

CHAPTER 18
INTELLECTUAL PROPERTY

Section A: General Provisions

Article 18.1: Definitions

1. For the purposes of this Chapter:

Berne Convention means the *Berne Convention for the Protection of Literary and Artistic Works*, as revised at Paris, July 24, 1971;

Budapest Treaty means the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977), as amended on September 26, 1980;

Declaration on TRIPS and Public Health means the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2), adopted on November 14, 2001;

geographical indication means an indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement;

Madrid Protocol means the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, done at Madrid, June 27, 1989;

Paris Convention means the *Paris Convention for the Protection of Industrial Property*, as revised at Stockholm, July 14, 1967;

performance means a performance fixed in a phonogram unless otherwise specified;

with respect to copyright and related rights, the term **right to authorise or prohibit** refers to exclusive rights;

Singapore Treaty means the *Singapore Treaty on the Law of Trademarks*, done at Singapore, March 27, 2006;

第 18 章

知识产权

A 节：总则

第 18.1 条 定义

1. 就本章而言：

《伯尔尼公约》指 1971 年 7 月 24 日修订于巴黎的《保护文学和艺术作品伯尔尼公约》；

《布达佩斯条约》指 1980 年 9 月 26 日修正的《国际承认用于专利程序的微生物保存布达佩斯条约》(1977)；

《TRIPS 与公共健康宣言》指 2001 年 11 月 14 日通过的《TRIPS 协定与公共健康宣言》(WT/MIN(01)/DEC/2)；

地理标志指识别一货物源自一缔约方领土内或该领土内一地区或地方的标志，该货物的特定质量、声誉或其他特性主要归因于其地理来源；

知识产权指属《TRIPS 协定》第二部分第 1 节至第 7 节的主题的所有类别的知识产权；

《马德里议定书》指 1989 年 6 月 27 日订于马德里的《商标国际注册马德里协定有关议定书》；

《巴黎公约》指 1967 年 7 月 14 日修订于斯德哥尔摩的《保护工业产权巴黎公约》；

表演指固定在录音制品上的表演，除非另有规定；

就版权和相关权而言，**授权或禁止的权利**指专有权；

《新加坡条约》指 2006 年 3 月 27 日订于新加坡的《商标法新加坡条约》；

UPOV 1991 means the *International Convention for the Protection of New Varieties of Plants*, as revised at Geneva, March 19, 1991;

WCT means the *WIPO Copyright Treaty*, done at Geneva, December 20, 1996;

WIPO means the World Intellectual Property Organization;

for greater certainty, **work** includes a cinematographic work, photographic work and computer program; and

WPPT means the *WIPO Performances and Phonograms Treaty*, done at Geneva, December 20, 1996.

2. For the purposes of Article 18.8 (National Treatment), Article 18.31(a) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.62.1 (Related Rights):

a **national** means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 18.7 (International Agreements) or the TRIPS Agreement.

Article 18.2: Objectives

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

Article 18.3: Principles

1. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.

2. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

1991年 UPOV 公约指 1991 年 3 月 19 日修订于日内瓦的《国际植物新品种保护公约》；

WCT 指 1996 年 12 月 20 日订于日内瓦的《WIPO 版权条约》；

WIPO 指世界知识产权组织；

为进一步明确，**作品**包括电影作品、摄影作品和计算机程序；以及

WPPT 指 1996 年 12 月 20 日订于日内瓦的《WIPO 表演和录音制品条约》。

2. 就第 18.8 条(国民待遇)、第 18.31 条(a)项(保护或承认地理标志的行政程序)和第 18.62.1 条(相关权)而言：

国民指，对于相关权利，符合第 18.7 条(国际协定)中所列协定或《TRIPS 协定》中所规定的保护资格标准的一缔约方的人。

第 18.2 条 目标

知识产权的保护和实施应有助于促进技术创新，有助于技术转让和传播，有助于技术知识的创造者和使用者的相互获益且有助于社会和经济福利，并有助于权利与义务的平衡。

第 18.3 条 原则

1. 在制定或修正其法律法规时，一缔约方可采取对保护公共健康和营养所必需的和促进对其社会经济和技术发展至关重要部门公共利益所必需的措施，只要此类措施与本章的规定相一致。

2. 可能需要采取适当措施以防止权利持有人滥用知识产权或防止采取不合理限制贸易或对国际技术转让造成不利影响的做法，只要此类措施与本章的规定相一致。

Article 18.4: Understandings in Respect of this Chapter

Having regard to the underlying public policy objectives of national systems, the Parties recognise the need to:

- (a) promote innovation and creativity;
- (b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and
- (c) foster competition and open and efficient markets,

through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including right holders, service providers, users and the public.

Article 18.5: Nature and Scope of Obligations

Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene the provisions of this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

Article 18.6: Understandings Regarding Certain Public Health Measures

1. The Parties affirm their commitment to the Declaration on TRIPS and Public Health. In particular, the Parties have reached the following understandings regarding this Chapter:

- (a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all. Each Party has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.

第 18.4 条 关于本章的谅解

考虑到国家体系的基本公共政策目标，缔约方认识到需要通过各自知识产权制度：

- (a) 促进创新和创造力；
- (b) 便利信息、知识、技术、文化和艺术的传播；以及
- (c) 培育竞争、开放和有效率的市场；

同时尊重透明度和正当程序原则，并考虑相关利益相关者的利益，包括权利人、服务提供者、使用者和公众。

第 18.5 条 义务的性质和范围

每一缔约方均应实施本章的规定。一缔约方可以，但并无义务，在其法律中为知识产权提供比本章所要求的更为广泛的保护或执行，只要此种保护或执行不违反本章的规定。每一缔约方应有权在其各自的法律制度和实践中确定实施本章规定的适当方法。

第 18.6 条 关于特定公共健康措施的谅解

1. 缔约方确认其在《TRIPS 与公共健康宣言》中的承诺。特别是，缔约方已就本章达成下列谅解：

- (a) 本章的义务不会且不得阻止一缔约方采取措施保护公共健康。因此，在重申其对本章承诺的同时，缔约方确认，本章能够且应该以支持每一缔约方保护公共健康，特别是促进所有人获得药物的权利的方式加以解释和实施。每一缔约方有权确定构成国家紧急状态或其他极端紧急的情况，各方理解公共健康危机，包括与艾滋病病毒/艾滋病、肺结核、疟疾和其他传染病相关的公共健康危机，可以构成国家紧急状态或其他极端紧急的情况。

- (b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the WTO General Council of August 30, 2003 on the *Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health* (WT/L/540) and the WTO General Council Chairman's Statement Accompanying the Decision (JOB(03)/177, WT/GC/M/82), as well as the Decision of the WTO General Council of December 6, 2005 on the *Amendment of the TRIPS Agreement*, (WT/L/641) and the WTO General Council Chairperson's Statement Accompanying the Decision (JOB(05)/319 and Corr. 1, WT/GC/M/100) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilisation of the TRIPS/health solution.
- (c) With respect to the aforementioned matters, if any waiver of any provision of the TRIPS Agreement, or any amendment of the TRIPS Agreement, enters into force with respect to the Parties, and a Party's application of a measure in conformity with that waiver or amendment is contrary to the obligations of this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the waiver or amendment.

2. Each Party shall notify, if it has not already done so, the WTO of its acceptance of the *Protocol amending the TRIPS Agreement*, done at Geneva on December 6, 2005.

Article 18.7: International Agreements

1. Each Party affirms that it has ratified or acceded to the following agreements:

- (a) *Patent Cooperation Treaty*, as amended September 28, 1979;
- (b) Paris Convention; and
- (c) Berne Convention.

2. Each Party shall ratify or accede to each of the following agreements, if it is not already a party to that agreement, by the date of entry into force of this Agreement for that Party:

- (a) Madrid Protocol;
- (b) Budapest Treaty;

- (b) 认识到关于获得依照如下宣言和决定所提供药物的承诺：即 WTO 总理事会 2003 年 8 月 30 日《关于执行<TRIPS 协定与公共健康多哈宣言>第 6 段的决定》(WT/L/540)和该决定所附 WTO 总理事会主席声明(JOB(03)/177、WT/GC/M/82)以及 WTO 总理事会 2005 年 12 月 6 日《关于<TRIPS 协定>修正案的決定》(WT/L/641)和该决定所附 WTO 总理事会主席声明(JOB(05)/319 和 Corr.1、WT/GC/M/100)(统称为“TRIPS/健康解决方案”)，本章不会且不得妨碍 TRIPS/健康解决方案的有效利用。
- (c) 对于上述事项，如对《TRIPS 协定》任何条款的任何豁免或对《TRIPS 协定》的任何修正对缔约方生效，且一缔约方所实施的与该豁免或修正相符的措施与本章的义务相违背，则缔约方应立即进行磋商，以便依照该豁免或修正酌情修改本章。

2. 每一缔约方，如其尚未作出通知，则应将其接受 2005 年 12 月 6 日订于日内瓦的《关于修正<TRIPS 协定>的议定书》一事向 WTO 作出通知。

第 18.7 条 国际协定

1. 每一缔约方确认其已经批准或加入下列协定：
- (a) 1979 年 9 月 28 日修正的《专利合作条约》；
 - (b) 《巴黎公约》；以及
 - (c) 《伯尔尼公约》。
2. 每一缔约方如尚未成为下列协定参加方，则应在截至本协议对该缔约方生效之日批准或加入下列每一协定：
- (a) 《马德里议定书》；
 - (b) 《布达佩斯条约》；

- (c) Singapore Treaty;¹
- (d) UPOV 1991;²
- (e) WCT; and
- (f) WPPT.

Article 18.8: National Treatment

1. In respect of all categories of intellectual property covered in this Chapter,³ each Party shall accord to nationals of another Party treatment no less favourable than it accords to its own nationals with regard to the protection⁴ of intellectual property rights.

2. With respect to secondary uses of phonograms by means of analog communications and free over-the-air broadcasting, however, a Party may limit the rights of the performers and producers of another Party to the rights its persons are accorded within the jurisdiction of that other Party.

3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of another Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:

- (a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and

¹ A Party may satisfy the obligations in paragraph 2(a) and 2(c) by ratifying or acceding to either the Madrid Protocol or the Singapore Treaty.

² Annex 18-A applies to this subparagraph.

³ For greater certainty, with respect to copyrights and related rights that are not covered under Section H (Copyright and Related Rights), nothing in this Agreement limits a Party from taking an otherwise permissible derogation from national treatment with respect to those rights.

⁴ For the purposes of this paragraph, “protection” shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for the purposes of this paragraph, “protection” also includes the prohibition on the circumvention of effective technological measures set out in Article 18.68 (TPMs) and the provisions concerning rights management information set out in Article 18.69 (RMI). For greater certainty, “matters affecting the use of intellectual property rights specifically covered by this Chapter” in respect of works, performances and phonograms, include any form of payment, such as licensing fees, royalties, equitable remuneration, or levies, in respect of uses that fall under the copyright and related rights in this Chapter. The preceding sentence is without prejudice to a Party’s interpretation of “matters affecting the use of intellectual property rights” in footnote 3 of the TRIPS Agreement.

- (c) 《新加坡条约》；¹
- (d) 1991 年 UPOV 公约；²
- (e) WCT；以及
- (f) WPPT。

第 18.8 条 国民待遇

1. 对于本章中所涵盖的所有类别的知识产权，³每一缔约方在知识产权保护⁴方面，给予另一缔约方国民的待遇不得低于其给予本国国民的待遇。

2. 然而对于通过模拟通信和免费无线广播对录音制品的二次使用，一缔约方可将另一缔约方的表演者和制作者的权利限定为该缔约方的人在该另一缔约方管辖范围内被给予的权利。

3. 一缔约方可在其司法和行政程序方面减损第 1 款，包括要求另一缔约方的国民在其领土内指定送达地址，或在其领土内委派代理人，只要此种减损：

- (a) 为保证遵守与本章不相抵触的法律或法规所必需；
及

¹ 一缔约方可通过批准或加入《马德里议定书》或《新加坡条约》两者之一以履行第 2 款(a)项和第 2 款(c)项中的义务。

² 附件 18-A 适用于本项。

³ 为进一步明确，对于 H 节(版权和相关权)未涵盖的版权和相关权，本协定中任何条款不限制一缔约方对这些权利采取在其他情况下允许的对国民待遇的减损。

⁴ 就本款而言，“保护”应包括影响知识产权的效力、获得、范围、维持和执行的事项以及影响本章具体涵盖的知识产权使用的事项。此外，就本款而言，“保护”还包括禁止规避第 18.68 条(技术保护措施)中所列有效技术措施和第 18.69 条(权利管理信息)中所列有关权利管理信息的规定。为进一步明确，对于作品、表演和录音制品，“影响本章具体涵盖的知识产权使用的事项”，包括任何形式的对归入本章中版权和相关权的使用的支付，例如许可费、许可权使用费、合理报酬或征税。前句不损害一缔约方对《TRIPS 协定》脚注 3 中“影响知识产权使用的事项”的解释。

- (b) not applied in a manner that would constitute a disguised restriction on trade.

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

Article 18.9: Transparency

1. Further to Article 26.2 (Publication) and Article 18.73.1 (Enforcement Practices with Respect to Intellectual Property Rights), each Party shall endeavour to make available on the Internet its laws, regulations, procedures and administrative rulings of general application concerning the protection and enforcement of intellectual property rights.

2. Each Party shall, subject to its law, endeavour to make available on the Internet information that it makes public concerning applications for trademarks, geographical indications, designs, patents and plant variety rights.^{5,6}

3. Each Party shall, subject to its law, make available on the Internet information that it makes public concerning registered or granted trademarks, geographical indications, designs, patents and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights.⁷

Article 18.10: Application of Chapter to Existing Subject Matter and Prior Acts

1. Unless otherwise provided in this Chapter, including in Article 18.64 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement for a Party and that is protected on that date in the territory of a Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.

2. Unless provided in Article 18.64 (Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement), a Party shall not be

⁵ For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under Article 18.24 (Electronic Trademarks System).

⁶ For greater certainty, paragraph 2 does not require a Party to make available on the Internet the entire dossier for the relevant application.

⁷ For greater certainty, paragraph 3 does not require a Party to make available on the Internet the entire dossier for the relevant registered or granted intellectual property right.

(b) 不以对贸易构成变相限制的方式实施。

4. 第 1 款不适用于在 WIPO 主持下缔结的多边协定中所规定的与获得或维持知识产权相关的程序。

第 18.9 条 透明度

1. 在第 26.2 条(公布)和第 18.73.1 条(与知识产权有关的执行实践)的基础上, 每一缔约方应努力使其与知识产权保护和执行有关的普遍适用的法律、法规、程序和行政裁决在互联网上可获得。

2. 每一缔约方, 在遵守其法律的前提下, 应努力使其已公布的有关商标、地理标志、外观设计、专利和植物新品种权申请的信息在互联网上可获得。^{5,6}

3. 每一缔约方, 在遵守其法律的前提下, 使其已公布的注册或授予的商标、地理标志、外观设计、专利和植物新品种权的信息在互联网上可获得, 足以使公众知晓这些注册或授予的权利。⁷

第 18.10 条 本章对现有客体和先前行为的适用

1. 除非本章中另有规定, 包括在第 18.64 条(《伯尔尼公约》第 18 条和《TRIPS 协定》第 14 条第 6 款的适用)中另有规定, 否则本章对在本协定对一缔约方生效之日已存在且于当日在要求获得保护的一缔约方领土内受到保护的所有客体, 或满足或此后满足本章下保护标准的所有客体, 均产生义务。

2. 除非第 18.64 条(《伯尔尼公约》第 18 条和《TRIPS 协定》第 14 条第 6 款的适用)中设有规定, 否则不得要求一缔约方

⁵ 为进一步明确, 第 2 款和第 3 款不损害一缔约方在第 18.24 条(商标电子系统)下的义务。

⁶ 为进一步明确, 第 2 款不要求一缔约方使相关申请的整个卷宗在互联网上可获得。

⁷ 为进一步明确, 第 3 款不要求一缔约方使相关注册或授权的知识产权的整个卷宗在互联网上可获得。

required to restore protection to subject matter that on the date of entry into force of this Agreement for that Party has fallen into the public domain in its territory.

3. This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement for a Party.

Article 18.11: Exhaustion of Intellectual Property Rights

Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its legal system.⁸

Section B: Cooperation

Article 18.12: Contact Points for Cooperation

Further to Article 21.3 (Contact Points for Cooperation and Capacity Building), each Party may designate and notify under Article 27.5.2 (Contact Points) one or more contact points for the purpose of cooperation under this Section.

Article 18.13: Cooperation Activities and Initiatives

The Parties shall endeavour to cooperate on the subject matter covered by this Chapter, such as through appropriate coordination, training and exchange of information between the respective intellectual property offices of the Parties, or other institutions, as determined by each Party. Cooperation may cover areas such as:

- (a) developments in domestic and international intellectual property policy;
- (b) intellectual property administration and registration systems;
- (c) education and awareness relating to intellectual property;
- (d) intellectual property issues relevant to:
 - (i) small and medium-sized enterprises;
 - (ii) science, technology and innovation activities; and

⁸ For greater certainty, this Article is without prejudice to any provisions addressing the exhaustion of intellectual property rights in international agreements to which a Party is a party.

对本协定对该缔约方生效之日在其领土内已属公有领域的客体恢复保护。

3. 本章对在本协定对一缔约方生效之日前发生的行为不产生义务。

第 18.11 条 知识产权的权利用尽

本协定中任何条款不阻止一缔约方在其法律制度内确定是否适用及在何种条件下适用知识产权的权利用尽。⁸

B 节：合作

第 18.12 条 合作的联络点

在第 21.3 条(合作与能力建设的联络点)基础上，每一缔约方可根据第 27.5.2 条(联络点)指定一个或多个联络点并作出通知，以开展本节下的合作。

第 18.13 条 合作活动和倡议

缔约方应努力就本章所涵盖的客体开展合作，例如通过按每一缔约方确定的其各自知识产权机构或其他机构之间的适当协调、培训和信息交流。合作可涵盖下列领域：

- (a) 国内和国际知识产权政策的发展情况；
- (b) 知识产权管理和注册制度；
- (c) 与知识产权相关的教育和意识；
- (d) 与下列相关的知识产权问题：
 - (i) 中小企业；
 - (ii) 科学、技术和创新活动；以及

⁸ 为进一步明确，本条不损害一缔约方参加的国际协定中处理知识产权用尽的任何规定。

- (iii) the generation, transfer and dissemination of technology;
- (e) policies involving the use of intellectual property for research, innovation and economic growth;
- (f) implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of WIPO; and
- (g) technical assistance for developing countries.

Article 18.14: Patent Cooperation and Work Sharing

1. The Parties recognise the importance of improving the quality and efficiency of their respective patent registration systems as well as simplifying and streamlining the procedures and processes of their respective patent offices for the benefit of all users of the patent system and the public as a whole.

2. Further to paragraph 1, the Parties shall endeavour to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work of other Parties. This may include:

- (a) making search and examination results available to the patent offices of other Parties;⁹ and
- (b) exchanging information on quality assurance systems and quality standards relating to patent examination.

3. In order to reduce the complexity and cost of obtaining the grant of a patent, the Parties shall endeavour to cooperate to reduce differences in the procedures and processes of their respective patent offices.

4. The Parties recognise the importance of giving due consideration to ratifying or acceding to the *Patent Law Treaty*, done at Geneva, June 1, 2000; or in the alternative, adopting or maintaining procedural standards consistent with the objective of the *Patent Law Treaty*.

Article 18.15: Public Domain

1. The Parties recognise the importance of a rich and accessible public domain.

⁹ The Parties recognise the importance of multilateral efforts to promote the sharing and use of search and examination results, with a view to improving the quality of search and examination processes and to reducing the costs for both applicants and patent offices.

- (iii) 技术的产生、转让和传播；
- (e) 涉及在研究、创新和经济增长中使用知识产权的政策；
- (f) 知识产权多边协定的实施，例如在 WIPO 主持下缔结或管理的协定；以及
- (g) 对发展中国家的技术援助。

第 18.14 条 专利合作和工作共享

1. 缔约方认识到为专利制度的所有使用者和整体公众利益而提高各自专利注册制度的质量和效率及简化和精简各自专利机构的程序和流程的重要性。
2. 在第 1 款基础上，缔约方应努力在各自专利机构之间进行合作，以便利分享和利用其他缔约方的检索和审查工作。这一合作可包括：
 - (a) 使其他缔约方的专利机构可获得检索和审查结果；⁹ 及
 - (b) 交流与专利审查相关的质量保证体系和质量标准的信息。
3. 为降低获得专利授权的复杂度和费用，缔约方应努力合作，以减少其各自专利机构在程序和流程方面的差异。
4. 缔约方认识到考虑批准或加入 2000 年 6 月 1 日订于日内瓦的《专利法条约》的重要性；或作为替代，采用或维持与《专利法条约》的目标相一致的程序标准的重要性。

第 18.15 条 公有领域

1. 缔约方认识到拥有一丰富且可利用的公有领域的重要性。

⁹ 缔约方认识到促进检索和审查结果分享和使用的多边努力的重要性，目的在于提高检索和审查程序的质量并降低申请人和专利机构的费用。

2. The Parties also acknowledge the importance of informational materials, such as publicly accessible databases of registered intellectual property rights that assist in the identification of subject matter that has fallen into the public domain.

Article 18.16: Cooperation in the Area of Traditional Knowledge

1. The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.

2. The Parties shall endeavour to cooperate through their respective agencies responsible for intellectual property, or other relevant institutions, to enhance the understanding of issues connected with traditional knowledge associated with genetic resources, and genetic resources.

3. The Parties shall endeavour to pursue quality patent examination, which may include:

- (a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;
- (b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;
- (c) if applicable and appropriate, the use of databases or digital libraries containing traditional knowledge associated with genetic resources; and
- (d) cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.

Article 18.17: Cooperation on Request

Cooperation activities and initiatives undertaken under this Chapter shall be subject to the availability of resources, and on request, and on terms and conditions mutually agreed upon between the Parties involved.

2. 缔约方还承认信息材料的重要性，例如可帮助确定已属公有领域的客体的可公开访问的已注册知识产权数据库。

第 18.16 条 传统知识领域的合作

1. 缔约方认识到，知识产权制度和遗传资源相关传统知识两者之间的相关性，在该传统知识与知识产权制度相关联的情况下。

2. 缔约方应通过各自负责知识产权的机构或其他相关机构努力开展合作，以增进对与遗传资源相关的传统知识问题和遗传资源的理解。

3. 缔约方应努力开展高质量专利审查，可包括：

- (a) 在确定现有技术时，可考虑遗传资源相关传统知识的可公开获得的相关文献信息；
- (b) 给予第三方机会以书面形式向主管审查机关引用可能影响专利性的现有技术披露，包括与遗传资源相关传统知识有关的现有技术披露；
- (c) 如适用且适当，使用包含遗传资源相关传统知识的数据库或数字图书馆；以及
- (d) 在培训审查涉及遗传资源相关传统知识专利申请的专利审查员方面进行合作。

第 18.17 条 应请求进行合作

根据本章开展的合作活动和倡议应取决于资源的可获性，并应请求和根据所涉缔约方之间双方同意的条款和条件进行。

Section C: Trademarks

Article 18.18: Types of Signs Registrable as Trademarks

No Party shall require, as a condition of registration, that a sign be visually perceptible, nor shall a Party deny registration of a trademark only on the ground that the sign of which it is composed is a sound. Additionally, each Party shall make best efforts to register scent marks. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trademark.

Article 18.19: Collective and Certification Marks

Each Party shall provide that trademarks include collective marks and certification marks. A Party is not obligated to treat certification marks as a separate category in its law, provided that those marks are protected. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system.¹⁰

Article 18.20: Use of Identical or Similar Signs

Each Party shall provide that the owner of a registered trademark has the exclusive right to prevent third parties that do not have the owner's consent from using in the course of trade identical or similar signs, including subsequent geographical indications,^{11,12} for goods or services that are related to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

¹⁰ Consistent with the definition of a geographical indication in Article 18.1 (Definitions), any sign or combination of signs shall be eligible for protection under one or more of the legal means for protecting geographical indications, or a combination of such means.

¹¹ For greater certainty, the exclusive right in this Article applies to cases of unauthorised use of geographical indications with goods for which the trademark is registered, in cases in which the use of that geographical indication in the course of trade would result in a likelihood of confusion as to the source of the goods.

¹² For greater certainty, the Parties understand that this Article should not be interpreted to affect their rights and obligations under Articles 22 and 23 of the TRIPS Agreement.

C 节：商标

第 18.18 条 可注册为商标的标记类型

任何缔约方不得作为注册的条件而要求标记可被视觉感知，也不得仅以该标记由声音组成为由拒绝注册一商标。此外，每一缔约方应尽最大努力注册气味商标。一缔约方可要求对商标进行简要和精确的描述或图片表示，或如适用，则两者均包括。

第 18.19 条 集体商标和证明商标

每一缔约方应规定商标包括集体商标和证明商标。一缔约方无义务在其法律中将证明商标作为单独类别处理，只要这些商标受到保护。每一缔约方还应规定可作为地理标志的标记在其商标制度下可受到保护。¹⁰

第 18.20 条 相同或类似标记的使用

每一缔约方应规定，注册商标的所有权人享有专有权，以阻止第三方未经该所有权人同意而在贸易过程中对与所有权人已注册商标的货物或服务有关的货物或服务使用相同或相似标记，包括在后的地理标志，^{11,12}如此种使用会导致出现混淆的可能性。在对相同货物或服务使用相同标记的情况下，应推定存在混淆的可能性。

¹⁰ 在与第 18.1 条(定义)中地理标志的定义相一致的前提下，任何标记或标记的组合应有资格通过一种或多种保护地理标志的法律手段或此类手段的结合加以保护。

¹¹ 为进一步明确，本条中的专有权适用于对已注册商标的货物未经授权而使用地理标志的情况，如在贸易过程中使用该地理标志会导致对货物产地出现混淆的可能性。

¹² 为进一步明确，缔约方理解，本条不得解释为影响其在《TRIPS 协定》第 22 条和第 23 条下的权利和义务。

Article 18.21: Exceptions

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

Article 18.22: Well-Known Trademarks

1. No Party shall require as a condition for determining that a trademark is well-known that the trademark has been registered in the Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.

2. Article 6*bis* of the Paris Convention shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark,¹³ whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

3. Each Party recognises the importance of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO September 20 to 29, 1999.

4. Each Party shall provide for appropriate measures to refuse the application or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark¹⁴, for identical or similar goods or services, if the use of that trademark is likely to cause confusion with the prior well-known trademark. A Party may also provide such measures including in cases in which the subsequent trademark is likely to deceive.

Article 18.23: Procedural Aspects of Examination, Opposition and Cancellation

Each Party shall provide a system for the examination and registration of trademarks which includes among other things:

¹³ In determining whether a trademark is well-known in a Party, that Party need not require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

¹⁴ The Parties understand that a well-known trademark is one that was already well-known before, as determined by a Party, the application for, registration of or use of the first-mentioned trademark.

第 18.21 条 例外

一缔约方可对商标所授予的权利规定有限的例外，例如合理使用描述性词语，只要这些例外考虑到商标所有权人和第三方的合法利益。

第 18.22 条 驰名商标

1. 任何缔约方不得作为确定商标属驰名的条件而要求该商标在该缔约方或在另一管辖范围内已注册、已列入一驰名商标名单或已事先承认属驰名商标。

2. 《巴黎公约》第 6 条之二在细节上作必要修改后应适用于与以一驰名商标标识的货物或服务不相同或不相似的货物或服务，¹³ 无论是否注册，只要对这些货物或服务使用该商标会表明这些货物或服务与商标所有权人之间存在联系，且该商标所有权人的利益有可能因此种使用而受到损害。

3. 每一缔约方认识到由保护工业产权巴黎联盟大会和 WIPO 大会在 1999 年 9 月 20 日至 29 日的 WIPO 成员国大会第 34 届系列会议上通过的《关于保护驰名商标规定的联合建议》的重要性。

4. 每一缔约方应规定适当措施，驳回商标注册申请或注销商标注册并禁止对相同或相似货物或服务使用与一驰名商标¹⁴相同或相似的商标，如该商标的使用有可能造成与在先驰名商标的混淆。一缔约方也可在对后商标有欺诈可能的情况下规定此类措施。

第 18.23 条 审查、异议和注销的程序事项

每一缔约方应规定一商标审查和注册制度，该制度应特别包括：

¹³ 在确定一商标在一缔约方是否驰名时，该缔约方无需要求该商标的声誉延伸至通常处理相关货物或服务的公众中相关群体之外。

¹⁴ 缔约方理解，一驰名商标指在首次提及的商标的申请、注册或使用之前经一缔约方确定已经驰名的商标。

- (a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trademark;
- (b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trademark;
- (c) providing an opportunity to oppose the registration of a trademark or to seek cancellation¹⁵ of a trademark; and
- (d) requiring administrative decisions in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means.

