***Disclaimer**: In view of the European Commission's transparency policy, the Commission is publishing the texts of the EU-India FTA further to the conclusion of negotiations on 27 January 2026. These texts are published for information purposes only and may undergo further modifications, including as a result of the process of legal revision. These texts are without prejudice to the outcome of the Agreement between the EU and India. The texts will be final upon signing. The Agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.*

CHAPTER 10

INTELLECTUAL PROPERTY

SECTION A

GENERAL PROVISIONS

ARTICLE 10.1

Objectives

1. The objective of this Chapter is to ensure appropriate and effective protection and enforcement of intellectual property rights in each Party in order to:

(a) promote innovation and creativity;

(b) facilitate trade of innovative and creative goods and services; and

(c) reduce distortion and impediments to trade and incentivise investments in a manner conducive to a more sustainable and inclusive economy.

2. The objectives set out in Article 7 of the TRIPS Agreement apply to this Chapter, *mutatis mutandis*.

ARTICLE 10.2

Principles

The principles set out in Article 8 of the TRIPS Agreement apply to this Chapter, *mutatis mutandis*.

ARTICLE 10.3

Scope

1. This Chapter shall complement and further specify the rights and obligations of each Party under the TRIPS Agreement and other international treaties in the field of intellectual property to which they are parties.

2. This Chapter does not preclude either Party from introducing more extensive protection and enforcement of intellectual property rights under its law than required by this Chapter, provided that such protection and enforcement does not contravene this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

3. The protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention.

ARTICLE 10.4

Definitions

For the purposes of this Chapter, the following definitions apply:

(a) "TRIPS Agreement" means the Agreement on Trade-Related Aspects of Intellectual Property Rights contained in Annex 1C to the WTO Agreement;

(b) "Doha Declaration" means the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the Ministerial Conference of the WTO at Doha;

(c) "Paris Convention" means the Paris Convention for the Protection of Industrial Property, done at Paris on 20 March 1883, as revised at Stockholm on 14 July 1967;

(d) "Berne Convention" means the Berne Convention for the Protection of Literary and Artistic Works, done at Berne on 9 September 1886, as revised at Paris on 24 July 1971 and amended on 28 September 1979;

(e) "Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961;

(f) "WPPT" means the WIPO Performances and Phonograms Treaty, done at Geneva on 20 December 1996;

(g) "WIPO" means the World Intellectual Property Organization;

(h) "Intellectual property" means all categories of intellectual property that are covered by Articles 10.11 [Authors] to 10.40 [Protection of plant varieties rights] of this Chapter or Sections 1 through 7 of Part II of the TRIPS Agreement;

(i) "National" means, in respect of the relevant intellectual property right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement and multilateral agreements concluded and administered under the auspices of WIPO, to which a Party is a contracting party.

ARTICLE 10.5

International agreements

1. The Parties affirm their commitments under the following international agreements:

(a) the TRIPS Agreement;

(b) WIPO Copyright Treaty, done at Geneva on 20 December 1996;

(c) the WPPT;

(d) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, done at Marrakesh on 27 June 2013;

(e) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989 as amended on 3 October 2006 and on 12 November 2007.

2. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements:

(a) the Treaty on Audiovisual Performances, adopted at Beijing on 24 June 2012;

(b) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999.

3. Each Party shall consider ratifying or acceding to the Singapore Treaty on the Law of Trademarks, adopted at Singapore on 27 March 2006.

4. Each Party shall ensure that the procedures provided under the Patent Cooperation Treaty, done at Washington on 19 June 1970, as amended on 28 September 1979, modified on 3 February 1984 and last modified on 3 October 2001, are available in its territory.

ARTICLE 10.6

TRIPS and public health

1. The Parties affirm the Doha Declaration. In interpreting and implementing the rights and obligations under this Chapter, each Party shall ensure consistency with the Doha Declaration.

2. Nothing in this Chapter shall limit a Party's rights and obligations pursuant to Article 31 and Article 31bis of the TRIPS Agreement, and the Annex and the Appendix to the Annex to the TRIPS Agreement.

ARTICLE 10.7

Exhaustion

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

ARTICLE 10.8

National treatment

1. In respect of the intellectual property covered by this Chapter, each Party shall accord to the nationals of the other Party treatment no less favorable than it accords to its own nationals with

regard to the protection[1] of intellectual property rights, subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention, the Rome Convention, the WPPT or the Treaty on Intellectual Property in Respect of Integrated Circuits done at Washington on 26 May 1989. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided for under this Chapter.

