

***The United States-Mexico-Canada Agreement,
The North American Free Trade Agreement and
the Trans-Pacific Partnership:
Side-by-Side Comparison***

**USMCA Chapter 20:
Intellectual Property Rights**

United States-Mexico-Canada Agreement (2018) (Final Text)	North American Free Trade Agreement (1994)	Trans-Pacific Partnership (2015)
<p style="text-align: center;">CHAPTER 20 INTELLECTUAL PROPERTY RIGHTS Section A: General Provisions</p> <p>Article 20.1: Definitions 1. For the purposes of this Chapter: Berne Convention means the <i>Berne Convention for the Protection of Literary and Artistic Works</i>, done at Berne on September 9, 1886, as revised at Paris on July 24, 1971; Brussels Convention means the <i>Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite</i>, done at Brussels on May 21, 1974; Budapest Treaty means the <i>Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure</i> (1977), done at Budapest on April 28, 1977, as amended on September 26, 1980;</p> <p>Declaration on TRIPS and Public Health means the <i>Declaration on the TRIPS Agreement and Public Health</i> (WT/MIN(01)/DEC/2), adopted on November 14, 2001;</p> <p>geographical indication means an indication that identifies 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; Hague Agreement means the <i>Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs</i>, done at Geneva on July 2, 1999;</p> <p>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;</p> <p>Madrid Protocol means the <i>Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks</i>, done at Madrid on June 27, 1989;</p> <p>Paris Convention means the <i>Paris Convention for the Protection of Industrial Property</i>, done at Paris on March 20, 1883 as revised at Stockholm on July 14, 1967;</p>	<p style="text-align: center;">Chapter Seventeen: Intellectual Property</p> <p style="text-align: center;">Part Six: Intellectual Property</p> <p>Article 1721: Definitions 1. For purposes of this Chapter:</p> <p>confidential information includes trade secrets, privileged information and other materials exempted from disclosure under the Party's domestic law. 2. For purposes of this Agreement:</p> <p>encrypted program-carrying satellite signal means a program-carrying satellite signal that is transmitted in a form whereby the aural or visual characteristics, or both, are modified or altered for the purpose of preventing the unauthorized reception, by persons without the authorized equipment that is designed to eliminate the effects of such modification or alteration, of a program carried in that signal;</p> <p>geographical indication means any indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a particular quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;</p> <p>in a manner contrary to honest commercial practices means at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by other persons who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition;</p> <p>intellectual property rights refers to copyright and related rights, trademark rights, patent rights, rights in layout designs of semiconductor integrated circuits, trade secret rights, plant breeders' rights, rights in geographical indications and industrial design rights;</p> <p>nationals of another Party means, in respect of the relevant intellectual property right, persons who would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Geneva Convention (1971), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961), the UPOV Convention (1978), the UPOV Convention (1991) or the Treaty on Intellectual Property in Respect of Integrated Circuits, as if each Party were a party to those Conventions, and with respect to intellectual property rights that are not the subject of these Conventions, "nationals of another Party" shall be understood to be at least individuals who are citizens or permanent residents of that Party and also includes any other natural person referred to in Annex 201.1 (Country Specific Definitions);</p>	<p style="text-align: center;">Chapter Eighteen: Intellectual Property</p> <p style="text-align: center;">Section A: General Provisions</p> <p>Article 18.1: Definitions 1. For the purposes of this Chapter: Berne Convention means the Berne Convention for the Protection of Literary and Artistic Works, as revised at Paris, July 24, 1971;</p> <p>Budapest Treaty means the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended on September 26, 1980;</p> <p>Declaration on TRIPS and Public Health means the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2), adopted on November 14, 2001;</p> <p>geographical indication means an indication that identifies 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;</p> <p>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;</p> <p>Madrid Protocol means the <i>Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks</i>, done at Madrid, June 27, 1989;</p> <p>Paris Convention means the <i>Paris Convention for the Protection of Industrial Property</i>, as revised at Stockholm, July 14, 1967;</p>

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<p>performance means a performance fixed in a phonogram, unless otherwise specified;</p> <p>with respect to copyright and related rights, right to authorize or prohibit refers to exclusive rights;</p> <p>PLT means the <i>Patent Law Treaty</i> adopted by the WIPO Diplomatic Conference done at Geneva on June 1, 2000;</p> <p>Singapore Treaty means the <i>Singapore Treaty on the Law of Trademarks</i>, done at Singapore on March 27, 2006;</p> <p>UPOV 1991 means the <i>International Convention for the Protection of New Varieties of Plants</i>, done at Paris on December 2, 1961, as revised at Geneva on March 19, 1991;</p> <p>WCT means the <i>WIPO Copyright Treaty</i>, done at Geneva on December 20, 1996;</p> <p>WIPO means the World Intellectual Property Organization; for greater certainty, work includes a cinematographic work, photographic work, and computer program; and</p> <p>WPPT means the <i>WIPO Performances and Phonograms Treaty</i>, done at Geneva on December 20, 1996.</p> <p>2. For the purposes of Article 20.8 (National Treatment), Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications), and Article 20.62 (Related Rights):</p> <p>a national means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 20.7 (International Agreements) or the TRIPS Agreement.</p> <p>Article 20.2: Objectives</p> <p>The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.</p> <p>Article 20.3: Principles</p> <p>1. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that those measures are consistent with the provisions of this Chapter.</p> <p>2. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.</p> <p>Article 20.4: Understandings in Respect of this Chapter</p> <p>Having regard to the underlying public policy objectives of national systems, the Parties recognize the need to:</p> <p>(a) promote innovation and creativity;</p> <p>(b) facilitate the diffusion of information, knowledge, technology, culture, and the arts; and</p> <p>(c) foster competition and open and efficient markets;</p>	<p>public includes, with respect to rights of communication and performance of works provided for under Articles 11, 11bis(1) and 14(1)(ii) of the Berne Convention, with respect to dramatic, dramatico-musical, musical and cinematographic works, at least, any aggregation of individuals intended to be the object of, and capable of perceiving, communications or performances of works, regardless of whether they can do so at the same or different times or in the same or different places, provided that such an aggregation is larger than a family and its immediate circle of acquaintances or is not a group comprising a limited number of individuals having similarly close ties that has not been formed for the principal purpose of receiving such performances and communications of works; and</p> <p>secondary uses of sound recordings means the use directly for broadcasting or for any other public communication of a sound recording.</p>	<p>performance means a performance fixed in a phonogram unless otherwise specified;</p> <p>with respect to copyright and related rights, the term right to authorize or prohibit refers to exclusive rights;</p> <p>Singapore Treaty means the <i>Singapore Treaty on the Law of Trademarks</i>, done at Singapore, March 27, 2006;</p> <p>UPOV 1991 means the <i>International Convention for the Protection of New Varieties of Plants</i>, as revised at Geneva, March 19, 1991;</p> <p>WCT means the <i>WIPO Copyright Treaty</i>, done at Geneva, December 20, 1996;</p> <p>WIPO means the World Intellectual Property Organization; for greater certainty, work includes a cinematographic work, photographic work and computer program; and</p> <p>WPPT means the <i>WIPO Performances and Phonograms Treaty</i>, done at Geneva, December 20, 1996.</p> <p>2. For the purposes of Article 18.8 (National Treatment), Article 18.31(a) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.62.1 (Related Rights):</p> <p>a national means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 18.7 (International Agreements) or the TRIPS Agreement.</p> <p>Article 18.2: Objectives</p> <p>The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.</p> <p>Article 18.3: Principles</p> <p>1. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.</p> <p>2. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.</p> <p>Article 18.4: Understandings in Respect of this Chapter</p> <p>Having regard to the underlying public policy objectives of national systems, the Parties recognise the need to:</p> <p>(a) promote innovation and creativity;</p> <p>(b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and</p> <p>(c) foster competition and open and efficient markets,</p>

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<p>through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, service providers, users, and the public.</p> <p>Article 20.5: Nature and Scope of Obligations 1. Each Party shall provide in its territory to the nationals of another Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade. 2. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.</p> <p>Article 20.6: Understandings Regarding Certain Public Health Measures The Parties affirm their commitment to the Declaration on TRIPS and Public Health. In particular, the Parties have reached the following understandings regarding this Chapter:</p> <p>(a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all. Each Party has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria, and other epidemics, can represent a national emergency or other circumstances of extreme urgency.</p> <p>(b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the WTO General Council of August 30, 2003 on the <i>Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health</i> (WT/L/540) and the WTO General Council Chairman's Statement Accompanying the Decision (JOB(03)/177, WT/GC/M/82), as well as the Decision of the WTO General Council of December 6, 2005 on the <i>Amendment of the TRIPS Agreement</i>, (WT/L/641) and the WTO General Council Chairperson's Statement Accompanying the Decision (JOB(05)/319 and Corr. 1, WT/GC/M/100) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilization of the TRIPS/health solution.</p> <p>(c) With respect to the aforementioned matters, if any waiver of a provision of the TRIPS Agreement, or any amendment of the TRIPS Agreement, enters into force with respect to the Parties, and a Party's application of a measure in conformity with that waiver or amendment is contrary to the obligations of this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the waiver or amendment.</p> <p>Article 20.7: International Agreements 1. Each Party affirms that it has ratified or acceded to the following agreements:</p> <p>(a) <i>Patent Cooperation Treaty</i>, as amended on September 28, 1979, and modified on February 3, 1984;</p>	<p>Article 1701: Nature and Scope of Obligations 1. Each Party shall provide in its territory to the nationals of another Party adequate and effective protection and enforcement of intellectual property rights, while ensuring that measures to enforce intellectual property rights do not themselves become barriers to legitimate trade.</p> <p>2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, at a minimum, give effect to this Chapter and to the substantive provisions of:</p> <p>(a) the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms, 1971 (Geneva Convention);</p>	<p>through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, service providers, users and the public.</p> <p>Article 18.5: Nature and Scope of Obligations Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene the provisions of this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.</p> <p>Article 18.6: Understandings Regarding Certain Public Health Measures 1. The Parties affirm their commitment to the Declaration on TRIPS and Public Health. In particular, the Parties have reached the following understandings regarding this Chapter:</p> <p>(a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all. Each Party has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.</p> <p>(b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the WTO General Council of August 30, 2003 on the <i>Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health</i> (WT/L/540) and the WTO General Council Chairman's Statement Accompanying the Decision (JOB(03)/177, WT/GC/M/82), as well as the Decision of the WTO General Council of December 6, 2005 on the <i>Amendment of the TRIPS Agreement</i>, (WT/L/641) and the WTO General Council Chairperson's Statement Accompanying the Decision (JOB(05)/319 and Corr. 1, WT/GC/M/100) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilisation of the TRIPS/health solution.</p> <p>(c) With respect to the aforementioned matters, if any waiver of any provision of the TRIPS Agreement, or any amendment of the TRIPS Agreement, enters into force with respect to the Parties, and a Party's application of a measure in conformity with that waiver or amendment is contrary to the obligations of this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the waiver or amendment</p> <p>2. Each Party shall notify, if it has not already done so, the WTO of its acceptance of the Protocol amending the TRIPS Agreement, done at Geneva on December 6, 2005.</p> <p>Article 18.7: International Agreements 1. Each Party affirms that it has ratified or acceded to the following agreements:</p> <p>(a) <i>Patent Cooperation Treaty</i>, as amended September 28, 1979;</p>

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<p>(b) Paris Convention;</p> <p>(c) Berne Convention;</p> <p>(d) WCT; and</p> <p>(e) WPPT.</p> <p>2. Each Party shall ratify or accede to each of the following agreements, if it is not already a party to that agreement, by the date of entry into force of this Agreement:</p> <p>(a) Madrid Protocol;</p> <p>(b) Budapest Treaty;</p> <p>(c) Singapore Treaty;¹</p> <p>Footnote 1 1 A Party may satisfy the obligations in paragraphs 2(a) and 2(c) by ratifying or acceding to either the Madrid Protocol or the Singapore Treaty.</p> <p>(d) UPOV 1991;</p> <p>(e) Hague Agreement; and</p> <p>(f) Brussels Convention.</p> <p>3. Each Party shall give due consideration to ratifying or acceding to the PLT, or, in the alternative, shall adopt or maintain procedural standards consistent with the objective of the PLT.</p> <p>Article 20.8: National Treatment 1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of another Party treatment no less favorable than it accords to its own nationals with regard to the protection² of intellectual property rights.</p>	<p>(c) the Paris Convention for the Protection of Industrial Property , 1967 (Paris Convention);</p> <p>(b) the Berne Convention for the Protection of Literary and Artistic Works , 1971 (Berne Convention);</p> <p>and (d) the International Convention for the Protection of New Varieties of Plants , 1978 (UPOV Convention), or the International Convention for the Protection of New Varieties of Plants , 1991 (UPOV Convention).</p> <p>If a Party has not acceded to the specified text of any such Conventions on or before the date of entry into force of this Agreement, it shall make every effort to accede.</p> <p>(a) Madrid Protocol;</p> <p>(b) Budapest Treaty;</p> <p>(c) Singapore Treaty;¹</p> <p>Footnote 1 A Party may satisfy the obligations in paragraph 2(a) and 2(c) by ratifying or acceding to either the Madrid Protocol or the Singapore Treaty.</p> <p>(d) UPOV 1991;²</p> <p>Footnote 2 Annex 18-A applies to this subparagraph.</p> <p>(e) WCT; and</p> <p>(f) WPPT.</p> <p>3. Annex 1701.3 applies to the Parties specified in that Annex.</p> <p>Article 1702: More Extensive Protection A Party may implement in its domestic law more extensive protection of intellectual property rights than is required under this Agreement, provided that such protection is not inconsistent with this Agreement.</p> <p>Article 1703: National Treatment 1. Each Party shall accord to nationals of another Party treatment no less favorable than that it accords to its own nationals with regard to the protection and enforcement of all intellectual property rights.</p> <p>In respect of sound recordings, each Party shall provide such treatment to producers and performers of another Party, except that a Party may limit rights of performers of another Party in respect of secondary uses of sound recordings to those rights its nationals are accorded in the territory of such other Party.</p>	<p>(b) Paris Convention; and</p> <p>(c) Berne Convention..</p> <p>2. Each Party shall ratify or accede to each of the following agreements, if it is not already a party to that agreement, by the date of entry into force of this Agreement for that Party:</p> <p>(a) Madrid Protocol;</p> <p>(b) Budapest Treaty;</p> <p>(c) Singapore Treaty;¹</p> <p>Footnote 1 A Party may satisfy the obligations in paragraph 2(a) and 2(c) by ratifying or acceding to either the Madrid Protocol or the Singapore Treaty.</p> <p>(d) UPOV 1991;²</p> <p>Footnote 2 Annex 18-A applies to this subparagraph.</p> <p>(e) WCT; and</p> <p>(f) WPPT.</p> <p>Article 18.8: National Treatment 1. In respect of all categories of intellectual property covered in this Chapter,³ each Party shall accord to nationals of another Party treatment no less favourable than it accords to its own nationals with regard to the protection⁴ of intellectual property rights.</p> <p>2. With respect to secondary uses of phonograms by means of analog communications and free over-the-air broadcasting, however, a Party may limit the rights of the performers and producers of another Party to the rights its persons are accorded within the jurisdiction of that other Party.</p> <p>Footnote 3 For greater certainty, with respect to copyrights and related rights that are not covered under Section H (Copyright and Related Rights), nothing in this Agreement limits a Party from taking an otherwise permissible derogation from national treatment with respect to those rights.</p>

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<p>Footnote 2 For the purposes of this paragraph, “protection” shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this paragraph, “protection” also includes the prohibition on the circumvention of effective technological measures set out in Article 20.67 (Technological Protection Measures) and the provisions concerning rights management information set out in Article 20.68 (Rights Management Information). For greater certainty, “matters affecting the use of intellectual property rights specifically covered by this Chapter” in respect of works, performances, and phonograms, include any form of payment, such as licensing fees, royalties, equitable remuneration, or levies, in respect of uses that fall under the copyright and related rights in this Chapter. The preceding sentence is without prejudice to a Party’s interpretation of “matters affecting the use of intellectual property rights” in footnote 3 of the TRIPS Agreement</p> <p>2. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of another Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that this derogation is:</p> <p>(a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and (b) not applied in a manner that would constitute a disguised restriction on trade.</p> <p>3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.</p> <p>Article 20.9: Transparency 1. Further to Article 20.81 (Enforcement Practices with Respect to Intellectual Property Rights), each Party shall endeavor to publish online its laws, regulations, procedures, and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.</p> <p>2. Each Party shall, subject to its law, endeavor to publish online information that it makes public concerning applications for trademarks, geographical indications, designs, patents, and plant variety rights.^{3,4}</p> <p>Footnote 3 For greater certainty, paragraphs 2 and 3 are without prejudice to a Party’s obligations under Article 20.23 (Electronic Trademarks System).</p> <p>Footnote 4 For greater certainty, paragraph 2 does not require a Party to publish online the entire dossier for the relevant application.</p>	<p>2. No Party may, as a condition of according national treatment under this Article, require right holders to comply with any formalities or conditions in order to acquire rights in respect of copyright and related rights.</p> <p>3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures for the protection or enforcement of intellectual property rights, including any procedure requiring a national of another Party to designate for service of process an address in the Party’s territory or to appoint an agent in the Party’s territory, if the derogation is consistent with the relevant Convention listed in Article 1701(2), provided that such derogation:</p> <p>(a) is necessary to secure compliance with measures that are not inconsistent with this Chapter; and (b) is not applied in a manner that would constitute a disguised restriction on trade.</p> <p>4. No Party shall have any obligation under this Article with respect to procedures provided in multilateral agreements concluded under the auspices of the World Intellectual Property Organization relating to the acquisition or maintenance of intellectual property rights.</p> <p>Article 1704: Control of Abusive or Anticompetitive Practices or Conditions Nothing in this Chapter shall prevent a Party from specifying in its domestic law licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. A Party may adopt or maintain, consistent with the other provisions of this Agreement, appropriate measures to prevent or control such practices or conditions.</p>	<p>Footnote 4 For the purposes of this paragraph, “protection” shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this paragraph, “protection” also includes the prohibition on the circumvention of effective technological measures set out in Article 18.68 (TPMs) and the provisions concerning rights management information set out in Article 18.69 (RMI). For greater certainty, “matters affecting the use of intellectual property rights specifically covered by this Chapter” in respect of works, performances and phonograms, include any form of payment, such as licensing fees, royalties, equitable remuneration, or levies, in respect of uses that fall under the copyright and related rights in this Chapter. The preceding sentence is without prejudice to a Party’s interpretation of “matters affecting the use of intellectual property rights” in footnote 3 of the TRIPS Agreement.</p> <p>3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of another Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:</p> <p>(a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and (b) not applied in a manner that would constitute a disguised restriction on trade.</p> <p>4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.</p> <p>Article 18.9: Transparency 1. Further to Article 26.2 (Publication) and Article 18.73.1 (Enforcement Practices with Respect to Intellectual Property Rights), each Party shall endeavour to make available on the Internet its laws, regulations, procedures and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.</p> <p>2. Each Party shall, subject to its law, endeavour to make available on the Internet information that it makes public concerning applications for trademarks, geographical indications, designs, patents and plant variety rights.^{5,6}</p> <p>Footnote 5 For greater certainty, paragraph 2 does not require a Party to make available on the Internet the entire dossier for the relevant application.obligations under Article 18.24 (Electronic Trademarks System).</p> <p>Footnote 6 For greater certainty, paragraph 2 does not require a Party to make available on the Internet the entire dossier for the relevant application.</p>

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<p>3. Each Party shall, subject to its law, publish online information that it makes public concerning registered or granted trademarks, geographical indications, designs, patents, and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights.⁵</p> <p>Footnote 5 For greater certainty, paragraph 3 does not require a Party to publish online the entire dossier for the relevant registered or granted intellectual property right.</p> <p>Article 20.10: Application of Chapter to Existing Subject Matter and Prior Acts 1. Unless otherwise provided in this Chapter, including in Article 20.64 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.</p> <p>2. Unless provided in Article 20.64 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory.</p> <p>3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement.</p> <p>Article 20.11: Exhaustion of Intellectual Property Rights Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system.⁶</p> <p>Footnote 6 For greater certainty, this Article is without prejudice to any provisions addressing the exhaustion of intellectual property rights in international agreements to which a Party is a party.</p> <p style="text-align: center;">Section B: Cooperation</p> <p>Article 20.12: Contact Points for Cooperation Each Party may designate and notify the other Parties of one or more contact points for the purpose of cooperation under this Section.</p> <p>Article 20.13: Cooperation The Parties shall endeavor to cooperate on the subject matter covered by this Chapter, such as through appropriate coordination and exchange of information between their respective intellectual property offices, or other agencies or institutions, as determined by each Party.</p> <p>Article 20.14: Committee on Intellectual Property Rights 1. The Parties hereby establish a Committee on Intellectual Property Rights (IPR Committee), composed of government representatives of each Party. 2. The IPR Committee shall: (a) exchange information, pertaining to intellectual property rights matters, including how intellectual property protection contributes to innovation, creativity, economic growth, and employment, such as: (i) developments in domestic and international intellectual property law and policy, (ii) economic benefits related to trade and other analysis of the contributions arising from the protection and enforcement of intellectual property rights,</p>		<p>3. Each Party shall, subject to its law, make available on the Internet information that it makes public concerning registered or granted trademarks, geographical indications, designs, patents and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights.⁷</p> <p>Footnote 7 For greater certainty, paragraph 3 does not require a Party to make available on the Internet the entire dossier for the relevant registered or granted intellectual property right.</p> <p>Article 18.11: Exhaustion of Intellectual Property Rights Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system.⁸</p> <p>Footnote 8 For greater certainty, this Article is without prejudice to any provisions addressing the exhaustion of intellectual property rights in international agreements to which a Party is a party.</p> <p style="text-align: center;">Section B: Cooperation</p> <p>Article 18.13: Cooperation Activities and Initiatives The Parties shall endeavour to cooperate on the subject matter covered by this Chapter, such as through appropriate coordination, training and exchange of information between the respective intellectual property offices of the Parties, or other institutions, as determined by each Party. Cooperation may cover areas such as:</p> <p>(b) intellectual property administration and registration systems;</p> <p>(e) policies involving the use of intellectual property for research, innovation and economic growth;</p> <p>(a) developments in domestic and international intellectual property policy;</p>

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<p>(iii) intellectual property issues particularly relevant to small and medium-sized enterprises; science, technology, and innovation activities; and to the generation, transfer, and dissemination of technology,</p> <p>(iv) approaches for reducing the infringement of intellectual property rights, as well as effective strategies for removing the underlying incentives for infringement,</p> <p>(v) programs on education and awareness related to intellectual property and building capacity regarding intellectual property rights matters, and</p> <p>(vi) implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of WIPO;</p> <p>(b) work towards strengthening border enforcement of intellectual property rights through the promotion of collaborative operations in customs and exchange of best practices;</p> <p>(c) exchange information regarding trade secret-related matters, including the value of trade secrets and the economic loss associated with trade secret misappropriation;</p> <p>(d) discuss proposals to enhance procedural fairness in patent litigation, including with respect to choice of venue; and</p> <p>(e) upon request of a Party and in the interest of advancing transparency, endeavor to reach a mutually agreeable solution before taking measures in connection with future requests of recognition or protection of a geographical indication from any other country through a trade agreement.</p> <p>3. The Parties shall endeavor to cooperate on providing technical assistance regarding trade secret protection to the relevant authorities of non-Parties and identify appropriate opportunities to increase cooperation between the Parties on trade-related intellectual property rights protection and enforcement.</p> <p>4. The IPR Committee shall meet within one year after the date of entry into force of this Agreement and thereafter as necessary.</p> <p>Article 20.15: Patent Cooperation and Work Sharing</p> <p>1. The Parties recognize the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices to the benefit of all users of the patent system and the public as a whole.</p> <p>2. Further to paragraph 1, the Parties shall endeavor to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work of the Parties. This may include:</p> <p>(a) making search and examination results available to the patent offices of the other Parties;⁷ and</p> <p>Footnote 7</p> <p>The Parties recognize the importance of multilateral efforts to promote the sharing and use of search and examination results with a view to improving the quality of search and examination processes and to reducing the costs for both applicants and patent offices.</p> <p>(b) exchanging information on quality assurance systems and quality standards relating to patent examination.</p> <p>3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavor to cooperate to reduce differences in the procedures and processes of their respective patent offices.</p> <p>Article 20.16: Cooperation on Request</p> <p>Cooperation activities undertaken under this Chapter are subject to the availability of resources, and on request, and on terms and conditions mutually decided upon between the Parties involved. The Parties affirm that cooperation under this Section is additional to and without prejudice to other past, ongoing, and future cooperation activities, both bilateral and multilateral, between the Parties, including between their respective intellectual property offices.</p>	<p>Article 1719: Cooperation and Technical Assistance</p> <p>1. The Parties shall provide each other on mutually agreed terms with technical assistance and shall promote cooperation between their competent authorities. Such cooperation shall include the training of personnel.</p>	<p>(d) intellectual property issues relevant to:</p> <p>(i) small and medium-sized enterprises;</p> <p>(ii) science, technology and innovation activities; and</p> <p>(iii) the generation, transfer and dissemination of technology;</p> <p>(c) education and awareness relating to intellectual property;</p> <p>(f) implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of WIPO; and</p> <p>Article 18.17: Cooperation on Request</p> <p>Cooperation activities and initiatives undertaken under this Chapter shall be subject to the availability of resources, and on request, and on terms and conditions mutually agreed upon between the Parties involved.</p> <p>Article 18.12: Contact Points for Cooperation</p>

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<p style="text-align: center;">Section C: Trademarks</p> <p>Article 20.17: Types of Signs Registrable as Trademarks No Party shall require, as a condition of registration, that a sign be visually perceptible, nor shall a Party deny registration of a trademark only on the ground that the sign of which it is composed is a sound. Additionally, each Party shall make best efforts to register scent marks. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trademark.</p> <p>Article 20.18: Collective and Certification Marks Each Party shall provide that trademarks include collective marks and certification marks. A Party is not required to treat certification marks as a separate category in its law, provided that those marks are protected. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system.⁸</p> <p>Footnote 8 Consistent with the definition of a geographical indication in Article 20.1 (Definitions), any sign, or combination of signs, shall be eligible for protection under one or more of the legal means for protecting geographical indications, or a combination of those means.</p> <p>Article 20.19: Use of Identical or Similar Signs Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent third parties that do not have the owner's consent from using in the course of trade identical or similar signs, including subsequent geographical indications⁹ for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, if that 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.</p> <p>Footnote 9 For greater certainty, the Parties understand that this Article should not be interpreted to affect their rights and obligations under Articles 22 and 23 of the TRIPS Agreement.</p> <p>Article 20.20: Exceptions A 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.</p>	<p>2. The Parties shall cooperate with a view to eliminating trade in goods that infringe intellectual property rights. For this purpose, each Party shall establish and notify the other Parties by January 1, 1994 of contact points in its federal government and shall exchange information concerning trade in infringing goods.</p> <p>Article 1708: Trademarks</p> <p>1. For purposes of this Agreement, a trademark consists of any sign, or any combination of signs, capable of distinguishing the goods or services of one person from those of another, including personal names, designs, letters, numerals, colors, figurative elements, or the shape of goods or of their packaging. Trademarks shall include service marks and collective marks, and may include certification marks. A Party may require, as a condition for registration, that a sign be visually perceptible.</p> <p>2. Each Party shall provide to the owner of a registered trademark the right to prevent all persons not having the owner's consent from using in commerce identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any prior rights, nor shall they affect the possibility of a Party making rights available on the basis of use.</p> <p>3. A Party may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. No Party may refuse an application solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application for registration.</p> <p>12. A Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that those exceptions take into account the legitimate interests of the trademark owner and of other persons.</p> <p>13. Each Party shall prohibit the registration as a trademark of words, at least in English, French or Spanish, that generically designate goods or services or types of goods or services to which the trademark applies.</p>	<p>Further to Article 21.3 (Contact Points for Cooperation and Capacity Building), each Party may designate and notify under Article 27.5.2 (Contact Points) one or more contact points for the purpose of cooperation under this Section.</p> <p style="text-align: center;">Section C: Trademarks</p> <p>Article 18.18: Types of Signs Registrable as Trademarks No Party shall require, as a condition of registration, that a sign be visually perceptible, nor shall a Party deny registration of a trademark only on the ground that the sign of which it is composed is a sound. Additionally, each Party shall make best efforts to register scent marks. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trademark.</p> <p>Article 18.19: Collective and Certification Marks 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 its law, provided that those marks are protected. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system.¹⁰</p> <p>Footnote 10 Consistent with the definition of a geographical indication in Article 18.1 (Definitions), any sign or combination of signs shall be eligible for protection under one or more of the legal means for protecting geographical indications, or a combination of such means.</p> <p>Article 18.20: Use of Identical or Similar Signs Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent third parties that do not have the owner's consent from using in the course of trade identical or similar signs, including subsequent geographical indications,^{11,12} for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.</p> <p>Footnote 11 For greater certainty, the exclusive right in this Article applies to cases of unauthorised use of geographical indications with goods for which the trademark is registered, in cases in which the use of that geographical indication in the course of trade would result in a likelihood of confusion as to the source of the goods.</p> <p>Footnote 12 For greater certainty, the Parties understand that this Article should not be interpreted to affect their rights and obligations under Articles 22 and 23 of the TRIPS Agreement.</p> <p>Article 18.21: Exceptions A 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 interest of the owner of the trademark and of third parties.</p>

