

# World Trade Organization Agreement Implementation Act Schedules II to IV

## *Copyright Act*

R.S.C C-42

1993. c. 44. . 53(2)

56. (1) The definitions “infringing” and “performance” in **section 2** of the *Copyright Act* are replaced by the following:

*“infringing”*

“infringing” means

(a) when applied to a copy of a work in which copyright subsists, any copy, including any colourable imitation, made or imported in contravention of this Act or

(b) when applied to a fixation of a performer’s performance in respect of which a performer’s right subsists, or to a reproduction of such a fixation, any fixation or reproduction made or imported in contravention of this Act;

*“performance”*

“performance” means any acoustic representation of a work or any visual representation of a dramatic work, including a representation made by means of any mechanical instrument, radio receiving set or television receiving set, but this definition does not apply in the expression “performer’s performance” or in the definition of that expression:

1993. c. 44. 53(3)

(2) The definition “pays partie à la Convention” in **section 2** of the French version of the Act is replaced by the following:

*Convention*

« pays partie à la Convention de Berne » Pays partie à la Convention pour la protection des oeuvres littéraires et artistiques, conclue à Berne le 9 septembre 1886, ou à l’une de ses versions révisées, notamment celle de l’Acte de Paris de 1971.

(3) **Section 2** of the Act is amended by adding the following in alphabetical order:

“performer’s performance” means

(a) a live performance of a pre-existing artistic work, pre-existing dramatic work or pre-existing musical work, or a live recitation of a pre-existing literary work, whether or not the work was previously fixed in any material form, and whether or not the work’s term of copyright protection under this Act has expired.

(b) a live reading of a pre-existing literary work, whether or not the work’s term of copyright protection under this Act has expired, or

(c) a live improvisation of an artistic work, dramatic work, musical work or literary work, whether or not the improvised work is based on a pre-existing work,

but the references to artistic works in [paragraphs \(a\)](#) and [\(c\)](#) shall be read as applicable only in relation to the performer’s sole right conferred by [paragraph 14.01\(1\)\(c\)](#) and the performer’s sole right to authorize acts described in [paragraph 14.01\(1\)\(c\)](#);

*treaty country*

“treaty country” means a Berne Convention country, UCC country or WTO Member;

“*UCC country*”

“UCC country” means a country that is a party to the Universal Copyright Convention, adopted on September 6, 1952 in Geneva, Switzerland, or to that Convention as revised in Paris, France on July 24, 1971;

“*WTO Member*”

“WTO Member” means a Member of the World Trade Organization as defined in [subsection 2\(1\)](#) of the *World Trade Organization Agreement Implementation Act*.

(4) [Section 2](#) of the French version of the Act is amended by adding the following in alphabetical order:

« artiste interprète » Tout artiste interprète ou exécutant.

1993. c. 44. 57(1)

57. (1) [Subsections 5\(1\)](#) and [\(1.1\)](#) of the Act are replaced by the following:

### *Conditions for of copyright*

5. (1) Subject to this Act, copyright shall subsist in Canada, for the term hereinafter mentioned, in every original literary, dramatic, musical and artistic work if any one of the following conditions is met:

(a) in the case of any work, whether published or unpublished, including a cinematograph, the author was, at the date of the making of the work,

(i) a British subject.

(ii) a citizen or subject of, or a person ordinarily resident in, a treaty country,  
or

(iii) a resident within Her Majesty's Realms and Territories;

(b) in the case of a cinematograph, whether published or unpublished, the maker, at the date of the making of the cinematograph.

(i) if a corporation, had its headquarters in a treaty country, or

(ii) if a natural person, was

(A) a British subject,

(B) a citizen or subject of, or a person ordinarily resident in, a treaty country,  
or

(C) a resident within Her Majesty's Realms and Territories; or

(c) in the case of a published work, including a cinematograph,

(i) in relation to [paragraph 4\(1\)\(a\)](#), the first publication in such a quantity as to satisfy the reasonable demands of the public, having regard to the nature of the work, occurred within Her Majesty's Realms and Territories or in a treaty country, or

(ii) in relation to [paragraph 4\(1\)\(b\) or \(c\)](#), the first publication occurred within Her Majesty's Realms and Territories or in a treaty country.

### *Protection for older works*

(1.01) For the purposes of [subsection \(1\)](#), a country that becomes a Berne Convention country or a WTO Member after the date of the making or publication of a work shall, as of becoming a Berne Convention country or WTO Member, as the case may be, be deemed to have been a Berne Convention country or WTO Member at the date of the making or publication of the work, subject to [subsection \(1.02\)](#) and [section 29](#).