2. A Party may avail itself of the exceptions permitted pursuant to paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service in its territory, or to appoint an agent in its territory, if such exceptions are:

(a) necessary to secure compliance with the Party's laws or regulations which are not inconsistent with this Chapter; and

b) not applied in a manner which would constitute a disguised restriction on trade.

3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

ARTICLE 10.9

Transfer of technology

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1 For the purposes of this paragraph, “protection” shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter, including measures to prevent the circumvention of effective technological measures as referred to in Article 10.18 [Protection of technological measures] and measures concerning rights management information referred to in Article 10.19 [Obligations concerning rights management information].

1. The Parties recognise the importance of facilitating the voluntary transfer and dissemination of technology. The Parties further recognise the importance of the protection and enforcement of intellectual property, in this regard.

2. The Parties agree to exchange views and information on their law and international practices, including those related to the protection and enforcement of intellectual property rights, regarding transfer of technology. This may include exchanges on measures to facilitate information flows, business partnerships and voluntary licensing and subcontracting agreements. Particular attention shall be paid to the conditions necessary to promote technology linkage and innovation and to create an adequate enabling environment for technology transfer in the host countries, including issues such as the relevant legal framework and development of human capital.

ARTICLE 10.10

Genetic resources, traditional knowledge and traditional cultural expressions

1. The Parties affirm the importance of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, adopted on 24 May 2024.

2. The Parties affirm the importance of the work carried out on traditional knowledge and traditional cultural expressions by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

3. The Parties agree to exchange views and information on intellectual property related aspects of genetic resources, traditional knowledge and traditional cultural expressions.

4. The Parties acknowledge that the disclosure of the origin or source of genetic resources and associated traditional knowledge in patent applications promotes the transparency of the patent system with regard to genetic resources associated traditional knowledge, and recognise the

importance of using relevant and available databases or digital libraries, such as the Traditional Knowledge Digital Library[2], in that respect.

SECTION B

STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

COPYRIGHT AND RELATED RIGHTS

ARTICLE 10.11

Authors

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

(a) the reproduction, including direct or indirect, temporary or permanent, by any means or in any manner or form, in whole or in part, of their works;

(b) any form of distribution to the public by sale or otherwise of the original and copies of their works;

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[2] The Traditional Knowledge Digital Library project, initiated in India in 2001.

(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

(d) the commercial rental to the public of originals or copies of their works in respect of at least computer programs[3] and cinematographic works.

ARTICLE 10.12

Performers

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

(a) the fixation of their unfixed performances;

(b) the reproduction, including direct or indirect, temporary or permanent, by any means or in any manner or form, in whole or in part, of their fixed performances;

(c) the distribution to the public, by sale or otherwise, of the original or copies of fixations of their performances;

(d) the commercial rental to the public of the original and copies of their fixed performances;

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

[3] A Party may exclude computer programs where the program itself is not the essential object of the rental.

(f) the broadcasting, at least by wireless means, and the communication to the public of their unfixed performances except where the performance is already a broadcast performance.

ARTICLE 10.13

Producers of Phonograms

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

(a) the reproduction, including direct or indirect, temporary or permanent, by any means or in any manner or form, in whole or in part, of their phonograms;

(b) the distribution to the public, by sale or otherwise, of the original or copies of their phonograms;

(c) the commercial rental to the public of the original and copies of their phonograms; and

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

ARTICLE 10.14

Broadcasting organisations

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

(a) the fixation of their broadcasts whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;

(b) any reproduction by any means or in any manner or form, in whole or in part, of fixations of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;

(c) the distribution to the public, by sale or otherwise, of fixations including copies thereof, of their broadcasts whether these broadcasts are transmitted by wire or over the air, including by cable or satellite;

(d) the rebroadcasting of their broadcasts, at least by wireless means;

(e) the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of a fee; and

(e) the making available to the public, by wire or wireless means, of fixations of their broadcasts, whether those 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.

ARTICLE 10.15

Broadcasting and communication to the public of phonograms published for commercial purposes

1. Each Party shall provide performers and producers of phonograms with:

(a) the right to a single equitable remuneration paid by the user if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or any communication to the public; or

(b) the exclusive right to authorize or prohibit any of the following acts: the broadcasting or any communication to the public of their phonograms published for commercial purposes.

2. For the purposes of point (a) of paragraph 1, a Party shall ensure that the single equitable remuneration is shared between the relevant performers and phonogram producers. A Party may, in the absence of an agreement between performers and producers of phonograms, set the terms according to which performers and producers of phonograms shall share such single equitable remuneration.