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<p>Article 20.21: Well-Known Trademarks</p> <p>1. No Party shall require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.</p> <p>2. Article 6bis of the Paris Convention shall apply, <i>mutatis mutandis</i>, to goods or services that are not identical or similar to those identified by a well-known trademark,¹⁰ 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 that use.</p> <p>Footnote 10</p> <p>In determining whether a trademark is well-known in a Party, that Party need not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.</p> <p>3. The Parties recognize the importance of the <i>Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks</i> as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO September 20 to 29, 1999.</p> <p>4. Each Party shall provide for appropriate measures to refuse the application or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark,¹¹ for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark. A Party may also provide those measures including in cases in which the subsequent trademark is likely to deceive.</p> <p>Footnote 11</p> <p>The Parties understand that a well-known trademark is one that was already well-known before, as determined by a Party, the application for, registration of, or use of the first-mentioned trademark.</p> <p>Article 20.22: Procedural Aspects of Examination, Opposition, and Cancellation</p> <p>Each Party shall provide a system for the examination and registration of trademarks that includes among other things:</p> <p>(a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trademark;</p> <p>(b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trademark;</p> <p>(c) providing an opportunity to oppose the registration of a trademark and an opportunity to seek cancellation¹² of a trademark through, at a minimum, administrative procedures; and</p> <p>Footnote 12</p> <p>For greater certainty, cancellation for the purposes of this Section may be implemented through a nullification or revocation proceeding.</p> <p>(d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means.</p>	<p>14. Each Party shall refuse to register trademarks that consist of or comprise immoral, deceptive or scandalous matter, or matter that may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs or any Party's national symbols, or bring them into contempt or disrepute.</p> <p>6. Article 6bis of the Paris Convention shall apply, with such modifications as may be necessary, to services. In determining whether a trademark is wellknown, account shall be taken of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Party's territory obtained as a result of the promotion of the trademark. No Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.</p> <p>4. Each Party shall provide a system for the registration of trademarks, which shall include:</p> <p>(a) examination of applications;</p> <p>(b) notice to be given to an applicant of the reasons for the refusal to register a trademark;</p> <p>(c) a reasonable opportunity for the applicant to respond to the notice;</p> <p>(d) publication of each trademark either before or promptly after it is registered; and</p> <p>(e) a reasonable opportunity for interested persons to petition to cancel the registration of a trademark.</p> <p>A Party may provide for a reasonable opportunity for interested persons to oppose the registration of a trademark.</p>	<p>Article 18.22: Well-Known Trademarks</p> <p>1. No Party shall require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.</p> <p>2. Article 6bis of the Paris Convention shall apply, <i>mutatis mutandis</i>, to goods or services that are not identical or similar to those identified by a well-known trademark,¹³ 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.</p> <p>Footnote 13</p> <p>In determining whether a trademark is well-known in a Party, that Party need not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.</p> <p>3. Each Party recognises the importance of the <i>Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks</i> as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO September 20 to 29, 1999.</p> <p>4. Each Party shall provide for appropriate measures to refuse the application or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark¹⁴, for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark. A Party may also provide such measures including in cases in which the subsequent trademark is likely to deceive.</p> <p>Footnote 14</p> <p>The Parties understand that a well-known trademark is one that was already well-known before, as determined by a Party, the application for, registration of or use of the first-mentioned trademark.</p> <p>Article 18.23: Procedural Aspects of Examination, Opposition and Cancellation</p> <p>Each Party shall provide a system for the examination and registration of trademarks which includes among other things:</p> <p>(a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trademark;</p> <p>(b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trademark;</p> <p>(c) providing an opportunity to oppose the registration of a trademark or to seek cancellation¹⁵ of a trademark; and</p> <p>Footnote 15</p> <p>For greater certainty, cancellation for purposes of this Section may be implemented through nullification or revocation proceedings.</p> <p>(d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means.</p>

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<p>Article 20.23: Electronic Trademarks System Further to Article 20.9.3 (Transparency), each Party shall provide a:</p> <p>(a) system for the electronic application for, and maintenance of, trademarks; and (b) publicly available electronic information system, including an online database, of trademark applications and of registered trademarks.</p> <p>Article 20.24: Classification of Goods and Services Each Party shall adopt or maintain a trademark classification system that is consistent with the <i>Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks</i>, done at Nice, June 15, 1957, as revised and amended (Nice Classification). Each Party shall provide that:</p> <p>(a) registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification;¹³ and</p> <p>Footnote 13 A Party that relies on translations of the Nice Classification shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.</p> <p>(b) goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.</p> <p>Article 20.25: Term of Protection for Trademarks Each Party shall provide that initial registration and each renewal of registration of a trademark is for a term of no less than 10 years.</p> <p>Article 20.26: Non-Recordal of a License No Party shall require recordal of trademark licenses: (a) to establish the validity of the licenses; or (b) as a condition for use of a trademark by a licensee to be deemed to constitute use by the holder in a proceeding that relates to the acquisition, maintenance, or enforcement of trademarks.</p> <p>Article 20.27: Domain Names</p>	<p>5. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.</p> <p>7. Each Party shall provide that the initial registration of a trademark be for a term of at least 10 years and that the registration be indefinitely renewable for terms of not less than 10 years when conditions for renewal have been met.</p> <p>8. Each Party shall require the use of a trademark to maintain a registration. The registration may be canceled for the reason of non-use only after an uninterrupted period of at least two years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Each Party shall recognize, as valid reasons for non-use, circumstances arising independently of the will of the trademark owner that constitute an obstacle to the use of the trademark, such as import restrictions on, or other government requirements for, goods or services identified by the trademark.</p> <p>9. Each Party shall recognize use of a trademark by a person other than the trademark owner, where such use is subject to the owner's control, as use of the trademark for purposes of maintaining the registration.</p> <p>10. No Party may encumber the use of a trademark in commerce by special requirements, such as a use that reduces the trademark's function as an indication of source or a use with another trademark.</p> <p>11. A Party may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign its trademark with or without the transfer of the business to which the trademark belongs.</p>	<p>Article 18.24: Electronic Trademarks System Each Party shall provide:</p> <p>(a) a system for the electronic application for, and maintenance of, trademarks; and (b) a publicly available electronic information system, including an online database, of trademark applications and of registered trademarks.</p> <p>Article 18.25: Classification of Goods and Services Each Party shall adopt or maintain a trademark classification system that is consistent with the <i>Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks</i>, done at Nice, June 15, 1957, as revised and amended (Nice Classification). Each Party shall provide that:</p> <p>(a) registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification;¹⁶ and</p> <p>Footnote 16 A Party that relies on translations of the Nice Classification shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.</p> <p>(b) goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.</p> <p>Article 18.26: Term of Protection for Trademarks Each Party shall provide that initial registration and each renewal of registration of a trademark is for a term of no less than 10 years.</p> <p>Article 18.27: Non-Recordal of a License No Party shall require recordal of trademark licenses: (a) to establish the validity of the licence; or (b) as a condition for use of a trademark by a licensee to be deemed to constitute use by the holder in a proceeding that relates to the acquisition, maintenance or enforcement of trademarks.</p> <p>Article 18.28: Domain Names</p>

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<p>1. In connection with each Party's system for the management of its country-code top-level domain (ccTLD) domain names, the following shall be available:</p> <p>(a) an appropriate procedure for the settlement of disputes that, based on, or modelled along the same lines as, the principles established in the <i>Uniform Domain-Name Dispute-Resolution Policy</i>, or that:</p> <p>(i) is designed to resolve disputes expeditiously and at low cost,</p> <p>(ii) is fair and equitable,</p> <p>(iii) is not overly burdensome, and</p> <p>(iv) does not preclude resort to judicial proceedings; and</p> <p>(b) online public access to a reliable and accurate database of contact information concerning domain name registrants,</p> <p>in accordance with each Party's law and, if applicable, relevant administrator policies regarding protection of privacy and personal data.</p> <p>2. In connection with each Party's system for the management of ccTLD domain names, appropriate remedies¹⁴ shall be available at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.</p> <p>Footnote 14 The Parties understand that those remedies may, but need not, include revocation, cancellation, transfer, damages, or injunctive relief.</p> <p style="text-align: center;">Section D: Country Names</p> <p>Article 20.28: Country Names Each Party shall provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good.</p> <p style="text-align: center;">Section E: Geographical Indications</p>	<p>Article 1712: Geographical Indications</p> <p>1. Each Party shall provide, in respect of geographical indications, the legal means for interested persons to prevent:</p> <p>(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 territory, region or locality other than the true place of origin, in a manner that misleads the public as to the geographical origin of the good;</p> <p>(b) any use that constitutes an act of unfair competition within the meaning of Article 10<i>bis</i> of the Paris Convention.</p> <p>2. Each Party shall, on its own initiative if its domestic law so permits or at the request of an interested person, refuse to register, or invalidate the registration of, a trademark containing or consisting of a geographical indication with respect to goods that do not originate in the indicated territory, region or locality, if use of the indication in the trademark for such goods is of such a nature as to mislead the public as to the geographical origin of the good.</p> <p>3. Each Party shall also apply paragraphs 1 and 2 to a geographical indication that, although correctly indicating the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory, region or locality.</p> <p>4. Nothing in this Article shall be construed to require a Party to prevent continued and similar use of a particular geographical indication of another Party in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in that Party's territory, either:</p> <p>(a) for at least 10 years, or</p> <p>(b) in good faith, before the date of signature of this Agreement.</p> <p>5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith, either:</p>	<p>1. In connection with each Party's system for the management of its country-code top-level domain (ccTLD) domain names, the following shall be available:</p> <p>(a) an appropriate procedure for the settlement of disputes, based on, or modelled along the same lines as, the principles established in the <i>Uniform Domain-Name Dispute-Resolution Policy</i>, as approved by the Internet Corporation for Assigned Names and Numbers (ICANN) or that:</p> <p>(i) is designed to resolve disputes expeditiously and at low cost;</p> <p>(ii) is fair and equitable;</p> <p>(iii) is not overly burdensome; and</p> <p>(iv) does not preclude resort to judicial proceedings; and</p> <p>(b) online public access to a reliable and accurate database of contact information concerning domain name registrants,</p> <p>in accordance with each Party's law and, if applicable, relevant administrator policies regarding protection of privacy and personal data.</p> <p>2. In connection with each Party's system for the management of ccTLD domain names, appropriate remedies¹⁷ shall be available at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.</p> <p>Footnote 17 The Parties understand that such remedies may, but need not, include, among other things, revocation, cancellation, transfer, damages or injunctive relief.</p> <p style="text-align: center;">Section D: Country Names</p> <p>Article 18.29: Country Names Each Party shall provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good.</p> <p style="text-align: center;">Section E: Geographical Indications</p>

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<p>Article 20.29: Recognition of Geographical Indications The Parties recognize that geographical indications may be protected through a trademark or a <i>sui generis</i> system or other legal means.</p> <p>Article 20.30: Administrative Procedures for the Protection or Recognition of Geographical Indications If a Party provides administrative procedures for the protection or recognition of geographical indications, whether through a trademark or a <i>sui generis</i> system, with respect to applications for that protection or petitions for that recognition, that Party shall:</p> <p>(a) accept those applications or petitions without requiring intercession by a Party on behalf of its nationals;¹⁵</p> <p>Footnote 15 This subparagraph also applies to judicial procedures that protect or recognize a geographical indication.</p> <p>(b) process those applications or petitions without imposing overly burdensome formalities;</p> <p>(c) ensure that its laws and regulations governing the filing of those applications or petitions are readily available to the public and clearly set out the procedures for these actions;</p> <p>(d) make available information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications or petitions and the processing of those applications or petitions in general; and allow an applicant, a petitioner, or their representative to ascertain the status of specific applications and petitions;</p> <p>(e) require that applications or petitions may specify particular translation or transliteration for which protection is being sought;</p> <p>(f) examine applications or petitions;</p> <p>(g) ensure that those applications or petitions are published for opposition and provide procedures for opposing geographical indications that are the subject of applications or petitions;</p> <p>(h) provide a reasonable period of time during which an interested person may oppose the application or petition;</p>	<p>(a) before the date of application of these provisions in that Party, or (b) before the geographical indication is protected in its Party of origin, no Party may adopt any measure to implement this Article that prejudices eligibility for, or the validity of, the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.</p> <p>6. No Party shall be required to apply this Article to a geographical indication if it is identical to the customary term in common language in that Party's territory for the goods or services to which the indication applies.</p> <p>7. 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.</p> <p>8. No Party shall adopt any measure implementing this Article that would prejudice any person's right to use, in the course of trade, its name or the name of its predecessor in business, except where such name forms all or part of a valid trademark in existence before the geographical indication became protected and with which there is a likelihood of confusion, or such name is used in such a manner as to mislead the public.</p> <p>9. Nothing in this Chapter shall be construed to require a Party to protect a geographical indication that is not protected, or has fallen into disuse, in the Party of origin.</p>	<p>Article 18.30: Recognition of Geographical Indications The Parties recognise that geographical indications may be protected through a trademark or <i>sui generis</i> system or other legal means.</p> <p>Article 18.31: Administrative Procedures for the Protection or Recognition of Geographical Indications If a Party provides administrative procedures for the protection or recognition of geographical indications, whether through a trademark or a <i>sui generis</i> system, that Party shall with respect to applications for that protection or petitions for that recognition:</p> <p>(a) accept those applications or petitions without requiring intercession by a Party on behalf of its nationals;¹⁸</p> <p>Footnote 18 This subparagraph also applies to judicial procedures that protect or recognise a geographical indication.</p> <p>(b) process those applications or petitions without imposition of overly burdensome formalities;</p> <p>(c) ensure that its laws and regulations governing the filing of those applications or petitions are readily available to the public and clearly set out the procedures for these actions;</p> <p>(d) make available information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications or petitions and the processing of those applications or petitions in general; and allow an applicant, a petitioner, or their representative to ascertain the status of specific applications and petitions;</p> <p>(e) ensure that those applications or petitions are published for opposition and provide procedures for opposing geographical indications that are the subject of applications or petitions; and</p>

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<p>(i) require that administrative decisions in opposition proceedings be reasoned and in writing, which may be provided by electronic means;</p> <p>(j) require that administrative decisions in cancellation proceedings be reasoned and in writing, which may be provided by electronic means; and</p> <p>(k) provide for cancellation¹⁶ of the protection or recognition afforded to a geographical indication.</p> <p>Footnote 16 16 For greater certainty, for the purposes of this Section, cancellation may be implemented through nullification or revocation proceedings.</p> <p>Article 20.31: Grounds of Denial, Opposition, and Cancellation¹⁷</p> <p>Footnote 17 A Party is not required to apply this Article to geographical indications for wines and spirits or to applications or petitions for those geographical indications.</p> <p>1. If a Party protects or recognizes a geographical indication through the procedures referred to in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow interested persons to object to the protection or recognition of a geographical indication, and that allow for that protection or recognition to be refused or otherwise not afforded, at least, on the grounds that the geographical indication is:</p> <p>(a) likely to cause confusion with a trademark that is the subject of a pre-existing good faith pending application or registration in the territory of the Party;</p> <p>(b) likely to cause confusion with a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law; and</p> <p>(c) a term customary in common language as the common name^{18, 19, 20} for the relevant good in the territory of the Party.</p> <p>Footnote 18 If a Party refuses to protect or recognize a compound geographical indication on the grounds that an individual term of that geographical indication is the common name for the relevant good in the territory of a Party, the Party may withdraw its refusal of protection or recognition if the applicant or registrant agrees to disclaim any claim of exclusive rights to the particular individual term that was the basis for the refusal.</p> <p>Footnote 19 For greater certainty, if a Party provides for the procedures in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and this Article to be applied to geographical indications for wines and spirits or applications or petitions for those geographical indications, that Party is not required to protect or recognize a geographical indication of any other Party with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Party.</p> <p>Footnote 20 For greater certainty, a term customary in common language as the common name may refer to a single-component term or individual components of a multi-component term.</p>		<p>(f) provide for cancellation¹⁹ of the protection or recognition afforded to a geographical indication.</p> <p>Footnote 19 For greater certainty, for the purposes of this Section, cancellation may be implemented through nullification or revocation proceedings.</p> <p>Article 18.32: Grounds of Opposition and Cancellation²⁰</p> <p>Footnote 20 A Party is not required to apply this Article to geographical indications for wines and spirits or to applications or petitions for those geographical indications.</p> <p>1. If a Party protects or recognises a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow interested persons to object to the protection or recognition of a geographical indication, and that allow for any such protection or recognition to be refused or otherwise not afforded, at least, on the following grounds:</p> <p>(a) the geographical indication is likely to cause confusion with a trademark that is the subject of a pre-existing good faith pending application or registration in the territory of the Party;</p> <p>(b) the geographical indication is likely to cause confusion with a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law; and</p> <p>(c) the geographical indication is a term customary in common language as the common name²¹ for the relevant good in the territory of the Party.</p> <p>Footnote 21 For greater certainty, if a Party provides for the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and this Article to be applied to geographical indications for wines and spirits or applications or petitions for those geographical indications, the Parties understand nothing shall require a Party to protect or recognise a geographical indication of any other Party with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Party.</p>

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<p>2. If a Party has protected or recognized a geographical indication through the procedures referred to in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow for interested persons to seek the cancellation of a geographical indication, and that allow for the protection or recognition to be cancelled, at least, on the grounds listed in paragraph 1. A Party may provide that the grounds listed in paragraph 1 apply as of the time of filing the request for protection or recognition of a geographical indication in the territory of the Party.²¹</p> <p>Footnote 21 For greater certainty, if the grounds listed in paragraph 1 did not exist in a Party's law as of the time of filing of the request for protection or recognition of a geographical indication under Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party is not required to apply those grounds for the purposes of paragraphs 2 or 4 of this Article in relation to that geographical indication.</p> <p>3. No Party shall preclude the possibility that the protection or recognition of a geographical indication may be cancelled, or otherwise cease, on the basis that the protected or recognized term has ceased meeting the conditions upon which the protection or recognition was originally granted in that Party.</p> <p>4. If a Party has in place a <i>sui generis</i> system for protecting unregistered geographical indications by means of judicial procedures, that Party shall provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if any circumstance identified in paragraph 1 has been established.²² That Party shall also provide a process that allows interested persons to commence a proceeding on the grounds identified in paragraph 1.</p> <p>Footnote 22 As an alternative to this paragraph, if a Party has in place a <i>sui generis</i> system of the type referred to in this paragraph as of the applicable date under Article 20.35.6 (International Agreements), that Party shall at least provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if the circumstances identified in paragraph 1(c) have been established.</p> <p>5. If a Party provides protection or recognition of a geographical indication through the procedures referred to in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications) to the translation or transliteration of that geographical indication, that Party shall make available procedures that are equivalent to, and grounds that are the same as, those referred to in paragraphs 1 and 2 with respect to that translation or transliteration.</p> <p>Article 20.32: Guidelines for Determining Whether a Term is the Term Customary in the Common Language With respect to the procedures in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 20.31 (Grounds of Denial, Opposition, and Cancellation), in determining whether a term is the term customary in common language as the common name for the relevant good in the territory of a Party, that Party's authorities shall have the authority to take into account how consumers understand the term in the territory of that Party. Factors relevant to that consumer understanding may include:</p> <p>(a) whether the term is used to refer to the type of good in question, as indicated by competent sources such as dictionaries, newspapers, and relevant websites; (b) how the good referenced by the term is marketed and used in trade in the territory of that Party;</p>		<p>2. If a Party has protected or recognised a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow for interested persons to seek the cancellation of a geographical indication, and that allow for the protection or recognition to be cancelled, at least, on the grounds listed in paragraph 1. A Party may provide that the grounds listed in paragraph 1 shall apply as of the time of filing the request for protection or recognition of a geographical indication in the territory of the Party.²²</p> <p>Footnote 22 For greater certainty, if the grounds listed in paragraph 1 did not exist in a Party's law as of the time of filing of the request for protection or recognition of a geographical indication under Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party is not required to apply those grounds for the purposes of paragraph 2 or paragraph 4 of this Article in relation to that geographical indication.</p> <p>3. No Party shall preclude the possibility that the protection or recognition of a geographical indication may be cancelled, or otherwise cease, on the basis that the protected or recognised term has ceased meeting the conditions upon which the protection or recognition was originally granted in that Party.</p> <p>4. If a Party has in place a <i>sui generis</i> system for protecting unregistered geographical indications by means of judicial procedures, that Party shall provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if any of the circumstances identified in paragraph 1 has been established.²³ That Party shall also provide a process that allows interested persons to commence a proceeding on the grounds identified in paragraph 1.</p> <p>Footnote 23 As an alternative to this paragraph, if a Party has in place a <i>sui generis</i> system of the type referred to in this paragraph as of the applicable date under Article 18.36.6 (International Agreements), that Party shall at least provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if the circumstances identified in paragraph 1(c) have been established.</p> <p>5. If a Party provides protection or recognition of a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) to the translation or transliteration of that geographical indication, that Party shall make available procedures that are equivalent to, and grounds that are the same as, those referred to in paragraphs 1 and 2 with respect to that translation or transliteration.</p> <p>Article 18.33: Guidelines for Determining Whether a Term is the Term Customary in the Common Language With respect to the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation), in determining whether a term is the term customary in common language as the common name for the relevant good in the territory of a Party, that Party's authorities shall have the authority to take into account how consumers understand the term in the territory of that Party. Factors relevant to such consumer understanding may include:</p> <p>(a) whether the term is used to refer to the type of good in question, as indicated by competent sources such as dictionaries, newspapers and relevant websites; and (b) how the good referenced by the term is marketed and used in trade in the territory of that Party.²⁴</p>

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<p>(c) whether the term is used, as appropriate, in relevant international standards recognized by the Parties to refer to a type or class of good in the territory of the Party, such as pursuant to a standard promulgated by the Codex Alimentarius; and</p> <p>(d) whether the good in question is imported into the Party's territory, in significant quantities,²³ from a place other than the territory identified in the application or petition, and whether those imported goods are named by the term.</p> <p>Footnote 23 In determining whether the good in question is imported in significant quantities, a Party may consider the amount of importation at the time of the application or petition.</p> <p>Article 20.33: Multi-Component Terms With respect to the procedures in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 20.31 (Grounds of Denial, Opposition, and Cancellation), an individual component of a multi-component term that is protected as a geographical indication in the territory of a Party shall not be protected in that Party if that individual component is a term customary in the common language as the common name for the associated good.</p> <p>Article 20.34: Date of Protection of a Geographical Indication If a Party grants protection or recognition to a geographical indication through the procedures referred to in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that protection or recognition shall commence no earlier than the filing date²⁴ in the Party or the registration date in the Party, as applicable.</p> <p>Footnote 24 For greater certainty, the filing date referred to in this paragraph includes, as applicable, the priority filing date under the Paris Convention. No Party shall use the date of protection in a country of origin of a geographical indication to establish a priority date in the territory of the Party, unless filed within the Paris Convention priority period.</p> <p>Article 20.35: International Agreements 1. If a Party protects or recognizes a geographical indication pursuant to an international agreement, as of the applicable date under paragraph 6, involving a Party or a non-Party and that geographical indication is not protected through the procedures referred to in Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications)²⁵ or Article 20.31 (Grounds of Denial, Opposition, and Cancellation), that Party at least shall apply procedures and grounds that are equivalent to those in Article 20.30(f), (g), (h), and (i) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 20.31.1 (Grounds of Denial, Opposition, and Cancellation), as well as:</p> <p>Footnote 25 Each Party shall apply Article 20.32 (Guidelines for Determining Whether a Term is the Term Customary in the Common Language) and Article 20.33 (Multi-Component Terms) in determining whether to grant protection or recognition of a geographical indication pursuant to this paragraph.</p> <p>(a) make available information sufficient to allow the general public to obtain guidance concerning the procedures for protecting or recognizing the geographical indication and allow interested persons to ascertain the status of requests for protection or recognition;</p>		<p>Footnote 24 For the purposes of this subparagraph, a Party's authorities may take into account, as appropriate, whether the term is used in relevant international standards recognised by the Parties to refer to a type or class of good in the territory of the Party.</p> <p>Article 18.34: Multi-Component Terms With respect to the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation), an individual component of a multi-component term that is protected as a geographical indication in the territory of a Party shall not be protected in that Party if that individual component is a term customary in the common language as the common name for the associated good.</p> <p>Article 18.35: Date of Protection of a Geographical Indication If a Party grants protection or recognition to a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that protection or recognition shall commence no earlier than the filing date²⁵ in the Party or the registration date in the Party, as applicable.</p> <p>Footnote 25 For greater certainty, the filing date referred to in this paragraph includes, as applicable, the priority filing date under the Paris Convention.</p> <p>Article 18.36: International Agreements 1. If a Party protects or recognises a geographical indication pursuant to an international agreement, as of the applicable date under paragraph 6, involving a Party or a non-Party and that geographical indication is not protected through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications)²⁶ or Article 18.32.4 (Grounds of Opposition and Cancellation), that Party shall apply at least procedures and grounds that are equivalent to those in Article 18.31(e) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32.1 (Grounds of Opposition and Cancellation), as well as:</p> <p>Footnote 26 Each Party shall apply Article 18.33 (Guidelines for Determining Whether a Term is the Term Customary in the Common Language) and Article 18.34 (Multi-Component Terms) in determining whether to grant protection or recognition of a geographical indication pursuant to this paragraph.</p> <p>(a) make available information sufficient to allow the general public to obtain guidance concerning the procedures for protecting or recognising the geographical indication and allow interested persons to ascertain the status of requests for protection or recognition;</p>

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<p>(b) to publish online details regarding the terms that the Party is considering protecting or recognizing through an international agreement involving a Party or a non-Party, including specifying whether the protection or recognition is being considered for any translations or transliterations of those terms, and with respect to multi-component terms, specifying the components, if any, for which protection or recognition is being considered, or the components that are disclaimed;</p> <p>(c) in respect of opposition procedures, provide a reasonable period of time for interested persons to oppose the protection or recognition of the terms referred to in subparagraph (b). That period shall allow for a meaningful opportunity for any interested person to participate in an opposition process; and</p> <p>(d) inform the other Parties of the opportunity to oppose, no later than the commencement of the opposition period.</p> <p>2. In respect of international agreements referred to in paragraph 6 that permit the protection or recognition of a new geographical indication, a Party shall:^{26, 27}</p> <p>Footnote 26 In respect of an international agreement referred to in paragraph 6 that has geographical indications that have been identified, but have not yet received protection or recognition in the territory of the Party that is a party to that agreement, that Party may fulfil the obligations of paragraph 2 by complying with the obligations of paragraph 1.</p> <p>Footnote 27 A Party may comply with this Article by applying Article 20.30 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 20.31 (Grounds of Denial, Opposition, and Cancellation). (a) apply paragraph 1(b) and apply at least procedures and grounds that are equivalent to those in Article 20.30(f), (g), (h), and (i) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 20.31.1 (Grounds of Denial, Opposition, and Cancellation); (b) provide an opportunity for interested persons to comment regarding the protection or recognition of the new geographical indication for a reasonable period of time before that term is protected or recognized; and (c) inform the other Parties of the opportunity to comment, no later than the commencement of the period for comment.</p> <p>3. For the purposes of this Article, a Party shall not preclude the possibility that the protection or recognition of a geographical indication could cease.</p> <p>4. For the purposes of this Article, a Party is not required to apply Article 20.31 (Grounds of Denial, Opposition, and Cancellation), or obligations equivalent to Article 20.31, to geographical indications for wines and spirits or applications for those geographical indications.</p> <p>5. The protection or recognition that each Party provides pursuant to paragraph 1 shall commence no earlier than the date on which that agreement enters into force or, if that Party grants that protection or recognition on a date after the entry into force of that agreement, on that later date.</p> <p>6. No Party shall be required to apply this Article to geographical indications that have been specifically identified in, and that are protected or recognized pursuant to, an international agreement involving a Party or a non-Party, provided that the agreement:</p> <p>(a) was concluded, or agreed in principle,²⁸ prior to the date of conclusion, or agreement in principle, of this Agreement;</p> <p>Footnote 28 For the purpose of this Article, an agreement “agreed in principle” means an agreement involving another government, government entity, or international organization in respect of which a political understanding has been reached and the negotiated outcomes of the agreement have been publically announced.</p>		<p>(b) make available to the public, on the Internet, details regarding the terms that the Party is considering protecting or recognising through an international agreement involving a Party or a non-Party, including specifying whether the protection or recognition is being considered for any translations or transliterations of those terms, and with respect to multi-component terms, specifying the components, if any, for which protection or recognition is being considered, or the components that are disclaimed;</p> <p>(c) in respect of opposition procedures, provide a reasonable period of time for interested persons to oppose the protection or recognition of the terms referred to in subparagraph (b). That period shall provide a meaningful opportunity for interested persons to participate in an opposition process; and</p> <p>(d) inform the other Parties of the opportunity to oppose, no later than the commencement of the opposition period.</p> <p>2. In respect of international agreements referred to in paragraph 6 that permit the protection or recognition of a new geographical indication, a Party shall:^{27, 28}</p> <p>Footnote 27 In respect of an international agreement referred to in paragraph 6 that has geographical indications that have been identified, but have not yet received protection or recognition in the territory of the Party that is a party to that agreement, that Party may fulfil the obligations of paragraph 2 by complying with the obligations of paragraph 1.</p> <p>Footnote 28 A Party may comply with this Article by applying Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation). (a) apply paragraph 1(b);</p> <p>(b) provide an opportunity for interested persons to comment regarding the protection or recognition of the new geographical indication for a reasonable period of time before such a term is protected or recognised; and (c) inform the other Parties of the opportunity to comment, no later than the commencement of the period for comment.</p> <p>3. For the purposes of this Article, a Party shall not preclude the possibility that the protection or recognition of a geographical indication could cease.</p> <p>4. For the purposes of this Article, a Party is not required to apply Article 18.32 (Grounds of Opposition and Cancellation), or obligations equivalent to Article 18.32, to geographical indications for wines and spirits or applications for those geographical indications.</p> <p>5. Protection or recognition provided pursuant to paragraph 1 shall commence no earlier than the date on which the agreement enters into force or, if that Party grants that protection or recognition on a date after the entry into force of the agreement, on that later date.</p> <p>6. No Party shall be required to apply this Article to geographical indications that have been specifically identified in, and that are protected or recognised pursuant to, an international agreement involving a Party or a non-Party, provided that the agreement:</p> <p>(a) was concluded, or agreed in principle²⁹, prior to the date of conclusion, or agreement in principle, of this Agreement;</p> <p>Footnote 29 For the purpose of this Article, an agreement “agreed in principle” means an agreement involving another government, government entity or international organisation in respect of which a political understanding has been reached and the negotiated outcomes of the agreement have been publically announced.</p>

