This document contains the consolidated text resulting from the 28th round of negotiations (3-7 July 2017) on Intellectual Property Rights in the Trade Part of the EU-Mercosur Association Agreement. This is without prejudice to the final outcome of negotiations. Both sides reserve the right to make subsequent modifications to their proposals.

EU Mercosur negotiations

Chapter on Intellectual Property Rights

Draft consolidated text

Section 1 – General Provisions and Principles

[MCS: Article 1

General Provisions

1. [EU: The Parties shall give effect to the provisions of this Chapter consistently with their obligations under the international treaties dealing with intellectual property to which they are parties including TRIPS Agreement. ~~No Party shall be obliged to implement in its law more extensive protection than is required by that Agreement and this Chapter.~~]

   [EU: The Parties reaffirm the right and obligations under the WTO Agreement on Trade Related Aspect of Intellectual Property Rights, and any other multilateral agreement related to intellectual property and agreements administered under the auspices of the World Intellectual Organization to which the Parties are party.]

   [MCS: 1. The Parties shall give effect to the provisions of this Chapter consistently with their obligations under the TRIPS Agreement. No Party shall be obliged to implement in its law more extensive protection than is required by that Agreement and this Chapter.]

   2. The Parties shall be free to determine the appropriate method of implementing the provisions of this Chapter within their own legal system and practice, in a manner consistent with the objectives and principles of the TRIPS Agreement. [EU: THIS PARAGRAPH TO BE PLACED UNDER ART. 3]

Article 2

Objectives

1. The objectives of this Chapter are to:
   a) Facilitate access, production and commercialisation of innovative and creative products and foster trade and investment between the Parties contributing to a more sustainable, equitable and inclusive economy for the Parties;
   b) Achieve an adequate and effective level of protection and enforcement of intellectual property rights that provides incentives and rewards to innovation while contributing to the effective transfer and dissemination of technology and favouring social and economic welfare and the balance between the rights of the holders and the public interest;
   c) Foster measures that will help the Parties to promote research and development, and access to knowledge.

Article 3

Nature and Scope of Obligations

1. The Parties shall ensure an adequate and effective implementation of this Chapter and the international instruments dealing with intellectual property to which they are parties including the Agreement on Trade-related Aspects of Intellectual Property (hereinafter referred to as "TRIPS Agreement") contained in Annex IC to the WTO Agreement. The Parties reaffirm their rights and obligations under these Agreements.
2. For the purposes of this Agreement, intellectual property rights embody:
   a) Copyright and related rights;
   b) Trademarks;
   c) Industrial designs;
   d) Geographical indications;
   e) Patent rights;
   f) Protection of undisclosed information;
   g) Layout-designs (topographies) of integrated circuits.
   h) [EU: Plants Varieties]

3. Protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967).
4. No provisions of this Chapter will prevent a Party to adopt any measure necessary 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, [MCS: including but not limited to certain practices or conditions related to licensing].
5. This Chapter does not create any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and enforcement of law in general.

[EU: 6. The Parties shall be free to determine the appropriate method of implementing the provisions of this Chapter within their own legal system and practice, in a manner consistent with the objectives and principles of the TRIPS Agreement.]

7. No Party shall be obliged to implement in its law more extensive protection than is required by this Chapter. This Chapter does not preclude the Parties from applying provisions of domestic law introducing higher standards for the protection and enforcement of intellectual property, provided that they do not violate the provisions of this Chapter.

Article 4

Principles

1. Each Party[1] recognises that the protection and enforcement of intellectual property rights can and must be done in a manner conducive to economic, social and scientific progress. Each Party shall ensure the enforcement of intellectual property rights within its own legal system and practice.
2. In formulating or amending its laws and regulations, each Party may establish exceptions and flexibilities permitted by the multilateral instruments to which the Parties are Signatories.
3. [MCS: The provisions in this Chapter shall be implemented in such a way as to promote the attainment of the United Nations Sustainable Development Goals (SDGs).] [EU: The

[1] For further clarification of legal teams in order to make sure that each country maintains its own legal system.

Parties support the achieving of the United Nations Sustainable Development Goals (SDGs).]

4. The Parties [EU: recognise the importance of] [MCS: shall take due account of the need to preserve] a robust, rich, and accessible public domain, [MCS: and shall cooperate with each other in identifying subject matters that have fallen into the public domain.[2]]. [EU: ~~In particular, the Parties commit to promote the use of unprotected knowledge and information and to prevent practices that may restrict their diffusion.~~]
5. The Parties recognise the importance of the declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 (hereinafter referred to as the "Doha Declaration") by the Ministerial Conference of the WTO. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with the Doha Declaration. [EU: ~~including the grounds for issuing a compulsory licence set out by the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967).~~]
6. The Parties shall implement Article 31bis of the TRIPS Agreement, as well as the Annex and Appendix to the Annex related thereto, which entered into force on January 23, 2017.
7. The Parties recognise that technology transfer contributes to the strengthening of national capabilities with the aim to establish a sound and viable technological base and innovative capacity.
8. The Parties recognise the importance of the World Health Assembly Resolution WHA 60.28 and the Pandemic Influenza Preparedness (PIP) Framework adopted on the Sixty-fourth World Health Assembly. [EU: ~~and commit to support actively its implementation.~~]
9. The Parties recognise the importance of promoting the implementation of Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, adopted by the World Health Assembly on 24 of May 2008 (Resolution WHA 61.21 as amended by Resolution WHA 62.16), [EU: ~~as well as the recommendations of the Report of the WHO Consultative Expert Working Group on Research and Development: Financing and Coordination (CEWG).~~]
10. [EU: ~~The Parties also recognise the importance of implementing the recommendations made by the United Nations Secretary-General's High-Level Panel on Access to~~

[2] EU: suggests to put it under the Cooperation Article

~~medicines report released in September 2016 including, but not limited to, the requirement for the patent applicant to inform the relevant international non-proprietary names for the medical products it relates to.]~~

11. The Parties acknowledge the Development Agenda recommendations, adopted in 2007 by the General Assembly of the World Intellectual Property Organization (WIPO).
12. [EU: ~~The Parties also recognise the role of national health authorities, according to their national legal framework, on issues related to patents for pharmaceuticals and other health technologies.]~~
13. The Parties recognise the sovereign right of States over their natural resources and the access to their genetic resources in accordance with the Convention on Biological Diversity of 1992 (henceforth referred to as CBD). No provision in this Chapter shall prevent the Parties from adopting or maintaining measures to promote the conservation of biological diversity, the sustainable utilisation of its components and the fair and equitable benefit sharing arising from the utilisation of genetic resources, [MCS: in conformity with that Convention, Nagoya Protocol] [EU: ~~and the International Treaty on Plant Genetic Resources for Food and Agriculture (2001)]. [EU: Accordingly, the Parties recognise and reaffirm the rights and obligations under the CBD and support and encourage efforts to establish a mutually supportive relationship between that Convention and the TRIPS Agreement.]~~
14. [EU: The Parties recognise the impact of information and communication technologies on the usage of literary and artistic works, artistic performances, phonogram productions and broadcasts and, therefore, the need [MCS: ensure transparency as well as] to provide adequate protection of copyright and related rights in the digital environment.]
15. [EU: For the purposes of providing efficient administration of the intellectual property protection system, each Party [MCS: ~~take appropriate measures~~] [MCS: shall make best efforts] to enhance the efficiency of its administrative procedures concerning intellectual property.]
16. [EU: Where the acquisition of an intellectual property right is subject to the right being granted or registered, each Party [MCS: shall make best efforts to] ensure the procedures for granting or registration of the right are conducive to the granting or registration within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.]

