

# INTELLECTUAL PROPERTY

## *Section A*

### **General Provisions and Principles**

#### **Article 1**

##### *Objectives*

1. The objectives of this chapter are to:

- (a) facilitate the creation, production and commercialization of innovative and creative products between the Parties contributing to a more sustainable and inclusive economy for the Parties; and
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights

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

#### **Article 2**

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

1. The Parties reaffirm the rights and obligations under and shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties, including the WTO Agreement on Trade-related Aspects of Intellectual Property (hereinafter called TRIPS Agreement). The provisions of this chapter shall complement and further specify the rights and obligations between the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property with an aim at ensuring adequate and effective implementation of those international treaties, as well as the balance between the rights of intellectual property holders and the interest of the public.

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

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

Protection of intellectual property includes protection against unfair competition as referred to in Article 10*bis* of the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967).

## **Article X**

### *Most Favoured Nation Treatment*

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

## **Article 3**

### *Exhaustion*

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

## *Section B*

### **Standards Concerning Intellectual Property Rights**

## **Article 4**

### *Copyright and Related Rights*

#### **Article 4.1 – Protection Granted**

The Parties:

1. shall comply with the rights and obligations set out in the Berne Convention for the Protection of Literary and Artistic Works; the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations and the TRIPS Agreement.
2. shall<sup>1</sup> accede to the WIPO Copyright Treaty – WCT and the WIPO Performances and Phonograms Treaty – WPPT.

#### **Article 4.2 - Authors**

The Parties shall provide for authors the exclusive right to authorise or prohibit:

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

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<sup>1</sup> Within the period of 3 years from the entry into force of this Agreement

### **Article 4.3 - Performers**

The Parties shall provide for performers the exclusive right to authorise or prohibit:

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

### **Article 4.4 – Producers of phonograms**

The Parties shall provide for phonogram producers the exclusive right to authorise or prohibit:

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

### **Article 4.5 – Broadcasting organisations**

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

1. the fixation of their broadcasts;
2. the reproduction of fixations of their broadcasts;
3. distribution to the public of fixations of their broadcasts; and
4. the rebroadcasting of their broadcasts by wireless means

### **Article 4.6 – Broadcasting and Communication to the Public**

Each Party shall provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the

public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. Each Party may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

#### **Article 4.7 - *Term of protection***

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for at least 50 years after his death, irrespective of the date when the work is lawfully made available to the public.

2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.

3. The rights of performers shall expire not less than 50 years after the date of the performance. However,

–if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier,

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

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

6. The rights of producers of the first fixation of a film shall expire not less than 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire not less than 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. The term ‘film’ shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

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

#### **Article 4.8 - *Protection of Technological Measures***

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

2. The Parties shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, offer to public for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services, which:

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

any effective technological measures.

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

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

#### **Article 4.9 - Protection of Rights Management Information**

1. The parties shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:

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

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

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

3. Paragraph 2, shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Agreement.

#### **Article 4.10 - Exceptions and limitations**

1. The Parties may provide for limitations or exceptions to the rights set out in the Articles 4.2 – 4.6 only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the right holders in accordance with the conventions and international Treaties to which they are Parties.

2. The Parties shall provide that acts of reproduction referred to in Articles 4.2 to 4.6, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable

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

(b) a lawful use

of a work or other subject-matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Articles 4.2 to 4.6.

#### **Article 4.11 – Artists' Resale Right in Works of Art**

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

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

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

4. The protection provided in paragraph 1 may be claimed in a Party only if legislation in the Party to which the author belongs so permits, and to the extent permitted by the Party where this protection is claimed. The procedure for collection and the amounts shall be a matter for determination by national legislation.

#### **Article 4.12 - Co-operation on Collective Management of Rights**

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

### **Article 5 Trademarks**

### **Article 5.1 – International Agreements**

The European Union and Vietnam:

- reaffirm their obligations under *Protocol related to the Madrid Agreement concerning the International Registration of Marks*,
- shall use the classification provided for in the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*.<sup>2</sup>
- shall simplify and develop its trademark registration procedures using the Trademark Law Treaty and Singapore Treaty on the Law of Trademarks, *inter alia*, as reference points.

### **Article 5.2 - Rights conferred by a trademark**

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

- (a) any sign which is identical with the trademark for goods or services which are identical with those for which the trademark is registered<sup>3</sup>;
- (b) any sign which is identical or similar with the trademark for goods or services, which are identical with or similar to those for which the trademark is registered, where such use would result in a likelihood of confusion on the part of the public.

### **Article 5.3 – Registration Procedure**

The Parties shall provide for a system for the registration of trademarks in which each final negative decision taken by the relevant trademark administration shall be communicated in writing and duly reasoned.

The Parties shall provide for the possibility to oppose trademark applications and an opportunity for the trademark applicant to respond to such opposition.

The Parties shall provide a publicly available electronic database of published trademark applications and trademark registrations.

### **Article 5.4 – Well-known Trademarks**

For the purpose of giving effect to protection of well-known trademarks, as referred to in Article 6*bis* of the Paris Convention (1967) and Article 16(2) and (3) of the TRIPS Agreement, the Parties shall give consideration to the Joint Recommendation adopted by the assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the

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<sup>2</sup> For greater certainty, a Party is required to follow updated versions of the Nice Classification to the extent that the updated version has been published by WIPO and for Vietnam, official translation has been published by its authority.

<sup>3</sup> Without prejudice to article 5.5

World Intellectual Property Organization (WIPO) at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO (September 1999).

**Article 5.5 – Exceptions to the Rights Conferred by a Trademark**

Each Party:

(a) shall provide for the fair use of descriptive terms<sup>4</sup> as a limited exception to the rights conferred by trademarks; and

(b) may provide for other limited exceptions,

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

**Article 5.6 - Grounds for revocation<sup>5</sup>**

1. The Parties shall provide that a trademark registration shall be liable to revocation<sup>6</sup> if, within a continuous period of five years prior to a request for revocation, it has not been put to genuine<sup>7</sup> use by its owner or his/her licensee in the relevant territory in connection with the goods or services in respect of which it is registered, without justifiable reasons, except where the use is commenced or resumed at least 3 months before the request for revocation. Parties may provide that this, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the request for revocation may be filed.