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<p>(b) was ratified by a Party prior to the date of ratification of this Agreement by that Party; or (c) entered into force for a Party prior to the date of entry into force of this Agreement.</p> <p>Section F: Patents and Undisclosed Test or Other Data Subsection A: General Patents Article 20.36: Patentable Subject Matter 1. Subject to paragraphs 3 and 4, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application.²⁹</p> <p>Footnote 29 For the purposes of this Section, a Party may deem the terms “inventive step” and “capable of industrial application” to be synonymous with the terms “non-obvious” and “useful”, respectively. In determinations regarding inventive step, or non-obviousness, each Party shall consider whether the claimed invention would have been obvious to a person skilled in the art, or having ordinary skill in the art, having regard to the prior art.</p> <p>2. Subject to paragraphs 3 and 4 and consistent with paragraph 1, each Party confirms that patents are available for inventions claimed as at least one of the following: new uses of a known product, new methods of using a known product, or new processes of using a known product.</p> <p>3. A Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect <i>ordre public</i> or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to nature or the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law.</p> <p>A Party may also exclude from patentability: (a) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; (b) animals other than microorganisms, and essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes.</p> <p>4. A Party may also exclude from patentability plants other than microorganisms. However, consistent with paragraph 1 and subject to paragraph 3, each Party confirms that patents are available at least for inventions that are derived from plants.</p>	<p>Article 1709: Patents 1. Subject to paragraphs 2 and 3, each Party shall make patents available for any inventions, whether products or processes, in all fields of technology, provided that such inventions are new, result from an inventive step and are capable of industrial application. For purposes of this Article, a Party may deem the terms “inventive step” and “capable of industrial application” to be synonymous with the terms “non-obvious” and “useful”, respectively.</p> <p>2. A Party may exclude from patentability inventions if preventing in its territory the commercial exploitation of the inventions is necessary to protect <i>ordre public</i> or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that the exclusion is not based solely on the ground that the Party prohibits commercial exploitation in its territory of the subject matter of the patent.</p> <p>3. A Party may also exclude from patentability: (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; (b) plants and animals other than microorganisms; and (c) essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes for such production.</p> <p>Notwithstanding subparagraph (b), each Party shall provide for the protection of plant varieties through patents, an effective scheme of <i>sui generis</i> protection, or both.</p> <p>4. If a Party has not made available product patent protection for pharmaceutical or agricultural chemicals commensurate with paragraph 1: (a) as of January 1, 1992, for subject matter that relates to naturally occurring substances prepared or produced by, or significantly derived from, microbiological processes and intended for food or medicine, and (b) as of July 1, 1991, for any other subject matter, that Party shall provide to the inventor of any such product or its assignee the means to obtain product patent protection for such product for the unexpired term of the patent for such product granted in another Party, as long as the product has not been marketed in the Party providing protection under this paragraph and the person seeking such protection makes a timely request.</p> <p>5. Each Party shall provide that:</p>	<p>(b) was ratified by a Party prior to the date of ratification of this Agreement by that Party; or (c) entered into force for a Party prior to the date of entry into force of this Agreement for that Party.</p> <p>Section F: Patents and Undisclosed Test or Other Data Subsection A: General Patents Article 18.37: Patentable Subject Matter 1. Subject to paragraphs 3 and 4, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step and is capable of industrial application.³⁰</p> <p>Footnote 30 For the purposes of this Section, a Party may deem the terms “inventive step” and “capable of industrial application” to be synonymous with the terms “non-obvious” and “useful”, respectively. In determinations regarding inventive step, or non-obviousness, each Party shall consider whether the claimed invention would have been obvious to a person skilled in the art, or having ordinary skill in the art, having regard to the prior art.</p> <p>2. Subject to paragraphs 3 and 4 and consistent with paragraph 1, each Party confirms that patents are available for inventions claimed as at least one of the following: new uses of a known product, new methods of using a known product, or new processes of using a known product. A Party may limit those new processes to those that do not claim the use of the product as such.</p> <p>3. A Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect <i>ordre public</i> or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law.</p> <p>A Party may also exclude from patentability: (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; (b) animals other than microorganisms, and essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes.</p> <p>4. A Party may also exclude from patentability plants other than microorganisms. However, consistent with paragraph 1 and subject to paragraph 3, each Party confirms that patents are available at least for inventions that are derived from plants.</p>

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<p>Article 20.37: Grace Period Each Party shall disregard at least information contained in public disclosures used to determine if an invention is novel or has an inventive step, if the public disclosure.³⁰</p> <p>Footnote 30 For greater certainty, a Party may limit the application of this Article to disclosures made by, or obtained directly or indirectly from, the inventor or joint inventor. For greater certainty, a Party may provide that, for the purposes of this Article, information obtained directly or indirectly from the patent applicant may be information contained in the public disclosure that was authorized by, or derived from, the patent applicant.</p> <p>(a) was made by the patent applicant or by a person that obtained the information directly or indirectly from the patent applicant; and</p> <p>(b) occurred within twelve months prior to the filing date in the territory of the Party.</p> <p>Article 20.38: Patent Revocation 1. Each Party shall provide that a patent may be cancelled, revoked, or nullified only on grounds that would have justified a refusal to grant the patent. A Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for cancelling, revoking, or nullifying a patent or holding a patent unenforceable. 2. Notwithstanding paragraph 1, a Party may provide that a patent may be revoked, provided it is done in a manner consistent with Article 5A of the Paris Convention and the TRIPS Agreement.</p> <p>Article 20.39: Exceptions A 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.</p> <p>Article 20.40: Other Use Without Authorization of the Right Holder The Parties understand that nothing in this Chapter limits a Party's rights and obligations under Article 31 of the TRIPS Agreement, and any waiver of or amendment to that Article that the Parties accept.</p>	<p>(a) where the subject matter of a patent is a product, the patent shall confer on the patent owner the right to prevent other persons from making, using or selling the subject matter of the patent, without the patent owner's consent; and</p> <p>(b) where the subject matter of a patent is a process, the patent shall confer on the patent owner the right to prevent other persons from using that process and from using, selling, or importing at least the product obtained directly by that process, without the patent owner's consent.</p> <p>8. A Party may revoke a patent only when: (a) grounds exist that would have justified a refusal to grant the patent; or (b) the grant of a compulsory license has not remedied the lack of exploitation of the patent.</p> <p>9. Each Party shall permit patent owners to assign and transfer by succession their patents, and to conclude licensing contracts.</p> <p>6. A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interests of other persons.</p> <p>7. Subject to paragraphs 2 and 3, patents shall be available and patent rights enjoyable without discrimination as to the field of technology, the territory of the Party where the invention was made and whether products are imported or locally produced.</p>	<p>Article 18.38: Grace Period Each Party shall disregard at least information contained in public disclosures used to determine if an invention is novel or has an inventive step, if the public disclosure.^{31, 32}</p> <p>Footnote 31 No Party shall be required to disregard information contained in applications for, or registrations of, intellectual property rights made available to the public or published by a patent office, unless erroneously published or unless the application was filed without the consent of the inventor or their successor in title, by a third person who obtained the information directly or indirectly from the inventor.</p> <p>Footnote 32 For greater certainty, a Party may limit the application of this Article to disclosures made by, or obtained directly or indirectly from, the inventor or joint inventor. For greater certainty, a Party may provide that, for the purposes of this Article, information obtained directly or indirectly from the patent applicant may be information contained in the public disclosure that was authorised by, or derived from, the patent applicant.</p> <p>(a) was made by the patent applicant or by a person that obtained the information directly or indirectly from the patent applicant; and</p> <p>(b) occurred within 12 months prior to the date of the filing of the application in the territory of the Party.</p> <p>Article 18.39: Patent Revocation 1. Each Party shall provide that a patent may be cancelled, revoked or nullified only on grounds that would have justified a refusal to grant the patent. A Party may also provide that fraud, misrepresentation or inequitable conduct may be the basis for cancelling, revoking or nullifying a patent or holding a patent unenforceable. 2. Notwithstanding paragraph 1, a Party may provide that a patent may be revoked, provided it is done in a manner consistent with Article 5A of the Paris Convention and the TRIPS Agreement.</p> <p>Article 18.40: Exceptions A Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.</p> <p>Article 18.41: Other Use Without Authorisation of the Right Holder The Parties understand that nothing in this Chapter limits a Party's rights and obligations under Article 31 of the TRIPS Agreement, any waiver or any amendment to that Article that the Parties accept.</p>

United States-Mexico-Canada Agreement (2018) (Final Text)	North American Free Trade Agreement (1994)	Trans-Pacific Partnership (2015)
	<p>10. Where the law of a Party allows for use of the subject matter of a patent, other than that use allowed under paragraph 6, without the authorization of the right holder, including use by the government or other persons authorized by the government, the Party shall respect the following provisions:</p> <p>(a) authorization of such use shall be considered on its individual merits;</p> <p>(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and such efforts have not been successful within a reasonable period of time. The requirement to make such efforts may be waived by a Party in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;</p> <p>(c) the scope and duration of such use shall be limited to the purpose for which it was authorized;</p> <p>(d) such use shall be non-exclusive;</p> <p>(e) such use shall be non-assignable, except with that part of the enterprise or goodwill that enjoys such use;</p> <p>(f) any such use shall be authorized predominantly for the supply of the Party's domestic market;</p> <p>(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances that led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, on motivated request, the continued existence of these circumstances;</p> <p>(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;</p> <p>(i) the legal validity of any decision relating to the authorization shall be subject to judicial or other independent review by a distinct higher authority;</p> <p>(j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial or other independent review by a distinct higher authority;</p> <p>(k) the Party shall not be obliged to apply the conditions set out in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anticompetitive. The need to correct anticompetitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions that led to such authorization are likely to recur;</p> <p>(l) the Party shall not authorize the use of the subject matter of a patent to permit the exploitation of another patent except as a remedy for an adjudicated violation of domestic laws regarding anticompetitive practices.</p> <p>11. Where the subject matter of a patent is a process for obtaining a product, each Party shall, in any infringement proceeding, place on the defendant the burden of establishing that the allegedly infringing product was made by a process other than the patented process in one of the following situations:</p> <p>(a) the product obtained by the patented process is new; or</p> <p>(b) a substantial likelihood exists that the allegedly infringing product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.</p> <p>In the gathering and evaluation of evidence, the legitimate interests of the defendant in protecting its trade secrets shall be taken into account.</p>	

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<p>Article 20.41: Amendments, Corrections, and Observations Each Party shall provide a patent applicant with at least one opportunity to make amendments, corrections, and observations in connection with its application.³¹</p> <p>Footnote 31 A Party may provide that those amendments or corrections must not exceed the scope of the disclosure of the invention, as of the filing date.</p> <p>Article 20.42: Publication of Patent Applications 1. Recognizing the benefits of transparency in the patent system, each Party shall endeavor to publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.</p> <p>2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application or the corresponding patent, as soon as practicable.</p> <p>3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiration of the period referred to in paragraph 1.</p> <p>Article 20.43: Information Relating to Published Patent Applications and Granted Patents For published patent applications and granted patents, and in accordance with the Party's requirements for prosecution of those applications and patents, each Party shall make available to the public at least the following information, to the extent that this information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement:</p> <p>(a) search and examination results, including details of, or information related to, relevant prior art searches; (b) as appropriate, non-confidential communications from applicants; and (c) patent and non-patent related literature citations submitted by applicants and relevant third parties.</p> <p>Article 20.44: Patent Term Adjustment for Unreasonable Granting Authority Delays 1. Each Party shall make best efforts to process patent applications in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays. 2. A Party may provide procedures for a patent applicant to request to expedite the examination of its patent application.</p>	<p>12. Each Party shall provide a term of protection for patents of at least 20 years from the date of filing or 17 years from the date of grant. A Party may extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.</p>	<p>Article 18.42: Patent Filing Each Party shall provide that if an invention is made independently by more than one inventor, and separate applications claiming that invention are filed with, or for, the relevant authority of the Party, that Party shall grant the patent on the application that is patentable and that has the earliest filing date or, if applicable, priority date,³³ unless that application has, prior to publication,³⁴ been withdrawn, abandoned or refused.</p> <p>Footnote 33 A Party shall not be required to apply this Article in cases involving derivation or in situations involving any application that has or had, at any time, at least one claim having an effective filing date before the date of entry into force of this Agreement for that Party or any application that has or had, at any time, a priority claim to an application that contains or contained such a claim.</p> <p>Footnote 34 For greater certainty, a Party may grant the patent to the subsequent application that is patentable, if an earlier application has been withdrawn, abandoned, or refused, or is not prior art against the subsequent application.</p> <p>Article 18.43: Amendments, Corrections and Observations Each Party shall provide a patent applicant with at least one opportunity to make amendments, corrections and observations in connection with its application.³⁵</p> <p>Footnote 35 A Party may provide that such amendments do not go beyond the scope of the disclosure of the invention, as of the filing date.</p> <p>Article 18.44: Publication of Patent Applications 1. Recognising the benefits of transparency in the patent system, each Party shall endeavour to publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.</p> <p>2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application or the corresponding patent, as soon as practicable.</p> <p>3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiration of the period referred to in paragraph 1.</p> <p>Article 18.45: Information Relating to Published Patent Applications and Granted Patents For published patent applications and granted patents, and in accordance with the Party's requirements for prosecution of such applications and patents, each Party shall make available to the public at least the following information, to the extent that such information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement for that Party:</p> <p>(a) search and examination results, including details of, or information related to, relevant prior art searches; (b) as appropriate, non-confidential communications from applicants; and (c) patent and non-patent related literature citations submitted by applicants and relevant third parties.</p> <p>Article 18.46: Patent Term Adjustment for Unreasonable Granting Authority Delays 1. Each Party shall make best efforts to process patent applications in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays. 2. A Party may provide procedures for a patent applicant to request to expedite the examination of its patent application.</p>

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<p>3. If there are unreasonable delays in a Party's issuance of a patent, that Party shall provide the means to, and at the request of the patent owner shall, adjust the term of the patent to compensate for those delays.</p> <p>4. For the purposes of this Article, an unreasonable delay at least shall include a delay in the issuance of a patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later. A Party may exclude, from the determination of those delays, periods of time that do not occur during the processing³² of, or the examination of, the patent application by the granting authority; periods of time that are not directly attributable³³ to the granting authority; as well as periods of time that are attributable to the patent applicant.³⁴</p> <p>Footnote 32 For the purposes of this paragraph, a Party may interpret processing to mean initial administrative processing and administrative processing at the time of grant.</p> <p>Footnote 33 A Party may treat delays "that are not directly attributable to the granting authority" as delays that are outside the direction or control of the granting authority.</p> <p>Footnote 34 Notwithstanding Article 20.10 (Application of Chapter to Existing Subject Matter and Prior Acts), this Article shall apply to all patent applications filed after the date of entry into force of this Agreement, or the date two years after the signing of this Agreement, whichever is later.</p> <p style="text-align: center;">Subsection B: Measures Relating to Agricultural Chemical Products</p> <p style="text-align: center;">Article 20.45: Protection of Undisclosed Test or Other Data for Agricultural Chemical Products</p> <p>1. If a Party requires, as a condition for granting marketing approval³⁵ for a new agricultural chemical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product,³⁶ that Party shall not permit third persons, without the consent of the person that previously submitted that information, to market the same or a similar³⁷ product on the basis of that information or the marketing approval granted to the person that submitted that test or other data for at least 10 years³⁸ from the date of marketing approval of the new agricultural chemical product in the territory of the Party.</p> <p>Footnote 35 For the purposes of this Chapter, the term "marketing approval" is synonymous with "sanitary approval" under a Party's law.</p> <p>Footnote 36 Each Party confirms that the obligations of this Article apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (a) only the safety of the product, (b) only the efficacy of the product, or (c) both.</p> <p>Footnote 37 For greater certainty, for the purposes of this Section, an agricultural chemical product is "similar" to a previously approved agricultural chemical product if the marketing approval, or, in the alternative, the applicant's request for that approval, of that similar agricultural chemical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved agricultural chemical product, or the prior approval of that previously approved product.</p> <p>Footnote 38 For greater certainty, a Party may limit the period of protection under this Article to 10 years.</p>		<p>3. If there are unreasonable delays in a Party's issuance of patents, that Party shall provide the means to, and at the request of the patent owner shall, adjust the term of the patent to compensate for such delays.³⁶</p> <p>Footnote 36 Annex 18-D applies to this paragraph.</p> <p>4. For the purposes of this Article, an unreasonable delay at least shall include a delay in the issuance of a patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later. A Party may exclude, from the determination of such delays, periods of time that do not occur during the processing³⁷ of, or the examination of, the patent application by the granting authority; periods of time that are not directly attributable³⁸ to the granting authority; as well as periods of time that are attributable to the patent applicant.³⁹</p> <p>Footnote 37 For the purposes of this paragraph, a Party may interpret processing to mean initial administrative processing and administrative processing at the time of grant.</p> <p>Footnote 38 A Party may treat delays "that are not directly attributable to the granting authority" as delays that are outside the direction or control of the granting authority.</p> <p>Footnote 39 Notwithstanding Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), this Article shall apply to all patent applications filed after the date of entry into force of this Agreement for that Party, or the date two years after the signing of this Agreement, whichever is later for that Party.</p> <p style="text-align: center;">Subsection B: Measures Relating to Agricultural Chemical Products</p> <p style="text-align: center;">Article 18.47: Protection of Undisclosed Test or Other Data for Agricultural Chemical Products</p> <p>1. If a Party requires, as a condition for granting marketing approval⁴⁰ for a new agricultural chemical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product,⁴¹ that Party shall not permit third persons, without the consent of the person that previously submitted such information, to market the same or a similar⁴² product on the basis of that information or the marketing approval granted to the person that submitted such test or other data for at least 10 years⁴³ from the date of marketing approval of the new agricultural chemical product in the territory of the Party.</p> <p>Footnote 40 For the purposes of this Chapter, the term "marketing approval" is synonymous with "sanitary approval" under a Party's law.</p> <p>Footnote 41 Each Party confirms that the obligations of this Article apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (a) only the safety of the product, (b) only the efficacy of the product or (c) both.</p> <p>Footnote 42 For greater certainty, for the purposes of this Section, an agricultural chemical product is "similar" to a previously approved agricultural chemical product if the marketing approval, or, in the alternative, the applicant's request for such approval, of that similar agricultural chemical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved agricultural chemical product, or the prior approval of that previously approved product.</p> <p>Footnote 43 For greater certainty, a Party may limit the period of protection under this Article to 10 years.</p>

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<p>2. If a Party permits, as a condition of granting marketing approval for a new agricultural chemical product, the submission of evidence of a prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of the person that previously submitted undisclosed test or other data concerning the safety and efficacy of the product in support of that prior marketing approval, to market the same or a similar product based on that undisclosed test or other data, or other evidence of the prior marketing approval in the other territory, for at least 10 years from the date of marketing approval of the new agricultural chemical product in the territory of the Party.</p> <p>3. For the purposes of this Article, a new agricultural chemical product is one that contains a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.</p> <p>Subsection C: Measures Relating to Pharmaceutical Products</p> <p>Article 20.46: Patent Term Adjustment for Unreasonable Curtailment</p> <p>1. Each Party shall make best efforts to process applications for marketing approval of pharmaceutical products in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays.</p> <p>2. With respect to a pharmaceutical product that is subject to a patent, each Party shall make available an adjustment³⁹ of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process.</p> <p>Footnote 39</p> <p>For greater certainty, a Party may alternatively make available a period of additional <i>sui generis</i> protection to compensate for unreasonable curtailment of the effective patent term as a result of the marketing approval process. The <i>sui generis</i> protection must confer the rights conferred by the patent, subject to any conditions and limitations pursuant to paragraph 3.</p> <p>3. For greater certainty, in implementing the obligations of this Article, each Party may provide for conditions and limitations, provided that the Party continues to give effect to this Article.</p> <p>4. With the objective of avoiding unreasonable curtailment of the effective patent term, a Party may adopt or maintain procedures that expedite the processing of marketing approval applications.</p> <p>Article 20.47: Regulatory Review Exception</p> <p>Without prejudice to the scope of, and consistent with, Article 20.39 (Exceptions), each Party shall adopt or maintain a regulatory review exception for pharmaceutical products.</p>		<p>2. If a Party permits, as a condition of granting marketing approval for a new agricultural chemical product, the submission of evidence of a prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of the person that previously submitted undisclosed test or other data concerning the safety and efficacy of the product in support of that prior marketing approval, to market the same or a similar product based on that undisclosed test or other data, or other evidence of the prior marketing approval in the other territory, for at least 10 years from the date of marketing approval of the new agricultural chemical product in the territory of the Party.</p> <p>3. For the purposes of this Article, a new agricultural chemical product is one that contains⁴⁴ a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.</p> <p>Footnote 44</p> <p>For the purposes of this Article, a Party may treat “contain” as meaning utilise. For greater certainty, for the purposes of this Article, a Party may treat “utilise” as requiring the new chemical entity to be primarily responsible for the product’s intended effect.</p> <p>Subsection C: Measures Relating to Pharmaceutical Products</p> <p>Article 18.48: Patent Term Adjustment for Unreasonable Curtailment</p> <p>1. Each Party shall make best efforts to process applications for marketing approval of pharmaceutical products in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays.</p> <p>2. With respect to a pharmaceutical product⁴⁵ that is subject to a patent, each Party shall make available an adjustment⁴⁶ of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process.^{47, 48}</p> <p>Footnote 45</p> <p>A Party may comply with the obligations of this paragraph with respect to a pharmaceutical product or, alternatively, with respect to a pharmaceutical substance.</p> <p>Footnote 46</p> <p>For greater certainty, a Party may alternatively make available a period of additional <i>sui generis</i> protection to compensate for unreasonable curtailment of the effective patent term as a result of the marketing approval process. The <i>sui generis</i> protection shall confer the rights conferred by the patent, subject to any conditions and limitations pursuant to paragraph 3.</p> <p>Footnote 47</p> <p>Notwithstanding Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), this Article shall apply to all applications for marketing approval filed after the date of entry into force of this Article for that Party.</p> <p>Footnote 48</p> <p>Annex 18-D applies to this paragraph.</p> <p>3. For greater certainty, in implementing the obligations of this Article, each Party may provide for conditions and limitations, provided that the Party continues to give effect to this Article.</p> <p>4. With the objective of avoiding unreasonable curtailment of the effective patent term, a Party may adopt or maintain procedures that expedite the processing of marketing approval applications.</p> <p>Article 18.49: Regulatory Review Exception</p> <p>Without prejudice to the scope of, and consistent with, Article 18.40 (Exceptions), each Party shall adopt or maintain a regulatory review exception⁴⁹ for pharmaceutical products.</p>

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<p>Article 20.48: Protection of Undisclosed Test or Other Data</p> <p>1. (a) If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product,⁴⁰ that Party shall not permit third persons, without the consent of the person that previously submitted that information, to market the same or a similar⁴¹ product on the basis of:</p> <p>Footnote 40 Each Party confirms that the obligations of this Article and Article 20.49 (Biologics) apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (i) only the safety of the product, (ii) only the efficacy of the product, or (iii) both.</p> <p>Footnote 41 For greater certainty, for the purposes of this Section, a pharmaceutical product is “similar” to a previously approved pharmaceutical product if the marketing approval, or, in the alternative, the applicant’s request for that approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved pharmaceutical product, or the prior approval of that previously approved product.</p> <p>(i) that information, or (ii) the marketing approval granted to the person that submitted that information, for at least five years⁴² from the date of marketing approval of the new pharmaceutical product in the territory of the Party;</p> <p>Footnote 42 For greater certainty, a Party may limit the period of protection under paragraph 1 to five years, and the period of protection under Article 20.49.1 (Biologics) to 10 years.</p> <p>(b) If a Party permits, as a condition of granting marketing approval for a new pharmaceutical product, the submission of evidence of prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of a person that previously submitted the information concerning the safety and efficacy of the product, to market a same or a similar product based on evidence relating to prior marketing approval in the other territory for at least five years from the date of marketing approval of the new pharmaceutical product in the territory of that Party.</p> <p>2. Each Party shall:⁴³</p> <p>Footnote 43 A Party that provides a period of at least eight years of protection under paragraph 1 is not required to apply paragraph 2.</p> <p>(a) apply paragraph 1, <i>mutatis mutandis</i>, for a period of at least three years with respect to new clinical information submitted as required in support of a marketing approval of a previously approved pharmaceutical product covering a new indication, new formulation, or new method of administration; or, alternatively,</p> <p>(b) apply paragraph 1, <i>mutatis mutandis</i>, for a period of at least five years to new pharmaceutical products that contain a chemical entity that has not been previously approved in that Party.⁴⁴</p>		<p>Footnote 49 For greater certainty, consistent with Article 18.40 (Exceptions), nothing prevents a Party from providing that regulatory review exceptions apply for purposes of regulatory reviews in that Party, in another country or both.</p> <p>Article 18.50: Protection of Undisclosed Test or Other Data⁵⁰</p> <p>Footnote 50 Annex 18-B and Annex 18-C apply to paragraphs 1 and 2 of this Article.</p> <p>1. (a) If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product,⁵¹ that Party shall not permit third persons, without the consent of the person that previously submitted such information, to market the same or a similar⁵² product on the basis of:</p> <p>Footnote 51 Each Party confirms that the obligations of this Article, and Article 18.51 (Biologics) apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (a) only the safety of the product, (b) only the efficacy of the product or (c) both.</p> <p>Footnote 52 For greater certainty, for the purposes of this Section, a pharmaceutical product is “similar” to a previously approved pharmaceutical product if the marketing approval, or, in the alternative, the applicant’s request for such approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved pharmaceutical product, or the prior approval of that previously approved product.</p> <p>(i) that information; or (ii) the marketing approval granted to the person that submitted such information, for at least five years⁵³ from the date of marketing approval of the new pharmaceutical product in the territory of the Party.</p> <p>Footnote 53 For greater certainty, a Party may limit the period of protection under paragraph 1 to five years, and the period of protection under Article 18.51.1(a) (Biologics) to eight years.</p> <p>(b) If a Party permits, as a condition of granting marketing approval for a new pharmaceutical product, the submission of evidence of prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of a person that previously submitted such information concerning the safety and efficacy of the product, to market a same or a similar product based on evidence relating to prior marketing approval in the other territory for at least five years from the date of marketing approval of the new pharmaceutical product in the territory of that Party.⁵⁴</p> <p>Footnote 54 Annex 18-D applies to this subparagraph.</p> <p>2. Each Party shall:⁵⁵</p> <p>Footnote 55 A Party that provides a period of at least eight years of protection pursuant to paragraph 1 is not required to apply paragraph 2.</p> <p>(a) apply paragraph 1, <i>mutatis mutandis</i>, for a period of at least three years with respect to new clinical information submitted as required in support of a marketing approval of a previously approved pharmaceutical product covering a new indication, new formulation or new method of administration; or, alternatively,</p> <p>(b) apply paragraph 1, <i>mutatis mutandis</i>, for a period of at least five years to new pharmaceutical products that contain⁵⁶ a chemical entity that has not been previously approved in that Party.⁵⁷</p>

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<p>Footnote 44 For the purposes of Article 20.48.2(b) (Protection of Undisclosed Test or Other Data), a Party may choose to protect only the undisclosed test or other data concerning the safety and efficacy relating to the chemical entity that has not been previously approved.</p> <p>3. Notwithstanding paragraphs 1 and 2 and Article 20.49 (Biologics), a Party may take measures to protect public health in accordance with:</p> <p>(a) the Declaration on TRIPS and Public Health;</p> <p>(b) any waiver of a provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration on TRIPS and Public Health and that is in force between the Parties; or</p> <p>(c) any amendment of the TRIPS Agreement to implement the Declaration on TRIPS and Public Health that enters into force with respect to the Parties.</p> <p>Article 20.49: Biologics</p> <p>1. With regard to protecting new biologics, a Party shall, with respect to the first marketing approval in a Party of a new pharmaceutical product that is, or contains, a biologic,^{45,46} provide effective market protection through the implementation of Article 20.48.1 (Protection of Undisclosed Test or Other Data) and Article 20.48.3 (Protection of Undisclosed Test or Other Data), <i>mutatis mutandis</i>, for a period of at least ten years from the date of first marketing approval of that product in that Party.</p> <p>Footnote 45 Nothing requires a Party to extend the protection of this paragraph to:</p> <p>(a) any second or subsequent marketing approval of such a pharmaceutical product; or</p> <p>(b) a pharmaceutical product that is, or contains, a previously approved biologic.</p> <p>Footnote 46 Each Party may provide that an applicant may request approval of a pharmaceutical product that is, or contains, a biologic under the procedures set forth in Article 20.48.1(a) (Protection of Undisclosed Test or Other Data) and Article 20.48.1(b) (Protection of Undisclosed Test or Other Data) on or before March 23, 2020, provided that other pharmaceutical products in the same class of products have been approved by that Party under the procedures set forth in Article 20.48.1(a) (Protection of Undisclosed Test or Other Data) and Article 20.48.1(b) (Protection of Undisclosed Test or Other Data) before the date of entry into force of this Agreement.</p> <p>2. Each Party shall apply this Article to, at a minimum,⁴⁷ a product that is produced using biotechnology processes and that is, or contains, a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein, or analogous product, for use in human beings for the prevention, treatment, or cure of a disease or condition.</p>		<p>Footnote 56 For the purposes of this Article, a Party may treat “contain” as meaning utilise.</p> <p>Footnote 57 For the purposes of Article 18.50.2(b) (Protection of Undisclosed Test or Other Data), a Party may choose to protect only the undisclosed test or other data concerning the safety and efficacy relating to the chemical entity that has not been previously approved.</p> <p>Article 18.51: Biologics⁵⁸</p> <p>Footnote 58 Annex 18-B, Annex 18-C and Annex 18-D apply to this Article.</p> <p>1. With regard to protecting new biologics, a Party shall either: (a) with respect to the first marketing approval in a Party of a new pharmaceutical product that is or contains a biologic,^{59,60} provide effective market protection through the implementation of Article 18.50.1 (Protection of Undisclosed Test or Other Data) and Article 18.50.3, <i>mutatis mutandis</i>, for a period of at least eight years from the date of first marketing approval of that product in that Party; or, alternatively,</p> <p>Footnote 59 Nothing requires a Party to extend the protection of this paragraph to:</p> <p>(a) any second or subsequent marketing approval of such a pharmaceutical product; or</p> <p>(b) a pharmaceutical product that is or contains a previously approved biologic.</p> <p>Footnote 60 Each Party may provide that an applicant may request approval of a pharmaceutical product that is or contains a biologic under the procedures set forth in Article 18.50.1(a) (Protection of Undisclosed Test or Other Data) and Article 18.50.1(b) within five years of the date of entry into force of this Agreement for that Party, provided that other pharmaceutical products in the same class of products have been approved by that Party under the procedures set forth in Article 18.50.1(a) and Article 18.50.1(b) before the date of entry into force of this Agreement for that Party.</p> <p>(b) with respect to the first marketing approval in a Party of a new pharmaceutical product that is or contains a biologic, provide effective market protection: (i) through the implementation of Article 18.50.1 (Protection of Undisclosed Test or Other Data) and Article 18.50.3, <i>mutatis mutandis</i>, for a period of at least five years from the date of first marketing approval of that product in that Party, (ii) through other measures, and (iii) recognising that market circumstances also contribute to effective market protection to deliver a comparable outcome in the market.</p> <p>2. For the purposes of this Section, each Party shall apply this Article to, at a minimum, a product that is, or, alternatively, contains, a protein produced using biotechnology processes, for use in human beings for the prevention, treatment, or cure of a disease or condition.</p>

