

TRIPS Agreement

与贸易有关的 知识产权协定 (草案)

Members,

各成员国，

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

希望消除对国际贸易的扭曲和阻碍，并考虑到促进对知识产权的充分和有效保护的必要性，以及确保行使知识产权的措施和程序本身对合法贸易不构成障碍；

Recognizing , to this end, the need for new rules and disciplines concerning:

为此目的，认为有必要拟定以下新的规则和纪律：

(a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;

（一）《1994 年关税与贸易总协定》（GATT）的基本原则和有关知识产权国际性协议或公约的基本原则的可适用性；

(b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;

（二）关于与贸易有关知识产权的获得、范围和行使的适当标准和原则；

(c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national

（三）关于行使与贸易有关知识产权的有效和适用的办法，同时考虑到各国国内法律体制的差别；

legal systems;

(d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and

(e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognizing that intellectual property rights are private rights;

Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues

（四）用于以多边方式解决和预防政府间纠纷的有效和快速的程序；以及

（五）旨在全面接受谈判结果的过渡性安排；

认识到有必要形成有关国际假冒商品贸易的原则、规则和惩处的多边性框架；

认识到知识产权是私有权；

承认各国保护知识产权体制的保护公共利益的基本目标，包括发展和技术目标；

也承认最不发达国家在其国内实施法律及其细则方面享受最大程度灵活性的特殊需要，以便使它们能够建立一个坚实和有效的技术基础；

强调通过多边程序方式解决与贸易有关的知识产权纠纷，以缓解紧张关系的重要性；

through multilateral procedures;

Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations;

Hereby agree as follows:

希望在世界贸易组织（WTO）和世界知识产权组织（WIPO）以及其他有关国际组织之间建立相互支持的关系；

从而同意以下各条：

PART I:

GENERAL

PROVISIONS AND

BASIC PRINCIPLES

第一部分

总则和基本原则

Article 1:

Nature and Scope of

Obligations

第一条

义务的性质和范围

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.

一、各成员应实施本协定的规定。各成员可以，但并无义务，在其法律中实施比本协定要求更广泛的保护，只要此种保护不违反本协定的规定。各成员有权在其各自的法律制度和实践中确定实施本协定规定的适当方法。

2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.

3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members. In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions. Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

Article 2: Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the

二、就本协定而言，“知识产权”一词指作为第二部分第一节至第七节主题的所有类别的知识产权。

三、各成员应对其他成员的国民给予本协定规定的待遇。就有关的知识产权而言，其他成员的国民应理解为符合《巴黎公约》（1967）、《伯尔尼公约》（1971）、《罗马公约》和《关于集成电路的知识产权条约》规定的保护资格标准的自然人或法人，假设所有 WTO 成员均为这些公约的成员。任何利用《罗马公约》第五条第三款或第六条第二款中规定的可能性的成员，均应按这些条款中所预想的那样，向与贸易有关的知识产权理事会（“TRIPS 理事会”）作出通知。

第二条 知识产权公约

一、就本协定的第二部分、第三部分和第四部分而言，各成员应遵守《巴黎公约》（1967）第一条至第十二条和

Paris Convention (1967).

2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

Article 3: National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.

第十九条。

二、本协定第一部分至第四部分的任何规定不得背离各成员可能在《巴黎公约》、《伯尔尼公约》、《罗马公约》和《关于集成电路的知识产权条约》项下相互承担的现有义务。

第三条 知识产权公约

一、在知识产权保护方面，在遵守《巴黎公约》（1967）、《伯尔尼公约》（1971）、《罗马公约》或《关于集成电路的知识产权条约》中各自规定的例外的前提下，每一成员给予其他成员国民的待遇不得低于给予本国国民的待遇。就表演者、录音制品制作者和广播组织而言，此义务仅适用于本协定规定的权利。任何利用《伯尔尼公约》第六条或《罗马公约》第十六条第一款（二）项规定的可能性的成员，均应按这些条款中所预想的那样，向 TRIPS 理事会作出通知。

2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

**Article 4:
Most-Favoured-Nation
Treatment**

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

(a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;

(b) granted in accordance with the

二、各成员可利用第一款下允许的在司法和行政程序方面的例外，包括在一成员管辖范围内指定送达地址或委派代理人，但是这些例外应为保证遵守与本协定规定发生不相抵触的法律和法规所必需，且这种做法的实施不会对贸易构成变相限制。

**第四条
最惠国待遇**

对于知识产权保护，一成员对任何其他国家国民给予的任何利益、优惠、特权或豁免，应立即无条件地给予所有其他成员的国民。一成员给予的属下列情况的任何利益、优惠、特权或豁免，免除此义务：

（一）自一般性的、并非专门限于知识产权保护的关于司法协助或法律实施的国际协定所派生；

（二）依照《伯尔尼公约》（1971）

provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;

(c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;

(d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

Article 5: Multilateral Agreements on Acquisition or Maintenance of Protection

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

或《罗马公约》的规定所给予，此类规定允许所给予的待遇不属国民待遇性质而属在另一国中给予待遇的性质；

（三）关于本协定项下未作规定的有关表演者、录音制品制作者以及广播组织的权利；

（四）自《WTO 协定》生效之前已生效的有关知识产权保护的国际协定所派生，只要此类协定向 TRIPS 理事会作出通知，并对其他成员的国民不构成任意的或不合理的歧视。

第五条 关于取得或维持保护的 多边协定

第三条和第四条的义务不适用于在 WIPO 主持下订立的有关取得或维持知识产权的多边协定中规定的程序。

Article 6: Exhaustion

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

第六条 权利用尽

就本协定项下的争端解决而言，在遵守第二条和第四条规定的前提下，本协定的任何规定不得用于处理知识产权的权利用尽问题。

Article 7: 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.

第七条 目标

知识产权的保护和实施应有助于促进技术革新及技术转让和传播，有助于技术知识的创造者和使用者的相互利益，并有助于社会和经济福利及权利与义务的平衡。

Article 8: Principles

1. Members may, in formulating or amending their 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

第八条 原则

一、在制定或修改其法律和法规时，各成员可采用对保护公共健康和营养，促进对其社会经济和技术发展至关重要部门的公共利益所必需的措施，只要此类措施与本协定的规定相一致。

are consistent with the provisions of this Agreement.

2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, 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.

二、只要与本协定的规定相一致,可能需要采取适当措施以防止知识产权权利持有人滥用知识产权或采取不合理地限制贸易或对国际技术转让造成不利影响的做法。

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

第二部分
关于知识产权效
力、范围和使用的
标准

SECTION 1:
COPYRIGHT AND
RELATED RIGHTS

第一节
版权和相关权利

Article 9:
Relation to the Berne
Convention

第九条
与《伯尔尼公约》的
关系

1. Members shall comply with Articles 1

一、各成员应遵守《伯尔尼公约》

through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom.

2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

**Article 10:
Computer Programs
and Compilations of
Data**

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).