### *Limitation*

(1.02) [Subsection \(1.01\)](#) does not confer copyright protection in Canada on a work whose term of copyright protection in the country referred to in that subsection had expired before that country became a Berne Convention country or WTO Member, as the case may be.

### *First publication*

(1.1) The first publication described in [subparagraph \(1\)\(c\)\(i\)](#) or [\(ii\)](#) shall be deemed to have occurred within Her Majesty's Realms and Territories or in a treaty country notwithstanding that it in fact occurred previously elsewhere, if the interval between those two publications did not exceed thirty days or such longer period as may be fixed by order in council.

*1993. c. 15. 2. c. 44. 57(1)*

(2) [Subsections 5\(2\)](#) and [\(2.1\)](#) of the Act are replaced by the following:

### *Minister may extend copyright to other countries*

(2) Where the Minister certifies by notice, published in the *Canada Gazette*, that any country that is not a treaty country grants or has undertaken to grant, either by treaty, convention, agreement or law, to citizens of Canada, the benefit of copyright on substantially the same basis as to its own citizens or copyright protection substantially equal to that conferred by this Act, the country shall, for the purpose of the rights conferred by this Act, be treated as if it were a country to which this Act extends, and the Minister may give a certificate, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, under the law of such country, differ from those in this Act.

*1993. c. 44. 57(2)*

(3) [Subsection 5\(7\)](#) of the Act is replaced by the following:

### *protection*

(7) For greater certainty, the protection to which a work is entitled by virtue of a notice published under [subsection \(2\)](#), or under that subsection as it read at any time before the coming into force of this subsection, is not affected by reason only of the country in question becoming a treaty country.

58. The Act is amended by adding the following after [section 14](#):

## ***PERFORMERS' RIGHTS***

### *Performer's rights*

14.01 (1) Where a performer's performance takes place in a country that is a WTO Member, on or after the later of the day on which this section comes into force and the day on which that country becomes a WTO Member, the performer has the sole right

(a) to fix the performer's performance, or any substantial part thereof, by means of a record, perforated roll or other contrivance by means of which sounds may be mechanically reproduced,

(b) to reproduce

(i) the fixation described in [paragraph \(a\)](#), or any substantial part thereof, and

(ii) any reproduction of that fixation, or any substantial part of such reproduction,

where that fixation was made without the performer's consent, and

(c) to communicate the performer's performance, or any substantial part thereof, to the public by telecommunication at the time of the performer's performance.

and to authorize any such acts.

(2) For the purpose of [paragraph \(1\)\(c\)](#), persons who occupy apartments, hotel rooms or dwelling units situated in the same building are part of the public and a communication intended to be received exclusively by such persons is a communication to the public.

### *Restriction*

(3) For the purpose of [paragraph \(1\)\(c\)](#), a person whose only act in respect of the communication of a performer's performance to the public consists of providing the means of telecommunication necessary for another person to so communicate the performer's performance does not communicate that performer's performance to the public.

### *Performer's rights*

(4) Where a performer's performance took place in a country before the later of the day on which this section comes into force and the day on which that country becomes a WTO Member, the performer has, commencing on the later of those two days, the sole right described in [paragraph \(1\)\(b\)](#) and the sole right to authorize any such act.

### *Terms of performer's rights*

(5) The rights conferred by this section subsist for the remainder of the calendar year in which the performer's performance takes place and a period of fifty years following the end of that calendar year.

### *Assignments of right by performer*

(6) [Subsections 13\(4\)](#) and [14\(3\)](#) apply in respect of a performer's right conferred by this Act, in the same way that they apply in respect of assignment of copyright and grants of interests in copyright by licence.

(7) No assignment of a performer's right conferred by this Act, and no grant of an interest in such a right by licence, affects the right of the performer

(a) to prevent the reproduction of

(i) any fixation of the performer's performance, or any reproduction of such a fixation, and

(ii) any substantial part of such a fixation or reproduction.

where the fixation was made without the performer's consent; and

(b) to prevent the importation into Canada, for sale or hire, of any fixation of the performer's performance, or any reproduction of such a fixation, that to the knowledge of the importer was made without the performer's consent.