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<p>Footnote 47 For greater certainty, for the purposes of this Article, the Parties understand that “at a minimum” means that a Party may limit the application to the scope specified in this paragraph.</p> <p>Article 20.50: Definition of New Pharmaceutical Product For the purposes of Article 20.48.1 (Protection of Undisclosed Test or Other Data), a new pharmaceutical product means a pharmaceutical product that does not contain a chemical entity that has been previously approved in that Party.</p> <p>Article 20.51: Measures Relating to the Marketing of Certain Pharmaceutical Products 1. If a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting the safety and efficacy information, to rely on evidence or information concerning the safety and efficacy of a product that was previously approved, such as evidence of prior marketing approval by the Party or in another territory, that Party shall provide:</p> <p>(a) a system to provide notice to a patent holder⁴⁸ or to allow for a patent holder to be notified prior to the marketing of such a pharmaceutical product, that such other person is seeking to market that product during the term of an applicable patent claiming the approved product or its approved method of use;</p> <p>Footnote 48 For greater certainty, for the purposes of this Article, a Party may provide that a “patent holder” includes a patent licensee or the authorized holder of marketing approval. (b) adequate time and sufficient opportunity for such a patent holder to seek, prior to the marketing of an allegedly infringing product, available remedies in subparagraph (c); and</p> <p>(c) procedures, such as judicial or administrative proceedings, and expeditious remedies, such as preliminary injunctions or equivalent effective provisional measures, for the timely resolution of disputes concerning the validity or infringement of an applicable patent claiming an approved pharmaceutical product or its approved method of use.</p>		<p>3. Recognising that international and domestic regulation of new pharmaceutical products that are or contain a biologic is in a formative stage and that market circumstances may evolve over time, the Parties shall consult after 10 years from the date of entry into force of this Agreement, or as otherwise decided by the Commission, to review the period of exclusivity provided in paragraph 1 and the scope of application provided in paragraph 2, with a view to providing effective incentives for the development of new pharmaceutical products that are or contain a biologic, as well as with a view to facilitating the timely availability of follow-on biosimilars, and to ensuring that the scope of application remains consistent with international developments regarding approval of additional categories of new pharmaceutical products that are or contain a biologic.</p> <p>Article 18.52: Definition of New Pharmaceutical Product For the purposes of Article 18.50.1 (Protection of Undisclosed Test or Other Data), a new pharmaceutical product means a pharmaceutical product that does not contain⁶¹ a chemical entity that has been previously approved in that Party.</p> <p>Footnote 61 For the purposes of this Article, a Party may treat “contain” as meaning utilise.</p> <p>Article 18.53: Measures Relating to the Marketing of Certain Pharmaceutical Products 1. If a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting the safety and efficacy information, to rely on evidence or information concerning the safety and efficacy of a product that was previously approved, such as evidence of prior marketing approval by the Party or in another territory, that Party shall provide:</p> <p>(a) a system to provide notice to a patent holder⁶² or to allow for a patent holder to be notified prior to the marketing of such a pharmaceutical product, that such other person is seeking to market that product during the term of an applicable patent claiming the approved product or its approved method of use;</p> <p>Footnote 62 For greater certainty, for the purposes of this Article, a Party may provide that a “patent holder” includes a patent licensee or the authorised holder of marketing approval. (b) adequate time and opportunity for such a patent holder to seek, prior to the marketing⁶³ of an allegedly infringing product, available remedies in subparagraph (c); and</p> <p>Footnote 63 For the purposes of paragraph 1(b), a Party may treat “marketing” as commencing at the time of listing for purposes of the reimbursement of pharmaceutical products pursuant to a national healthcare programme operated by a Party and inscribed in the Appendix to Annex 26-A (Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices).</p> <p>(c) procedures, such as judicial or administrative proceedings, and expeditious remedies, such as preliminary injunctions or equivalent effective provisional measures, for the timely resolution of disputes concerning the validity or infringement of an applicable patent claiming an approved pharmaceutical product or its approved method of use.</p>

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<p>2. As an alternative to paragraph 1, a Party shall instead adopt or maintain a system other than judicial proceedings that precludes, based upon patent-related information submitted to the marketing approval authority by a patent holder or the applicant for marketing approval, or based on direct coordination between the marketing approval authority and the patent office, the issuance of marketing approval to any third person seeking to market a pharmaceutical product subject to a patent claiming that product, unless by consent or acquiescence of the patent holder.</p> <p>Article 20.52: Alteration of Period of Protection Subject to Article 20.48.3 (Protection of Undisclosed Test or Other Data), if a product is subject to a system of marketing approval in the territory of a Party pursuant to Article 20.45 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), Article 20.48, or Article 20.49 (Biologics) and is also covered by a patent in the territory of that Party, that Party shall not alter the period of protection that it provides pursuant to Article 20.45, Article 20.48, or Article 20.49 in the event that the patent protection terminates on a date earlier than the end of the period of protection specified in Article 20.45, Article 20.48, or Article 20.49.</p> <p style="text-align: center;">Section G: Industrial Designs</p> <p>Article 20.53: Protection 1. Each Party shall ensure adequate and effective protection of industrial designs consistent with Articles 25 and 26 of the TRIPS Agreement. 2. Consistent with paragraph 1, each Party confirms that protection is available for designs embodied in a part of an article.</p> <p>Article 20.54: Non-Prejudicial Disclosures/Grace Period⁴⁹ Footnote 49 Articles 20.54 (Non-Prejudicial Disclosures/Grace Period) and 20.55 (Electronic Industrial Design System) apply with respect to industrial design patent systems or industrial design registration systems.</p>	<p style="text-align: center;">Article 1713: Industrial Designs</p> <p>1. Each Party shall provide for the protection of independently created industrial designs that are new or original. A Party may provide that: (a) designs are not new or original if they do not significantly differ from known designs or combinations of known design features; and (b) such protection shall not extend to designs dictated essentially by technical or functional considerations.</p> <p>2. Each Party shall ensure that the requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair a person's opportunity to seek and obtain such protection. A Party may comply with this obligation through industrial design law or copyright law.</p> <p>3. Each Party shall provide the owner of a protected industrial design the right to prevent other persons not having the owner's consent from making or selling articles bearing or embodying a design that is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.</p> <p>4. A Party may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking into account the legitimate interests of other persons.</p> <p>5. Each Party shall provide a term of protection for industrial designs of at least 10 years.</p>	<p>2. As an alternative to paragraph 1, a Party shall instead adopt or maintain a system other than judicial proceedings that precludes, based upon patent-related information submitted to the marketing approval authority by a patent holder or the applicant for marketing approval, or based on direct coordination between the marketing approval authority and the patent office, the issuance of marketing approval to any third person seeking to market a pharmaceutical product subject to a patent claiming that product, unless by consent or acquiescence of the patent holder.</p> <p>Article 18.54: Alteration of Period of Protection Subject to Article 18.50.3 (Protection of Undisclosed Test or Other Data), if a product is subject to a system of marketing approval in the territory of a Party pursuant to Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), Article 18.50 or Article 18.51 (Biologics) and is also covered by a patent in the territory of that Party, the Party shall not alter the period of protection that it provides pursuant to Article 18.47, Article 18.50 or Article 18.51 in the event that the patent protection terminates on a date earlier than the end of the period of protection specified in Article 18.47, Article 18.50 or Article 18.51.</p> <p style="text-align: center;">Section G: Industrial Designs</p> <p>Article 18.55: Protection 2. This Article is subject to Articles 25 and 26 of the TRIPS Agreement.</p> <p>1. Each Party shall ensure adequate and effective protection of industrial designs and also confirms that protection for industrial designs is available for designs: (a) embodied in a part of an article; or, alternatively, (b) having a particular regard, where appropriate, to a part of an article in the context of the article as a whole.</p> <p>Article 18.56: Improving Industrial Design Systems The Parties recognise the importance of improving the quality and efficiency of their respective industrial design registration systems, as well as facilitating the process of cross-border acquisition of rights in their respective industrial design systems, including giving due consideration to ratifying or acceding to the <i>Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs</i>, done at Geneva, July 2, 1999.</p>

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<p>Each Party shall disregard at least information contained in public disclosures used to determine if an industrial design is new, original, or, where applicable, non-obvious, if the public disclosure.⁵⁰</p> <p>Footnote 50 For greater certainty, a Party may limit the application of this Article to disclosures made by, or obtained directly or indirectly from, the creator or co-creator and provide that, for the purposes of this Article, information obtained directly or indirectly from the design applicant may be information contained in the public disclosure that was authorized by, or derived from, the design applicant.</p> <p>(a) was made by the design applicant or by a person that obtained the information directly or indirectly from the design applicant; and</p> <p>(b) occurred within 12 months prior to the filing date in the territory of the Party.</p> <p>Article 20.55: Electronic Industrial Design System Each Party shall provide a:</p> <p>(a) system for the electronic application for industrial design rights; and</p> <p>(b) publicly available electronic information system, which must include an online database of protected industrial designs.</p> <p>Article 20.56: Term of Protection Each Party shall provide a term of protection for industrial designs of at least 15 years from either: (a) the date of filing, or (b) the date of grant or registration.</p> <p style="text-align: center;">Section H: Copyright and Related Rights</p> <p>Article 20.57: Definitions For the purposes of Article 20.58 (Right of Reproduction) and Article 20.60 (Right of Distribution) through Article 20.69 (Collective Management), the following definitions apply with respect to performers and producers of phonograms:</p> <p>broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” if the means for decrypting are provided to the public by the broadcasting organization or with its consent; “broadcasting” does not include transmission over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public;</p>	<p>Article 1705: Copyright</p> <p>1. Each Party shall protect the works covered by Article 2 of the Berne Convention, including any other works that embody original expression within the meaning of that Convention. In particular:</p> <p>(a) all types of computer programs are literary works within the meaning of the Berne Convention and each Party shall protect them as such; and</p> <p>(b) compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations, shall be protected as such.</p> <p>The protection a Party provides under subparagraph (b) shall not extend to the data or material itself, or prejudice any copyright subsisting in that data or material.</p> <p>2. Each Party shall provide to authors and their successors in interest those rights enumerated in the Berne Convention in respect of works covered by paragraph 1, including the right to authorize or prohibit:</p> <p>(a) the importation into the Party's territory of copies of the work made without the right holder's authorization;</p> <p>(b) the first public distribution of the original and each copy of the work by sale, rental or otherwise;</p> <p>(c) the communication of a work to the public; and</p> <p>(d) the commercial rental of the original or a copy of a computer program.</p> <p>Subparagraph (d) shall not apply where the copy of the computer program is not itself an essential object of the rental. Each Party shall provide that putting the original or a copy of a computer program on the market with the right holder's consent shall not exhaust the rental right.</p>	<p style="text-align: center;">Section H: Copyright and Related Rights</p> <p>Article 18.57: Definitions For the purposes of Article 18.58 (Right of Reproduction) and Article 18.60 (Right of Distribution) through Article 18.70 (Collective Management), the following definitions apply with respect to performers and producers of phonograms:</p> <p>broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;</p>

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<p>communication to the public of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;</p> <p>fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;</p> <p>performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;</p> <p>phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;</p> <p>producer of a phonogram means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and</p> <p>publication of a performance or phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.</p> <p>Article 20.58: Right of Reproduction Each Party shall provide⁵¹ to authors, performers, and producers of phonograms⁵² the exclusive right to authorize or prohibit all reproduction of their works, performances, or phonograms in any manner or form, including in electronic form.</p> <p>Footnote 51 For greater certainty, the Parties understand that it is a matter for each Party's law to prescribe that works, performances, or phonograms in general or any specified categories of works, performances and phonograms are not protected by copyright or related rights unless the work, performance, or phonogram has been fixed in some material form.</p> <p>Footnote 52 References to "authors, performers, and producers of phonograms" refer also to any of their successors in interest.</p> <p>Article 20.59: Right of Communication to the Public Without prejudice to Article 11(1)(ii), Article 11<i>bis</i> (1)(i) and (ii), Article 11<i>ter</i> (1)(iii), Article 14(1)(ii), and Article 14<i>bis</i> (1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorize or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.⁵³</p> <p>Footnote 53 The Parties understand that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. The Parties further understand that nothing in this Article precludes a Party from applying Article 11<i>bis</i> (2) of the Berne Convention.</p> <p>Article 20.60: Right of Distribution Each Party shall provide to authors, performers, and producers of phonograms the exclusive right to authorize or prohibit the making available to the public of the original and copies⁵⁴ of their works, performances, and phonograms through sale or other transfer of ownership.</p> <p>Footnote 54 The expressions "copies" and "original and copies", that are subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.</p> <p>Article 20.61: No Hierarchy</p>		<p>communication to the public of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;</p> <p>fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;</p> <p>performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;</p> <p>phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;</p> <p>producer of a phonogram means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and</p> <p>publication of a performance or phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.</p> <p>Article 18.58: Right of Reproduction Each Party shall provide⁶⁴ to authors, performers and producers of phonograms⁶⁵ the exclusive right to authorise or prohibit all reproduction of their works, performances or phonograms in any manner or form, including in electronic form.</p> <p>Footnote 64 For greater certainty, the Parties understand that it is a matter for each Party's law to prescribe that works, performances or phonograms in general or any specified categories of works, performances and phonograms are not protected by copyright or related rights unless the work, performance or phonogram has been fixed in some material form.</p> <p>Footnote 65 References to "authors, performers, and producers of phonograms" refer also to any of their successors in interest.</p> <p>Article 18.59: Right of Communication to the Public Without prejudice to Article 11(1)(ii), Article 11<i>bis</i> (1)(i) and (ii), Article 11<i>ter</i> (1)(iii), Article 14(1)(ii), and Article 14<i>bis</i> (1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorise or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.⁶⁶</p> <p>Footnote 66 The Parties understand that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. The Parties further understand that nothing in this Article precludes a Party from applying Article 11<i>bis</i> (2) of the Berne Convention.</p> <p>Article 18.60: Right of Distribution Each Party shall provide to authors, performers and producers of phonograms the exclusive right to authorise or prohibit the making available to the public of the original and copies⁶⁷ of their works, performances and phonograms through sale or other transfer of ownership.</p> <p>Footnote 67 The expressions "copies" and "original and copies", that are subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.</p> <p>Article 18.61: No Hierarchy</p>

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<p>Each Party shall provide that, in cases in which authorization is needed from both the author of a work embodied in a phonogram and a performer or producer that owns rights in the phonogram, the need for the authorization of the:</p> <p>(a) author does not cease to exist because the authorization of the performer or producer is also required; and</p> <p>(b) performer or producer does not cease to exist because the authorization of the author is also required.</p> <p>Article 20.62: Related Rights 1. Further to the protection afforded to performers and producers of phonograms as “nationals” under Article 20.8 (National Treatment), each Party shall accord the rights provided for in this Chapter to performances and phonograms first published or first fixed⁵⁵ in the territory of another Party.⁵⁶ A performance or phonogram is considered first published in the territory of a Party if it is published in the territory of that Party within 30 days of its original publication.</p> <p>Footnote 55 For the purposes of this Article, fixation means the finalization of the master tape or its equivalent.</p> <p>Footnote 56 For greater certainty, consistent with Article 20.8 (National Treatment), each Party shall accord to performances and phonograms first published or first fixed in the territory of another Party treatment no less favorable than it accords to performances or phonograms first published or first fixed in its own territory.</p> <p>2. Each Party shall provide to performers the exclusive right to authorize or prohibit: (a) the broadcasting and communication to the public of their unfixed performances, unless the performance is already a broadcast performance; and (b) the fixation of their unfixed performances.</p> <p>3. (a) Each Party shall provide to performers and producers of phonograms the exclusive right to authorize or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means⁵⁷ and the making available to the public of those performances or phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.</p> <p>Footnote 57 For greater certainty, the obligation under this paragraph does not include broadcasting or communication to the public, by wire or wireless means, of the sounds or representations of sounds fixed in a phonogram that are incorporated in a cinematographic or other audio-visual work.</p> <p>(b) Notwithstanding subparagraph (a) and Article 20.65 (Limitations and Exceptions), the application of the right referred to in subparagraph (a) to analog transmissions and non-interactive free over-the-air broadcasts, and exceptions or limitations to this right for those activities, is a matter of each Party’s law.⁵⁸</p>		<p>Each Party shall provide that in cases in which authorisation is needed from both the author of a work embodied in a phonogram and a performer or producer that owns rights in the phonogram:</p> <p>(a) the need for the authorisation of the author does not cease to exist because the authorisation of the performer or producer is also required; and (b) the need for the authorisation of the performer or producer does not cease to exist because the authorisation of the author is also required.</p> <p>Article 18.62: Related Rights 1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms: to the performers and producers of phonograms that are nationals⁵⁸ of another Party; and to performances or phonograms first published or first fixed⁶⁹ in the territory of another Party.⁷⁰ A performance or phonogram shall be considered first published in the territory of a Party if it is published in the territory of that Party within 30 days of its original publication.</p> <p>Footnote 68 For the purposes of determining criteria for eligibility under this Article, with respect to performers, a Party may treat “nationals” as those who would meet the criteria for eligibility under Article 3 of the WPPT.</p> <p>Footnote 69 For the purposes of this Article, fixation means the finalisation of the master tape or its equivalent.</p> <p>Footnote 70 For greater certainty, in this paragraph with respect to performances or phonograms first published or first fixed in the territory of a Party, a Party may apply the criterion of publication, or alternatively, the criterion of fixation, or both. For greater certainty, consistent with Article 18.8 (National Treatment), each Party shall accord to performances and phonograms first published or first fixed in the territory of another Party treatment no less favourable than it accords to performances or phonograms first published or first fixed in its own territory.</p> <p>2. Each Party shall provide to performers the exclusive right to authorise or prohibit: (a) the broadcasting and communication to the public of their unfixed performances, unless the performance is already a broadcast performance; and (b) the fixation of their unfixed performances.</p> <p>3. (a) Each Party shall provide to performers and producers of phonograms the exclusive right to authorise or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means,^{71, 72} and the making available to the public of those performances or phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.</p> <p>Footnote 71 With respect to broadcasting and communication to the public, a Party may satisfy the obligation by applying Article 15(1) and Article 15(4) of the WPPT and may also apply Article 15(2) of the WPPT, provided that it is done in a manner consistent with that Party’s obligations under Article 18.8 (National Treatment).</p> <p>Footnote 72 For greater certainty, the obligation under this paragraph does not include broadcasting or communication to the public, by wire or wireless means, of the sounds or representations of sounds fixed in a phonogram that are incorporated in a cinematographic or other audio-visual work.</p> <p>(b) Notwithstanding subparagraph (a) and Article 18.65 (Limitations and Exceptions), the application of the right referred to in subparagraph (a) to analog transmissions and non-interactive free over-the-air broadcasts, and exceptions or limitations to this right for those activities, is a matter of each Party’s law.⁷³</p>

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<p>Footnote 58 For the purposes of this subparagraph the Parties understand that a Party may provide for the retransmission of non-interactive, free over-the-air broadcasts, provided that these retransmissions are lawfully permitted by that Party's government communications authority; any entity engaging in these retransmissions complies with the relevant rules, orders, or regulations of that authority; and these retransmissions do not include those delivered and accessed over the Internet. For greater certainty this footnote does not limit a Party's ability to avail itself of this subparagraph.</p> <p>(c) Each Party may adopt limitations to this right in respect of other non-interactive transmissions in accordance with Article 20.65.1 (Limitations and Exceptions), provided that the limitations do not prejudice the right of the performer or producer of phonograms to obtain equitable remuneration.</p> <p>Article 20.63: Term of Protection for Copyright and Related Rights</p> <p>Each Party shall provide that in cases in which the term of protection of a work, performance, or phonogram is to be calculated:</p> <p>(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death;⁵⁹ and</p> <p>Footnote 59 The Parties understand that if a Party provides its nationals a term of copyright protection that exceeds life of the author plus 70 years, nothing in this Article or Article 20.8 (National Treatment) precludes that Party from applying Article 7(8) of the Berne Convention with respect to the term in excess of the term provided in this subparagraph of protection for works of another Party.</p> <p>(b) on a basis other than the life of a natural person, the term shall be: (i) not less than 75 years from the end of the calendar year of the first authorized publication⁶⁰ of the work, performance, or phonogram, or (ii) failing such authorized publication within 25 years from the creation of the work, performance, or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.</p> <p>Footnote 60 For greater certainty, for the purposes of subparagraph (b), if a Party's law provides for the calculation of term from fixation rather than from the first authorized publication that Party may continue to calculate the term from fixation.</p> <p>Article 20.64: Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, <i>mutatis mutandis</i>, to works, performances, and phonograms, and the rights in and protections afforded to that subject matter as required by this Section.</p> <p>Article 20.65: Limitations and Exceptions</p>	<p>4. Each Party shall provide that, where the term of protection of a work, other than a photographic work or a work of applied art, is to be calculated</p> <p>on a basis other than the life of a natural person, the term shall be not less than 50 years from the end of the calendar year of the first authorized publication of the work or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.</p>	<p>Footnote 73 For the purposes of this subparagraph the Parties understand that a Party may provide for the retransmission of non-interactive, free over-the-air broadcasts, provided that these retransmissions are lawfully permitted by that Party's government communications authority; any entity engaging in these retransmissions complies with the relevant rules, orders or regulations of that authority; and these retransmissions do not include those delivered and accessed over the Internet. For greater certainty this footnote does not limit a Party's ability to avail itself of this subparagraph.</p> <p>Article 18.63: Term of Protection for Copyright and Related Rights</p> <p>Each Party shall provide that in cases in which the term of protection of a work, performance or phonogram is to be calculated:⁷⁴</p> <p>Footnote 74 For greater certainty, in implementing this Article, nothing prevents a Party from promoting certainty for the legitimate use and exploitation of a work, performance or phonogram during its term of protection, consistent with Article 18.65 (Limitations and Exceptions) and that Party's international obligations</p> <p>(a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death;⁷⁵ and</p> <p>Footnote 75 The Parties understand that if a Party provides its nationals a term of copyright protection that exceeds life of the author plus 70 years, nothing in this Article or Article 18.8 (National Treatment) shall preclude that Party from applying Article 7(8) of the Berne Convention with respect to the term in excess of the term provided in this subparagraph of protection for works of another Party.</p> <p>(b) on a basis other than the life of a natural person, the term shall be: (i) not less than 70 years from the end of the calendar year of the first authorised publication⁷⁶ of the work, performance or phonogram; or (ii) failing such authorised publication within 25 years from the creation of the work, performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance or phonogram.⁷⁷</p> <p>Footnote 76 For greater certainty, for the purposes of subparagraph (b), if a Party's law provides for the calculation of term from fixation rather than from the first authorised publication, that Party may continue to calculate the term from fixation.</p> <p>Footnote 77 For greater certainty, a Party may calculate a term of protection for an anonymous or pseudonymous work or a work of joint authorship in accordance with Article 7(3) or Article 7<i>bis</i> of the Berne Convention, provided that the Party implements the corresponding numerical term of protection required under this Article.</p> <p>Article 18.64: Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, <i>mutatis mutandis</i>, to works, performances and phonograms, and the rights in and protections afforded to that subject matter as required by this Section.</p> <p>Article 18.65: Limitations and Exceptions</p>

United States-Mexico-Canada Agreement (2018) (Final Text)	North American Free Trade Agreement (1994)	Trans-Pacific Partnership (2015)
<p>1. With respect to this Section, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.</p> <p>2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WCT, or the WPPT.</p> <p>Article 20.66: Contractual Transfers Each Party shall provide that for copyright and related rights, any person acquiring or holding an economic right⁶¹ in a work, performance, or phonogram: (a) may freely and separately transfer that right by contract; and (b) by virtue of contract, including contracts of employment underlying the creation of works, performances, or phonograms, must be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.⁶²</p> <p>Footnote 61 For greater certainty, this Article does not affect the exercise of moral rights.</p> <p>Footnote 62 Nothing in this Article affects a Party's ability to establish: (i) which specific contracts underlying the creation of works, performances, or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law; and (ii) reasonable limits to protect the interests of the original right holders, taking into account the legitimate interests of the transferees.</p> <p>Article 20.67: Technological Protection Measures⁶³ Footnote 63 Nothing in this Agreement requires a Party to restrict the importation or domestic sale of a device that does not render effective a technological measure the only purpose of which is to control market segmentation for legitimate physical copies of a cinematographic film, and is not otherwise a violation of its law.</p> <p>1. In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide⁶⁴ that a person who:</p> <p>Footnote 64 A Party that, prior to the date of entry into force of this Agreement, maintains legal protections for technological protection measures consistent with Article 20.67.1 (Technological Protection Measures), may maintain its current scope of limitations, exceptions, and regulations regarding circumvention.</p> <p>(a) knowingly, or having reasonable grounds to know,⁶⁵ circumvents without authority an effective technological measure that controls access to a protected work, performance, or phonogram;⁶⁶ or</p> <p>Footnote 65 For greater certainty, for the purposes of this subparagraph, a Party may provide that reasonable grounds to know may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act.</p>	<p>5. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.</p> <p>6. No Party may grant translation and reproduction licenses permitted under the Appendix to the Berne Convention where legitimate needs in that Party's territory for copies or translations of the work could be met by the right holder's voluntary actions but for obstacles created by the Party's measures.</p> <p>7. Annex 1705.7 applies to the Parties specified in that Annex.</p> <p>3. Each Party shall provide that for copyright and related rights: (a) any person acquiring or holding economic rights may freely and separately transfer such rights by contract for purposes of their exploitation and enjoyment by the transferee; and (b) any person acquiring or holding such economic rights by virtue of a contract, including contracts of employment underlying the creation of works and sound recordings, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.</p>	<p>1. With respect to this Section, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.</p> <p>2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WCT or the WPPT.</p> <p>Article 18.67: Contractual Transfers Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right⁸⁰ in a work, performance or phonogram: (a) may freely and separately transfer that right by contract; and (b) by virtue of contract, including contracts of employment underlying the creation of works, performances or phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.⁸¹</p> <p>Footnote 80 For greater certainty, this provision does not affect the exercise of moral rights.</p> <p>Footnote 81 Nothing in this Article affects a Party's ability to establish: (i) which specific contracts underlying the creation of works, performances or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law; and (ii) reasonable limits to protect the interests of the original right holders, taking into account the legitimate interests of the transferees.</p> <p>Article 18.68: Technological Protection Measures (TPMs)⁸² Footnote 82 Nothing in this Agreement requires a Party to restrict the importation or domestic sale of a device that does not render effective a technological measure the only purpose of which is to control market segmentation for legitimate physical copies of a cinematographic film, and is not otherwise a violation of its law.</p> <p>1. In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorised acts in respect of their works, performances, and phonograms, each Party shall provide that any person that:</p> <p>(a) knowingly, or having reasonable grounds to know,⁸³ circumvents without authority any effective technological measure that controls access to a protected work, performance, or phonogram;⁸⁴ or</p> <p>Footnote 83 For the purposes of this subparagraph, a Party may provide that reasonable grounds to know may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act.</p>

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<p>Footnote 66 For greater certainty, no Party is required to impose civil or criminal liability under this subparagraph for a person that circumvents any effective technological measure that protects any of the exclusive rights of copyright or related rights in a protected work, performance, or phonogram, but does not control access to that work, performance, or phonogram.</p> <p>(b) manufactures, imports, distributes, offers for sale or rental to the public, or otherwise provides devices, products, or components, or offers to the public or provides services, that:</p> <p>(i) are promoted, advertised, or otherwise marketed by that person for the purpose of circumventing any effective technological measure,</p> <p>(ii) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure, or</p> <p>(iii) are primarily designed, produced, or performed for the purpose of circumventing any effective technological measure,</p> <p>is liable and subject to the remedies provided for in Article 20.82.18 (Civil and Administrative Procedures and Remedies).⁶⁷</p> <p>Footnote 67 For greater certainty, no Party is required to impose liability under this Article and Article 20.68 (Rights Management Information) for actions taken by that Party or a third person acting with authorization or consent of the Party.</p> <p>Each Party shall provide for criminal procedures and penalties to be applied when a person, other than a non-profit library, archive,⁶⁸ educational institution, or public non-commercial broadcasting entity, is found to have engaged willfully and for the purposes of commercial advantage or financial gain in any of the foregoing activities.</p> <p>Footnote 68 For greater certainty, a Party may treat a non-profit museum as a non-profit archive.</p>		<p>Footnote 84 For greater certainty, no Party is required to impose civil or criminal liability under this subparagraph for a person that circumvents any effective technological measure that protects any of the exclusive rights of copyright or related rights in a protected work, performance or phonogram, but does not control access to such that work, performance or phonogram.</p> <p>(b) manufactures, imports, distributes,⁸⁵ offers for sale or rental to the public, or otherwise provides devices, products, or components, or offers to the public or provides services, that:</p> <p>Footnote 85 A Party may provide that the obligations described in this subparagraph with respect to manufacturing, importation, and distribution apply only in cases in which those activities are undertaken for sale or rental, or if those activities prejudice the interests of the right holder of the copyright or related right.</p> <p>(i) are promoted, advertised, or otherwise marketed by that person⁸⁶ for the purpose of circumventing any effective technological measure;</p> <p>Footnote 86 The Parties understand that this provision still applies in cases in which the person promotes, advertises, or markets through the services of a third person.</p> <p>(ii) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure;⁸⁷ or</p> <p>Footnote 87 A Party may comply with this paragraph if the conduct referred to in this subparagraph does not have a commercially significant purpose or use other than to circumvent an effective technological measure.</p> <p>(iii) are primarily designed, produced, or performed for the purpose of circumventing any effective technological measure,</p> <p>is liable and subject to the remedies provided for in Article 18.74 (Civil and Administrative Procedures and Remedies).</p> <p>Each Party shall provide for criminal procedures and penalties to be applied if any person is found to have engaged willfully⁸⁸ and for the purposes of commercial advantage or financial gain⁸⁹ in any of the above activities.⁹⁰</p> <p>Footnote 88 For greater certainty, for purposes of this Article and Article 18.69 (RMI), wilfulness contains a knowledge element.</p> <p>Footnote 89 For greater certainty, for purposes of this Article, Article 18.69 (RMI) and Article 18.77 (Criminal Procedures and Penalties), the Parties understand that a Party may treat “financial gain” as “commercial purposes”.</p> <p>Footnote 90 For greater certainty, no Party is required to impose liability under this Article and Article 18.69 (RMI) for actions taken by that Party or a third person acting with the authorisation or consent of that Party.</p>