17. [EU: The Parties shall take the necessary measures to enhance public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.]

[Placeholder: MERCOSUR may propose additional text on Principles]

[EU: Article X.4

National Treatment

EU alternative article on National Treatment

[EU: Each Party shall accord to the nationals of another Party treatment no less favourable than that it accords to its own nationals with regard to the protection[3] of intellectual property, subject to the exceptions already provided for in Article 3 and 5 of the TRIPS Agreement.]

National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to the nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection of intellectual property rights, subject to the exceptions provided in, respectively, the Paris Convention, the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886, as last revised at Paris on 24 July 1971 (hereinafter referred to as "Berne Convention"), the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 26 October 1961 (hereinafter referred to as "Rome Convention"), or the Treaty on Intellectual Property in Respect of Integrated Circuits, done at Washington, D.C., on May 26, 1989. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement.

[3] [EU: For the purposes of Articles xxx and xxx "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Title.]

2. A Party may avail itself of the exceptions permitted under paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other 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:
   (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.
3. Paragraph 1 and 2 do not apply to procedures provided in multilateral agreements concluded under the auspices of World Intellectual Property Organisation (hereinafter referred to as "WIPO") relating to the acquisition or maintenance of intellectual property rights.]

[MCS: Article 5

Protection of Biodiversity and Traditional knowledge

1. The Parties recognise the importance and value of biological diversity and its components and of the associated traditional knowledge, innovations and practices of indigenous and local communities.[4] The Parties furthermore reaffirm their sovereign rights over their natural resources and recognise their rights and obligations as established by the Convention of Biological Diversity of 1992 (henceforth referred to as CBD).
2. The Parties reaffirm Article 8 (j) of the CBD and recognise the past, present and future contribution of indigenous and local communities to the conservation and sustainable use of biological diversity and all of its components and, in general, the contribution of the traditional knowledge[5] of their indigenous and local communities to the culture and to the economic and social development of nations.
3. In accordance with Article 15 paragraph 7 of the CBD, the Parties reaffirm their obligation to take measures with the aim of sharing in a fair and equitable way the benefits arising from the utilisation of genetic resources. The Parties also recognise that benefit-sharing obligations shall include commercialisation of products originating from

[4] Where applicable, "indigenous and local communities" include descendants of enslaved Africans.
[5] Without prejudice to the implementation of this Chapter, the Parties acknowledge that the concept of traditional knowledge is discussed in relevant international fora.

licensed intellectual property rights arising from the use of genetic resources or associated traditional knowledge and shall be on mutually agreed terms.

4. MERCOSUR and the EU shall collaborate in further clarifying the issue and concept of misappropriation of genetic resources and associated traditional knowledge, innovation and practices so as to find, as appropriate and in accordance with the provisions of international and domestic law, measures to address this issue.
5. The Parties shall cooperate, subject to domestic legislation and international law, to ensure that intellectual property rights are supportive of, and do not run counter to, their rights and obligations under the CBD, in so far as genetic resources and associated traditional knowledge of the indigenous and local communities located in their respective territories are concerned. The Parties reaffirm their rights and obligations under Article 16 paragraph 3 of the CBD in relation to countries providing genetic resources, to take measures with the aim to provide access to and transfer of technology which makes use of such resources, upon mutually agreed terms. This provision shall apply without prejudice to the rights and obligations under Article 31 of the TRIPS Agreement.
6. The Parties shall require the disclosure of the origin or source of genetic resources and associated traditional knowledge in patent applications, considering that this contributes to the transparency about the uses of genetic resources and associated traditional knowledge. It also enhances the traceability of the use of the resources or knowledge and builds mutual trust among all stakeholders involved in access and benefit sharing.
7. The Parties agree that benefits arising from the commercialisation of products originating from the utilisation of genetic resources or associated traditional knowledge, including those developed from the utilisation of digital sequence information, shall be shared in a fair and equitable way with the country of origin of such resource.
8. In accordance with applicable international and domestic law, the Parties agree to collaborate in the application of domestic frameworks on access to genetic resources and associated traditional knowledge, innovations and practices.
9. Recognising the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions, the parties agree that access to genetic resources for food and agriculture shall be subject to specific treatment, in accordance with the International Treaty on Plant Genetic Resources for Food and Agriculture (2001).
10. The Parties may, by mutual agreement, review this Article subject to the results and conclusions of multilateral discussions. The Parties agree that access facilitation and

benefit- sharing obligations shall be treated as parts of a single undertaking and shall not be agreed upon separately.]

[Placeholder: MERCOSUR will include text on protection of biodiversity and traditional knowledge]

Article 6

Exhaustion

1. Each Party shall be free to establish its own regime for exhaustion of intellectual property rights subject to the provision of the TRIPS Agreement.
2. In the area of copyright and related rights, the Exhaustion Principle does not apply in the digital environment.

Article 7

Technology Transfer and Technical Cooperation

1. Subject to their resources and domestic policies, the Parties [EU: ~~shall provide incentives to enterprises and institutions in their territory for promoting technological innovation. The EU countries~~] shall encourage access and transfer of technology to enterprises and institutions established in the territory of the other Party to this Agreement. [EU: Particular attention shall be paid to the conditions necessary to create an adequate enabling environment to promote technology transfer between the Parties, including issues such as the relevant legal framework and development of human capital.]

   [EU: When measures are taken with regard to technology transfer, the legitimate interests of the IPR holders shall be protected.]

2. [EU: ~~The Parties agree that transfer of technology includes the transfer of systematic knowledge for the manufacture of a product, for the application of a process or for the rendering of a service and does not extend to the transactions involving the mere sale or mere lease of goods. Technology transfer agreements may be constituted among public organisations, the private sector and/or scientific and technological institutions~~.]
3. The Parties [EU: are encouraged to] [MCS: commit] exchange information related to public domain technologies in their territory.
4. [EU: ~~Subject to their domestic law technology transfer may include trademark licenses provided that also includes the content of paragraph 2.~~

~~5. The Parties agree that technology transfer agreements may have as object industrial property rights, know-how and technical and scientific assistance services. Agreements related to know-how and technical and scientific assistance services shall involve the sharing of information, techniques and knowledge related to products and to the production processes that are not formally protected by industrial property rights.]~~

6. The Parties shall encourage mechanisms for the participation of entities and experts of their respective systems of science, technology and innovation, in projects and joint research, development and innovation networks, with the purpose of strengthening their capacities building in science, technology and innovation. Those mechanisms may include:
    a) joint research, innovation and technological development activities as well as educational and research projects;
    b) visits, training and exchanges of scientists, researchers, interns, and technical experts;
    c) joint organisation of scientific seminars, conferences, symposia and workshops, as well as the participation of MERCOSUR and EU experts in those activities;
    d) joint research, development, and innovation networks;
    e) exchange and sharing of equipment and materials;
    f) promotion of the evaluation of joint work, and the dissemination of results; and
    g) any other activity agreed upon by the Parties.
7. The Parties should consider establishing mechanisms for the exchange of information about research, development and innovation projects financed from public and private resources.
8. The Parties shall facilitate and promote the use of incentives granted to research and academic institutions and enterprises in its territory for the transfer of technology to institutions and enterprises from the signatory MERCOSUR and the EU in order to enable them to establish a viable technological base.