Article 18.24: Electronic Trademarks System

Each Party shall provide:

- (a) a system for the electronic application for, and maintenance of, trademarks; and
- (b) a publicly available electronic information system, including an online database, of trademark applications and of registered trademarks.

Article 18.25: Classification of Goods and Services

Each Party shall adopt or maintain a trademark 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, June 15, 1957, as revised and amended (Nice Classification). Each Party shall provide that:

- (a) registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification,¹⁶ and

¹⁵ For greater certainty, cancellation for purposes of this Section may be implemented through nullification or revocation proceedings.

¹⁶ A Party that relies on translations of the Nice Classification shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.

- (a) 书面告知申请人驳回商标注册的理由，可通过电子方式；
- (b) 向申请人提供机会以回应主管机关的通知、抗辩任何初审驳回决定并对商标注册的任何终审驳回决定提起司法上诉；
- (c) 提供对商标注册提出异议或寻求注销¹⁵商标的机会；以及
- (d) 要求异议和注销程序中的行政决定说明理由并采取书面形式，可通过电子方式。

第 18.24 条 商标电子系统

每一缔约方应提供：

- (a) 商标电子申请和维持系统；及
- (b) 可公开获得的电子信息系统，包括商标申请和已注册商标的在线数据库。

第 18.25 条 货物和服务的分类

每一缔约方应采取或设立与 1957 年 6 月 15 日订于尼斯并经修订和修正的《商标注册用商品与服务国际分类尼斯协定》(尼斯分类)相一致的商标分类系统。每一缔约方应规定：

- (a) 在注册和申请公告中标明货物和服务的名称，并根据尼斯分类所确定的类别进行分组；¹⁶及

¹⁵ 为进一步明确，就本节而言，注销可通过宣告无效或撤销程序实现。

¹⁶ 依靠尼斯分类译本的一缔约方在官方译本已发布和出版的情况下应遵循尼斯分类的更新版本。

- (b) goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.

Article 18.26: Term of Protection for Trademarks

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

Article 18.27: Non-Recordal of a Licence

No Party shall require recordal of trademark licences:

- (a) to establish the validity of the licence; or
- (b) as a condition for use of a trademark by a licensee to be deemed to constitute use by the holder in a proceeding that relates to the acquisition, maintenance or enforcement of trademarks.

Article 18.28: Domain Names

1. In connection with each Party's system for the management of its country-code top-level domain (ccTLD) domain names, the following shall be available:

- (a) an appropriate procedure for the settlement of disputes, based on, or modelled along the same lines as, the principles established in the *Uniform Domain-Name Dispute-Resolution Policy*, as approved by the Internet Corporation for Assigned Names and Numbers (ICANN) or that:
 - (i) is designed to resolve disputes expeditiously and at low cost;
 - (ii) is fair and equitable;
 - (iii) is not overly burdensome; and
 - (iv) does not preclude resort to judicial proceedings; and

- (b) 货物或服务不得以在任何注册或公告中归入尼斯分类的同一类别为由而被视为彼此相似。相反，每一缔约方应规定货物或服务不得以在任何注册或公告中归入尼斯分类的不同类别为由而被视为彼此相异。

第 18.26 条 商标保护期限

每一缔约方应规定商标的初始注册和每次续展注册的有效期限不少于 10 年。

第 18.27 条 不以许可备案为前提

任何缔约方均不得出于下列目的而要求对商标许可进行备案：

- (a) 以确定许可的有效性；或
- (b) 作为在与商标的获得、维持或执行相关的程序中将被许可人使用商标视为持有人使用的条件。

第 18.28 条 域名

1. 关于每一缔约方的国家顶级域名(ccTLD)管理制度中的域名，应依照每一缔约方的法律，且如适用，有关保护隐私和个人数据的相关管理者政策，提供下列各项：

- (a) 适当的争议解决程序，该程序根据互联网名称与数字地址分配机构(ICANN)批准的《统一域名争议解决政策》中所确立的原则设立或按照上述原则设计，或该程序：
 - (i) 旨在迅速且以低成本解决争议；
 - (ii) 公平合理；
 - (iii) 不过度繁琐；以及
 - (iv) 不排除诉诸司法程序的可能性；以及

- (b) online public access to a reliable and accurate database of contact information concerning domain name registrants,

in accordance with each Party's law and, if applicable, relevant administrator policies regarding protection of privacy and personal data.

2. In connection with each Party's system for the management of ccTLD domain names, appropriate remedies¹⁷ shall be available at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.

Section D: Country Names

Article 18.29: Country Names

Each Party shall provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good.

Section E: Geographical Indications

Article 18.30: Recognition of Geographical Indications

The Parties recognise that geographical indications may be protected through a trademark or *sui generis* system or other legal means.

Article 18.31: Administrative Procedures for the Protection or Recognition of Geographical Indications

If a Party provides administrative procedures for the protection or recognition of geographical indications, whether through a trademark or a *sui generis* system, that Party shall with respect to applications for that protection or petitions for that recognition:

- (a) accept those applications or petitions without requiring intercession by a Party on behalf of its nationals;¹⁸

¹⁷ The Parties understand that such remedies may, but need not, include, among other things, revocation, cancellation, transfer, damages or injunctive relief.

¹⁸ This subparagraph also applies to judicial procedures that protect or recognise a geographical indication.

- (b) 在线公开访问有关域名注册人联系信息的可靠且准确的数据库；

2. 对于每一缔约方的 ccTLD 域名管理制度，应至少对于一人恶意营利而注册或持有与一商标相同或混淆性相似域名的情况给予适当救济¹⁷。

D 节：国名

第 18.29 条 国名

每一缔约方应为利害关系人提供法律手段，以防止以使消费者对货物来源产生误解的方式对一货物商业性使用一缔约方的国名。

E 节：地理标志

第 18.30 条 地理标志的承认

缔约方认识到地理标志可通过商标或专门制度或其他法律手段加以保护。

第 18.31 条 保护或承认地理标志的行政程序

如一缔约方规定保护或承认地理标志的行政程序，无论通过商标还是通过专门制度，则对于该保护的申请或承认的请求，该缔约方应：

- (a) 接受申请或请求而不要求一缔约方代表其国民介入；¹⁸

¹⁷ 缔约方理解，此类救济可以但无需包括撤销、注销、转让、损害赔偿或禁止。

¹⁸ 本项也适用于保护或承认地理标志的司法程序。

- (b) process those applications or petitions without imposition of overly burdensome formalities;
- (c) ensure that its laws and regulations governing the filing of those applications or petitions are readily available to the public and clearly set out the procedures for these actions;
- (d) make available information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications or petitions and the processing of those applications or petitions in general; and allow an applicant, a petitioner, or their representative to ascertain the status of specific applications and petitions;
- (e) ensure that those applications or petitions are published for opposition and provide procedures for opposing geographical indications that are the subject of applications or petitions; and
- (f) provide for cancellation¹⁹ of the protection or recognition afforded to a geographical indication.

Article 18.32: Grounds of Opposition and Cancellation²⁰

1. If a Party protects or recognises a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow interested persons to object to the protection or recognition of a geographical indication, and that allow for any such protection or recognition to be refused or otherwise not afforded, at least, on the following grounds:

- (a) the geographical indication is likely to cause confusion with a trademark that is the subject of a pre-existing good faith pending application or registration in the territory of the Party;
- (b) the geographical indication is likely to cause confusion with a pre-existing trademark, the rights to which have been acquired in accordance with the Party's law; and
- (c) the geographical indication is a term customary in common language as the common name²¹ for the relevant good in the territory of the Party.

¹⁹ For greater certainty, for the purposes of this Section, cancellation may be implemented through nullification or revocation proceedings.

²⁰ A Party is not required to apply this Article to geographical indications for wines and spirits or to applications or petitions for those geographical indications.

- (b) 在处理申请或请求时不施加过于繁琐的手续；
- (c) 保证其管理提交申请或请求的法律法规可使公众容易获得且明确列出申请或请求的程序；
- (d) 提供充足信息，使公众能够获得有关提交申请或请求程序和处理申请或请求的一般指导；且使申请人、请求人或其代表能够确定具体申请和请求的状态；
- (e) 保证公布申请或请求以供提出异议，并规定对属申请或请求的客体的地理标志提出异议的程序；以及
- (f) 规定对给予地理标志的保护或承认予以注销¹⁹。

第 18.32 条 异议和注销的理由²⁰

1. 如一缔约方通过第 18.31 条(保护或承认地理标志的行政程序)中所指的程序对地理标志进行保护或承认，则该缔约方应规定允许利害关系人对一地理标志的保护或承认提出异议的程序，并规定至少根据下列理由允许拒绝或不给予任何此种保护或承认的程序：

- (a) 该地理标志有可能与属在该缔约方领土内待审查的在先善意申请或注册的客体的一商标产生混淆；
- (b) 该地理标志有可能与依照该缔约方法律已获权利的在先商标产生混淆；以及
- (c) 该地理标志是以通用语言中的惯用名称表示的该缔约方领土内相关货物的通用名称²¹；

¹⁹ 为进一步明确，就本节而言，注销可通过宣告无效或撤销程序加以实施。

²⁰ 一缔约方无需将本条适用于葡萄酒和烈酒的地理标志或这些地理标志的申请或请求。

2. If a Party has protected or recognised a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party shall provide procedures that allow for interested persons to seek the cancellation of a geographical indication, and that allow for the protection or recognition to be cancelled, at least, on the grounds listed in paragraph 1. A Party may provide that the grounds listed in paragraph 1 shall apply as of the time of filing the request for protection or recognition of a geographical indication in the territory of the Party.²²

3. No Party shall preclude the possibility that the protection or recognition of a geographical indication may be cancelled, or otherwise cease, on the basis that the protected or recognised term has ceased meeting the conditions upon which the protection or recognition was originally granted in that Party.

4. If a Party has in place a *sui generis* system for protecting unregistered geographical indications by means of judicial procedures, that Party shall provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if any of the circumstances identified in paragraph 1 has been established.²³ That Party shall also provide a process that allows interested persons to commence a proceeding on the grounds identified in paragraph 1.

5. If a Party provides protection or recognition of a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) to the translation or transliteration of that geographical indication, that Party shall make available procedures that are equivalent to, and grounds that are the same as, those referred to in paragraphs 1 and 2 with respect to that translation or transliteration.

²¹ For greater certainty, if a Party provides for the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and this Article to be applied to geographical indications for wines and spirits or applications or petitions for those geographical indications, the Parties understand nothing shall require a Party to protect or recognise a geographical indication of any other Party with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Party.

²² For greater certainty, if the grounds listed in paragraph 1 did not exist in a Party's law as of the time of filing of the request for protection or recognition of a geographical indication under Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that Party is not required to apply those grounds for the purposes of paragraph 2 or paragraph 4 of this Article in relation to that geographical indication.

²³ As an alternative to this paragraph, if a Party has in place a *sui generis* system of the type referred to in this paragraph as of the applicable date under Article 18.36.6 (International Agreements), that Party shall at least provide that its judicial authorities have the authority to deny the protection or recognition of a geographical indication if the circumstances identified in paragraph 1(c) have been established.

2. 如一缔约方通过第 18.31 条(保护或承认地理标志的行政程序)中所指的程序已经对地理标志进行保护或承认, 则该缔约方应规定允许利害关系人寻求注销该地理标志的程序, 并规定至少根据第 1 款中所列理由允许注销该保护或承认的程序。一缔约方可规定, 第 1 款中所列理由应于在其领土内提交保护或承认地理标志的请求时即适用。²²

3. 任何缔约方不得根据受保护或承认的名称不再符合其在该缔约方最初被给予保护或承认的条件而排除注销或通过其他方式停止对地理标志的保护或承认的可能性。

4. 如一缔约方设有通过司法程序保护未注册地理标志的专门制度, 则该缔约方应规定如其司法机构确定已发生第 1 款中所指的情况则有权拒绝对一地理标志给予保护或承认。²³该缔约方还应规定允许利害关系人根据第 1 款中所确定的理由提起诉讼的程序。

5. 如一缔约方规定通过第 18.31 条(保护或承认地理标志的行政程序)中所指的程序对一地理标志的意译或字译提供对该地理标志的保护或承认, 则该缔约方应对该意译或字译提供与第 1 款和第 2 款中所指的等同的程序和相同的理由。

²¹ 为进一步明确, 如一缔约方规定将第 18.31 条(保护或承认地理标志的行政程序)和本条中的程序适用于葡萄酒和烈酒的地理标志或适用于对这些地理标志的申请或请求, 则缔约方理解, 任何内容不得要求一缔约方保护或承认与其领土内存在的葡萄品种通用名称相同的任何其他缔约方关于葡萄产品的一地理标志。

²² 为进一步明确, 如在根据第 18.31 条(保护或承认地理标志的行政程序)提交对一地理标志进行保护或承认的请求时, 一缔约方法律中不存在第 1 款中所列理由, 则就本条第 2 款或第 4 款而言, 该缔约方无需对该地理标志适用这些理由。

²³ 作为对本款的替代, 如一缔约方截至第 18.36.6 条(国际协定)下的适用日期已设有本款所述类型的专门制度, 则该缔约方至少应规定, 如已确定存在第 1 款(c)项中所确定的情况, 则其司法机关有权拒绝保护或承认一地理标志。

Article 18.33: Guidelines for Determining Whether a Term is the Term Customary in the Common Language

With respect to the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation), in determining whether a term is the term customary in common language as the common name for the relevant good in the territory of a Party, that Party's authorities shall have the authority to take into account how consumers understand the term in the territory of that Party. Factors relevant to such consumer understanding may include:

- (a) whether the term is used to refer to the type of good in question, as indicated by competent sources such as dictionaries, newspapers and relevant websites; and
- (b) how the good referenced by the term is marketed and used in trade in the territory of that Party.²⁴

Article 18.34: Multi-Component Terms

With respect to the procedures in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation), an individual component of a multi-component term that is protected as a geographical indication in the territory of a Party shall not be protected in that Party if that individual component is a term customary in the common language as the common name for the associated good.

Article 18.35: Date of Protection of a Geographical Indication

If a Party grants protection or recognition to a geographical indication through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications), that protection or recognition shall commence no earlier than the filing date²⁵ in the Party or the registration date in the Party, as applicable.

²⁴ For the purposes of this subparagraph, a Party's authorities may take into account, as appropriate, whether the term is used in relevant international standards recognised by the Parties to refer to a type or class of good in the territory of the Party.

²⁵ For greater certainty, the filing date referred to in this paragraph includes, as applicable, the priority filing date under the Paris Convention.

第 18.33 条 确定一名称是否属通用语言中惯用名称的指南

对于第 18.31 条(保护或承认地理标志的行政程序)和第 18.32 条(异议和注销的理由)中的程序,在确定一名称是否属一缔约方领土内通用语言中的惯用名称作为相关货物的通用名称时,该缔约方主管机关应有权考虑在该缔约方领土内消费者如何理解该名称。与消费者理解相关的因素可包括:

- (a) 如字典、报纸和相关网站等权威来源所示,该名称是否用于指代所涉货物类型;及
- (b) 由该名称所指代的货物在该缔约方领土内的贸易过程中如何销售和使用。²⁴

第 18.34 条 复合名称

对于第 18.31 条(保护或承认地理标志的行政程序)和第 18.32 条(异议和注销的理由)中的程序,如在一缔约方领土内属受保护的地理标志的一复合名称的单独组成部分是作为有关货物通用名称的通用语言中的一惯用名称,则该组成部分不得在该缔约方内受到保护。

第 18.35 条 地理标志的保护日期

如一缔约方通过第 18.31 条(保护或承认地理标志的行政程序)中所指的程序对一地理标志给予保护或承认,则该保护或承认不得早于在该缔约方的申请日期²⁵或在该缔约方的注册日期(如适用)开始。

²⁴ 就本项而言,一缔约方的主管机关可酌情考虑该名称是否用于缔约方承认的相关国际标准以指代该缔约方领土内一类型或一类别的货物。

²⁵ 为进一步明确,本款中所指的申请日期,如适用,包括《巴黎公约》规定的优先权申请日。

Article 18.36: International Agreements

1. If a Party protects or recognises a geographical indication pursuant to an international agreement, as of the applicable date under paragraph 6, involving a Party or a non-Party and that geographical indication is not protected through the procedures referred to in Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications)²⁶ or Article 18.32.4 (Grounds of Opposition and Cancellation), that Party shall apply at least procedures and grounds that are equivalent to those in Article 18.31(e) (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32.1 (Grounds of Opposition and Cancellation), as well as:

- (a) make available information sufficient to allow the general public to obtain guidance concerning the procedures for protecting or recognising the geographical indication and allow interested persons to ascertain the status of requests for protection or recognition;
- (b) make available to the public, on the Internet, details regarding the terms that the Party is considering protecting or recognising through an international agreement involving a Party or a non-Party, including specifying whether the protection or recognition is being considered for any translations or transliterations of those terms, and with respect to multi-component terms, specifying the components, if any, for which protection or recognition is being considered, or the components that are disclaimed;
- (c) in respect of opposition procedures, provide a reasonable period of time for interested persons to oppose the protection or recognition of the terms referred to in subparagraph (b). That period shall provide a meaningful opportunity for interested persons to participate in an opposition process; and
- (d) inform the other Parties of the opportunity to oppose, no later than the commencement of the opposition period.

2. In respect of international agreements referred to in paragraph 6 that permit the protection or recognition of a new geographical indication, a Party shall:^{27, 28}

²⁶ Each Party shall apply Article 18.33 (Guidelines for Determining Whether a Term is the Term Customary in the Common Language) and Article 18.34 (Multi-Component Terms) in determining whether to grant protection or recognition of a geographical indication pursuant to this paragraph.

²⁷ In respect of an international agreement referred to in paragraph 6 that has geographical indications that have been identified, but have not yet received protection or recognition in the territory of the Party that is a party to that agreement, that Party may fulfil the obligations of paragraph 2 by complying with the obligations of paragraph 1.

第 18.36 条 国际协定

1. 如一缔约方截至第 6 款下的适用日期之时，根据涉及一缔约方或一非缔约方的国际协定保护或承认一地理标志，且该地理标志未通过第 18.31 条(保护或承认地理标志的行政程序)²⁶或第 18.32.4 条(异议和注销的理由)中所指的程序予以保护，则该缔约方应至少适用等同于第 18.31 条(e)项(保护或承认地理标志的行政程序)和第 18.32.1 条(异议和注销的理由)中的程序和理由，且：

- (a) 提供充分信息，使公众获得有关地理标志保护或承认程序的指导，并使利害关系人能够确定保护或承认请求的状态；
- (b) 在互联网上向公众提供关于该缔约方正在考虑通过涉及一缔约方或一非缔约方的国际协定予以保护或承认的名称的细节，包括详细说明是否正在考虑保护或承认此类名称的任何意译或字译，以及对于复合名称，详细说明正在考虑保护或承认的组成部分(如有)，或拒绝保护或承认的组成部分；
- (c) 对于异议程序，提供一合理期限供利害关系人对(b)项中所指的名称保护或承认提出异议。该期限应可向利害关系人提供参与一异议程序的有意义的机会；以及
- (d) 不迟于该异议期开始之时，将提出异议的机会告知其他缔约方。

2. 对于第 6 款中所指的允许保护或承认一新地理标志的国际协定，一缔约方应：^{27, 28}

²⁶ 每一缔约方应确定是否根据本款对一地理标志给予保护或承认时适用第 18.33 条(确定一名称是否属通用语言中惯用名称的指南)和第 18.34 条(复合名称)。

²⁷ 对于第 6 款中所指的一国际协定，如其包含已确定但尚未在属该协定一参加方的缔约方领土内获得保护或承认的地理标志，则该缔约方可通过遵守第 1 款的义务以履行第 2 款的义务。

- (a) apply paragraph 1(b);
 - (b) provide an opportunity for interested persons to comment regarding the protection or recognition of the new geographical indication for a reasonable period of time before such a term is protected or recognised; and
 - (c) inform the other Parties of the opportunity to comment, no later than the commencement of the period for comment.
3. For the purposes of this Article, a Party shall not preclude the possibility that the protection or recognition of a geographical indication could cease.
4. For the purposes of this Article, a Party is not required to apply Article 18.32 (Grounds of Opposition and Cancellation), or obligations equivalent to Article 18.32, to geographical indications for wines and spirits or applications for those geographical indications.
5. Protection or recognition provided pursuant to paragraph 1 shall commence no earlier than the date on which the agreement enters into force or, if that Party grants that protection or recognition on a date after the entry into force of the agreement, on that later date.
6. No Party shall be required to apply this Article to geographical indications that have been specifically identified in, and that are protected or recognised pursuant to, an international agreement involving a Party or a non-Party, provided that the agreement:
- (a) was concluded, or agreed in principle²⁹, prior to the date of conclusion, or agreement in principle, of this Agreement;
 - (b) was ratified by a Party prior to the date of ratification of this Agreement by that Party; or
 - (c) entered into force for a Party prior to the date of entry into force of this Agreement for that Party.

²⁸ A Party may comply with this Article by applying Article 18.31 (Administrative Procedures for the Protection or Recognition of Geographical Indications) and Article 18.32 (Grounds of Opposition and Cancellation).

²⁹ For the purpose of this Article, an agreement “agreed in principle” means an agreement involving another government, government entity or international organisation in respect of which a political understanding has been reached and the negotiated outcomes of the agreement have been publically announced.

- (a) 适用第 1 款(b)项；
 - (b) 在该名称获得保护或承认前的一合理期限内，向利害关系人提供对该新地理标志的保护或承认进行评论的机会；以及
 - (c) 不迟于评论期开始之时，将评论的机会告知其他缔约方。
3. 就本条而言，一缔约方不得排除终止保护或承认一地理标志的可能性。
4. 就本条而言，一缔约方无需将第 18.32 条(异议和注销的理由)或等同于第 18.32 条的义务适用于葡萄酒和烈酒的地理标志或这些地理标志的申请。
5. 根据第 1 款提供的保护或承认不得早于该协定的生效日期开始，或如缔约方在该协定生效之后的一日期给予保护或承认，则不得早于该稍晚日期开始。
6. 任何缔约方无需将本条适用于已经涉及一缔约方或非缔约方的一国际协定特别确定并根据该协定予以保护或承认的地理标志，只要该协定：
- (a) 在本协定缔结或原则达成一致之日前已经缔结或原则达成一致²⁹；
 - (b) 在一缔约方批准本协定之日前已经该缔约方批准；
或
 - (c) 在本协定对一缔约方生效之日前已对该缔约方生效。

²⁸ 一缔约方可通过适用第 18.31 条(保护或承认地理标志的行政程序)和第 18.32 条(异议和注销的理由)以遵守本条。

²⁹ 就本条而言，“原则达成一致”的协定指涉及另一政府、政府实体或国际组织的一协定，对该协定已达成政治谅解且协定的谈判结果已经公开宣布。

Section F: Patents and Undisclosed Test or Other Data

Subsection A: General Patents

Article 18.37: Patentable Subject Matter

1. Subject to paragraphs 3 and 4, each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step and is capable of industrial application.³⁰

2. Subject to paragraphs 3 and 4 and consistent with paragraph 1, each Party confirms that patents are available for inventions claimed as at least one of the following: new uses of a known product, new methods of using a known product, or new processes of using a known product. A Party may limit those new processes to those that do not claim the use of the product as such.

3. A Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to nature or the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law. A Party may also exclude from patentability:

- (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
- (b) animals other than microorganisms, and essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes.

4. A Party may also exclude from patentability plants other than microorganisms. However, consistent with paragraph 1 and subject to paragraph 3, each Party confirms that patents are available at least for inventions that are derived from plants.

³⁰ For the purposes of this Section, a Party may deem the terms “inventive step” and “capable of industrial application” to be synonymous with the terms “non-obvious” and “useful”, respectively. In determinations regarding inventive step, or non-obviousness, each Party shall consider whether the claimed invention would have been obvious to a person skilled, or having ordinary skill in the art, having regard to the prior art.

F 节：专利和未披露试验数据或其他数据

A 款：普通专利

第 18.37 条 可授予专利的客体

1. 在遵守第 3 款和第 4 款的前提下，每一缔约方应保证所有技术领域的任何发明，无论是产品还是工序，均可授予专利，只要该发明具有新颖性、包含创造性步骤且可供工业应用。³⁰
2. 在遵守第 3 款和第 4 款并与第 1 款相一致的前提下，每一缔约方确认对下列至少一项提出要求的发明可授予专利：即已知产品的新用途、使用一已知产品的新方法或使用一已知产品的新工序。一缔约方可将这些新工序的范围限定为那些并不要求使用产品本身的工序。
3. 一缔约方可拒绝对某些发明授予专利权，如在其领土内防止此类发明的商业利用是维护公共秩序或道德，包括保护人类、动物或植物的生命或健康或避免对自然或环境造成严重损害所必需的，只要此种拒绝授予并非仅因此种利用为其法律所禁止。一缔约方还可拒绝对下列内容授予专利权：
 - (a) 用于人类或动物治疗的诊断、治疗和外科手术方法；及
 - (b) 除微生物外的动物，以及除非生物和微生物学方法外的生产植物或动物的主要生物方法。
4. 一缔约方还可拒绝对除微生物外的植物授予专利权。然而，在与第 1 款相一致并在遵守第 3 款的前提下，每一缔约方确认，专利至少可授予源自植物的发明。

³⁰ 就本节而言，一缔约方可认为“创造性步骤”和“可供工业应用”两词分别与“非显而易见的”和“有用的”两词含义相同。在确定创造性步骤或非显而易见性时，每一缔约方应考虑所要求的发明对于相关技术领域具有熟练或一般技术的人员而言是否属显而易见的，同时考虑到现有技术。

Article 18.38: Grace Period

Each Party shall disregard at least information contained in public disclosures used to determine if an invention is novel or has an inventive step, if the public disclosure:^{31, 32}

- (a) was made by the patent applicant or by a person that obtained the information directly or indirectly from the patent applicant; and
- (b) occurred within 12 months prior to the date of the filing of the application in the territory of the Party.

Article 18.39: Patent Revocation

1. Each Party shall provide that a patent may be cancelled, revoked or nullified only on grounds that would have justified a refusal to grant the patent. A Party may also provide that fraud, misrepresentation or inequitable conduct may be the basis for cancelling, revoking or nullifying a patent or holding a patent unenforceable.

2. Notwithstanding paragraph 1, a Party may provide that a patent may be revoked, provided it is done in a manner consistent with Article 5A of the Paris Convention and the TRIPS Agreement.

Article 18.40: Exceptions

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

³¹ No Party shall be required to disregard information contained in applications for, or registrations of, intellectual property rights made available to the public or published by a patent office, unless erroneously published or unless the application was filed without the consent of the inventor or their successor in title, by a third person who obtained the information directly or indirectly from the inventor.

³² For greater certainty, a Party may limit the application of this Article to disclosures made by, or obtained directly or indirectly from, the inventor or joint inventor. For greater certainty, a Party may provide that, for the purposes of this Article, information obtained directly or indirectly from the patent applicant may be information contained in the public disclosure that was authorised by, or derived from, the patent applicant.

第 18.38 条 宽限期

每一缔约方在确定一发明是否具有新颖性或是否包含创造性步骤时，至少应忽略公开披露中所含信息，如此种公开披露：

31,32

- (a) 由专利申请人所为或自专利申请人处直接或间接获得信息的人所为；及
- (b) 发生在该缔约方领土内提交申请之日前 12 个月内。

第 18.39 条 专利撤销

1. 每一缔约方应规定，只能以可证明拒绝授予专利属合理的理由，方可注销、撤销专利或宣告专利无效。一缔约方也可规定，欺诈、虚假陈述或不公正行为可以成为注销、撤销专利或宣告专利无效或不能执行的根据。

2. 尽管有第 1 款，但是一缔约方可规定专利可以撤销，只要以与《巴黎公约》第 5A 条和《TRIPS 协定》相一致的方式进行。

第 18.40 条 例外

一缔约方可对专利所授予的专有权规定有限例外，只要此类例外不会与专利的正常利用发生不合理抵触，也不会不合理损害专利所有人的合法利益，同时考虑第三方的合法利益。

³¹ 不得要求任何缔约方忽视由专利机构向公众提供或公布的知识产权申请或注册中包含的信息，除非错误公布或除非该申请未经发明人或其继承人同意而由自发明人处直接或间接获得信息的第三人提交。

³² 为进一步明确，一缔约方可将本条的适用限于发明人或共同发明人作出的或自发明人或共同发明人处直接或间接获得的披露。为进一步明确，一缔约方可规定，就本条而言，自专利申请人处直接或间接获得的信息可以是公开披露中包含的专利申请人授权或源自专利申请人的信息。

Article 18.41: Other Use Without Authorisation of the Right Holder

The Parties understand that nothing in this Chapter limits a Party's rights and obligations under Article 31 of the TRIPS Agreement, any waiver or any amendment to that Article that the Parties accept.