3. For the purposes of point (b) of paragraph 1, a Party shall ensure adequate remuneration for performers and producers of phonograms when phonograms published for commercial purposes are used for broadcasting or for any communication to the public.

ARTICLE 10.16

Resale right

1. Each Party shall provide, for the benefit of the author of an original work of art,[4] a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.

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

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

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[4] For the purposes of this Article, works of art shall include at least paintings, sculptures and drawings.

The procedure for collection of the remuneration and their amounts shall be determined by the law of each Party.

ARTICLE 10.17

Collective management of rights

1. The Parties shall promote cooperation between the collective management organisations established in their respective territories for the purpose of facilitating licensing of works and other protected subject matter under this Sub-section and the transfer of rights revenue between the respective collective management organisations for the use of works or other protected subject matter.

2. The Parties shall promote the transparency of collective management organisations established in their respective territories, in particular regarding the rights revenue they collect, the deductions they make from the rights revenue collected, the use of the rights revenue collected, their distribution policies, and the repertoire they represent.

3. Each Party shall endeavour to promote the non-discriminatory treatment by collective management organisations of rights holders these organisations represent either directly or via another collective management organisation.

4. Each Party shall encourage collective management organisations established in its territory and representing another collective management organisation established in the territory of the other Party by way of a representation agreement, to regularly, diligently and accurately distribute amounts due to the represented collective management organisations, as well as provide the represented collective management organisation with the information on the amount of rights revenue collected on its behalf and any deductions made to this rights revenue.

ARTICLE 10.18

Obligations concerning technological measures

Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by the right holder of any copyright or related right in connection with the exercise of their rights provided under this Sub-Section that restrict acts, in respect of their works and other subject matter, which are not authorized by the right holder of any copyright or related right concerned or permitted by law, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that they are pursuing that objective. Each Party may provide for a specific regime for legal protection of technological measures used to protect computer programs.

ARTICLE 10.19

Obligations concerning rights management information

1. Each Party shall provide adequate and effective legal remedies against any person knowingly performing without authority any of the following acts, if such person knows, or has reasonable grounds to know, that by so doing he or she is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights as provided by the law of a Party:

(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, including copies thereof, or other subject-matter protected pursuant to this Sub-Section knowing that electronic rights management information has been removed or altered without authority.

2. For the purposes of this Article, "rights management information" means any information which identifies the work or other subject-matter referred to in this Article, the author or any other

right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.

3. Paragraph 2 shall apply if 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 Article.

ARTICLE 10.20

Term of Protection

1. Each Party shall provide that the rights of an author of a work shall run for the life of the author and not less than 60 years after the author's death, irrespective of the date when the work is lawfully made available to the public.

2. In the case of anonymous or pseudonymous works, the term of protection shall run for not less than 60 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.

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. Each Party shall provide the rights of the broadcasting organizations shall run for not less than 25 years from the first transmission of the broadcast whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

5. Each party shall provide that the rights of performers for their performances shall run for not less than 50 years from the date of the performance.

6. The term of protection to be granted to producers of phonograms under this Chapter shall last, at least, until the end of a period of 60 years computed from the end of the year in which the phonogram was published, or failing such publication within 50 years from fixation of the phonogram, 50 years from the end in which the fixation was made. Each Party may provide for effective measures in order to ensure that the profit generated during the 10 years of protection beyond 50 years is shared fairly between the performers and the producers of phonograms.

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

8. Each Party may provide for longer terms of protection than those provided for in this Article.

ARTICLE 10.21

Limitations and exceptions

Each Party may provide limitations or exceptions to the rights set out in Articles 10.11 to 10.15 provided that such limitations or exceptions are confined to certain special cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the right holder.

SUB-SECTION 2

TRADE MARKS

ARTICLE 10.22

Signs of which a trade mark may consist

1. A trade mark may consist of any signs, or any combination of signs, in particular words, including personal names, or letters, numerals, figurative elements, colours or combinations of colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

(a) distinguishing the goods or services of one undertaking from those of other undertakings; and

(b) being represented on the respective trade mark register of each Party, in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection.

2. A Party may require as a condition for registration of a trade mark that the mark be capable of being represented graphically.

3. Where signs are not inherently capable of distinguishing the relevant goods or services, Parties may make registrability depend on distinctiveness acquired through use.

