



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 20 December 2013**

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**WTO**

**MEETING DOCUMENT**

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from: Commission  
to: Trade Policy Committee  
Subject : CETA: consolidated texts

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Delegations will find attached a note by the Commission services on the above-mentioned subject.

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EUROPEAN COMMISSION

Directorate-General for Trade

Directorate E – Neighbouring countries, USA and Canada

Brussels, 17 December 2013

TRADE 10/2013

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**NOTE FOR THE ATTENTION OF TRADE POLICY COMMITTEE**

**SUBJECT:** *CETA – Consolidated texts*

**ORIGIN:** **Commission DG TRADE Dir. E.1**

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**OBJECTIVE:** *For Information*

Member States will find attached consolidated texts of CETA. This text reflects the state of play of the negotiations in the chapters attached.

However, the political break-through package agreed on the 18 October is yet only partially (e.g. IPR for pharmaceuticals) taken into account in this text. For those areas not yet integrated (e.g. financial services, RoO for cars, GIs, or public procurement for rolling stock) as well as more generally, Member States are invited to refer to the summary of negotiating results presented on 29 October 2013 in m.d. 399/13 (and documents referenced therein).

It is also to be noted that formatting, placement, order and numbering will need to be adjusted as part of the final package – so the current order and numbering is indicative only.

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## **CETA –Draft Texts as of 17 December 2013**

This text reflects the state of play of the negotiations for a Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada in the chapters attached.

However, the political break-through package agreed on the 18 October is yet only partially (e.g. IPR for pharmaceuticals) integrated into this text. For those areas not yet integrated (e.g. financial services, RoO for cars, GIs, or public procurement for rolling stock) as well as more generally, Member States are invited to refer to the summary of negotiating results presented on 29 October 2013 in m.d. 399/13 (and documents referenced therein).

It is also to be noted that formatting, placement, order and numbering will need to be adjusted as part of the final package – so the current order and numbering is indicative only.

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**12. INTELLECTUAL PROPERTY**

**Intellectual Property Rights**

**CETA – DRAFT IPR CHAPTER**

<b>Article 1 Objectives</b>
The objectives of this chapter are to: <ul style="list-style-type: none"><li>(a) facilitate the production and commercialization of innovative and creative products, and the provision of services, between the Parties; and</li><li>(b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.</li></ul>
<b>Article X Definitions</b>
For the purposes of this Chapter, “pharmaceutical product” means a product including a chemical drug, biologic drug, vaccine or radiopharmaceutical, which is manufactured, sold or represented for use in: <ul style="list-style-type: none"><li>(a) making a medical diagnosis, treating, mitigating or preventing disease, disorder, or abnormal physical state, or its symptoms, or</li><li>(b) restoring, correcting or modifying physiological functions.</li></ul>
<b>Sub-Section 1 Principles</b>
<b>Article 2 Nature and Scope of Obligations</b>
The provisions of this chapter complement the rights and obligations between the Parties under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter called TRIPS Agreement). Each Party shall be free to determine the appropriate method of implementing the provisions of this Agreement within its own legal system and practice. Nothing in this Agreement creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and enforcement of law in general.

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<p>Article 3 <b>Public Health Concerns</b></p>
<p>1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organisation. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with this Declaration.</p> <p>2. The Parties shall contribute to the implementation and respect the Decision of the WTO General Council of 30 August 2003 on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005.</p>
<p>Article 4 <b>Exhaustion</b></p>
<p>Nothing in this Chapter shall affect the freedom of the Parties to determine whether and under what conditions the exhaustion of intellectual property rights applies.</p>
<p>Article 4A <b>Disclosure of Information</b></p>
<p>Nothing in this Chapter shall require a Party to disclose information that would otherwise be contrary to its law or exempt from disclosure under its law, including its laws and regulations concerning access to information and privacy.</p>
<p><i>Sub-Section 2</i> Standards Concerning Intellectual Property Rights</p>
<p>Article 5 <b>Copyright and Related Rights</b></p>
<p><b><i>Article 5.1 – Protection Granted</i></b></p> <p>1. The Parties shall comply with the Berne Convention for the Protection of Literary and Artistic Works (1886, last amended in 1979), the WIPO Copyright Treaty – WCT (Geneva, 1996), and the WIPO Performances and Phonograms Treaty – WPPT (Geneva, 1996). The Parties shall comply with Articles 1 through 22 of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961).</p> <p>2. The moral rights of the authors and performers shall be protected in accordance with Article 6<i>bis</i> of the Berne Convention for the Protection of Literary and Artistic Works and Article 5 of the WIPO</p>

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Performances and Phonograms Treaty (WPPT).