Article 7.1

Climate Change and Green Technologies

~~1. [EU: The Parties agree to mutual advice and support to identify technology needs and implement environmentally sound technologies, practices and processes; to strengthen~~

~~capacity of the Parties to identify technology options, make technology choices and operate, maintain and adapt technology; and facilitate prompt action on the deployment of existing technology between the Parties. To this objective Parties may:~~

~~a. Enable entities in the Parties to do research and development especially on adaptation as well as mitigation technologies;~~

~~b. Take steps to ensure sharing of publicly funded technologies and related know-how at an affordable price and on terms and conditions that promote access for all Parties.~~

~~c. Ensure access to intellectual property protected technologies and associated know-how.]~~

[Placeholder: MERCOSUR may propose additional text on this article]

Article 7.2

Access to medicines

1. [EU: ~~The Parties agree to strengthen the public-funded health research and development capacities and increase investments in health research and development for diseases disproportionately affecting the Parties, in particular Type II and Type III diseases and the specific research and development needs of developing countries in relation to Type I diseases.~~[6]

2. ~~The parties agree to capacity building, mutual advice and support and technology transfer. The parties are requested to identify appropriate actions to address barriers to technology development and transfer encountered by Parties, and to promote the creation of patent pools to ensure access to technologies~~.]

Article 8

Competition and Intellectual Property

[6] For the purposes of this Chapter, disease Types I, II and III shall be understood by reference to the categories created by the Commission on Macroeconomics and Health of the World Health Organization and accepted by the Consultative Expert Working Group on Research and Development: Financing and Coordination in its 2012 report.

[EU: ~~The Parties shall prohibit any practices or terms and conditions in licensing and other agreements involving intellectual property rights that distort competition and/or have adverse effects on trade and/or impede the transfer of technology, including practices that:~~

~~a) Use IPRs to create or facilitate / coordinate a cartel;~~

~~b) Leverage IPRs to create an advantage outside of the market where the innovation took place;~~

~~c) Prohibit post-termination use of a licensed technology or requiring royalty payments for a term exceeding the life of a patent;~~

~~d) Prohibit a licensee from challenging the validity of a patent;~~

~~e) Abuse of lawsuits as an attempt to interfere directly with the business relationships of a competitor through the use of the governmental process; and,~~

~~f) Prevent access to fair, reasonable and non-discriminatory clauses.~~]

Section 2 - Standards Concerning Intellectual Property Rights

Article 9

Copyright and related rights

Article 9.1

International Treaties

The Parties shall give effect to the provisions of this Chapter consistently with their obligations under the following international agreements if they are party to them:

a) The Berne Convention for the Protection of Literary and Artistic Works ('the Berne Convention');

b) The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (hereinafter referred to as the "Rome Convention"); and,

c) The Marrakesh Treaty to facilitate access for persons who are blind, visually impaired, or otherwise print disabled;

d) The WIPO Copyright Treaty, adopted in Geneva on 20 December 1996; and

e) The WIPO Performances and Phonograms Treaty, adopted in Geneva on 20 December 1996.

f) Beijing Treaty on Audiovisual Performances.

[MCS: Article 9.2]

Authors

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

1. Direct or indirect, temporary [7] or permanent 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 otherwise of the original of their works or of copies thereof;

[MCS: 3. Any communication to the public of their works, by wire or wireless means. For the purposes of this Chapter, streaming shall be considered communication to the public. Each Party shall be free to implement in their domestic law the right to making available to the public [EU: 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,] as right of communication to the public or right to distribution.][8]

[EU:(c) any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them; and[9]

[MCS: ~~(d) the commercial rental to the public of originals or copies.~~]]

[MCS: Article 9.3]

Performers

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

The fixation[10] of their performances;

2. The direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of fixations of their performances;

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[7] The term "temporary" means reproduction for a limited period and does not include incidental or ephemeral reproduction. By "incidental" or "ephemeral" we understand the type of reproduction having the sole purpose of making a work accessible instead of making a copy.

[8] [MCS: ~~MERCOSUR will propose language on how to present the equivalent of making available right.~~]

[9] [EU: MCS is free to use the term "communication to the public right" or "distribution right" to cover the making available right in paragraph c]

[10] Fixation means the embodiment of sounds or images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

3. The distribution to the public, by sale or otherwise, of the fixations of their performances; [MCS: except where a performance is used in that communication:
   (a) Constitutes a broadcast work in itself;
   (b) Has been fixed on a phonogram or videogram that has been made public by the right holder.]
4. The broadcasting by [MCS: wire and/or] wireless means, and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation. [MCS: This article also applies for broadcasting by wire means when the legislation of a Party allows it.]

[EU: (d) the making available to the public, by wire or wireless means, of fixations of their performances in such a way that members of the public may access them from a place and at a time individually chosen by them;

(f) the commercial rental to the public of the fixation of their performances.]

Article 9.4[11]

Producers of phonograms

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

1. The direct or indirect, temporary [[12]] or permanent reproduction by any means and in any form, in whole or in part of their phonograms;
2. The distribution to the public, by sale or otherwise, of their phonograms, including copies thereof;

[MCS: 3. The broadcasting by wire or wireless means, and the communication to the public of their phonograms.]

[EU: (c) the making available to the public, by wire or wireless means, of their phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them; and

(d) the commercial rental of their phonograms to the public.]

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[11] EU: see footnote attached to art. 9.6.
[12] The term "temporary" means reproduction for a limited period and does not include incidental or ephemeral reproduction. By "incidental" or "ephemeral" we understand the type of reproduction having the sole purpose of making a work accessible instead of making a copy.

Article 9.5

Broadcasting Organisations

Each Party [MCS: shall stipulate the legal requirements in their domestic laws to be considered a Broadcasting Organisation and also] shall provide them with the exclusive right to authorise or prohibit:

1. The fixation of their broadcasts; [EU: whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;]
2. The direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their broadcasts; [EU: whether those broadcasts are transmitted by wire or over the air, including by cable or satellite;]

[MCS: 3. The communication to the public of their broadcasts;]

[EU: (c) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite in such a way that members of the public may access them from a place and at a time individually chosen by them;]

4. The distribution to the public, by sale or otherwise, of fixations [EU: including copies thereof] of their broadcasts; [EU: whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;] and
5. The rebroadcasting of their broadcasts by wire or wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

Article 9.6[13]

Right to remuneration for broadcasting and communication to the public

1. The Parties [MCS: may] [EU: shall] provide a right in order to ensure that a single equitable remuneration is paid by the user to the performers and producers of phonograms, if a phonogram published for commercial purposes, or a reproduction of

[13] [EU: Each Party may grant more extensive rights, as regards the broadcasting and communication to the public of phonograms published for commercial purposes, to performers and producers of phonograms.]

such phonogram, is used for broadcasting by wireless means or for any communication to the public.

2. The Parties [MCS: may] [EU: shall] provide that the single equitable remuneration shall be claimed from the user by the performer or by the producer of a phonogram or by both. The Parties may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

[MCS: 3. The Parties shall stipulate the legal requirements in domestic law to be considered Broadcasting Organisation.]

[MCS: Article 9.7

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 not less than 50 years after his death. In respect of photographic and cinematographic works the Parties will establish the term of protection according to their domestic laws.
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. In the case of anonymous or pseudonymous works, the term of protection shall run for not less than 50 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.
4. The rights of performers in a performance otherwise than in a phonogram shall expire not less than fifty years after the date of the performance.
5. The rights of performers and producers of phonograms shall expire not less than 50 years after the fixation. The Parties may adopt effective measures in order to ensure that the profit generated during the 20 years of protection beyond 50 years are shared fairly between the performers and producers.
6. The terms laid down in this Article shall be calculated from the 1st January of the year following the event.
7. The terms of protection may exceed the periods provided for in this Article.]