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<p>Criminal procedures and penalties listed in subparagraphs (a), (c), and (f) of Article 20.85.6 (Criminal Procedures and Penalties) shall apply, as applicable to infringements <i>mutatis mutandis</i>, to the activities described in subparagraphs (a) and (b) of this paragraph.</p> <p>2. In implementing paragraph 1, no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measure implementing paragraph 1.</p> <p>3. Each Party shall provide that a violation of a measure implementing this Article is a separate cause of action, independent of any infringement that might occur under the Party's law on copyright and related rights.</p> <p>4. Each Party shall confine exceptions and limitations to measures implementing paragraph 1 to the following activities, which shall be applied to relevant measures in accordance with paragraph 5.⁶⁹</p> <p>Footnote 69 A Party may request consultations with the other Parties to consider how to address, under paragraph 4, activities of a similar nature that a Party identifies after the date this Agreement enters into force.</p> <p>(a) non-infringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs;</p>		<p>A Party may provide that the criminal procedures and penalties do not apply to a non-profit library, museum, archive, educational institution, or public non-commercial broadcasting entity. A Party may also provide that the remedies provided for in Article 18.74 (Civil and Administrative Procedures and Remedies) do not apply to any of the same entities provided that the above activities are carried out in good faith without knowledge that the conduct is prohibited.</p> <p>2. In implementing paragraph 1, 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, provided that the product does not otherwise violate a measure implementing paragraph 1.</p> <p>3. Each Party shall provide that a violation of a measure implementing this Article is independent of any infringement that might occur under the Party's law on copyright and related rights.⁹¹</p> <p>Footnote 91 For greater certainty, a Party is not required to treat the criminal act of circumvention set forth in paragraph 1(a) as an independent violation, where the Party criminally penalises such acts through other means.</p> <p>4. With regard to measures implementing paragraph 1: (a) a Party may provide certain limitations and exceptions to the measures implementing paragraph 1(a) or paragraph 1(b) in order to enable non-infringing uses if there is an actual or likely adverse impact of those measures on those non-infringing uses, as determined through a legislative, regulatory, or administrative process in accordance with the Party's law, giving due consideration to evidence when presented in that process, including with respect to whether appropriate and effective measures have been taken by rights holders to enable the beneficiaries to enjoy the limitations and exceptions to copyright and related rights under that Party's law;⁹²</p> <p>Footnote 92 For greater certainty, nothing in this provision requires a Party to make a new determination via the legislative, regulatory, or administrative process with respect to limitations and exceptions to the legal protection of effective technological measures: (i) previously established pursuant to trade agreements in force between two or more Parties; or (ii) previously implemented by the Parties, provided that such limitations and exceptions are otherwise consistent with this paragraph.</p>

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<p>(b) non-infringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfix performance, or display of a work, performance, or phonogram and who has made a good faith effort to obtain authorization for those activities, to the extent necessary for the sole purpose of research consisting of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;</p> <p>(c) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device that itself is not prohibited under the measures implementing paragraph (1)(b);</p> <p>(d) non-infringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network;</p> <p>(e) non-infringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work;</p> <p>(f) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes;</p> <p>(g) access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram not otherwise available to it, for the sole purpose of making acquisition decisions; and</p> <p>(h) in addition, a Party may provide additional exceptions or limitations for non-infringing uses of a particular class of works, performances, or phonograms, when an actual or likely adverse impact on those non-infringing uses is demonstrated by substantial evidence in a legislative, regulatory, or administrative proceeding in accordance with the Party's law.</p> <p>5. The exceptions and limitations to measures implementing paragraph 1 for the activities set forth in paragraph 4 may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures under the Party's legal system:</p> <p>(a) measures implementing paragraph (1)(a) may be subject to exceptions and limitations with respect to each activity set forth in paragraph (4);</p>		<p>(b) any limitations or exceptions to a measure that implements paragraph 1(b) shall be permitted only to enable the legitimate use of a limitation or exception permissible under this Article by its intended beneficiaries⁹³ and does not authorise the making available of devices, products, components, or services beyond those intended beneficiaries;⁹⁴ and</p> <p>Footnote 93 For greater certainty, a Party may provide an exception to paragraph 1(b) without providing a corresponding exception to paragraph 1(a), provided that the exception to paragraph 1(b) is limited to enabling a legitimate use that is within the scope of limitations or exceptions to paragraph 1(a) as provided under this subparagraph.</p> <p>Footnote 94 For the purposes of interpreting paragraph 4(b) only, paragraph 1(a) should be read to apply to all effective technological measures as defined in paragraph 5, <i>mutatis mutandis</i>.</p> <p>(c) a Party shall not, by providing limitations and exceptions under paragraph 4(a) and paragraph 4(b), undermine the adequacy of that Party's legal system for the protection of effective technological measures, or the effectiveness of legal remedies against the circumvention of such measures, that authors, performers, or producers of phonograms use in connection with the exercise of their rights, or that restrict unauthorised acts in respect of their works, performances or phonograms, as provided for in this Chapter.</p>

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<p>(b) measures implementing paragraph (1)(b), as they apply to effective technological measures that control access to a work, performance, or phonogram, may be subject to exceptions and limitations with respect to activities set forth in paragraphs (4)(a), (b), (c), (d), and (f); and</p> <p>(c) measures implementing paragraph (1)(b), as they apply to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to activities set forth in paragraphs (4)(a) and (f).</p> <p>6. Effective technological measure means a technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, or phonogram, or protects copyright or rights related to copyright.⁷⁰</p> <p>Footnote 70 For greater certainty, a technological measure that can, in a usual case, be circumvented accidentally is not an “effective” technological measure.</p> <p>Article 20.68: Rights Management Information⁷¹</p> <p>Footnote 71 A Party may comply with the obligations in this Article by providing legal protection only to electronic rights management information.</p> <p>1. In order to provide adequate and effective legal remedies to protect rights management information (RMI), each Party shall provide that any person that, without authority, and knowing, or having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of the copyright or related right of authors, performers, or producers of phonograms, knowingly:⁷²</p> <p>(a) removes or alters any RMI;</p> <p>Footnote 72 For greater certainty, a Party may extend the protection afforded by this paragraph to circumstances in which a person engages without knowledge in the acts in subparagraphs (a), (b), and (c), and to other related right holders.</p> <p>(b) distributes or imports for distribution RMI knowing that the RMI has been altered without authority;⁷³ or</p> <p>Footnote 73 A Party may meet its obligation under this subparagraph if it provides effective protection for original compilations, provided that the acts described in this subparagraph are treated as infringements of copyright in those original compilations.</p> <p>(c) distributes, imports for distribution, broadcasts, communicates, or makes available to the public copies of works, performances, or phonograms, knowing that RMI has been removed or altered without authority, is liable and subject to the remedies set out in Article 20.82 (Civil and Administrative Procedures and Remedies).</p> <p>2. Each Party shall provide for criminal procedures and penalties to be applied if a person is found to have engaged willfully and for purposes of commercial advantage or financial gain in any of the activities referred to in paragraph 1.</p> <p>3. A Party may provide that the criminal procedures and penalties do not apply to a non-profit library, museum, archive, educational institution or public non-commercial broadcasting entity.⁷⁴</p> <p>Footnote 74 For greater certainty, a Party may treat a broadcasting entity established without a profit-making purpose under its law as a public non-commercial broadcasting entity.</p>		<p>5. Effective technological measure means any effective⁹⁵ technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, or phonogram, or protects copyright or related rights related to a work, performance or phonogram.</p> <p>Footnote 95 For greater certainty, a technological measure that can, in a usual case, be circumvented accidentally is not an “effective” technological measure.</p> <p>Article 18.69: Rights Management Information (RMI)⁹⁶</p> <p>Footnote 96 A Party may comply with the obligations in this Article by providing legal protection only to electronic RMI.</p> <p>1. In order to provide adequate and effective legal remedies to protect RMI:</p> <p>(a) each Party shall provide that any person that, without authority, and knowing, or having reasonable grounds to know, that it would induce, enable, facilitate or conceal an infringement of the copyright or related right of authors, performers or producers of phonograms:</p> <p>(i) knowingly⁹⁷ removes or alters any RMI;</p> <p>Footnote 97 For greater certainty, a Party may extend the protection afforded by this paragraph to circumstances in which a person engages without knowledge in the acts in sub-subparagraphs (i), (ii) and (iii), and to other related right holders.</p> <p>(ii) knowingly distributes or imports for distribution RMI knowing that the RMI has been altered without authority;⁹⁸ or</p> <p>Footnote 98 A Party may comply with its obligations under this sub-subparagraph by providing for civil judicial proceedings concerning the enforcement of moral rights under its copyright law. A Party may also meet its obligation under this sub-subparagraph, if it provides effective protection for original compilations, provided that the acts described in this sub-subparagraph are treated as infringements of copyright in those original compilations.</p> <p>(iii) knowingly distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances or phonograms, knowing that RMI has been removed or altered without authority, is liable and subject to the remedies set out in Article 18.74 (Civil and Administrative Procedures and Remedies).</p> <p>Each Party shall provide for criminal procedures and penalties to be applied if any person is found to have engaged willfully and for purposes of commercial advantage or financial gain in any of the above activities.</p> <p>A Party may provide that the criminal procedures and penalties do not apply to a non-profit library, museum, archive, educational institution or public non-commercial broadcasting entity.⁹⁹</p> <p>Footnote 99 For greater certainty, a Party may treat a broadcasting entity established without a profit-making purpose under its law as a public non-commercial broadcasting entity.</p>

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<p>4. For greater certainty, nothing prevents a Party from excluding from a measure that implements paragraphs 1 through 3 a lawfully authorized activity that is carried out for the purpose of law enforcement, essential security interests, or other related governmental purposes, such as the performance of a statutory function.</p> <p>5. For greater certainty, nothing in this Article obligates a Party to require a right holder in a work, performance, or phonogram to attach RMI to copies of the work, performance, or phonogram, or to cause RMI to appear in connection with a communication of the work, performance, or phonogram to the public.</p> <p>6. RMI means:</p> <p>(a) information that identifies a work, performance, or phonogram, the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of a right in the work, performance, or phonogram;</p> <p>(b) information about the terms and conditions of the use of the work, performance, or phonogram; or</p> <p>(c) any numbers or codes that represent the information referred to in subparagraphs (a) and (b),</p> <p>if any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance, or phonogram to the public.</p> <p>Article 20.69: Collective Management The Parties recognize the important role of collective management societies for copyright and related rights in collecting and distributing royalties⁷⁵ based on practices that are fair, efficient, transparent, and accountable, which may include appropriate record keeping and reporting mechanisms.</p> <p>Footnote 75 For greater certainty, royalties may include equitable remuneration.</p>	<p>Article 1706: Sound Recordings</p> <p>1. Each Party shall provide to the producer of a sound recording the right to authorize or prohibit:</p> <p>(a) the direct or indirect reproduction of the sound recording;</p> <p>(b) the importation into the Party's territory of copies of the sound recording made without the producer's authorization;</p> <p>(c) the first public distribution of the original and each copy of the sound recording by sale, rental or otherwise; and</p> <p>(d) the commercial rental of the original or a copy of the sound recording, except where expressly otherwise provided in a contract between the producer of the sound recording and the authors of the works fixed therein.</p> <p>Each Party shall provide that putting the original or a copy of a sound recording on the market with the right holder's consent shall not exhaust the rental right.</p> <p>2. Each Party shall provide a term of protection for sound recordings of at least 50 years from the end of the calendar year in which the fixation was made.</p> <p>3. Each Party shall confine limitations or exceptions to the rights provided for in this Article to certain special cases that do not conflict with a normal exploitation of the sound recording and do not unreasonably prejudice the legitimate interests of the right holder.</p> <p>Article 1710: Layout Designs of Semiconductor Integrated Circuits</p> <p>1. Each Party shall protect layout designs (topographies) of integrated circuits ("layout designs") in accordance with Articles 2 through 7, 12 and 16(3), other than Article 6(3), of the Treaty on Intellectual Property in Respect of Integrated Circuits as opened for signature on May 26, 1989.</p>	<p>2. For greater certainty, nothing prevents a Party from excluding from a measure that implements paragraph 1 a lawfully authorised activity that is carried out for the purpose of law enforcement, essential security interests or other related governmental purposes, such as the performance of a statutory function.</p> <p>3. For greater certainty, nothing in this Article shall obligate a Party to require a right holder in a work, performance or phonogram to attach RMI to copies of the work, performance or phonogram, or to cause RMI to appear in connection with a communication of the work, performance or phonogram to the public.</p> <p>4. RMI means:</p> <p>(a) information that identifies a work, performance or phonogram, the author of the work, the performer of the performance or the producer of the phonogram; or the owner of any right in the work, performance or phonogram;</p> <p>(b) information about the terms and conditions of the use of the work, performance or phonogram; or</p> <p>(c) any numbers or codes that represent the information referred to in subparagraphs (a) and (b),</p> <p>if any of these items is attached to a copy of the work, performance or phonogram or appears in connection with the communication or making available of a work, performance or phonogram to the public.</p> <p>Article 18.70: Collective Management The Parties recognise the important role of collective management societies for copyright and related rights in collecting and distributing royalties¹⁰⁰ based on practices that are fair, efficient, transparent and accountable, which may include appropriate record keeping and reporting mechanisms.</p> <p>Footnote 100 For greater certainty, royalties may include equitable remuneration.</p>

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<p style="text-align: center;">Section I: Trade Secrets^{76, 77}</p> <p>Footnote 76 For greater certainty, the enforcement obligations and principles set forth in Section J also apply to the obligations in this section, as relevant.</p> <p>Footnote 77 For greater certainty, this Section is without prejudice to a Party's measures protecting good faith lawful disclosures to provide evidence of a violation of that Party's law.</p> <p>Article 20.70: Protection of Trade Secrets In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention, each Party shall ensure that persons have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others (including state-owned enterprises) without their consent in a manner contrary to honest commercial practices.</p>	<p>2. Subject to paragraph 3, each Party shall make it unlawful for any person without the right holder's authorization to import, sell or otherwise distribute for commercial purposes any of the following:</p> <p>(a) a protected layout design; (b) an integrated circuit in which a protected layout design is incorporated; or (c) an article incorporating such an integrated circuit, only insofar as it continues to contain an unlawfully reproduced layout design.</p> <p>3. No Party may make unlawful any of the acts referred to in paragraph 2 performed in respect of an integrated circuit that incorporates an unlawfully reproduced layout design, or any article that incorporates such an integrated circuit, where the person performing those acts or ordering those acts to be done did not know and had no reasonable ground to know, when it acquired the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design.</p> <p>4. Each Party shall provide that, after the person referred to in paragraph 3 has received sufficient notice that the layout design was unlawfully reproduced, such person may perform any of the acts with respect to the stock on hand or ordered before such notice, but shall be liable to pay the right holder for doing so an amount equivalent to a reasonable royalty such as would be payable under a freely negotiated license in respect of such a layout design.</p> <p>5. No Party may permit the compulsory licensing of layout designs of integrated circuits.</p> <p>6. Any Party that requires registration as a condition for protection of a layout design shall provide that the term of protection shall not end before the expiration of a period of 10 years counted from the date of: (a) filing of the application for registration; or (b) the first commercial exploitation of the layout design, wherever in the world it occurs.</p> <p>7. Where a Party does not require registration as a condition for protection of a layout design, the Party shall provide a term of protection of not less than 10 years from the date of the first commercial exploitation of the layout design, wherever in the world it occurs.</p> <p>8. Notwithstanding paragraphs 6 and 7, a Party may provide that the protection shall lapse 15 years after the creation of the layout design.</p> <p>9. Annex 1710.9 applies to the Parties specified in that Annex.</p> <p>Article 1711: Trade Secrets</p> <p>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.</p>	<p>Article 18.78: Trade Secrets¹³⁶</p> <p>Footnote 136 For greater certainty, this Article is without prejudice to a Party's measures protecting good faith lawful disclosures to provide evidence of a violation of that Party's law.</p> <p>1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention, each Party shall ensure that persons have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others (including state-owned enterprises) without their consent in a manner contrary to honest commercial practices.¹³⁷ As used in this Chapter, trade secrets encompass, at a minimum, undisclosed information as provided for in Article 39.2 of the TRIPS Agreement.</p>

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<p>Article 20.71: Civil Protection and Enforcement In fulfilling its obligation under paragraphs 1 and 2 of Article 39 of the TRIPS Agreement, each Party shall:</p> <p>(a) provide civil judicial procedures⁷⁸ for any person lawfully in control of a trade secret to prevent, and obtain redress for, the misappropriation of the trade secret by any other person; and</p> <p>Footnote 78 For greater certainty, civil judicial procedures do not have to be federal provided that those procedures are available. (b) not limit the duration of protection for a trade secret, so long as the conditions in Article 20.73 (Definitions) exist.</p> <p>Article 20.72: Criminal Enforcement 1. Subject to paragraph 2, each Party shall provide for criminal procedures and penalties for the unauthorized and willful misappropriation⁷⁹ of a trade secret.</p>	<p>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.</p> <p>3. No Party may limit the duration of protection for trade secrets, so long as the conditions in paragraph 1 exist.</p> <p>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.</p> <p>5. If a Party requires, as a condition for approving the marketing of pharmaceutical or agricultural chemical 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, 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.</p> <p>6. Each Party shall provide that for data subject to paragraph 5 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 reasonable period of time after their submission. For this purpose, a reasonable period shall normally mean 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.</p> <p>7. 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.</p>	<p>Footnote 137 For the purposes of this paragraph "a manner contrary to honest commercial practices" means at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties that knew, or were grossly negligent in failing to know, that those practices were involved in the acquisition.</p> <p>2. Subject to paragraph 3, each Party shall provide for criminal procedures and penalties for one or more of the following: (a) the unauthorised and wilful access to a trade secret held in a computer system; (b) the unauthorised and wilful misappropriation¹³⁸ of a trade secret, including by means of a computer system; or (c) the fraudulent disclosure, or alternatively, the unauthorised and wilful disclosure, of a trade secret, including by means of a computer system.</p>

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<p>Footnote 79 For the purposes of this Article, “willful misappropriation” requires a person to have known that the trade secret was acquired in a manner contrary to honest commercial practices.</p> <p>2. With respect to the acts referred to in paragraph 1, a Party may, as appropriate, limit the availability of its procedures, or limit the level of penalties available, to one or more of the following cases in which the act is:</p> <p>(a) for the purposes of commercial advantage or financial gain;</p> <p>(b) related to a product or service in national or international commerce; or</p> <p>(c) intended to injure the owner of that trade secret.</p> <p>Article 20.73: Definitions For the purposes of this Section: trade secret means information that:</p> <p>(a) 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 within the circles that normally deal with the kind of information in question;</p> <p>(b) has actual or potential commercial value because it is secret; and</p> <p>(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;</p> <p>misappropriation means the acquisition, use, or disclosure of a trade secret in a manner contrary to honest commercial practices, including the acquisition, use, or disclosure of a trade secret by a third party that knew, or had reason to know, that the trade secret was acquired in a manner contrary to honest commercial practices.⁸⁰</p> <p>Footnote 80 For greater certainty, “misappropriation” as defined in this paragraph includes cases in which the acquisition, use, or disclosure involves a computer system. Misappropriation does not include situations in which a person:</p> <p>(a) reverse engineered an item lawfully obtained;</p> <p>(b) independently discovered information claimed as a trade secret; or</p> <p>(c) acquired the subject information from another person in a legitimate manner without an obligation of confidentiality or knowledge that the information was a trade secret; and</p> <p>manner contrary to honest commercial practices means at least practices such as breach of contract, breach of confidence, and inducement to breach, and includes the acquisition of undisclosed information by third parties that knew, or were grossly negligent in failing to know, that those practices were involved in the acquisition.</p> <p>Article 20.74: Provisional Measures In the civil judicial proceedings described in Article 20.71 (Civil Protection and Enforcement), each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional measures, such as orders to prevent the misappropriation of the trade secret and to preserve relevant evidence.</p> <p>Article 20.75: Confidentiality In connection with the civil judicial proceedings described in Article 20.71 (Civil Protection and Enforcement), each Party shall provide that its civil judicial authorities have the authority to:</p>		<p>Footnote 138 A Party may deem the term “misappropriation” to be synonymous with “unlawful acquisition”.</p> <p>3. With respect to the relevant acts referred to in paragraph 2, a Party may, as appropriate, limit the availability of its criminal procedures, or limit the level of penalties available, to one or more of the following cases in which: (a) the acts are for the purposes of commercial advantage or financial gain; (b) the acts are related to a product or service in national or international commerce; (c) the acts are intended to injure the owner of such trade secret; (d) the acts are directed by or for the benefit of or in association with a foreign economic entity; or (e) the acts are detrimental to a Party’s economic interests, international relations, or national defence or national security.</p>

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<p>(a) order specific procedures to protect the confidentiality of any trade secret, alleged trade secret, or any other information asserted by an interested party to be confidential; and</p> <p>(b) impose sanctions on parties, counsel, expert, or other person subject to those proceedings, related to violation of orders concerning the protection of a trade secret or alleged trade secret produced or exchanged in that proceeding, as well as other information asserted by an interested party to be confidential.</p> <p>Each Party shall further provide in its law that, in cases in which an interested party asserts information to be a trade secret, its judicial authorities shall not disclose that information without first providing that person with an opportunity to make a submission under seal that describes the interest of that person in keeping the information confidential.</p> <p>Article 20.76: Civil Remedies In connection with the civil judicial proceedings described in Article 20.71 (Civil Protection and Enforcement), each Party shall provide that its judicial authorities have the authority at least to order:</p> <p>(a) injunctive relief that conforms to Article 44 of the TRIPS Agreement against a person that misappropriated a trade secret; and and (b) a person that misappropriated a trade secret to pay damages adequate to compensate the person lawfully in control of the trade secret for the injury suffered because of the misappropriation of the trade secret⁸¹ and, if appropriate, because of the proceedings to enforce the trade secret.</p> <p>Footnote 81 For greater certainty, a Party may provide that the determination of damages is carried out after the determination of misappropriation.</p> <p>Article 20.77: Licensing and Transfer of Trade Secrets No Party shall discourage or impede the voluntary licensing of trade secrets by imposing excessive or discriminatory conditions on those licenses or conditions that dilute the value of the trade secrets.</p> <p>Article 20.78: Prohibition of Unauthorized Disclosure or Use of a Trade Secret by Government Officials Outside the Scope of Their Official Duties 1. In civil, criminal, and regulatory proceedings in which trade secrets may be submitted to a court or government entity, each Party shall prohibit the unauthorized disclosure of a trade secret by a government official at the central level of government outside the scope of that person's official duties.</p> <p>2. Each Party shall provide for in its law deterrent level penalties, including monetary fines, suspension or termination of employment, and imprisonment, to guard against the unauthorized disclosure of a trade secret described in paragraph 1.</p>	<p>Article 1714: Enforcement of Intellectual Property Rights: General Provisions 1. Each Party shall ensure that enforcement procedures, as specified in this Article and Articles 1715 through 1718, are available under its domestic law so as to permit effective action to be taken against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies to deter further infringements. Such enforcement procedures shall be applied so as to avoid the creation of barriers to legitimate trade and to provide for safeguards against abuse of the procedures.</p>	<p>Section I: Enforcement Article 18.71: General Obligations 1. Each Party shall ensure that enforcement procedures as specified in this Section are available under its law¹⁰¹ 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 that constitute a deterrent to future infringements.¹⁰² 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.</p> <p>Footnote 101 For greater certainty, "law" is not limited to legislation. Footnote 102 For greater certainty, and subject to Article 44 of the TRIPS Agreement and the provisions of this Agreement, each Party confirms that it makes such remedies available with respect to enterprises, regardless of whether the enterprises are private or state-owned.</p>
<p>Section J: Enforcement Article 20.79: General Obligations 1. Each Party shall ensure that enforcement procedures as specified in this Section are available under its law so as to permit effective action against an act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements.⁸² 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.</p> <p>Footnote 82 For greater certainty, and subject to Article 44 of the TRIPS Agreement and this Agreement, each Party confirms that it makes those remedies available with respect to enterprises, regardless of whether the enterprises are private or state-owned.</p>		

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<p>2. Each Party confirms that the enforcement procedures set forth in Article 20.82 (Civil and Administrative Procedures and Remedies), Article 20.83 (Provisional Measures), and Article 20.85 (Criminal Procedures and Penalties) shall be available to the same extent with respect to acts of trademark infringement, as well as copyright or related rights infringement, in the digital environment.</p> <p>3. Each Party shall ensure that its procedures concerning the enforcement of intellectual property rights are fair and equitable. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.</p> <p>4. This Section does not create any obligation: (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of each Party to enforce its law in general; or (b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of law in general.</p> <p>5. In implementing this Section in its intellectual property system, each Party shall take into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties, as well as the interests of third parties.</p> <p>Article 20.80: Presumptions</p> <p>1. In civil, criminal, and, if applicable, administrative proceedings involving copyright or related rights, each Party shall provide for a presumption⁸³ that, in the absence of proof to the contrary:</p> <p>Footnote 83</p> <p>For greater certainty, a Party may implement this Article on the basis of sworn statements or documents having evidentiary value, such as statutory declarations. A Party may also provide that these presumptions are rebuttable presumptions that may be rebutted by evidence to the contrary.</p> <p>(a) the person whose name is indicated in the usual manner⁸⁴ as the author, performer, or producer of the work, performance, or phonogram, or if applicable the publisher, is the designated right holder in that work, performance, or phonogram; and</p> <p>Footnote 84</p> <p>For greater certainty, a Party may establish the means by which it shall determine what constitutes the “usual manner” for a particular physical support.</p> <p>(b) the copyright or related right subsists in that subject matter.</p>	<p>2. Each Party shall ensure that its procedures for the enforcement of intellectual property rights are fair and equitable, are not unnecessarily complicated or costly, and do not entail unreasonable timelimits or unwarranted delays.</p> <p>3. Each Party shall provide that decisions on the merits of a case in judicial and administrative enforcement proceedings shall:</p> <p>(a) preferably be in writing and preferably state the reasons on which the decisions are based;</p> <p>(b) be made available at least to the parties in a proceeding without undue delay; and</p> <p>(c) be based only on evidence in respect of which such parties were offered the opportunity to be heard.</p> <p>4. Each Party shall ensure that parties in a proceeding have an opportunity to have final administrative decisions reviewed by a judicial authority of that Party and, subject to jurisdictional provisions in its domestic laws concerning the importance of a case, to have reviewed at least the legal aspects of initial judicial decisions on the merits of a case. Notwithstanding the above, no Party shall be required to provide for judicial review of acquittals in criminal cases.</p> <p>5. Nothing in this Article or Articles 1715 through 1718 shall be construed to require a Party to establish a judicial system for the enforcement of intellectual property rights distinct from that Party's system for the enforcement of laws in general.</p> <p>6. For the purposes of Articles 1715 through 1718, the term "right holder" includes federations and associations having legal standing to assert such rights.</p>	<p>2. Each Party confirms that the enforcement procedures set forth in Article 18.74 (Civil and Administrative Procedures and Remedies), Article 18.75 (Provisional Measures) and Article 18.77 (Criminal Procedures and Penalties) shall be available to the same extent with respect to acts of trademark infringement, as well as copyright or related rights infringement, in the digital environment.</p> <p>3. Each Party shall ensure that its procedures concerning the enforcement of intellectual property rights are fair and equitable. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.</p> <p>4. This Section does not create any obligation: (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of each Party to enforce its law in general; or (b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of law in general.</p> <p>5. In implementing the provisions of this Section in its intellectual property system, each Party shall take into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties, as well as the interests of third parties.</p> <p>Article 18.72: Presumptions</p> <p>1. In civil, criminal and, if applicable, administrative proceedings involving copyright or related rights, each Party shall provide for a presumption¹⁰³ that, in the absence of proof to the contrary:</p> <p>Footnote 103</p> <p>For greater certainty, a Party may implement this Article on the basis of sworn statements or documents having evidentiary value, such as statutory declarations. A Party may also provide that these presumptions are rebuttable presumptions that may be rebutted by evidence to the contrary.</p> <p>(a) the person whose name is indicated in the usual manner¹⁰⁴ as the author, performer or producer of the work, performance or phonogram, or if applicable the publisher, is the designated right holder in that work, performance or phonogram; and</p> <p>Footnote 104</p> <p>For greater certainty, a Party may establish the means by which it shall determine what constitutes the “usual manner” for a particular physical support.</p> <p>(b) the copyright or related right subsists in such subject matter</p>

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<p>2. In connection with the commencement of a civil, administrative, or criminal enforcement proceeding involving a registered trademark that has been substantively examined by its competent authority, each Party shall provide that the trademark be considered <i>prima facie</i> valid.</p> <p>3. In connection with the commencement of a civil or administrative enforcement proceeding involving a patent that has been substantively examined and granted by the competent authority of a Party, that Party shall provide that each claim in the patent be considered <i>prima facie</i> to satisfy the applicable criteria of patentability in its territory.^{85, 86}</p> <p>Footnote 85 For greater certainty, if a Party provides its administrative authorities with the exclusive authority to determine the validity of a registered trademark or patent, nothing in paragraphs 2 and 3 shall prevent that Party's competent authority from suspending enforcement procedures until the validity of the registered trademark or patent is determined by the administrative authority. In those validity procedures, the party challenging the validity of the registered trademark or patent shall be required to prove that the registered trademark or patent is not valid. Notwithstanding this requirement, a Party may require the trademark holder to provide evidence of first use.</p> <p>Footnote 86 A Party may provide that this paragraph applies only to those patents that have been applied for, examined, and granted after the entry into force of this Agreement.</p> <p>Article 20.81: Enforcement Practices with Respect to Intellectual Property Rights 1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights: (a) are in writing and preferably state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based; and (b) are published⁸⁷ or, if publication is not practicable, otherwise made available to the public in a national language in such a manner as to enable interested persons and Parties to become acquainted with them.</p> <p>Footnote 87 For greater certainty, a Party may satisfy the requirement for publication by making the decision or ruling available to the public online.</p> <p>2. Each Party recognizes the importance of collecting and analyzing statistical data and other relevant information concerning infringements of intellectual property rights as well as collecting information on best practices to prevent and combat infringements.</p> <p>3. Each Party shall publish or otherwise make available to the public information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal systems, such as statistical information that the Party may collect for those purposes.</p> <p>Article 20.82: Civil and Administrative Procedures and Remedies 1. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered in this Chapter.⁸⁸</p>	<p>Article 1715: Specific Procedural and Remedial Aspects of Civil and Administrative Procedures 1. Each Party shall make available to right holders civil judicial procedures for the enforcement of any intellectual property right provided in this Chapter. Each Party shall provide that:</p>	<p>2. In connection with the commencement of a civil, administrative or criminal enforcement proceeding involving a registered trademark that has been substantively examined by its competent authority, each Party shall provide that the trademark be considered <i>prima facie</i> valid.</p> <p>3. In connection with the commencement of a civil or administrative enforcement proceeding involving a patent that has been substantively examined and granted¹⁰⁵ by the competent authority of a Party, that Party shall provide that each claim in the patent be considered <i>prima facie</i> to satisfy the applicable criteria of patentability in the territory of the Party.^{106, 107}</p> <p>Footnote 105 For greater certainty, nothing in this Chapter prevents a Party from making available third party procedures in connection with its fulfilment of the obligations under paragraphs 2 and 3.</p> <p>Footnote 106 For greater certainty, if a Party provides its administrative authorities with the exclusive authority to determine the validity of a registered trademark or patent, nothing in paragraphs 2 and 3 shall prevent that Party's competent authority from suspending enforcement procedures until the validity of the registered trademark or patent is determined by the administrative authority. In those validity procedures, the party challenging the validity of the registered trademark or patent shall be required to prove that the registered trademark or patent is not valid. Notwithstanding this requirement, a Party may require the trademark holder to provide evidence of first use.</p> <p>Footnote 107 A Party may provide that this paragraph applies only to those patents that have been applied for, examined and granted after the entry into force of this Agreement for that Party.</p> <p>Article 18.73: Enforcement Practices with Respect to Intellectual Property Rights 1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights: (a) preferably are in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based; and (b) are published¹⁰⁸ or, if publication is not practicable, otherwise made available to the public in a national language in such a manner as to enable interested persons and Parties to become acquainted with them.</p> <p>Footnote 108 For greater certainty, a Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.</p> <p>2. Each Party recognises the importance of collecting and analysing statistical data and other relevant information concerning infringements of intellectual property rights as well as collecting information on best practices to prevent and combat infringements.</p> <p>3. Each Party shall publish or otherwise make available to the public information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal systems, such as statistical information that the Party may collect for such purposes.</p> <p>Article 18.74: Civil and Administrative Procedures and Remedies 1. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered in this Chapter.¹⁰⁹</p>