3. To the extent permitted by the treaties referred to in paragraph 1, nothing in this Chapter shall be construed as restricting each Party's ability to limit intellectual property protection to performances that are fixed in phonograms.

### *Article 5.2 – Broadcasting and Communication to the Public*

1. The Parties shall provide performers the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

2. The Parties shall ensure that a single equitable remuneration is paid by the user if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. The Parties may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

### *Article 5.3 - Protection of Technological Measures*

5.3(1) Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures<sup>1</sup> that are used by authors, performers or producers of phonograms in connection with the exercise of their rights in, and that restrict acts in respect of, their works, performances, and phonograms, which are not authorized by the authors, the performers or the producers of phonograms concerned or permitted by law.

5.3(2) In order to provide the adequate legal protection and effective legal remedies referred to in paragraph 5.3(1), each Party shall provide protection at least against:

(a) to the extent provided by its law:

(i) the unauthorized circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know; and

<sup>1</sup> For the purposes of this Article, **technological measures** means any technology, device, or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, performances, or phonograms, which are not authorized by authors, performers or producers of phonograms, as provided for by a Party's law. Without prejudice to the scope of copyright or related rights contained in a Party's law, technological measures shall be deemed effective where the use of protected works, performances, or phonograms is controlled by authors, performers or producers of phonograms through the application of a relevant access control or protection process, such as encryption or scrambling, or a copy control mechanism, which achieves the objective of protection.

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(ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and

(b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that:

(i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or

(ii) has only a limited commercially significant purpose other than circumventing an effective technological measure.

5.3(2.1) Under paragraph 5.3(2) “to the extent provided by its law” means that Parties have flexibility in implementing paragraphs 5.3(2)(a)(i) and (ii).

5.3(3) In implementing paragraphs 5.3(1) and (2), no Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise contravene its measures implementing these paragraphs. The intention of this provision is that this Agreement does not require a Party to mandate interoperability in its law, i.e., there is no obligation for the ICT (Information Communication Technology) industry to design devices, products, components, or services to correspond to certain technological protection measures.

5.3(4) In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraph 5.3(1), a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 5.3(1) and (2). The obligations set forth in paragraphs 5.3(1) and (2) are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party’s law.

### ***Article 5.4 - Protection of Rights Management Information***

5.4(1) To protect electronic rights management information,<sup>2</sup> each Party shall provide adequate legal protection and effective legal remedies against any person knowingly performing without authority any of the following acts knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights:

<sup>2</sup> For the purposes of this Article, **rights management information** means:

(a) information that identifies the work, the performance, or the 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 use of the work, performance, or phonogram; or

(c) any numbers or codes that represent the information described in (a) and (b) above;

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

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- (a) to remove or alter any electronic rights management information;
- (b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of works, performances, or phonograms, knowing that electronic rights management information has been removed or altered without authority.

5.4(2) In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraph 5.4(1), a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraph 5.4(1). The obligations set forth in paragraph 5.4(1) are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law.

### *Article 5.5 - Liability of Intermediary Service Providers*

1. Subject to the other paragraphs of this Article, each Party shall provide limitations or exceptions in its domestic legislation regarding the liability of service providers, when acting as intermediaries, for infringements of copyright or related rights that take place on or through communication networks, in relation to the provision or use of their services.
2. The limitations or exceptions referred to in the previous paragraph:
  - a) shall cover at least the following functions:
    - i. hosting of the information at the request of a user of the hosting services;
    - ii. caching carried out through an automated process, when the service provider:
      - a. does not modify the information other than for technical reasons;
      - b. ensures that any directions related to the caching of the information that are specified in a manner widely recognized and used by industry are complied with; and
      - c. does not interfere with the use of technology that is lawful and widely recognized and used by the industry in order to obtain data on the use of the information;
    - iii. mere conduit, which consists of the provision of the means to transmit information provided by a user, or the means of access to a communication network;
  - b) may also cover other functions including:  
providing an information location tool, by making reproductions of copyright material in an automated manner, and communicating the reproductions.
3. Eligibility for the limitations or exceptions in this Article may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity.
4. Each Party may prescribe in its domestic law, conditions for service providers to qualify for the limitations or exceptions in this Article. Without prejudice to the above each Party may establish appropriate procedures for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification.
5. This Article is without prejudice to the availability in a Party's law of other defences, limitations and exceptions to the infringement of copyright or related rights. This Article shall not affect the