Article 18.42: Patent Filing

Each Party shall provide that if an invention is made independently by more than one inventor, and separate applications claiming that invention are filed with, or for, the relevant authority of the Party, that Party shall grant the patent on the application that is patentable and that has the earliest filing date or, if applicable, priority date,³³ unless that application has, prior to publication,³⁴ been withdrawn, abandoned or refused.

Article 18.43: Amendments, Corrections and Observations

Each Party shall provide a patent applicant with at least one opportunity to make amendments, corrections and observations in connection with its application.³⁵

Article 18.44: Publication of Patent Applications

1. Recognising the benefits of transparency in the patent system, each Party shall endeavour to publish unpublished pending patent applications promptly after the expiration of 18 months from the filing date or, if priority is claimed, from the earliest priority date.
2. If a pending application is not published promptly in accordance with paragraph 1, a Party shall publish that application or the corresponding patent, as soon as practicable.

³³ A Party shall not be required to apply this Article in cases involving derivation or in situations involving any application that has or had, at any time, at least one claim having an effective filing date before the date of entry into force of this Agreement for that Party or any application that has or had, at any time, a priority claim to an application that contains or contained such a claim.

³⁴ For greater certainty, a Party may grant the patent to the subsequent application that is patentable, if an earlier application has been withdrawn, abandoned, or refused, or is not prior art against the subsequent application.

³⁵ A Party may provide that such amendments do not go beyond the scope of the disclosure of the invention, as of the filing date.

第 18.41 条 未经权利持有人授权的其他使用

缔约方理解，本章中任何内容不限制缔约方在《TRIPS 协定》第 31 条下的权利和义务及缔约方接受的对该条的任何豁免或任何修正。

第 18.42 条 专利申请

每一缔约方应规定，如一发明由一个以上发明人独立创造，且向该缔约方相关机关提交要求该发明的单独申请，则该缔约方应将专利授予可给予专利且申请日期最早，或如适用，优先权申请日最早的申请，³³除非该申请在公布前³⁴已撤回、放弃或驳回。

第 18.43 条 修正、更正和陈述意见

每一缔约方应向专利申请人提供至少一次对其申请进行修改、更正和陈述意见的机会。³⁵

第 18.44 条 专利申请的公布

1. 认识到透明度在专利制度中的益处，每一缔约方应努力在自申请日期或如要求优先权，则自最早的优先权申请日起计算 18 个月期满后迅速公布尚未公布的未决专利申请。
2. 如一未决专利申请未依照第 1 款迅速公布，则一缔约方应在可行时尽快公布该申请或相应专利。

³³ 在如下情况下不要求一缔约方适用本条：即涉及派生程序的情况，或在任何申请在任何时间具有或曾经具有至少一项在本协定对该缔约方生效之日前即有效提出的请求，或在任何申请在任何时间具有或曾经具有此类请求的优先权的情况。

³⁴ 为进一步明确，如在先申请被撤回、放弃或驳回或未对在后申请构成现有技术，则一缔约方可将专利权授予在后提出的可授予专利的申请。

³⁵ 一缔约方可规定此类修正不得超出截至申请之日该发明的披露范围。

3. Each Party shall provide that an applicant may request the early publication of an application prior to the expiration of the period referred to in paragraph 1.

Article 18.45: Information Relating to Published Patent Applications and Granted Patents

For published patent applications and granted patents, and in accordance with the Party's requirements for prosecution of such applications and patents, each Party shall make available to the public at least the following information, to the extent that such information is in the possession of the competent authorities and is generated on, or after, the date of the entry into force of this Agreement for that Party:

- (a) search and examination results, including details of, or information related to, relevant prior art searches;
- (b) as appropriate, non-confidential communications from applicants; and
- (c) patent and non-patent related literature citations submitted by applicants and relevant third parties.

Article 18.46: Patent Term Adjustment for Unreasonable Granting Authority Delays

1. Each Party shall make best efforts to process patent applications in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays.

2. A Party may provide procedures for a patent applicant to request to expedite the examination of its patent application.

3. If there are unreasonable delays in a Party's issuance of patents, that Party shall provide the means to, and at the request of the patent owner shall, adjust the term of the patent to compensate for such delays.³⁶

4. For the purposes of this Article, an unreasonable delay at least shall include a delay in the issuance of a patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later. A Party may exclude, from the determination of such delays, periods of time that do not

³⁶ Annex 18-D applies to this paragraph.

3. 每一缔约方应规定，申请人可请求在第 1 款中所指的期限期满前提前公布一申请。

第 18.45 条 与已公布专利申请和已授予专利相关的信息

对于已公布的专利申请和已授予的专利，依照该缔约方处理此类申请和专利的要求，每一缔约方应使公众可获得至少下列信息，只要此类信息由主管机关拥有且在本协定对该缔约方生效之日或之后产生：

- (a) 检索和审查结果，包括与相关现有技术的检索有关的细节或信息；
- (b) 如适当，来自申请人的非保密通信；以及
- (c) 申请人和相关第三方提交的与专利和非专利相关的文献引文。

第 18.46 条 因授予机关不合理迟延而调整专利期

1. 每一缔约方应尽最大努力以及时有效方式处理专利申请，以期避免不合理或不必要的迟延。
2. 一缔约方可规定程序供一专利申请人请求加快审查其专利申请。
3. 如在一缔约方授予专利方面出现不合理迟延，则该缔约方应提供途径，并应专利所有人请求，调整专利期限以补偿此类迟延。³⁶
4. 就本条而言，不合理迟延至少应包括自在该缔约方领土内提交申请之日起超过 5 年或在提出对申请进行审查后超过 3 年，以较晚者为准，仍未授予专利。在确定此类迟延时，一缔约方可

³⁶ 附件 18-D 适用于本款。

occur during the processing³⁷ of, or the examination of, the patent application by the granting authority; periods of time that are not directly attributable³⁸ to the granting authority; as well as periods of time that are attributable to the patent applicant.³⁹

Subsection B: Measures Relating to Agricultural Chemical Products

Article 18.47: Protection of Undisclosed Test or Other Data for Agricultural Chemical Products

1. If a Party requires, as a condition for granting marketing approval⁴⁰ for a new agricultural chemical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product,⁴¹ that Party shall not permit third persons, without the consent of the person that previously submitted such information, to market the same or a similar⁴² product on the basis of that information or the marketing approval granted to the person that submitted such test or other data for at least 10 years⁴³ from the date of marketing approval of the new agricultural chemical product in the territory of the Party.

2. If a Party permits, as a condition of granting marketing approval for a new agricultural chemical product, the submission of evidence of a prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of the person that previously submitted undisclosed

³⁷ For the purposes of this paragraph, a Party may interpret processing to mean initial administrative processing and administrative processing at the time of grant.

³⁸ A Party may treat delays “that are not directly attributable to the granting authority” as delays that are outside the direction or control of the granting authority.

³⁹ Notwithstanding Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), this Article shall apply to all patent applications filed after the date of entry into force of this Agreement for that Party, or the date two years after the signing of this Agreement, whichever is later for that Party.

⁴⁰ For the purposes of this Chapter, the term “marketing approval” is synonymous with “sanitary approval” under a Party’s law.

⁴¹ Each Party confirms that the obligations of this Article apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (a) only the safety of the product, (b) only the efficacy of the product or (c) both.

⁴² For greater certainty, for the purposes of this Section, an agricultural chemical product is “similar” to a previously approved agricultural chemical product if the marketing approval, or, in the alternative, the applicant’s request for such approval, of that similar agricultural chemical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved agricultural chemical product, or the prior approval of that previously approved product.

⁴³ For greater certainty, a Party may limit the period of protection under this Article to 10 years.

排除专利授予机关处理³⁷或审查专利申请过程之外的时间段、不直接归因³⁸于专利授予机关的时间段以及归因于专利申请人的时间段。³⁹

B 款：与农用化学品相关的措施

第 18.47 条 对农用化学品未披露试验数据或其他数据的保护

1. 如一缔约方，作为授予一新农用化学品上市许可⁴⁰的条件，要求提交有关该产品安全性和有效性的未披露试验数据或其他数据，⁴¹则该缔约方在自该新农用化学品在该缔约方领土内获得上市许可之日起至少10年⁴³内，不得允许第三人未经以往提交此信息的人同意即根据该信息或根据授予提交该试验数据或其他数据的人的上市许可销售相同或相似⁴²产品。

2. 如一缔约方，作为授予一新农用化学品上市许可的条件，允许提交该产品在另一领土内先前上市许可的证据，则该缔约方在自该新农用化学品在该缔约方领土内获得上市许可之日起至少

³⁷ 就本款而言，一缔约方可将处理解释为指初始行政处理程序和授予时的行政处理程序。

³⁸ 一缔约方可将“不直接归因于授予机关的”迟延视为不在授予机关指示或控制范围内的迟延。

³⁹ 尽管有第 18.10 条(本章对现有客体和先前行为的适用)，但是本条应适用于本协定对该缔约方生效之日后或本协定签署 2 年之日后提交的所有专利申请，以对该缔约方较晚者为准。

⁴⁰ 就本章而言，“上市许可”一词与一缔约方法律项下的“卫生许可”同义。

⁴¹ 每一缔约方确认，本条的义务适用于缔约方要求提交有关如下内容的未披露试验数据或其他数据的情况：(a)仅涉及产品的安全性，(b)仅涉及产品的有效性，或(c)同时涉及两者。

⁴² 为进一步明确，就本节而言，如一农用化学品的上市许可或在另一种情况下，申请人获得此种许可的请求，根据以往获得批准的农用化学品有关安全性和有效性的未披露试验数据或其他数据提出，或根据以往获得批准的产品的先前许可提出，则该农用化学品与该以往获得批准的农用化学品“相似”。

⁴³ 为进一步明确，一缔约方可将本条下的保护期限定为 10 年。

test or other data concerning the safety and efficacy of the product in support of that prior marketing approval, to market the same or a similar product based on that undisclosed test or other data, or other evidence of the prior marketing approval in the other territory, for at least 10 years from the date of marketing approval of the new agricultural chemical product in the territory of the Party.

3. For the purposes of this Article, a new agricultural chemical product is one that contains⁴⁴ a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product.

Subsection C: Measures Relating to Pharmaceutical Products

Article 18.48: Patent Term Adjustment for Unreasonable Curtailment

1. Each Party shall make best efforts to process applications for marketing approval of pharmaceutical products in an efficient and timely manner, with a view to avoiding unreasonable or unnecessary delays.

2. With respect to a pharmaceutical product⁴⁵ that is subject to a patent, each Party shall make available an adjustment⁴⁶ of the patent term to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process.^{47, 48}

3. For greater certainty, in implementing the obligations of this Article, each Party may provide for conditions and limitations, provided that the Party continues to give effect to this Article.

4. With the objective of avoiding unreasonable curtailment of the effective patent term, a Party may adopt or maintain procedures that expedite the processing of marketing approval applications.

⁴⁴ For the purposes of this Article, a Party may treat “contain” as meaning utilise. For greater certainty, for the purposes of this Article, a Party may treat “utilise” as requiring the new chemical entity to be primarily responsible for the product’s intended effect.

⁴⁵ A Party may comply with the obligations of this paragraph with respect to a pharmaceutical product or, alternatively, with respect to a pharmaceutical substance.

⁴⁶ For greater certainty, a Party may alternatively make available a period of additional *sui generis* protection to compensate for unreasonable curtailment of the effective patent term as a result of the marketing approval process. The *sui generis* protection shall confer the rights conferred by the patent, subject to any conditions and limitations pursuant to paragraph 3.

⁴⁷ Notwithstanding Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), this Article shall apply to all applications for marketing approval filed after the date of entry into force of this Article for that Party.

⁴⁸ Annex 18-D applies to this paragraph.

10 年内，不得允许第三人未经以往提交有关产品安全性和有效性的未披露试验数据或其他数据以支持该先前上市许可的人同意，即根据该未披露试验数据或其他数据或在另一领土内获得先前上市许可的其他证据销售相同或相似产品。

3. 就本条而言，一新农用化学品为包含⁴⁴此前未在该缔约方领土内批准用于一农用化学品的化学成分的农用化学品。

C 款：与药品相关的措施

第 18.48 条 因不合理缩短而调整专利期

1. 每一缔约方应尽最大努力有效及时处理药品上市许可申请，以期避免不合理或不必要的迟延。

2. 对于受专利保护的药品⁴⁵，每一缔约方应可对专利期进行调整⁴⁶，以补偿专利所有人因上市许可程序导致的有效专利期的不合理缩短。^{47,48}

3. 为进一步明确，在履行本条义务时，每一缔约方可规定条件和限制，只要该缔约方继续实施本条。

4. 为避免有效专利期的不合理缩短，一缔约方可采取或设立加快处理上市许可申请的程序。

⁴⁴ 就本条而言，一缔约方可将“包含”理解为指使用。为进一步明确，就本条而言，一缔约方可将“使用”视为要求新化学成分对该产品预期效用起主要作用。

⁴⁵ 缔约方可对一药品，或作为替代，可对一药物遵守本款义务。

⁴⁶ 为进一步明确，一缔约方作为替代可提供额外的专门保护期限，以补偿因上市许可程序而导致的专利有效期的不合理缩短。在遵守根据第 3 款制定的任何条件和限制的前提下，该专门保护应授予专利所授予的权利。

⁴⁷ 尽管有第 18.10 条(本章对现有客体和先前行为的适用)，但是本条应适用于本条对该缔约方生效之日后提交的所有上市许可申请。

⁴⁸ 附件 18-D 适用于本款。

Article 18.49: Regulatory Review Exception

Without prejudice to the scope of, and consistent with, Article 18.40 (Exceptions), each Party shall adopt or maintain a regulatory review exception⁴⁹ for pharmaceutical products.

Article 18.50: Protection of Undisclosed Test or Other Data⁵⁰

1. (a) If a Party requires, as a condition for granting marketing approval for a new pharmaceutical product, the submission of undisclosed test or other data concerning the safety and efficacy of the product,⁵¹ that Party shall not permit third persons, without the consent of the person that previously submitted such information, to market the same or a similar⁵² product on the basis of:
 - (i) that information; or
 - (ii) the marketing approval granted to the person that submitted such information,for at least five years⁵³ from the date of marketing approval of the new pharmaceutical product in the territory of the Party.
- (b) If a Party permits, as a condition of granting marketing approval for a new pharmaceutical product, the submission of evidence of prior marketing approval of the product in another territory, that Party shall not permit third persons, without the consent of a person that previously submitted such information concerning the safety

⁴⁹ For greater certainty, consistent with Article 18.40 (Exceptions), nothing prevents a Party from providing that regulatory review exceptions apply for purposes of regulatory reviews in that Party, in another country or both.

⁵⁰ Annex 18-B and Annex 18-C apply to paragraphs 1 and 2 of this Article.

⁵¹ Each Party confirms that the obligations of this Article, and Article 18.51 (Biologics) apply to cases in which the Party requires the submission of undisclosed test or other data concerning: (a) only the safety of the product, (b) only the efficacy of the product or (c) both.

⁵² For greater certainty, for the purposes of this Section, a pharmaceutical product is “similar” to a previously approved pharmaceutical product if the marketing approval, or, in the alternative, the applicant’s request for such approval, of that similar pharmaceutical product is based upon the undisclosed test or other data concerning the safety and efficacy of the previously approved pharmaceutical product, or the prior approval of that previously approved product.

⁵³ For greater certainty, a Party may limit the period of protection under paragraph 1 to five years, and the period of protection under Article 18.51.1(a) (Biologics) to eight years.

第 18.49 条 监管审查例外

在不损害第 18.40 条(例外)的范围并与该条相一致的情况下，每一缔约方应对药品采取或维持监管审查例外⁴⁹。

第 18.50 条 保护未披露试验数据或其他数据⁵⁰

1. (a) 如一缔约方，作为授予一新药上市许可的条件，要求提交有关产品安全性和有效性的未披露试验数据和其他数据，⁵¹则该缔约方自该新药在该缔约方领土内获得上市许可之日起至少5年内⁵³，不得批准第三人未经以往提交此类信息的人同意，而根据下列内容销售相同或相似⁵²产品：
 - (i) 该信息；或
 - (ii) 授予提交此类信息人的上市许可。
- (b) 如一缔约方，作为授予一新药上市许可的条件，允许提交该产品在另一领土先前上市许可的证据，则该缔约方在自该新药在该缔约方领土内获得上市许可之日起至少 5 年内，不得批准第三人未经以往提

⁴⁹ 为进一步明确，在与第 18.40 条(例外)相一致的情况下，任何内容不阻止一缔约方规定监管审查例外适用于在该缔约方内或在另一国家内的监管审查目的，或两者均适用。

⁵⁰ 附件 18-B 和附件 18-C 适用于本条第 1 款和第 2 款。

⁵¹ 每一缔约方确认，本条的义务和第 18.51 条(生物制剂)适用于该缔约方要求提交有关如下内容的未披露试验数据或其他数据的情况：(a)仅涉及产品的安全性，(b)仅涉及产品的有效性，或(c)同时涉及两者。

⁵² 为进一步明确，就本节而言，如一药品的上市许可或在另一种情况下，申请人获得此种许可的请求，根据以往获得批准的药品有关安全性和有效性的未披露试验数据或其他数据提出，或根据以往获得批准的产品的先前许可提出，则该药品与该以往获得批准的药品“相似”。

⁵³ 为进一步明确，一缔约方可将第 1 款下的保护期限定为 5 年，将第 18.51.1 条(a)(生物制剂)项下的保护期限定为 8 年。

and efficacy of the product, to market a same or a similar product based on evidence relating to prior marketing approval in the other territory for at least five years from the date of marketing approval of the new pharmaceutical product in the territory of that Party.⁵⁴

2. Each Party shall:⁵⁵
 - (a) apply paragraph 1, *mutatis mutandis*, for a period of at least three years with respect to new clinical information submitted as required in support of a marketing approval of a previously approved pharmaceutical product covering a new indication, new formulation or new method of administration; or, alternatively,
 - (b) apply paragraph 1, *mutatis mutandis*, for a period of at least five years to new pharmaceutical products that contain⁵⁶ a chemical entity that has not been previously approved in that Party.⁵⁷
3. Notwithstanding paragraphs 1 and 2 and Article 18.51 (Biologics), a Party may take measures to protect public health in accordance with:
 - (a) the Declaration on TRIPS and Public Health;
 - (b) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration on TRIPS and Public Health and that is in force between the Parties; or
 - (c) any amendment of the TRIPS Agreement to implement the Declaration on TRIPS and Public Health that enters into force with respect to the Parties.

⁵⁴ Annex 18-D applies to this subparagraph.

⁵⁵ A Party that provides a period of at least eight years of protection pursuant to paragraph 1 is not required to apply paragraph 2.

⁵⁶ For the purposes of this Article, a Party may treat “contain” as meaning utilise.

⁵⁷ For the purposes of Article 18.50.2(b) (Protection of Undisclosed Test or Other Data), a Party may choose to protect only the undisclosed test or other data concerning the safety and efficacy relating to the chemical entity that has not been previously approved.

交有关该产品安全性和有效性信息的人同意，即根据与另一领土先前上市许可相关的证据销售相同或相似产品。⁵⁴

2. 每一缔约方应：⁵⁵
 - (a) 对于为证明以往获得批准的药品的涵盖新适应症、新配方或新给药途径的上市许可而按要求提交的新临床信息，第 1 款在细节上作必要修改后至少适用 3 年时间；或作为替代，
 - (b) 对于包含⁵⁶以往在该缔约方未获批准的一化学成分的一新药，第 1 款在细节上作必要修改后至少适用 5 年时间。⁵⁷

3. 尽管有第 1 款和第 2 款及第 18.51 条(生物制剂)，但是一缔约方可依照下列各项采取措施保护公共健康：
 - (a) 《TRIPS 与公共健康宣言》；
 - (b) WTO 成员为执行《TRIPS 与公共健康宣言》而依照《WTO 协定》作出的对《TRIPS 协定》任何条款的任何豁免且该豁免在缔约方之间生效；或
 - (c) 为执行《TRIPS 与公共健康宣言》而对《TRIPS 协定》所作的、对缔约方生效的任何修正。

⁵⁴ 附件 18-D 适用于本项。

⁵⁵ 不要求根据第 1 款提供至少 8 年保护期限的一缔约方适用第 2 款。

⁵⁶ 就本条而言，缔约方可将“包含”理解为使用。

⁵⁷ 就第 18.50.2 条(b)项(保护未披露试验数据或其他数据)而言，一缔约方可选择仅保护有关以往未获得批准的化学成分的安全性和有效性的未披露试验数据或其他数据。

Article 18.51: Biologics⁵⁸

1. With regard to protecting new biologics, a Party shall either:
 - (a) with respect to the first marketing approval in a Party of a new pharmaceutical product that is or contains a biologic,^{59,60} provide effective market protection through the implementation of Article 18.50.1 (Protection of Undisclosed Test or Other Data) and Article 18.50.3, *mutatis mutandis*, for a period of at least eight years from the date of first marketing approval of that product in that Party; or, alternatively,
 - (b) with respect to the first marketing approval in a Party of a new pharmaceutical product that is or contains a biologic, provide effective market protection:
 - (i) through the implementation of Article 18.50.1 (Protection of Undisclosed Test or Other Data) and Article 18.50.3, *mutatis mutandis*, for a period of at least five years from the date of first marketing approval of that product in that Party,
 - (ii) through other measures, and
 - (iii) recognising that market circumstances also contribute to effective market protection

to deliver a comparable outcome in the market.

2. For the purposes of this Section, each Party shall apply this Article to, at a minimum, a product that is, or, alternatively, contains, a protein produced using biotechnology processes, for use in human beings for the prevention, treatment, or cure of a disease or condition.

⁵⁸ Annex 18-B, Annex 18-C and Annex 18-D apply to this Article.

⁵⁹ Nothing requires a Party to extend the protection of this paragraph to:

- (a) any second or subsequent marketing approval of such a pharmaceutical product; or
- (b) a pharmaceutical product that is or contains a previously approved biologic.

⁶⁰ Each Party may provide that an applicant may request approval of a pharmaceutical product that is or contains a biologic under the procedures set forth in Article 18.50.1(a) (Protection of Undisclosed Test or Other Data) and Article 18.50.1(b) within five years of the date of entry into force of this Agreement for that Party, provided that other pharmaceutical products in the same class of products have been approved by that Party under the procedures set forth in Article 18.50.1(a) and Article 18.50.1(b) before the date of entry into force of this Agreement for that Party.

第 18.51 条 生物制剂⁵⁸

1. 对于保护新生物制剂，一缔约方应：
 - (a) 对于一属于或含有生物成分的新药在一缔约方内的首次上市许可，^{59,60}通过适用在细节上作必要修改的第 18.50.1 条(保护未披露试验数据或其他数据)和第 18.50.3 条，提供自该产品在该缔约方内获得首次上市许可之日起至少 8 年时间的有效市场保护；或作为替代，
 - (b) 对于一属于或包含生物成分的新药在缔约方的首次上市许可，通过下列方式提供有效市场保护，从而在市场中达到可比效果：
 - (i) 通过适用在细节上作必要修改的第 18.50.1 条(保护未披露试验数据或其他数据)和第 18.50.3 条，自该产品在该缔约方获得首次上市许可之日起至少 5 年时间；
 - (ii) 通过其他措施，以及
 - (iii) 认识到市场状况也有助于有效市场保护。
2. 就本节而言，每一缔约方应至少将本条适用于属于或包含以生物方法生产的蛋白质、供人类用于预防、治疗或治愈疾病或健康问题的一产品。

⁵⁸ 附件 18-B、附件 18-C 和附件 18-D 适用于本条。

⁵⁹ 任何内容不要一缔约方将本款的保护延伸至：

- (a) 此种药品的任何第二次或后续上市许可；或
- (b) 属于或包含以往已获批准的生物成分的一药品。

⁶⁰ 每一缔约方可规定，自本协定对该缔约方生效之日后 5 年内，一申请人可根据第 18.50.1 条(a)项(保护未披露试验数据或其他数据)和第 18.50.1 条(b)项中所列程序，请求批准一属于或包含生物成分的药品，只要在本协定对该缔约方生效之日前，属相同类别的其他药品已经由该缔约方根据第 18.50.1 条(a)项和 18.50.1 条(b)项中所列程序予以批准。

3. Recognising that international and domestic regulation of new pharmaceutical products that are or contain a biologic is in a formative stage and that market circumstances may evolve over time, the Parties shall consult after 10 years from the date of entry into force of this Agreement, or as otherwise decided by the Commission, to review the period of exclusivity provided in paragraph 1 and the scope of application provided in paragraph 2, with a view to providing effective incentives for the development of new pharmaceutical products that are or contain a biologic, as well as with a view to facilitating the timely availability of follow-on biosimilars, and to ensuring that the scope of application remains consistent with international developments regarding approval of additional categories of new pharmaceutical products that are or contain a biologic.

Article 18.52: Definition of New Pharmaceutical Product

For the purposes of Article 18.50.1 (Protection of Undisclosed Test or Other Data), a **new pharmaceutical product** means a pharmaceutical product that does not contain⁶¹ a chemical entity that has been previously approved in that Party.

Article 18.53: Measures Relating to the Marketing of Certain Pharmaceutical Products

1. If a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting the safety and efficacy information, to rely on evidence or information concerning the safety and efficacy of a product that was previously approved, such as evidence of prior marketing approval by the Party or in another territory, that Party shall provide:

- (a) a system to provide notice to a patent holder⁶² or to allow for a patent holder to be notified prior to the marketing of such a pharmaceutical product, that such other person is seeking to market that product during the term of an applicable patent claiming the approved product or its approved method of use;
- (b) adequate time and opportunity for such a patent holder to seek, prior to the marketing⁶³ of an allegedly infringing product, available remedies in subparagraph (c); and

⁶¹ For the purposes of this Article, a Party may treat “contain” as meaning utilise.

⁶² For greater certainty, for the purposes of this Article, a Party may provide that a “patent holder” includes a patent licensee or the authorised holder of marketing approval.

⁶³ For the purposes of paragraph 1(b), a Party may treat “marketing” as commencing at the time of listing for purposes of the reimbursement of pharmaceutical products pursuant to a national

3. 认识到对属于或包含生物成分的新药的国际和国内规制尚处于形成阶段，且市场情况可能随时间而不断变化，缔约方应在本协定生效之日起 10 年后进行磋商，或按自贸协定委员会另有决定的，对第 1 款中所规定的专有权期限和第 2 款中规定的适用范围进行审议，以期有效激励属于或包含生物成分的新药开发，促进后续生物仿制药的及时可获性，并保证适用范围与批准属于或包含生物成分的新药的额外类别的国际发展情况保持一致。

第 18.52 条 新药物的定义

就第 18.50.1 条(保护未披露试验数据或其他数据)而言，一新药品指不包含⁶¹以往已在该缔约方获得批准的一化学成分的药物。

第 18.53 条 与部分药品销售相关的措施

1. 如一缔约方，作为批准一药品销售的条件，允许最初提交安全性和有效性信息的人之外的人依赖以往已获得批准的药品的安全性和有效性的证据或信息，例如在该缔约方或另一领土获得的先前上市许可的证据，则该缔约方应提供：

- (a) 一项制度，据此在此种药品销售前通知专利持有人⁶²或允许专利持有人获知，在其获批产品或获批使用方法的适用专利期限内，该另一人正在寻求销售该药品；
- (b) 充足的时间和机会供此种专利持有人在涉嫌侵权产品销售⁶³前寻求(c)项中可获得的救济；以及

⁶¹ 就本条而言，缔约方可将“包含”理解为“使用”。

⁶² 为进一步明确，就本条而言，一缔约方可规定“专利持有人”包括专利被许可人或上市许可的授权持有人。

⁶³ 就第 1 款(b)项而言，一缔约方可将“销售”理解为自被列入缔约方国家医疗项目药品报销

- (c) procedures, such as judicial or administrative proceedings, and expeditious remedies, such as preliminary injunctions or equivalent effective provisional measures, for the timely resolution of disputes concerning the validity or infringement of an applicable patent claiming an approved pharmaceutical product or its approved method of use.