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

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

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<sup>4</sup> The fair use of descriptive terms includes the use of a sign to indicate the geographic origin of the goods or services, and where such use is in accordance with honest practices in industrial or commercial matters.

<sup>5</sup> For Vietnam “*revocation*” is equivalent to “*termination*”.

<sup>7</sup> Genuine use implies real use for the purpose of trading in the goods or services in question so as to generate goodwill. In general, this implies actual sales and there must have been some sales of the goods or providing of the services during the relevant period of time. Use in advertising may amount to genuine use. However, mere preparatory steps are not to be regarded as genuine use of a mark. Genuine use is opposed to token or artificial use designed solely to maintain the trade mark on the register.

**Article 6**  
*Geographical Indications*

**Article 6.1 - Scope of application**

1. This Article applies to the recognition and protection of geographical indications for wines, spirits, agricultural products and foodstuffs which are originating in the territories of the Parties.
2. Geographical indications of a Party to be protected by the other Party, shall only be subject to this Article if they are protected as geographical indications under the system as referred to in Article 6.2 in the territory of the Party of origin.

**Article 6.2 - System of registration and protection of Geographical Indications**

1. Each Party shall maintain its system for the registration and protection of geographical indications, which shall contain at least the following elements:
  - (a) a register listing geographical indications protected in the territory of that Party;
  - (b) an administrative process verifying that geographical indications to be entered, or remained, on the register referred to in subparagraph 1(a) identify a good as originating in a territory, region or locality of a Party, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
  - (c) an objection procedure that allows the legitimate interests of any natural or legal person to be taken into account;
  - (d) procedures for rectification and termination of entries on the register referred to in subparagraph 1(a), that take into account the legitimate interests of third parties and the right holders of the registered geographical indications in question.<sup>8</sup>
2. Parties may, but shall not be obliged to, provide in their domestic legislation more extensive protection than is required by this Agreement, provided that such protection does not contravene the protection provided under this Agreement.

**Article 6.3 - Established geographical indications**

1. Having completed an objection procedure and having examined the geographical indications of the European Union listed in {Annex GI – I, Part A}, Vietnam recognises that they are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement that have been registered by the European Union under the system referred to in Article 6.2. Vietnam undertakes to protect those

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<sup>8</sup> Without prejudice to the legislation on the system of registration and protection of geographical indications, each Party shall provide for legal means for the invalidation of the registration of geographical indications.

geographical indications according to the level of protection laid down in this Agreement.

2. Having completed an objection procedure and having examined the geographical indications of Vietnam listed in {Annex GI – I, Part B}, the European Union recognises that they are geographical indications within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement that have been registered by Vietnam under the system referred to in Article 6.2. The European Union undertakes to protect those geographical indications according to the level of protection laid down in this Agreement.

#### **Article 6.4 - Amendment of List of geographical indications**

1. The Parties agree on the possibility of amending the List of geographical indications to be protected in {Annex GI – I} in accordance with the procedure set out in paragraph 3.a of Article 6.11 and in line with paragraph 1 {Amendment} of Article X.6 of the Chapter on Institutional, General and Final provisions, for instance:
  - (a) by removing geographical indications which have ceased to be protected in the country of origin; or
  - (b) by adding geographical indications, after having completed the objection procedure and after having examined the geographical indications as referred to in Article 6.3(1) and 6.3(2), to the satisfaction of both Parties.
2. A geographical indication for wines, spirits, agricultural products or foodstuffs shall not in principle be added to {Annex GI - I}, if it is a name that on the date of signing of this Agreement is listed in the relevant register of the Parties with a status of "Registered".

#### **Article 6.5 – Protection of geographical indications**

1. Each Party shall provide the legal means for interested parties to prevent:
  - (a) the use of a geographical indication of the other Party listed in {Annex GI – I} for any product that falls within the product class specified in {Annex GI – I} for that geographical indication and that either:
    - i. does not originate in the country of origin specified in {Annex GI – I} for that geographical indication; or
    - ii. does originate in the country of origin specified in {Annex GI – I} for that geographical indication but was not produced or manufactured in accordance with the laws and regulations of the other Party that would apply if the product was for consumption in the other Party;
  - (b) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin or nature of the good; and,

- (c) any other use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention (1967).

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

2. Without prejudice to Article 23 of the Agreement on the TRIPS Agreement, the Parties shall mutually decide the practical conditions of use under which the homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled. A homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned.
3. Where a Party, in the context of negotiations with a third party, proposes to protect a geographical indication of the third party which is homonymous with a geographical indication of the other Party protected under this Article, the latter shall be informed and be given an opportunity to comment before the third party's geographical indication becomes protected.
4. Nothing in this Article shall oblige a Party to protect a geographical indication of the other Party which is not or ceases to be protected in its country of origin. Each Party shall notify the other Party if a geographical indication ceases to be protected in the country of origin. Such notification shall take place in accordance with procedures laid down in Article 6.11(3).
5. A Party shall not be required to protect as a geographical indication a name that is likely to mislead the consumer as to the true origin of the product in case it conflicts with the name of a plant variety or an animal breed.

#### **Article 6.5a - Exceptions**

1. Notwithstanding Article 6.5, the protection of the geographical indications listed in Part A of {Annex GI – I} and identified by one asterisk {note: "Asiago", "Fontina" and "Gorgonzola"} shall not prevent the use in the territory of Viet Nam of any of these indications by any persons, including their successors, who made actual commercial use in good faith of those indications with regard to products in the class of "cheeses" prior to 1 January 2017.
2. Notwithstanding Article 6.5, the protection of the geographical indication listed in Part A of {Annex GI – I} and identified by two asterisks {note: "Feta"} shall not prevent the use in the territory of Viet Nam of this indication by any persons, including their successors, who made actual commercial use in good faith of the indication with regard to products in the class of "cheeses" made from sheep's milk or made from sheep and goat's milk, prior to 1 January 2017.
3. Notwithstanding Article 6.5, a transitional period of 10 years from the entry into force of this Article during which the use of the geographical indication, or its translation, transliteration or transcription, listed in Part A of {Annex GI – I} and identified by three asterisks {note: "Champagne"} shall not be prevented, shall apply to any persons,

including their successors, who made actual commercial use in good faith of this indication with regard to products in the class of “wines”.