ARTICLE 10.23

Registration procedure

1. Each Party shall provide for a system for the registration of trade marks in which each final negative decision taken by the relevant trade mark administration, including partial refusals of registration, if any, shall be communicated in writing to the relevant party, which may be by electronic means, be duly reasoned and subject to appeal.

2. Each Party shall provide for the possibility for third parties to oppose:

(a) trade mark applications; or

(b) where appropriate, trade mark registrations.

Such opposition proceedings shall be adversarial.

3. Each Party shall provide a publicly available electronic database of trade mark applications and trade mark registrations.

ARTICLE 10.24

Trade mark classification

Each Party shall maintain a trade mark classification system that is consistent 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 and revised (Nice Classification).

ARTICLE 10.25

Rights conferred by a trade mark

1. Each Party shall provide that the registration of a trade mark confers on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having the proprietor's consent from using in the course of trade:

(a) any sign which is identical with the registered trade mark in relation to goods or services which are identical with those for which the trade mark is registered;

(b) any sign where, because of its identity with, or similarity to, the registered trade mark and the identity or similarity of the goods or services covered by this trade mark and the sign, there exists a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the registered trade mark;

(c) any sign where, because of its identity with, or similarity to, the registered trade mark used in relation to goods or services which are not similar to those for which the trade mark is registered, where the latter has a reputation in the territory of the Party and where use of that sign without due cause takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the registered trade mark.

2. The rights described under paragraph 1 shall not prejudice any existing prior rights, nor shall they affect the possibility of the Parties to make rights available on the basis of use.

ARTICLE 10.26

The right to prohibit acts in relation to the use of packaging or other means

Where the risk exists that the packaging, labels, tags, security or authenticity features or devices, or any other means to which the trade mark is affixed could be used in relation to goods or services and that use would constitute an infringement of the rights of the proprietor of the trade mark, the proprietor of that trade mark shall have the right to prohibit the following acts if carried out in the course of trade:

(a) affixing a sign identical with, or similar to, the trade mark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark may be affixed; or

(b) offering or placing on the market, or stocking for those purposes, or importing or exporting, packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark is affixed.

ARTICLE 10.27

Well-known trade marks

1. For the purpose of giving effect to protection of well-known trade marks, as referred to in Article 6bis of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, each Party shall endeavour to 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.

2. No Party shall require, as a condition for determining that a trade mark is well-known, that the trade mark has been registered in the Party or in another jurisdiction.

ARTICLE 10.28

Exceptions to the rights conferred by a trade mark

1. Each Party shall provide for limited exceptions to the rights conferred by a trade mark, such as the fair use of descriptive terms, including geographical indication, and may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the proprietor of the trade mark and of third parties.

2. The trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:

(a) the name or address of the third party, where the third party is a natural person;

(b) signs or 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 trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular where the use of that trade mark is necessary to

indicate the intended purpose of a product or service, in particular as accessories or spare parts;

provided the third party uses them in accordance with honest practices in industrial or commercial matters.

ARTICLE 10.29

Grounds for revocation

1. Each Party shall provide that a trade mark shall be liable to revocation if, within a continuous period of five years, the trade mark has not been put to genuine use in the relevant territory of a Party in connection with the goods or services in respect of which it is registered, and there are no proper reasons for non-use[5]. However, no person may claim that the proprietor's rights in a trade mark 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 trade mark 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 occur only after the proprietor becomes aware that the application for revocation may be filed.

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

(a) as a consequence of acts or inactivity of the proprietor, the trade mark has become the common name in the trade for a good or service in respect of which it is registered;

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[5] For the purposes of this Article, each Party may interpret 'proper reasons for non-use' as 'non-use of a trade mark due to special circumstances in trade that affected its use and not due to any intention to abandon or not to use the trade mark'.

(b) as a consequence of the use made of the trade mark by the proprietor of the trade mark or with the proprietor's 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.

ARTICLE 10.30

Bad faith applications

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

SUB-SECTION 3

DESIGNS

ARTICLE 10.31

Protection of registered industrial designs

1. Each Party shall provide for the protection of independently created industrial designs that are new or original. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with this Sub-Section. For the purposes of this Article, a Party may consider that a design having individual character is original.

2. The holder of a registered industrial design shall have the right to prevent third parties not having the holder's consent at least from making, offering for sale, selling, importing, exporting,

stocking or using a product or article bearing or embodying a design which is a copy[6], or substantially a copy, of the protected design when such acts are undertaken for commercial purposes.