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possibility of a court or administrative authority, in accordance with Parties' legal systems, of requiring the service provider to terminate or prevent an infringement.

### ***Article 5.6 – Camcording***

Each Party may provide for criminal procedures and penalties to be applied in accordance with its laws and regulations against any person who, without authorisation of the theatre manager or the holder of copyright in a cinematographic work, makes a copy of that work or any part thereof, from a performance of the work in a motion picture exhibition facility open to the public.

## Article 6 **Trademarks**

### ***Article 6.1 – International Agreements***

The Parties shall make all reasonable efforts to comply with the Singapore Treaty on the Law of Trademarks (2006) and to accede to *the Protocol related to the Madrid Agreement concerning the International Registration of Marks*.

### ***Article 6.2 – Registration Procedure***

The Parties shall provide for a system for the registration of trademarks in which reasons for the refusal to register a trademark shall be communicated in writing to the applicant who will have the opportunity to contest such refusal and to appeal a final refusal to a judicial authority. The Parties shall provide for the possibility to file oppositions either against trademark applications or against trademark registrations. The Parties shall provide a publicly available electronic database of trademark applications and trademark registrations.

### ***Article 6.3 – Exceptions to the Rights Conferred by a Trademark***

The Parties shall provide for the fair use of descriptive terms, including terms descriptive of geographical origin, as a limited exception to the rights conferred by a trademark. In determining what is fair use, account shall be taken of the legitimate interests of the owner of the trademark and of third parties. The Parties may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

## Article 8 **Designs**

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

The Parties shall make all reasonable efforts to accede to the Geneva Act of the Hague Agreement

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Concerning the International Registration of Industrial Designs (1999).

### ***Article 8.2 - Relationship to Copyright***

The subject matter of a design right may be protected under copyright law if the conditions for such protection are met. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

## Article 9 Patents

### ***Article 9.1 - International Agreements***

The Parties shall make all reasonable efforts to comply with the Patent Law Treaty (Geneva, 2000).

### ***Article 9.2 – Patent term restoration***

1. Each Party shall provide a period of *sui generis* protection in respect of a pharmaceutical product that is protected by a basic patent at the request of the holder of the patent or his successor in title.

Basic patent means a patent which protects the active ingredient or combination of active ingredients of a pharmaceutical product as such, a process to obtain such an active ingredient or combination of active ingredients or an application of such an active ingredient or combination of active ingredients.

2. Each Party may:

- a) provide a period of *sui generis* protection only if the first application for authorisation to place the pharmaceutical product on their market is submitted within a reasonable time limit prescribed by that Party; and
- b) prescribe a time limit of no less than 60 days from the date on which the first marketing authorisation was granted for the submission of the request for the period of *sui generis* protection. However, where the first marketing authorisation is granted before the patent is granted, the Parties will provide at least 60 days from the grant during which the application for a further period of protection under this Article may be submitted.

3. In the case where a pharmaceutical product is protected by one patent, the period of *sui generis* protection shall take effect at the end of the lawful term of the patent.

In the case where a pharmaceutical product is protected by more than one patent, a Party may provide for only a single period of *sui generis* protection that takes effect at the end of the lawful term of a single

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patent

- a) in the case where all the patents are owned by the same person, selected by the person requesting the period of *sui generis* protection;
- b) in the case where the patents are not owned by the same person and this gives rise to conflicting requests for the *sui generis* protection, selected by agreement between the patent holders.

Each Party shall provide that the period of *sui generis* protection shall be for a period equal to the period which elapsed between the date on which the application for a patent was filed and the date of the first authorisation to place the product on the market of that Party reduced by a period of five years.

Notwithstanding the previous paragraph, the duration of the *sui generis* protection may not exceed a period of two to five years, to be established by each Party.