4. A Party may provide that any request made under this Article 6 in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Party or after the date of registration of the trademark in that Party provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Party, provided that the geographical indication is not used or registered in bad faith.
5. The provisions of Article 6 shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

#### **Article 6.6 - Right of use of geographical indications**

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

#### **Article 6.7 - Relationship with trademarks**

1. 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, in a Party before the applicable date set out in paragraph 2, measures adopted to implement this Article 6 in that Party shall not prejudice eligibility for or the validity of the trademark, or the right to use the trademark, on the basis that the trademark is identical with, or similar to a geographical indication.
2. For the purposes of paragraph 1, the applicable date is:
  - (a) the date of entry into force of this Article/Agreement regarding geographical indications referred to in Article 6.3; or,
  - (b) the date on which a complete application by a Party for protection of a geographical indication as referred to in Article 6.4 is received by the competent authority of the other Party.
3. Such trademark may continue to be protected, used and renewed notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the legislation on trademarks of the Parties.

#### **Article 6.8 - Enforcement of protection**

1. Each Party shall provide for enforcement by appropriate administrative action, to the extent provided for by its domestic law, to prohibit a person from manufacturing, preparing, packaging, labelling, selling or importing or advertising a food commodity in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its origin.

2. Each Party shall at least enforce the protection provided for in Articles 6.5. and 6.7 at the request of an interested party.

#### **Article 6.9 - General rules**

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

Any matter arising from product specifications of registered products shall be dealt with in the Working Group on Intellectual Property Rights, including Geographical Indications established in Article 6.11.

#### **Article 6.10 - Co-operation and transparency**

1. The Parties shall, either directly or through the {Joint Committee} established pursuant to Article 6.11, maintain contact on all matters relating to the implementation and the functioning of this Article. In particular, a Party may request from the other Party information relating to product specifications and their amendment and relevant contact points for control or management.
2. Each Party may make publicly available the specifications or a summary thereof and relevant contact points for control or management corresponding to geographical indications of the other Party protected pursuant to this Article.

#### **Article 6.11 – Working Group on Intellectual Property Rights, including Geographical Indications**

1. Both Parties agree to set up a Working Group on Intellectual Property Rights, including Geographical Indications, consisting of representatives of the European Union and Vietnam with the purpose of monitoring the implementation of this Article and of intensifying their co-operation and dialogue on geographical indications.
2. The Working Group on Intellectual Property Rights, including Geographical Indications adopts its decisions by consensus. It shall determine its own rules of procedure. It shall meet at the request of either of the Parties, alternatively in the European Union and in Vietnam, at a time and a place and in a manner (which may include by videoconference) mutually determined by the Parties, but no later than 90 days after the request.
3. The Working Group on Intellectual Property Rights, including Geographical Indications shall also see to the proper functioning of this Chapter and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:
  - (a) preparing a recommendation for the Parties to amend {Annex GI I} as regards geographical indications in accordance with Article 6.4.
  - (b) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications;

- (c) exchanging information on geographical indications for the purpose of considering their protection in accordance with this Article.

{ANNEX GI – I}

**Part A**

**Geographical indications of the European Union as referred to in Article 6**

{GI N°}* N°	Designation Name	Product Class	Product
<i>Country of origin: Austria</i>			
1	Steirisches Kürbiskernöl	Oils and animal fats	Pumpkin seed oil
2	Tiroler Speck	Fresh, frozen and processed meats	Bacon
3	Inländerrum	Spirit	Spirit
4	Jägertee/Jagertee/Jagatee	Spirit	Spirit
<i>Country of origin: Cyprus</i>			
5	Ζιβανία/Τζιβανία/Ζιβάνα/Zivania	Spirit	Spirit
6	Κουμανδάρια /Commandaria	Wine	Wine
<i>Country of origin: Czech Republic</i>			
9	České pivo	Beer	Beer
10	Českobudějovické pivo	Beer	Beer
11	Žatecký chmel	Hops	Hops
<i>Country of origin: Germany</i>			
12	Bayerisches Bier	Beer	Beer
13	Lübecker Marzipan	Confectionery and baked products	Marzipan
14	Nürnberger Bratwürste ; Nürnberger Rostbratwürste	Fresh, frozen and processed meats	Sausage
15	Münchener Bier	Beer	Beer
16	Schwarzwälder Schinken	Fresh, frozen and processed meats	Ham
<i>Country of origin: Germany, Austria, Belgium (German speaking Community)</i>			

{GI N°}* N°	Designation Name	Product Class	Product
17	Korn/Kornbrand	Spirit	Spirit
<i>Country of origin: Germany</i>			
18	Franken	Wine	Wine
19	Mittelrhein	Wine	Wine
20	Mosel	Wine	Wine
21	Rheingau	Wine	Wine
22	Rheinhessen	Wine	Wine
<i>Country of origin: Denmark</i>			
23	Danablu	Cheese	Cheese
<i>Country of origin: Spain</i>			
24	Antequera	Oils and animal fats	Olive oil
25	Azafrán de la Mancha	Spices	Saffron
26	Baena	Oils and animal fats	Olive oil
27	Cítricos Valencianos ; Cítricos Valencians <sup>9</sup>	Fresh and processed fruits and nuts	Oranges, mandarins and lemons
28	Jamón de Huelva	Dry-cured meats	Ham
29	Jamón de Teruel	Dry-cured meats	Ham
30	Jijona	Confectionery and baked products	Nougat
31	Priego de Córdoba	Oils and animal fats	Olive oil
32	Queso Manchego	Cheese	Cheese
33	Sierra de Segura	Oils and animal fats	Olive oil
34	Sierra Mágina	Oils and animal fats	Olive oil
35	Turrón de Alicante	Confectionery and baked products	Nougat

<sup>9</sup> Varietal names containing or consisting of ‘Valencia’ may continue to be used on similar product, provided the consumer is not misled on the nature of such term or the precise origin of product.