2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

Article 11:

(1971) 第一条至第二十一条及其附录的规定。但是，对于该公约第六条之二授予或派生的权利，各成员在本协定项下不享有权利或义务。

二、版权的保护仅延伸至表达方式，而不延伸至思想、程序、操作方法或数学概念本身。

**第十条
计算机程序和数据汇
编**

一、计算机程序，无论是源代码还是目标代码，应作为《伯尔尼公约》（1971）项下的文字作品加以保护。

二、数据汇编或其他资料，无论机器可读还是其他形式，只要由于对其内容的选取或编排而构成智力创作，即应作为智力创作加以保护。该保护不得延伸至数据或资料本身，并不得损害存在于数据或资料本身的任何版权。

第十一条

Rental Rights

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

Article 12: Term of Protection

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

出租权

至少就计算机程序和电影作品而言，一成员应给予作者及其合法继承人准许或禁止向公众商业性出租其有版权作品的原件或复制品的权利。一成员对电影作品可不承担此义务，除非此种出租已导致对该作品的广泛复制，从而实质性减损该成员授予作者及其合法继承人的专有复制权。就计算机程序而言，如该程序本身不是出租的主要标的，则此义务不适用于出租。

第十二条 保护期限

除摄影作品或实用艺术作品外，只要一作品的保护期限不以自然人的生命为基础计算，则该期限自作品经授权出版的日历年年底计算即不得少于五十年，或如果该作品在创作后五十年内未经授权出版，则为自作品完成的日历年年底起计算的五十年。

**Article 13:
Limitations and
Exceptions**

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

**Article 14:
Protection of
Performers,
Producers of
Phonograms (Sound
Recordings) and
Broadcasting
Organizations**

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.

**第十三条
限制和例外**

各成员对专有权作出的任何限制或例外规定仅限于某些特殊情况，且与作品的正常利用不相冲突，也不得无理损害权利持有人的合法权益。

**第十四条
对表演者、录音制品
（唱片）制作者和广
播组织的保护**

一、就将其表演固定在录音制品上而言，表演者应有可能防止下列未经其授权的行为：固定其未曾固定的表演和复制该录制品。表演者还应有可能阻止下列未经其授权的行为：以无线广播方式播出和向大众传播其现场表演。

2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).

4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.

二、录音制品制作者应享有准许或禁止直接或间接复制其录音制品的权利。

三、广播组织有权禁止下列未经其授权的行为：录制、复制录制品、以无线广播方式转播以及将其电视广播向公众传播。如各成员未授予广播组织此类权利，则在遵守《伯尔尼公约》(1971)规定的前提下，应给予广播的客体的版权所有人阻止上述行为的可能性。

四、第十一条关于计算机程序的规定在细节上作必要修改后应适用于录音制品制作者和按一成员法律确定的录音制品的任何其他权利持有人。如在1994年4月15日，一成员在录音制品的出租方面已实施向权利持有人公平付酬的制度，则可维持该制度，只要录音制品的商业性出租不对权利持有人的专有复制权造成实质性减损。

5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.

6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, mutatis mutandis, to the rights of performers and producers of phonograms in phonograms.

SECTION 2: ***TRADEMARKS***

Article 15: **Protectable Subject** **Matter**

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of

五、本协定项下表演者和录音制品制作者可获得的保护期限，自该固定或表演完成的日历年年底计算，应至少持续至五十年年末。按照第三款给予的保护期限，自广播播出的日历年年底计算，应至少持续二十年。

六、任何成员可就第一款、第二款和第三款授予的权利，在《罗马公约》允许的限度内，规定条件、限制、例外和保留。但是，《伯尔尼公约》（1971）第十八条的规定在细节上作必要修改后也应适用于表演者和录音制品制作者对录音制品享有的权利。

第二节 **商标**

第十五条 **可保护客体**

一、任何标记或标记的组合，只要能够将一企业的货物和服务区别于其他企业的货物或服务，即能够构成商

other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).

3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.

4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of

标。此类标记，特别是单词，包括人名、字母、数字、图案的成分和颜色的组合以及任何此类标记的组合，均应符合注册为商标的条件。如标记无固有的区别有关货物或服务的特征，则各成员可以由通过使用而获得的显著性作为注册的条件。各成员可要求，作为注册的条件，这些标记应为视觉上可感知的。

二、第一款不得理解为阻止一成员以其他理由拒绝商标的注册，只要这些理由不背离《巴黎公约》（1967）的规定。

三、各成员可以将使用作为注册条件。但是，一商标的实际使用不得作为接受申请的一项条件。不得仅以自申请日起三年期满后商标未按原意使用为由拒绝该申请。

四、商标所适用的货物或服务的性质在任何情况下不得形成对商标注册的障碍。

the trademark.

5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

Article 16: Rights Conferred

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

2. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the

五、各成员应在商标注册前或在注册后迅速公布每一商标，并应对注销注册的请求给予合理的机会。此外，各成员可提供机会以便对商标的注册提出异议。

第十六条 授予的权利

一、注册商标的所有权人享有专有权，以阻止所有第三方未经该所有权人同意在贸易过程中对与已注册商标的货物或服务的相同或类似货物或服务使用相同或类似标记，如此类使用会导致混淆的可能性。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。上述权利不得损害任何现有的优先权，也不得影响各成员以使用为基础提供权利的可能性。

二、《巴黎公约》（1967）第六条之二在细节上作必要修改后应适用于服务。在确定一商标是否驰名时，各成员应考虑相关部门公众对该商标的了解程度，包括在该成员中因促销该商标

trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.

3. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

Article 17: Exceptions

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

Article 18: Term of Protection

Initial registration, and each renewal of registration, of a trademark shall be for a

而获得的了解程度。

三、《巴黎公约》（1967）第六条之二在细节上作必要修改后应适用于与已注册商标的货物或服务不相类似的货物或服务，只要该商标在对那些货物或服务的使用方面可表明这些货物或服务与该注册商标所有权人之间存在联系，且此类使用有可能损害该注册商标所有权人的利益。

第十七条 例外

各成员可对商标所授予的权利规定有限的例外，如合理使用描述性词语，只要此类例外考虑到商标所有权人和第三方的合法权益。

第十八条 保护期限

商标的首次注册及每次续展的期限均不得少于七年。商标的注册应可以

term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

Article 19: Requirement of Use

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.

2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

Article 20: Other Requirements

The use of a trademark in the course of trade shall not be unjustifiably

无限续展。

第十九条 关于使用的要求

一、如维持注册需要使用商标，则只有在至少连续三年不使用后方可注销注册，除非商标所有权人根据对商标使用存在的障碍说明正当理由。出现商标人意志以外的情况而构成对商标使用的障碍，例如对受商标保护的货物或服务实施进口限制或其他政府要求，此类情况应被视为不使用商标的正当理由。

二、在受所有权人控制的前提下，另一人使用一商标应被视为为维持注册而使用该商标。

第二十条 其他要求

在贸易过程中使用商标不得受特殊要求的无理妨碍，例如要求与另一商

encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

**Article 21:
Licensing and
Assignment**

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

**SECTION 3:
GEOGRAPHICAL
INDICATIONS**

**Article 22:
Protection of**

标一起使用，以特殊形式使用或要求以损害其将一企业的货物或服务区别于另一企业的货物或服务能力的方式使用。此点不排除要求将识别生产该货物或服务的企业的商标与区别该企业的具体货物或服务的商标一起使用，但不将两者联系起来。

**第二十一条
许可和转让**

各成员可对商标的许可和转让确定条件，与此相关的理解是，不允许商标的强制许可，且注册商标的所有权人有权将商标与该商标所属业务同时或不同时转让。

**第三节
地理标识**

**第二十二条
地理标识的保护**

Geographical Indications

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, 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.

2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:

(a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;

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

3. A Member shall, *ex officio* if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark which contains or consists of a geographical indication with

一、就本协定而言，“地理标识”指识别一货物来源于一成员领土或该领土内一地区或地方的标识，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。

二、就地理标识而言，各成员应向利害关系方提供法律手段以防止：

（一）在一货物的标志或说明中使用任何手段标明或暗示所涉货物来源于真实原产地之外的一地理区域，从而在该货物的地理来源方面使公众产生误解；

（二）构成属《巴黎公约》（1967）第十条之二范围内的不公平竞争行为的任何使用。

三、如一商标包含的或构成该商标的地理标识中所标明的领土并非货物的来源地，且如果在该成员中在此类货物的商标中使用该标识会使公众对其真实原产地产生误解，则该成员在其立

respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

**Article 23:
Additional Protection
for Geographical
Indications for Wines
and Spirits**

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.