Each Party may provide that the period of *sui generis* protection shall lapse:

- a) if the *sui generis* protection is surrendered by the beneficiary;
- b) if prescribed administrative fees are not paid.

Each Party may reduce the period of protection commensurate with any unjustified delays resulting from the inactions of the applicant after applying for the market authorisation, when the holder of the patent is the applicant for market authorisation or an entity related to it.

4. Within the limits of the protection conferred by the patent, the *sui generis* protection shall extend only to the pharmaceutical product covered by the authorisation to place that product on the market and for any use of that product as a pharmaceutical product that has been authorized before the expiry of the *sui generis* protection. Subject to the preceding sentence, the *sui generis* protection shall confer the same rights as conferred by the patent and shall be subject to the same limitations and obligations.

Notwithstanding, each Party may also limit the scope of the protection by providing exceptions for making, using, offering for sale, selling or importing of pharmaceutical products for the purpose of export during the period of protection.

5. Each Party may revoke the protection on grounds relating to the invalidity of the applicable patent or on grounds relating to withdrawal of the appropriate authorisation or authorisations to place the product on their respective market.

### [CA:Article 9.3 - Public Disclosure

Each Party shall provide a 12-month grace period for patent applications without any formal

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requirements such as a declaration of disclosures made.]

### Article 10

#### Protection of undisclosed Data relating to Pharmaceutical Products

1. If a Party requires, as a condition for approving the marketing of pharmaceutical products that utilize new chemical entities, the submission of undisclosed test or other data necessary to determine whether the use of such products is safe and effective, the Party shall protect [EU: such data] against disclosure [CA: of the data of persons making such submissions – *comment: legal scrub*], where the origination of such data involves considerable effort, except where the disclosure is necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

2. Each Party shall provide that for data subject to paragraph 1 that are submitted to the Party after the date of entry into force of this Agreement:

- a) no person other than the person that submitted them may, without the latter's permission, rely on such data in support of an application for [CA: product approval][EU: marketing authorisation - *comment: legal scrub*] during a period of not less than six years from the date on which the Party granted approval to the person that produced the data for approval to market its product, and
- b) no Party shall grant [CA: product approval][EU: marketing authorisation - *comment: legal scrub*] to any person who relies on such data during a period of not less than eight years from the date on which the Party granted [EU: authorisation] [CA: approval - *comment: legal scrub*] to the person that produced the data for [EU: authorisation] [CA: approval - *comment: legal scrub*] to market its product, unless the person or entity who produced this data provides its permission.

Subject to this provision, there shall be no limitation on any Party to implement abbreviated [EU: authorisation] [CA: approval] procedures for such products on the basis of bioequivalence and bioavailability studies.

### Article 10 bis

#### Patent linkage mechanisms

If a Party relies on "patent linkage" mechanisms whereby the granting of marketing authorisations (or notices of compliance or similar concepts) for generic pharmaceutical products is linked to the existence of patent protection, it shall ensure that all litigants are afforded equivalent and effective rights of appeal.

### Article 11

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### Data Protection on Plant Protection Products

1. The Parties shall determine safety and efficacy requirements before authorising the placing on the market of plant protection products.
2. The Parties shall recognise a temporary right to the owner of a test or study report submitted for the first time to achieve a marketing authorisation for a plant protection product.  
During such period, the test or study report will not be used for the benefit of any other person aiming to achieve a marketing authorisation for plant protection product, except when the explicit consent of the first owner is proved. This right will be hereinafter referred as data protection.
3. The test or study report should be necessary for the authorisation or for an amendment of an authorisation in order to allow the use on other crops.
4. The period of data protection shall be at least ten years starting at the date of the first authorisation in that Party with respect to data supporting the authorisation of a new active ingredient and data supporting the concurrent registration of the end-use product containing the active ingredient. The duration of protection may be extended in order to encourage the authorisation of low-risk plant protection products and minor uses.
5. The Parties may also establish data protection requirements or financial compensation requirements for data supporting the amendment or renewal of an authorisation.
6. Each of the Parties shall establish rules to avoid duplicative testing on vertebrate animals. Any applicant intending to perform tests and studies involving vertebrate animals should be encouraged to take the necessary measures to verify that those tests and studies have not already been performed or initiated.
7. The new applicant and the holder or holders of the relevant authorisations should be encouraged to make every effort to ensure that they share tests and studies involving vertebrate animals. The costs of sharing the test and study reports shall be determined in a fair, transparent and non-discriminatory way. The prospective applicant is only required to share in the costs of information he is required to submit to meet the authorisation requirements.
8. The holder or holders of the relevant authorisation shall have a claim on the prospective applicant for a fairshare of the costs incurred by him. The Party may direct the parties involved to resolve the matter by formal and binding arbitration administered under national law.