*R.S., c. 10 ( Supp.), S. 17(F) : 1993. c. 44, xx. 62,63*

59. The heading before [section 16](#) and [sections 16 to 26](#) of the Act are repealed.

60. The Act is amended by adding the following after [section 28.01](#);

## **INFRINGEMENT OF PERFORMERS' RIGHTS**

### *Infringement of performer's right*

28.02 (1) A performer's right in a performer's performance shall be deemed to be infringed by any person who, without the consent of the performer's owner of the performer's right, does anything that, by virtue of [section 14.01](#), only the performer has the right to do.

### *Acts not infringement*

(2) The following acts do not constitute an infringement of Performer's right in a performer's performance:

(a) any fair dealing with the performer's performance, a fixation thereof or a reproduction of the fixation, for the purposes of private study, research, criticism, review or newspaper summary;

(b) the making of a temporary fixation of the performer's performance for the purpose of doing an act permitted by [paragraph 27\(2\)\(e\)](#);

(c) reproducing a fixation of the performer's performance for the purpose of doing an act permitted by [paragraph 27\(2\)\(h\), \(i\), \(j\) or \(k\)](#); and

(d) the retransmission of the performer's performance where, by virtue of [subsection 28.01\(2\)](#), the retransmission is not an infringement of copyright.

### *Infringement by personal action*

(3) A performer's right in a performer's performance shall be deemed to be infringed by any person who

(a) sells or lets for hire, or by way of trade exposes or offers for sale or hire,

(b) distributes, either for the purposes of trade or to such an extent as to affect prejudicially the owner of the performer's right.

(c) by way of trade exhibits in public, or

(d) imports for sale or hire into Canada,

any fixation of the performer's performance, or any reproduction of such a fixation, that to the knowledge of that person infringes the performer's right.

### *rights and protected*

28.03 (1) Notwithstanding [subsections 28.02\(1\)](#) and [\(3\)](#), where a person has, before the later of the day on which this section comes into force and the day on which a country becomes a WTO Member, incurred an expenditure or liability in connection with, or in preparation for, the doing of an Act that would have infringed a performer's right under this Act commencing on the later of those two days, had that country been a WTO member, any right or interest of that person that

(a) arises from or in connection with the doing of that act, and

(b) is subsisting and valuable on the later of those two days

is not prejudiced or diminished by reason only that that country has become a WTO member, except as provided by an order of the Board made under [subsection 70.8\(3\)](#).

(2) Notwithstanding [subsection \(1\)](#), a person's right or interest that is protected by that subsection terminates if and when the owner of the performer's right pays that person

such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with [section 70.8](#).

### *Limination*

(3) Nothing in [subsections \(1\)](#) and [\(2\)](#) affects any right of a performer available in law or equity.

61. The Act is amended by adding the following after [section 28.2](#):

## ***COMPENSATION FOR RESTORATION OF COPYRIGHT OR MORAL RIGHTS***

### *Certain right and protected*

29. (1) Notwithstanding [subsections 27\(1\), \(4\) and \(5\)](#) and [sections 28.1](#) and [28.2](#), where a person has, before a country becomes a treaty country, incurred an expenditure or liability in connection with, or in preparation for, the doing of an act that would have infringed the copyright owner's copyright or the author's moral rights had that country been a treaty country, any right or interest of that person that

(a) arises from or in connection with the doing of that act, and

(b) is subsisting and valuable at the time when that country becomes a treaty country

is not prejudiced or diminished by reason only that that country has become a treaty country, except as provided by an order of the Board made under [subsection 70.8\(3\)](#).

(2) Notwithstanding [subsection \(1\)](#), a person's right or interest that is protected by that subsection terminates, as against the copyright owner or the author, if and when the copyright owner or the author, as the case may be, pays that person such compensation as is agreed to between the parties or, failing agreement, as is determined by the Board in accordance with [section 70.8](#).

62. [Section 34](#) of the Act is amended by adding the following after [subsection \(1\)](#):

### *Performers' rights*

(1.01) In any proceedings for an infringement of a performer's right, the court may, subject to [subsection \(1.02\)](#), grant to the owner of the performer's right all remedies by way of injunction, damages, accounts or delivery up and otherwise that are or may be conferred by law for the infringement of a right.

### *Limitation*

(1.02) Where a performer has assigned to any extent a performer's right, or has granted an interest in a performer's right by licence, and subsequently institutes proceedings described in [paragraph 14.01\(7\)\(a\)](#), or [\(b\)](#), the court may not grant to the



performer, in relation to the right assigned or interest granted, any remedy otherwise than by way of injunction or delivery up.