法允许的情况下可依职权或在一利害关系方请求下，拒绝该商标注册或宣布注册无效。

四、根据第一款、第二款和第三款给予的保护可适用于虽在文字上表明货物来源的真实领土、地区或地方，但却虚假地向公众表明该货物来源于另一领土的地理标识。

**第二十三条
对葡萄酒和烈酒地理
标识的附加保护**

一、每一成员应为利害关系方提供法律手段，以防止将识别葡萄酒的地理标识用于并非来源于所涉地理标识所标明地方的葡萄酒，或防止将识别烈酒的地理标识用于并非来源于所涉地理标识所标明地方的烈酒，即使对货物的真实原产地已标明，或该地理标识用于翻译中，或附有“种类”、“类型”、“特色”、“仿制”或类似表达方式。

2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, *ex officio* if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.

3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

二、对于一葡萄酒商标包含识别葡萄酒的地理标识或由此种标识构成，或如果一烈酒商标包含识别烈酒的地理标识或由此种标识构成，一成员应在其立法允许的情况下依职权或在一利害关系方请求下，对不具备此来源的此类葡萄酒或烈酒，拒绝该商标注册或宣布注册无效。

三、在葡萄酒的地理标识同名的情况下，在遵守第二十二条第四款规定的前提下，应对每一种标识予以保护。每一成员应确定相互区分所涉同名标识的可行条件，同时考虑保证公平对待有关生产者且使消费者不致产生误解的需要。

四、为便利葡萄酒地理标识的保护，应在 TRIPS 理事会内谈判建立关于葡萄酒地理标识通知和注册的多边制度，使之能在参加该多边制度的成员中获得保护。

**Article 24:
International
Negotiations;
Exceptions**

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.

2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members

**第二十四条
国际谈判；例外**

一、各成员同意进行谈判，以加强根据第二十三条对单个地理标识的保护。一成员不得使用以下第四款至第八款的规定，以拒绝进行谈判或订立双边或多边协定。在此类谈判中，各成员应自愿考虑这些规定继续适用于其使用曾为此类谈判主题的单个地理标识。

二、TRIPS 理事会应继续对本节规定的适用情况进行审议：第一次审议应在《WTO 协定》生效后二年之内进行。任何影响遵守这些规定下的义务的事项均可提请理事会注意，在一成员请求下，理事会应就有关成员之间未能通过双边或诸边磋商找到满意解决办法的事项与任何一成员或多个成员进行磋商。理事会应采取各方同意的行动，以便利本节的运用，并促进本节目标的实现。

concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.

3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.

4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

(a) before the date of application of these provisions in that Member as defined in Part VI; or

(b) before the geographical indication is

三、在实施本节时，一成员不得降低《WTO 协定》生效之日前已在该成员中存在的对地理标识的保护。

四、本节的任何规定均不得要求一成员阻止其任何国民或居民在货物或服务方面继续以类似方式使用另一成员识别葡萄酒或烈酒的一特定地理标识，如其国民或居民在相同或有关的货物或服务上在该成员领土内已连续使用该地理标识（一）在 1994 年 4 月 15 日前已至少有十年，或（二）在该日期之前的使用是善意的。

五、如一商标的申请或注册是善意的，或如果一商标的权利是在以下日期之前通过善意的使用取得的：

（一）按第六部分确定的这些规定在该成员中适用之日前；或

（二）该地理标识在其起源国获

protected in its country of origin;

得保护之前;

measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

为实施本节规定而采取的措施不得因一商标与一地理标识相同或类似而损害该商标注册的资格或注册的有效性或商标的使用权。

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member 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 Member as of the date of entry into force of the WTO Agreement.

六、如任何其他成员关于货物或服务的地理标识与一成员以通用语文的惯用术语作为其领土内此类货物或服务的普通名称相同,则本节的任何规定不得要求该成员对其他成员的相关标识适用本节的规定。如任何其他成员用于葡萄酒产品的地理标识与在《WTO协定》生效之日一成员领土内已存在的葡萄品种的惯用名称相同,则本节的任何规定不得要求该成员对其他成员的相关标识适用本节的规定。

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration

七、一成员可规定,根据本节提出的关于一商标的使用或注册的任何请求必须在对该受保护标识的非法使用已在该成员中广为人知后五年内提出,或如果商标在一成员中的注册日期早于上述非法使用在该成员中广为人知的日期,只要该商标在其注册之日前已

of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.

9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

公布, 则该请求必须在该商标在该成员中注册之日起五年内提出, 只要该地理标识未被恶意使用或注册。

八、本节的规定决不能损害任何人在贸易过程中使用其姓名或其业务前任的姓名的权利, 除非该姓名使用的方式会使公众产生误解。

九、各成员在本协定项下无义务保护在起源国不受保护或已停止保护, 或在该国中已废止的地理标识。

SECTION 4: INDUSTRIAL DESIGNS

Article 25: Requirements for Protection

1. Members shall provide for the protection of independently created

第四节 工业设计

第二十五条 保护的要求

一、各成员应对新的或原创性的独立创造的工业设计提供保护。各成员可

industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.

Article 26: Protection

1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do

规定，如工业设计不能显著区别于已知的设计或已知设计特征的组合，则不属于新的或原创性设计。各成员可规定该保护不应延伸至主要出于技术或功能上的考虑而进行的设计。

二、每一成员应保证为获得对纺织品设计的保护而规定的要求，特别是有关任何费用、审查或公布的要求，不得无理损害寻求和获得此种保护的机会。各成员有权通过工业设计法或版权法履行该项义务。

第二十六条 保护

一、受保护的工业设计的所有权人有权阻止第三方未经所有权人同意而生产、销售或进口所载或所含设计是一受保护设计的复制品或实质上是复制品的物品，如此类行为为商业目的而采取。

二、各成员可对工业设计的保护规定有限的例外，只要此类例外不会与受保护的工业设计的正常利用发生无理

not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

3. The duration of protection available shall amount to at least 10 years.

SECTION 5: ***PATENTS***

Article 27: **Patentable Subject** **Matter**

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Members may exclude from patentability inventions, the prevention

抵触，也不会无理损害受保护工业设计所有权人的合法权益，同时考虑第三方的合法权益。

三、可获得的保护期限应至少达到十年。

第五节 **专利**

第二十七条 **可授予专利的客体**

一、在遵守第二款和第三款规定的前提下，专利可授予所有技术领域的任何发明，无论是产品还是方法，只要它们具有新颖性、包含发明性步骤，并可供工业应用。在遵守第六十五条第四款、第七十条第八款和本条第三款规定的前提下，对于专利的获得和专利权的享受不因发明地点、技术领域、产品是进口的还是当地生产的而受到歧视。

二、各成员可拒绝对某些发明授予专利权，如在其领土内阻止对这些发明

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 the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. Members may also exclude from patentability:

(a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

(b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

Article 28: Rights Conferred

1. A patent shall confer on its owner the

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环境造成严重损害所必需的，只要此种拒绝授予并非仅因为此种利用为其法律所禁止。