[EU: Article X.11

Term of Protection

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for seventy years after his death, irrespective of the date when the work is lawfully made available to the public.
2. The term of protection of a musical composition with words shall expire seventy years after the death of the last of the following persons to survive, whether or not those persons are designated as co-authors: the author of the lyrics and the composer of the musical composition, provided that both contributions were specifically created for the respective musical composition with words.
3. 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.
4. In the case of anonymous or pseudonymous works, the term of protection shall run for seventy years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.
5. ~~Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately.~~ (PROP. EU 10 MAY)
6. The term of protection of cinematographic or audiovisual works shall expire seventy years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.
7. The rights of broadcasting organisations shall expire fifty years after the first transmission of a broadcast, whether that broadcast is transmitted by wire or over the air, including by cable or satellite.
8. The rights of performers shall expire (NEW ART. 7, PROP. EU 10 MAY)

a) 50 years after the date of the fixation of the performance otherwise than in a phonogram;

b) 70 years after the date of the fixation of the performance in a phonogram.

If a fixation of the performance is lawfully published or lawfully communicated to the public within the periods mentioned in points (a) and (b), the terms of protection shall be calculated from the date of the first such publication or the first such communication to the public, whichever is the earlier.

9. The rights of producers of phonograms shall expire fifty years after the fixation is made. However, if the phonogram has been lawfully published within this period, the said rights shall expire seventy 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 seventy years from the date of the first lawful communication to the public. Each Party may adopt effective measures in order to ensure that the profit generated during the twenty years protection beyond the initial fifty years are shared fairly between the performers and producers.

10. ~~The rights of producers of the first fixation of a film shall expire fifty years after the fixation is made. If the film is lawfully published or lawfully communicated to the public during that period, those rights shall expire fifty years from the date of the first such publication or the first such communication to the public, whichever is earlier. The term "film" shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.~~ (PROP. EU 10 MAY)

11. The terms laid down in this Article shall be calculated from the 1st January of the year following the event.

12. The terms of protection may exceed the periods provided for in this Article.]

[EU: Article X.12

Resale Right

1. Each Party [MCS: may] [MCS: ~~shall~~] provide, for the benefit of the author of graphic or plastic art, a resale right, defined as an inalienable right, which cannot be waived, even in advance, to receive a percentage of the price obtained from any resale of that work, after the first transfer of that work by the author.

2. The right referred to in paragraph 1 [MCS: may] [MCS: ~~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 dealers in works of art.
3. Each Party may provide that the right referred to in paragraph 1 [MCS: may] [MCS: ~~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 when the resale price does not exceed a minimum amount.
4. Each Party [MCS: may] [MCS: ~~shall~~] provide that authors who are nationals of third countries and their successors in title [MCS: may] [MCS: ~~shall~~] enjoy the resale right in accordance with the Agreement and the legislation of the Party concerned only if the legislation of the country of which the author or his/her successor in title is a national permits resale right protection in that country for authors from the Party concerned and their successors in title.]
5. [MCS: Member States of each party will make best efforts to include the resale right in their domestic law when this right is not yet in force.]

Article 9.8

Cooperation on collective management of rights

[MCS: 1. The Parties agree to promote [EU: cooperation, ~~the~~ transparency and non-discrimination] of [EU: ~~legally constituted~~] collective management organisations [EU: ~~in compliance with their domestic laws~~], in particular as regards the revenues they collect, deductions applied to such income, the use of the royalties collected, the distribution policy and their repertoire.] [EU:, including in the digital environment.]

2. The Parties hereby undertake to ensure that where a collective management organisation established in the territory of a Party represents a collective management organisation established in the territory of another Party in a representation agreement, the representative organisation does not discriminate against entitled members of the represented organisation.
3. The representing collective management organisation must pay accurately, regularly, diligently, [MCS: and in full transparency], the amounts owed to the collective

management organisation and provide the represented organisation information on the amounts of revenue collected on its behalf and the deductions made.

[EU: [~~MCS: 4. The Parties shall arbitrate the instruments so that the information provided by collecting societies is not discriminatory and includes the collection of the use of the works in the digital environment.~~]]

[EU: Article X.13

Cooperation on Collective Management of Rights

1. The Parties shall promote cooperation between their respective collective management organisations for the purposes of fostering the availability of works and other protected subject-matter in the territories of the Parties and the transfer of rights revenue for the use of such works or other protected subject-matter.
2. The Parties agree to promote the transparency of collective management organisations, in particular as regards the rights revenue they collect, deductions they apply to such revenue, the use of the rights revenue collected, the distribution policy and their repertoire.
3. Each Party undertakes to ensure that when a collective management organisation established in the territory of a Party represents a collective management organisation established in the territory of another Party in a representation agreement, the representing organisation does not discriminate against entitled members of the organisation represented.
4. The representing collective management organisation must pay accurately, regularly and diligently the amounts owed to the represented collective management organisation and provide the represented organisation with information on the amount of rights revenue collected on its behalf and the deductions made.]

Article 9.9

Exceptions and limitations

[MCS: 1. The Parties shall provide for exceptions and limitations to exclusive rights compatible with [EU: the law of each Party] [MCS: their domestic law] and [EU: their] international obligations, [EU: ~~giving due consideration to legitimate purposes~~] including, but

not limited to: criticism, [EU: review] comment[14], news reporting, teaching, [EU: ~~scholarship~~], research [EU: as long as the source including the author's name is indicated to the extent possible], [EU: ~~and other similar purposes~~]; and facilitating access to published works for persons who are blind, visually impaired or otherwise print disabled. [EU: ~~These exceptions and limitations shall be restricted to [EU: such] special cases [EU: as illustrated above] and shall be implemented in a manner that does not conflict with a normal exploitation of the [EU: work] [EU: subject matter] and does not unreasonably prejudice the legitimate interests of the rights holder.~~] [EU: Each Party shall provide for exceptions and limitations to the exclusive rights 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.]

2. The Parties agree that exceptions and limitations granted by their own domestic laws are applicable in all the other Member States, on condition that such use is made in the strict terms and requirements in which the limitation or exception was established.][15]
3. The Parties shall provide that temporary acts of reproduction 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.

[EU: Article X.15

Protection of Technological Measures

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

[14] [EU: "comment" for the EU means "review"]
[15] [MCS: see art x.14]

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes of devices, products or components or the provision of services which:
   (a) are promoted, advertised or marketed for the purpose of circumvention of any effective technological measures;
   (b) have only a limited commercially significant purpose or use other than to circumvent any effective technological measures; or
   (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitation the circumvention of any effective technological measures.
3. For the purposes of this Article, the term "technological measures" means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject matter, which are not authorised by the right holder of any copyright or related right as provided for by domestic legislation. Technological measures shall be deemed "effective" where the use of a protected work or other subject matter is controlled by the right holders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter or a copy control mechanism, which achieves the objective of protection.]

Article 9.10

Obligations concerning Rights Management Information

1. The Parties shall provide adequate legal protection against any person knowingly performing without authority any of the following acts: [EU: 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:]
   (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 or other subject-matter protected under this Agreement from which electronic rights-management information has been removed or altered without authorisation, [MCS: 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.]

2. For the purposes of this [MCS: article] [EU: Sub-Section] "rights-management information" means any information provided by right holders which identifies the work or other subject-matter referred to in this [MCS: Agreement] [EU: Chapter], the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, [MCS: and] [EU: or] any numbers or codes that represent such information.
3. The subparagraph 1 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 [MCS: Article] [EU: Chapter].

