

# Chapter 12: Intellectual Property – Text of the 2023 Canada - Ukraine Free Trade Agreement

---

The 2017 CUFTA will remain in force until entry into force of the 2023 modernized agreement. Until such time, please refer to the [2017 CUFTA text](#) for information on the existing trade agreement between Canada and Ukraine.

## Article 12.1: Objectives

The objectives of this Chapter are to:

- (a) maintain a balance between the rights of intellectual property right holders and the legitimate interests of intellectual property users with regard to intellectual property;
- (b) facilitate international trade and economic, social and cultural development through the dissemination of ideas, technology and creative works; and
- (c) facilitate the enforcement of intellectual property rights with a view, among other things, to eliminating trade in goods infringing intellectual property rights.

## Article 12.2: Affirmation of International Agreements

1. The Parties affirm their rights and obligations under the *WTO Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement) and other intellectual property agreements to which both Parties are party.

2. The Parties confirm that the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all. In this regard,

the Parties affirm the right to fully avail themselves of the flexibilities established in the TRIPS Agreement, including those related to the protection of public health and in particular the promotion of access to medicines for all. The Parties take note of the WTO's General Council Decision on the *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health* of 30 August 2003 and the *Protocol amending the TRIPS Agreement* adopted 6 December 2005.

## **Article 12.3: Protection of Geographical Indications**

1. This Article concerns the protection in each of the Parties of geographical indications of wines and spirits originating in the territory of the other Party.
2. Part A of Annex 12-A contains geographical indications originating and protected in Canada. The terms listed in Part A of Annex 12-A are eligible for registration as protected geographical indications in Ukraine.
3. Part B of Annex 12-A contains geographical indications originating and protected in Ukraine. The terms listed in Part B of Annex 12-A are eligible for registration as protected geographical indications in Canada.
4. In order to secure protection, the authorities responsible for particular geographical indications in each Party shall apply for registration for protection in the territory of the other Party, in accordance with the procedures and requirements prescribed by the law of the other Party. The protection by each Party of these geographical indications shall be in accordance with Articles 22 through 24 of the TRIPS Agreement and subject to the exceptions provided in Article 24 of the TRIPS Agreement.
5. Each Party may adopt or maintain procedures that provide for the cancellation of the protection afforded to a geographical indication within its territory.
6. If a geographical indication of a Party listed in Annex 12-A ceases to be protected in the territory of its place of origin or

falls into disuse in that place, that Party shall notify the other Party and request cancellation of the registration.

7. In accordance with the procedure established in paragraph 9, the Joint Commission referred to under Article 27.1 (Joint Commission) may amend Annex 12-A by removing a geographical indication of a wine or spirit which has ceased to be protected, or has fallen into disuse in Canada from Part A, or a geographical indication of a wine and spirit which has ceased to be protected, or has fallen into disuse in Ukraine from Part B.

8. In accordance with the procedure established in paragraph 9, the Joint Commission may amend Annex 12-A by adding a geographical indication of a wine or spirit originating and protected in Canada to Part A, and a geographical indication of a wine or a spirit originating and protected in Ukraine to Part B.

9. The Joint Commission, when exercising its powers of paragraph 7 or 8, shall act by consensus and on a recommendation by the Committee on Intellectual Property referred to under Article 12.12.

## **Article 12.4: Enforcement of Intellectual Property Rights**

1. Each Party shall ensure that enforcement procedures are available under its legislation so as to permit effective action against any act of infringement of intellectual property rights<sup>Footnote1</sup>, 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.

## **Article 12.5: Criminal Procedures**

Each Party 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 either imprisonment or monetary fines or both, sufficient to provide a deterrent, consistent 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 any materials or implements the predominant use of which has been in the commission of the offence. Each Party may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular when they are committed wilfully and on a commercial scale.

## **Article 12.6: Camcording**

1. Each Party shall provide for criminal procedures and penalties to be applied in accordance with that Party's laws and regulations for the unauthorised copying of a cinematographic work, or any part thereof, from a performance in a movie theatre.

2. For an offence specified in paragraph 1, each Party shall provide penalties that include imprisonment as well as monetary fines<sup>Footnote2</sup> sufficiently high to provide a deterrent against future acts of infringement, consistent with the level of penalties applied for crimes of a corresponding gravity.