2. As an alternative to paragraph 1, a Party shall instead adopt or maintain a system other than judicial proceedings that precludes, based upon patent-related information submitted to the marketing approval authority by a patent holder or the applicant for marketing approval, or based on direct coordination between the marketing approval authority and the patent office, the issuance of marketing approval to any third person seeking to market a pharmaceutical product subject to a patent claiming that product, unless by consent or acquiescence of the patent holder.

Article 18.54: Alteration of Period of Protection

Subject to Article 18.50.3 (Protection of Undisclosed Test or Other Data), if a product is subject to a system of marketing approval in the territory of a Party pursuant to Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), Article 18.50 or Article 18.51 (Biologics) and is also covered by a patent in the territory of that Party, the Party shall not alter the period of protection that it provides pursuant to Article 18.47, Article 18.50 or Article 18.51 in the event that the patent protection terminates on a date earlier than the end of the period of protection specified in Article 18.47, Article 18.50 or Article 18.51.

Section G: Industrial Designs

Article 18.55: Protection

1. Each Party shall ensure adequate and effective protection of industrial designs and also confirms that protection for industrial designs is available for designs:

- (a) embodied in a part of an article; or, alternatively,
- (b) having a particular regard, where appropriate, to a part of an article in the context of the article as a whole.

healthcare programme operated by a Party and inscribed in the Appendix to Annex 26-A (Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices).

- (c) 司法或行政程序等程序及临时禁令或等效临时措施等快速救济，以及时解决有关一已获批药品或已获批使用方法所适用的专利的有效性或侵权的争议。

2. 作为第 1 款的替代，一缔约方应转而采用或设立一不同于司法程序的制度。在该制度下，根据一专利持有人或上市许可申请人向上市许可审批机关提交的与专利相关的信息，或根据上市许可审批机关与专利机构之间的直接协调，阻止向寻求销售该专利药品的任何第三方发放上市许可，除非经专利持有人同意或默许。

第 18.54 条 保护期限的变更

在遵守第 18.50.3 条(保护未披露试验数据或其他数据)的前提下，如一产品根据第 18.47 条(对农用化学品未披露试验数据或其他数据的保护)、第 18.50 条或第 18.51 条(生物制剂)在一缔约方领土内受上市许可制度管辖，且在该缔约方领土内还被一专利所涵盖，则在该专利期在早于第 18.47 条、第 18.50 条或第 18.51 条中所规定的保护期期末的一日期即终止的情况下，该缔约方不得改变其根据第 18.47 条、第 18.50 条或第 18.51 条规定的保护期限。

G 节：工业品外观设计

第 18.55 条 保护

1. 每一缔约方应保证对工业品外观设计提供充分有效保护，并确认下列设计可获得工业设计保护：
 - (a) 体现在一物品的一部分之中，或作为替代，
 - (b) 在一物品作为一整体的情况下，如适当，特别代表该物品的一部分。

清单和被写入附件 26-A(关于药品和医疗设备的透明度和程序公正)的附录之日起。

2. This Article is subject to Articles 25 and 26 of the TRIPS Agreement.

Article 18.56: Improving Industrial Design Systems

The Parties recognise the importance of improving the quality and efficiency of their respective industrial design registration systems, as well as facilitating the process of cross-border acquisition of rights in their respective industrial design systems, including giving due consideration to ratifying or acceding to the *Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs*, done at Geneva, July 2, 1999.

Section H: Copyright and Related Rights

Article 18.57: Definitions

For the purposes of Article 18.58 (Right of Reproduction) and Article 18.60 (Right of Distribution) through Article 18.70 (Collective Management), the following definitions apply with respect to performers and producers of phonograms:

broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;

communication to the public of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;

fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device;

performers means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

2. 本条受《TRIPS 协定》第 25 条和第 26 条约束。

第 18.56 条 改善工业品外观设计制度

缔约方认识到提高各自工业品外观设计注册制度的质量和效率的重要性，还认识到在各自工业品外观设计制度中便利跨境获得权利过程的重要性，包括适当考虑批准或加入 1999 年 7 月 2 日订于日内瓦的《工业品外观设计国际注册海牙协定日内瓦文本》。

H 节：版权和相关权

第 18.57 条 定义

就第 18.58 条(复制权)及第 18.60 条(发行权)至第 18.70 条(集体管理)而言，下列定义适用于表演者和录音制品制作者：

广播指以无线方式传送供公众接收的声音、或图像与声音、或图像与声音的表现物；通过卫星进行的此种传送也属“广播”；如广播组织或经其同意向公众提供解码方式，则传送加密信号也属“广播”；

向公众传播表演或录音制品指通过广播之外的任何媒介向公众传送表演的声音或录音制品中固定的声音或声音的表现物；

固定指对声音或声音表现物的呈现，由此声音可通过装置被感知、复制或传播；

表演者指演员、歌唱家、音乐家、舞蹈家及表演、歌唱、演说、朗诵、演奏、表现或以其他方式表演文学或艺术作品或民间文学艺术的其他人；

录音制品指对表演的声音、其他声音或声音的表现物的固定，电影作品或其他视听作品所包含的固定形式除外；

producer of a phonogram means a person that takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and

publication of a performance or phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.

Article 18.58: Right of Reproduction

Each Party shall provide⁶⁴ to authors, performers and producers of phonograms⁶⁵ the exclusive right to authorise or prohibit all reproduction of their works, performances or phonograms in any manner or form, including in electronic form.

Article 18.59: Right of Communication to the Public

Without prejudice to Article 11(1)(ii), Article 11*bis*(1)(i) and (ii), Article 11*ter*(1)(ii), Article 14(1)(ii), and Article 14*bis*(1) of the Berne Convention, each Party shall provide to authors the exclusive right to authorise or prohibit the communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them.⁶⁶

Article 18.60: Right of Distribution

Each Party shall provide to authors, performers and producers of phonograms the exclusive right to authorise or prohibit the making available to the public of the original and copies⁶⁷ of their works, performances and phonograms through sale or other transfer of ownership.

⁶⁴ For greater certainty, the Parties understand that it is a matter for each Party's law to prescribe that works, performances or phonograms in general or any specified categories of works, performances and phonograms are not protected by copyright or related rights unless the work, performance or phonogram has been fixed in some material form.

⁶⁵ References to "authors, performers, and producers of phonograms" refer also to any of their successors in interest.

⁶⁶ The Parties understand that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Chapter or the Berne Convention. The Parties further understand that nothing in this Article precludes a Party from applying Article 11*bis*(2) of the Berne Convention.

⁶⁷ The expressions "copies" and "original and copies", that are subject to the right of distribution in this Article, refer exclusively to fixed copies that can be put into circulation as tangible objects.

录音制品制作者指主动发起并负责对表演的声音、其他声音或声音表现物进行首次固定的人；以及

发表表演或录音制品指经权利持有人同意，向公众提供表演或录音制品的复制品，只要向公众提供的复制品属合理数量。

第 18.58 条 复制权

每一缔约方应给予⁶⁴作者、表演者和录音制品制作者⁶⁵授权或禁止对其作品、表演和录音制品以任何方式或形式进行的所有复制的专有权，包括电子形式。

第 18.59 条 向公众传播权

在不损害《伯尔尼公约》第 11 条第(1)款(ii)项、第 11 条之二第(1)款(i)项和(ii)项、第 11 条之三第(1)款(ii)项、第 14 条第(1)款(ii)项和第 14 条之二第(1)款的情况下，每一缔约方应给予作者授权或禁止以有线或无线方式向公众传播其作品的专有权，包括向公众提供其作品，从而使公众人士可在个人选择的地点和时间获得这些作品。⁶⁶

第 18.60 条 发行权

每一缔约方应给予作者、表演者和录音制品制作者授权或禁止通过销售或其他所有权转让方式向公众提供其作品、表演和录音制品的原件和复制品⁶⁷的专有权。

⁶⁴ 为进一步明确，缔约方理解，应由每一缔约方的法律规定，一般作品、表演或录音制品或任何特定类别的作品、表演和录音制品不受版权或相关权保护，除非作品、表演或录音制品已经以某种物质形式加以固定。

⁶⁵ 提及“作者、表演者和录音制品制作者”也指其任何利益继承人。

⁶⁶ 缔约方理解，仅提供实体设施使传播成为可能或进行传播本身并不意味着属本章或《伯尔尼公约》范围内的传播。缔约方进一步理解，本条中任何内容不阻止一缔约方适用《伯尔尼公约》第 11 条之二第(2)款。

⁶⁷ 本条中发行权所涉的“复制品”和“原件和复制品”的表述专门指可以有形物体发行的已固定复制品。

Article 18.61: No Hierarchy

Each Party shall provide that in cases in which authorisation is needed from both the author of a work embodied in a phonogram and a performer or producer that owns rights in the phonogram:

- (a) the need for the authorisation of the author does not cease to exist because the authorisation of the performer or producer is also required; and
- (b) the need for the authorisation of the performer or producer does not cease to exist because the authorisation of the author is also required.

Article 18.62: Related Rights

1. Each Party shall accord the rights provided for in this Chapter with respect to performers and producers of phonograms: to the performers and producers of phonograms that are nationals⁶⁸ of another Party; and to performances or phonograms first published or first fixed⁶⁹ in the territory of another Party.⁷⁰ A performance or phonogram shall be considered first published in the territory of a Party if it is published in the territory of that Party within 30 days of its original publication.

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

- (a) the broadcasting and communication to the public of their unfixed performances, unless the performance is already a broadcast performance; and
- (b) the fixation of their unfixed performances.

⁶⁸ For the purposes of determining criteria for eligibility under this Article, with respect to performers, a Party may treat “nationals” as those who would meet the criteria for eligibility under Article 3 of the WPPT.

⁶⁹ For the purposes of this Article, fixation means the finalisation of the master tape or its equivalent.

⁷⁰ For greater certainty, in this paragraph with respect to performances or phonograms first published or first fixed in the territory of a Party, a Party may apply the criterion of publication, or alternatively, the criterion of fixation, or both. For greater certainty, consistent with Article 18.8 (National Treatment), each Party shall accord to performances and phonograms first published or first fixed in the territory of another Party treatment no less favourable than it accords to performances or phonograms first published or first fixed in its own territory.

第 18.61 条 无层级

每一缔约方应规定，在同时需要一录音制品所含一作品的作者和对该录音制品享有权利的一表演者或制作者授权的情况下：

- (a) 对该作者授权的需要并不因还需要该表演者或制作者的授权而不复存在；及
- (b) 对该表演者或制作者授权的需要并不因还需要该作者授权而不复存在。

第 18.62 条 相关权

1. 每一缔约方应将本章中所规定的表演者和录音制品制作者的权利授予：属另一缔约方国民⁶⁸的表演者和录音制品制作者；在另一缔约方领土内首次发表或首次固定⁶⁹的表演或录音制品。⁷⁰如表演或录音制品在其最初发表后 30 天内在一缔约方领土内发表，则该表演或录音制品应被视为在该缔约方领土内首次发表。

2. 每一缔约方应给予表演者授权或禁止下列行为的专有权：

- (a) 广播或向公众传播其未固定的表演，除非该表演已属广播表演；及
- (b) 固定其未固定的表演。

⁶⁸ 为确定本条下的资格标准，对于表演者，一缔约方可将“国民”视为会满足 WPPT 第 3 条下资格标准的人。

⁶⁹ 就本条而言，固定指母带或其等同物的定稿。

⁷⁰ 为进一步明确，在本款中，对于在一缔约方领土内首次发表或首次固定的表演或录音制品，一缔约方可适用发表的标准，或作为替代，适用固定的标准，或两者均适用。为进一步明确，在与第 18.8 条(国民待遇)相一致的前提下，每一缔约方应授予在另一缔约方领土内首次发表或首次固定的表演和录音制品不低于其授予在其本国领土内首次发表或首次固定的表演或录音制品的待遇。

3. (a) Each Party shall provide to performers and producers of phonograms the exclusive right to authorise or prohibit the broadcasting or any communication to the public of their performances or phonograms, by wire or wireless means,^{71, 72} and the making available to the public of those performances or phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them.
- (b) Notwithstanding subparagraph (a) and Article 18.65 (Limitations and Exceptions), the application of the right referred to in subparagraph (a) to analog transmissions and non-interactive free over-the-air broadcasts, and exceptions or limitations to this right for those activities, is a matter of each Party's law.⁷³

Article 18.63: Term of Protection for Copyright and Related Rights

Each Party shall provide that in cases in which the term of protection of a work, performance or phonogram is to be calculated:⁷⁴

- (a) on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death;⁷⁵ and
- (b) on a basis other than the life of a natural person, the term shall be:

⁷¹ With respect to broadcasting and communication to the public, a Party may satisfy the obligation by applying Article 15(1) and Article 15(4) of the WPPT and may also apply Article 15(2) of the WPPT, provided that it is done in a manner consistent with that Party's obligations under Article 18.8 (National Treatment).

⁷² For greater certainty, the obligation under this paragraph does not include broadcasting or communication to the public, by wire or wireless means, of the sounds or representations of sounds fixed in a phonogram that are incorporated in a cinematographic or other audio-visual work.

⁷³ For the purposes of this subparagraph the Parties understand that a Party may provide for the retransmission of non-interactive, free over-the-air broadcasts, provided that these retransmissions are lawfully permitted by that Party's government communications authority; any entity engaging in these retransmissions complies with the relevant rules, orders or regulations of that authority; and these retransmissions do not include those delivered and accessed over the Internet. For greater certainty this footnote does not limit a Party's ability to avail itself of this subparagraph.

⁷⁴ For greater certainty, in implementing this Article, nothing prevents a Party from promoting certainty for the legitimate use and exploitation of a work, performance or phonogram during its term of protection, consistent with Article 18.65 (Limitations and Exceptions) and that Party's international obligations.

⁷⁵ The Parties understand that if a Party provides its nationals a term of copyright protection that exceeds life of the author plus 70 years, nothing in this Article or Article 18.8 (National Treatment) shall preclude that Party from applying Article 7(8) of the Berne Convention with respect to the term in excess of the term provided in this subparagraph of protection for works of another Party.

3. (a) 每一缔约方应给予表演者和录音制品制作者授权或禁止以有线或无线方式广播或向公众传播其表演或录音制品的专有权，^{71,72}并向公众提供这些表演或录音制品，从而使公众人士可在个人选择的地点和时间获得。
- (b) 尽管有(a)项和第 18.65 条(限制和例外)，但是对模拟传送和非交互式免费无线广播适用(a)项中所指权利及这一权利对这些活动的例外或限制属每一缔约方的法律事项。⁷³

第 18.63 条 版权和相关权的保护期限

每一缔约方应规定，作品、表演或录音制品的保护期限按下列方式进行计算：⁷⁴

- (a) 以一自然人的生命为基础，保护期限不得少于作者生前加作者死亡后 70 年；⁷⁵及
- (b) 不以一自然人的生命为基础，保护期限应为：

⁷¹ 对于广播和向公众传播，一缔约方可通过适用 WPPT 第 15 条第(1)款和第 15 条第(4)款履行该义务，也可适用 WPPT 第 15 条第(2)款，只要适用方式与该缔约方在第 18.8 条(国民待遇)下的义务相一致。

⁷² 为进一步明确，本款下的义务不包括以有线或无线方式广播或向公众传播固定在一电影或其他视听作品中所包含的一录音制品中的声音或声音表现物。

⁷³ 就本项而言，缔约方理解，一缔约方可提供非交互式免费无线广播的转播，只要这些转播经该缔约方政府通信管理机构合法准许；任何从事这些转播的实体遵守该机构的相关规定、命令或法规；且这些转播不包括通过互联网的传送和接入。为进一步明确，本脚注不限制一缔约方利用本项的能力。

⁷⁴ 为进一步明确，在实施本条时，任何内容不阻止一缔约方以与第 18.65 条(限制和例外)和缔约方国际义务相一致的方式，在保护期限内提高合理使用和利用作品、表演或录音制品的确定性。

⁷⁵ 缔约方理解，如一缔约方给予其国民的版权保护期限超过作者生前加死亡后 70 年，则本条或第 18.8 条(国民待遇)中任何内容不阻止该缔约方对超出本项中所规定的保护另一缔约方作品的期限适用《伯尔尼公约》第 7 条第(8)款。

- (i) not less than 70 years from the end of the calendar year of the first authorised publication⁷⁶ of the work, performance or phonogram; or
- (ii) failing such authorised publication within 25 years from the creation of the work, performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance or phonogram.⁷⁷

Article 18.64: Application of Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement

Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to works, performances and phonograms, and the rights in and protections afforded to that subject matter as required by this Section.

Article 18.65: Limitations and Exceptions

1. With respect to this Section, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.
2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WCT or the WPPT.

Article 18.66: Balance in Copyright and Related Rights Systems

Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, among other things by means of limitations or exceptions that are consistent with Article 18.65 (Limitations and Exceptions), including those for the digital environment, giving due consideration to legitimate purposes such as, but not limited to: criticism; comment; news reporting; teaching, scholarship, research, and other similar purposes; and facilitating access

⁷⁶ For greater certainty, for the purposes of subparagraph (b), if a Party's law provides for the calculation of term from fixation rather than from the first authorised publication, that Party may continue to calculate the term from fixation.

⁷⁷ For greater certainty, a Party may calculate a term of protection for an anonymous or pseudonymous work or a work of joint authorship in accordance with Article 7(3) or Article 7bis of the Berne Convention, provided that the Party implements the corresponding numerical term of protection required under this Article.

- (i) 自作品、表演或录音制品首次授权发表⁷⁶的日历年年底起计算不少于 70 年；或
- (ii) 如作品、表演或录音制品自创作时起 25 年内未授权发表，则自作品、表演或录音制品创作的日历年年底起计算不少于 70 年。⁷⁷

第 18.64 条 《伯尔尼公约》第 18 条和《TRIPS 协定》第 14 条第 6 款的适用

每一缔约方应将《伯尔尼公约》第 18 条和《TRIPS 协定》第 14 条第 6 款在细节上作必要修改后适用于作品、表演和录音制品，以及按本节所要求的对该客体授予的权利和给予的保护。

第 18.65 条 限制和例外

1. 关于本节，每一缔约方应将专有权的限制或例外限于某些特殊情况，不得与作品、表演或录音制品的正常利用相冲突，且不得合理损害权利持有人的合法利益。
2. 本条既不缩小也不扩大《TRIPS 协定》、《伯尔尼公约》、WCT 或 WPPT 所允许的限制和例外的适用范围。

第 18.66 条 版权和相关权制度中的平衡

每一缔约方应努力实现其版权和相关权制度中的适当平衡，特别是通过采取与第 18.65 条(限制和例外)相一致的限制或例外的方式，包括对于数字环境的限制和例外，同时适当考虑合理目的，例如但不限于：批评、评论、新闻报道、教学、学术、

⁷⁶ 为进一步明确，就(b)项而言，如一缔约方规定期限自作品固定而非首次授权发表起计算，则该缔约方可继续自作品固定起计算期限。

⁷⁷ 为进一步明确，一缔约方可依照《伯尔尼公约》第 7 条第(3)款或第 7 条之二计算匿名作品或假名作品或合作作品的保护期限，只要该缔约方实施本条下所要求的相应数值保护期限。

to published works for persons who are blind, visually impaired or otherwise print disabled.^{78, 79}

Article 18.67: Contractual Transfers

Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right⁸⁰ in a work, performance or phonogram:

- (a) may freely and separately transfer that right by contract; and
- (b) by virtue of contract, including contracts of employment underlying the creation of works, performances or phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.⁸¹

Article 18.68: Technological Protection Measures (TPMs)⁸²

1. In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorised acts in respect of their works, performances, and phonograms, each Party shall provide that any person that:

- (a) knowingly, or having reasonable grounds to know,⁸³ circumvents without authority any effective technological measure that controls access to a protected work, performance, or phonogram;⁸⁴ or

⁷⁸ As recognised by the *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled*, done at Marrakesh, June 27, 2013 (Marrakesh Treaty). The Parties recognise that some Parties facilitate the availability of works in accessible formats for beneficiaries beyond the requirements of the Marrakesh Treaty.

⁷⁹ For greater certainty, a use that has commercial aspects may in appropriate circumstances be considered to have a legitimate purpose under Article 18.65 (Limitations and Exceptions).

⁸⁰ For greater certainty, this provision does not affect the exercise of moral rights.

⁸¹ Nothing in this Article affects a Party's ability to establish: (i) which specific contracts underlying the creation of works, performances or phonograms shall, in the absence of a written agreement, result in a transfer of economic rights by operation of law; and (ii) reasonable limits to protect the interests of the original right holders, taking into account the legitimate interests of the transferees.

⁸² Nothing in this Agreement requires a Party to restrict the importation or domestic sale of a device that does not render effective a technological measure the only purpose of which is to control market segmentation for legitimate physical copies of a cinematographic film, and is not otherwise a violation of its law.

研究及其他类似目的，并便利盲人、视力障碍者或其他印刷品阅读障碍者获得已发表的作品。^{78,79}

第 18.67 条 合同转让

每一缔约方应规定，对于版权和相关权，对一作品、表演或录音制品获得或持有任何经济权利⁸⁰的任何人：

- (a) 可通过合同自由且单独转让该权利；及
- (b) 凭合同，包括作为作品、表演或录音制品创作基础的雇佣合同，应能够以其自身名义行使该权利，且充分享受该项权利产生的利益。⁸¹

第 18.68 条 技术保护措施(TPMs)⁸²

1. 为提供充分法律保护 and 有效法律救济，以防止规避作者、表演者和录音制品制作者在行使其权利中所使用的、对就其作品、表演和录音制品的未经授权行为加以限制的有效技术措施，每一缔约方应规定从事下列行为的任何人：

- (a) 明知或在有合理理由知道⁸³的情况下，未经授权而规避用于控制获得一受保护作品、表演或录音制品的任何有效技术措施；⁸⁴或

⁷⁸ 如 2013 年 6 月 27 日订于马拉喀什的《关于为盲人、视障者或其他印刷品阅读障碍者获得已出版作品提供便利的马拉喀什条约》所认识的。缔约方认识到，一些缔约方为受益者获得无障碍格式版的作品提供便利已超出《马拉喀什条约》的要求。

⁷⁹ 为进一步明确，具有商业因素的使用可能在适当情况下被认为具有第 18.65 条(限制和例外)下的合理目的。

⁸⁰ 为进一步明确，本规定不影响版权精神权利的行使。

⁸¹ 本条中任何内容不影响一缔约方确定如下事项的能力：(i)在缺乏书面协议时，作为作品、表演或录音制品创作基础的哪一个具体合同应依法导致经济权利的转让；及(ii)合理限制以保护原权利人的利益，同时考虑受让人的合法利益。

⁸² 本协定中任何条款不要求一缔约方限制进口或在国内销售一不使技术措施起效的装置，该技术措施的惟一目的是控制电影的合法有形复制件的市场分割，且在其他方面不违反其法律。

- (b) manufactures, imports, distributes,⁸⁵ offers for sale or rental to the public, or otherwise provides devices, products, or components, or offers to the public or provides services, that:
 - (i) are promoted, advertised, or otherwise marketed by that person⁸⁶ for the purpose of circumventing any effective technological measure;
 - (ii) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure;⁸⁷ or
 - (iii) are primarily designed, produced, or performed for the purpose of circumventing any effective technological measure,

is liable and subject to the remedies provided for in Article 18.74 (Civil and Administrative Procedures and Remedies).

Each Party shall provide for criminal procedures and penalties to be applied if any person is found to have engaged wilfully⁸⁸ and for the purposes of commercial advantage or financial gain⁸⁹ in any of the above activities.⁹⁰

⁸³ For the purposes of this subparagraph, a Party may provide that reasonable grounds to know may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act.

⁸⁴ For greater certainty, no Party is required to impose civil or criminal liability under this subparagraph for a person that circumvents any effective technological measure that protects any of the exclusive rights of copyright or related rights in a protected work, performance or phonogram, but does not control access to such that work, performance or phonogram.

⁸⁵ A Party may provide that the obligations described in this subparagraph with respect to manufacturing, importation, and distribution apply only in cases in which those activities are undertaken for sale or rental, or if those activities prejudice the interests of the right holder of the copyright or related right.

⁸⁶ The Parties understand that this provision still applies in cases in which the person promotes, advertises, or markets through the services of a third person.

⁸⁷ A Party may comply with this paragraph if the conduct referred to in this subparagraph does not have a commercially significant purpose or use other than to circumvent an effective technological measure.

⁸⁸ For greater certainty, for purposes of this Article and Article 18.69 (RMI), wilfulness contains a knowledge element.

⁸⁹ For greater certainty, for purposes of this Article, Article 18.69 (RMI) and Article 18.77 (Criminal Procedures and Penalties), the Parties understand that a Party may treat “financial gain” as “commercial purposes”.

- (b) 制造、进口、分销、⁸⁵许诺销售或向公众出租，或以其他方式提供设备、产品或组件，或向公众许诺提供或提供服务，这些设备、产品、组件或服务：
- (i) 系该人为规避任何有效技术措施而推销、广告或以其他方式营销⁸⁶；
 - (ii) 除规避任何有效技术措施外，仅有有限商业目的或用途；⁸⁷或
 - (iii) 主要为规避任何有效技术措施而设计、生产或使用，

应承担 responsibility 并适用第 18.74 条(民事和行政程序及救济)中所规定的救济措施。

每一缔约方应规定，如任何人被发现故意⁸⁸并为商业利益或经济收入⁸⁹而从事上述任何活动，则应适用刑事程序和处罚。⁹⁰

⁸³ 就本项而言，一缔约方可规定，合理理由知道可通过合理的证据加以证明，同时考虑与指控的非法行为紧密相关的事实和情况。

⁸⁴ 为进一步明确，对于规避旨在保护受保护作品、表演或录音制品的任何版权或相关权专有权利的任何有效技术措施、但未规避旨在控制此类作品、表演或录音制品的获得的人，不要求缔约方根据本项对其施加民事或刑事责任。

⁸⁵ 缔约方可规定，本项中所述对制造、进口和分销的义务仅适用于这些活动是为销售或出租所开展的情况，或如这些活动损害版权或相关权的权利持有人的利益的情况。

⁸⁶ 缔约方理解，这一规定仍适用于该人通过一第三人的服务进行推销、广告或营销的情况。

⁸⁷ 如本项中所指的行为除规避一有效技术措施外缺乏具有商业意义的目的或用途，则一缔约方可以遵守本款。

⁸⁸ 为进一步明确，就本条和第 18.69 条(权利管理信息)而言，故意包含知情的因素。

⁸⁹ 为进一步明确，就本条、第 18.69 条(权利管理信息)和第 18.77 条(刑事程序和处罚)而言，缔约方理解，一缔约方可将“经济收入”视为“商业目的”。

A Party may provide that the criminal procedures and penalties do not apply to a non-profit library, museum, archive, educational institution, or public non-commercial broadcasting entity. A Party may also provide that the remedies provided for in Article 18.74 (Civil and Administrative Procedures and Remedies) do not apply to any of the same entities provided that the above activities are carried out in good faith without knowledge that the conduct is prohibited.

2. In implementing paragraph 1, no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, provided that the product does not otherwise violate a measure implementing paragraph 1.

3. Each Party shall provide that a violation of a measure implementing this Article is independent of any infringement that might occur under the Party's law on copyright and related rights.⁹¹

4. With regard to measures implementing paragraph 1:

- (a) a Party may provide certain limitations and exceptions to the measures implementing paragraph 1(a) or paragraph 1(b) in order to enable non-infringing uses if there is an actual or likely adverse impact of those measures on those non-infringing uses, as determined through a legislative, regulatory, or administrative process in accordance with the Party's law, giving due consideration to evidence when presented in that process, including with respect to whether appropriate and effective measures have been taken by rights holders to enable the beneficiaries to enjoy the limitations and exceptions to copyright and related rights under that Party's law;⁹²
- (b) any limitations or exceptions to a measure that implements paragraph 1(b) shall be permitted only to enable the legitimate use of a limitation or exception permissible under this Article by its

⁹⁰ For greater certainty, no Party is required to impose liability under this Article and Article 18.69 (RMI) for actions taken by that Party or a third person acting with the authorisation or consent of that Party.