*Other may be joined*

(1.03) In any proceedings for an infringement of a performer's right, the court may, on application by the performer, an assignee of the performer's right, a person to whom an interest in the performer's right has been granted by licence, or the defendant, order such other parties to be joined in the proceedings as the court considers necessary.

63. **Section 36** of the Act is renumbered as **subsection 36(1)** and is amended by adding the following:

*Protection of separate rights*

(2) [Subsection \(1\)](#) applies in respect of a performer and in respect of the owner of a performer's right conferred by this Act, in the same way that that subsection applies in respect of the persons described therein.

64. The Act is amended by adding the following after [section 43](#):

*punishment*

43.1 (1) Every person who knowingly

(a) makes for sale or hire any infringing fixation, or infringing reproduction thereof, of a performer's performance in respect of which a performer's right subsists,

(b) sells or lets for hire or by way of trade exposes or offers for sale or hire any infringing fixation, or infringing reproduction thereof, of a performer's performance in respect of which a performer's right subsists,

(c) distributes infringing fixations, or infringing reproductions thereof, of a performer's performance in respect of which a performer's right subsists, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the performer's right,

(d) by way of trade exhibits in public any infringing fixation, or infringing reproduction thereof, of a performer's performance in respect of which a performer's right subsists, or

(e) imports for sale or hire into Canada any infringing fixation, or infringing reproduction thereof, of a performer's performance in respect of which a performer's right subsists

is guilty of an offence and liable

(f) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both, or

(g) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

### *Making or plate — offence and punishment*

(2) Every person who knowingly makes or possesses any plate for the purpose of making infringing reproductions of a fixation of a performer's performance in respect of which a performer's right subsists is guilty of an offence and liable

(a) on summary conviction, to a fine not exceeding twenty-five thousand dollars or to imprisonment for a term not exceeding six months or to both; or

(b) on conviction on indictment, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both.

### *Power of court to with reproductions or platen*

(3) The court before which any proceedings under this section are taken may, whether the alleged offender is convicted or not, order that

(a) all fixations in the possession of the alleged offender that appear to it to be infringing fixations.

(b) all reproductions of the fixation in the possession of the alleged offender that appear to it to be infringing reproductions, and

(c) all plates in the possession of the alleged offender that appear to it to be plates for the purpose of making infringing reproductions

be destroyed or delivered up to the owner of the performer's right or otherwise dealt with as the court may think fit.

65. The heading before [section 44](#) of the Act is replaced by the following:

## ***IMPORTATION OF COPIES. FIXATIONS AND REPRODUCTIONS***

66. The Act is amended by adding the following after [section 44.1](#):

### *Performer's performances*

44.2 [Section 44.1](#) applies, with such modifications as the circumstances require, in respect of a performer's performance, where a fixation of the performer's performance, or a reproduction of such a fixation,

(a) is about to be imported into Canada, or has been imported into Canada but has not yet been released;

(b) was made without the consent of the performer, and

(c) to the knowledge of the importer, would have infringed the performer's right if it had been made in Canada by the importer.

*R.S.c, 41 (3rd Supp.), 177*

67.(1) **Subsection 45(1)** of the Act is replaced by the following:

*No importation where right to reproduce in Canada granted*

45. (1) Where the owner of the copyright has by licence or otherwise granted the right to reproduce any book in Canada it shall not be lawful except as provided in [subsections \(3\)](#) and [\(4\)](#) to import into Canada copies of the book, and the copies shall be deemed to be included in **Schedule VII** to the *Customs Tariff*, and that Schedule applies accordingly.

*1993, c. 44. 67(1)*

(2) [Paragraph 45\(3\)\(a\)](#) of the Act is replaced by the following:

(a) to import for the person's own use not more than two copies of any work published in a treaty country;

*1993, 67(2)*

(3) [Paragraph 45\(3\)\(d\)](#) of the Act is replaced by the following:

(d) to import any book lawfully printed in a treaty country and published for circulation among, and sale to, the public within that country.

*1993, 67(3)*

(4) [Subsection 45\(5\)](#) of the Act is replaced by the following:

*Application of provisions regarding importation.*

(5) This section does not apply to any work the author of which is a subject or citizen of a treaty country other than Canada.