## **Article 12.7: Special Measures Against Copyright Infringers on the Internet or other Digital Networks**

1. Each Party's civil and criminal enforcement procedures shall apply to infringement of copyright or related rights on the Internet or other digital networks, which may include the unlawful use of means of widespread distribution for infringing purposes.

2. A Party may provide its competent authorities, in accordance with its law, with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, if that right holder has filed a legally sufficient claim for copyright or related rights infringement, and if that information is being sought for the purpose of protecting or enforcing those rights.

3. Each Party shall endeavour to promote cooperative efforts within the business community to effectively address copyright or related rights infringement while preserving legitimate competition and, consistent with that Party's domestic law, preserving fundamental principles such as freedom of expression, fair process, and privacy.

4. Each Party shall adopt or maintain measures to curtail copyright and related right infringement on the Internet or other digital network.

5. Each Party shall implement the procedures referred to in this Article in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy.<sup>[Footnote3](#)</sup>

## **Article 12.8: Special Requirements Related to Border Measures**

1. For the purposes of this Article, goods infringing an intellectual property right mean counterfeit trademark goods or pirated copyright goods as defined in footnote 14 of Article 51 of the TRIPS Agreement.<sup>[Footnote4](#)</sup>

2. Each Party shall permit its competent authorities to request that a right holder supply relevant information to assist in taking the border measures referred to in this Article. A Party may also allow a right holder to supply relevant information to its competent authorities.

3. Each Party shall adopt or maintain procedures with respect to import and export shipments<sup>Footnote5</sup> under which its competent authorities may act upon their own initiative to suspend the release of, or to detain, goods suspected of infringing an intellectual property right.

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

5. Each Party may provide that, if the applicant has abused the procedures described in this Article or if there is due cause, that Party's competent authorities have the authority to deny, suspend, or void the application.

6. Each Party shall adopt or maintain procedures by which its competent authorities may determine, within a reasonable period of time after the initiation of the procedures described in paragraph 3 or 4, if the goods suspected of infringing an intellectual property right infringe an intellectual property right.

7. Each Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

## **Article 12.9: Cooperation on Enforcement of Intellectual Property Rights**

1. The Parties recognize the challenges related to the enforcement of intellectual property rights, particularly in trans-border contexts. The Parties shall endeavour to cooperate, as appropriate, to stem the economic and social costs of trademark counterfeiting and copyright piracy in accordance with each Party's law.

2. Each Party shall endeavour to encourage the development of expertise for the enforcement of intellectual property rights. The Parties shall also endeavour to exchange information and share best practices in areas of mutual interest relating to the

enforcement of intellectual property rights in accordance with each Party's domestic law.

3. The Parties' respective competent authorities may cooperate, as appropriate, to better identify and target the inspection of shipments suspected of containing certain counterfeit trademark or pirated copyright, and, in doing so, endeavour to:

- (a) share information on innovative approaches that may be developed to provide greater analytical targeting of shipments that could contain counterfeit or pirated goods; and
- (b) share information and intelligence regarding shipments of suspected counterfeit trademark or pirated copyright goods in appropriate cases.

## **Article 12.10: Other Areas of Cooperation**

Recognizing the growing importance of intellectual property rights in promoting innovation, social, economic, and cultural development, as well as economic competitiveness in a knowledge based economy, the Parties endeavour to cooperate, subject to availability of resources, in the field of intellectual property in areas of mutual interest.

## **Article 12.11: Designation of Contact Points**

Each Party shall designate a Contact Point to facilitate communications between the Parties on intellectual property, and shall notify the other Party of the Contact Point and any changes to the Contact Point.

## **Article 12.12: Committee on Intellectual Property**

1. The Parties continue the Committee on Intellectual Property (Committee) established under the 2017 Agreement composed

of representatives of each Party with expertise in intellectual property.

2. The Committee shall be co-chaired by a representative of each Party.

3. The Committee shall:

- (a) discuss topics relevant to the protection and enforcement of intellectual property rights covered by this Chapter, and any other relevant issue as mutually decided by the Parties;
- (b) provide a forum for consultations pursuant to Article 12.15;
- (c) oversee the Parties' cooperation under this Chapter; and
- (d) make any recommendation to the Joint Commission referred to under Article 27.1 (Joint Commission) to amend Annex 12-A pursuant to Article 12.3.9.