3. Each Party may provide that a design applied to or incorporated in a product which constitutes a component part, of a complex product is only considered to be new or original:

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

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

4. For the purposes of point (a) of paragraph 3, "normal use" means use by the end user, excluding maintenance, servicing or repair work.

ARTICLE 10.32

International classification system for industrial designs

Each Party shall endeavour to use a classification system for industrial designs that is consistent with the Locarno Agreement Establishing an International Classification for Industrial Designs, done at Locarno on 8 October 1968, as amended on 28 September 1979.

ARTICLE 10.33

Duration of protection

[6] "Copy" shall be understood within the meaning of Article 26 of TRIPS.

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

ARTICLE 10.34

Protection of unregistered designs

1. Each Party may confer on holders of an unregistered design the right to prevent the use of the unregistered design by any third party not having the holder's consent only if the contested use results from copying the unregistered design in their respective territory. Such use shall at least cover the offering for sale, putting on the market, importing or exporting the product.

2. The duration of protection available for the unregistered design may amount to at least three years as from the date on which the design was first made available to the public in the territory of the respective Party.

ARTICLE 10.35

Exceptions and exclusions

1. Each Party may provide limited exceptions to the protection of designs, including unregistered designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of designs, and do not unreasonably prejudice the legitimate interests of the holder of the design, taking account of the legitimate interests of third parties.

2. Each Party may provide that the protection of designs shall not extend to designs solely dictated by its technical or functional considerations.

3. Each Party may provide that a design shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the

product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.

4. By way of derogation from paragraph 3 of this Article, a design shall, in accordance with the conditions set out in Article 10.31(1), subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

ARTICLE 10.36

Relationship to copyright

Each Party shall ensure that unregistered designs shall also be eligible for protection under the copyright law of that Party 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.

SUB-SECTION 4

PROTECTION OF UNDISCLOSED INFORMATION

Article 10.37

Protection of trade secrets

1. Each Party shall provide for appropriate civil judicial procedures and remedies for any trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret without the consent of the trade secret holder whenever carried out in a manner contrary to honest commercial practices.

2. For the purposes of this Sub-Section, the following definitions apply:

(a) "Trade secret" means information which meets all of the following requirements:

(i) it 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) it has commercial value because it is secret; and

(iii) it 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 purposes of this Sub-Section, at least the following conduct shall be considered contrary to honest commercial practices:

(a) the acquisition of a trade secret without the consent of the trade secret holder, whenever obtained by unauthorised access to, or by appropriation or copying of, any documents, objects, materials, substances or electronic files that are lawfully under the control of the trade secret holder, and that contain the trade secret or from which the trade secret can be deduced;

(b) the use or disclosure of a trade secret whenever it is 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 in a manner referred to in point (a);

(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 to have known[7] under the circumstances 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).

4. Nothing in this Sub-Section shall be understood as requiring either Party to consider any of the following conducts as contrary to honest commercial practices:

(a) independent discovery or creation;

(b) the reverse engineering of a product that has been made available to the public or that is lawfully in the possession of the acquirer of the information, where the acquirer of the information is free from any legally valid duty to limit the acquisition of the trade secret;

(c) the acquisition, use or disclosure of a trade secret required or allowed by the law of each Party;

(d) the exercise of the right of workers or workers' representatives to information and consultation in accordance with the laws and regulations of that Party.

(e) any other practice which, under the circumstances, is in conformity with honest commercial practices.

5. Nothing in this Sub-Section shall be understood as affecting the exercise of freedom of expression and information, including the freedom and pluralism of the media, as protected in each Party, restricting the mobility of employees, or as affecting the autonomy of social partners and their right to enter into collective agreements, in accordance with the laws and regulations of the Parties.

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[7] For the purpose of this Article, a Party may interpret "ought to have known" as "was grossly negligent in failing to know".

ARTICLE 10.38

Civil judicial procedures and remedies of trade secrets

1. Each Party shall provide that its judicial authorities have the authority to order any person participating in the civil judicial proceedings referred to in Article 10.37(1), or who has access to documents which form part of those 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. Each Party shall provide that the judicial authorities shall have the authority to order that the obligation referred to in paragraph 1 remains in force after the civil judicial proceedings have ended, for as long as appropriate.