三、各成员可拒绝对下列内容授予专利权：

（一）人类或动物的诊断、治疗和外科手术方法；

（二）除微生物外的植物和动物，以及除非生物和微生物外的生产植物和动物的主要生物方法。但是，各成员应规定通过专利或一种有效的特殊制度或通过这两者的组合来保护植物品种。本项的规定应在《WTO 协定》生效之日起四年后进行审议。

第二十八条 授予的权利

一、一专利授予其所有权人下列专

following exclusive rights:

(a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering for sale, selling, or importing for these purposes that product;

(b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

Article 29: Conditions on Patent Applicants

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the

有权利:

(一) 如一专利的客体是产品, 则防止第三方未经所有权人同意而进行制造、使用、标价出售、销售或为这些目的而进口该产品的行为;

(二) 如一专利的客体是方法, 则防止第三方未经所有权人同意而使用该行为, 并防止使用、标价出售、销售或为这些目的而进口至少是以该方法直接获得产品的行为。

二、专利所有权人还有权转让或以继承方式转移其专利并订立许可合同。

第二十九条 专利申请人的条件

一、各成员应要求专利申请人以足够清晰和完整的方式披露其发明, 使该专业的技术人员能够实施该发明, 并可要求申请人在申请之日, 或在要求优先权的情况下在申请的优先权日, 指明发明人所知的实施该发明的最佳方式。

application.

2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

Article 30: Exceptions to Rights Conferred

Members 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.

Article 31: Other Use Without Authorization of the Right Holder

Where the law of a Member allows for other use of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

(a) authorization of such use shall be

二、各成员可要求专利申请人提供关于申请人相应的国外申请和授予情况的信息。

第三十条 授予权利的例外

各成员可对专利授予的专有权规定有限的例外，只要此类例外不会对专利的正常利用发生无理抵触，也不会无理损害专利所有权人的合法权益，同时考虑第三方的合法权益。

第三十一条 未经权利持有人授权 的其他使用

如一成员的法律允许未经权利持有人授权即可对一专利的客体作其他使用，包括政府或经政府授权的第三方的使用，则应遵守下列规定：

（一）授权此种使用应一事一议；

considered on its individual merits;

(b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;

(c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;

（二）只有在拟使用者在此种使用之前已经按合理商业条款和条件努力从权利持有人处获得授权，但此类努力在合理时间内未获得成功，方可允许此类使用。在全国处于紧急状态或在其他极端紧急的情况下，或在公共非商业性使用的情况下，一成员可豁免此要求。尽管如此，在全国处于紧急状态或在其他极端紧急的情况下，应尽快通知权利持有人。在公共非商业性使用的情况下，如政府或合同方未作专利检索即知道或有显而易见的理由知道一有效专利正在或将要被政府使用或为政府而使用，则应迅速告知权利持有人；

（三）此类使用的范围和期限应仅限于被授权的目的，如果是半导体技术，则仅能用于公共非商业性使用，或用于补救经司法或行政程序确定为限制竞争行为；

(d) such use shall be non-exclusive;

（四）此种使用应是非专有的；

(e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;

（五）此种使用应是不可转让的，除非与享有此种使用的那部分企业或商誉一同转让；

(f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

（六）任何此种使用的授权应主要为供应授权此种使用的成员的国内市场；

(g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;

（七）在充分保护被授权人合法权益的前提下，如导致此类使用的情况已不复存在且不可能再次出现，则有关此类使用的授权应终止。在收到有根据的请求的情况下，主管机关有权审议这些情况是否继续存在；

(h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;

（八）在每一种情况下应向权利持有人支付适当报酬，同时考虑授权的经济价值；

(i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

（九）与此种使用有关的任何决定的法律效力应经过司法审查或经过该成员中上一级主管机关的独立审查；

(j) any decision relating to the remuneration provided in respect of such

（十）任何与就此种使用提供的报酬有关的决定应经过司法审查或该

use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

(k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;

(l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:

(i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;

(ii) the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the

成员中上一级主管机关的独立审查；

（十一）如允许此类使用以补救经司法或行政程序确定为限制竞争的行为，则各成员无义务适用（二）项和（六）项所列条件。在确定此类情况下的报酬数额时，可考虑纠正限制竞争行为的需要。如导致授权的条件可能再次出现，则主管机关有权拒绝终止授权；

（十二）如授权此项使用以允许利用一专利（“第二专利”），而该专利在不侵害另一专利（“第一专利”）的情况下不能被利用，则应适用下列附加条件：

（1）与第一专利中要求的发明相比，第二专利中要求的发明应包含重要的、具有巨大经济意义的技术进步；

（2）第一专利的所有权人有权以合理的条件通过交叉许可使用第二专利具有的发明；以及

second patent; and

(iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Article 32: Revocation/Forfeiture

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

Article 33: Term of Protection

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.

Article 34: Process Patents: Burden of Proof

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is

(3) 就第一专利授权的使用不得转让，除非与第二专利一同转让。

第三十二条 撤销 / 无效

对任何有关撤销或宣布一专利无效的决定应可进行司法审查。

第三十三条 保护期限

可获得的保护期限不得在自申请之日起计算的二十年期满前结束。

第三十四条 方法专利：举证责任

一、就第二十八条第一款（二）项所指的侵害所有权人权利的民事诉讼而言，如一专利的客体是获得一产品的方法，则司法机关有权责令被告方证明其获得相同产品的方法不同于已获专利的方法。因此，各成员应规定至少在下列一种情况下，任何未经专利所有权人同意而生产的相同产品，如无相反的

different from the patented process.
Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

(a) if the product obtained by the patented process is new;

(b) if there is a substantial likelihood that the identical product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.

3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

证明，则应被视为是通过该已获专利方法所获得的：

（一）如通过该已获专利方法获得的产品是新的；

（二）如存在实质性的可能性表明该相同产品是由该方法生产的，而专利所有权人经过合理努力不能确定事实上使用了该方法。

二、只有满足（一）项所指条件或只有满足（二）项所指条件，任何成员方有权规定第一款所指的举证责任在于被指控的侵权人。

三、在引述相反证据时，应考虑被告方在保护其制造和商业秘密方面的合法权益。

SECTION 6: LAYOUT-DESIGNS

第六节 集成电路布图设计

***(TOPOGRAPHIES) OF
INTEGRATED
CIRCUITS***

**Article 35:
Relation to the IPIC
Treaty**

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

**Article 36:
Scope of the
Protection**

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder: importing, selling, or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it

(拓扑图)

**第三十五条
与《IPIC 条约》的关
系**

各成员同意依照《IPIC 条约》第二条至第七条（第六条第三款除外）及第十二条和第十六条第三款，对集成电路的布图设计（拓扑图）（本协定中称“布图设计”）提供保护，此外还同意遵守下列规定。

**第三十六条
保护范围**

在遵守第三十七条第一款规定的前提下，如从事下列行为未经权利持有人授权，则应视为非法：为商业目的进口、销售或分销一受保护的布图设计、含有受保护的布图设计的集成电路、或含有此种集成电路的物品，只要该集成电路仍然包含非法复制的布图设计。

continues to contain an unlawfully reproduced layout-design.

**Article 37:
Acts Not Requiring the
Authorization of the
Right Holder**

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.

2. The conditions set out in

**第三十七条
无需权利持有人授权
的行为**

一、尽管有第三十六条的规定，但是如从事或命令从事该条所指的与含有非法复制的布图设计的集成电路或包含此种集成电路的物品有关的行为的人，在获得该集成电路或包含该集成电路的物品时，不知道且无合理的根据知道其中包含此种非法复制的布图设计，则任何成员不得将从事该条所指的任何行为视为非法。各成员应规定，在该人收到关于该布图设计被非法复制的充分通知后，可对现有的存货和此前的订货从事此类行为，但有责任向权利持有人支付费用，数额相当于根据就此种布图设计自愿达成的许可协议应付的合理使用费。

二、第三十一条（一）项至（十一）

subparagraphs (a) through (k) of Article 31 shall apply mutatis mutandis in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

Article 38: Term of Protection

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.