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<p>Footnote 88 For the purposes of this Article, the term “right holders” includes those authorized licensees, federations, and associations that have the legal standing and authority to assert those rights. The term “authorized licensee” includes the exclusive licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.</p> <p>2. Each Party shall provide that its judicial authorities have the authority to order injunctive relief that conforms to Article 44 of the TRIPS Agreement, including to prevent goods that involve the infringement of an intellectual property right under the law of the Party providing that relief from entering into the channels of commerce.</p> <p>3. Each Party shall provide⁸⁹ that, in civil judicial proceedings, its judicial authorities have the authority at least to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person’s intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.</p> <p>Footnote 89 A Party may also provide that the right holder may not be entitled to any of the remedies set out in paragraphs 3, 5, and 7 if there is a finding of non-use of a trademark. For greater certainty, there is no obligation for a Party to provide for the possibility of any of the remedies in paragraphs 3, 5, 6, and 7 to be ordered in parallel.</p> <p>4. In determining the amount of damages under paragraph 3, each Party’s judicial authorities shall have the authority to consider, among other things, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price.</p>	<p>(a) defendants have the right to written notice that is timely and contains sufficient detail, including the basis of the claims; (b) parties in a proceeding are allowed to be represented by independent legal counsel; (c) the procedures do not include imposition of overly burdensome requirements concerning mandatory personal appearances; (d) all parties in a proceeding are duly entitled to substantiate their claims and to present relevant evidence; and (e) the procedures include a means to identify and protect confidential information.</p> <p>2. Each Party shall provide that its judicial authorities shall have the authority:</p> <p>(a) where a party in a proceeding has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to the substantiation of its claims that is within the control of the opposing party, to order the opposing party to produce such evidence, subject in appropriate cases to conditions that ensure the protection of confidential information;</p> <p>(b) where a party in a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide relevant evidence under that party’s control within a reasonable period, or significantly impedes a proceeding relating to an enforcement action, to make preliminary and final determinations, affirmative or negative, on the basis of the evidence presented, including the complaint or the allegation presented by the party adversely affected by the denial of access to evidence, subject to providing the parties an opportunity to be heard on the allegations or evidence;</p> <p>(c) to order a party in a proceeding to desist from an infringement, including to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, which order shall be enforceable at least immediately after customs clearance of such goods;</p> <p>(d) to order the infringer of an intellectual property right to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of the infringement where the infringer knew or had reasonable grounds to know that it was engaged in an infringing activity;</p>	<p>Footnote 109 For the purposes of this Article, the term “right holders” shall include those authorised licensees, federations and associations that have the legal standing and authority to assert such rights. The term “authorised licensee” shall include the exclusive licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.</p> <p>2. Each Party shall provide that its judicial authorities have the authority to order injunctive relief that conforms to Article 44 of the TRIPS Agreement, including to prevent goods that involve the infringement of an intellectual property right under the law of the Party providing that relief from entering into the channels of commerce.</p> <p>3. Each Party shall provide¹¹⁰ that, in civil judicial proceedings, its judicial authorities have the authority at least to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person’s intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.</p> <p>Footnote 110 A Party may also provide that the right holder may not be entitled to any of the remedies set out in paragraphs 3, 5 and 7 if there is a finding of non-use of a trademark. For greater certainty, there is no obligation for a Party to provide for the possibility of any of the remedies in paragraphs 3, 5, 6 and 7 to be ordered in parallel.</p> <p>4. In determining the amount of damages under paragraph 3, each Party’s judicial authorities shall have the authority to consider, among other things, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price.</p>

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<p>5. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer, at least in cases described in paragraph 3, to pay the right holder the infringer's profits that are attributable to the infringement.⁹⁰</p> <p>Footnote 90 A Party may comply with this paragraph by presuming those profits to be the damages referred to in paragraph 3.</p> <p>6. In civil judicial proceedings with respect to the infringement of copyright or related rights protecting works, phonograms, or performances, each Party shall establish or maintain a system that provides for one or more of the following: (a) pre-established damages, which shall be available on the election of the right holder; or (b) additional damages.⁹¹</p> <p>Footnote 91 For greater certainty, additional damages may include exemplary or punitive damages.</p> <p>7. In civil judicial proceedings with respect to trademark counterfeiting, each Party shall also establish or maintain a system that provides for one or more of the following: (a) pre-established damages, which shall be available on the election of the right holder; or (b) additional damages.⁹²</p> <p>Footnote 92 For greater certainty, additional damages may include exemplary or punitive damages.</p> <p>8. Pre-established damages referred to in paragraphs 6 and 7 shall be in an amount sufficient to constitute a deterrent to future infringements and to compensate fully the right holder for the harm caused by the infringement.</p> <p>9. In awarding additional damages referred to in paragraphs 6 and 7, judicial authorities shall have the authority to award those additional damages as they consider appropriate, having regard to all relevant matters, including the nature of the infringing conduct and the need to deter similar infringements in the future.</p> <p>10. Each Party shall provide that its judicial authorities, if appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of at least copyright or related rights, patents, and trademarks, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under the Party's law.</p>	<p>(e) to order an infringer of an intellectual property right to pay the right holder's expenses, which may include appropriate attorney's fees; and</p> <p>(f) to order a party in a proceeding at whose request measures were taken and who has abused enforcement procedures to provide adequate compensation to any party wrongfully enjoined or restrained in the proceeding for the injury suffered because of such abuse and to pay that party's expenses, which may include appropriate attorney's fees.</p> <p>3. With respect to the authority referred to in subparagraph 2(c), no Party shall be obliged to provide such authority in respect of protected subject matter that is acquired or ordered by a person before that person knew or had reasonable grounds to know that dealing in that subject matter would entail the infringement of an intellectual property right.</p> <p>4. With respect to the authority referred to in subparagraph 2(d), a Party may, at least with respect to copyrighted works and sound recordings, authorize the judicial authorities to order recovery of profits or payment of pre-established damages, or both, even where the infringer did not know or had no reasonable grounds to know that it was engaged in an infringing activity.</p>	<p>10. Each Party shall provide that its judicial authorities, if appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of at least copyright or related rights, patents and trademarks, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under the Party's law.</p> <p>15. Each Party shall ensure that its judicial authorities have the authority to order a party at whose request measures were taken and that has abused enforcement procedures with regard to intellectual property rights, including trademarks, geographical indications, patents, copyright and related rights and industrial designs, to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of that abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.</p> <p>5. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer, at least in cases described in paragraph 3, to pay the right holder the infringer's profits that are attributable to the infringement.¹¹¹</p> <p>Footnote 111 A Party may comply with this paragraph through presuming those profits to be the damages referred to in paragraph 3.</p> <p>6. In civil judicial proceedings with respect to the infringement of copyright or related rights protecting works, phonograms or performances, each Party shall establish or maintain a system that provides for one or more of the following: (a) pre-established damages, which shall be available on the election of the right holder; or (b) additional damages.¹¹²</p> <p>Footnote 112 For greater certainty, additional damages may include exemplary or punitive damages.</p> <p>7. In civil judicial proceedings with respect to trademark counterfeiting, each Party shall also establish or maintain a system that provides for one or more of the following: (a) pre-established damages, which shall be available on the election of the right holder; or (b) additional damages.¹¹³</p> <p>Footnote 113 For greater certainty, additional damages may include exemplary or punitive damages.</p> <p>8. Pre-established damages under paragraphs 6 and 7 shall be set out in an amount that would be sufficient to compensate the right holder for the harm caused by the infringement, and with a view to deterring future infringements.</p> <p>9. In awarding additional damages under paragraphs 6 and 7, judicial authorities shall have the authority to award such additional damages as they consider appropriate, having regard to all relevant matters, including the nature of the infringing conduct and the need to deter similar infringements in the future.</p>

United States-Mexico-Canada Agreement (2018) (Final Text)	North American Free Trade Agreement (1994)	Trans-Pacific Partnership (2015)
<p>11. If a Party's judicial or other authorities appoint a technical or other expert in a civil proceeding concerning the enforcement of an intellectual property right and require that the parties in the proceeding pay the costs of that expert, that Party should seek to ensure that those costs are reasonable and related appropriately, among other things, to the quantity and nature of work to be performed and do not unreasonably deter recourse to those proceedings.</p> <p>12. Each Party shall provide that in civil judicial proceedings:</p> <p>(a) at least with respect to pirated copyright goods and counterfeit trademark goods, its judicial authorities have the authority, at the right holder's request, to order that the infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort;</p> <p>(b) its judicial authorities have the authority to order that materials and implements that have been used in the manufacture or creation of the infringing goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risk of further infringement; and</p> <p>(c) in regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed is not sufficient, other than in exceptional circumstances, to permit the release of goods into the channels of commerce.</p> <p>13. Without prejudice to its law governing privilege, the protection of confidentiality of information sources, or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of an intellectual property right, its judicial authorities have the authority, on a justified request of the right holder, to order the infringer or the alleged infringer, as applicable, 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. This information may include information regarding any person involved in any aspect of the infringement or alleged infringement and 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 the goods or services and of their channels of distribution.</p>	<p>5. Each Party shall provide that, in order to create an effective deterrent to infringement, its judicial authorities shall have the authority to order that:</p> <p>(a) goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any injury caused to the right holder or, unless this would be contrary to existing constitutional requirements, destroyed; and</p> <p>(b) materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.</p> <p>In considering whether to issue such an order, judicial authorities shall take into account the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of other persons. In regard to counterfeit 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.</p> <p>6. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, each Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of such laws.</p> <p>7. Notwithstanding the other provisions of Articles 1714 through 1718, where a Party is sued with respect to an infringement of an intellectual property right as a result of its use of that right or use on its behalf, that Party may limit the remedies available against it to the payment to the right holder of adequate remuneration in the circumstances of each case, taking into account the economic value of the use.</p>	<p>11. If a Party's judicial or other authorities appoint a technical or other expert in a civil proceeding concerning the enforcement of an intellectual property right and require that the parties to the proceeding pay the costs of that expert, that Party should seek to ensure that those costs are reasonable and related appropriately, among other things, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.</p> <p>12. Each Party shall provide that in civil judicial proceedings:</p> <p>(a) at least with respect to pirated copyright goods and counterfeit trademark goods, its judicial authorities have the authority, at the right holder's request, to order that the infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort;</p> <p>(b) its judicial authorities have the authority to order that materials and implements that have been used in the manufacture or creation of the infringing goods be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimise the risk of further infringement; and</p> <p>(c) in regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed is not sufficient, other than in exceptional circumstances, to permit the release of goods into the channels of commerce.</p> <p>13. Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of an intellectual property right, its judicial authorities have the authority, on a justified request of the right holder, to order the infringer or, in the alternative, the alleged infringer to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. The information may include information regarding any person involved in any aspect of the infringement or alleged infringement and 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 the goods or services and of their channels of distribution.</p>

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<p>14. In cases in which a party in a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide relevant evidence under its control within a reasonable period, or significantly impedes a proceeding relating to an enforcement action, each Party shall provide that its judicial authorities shall have the authority to make preliminary and final determinations, affirmative or negative, on the basis of the evidence presented, including the complaint or the allegation presented by the party adversely affected by the denial of access to evidence, subject to providing the parties an opportunity to be heard on the allegations or evidence.</p> <p>15. Each Party shall ensure that its judicial authorities have the authority to order a party at whose request measures were taken and that has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of that abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.</p> <p>16. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of an intellectual property right, its judicial or other authorities have the authority to impose sanctions on a party, counsel, expert, or other person subject to the court's jurisdiction for violation of judicial orders concerning the protection of confidential information produced or exchanged in that proceeding.</p> <p>17. To the extent that a 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 out in this Article.</p> <p>18. In civil judicial proceedings concerning the acts described in Article 20.67 (Technological Protection Measures) and Article 20.68 (Rights Management Information):</p> <p>(a) each Party shall provide that its judicial authorities have the authority at least to:⁹³</p> <p>Footnote 93 For greater certainty, a Party may, but is not required to, put in place separate remedies in respect of Article 20.67 (Technological Protection Measures) and 20.68 (Rights Management Information), if those remedies are available under its copyright law</p> <p>(i) impose provisional measures, including seizure or other taking into custody of devices and products suspected of being involved in the prohibited activity,</p> <p>(ii) order the type of damages available for copyright infringement, as provided under its law in accordance with this Article,</p> <p>(iii) order court costs, fees or expenses as provided for under paragraph 10, and</p> <p>(iv) order the destruction of devices and products found to be involved in the prohibited activity; and</p> <p>(b) a Party may provide that damages are not available against a non-profit library, museum, archive, educational institution, or public non-commercial broadcasting entity, if it sustains the burden of proving that it was not aware or had no reason to believe that its acts constituted a prohibited activity.</p> <p>Article 20.83: Provisional Measures</p>	<p>8. Each Party shall provide that, where a civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set out in this Article.</p> <p>Article 1716: Provisional Measures</p>	<p>14. Each Party shall provide that in relation to a civil judicial proceeding concerning the enforcement of an intellectual property right, its judicial or other authorities have the authority to impose sanctions on a party, counsel, experts or other persons subject to the court's jurisdiction for violation of judicial orders concerning the protection of confidential information produced or exchanged in that proceeding.</p> <p>16. 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 out in this Article.</p> <p>17. In civil judicial proceedings concerning the acts described in Article 18.68 (TPMs) and Article 18.69 (RMI):</p> <p>(a) each Party shall provide that its judicial authorities have the authority at least to:¹¹⁴</p> <p>Footnote 114 For greater certainty, a Party may, but is not required to, put in place separate remedies in respect of Article 18.68 (TPMs) and Article 18.69 (RMI), if those remedies are available under its copyright law.</p> <p>(i) impose provisional measures, including seizure or other taking into custody of devices and products suspected of being involved in the prohibited activity;</p> <p>(ii) order the type of damages available for copyright infringement, as provided under its law in accordance with this Article;¹¹⁵</p> <p>Footnote 115 If a Party's copyright law provides for both pre-established damages and additional damages, that Party may comply with the requirements of this subparagraph by providing for only one of these forms of damages.</p> <p>(iii) order court costs, fees or expenses as provided for under paragraph 10; and</p> <p>(iv) order the destruction of devices and products found to be involved in the prohibited activity; and</p> <p>(b) a Party may provide that damages shall not be available against a non-profit library, archive, educational institution, museum or public non-commercial broadcasting entity, if it sustains the burden of proving that it was not aware or had no reason to believe that its acts constituted a prohibited activity.</p> <p>Article 18.75: Provisional Measures</p>

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<p>1. Each Party's authorities shall act on a request for relief in respect of an intellectual property right <i>in audita altera parte</i> expeditiously in accordance with that Party's judicial rules.</p> <p>2. Each Party shall provide that its judicial authorities have the authority to require the applicant for a provisional measure in respect of an intellectual property right to provide any reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that the infringement is imminent, and to order the applicant to provide security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse. That security or equivalent assurance shall not unreasonably deter recourse to those procedures.</p>	<p>1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional measures: (a) to prevent an infringement of any intellectual property right, and in particular to prevent the entry into the channels of commerce in their jurisdiction of allegedly infringing goods, including measures to prevent the entry of imported goods at least immediately after customs clearance; and (b) to preserve relevant evidence in regard to the alleged infringement.</p> <p>2. Each Party shall provide that its judicial authorities shall have the authority to require any applicant for provisional measures to provide to the judicial authorities any evidence reasonably available to that applicant that the judicial authorities consider necessary to enable them to determine with a sufficient degree of certainty whether: (a) the applicant is the right holder; (b) the applicant's right is being infringed or such infringement is imminent; and (c) any delay in the issuance of such measures is likely to cause irreparable harm to the right holder, or there is a demonstrable risk of evidence being destroyed. Each Party shall provide that its judicial authorities shall have the authority to require the applicant to provide a security or equivalent assurance sufficient to protect the interests of the defendant and to prevent abuse.</p> <p>3. Each Party shall provide that its judicial authorities shall have the authority to require an applicant for provisional measures to provide other information necessary for the identification of the relevant goods by the authority that will execute the provisional measures.</p> <p>4. Each Party shall provide that its judicial authorities shall have the authority to order provisional measures on an ex parte basis , 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.</p> <p>5. Each Party shall provide that where provisional measures are adopted by that Party's judicial authorities on an ex parte basis :</p> <p>(a) a person affected shall be given notice of those measures without delay but in any event no later than immediately after the execution of the measures;</p> <p>(b) a defendant shall, on request, have those measures reviewed by that Party's judicial authorities for the purpose of deciding, within a reasonable period after notice of those measures is given, whether the measures shall be modified, revoked or confirmed, and shall be given an opportunity to be heard in the review proceedings.</p> <p>6. Without prejudice to paragraph 5, each Party shall provide that, on the request of the defendant, the Party's judicial authorities shall revoke or otherwise cease to apply the provisional measures taken on the basis of paragraphs 1 and 4 if proceedings leading to a decision on the merits are not initiated:</p> <p>(a) within a reasonable period as determined by the judicial authority ordering the measures where the Party's domestic law so permits; or</p> <p>(b) in the absence of such a determination, within a period of no more than 20 working days or 31 calendar days, whichever is longer.</p> <p>7. Each Party shall provide that, where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where the judicial authorities subsequently find that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, on request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.</p> <p>8. Each Party shall provide that, where a provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set out in this Article.</p>	<p>1. Each Party's authorities shall act on a request for relief in respect of an intellectual property right <i>in audita altera parte</i> expeditiously in accordance with that Party's judicial rules.</p> <p>2. Each Party shall provide that its judicial authorities have the authority to require the applicant for a provisional measure in respect of an intellectual property right to provide any reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that the infringement is imminent, and to order the applicant to provide security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to those procedures.</p>

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<p>3. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of suspected infringing goods, materials, and implements relevant to the infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.</p> <p>Article 20.84: Special Requirements Related to Border Measures</p> <p>1. Each Party shall provide for applications to suspend the release of, or to detain, suspected counterfeit or confusingly similar trademark or pirated copyright goods that are imported into the territory of the Party.⁹⁴</p> <p>Footnote 94 For the purposes of this Article: (a) “counterfeit trademark goods” means goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of those goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the Party providing the procedures under this Section; and (b) “pirated copyright goods” means goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article when the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party providing the procedures under this Section.</p> <p>2. Each Party shall provide that a right holder, submitting an application referred to in paragraph 1, to initiate procedures for the Party’s competent authorities⁹⁵ to suspend release into free circulation of, or to detain, suspected counterfeit or confusingly similar trademark or pirated copyright goods, is required to: (a) 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 (b) supply sufficient information that may reasonably be expected to be within the right holder’s knowledge to make the suspect goods reasonably recognizable by its competent authorities. The requirement to provide that information shall not unreasonably deter recourse to these procedures.</p> <p>Footnote 95 For the purposes of this Article, unless otherwise specified, competent authorities may include the appropriate judicial, administrative, or law enforcement authorities under a Party’s law.</p>	<p>Article 1718: Enforcement of Intellectual Property Rights at the Border</p> <p>1. Each Party shall, in conformity with this Article, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark goods or pirated copyright goods may take place, to lodge an application in writing with its competent authorities, whether administrative or judicial, for the suspension by the customs administration of the release of such goods into free circulation. No Party shall be obligated to apply such procedures to goods in transit. A Party may permit such an application to be made in respect of goods that involve other infringements of intellectual property rights, provided that the requirements of this Article are met. A Party may also provide for corresponding procedures concerning the suspension by the customs administration of the release of infringing goods destined for exportation from its territory.</p> <p>2. Each Party shall require any applicant who initiates procedures under paragraph 1 to provide adequate evidence: (a) to satisfy that Party’s competent authorities that, under the domestic laws of the country of importation, there is prima facie an infringement of its intellectual property right; and (b) to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs administration. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, if so, the period for which the customs administration will take action.</p>	<p>3. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of suspected infringing goods, materials and implements relevant to the infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.</p> <p>Article 18.76: Special Requirements Related to Border Measures</p> <p>1. Each Party shall provide for applications to suspend the release of, or to detain, any suspected counterfeit or confusingly similar trademark or pirated copyright goods that are imported into the territory of the Party.¹¹⁶</p> <p>Footnote 116 For the purposes of this Article: (a) counterfeit trademark goods means any goods, including packaging, bearing without authorisation a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the Party providing the procedures under this Section; and (b) pirated copyright goods means any goods that are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party providing the procedures under this Section.</p> <p>2. Each Party shall provide that any right holder initiating procedures for its competent authorities¹¹⁷ to suspend release of suspected counterfeit or confusingly similar trademark or pirated copyright goods into free circulation is required 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 its competent authorities. The requirement to provide that information shall not unreasonably deter recourse to these procedures.</p> <p>Footnote 117 For the purposes of this Article, unless otherwise specified, competent authorities may include the appropriate judicial, administrative or law enforcement authorities under a Party’s law.</p>

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<p>3. Each Party shall provide that its competent authorities have the authority to require a right holder submitting an application referred to in paragraph 1 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 does not unreasonably deter recourse to these procedures. A Party may provide that the security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.</p>	<p>3. Each Party shall provide that its competent authorities shall have the authority to require an applicant under paragraph 1 to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.</p> <p>4. Each Party shall provide that, where pursuant to an application under procedures adopted pursuant to this Article, its customs administration suspends the release of goods involving industrial designs, patents, integrated circuits or trade secrets into free circulation on the basis of a decision other than by a judicial or other independent authority, and the period provided for in paragraphs 6 through 8 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder against any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue its right of action within a reasonable period of time.</p> <p>5. Each Party shall provide that its customs administration shall promptly notify the importer and the applicant when the customs administration suspends the release of goods pursuant to paragraph 1.</p> <p>6. Each Party shall provide that its customs administration shall release goods from suspension if within a period not exceeding 10 working days after the applicant under paragraph 1 has been served notice of the suspension the customs administration has not been informed that: (a) a party other than the defendant has initiated proceedings leading to a decision on the merits of the case, or (b) a competent authority has taken provisional measures prolonging the suspension, provided that all other conditions for importation or exportation have been met. Each Party shall provide that, in appropriate cases, the customs administration may extend the suspension by another 10 working days.</p> <p>7. Each Party shall provide that if proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place on request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed.</p> <p>8. Notwithstanding paragraphs 6 and 7, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, Article 1716(6) shall apply.</p> <p>9. Each Party shall provide that its competent authorities shall have the authority to order the applicant under paragraph 1 to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to paragraph 6.</p>	<p>3. Each Party shall provide that its competent authorities have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance does not unreasonably deter recourse to these procedures. A Party may provide that the security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.</p>

United States-Mexico-Canada Agreement (2018) (Final Text)	North American Free Trade Agreement (1994)	Trans-Pacific Partnership (2015)
<p>4. Without prejudice to a Party's law pertaining to privacy or the confidentiality of information:</p> <p>(a) if a Party's competent authorities have detained or suspended the release of goods that are suspected of being counterfeit trademark or pirated copyright goods, that Party may provide that its competent authorities have the authority to inform the right holder without undue delay of the names and addresses of the consignor, exporter, consignee, or importer; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods;⁹⁶ or</p> <p>Footnote 96 For greater certainty, a Party may establish reasonable procedures to receive or access that information.</p> <p>(b) if a Party does not provide its competent authority with the authority referred to in subparagraph (a) when suspect goods are detained or suspended from release, it shall provide, at least in cases of imported goods, its competent authorities with the authority to provide the information specified in subparagraph (a) to the right holder normally within 30 working days of the seizure or determination that the goods are counterfeit trademark goods or pirated copyright goods.</p> <p>5. Each Party shall provide that its competent authorities may initiate border measures <i>ex officio</i> against suspected counterfeit trademark goods or pirated copyright goods under customs control⁹⁷ that are:</p> <p>Footnote 97 For the purposes of this Article, "goods under customs control" means goods that are subject to a Party's customs procedures.</p> <p>(a) imported; (b) destined for export;</p> <p>(c) in transit;⁹⁸ and</p>	<p>10. Without prejudice to the protection of confidential information, each Party shall provide that its competent authorities shall have the authority to give the right holder sufficient opportunity to have any goods detained by the customs administration inspected in order to substantiate the right holder's claims. Each Party shall also provide that its competent authorities have the authority to give the importer an equivalent opportunity to have any such goods inspected. Where the competent authorities have made a positive determination on the merits of a case, a Party may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee, and of the quantity of the goods in question.</p> <p>11. Where a Party requires its competent authorities to act on their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed: (a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers; (b) the importer and the right holder shall be promptly notified of the suspension by the Party's competent authorities, and where the importer lodges an appeal against the suspension with competent authorities, the suspension shall be subject to the conditions, with such modifications as may be necessary, set out in paragraphs 6 through 8; and (c) the Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.</p>	<p>4. Without prejudice to a Party's law pertaining to privacy or the confidentiality of information:</p> <p>(a) if a Party's competent authorities have detained or suspended the release of goods that are suspected of being counterfeit trademark or pirated copyright goods, that Party may provide that its competent authorities have the authority to inform the right holder without undue delay of the names and addresses of the consignor, exporter, consignee or importer; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods;¹¹⁸ or</p> <p>Footnote 118 For greater certainty, a Party may establish reasonable procedures to receive or access that information.</p> <p>(b) if a Party does not provide its competent authority with the authority referred to in subparagraph (a) when suspect goods are detained or suspended from release, it shall provide, at least in cases of imported goods, its competent authorities with the authority to provide the information specified in subparagraph (a) to the right holder normally within 30 working days of the seizure or determination that the goods are counterfeit trademark goods or pirated copyright goods.</p> <p>5. Each Party shall provide that its competent authorities may initiate border measures <i>ex officio</i>¹¹⁹ with respect to goods under customs control¹²⁰ that are:</p> <p>Footnote 119 For greater certainty, that ex officio action does not require a formal complaint from a third party or right holder.</p> <p>Footnote 120 For the purposes of this Article, a Party may treat "goods under customs control" as meaning goods that are subject to a Party's customs procedures.</p> <p>(a) imported; (b) destined for export;¹²¹ or</p> <p>Footnote 121 For the purposes of this Article, a Party may treat goods "destined for export" as meaning exported.</p> <p>(c) in transit,^{122, 123}</p>

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<p>Footnote 98 For the purposes of this Article, an “in-transit” good means a good that is under “Customs transit” or “transshipped,” as defined in the <i>International Convention on the Simplification and Harmonization of Customs Procedures</i> (as amended), done at Kyoto on May 18, 1973, as amended at Brussels on June 26, 1999.</p> <p>(d) admitted into or exiting from a free trade zone or a bonded warehouse.</p> <p>6. Nothing in this Article precludes a Party from exchanging, if appropriate and with a view to eliminating international trade in counterfeit trademarked goods or pirated copyrighted goods, available information to another Party in respect of goods that it has examined without a local consignee and that are transshipped through its territory and are destined for the territory of the other Party, to inform that other Party’s efforts to identify suspect goods upon arrival in its territory.</p> <p>7. Each Party shall adopt or maintain a procedure by which its competent authorities may determine within a reasonable period of time after the initiation of the procedures described in paragraphs 1 and 5, whether the suspect goods infringe an intellectual property right. If a Party provides administrative procedures for the determination of an infringement, it may also provide its authorities with the authority to impose administrative penalties or sanctions, which may include fines or the seizure of the infringing goods following a determination that the goods are infringing.</p> <p>8. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination that the goods are infringing. In cases in which the goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid harm to the right holder. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.</p> <p>9. If a Party establishes or assesses, in connection with the procedures described in this Article, an application fee, storage fee, or destruction fee, that Party shall not set the fee at an amount that unreasonably deters recourse to these procedures.</p> <p>10. This Article applies to goods of a commercial nature sent in small consignments. A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travelers’ personal luggage.⁹⁹</p>	<p>12. Without prejudice to other rights of action open to the right holder and subject to the defendant's right to seek judicial review, each Party shall provide that its competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 1715(5). In regard to counterfeit goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.</p> <p>13. A Party may exclude from the application of paragraphs 1 through 12 small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments that are not repetitive.</p>	<p>Footnote 122 This subparagraph applies to suspect goods that are in transit from one customs office to another customs office in the Party’s territory from which the goods will be exported.</p> <p>Footnote 123 As an alternative to this subparagraph, a Party shall instead endeavour to provide, if appropriate and with a view to eliminating international trade in counterfeit trademark goods or pirated copyright goods, available information to another Party in respect of goods that it has examined without a local consignee and that are transshipped through its territory and destined for the territory of the other Party, to inform that other Party’s efforts to identify suspect goods upon arrival in its territory.</p> <p>and that are suspected of being counterfeit trademark goods or pirated copyright goods.</p> <p>6. Each Party shall adopt or maintain a procedure by which its competent authorities may determine within a reasonable period of time after the initiation of the procedures described in paragraph 1, paragraph 5(a), paragraph 5(b) and, if applicable, paragraph 5(c), whether the suspect goods infringe an intellectual property right.¹²⁴ If a Party provides administrative procedures for the determination of an infringement, it may also provide its authorities with the authority to impose administrative penalties or sanctions, which may include fines or the seizure of the infringing goods following a determination that the goods are infringing.</p> <p>Footnote 124 A Party may comply with the obligation in this Article with respect to a determination that suspect goods under paragraph 5 infringe an intellectual property right through a determination that the suspect goods bear a false trade description.</p> <p>7. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination that the goods are infringing. In cases in which the goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.</p> <p>8. If a Party establishes or assesses, in connection with the procedures described in this Article, an application fee, storage fee or destruction fee, that fee shall not be set at an amount that unreasonably deters recourse to these procedures.</p> <p>9. This Article also shall apply to goods of a commercial nature sent in small consignments. A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers’ personal luggage.¹²⁵</p>