⁹¹ For greater certainty, a Party is not required to treat the criminal act of circumvention set forth in paragraph 1(a) as an independent violation, where the Party criminally penalises such acts through other means.

⁹² For greater certainty, nothing in this provision requires a Party to make a new determination via the legislative, regulatory, or administrative process with respect to limitations and exceptions to the legal protection of effective technological measures: (i) previously established pursuant to trade agreements in force between two or more Parties; or (ii) previously implemented by the Parties, provided that such limitations and exceptions are otherwise consistent with this paragraph.

一缔约方可规定，该刑事程序和处罚不适用于非营利性的图书馆、博物馆、档案馆、教育机构或公共非商业性广播实体。一缔约方还可规定，第 18.74 条(民事和行政程序及救济)中所规定的救济措施不适用于任何前述实体，只要上述活动为善意从事且不知该行为属禁止之列。

2. 在实施第 1 款时，任何缔约方无义务要求消费电子产品、通信产品或计算机产品的设计或其零部件的设计和选择对任何特定技术措施作出响应，只要该产品未在其他方面违反实施第 1 款的一措施。

3. 每一缔约方应规定，违反实施本条的一措施与该缔约方关于版权和相关权的法律下可能发生的任何侵权行为相互独立。⁹¹

4. 对于实施第 1 款的措施：

(a) 一缔约方可对实施第 1 款(a)项或第 1 款(b)项的措施规定某些限制和例外，从而允许进行非侵权使用，如按依照其法律通过立法、监管或行政程序所确定的，这些措施对非侵权使用产生实际或可能的不利影响，同时适当考虑在这一程序中提出的证据，包括权利所有人是否已采取适当和有效措施使受益人能够享有该缔约方法律项下对版权和相关权规定的限制和例外；⁹²

(b) 实施第 1 款(b)项的一措施的任何限制或例外应仅被

⁹⁰ 为进一步明确，不要求任何缔约方对其或其授权或同意的第三人采取的行动施以本条和第 18.69 条(权利管理信息)下的责任。

⁹¹ 为进一步明确，如一缔约方通过其他手段对第 1 款(a)项中所列刑事规避行为进行刑事处罚，则不要求该缔约方将该行为视为独立违法行为。

⁹² 为进一步明确，这一规定中任何内容不要求一缔约方通过立法、监管或行政程序就如下有效技术措施法律保护的的限制和例外作出新的确定：(i)根据两个或多个缔约方之间实施的贸易协定在以往确定的限制和例外；或(ii)该缔约方在以往实施的的限制和例外，只要此类限制和例外在其他方面与本款一致。

intended beneficiaries⁹³ and does not authorise the making available of devices, products, components, or services beyond those intended beneficiaries;⁹⁴ and

- (c) a Party shall not, by providing limitations and exceptions under paragraph 4(a) and paragraph 4(b), undermine the adequacy of that Party's legal system for the protection of effective technological measures, or the effectiveness of legal remedies against the circumvention of such measures, that authors, performers, or producers of phonograms use in connection with the exercise of their rights, or that restrict unauthorised acts in respect of their works, performances or phonograms, as provided for in this Chapter.

5. **Effective technological measure** means any effective⁹⁵ technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, or phonogram, or protects copyright or related rights related to a work, performance or phonogram.

Article 18.69: Rights Management Information (RMI)⁹⁶

1. In order to provide adequate and effective legal remedies to protect RMI:
- (a) each Party shall provide that any person that, without authority, and knowing, or having reasonable grounds to know, that it would induce, enable, facilitate or conceal an infringement of the copyright or related right of authors, performers or producers of phonograms:
- (i) knowingly⁹⁷ removes or alters any RMI;

⁹³ For greater certainty, a Party may provide an exception to paragraph 1(b) without providing a corresponding exception to paragraph 1(a), provided that the exception to paragraph 1(b) is limited to enabling a legitimate use that is within the scope of limitations or exceptions to paragraph 1(a) as provided under this subparagraph.

⁹⁴ For the purposes of interpreting paragraph 4(b) only, paragraph 1(a) should be read to apply to all effective technological measures as defined in paragraph 5, *mutatis mutandis*.

⁹⁵ For greater certainty, a technological measure that can, in a usual case, be circumvented accidentally is not an "effective" technological measure.

⁹⁶ A Party may comply with the obligations in this Article by providing legal protection only to electronic RMI.

⁹⁷ For greater certainty, a Party may extend the protection afforded by this paragraph to circumstances in which a person engages without knowledge in the acts in sub-subparagraphs (i), (ii) and (iii), and to other related right holders.

允许用以使预期受益人⁹³能够合理使用本条下允许的一限制或例外，且不授权预期受益人之外的人获得设备、产品、组件或服务；⁹⁴以及

- (c) 一缔约方不得通过提供第 4 款(a)项和第 4 款(b)项下的例外和限制而损害该缔约方保护有效技术措施的法律制度的适当性，或损害针对规避如下措施的法律救济的有效性：即按本章所规定的，作者、表演者或录音制品制作者行使其权利时所使用的措施，或限制与其作品、表演或录音制品相关的未经授权的行为所使用的措施。

5. **有效技术措施**指任何有效⁹⁵技术、设备或组件，用以在正常运行过程中，控制对受保护作品、表演或录音制品的获取，或保护与作品、表演或录音制品相关的版权或相关权。

第 18.69 条 权利管理信息(RMI)⁹⁶

1. 为提供充分和有效的法律救济以保护权利管理信息：
- (a) 每一缔约方应规定，任何人未经授权且明知或有合理理由知道下列行为会诱使、促成、便利或包庇对作者、表演者或录音制品制作者的版权或相关权的侵权行为：
- (i) 故意⁹⁷去除或改变任何权利管理信息；

⁹³ 为进一步明确，一缔约方可对第 1 款(b)项规定一项例外而无需规定第 1 款(a)项的相应例外，只要第 1 款(b)项的例外限于使按本项所规定的在对第 1 款(a)项的例外或限制范围内的合理使用得以实现。

⁹⁴ 仅为解释第 4 款(b)项的目的，第 1 款(a)项应理解为，在细节上作必要修改后适用于第 5 款中所定义的所有有效技术措施。

⁹⁵ 为进一步明确，在通常情况下可被意外规避的一技术性措施不属一“有效”技术措施。

⁹⁶ 一缔约方可通过仅对电子权利管理信息提供法律保护以遵守本条中的义务。

⁹⁷ 为进一步明确，一缔约方可将本款给予的保护延伸至一人在不知情的情况下从事(i)目、(ii)目和(iii)目中的行为的情况，并可延伸至其他相关权利持有人。

- (ii) knowingly distributes or imports for distribution RMI knowing that the RMI has been altered without authority;⁹⁸
or
- (iii) knowingly distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances or phonograms, knowing that RMI has been removed or altered without authority,

is liable and subject to the remedies set out in Article 18.74 (Civil and Administrative Procedures and Remedies).

Each Party shall provide for criminal procedures and penalties to be applied if any person is found to have engaged wilfully and for purposes of commercial advantage or financial gain in any of the above activities.

A Party may provide that the criminal procedures and penalties do not apply to a non-profit library, museum, archive, educational institution or public non-commercial broadcasting entity.⁹⁹

2. For greater certainty, nothing prevents a Party from excluding from a measure that implements paragraph 1 a lawfully authorised activity that is carried out for the purpose of law enforcement, essential security interests or other related governmental purposes, such as the performance of a statutory function.

3. For greater certainty, nothing in this Article shall obligate a Party to require a right holder in a work, performance or phonogram to attach RMI to copies of the work, performance or phonogram, or to cause RMI to appear in connection with a communication of the work, performance or phonogram to the public.

4. **RMI** means:

- (a) information that identifies a work, performance or phonogram, the author of the work, the performer of the performance or the producer of the phonogram; or the owner of any right in the work, performance or phonogram;
- (b) information about the terms and conditions of the use of the work, performance or phonogram; or

⁹⁸ A Party may comply with its obligations under this sub-subparagraph by providing for civil judicial proceedings concerning the enforcement of moral rights under its copyright law. A Party may also meet its obligation under this sub-subparagraph, if it provides effective protection for original compilations, provided that the acts described in this sub-subparagraph are treated as infringements of copyright in those original compilations.

⁹⁹ For greater certainty, a Party may treat a broadcasting entity established without a profit-making purpose under its law as a public non-commercial broadcasting entity.

- (ii) 明知权利管理信息未经授权已被改变，而故意发行或为发行而进口权利管理信息；⁹⁸或
- (iii) 明知权利管理信息未经授权已被除去或改变，而故意发行、为发行而进口、广播、传播或向公众提供作品、表演或录音制品的复制品。

应承担 responsibility 并适用第 18.74 条(民事和行政程序及救济)中所列救济措施。

每一缔约方应规定，如任何人被发现故意和为商业利益或经济收入而从事上述任何行为，则应适用刑事程序和处罚。

一缔约方可规定，刑事程序和处罚不适用于非营利性的图书馆、博物馆、档案馆、教育机构或公共非商业性广播实体。⁹⁹

2. 为进一步明确，任何内容不阻止一缔约方将为下列目的的合法授权的活动排除在实施第 1 款的一措施之外：即法律执行、基本安全利益或其他相关政府目的，例如履行法定职能。

3. 为进一步明确，本条中任何内容不得为一缔约方设定如下义务：即要求作品、表演或录音制品的权利持有人将权利管理信息附于作品、表演或录音制品之上，或使权利管理信息出现在向公众传播作品、表演或录音制品时。

4. **权利管理信息指：**

- (a) 识别作品、表演或录音制品、作品的作者、表演的表演者或录音制品的制作者的信息；或识别对作品、表演或录音制品拥有任何权利的所有人的信息；
- (b) 关于使用作品、表演或录音制品的条款和条件的信息；或

⁹⁸ 一缔约方可通过在其版权法律项下规定有关实施精神权利的民事司法程序而遵守其在本目下的义务。如一缔约方对原创汇编作品提供有效保护，则其同样符合其在本目下的义务，只要本目所述行为被视为侵犯该原创汇编作品的版权。

⁹⁹ 为进一步明确，一缔约方可根据其法律建立的不以营利为目的的广播实体视为公共非商业性广播实体。

- (c) any numbers or codes that represent the information referred to in subparagraphs (a) and (b),

if any of these items is attached to a copy of the work, performance or phonogram or appears in connection with the communication or making available of a work, performance or phonogram to the public.

Article 18.70: Collective Management

The Parties recognise the important role of collective management societies for copyright and related rights in collecting and distributing royalties¹⁰⁰ based on practices that are fair, efficient, transparent and accountable, which may include appropriate record keeping and reporting mechanisms.

Section I: Enforcement

Article 18.71: General Obligations

1. Each Party shall ensure that enforcement procedures as specified in this Section are available under its law¹⁰¹ so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements.¹⁰² These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

2. Each Party confirms that the enforcement procedures set forth in Article 18.74 (Civil and Administrative Procedures and Remedies), Article 18.75 (Provisional Measures) and Article 18.77 (Criminal Procedures and Penalties) shall be available to the same extent with respect to acts of trademark infringement, as well as copyright or related rights infringement, in the digital environment.

3. Each Party shall ensure that its procedures concerning the enforcement of intellectual property rights are fair and equitable. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

¹⁰⁰ For greater certainty, royalties may include equitable remuneration.

¹⁰¹ For greater certainty, “law” is not limited to legislation.

¹⁰² For greater certainty, and subject to Article 44 of the TRIPS Agreement and the provisions of this Agreement, each Party confirms that it makes such remedies available with respect to enterprises, regardless of whether the enterprises are private or state-owned.

(c) 代表(a)项和(b)项中所指信息的任何数字或代码，

如这些信息中的任何一项附于作品、表演或录音制品的复制品上，或出现在向公众传播或提供作品、表演或录音制品时。

第 18.70 条 集体管理

缔约方认识到版权和相关权的集体管理组织在基于公平、有效、透明和负责的做法收取和分配许可使用费¹⁰⁰方面的重要性，可包括适当的记录保存和报告机制。

I 节：执行

第 18.71 条 一般义务

1. 每一缔约方应保证其国内法律¹⁰¹中可获得本节中所规定的执行程序，从而允许对任何侵犯本章所涵盖知识产权的行为采取有效行动，包括防止侵权的快速救济措施和对未来侵权构成威慑的救济措施。¹⁰²这些程序的实施方式应避免对合法贸易形成障碍并为防止程序被滥用提供保障。

2. 每一缔约方确认，第 18.74 条(民事和行政程序及救济)、第 18.75 条(临时措施)和第 18.77 条(刑事程序和处罚)中所列执行程序应能在同等程度上适用于数字环境中的商标侵权以及版权或相关权侵权。

3. 每一缔约方应保证其有关知识产权执行的程序公平和公正。这些程序不应不必要的复杂或费用高昂，也不得限定不合理时限或不合理迟延。

¹⁰⁰ 为进一步明确，许可使用费可包括合理报酬。

¹⁰¹ 为进一步明确，“法律”不限于立法。

¹⁰² 为进一步明确，并在遵守《TRIPS 协定》第 44 条和本协定条款的前提下，每一缔约方确认将向企业提供此类救济措施，无论企业属私营还是国有。

4. This Section does not create any obligation:
 - (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of each Party to enforce its law in general; or
 - (b) with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of law in general.
5. In implementing the provisions of this Section in its intellectual property system, each Party shall take into account the need for proportionality between the seriousness of the infringement of the intellectual property right and the applicable remedies and penalties, as well as the interests of third parties.

Article 18.72: Presumptions

1. In civil, criminal and, if applicable, administrative proceedings involving copyright or related rights, each Party shall provide for a presumption¹⁰³ that, in the absence of proof to the contrary:
 - (a) the person whose name is indicated in the usual manner¹⁰⁴ as the author, performer or producer of the work, performance or phonogram, or if applicable the publisher, is the designated right holder in that work, performance or phonogram; and
 - (b) the copyright or related right subsists in such subject matter.
2. In connection with the commencement of a civil, administrative or criminal enforcement proceeding involving a registered trademark that has been substantively examined by its competent authority, each Party shall provide that the trademark be considered *prima facie* valid.
3. In connection with the commencement of a civil or administrative enforcement proceeding involving a patent that has been substantively examined and granted¹⁰⁵ by the competent authority of a Party, that Party shall provide that

¹⁰³ For greater certainty, a Party may implement this Article on the basis of sworn statements or documents having evidentiary value, such as statutory declarations. A Party may also provide that these presumptions are rebuttable presumptions that may be rebutted by evidence to the contrary.

¹⁰⁴ For greater certainty, a Party may establish the means by which it shall determine what constitutes the “usual manner” for a particular physical support.

¹⁰⁵ For greater certainty, nothing in this Chapter prevents a Party from making available third party procedures in connection with its fulfilment of the obligations under paragraphs 2 and 3.

4. 本节不设定下列义务：
- (a) 为知识产权执行设定不同于一般法律执行的司法制度，且本节也不影响每一缔约方执行其一般法律的能力；或
 - (b) 对于知识产权执行与一般法律执行之间的资源分配。
5. 在其知识产权制度中实施本节的规定时，每一缔约方应考虑保持知识产权侵权的严重程度与适用的救济和惩罚以及第三方利益之间均衡性的必要。

第 18.72 条 推定

1. 在涉及版权或相关权的民事、刑事程序，及如适用，行政程序中，每一缔约方应规定，如无相反证据，则推定¹⁰³：
 - (a) 其姓名以通常方式¹⁰⁴标为作品、表演或录音制品的作者、表演者或制作者，或如适用，出版者的人，是该作品、表演或录音制品的指定权利持有人；及
 - (b) 版权或相关权存在于该客体中。
2. 对于涉及一已经其主管机关实质性审查的注册商标的民事、行政或刑事执行程序的启动，每一缔约方应规定该商标被视为初步有效。
3. 对于涉及一已经其主管机关实质性审查并已被授予专利权的专利¹⁰⁵的民事或行政执行程序的启动，每一缔约方应规定，专

¹⁰³ 为进一步明确，一缔约方可根据宣誓声明或具有证据价值的文件，例如法定声明，以实施本条。一缔约方还可规定，这些推定是可被相反证据反驳的可反驳的推定。

¹⁰⁴ 为进一步明确，一缔约方可确定方法，应据此确定对一特定实物支持构成“通常方式”的内容。

¹⁰⁵ 为进一步明确，本章中任何内容不阻止一缔约方在履行第 2 款和第 3 款下义务过程中提供第三方程序。

each claim in the patent be considered *prima facie* to satisfy the applicable criteria of patentability in the territory of the Party.^{106, 107}

Article 18.73: Enforcement Practices with Respect to Intellectual Property Rights

1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights:

- (a) preferably are in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based; and
- (b) are published¹⁰⁸ or, if publication is not practicable, otherwise made available to the public in a national language in such a manner as to enable interested persons and Parties to become acquainted with them.

2. Each Party recognises the importance of collecting and analysing statistical data and other relevant information concerning infringements of intellectual property rights as well as collecting information on best practices to prevent and combat infringements.

3. Each Party shall publish or otherwise make available to the public information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal systems, such as statistical information that the Party may collect for such purposes.

¹⁰⁶ For greater certainty, if a Party provides its administrative authorities with the exclusive authority to determine the validity of a registered trademark or patent, nothing in paragraphs 2 and 3 shall prevent that Party's competent authority from suspending enforcement procedures until the validity of the registered trademark or patent is determined by the administrative authority. In those validity procedures, the party challenging the validity of the registered trademark or patent shall be required to prove that the registered trademark or patent is not valid. Notwithstanding this requirement, a Party may require the trademark holder to provide evidence of first use.

¹⁰⁷ A Party may provide that this paragraph applies only to those patents that have been applied for, examined and granted after the entry into force of this Agreement for that Party.

¹⁰⁸ For greater certainty, a Party may satisfy the requirement for publication by making the decision or ruling available to the public on the Internet.

利中的每项权利要求均被视为初步满足该缔约方国内适用的可专利性标准。^{106,107}

第 18.73 条 与知识产权有关的执行实践

1. 每一缔约方应规定，与知识产权执行有关的普遍适用的最终司法裁决和行政裁定：

- (a) 最好以书面形式作出，并说明作出司法裁决和行政裁定所根据的相关事实认定和推理或法律根据；及
- (b) 予以公布¹⁰⁸，或如公布不可行，采取其他方式以使利害关系人和缔约方知晓的方式以本国语文向公众提供。

2. 每一缔约方认识到收集和分析与知识产权侵权有关的统计数据和其他相关信息的重要性，还认识到收集防止和打击侵权最佳实践信息的重要性。

3. 每一缔约方应公布或以其他方式向公众提供关于为在其民事、行政和刑事制度中提供知识产权有效执行所作努力的信息，例如缔约方为此类目的可能收集的统计信息。

¹⁰⁶ 为进一步明确，如一缔约方规定其行政主管机关拥有确定一注册商标或专利有效性的专有权利，则第 2 款和第 3 款中任何内容不得阻止该缔约方的主管机关在其行政主管机关确定该注册商标或专利的有效性之前暂停执行程序。在这些有效性程序中，应要求质疑该注册商标或专利有效性的一方证明该注册商标或专利是无效的。尽管有这一要求，但是一缔约方可要求商标持有人提供首次使用的证据。

¹⁰⁷ 一缔约方可规定本款仅适用于在本协定对该缔约方生效后提出申请、已经审查和已被授予的专利。

¹⁰⁸ 为进一步明确，一缔约方可通过在互联网上向公众提供裁决或裁定以满足关于公布的要求。

Article 18.74: Civil and Administrative Procedures and Remedies

1. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right covered in this Chapter.¹⁰⁹
2. Each Party shall provide that its judicial authorities have the authority to order injunctive relief that conforms to Article 44 of the TRIPS Agreement, including to prevent goods that involve the infringement of an intellectual property right under the law of the Party providing that relief from entering into the channels of commerce.
3. Each Party shall provide¹¹⁰ that, in civil judicial proceedings, its judicial authorities have the authority at least to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.
4. In determining the amount of damages under paragraph 3, each Party's judicial authorities shall have the authority to consider, among other things, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price.
5. At least in cases of copyright or related rights infringement and trademark counterfeiting, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the infringer, at least in cases described in paragraph 3, to pay the right holder the infringer's profits that are attributable to the infringement.¹¹¹
6. In civil judicial proceedings with respect to the infringement of copyright or related rights protecting works, phonograms or performances, each Party shall establish or maintain a system that provides for one or more of the following:

¹⁰⁹ For the purposes of this Article, the term "right holders" shall include those authorised licensees, federations and associations that have the legal standing and authority to assert such rights. The term "authorised licensee" shall include the exclusive licensee of any one or more of the exclusive intellectual property rights encompassed in a given intellectual property.

¹¹⁰ A Party may also provide that the right holder may not be entitled to any of the remedies set out in paragraphs 3, 5 and 7 if there is a finding of non-use of a trademark. For greater certainty, there is no obligation for a Party to provide for the possibility of any of the remedies in paragraphs 3, 5, 6 and 7 to be ordered in parallel.

¹¹¹ A Party may comply with this paragraph through presuming those profits to be the damages referred to in paragraph 3.

第 18.74 条 民事和行政程序及救济

1. 每一缔约方应使权利持有人可获得有关执行本章中所涵盖的任何知识产权的民事司法程序。¹⁰⁹
2. 每一缔约方应规定其司法机关有权实施符合《TRIPS 协定》第 44 条的禁令救济，包括根据规定此项救济的缔约方法律阻止涉及侵犯一知识产权的货物进入商业渠道。
3. 每一缔约方应规定¹¹⁰，在民事司法程序中，其司法机关至少有权责令明知或有合理理由知道从事侵权活动的侵权人向权利持有人支付足以补偿该权利持有人因其知识产权被该侵权人侵犯而所受损害的赔偿。
4. 在确定第 3 款下的赔偿金额时，每一缔约方的司法机关应有权考虑，除其他外，权利持有人提交的任何合理价值尺度，可包括利润损失、以市场价格或建议零售价衡量的被侵权货物或服务的价值。
5. 至少在版权或相关权侵权案件和假冒商标案件中，每一缔约方应规定，在民事司法程序中，其司法机关有权要求侵权人，至少在第 3 款中所述情况下，向权利持有人支付侵权人可归因于侵权的利润。¹¹¹
6. 在有关侵犯保护作品、录音制品或表演的版权或相关权的民事司法程序中，每一缔约方应建立或设立规定下列一项或多项的制度：

¹⁰⁹ 就本条而言，“权利持有人”一词应包括授权的被许可人及授权的、拥有法律地位和权力主张此类权利的联合会和协会。“授权的被许可人”一词应包括享有包含在一特定知识财产中的任何一项或多项知识产权的独家被许可人。

¹¹⁰ 一缔约方还可规定，如发现商标未使用，权利人无权获得第 3 款、第 5 款和第 7 款中列救济。为进一步明确，一缔约方并无义务规定同时判令第 3 款、第 5 款、第 6 款和第 7 款中任何救济的可能性。

¹¹¹ 一缔约方可通过推定这些利润属第 3 款中所指损害而遵守本款。

- (a) pre-established damages, which shall be available on the election of the right holder; or
- (b) additional damages.¹¹²

7. In civil judicial proceedings with respect to trademark counterfeiting, each Party shall also establish or maintain a system that provides for one or more of the following:

- (a) pre-established damages, which shall be available on the election of the right holder; or
- (b) additional damages.¹¹³

8. Pre-established damages under paragraphs 6 and 7 shall be set out in an amount that would be sufficient to compensate the right holder for the harm caused by the infringement, and with a view to deterring future infringements.

9. In awarding additional damages under paragraphs 6 and 7, judicial authorities shall have the authority to award such additional damages as they consider appropriate, having regard to all relevant matters, including the nature of the infringing conduct and the need to deter similar infringements in the future.

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

11. If a Party's judicial or other authorities appoint a technical or other expert in a civil proceeding concerning the enforcement of an intellectual property right and require that the parties to the proceeding pay the costs of that expert, that Party should seek to ensure that those costs are reasonable and related appropriately, among other things, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings.

12. Each Party shall provide that in civil judicial proceedings:

- (a) at least with respect to pirated copyright goods and counterfeit trademark goods, its judicial authorities have the authority, at the right holder's request, to order that the infringing goods be destroyed, except in exceptional circumstances, without compensation of any sort;

¹¹² For greater certainty, additional damages may include exemplary or punitive damages.

¹¹³ For greater certainty, additional damages may include exemplary or punitive damages.

- (a) 法定赔偿，根据权利持有人的选择而提供；或
- (b) 额外赔偿。¹¹²

7. 在有关假冒商标的民事司法程序中，每一缔约方也应建立或设立包含下列一项或多项的制度：

- (a) 法定赔偿，根据权利持有人的选择而提供；或
- (b) 额外赔偿。¹¹³

8. 第 6 款和第 7 款下的法定赔偿所列金额应足以补偿权利持有人因侵权所造成的损害，并可威慑未来侵权行为。

9. 在判定第 6 款和第 7 款下的额外赔偿时，司法机关在考虑所有相关事项的基础上，包括侵权行为的性质和威慑未来类似侵权的需要，应有权判处其认为合理的额外赔偿。

10. 每一缔约方应规定，在有关至少侵犯版权或相关权、专利权和商标权的民事司法程序结束时，如适当，其司法机关有权要求败诉方向胜诉方支付诉讼费用和适当律师费，或该缔约方法律项下所规定的任何其他费用。

11. 如一缔约方的司法机关或其他机关在有关知识产权执行的民事程序中指定一技术专家或其他专家并要求该程序的当事人支付该专家的费用，则该缔约方应寻求保证这些费用是合理的，且除其他因素外，与需要完成的工作的数量和性质适当相关，且不得不合理妨碍援用此类程序。

12. 每一缔约方应规定，在民事司法程序中：

- (a) 至少对于盗版货物和假冒商标货物，其司法机关有权，应权利持有人请求，责令销毁侵权货物，且除非在特殊情况下，否则不给予任何类型的补偿；

¹¹² 为进一步明确，额外赔偿可包括惩戒性或惩罚性赔偿。

¹¹³ 为进一步明确，额外赔偿可包括惩戒性或惩罚性赔偿。

- (b) its judicial authorities have the authority to order that materials and implements that have been used in the manufacture or creation of the infringing goods be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimise the risk of further infringement; and
- (c) in regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed is not sufficient, other than in exceptional circumstances, to permit the release of goods into the channels of commerce.

13. Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of an intellectual property right, its judicial authorities have the authority, on a justified request of the right holder, to order the infringer or, in the alternative, the alleged infringer to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. The information may include information regarding any person involved in any aspect of the infringement or alleged infringement and the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of the goods or services and of their channels of distribution.

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

15. Each Party shall ensure that its judicial authorities have the authority to order a party at whose request measures were taken and that has abused enforcement procedures with regard to intellectual property rights, including trademarks, geographical indications, patents, copyright and related rights and industrial designs, to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of that abuse. The judicial authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

16. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that

- (b) 其司法机关有权责令将生产或制造侵权产品时曾使用的材料和工具，在无不当迟延且不给予任何类型补偿的条件下，予以销毁或清除出商业渠道，以便将产生进一步侵权的风险降至最低程度；以及
- (c) 对于假冒商标货物，除特殊情况外，仅简单除去非法加贴的商标并不足以允许放行该货物进入商业渠道。

13. 在不损害其管辖特权、保护信息来源机密性或处理个人数据的法律的前提下，每一缔约方应规定，在有关知识产权执行的民事司法程序中，其司法机关有权，应权利持有人正当请求，责令侵权人或作为替代，涉嫌侵权人向权利持有人或向司法机关提供，至少为收集证据的目的，按其适用的法律法规中所规定的由侵权人或涉嫌侵权人持有或控制的相关信息。该信息可包括关于在任何方面涉及侵权或涉嫌侵权的任何人的信息，及有关侵权或涉嫌侵权货物或服务的生产方式或分销渠道的信息，包括对涉嫌参与此类货物或服务的生产和分销的第三人及其分销渠道的确认。

14. 每一缔约方应规定，对于有关知识产权执行的民事司法程序，其司法机关或其他机关有权对违反有关保护诉讼中产生或交换的机密信息的司法命令的一当事方、律师、专家或受法院管辖的其他人实施制裁。

15. 每一缔约方应保证，其司法机关有权责令应其请求而采取措施的一当事方，因其滥用有关商标、地理标志、专利、版权和相关权以及工业设计等知识产权执行程序，而向受到错误禁止或限制的一当事方提供由于此种滥用而所受损害的充足赔偿。司法机关还应有权责令该申请人向被告支付费用，其中可包括适当的律师费。

16. 如由于行政程序对一案件实体问题的裁决而决定进行任何民事救济，则每一缔约方应规定这些程序符合与本条所列原

those procedures conform to principles equivalent in substance to those set out in this Article.