{GI N°}* N°	Designation Name	Product Class	Product
36	Brandy de Jerez	Spirit	Spirit
37	Pacharán navarro	Spirit	Spirit
38	Alicante	Wine	Wine
39	Bierzo	Wine	Wine
40	Cataluña	Wine	Wine
41	Cava	Wine	Wine
42	Empordà	Wine	Wine
43	Jerez-Xérès-Sherry	Wine	Wine
44	Jumilla	Wine	Wine
45	La Mancha	Wine	Wine
46	Málaga	Wine	Wine
47	Manzanilla-Sanlúcar de Barrameda	Wine	Wine
48	Navarra	Wine	Wine
49	Penedès	Wine	Wine
50	Priorat	Wine	Wine
51	Rías Baixas	Wine	Wine
52	Ribera del Duero	Wine	Wine
53	Rioja	Wine	Wine
54	Rueda	Wine	Wine
55	Somontano	Wine	Wine
56	Toro	Wine	Wine
57	Valdepeñas	Wine	Wine
58	Valencia	Wine	Wine
	<i>Country of origin: Finland</i>		

{GI N°}* N°	Designation Name	Product Class	Product
59	Suomalainen Vodka/Finsk Vodka/Vodka of Finland	Spirit	Spirit
	<i>Country of origin: France</i>		
60	Brie <sup>10</sup> de Meaux	Cheese	Cheese
61	Camembert <sup>11</sup> de Normandie	Cheese	Cheese
62	Canard à foie gras du Sud-Ouest (Chalosse, Gascogne, Gers, Landes, Périgord, Quercy)	Fresh, frozen and processed meats	Processed meat product of duck
63	Comté	Cheese	Cheese
64	Emmental <sup>12</sup> de Savoie	Cheese	Cheese
65	Jambon de Bayonne	Dry-cured meats	Ham
66	Pruneaux d'Agen ; Pruneaux d'Agen mi-cuits	Fresh and processed fruits and nuts	Prunes
67	Reblochon ; Reblochon de Savoie	Cheese	Cheese
68	Roquefort	Cheese	Cheese
69	Armagnac	Spirit	Spirit
70	Calvados	Spirit	Spirit
71	Cognac ; Eau-de-vie de Cognac ; Eau-de-vie des Charentes	Spirit	Spirit
72	Alsace/Vin d'Alsace	Wine	Wine
73	Anjou	Wine	Wine
74	Beaujolais	Wine	Wine
75	Bordeaux	Wine	Wine
76	Bourgogne	Wine	Wine

<sup>10</sup> The protection of the term "brie" is not sought.

<sup>11</sup> The protection of the term "camembert" is not sought.

<sup>12</sup> The protection of the term "emmental" is not sought.

{GI N°}* N°	Designation Name	Product Class	Product
77	Chablis	Wine	Wine
78	Champagne***	Wine	Wine
79	Châteauneuf-du-Pape	Wine	Wine
80	Coteaux du Languedoc / Languedoc	Wine	Wine
81	Côtes de Provence	Wine	Wine
82	Côtes du Rhône	Wine	Wine
83	Côtes du Roussillon	Wine	Wine
84	Graves	Wine	Wine
85	Bergerac	Wine	Wine
86	Haut-Médoc	Wine	Wine
87	Margaux	Wine	Wine
88	Médoc	Wine	Wine
89	Pomerol	Wine	Wine
90	Pays d'Oc	Wine	Wine
91	Saint-Emilion	Wine	Wine
92	Sauternes	Wine	Wine
93	Touraine	Wine	Wine
94	Ventoux	Wine	Wine
95	Val de Loire	Wine	Wine
	<i>Country of origin: Greece</i>		
96	Ελιά Καλαμάτας <sup>13</sup> ( <i>transcription into Latin alphabet: Elia Kalamatas</i> )	Table and processed olives	Table olive
97	Κασέρι ( <i>transcription into Latin</i>	Cheese	Cheese

<sup>13</sup> The varietal name 'Kalamata' may continue to be used on similar product, provided that the consumer is not misled on the nature of such term or the precise origin of product.

{GI N°}* N°	Designation Name	Product Class	Product
	<i>alphabet: Kasseri)</i>		
98	Φέτα** ( <i>transcription into Latin alphabet: Feta</i> )	Cheese	Cheese
99	Καλαμάτα ( <i>transcription into Latin alphabet: Kalamata</i> )	Oils and animal fats	Olive oil
100	Μαστίχα Χίου ( <i>transcription into Latin alphabet: Masticha Chiou</i> )	Natural gums and resins	Natural gum and chewing gum
101	Σητεία Λασιθίου Κρήτης ( <i>transcription into Latin alphabet: Sitia Lasithiou Kritis</i> )	Oils and animal fats	Olive oil
	<i>Country of origin: Greece, Cyprus</i>		
102	Ούζο ( <i>transcription into Latin alphabet: Ouzo</i> )	Spirit	Spirit
	<i>Country of origin: Greece</i>		
103	Νεμέα ( <i>transcription into Latin Alphabet: Nemea</i> )	Wine	Wine
104	Ρετσίνα Αττικής ( <i>transcription into Latin alphabet: Retsina Attikis</i> )	Wine	Wine
105	Πελοποννησιακός ( <i>transcription into Latin alphabet: Peloponnese</i> )	Wine	Wine
106	Σάμος ( <i>transcription into Latin Alphabet: Samos</i> )	Wine	Wine
	<i>Country of origin: Croatia</i>		
107	Dingač	Wine	Wine
	<i>Country of origin: Hungary</i>		
108	Pálinka	Spirit	Spirit
109	Törkölypálinka	Spirit	Spirit
110	Tokaj/Tokaji	Wine	Wine
	<i>Country of origin: Ireland</i>		

{GI N°}* N°	Designation Name	Product Class	Product
111	Irish Cream	Spirit	Spirit
112	Irish Whiskey/Uisce Beatha Eireannach/Irish Whisky	Spirit	Spirit
<i>Country of origin: Italy</i>			
113	Aceto Balsamico di Modena	Vinegar	Vinegar
114	Asiago *	Cheese	Cheese
115	Bresaola della Valtellina	Fresh, frozen and processed meats	Dried salted beef
116	Fontina *	Cheese	Cheese
117	Gorgonzola *	Cheese	Cheese
118	Grana Padano	Cheese	Cheese
119	Kiwi Latina	Fresh and processed fruits and nuts	Kiwi
120	Mela Alto Adige ; Südtiroler Apfel	Fresh and processed fruits and nuts	Apple
121	Mortadella Bologna	Fresh, frozen and processed meats	Mortadella
122	Mozzarella <sup>14</sup> di Bufala Campana	Cheese	Cheese
123	Parmigiano Reggiano <sup>15</sup>	Cheese	Cheese
124	Pecorino <sup>16</sup> Romano	Cheese	Cheese
125	Prosciutto di Parma	Dry-cured meats	Ham
126	Prosciutto di S. Daniele	Dry-cured meats	Ham
127	Prosciutto Toscano	Dry-cured meats	Ham

<sup>14</sup> The protection of the term "mozzarella" is not sought.