68. The Act is amended by adding the following after **section 70.7**;

## ***COMPENSATION FOR RESTORATION OF COPYRIGHT OR PERFORMER'S RIGHT***

*Board may determine compensation.*

70.8 (1) Subject to [subsection \(2\)](#), for the purposes of [subsections 28.03\(2\)](#) and **29(2)**, the Board may, on application by any of the parties referred to in one of those provisions, determine the amount of the compensation referred to in that provision that the Board considers reasonable, having regard to all the circumstances, including any judgment of a court in an action between the parties for enforcement of a right mentioned in [subsection 28.03\(3\)](#).

(2) The Board shall not proceed with an application under [subsection \(1\)](#)

(a) where a notice is filed with the Board that an agreement touching the matters in issue has been reached; or

(b) where a court action between the parties for enforcement of a right mentioned in [subsection 28.03\(3\)](#) has been commenced but not finally concluded.

### *orders*

(3) Where the Board proceeds with an application under [subsection \(1\)](#), it may, for the purpose of avoiding serious prejudice to any party, make an interim order requiring a party to refrain from doing any act described in the order until the determination of compensation is made under [subsection \(1\)](#).

69. The French version of the Act is amended by replacing the expression “pays partie à la Convention” with the expression “pays partie à la Convention de Berne” in the following provisions:

(a) subsection 10(2); and

(b) [section 11](#).

### ***Fertilizers Act***

*R.S., F.10*

*1993. 44, 155*

115. [Subsections 5\(2\)](#) and [\(3\)](#) of the *Fertilizers Act* are replaced by the following:

#### *Regulations North American Free Trade Agreement and WTO Agreement*

(2) Without limiting the authority conferred by [subsection \(1\)](#), the Governor in Council may make such regulations as the Governor in Council deems necessary for the purpose of implementing, in relation to fertilizers or supplements, [Article 1711](#) of the North American Free Trade Agreement or [paragraph 3 of Article 39](#) of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex IC to the WTO Agreement.

### *Definition*

(3) In [subsection \(2\)](#),

*“North American Free Trade Agreement” “Accord the libre-exchange ”*

“North American Free Trade Agreement” has the meaning given to the word “Agreement” by **subsection 2(1)** of the *North American Free Trade Agreement Implementation Act*.

*“WTO Agreement” “Accord ”*

“WTO Agreement” has the meaning given to the word “Agreement” by **subsection 2(1)** of the *World Trade Organization Agreement Implementation Act*.

### ***Food and Drugs Act***

*R.S. F. 27*

*1993, c. 44.*

117, **Subsections 30(3)** and **(4)** of the *Food and Drugs Act* are replaced by the following:

*Regulations the North American Free Trade Agreement and WTO Agreement*

(3) Without limiting or restricting the authority conferred by any other provisions of this Act or any Part thereof for carrying into effect the purposes and provisions of this Act or any Part thereof, the Governor in Council may make such regulations as the Governor in Council deems necessary for the purpose of implementing, in relation to drugs, **Article 1711** of the North American Free Trade Agreement or **paragraph 3 of Article 39** of the Agreement or **paragraph 3 of Article 39** of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex IC to the WTO Agreement.

### *Definitions*

(4) In [subsection \(3\)](#).

*“North American Free Trade Agreement*

“North American Free Trade Agreement” has the meaning given to the word “Agreement” by **subsection 2(1)** of the *North American Free Trade Agreement Implementation Act*.

*“WTO Agreement”*

“WTO Agreement” has the meaning given to the word “Agreement” by **subsection 2(1)** of the *World Trade Organization Agreement Implementation Act*.

## *Industrial Design Act*

R.S.,c. I-9

1993. c. 171

118. (1) The portion of [section 29](#) of the *Industrial Design Act* before [paragraph \(a\)](#) is replaced by the following:

### *Application filed in another country*

29. (1) Subject to the regulations, an application for the registration of an industrial design filed in Canada by any person who has, or whose predecessor in title has, previously regularly filed an application for the registration of the same industrial design in or for a foreign country has the same force and effect as the same application would have if filed in Canada on the date on which the application for the registration of the same industrial design was first filed in or for that foreign country, if

(2) [Section 29](#) of the Act is amended by adding the following after [subsection \(1\)](#):

### *Definitions*

(2) In this section.

“*Foreign country*”

“foreign country”

(a) means a country that by treaty, convention or law affords a privilege to citizens of Canada that is similar to the privilege afforded by [subsection \(1\)](#) with respect to the effective date of an application for the registration of an industrial design, and

(b) includes a WTO Member.