[MCS: 4. The Parties shall ensure that this protection shall not harm non-infringing uses, including through provisions of sanctions for those right holders who do not take appropriate and effective measures to enable the beneficiaries to enjoy the limitations and exceptions to copyright and related rights under their laws.]

Article 10

Trademarks

[EU: Article X.17

International Agreements

Each Party:

(a) shall comply with the Trademark Law Treaty and with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, done at Nice on 15 June 1957, as amended on 28 September 1979 ("Nice Classification");
(b) shall comply with the Protocol related to the Madrid Agreement concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007; and
(c) shall comply with the Singapore Treaty on the Law of Trademarks, done at Singapore on 27 March 2006.]

Article 10.1

Registration Procedure

1. The Parties shall establish a system for the registration of trademarks in which each final negative decision, including the partial refusal of registration issued by the relevant trademark administration, shall be notified in writing and duly reasoned and open to challenge.
2. The Parties shall provide for the possibility to oppose applications to register trademarks or, where appropriate, [EU: request the cancellation of] the registration of trade marks. Such [EU: opposition] proceedings shall be adversarial.
3. The Parties shall provide a publicly available electronic database of applications and registrations of trademarks.

Article 10.2

Rights conferred by a trademark

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

(a) Any sign which is identical with the trademark in relation to goods or services which are identical with those for which the trademark is registered;
(b) Any sign where, because of its identity with, or similarity to, the trademark and the identity or similarity of the goods or services covered by the trademark and the sign, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association between the sign and the trademark.

[MCS: ~~[EU: 2. The proprietor of a registered trademark shall be entitled to prevent all third parties from bringing, in the course of trade, goods into the territory of the Party where the trademark is registered without being released for free circulation there, where such goods, including packaging, come from third countries and bear without authorisation a trademark which is identical to the trademark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trademark~~[16]~~.~~

3. ~~The entitlement of the proprietor of the trademark shall lapse if, during the proceedings to determine whether there was a breach of the registered trademark, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered~~

[16] The Parties may take additional appropriate measures with a view to ensure the smooth transit of generic medicines.

~~trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination.]]~~

[MCS: Article 10.3

Well-known Trademarks

1. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.
2. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, 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 registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.]

[EU: Article X.20

Well-known Trademarks

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

[MCS: Article 10.4

Grounds for revocation]

[Placeholder: MERCOSUR will propose text on grounds for revocation of trademarks]

[*EU: Article X.22*

Revocation of a Trademark

[EU: 1. Each Party shall provide that a trademark shall be liable to revocation if, within a continuous five-year period of, the trademark has not been put to genuine use in the relevant territory in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use. However, no person may claim that the proprietor's rights in a trademark should be revoked where, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trademark has been started or resumed. The commencement or resumption of use within a period of three months preceding the filing of the application for revocation, which began at the earliest on expiry of the continuous period of five years of non-use, shall, however, be disregarded where preparations for the commencement or resumption of use takes place only after the proprietor has been informed that the application for revocation may be filed.]

[MCS:1 Each Party shall provide that a trademark shall be liable to revocation if, within a continuous five-year period of, the trademark has not been used in the territory where it was registered, and there are no proper reasons for non-use. However, no person may claim that the proprietor's rights in a trademark should be revoked where, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trademark has been started or resumed. [EU: the EU will provide the text for a footnote considering the exception of three months] [MCS: MCS will reflect on goods and services and alternative wording for the phrase "genuine use".]

[EU: 2. A trademark shall also be liable to revocation if, after the date on which it was registered:

(a) 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; or
(b) in consequence of the use made of it by the proprietor of the trademark or with his consent in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.]

[MCS 2. A trademark shall also 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 has been registered.]

Article 10.5

Invalidation of the registration application in bad faith

A trade mark shall be liable to be declared invalid where the application for registration of the trademark was made in bad faith by the applicant. The Parties may also provide that such a trademark shall not be registered.

Article 10.6

Exceptions to the Rights Conferred by a Trademark

1. Each Party shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms, including in the case of geographical indications, and they may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.
2. The trademark shall not entitle the owner to prohibit a third party from using:
   (a) His own name or address;
   (b) Indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services;
   (c) The trademark where it is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts; provided he uses them in accordance with honest practices in industrial or commercial matters.

   [MCS: (d) Using the trademark for the purpose of identifying or referring to goods or services as those of the owner of that trademark;

   (e) Using the trademark in speeches, scientific or artistic works, or any other form of expression freedom, in accordance with the laws and practices of each Party;
   (f) Reproducing copyrighted works that contain the trademark, particularly the reproduction of works in the public domain;

(g) Temporary transit of trademark-registered products in the national territory of a Party, if a third country is the country destination of the products and the products are not subject to any commercial use in the national territory.]

[Placeholder: MERCOSUR may propose additional text on this article]

Article 11

Designs

[EU: Article X.24

International Agreements

Each Party shall [MCS: make the best efforts to] comply with the Geneva (1999) Act of The Hague Agreement Concerning the International Registration of Industrial Designs done at Geneva on 2 July 1999.]

[Placeholder: MERCOSUR may propose text on this article]

Article 11.1

Protection of Registered Designs

1. Each Party shall provide for the protection of independently created designs that are new and original[17]. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with [MCS: the provisions of this article] [EU: this Sub-Section.]
2. The holder of a registered design shall have at least the right to use and prevent third parties not having the owner's consent at least from using and notably making, offering for sale, selling, putting on the market, importing, exporting, stocking such a product or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes, unduly prejudice the normal exploitation of the design, or are not compatible with fair trade practice.

Article 11.2

Term of Protection

[17] For the purpose of this Article, a Party may consider that a design having individual character is original.

The duration of protection available, including renewals, shall amount to at least 15 years from the date of filing the application.

Article X.27

[MCS: [~~EU: Protection Conferred to Unregistered Designs~~

~~1. The Parties shall provide the legal means to prevent the use of the unregistered designs, only if the contested use results from copying the unregistered design. Such use shall at least cover the offering for sale, putting on the market, importing and exporting the product concerned.~~

~~2. The duration of protection for unregistered designs shall amount to at least three years from the date on which the design was first made available to the public.]]~~

[Placeholder: EU shall propose new language]

Article 11.3

[EU: ~~MCS: *Scope of Protection*~~

~~Design protection shall not extend to partial designs when the claimed feature of the appearance of a [three-dimensional] product does constitute an independent component part itself.]~~

[Placeholder: MERCOSUR shall provide additional information and new language]

Article X.28

Exceptions and Exclusions

1. Each Party may establish 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. Design protection shall not extend to designs dictated essentially by technical or functional considerations. [MCS: ~~EU: In particular a design right shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions for the product in which incorporated or to which the design is~~

~~applied to be mechanically connected to, or placed in, or around or contact with another product so that either product may perform its function.~~

3. ~~By way of derogation from paragraph 2, a design may subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.]~~

Article 11.4

Relationship to Copyright

A design shall also be eligible for protection under the law of copyright of a Party when this protection is provided for by its legislation and the requirements are met, as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

Article 12

Geographical Indications

[See separate working document]

Article 13

Patents

[MCS: Article 13.1

International treaties

The Parties shall make the best efforts to comply with the Patent Cooperation Treaty.]