3. In civil judicial proceedings referred to Article 10.37(1), each Party shall provide that its judicial authorities have the authority at least to:

(a) order provisional measures, in accordance with their respective laws and regulations to cease, prevent and prohibit the use or disclosure of the trade secret in a manner contrary to honest commercial practices;

(b) order measures, in accordance with their respective laws and regulations, ordering the cessation or prohibition of the disclosure or use of the trade secret in a manner contrary to honest commercial practices;

(c) order, in accordance with their respective laws and regulations, any person who has acquired, used or disclosed a trade secret in a manner contrary to honest commercial practices and that

knew or ought to have known[8] that he or 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 such acquisition, use or disclosure of the trade secret;

(d) take specific measures necessary to preserve the confidentiality of any trade secret or alleged trade secret used or referred to in proceedings as referred to in Article 10.37(1). Such specific measures may include, in accordance with each Party's respective laws and regulations, including the rights of defence, 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 any person participating in the legal proceedings who fail or refuse to comply with the court orders concerning the protection of the trade secret or alleged trade secret.

4. Each Party may provide that an application for the measure, procedures or remedies provided for in this Article is dismissed where the alleged acquisition, use or disclosure of a trade secret was carried out, in accordance with its laws and regulations:

(a) to reveal misconduct, wrongdoing or illegal activity for the purpose of protecting the general public interest;

(b) as a disclosure by employees to their representatives as part of, and necessary for, the legitimate exercise by those representatives of their functions;

c) to protect a legitimate interest recognised by the laws and regulations of that Party.

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[8] For the purpose of this Article, a Party may interpret "ought to have known" as "was grossly negligent in failing to know".

ARTICLE 10.39

Protection of data submitted to obtain marketing authorisation for pharmaceutical or agricultural chemical products

Each Party, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, each Party shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

SUB-SECTION 5

PLANT VARIETIES

ARTICLE 10.40

Protection of plant varieties rights

1. Each Party shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof, in accordance with the TRIPS Agreement.

2. The *sui generis* system referred to in paragraph 1 shall include at least the following elements: scope of protection, application procedure, examination of distinctness, uniformity and stability (DUS), requirements on novelty and denomination, obligations of the right holder and enforcement of rights.

3. The duration of protection available shall amount to at least 18 years for trees and vines, and 15 years for other plant varieties[9].

SECTION C

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

GENERAL PROVISIONS

ARTICLE 10.41

General obligations

1. Each Party shall provide under its respective law for measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. For the purposes of this Section, the term "intellectual property rights" does not include rights covered by Sub-Section 4 of Section B [PROTECTION OF UNDISCLOSED INFORMATION].

2. The measures, procedures and remedies referred to in paragraph 1 shall be:

(a) fair and equitable;

(b) not unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays;

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[9] A Party may comply with this obligation with shorter terms of protection subject to reviews and renewals.

(c) effective, proportionate and dissuasive; and

(d) applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

3. The Parties understand that this 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 each Party to enforce its law in general. Nothing in this Section shall create any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

ARTICLE 10.42

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 Sub-Sections 2 and 3 of this Section:

(a) the holders of intellectual property rights in accordance with the law of a Party;

(b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the law of a Party; and

(c) federations and associations, in so far as permitted by and in accordance with the law of a Party. The term "federations and associations" shall include collective rights management bodies and professional defence bodies which are regularly recognised as having the right to represent holders of intellectual property rights.

ARTICLE 10.43

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 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 the author's name to appear on the work in the usual manner; and

(b) point (a) applies mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.

SUB-SECTION 2

CIVIL AND ADMINISTRATIVE ENFORCEMENT

ARTICLE 10.44

Measures for preserving evidence

1. Each Party shall provide that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support their claims that their 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 appropriate safeguards and 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. The measures in paragraphs 1 and 2 shall be taken, where appropriate, without the other party having been heard, in particular if any delay is likely to cause irreparable harm to the right holder or if there is a demonstrable risk of evidence being destroyed.

ARTICLE 10.45

Evidence

1. Each Party shall take the necessary measures to enable that competent judicial authorities have the authority to order, on application by a party which has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, that this evidence be produced by the opposing party, subject to conditions which ensure the protection of confidential information.

2. Each Party shall also take the necessary measures to enable that competent judicial authorities have the authority to order, where appropriate, in cases of infringement of an intellectual property right committed on a commercial scale, under the same conditions as in paragraph 1, the communication of banking, financial or commercial documents under the control of the opposing party, subject to conditions which ensure the protection of confidential information.

ARTICLE 10.46

Right of information

1. Each Party shall provide that, in the context of civil 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 or any other person to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right.

2. For the purposes of paragraph 1 "any other person" means a person who:

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

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

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

(d) was indicated by the person referred to in points (a), (b) or (c), as being involved in the production, manufacture or distribution of the goods or the provision of the services.