“*WTO Agreement*”

“WTO Agreement” has the meaning given to the word “Agreement” by [subsection 2\(1\)](#) of the *World Trade Organization Agreement Implementation Act*.

“*WTO Member*”

“WTO Member” means a Member of the World Trade Organization established by Article I of the WTO Agreement.

129. The *Circuit Topography Act* is amended by adding the following after [section 2](#):

## ***HER MAJESTY***

### *Binding on Her Majesty*

2.1 This Act is binding on Her Majesty in right of Canada or a province.

130. (1) Paragraph 4(1)(c) of the Act is amended by striking out the word “or” at the end of subparagraph (ii), by adding the word “or” at the end of subparagraph (iii) and by adding the following after subparagraph (iii):

(iv) a national of a WTO Member.

(2) Section 4 of the Act is amended by adding the following after subsection (4):

### *Definitions*

(5) In this section.

“Commissioner”

“Commissioner” the Commissioner of Patents:

“WTO Agreement”

“WTO Agreement” has the meaning given to the word “Agreement” by subsection 2(1) of the *World Trade Organization Agreement Implementation Act*.

“WTO Member”

“WTO Member” means a Member of the World Trade Organization established by Article I of the WTO Agreement.

131.(1) The Act is amended by adding the following after section 7:

### *Government*

7.1 (1) Subject to section 7.2, the Commissioner may, on application by the Government of Canada or the government of a province, authorize the public non-commercial use of a registered topography by that government.

### *Terms of use*

(2) Subject to section 7.2, the use of the registered topography may be authorized for such purpose, for such period and on such other terms as the Commissioner considers expedient, but the Commissioner shall settle those terms in accordance with the following principles:

(a) the scope and duration of the use shall be limited to the purpose for which the use is authorized;

(b) the use authorized shall be non-exclusive; and

(c) any use shall be authorized predominantly to supply the domestic market.

### *Notice*

(3) The Commissioner shall notify the owner of the registered topography of any use of the registered topography that is authorized under this section.

### *Payment of remuneration*

(4) Where the use of the registered topography is authorized, the authorized user shall pay to the owner of the registered topography such amount as the Commissioner considers to be adequate remuneration in the circumstances.

### *Termination of authorization*

(5) The Commissioner may, on application by the owner of the registered topography and after giving all concerned parties an opportunity to be heard, terminate the authorization if the Commissioner is satisfied that the circumstances that led to the granting of authorization have ceased to exist and are unlikely to recur, subject to such conditions as the Commissioner deems appropriate to protect the legitimate interests of the authorized user.

### *Authorization not transferable*

(6) An authorization granted under this section is not transferable.

### *Prescribed uses*

7.2 The Commissioner may not, under [section 7.1](#), authorize any use that is a prescribed use unless the proposed user complies with the prescribed conditions.

### *Appeal*

7.3 Any decision made by the Commissioner under [section 7.1](#) or [7.2](#) is subject to appeal to the Federal Court under the *Patent Act*.

### *Regulations*

7.4 (1) The Governor in Council may make regulations for the purpose of implementing, in relation to registered topographies, [paragraph 2 of Article 37](#) of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in [Annex 1C](#) to the WTO Agreement.

### *Definition of “WTO Agreement”*

(2) In [subsection \(1\)](#), “WTO Agreement” has the same meaning as in [subsection 4\(5\)](#).



## *No liability*

(2) Her Majesty in right of Canada or a province is not, by reason only of the enactment of [subsection \(1\)](#), liable for any use of a registered topography before the day on which [subsection \(1\)](#) comes into force.

## ***Patent Act***

141. **Section 2** of the *Patent Act* is amended by adding the following in alphabetical order:

“*country*”

“country” includes a Member of the World Trade Organization, as defined in **subsection 2(1)** of the *World Trade Organization Agreement Implementation Act*.

142. **Section 19.1** of the Act is amended by adding the following after **subsection (3)**:

(4) The Commissioner may not, under **section 19**, authorize any use of semiconductor technology other than a public non-commercial use.

## ***Pest Control Products Act***

143. **Subsections 6(2)** and **(3)** of the *Pest Control Products Act* are replaced by the following:

### *Regulations of NAFTA and WTO Agreement*

(2) Without limiting the authority conferred by **subsection (1)**, the Governor in Council may make such regulations as the Governor in Council deems necessary for the purpose of implementing, in relation to control products, **Article 1711** of the North American Free Trade Agreement or **paragraph 3 of Article 39** of the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex 1C to the World Trade Organization Agreement.

