2. A Party may adopt or maintain procedures with respect to export shipments under which its competent authorities may act upon their own initiative to suspend the release of suspected pirated copyright goods or counterfeit trademark goods. That Party shall provide that where its competent authorities act upon their own initiative, the exporter and the right holder shall be promptly notified of the suspension.

3. Each Party shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

Article 11.70: Information Provided by Right Holders to Competent Authorities in Case of *Ex Officio* Action

Each Party shall provide that its competent authorities shall have the authority, where they act on their own initiative, to request a right holder to supply relevant information to assist the competent authorities in taking the border measures referred to in this Subsection. A Party may also allow a right holder to supply relevant information to its competent authorities.

Article 11.71: Infringement Determination within Reasonable Period by Competent Authorities[60]

Each Party shall adopt or maintain procedures under which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in Article 11.65 (Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by Right Holder's Application) and Article 11.69 (Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by *Ex Officio* Action), whether suspected pirated copyright goods or counterfeit trademark goods are infringing intellectual property rights.

[60] A Party may comply with the obligation under this Article with respect to a determination that suspected goods under Article 11.69 (Suspension of the Release of Suspected Pirated Copyright Goods or Counterfeit Trademark Goods by *Ex Officio* Action) infringe an intellectual property right through a determination that the suspected goods bear a false trade description.

Article 11.72: Destruction Order by Competent Authorities

Each Party shall provide that, 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, its competent authorities shall have the authority to order the destruction and the authority to order the disposal of goods that are determined to be pirated copyright goods or counterfeit trademark goods. In cases where such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder. 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 the release of the goods into the channels of commerce.

Article 11.73: Fees

Where an application fee, merchandise storage fee, or destruction fee is established or assessed in connection with border measures to enforce an intellectual property right, each Party shall provide that the fee shall not be set at an amount that unreasonably deters recourse to these measures.

SUBSECTION 4
CRIMINAL REMEDIES

Article 11.74: Criminal Procedures and Penalties

1. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful copyright or related rights piracy or trademark counterfeiting on a commercial scale.[61]

2. Each Party shall treat wilful importation of pirated copyright goods or counterfeit trademark goods on a commercial scale as unlawful activities subject to the criminal procedures and penalties referred to in paragraph 1. A Party may comply with its obligation relating to importation under this Article by providing that distribution or

[61] For the purposes of the application of this Article, paragraph 1 shall not prevent a Party from determining the scope of application of criminal procedures and penalties in case of wilful related rights piracy on a commercial scale, in accordance with its laws and regulations.