[EU: Article X.41

International Agreements

Each Party shall comply with the Patent Cooperation Treaty, done at Washington on 19 June 1970, as amended on 28 September 1979 and last modified on 3 October 2001, and the Patent Law Treaty, adopted in Geneva on 1 June 2000.]

[EU: Article X.44

Extension of the Period of Protection Conferred by a Patent on Medicinal Products

1. The Parties recognise that medicinal products protected by a patent in their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.
2. Each Party shall provide for a further period of protection for a medicinal product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in the second sentence of paragraph 1, reduced by a period of five years.
3. Notwithstanding paragraph 2, the duration of the further period of protection may not exceed [….] years.
4. 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, the Parties shall provide for a further [….] months extension of the period of protection referred to in paragraph 2.

Article X.45

Extension of the Period of Protection Conferred by a Patent on Plant Protection Products

1. The Parties recognise that plant protection products protected by a patent in their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.
2. Each Party shall provide for a further period of protection for a plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in the second sentence of paragraph 1, reduced by five years.
3. Notwithstanding paragraph 2, the duration of the further period of protection may not exceed [….] years.]

[MCS: Article 13.2

Patent procedure

1. Each Party shall make best efforts to process patent applications in an efficient and timely manner, with a view to avoiding delays.
2. The Parties shall require and make best efforts to ensure that the patent disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application, as set out by Article 29.1 of the TRIPS Agreement.]

[MCS: Article 13.3

Rights Conferred by Patent Applications

The rights conferred by a patent can only be exercised after its grant. The domestic legislation of the Parties may establish the right of the patent owner to claim compensation for acts that would have constituted a wilful infringement of the patent which occurred after the publication of the patent and before its grant.]

[MCS: Article 13.4

Exceptions and limitations

Subject to their domestic law, each Party shall guarantee the effective and full functioning of patent exceptions and limitations, such as:

a) Private non-commercial use;
b) Use in teaching;
c) Research and experimentation;
d) Preparation of individually prescribed medicines and its use;
e) Temporary transit of patented products in the national territory of the Parties;
f) Bona fide prior use;
g) Acts performed exclusively for the production of information, data and test results directed at obtaining market authorization;
h) Non-commercial use of propagating material;
i) Compulsory license;
j) Personal use of patented medical products;

k) Governmental non-commercial use.]

[EU: Reference to Art. 30 TRIPS is needed]

[MCS: Article 13.5

Accountability to Civil Society

Each Party shall make their best efforts to improve and make more transparent and efficient the management and procedure for the granting of patents. To that end, each Party should monitor, evaluate and publicly inform in a clear and comprehensive way how the patent office is performing in terms of promotion of innovation, transfer of technology, access to health and, more generally, serving the public interest.

Article 13.6

Disclosure

The Parties shall require that the applicant for a patent shall disclose the invention in a manner sufficiently clear and complete, including when known, the indication of the International Non- Proprietary Name (INN) claimed or the INN associated to the matter or process claimed.

[Placeholder: MERCOSUR will introduce additional text on this article]

Article 13.7

Patent Opposition

The Parties are free to establish systems of pre- and post-grant opposition, including through *inter parte* procedures. Oppositions may be based, *inter alia*, on lack of novelty, inventive step or industrial applicability; non-patentable subject matter; subject matter offensive to public interest or morality; and insufficient disclosure, including lack of written description and enablement.]

SUB-SECTION 6

Plant Varieties

Article X.46

International Agreements

Each Party shall protect plant varieties rights, in accordance with the International Convention for the Protection of New Varieties of Plants adopted in Paris on 2 December 1961, as lastly revised in Geneva on March 19, 1991 (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.

Article 14

Undisclosed information

1. The Parties agree that undisclosed know-how and business information refers to those formally binding agreements constituted among public organisations, the private sector and/or scientific and technological institutions with the aim of establishing (a) conditions, rights, and obligations related to the economic exploitation of knowledge, information and (b) techniques related to products and processes of production, which are under possession of the assignor organisation.
2. This Chapter does not require a Party to disclose information that would otherwise be contrary to its law or exempt from disclosure under its law concerning access to information and privacy.
3. Each Party shall protect undisclosed test or other data related to safety and efficacy of pharmaceutical products and agricultural chemical products, in accordance with Article 39 of the TRIPS Agreement and its domestic legislation.

SUB-SECTION 7

Protection of Undisclosed Information

Article X.47

Scope of protection of trade secrets

1. In fulfilling its obligation under Article X.2.1 to comply with the TRIPS Agreement, and in particular paragraphs 1 and 2 of Article 39 of the TRIPS Agreement, each Party shall provide for appropriate civil judicial procedures and remedies for any person lawfully in control of a trade secret to prevent, and obtain redress for, the acquisition, use or

disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.

2. For the purpose of this subsection:
   (a) 'trade secret' means information that:
      (i) 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;
      (ii) has commercial value because it is secret; and
      (iii) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
   (b) 'trade secret holder' means any natural or legal person lawfully controlling a trade secret.
3. For the purpose of this subsection, at least the following conducts shall be considered contrary to honest commercial practices:
   (a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced:
   (b) the use or disclosure of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:
      (i) having acquired the trade secret unlawfully;
      (ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret; or
      (iii) being in breach of a contractual or any other duty to limit the use of the trade secret.
   (c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known that the trade secret had been obtained directly or indirectly from another person who was using or disclosing the trade secret

unlawfully within the meaning of point (b), including when a person induced another person to carry out the actions referred to in point (b).

4. Nothing in this subsection shall be understood as requiring any Party to consider any of the following conducts as contrary to honest commercial practices:
   (a) independent discovery or creation by a person of the relevant information;
   (b) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;
   (c) acquisition, use or disclosure of information required or allowed by the relevant domestic law;
   (d) use by employees of their experience and skills honestly acquired in the normal course of their employment.
5. Nothing in this subsection shall be understood as restricting freedom of expression and information, including media freedom as protected in the jurisdiction of each of the Parties.

Article X.48

Civil judicial procedures and remedies of trade secrets

1. Each party shall ensure that the any person participating in the civil judicial proceedings referred to in Article 11.1 (scope of protection of trade secrets) or who has access to documents which form part of those legal proceedings, is not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential and of which they have become aware as a result of such participation or access.
2. In the civil judicial proceedings referred to in Article 11.1 (scope of protection of trade secrets), each Party shall provide that its judicial authorities have the authority at least to:
   (a) order provisional measures, as set out in the respective domestic laws and regulations, to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;
   (b) order injunctive relief to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;
   (c) order the person that knew or ought to have known that he, she or it was acquiring, using or disclosing a trade secret in a manner contrary to honest

commercial practices to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of the unlawful acquisition, use or disclosure of the trade secret;

(d) take specific measures to preserve the confidentiality of any trade secret or alleged trade secret produced in civil proceedings relating to the alleged acquisition, use and disclosure of a trade secret in a manner contrary to honest commercial practices. Such specific measures may include, in accordance with their respective domestic law, the possibility of restricting access to certain documents in whole or in part; of restricting access to hearings and their corresponding records or transcript; and of making available a non-confidential version of judicial decision in which the passages containing trade secrets have been removed or redacted;

(e) impose sanctions on parties, or other persons subject to the court's jurisdiction for violation of judicial orders concerning the protection of a trade secret or alleged trade secret produced in that proceedings.

3. The Parties shall not be required to provide for the judicial procedures and remedies referred to in Article 11.1 (scope of protection of trade secrets) when the conduct contrary to honest commercial practices is carried out, in accordance with their relevant domestic law, to reveal misconduct, wrongdoing or illegal activity or for the purpose of protecting a legitimate interest recognised by law.