3. The information referred to in paragraph 1 shall, as appropriate, comprise:

(a) 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;

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

4. Paragraphs 1 and 2 shall apply without prejudice to other laws of a Party which:

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

(b) govern the use in civil 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 their own participation or that of their close relatives in an infringement of an intellectual property right;

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

ARTICLE 10.47

Provisional and precautionary measures

1. Each Party shall provide that its judicial authorities shall have the authority, at the request of the applicant:

(a) to 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 the law of that Party, 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; and

(b) 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.

2. In the case of an alleged infringement committed on a commercial scale, each Party shall provide that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities shall have the authority to order the precautionary seizure of the immovable property of the alleged infringer. Each Party shall also provide that its judicial

authorities have the authority to order the precautionary seizure of movable property of the alleged infringer, including the blocking of the alleged infringer's 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.

3. Each Party shall provide that its judicial authorities shall, in respect of the measures referred to in paragraphs 1 and 2 have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the rightholder and that the applicant's right is being infringed, or that such infringement is imminent.

ARTICLE 10.48

Corrective measures

1. Each Party shall provide that its judicial authorities may order, at the request of the applicant, without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the destruction of goods that they have found to be infringing an intellectual property right or at least the removal of those goods from the channels of commerce in such a manner as to avoid any harm caused to the right holder. If appropriate, under the same conditions, the judicial authorities may also order the destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. Each Party's judicial authorities 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 10.49

Injunctions

Each Party shall provide that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities shall have the authority to issue against the infringer an injunction aimed at prohibiting the continuation of the infringement[10]. Each Party shall also provide that the judicial authorities shall have the authority to issue an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right.

ARTICLE 10.50

Alternative measures

Each Party may provide that the judicial authorities, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 10.48 [Corrective measures] or 10.49 [Injunctions], may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in these two Articles if that person acted unintentionally and without negligence, if execution of the measures in question would cause the person disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

ARTICLE 10.51

Damages

1. Each Party shall provide that its civil judicial authorities shall have the authority to, on application of the injured party, order the infringer, who knowingly engaged or had reasonable grounds to know it was engaging in an infringing activity, to pay to the right holder damages appropriate to the actual injury suffered by the right holder as a result of the infringement.

2. Each Party shall provide that when its judicial authorities set the amount of damages:

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[10] The obligations in this Section are without prejudice to the flexibilities available under Article 44.2 of the TRIPS Agreement.

(a) they take into account the appropriate aspects, such as the negative economic consequences, including 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 point (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.

3. 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 the recovery of profits or the payment of damages which may be pre-established.

ARTICLE 10.52

Legal costs

Each Party shall provide that its judicial authorities have the authority to order 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 10.53

Publication of judicial decisions

Each Party shall provide that, in legal proceedings instituted for infringement of an intellectual property right, the 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 10.54

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 this Section.

SUB-SECTION 3

BORDER ENFORCEMENT

ARTICLE 10.55

Border measures

1. Each Party shall adopt or maintain procedures, with respect to import shipments, under which a right holder may submit applications[11] requesting customs authorities to suspend the release of or detain suspected goods.[12] For the purposes of this Section, "suspected goods" means goods

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11 For the purposes of this Sub-Section, a Party may treat “application” as meaning “recordation”.

12 With respect to export shipments, the judicial authorities of India shall have the authority to, upon application from the right holder, prevent the exportation of suspected goods covered in this Sub-Section.

suspected of infringing trademarks, copyrights and related rights, geographical indications, industrial designs.

2. Each Party shall have in place electronic systems for the management by customs of the applications granted or recorded.

3. Each Party may provide that its customs authorities do not charge a fee to cover the administrative costs resulting from the processing of an application or a recordation. If a Party decides to establish a fee to cover the administrative costs resulting from the processing of an application or a recordation, such a fee shall not be set at an amount that unreasonably deters recourse to these procedures.

4. Each Party shall provide that its customs authorities decide about granting or recording application within a reasonable period of time.

5. Each Party shall provide for the applications referred to in paragraph 1 to apply to multiple shipments.

6. Each Party shall provide that its customs authorities use risk analysis to identify suspected goods.

7. Each Party may authorise its customs authority to provide a right holder, upon request, with information about goods, including a description and the actual or estimated quantities thereof, and if known, the name and address of the consignor, importer, exporter or consignee, without prejudice to a Party's laws and regulations relating to the protection of confidential information, and the country of origin or provenance of the goods, whose release has been suspended, or which have been detained.