2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.

3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

SECTION 7: PROTECTION OF

项所列条件在细节上作必要修改后应适用于任何有关布图设计的非自愿许可情况或任何未经权利持有人授权而被政府或为政府而使用的情况。

第三十八条 保护期限

一、在要求将注册作为保护条件的成员中，布图设计的保护期限不得在自提交注册申请之日起或自世界任何地方首次进行商业利用之日起计算十年期限期满前终止。

二、在不要求将注册作为保护条件的成员中，布图设计的保护期限不得少于自世界任何地方首次进行商业利用之日起计算的十年。

三、尽管有第一款和第二款的规定，任何一成员仍可规定保护应在布图设计创作十五年后终止。

第七节 对未披露信息的保护

**UNDISCLOSED
INFORMATION**

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

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

(c) has been subject to reasonable steps

第三十九条

一、在保证针对《巴黎公约》(1967)第十条之二规定的不公平竞争而采取有效保护的过程中,各成员应依照第二款对未披露信息和依照第三款提交政府或政府机构的数据进行保护。

二、自然人和法人应有可能防止其合法控制的信息在未经其同意的情况下以违反诚实商业行为的方式向他人披露,或被他人取得或使用,只要此类信息:

(一) 属秘密,即作为一个整体或就其各部分的精确排列和组合而言,该信息尚不为通常处理所涉信息范围内的人所普遍知道,或不易被他们获得;

(二) 因属秘密而具有商业价值;并且

(三) 由该信息的合法控制人,

under the circumstances, by the person lawfully in control of the information, to keep it secret.

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

***SECTION 8:
CONTROL OF
ANTI-COMPETITIVE
PRACTICES IN
CONTRACTUAL
LICENCES***

Article 40

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.

在此种情况下采取合理的步骤以保持其秘密性质。

三、各成员如要求，作为批准销售使用新型化学个体制造的药品或农业化学物质产品的条件，需提交通过巨大努力取得的、未披露的试验数据或其他数据，则应保护该数据，以防止不正当的商业使用。此外，各成员应保护这些数据不被披露，除非属为保护公众所必需，或除非采取措施以保证该数据不被用在不正当的商业使用中。

**第八节
对协议许可中限制竞争行为的控制**

第四十条

一、各成员同意，一些限制竞争的有关知识产权的许可活动或条件可对贸易产生不利影响，并会妨碍技术的转让和传播。

2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.

3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate

二、本协定的任何规定均不得阻止各成员在其立法中明确规定在特定情况下可构成对知识产权的滥用并对相关市场中的竞争产生不利影响的许可活动或条件。如以上所规定的，一成员在与本协定其他规定相一致的条件下，可按照该成员的有关法律法规，采取适当的措施以防止或控制此类活动，包括诸如排他性返授条件、阻止对许可效力提出质疑的条件和强制性一揽子许可等。

三、应请求，每一成员应与任一其他成员进行磋商，只要该成员有理由认为被请求进行磋商成员的国民或居民的知识产权所有权人正在采取的做法违反请求进行磋商成员关于本节主题的法律法规，并希望在不妨害根据法律采取任何行动及不损害两成员中任一成员作出最终决定的充分自由的情况下，使该立法得到遵守。被请求的成员应对与提出请求成员的磋商给予充分和积极的考虑，并提供充分的机会，并在受国内法约束和就提出请求的成员保障其机密性达成相互满意的协议的前提下，通过提供与所涉事项有关的、可公开获得的非机密信息和该成员可获得的其他信息进行合作。

opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.

4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.

四、如一成员的国民或居民在另一成员领土内因被指控违反该另一成员有关本节主题的法律法规而被起诉，则该另一成员应按与第三款预想的条件相同的条件给予该成员磋商的机会。

PART III:
ENFORCEMENT OF
INTELLECTUAL
PROPERTY RIGHTS

第三部分
知识产权的实施

SECTION 1:
GENERAL
OBLIGATIONS

第一节
一般义务

Article 41

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. 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. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.

4. Parties to a proceeding shall have an

第四十一条

一、各成员应保证其国内法中包括关于本部分规定的实施程序，以便对任何侵犯本协定所涵盖知识产权的行为采取有效行动，包括防止侵权的迅速救济措施和制止进一步侵权的救济措施。这些程序的实施应避免对合法贸易造成障碍并为防止这些程序被滥用提供保障。

二、有关知识产权的实施程序应公平和公正。这些程序不应不必要的复杂和费用高昂，也不应限定不合理的时限或造成无理的迟延。

三、对一案件是非曲直的裁决，最好采取书面形式并说明理由。至少应使诉讼当事方可获得，而不造成不正当的迟延。对一案件是非曲直的裁决只能根据已向各方提供听证机会的证据作出。

四、诉讼当事方应有机会要求司法

opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.

5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

***SECTION 2:
CIVIL AND
ADMINISTRATIVE
PROCEDURES AND
REMEDIES***

**Article 42:
Fair and Equitable
Procedures**

Members shall make available to right

机关对最终行政裁定进行审查，并在遵守一成员法律中有关案件重要性的司法管辖权规定的前提下，至少对案件是非的初步司法裁决的法律方面进行审查。但是，对刑事案件中的无罪判决无义务提供审查机会。

五、各方理解，本部分并不产生任何建立与一般法律实施制度不同的知识产权实施制度的义务，也不影响各成员实施一般法律的能力。本部分的任何规定在实施知识产权与实施一般法律的资源分配方面，也不产生任何义务。

**第二节
民事和行政程序及救济**

**第四十二条
公平和公正的程序**

各成员应使权利持有人可获得有

holders civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement.

Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

Article 43: Evidence

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.

关实施本协议涵盖的任何知识产权的民事司法程序。被告有权获得及时的和包含足够细节的书面通知，包括权利请求的依据。应允许当事方由独立的法律顾问代表出庭，且程序不应制定强制本人出庭的过重要求。此类程序的所有当事方均有权证明其权利请求并提供所有相关证据。该程序应规定一种确认和保护机密信息的方法，除非此点会违背现有的宪法规定的必要条件。

第四十三条 证据

一、如一当事方已出示可合理获得的足以证明其权利请求的证据，并指明在对方控制之下的与证实其权利请求有关的证据，则司法机关在遵守在适当的情况下可保证保护机密信息条件的前提下，有权命令对方提供此证据。

2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

Article 44: Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail

二、如一诉讼方在合理期限内自行且无正当理由拒绝提供或不提供必要的信息，或严重阻碍与一实施行动有关的程序，则一成员可授权司法机关在向其提供信息的基础上，包括由于被拒绝提供信息而受到不利影响的当事方提出的申诉或指控，作出肯定或否定的初步或最终裁决，但应向各当事方提供就指控或证据进行听证的机会。

第四十四条 禁令

一、司法机关有权责令一当事方停止侵权，特别是有权在结关后立即阻止涉及知识产权侵权行为的进口货物进入其管辖范围内的商业渠道。如受保护的客体是在一人知道或有合理的根据知道从事该客体的交易会构成知识产权侵权之前取得或订购的，则各成员无义务给予此种授权。

the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

Article 45: Damages

1. The judicial authorities shall have the authority 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.

2. The judicial authorities shall also have the authority to order the infringer to pay

二、尽管有本部分其他条款的规定，但是只要符合第二部分专门处理未经权利持有人授权的政府使用或政府授权的第三方使用而作出的规定，各成员可将针对可使用的救济限于依照第三十一条（八）项支付的报酬。在其他情况下，应适用本部分下的救济，或如果这些救济与一成员的法律不一致，则应采取宣告式判决，并应可获得适当的补偿。