17. In civil judicial proceedings concerning the acts described in Article 18.68 (TPMs) and Article 18.69 (RMI):

- (a) each Party shall provide that its judicial authorities have the authority at least to:¹¹⁴
 - (i) impose provisional measures, including seizure or other taking into custody of devices and products suspected of being involved in the prohibited activity;
 - (ii) order the type of damages available for copyright infringement, as provided under its law in accordance with this Article;¹¹⁵
 - (iii) order court costs, fees or expenses as provided for under paragraph 10; and
 - (iv) order the destruction of devices and products found to be involved in the prohibited activity; and
- (b) a Party may provide that damages shall not be available against a non-profit library, archive, educational institution, museum or public non-commercial broadcasting entity, if it sustains the burden of proving that it was not aware or had no reason to believe that its acts constituted a prohibited activity.

Article 18.75: Provisional Measures

1. Each Party's authorities shall act on a request for relief in respect of an intellectual property right *inaudita altera parte* expeditiously in accordance with that Party's judicial rules.

2. Each Party shall provide that its judicial authorities have the authority to require the applicant for a provisional measure in respect of an intellectual property right to provide any reasonably available evidence in order to satisfy the judicial authority, with a sufficient degree of certainty, that the applicant's right is being infringed or that the infringement is imminent, and to order the applicant to

¹¹⁴ For greater certainty, a Party may, but is not required to, put in place separate remedies in respect of Article 18.68 (TPMs) and Article 18.69 (RMI), if those remedies are available under its copyright law.

¹¹⁵ If a Party's copyright law provides for both pre-established damages and additional damages, that Party may comply with the requirements of this subparagraph by providing for only one of these forms of damages.

则实质相当的原则。

17. 在有关第 18.68 条(技术保护措施)和第 18.69 条(权利管理信息)中所述行为的民事司法程序中:

- (a) 每一缔约方应规定其司法机关有权至少：¹¹⁴
 - (i) 采取临时措施，包括扣押或以其他方式收押涉嫌卷入在被禁止活动中的设备和产品；
 - (ii) 按其法律中依照本条所规定的，责令作出版权侵权可获得类型的赔偿；¹¹⁵
 - (iii) 责令支付第 10 款下所规定的诉讼费用或支出；及
 - (iv) 责令销毁被发现卷入被禁止活动的设备和产品；以及
- (b) 一缔约方可规定，对于非营利性的图书馆、档案馆、教育机构、博物馆或非商业性公共广播实体，如上述机构承担举证责任，证明未意识到或无理由相信其行为构成被禁止活动，则不得要求其作出赔偿。

第 18.75 条 临时措施

1. 每一缔约方的主管机关，对于涉及知识产权的救济请求，应不预先听取对方当事人的陈述即依照该缔约方的司法规则快速采取行动。

2. 每一缔约方应规定，其司法机关有权要求对一知识产权采取临时措施的申请人提供任何可合理获得的证据，以使司法机关

¹¹⁴ 为进一步明确，一缔约方可以但无需就第 18.68 条(技术保护措施)和第 18.69 条(权利管理信息)提供单独救济，如这些救济在其版权法中可获得。

¹¹⁵ 如一缔约方的版权法同时规定法定赔偿和额外赔偿，则该缔约方可通过仅提供这些赔偿形式中的一种以遵守本条的要求。

provide security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to those procedures.

3. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of suspected infringing goods, materials and implements relevant to the infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.

Article 18.76: Special Requirements related to Border Measures

1. Each Party shall provide for applications to suspend the release of, or to detain, any suspected counterfeit or confusingly similar trademark or pirated copyright goods that are imported into the territory of the Party.¹¹⁶

2. Each Party shall provide that any right holder initiating procedures for its competent authorities¹¹⁷ to suspend release of suspected counterfeit or confusingly similar trademark or pirated copyright goods into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the law of the Party providing the procedures, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspect goods reasonably recognisable by its competent authorities. The requirement to provide that information shall not unreasonably deter recourse to these procedures.

3. Each Party shall provide that its competent authorities have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark or pirated copyright goods, to provide a reasonable security or equivalent assurance sufficient to protect the

¹¹⁶ For the purposes of this Article:

- (a) counterfeit trademark goods means any goods, including packaging, bearing without authorisation a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the Party providing the procedures under this Section; and
- (b) pirated copyright goods means any goods that are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party providing the procedures under this Section.

¹¹⁷ For the purposes of this Article, unless otherwise specified, competent authorities may include the appropriate judicial, administrative or law enforcement authorities under a Party's law.

有足够把握确信，该申请人的权利正在受到侵犯或此种侵权已迫近，并有权责令申请人提供足以保护被告和防止滥用的保证金或同等的担保。此种保证金或同等的担保不得不合理妨碍援用这些程序。

3. 在有关版权或相关权侵权和假冒商标的民事司法程序中，每一缔约方应规定，其司法机关有权责令扣押或以其他方式收押涉嫌侵权货物、与侵权相关的材料和工具以及至少对于假冒商标，与侵权相关的书面证据。

第 18.76 条 与边境措施相关的特殊要求

1. 每一缔约方应规定可申请中止放行或扣留进口至该缔约方领土内的任何涉嫌假冒、混淆性相似商标或盗版的货物。¹¹⁶

2. 每一缔约方应规定，启动程序要求主管机关¹¹⁷中止放行涉嫌假冒、混淆性相似商标或盗版的货物进入自由流通的任何权利持有人需要提供充足证据，以使主管机关确信，根据规定该程序的该缔约方法律，可初步推定权利持有人的知识产权受到侵犯，并要求提供可合理期待的属权利持有人所知范围内的充分信息，使可疑货物可被主管机关合理识别。提供该信息的要求不得不合理妨碍援用这些程序。

3. 每一缔约方应规定，其主管机关有权要求启动中止放行涉嫌假冒、混淆性相似商标或盗版的货物程序的一权利持有人，提

¹¹⁶ 就本条而言：

- (a) 假冒商标货物指包括包装在内的如下任何货物：即未经授权而载有的商标与此类货物已有效注册的商标相同，或其基本特征不能与此种商标相区分，并因此侵犯所涉商标的所有权人在规定本节下程序的该缔约方法律项下的权利；及
- (b) 盗版货物是指如下任何货物：即其未经权利持有人同意或未经在生产国获得权利持有人正式授权的人同意而制造的复制品，及直接或间接由一物品制成的货物，如生产此种复制品将构成对规定本节下程序的缔约方法律项下的版权或相关权的侵犯。

¹¹⁷ 就本条而言，除非另有具体规定，否则主管机关可包括缔约方法律项下的适当司法、行政或执法机关。

defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance does not unreasonably deter recourse to these procedures. A Party may provide that the security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good.

4. Without prejudice to a Party's law pertaining to privacy or the confidentiality of information:

- (a) if a Party's competent authorities have detained or suspended the release of goods that are suspected of being counterfeit trademark or pirated copyright goods, that Party may provide that its competent authorities have the authority to inform the right holder without undue delay of the names and addresses of the consignor, exporter, consignee or importer; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods;¹¹⁸ or
- (b) if a Party does not provide its competent authority with the authority referred to in subparagraph (a) when suspect goods are detained or suspended from release, it shall provide, at least in cases of imported goods, its competent authorities with the authority to provide the information specified in subparagraph (a) to the right holder normally within 30 working days of the seizure or determination that the goods are counterfeit trademark goods or pirated copyright goods.

5. Each Party shall provide that its competent authorities may initiate border measures *ex officio*¹¹⁹ with respect to goods under customs control¹²⁰ that are:

- (a) imported;
- (b) destined for export;¹²¹ or
- (c) in transit,^{122, 123}

¹¹⁸ For greater certainty, a Party may establish reasonable procedures to receive or access that information.

¹¹⁹ For greater certainty, that *ex officio* action does not require a formal complaint from a third party or right holder.

¹²⁰ For the purposes of this Article, a Party may treat "goods under customs control" as meaning goods that are subject to a Party's customs procedures.

¹²¹ For the purposes of this Article, a Party may treat goods "destined for export" as meaning exported.

¹²² This subparagraph applies to suspect goods that are in transit from one customs office to another customs office in the Party's territory from which the goods will be exported.

供足以保护被告和主管机关并防止滥用的合理保证金或同等的担保。每一缔约方应规定，此种保证金或同等担保不会不合理妨碍援用这些程序。一缔约方可规定，该保证金可以采用附条件保函的形式，条件为如主管机关确定该物品不属侵权货物，则可使被告免受因中止放行货物而造成的任何损失或损害。

4. 在不损害一缔约方有关隐私或信息机密性法律的情况下：

- (a) 如一缔约方的主管机关已经扣留或中止放行涉嫌假冒商标或盗版的货物，该缔约方可规定，其主管机关有权将发货人、出口商、收货人或进口商的姓名和地址、对货物的描述、货物的数量以及货物原产国(如已知)告知权利持有人而不造成不当迟延；¹¹⁸或
- (b) 如一缔约方在扣留或中止放行涉嫌货物时未规定其主管机关拥有(a)项中所指的职权，则该缔约方应规定，至少对于进口货物，其主管机关有权通常在扣押或认定货物属假冒商标或盗版货物的 30 个工作日内向权利持有人提供(a)项中所规定的信息。

5. 每一缔约方应规定，其主管机关可依职权¹¹⁹对于在海关监管¹²⁰的下列货物启动边境措施：

- (a) 进口；
- (b) 准备出口；¹²¹或
- (c) 过境，^{122,123}

¹¹⁸ 为进一步明确，一缔约方可建立合理程序以接收或访问此类信息。

¹¹⁹ 为进一步明确，“依职权”的行动不要求第三方或权利持有人提出正式投诉。

¹²⁰ 就本条而言，一缔约可将“海关监管货物”视为受一缔约方海关程序管辖的货物。

¹²¹ 就本条而言，一缔约可将“准备出口”的货物视为出口货物。

¹²² 本项适用于正在该缔约方领土内自一海关运输至另一海关并将自后一海关出口的可疑货物。

and that are suspected of being counterfeit trademark goods or pirated copyright goods.

6. Each Party shall adopt or maintain a procedure by which its competent authorities may determine within a reasonable period of time after the initiation of the procedures described in paragraph 1, paragraph 5(a), paragraph 5(b) and, if applicable, paragraph 5(c), whether the suspect goods infringe an intellectual property right.¹²⁴ If a Party provides administrative procedures for the determination of an infringement, it may also provide its authorities with the authority to impose administrative penalties or sanctions, which may include fines or the seizure of the infringing goods following a determination that the goods are infringing.

7. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination that the goods are infringing. In cases in which the goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, the goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce.

8. If a Party establishes or assesses, in connection with the procedures described in this Article, an application fee, storage fee or destruction fee, that fee shall not be set at an amount that unreasonably deters recourse to these procedures.

9. This Article also shall apply to goods of a commercial nature sent in small consignments. A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage.¹²⁵

¹²³ As an alternative to this subparagraph, a Party shall instead endeavour to provide, if appropriate and with a view to eliminating international trade in counterfeit trademark goods or pirated copyright goods, available information to another Party in respect of goods that it has examined without a local consignee and that are transhipped through its territory and destined for the territory of the other Party, to inform that other Party's efforts to identify suspect goods upon arrival in its territory.

¹²⁴ A Party may comply with the obligation in this Article with respect to a determination that suspect goods under paragraph 5 infringe an intellectual property right through a determination that the suspect goods bear a false trade description.

¹²⁵ For greater certainty, a Party may also exclude from the application of this Article small quantities of goods of a non-commercial nature sent in small consignments.

且被怀疑属假冒商标货物或盗版货物。

6. 每一缔约方应采取或设立程序，主管机关通过该程序可在启动第 1 款、第 5 款(a)项、第 5 款(b)项，及如适用，第 5 款(c)项中所述程序后的一合理期限内，认定可疑货物是否侵犯知识产权。¹²⁴如一缔约方规定侵权认定的行政程序，则其也可规定其主管机关有权在认定货物属侵权后施加行政处罚或制裁，可包括罚款或扣押侵权货物。

7. 每一缔约方应规定，其主管机关有权在认定货物侵权后责令销毁该货物。在该货物未被销毁的情况下，每一缔约方应保证，除特殊情况外，将该货物清除出商业渠道，以避免对权利持有人造成任何损害。对于假冒商标货物，除特殊情况外，仅简单除去非法加贴的商标并不足以允许放行该货物进入商业渠道。

8. 如一缔约方设定或确定与本条中所述程序有关的申请费、储存费或销毁费，则对此类费用所设定的金额不得不合理妨碍援用此类程序。

9. 本条也应适用于小件托运的商业性货物。一缔约方可将旅客个人行李中夹带的少量非商业性货物排除在本条规定的适用范围之外。¹²⁵

¹²³ 作为对本项的替代，一缔约方应转而努力提供，如适当且为消除假冒商标货物或盗版货物的国际贸易，向另一缔约方提供其已检查且无当地收货人并通过其领土转运至另一缔约方领土的货物的可获得的信息，并告知另一缔约方努力在货物抵达其领土时识别可疑货物。

¹²⁴ 一缔约方可通过认定可疑货物含有虚假贸易描述以遵守本条中关于认定第 5 款下可疑货物侵犯知识产权的义务。

¹²⁵ 为进一步明确，一缔约方也可将小件托运的少量非商业性货物，排除在本条的适用范围之外。

Article 18.77: Criminal Procedures and Penalties

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

- (a) acts carried out for commercial advantage or financial gain; and
- (b) significant acts, not carried out for commercial advantage or financial gain, that have a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.^{126, 127}

2. Each Party shall treat wilful importation or exportation of counterfeit trademark goods or pirated copyright goods on a commercial scale as unlawful activities subject to criminal penalties.¹²⁸

3. Each Party shall provide for criminal procedures and penalties to be applied in cases of wilful importation¹²⁹ and domestic use, in the course of trade and on a commercial scale, of a label or packaging:¹³⁰

- (a) to which a trademark has been applied without authorisation that is identical to, or cannot be distinguished from, a trademark registered in its territory; and
- (b) that is intended to be used in the course of trade on goods or in relation to services that are identical to goods or services for which that trademark is registered.

¹²⁶ The Parties understand that a Party may comply with subparagraph (b) by addressing such significant acts under its criminal procedures and penalties for non-authorised uses of protected works, performances and phonograms in its law.

¹²⁷ A Party may provide that the volume and value of any infringing items may be taken into account in determining whether the act has a substantial prejudicial impact on the interests of the copyright or related rights holder in relation to the marketplace.

¹²⁸ The Parties understand that a Party may comply with its obligation under this paragraph by providing that distribution or sale of counterfeit trademark goods or pirated copyright goods on a commercial scale is an unlawful activity subject to criminal penalties. Furthermore, criminal procedures and penalties as specified in paragraphs 1, 2 and 3 are applicable in any free trade zones in a Party.

¹²⁹ A Party may comply with its obligation relating to importation of labels or packaging through its measures concerning distribution.

¹³⁰ A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trademark offence.

第 18.77 条 刑事程序和处罚

1. 每一缔约方应规定至少适用于具有商业规模的蓄意假冒商标或版权或相关权盗版的案件的刑事程序和处罚。对于“具有商业规模”的蓄意版权或相关权盗版至少包括：

- (a) 为商业利益或经济收入目的而从事的行为；及
- (b) 并非为商业利益或经济收入目的而从事的，对版权或相关权持有人与市场相关的利益产生重大不利影响的重大行为。^{126,127}

2. 每一缔约方应将具有商业规模的蓄意进口或出口假冒商标货物或盗版货物视为应受刑事处罚的非法活动。¹²⁸

3. 每一缔约方应规定对在贸易过程中具有商业规模的蓄意进口¹²⁹和国内使用下列标签或包装的情况适用刑事程序和处罚：¹³⁰

- (a) 在标签或包装上未经授权使用与已在其领土内注册的一商标相同或无法区分的商标；及
- (b) 有意在贸易过程中将标签或包装用于与已注册商标的货物或服务相同的货物或服务。

¹²⁶ 缔约方理解，一缔约方可通过根据其法律中对未经授权使用受保护作品、表演和录音制品的刑事程序和处罚处理此类重大行为以遵守(b)项。

¹²⁷ 一缔约方可规定，在认定该行为是否对版权或相关权的权利持有人的相关市场利益产生重大不利影响时，可考虑任何侵权物品的数量和价值。

¹²⁸ 缔约方理解，一缔约方可通过规定具有商业规模的分销或销售假冒商标货物或盗版货物属应受刑事处罚的非法活动以遵守其在本款下的义务。此外，第 1 款、第 2 款和第 3 款中所规定的刑事程序和处罚适用于一缔约方内的任何自由贸易园区。

¹²⁹ 一缔约方可通过其有关分销的措施以遵守其与标签或包装进口相关的义务。

¹³⁰ 一缔约方可通过规定刑事程序和处罚适用于从事商标违法的意图以遵守其在本款下的义务。

4. 认识到有必要处理在电影院放映过程对一部电影作品进行未经授权复制¹³¹的行为，如此种非法复制对市场上一权利持有人的该部作品造成重大损害，并认识到有必要阻止此种损害，每一缔约方应采取或维持措施，这些措施至少应包括但不必限于适当的刑事程序和处罚。

5. 对于本条要求一缔约方规定刑事程序和处罚的违法行为，每一缔约方应保证其国内法中可获得对协助或教唆行为的刑事责任。

6. 对于第 1 款至第 5 款中所述的违法行为，每一缔约方应规定下列内容：

- (a) 刑事处罚包括判处有期徒刑及足以对未来侵权行为起到威慑作用的罚金，并应与适用于同等严重性的犯罪所受到的处罚水平相一致。¹³²
- (b) 其司法机关在确定处罚时，应有权考虑情况的严重程度，可包括涉及对健康或安全造成威胁或影响的情况。¹³³
- (c) 其司法机关或其他主管机关有权责令扣押涉嫌假冒商标货物或盗版货物、用于实施指控的违法行为的任何相关材料和工具、与指控的违法行为相关的书面证据以及来源于或通过涉嫌侵权活动获得的财产。如一缔约方要求将确认应被扣押的物品作为发布本项中所指司法命令的前提，则该缔约方所要求对该物品描述的详细程度不得超过为扣押之目的而指认该物品的必要程度。
- (d) 其司法机关有权责令没收，至少对于严重违法行为而言，任何来源于或通过侵权活动获得的财产。
- (e) 其司法机关有权责令没收或销毁下列各项：

¹³¹ 就本条而言，一缔约方可将 copying 视为 reproduction 的同义词(两词均有“复制品”之义—译注)。

¹³² 缔约方理解，一缔约方无义务规定平行施加有期徒刑和罚金的可能性。

¹³³ 一缔约方也可通过单独的刑事犯罪考虑此类情况。

4. Recognising the need to address the unauthorised copying¹³¹ of a cinematographic work from a performance in a movie theatre that causes significant harm to a right holder in the market for that work, and recognising the need to deter such harm, each Party shall adopt or maintain measures, which shall at a minimum include, but need not be limited to, appropriate criminal procedures and penalties.

5. With respect to the offences for which this Article requires a Party to provide for criminal procedures and penalties, each Party shall ensure that criminal liability for aiding and abetting is available under its law.

6. With respect to the offences described in paragraphs 1 through 5, each Party shall provide the following:

- (a) Penalties that include sentences of imprisonment as well as monetary fines sufficiently high to provide a deterrent to future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity.¹³²
- (b) Its judicial authorities have the authority, in determining penalties, to account for the seriousness of the circumstances, which may include circumstances that involve threats to, or effects on, health or safety.¹³³
- (c) Its judicial or other competent authorities have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and assets derived from, or obtained through the alleged infringing activity. If a Party requires identification of items subject to seizure as a prerequisite for issuing a judicial order referred to in this subparagraph, that Party shall not require the items to be described in greater detail than necessary to identify them for the purpose of seizure.
- (d) Its judicial authorities have the authority to order the forfeiture, at least for serious offences, of any assets derived from or obtained through the infringing activity.
- (e) Its judicial authorities have the authority to order the forfeiture or destruction of:

¹³¹ For the purposes of this Article, a Party may treat the term “copying” as synonymous with reproduction.

¹³² The Parties understand that there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

¹³³ A Party may also account for such circumstances through a separate criminal offence.

- (i) all counterfeit trademark goods or pirated copyright goods;
- (ii) materials and implements that have been predominantly used in the creation of pirated copyright goods or counterfeit trademark goods; and
- (iii) any other labels or packaging to which a counterfeit trademark has been applied and that have been used in the commission of the offence.

In cases in which counterfeit trademark goods and pirated copyright goods are not destroyed, the judicial or other competent authorities shall ensure that, except in exceptional circumstances, those goods are disposed of outside the channels of commerce in such a manner as to avoid causing any harm to the right holder. Each Party shall further provide that forfeiture or destruction under this subparagraph and subparagraph (c) shall occur without compensation of any kind to the defendant.

- (f) Its judicial or other competent authorities have the authority to release or, in the alternative, provide access to, goods, material, implements, and other evidence held by the relevant authority to a right holder for civil¹³⁴ infringement proceedings.
- (g) Its competent authorities may act upon their own initiative to initiate legal action without the need for a formal complaint by a third person or right holder.¹³⁵

7. With respect to the offences described in paragraphs 1 through 5, a Party may provide that its judicial authorities have the authority to order the seizure or forfeiture of assets, or alternatively, a fine, the value of which corresponds to the assets derived from, or obtained directly or indirectly through, the infringing activity.

Article 18.78: Trade Secrets¹³⁶

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention, each Party shall ensure that

¹³⁴ A Party may also provide this authority in connection with administrative infringement proceedings.

¹³⁵ With regard to copyright and related rights piracy provided for under paragraph 1, a Party may limit application of this subparagraph to the cases in which there is an impact on the right holder's ability to exploit the work, performance or phonogram in the market.

¹³⁶ For greater certainty, this Article is without prejudice to a Party's measures protecting good faith lawful disclosures to provide evidence of a violation of that Party's law.

- (i) 所有的假冒商标货物或盗版货物；
- (ii) 主要用于制造盗版货物或假冒商标货物的材料和工具；以及
- (iii) 用于贴附假冒商标且在实施犯罪中所使用的任何其他标签或包装。

在假冒商标货物和盗版货物未被销毁的情况下，司法机关或其他主管机关应保证，除特殊情况外，这些货物被清除出商业渠道，以避免对权利持有人造成任何损害。每一缔约方应进一步规定，根据本项和(c)项进行的没收或销毁无需对被告给予任何类别的补偿。

- (f) 其司法机关或其他主管机关有权为民事¹³⁴侵权诉讼的需要向权利持有人放行，或作为替代，使其可获得相关机关持有的货物、材料、工具及其他证据。
- (g) 其主管机关可主动提起法律诉讼而无需第三方或权利持有人的正式投诉。¹³⁵

7. 对于第 1 款至 5 款中所述的违法行为，一缔约方可规定，其司法机关有权责令扣押或没收财产，或作为替代，处以罚金，罚金金额相当于来源于或直接或间接通过侵权活动所获得财产。

第 18.78 条 商业秘密¹³⁶

1. 在保证有效防止如《巴黎公约》第 10 条之二中所规定的不正当竞争的过程中，每一缔约方应保证个人有法律手段以阻止

¹³⁴ 一缔约方也可对行政侵权程序规定这一权限。

¹³⁵ 对于第 1 款下所规定的版权和相关权盗版，一缔约方可将本项的适用限定于对权利持有人在市场中利用其作品、表演或录音制品的能力产生影响的情况。

¹³⁶ 为进一步明确，本条不损害一缔约方保护为提供违反该缔约方法律的证据而所作的善意合法披露的措施。

persons have the legal means to prevent trade secrets lawfully in their control from being disclosed to, acquired by, or used by others (including state-owned enterprises) without their consent in a manner contrary to honest commercial practices.¹³⁷ As used in this Chapter, trade secrets encompass, at a minimum, undisclosed information as provided for in Article 39.2 of the TRIPS Agreement.

2. Subject to paragraph 3, each Party shall provide for criminal procedures and penalties for one or more of the following:

- (a) the unauthorised and wilful access to a trade secret held in a computer system;
- (b) the unauthorised and wilful misappropriation¹³⁸ of a trade secret, including by means of a computer system; or
- (c) the fraudulent disclosure, or alternatively, the unauthorised and wilful disclosure, of a trade secret, including by means of a computer system.

3. With respect to the relevant acts referred to in paragraph 2, a Party may, as appropriate, limit the availability of its criminal procedures, or limit the level of penalties available, to one or more of the following cases in which:

- (a) the acts are for the purposes of commercial advantage or financial gain;
- (b) the acts are related to a product or service in national or international commerce;
- (c) the acts are intended to injure the owner of such trade secret;
- (d) the acts are directed by or for the benefit of or in association with a foreign economic entity; or
- (e) the acts are detrimental to a Party's economic interests, international relations, or national defence or national security.

¹³⁷ For the purposes of this paragraph “a manner contrary to honest commercial practices” means at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties that knew, or were grossly negligent in failing to know, that those practices were involved in the acquisition.

¹³⁸ A Party may deem the term “misappropriation” to be synonymous with “unlawful acquisition”.

其合法控制的商业秘密在未经其同意的情况下以违反诚信商业惯例的方式¹³⁷向他人(包括国有企业)披露、被他人获得或使用。在用于本章时, 商业秘密至少包含如《TRIPS 协定》第 39 条第 2 款中所规定的未披露信息。

2. 在遵守第 3 款的前提下, 每一缔约方应对下列一项或多项行为规定刑事程序和处罚:

- (a) 未经授权且蓄意获取计算机系统上的商业秘密;
- (b) 未经授权且蓄意盗用¹³⁸商业秘密, 包括通过计算机系统的方式盗取; 或
- (c) 欺诈性披露, 或作为替代, 未经授权且蓄意披露商业秘密, 包括通过计算机系统的方式披露。

3. 对于第 2 款中所指的相关行为, 一缔约方可酌情将其刑事程序的可获性或可获得的刑事处罚的水平限定在下列一种或多种情况:

- (a) 该行为的目的是为商业利益或经济收入;
- (b) 该行为与国内或国际贸易中的一产品或服务相关;
- (c) 该行为意在损害此类商业秘密的拥有者;
- (d) 该行为受一外国经济实体指示或为其利益或与其有关联; 或
- (e) 该行为损害一缔约方的经济利益、国际关系或国防或国家安全。

¹³⁷ 就本款而言, “违反诚信商业惯例的方式”至少指违反合同、泄露机密和引诱违约等惯例, 并包括第三方在获得未披露信息时知道或因重大过失不知道获得过程涉及前述惯例。

¹³⁸ 一缔约方可将“盗用”一词视为“非法获得”的同义词。

Article 18.79: Protection of Encrypted Program-Carrying Satellite and Cable Signals

1. Each Party shall make it a criminal offence to:
- (a) manufacture, assemble, modify,¹³⁹ import, export, sell, lease or otherwise distribute a tangible or intangible device or system knowing or having reason to know¹⁴⁰ that the device or system meets at least one of the following conditions:
 - (i) it is intended to be used to assist;
 - (ii) it is primarily of assistance; or
 - (iii) its principal function is solely to assist,

in decoding an encrypted program-carrying satellite signal without the authorisation of the lawful distributor¹⁴¹ of such signal,¹⁴² and
 - (b) with respect to an encrypted program-carrying satellite signal, wilfully:
 - (i) receive¹⁴³ such a signal; or
 - (ii) further distribute¹⁴⁴ such signal,

knowing that it has been decoded without the authorisation of the lawful distributor of the signal.

¹³⁹ For greater certainty, a Party may treat “assemble” and “modify” as incorporated in “manufacture”.

¹⁴⁰ For the purposes of this paragraph, a Party may provide that “having reason to know” may be demonstrated through reasonable evidence, taking into account the facts and circumstances surrounding the alleged illegal act, as part of the Party’s “knowledge” requirements. A Party may treat “having reason to know” as meaning “wilful negligence”.

¹⁴¹ With regard to the criminal offences and penalties in paragraph 1 and paragraph 3, a Party may require a demonstration of intent to avoid payment to the lawful distributor, or a demonstration of intent to otherwise secure a pecuniary benefit to which the recipient is not entitled.