4. The Parties shall endeavour to increase opportunities for cooperation in the field of intellectual property. This cooperation may include:

- (a) promoting the development of contacts among the Parties' respective competent authorities that have an interest in the field of intellectual property;
- (b) exchanging information on:
  - (i) each Party's legislation, procedures, policies, activities, and experiences in the field of intellectual property;
  - (ii) the implementation of intellectual property systems aimed at promoting the efficient registration of intellectual property rights; and
  - (iii) appropriate initiatives to promote public awareness of intellectual property rights.

5. With the exception of consultations pursuant to Article 12.15, the Committee shall meet as mutually decided by the Parties.



Committee meetings may be held in person, or by electronic video-conference, telephone, or by other means.

## **Article 12.13: Transparency**

With the aim of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that its laws, regulations, and procedures concerning intellectual property rights are published or otherwise made available in a manner that enables the other Party or any interested person to become acquainted with them.

## **Article 12.14: Disclosure of Information**

This Chapter does not require a Party to disclose information that would impede law enforcement, be contrary to its law, or that is exempt from disclosure under its law.

## **Article 12.15: Consultations**

1. Either Party may request consultations with the other Party regarding any actual or proposed measure, or any other matter which that Party considers might negatively affect its intellectual property interests.

2. Upon a request pursuant to paragraph 1, the Parties shall consult each other within the framework of the Committee referred to under Article 12.12 to consider ways of reaching a mutually satisfactory solution. In doing so, each Party shall:

- (a) endeavour to provide sufficient information to enable a full examination of the matter; and
- (b) maintain the confidentiality of the information provided by the other Party in the course of consultations.

3. Consultations within the framework of the Committee shall be conducted within 60 days following the request for consultations.

4. If the Parties are unable to reach a mutually satisfactory solution pursuant to the consultations under paragraph 2, either Party may refer the matter to the Joint Commission referred to under Article 27.1 (Joint Commission).

## **Article 12.16: Non-Application of Dispute Settlement**

A Party shall not have recourse to dispute settlement under Chapter 28 (Dispute Settlement) for any matter arising under this Chapter.

## **Annex 12-A: List of Wines and Spirits Eligible for Protection as Geographical Indications in the Territory of the Parties**

### **Part A - Geographical Indications of Canada**

(a) For wines:

- BC Gulf Islands
- Beamsville Bench
- British Columbia
- Creek Shores
- Fraser Valley
- Four Mile Creek
- Lake Erie North Shore
- Lincoln Lakeshore
- Niagara Escarpment
- Niagara Lakeshore
- Niagara Peninsula
- Niagara River

- Niagara-on-the-Lake
- Okanagan Valley
- Ontario
- Ontario Icewine
- Prince Edward County
- Similkameen Valley
- Short Hills Bench
- St. David's Bench
- Twenty Mile Bench
- Vancouver Island
- Vinemount Ridge

(b) For Spirits:

- Canadian Rye Whisky
- Canadian Whisky

## **Part B - Geographical Indications of Ukraine**

(a) For wines:

- Tavriya
- Sonyachna dolyna
- Novyisvit
- Meganom
- Magarach
- Zolota Balka
- Balaklava

(b) For spirits:

- Tavriya

# **Footnotes**

## **Footnote 1**

For the purposes of this Chapter, intellectual property rights refer to all categories of intellectual property rights that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement.

[Return to footnote1referrer](#)

#### **Footnote 2**

For greater certainty, there is no obligation for a Party to provide for the possibility of imprisonment and monetary fines to be imposed in parallel.

[Return to footnote2referrer](#)

#### **Footnote 3**

For instance, the procedures in this Article are without prejudice to a Party's law, adopting or maintaining a regime providing for limitations on the liability of, or on the remedies available against, online service providers while preserving the legitimate interests of right holders.

[Return to footnote3referrer](#)

#### **Footnote 4**

Footnote 14 of the TRIPS Agreement contains the following definitions:

1. "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;
2. "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

[Return to footnote4referrer](#)

**Footnote 5**

For greater certainty, reference to "import and export shipments" referenced in this Article need not include shipments moving "in-transit".

[Return to footnote5referrer](#)