SUBSECTION 3
BORDER MEASURES

Article 11.65: Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by Right Holder's Application

1. Each Party shall adopt or maintain procedures[56] with respect to import shipments under which a right holder, who has valid grounds for suspecting that the importation of pirated copyright goods or counterfeit trademark goods may take place, may lodge an application with the Party's competent authorities to suspend the release of the suspected pirated copyright goods or counterfeit trademark goods[57] in accordance with Article 51 of the TRIPS Agreement.

2. For the purposes of this Subsection, "competent authorities" may include the appropriate judicial, administrative, or law enforcement authorities under a Party's laws and regulations.

Article 11.66: Applications for Suspension or Detention

Each Party shall endeavour to provide that an accepted application[58] for suspension or detention remains in force for an appropriate period with a view to minimising the administrative burden on right holders.

Article 11.67: Security or Equivalent Assurance

Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures referred to in Article 11.65 (Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by Right Holder's Application) to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that the security or equivalent assurance shall not unreasonably deter recourse to these procedures.

Article 11.68: Information Provided by Competent Authorities to Right Holders

Without prejudice to a Party's laws and regulations pertaining to the confidentiality of information, where its competent authorities have detained or suspended the release of goods that are suspected of being pirated copyright goods or counterfeit trademark goods, that Party may provide that its competent authorities have the authority to inform the right holder of the name and address of the consignor, importer, or consignee; a description of the goods; the quantity of the goods; and, if known, the country of origin of the goods.

Article 11.69: Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by *Ex Officio* Action

1. Each Party shall adopt or maintain procedures with respect to import shipments under which its competent authorities may act upon their own initiative to suspend the release of suspected[59] pirated copyright goods or counterfeit trademark goods. Each Party shall provide that where its competent authorities act upon their own initiative, the importer and the right holder shall be promptly notified of the suspension.

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[56] The Parties understand that there shall be no obligation to apply such procedures to imports of goods put on the market in another Party or non-Party by or with the consent of the right holder, or to goods in transit.

[57] For the purposes of Subsection 1 (General Obligations), Subsection 2 (Civil Remedies), Subsection 3 (Border Measures), and Subsection 4 (Criminal Remedies):

(a) "counterfeit trademark goods" means any goods, including packaging, bearing without authorisation a trademark that is identical to a trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the laws and regulations of the Party providing procedures under those Subsections; and

(b) "pirated copyright goods" means any goods that are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the Party providing procedures under those Subsections.

[58] For the purposes of this Subsection, a Party may treat "application" as meaning "recordation".

[59] A Party may comply with this obligation on the basis that its competent authorities have reasonable cause to believe that the goods are pirated copyright goods or counterfeit trademark goods.