2. Each Party shall treat wilful importation or exportation of goods covered by paragraph 1 as unlawful activities subject to criminal penalties. A Party may comply with its obligation relating to importation and exportation of goods covered by paragraph 1 by providing for distribution, sale or offer for sale of such goods on a commercial scale as unlawful activities subject to criminal penalties.

3. Penalties applicable to the cases referred to in paragraphs 1 and 2 shall include imprisonment and/or monetary fines sufficient to provide a deterrent, that are consistent with the level of penalties applied for crimes of a corresponding gravity.

4. Each Party shall ensure, at least in cases of trade mark counterfeiting or infringement of rights relating to new varieties of plants, committed wilfully and on a commercial scale, that its competent authorities may institute prosecution *ex officio*, without the need for a formal complaint by the right holder whose right has been infringed.

5. Each Party shall ensure that in cases of trade mark counterfeiting or copyright or related rights piracy committed wilfully and on a commercial scale, its judicial authorities may order the confiscation of crime proceeds and properties derived from such crime proceeds, in accordance with its laws and regulations.

Note: For the purposes of this paragraph, for Australia, its judicial authorities shall only be required to order the confiscation of crime proceeds and properties derived from such crime proceeds, in respect of offences defined as "indictable offences" under its law.

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

(a) to which a mark has been applied without authorisation which is identical to, or cannot be distinguished from, a trade mark registered in its Area; and

(b) which are intended to be used in the course of trade on goods or in relation to services which are identical to goods or services for which such trade mark is registered.

Note 1: A Party may comply with its obligation under this paragraph relating to importation of labels or packaging through its measures concerning distribution.

Note 2: A Party may comply with its obligations under this paragraph by providing for criminal procedures and penalties to be applied to attempts to commit a trade mark offence.

Article 16.21
Sub-Committee on Intellectual Property

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Intellectual Property (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:

(a) reviewing and monitoring the implementation and operation of this Chapter;

(b) discussing any issues related to intellectual property, including geographical indications, covered by this Chapter;

(c) overseeing ongoing cooperation between the Parties in relation to the protection of intellectual property, enforcement of intellectual property rights and administration of their intellectual property systems;

(d) reporting the findings and the outcomes of discussions of the Sub-Committee to the Joint Committee; and

(e) carrying out other functions as may be delegated by the Joint Committee.