第四十五条 赔偿

一、对于故意或有充分理由应知道自己从事侵权活动的侵权人，司法机关有权责令侵权人向权利持有人支付足以补偿其因知识产权侵权所受损害的赔偿。

二、司法机关还有权责令侵权人向权利持有人支付有关费用，其中可包括

the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

Article 46: Other Remedies

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered

有关的律师费用。在适当的情况下，各成员可授权司法机关责令其退还利润和 / 或支付法定的赔偿，即使侵权人并非故意或没有充分理由知道自己从事侵权活动。

第四十六条 其他补救

为有效制止侵权，司法机关有权在不给予任何补偿的情况下，责令将已被发现侵权的货物清除出商业渠道，以避免对权利持有人造成任何损害，或下令将其销毁，除非此点会违背现有的宪法规定的必要条件。司法机关还有权在不给予任何补偿的情况下，责令将主要用于制造侵权货物的材料和工具清除出商业渠道，以便将产生进一步侵权的风险减少到最低限度。在考虑此类请求时，应考虑侵权的严重程度与给予的救济以及第三方利益之间的均衡性。对于冒牌货，除例外情况外，仅除去非法加贴的商标并不足以允许该货物放行进入商业渠道。

as well as the interests of third parties shall be taken into account. 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.

Article 47: Right of Information

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

Article 48: Indemnification of the Defendant

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial authorities shall also have the authority to

第四十七条 获得信息的权利

各成员可规定，司法机关有权责令侵权人将生产和分销侵权货物或服务过程中涉及的第三方的身份及其分销渠道告知权利持有人，除非此点与侵权的严重程度不相称。

第四十八条 对被告的赔偿

一、如应一当事方的请求而采取措施且该当事方滥用实施程序，则司法机关有权责令该当事方向受到错误禁止或限制的当事方就因此种滥用而受到的损害提供足够的补偿。司法机关还有权责令该申请当事方支付辩方费用，其中可包括适当的律师费。

order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

**Article 49:
Administrative
Procedures**

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

**SECTION 3:
PROVISIONAL
MEASURES**

Article 50

1. The judicial authorities shall have the authority to order prompt and effective

二、就实施任何有关知识产权的保护或实施的法律而言，只有在管理该过程中采取或拟采取的行动是出于善意的情况下，各成员方可免除公共机构和官员采取适当救济措施的责任。

**第四十九条
行政程序**

如由于行政程序对案件是非曲直的裁决而导致责令进行任何民事救济，则此类程序应符合与本节所列原则实质相当的原则。

**第三节
临时措施**

第五十条

一、司法机关有权责令采取迅速和有效的临时措施以便：

provisional measures:

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

(b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.

3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

4. Where provisional measures have been

(一) 防止侵犯任何知识产权，特别是防止货物进入其管辖范围内的商业渠道，包括结关后立即进入的进口货物；

(二) 保存关于被指控侵权的有关证据。

二、在适当时，特别是在任何迟延可能对权利持有人造成不可补救的损害时，或存在证据被销毁的显而易见的风险时，司法机关有权采取不作预先通知的临时措施。

三、司法机关有权要求申请人提供任何可合理获得的证据，以使司法机关有足够程度的确定性确信该申请人为权利持有人，且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相当的担保。

四、如已经采取不作预先通知的临

adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.

6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.

7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no

时措施，则至迟应在执行该措施后立刻通知受影响的各方。应被告请求，应对这些措施进行审查，包括进行听证，以期在作出关于有关措施的通知后一段合理期限内，决定这些措施是否应进行修改、撤销或确认。

五、执行临时措施的主管机关可要求申请人提供确认有关货物的其他必要信息。

六、在不损害第四款规定的情况下，如导致根据案件事实作出裁决的程序未在一合理期限内启动，则应被告请求，根据第一款和第二款采取的临时措施应予撤销或终止生效，该合理期限在一成员法律允许的情况下由责令采取该措施的司法机关确定，如未作出此种确定，则不超过二十个工作日或三十一天，以时间长者为准。

七、如临时措施被撤销或由于申请人的任何作为或不作为而失效，或如果随后认为不存在知识产权侵权或侵权威胁，则应被告请求，司法机关有权责

infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.

8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

***SECTION 4:
SPECIAL
REQUIREMENTS
RELATED TO
BORDER MEASURES***

**Article 51:
Suspension of Release
by Customs
Authorities**

Members shall, in conformity with the provisions set out below, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of counterfeit trademark or pirated copyright goods may take place, to lodge an application in writing with competent authorities, administrative or judicial, for

令申请人就这些措施造成的任何损害向被告提供适当补偿。

八、在作为行政程序的结果可责令采取任何临时措施的限度内，此类程序应符合与本节所列原则实质相当的原则。

**第四节
与边境措施相关的特
殊要求**

**第五十一条
海关中止放行**

各成员应在符合以下规定的情况下，采取程序使在有正当理由怀疑假冒商标或盗版货物的进口有可能发生的权利持有人，能够向行政或司法主管机关提出书面申请，要求海关中止放行此类货物进入自由流通。各成员可针对涉及其他知识产权侵权行为的货物提出此种申请，只要符合本节的要求。各成

the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

Article 52: Application

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

员还可制定关于海关中止放行自其领土出口的侵权货物的相应程序。

第五十二条 申请

任何启动第五十一条下程序的权利持有人需要提供充分的证据，以使主管机关相信，根据进口国法律，可初步推定权利持有人的知识产权受到侵犯，并提供货物的足够详细的说明以便海关易于辨认。主管机关应在一合理期限内告知申请人是否已受理其申请，如主管机关已确定海关采取行动的时限，则应将该时限通知申请人。

Article 53:
Security or Equivalent
Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being

第五十三条
保证金或同等的担保

一、主管机关有权要求申请人提供足以保护被告和主管机关并防止滥用的保证金或同等的担保。此类保证金或同等的担保不得无理阻止对这些程序的援用。

二、如按照根据本节提出的申请，海关根据非司法机关或其他独立机关的裁决对涉及工业设计、专利、集成电路布图设计或未披露信息的货物中止放行进入自由流通，而第五十五条规定的期限在获得适当授权的机关未给予临时救济的情况下已期满，只要符合所有其他进口条件，则此类货物的所有人、进口商或收货人有权在对任何侵权交纳一笔足以保护权利持有人的保证金后有权要求予以放行。该保证金的支付不得损害对权利持有人的任何其他可获得的补救，如权利持有人未能在合理期限内行使诉讼权，则该保证金应予解除。

understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

Article 54: Notice of Suspension

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

Article 55: Duration of Suspension

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a

第五十四条 中止放行的通知

根据第五十一条作出的对货物的中止放行应迅速通知进口商和申请人。

第五十五条 中止放行的时限

如在向申请人送达关于中止放行的通知后不超过十个工作日的期限内，海关未被告知一非被告的当事方已就关于案件是非曲直的裁决提出诉讼，或未被告知获得适当授权的机关已采取临时措施延长货物中止放行的期限，则此类货物应予放行，只要符合所有其他进口或出口条件：在适当的情况下，此时限可再延长十个工作日。如已启动就案件是非曲直作出裁决的诉讼，则应被告请求，应进行审查，包括进行听证，以期在一合理期限内决定这些措施是否应予修正、撤销或确认。尽管有上述规定，但是如依照临时司法措施中止或继续中止货物的放行，则应适用第五十条第六款的规定。

review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed.

Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

**Article 56:
Indemnification of the
Importer and of the
Owner of the Goods**

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

**Article 57:
Right of Inspection
and Information**

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by

**第五十六条
对进口商和货物所有
权人的赔偿**

有关主管机关有权责令申请人向进口商、收货人和货物所有权人对因货物被错误扣押或因扣押按照第五十五条放行的货物而造成的损失支付适当的补偿。

**第五十七条
检验和获得信息的权
利**

在不损害保护机密信息的情况下，各成员应授权主管机关给予权利持有人充分的机会要求海关对扣押的货物进行检查，以证实权利持有人的权利请求。主管机关还有权给予进口商同等的

the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

Article 58: Ex Officio Action

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

- (a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;
- (b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, mutatis

机会对此类货物进行检查。如对案件的是非曲直作出肯定确定，则各成员可授权主管机关将发货人、进口商和收货人的姓名和地址及所涉货物的数量告知权利持有人。

第五十八条 依职权的行动

如各成员要求主管机关自行采取行动，并对其已取得初步证据证明一知识产权正在被侵犯的货物中止放行，则：

- （一）主管机关可随时向权利持有人寻求可帮助其行使这些权力的任何信息；
- （二）进口商和权利持有人应被迅速告知中止放行的行动。如进口商向主管机关就中止放行提出上诉，则中止放行应遵守在细节上作必要修改的第五十五条所列条件；

mutandis, set out at Article 55;

(c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 59: Remedies

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority, competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article 60: De Minimis Imports

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

（三）只有在采取或拟采取的行动是出于善意的情况下，各成员方可免除公共机构和官员采取适当救济措施的责任。

第五十九条 救济

在不损害权利持有人可采取的其他诉讼权并在遵守被告寻求司法机关进行审查权利的前提下，主管机关有权依照第四十六条所列原则责令销毁或处理侵权货物。对于假冒商标货物，主管机关不得允许侵权货物在未作改变的状态下再出口或对其适用不同的海关程序，但例外情况下除外。

第六十条 微量进口

各成员可将旅客个人行李中夹带的或在小件托运中运送的非商业性少量货物排除在述规定的适用范围之外。

***SECTION 5:
CRIMINAL
PROCEDURES***

Article 61

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

***PART IV:
ACQUISITION AND
MAINTENANCE OF***

**第五节
刑事程序**

第六十一条

各成员应规定至少将适用于具有商业规模的蓄意假冒商标或盗版案件的刑事程序和处罚。可使用的救济应包括足以起到威慑作用的监禁和 / 或罚金，并应与适用于同等严重性的犯罪所受到的处罚水平一致。在适当的情况下，可使用的救济还应包括扣押、没收和销毁侵权货物和主要用于侵权活动的任何材料和工具。各成员可规定适用于其他知识产权侵权案件的刑事程序和处罚，特别是蓄意并具有商业规模的侵权案件。

**第四部分
知识产权的取得
和维持及当事方**

***INTELLECTUAL
PROPERTY RIGHTS
AND RELATED
INTER-PARTES
PROCEDURES***

之间的相关程序

Article 62

第六十二条

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

一、各成员可要求作为取得或维持第二部分第二节至第六节下规定的知识产权的一项条件，应符合合理的程序和手续。此类程序和手续应与本协定的规定相一致。

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

二、如知识产权的取得取决于该权利的给予或注册，则各成员应保证，给予或注册的程序在遵守取得该权利的实质性条件的前提下，允许在一合理期限内给予或注册该权利，以避免无根据地缩短保护期限。

3. Article 4 of the Paris Convention (1967) shall apply mutatis mutandis to service marks.

三、《巴黎公约》（1967）第四条在细节上作必要修改后应适用于服务标记。

4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and *inter partes* procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.

5. Final administrative decisions in any of the procedures referred to under paragraph 4 shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

四、有关取得或维持知识产权的程序，及在一成员法律对此类程序作出规定的情况下，行政撤销和诸如异议、撤销和注销等当事方之间的程序，应适用于第四十一条第二款和第三款所列一般原则。

五、第四款下所指的任何程序中的行政终局裁决均应由司法或准司法机关进行审议。但是，在异议或行政撤销不成立的情况下，无义务提供机会对裁决进行此种审查，只要此类程序的根据可成为无效程序的理由。

PART V:
DISPUTE
PREVENTION AND
SETTLEMENT

Article 63:
Transparency

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a

第五部分
争端的防止和解
决

第六十三条
透明度

一、一成员有效实施的、有关本协定主题（知识产权的效力、范围、取得、实施和防止滥用）的法律和法规及普遍

Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.

2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful. The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6ter of the

适用的司法终局裁决和行政裁定应以本国语文公布，或如果此种公布不可行，则应使之可公开获得，以使政府和权利持有人知晓。一成员政府或政府机构与另一成员政府或政府机构之间实施的有关本协定主题的协定也应予以公布。

二、各成员应将第一款所指的法律和法规通知 TRIPS 理事会，以便在理事会审议本协定运用情况时提供帮助。理事会应努力尝试将各成员履行此义务的负担减少到最小程度，且如果与 WIPO 就建立法律和法规的共同登记处的磋商获得成功，则可决定豁免直接向理事会通知此类法律和法规的义务。理事会还应考虑在这方面就源自《巴黎公约》（1967）第六条之三的规定、在本协定项下产生的通知义务需要采取的任何行动。

Paris Convention (1967).

3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.

4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 64: Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.

三、每一成员应准备就另一成员的书面请求提供第一款所指类型的信息。一成员如有理由认为属知识产权领域的一特定司法裁决、行政裁定或双边协定影响其在本协定项下的权利，也可书面请求为其提供或向其告知此类具体司法裁决、行政裁定或双边协定的足够细节。

四、第一款、第二款和第三款中的任何规定均不得要求各成员披露会妨碍执法或违背公共利益或损害特定公私企业合法商业利益的机密信息。

第六十四条 争端解决

一、由《争端解决谅解》详述和实施的《1994 年关税与贸易总协定》第二十二和第二十三的规定适用于本协定项下产生的磋商和争端解决，除非本协定中另有具体规定。

2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

PART VI:
TRANSITIONAL
ARRANGEMENTS

Article 65:
Transitional
Arrangements

1. Subject to the provisions of paragraphs

二、自《WTO 协定》生效之日起五年内，《1994 年关税与贸易总协定》第二十三条第一款（二）项和（三）项不得适用于本协定项下的争端解决。

三、在第二款所指的时限内，TRIPS 理事会应审查根据本协定提出的、属《1994 年关税与贸易总协定》第二十三条第一款（二）项和（三）项规定类型的起诉的范围和模式，并将其建议提交部长级会议供批准。部长级会议关于批准此类建议或延长第二款中时限的任何决定只能经协商一致作出，且经批准的建议应对所有成员生效，无需进一步的正式接受程序。

第六部分
过渡性安排

第六十五条
过渡性安排

一、在遵守第二款、第三款和第四

2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.

2. A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.

3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.

4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.