### Article 12 Plant Varieties

The Parties shall co-operate to promote and reinforce the protection of plant varieties based on the International Convention for the Protection of New Varieties of Plants (UPOV).

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<p>Sub-Section 3 <b>Enforcement of Intellectual Property Rights</b></p>
<p>Article 13 <b>General Obligations</b></p>
<p>1. The Parties shall ensure that any procedures for the enforcement of intellectual property rights are fair and equitable, and are not unnecessarily complicated or costly, nor entail unreasonable time-limits or unwarranted delays. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.</p> <p>2. In implementing the provisions of this Sub-Section, each Party shall take into account the need for proportionality between the seriousness of the infringement, the interests of third parties, and the applicable measures, remedies and penalties.</p> <p>3. Articles 14 to 23 relate to civil enforcement.</p> <p>4. For the purposes of Articles 14 to 23, unless otherwise mentioned, "intellectual property rights" means all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the Agreement on Trade-Related Aspects of Intellectual Property Rights.</p>
<p>Article 14 <b>Entitled Applicants</b></p>
<p>The Parties shall recognise as persons entitled to seek application of the procedures and remedies referred to in Articles 15 to 23:</p> <p>(a) the holders of intellectual property rights in accordance with the provisions of the applicable domestic law,</p> <p>(b) all other persons authorised to use those rights, if such persons are entitled to seek relief in accordance with the provisions of the applicable domestic law,</p> <p>(c) intellectual property collective rights management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, if such bodies are entitled to seek relief in accordance with the provisions of the applicable domestic law,</p> <p>(d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, if such bodies are entitled to seek relief in accordance with the provisions of the applicable domestic law.</p>
<p>Article 15 <b>Evidence</b></p>
<p>Each Party shall ensure that, in the case of an alleged infringement of an intellectual property right committed on a commercial scale, the judicial authorities shall have the authority to order, where</p>

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appropriate and following an application, the production of relevant information, as provided for in the Party's domestic law, including banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

### Article 16

#### **Measures for Preserving Evidence**

1. The Parties shall ensure that, even before the commencement of proceedings on the merits of the case, the judicial authorities may, on application by an entity who has presented reasonably available evidence to support its claims that its intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.
2. Each Party may provide that such measures include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. The judicial authorities shall have the authority to take those measures, if necessary without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

### Article 17

#### **Right of Information**

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 intellectual property rights, its judicial authorities shall have the authority, upon a justified request of the right holder, to order the infringer or 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. Such information may include information regarding any person involved in any aspect of the infringement or alleged infringement and regarding 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 such goods or services and of their channels of distribution.

### Article 18

#### **Provisional and Precautionary Measures**

1. Each Party shall provide that its judicial authorities shall have the authority to order prompt and effective provisional and precautionary measures, including an interlocutory injunction, against a party, or where appropriate, against a third party over whom the relevant judicial authority exercises jurisdiction, to prevent an infringement of an intellectual property right from occurring, and in particular,

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to prevent infringing goods from entering the channels of commerce.

2. Each Party shall provide that its judicial authorities have the authority to order the seizure or other taking into custody of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

3. Each Party shall provide that, in the case of an alleged infringement of an intellectual property right committed on a commercial scale, the judicial authorities may order, in accordance with domestic law, the precautionary seizure of property of the alleged infringer, including the blocking of its bank accounts and other assets. To that end, the judicial authorities may order the communication of relevant bank, financial or commercial documents, or access to other relevant information, as appropriate.

### Article 19 Other remedies

1. The Parties shall ensure that the judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, the definitive removal from the channels of commerce, or the destruction, of goods that they have found to be infringing an intellectual property right. The Parties shall ensure that the judicial authorities may order, if appropriate, destruction of materials and implements predominantly used in the creation or manufacture of those goods. In considering a request for such remedies, the need for proportionality between the seriousness of the infringement and the remedies ordered, as well as the interests of third parties, shall be taken into account.