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<p>Footnote 99 For greater certainty, a Party may also exclude from the application of this Article small quantities of goods of a non-commercial nature sent in small consignments.</p> <p>Article 20.85: Criminal Procedures and Penalties 1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. In respect of willful copyright or related rights piracy, “on a commercial scale” includes: (a) acts carried out for commercial advantage or financial gain; and (b) significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.^{100, 101}</p> <p>Footnote 100 The Parties understand that a Party may comply with subparagraph (b) by addressing those significant acts under its criminal procedures and penalties for non-authorized uses of protected works, performances and phonograms in its law.</p> <p>Footnote 101 A Party may provide that the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.</p> <p>2. Each Party shall treat willful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties.¹⁰²</p> <p>Footnote 102 The Parties understand that a Party may comply with its obligation under this paragraph by providing that distribution or sale of counterfeit trademark goods or pirated copyright goods on a commercial scale is an unlawful activity subject to criminal penalties. The Parties understand that criminal procedures and penalties as specified in paragraphs 1, 2, and 3 are applicable in any free trade zones in a Party.</p> <p>3. Each Party shall provide for criminal procedures and penalties to be applied in cases of willful importation¹⁰³ and domestic use, in the course of trade and on a commercial scale, of a label or packaging:</p> <p>Footnote 103 A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.</p> <p>(a) to which a trademark has been applied without authorization that is identical to, or cannot be distinguished from, a trademark registered in its territory; and</p> <p>(b) that is intended to be used in the course of trade on goods or in relation to services that are identical to goods or services for which that trademark is registered.</p> <p>4. Each Party shall provide for criminal procedures to be applied against a person who, willfully and without the authorization of the holder¹⁰⁴ of copyright or related rights in a cinematographic work, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of the cinematographic work or any part thereof, from a performance of the motion picture or other audiovisual work in a movie theater or other venue that is being used primarily for the exhibition of a copyrighted motion picture. In addition to the criminal procedures, a Party may provide for administrative enforcement procedures.</p>	<p>14. Annex 1718.14 applies to the Parties specified in that Annex.</p> <p>Article 1717: Criminal Procedures and Penalties 1. Each Party shall provide criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Each Party shall provide that penalties available include imprisonment or monetary fines, or both, sufficient to provide a deterrent, consistent with the level of penalties applied for crimes of a corresponding gravity.</p>	<p>Footnote 125 For greater certainty, a Party may also exclude from the application of this Article small quantities of goods of a non-commercial nature sent in small consignments</p> <p>Article 18.77: Criminal Procedures and Penalties 1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. In respect of willful copyright or related rights piracy, “on a commercial scale” includes at least: (a) acts carried out for commercial advantage or financial gain; and (b) significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.^{126, 127}</p> <p>Footnote 126 The Parties understand that a Party may comply with subparagraph (b) by addressing such significant acts under its criminal procedures and penalties for non-authorized uses of protected works, performances and phonograms in its law.</p> <p>Footnote 127 A Party may provide that the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.</p> <p>2. Each Party shall treat willful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties.¹²⁸</p> <p>Footnote 128 The Parties understand that a Party may comply with its obligation under this paragraph by providing that distribution or sale of counterfeit trademark goods or pirated copyright goods on a commercial scale is an unlawful activity subject to criminal penalties. Furthermore, criminal procedures and penalties as specified in paragraphs 1, 2 and 3 are applicable in any free trade zones in a Party.</p> <p>3. Each Party shall provide for criminal procedures and penalties to be applied in cases of willful importation¹²⁹ and domestic use, in the course of trade and on a commercial scale, of a label or packaging:¹³⁰</p> <p>Footnote 129 A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.</p> <p>Footnote 130 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.</p> <p>(a) to which a trademark has been applied without authorisation that is identical to, or cannot be distinguished from, a trademark registered in its territory; and</p> <p>(b) that is intended to be used in the course of trade on goods or in relation to services that are identical to goods or services for which that trademark is registered.</p>

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<p>Footnote 104 For greater certainty, the theater or venue owner or operator shall be entitled to contact the criminal law enforcement authorities with respect to the suspected commission of the acts referred to in this provision. For greater certainty, nothing in this paragraph expands or diminishes the existing rights and obligations of a theater or venue owner or operator with respect to the cinematographic work.</p> <p>5. With respect to the offenses for which this Article requires a Party to provide for criminal procedures and penalties, each Party shall ensure that criminal liability for aiding and abetting is available under its law.</p> <p>6. With respect to the offenses described in paragraphs 1 through 5, each Party shall provide:</p> <p>(a) penalties that include sentences of imprisonment as well as monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity;¹⁰⁵</p> <p>Footnote 105 The Parties understand that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.</p> <p>(b) that its judicial authorities have the authority, in determining penalties, to account for the seriousness of the circumstances, which may include circumstances that involve threats to, or effects on, health or safety;¹⁰⁶</p> <p>Footnote 106 A Party may also account for those circumstances through a separate criminal offense.</p> <p>(c) that its judicial or other 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 offense, documentary evidence relevant to the alleged offense, and assets derived from, or obtained through the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure;</p> <p>(d) that its judicial authorities have the authority to order the forfeiture, at least for serious offenses, of any assets derived from or obtained through the infringing activity;</p> <p>(e) that its judicial authorities have the authority to order the forfeiture or destruction of: (i) all counterfeit trademark goods or pirated copyright goods, (ii) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trademark goods, and (iii) any other labels or packaging to which a counterfeit trademark has been applied and that have been used in the commission of the offense,</p> <p>In cases in which counterfeit trademark goods and pirated copyright goods are not destroyed, the judicial or other competent authorities shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall further provide that forfeiture or destruction under this subparagraph and subparagraph (d) occur without compensation of any kind to the defendant;</p>	<p>2. Each Party shall provide that, in appropriate cases, its judicial authorities may order the seizure, forfeiture and destruction of infringing goods and of any materials and implements the predominant use of which has been in the commission of the offense.</p>	<p>4. Recognising the need to address the unauthorised copying¹³¹ of a cinematographic work from a performance in a movie theatre that causes significant harm to a right holder in the market for that work, and recognising the need to deter such harm, each Party shall adopt or maintain measures, which shall at a minimum include, but need not be limited to, appropriate criminal procedures and penalties.</p> <p>Footnote 131 For the purposes of this Article, a Party may treat the term “copying” as synonymous with reproduction.</p> <p>5. With respect to the offences for which this Article requires a Party to provide for criminal procedures and penalties, each Party shall ensure that criminal liability for aiding and abetting is available under its law.</p> <p>6. With respect to the offences described in paragraphs 1 through 5, each Party shall provide the following:</p> <p>(a) Penalties that include sentences of imprisonment as well as monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity.¹³²</p> <p>Footnote 132 The Parties understand that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.</p> <p>(b) Its judicial authorities have the authority, in determining penalties, to account for the seriousness of the circumstances, which may include circumstances that involve threats to, or effects on, health or safety.¹³³</p> <p>Footnote 133 A Party may also account for such circumstances through a separate criminal offense.</p> <p>(c) Its judicial or other 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 assets derived from, or obtained through the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure.</p> <p>(d) Its judicial authorities have the authority to order the forfeiture, at least for serious offences, of any assets derived from or obtained through the infringing activity;</p> <p>(e) its judicial authorities have the authority to order the forfeiture or destruction of: (i) all counterfeit trademark goods or pirated copyright goods; (ii) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trademark goods; and (iii) any other labels or packaging to which a counterfeit trademark has been applied and that have been used in the commission of the offence.</p> <p>In cases in which counterfeit trademark goods and pirated copyright goods are not destroyed, the judicial or other competent authorities shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall further provide that forfeiture or destruction under this subparagraph and subparagraph (c) shall occur without compensation of any kind to the defendant.</p>

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<p>(f) that its judicial or other competent authorities have the authority to release or, in the alternative, provide access to, goods, material, implements, and other evidence held by the relevant authority to a right holder for civil¹⁰⁷ infringement proceedings; and</p> <p>Footnote 107 A Party may also provide this authority in connection with administrative infringement proceedings. (g) that its competent authorities may act upon their own initiative to initiate legal action without the need for a formal complaint by a third person or right holder.</p> <p>7. With respect to the offenses described in paragraphs 1 through 5, a Party may provide that its judicial authorities have the authority to order the seizure or forfeiture of assets, or alternatively, a fine, the value of which corresponds to the assets derived from, or obtained directly or indirectly through, the infringing activity.</p> <p>Article 20.86: Protection of Encrypted Program-Carrying Satellite and Cable Signals</p> <p>1. Each Party shall make it a criminal offense to: (a) manufacture, assemble,¹⁰⁸ modify, import, export,¹⁰⁹ sell, or otherwise distribute a tangible or intangible device or system knowing or having reason to know¹¹⁰ that the device or system meets at least one of the following conditions: (i) it is intended to be used to assist, or (ii) it is primarily of assistance, in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor¹¹¹ of that signal;¹¹² and (b) with respect to an encrypted program-carrying satellite signal, willfully: (i) receive¹¹³ that signal, or (ii) further distribute¹¹⁴ that signal, knowing that it has been decoded without the authorization of the lawful distributor of the signal.</p> <p>Footnote 108 For greater certainty, a Party may treat “assemble” as incorporated in “manufacture.”</p> <p>Footnote 109 The obligation regarding export may be met by making it a criminal offense to possess and distribute a device or system described in this paragraph.</p> <p>Footnote 110 For the purposes of this paragraph, a Party may provide that “having a reason to know” may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act, as part of the Party’s “knowledge” requirements. A Party may treat “having reason to know” as meaning “willful negligence”.</p> <p>Footnote 111 With regard to the criminal offenses and penalties in paragraphs 1 and 3, a Party may require a demonstration of intent to avoid payment to the lawful distributor, or a demonstration of intent to otherwise secure a pecuniary benefit to which the recipient is not entitled.</p>	<p>3. A Party may provide criminal procedures and penalties to be applied in cases of infringement of intellectual property rights, other than those in paragraph 1, where they are committed wilfully and on a commercial scale.</p> <p>Article 1707: Protection of Encrypted Program Carrying Satellite Signals Within one year from the date of entry into force of this Agreement, each Party shall make it:</p>	<p>(f) Its judicial or other competent authorities have the authority to release or, in the alternative, provide access to, goods, material, implements, and other evidence held by the relevant authority to a right holder for civil¹³⁴ infringement proceedings.</p> <p>Footnote 134 A Party may also provide this authority in connection with administrative infringement proceedings. (g) Its competent authorities may act upon their own initiative to initiate legal action without the need for a formal complaint by a third person or right holder.¹³⁵</p> <p>Footnote 135 With regard to copyright and related rights piracy provided for under paragraph 1, a Party may limit application of this subparagraph to the cases in which there is an impact on the right holder’s ability to exploit the work, performance or phonogram in the market.</p> <p>7. With respect to the offences described in paragraphs 1 through 5, a Party may provide that its judicial authorities have the authority to order the seizure or forfeiture of assets, or alternatively, a fine, the value of which corresponds to the assets derived from, or obtained directly or indirectly through, the infringing activity.</p> <p>Article 18.79: Protection of Encrypted Program-Carrying Satellite and Cable Signals</p> <p>1. Each Party shall make it a criminal offence to: (a) manufacture, assemble, modify,¹³⁹ import, export, sell, lease or otherwise distribute a tangible or intangible device or system knowing or having reason to know¹⁴⁰ that the device or system meets at least one of the following conditions: (i) it is intended to be used to assist; (ii) it is primarily of assistance; or (iii) its principal function is solely to assist, in decoding an encrypted program-carrying satellite signal without the authorisation of the lawful distributor¹⁴¹ of such signal;¹⁴² and (b) with respect to an encrypted program-carrying satellite signal, wilfully: (i) receive¹⁴³ such a signal; or (ii) further distribute¹⁴⁴ such signal, knowing that it has been decoded without the authorisation of the lawful distributor of the signal.</p> <p>Footnote 139 For greater certainty, a Party may treat “assemble” and “modify” as incorporated in “manufacture”.</p> <p>Footnote 142 The obligation regarding export may be met by making it a criminal offence to possess and distribute a device or system described in this paragraph. For the purposes of this Article, a Party may provide that a “lawful distributor” means a person that has the lawful right in that Party’s territory to distribute the encrypted program-carrying signal and authorise its decoding.</p> <p>Footnote 140 For the purposes of this paragraph, a Party may provide that “having reason to know” may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act, as part of the Party’s “knowledge” requirements. A Party may treat “having reason to know” as meaning “wilful negligence”.</p> <p>Footnote 141 With regard to the criminal offences and penalties in paragraph 1 and paragraph 3, a Party may require a demonstration of intent to avoid payment to the lawful distributor, or a demonstration of intent to otherwise secure a pecuniary benefit to which the recipient is not entitled.</p>

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<p>Footnote 112 For the purposes of this Article, a Party may provide that a “lawful distributor” means a person that has the lawful right in that Party’s territory to distribute the encrypted program carrying signal and authorize its decoding.</p> <p>Footnote 113 For greater certainty and for the purposes of paragraphs 1(b) and 3(b), a Party may provide that willful receipt of an encrypted program carrying satellite or cable signal means receipt and use of the signal, or means receipt and decoding of the signal.</p> <p>Footnote 114 For greater certainty, a Party may interpret “further distribute” as “retransmit to the public”. 2. Each Party shall provide for civil remedies for a person that holds an interest in an encrypted program-carrying satellite signal or its content and that is injured by an activity described in paragraph 1. 3. Each Party shall provide for criminal penalties and civil¹¹⁵ remedies for willfully: (a) manufacturing or distributing equipment knowing that the equipment is intended to be used in the unauthorized reception of any encrypted program-carrying cable signal; and (b) receiving, or assisting another to receive,¹¹⁶ an encrypted program-carrying cable signal without authorization of the lawful distributor of the signal.</p> <p>Footnote 115 In providing for civil remedies, a Party may require a demonstration of injury.</p> <p>Footnote 116 A Party may comply with its obligation in respect of “assisting another to receive” by providing for criminal penalties to be available against a person willfully publishing any information in order to enable or assist another person to receive a signal without authorization of the lawful distributor of the signal.</p> <p>Article 20.87: Government Use of Software 1. Each Party recognizes the importance of promoting the adoption of measures to enhance government awareness of respect for intellectual property rights and of the detrimental effects of the infringement of intellectual property rights. 2. Each Party shall adopt or maintain appropriate laws, regulations, policies, orders, government-issued guidelines, or administrative or executive decrees that provide that its central government agencies use only non-infringing computer software protected by copyright and related rights, and, if applicable, only use that computer software in a manner authorized by the relevant license. These measures apply to the acquisition and management of the software for government use.</p>	<p>(a) a criminal offense 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 authorization of the lawful distributor of such signal; and</p> <p>(b) a civil offense to receive, in connection with commercial activities, or further distribute, an encrypted program carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal or to engage in any activity prohibited under subparagraph (a).</p> <p>Each Party shall provide that any civil offense established under subparagraph (b) shall be actionable by any person that holds an interest in the content of such signal.</p> <p>Article 1720: Protection of Existing Subject Matter 1. Except as required under Article 1705(7), this Agreement does not give rise to obligations in respect of acts that occurred before the date of application of the relevant provisions of this Agreement for the Party in question.</p>	<p>Footnote 143 For greater certainty and for the purposes of paragraph 1(b) and paragraph 3(b), a Party may provide that willful receipt of an encrypted program-carrying satellite or cable signal means receipt and use of the signal, or means receipt and decoding of the signal.</p> <p>Footnote 144 For greater certainty, a Party may interpret “further distribute” as “retransmit to the public”.</p> <p>3. Each Party shall provide for criminal penalties or civil remedies¹⁴⁵ for willfully: (a) manufacturing or distributing equipment knowing that the equipment is intended to be used in the unauthorised reception of any encrypted program-carrying cable signal; and (b) receiving, or assisting another to receive,¹⁴⁶ an encrypted program carrying cable signal without authorisation of the lawful distributor of the signal.</p> <p>Footnote 145 If a Party provides for civil remedies, it may require a demonstration of injury.</p> <p>Footnote 146 A Party may comply with its obligation in respect of “assisting another to receive” by providing for criminal penalties to be available against a person willfully publishing any information in order to enable or assist another person to receive a signal without authorisation of the lawful distributor of the signal.</p> <p>2. Each Party shall provide for civil remedies for a person that holds an interest in an encrypted program-carrying satellite signal or its content and that is injured by an activity described in paragraph 1.</p> <p>Article 18.80: Government Use of Software 1. Each Party recognises the importance of promoting the adoption of measures to enhance government awareness of respect for intellectual property rights and of the detrimental effects of the infringement of intellectual property rights. 2. Each Party shall adopt or maintain appropriate laws, regulations, policies, orders, government-issued guidelines, or administrative or executive decrees that provide that its central government agencies use only non-infringing computer software protected by copyright and related rights, and, if applicable, only use that computer software in a manner authorised by the relevant licence. These measures shall apply to the acquisition and management of the software for government use.¹⁴⁷</p> <p>Footnote 147 For greater certainty, paragraph 2 should not be interpreted as encouraging regional government agencies to use infringing computer software or, if applicable, to use computer software in a manner which is not authorised by the relevant licence.</p> <p>Article 18.10: Application of Chapter to Existing Subject Matter and Prior Acts 3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement for a Party.</p>

United States-Mexico-Canada Agreement (2018) (Final Text)	North American Free Trade Agreement (1994)	Trans-Pacific Partnership (2015)
	<p>2. Except as otherwise provided for in this Agreement, each Party shall apply this Agreement to all subject matter existing on the date of application of the relevant provisions of this Agreement for the Party in question and that is protected in a Party on such date, or that meets or subsequently meets the criteria for protection under the terms of this Chapter. In respect of this paragraph and paragraphs 3 and 4, a Party's obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention and with respect to the rights of producers of sound recordings in existing sound recordings shall be determined solely under Article 18 of that Convention, as made applicable under this Agreement.</p> <p>3. Except as required under Article 1705(7), and notwithstanding the first sentence of paragraph 2, no Party may be required to restore protection to subject matter that, on the date of application of the relevant provisions of this Agreement for the Party in question, has fallen into the public domain in its territory.</p> <p>4. In respect of any acts relating to specific objects embodying protected subject matter that become infringing under the terms of laws in conformity with this Agreement, and that were begun or in respect of which a significant investment was made, before the date of entry into force of this Agreement for that Party, any Party may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Party. In such cases, the Party shall, however, at least provide for payment of equitable remuneration.</p> <p>5. No Party shall be obliged to apply Article 1705(2)(d) or 1706(1)(d) with respect to originals or copies purchased prior to the date of application of the relevant provisions of this Agreement for that Party.</p> <p>6. No Party shall be required to apply Article 1709(10), or the requirement in Article 1709(7) that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the text of the Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations became known.</p> <p>7. In the case of intellectual property rights for which protection is conditional on registration, applications for protection that are pending on the date of application of the relevant provisions of this Agreement for the Party in question shall be permitted to be amended to claim any enhanced protection provided under this Agreement. Such amendments shall not include new matter.</p>	<p>1. Unless otherwise provided in this Chapter, including in Article 18.64 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement for a Party and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.</p> <p>2. Unless provided in Article 18.64 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement for that Party has fallen into the public domain in its territory.</p> <p>Article 18.14: Patent Cooperation and Work Sharing</p> <p>1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices for the benefit of all users of the patent system and the public as a whole.</p> <p>2. Further to paragraph 1, the Parties shall endeavour to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work of other Parties. This may include:</p> <p>(a) making search and examination results available to the patent offices of other Parties;⁹ and</p> <p>Footnote 9</p> <p>The Parties recognise the importance of multilateral efforts to promote the sharing and use of search and examination results, with a view to improving the quality of search and examination processes and to reducing the costs for both applicants and patent offices.</p> <p>(b) exchanging information on quality assurance systems and quality standards relating to patent examination.</p> <p>3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in the procedures and processes of their respective patent offices.</p>

United States-Mexico-Canada Agreement (2018) (Final Text)	North American Free Trade Agreement (1994)	Trans-Pacific Partnership (2015)
<p>Article 20.88: Internet Service Providers</p> <p>1. For the purpose of Article 20.89 (Legal Remedies and Safe Harbors), an Internet Service Provider is:</p> <p>(a) a provider of services for the transmission, routing, or providing of connections for digital online communications without modification of their content, between or among points specified by a user, of material of the user's choosing, undertaking the function in Article 20.89.2(a) (Legal Remedies and Safe Harbors); or</p> <p>(b) a provider of online services undertaking the functions in Article 20.89.2(b), Article 20.89.2(c), or Article 20.89.2(d) (Legal Remedies and Safe Harbors).</p> <p>2. For the purposes of Article 20.89 (Legal Remedies and Safe Harbors), "copyright" includes related rights.</p> <p>Article 20.89: Legal Remedies and Safe Harbors¹¹⁷</p> <p>Footnote 117 Annex 20-A (Annex to Section J) applies to Articles 20.89.3, 20.89.4, and 20.89.6.</p>		<p>4. The Parties recognise the importance of giving due consideration to ratifying or acceding to the <i>Patent Law Treaty</i>, done at Geneva, June 1, 2000; or in the alternative, adopting or maintaining procedural standards consistent with the objective of the <i>Patent Law Treaty</i>.</p> <p>Article 18.15: Public Domain</p> <p>1. The Parties recognise the importance of a rich and accessible public domain.</p> <p>2. The Parties also acknowledge the importance of informational materials, such as publicly accessible databases of registered intellectual property rights that assist in the identification of subject matter that has fallen into the public domain.</p> <p>Article 18.16: Cooperation in the Area of Traditional Knowledge</p> <p>1. The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.</p> <p>2. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.</p> <p>3. The Parties shall endeavour to pursue quality patent examination, which may include:</p> <p>(a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;</p> <p>(b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;</p> <p>(c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and</p> <p>(d) cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.</p> <p>Section J: Internet Service Providers¹⁴⁸</p> <p>Footnote 148 Annex 18-F applies to this Section.</p> <p>Article 18.81: Definitions For the purposes of this Section: Internet Service Provider means:</p> <p>(a) a provider of online services for the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, undertaking the function in Article 18.82.2(a) (Legal Remedies and Safe Harbours); or</p> <p>(b) a provider of online services undertaking the functions in Article 18.82.2(c) or Article 18.82.2(d) (Legal Remedies and Safe Harbours).</p> <p>For greater certainty, Internet Service Provider includes a provider of the services listed above that engages in caching carried out through an automated process. the term copyright includes related rights; and</p> <p>Article 18.82: Legal Remedies and Safe Harbours¹⁴⁹</p> <p>Footnote 149 Annex 18-E applies to Article 18.82.3 and Article 18.82.4 (Legal Remedies and Safe Harbours).</p>

United States-Mexico-Canada Agreement (2018) (Final Text)	North American Free Trade Agreement (1994)	Trans-Pacific Partnership (2015)
<p>1. The Parties recognize the importance of facilitating the continued development of legitimate online services operating as intermediaries and, in a manner consistent with Article 41 of the TRIPS Agreement, providing enforcement procedures that permit effective and expeditious action by right holders against copyright infringement covered under this Chapter that occurs in the online environment. Accordingly, each Party shall ensure that legal remedies are available for right holders to address that copyright infringement and shall establish or maintain appropriate safe harbors in respect of online services that are Internet Service Providers. This framework of legal remedies and safe harbors shall include:</p> <p>(a) legal incentives for Internet Service Providers to cooperate with copyright owners to deter the unauthorized storage and transmission of copyrighted materials or, in the alternative, to take other action to deter the unauthorized storage and transmission of copyrighted materials; and</p> <p>(b) limitations in its law that have the effect of precluding monetary relief against Internet Service Providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf.</p> <p>2. The limitations described in paragraph 1(b) shall include limitations in respect of the following functions:</p> <p>(a) transmitting, routing, or providing connections for material without modification of its content or the intermediate and transient storage of that material done automatically in the course of such a technical process;¹¹⁸</p> <p>Footnote 118 The Parties understand that these limitations shall apply only where the Internet Service Provider does not initiate the chain of transmission of the materials, and does not select the material or its recipients.</p> <p>(b) caching carried out through an automated process;</p> <p>(c) storage, at the direction of a user, of material residing on a system or network controlled or operated by or for the Internet Service Provider; and</p> <p>(d) referring or linking users to an online location by using information location tools, including hyperlinks and directories.</p> <p>3. To facilitate effective action to address infringement, each Party shall prescribe in its law conditions for Internet Service Providers to qualify for the limitations described in paragraph 1(b), or, alternatively, shall provide for circumstances under which Internet Service Providers do not qualify for the limitations described in paragraph 1(b).¹¹⁹</p>		<p>1. The Parties recognise the importance of facilitating the continued development of legitimate online services operating as intermediaries and, in a manner consistent with Article 41 of the TRIPS Agreement, providing enforcement procedures that permit effective action by right holders against copyright infringement covered under this Chapter that occurs in the online environment. Accordingly, each Party shall ensure that legal remedies are available for right holders to address such copyright infringement and shall establish or maintain appropriate safe harbours in respect of online services that are Internet Service Providers. This framework of legal remedies and safe harbours shall include:</p> <p>(a) legal incentives¹⁵⁰ for Internet Service Providers to cooperate with copyright owners to deter the unauthorised storage and transmission of copyrighted materials or, in the alternative, to take other action to deter the unauthorised storage and transmission of copyrighted materials; and</p> <p>Footnote 150 For greater certainty, the Parties understand that implementation of the obligations in paragraph 1(a) on “legal incentives” may take different forms.</p> <p>(b) limitations in its law that have the effect of precluding monetary relief against Internet Service Providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf.¹⁵¹</p> <p>Footnote 151 The Parties understand that, to the extent that a Party determines, consistent with its international legal obligations, that a particular act does not constitute copyright infringement, there is no obligation to provide for a limitation in relation to that act.</p> <p>2. The limitations described in paragraph 1(b) shall include limitations in respect of the following functions:</p> <p>(a) transmitting, routing or providing connections for material without modification of its content¹⁵² or the intermediate and transient storage of that material done automatically in the course of such a technical process;</p> <p>Footnote 152 The Parties understand that such modification does not include a modification made as part of a technical process or for solely technical reasons such as division into packets</p> <p>(b) caching carried out through an automated process;</p> <p>(c) storage¹⁵³, at the direction of a user, of material residing on a system or network controlled or operated by or for the Internet Service Provider;¹⁵⁴ and</p> <p>Footnote 153 For greater certainty, a Party may interpret “storage” as “hosting”.</p> <p>Footnote 154 For greater certainty, the storage of material may include e-mails and their attachments stored in the Internet Service Provider’s server and web pages residing on the Internet Service Provider’s server.</p> <p>(d) referring or linking users to an online location by using information location tools, including hyperlinks and directories.</p> <p>3. To facilitate effective action to address infringement, each Party shall prescribe in its law conditions for Internet Service Providers to qualify for the limitations described in paragraph 1(b), or, alternatively, shall provide for circumstances under which Internet Service Providers do not qualify for the limitations described in paragraph 1(b).^{155, 156}</p>

United States-Mexico-Canada Agreement (2018) (Final Text)	North American Free Trade Agreement (1994)	Trans-Pacific Partnership (2015)
<p>Footnote 119</p> <p>The Parties understand that a Party that has yet to implement the obligations in paragraphs 3 and 4 will do so in a manner that is both effective and consistent with that Party's existing constitutional provisions. To that end, a Party may establish an appropriate role for the government that does not impair the timeliness of the process provided in paragraphs 3 and 4, and does not entail advance government review of each individual notice.</p> <p>(a) With respect to the functions referred to in paragraphs 2(c) and 2(d), these conditions shall include a requirement for Internet Service Providers to expeditiously remove or disable access to material residing on their networks or systems upon obtaining actual knowledge of the copyright infringement or becoming aware of facts or circumstances from which the infringement is apparent, such as through receiving a notice¹²⁰ of alleged infringement from the right holder or a person authorized to act on its behalf.</p> <p>Footnote 120</p> <p>For greater certainty, a notice of alleged infringement, as may be set out under a Party's law, must contain information that:</p> <p>(a) is reasonably sufficient to enable the Internet Service Provider to identify the work, performance or phonogram claimed to be infringed, the alleged infringing material, and the online location of the alleged infringement; and</p> <p>(b) has a sufficient indicia of reliability with respect to the authority of the person sending the notice.</p> <p>(b) An Internet Service Provider that removes or disables access to material in good faith under subparagraph (a) shall be exempt from any liability for having done so, provided that it takes reasonable steps in advance or promptly after to notify the person whose material is removed or disabled.¹²¹</p> <p>Footnote 121</p> <p>With respect to the function in paragraph 2(b), a Party may limit the requirements of paragraph 3 related to an Internet Service Provider removing or disabling access to material to circumstances in which the Internet Service Provider becomes aware or receives notification that the cached material has been removed or access to it has been disabled at the originating site.</p>		<p>Footnote 155</p> <p>A Party may comply with the obligations in paragraph 3 by maintaining a framework in which:</p> <p>(a) there is a stakeholder organisation that includes representatives of both Internet Service Providers and right holders, established with government involvement;</p> <p>(b) that stakeholder organisation develops and maintains effective, efficient and timely procedures for entities certified by the stakeholder organisation to verify, without undue delay, the validity of each notice of alleged copyright infringement by confirming that the notice is not the result of mistake or misidentification, before forwarding the verified notice to the relevant Internet Service Provider;</p> <p>(c) there are appropriate guidelines for Internet Service Providers to follow in order to qualify for the limitation described in paragraph 1(b), including requiring that the Internet Service Provider promptly removes or disables access to the identified materials upon receipt of a verified notice; and be exempted from liability for having done so in good faith in accordance with those guidelines; and</p> <p>(d) there are appropriate measures that provide for liability in cases in which an Internet Service Provider has actual knowledge of the infringement or awareness of facts or circumstances from which the infringement is apparent.</p> <p>Footnote 156</p> <p>The Parties understand that a Party that has yet to implement the obligations in paragraphs 3 and 4 will do so in a manner that is both effective and consistent with that Party's existing constitutional provisions. To that end, a Party may establish an appropriate role for the government that does not impair the timeliness of the process provided in paragraphs 3 and 4, and does not entail advance government review of each individual notice.</p> <p>(a) With respect to the functions referred to in paragraph 2(c) and paragraph 2(d), these conditions shall include a requirement for Internet Service Providers to expeditiously remove or disable access to material residing on their networks or systems upon obtaining actual knowledge of the copyright infringement or becoming aware of facts or circumstances from which the infringement is apparent, such as through receiving a notice¹⁵⁷ of alleged infringement from the right holder or a person authorised to act on its behalf,</p> <p>Footnote 157</p> <p>For greater certainty, a notice of alleged infringement, as may be set out under a Party's law, must contain information that:</p> <p>(a) is reasonably sufficient to enable the Internet Service Provider to identify the work, performance or phonogram claimed to be infringed, the alleged infringing material, and the online location of the alleged infringement; and</p> <p>(b) has a sufficient indicia of reliability with respect to the authority of the person sending the notice.</p> <p>(b) An Internet Service Provider that removes or disables access to material in good faith under subparagraph (a) shall be exempt from any liability for having done so, provided that it takes reasonable steps in advance or promptly after to notify the person whose material is removed or disabled.¹⁵⁸</p> <p>Footnote 158</p> <p>With respect to the function in subparagraph 2(b), a Party may limit the requirements of paragraph 3 related to an Internet Service Provider removing or disabling access to material to circumstances in which the Internet Service Provider becomes aware or receives notification that the cached material has been removed or access to it has been disabled at the originating site.</p>