### *Definitions*

(3) In [subsection \(2\)](#).

“*North American Free Trade Agreement*”

“North American Free Trade Agreement” has the meaning given to the word “Agreement” by **subsection 2(1)** of the *North American Free Trade Agreement Implementation Act*.

*“World Trade Organization Agreement”*

“World Trade Organization Agreement” has the meaning given to the word “Agreement” by [subsection 2\(1\)](#) of the *World Trade Organization Agreement Implementation Act*.

190. (1) The definition “country of the Union” in [section 2](#) of the *Trade-marks Act* is replaced by the following:

*“country of the Union”*

“country of the Union” means

(a) any country that is a member of the Union for the Protection of Industrial Property constituted under the Convention, or

(b) any WTO Member,

(2) [Section 2](#) of the Act is amended by adding the following in alphabetical order:

*“geographical indication”*

“geographical indication” means, in respect of a wine or spirit, an indication that

(a) identifies the wine or spirit as originating in the territory of a WTO Member, or a region or locality of that territory, where a quality, reputation or other characteristic of the wine or spirit is essentially attributable to its geographical origin, and

(b) except in the case of an indication identifying a wine or spirit originating in Canada, is protected by the laws applicable to that WTO Member.

*“protected geographical indication”*

“protected geographical indication” means a geographical indication that is on the list kept pursuant to [subsection 11.12\(1\)](#);

*“WTO Agreement”*

“WTO Agreement” has the meaning give to the word “Agreement” by [subsection 2\(1\)](#) of the *World Trade Organization Agreement Implementation Act*.

*“WTO Member”*

“WTO Member” means a Member of the World Trade Organization established by [Article 1](#) of the WTO Agreement.

191. (1) [Paragraphs 9\(1\)\(i\) and \(i.1\)](#) of the Act are replaced by the following:

(i) any territorial or civic flag or any national, territorial or civic arms, crest or emblem, of a country of the Union, if the flag, arms, crest or emblem is on a list communicated under [article 6ter](#) of the Convention or pursuant to the obligations under the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex IC to the WTO Agreement stemming from that article, and the Registrar gives public notice of the communication;

(i.1) any official sign or hallmark indicating control or warranty adopted by a country of the Union, if the sign or hallmark is on a list communicated under [article 6ter](#) of the Convention or pursuant to the obligations under the Agreement on Trade-related Aspects of Intellectual Property Rights set out in Annex IC to the WTO Agreement stemming from that article, and the Registrar gives public notice of the communication;

(2) [Paragraph 9\(1\) \(i.3\)](#) of the Act is replaced by the following:

(i.3) any armorial bearing, flag or other emblem, or any abbreviation of the name, of an international intergovernmental organization, if the armorial bearing, flag, emblem or abbreviation is on a list communicated under [article 6ter](#) of the Convention or pursuant to the obligations under the Agreement on Trade-related Aspects of Intellectual Property Rights set out in [Annex IC](#) to the WTO Agreement stemming from that article, and the Registrar gives public notice of the communication:

192. The Act is amended by adding the following after [section 11.1](#):

### *Definitions*

11.11 In [sections 11.12 to 11.2](#),

#### *“Minister”*

“Minister” means the member of the Queen’s Privy Council for Canada designated as the Minister for the purposes of [section 11.12 to 11.2](#);

#### *“responsible authority”*

“responsible authority” means, in relation to a wine or spirit, the person, firm or other entity that, in the opinion of the Minister, is, by reason of state or commercial interest, sufficiently connected with and knowledgeable of that wine or spirit to be a party to any proceedings in respect of an objection filed under [subsection 11.13\(1\)](#).

### *List*

11.12 (1) There shall be kept under the supervision of the Registrar a list of geographical indications.

### *Statement of Minister*

(2) Where a statement by the Minister, setting out in respect of an indication the information mentioned in [subsection \(3\)](#), is published in the *Canada Gazette* and

(a) a statement of objection has not been filed and served on the responsible authority in accordance with [subsection 11.13\(1\)](#) and the time for the filing of the statement of objection has expired, or

(b) a statement of objection has been so filed and served, but it has been withdrawn or deemed under [subsection 11.13\(6\)](#) to have been withdrawn or it has been rejected pursuant to [subsection 11.13\(7\)](#) or, if an appeal is taken, it is rejected pursuant to the final judgment given in the appeal,

the Registrar shall enter the indication on the list of geographical indications kept pursuant to [subsection \(1\)](#).