2. The Parties shall ensure that the judicial authorities have the authority to order that those remedies shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

### Article 20 Injunctions

1. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to issue an order against a party to desist from an infringement, and *inter alia*, an order to that party, or, where appropriate, to a third party over whom the relevant judicial authority exercises jurisdiction, to prevent infringing goods from entering into the channels of commerce.

2. Notwithstanding the other provisions of this Section, a Party may limit the remedies available against use by government, or by third parties authorized by government, without the use of authorization of the right holders to the payment of remuneration provided that the Party complies with the provisions of Part II of the TRIPS Agreement specifically addressing such use. In other cases, the remedies under this Section shall apply or, where these remedies are inconsistent with a Party's law, declaratory judgments

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and adequate compensation shall be available.

### Article 21 Damages

1. Each Party shall provide that:

(a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer who knowingly or with reasonable grounds to know, engaged in infringing activity of intellectual property rights to pay the right holder:

(i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; or

(ii) the profits of the infringer that are attributable to the infringement, which may be presumed to be the amount of damages referred to in paragraph (i);

(b) in determining the amount of damages for infringements of intellectual property rights, its judicial authorities may consider, *inter alia*, any legitimate measure of value that may be submitted by the right holder, including lost profits.

2. As an alternative to the previous paragraph, a Party's law may provide for payment of remuneration, such as a royalty or fee, to compensate a right holder for the unauthorized use of its intellectual property.

### Article 22 Legal Costs

Each Party shall provide that its judicial authorities, where appropriate, shall have the authority to order, at the conclusion of civil judicial proceedings concerning the enforcement of intellectual property rights, that the prevailing party be awarded payment by the losing party of legal costs and other expenses, as provided for under that Party's law.

### Article 23 Presumption of Authorship or Ownership

For the purposes of civil proceedings involving copyright or related rights,

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

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

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### Article 24 Border Measures<sup>3</sup>

#### **Article 24.1 – Scope of Border Measures**

1. [CA: For the purposes of this Article, ‘goods infringing an intellectual property right’ shall at least include goods that are subject to footnote 14 of Article 51 of the Agreement on Trade-Related Aspects of Intellectual Property Rights.] (*Note: Canada is aware that the outcome of discussions regarding export may necessitate changes to these definitions.*)

[EU: For the purposes of this Article, ‘goods infringing an intellectual property right apply notably in respect of:

- (a) trademark;
- (b) copyright;
- (c) geographical indication; and
- (d) design.]

(*Note: Definitions in support of Geographical Indications and Design would be required were these concepts to form part of an agreed scope.*)

2. Each Party shall adopt or maintain procedures with respect to import [EU: and export] shipments under which a right holder may request its competent authorities to suspend the release of, or detain goods suspected of infringing an intellectual property right.

3. Each Party shall adopt or maintain procedures with respect to import [EU: and export] shipments under which its competent authorities may act on their own initiative to temporarily suspend the release of, or detain goods suspected of infringing an intellectual property right to provide a right holder an opportunity to formally request assistance under paragraph 2.

[CA: 3A. Where a Party has entered into arrangements to establish a common security perimeter to conduct harmonized customs clearance procedures, it shall not be required to apply the obligations of paragraphs 2 and 3 of this Article at internal borders within the perimeter.]

4. Each Party may adopt or maintain procedures with respect to transshipments and shipments in customs transit [EU: and exports] under which a right holder may request its competent authorities to suspend the release of, or detain goods suspected of infringing an intellectual property right.

5. Each Party may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers’ personal luggage or small quantities of goods of a non-commercial nature sent in small consignments.

6. For the purposes of this Article:

<sup>3</sup>It is understood that there shall be no obligation to apply the procedures set forth in this Section to goods put on the market in another country by or with the consent of the right holder.