<sup>15</sup> The provisions of Article 6 shall in no way prejudice the right of any person to use, or to register in Viet Nam a trade mark containing or consisting of the term 'parmesan'. This does not apply in respect of any use that would mislead the public as to the geographical origin of the good.

<sup>16</sup> The protection of the term "pecorino" is not sought.

{GI N°}* 	Designation Name 	Product Class 	Product 
128	Provolone <sup>17</sup> Valpadana	Cheese	Cheese
129	Taleggio	Cheese	Cheese
130	Grappa	Spirit	Spirit
131	Acqui / Brachetto d'Acqui	Wine	Wine
132	Asti	Wine	Wine
133	Barbaresco	Wine	Wine
134	Bardolino Superiore	Wine	Wine
135	Barolo	Wine	Wine
136	Brunello di Montalcino	Wine	Wine
137	Chianti	Wine	Wine
138	Conegliano Valdobbiadene - Prosecco	Wine	Wine
139	Prosecco	Wine	Wine
140	Dolcetto d'Alba	Wine	Wine
141	Franciacorta	Wine	Wine
142	Lambrusco di Sorbara	Wine	Wine
143	Lambrusco Grasparossa di Castelvetro	Wine	Wine
144	Marsala	Wine	Wine
145	Montepulciano d'Abruzzo	Wine	Wine
146	Sicilia	Wine	Wine
147	Soave	Wine	Wine
148	Toscana/Toscano	Wine	Wine
149	Veneto	Wine	Wine

<sup>17</sup> The protection of the term "provolone" is not sought.

{GI N°}* N°	Designation Name	Product Class	Product
150	Vino Nobile di Montepulciano	Wine	Wine
	<i>Country of origin: Lithuania</i>		
151	Originali lietuviška degtinė	Spirit	Spirit
	<i>Country of origin: The Netherlands</i>		
152	Gouda <sup>18</sup> Holland	Cheese	Cheese
153	Genièvre/Jenever/Genever	Spirit	Spirit
	<i>Country of origin: Poland</i>		
154	Polish Cherry	Spirit	Spirit
155	Polska Wódka/Polish vodka	Spirit	Spirit
156	Wódka ziołowa z Niziny Północnopodlaskiej aromatyzowana ekstraktem z trawy żubrowej / Herbal vodka from the North Podlasie Lowland aromatised with an extract of bison grass	Spirit	Spirit
	<i>Country of origin: Portugal</i>		
157	Pêra Rocha do Oeste	Fruit	Pear
158	Queijo S. Jorge	Cheese	Cheese
159	Alentejo	Wine	Wine
160	Dão	Wine	Wine
161	Douro	Wine	Wine
162	Madeira	Wine	Wine
163	Porto/Port/Oporto	Wine	Wine
164	Vinho Verde	Wine	Wine
	<i>Country of origin: Romania</i>		

<sup>18</sup> The protection of the term "gouda" is not sought.

{GI N°}* 	Designation Name 	Product Class 	Product 
165	Cotnari	Wine	Wine
166	Dealu Mare	Wine	Wine
167	Murfatlar	Wine	Wine
<i>Country of origin: Sweden</i>			
168	Svensk Vodka/Swedish Vodka	Spirit	Spirit
<i>Country of origin: Slovakia</i>			
169	Vinohradnícka oblasť Tokaj	Wine	Wine
<i>Country of origin: United Kingdom</i>			
170	Scottish Farmed Salmon	Fish	Salmon
171	Scotch Whisky	Spirit	Spirit

*Part B*

*Geographical indications of Vietnam as referred to in Article 6*

{GI N°}* No	Designation Name	Product Class	Product description
1	Phú Quốc	Fresh fish, molluscs, and crustaceans and products derived there from	Extract of fish
2	Mộc Châu	Spices	Tea
3	Buôn Ma Thuột	Spices	Coffee beans
4	Đoan Hùng	Fresh and processed fruits and nuts	Pomelo
5	Bình Thuận	Fresh and processed fruits and nuts	Dragon fruit
6	Lạng Sơn	Spices	Star aniseed
7	Thanh Hà	Fresh and processed fruits and nuts	Lychee
8	Phan Thiết	Fresh fish, molluscs, and crustaceans and products derived there from	Extract of fish
9	Hải Hậu	Cereals	Rice
10	Vinh	Fresh and processed fruits and nuts	Orange
11	Tân Cương	Spices	Tea
12	Hồng Dân	Cereals	Rice
13	Lục Ngạn	Fresh and processed fruits and nuts	Lychee
14	Hòa Lộc	Fresh and processed fruits and nuts	Mango
15	Đại Hoàng	Fresh and processed fruits and nuts	Banana
16	Văn Yên	Spices	Cinnamon bark
17	Hậu Lộc	Fresh fish, molluscs, and crustaceans and products derived there from	Shrimp paste
18	Bắc Kạn	Fresh and processed fruits and nuts	Seedless persimmon
19	Phúc Trạch	Fresh and processed fruits and nuts	Pomelo
20	Bảy Núi	Cereals	Rice
21	Trùng Khánh	Nuts	Chestnut