Article X.49

Protection of Data Submitted to Obtain an Authorisation to Put a Medicinal Product on the Market

1. Each Party shall protect commercially confidential information submitted to obtain an authorisation to place pharmaceutical products on the market ("marketing authorisation") against disclosure to third parties, unless overriding public health interests provide otherwise.
2. Each Party shall ensure that for a period of [….] years from the first marketing authorisation in the Party concerned, the public body responsible for the granting of a marketing authorisation will not take into account confidential business information or the results of pre-clinical tests or clinical trials provided in the first marketing authorisation application and subsequently submitted by a person or entity, whether

public or private, in support of another application to place a medicinal product on the market without the explicit consent of the person or entity who submitted such data, unless international agreements recognised by both Parties provide otherwise.

3. During a [….] years period, starting from the date of grant of the first marketing authorisation in the Party concerned, a marketing authorisation granted for any subsequent application based on the results of pre-clinical tests or of clinical trials provided in the first marketing authorisation will not permit placing a pharmaceutical product on the market, unless the subsequent applicant submits his own results of pre-clinical tests or of clinical trials (or results of pre-clinical tests or of clinical trials used with the consent of the party which had provided this information) meeting the same requirements as the first applicant. Products not complying with the requirements set out in this paragraph shall not be allowed on the market.
4. In addition, the [….] years period referred to in paragraph 3 shall be extended to a maximum of [….] years if, during the first [….] years after obtaining the authorisation, the authorisation holder obtains an authorisation for one or more new therapeutic indications which are considered of significant clinical benefit in comparison with existing therapies.

Article X.50

Protection of Data Submitted to Obtain Marketing Authorisation for Plant Protection Products

1. Each Party shall recognise a temporary right of the owner of a test or study report submitted for the first time to achieve a marketing authorisation for a plant protection product. During such period, the test or study report will not be used for the benefit of any other person aiming to achieve a marketing authorisation for plant protection product, except when the explicit consent of the first owner is proved. This right will be hereinafter referred as data protection.
2. The test or study report should fulfil the following conditions:
   (a) be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops; and
   (b) be certified as compliant with the principles of good laboratory practice or of good experimental practice.

3. The period of data protection shall be at least [….] years from the first authorisation granted by the concerned authority in that Party. In case of low risk plant protection products, the period can be extended to [….] years.
4. Those periods shall be extended by [….] months for each extension of authorisation for minor uses[18] if the applications for such authorisations are made by the authorisation holder at the latest [….] years after the date of the first authorisation. The total period of data protection may in no case exceed ….] years. For low risk plant protection products the total period of data protection may in no case exceed [….] years.
5. A test or study shall also be protected if it was necessary for the renewal or review of an authorisation. In those cases, the period for data protection shall be [….] months.

Section 3

Enforcement of intellectual property rights

[Placeholder: MERCOSUR may propose text on Enforcement]

Sub-Section 3.1

General Provisions

Article 15

General obligations

1. The Parties reaffirm their commitments under the TRIPS Agreement and in particular of its Part III, and will ensure the enforcement of intellectual property rights within their own legal system and practice.
2. It is understood that this sub-section does not create any obligation 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 the Parties to enforce their law in general. Nothing in this sub-section creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

[18] Minor use: use of a plant protection product in a particular Party on plants or plant products which are not widely grown in that particular Party or widely grown to meet an exceptional plant protection need.

3. For the purposes of Articles xxx through xxx, unless otherwise provided, intellectual property rights mean the categories of intellectual property referred to in Article 3.2 of this Chapter.

Article X.51

General Obligations

1. The Parties affirm their commitments under the TRIPS Agreement and in particular of Part III thereof, and shall provide for the complementary measures, procedures and remedies under this Section, which are necessary to ensure the enforcement of intellectual property rights.[19] These measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.
2. The measures, procedures and remedies referred to in paragraph 1 shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article X.52

Persons Entitled to Apply for the Application of the Measures, Procedures and Remedies

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

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

[19] For the purposes of this Sub-Section the notion of "intellectual property rights" should include at least the following rights: copyright; rights related to copyright; sui generis right of a database maker; rights of the creator of the topographies of a semiconductor product; trademark rights; design rights; patent rights, including rights derived from supplementary protection certificates; geographical indications; utility model rights; plant variety rights; trade names in so far as these are protected by each Party.

(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 2

Civil and Administrative Enforcement

Article X.53

Evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party which 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 to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.
2. Such 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.
3. Each Party shall take the measures necessary, in cases of infringement of an intellectual property right committed on a commercial scale, 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 X.54

Right of Information

1. Each Party shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order the infringer and/or any other person which is party to a litigation or a witness therein to provide information on the

origin and distribution networks of the goods or services which infringe an intellectual property right.

(a) "Any other person" in this paragraph means a person who was:

(i) found in possession of the infringing goods on a commercial scale;

(ii) found to be using the infringing services on a commercial scale;

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

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

(b) Information shall, as appropriate, comprise:

(i) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers; or

(ii) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

2. This Article shall apply without prejudice to other statutory provisions which:

(a) grant the right holder rights to receive fuller information;

(b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;

(c) govern responsibility for misuse of the right of information;

(d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit his own participation or that of his close relatives in an infringement of an intellectual property right; or

(e) govern the protection of confidentiality of information sources or the processing of personal data.

Article X.55

Provisional and Precautionary Measures

1. Each Party shall ensure that the judicial authorities may, at the request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any

imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by domestic law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right. For the purposes of this Article, "intermediaries" include internet service providers.

2. An interlocutory injunction may also be issued to order the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.
3. 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 of the movable and immovable property of the alleged infringer, including the blocking of his bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.

Article X.56

Remedies

1. Each Party shall ensure that the competent judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction or at least the definitive removal from the channels of commerce, of goods that they have found to infringe an intellectual property right. If appropriate, the competent judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of those goods.
2. The competent judicial authorities of each Party shall have the authority to order that those measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

Article X.57

Injunctions

Each Party shall ensure that, when a judicial decision finds an infringement of an intellectual property right, the competent judicial authorities may issue against the infringer as well as against an intermediary whose services are being used by a third party to infringe an intellectual property right an injunction aimed at prohibiting the continuation of the infringement.

Article X.58

Alternative Measures

Each Party may provide that the judicial authorities, in appropriate cases and upon request of the person liable to be subject to the measures provided for in Article X.52 (Remedies) and/or Article X.53 (Injunctions), may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article X.52 (Remedies) and/or Article X.53 (Injunctions),if that person acted unintentionally and without negligence, if execution of the measures in question would cause him disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Article X.59

Damages

1. Each Party shall ensure that the competent judicial authorities, on application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the right holder damages appropriate to the actual prejudice suffered by him/her as a result of the infringement. When the competent judicial authorities set the damages:
    (a) they shall 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 and, in appropriate cases, elements other than

economic factors, such as the moral prejudice caused to the right holder by the infringement; or

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

2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, each Party 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 X.60

Legal Costs

Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall as a general rule be borne by the unsuccessful party, unless equity does not allow this.

Article X.61

Publication of Judicial Decisions

Each Party shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the competent judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part.

Article X.62

Presumption of Authorship or Ownership

The Parties shall recognise that, for the purposes of applying the measures, procedures and remedies provided for in this Section:

(a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner;

(b) the provision under (a) shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.

Article X.63

Administrative Procedures

To the extent that any 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 forth in the relevant provisions of this Section.