United States-Mexico-Canada Agreement (2018) (Final Text)	North American Free Trade Agreement (1994)	Trans-Pacific Partnership (2015)
<p>4. For the purposes of the functions referred to in paragraphs 2(c) and 2(d), each Party shall establish appropriate procedures in its laws or regulations for effective notices of claimed infringement, and effective counter-notices by those whose material is removed or disabled through mistake or misidentification. If material has been removed or access has been disabled in accordance with paragraph 3, that Party shall require that the Internet Service Provider restores the material that is the subject of a counter-notice, unless the person giving the original notice seeks relief through civil judicial proceedings within a reasonable period of time as set forth in that Party's laws or regulations.</p> <p>5. Each Party shall ensure that monetary remedies are available in its legal system against a person that makes a knowing material misrepresentation in a notice or counter-notice that causes injury to any interested party¹²² as a result of an Internet Service Provider relying on the misrepresentation.</p> <p>Footnote 122 For greater certainty, the Parties understand that, "any interested party" may be limited to those with a legal interest recognized under that Party's law.</p> <p>6. Eligibility for the limitations in paragraph 1 shall be conditioned on the Internet Service Provider:</p> <p>(a) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers;</p> <p>(b) accommodating and not interfering with standard technical measures accepted in the Party's territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks; and</p> <p>(c) with respect to the functions identified in paragraphs 2(c) and 2(d), not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity.</p> <p>7. Eligibility for the limitations identified in paragraph 1 shall not be conditioned on the Internet Service Provider monitoring its service or affirmatively seeking facts indicating infringing activity, except to the extent consistent with the technical measures identified in paragraph 6(b).</p> <p>8. Each Party shall provide procedures, whether judicial or administrative, in accordance with its legal system, and consistent with principles of due process and privacy, that enable a copyright owner that has made a legally sufficient claim of copyright infringement to obtain expeditiously from an Internet Service Provider information in the provider's possession identifying the alleged infringer, in cases in which that information is sought for the purpose of protecting or enforcing that copyright.</p> <p>9. The Parties understand that the failure of an Internet Service Provider to qualify for the limitations in paragraph 1(b) does not itself result in liability. Further, this Article is without prejudice to the availability of other limitations and exceptions to copyright, or any other defenses under a Party's legal system.</p> <p>10. The Parties recognize the importance, in implementing their obligations under this Article, of taking into account the impact on the right holders and Internet Service Providers.</p> <p style="text-align: center;">Section K: Final Provisions</p>		<p>4. If a system for counter-notices is provided under a Party's law, and if material has been removed or access has been disabled in accordance with paragraph 3, that Party shall require that the Internet Service Provider restores the material subject to a counter-notice, unless the person giving the original notice seeks judicial relief within a reasonable period of time.</p> <p>5. Each Party shall ensure that monetary remedies are available in its legal system against any person that makes a knowing material misrepresentation in a notice or counter-notice that causes injury to any interested party¹⁵⁹ as a result of an Internet Service Provider relying on the misrepresentation.</p> <p>Footnote 159 For greater certainty, the Parties understand that, "any interested party" may be limited to those with a legal interest recognised under that Party's law.</p> <p>6. Eligibility for the limitations in paragraph 1 shall not be conditioned on the Internet Service Provider monitoring its service or affirmatively seeking facts indicating infringing activity.</p> <p>7. Each Party shall provide procedures, whether judicial or administrative, in accordance with that Party's legal system, and consistent with principles of due process and privacy, that enable a copyright owner that has made a legally sufficient claim of copyright infringement to obtain expeditiously from an Internet Service Provider information in the provider's possession identifying the alleged infringer, in cases in which that information is sought for the purpose of protecting or enforcing that copyright.</p> <p>8. The Parties understand that the failure of an Internet Service Provider to qualify for the limitations in paragraph 1(b) does not itself result in liability. Further, this Article is without prejudice to the availability of other limitations and exceptions to copyright, or any other defences under a Party's legal system.</p> <p>9. The Parties recognise the importance, in implementing their obligations under this Article, of taking into account the impacts on right holders and Internet Service Providers.</p> <p style="text-align: center;">Section K: Final Provisions</p>

United States-Mexico-Canada Agreement (2018) (Final Text)	North American Free Trade Agreement (1994)	Trans-Pacific Partnership (2015)
<p>Article 20.90: Final Provisions</p> <p>1. Except as otherwise provided in Article 20.10 (Application of Chapter to Existing Subject Matter and Prior Acts) and paragraphs 2 and 3, each Party shall implement the provisions of this Chapter on the date of entry into force of this Agreement.</p> <p>2. During the relevant periods set out below, a Party shall not amend an existing measure or adopt a new measure that is less consistent with its obligations under the Articles referred to below for that Party than relevant measures that are in effect on the date of signature of this Agreement.</p> <p>3. With regard to obligations subject to a transition period, Mexico shall fully implement its obligations under the provisions of this Chapter no later than the expiration of the relevant time period specified below, which begins on the date of entry into force of this Agreement:</p> <p>(a) Article 20.7 (International Agreements), UPOV 1991, four years;</p> <p>(b) Article 20.45 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), five years;</p> <p>(c) Article 20.46 (Patent Term Adjustment for Unreasonable Curtailment), 4.5 years;</p> <p>(d) Article 20.48 (Protection of Undisclosed Test or Other Data), five years;</p> <p>(e) Article 20.49 (Biologics), five years;</p> <p>(f) Article 20.71 (Civil Protection and Enforcement), Article 20.74 (Provisional Measures) and Article 20.76 (Civil Remedies), five years; and</p> <p>(g) Articles 20.88 (Internet Service Providers) and 20.89 (Legal Remedies and Safe Harbors), three years.</p>		<p>Article 18.83: Final Provisions</p> <p>1. Except as otherwise provided in Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts) and paragraphs 2, 3 and 4, each Party shall give effect to the provisions of this Chapter on the date of entry into force of this Agreement for that Party.¹⁶⁰</p> <p>Footnote 160</p> <p>Only the following Parties have determined that, in order to implement and comply with Article 18.51.1 (Biologics), they require changes to their law, and thus require transition periods: Brunei Darussalam, Malaysia, Mexico, Peru and Viet Nam.</p> <p>2. During the relevant periods set out below, a Party shall not amend an existing measure or adopt a new measure that is less consistent with its obligations under the Articles referred to below for that Party than relevant measures that are in effect on the date of signature of this Agreement. This Section does not affect the rights and obligations of a Party under an international agreement to which it and another Party are party.</p> <p>3. With respect to works of any Party that avails itself of a transition period permitted to it with regard to implementation of Article 18.63 (Term of Protection for Copyright and Related Rights) as it relates to the term of copyright protection (transition Party), Japan and Mexico shall apply at least the term of protection available under the transition Party's law for the relevant works during the transition period and apply Article 18.8.1 (National Treatment) with respect to copyright term only when that Party fully implements Article 18.63.</p> <p>4. With regard to obligations subject to a transition period, a Party shall fully implement its obligations under the provisions of this Chapter no later than the expiration of the relevant time period specified below, which begins on the date of entry into force of this Agreement for that Party.</p> <p>(c) In the case of Mexico, with respect to:</p> <p>(i) Article 18.7.2(d) (International Agreements), UPOV 1991, four years;</p> <p>(ii) Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), five years;</p> <p>(iii) Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), 4.5 years;</p> <p>(iv) Article 18.50 (Protection of Undisclosed Test or Other Data), five years;++</p> <p>(v) Article 18.51 (Biologics), five years;+ and</p> <p>(vi) Section J (Internet Service Providers), three years.</p> <p>++</p> <p>If there are unreasonable delays in Mexico in the initiation of the filing of marketing approval applications for new pharmaceutical products after implementing its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) in connection with subparagraphs (c)(iv) and (c)(v), Mexico may consider adopting measures to incentivise the timely initiation of the filing of these applications with a view to the introduction of new pharmaceutical products in its market. To that end, Mexico shall notify the other Parties through the Commission and consult with them on such a proposed measure. Such consultations shall begin within 30 days of a request from an interested Party, and shall provide adequate time and opportunity to resolve any concerns. In addition, any such measure shall respect legitimate commercial considerations and take into account the need for incentives for the development of new pharmaceutical products and for the expeditious marketing approval in Mexico of such products.</p>

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<p>4. With regard to obligations subject to a transition period, Canada shall fully implement its obligations under the provisions of this Chapter no later than the expiration of the relevant time period specified below, which begins on the date of entry into force of this Agreement.</p> <p>(a) Article 20.7.2(f) (International Agreements), four years; (b) Article 20.44 (Patent Term Adjustment for Unreasonable Granting Authority Delays), 4.5 years; (c) Article 20.49 (Biologics), five years; and (d) Article 20.63(a) (Term of Protection for Copyright and Related Rights), 2.5 years.</p>		<p>(a) In the case of Brunei Darussalam, with respect to:</p> <p>(i) Article 18.7.2(d) (International Agreements), UPOV 1991, three years; (ii) Article 18.18 (Types of Signs Registrable as Trademarks), with respect to sound marks, three years; (iii) Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), 18 months; (iv) Article 18.50 (Protection of Undisclosed Test or Other Data), four years; ++ (v) Article 18.51 (Biologics), four years; ++ (vi) Article 18.53 (Measures Relating to the Marketing of Certain Pharmaceutical Products), two years; and (vii) With respect to Section J (Internet Service Providers), three years. ++ If there are unreasonable delays in Brunei Darussalam in the initiation of the filing of marketing approval applications for new pharmaceutical products after Brunei Darussalam implements its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) in connection with subparagraphs (a)(iv) and (a)(v), Brunei Darussalam may consider adopting measures to incentivise the timely initiation of the filing of these applications with a view to the introduction of new pharmaceutical products in its market. To that end, Brunei Darussalam shall notify the other Parties through the Commission and consult with them on such a proposed measure. Such consultations shall begin within 30 days of a request from an interested Party, and shall provide adequate time and opportunity to resolve any concerns. In addition, any such measure shall respect legitimate commercial considerations and take into account the need for incentives for the development of new pharmaceutical products and for the expeditious marketing approval in Brunei Darussalam of such products.</p> <p>(b) In the case of Malaysia, with respect to:</p> <p>(i) Article 18.7.2(a) (International Agreements), Madrid Protocol, four years; (ii) Article 18.7.2(b) (International Agreements), Budapest Treaty, four years; (iii) Article 18.7.2(c) (International Agreements), Singapore Treaty, four years; (iv) Article 18.7.2(d) (International Agreements), UPOV 1991, four years; (v) Article 18.18 (Types of Signs Registrable as Trademarks), with respect to sound marks, three years; (vi) Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), 4.5 years; (vii) Article 18.51 (Biologics), five years; (viii) Article 18.53 (Measures Relating to the Marketing of Certain Pharmaceutical Products), 4.5 years; (ix) Article 18.63(a) (Term of Protection for Copyright and Related Rights), with respect to life-based works, two years;</p> <p>(x) Article 18.76 (Special Requirements Related to Border Measures), with respect to applications to suspend the release of, or to detain, 'confusingly similar' trademark goods, four years;</p> <p>(xi) Article 18.76.5(b) and (c) (Special Requirements Related to Border Measures), with respect to ex officio border enforcement for in transit and export, four years; and</p> <p>(xii) Article 18.79.2 (Protection of Encrypted Program-Carrying Satellite and Cable Signals), four years.</p>

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		<p>(d) In the case of New Zealand, with respect to Article 18.63 (Term of Protection for Copyright and Related Rights), eight years. Except that from the date of entry into force of this Agreement for New Zealand, New Zealand shall provide that the term of protection for a work, performance or phonogram that would, during that eight years, have expired under the term that was provided in New Zealand law before the entry into force of this Agreement, instead expires 60 years from the relevant date in Article 18.63 that is the basis for calculating the term of protection under this Agreement. The Parties understand that, in applying Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), New Zealand shall not be required to restore or extend the term of protection to the works, performances and phonograms with a term provided pursuant to the previous sentence, once these works, performances and phonograms fall into the public domain in its territory.</p> <p>(e) In the case of Peru, with respect to:</p> <p>(i) Article 18.50.2 (Protection of Undisclosed Test or Other Data), five years; and</p> <p>(ii) Article 18.51 (Biologics), 10 years.</p> <p>(f) In the case of Viet Nam, with respect to:</p> <p>(i) Article 18.7.2(b) (International Agreements), Budapest Treaty, two years;</p> <p>(ii) Article 18.7.2(e) (International Agreements), WCT, three years;</p> <p>(iii) Article 18.7.2(f) (International Agreements), WPPT, three years;</p> <p>(iv) Article 18.18 (Types of Signs Registrable as Trademarks), with respect to sound marks, three years;</p> <p>(v) Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays), with respect to patents claiming pharmaceutical products, five years;[^]</p> <p>(vi) Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays), with respect to patents claiming agricultural chemical products, five years;[^]</p> <p>(vii) Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays), three years;¹⁶¹</p> <p>Footnote 161 Notwithstanding Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), for Viet Nam this Article shall apply to all applications filed after the conclusion of the three-year transition period under paragraph 4(f)(vii) or any applicable transition under paragraphs 4(f)(v) and 4(f)(vi) of this Article.</p> <p>(viii) Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), five years;</p> <p>(ix) Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), five years;</p> <p>(x) Article 18.50 (Protection of Undisclosed Test or Other Data), 10 years;*/++</p> <p>(xi) Article 18.51 (Biologics), 10 years;*/++</p> <p>(xii) Article 18.53 (Measures Relating to the Marketing of Certain Pharmaceutical Products), three years;</p> <p>(xiii) Article 18.63(a) (Term of Protection for Copyright and Related Rights), with respect to life-based works, five years;</p> <p>(xiv) Article 18.68 (TPMs), three years;</p> <p>(xv) Article 18.69 (RMI), three years;</p> <p>(xvi) Article 18.76.5(b) (Special Requirements Related to Border Measures), with respect to ex officio border measures for export, three years;</p> <p>(xvii) Article 18.76.5(c) (Special Requirements Related to Border Measures), with respect to ex officio border measures for in transit, two years;</p> <p>(xviii) Article 18.77.1(b) (Criminal Procedures and Penalties), three years;</p> <p>(xix) Article 18.77.2 (Criminal Procedures and Penalties), with respect to importation of pirated copyright goods, three years;</p>

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		<p>(xx) Article 18.77.2 (Criminal Procedures and Penalties), with respect to exportation, three years;</p> <p>(xxi) Article 18.77.4 (Criminal Procedures and Penalties), with respect to camcording, three years;</p> <p>(xxii) Article 18.77.6(g) (Criminal Procedures and Penalties), with respect to enforcement without the right holder's request for rights other than copyright, three years;</p> <p>(xxiii) Article 18.78.2 and Article 18.78.3 (Trade Secrets), three years;</p> <p>(xxiv) Article 18.79.1 (Protection of Encrypted Program-Carrying Satellite and Cable Signals), with respect to criminal remedies, three years;</p> <p>(xxv) Article 18.79.3 (Protection of Encrypted Program-Carrying Satellite and Cable Signals), with respect to cable signals, three years; and</p> <p>(xxvi) Section J (Internet Service Providers), three years.</p> <p>^ For transitions for Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays) for patents claiming pharmaceutical products and agricultural chemical products, the Parties will consider a justified request from Viet Nam for an extension of the transition period for up to one additional year. Viet Nam's request shall include the reasons for the requested extension. Viet Nam may avail itself of this one-time extension upon providing a request in accordance with this paragraph unless the Commission decides otherwise within 60 days of receiving the request. No later than the date on which the additional one-year period expires, Viet Nam shall provide to the Commission in writing a report on the measures it has taken to fulfil its obligation under Article 18.46.3 and Article 18.46.4.</p> <p>* For transitions for Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) for pharmaceutical products:</p> <p>(A) The Parties will consider a justified request from Viet Nam for an extension of the transition period for up to two additional years. Viet Nam's request shall include the reason for the requested extension. Viet Nam may avail itself of this one-time extension upon providing a request in accordance with this paragraph unless the Commission decides otherwise within 60 days of receiving the request. No later than the date on which the additional two-year period expires, Viet Nam shall provide to the Commission in writing a report on the measures it has taken to fulfil its obligation under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics).</p> <p>(B) Viet Nam may make a further request for an additional one-time extension pursuant to Chapter 27 (Administrative and Institutional Provisions). Viet Nam's request shall include the reason for the request. The Commission shall decide pursuant to the procedures set forth in Article 27.3 (Decision-Making), whether to grant the request based on relevant factors, which may include capacity as well as other appropriate circumstances. Viet Nam shall make the request no later than one year prior to the expiration of the two-year transition period referred to in the first sentence of paragraph (A). The Parties shall give due consideration to that request. If the Committee grants Viet Nam's request, Viet Nam shall provide to the Commission in writing a report on the measures it has taken to fulfil its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) no later than the date on which the extension period expires.</p> <p>(C) Viet Nam's implementation of Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) during three years after the conclusion of the extension period referred to in paragraph (A) shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement).</p>

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	<p style="text-align: center;">Annex 1701.3: Intellectual Property Conventions</p> <p>1. Mexico shall:</p> <p>(a) make every effort to comply with the substantive provisions of the 1978 or 1991 UPOV Convention as soon as possible and shall do so no later than two years after the date of signature of this Agreement; and</p> <p>(b) accept from the date of entry into force of this Agreement applications from plant breeders for varieties in all plant genera and species and grant protection, in accordance with such substantive provisions, promptly after complying with subparagraph (a).</p> <p>2. Notwithstanding Article 1701(2)(b), this Agreement confers no rights and imposes no obligations on the United States with respect to Article 6bis of the Berne Convention, or the rights derived from that Article.</p> <p style="text-align: center;">Annex 1705.7: Copyright</p> <p>The United States shall provide protection to motion pictures produced in another Party's territory that have been declared to be in the public domain pursuant to 17 U.S.C. section 405. This obligation shall apply to the extent that it is consistent with the Constitution of the United States, and is subject to budgetary considerations.</p> <p style="text-align: center;">Annex 1710.9: Layout Designs</p> <p>Mexico shall make every effort to implement the requirements of Article 1710 as soon as possible, and shall do so no later than four years after the date of entry into force of this Agreement.</p> <p style="text-align: center;">Annex 1718.14: Enforcement of Intellectual Property Rights</p> <p>Mexico shall make every effort to comply with the requirements of Article 1718 as soon as possible and shall do so no later than three years after the date of signature of this Agreement.</p>	<p>++ If there are unreasonable delays in Viet Nam in the initiation of the filing of marketing approval applications for new pharmaceutical products after Viet Nam implements its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) in connection with subparagraphs (f)(x) and (f)(xi), Viet Nam may consider adopting measures to incentivise the timely initiation of the filing of these applications with a view to the introduction of new pharmaceutical products in its market. To that end, Viet Nam shall notify the other Parties through the Commission and consult with them on such a proposed measure. Such consultations shall begin within 30 days of a request from an interested Party, and shall provide adequate time and opportunity to resolve any concerns. In addition, any such measure shall respect legitimate commercial considerations and take into account the need for incentives for the development of new pharmaceutical products and for the expeditious marketing approval in Viet Nam of such products.</p> <p style="text-align: center;">Annex 18-A: Annex to Article 18.7.2</p> <p>1. Notwithstanding the obligations in Article 18.7.2 (International Agreements), and subject to paragraphs 2, 3 and 4 of this Annex, New Zealand shall:</p> <p>(a) accede to UPOV 1991 within three years of the date of entry into force of this Agreement for New Zealand; or</p> <p>(b) adopt a sui generis plant variety rights system that gives effect to UPOV 1991 within three years of the date of entry into force of this Agreement for New Zealand.</p> <p>2. Nothing in paragraph 1 shall preclude the adoption by New Zealand of measures it deems necessary to protect indigenous plant species in fulfilment of its obligations under the Treaty of Waitangi, provided that such measures are not used as a means of arbitrary or unjustified discrimination against a person of another Party.</p> <p>3. The consistency of any measures referred to in paragraph 2 with the obligations in paragraph 1 shall not be subject to the dispute settlement provisions of this Agreement.</p>

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		<p>4. The interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 28 (Dispute Settlement) shall otherwise apply to this Annex. A panel established under Article 28.7 (Establishment of a Panel) may be requested to determine only whether any measure referred to in paragraph 2 is inconsistent with a Party's rights under this Agreement.</p> <p style="text-align: center;">Annex 18-B: Chile</p> <p>1. Nothing in Article 18.50.1 or Article 18.50.2 (Protection of Undisclosed Test or Other Data) or Article 18.51 (Biologics) prevents Chile from maintaining or applying the provisions of Article 91 of Chile's Law No. 19.039 on Industrial Property, as in effect on the date of agreement in principle of this Agreement.</p> <p>2. Notwithstanding Article 1.2 (Relation to Other Agreements), paragraph 1 is without prejudice to any Party's rights and obligations under an international agreement in effect prior to the date of entry into force of this Agreement for Chile, including any rights and obligations under a trade agreement between Chile and another Party.</p> <p style="text-align: center;">Annex 18-C: Malaysia</p> <p>1. Malaysia may, for the purpose of granting protection as specified in Article 18.50.1 and Article 18.50.2 (Protection of Undisclosed Test or Other Data) and Article 18.51.1 (Biologics), require an applicant to commence the process of obtaining marketing approval for pharmaceutical products covered under those Articles within 18 months from the date that the product is first granted marketing approval in any country.</p> <p>2. For greater certainty, the periods of protection referred to in Article 18.50.1 and Article 18.50.2 (Protection of Undisclosed Test or Other Data) and Article 18.51.1 (Biologics) shall begin on the date of marketing approval of the pharmaceutical product in Malaysia.</p> <p style="text-align: center;">Annex 18-D: Peru</p> <p>Part 1: Applicable to Article 18.46 (Patent Term Adjustment for Unreasonable Granting Authority Delays) and Article 18.48 (Patent Term Adjustment for Unreasonable Curtailment)</p> <p>To the extent that Andean Decision 486, Common Industrial Property Regime, and Andean Decision 689, Adequacy of Certain Articles of Decision 486, restricts Peru's implementation of its obligations set forth in Article 18.46.3 (Patent Term Adjustment for Unreasonable Granting Authority Delays) and Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), Peru commits to make its best efforts to obtain a waiver from the Andean Community that allows it to adjust its patent term in a way that is consistent with Article 18.46.3 (Patent Term Adjustment for Unreasonable Granting Authority Delays) and Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment). Further, if Peru demonstrates that the Andean Community withheld its request for a waiver despite its best efforts, Peru will continue ensuring that it does not discriminate with respect to the availability or enjoyment of patent rights based on the field of technology, the place of invention, and whether products are imported or locally produced. Thus, Peru confirms that the treatment of pharmaceutical patents will be no less favourable than treatment of other patents in respect of the processing and examination of patent applications.</p> <p>Part 2: Applicable to Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics)</p>

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<p style="text-align: center;">ANNEX 20-A ANNEX TO SECTION J</p> <p>1. In order to facilitate the enforcement of copyright online and to avoid unwarranted market disruption in the online environment, Articles 20.89.3, 20.89.4, and 20.89.6 (Legal Remedies and Safe Harbors) shall not apply to a Party provided that, as from the date of agreement in principle of this Agreement, the Party continues to:</p> <p>(a) prescribe in its law circumstances under which Internet Service Providers do not qualify for the limitations described in Article 20.89.1(b) (Legal Remedies and Safe Harbors);</p> <p>(b) provide statutory secondary liability for copyright infringement in cases in which a person, by means of the Internet or another digital network, provides a service primarily for the purpose of enabling acts of copyright infringement, in relation to factors set out in its law, such as:</p> <p>(i) whether the person marketed or promoted the service as one that could be used to enable acts of copyright infringement;</p> <p>(ii) whether the person had knowledge that the service was used to enable a significant number of acts of copyright infringement;</p> <p>(iii) whether the service has significant uses other than to enable acts of copyright infringement;</p> <p>(iv) the person's ability, as part of providing the service, to limit acts of copyright infringement, and any action taken by the person to do so;</p> <p>(v) any benefits the person received as a result of enabling the acts of copyright infringement; and</p> <p>(vi) the economic viability of the service if it were not used to enable acts of copyright infringement;</p> <p>(c) require Internet Service Providers carrying out the functions referred to in Article 20.89.2(a) and (c) (Legal Remedies and Safe Harbors) to participate in a system for forwarding notices of alleged infringement, including if material is made available online, and if the Internet Service Provider fails to do so, subjecting that provider to pre-established monetary damages for that failure;</p> <p>(d) induce Internet Service Providers offering information location tools to remove within a specified period of time any reproductions of material that they make, and communicate to the public, as part of offering the information location tool upon receiving a notice of alleged infringement and after the original material has been removed from the electronic location set out in the notice; and</p> <p>(e) induce Internet Service Providers carrying out the function referred to in Article 20.89.2(c) (Legal Remedies and Safe Harbors) to remove or disable access to material upon becoming aware of a decision of a court of that Party to the effect that the person storing the material infringes copyright in the material.</p>		<p>1. If Peru relies, pursuant to Article 18.50.1(b) (Protection of Undisclosed Test or Other Data), on a marketing approval granted by another Party, and grants approval within six months of the date of the filing of a complete application for marketing approval filed in Peru, Peru may provide that the protection specified in Article 18.50.1(b) (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics), as applicable, shall begin with the date of the first marketing approval relied on. In implementing Article 18.50.1(b) (Protection of Undisclosed Test or Other Data) and Article 18.51.1(b)(i) (Biologics), Peru may apply the period of protection established in Article 16.10.2(b) of the <i>United States – Peru Trade Promotion Agreement</i>, done at Washington, District of Columbia, April 12, 2006.</p> <p>2. Peru may apply paragraph 1 to Article 18.50.2 (Protection of Undisclosed Test or Other Data).</p> <p style="text-align: center;">Annex 18-E: Annex to Section J</p> <p>1. In order to facilitate the enforcement of copyright on the Internet and to avoid unwarranted market disruption in the online environment, Article 18.82.3 and Article 18.82.4 (Legal Remedies and Safe Harbours) shall not apply to a Party provided that, as from the date of agreement in principle of this Agreement, it continues to:</p> <p>(a) prescribe in its law circumstances under which Internet Service Providers do not qualify for the limitations described in Article 18.82.1(b) (Legal Remedies and Safe Harbours);</p> <p>(b) provide statutory secondary liability for copyright infringement in cases in which a person, by means of the Internet or another digital network, provides a service primarily for the purpose of enabling acts of copyright infringement, in relation to factors set out in its law, such as:</p> <p>(i) whether the person marketed or promoted the service as one that could be used to enable acts of copyright infringement;</p> <p>(ii) whether the person had knowledge that the service was used to enable a significant number of acts of copyright infringement;</p> <p>(iii) whether the service has significant uses other than to enable acts of copyright infringement;</p> <p>(iv) the person's ability, as part of providing the service, to limit acts of copyright infringement, and any action taken by the person to do so;</p> <p>(v) any benefits the person received as a result of enabling the acts of copyright infringement; and</p> <p>(vi) the economic viability of the service if it were not used to enable acts of copyright infringement;</p> <p>(c) require Internet Service Providers carrying out the functions referred to in Article 18.82.2(a) and (c) (Legal Remedies and Safe Harbours) to participate in a system for forwarding notices of alleged infringement, including if material is made available online, and if the Internet Service Provider fails to do so, subjecting that provider to pre-established monetary damages for that failure;</p> <p>(d) induce Internet Service Providers offering information location tools to remove within a specified period of time any reproductions of material that they make, and communicate to the public, as part of offering the information location tool upon receiving a notice of alleged infringement and after the original material has been removed from the electronic location set out in the notice; and</p> <p>(e) induce Internet Service Providers carrying out the function referred to in Article 18.82.2(c) (Legal Remedies and Safe Harbours) to remove or disable access to material upon becoming aware of a decision of a court of that Party to the effect that the person storing the material infringes copyright in the material.</p>

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<p>2. For a Party to which Articles 20.89.3, 20.89.4, and 20.89.6 (Legal Remedies and Safe Harbors) do not apply pursuant to paragraph 1, and in light of, among other things, paragraph 1(b), for the purposes of Article 20.89.1(a), legal incentives shall not mean the conditions for Internet Service Providers to qualify for the limitations provided for in Article 20.89.1(b), as set out in Article 20.89.3.</p> <p>3. Pursuant to paragraph 1, for a Party to which Articles 20.89.3, 20.89.4, and 20.89.6 (Legal Remedies and Safe Harbors) do not apply:</p> <p>(a) the term “modification” in paragraphs 20.88.1(a) and 20.89.2(a) does not include modifications made for solely technical reasons such as division into packets; and</p> <p>(b) with regard to paragraph 20.89.7, “except to the extent consistent with the technical measures identified in paragraph 6(b)” does not apply.</p>		<p>2. For a Party to which Article 18.82.3 and Article 18.82.4 (Legal Remedies and Safe Harbours) do not apply pursuant to paragraph 1 of this Annex, and in light of, among other things, paragraph 1(b) of this Annex, for the purposes of Article 18.82.1(a), legal incentives shall not mean the conditions for Internet Service Providers to qualify for the limitations provided for in Article 18.82.1(b), as set out in Article 18.82.3.</p> <p style="text-align: center;">Annex 18-F: Annex to Section J</p> <p>As an alternative to implementing Section J (Internet Service Providers), a Party may implement Article 17.11.23 of the United States – Chile Free Trade Agreement, done at Miami, June 6, 2003, which is incorporated into and made part of this Annex.</p>