{GI N°}* 	Designation Name	Product Class	Product description
22	Bà Đen	Fresh and processed fruits and nuts	Custard apple
23	Nga Sơn		Dried sedge
24	Trà My	Spices	Cinnamon bark
25	Ninh Thuận	Fresh and processed fruits and nuts	Grape
26	Tân Triều	Fresh and processed fruits and nuts	Pomelo
27	Bảo Lâm	Fresh and processed fruits and nuts	Seedless persimmon
28	Bắc Kạn	Fresh and processed fruits and nuts	Mandarin
29	Yên Châu	Fresh and processed fruits and nuts	Mango
30	Mèo Vạc	Honey	Peppermint honey
31	Bình Minh	Fresh and processed fruits and nuts	Pomelo
32	Hạ Long	Fresh fish, molluscs, and crustaceans and products derived there from	Grilled chopped cuttlefish
33	Bạc Liêu	Spices	Marine salt
34	Luận Văn	Fresh and processed fruits and nuts	Pomelo
35	Yên Tử	Flowers and ornamental plants	Yellow Apricot Blossom
36	Quảng Ninh	Fresh fish, molluscs, and crustaceans and products derived there from	Clam
37	Điện Biên	Cereals	Rice
38	Vĩnh Kim	Fresh and processed fruits and nuts	Star apple
39	Cao Phong	Fresh and processed fruits and nuts	Orange

*{ANNEX GI – II}*

**Product classes**

1. “fresh, frozen and processed meats” means products falling under Chapter 2 and heading 16.01 or 16.02 of the Harmonized System.
2. “dry-cured meats” means dry cured meat products falling under Chapter 2 and heading 16.01 or 16.02 of the Harmonized System.
3. “hops” means products falling under heading 12.10 of the Harmonized System;
4. “fresh, frozen and processed fish products” means products falling under Chapter 3 and heading 16.03, 16.04 or 16.05 of the Harmonized System;
5. “butter” means products falling under heading 04.05 of the Harmonized System;
6. “cheeses” means products falling under heading 04.06 of the Harmonized System;
7. “fresh and processed vegetable products” means products containing vegetables falling under Chapter 7 and Chapter 20 of the Harmonized System;
8. “fresh and processed fruits and nuts” means products containing fruits falling under Chapter 8 and 20 of the Harmonized System;
9. “spices” means products falling under Chapter 9 of the Harmonized System;
10. “cereals” means products falling under Chapter 10 of the Harmonized System;
11. “products of the milling industry” means products falling under Chapter 11 of the Harmonized System;
12. “oilseeds” means products falling under Chapter 12 of the Harmonized System;
13. “beverages from plant extracts” means products falling under heading 13.02 of the Harmonized System;
14. “oils and animal fats” means products falling under Chapter 15 of the Harmonized System;
15. “confectionery and baked products” means products falling under heading 17.04, 18.06, 19.04, or 19.05 of the Harmonized System;
16. “pasta” means products falling under heading 19.02 of the Harmonized System;
17. “table and processed olives” means products falling under heading 20.01 or 20.05 of the Harmonized System;
18. “mustard paste” means products falling under sub-heading 2103.30 of the Harmonized System;
19. “beer” means products falling under heading 22.03 of the Harmonized System;
20. “vinegar” means products falling under heading 22.09 of the Harmonized System;
21. “essential oils” means products falling under heading 33.01 of the Harmonized System.

22. "spirits" mean products falling under heading 22.08 of the Harmonized System.
23. "wines" mean products falling under heading 22.04 of the Harmonized System.
24. "fresh fish, molluscs, and crustaceans and products derived there from" mean products falling under Chapter 03 of the Harmonized System.
25. "gums and natural resins" mean products falling under heading 13.01 of the Harmonized System.
26. "honey" means products falling under heading 04.09 of the Harmonized System.
27. "flowers and ornamental plants" mean products falling under Chapter 6 of the Harmonized System.

## **Article 7**

### **Industrial Designs**

#### **Article 7.1 - *International Agreements***

The Parties shall accede<sup>19</sup> to the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs (1999).

#### **Article 7.2 - *Protection of Registered Industrial Designs***

1. The Parties shall provide for the protection of independently created industrial designs<sup>20</sup> that are new or original<sup>21</sup>. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this article.<sup>22</sup>
2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and original:

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<sup>19</sup> Within the period of 2 years from the entry into force this Agreement

<sup>20</sup> The Parties agree that when the domestic law of a Party so provides, a design means the appearance of the whole product or a separable and/or inseparable part of product.

<sup>21</sup> The Parties agree that when the domestic law of a Party so provides, individual character of designs can also be required. This refers to designs that significantly differ from known designs or combinations of known designs' features. The Union considers designs to have individual character if the overall impression it produces on the informed users differs from the overall impression produced on such a user by any design which has been made available to the public.

<sup>22</sup> It is understood that designs are not excluded from protection simply on the basis that they constitute a part of an article or product, provided that they are visible, fulfil the criteria of this paragraph, and:

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

(a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter, and

(b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.

3. "Normal use" within the meaning of paragraph 2(a) shall mean use by the end user, excluding maintenance, servicing or repair work.

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

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

#### *Article 7.4 – Exceptions and exclusions*

The Parties may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected designs, and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

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

#### **Article 7.5 - Relationship to Copyright**

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

### **Article 8**

#### **Patents**

##### **Article 8.1 - International Agreements**

The Parties reaffirm their obligations under the Patent Co-operation Treaty and shall simplify and develop its patent registration procedures using the Patent Law Treaty, *inter alia*, as a reference point.

### **Article 8.2 – Patents and Public Health**

1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organisation. In interpreting and implementing the rights and obligations under this Chapter, the Parties are entitled to rely upon the Doha Declaration.

2. The Parties shall respect the Decision of the WTO General Council of 30 August 2003 on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health.

### **Article 8.3 - Administrative Authorisation**

1. Parties recognise that pharmaceutical products protected by a patent on their respective territory are generally subject to an administrative authorisation procedure before being put on their market, hereinafter referred to as the "marketing authorisation procedure".

Parties shall provide for an adequate and effective mechanism to compensate the patent owner for the reduction in the effective patent life resulting from unreasonable delays in the granting of first marketing authorisation in the respective territories<sup>23</sup>. Such compensation may be in the form of an extension of the duration of the rights conferred by patent protection, equal to the time by which the period mentioned in footnote 15 is exceeded. The maximum duration of this extension shall not exceed 2 years.

2. Alternatively to paragraph 1 of this Article, a Party may make available an extension, not exceeding five years<sup>24</sup> of the duration of the rights conferred by the patent protection to compensate the patent owner for the reduction in the effective patent life as a result of the marketing authorisation procedure. The duration of the extension shall take effect at the end of the lawful term of the patent for a period equal to the period which elapsed between the date on which the application for a patent was filed and the date of the first marketing authorization to place the product on the market in the party, reduced by a period of five years.