Article X.64

Consistency with GATT and TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by customs, whether or not covered by this Agreement, each Party shall ensure consistency with its 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.

[EU: SECTION D

BORDER ENFORCEMENT

Article X.65

Border Enforcement Measures Related to Intellectual Property Rights

1. With respect to goods under customs control, each Party shall adopt or maintain procedures under which a right holder may submit applications requesting customs authorities to suspend the release of or detain goods suspected of infringing trademarks, copyrights and related rights, geographical indications, patents, utility models, industrial

designs, topographies of integrated circuits and plant variety rights (hereinafter referred to as "suspect goods").

2. Each Party shall have in place electronic systems for the management by customs of the applications granted or recorded.
3. Customs authorities shall not charge a fee to cover the administrative costs resulting from the processing of an application or a recordation.
4. Customs authorities shall decide about granting or recording application within a reasonable period of time from the submission of the application.
5. Parties shall provide for such application/recordation to apply to multiple shipments.
6. With respect to goods under customs control, customs authorities may act upon their own initiative to suspend the release of or detain suspect goods.
7. Customs authorities shall use risk analysis to identify suspect goods.
8. Each Party shall have in place procedures allowing for the destruction of goods infringing intellectual property rights, without there being any need to prior administrative or judicial proceedings for the formal determination of the infringements, in particular where the persons concerned agree or do not oppose to the destruction. In case goods determined to be infringing are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the commercial channel in such a manner to avoid any harm to the right holder.
9. Each Party may have in place procedures allowing for the swift destruction of counterfeit trade mark and pirated goods sent in postal or express couriers' consignments.
10. There shall be no obligation to apply this Article to import of goods put on the market in another country by or with the consent of the right holders. A Party may exclude from the application of this Article goods of a non-commercial nature contained in travellers' personal luggage.
11. The customs authorities of each Party shall maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of the intellectual property rights referred to in paragraph 1.
12. The Parties agree to cooperation in respect of international trade in suspect goods and, in particular, to share information on such trade.
13. Without prejudice to other forms of cooperation, the Protocol [2] on Mutual Administrative Assistance in Customs Matters will be applicable with regard to breaches of legislation on intellectual property rights referred to in paragraph 1, for the

enforcement of which the customs authorities are competent in accordance with this Article.

14. [A Committee shall be in charge of ensuring the proper functioning and implementation of this Article, in particular providing for the framework for organising cooperation.]

Article 16

Cooperation

1. The Parties agree to cooperate with a view to supporting implementation of the commitments and obligations undertaken under the IPR Chapter as well as 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.
2. Subject to Title XX (Economic and Sector Cooperation) and in accordance with the provisions of Title XX (Financial Cooperation, with Anti-Fraud Provisions) of this Agreement, areas of cooperation include the following activities, but not limited to them:
    a) The exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;
    b) The exchange of information on the legal framework and practices related to intellectual property and competition law;
    c) The exchange of experience between the Parties on legislative progress;
    d) The exchange of experience between the Parties on the enforcement of intellectual property rights;
    e) Exchange of experiences between the Parties on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;
    f) Coordination to prevent exports of trademarks counterfeit goods, including with other countries;
    g) Coordination among Competition Authorities to prevent anticompetitive practices such as, abuse in the exercise of intellectual property rights and dominant position, the resort to practices that unreasonably restrain trade, sham litigation and pay-for-delay agreements;
    h) Technical assistance, capacity-building; exchange and training of personnel;

i) The protection and defence of intellectual property rights and the dissemination of information in this regard, inter alia, business circles and civil society;

j) Public awareness of consumers and right holders; enhancement of institutional cooperation, particularly between the intellectual property offices;

k) Actively promoting awareness and education of the general public on policies concerning intellectual property rights;

l) Formulation of effective strategies to identify key audiences and communication programmes to increase consumer and media awareness on the impact of intellectual property abuse and violations;

m) Mutual cooperation between the intellectual property offices, research and academic institutions and private enterprises from the different Parties to facilitate the access of all specialised databases for the purposes of specialised searches. [MCS: The Parties shall explore new and existing mechanisms to facilitate technology transfer to strengthen national capabilities.]

Article X.66

Cooperation and Transparency

1. The Parties agree to cooperate with a view to supporting implementation of the commitments and obligations undertaken under this Chapter.
2. The Parties shall draw on the following modalities, among others, with respect to cooperation on intellectual property rights protection and enforcement matters. The areas of cooperation include the following activities, but are not limited to:
   (a) The exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;
   (b) The exchange of experience between the Parties on legislative progress;
   (c) The exchange of experience between the Parties on the enforcement of intellectual property rights;
   (d) The exchange of experiences between the Parties on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;
   (e) Coordination to prevent exports of counterfeit goods, including with other countries;
   (f) Technical assistance, capacity building; exchange and training of personnel;

(g) The protection and defence of intellectual property rights and the dissemination of information in this regard in, inter alia, business circles and civil society;

(h) Public awareness of consumers and right holders; enhancement of institutional cooperation, particularly between the intellectual property offices;

(i) Actively promoting awareness and education of the general public on policies concerning intellectual property rights;

(j) Regarding public-private collaboration engaging with SMEs, including at SME-focused events or gatherings, regarding protecting and enforcing intellectual property rights and reducing infringement;

(k) Formulation of effective strategies to identify audiences and 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;

(l) Facilitation of voluntary stakeholder initiatives to reduce intellectual property rights infringement, including over the internet and in other marketplaces.

3. [Without prejudice to paragraph 1 and 2 and to supplement them if necessary, the Parties agree to establish a Sub-Committee on Intellectual Property to follow up on the implementation of the provisions of this Title and any other relevant issue. This Sub-Committee shall be co-chaired by officials of both Parties and will meet at least once per year, except if the Parties agree otherwise. These meetings shall be carried out through any agreed means, including by video conference. The Sub-Committee on Intellectual Property will adopt its decisions by consensus. It may also adopt specific rules of procedure, by consensus.]

[MCS: Article XX

Liability of intermediary service providers]

[Placeholder: MERCOSUR may propose text on Liability of intermediary service providers]

The following articles relating to enforcement of infringements in a digital environment should be placed in a chapter dealing with e-commerce, but will be discussed by the IPR teams.

SECTION X

LIABILITY OF INTERMEDIARY SERVICE PROVIDERS

Article XX.1

Use of Intermediaries' Services

The Parties recognise that the services of intermediaries may be used for activities infringing an intellectual property right and each Party shall provide for the following measures in respect of intermediary service providers.

Article XX.2

Intermediary Service Providers: Mere Conduit

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, each Party shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:
   (a) does not initiate the transmission;
   (b) does not select the receiver of the transmission; and
   (c) does not select or modify the information contained in the transmission.
2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.
3. This Article shall not affect the possibility for a competent authority, in accordance with each Party's legal system, of requiring the service provider to terminate or prevent an infringement.

Article XX.3

Intermediary Service Providers: Caching

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, each Party shall ensure that the service provider is not liable for 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 recipients of the service upon their request, on condition that:
   (a) the provider does not modify the information;
   (b) the provider complies with conditions on access to the information;
   (c) the provider complies with rules regarding the updating of the information, specified in a manner widely recognised and used by industry;
   (d) 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; and
   (e) the provider acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge 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, or that a competent authority has ordered such removal or disablement.
2. This Article shall not affect the possibility for a competent authority, in accordance with each Party's legal system, of requiring the service provider to terminate or prevent an infringement.

Article XX.4

Intermediary Service Providers: Hosting

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that:
   (a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
   (b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.