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- (a) "Import shipments" means shipments of goods brought into the territory of a Party from a place outside that territory, while those goods remain under customs control. This definition includes goods brought into the territory to a free zone or customs warehouse, but excludes shipments in customs transit and transshipments.
- (b) "Shipments in customs transit" means shipments of goods that enter the territory of a Party from a place outside that territory and are authorized by customs authorities for transport under continuous customs control from an office of entry to an office of exit, for the purpose of exiting the territory. Shipments in customs transit that are subsequently approved for removal from customs control without exiting the territory are considered to be import shipments.
- (c) "Transshipments" means shipments of goods that are transferred under customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation.
- (d) "Export shipments" means shipments of goods which are to be taken from the territory of a Party to a place outside that territory, excluding shipments in customs transit and transshipments.

### ***Article 24.2 – Application by the Right Holder***

1. Each Party shall provide that its competent authorities require a right holder that requests the procedures described in Article 24.1 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 the competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to the procedures described in Article 24.1.

2. Each Party shall provide for applications to suspend the release of, or to detain goods<sup>4</sup> suspected of infringing an IPR listed Article 24.1, under customs control in its territory. The competent authorities may provide for such applications to apply to multiple shipments. Each Party may provide that, at the request of the right holder, the application to suspend the release of, or to detain suspect goods may apply to selected points of entry and exit under customs control.

3. Each Party shall ensure that its competent authorities inform the applicant within a reasonable period whether they have accepted the application. Where its competent authorities have accepted the application, they shall also inform the applicant of the period of validity of the application.

4. A Party may provide that, where the applicant has abused the procedures described in Article 24.1, or where there is due cause, its competent authorities have the authority to deny, suspend, or void an application.

### ***Article 24.3 – Provision of Information from the Right Holder***

<sup>4</sup> The requirement to provide for such applications is subject to the obligations to provide procedures referred to in subparagraphs 24.1(2) and 24.1(3).

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Each Party shall permit its competent authorities to request a right holder to supply relevant information that may reasonably be expected to be within the right holder's knowledge to assist the competent authorities in taking the border measures referred to in this Article. Each Party may also allow a right holder to supply such information to its competent authorities.

### *Article 24.4 – Security or Equivalent Assurance*

Each Party shall provide that its competent authorities have the authority to require a right holder that requests the procedures described in Article 24.1 to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

A Party may provide that such 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, or detention of, the goods in the event the competent authorities determine that the goods are not infringing. A Party may, only in exceptional circumstances or pursuant to a judicial order, permit the defendant to obtain possession of suspect goods by posting a bond or other security.

### *Article 24.5 – Determination as to Infringement*

Each Party shall adopt or maintain procedures by which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in Article 24.1, whether the suspect goods infringe an intellectual property right.

### *Article 24.6 – Remedies*

1. Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination referred to in Article 24.5 that the goods are infringing. In cases where such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder.

2. 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 release of the goods into the channels of commerce.

3. Each Party may provide that its competent authorities have the authority to impose administrative penalties following a determination referred to in Article 24.5 that the goods are infringing.

### *[Article 24.7 – Management of Risk at the Border]*

1. In order to enhance the effectiveness of border enforcement of intellectual property rights, the competent authorities of a Party may share information with the competent authorities of the other Party

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on border enforcement of intellectual property rights, including relevant information to better identify and target for inspection shipments suspected of containing infringing goods.]

*(Note: In response to the EU's interest in text speaking to co-operation related to border measures, Canada asked whether language drawn from ACTA Article 29.1(b) could be of interest. Both parties agreed that text of this nature would need to be accompanied by text to address privacy concerns. Both sides will reflect and may wish to look at ACTA Article 33.3 which is pasted here for information: Cooperation under this Chapter shall be conducted consistent with relevant international agreements, and subject to the laws, policies, resource allocation, and law enforcement priorities of each Party).*

### Sub-Section 4

#### Article 25

#### **Co-operation**

1. The Parties agree to co-operate with a view to supporting implementation of the commitments and obligations undertaken under this chapter. Areas of co-operation include exchanges of information or experience on the following:

- (a) protection and enforcement of intellectual property rights, including geographical indications;
- (b) establishment of arrangements between their respective collecting societies.

2. Without prejudice and as a complement to paragraph 1, the European Union and Canada agree to establish and maintain an effective dialogue on intellectual property issues to address topics relevant to the protection and enforcement of intellectual property rights covered by this Chapter, and any other relevant issue.

*(Note: Parties agreed to remove Article 27 on collecting societies)*

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