### **Article 9**

#### *Protection of undisclosed information and data*

1. In order to implement Article 39 of the TRIPS Agreement, and in the course of ensuring effective protection against unfair competition as provided in Article 10 bis of the Paris Convention (1967), each Party shall protect confidential information and data submitted **to government or governmental agencies in accordance with paragraphs [A] and [B] below.**

**[A]. If a Party requires, as a condition for approving the marketing of pharmaceutical or agrochemical products, the submission of undisclosed test or other data, the**

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<sup>23</sup> For the purposes of this section, an unreasonable delay at least shall include a delay in the first response to the applicant for marketing authorisation on application status of more than 24 months from filing date of application. Any delays that occur in the granting of a marketing authorisation due to periods attributable to the applicant or any period that is out of control of the marketing authorisation authority need not be included in the determination of such delay.

<sup>24</sup> This period can be extended for further six months in the case of medicinal products for which paediatric studies have been carried out, and the results of those studies are reflected in the product information.

origination of which involves a considerable effort, the Party shall protect such data against unfair commercial use. In addition, each Party shall protect such data against disclosure, except where necessary to protect the public.

[B]. Each Party shall provide that for data of a type referenced in paragraph [A] that are submitted to the Party after the date of entry into force of this Agreement, no other applicant for product approval may, without permission of the person that submitted them, rely on that data in support of an application for product approval during 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.

## **Article 11**

### *Plant Varieties*

The Parties shall protect plant varieties rights, in accordance with the International Convention for the Protection of New Varieties of Plants (UPOV) as lastly revised in Geneva on March 19, 1991, (the so-called "1991 UPOV ACT") including the exceptions to the breeder's right as referred to in Article 15 of the said Convention, and co-operate to promote and enforce these rights.

### *Section C*

## **Enforcement of Intellectual Property Rights**

### *Sub-section C.1*

#### **General Enforcement Provisions**

## **Article 12**

### *General Obligations*

1. The Parties reaffirm their commitments under the TRIPS Agreement and in particular of its Part III, and shall provide for the following complementary measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights.<sup>25</sup> Those measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

2. Those measures and remedies shall also be effective and proportionate and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

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<sup>25</sup> For the purposes of sub-section C.1 the notion of "intellectual property rights" should include at least the following rights: copyright; rights related to copyright; rights of the creator of the topographies of a semi conductor product; trade mark rights; design rights; patent rights; geographical indications; utility model rights; plant variety rights; trade names in so far as these are protected as intellectual property rights in the national law concerned.

**Article 13**  
*Entitled Applicants*

The Parties shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this section and in Part III of the TRIPS Agreement:

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

*Sub-Section 3.2*

**Civil Enforcement**

**Article 14**  
*Provisional Measures*

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

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

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

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

(b) to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. These measures may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto.

2. Where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed, the judicial authorities shall have the authority to adopt those provisional measures without the other party being heard.

3. The provisions of this Article are without prejudice to Article 50 of the TRIPS Agreement.

### **Article 15**

#### *Evidence*

Parties shall ensure that, on application by a party which has presented reasonably available evidence sufficient to support its claims, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the competent judicial authorities may order that such evidence be presented by the opposing party, subject to the protection of confidential information. For the purposes of this paragraph, Parties may provide that a reasonable sample of a substantial number of copies of a work or any other protected object be considered by the competent judicial authorities to constitute reasonable evidence.

In the case of an infringement committed on a commercial scale Parties shall take such measures as are necessary to enable the competent judicial authorities to order, where appropriate, on application by a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

### **Article 16**

#### *Right of Information*

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

‘Any other person’ in this paragraph may include a person who:

- (i) was found in possession of the infringing goods on a commercial scale;
- (ii) was found to be using the infringing services on a commercial scale;

(iii) was found to be providing on a commercial scale services used in infringing activities;  
or

(iv) was indicated by the person referred to in this subparagraph as being involved in the production, manufacture or distribution of the goods or the provision of the services.

2. The relevant information referred to in paragraph 1 may include information regarding any person involved on a commercial scale in the infringement or alleged infringement and regarding the means of production and distribution networks of the goods or services which infringe an intellectual property right.

## **Article 17**

### *Other Remedies*

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

- (a) the recall from the channels of commerce;<sup>26</sup>
- (b) the disposal outside the channels of commerce or;
- (c) the destruction

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

2. The Parties' judicial authorities shall have the authority to order that the remedies under this Article, at least for the destruction, including the removal from the channels of commerce for destruction, be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

## **Article 18**

### *Injunctions*

The Parties shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer and where appropriate, against a party whose services are being used by the infringer and over whom the relevant judicial authority exercises jurisdiction, an injunction aimed at prohibiting the continuation of the infringement.

## **Article 19**

### *Alternative Measures*

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<sup>26</sup> Parties will ensure that this provision applies to infringing goods found in the channels of commerce and that infringers should be ordered to at least recall the goods back from its customers (for example wholesalers, distributors, retailers).

The Parties may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 17 (Corrective measures) and/or Article 18 (Injunctions), the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in these two Articles if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

## **Article 20** *Damages*

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

In determining the amount of damages for infringement of intellectual property rights, a Party's judicial authorities shall have the authority:

(a) to take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer<sup>27</sup> and, in appropriate cases, elements other than economic factors<sup>28</sup>

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

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

## **Article 21** *Legal Costs*

Each Party shall provide that its judicial authorities, as a general rule and, where appropriate, have the authority to order that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under that Party's domestic law.

## **Article 22** *Publication of Judicial Decisions*

Judicial authorities shall have the authority to order, pursuant to its domestic law and policies, the publishing or making available to the public, at the expense of the **infringer**,

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<sup>27</sup> The calculation of unfair profits made by the infringer shall not be duplicated in calculating lost profits.

<sup>28</sup> Non-economic factors shall include moral prejudice caused by infringement of moral rights of inventors/authors.

appropriate information as decided by the judicial authorities concerning the final judicial decision.

### **Article 23**

#### *Presumption of Authorship or Ownership*

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

#### *Sub-Section C.3*

### **Border Enforcement**

#### **Article 24**

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

In implementing border measures for the enforcement of intellectual property rights by customs covered by this article, the Parties shall ensure consistency with their obligations under the GATT and TRIPS agreements and, in particular, with Article V of GATT agreement, Article 41 and Section 4 of the Part III of TRIPS agreement.