款的前提下，任何成员在《WTO 协定》生效之日起一年的一般期限期满前无义务适用本协定的规定。

二、一发展中国家成员有权将按第一款规定的实施日期再推迟四年实施本协定的规定，但第三条、第四条和第五条除外。

三、正处在从中央计划经济向市场和自由企业经济转型过程中的任何其他成员，及正在进行知识产权制度结构改革并在制订和实施知识产权法律和法规方面面临特殊困难的成员，也可受益于第二款设想的延迟期。

四、如一发展中国家成员按照本协定有义务将产品专利保护扩大至在按第二款规定的、对其适用本协定的一般日期其领土内尚未接受保护的技术领域，则该成员可再推迟五年对此类技术领域适用本协定第二部分第五节关于产品专利的规定。

5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

**Article 66:
Least-Developed
Country Members**

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.

2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to

五、利用第一款、第二款、第三款或第四款下的过渡期的一成员应保证，在过渡期内其法律、法规和做法的任何变更不会导致降低其与本协定规定一致性的程度。

**第六十六条
最不发达国家成员**

一、鉴于最不发达国家成员的特殊需要和要求，其经济、财政和管理的局限性，以及其为创立可行的技术基础所需的灵活性，不得要求此类成员在按第六十五条第一款定义的适用日期起十年内适用本协定的规定，但第三条、第四条和第五条除外。TRIPS 理事会应最不发达国家成员提出的有根据的请求，应延长该期限。

二、发达国家成员应鼓励其领土内的企业和组织，促进和鼓励向最不发达国家成员转让技术，以使这些成员创立一个良好和可行的技术基础。

create a sound and viable technological base.

Article 67:
Technical Cooperation

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

PART VII:
INSTITUTIONAL
ARRANGEMENTS;
FINAL PROVISIONS

Article 68:
Council for

第六十七条
技术合作

为促进本协定的实施，发达国家成员应发展中国家成员和最不发达国家成员的请求，并按双方同意的条款和条件，应提供有利于发展中国家成员和最不发达国家成员的技术和资金合作。此种合作应包括帮助制定有关知识产权保护和实施以及防止其被滥用的法律和法规，还应包括支持设立或加强与这些事项有关的国内机关和机构，包括人员培训。

第七部分
机构安排；最后条
款

第六十八条
与贸易有关的知识产

**Trade-Related Aspects
of Intellectual
Property Rights**

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

**Article 69:
International
Cooperation**

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify

权理事会

TRIPS 理事会应监督本协定的运用，特别是各成员遵守本协定项下义务的情况，并为各成员提供机会就与贸易有关的知识产权事项进行磋商。理事会应履行各成员所指定的其他职责，特别是在争端解决程序方面提供各成员要求的任何帮助。在履行其职能时，TRIPS 理事会可向其认为适当的任何来源进行咨询和寻求信息。经与 WIPO 磋商，理事会应寻求在其第一次会议后一年内达成与该组织各机构进行合作的适当安排。

**第六十九条
国际合作**

各成员同意相互进行合作，以消除侵犯知识产权的国际货物贸易。为此，它们应在其政府内设立联络点并就此作出通知，并准备就侵权货物的贸易交流信息。它们特别应就假冒商标货物和

contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

**Article 70:
Protection of Existing
Subject Matter**

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.
2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of

盗版货物的贸易而促进海关之间的信息交流和合作。

**第七十条
对现有客体的保护**

- 一、对于在本协定对所涉成员适用之日前发生的行为，本协定不产生义务。
- 二、除非本协定另有规定，否则本协定对于在本协定对所涉成员适用之日已存在的、在上述日期在该成员中受到保护、或符合或随后符合根据本协定条款规定的保护标准的所有客体产生义务。就本款及第三款和第四款而言，关于现有作品的版权义务应仅根据《伯尔尼公约》（1971）第十八条确定，关于录音制品制作者和表演者对现有录音制品享有权利的义务应仅按照根据本协定第十四条第六款适用的《伯尔尼公约》（1971）第十八条确定。

phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.

3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.

4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.

5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that

三、对于在本协定对所涉成员适用之日已进入公共领域的客体，该成员无义务恢复保护。

四、对于有关包含受保护客体的特定对象的任何行为，如在与本协定相符的立法条款下构成侵权，且如果该行为在该成员接受本协定之日前已经开始，或已经为此进行大量投资，则任何成员可就在该成员适用本协定之日起继续实施此类行为规定权利持有人可获补偿的限度。但是，在此类情况下，该成员至少应规定支付公平的补偿。

五、一成员无义务对于在其适用本协定之日前购买的原版或复制品适用第十一条和第十四条第四款的规定。

Member.

6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.

7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.

8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

(a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such

六、如在本协定生效日期公布之前政府已授权使用，对于无权利持有人授权的此类使用，则各成员不需适用第三十一条的规定或第二十七条第一款关于专利权享有不应因技术领域的不同而有所歧视的要求。

七、在知识产权的保护是以注册为条件的情况下，应允许对在本协定对所涉成员适用之日前未决的保护申请进行修改，以便申请人要求本协定项下规定的任何加强的保护。此类修改不应包括新的事项。

八、如截至《WTO 协定》生效之日一成员仍未按照其在第二十七条下的义务对药品和农药获得专利保护，则该成员应：

（一）尽管有第六部分的规定，自《WTO 协定》生效之日起提供据以提出此类发明的专利申请的方法；

inventions can be filed;

(b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and

(c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).

9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member

(二) 自本协定适用之日起, 对这些申请适用本协定规定的授予专利的标准, 如同这些标准在申请之日已在该成员中适用, 或如果存在并请求优先权, 则适用优先的申请日期; 以及

(三) 自给予专利时起和在依照本协定第三十三条自提出申请之日起计算的剩余专利期限内, 依照本协定对这些申请中符合(二)项所指的保护标准的申请提供专利保护。

九、如依照第八款(一)项一产品在一成员中属专利申请的客体, 则尽管有第六部分的规定, 仍应给予专有销售权, 期限或为在该成员中获得销售许可后五年, 或为至一产品专利在该成员中被授予或被拒绝时为止, 以时间短者为准, 只要在《WTO 协定》生效之后, 已在另一成员中提出专利申请、一产品已获得专利以及已在该另一成员中获得销售许可。

and marketing approval obtained in such other Member.

**Article 71:
Review and
Amendment**

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.

2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

Article 72:

**第七十一条
审议和修正**

一、TRIPS 理事会应在第六十五条第二款所指的过渡期期满后，审议本协定的实施情况。理事会应在考虑实施过程中所获经验的同时，在该日期后二年内、并在此后以同样间隔进行审议。理事会还可按照有理由修改或修正本协定的任何新的发展情况进行审议。

二、仅适于提高在其他多边协定中达成和实施的、并由 WTO 所有成员在这些协定项下接受的知识产权保护水平的修正，在 TRIPS 理事会经协商一致所提建议的基础上，可依照《WTO 协定》第十条第六款提交部长级会议采取行动。

第七十二条

Reservations

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

Article 73: Security Exceptions

Nothing in this Agreement shall be construed:

(a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;

(i) relating to fissionable materials or the materials from which they are derived;

(ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

(iii) taken in time of war or other emergency in international relations; or

保留

未经其他成员同意，不得对本协定的任何规定提出保留。

第七十三条 安全例外

本协定的任何规定不得解释为：

（一）要求一成员提供其认为如披露则会违背其根本安全利益的任何信息；或

（二）阻止一成员采取其认为对保护其根本安全利益所必需的任何行动；

（1）与裂变和聚变物质或衍生这些物质的物质有关的行动；

（2）与武器、弹药和作战物资的贸易有关的行动，及与此类贸易所运输的直接或间接供应军事机关的其他货物或物资有关的行动；

（3）在战时或国际关系中的其他紧急情况下采取的行动；或

(c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

（三）阻止一成员为履行《联合国宪章》项下的维持国际和平与安全的义务而采取的任何行动。