8. The competent authorities of each Party shall have the authority to order the destruction of goods following a determination that the goods are infringing. Each Party may have in place procedures allowing for the destruction of suspected goods, without there being any need for prior administrative or judicial proceedings for the formal determination of the infringements, where the

persons concerned agree or do not oppose the destruction. In case suspected goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the commercial channel in a manner which avoids 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. Each Party may decide not to apply this Article to the 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. Each Party shall encourage its customs authorities to maintain a regular dialogue and promote cooperation with the relevant stakeholders and with other authorities involved in the enforcement of intellectual property rights.

12. The Parties shall endeavour to cooperate in respect of international trade in suspected goods. In particular, the Parties shall share information on trade in suspected goods affecting the other Party.

13. Without prejudice to other forms of cooperation, Title III of the 2004 EU-India Agreement on customs cooperation and mutual administrative assistance in customs matters shall be applicable with regard to breaches of legislation on intellectual property rights for the enforcement of which the customs authorities of a Party are competent in accordance with this Article.

14. The Committee on Customs and Rules of Origin shall be responsible for matters related to the implementation of this Sub-Section.

ARTICLE 10.56

Ex-officio action

1. With respect to import shipments each Party shall ensure that its customs authorities may act upon their own initiative to suspend the release of or detain suspected goods.

2. Each Party shall provide that its competent authorities shall have the authority, where it acts on its own initiative, to request a right holder to supply relevant information to assist the competent authorities in taking the border measures referred to in this Section.

ARTICLE 10.57

Consistency with GATT 1994 and TRIPS Agreement

In implementing border measures for the enforcement of intellectual property rights by customs, whether or not covered by this Section, the Parties shall ensure consistency with their obligations under GATT 1994 and the TRIPS Agreements and, in particular, with Article V of GATT 1994 and Article 41 and Section 4 of Part III of the TRIPS Agreement.

SECTION D

OTHER PROVISIONS

ARTICLE 10. 58

Modalities of cooperation

1. The Parties shall endeavour to cooperate with a view to supporting implementation of the commitments and obligations in relation to the subject matter covered by this Chapter.

2. The areas of cooperation may include, among others:

(a) exchange of information on the legal framework and policy developments concerning intellectual property rights and relevant rules of protection and enforcement;

(b) exchange of experience on the enforcement of intellectual property rights and on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;

(c) exchange of information on legislative progress;

(d) coordination to prevent exports of counterfeit goods, including coordination with other countries;

(e) technical assistance, capacity building, exchange and training of personnel;

(f) protection and defence of intellectual property rights and the dissemination of information in this regard in, among others, to business circles and civil society;

(g) public awareness of consumers and right holders;

(h) enhancement of institutional cooperation, particularly between the intellectual property offices;

(i) educating and promoting awareness among the general public relating to policies concerning the protection and enforcement of intellectual property rights;

(j) promotion of the use, protection and enforcement of intellectual property rights with public-private collaboration, including with SMEs, startups and educational institutions;

(k) the formulation of effective strategies to identify audiences and communication programmes to increase consumer and media awareness on the impact of intellectual property rights' violations, including the risk to health and safety and the connection to organised crime.

(l) the arrangements between each Party's collective management organisations;

(m) sharing of best practices on aspects of intellectual property policy and law with the aim of supporting environmental and climate policies, such as the development and deployment of environmental and low-emission technologies, clean and renewable energy and enabling infrastructure, and energy-efficient goods and services;

(n) implementation of multilateral intellectual property agreements, such as the TRIPS Agreement and the agreements concluded or administered under the auspices of WIPO.

3. The Parties shall, either directly or through the Specialised Committee on Intellectual Property, maintain contact on all matters related to the implementation and functioning of this Section.

ARTICLE 10.59

Voluntary stakeholder initiatives

1. Each Party shall endeavour to facilitate voluntary stakeholder initiatives to effectively address intellectual property infringement, including online and in other marketplaces, focusing on concrete problems and seeking practical solutions that are realistic, balanced, proportionate and fair for all concerned, including by convening stakeholders consensually and promoting open dialogue and cooperation among the Parties' stakeholders.

2. The Parties shall endeavour to exchange information with each other regarding efforts to facilitate voluntary stakeholder initiatives in their respective territories.

ARTICLE 10. 60

Committee on intellectual property rights

Without prejudice to Article 10.55(14), the Committee on Intellectual Property Rights shall be responsible for the matters covered in this Chapter.