¹⁴² The obligation regarding export may be met by making it a criminal offence to possess and distribute a device or system described in this paragraph. For the purposes of this Article, a Party may provide that a “lawful distributor” means a person that has the lawful right in that Party’s territory to distribute the encrypted program-carrying signal and authorise its decoding.

¹⁴³ For greater certainty and for the purposes of paragraph 1(b) and paragraph 3(b), a Party may provide that wilful receipt of an encrypted program-carrying satellite or cable signal means receipt and use of the signal, or means receipt and decoding of the signal.

¹⁴⁴ For greater certainty, a Party may interpret “further distribute” as “retransmit to the public”.

第 18.79 条 对载有加密节目的卫星和有线信号的保护

1. 每一缔约方应将下列行为定为犯罪行为：
 - (a) 制造、组装、改装、¹³⁹进口、出口、销售、租赁或以其他方式分销有形或无形设备或系统，明知或有理由知道¹⁴⁰该设备或系统至少符合下列条件之一：
 - (i) 被有意用于协助；
 - (ii) 主要为协助；或
 - (iii) 其主要功能仅为协助，
解码载有加密节目的卫星信号而未经该信号的合法分配者¹⁴¹授权；¹⁴²及
 - (b) 对于载有加密节目的卫星信号，蓄意用于：
 - (i) 接收¹⁴³该信号；或
 - (ii) 进一步分配¹⁴⁴该信号，
明知该信号的解码未经该信号的合法分配者授权。

¹³⁹ 为进一步明确，一缔约方可将“组装”和“改装”视为包含在“制造”之中。

¹⁴⁰ 就本款而言，一缔约方可规定“有理由知道”可通过合理证据加以证明，同时考虑与涉嫌非法行为密切相关的事实和情况，作为缔约方关于“知道”的要求的一部分。一缔约方可将“有理由知道”视为“蓄意疏忽”。

¹⁴¹ 对于第 1 款和第 3 款中的刑事程序和处罚，一缔约方可要求证明存在避免向合法分配者付费的意图或证明存在通过其他方式获得接收者无资格获得的金钱利益的意图。

¹⁴² 关于出口的义务可通过将拥有和分销本款中所述的一设备或系统规定为刑事犯罪加以履行。就本条而言，一缔约方可规定“合法分配者”指在该缔约方领土内分配载有加密节目的信号和授权解码的合法权利的人。

¹⁴³ 为进一步明确并就第 1 款(b)项和第 3 款(b)项而言，一缔约方可规定，蓄意接收载有加密节目的卫星或有线信号指接收和使用该信号，或指接收和解码该信号。

¹⁴⁴ 为进一步明确，一缔约方可将“进一步分配”解释为“向公众转播”。

2. Each Party shall provide for civil remedies for a person that holds an interest in an encrypted program-carrying satellite signal or its content and that is injured by an activity described in paragraph 1.

3. Each Party shall provide for criminal penalties or civil remedies¹⁴⁵ for wilfully:

- (a) manufacturing or distributing equipment knowing that the equipment is intended to be used in the unauthorised reception of any encrypted program-carrying cable signal; and
- (b) receiving, or assisting another to receive,¹⁴⁶ an encrypted program-carrying cable signal without authorisation of the lawful distributor of the signal.

Article 18.80: Government Use of Software

1. Each Party recognises the importance of promoting the adoption of measures to enhance government awareness of respect for intellectual property rights and of the detrimental effects of the infringement of intellectual property rights.

2. Each Party shall adopt or maintain appropriate laws, regulations, policies, orders, government-issued guidelines, or administrative or executive decrees that provide that its central government agencies use only non-infringing computer software protected by copyright and related rights, and, if applicable, only use that computer software in a manner authorised by the relevant licence. These measures shall apply to the acquisition and management of the software for government use.¹⁴⁷

¹⁴⁵ If a Party provides for civil remedies, it may require a demonstration of injury.

¹⁴⁶ A Party may comply with its obligation in respect of “assisting another to receive” by providing for criminal penalties to be available against a person wilfully publishing any information in order to enable or assist another person to receive a signal without authorisation of the lawful distributor of the signal.

¹⁴⁷ For greater certainty, paragraph 2 should not be interpreted as encouraging regional government agencies to use infringing computer software or, if applicable, to use computer software in a manner which is not authorised by the relevant licence.

2. 每一缔约方应对载有加密节目的卫星信号或其内容拥有利益且因第 1 款中所述一活动而受到损害的人提供民事救济。
3. 每一缔约方应对下列蓄意行为规定刑事处罚或民事救济¹⁴⁵:
 - (a) 制造或分销设备，明知该设备意在用于未经授权接收任何载有加密节目的有线信号；及
 - (b) 接收或协助另一人接收¹⁴⁶未经信号合法分配者授权的载有加密节目的有线信号。

第 18.80 条 政府使用软件

1. 每一缔约方认识到推动采取措施以提高政府尊重知识产权的意识和提高对知识产权侵权行为危害性认识的重要性。
2. 每一缔约方应采用或维持适当的法律、法规、政策、命令、政府发布的指南或行政法令，其中规定其中央政府机构只使用受版权和相关权保护的未侵权计算机软件，且如适用，只以经相关许可授权的方式使用计算机软件。这些措施应适用于供政府使用目的的软件采购和管理。¹⁴⁷

¹⁴⁵ 如一缔约方规定民事救济，则其可要求证明损害。

¹⁴⁶ 一缔约方可通过针对蓄意公开任何信息使另一人能够接收或协助另一人接收未经信号合法分配者授权的信号的人规定刑事处罚以遵守其有关“协助另一人接收”的义务。

¹⁴⁷ 为进一步明确，第 2 款不应解释为鼓励地方政府机构使用侵权计算机软件，或如适用，鼓励以未经相关许可授权的方式使用计算机软件。

Section J: Internet Service Providers¹⁴⁸

Article 18.81: Definitions

For the purposes of this Section:

the term **copyright** includes related rights; and

Internet Service Provider means:

- (a) a provider of online services for the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, undertaking the function in Article 18.82.2(a) (Legal Remedies and Safe Harbours); or
- (b) a provider of online services undertaking the functions in Article 18.82.2(c) or Article 18.82.2(d) (Legal Remedies and Safe Harbours).

For greater certainty, Internet Service Provider includes a provider of the services listed above that engages in caching carried out through an automated process.

Article 18.82: Legal Remedies and Safe Harbours¹⁴⁹

1. The Parties recognise the importance of facilitating the continued development of legitimate online services operating as intermediaries and, in a manner consistent with Article 41 of the TRIPS Agreement, providing enforcement procedures that permit effective action by right holders against copyright infringement covered under this Chapter that occurs in the online environment. Accordingly, each Party shall ensure that legal remedies are available for right holders to address such copyright infringement and shall establish or maintain appropriate safe harbours in respect of online services that are Internet Service Providers. This framework of legal remedies and safe harbours shall include:

- (a) legal incentives¹⁵⁰ for Internet Service Providers to cooperate with copyright owners to deter the unauthorised storage and transmission of copyrighted materials or, in the alternative, to take

¹⁴⁸ Annex 18-F applies to this Section.

¹⁴⁹ Annex 18-E applies to Article 18.82.3 and Article 18.82.4 (Legal Remedies and Safe Harbours).

¹⁵⁰ For greater certainty, the Parties understand that implementation of the obligations in paragraph 1(a) on "legal incentives" may take different forms.

J 节：互联网服务提供商¹⁴⁸

第 18.81 条 定义

就本节而言：

版权一词包括相关权；及

互联网服务提供商指：

- (a) 为在用户指定的两点或多点间对用户选择的材料进行传送、发送、或为数字在线通信提供连接，承担第 18.82.2 条(a)项(法律救济和安全港)中功能的在线服务提供商；或
- (b) 承担第 18.82.2 条(c)项或第 18.82.2 条(d)项(法律救济和安全港)中功能的在线服务提供商。

为进一步明确，互联网服务提供商包括通过自动化过程从事高速缓存业务的以上所列服务的提供商。

第 18.82 条 法律救济和安全港¹⁴⁹

1. 缔约方认识到促进作为中介开展运营的合法在线服务继续发展的重要性，并认识到以符合遵守《TRIPS 协定》第 41 条的方式，提供允许权利持有人对在线环境中发生的本章所涵盖的版权侵权采取有效行动的执行程序的重要性。因此，每一缔约方应保证权利持有人可获得法律救济以处理此类版权侵权，并应为属互联网服务提供商的在线服务建立或设立适当的安全港。这一法律救济和安全港的框架应包括：

- (a) 给予互联网服务提供商法律激励¹⁵⁰，促其与版权权利持有人合作以阻止未经授权存储或传送受版权保护的材料，或作为替代，采取其他行动以阻止未经

¹⁴⁸ 附件 18-F 适用于本节。

¹⁴⁹ 附件 18-E 适用于第 18.82.3 条和第 18.82.4 条(法律救济和安全港)。

¹⁵⁰ 为进一步明确，缔约方理解，对第 1 款(a)项中“法律激励”义务的履行可采取不同形式。

other action to deter the unauthorised storage and transmission of copyrighted materials; and

- (b) limitations in its law that have the effect of precluding monetary relief against Internet Service Providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf.¹⁵¹

2. The limitations described in paragraph 1(b) shall include limitations in respect of the following functions:

- (a) transmitting, routing or providing connections for material without modification of its content¹⁵² or the intermediate and transient storage of that material done automatically in the course of such a technical process;
- (b) caching carried out through an automated process;
- (c) storage¹⁵³, at the direction of a user, of material residing on a system or network controlled or operated by or for the Internet Service Provider;¹⁵⁴ and
- (d) referring or linking users to an online location by using information location tools, including hyperlinks and directories.

3. To facilitate effective action to address infringement, each Party shall prescribe in its law conditions for Internet Service Providers to qualify for the limitations described in paragraph 1(b), or, alternatively, shall provide for circumstances under which Internet Service Providers do not qualify for the limitations described in paragraph 1(b).^{155, 156}

¹⁵¹ The Parties understand that, to the extent that a Party determines, consistent with its international legal obligations, that a particular act does not constitute copyright infringement, there is no obligation to provide for a limitation in relation to that act.

¹⁵² The Parties understand that such modification does not include a modification made as part of a technical process or for solely technical reasons such as division into packets.

¹⁵³ For greater certainty, a Party may interpret “storage” as “hosting”.

¹⁵⁴ For greater certainty, the storage of material may include e-mails and their attachments stored in the Internet Service Provider’s server and web pages residing on the Internet Service Provider’s server.

¹⁵⁵ A Party may comply with the obligations in paragraph 3 by maintaining a framework in which:

- (a) there is a stakeholder organisation that includes representatives of both Internet Service Providers and right holders, established with government involvement;

授权存储或传送受版权保护的材料；及

- (b) 在其法律中规定可产生排除针对互联网服务提供商因版权侵权而采取金钱救济效果的限制，如此种侵权并非由互联网提供商所控制、发起或指示，而是通过其或代表其控制或运营的系统或网络发生。¹⁵¹

2. 第 1 款(b)项中所述的限制应包括对下列功能的限制：

- (a) 在不对内容进行修改¹⁵²的情况下传送、发送材料或为材料提供连接，或在该技术过程中自动完成的对该材料的中间存储和瞬时存储；
- (b) 通过自动化过程实现高速缓存；
- (c) 根据用户指示，存储¹⁵³驻留在由或为该互联网服务提供商控制或运营的系统或网络上的材料；¹⁵⁴以及
- (d) 通过使用信息定位工具，包括超链接和目录，将用户指引至或链接至一在线位置。

3. 为便利处理侵权的有效行动，每一缔约方应在其法律中规定互联网服务提供商有资格使用第 1 款(b)项中所述限制的条件，或作为替代，应规定互联网服务提供商无资格使用第 1 款(b)项中所述限制的情况：^{155,156}

¹⁵¹ 缔约方理解，在与其国际法律义务相一致的情况下，在一缔约方确定一特定行为不构成版权侵权的限度内，无义务对该行为规定限制。

¹⁵² 缔约方理解，此种修改不包括作为一技术过程一部分的修改或仅为技术原因的修改，例如分成数据包。

¹⁵³ 为进一步明确，一缔约方可将“存储”解释为“托管”。

¹⁵⁴ 为进一步明确，材料的存储可包括存储于互联网服务提供商的服务器和驻留在互联网服务提供商的服务器上的网页中的电子邮件及其附件。

¹⁵⁵ 一缔约方可通过设立下列框架以遵守第 3 款的义务：

- (a) 该框架中设有包括互联网服务提供商和权利持有人双方代表的利益相关组织，由政府参与建立；

- (a) With respect to the functions referred to in paragraph 2(c) and paragraph 2(d), these conditions shall include a requirement for Internet Service Providers to expeditiously remove or disable access to material residing on their networks or systems upon obtaining actual knowledge of the copyright infringement or becoming aware of facts or circumstances from which the infringement is apparent, such as through receiving a notice¹⁵⁷ of alleged infringement from the right holder or a person authorised to act on its behalf,
- (b) An Internet Service Provider that removes or disables access to material in good faith under subparagraph (a) shall be exempt from any liability for having done so, provided that it takes reasonable steps in advance or promptly after to notify the person whose material is removed or disabled.¹⁵⁸

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- (b) that stakeholder organisation develops and maintains effective, efficient and timely procedures for entities certified by the stakeholder organisation to verify, without undue delay, the validity of each notice of alleged copyright infringement by confirming that the notice is not the result of mistake or misidentification, before forwarding the verified notice to the relevant Internet Service Provider;
 - (c) there are appropriate guidelines for Internet Service Providers to follow in order to qualify for the limitation described in paragraph 1(b), including requiring that the Internet Service Provider promptly removes or disables access to the identified materials upon receipt of a verified notice; and be exempted from liability for having done so in good faith in accordance with those guidelines; and
 - (d) there are appropriate measures that provide for liability in cases in which an Internet Service Provider has actual knowledge of the infringement or awareness of facts or circumstances from which the infringement is apparent.

¹⁵⁶ The Parties understand that a Party that has yet to implement the obligations in paragraphs 3 and 4 will do so in a manner that is both effective and consistent with that Party's existing constitutional provisions. To that end, a Party may establish an appropriate role for the government that does not impair the timeliness of the process provided in paragraphs 3 and 4, and does not entail advance government review of each individual notice.

¹⁵⁷ For greater certainty, a notice of alleged infringement, as may be set out under a Party's law, must contain information that:

- (a) is reasonably sufficient to enable the Internet Service Provider to identify the work, performance or phonogram claimed to be infringed, the alleged infringing material, and the online location of the alleged infringement; and
- (b) has a sufficient indicia of reliability with respect to the authority of the person sending the notice.

¹⁵⁸ With respect to the function in subparagraph 2(b), a Party may limit the requirements of paragraph 3 related to an Internet Service Provider removing or disabling access to material to circumstances in which the Internet Service Provider becomes aware or receives notification that the cached material has been removed or access to it has been disabled at the originating site.

- (a) 对于第 2 款(c)项和第 2 款(d)项中所指的功能，这些条件应包括要求互联网服务提供商在得知版权侵权的实际情况或意识到明显侵权的事实或情况下，例如收到权利持有人或经授权代表权利持有人的人发来的涉嫌侵权通知¹⁵⁷，应快速移除或禁止访问驻留在其网络或系统内的材料，
- (b) 根据(a)项善意移除或禁止访问材料的互联网服务提供商应被豁免由此产生的任何责任，只要其事先或事后迅速采取合理步骤通知其材料被移除或被禁止访问的人。¹⁵⁸

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- (b) 该利益相关者组织开发和维护有效、高效和及时的程序，供经该利益相关方组织认证的实体，针对关于涉嫌版权侵权的通知，在向相关互联网服务提供商转发之前，在无不当迟延的情况下，通过确认通知并非因错误或误判所引发，以核实每一份通知的有效性；
 - (c) 该框架内提供适当指南，供互联网服务提供商遵循，以符合使用第 1 款(b)项中所述限制的资格，包括要求互联网服务提供商在收到经核实的通知后即迅速移除或禁止访问被确认的材料；并豁免其依照该指南善意完成上述行为的责任；以及
 - (d) 该框架内提供适当措施，规定在互联网服务提供商在得知侵权的实际情况或意识到明显侵权的事实或情况下的责任。

¹⁵⁶ 缔约方理解，尚未履行第 3 款和第 4 款中义务的一缔约方将以有效且与该缔约方现行宪法规定相一致的方式履行义务。为此目的，一缔约方可为政府确立一适当角色，既不损害第 3 款和第 4 款中所规定程序的及时性，也不要求对每一份通知进行政府预先审查。

¹⁵⁷ 为进一步明确，涉嫌侵权的通知，可按一缔约方法律所规定，必须包含下述信息：

- (a) 使互联网服务提供商能够识别声称被侵权的作品、表演或录音制品、涉嫌侵权的材料和涉嫌侵权的在线位置的合理充分信息；及
- (b) 对发送通知的人的权限有充分可靠性标记的信息。

¹⁵⁸ 对于第 2 款(b)项中的职能，一缔约方可将第 3 款中与互联网服务提供商移除或禁止访问材料相关的要求限定于互联网服务提供商意识到或收到该缓存材料已被移除或无法访问原始网站的通知的情况。

4. If a system for counter-notices is provided under a Party's law, and if material has been removed or access has been disabled in accordance with paragraph 3, that Party shall require that the Internet Service Provider restores the material subject to a counter-notice, unless the person giving the original notice seeks judicial relief within a reasonable period of time.

5. Each Party shall ensure that monetary remedies are available in its legal system against any person that makes a knowing material misrepresentation in a notice or counter-notice that causes injury to any interested party¹⁵⁹ as a result of an Internet Service Provider relying on the misrepresentation.

6. Eligibility for the limitations in paragraph 1 shall not be conditioned on the Internet Service Provider monitoring its service or affirmatively seeking facts indicating infringing activity.

7. Each Party shall provide procedures, whether judicial or administrative, in accordance with that Party's legal system, and consistent with principles of due process and privacy, that enable a copyright owner that has made a legally sufficient claim of copyright infringement to obtain expeditiously from an Internet Service Provider information in the provider's possession identifying the alleged infringer, in cases in which that information is sought for the purpose of protecting or enforcing that copyright.

8. The Parties understand that the failure of an Internet Service Provider to qualify for the limitations in paragraph 1(b) does not itself result in liability. Further, this Article is without prejudice to the availability of other limitations and exceptions to copyright, or any other defences under a Party's legal system.

9. The Parties recognise the importance, in implementing their obligations under this Article, of taking into account the impacts on right holders and Internet Service Providers.

Section K: Final Provisions

Article 18.83: Final Provisions

1. Except as otherwise provided in Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts) and paragraphs 2, 3 and 4, each Party

¹⁵⁹ For greater certainty, the Parties understand that, "any interested party" may be limited to those with a legal interest recognised under that Party's law.

4. 如一缔约方的法律中规定反向通知制度且如材料已依照第 3 款被移除或禁止访问，则该缔约方应要求该互联网服务提供商恢复反向通知所针对的材料，除非作出原通知的人在一合理期限内寻求司法救济。
5. 每一缔约方应保证在其法律制度中可获得金钱救济，以针对在一通知或反向通知中作出故意重大虚假陈述导致互联网服务提供商因信赖该虚假陈述而对任何利害关系方¹⁵⁹造成损害的任何一人。
6. 使用第 1 款中限制的资格不得以互联网服务提供商监控其服务或以肯定方式寻找显示侵权活动的事实作为条件。
7. 每一缔约方应依照其法律制度，并在符合正当程序和隐私原则的前提下，规定司法或行政程序，使已经提出法律上充分的版权侵权请求的版权所有人，在寻求信息的目的在于保护或执行该版权的情况下，自一互联网服务提供商处快速获得该提供商持有的识别涉嫌侵权者的信息。
8. 缔约方理解，一互联网服务提供商未获得第 1 款(b)项中限制的使用资格本身不产生责任。此外，本条不损害一缔约方法律制度下对版权规定的其他限制和例外或任何其他抗辩的可获性。
9. 缔约方认识到在履行其在本条下的义务的过程中考虑对权利人和互联网服务提供商所产生的影响的重要性。

K 节：最后条款

第 18.83 条 最后条款

1. 除非在 18.10 条(本章对现有客体 and 先前行为的适用)及第 2 款、第 3 款和第 4 款中另有规定，否则每一缔约方应在本协定对

¹⁵⁹ 为进一步明确，缔约方理解，“任何利害关系方”可限定为根据该缔约方法律认定具有法律利益的当事方。

shall give effect to the provisions of this Chapter on the date of entry into force of this Agreement for that Party.¹⁶⁰

2. During the relevant periods set out below, a Party shall not amend an existing measure or adopt a new measure that is less consistent with its obligations under the Articles referred to below for that Party than relevant measures that are in effect on the date of signature of this Agreement. This Section does not affect the rights and obligations of a Party under an international agreement to which it and another Party are party.

3. With respect to works of any Party that avails itself of a transition period permitted to it with regard to implementation of Article 18.63 (Term of Protection for Copyright and Related Rights) as it relates to the term of copyright protection (transition Party), Japan and Mexico shall apply at least the term of protection available under the transition Party's law for the relevant works during the transition period and apply Article 18.8.1 (National Treatment) with respect to copyright term only when that Party fully implements Article 18.63.

4. With regard to obligations subject to a transition period, a Party shall fully implement its obligations under the provisions of this Chapter no later than the expiration of the relevant time period specified below, which begins on the date of entry into force of this Agreement for that Party.

- (a) In the case of Brunei Darussalam, with respect to:
 - (i) Article 18.7.2(d) (International Agreements), UPOV 1991, three years;
 - (ii) Article 18.18 (Types of Signs Registrable as Trademarks), with respect to sound marks, three years;
 - (iii) Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), 18 months;
 - (iv) Article 18.50 (Protection of Undisclosed Test or Other Data), four years;⁺⁺
 - (v) Article 18.51 (Biologics), four years;⁺⁺
 - (vi) Article 18.53 (Measures Relating to the Marketing of Certain Pharmaceutical Products), two years; and
 - (vii) With respect to Section J (Internet Service Providers), three years.

¹⁶⁰ Only the following Parties have determined that, in order to implement and comply with Article 18.51.1 (Biologics), they require changes to their law, and thus require transition periods: Brunei Darussalam, Malaysia, Mexico, Peru and Viet Nam.

该缔约方生效之日实行本章规定。¹⁶⁰

2. 在以下所列相关期限内，一缔约方不得修正一现有措施或采取与其在以下所指针对该缔约方的各条款下的义务的相符程度低于在本协定签署之日实施的相关措施与相关义务的相符程度的一新措施。本节不影响一缔约方在其与另一缔约方同为参加方的国际协定项下的权利和义务。

3. 对于在与版权保护期限有关的第 18.63 条(版权和相关权的保护期限)的实施方面使用其被允许使用的一过渡期的任何缔约方的作品(过渡缔约方)，日本和墨西哥应至少适用过渡期内相关作品在过渡缔约方的法律项下可获得的保护期限，并仅在该缔约方完全履行第 18.63 条后方对版权期限适用第 18.8.1 条(国民待遇)。

4. 对于实行过渡期的义务，一缔约方应在不迟于以下所规定的相关时限届满时完全履行其在本章规定下的义务，该期限自本协定对该缔约方生效之日开始。

(a) 对于文莱达鲁萨兰国，对于：

- (i) 第 18.7.2 条(d)项(国际协定)，1991 年 UPOV 公约，3 年；
- (ii) 第 18.18 条(可注册为商标的标记类型)，对于声音商标，3 年；
- (iii) 第 18.47 条(对农用化学品未披露试验数据或其他数据的保护)，18 个月；
- (iv) 第 18.50 条(保护未披露试验数据或其他数据)，4 年；⁺⁺
- (v) 第 18.51 条(生物制剂)，4 年；⁺⁺
- (vi) 第 18.53 条(与部分药品销售相关的措施)，2 年；以及
- (vii) J 节(互联网服务提供商)，3 年。

¹⁶⁰ 仅以下缔约方确定，为执行和遵守第 18.51.1 条(生物制剂)，需要修改其法律，因而需要过渡期：文莱达鲁萨兰国、马来西亚、墨西哥、秘鲁和越南。

⁺⁺ If there are unreasonable delays in Brunei Darussalam in the initiation of the filing of marketing approval applications for new pharmaceutical products after Brunei Darussalam implements its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) in connection with subparagraphs (a)(iv) and (a)(v), Brunei Darussalam may consider adopting measures to incentivise the timely initiation of the filing of these applications with a view to the introduction of new pharmaceutical products in its market. To that end, Brunei Darussalam shall notify the other Parties through the Commission and consult with them on such a proposed measure. Such consultations shall begin within 30 days of a request from an interested Party, and shall provide adequate time and opportunity to resolve any concerns. In addition, any such measure shall respect legitimate commercial considerations and take into account the need for incentives for the development of new pharmaceutical products and for the expeditious marketing approval in Brunei Darussalam of such products.

- (b) In the case of Malaysia, with respect to:
- (i) Article 18.7.2(a) (International Agreements), Madrid Protocol, four years;
 - (ii) Article 18.7.2(b) (International Agreements), Budapest Treaty, four years;
 - (iii) Article 18.7.2(c) (International Agreements), Singapore Treaty, four years;
 - (iv) Article 18.7.2(d) (International Agreements), UPOV 1991, four years;
 - (v) Article 18.18 (Types of Signs Registrable as Trademarks), with respect to sound marks, three years;
 - (vi) Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), 4.5 years;
 - (vii) Article 18.51 (Biologics), five years;
 - (viii) Article 18.53 (Measures Relating to the Marketing of Certain Pharmaceutical Products), 4.5 years;

⁺⁺ 如文莱达鲁萨兰国履行其在第 18.50 条(保护未披露试验数据或其他数据)和第 18.51 条(生物制剂)下与(a)项(iv)目和(a)项(v)目相关的义务后,在启动提交新药上市许可申请方面存在不合理迟延,则文莱达鲁萨兰国可考虑采取措施以激励及时启动这些申请的提交,以期将新药引入其市场。为此目的,文莱达鲁萨兰国应通过自贸协定委员会通知其他缔约方,并与其就此种拟议措施进行磋商。此类磋商应在一利害相关的缔约方提出请求后 30 天内进行,并应提供充足时间和机会以解决任何关注。此外,任何此类措施应尊重合理商业考虑,并考虑激励新药开发的需要在文莱达鲁萨兰国快速授予此类产品上市许可的需要。

- (b) 对于马来西亚,对于:
- (i) 第 18.7.2 条(a)项(国际协定),《马德里议定书》,4 年;
 - (ii) 第 18.7.2 条(b)项(国际协定),《布达佩斯条约》,4 年;
 - (iii) 第 18.7.2 条(c)项(国际协定),《新加坡条约》,4 年;
 - (iv) 第 18.7.2 条(d)项(国际协定),1991 年 UPOV 公约,4 年;
 - (v) 第 18.18 条(可注册为商标的标记类型),对于声音商标,3 年;
 - (vi) 第 18.48.2 条(因不合理缩短而调整专利期),4.5 年;
 - (vii) 第 18.51 条(生物制剂),5 年;
 - (viii) 第 18.53 条(与部分药品销售相关的措施),4.5 年;

- (ix) Article 18.63(a) (Term of Protection for Copyright and Related Rights), with respect to life-based works, two years;
 - (x) Article 18.76 (Special Requirements Related to Border Measures), with respect to applications to suspend the release of, or to detain, ‘confusingly similar’ trademark goods, four years;
 - (xi) Article 18.76.5(b) and (c) (Special Requirements Related to Border Measures), with respect to *ex officio* border enforcement for in transit and export, four years; and
 - (xii) Article 18.79.2 (Protection of Encrypted Program-Carrying Satellite and Cable Signals), four years.
- (c) In the case of Mexico, with respect to:
- (i) Article 18.7.2(d) (International Agreements), UPOV 1991, four years;
 - (ii) Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), five years;
 - (iii) Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), 4.5 years;
 - (iv) Article 18.50 (Protection of Undisclosed Test or Other Data), five years;⁺⁺
 - (v) Article 18.51 (Biologics), five years;⁺⁺ and
 - (vi) Section J (Internet Service Providers), three years.