#### **Article 25**

#### *Definitions*

For the purposes of Sub-section 3.2:

1. Goods infringing an intellectual property right” means goods, the importation or exportation of which, according to the law of the country where the goods are found, infringe an intellectual property right, consisting of counterfeit goods referred to in paragraph 2(a) and pirated copyright goods referred to in paragraph 2(b).

2. (a) "counterfeit goods" means:

(i) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and the importation or exportation of which thereby infringes the rights of the owner of the trademark in question under the law of the country where the goods are found

(ii) "counterfeit geographical indication goods", namely goods, including packaging, unlawfully bearing a geographical indication identical to the geographical indication validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a geographical indication, and the

importation or exportation of which thereby infringes the rights of the geographical indication in question under the law of the country where the goods are found

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

3. "Import goods" shall mean goods brought into the territory of a Party from a place outside that territory, while those goods remain under customs control.

4. "Export goods" shall mean goods which are to be taken from the territory of a Party to a place outside that territory, while those goods remain under customs control.

#### **Article 26**

##### *Scope of Border Measures*

1. Each Party shall adopt procedures with respect to import and export goods, under which right holders can record IPRs within the customs authorities, and such authorities shall carry out appropriate controls in order to identify goods suspected of infringing those recorded IPRs.
2. The customs authorities shall, in accordance with domestic procedures, suspend the release of the goods suspected of infringing IPRs recorded within the customs authorities.

#### **Article 27**

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

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

#### **Article 28**

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

1. Without prejudice to Article 2 section 2 (a) of the Chapter on Customs and Trade Facilitation, the Parties shall, where appropriate, arrange for exchange of information and cooperation between their customs authorities to enable effective border controls for intellectual property right enforcement, particularly in order to effectively implement article 69 of the TRIPS Agreement.

2. The Parties shall, where appropriate, arrange for exchange of information and best practices between their customs authorities with regard to customs enforcement of intellectual property rights.

3. Without prejudice to the general competence of the Trade Committee, the [Special Committee on Customs] referred to in Article [to complete] of this Agreement shall be responsible to ensure the proper functioning and implementation of this Article. The Special Committee will set the priorities and provide for the adequate procedures for cooperation between the competent authorities.

*Sub-Section C.4*

**Other Enforcement Provisions**

**Article 29**

*Codes of Conduct*

1. Parties shall encourage:
  - a) the development by trade or professional associations or organisations of codes of conduct aimed at contributing towards the enforcement of intellectual property rights.
  - b) the submission to the competent authorities of the Parties of draft codes of conduct and of any evaluations of the application of these codes of conduct.

**Article 30**

*Co-operation*

- \*1. The Parties agree to co-operate with a view to supporting implementation of the commitments and obligations undertaken under this chapter.
- \*2. Subject to the provisions of Article [X, horizontal art. on assistance/co-operation issues] of this Agreement, areas of co-operation include, but are not limited to, the following activities:
  - a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement; exchange of experiences in the European Union and Vietnam on legislative progress;
  - b) exchange of experiences and information in the European Union and Vietnam on enforcement of intellectual property rights;
  - c) exchange of experiences in the European Union and Vietnam on central and sub-central enforcement by customs, police, administrative and judiciary bodies; co-ordination to prevent exports of counterfeit goods, including with other countries;
  - d) capacity-building; exchange and training of personnel;
  - e) promotion and dissemination of information on intellectual property rights in, *inter alia*, business circles, socio-professional, social organisations; public awareness of consumers and right holders;
  - f) enhancement of inter-governmental co-operation, for example between intellectual property offices;
  - g) actively promoting awareness and education of the general public for intellectual property rights policies: formulate effective strategies to identify key audiences and create communication programmes to increase consumer and media awareness on the impact of

intellectual property violations, including the risk to health and safety and the connection to organised crime.

3. Without prejudice and as a complement to paragraphs 1 and 2, the Parties agree to hold effective dialogues as necessary on intellectual property issues ("Working Group on IPR (including GIs)"), to address topics relevant to the protection and enforcement of intellectual property rights covered by this chapter, and also any other relevant issue.

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## **Article XX**

### *Liability of Intermediary Service Providers*

(1) Subject to the other paragraphs of this Article, each Party shall provide limitations or exemptions in its domestic legislation regarding the liability of intermediary service providers for infringements of copyright or related rights that take place on or through tele-communication networks<sup>29</sup> in relation to the provision or use of their services.

(2) The limitations or exemptions referred to in the previous paragraph shall cover at least the following activities:

(a) the transmission in a tele-communication network of information provided by a user of the service, or the provision of access to a tele-communication network ("*mere conduit*") ;

(b) the transmission in a tele-communication network of information provided by a user of the service concerning the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other users of the service upon their request ("caching"), on condition that:

- (i) the provider does not modify the information other than for technical reasons;
- (ii) the provider complies with conditions on access to the information;
- (iii) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
- (iv) the provider does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain data on the use of the information;
- (v) the provider removes or disables access to the information it has stored upon obtaining knowledge<sup>30</sup> of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled

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<sup>29</sup> This also includes the Internet.

<sup>30</sup> Nothing in this Chapter precludes either of the Party to define in its national law conditions for determining how the knowledge about illegal information being hosted is obtained.

(c) the storage of information provided by a user of the service at the request of a user of the service ("*hosting*") on condition that:

(i) the provider does not have the knowledge of illegal information and

(ii) upon obtaining such knowledge<sup>31</sup> the provider acts expeditiously to remove or to disable access to information.

(3 bis) Each Party may also prescribe in its domestic law circumstances under which intermediary service providers do not qualify for the limitations or exceptions in paragraph 2.

(4) Eligibility conditions for service providers to qualify for the limitations or exceptions in paragraph 2 may not include the service provider monitoring its service, or seeking facts indicating infringing activity.

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

(6) This Article shall not affect the possibility of a court or administrative authority, in accordance with Parties' legal systems, of requiring the intermediary service provider to terminate or prevent an infringement.

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<sup>31</sup> Nothing in this Chapter precludes either of the Party to define in its national law conditions for determining how the knowledge about illegal information being hosted is obtained.