⁺⁺ If there are unreasonable delays in Mexico in the initiation of the filing of marketing approval applications for new pharmaceutical products after implementing its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) in connection with subparagraphs (c)(iv) and (c)(v), Mexico may consider adopting measures to incentivise the timely initiation of the filing of these applications with a view to the introduction of new pharmaceutical products in its market. To that end, Mexico shall notify the other Parties through the Commission and consult with them on such a proposed measure. Such consultations shall begin within 30 days of a request from an interested Party, and shall provide adequate time and opportunity to resolve any concerns. In addition, any such

- (ix) 第 18.63 条(a)项(版权和相关权的保护期限), 对于以生命为基础的作品, 2 年;
 - (x) 第 18.76 条(与边境措施相关的特殊要求), 关于申请中止放行或扣留“混淆性相似”商标的货物, 4 年;
 - (xi) 第 18.76.5 条(b)项和(c)项(与边境措施相关的特殊要求), 关于对过境和出口依职权采取的边境执法, 4 年; 以及
 - (xii) 第 18.79.2 条(对载有加密节目的卫星和有线信号的保护), 4 年。
- (c) 对于墨西哥, 对于:
- (i) 第 18.7.2 条(d)项, 1991 年 UPOV 公约, 4 年;
 - (ii) 第 18.47 条(对农用化学品未披露试验数据或其他数据的保护), 5 年;
 - (iii) 第 18.48.2 条(因不合理缩短而调整专利期), 4.5 年;
 - (iv) 第 18.50 条(保护未披露试验数据或其他数据), 5 年; ++
 - (v) 第 18.51 条(生物制剂), 5 年; ++ 以及
 - (vi) 第 J 节(互联网服务提供商), 3 年。

++ 如墨西哥履行其在第 18.50 条(保护未披露试验数据或其他数据)和第 18.51 条(生物制剂)下与(c)项(iv)目和(c)项(v)目相关的义务后, 在启动提交新药上市许可申请方面存在不合理迟延, 则墨西哥可考虑采取措施以激励及时启动这些申请的提交, 以期将新药引入其市场。为此目的, 墨西哥应通过自贸协定委员会通知其他缔约方, 并与其就此种拟议措施进行磋商。此类磋商应在一利害相关的缔约方

measure shall respect legitimate commercial considerations and take into account the need for incentives for the development of new pharmaceutical products and for the expeditious marketing approval in Mexico of such products.

- (d) In the case of New Zealand, with respect to Article 18.63 (Term of Protection for Copyright and Related Rights), eight years. Except that from the date of entry into force of this Agreement for New Zealand, New Zealand shall provide that the term of protection for a work, performance or phonogram that would, during that eight years, have expired under the term that was provided in New Zealand law before the entry into force of this Agreement, instead expires 60 years from the relevant date in Article 18.63 that is the basis for calculating the term of protection under this Agreement. The Parties understand that, in applying Article 18.10 (Application of Chapter to Existing Subject Matter and Prior Acts), New Zealand shall not be required to restore or extend the term of protection to the works, performances and phonograms with a term provided pursuant to the previous sentence, once these works, performances and phonograms fall into the public domain in its territory.
- (e) In the case of Peru, with respect to:
 - (i) Article 18.50.2 (Protection of Undisclosed Test or Other Data), five years; and
 - (ii) Article 18.51 (Biologics), 10 years.
- (f) In the case of Viet Nam, with respect to:
 - (i) Article 18.7.2(b) (International Agreements), Budapest Treaty, two years;
 - (ii) Article 18.7.2(e) (International Agreements), WCT, three years;
 - (iii) Article 18.7.2(f) (International Agreements), WPPT, three years;
 - (iv) Article 18.18 (Types of Signs Registrable as Trademarks), with respect to sound marks, three years;
 - (v) Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays), with respect to patents claiming pharmaceutical products, five years;^

提出请求后 30 天内进行，并应提供充足时间和机会以解决任何关注。此外，任何此类措施应尊重合理商业考虑，并考虑激励新药开发的需要在墨西哥快速授予此类产品上市许可的需要。

- (d) 对于新西兰，对于第 18.63 条(版权和相关权的保护期限)，8 年。但是自本协定对新西兰生效之日起，新西兰应规定，对于根据在本协定生效前新西兰法律中所规定的期限，保护期限本应在上述 8 年期满的作品、表演或录音制品，其保护期限转而将自作为本协定项下保护期限计算基础的第 18.63 条中的相关日期起 60 年期满。缔约方理解，在适用第 18.10 条(本章对现存客体和先前行为的适用)时，一旦这些作品、表演和录音制品已属其领土内的公有领域，则不得要求新西兰恢复或延长根据前一句已规定期限的作品、表演和录音制品的保护期限。
- (e) 对于秘鲁，对于：
 - (i) 第 18.50.2 条(保护未披露试验数据或其他数据)，5 年；及
 - (ii) 第 18.51 条(生物制剂)，10 年。
- (f) 对于越南，对于：
 - (i) 第 18.7.2 条(b)项(国际协定)，《布达佩斯条约》，2 年；
 - (ii) 第 18.7.2 条(e)项(国际协定)，WCT，3 年；
 - (iii) 第 18.7.2 条(f)项(国际协定)，WPPT，3 年；
 - (iv) 第 18.18 条(可注册为商标的标记类型)，对于声音商标，3 年；
 - (v) 第 18.46.3 条和第 18.46.4 条(因授权机关不合理迟延而调整专利期)，对于药品专利，5 年；[^]

- (vi) Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays), with respect to patents claiming agricultural chemical products, five years;[^]
- (vii) Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays), three years;
- (viii) Article 18.47 (Protection of Undisclosed Test or Other Data for Agricultural Chemical Products), five years;
- (ix) Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), five years;
- (x) Article 18.50 (Protection of Undisclosed Test or Other Data), 10 years;^{*/++}
- (xi) Article 18.51 (Biologics), 10 years;^{*/++}
- (xii) Article 18.53 (Measures Relating to the Marketing of Certain Pharmaceutical Products), three years;
- (xiii) Article 18.63(a) (Term of Protection for Copyright and Related Rights), with respect to life-based works, five years;
- (xiv) Article 18.68 (TPMs), three years;
- (xv) Article 18.69 (RMI), three years;
- (xvi) Article 18.76.5(b) (Special Requirements Related to Border Measures), with respect to *ex officio* border measures for export, three years;
- (xvii) Article 18.76.5(c) (Special Requirements Related to Border Measures), with respect to *ex officio* border measures for in transit, two years;
- (xviii) Article 18.77.1(b) (Criminal Procedures and Penalties), three years;
- (xix) Article 18.77.2 (Criminal Procedures and Penalties), with respect to importation of pirated copyright goods, three years;

- (vi) 第 18.46.3 条和第 18.46.4 条(因授权机关不合理迟延而调整专利期), 对于农用化学品专利, 5 年; ^
- (vii) 第 18.46.3 条和第 18.46.4 条(因授权机关不合理迟延而调整专利期), 3 年;
- (viii) 第 18.47 条(农用化学品未披露试验数据或其他数据的保护), 5 年;
- (ix) 第 18.48.2 条(因不合理缩短而调整专利期), 5 年;
- (x) 第 18.50 条(保护未披露试验数据或其他数据), 10 年;*/++
- (xi) 第 18.51 条(生物制剂), 10 年;*/++
- (xii) 第 18.53 条(与部分药品销售相关的措施), 3 年;
- (xiii) 第 18.63 条(a)项(版权和相关权的保护期限), 对于以生命为基础的作品, 5 年;
- (xiv) 第 18.68 条(技术保护措施), 3 年;
- (xv) 第 18.69 条(权利管理信息), 3 年;
- (xvi) 第 18.76.5 条(b)项(与边境措施相关的特殊要求), 对于对出口依职权采取的边境措施, 3 年;
- (xvii) 第 18.76.5 条(c)项(与边境措施相关的特殊要求), 对于对过境依职权采取的边境措施, 2 年;
- (xviii) 第 18.77.1 条(b)项(刑事程序和处罚), 3 年;
- (xix) 第 18.77.2 条(刑事程序和处罚), 对于进口盗版货物, 3 年;

- (xx) Article 18.77.2 (Criminal Procedures and Penalties), with respect to exportation, three years;
- (xxi) Article 18.77.4 (Criminal Procedures and Penalties), with respect to camcording, three years;
- (xxii) Article 18.77.6(g) (Criminal Procedures and Penalties), with respect to enforcement without the right holder's request for rights other than copyright, three years;
- (xxiii) Article 18.78.2 and Article 18.78.3 (Trade Secrets), three years;
- (xxiv) Article 18.79.1 (Protection of Encrypted Program-Carrying Satellite and Cable Signals), with respect to criminal remedies, three years;
- (xxv) Article 18.79.3 (Protection of Encrypted Program-Carrying Satellite and Cable Signals), with respect to cable signals, three years; and
- (xxvi) Section J (Internet Service Providers), three years.

[^] For transitions for Article 18.46.3 and Article 18.46.4 (Patent Term Adjustment for Unreasonable Granting Authority Delays) for patents claiming pharmaceutical products and agricultural chemical products, the Parties will consider a justified request from Viet Nam for an extension of the transition period for up to one additional year. Viet Nam's request shall include the reasons for the requested extension. Viet Nam may avail itself of this one-time extension upon providing a request in accordance with this paragraph unless the Commission decides otherwise within 60 days of receiving the request. No later than the date on which the additional one-year period expires, Viet Nam shall provide to the Commission in writing a report on the measures it has taken to fulfil its obligation under Article 18.46.3 and Article 18.46.4.

* For transitions for Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) for pharmaceutical products:

- (A) The Parties will consider a justified request from Viet Nam for an extension of the transition period for up to two additional years. Viet Nam's request shall include the reason for the requested extension. Viet Nam may avail itself of this one-time extension upon providing a request in

- (xx) 第 18.77.2 条(刑事程序和处罚), 对于出口, 3 年;
- (xxi) 第 18.77.4 条(刑事程序和处罚), 对于便携摄像, 3 年;
- (xxii) 第 18.77.6 条(g)项(刑事程序和处罚), 对于无需权利持有人请求的版权之外的权利的执行, 3 年;
- (xxiii) 第 18.78.2 条和第 18.78.3 条(商业秘密), 3 年;
- (xxiv) 第 18.79.1 条(对载有加密节目的卫星和有线信号的保护), 对于刑事救济, 3 年;
- (xxv) 第 18.79.3 条(对载有加密节目的卫星和有线信号的保护), 对于有线信号, 3 年; 以及
- (xxvi) J 节(互联网服务提供商), 3 年。

^ 对于第 18.46.3 条和第 18.46.4 条(因授权机关不合理迟延而调整专利期)涉及药品和农用化学品专利的过渡, 缔约方将考虑越南提出的将过渡期最多再延长额外 1 年的正当请求。越南的请求应包括请求延期的理由。越南可在依照本款提交请求后使用该一次性延期, 除非自贸协定委员会在收到该请求后 60 天内另有决定。不迟于该额外 1 年期满之日, 越南应以书面形式向自贸协定委员会提交关于其为履行第 18.46.3 条和第 18.46.4 条下的义务已采取措施的报告。

* 对于第 18.50 条(保护未披露试验数据或其他数据)和第 18.51 条(生物制剂)涉及药品的过渡:

- (A) 缔约方将考虑越南提出的将该过渡期最多再延长额外 2 年的正当请求。越南的请求应包括请求延期的理由。越南可在依照本款提交请求后使用该一次性延期, 除非自贸协定委

accordance with this paragraph unless the Commission decides otherwise within 60 days of receiving the request. No later than the date on which the additional two-year period expires, Viet Nam shall provide to the Commission in writing a report on the measures it has taken to fulfil its obligation under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics).

- (B) Viet Nam may make a further request for an additional one-time extension pursuant to Chapter 27 (Administrative and Institutional Provisions). Viet Nam's request shall include the reason for the request. The Commission shall decide pursuant to the procedures set forth in Article 27.3 (Decision-Making), whether to grant the request based on relevant factors, which may include capacity as well as other appropriate circumstances. Viet Nam shall make the request no later than one year prior to the expiration of the two-year transition period referred to in the first sentence of paragraph (A). The Parties shall give due consideration to that request. If the Committee grants Viet Nam's request, Viet Nam shall provide to the Commission in writing a report on the measures it has taken to fulfil its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) no later than the date on which the extension period expires.
- (C) Viet Nam's implementation of Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) during three years after the conclusion of the extension period referred to in paragraph (A) shall not be subject to dispute settlement under Chapter 28 (Dispute Settlement).

⁺⁺ If there are unreasonable delays in Viet Nam in the initiation of the filing of marketing approval applications for new pharmaceutical products after Viet Nam implements its obligations under Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics) in connection with subparagraphs (f)(x) and (f)(xi), Viet Nam may consider adopting measures to incentivise the timely initiation of the filing of these applications with a view to the introduction of new pharmaceutical products in its market. To that end, Viet Nam shall notify the other Parties through the Commission and consult with them on such a proposed measure. Such consultations shall begin within 30 days of a request from an interested Party, and shall provide adequate time and opportunity to resolve any concerns. In addition, any such measure shall respect legitimate commercial considerations and

员会在收到该请求后 60 天内另有决定。不迟于该额外 2 年期满之日，越南应以书面形式向自贸协定委员会提交其为履行第 18.50 条(保护未披露试验数据或其他数据)和第 18.51 条(生物制剂)下的义务已采取措施的报告。

- (B) 越南可根据第 27 章(管理和机构条款)进一步请求额外一次性延期。越南的请求应包括该请求的理由。自贸协定委员会应根据第 27.3 条(决策)中所列程序根据相关因素决定是否同意该请求，相关因素可包括能力及其他适当情况。越南应不迟于(A)款第一句所指 2 年过渡期期满前 1 年提出请求。缔约方应适当考虑该请求。如自贸协定委员会同意越南的请求，则越南不迟于延长期期满之日，以书面形式向自贸协定委员会提交其为履行第 18.50 条(保护未披露试验数据或其他数据)和第 18.51 条(生物制剂)下的义务已采取措施的报告。
- (C) 在(A)款第一句所指的延长期结束后 3 年内，越南对第 18.50 条(保护未披露试验数据或其他数据)和第 18.51 条(生物制剂)的履行情况不受第 28 章(争端解决)下的争端解决的约束。

⁺⁺ 如越南履行其在第 18.50 条(保护未披露试验数据或其他数据)和第 18.51 条(生物制剂)下与(f)项(x)目和(f)项(xi)目相关的义务后，在启动提交新药上市许可申请方面存在不合理迟延，则越南可考虑采取措施以激励及时启动这些申请的提交，以期将新药引入其市场。为此目的，越南应通过自贸协定委员会通知其他缔约方，并与其就此种拟议措施进行磋商。此类磋商应在一利害相关的缔约方提出请求后 30 天内开始，并提供充足时间和机会以解

take into account the need for incentives for the development of new pharmaceutical products and for the expeditious marketing approval in Viet Nam of such products.

决任何关注。此外，任何此类措施应尊重合理商业考虑，并考虑激励新药开发的需要在越南快速授予此类药品上市许可的需要。

Annex 18-A**Annex to Article 18.7.2**

1. Notwithstanding the obligations in Article 18.7.2 (International Agreements), and subject to paragraphs 2, 3 and 4 of this Annex, New Zealand shall:

- (a) accede to UPOV 1991 within three years of the date of entry into force of this Agreement for New Zealand; or
- (b) adopt a *sui generis* plant variety rights system that gives effect to UPOV 1991 within three years of the date of entry into force of this Agreement for New Zealand.

2. Nothing in paragraph 1 shall preclude the adoption by New Zealand of measures it deems necessary to protect indigenous plant species in fulfilment of its obligations under the Treaty of Waitangi, provided that such measures are not used as a means of arbitrary or unjustified discrimination against a person of another Party.

3. The consistency of any measures referred to in paragraph 2 with the obligations in paragraph 1 shall not be subject to the dispute settlement provisions of this Agreement.

4. The interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 28 (Dispute Settlement) shall otherwise apply to this Annex. A panel established under Article 28.7 (Establishment of a Panel) may be requested to determine only whether any measure referred to in paragraph 2 is inconsistent with a Party's rights under this Agreement.

附件 18-A
第 18.7.2 条的附件

1. 尽管有第 18.7.2 条(国际协定)中的义务，但是在遵守本附件第 2 款、第 3 款和第 4 款的前提下，新西兰应：
 - (a) 在本协定对新西兰生效之日起 3 年内加入 1991 年 UPOV 公约；或
 - (b) 在本协定对新西兰生效之日起 3 年内采用一植物品种权专门制度以实施 1991 年 UPOV 公约。
2. 第 1 款中任何内容不得阻止新西兰在履行其在《怀唐伊条约》项下的义务的过程中采取其认为必要的措施以保护本地植物物种，只要此类措施不用作任意或不合理歧视另一缔约方的人的手段。
3. 第 2 款中所指的任何措施与第 1 款中义务的一致性不得受本协定的争端解决规定的约束。
4. 对《怀唐伊条约》的解释，包括对该条约项下所产生的权利和义务性质的解释，不得受本协定的争端解决规定的约束。在其他方面，第 28 章(争端解决)应适用于本附件。根据第 28.7 条(设立专家组)设立的专家组可仅被请求确定第 2 款中所指的任何措施是否与一缔约方在本协定项下的权利不一致。

Annex 18-B

Chile

1. Nothing in Article 18.50.1 or Article 18.50.2 (Protection of Undisclosed Test or Other Data) or Article 18.51 (Biologics) prevents Chile from maintaining or applying the provisions of Article 91 of Chile's Law No. 19.039 on Industrial Property, as in effect on the date of agreement in principle of this Agreement.
2. Notwithstanding Article 1.2 (Relation to Other Agreements), paragraph 1 is without prejudice to any Party's rights and obligations under an international agreement in effect prior to the date of entry into force of this Agreement for Chile, including any rights and obligations under a trade agreement between Chile and another Party.

附件 18-B

智利

1. 第 18.50.1 条或第 18.50.2 条(保护未披露试验数据或其他数据)或第 18.51 条(生物制剂)中任何内容不损害智利维持或适用智利第 19.039 号法律第 91 条关于工业产权的规定, 该规定在本协定原则达成一致之日生效。
2. 尽管有第 1.2 条(与其他协定的关系), 但是第 1 款不损害任何缔约方在本协定对智利生效之日前生效的一国际协定项下的权利和义务, 包括智利与另一缔约方之间的贸易协定项下的权利和义务。

Annex 18-C

Malaysia

1. Malaysia may, for the purpose of granting protection as specified in Article 18.50.1 and Article 18.50.2 (Protection of Undisclosed Test or Other Data) and Article 18.51.1 (Biologics), require an applicant to commence the process of obtaining marketing approval for pharmaceutical products covered under those Articles within 18 months from the date that the product is first granted marketing approval in any country.
2. For greater certainty, the periods of protection referred to in Article 18.50.1 and Article 18.50.2 (Protection of Undisclosed Test or Other Data) and Article 18.51.1 (Biologics) shall begin on the date of marketing approval of the pharmaceutical product in Malaysia.

附件 18-C

马来西亚

1. 为授予按第 18.50.1 条和第 18.50.2 条(保护未披露试验数据或其他数据)及第 18.51.1 条(生物制剂)中所规定的保护, 马来西亚可要求一申请者自该产品在任何国家被首次授予上市许可之日起的 18 个月内开始这些条款所涵盖的获得药品上市许可的流程。
2. 为进一步明确, 第 18.50.1 条和第 18.50.2 条(保护未披露试验数据或其他数据)及第 18.51.1 条(生物制剂)中所指的保护期限应自该药品在马来西亚获得上市许可之日起开始。

Annex 18-D

Peru

Part 1: Applicable to Article 18.46 (Patent Term Adjustment for Unreasonable Granting Authority Delays) and Article 18.48 (Patent Term Adjustment for Unreasonable Curtailment)

To the extent that Andean Decision 486, *Common Industrial Property Regime*, and Andean Decision 689, *Adequacy of Certain Articles of Decision 486*, restricts Peru's implementation of its obligations set forth in Article 18.46.3 (Patent Term Adjustment for Unreasonable Granting Authority Delays) and Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment), Peru commits to make its best efforts to obtain a waiver from the Andean Community that allows it to adjust its patent term in a way that is consistent with Article 18.46.3 (Patent Term Adjustment for Unreasonable Granting Authority Delays) and Article 18.48.2 (Patent Term Adjustment for Unreasonable Curtailment). Further, if Peru demonstrates that the Andean Community withheld its request for a waiver despite its best efforts, Peru will continue ensuring that it does not discriminate with respect to the availability or enjoyment of patent rights based on the field of technology, the place of invention, and whether products are imported or locally produced. Thus, Peru confirms that the treatment of pharmaceutical patents will be no less favourable than treatment of other patents in respect of the processing and examination of patent applications.

Part 2: Applicable to Article 18.50 (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics)

1. If Peru relies, pursuant to Article 18.50.1(b) (Protection of Undisclosed Test or Other Data), on a marketing approval granted by another Party, and grants approval within six months of the date of the filing of a complete application for marketing approval filed in Peru, Peru may provide that the protection specified in Article 18.50.1(b) (Protection of Undisclosed Test or Other Data) and Article 18.51 (Biologics), as applicable, shall begin with the date of the first marketing approval relied on. In implementing Article 18.50.1(b) (Protection of Undisclosed Test or Other Data) and Article 18.51.1(b)(i) (Biologics), Peru may apply the period of protection established in Article 16.10.2(b) of the *United States – Peru Trade Promotion Agreement*, done at Washington, District of Columbia, April 12, 2006.
2. Peru may apply paragraph 1 to Article 18.50.2 (Protection of Undisclosed Test or Other Data).

附件 18-D

秘鲁

第 1 部分 适用于第 18.46 条(因授权机关不合理迟延而调整专利期)和第 18.48 条(因不合理缩短而调整专利期)

在安第斯决定第 486 号《共同的工业产权制度》和安第斯决定第 689 号《第 486 号决定部分条款的充分性》限制秘鲁履行第 18.46.3 条(因授权机关不合理迟延而调整专利期)和第 18.48.2 条(因不合理缩短而调整专利期)中所列其义务的情况下, 秘鲁承诺尽其最大努力自安第斯共同体获得豁免, 以允许其以与第 18.46.3 条(因授权机关不合理迟延而调整专利期)和第 18.48.2 条(因不合理缩短而调整专利期)相一致的方式调整其专利期。此外, 如秘鲁证明尽管其已尽最大努力但安第斯共同体拒绝其豁免请求, 则秘鲁将继续保证其不会根据技术领域、发明地点以及产品是否进口或当地生产而在专利权的可获性或享有方面实施任何歧视。因此, 秘鲁确认在处理和审查专利申请方面, 对药品专利的待遇将不低于对其他专利的待遇。

第 2 部分 适用于第 18.50 条(保护未披露试验数据或其他数据)和第 18.51 条(生物制剂)

1. 如秘鲁根据第 18.50.1 条(b)项(保护未披露试验数据或其他数据), 信赖另一缔约方授予的上市许可, 且在秘鲁提交完整的上市许可申请之日起 6 个月内授予许可, 则秘鲁可规定, 第 18.50.1 条(b)项(保护未披露试验数据或其他数据)和第 18.51 条(生物制剂)中所规定的保护, 如适用, 应自所信赖的首次上市许可授予之日起开始。在履行第 18.50.1 条(b)项(保护未披露试验数据或其他数据)和第 18.51 条(b)项(i)目(生物制剂)时, 秘鲁可适用 2006 年 4 月 12 日订于华盛顿哥伦比亚特区的《美国--秘鲁贸易促进协定》第 16.10.2 条(b)项中所设立的保护期限。

2. 秘鲁可将第 1 款适用于第 18.50.2 条(保护未披露试验数据或其他数据)。

Annex 18-E**Annex to Section J**

1. In order to facilitate the enforcement of copyright on the Internet and to avoid unwarranted market disruption in the online environment, Article 18.82.3 and Article 18.82.4 (Legal Remedies and Safe Harbours) shall not apply to a Party provided that, as from the date of agreement in principle of this Agreement, it continues to:

- (a) prescribe in its law circumstances under which Internet Service Providers do not qualify for the limitations described in Article 18.82.1(b) (Legal Remedies and Safe Harbours);
- (b) provide statutory secondary liability for copyright infringement in cases in which a person, by means of the Internet or another digital network, provides a service primarily for the purpose of enabling acts of copyright infringement, in relation to factors set out in its law, such as:
 - (i) whether the person marketed or promoted the service as one that could be used to enable acts of copyright infringement;
 - (ii) whether the person had knowledge that the service was used to enable a significant number of acts of copyright infringement;
 - (iii) whether the service has significant uses other than to enable acts of copyright infringement;
 - (iv) the person's ability, as part of providing the service, to limit acts of copyright infringement, and any action taken by the person to do so;
 - (v) any benefits the person received as a result of enabling the acts of copyright infringement; and
 - (vi) the economic viability of the service if it were not used to enable acts of copyright infringement;
- (c) require Internet Service Providers carrying out the functions referred to in Article 18.82.2(a) and (c) (Legal Remedies and Safe Harbours) to participate in a system for forwarding notices of alleged infringement, including if material is made available online, and if

附件 18-E

J 节的附件

1. 为便利在互联网上的版权实施并避免网络环境中无端市场干扰，第 18.82.3 条和第 18.82.4 条(法律救济和安全港)不得适用于一缔约方，只要自就本协定达成原则一致之日起，该缔约方继续：

- (a) 在其法律中规定互联网服务提供商无资格使用第 18.82.1 条(b)项(法律救济和安全港)中所述限制的情况；
- (b) 对于一人通过互联网或其他数字网络提供以促成版权侵权行为为主要目的的一服务的情况，规定版权侵权的法定间接责任，就其法律中所规定的因素而言，例如：
 - (i) 该人是否将该服务作为可用于促成版权侵权行为的服务进行营销或推广；
 - (ii) 该人是否知道该服务曾用于促成大量版权侵权行为；
 - (iii) 除促成版权侵权行为外，该服务是否具有其他重要用途；
 - (iv) 作为提供该服务的一部分，该人限制版权侵权行为的能力，以及该人为此采取的任何行动；
 - (v) 该人自促成版权侵权行为所获任何利益；以及
 - (vi) 如不用于促成版权侵权行为，该服务的经济实用性。
- (c) 要求互联网服务提供商履行第 18.82.2 条(a)项和(c)项(法律救济和安全港)中所指职能，参加一转发涉嫌侵权通知的系统，包括如材料可在线获得且如互

the Internet Service Provider fails to do so, subjecting that provider to pre-established monetary damages for that failure;

- (d) induce Internet Service Providers offering information location tools to remove within a specified period of time any reproductions of material that they make, and communicate to the public, as part of offering the information location tool upon receiving a notice of alleged infringement and after the original material has been removed from the electronic location set out in the notice; and
- (e) induce Internet Service Providers carrying out the function referred to in Article 18.82.2(c) (Legal Remedies and Safe Harbours) to remove or disable access to material upon becoming aware of a decision of a court of that Party to the effect that the person storing the material infringes copyright in the material.

2. For a Party to which Article 18.82.3 and Article 18.82.4 (Legal Remedies and Safe Harbours) do not apply pursuant to paragraph 1 of this Annex, and in light of, among other things, paragraph 1(b) of this Annex, for the purposes of Article 18.82.1(a), legal incentives shall not mean the conditions for Internet Service Providers to qualify for the limitations provided for in Article 18.82.1(b), as set out in Article 18.82.3.

联网服务提供商未能如此做，则要求该提供商为其不作为承担法定金钱赔偿责任；

- (d) 引导提供信息定位工具的互联网服务提供商在一规定期限内移除其对材料所作的任何复制，并作为其提供信息定位工具的一部分，在收到涉嫌侵权通知时和原始材料已被从通知中列出的电子位置移除后告知公众；以及
- (e) 引导互联网服务提供商履行第 18.82.2 条(c)项(法律救济和安全港)中所列职能，在得知该缔约方一法院判决存储该材料的人侵犯该材料版权时移除或禁止访问该材料。

2. 对于根据本附件第 1 款不适用第 18.82.3 条和第 18.82.4 条(法律救济和安全港)的一缔约方，并按照本附件第 1 款(b)项等规定，就第 18.82.1 条(a)项而言，法律激励不得指互联网服务提供商有资格使用第 18.82.1 条(b)项中所规定限制的条件，如第 18.82.3 条中所列。

Annex 18-F

Annex to Section J

As an alternative to implementing Section J (Internet Service Providers), a Party may implement Article 17.11.23 of the *United States – Chile Free Trade Agreement*, done at Miami, June 6, 2003, which is incorporated into and made part of this Annex.

附件 18-F

J 节的附件

作为实施 J 节(互联网服务提供商)的替代，一缔约方可实施 2003 年 6 月 6 日订于迈阿密的《美国—智利自由贸易协定》第 17.11.23 条，该条已纳入本附件并成为本附件一部分。