### *Information*

(3) For the purposes of [subsection \(2\)](#), the statement by the Minister must set out the following information in respect of an indication:

(a) that the Minister proposes that the indication be entered on the list of geographical indications kept pursuant to [subsection \(1\)](#);

(b) that the indication identifies a wine or that the indication identifies a spirit;

(c) the territory, or the region or locality of a territory, in which the wine or spirit is identified as originating;

(d) the name of the responsible authority in relation to the wine or spirit and the address of the responsible authority's principal office or place of business in Canada, if any, and if the responsible authority has no office or place of business in Canada, the name and address in Canada of a person or firm on whom service of any document or proceedings in respect of an objection may be given or served with the same effect as if they had been given to or served on the responsible authority itself; and

(e) the quality, reputation or other characteristic of the wine or spirit that, in the opinion of the Minister, qualifies that indication as a geographical indication.

### *Removal from list*

(4) The Registrar shall remove an indication from the list of geographical indications kept pursuant to [subsection \(1\)](#) on the publication in the *Canada Gazette* of a statement by the Minister that the indication is to be removed.

### *Statement of objection*

**11.13** (1) Within three months after the publication in the *Canada Gazette* of a statement referred to in [subsection 11.12\(2\)](#), any person interested may, on payment of the prescribed fee, file with the Registrar, and serve on the responsible authority in the prescribed manner, a statement of objection.

### *Ground*

(2) A statement of objection may be based only on the ground that the indication is not a geographical indication.

### *Concern*

(3) A statement of objection shall set out

(a) the ground of objection in sufficient detail to enable the responsible authority to reply thereto: and

(b) the address of the objector's principal office or place of business in Canada, if any, and if the objector has no office or place of business in Canada, the address of the principal office or place of business abroad and the name and address in Canada of a person or firm on whom service of any document in respect of the objection may be made with the same effect as if it had been served on the objector.

(4) Within three months after a statement of objection has been served on the responsible authority, the responsible authority may file a counter statement with the Registrar and serve a copy on the objector in the prescribed manner, and if the responsible authority does not so file and serve a counter statement, the indication shall not be entered on the list of geographical indications.

### *Evidence and hearing*

(5) Both the objector and the responsible authority shall be given an opportunity, in the manner prescribed, to submit evidence and to make representations to the Registrar unless

(a) the responsible authority does not file and serve a counter statement in accordance with [subsection \(4\)](#) or if, in the prescribed circumstances, the responsible authority does not submit evidence or a statement that the responsible authority does not wish to submit evidence; or

(b) the objection is withdrawn or deemed under [subsection \(6\)](#) to have been withdrawn.

### *Withdrawal of objection*

(6) The objection shall be deemed to have been withdrawn if, in the prescribed circumstances, the objector does not submit evidence or a statement that the objector does not wish to submit evidence.

### *Decision*

(7) After considering the evidence and representations of the objector and the responsible authority, the Registrar shall decide that the indication is not a geographical indication or reject the objection, and notify the parties of the decision and the reasons for the decision.

### *Prohibited adoption of indication for wines*

**11.14** (1) No person shall adopt in connection with a business, as a trade-mark or otherwise.

(a) a protected geographical indication identifying a wine in respect of a wine not originating in the territory indicated by the protected geographical indication; or

(b) a translation in any language of the geographical indication in respect of that wine.

### *Prohibited*

(2) No person shall use in connection with a business, as a trade-mark or otherwise.

(a) a protected geographical indication identifying a wine in respect of a wine not originating in the territory indicated by the protected geographical indication or adopted contrary to [subsection \(1\)](#); or

(b) a translation in any language of the geographical indication in respect of that wine.

### *Prohibited adoption of indication for spirit.*

**11.15** (1) No person shall adopt in connection with a business, as a trade-mark or otherwise,

(a) a protected geographical indication identifying a spirit in respect of a spirit not originating in the territory indicated by the protected geographical indication; or

(b) a translation in any language of the geographical indication in respect of that spirit.

### *Prohibited*

(2) No person shall use in connection with a business, as a trade-mark or otherwise,

(a) a protected geographical indication identifying a spirit in respect of a spirit not originating in the territory indicated by the protected geographical indication or adopted contrary to [subsection \(1\)](#); or

(b) a translation in any language of the geographical indication in respect of that spirit.

### *Exception for personal names*

**11.16** (1) [Sections 11.14](#) and [11.15](#) do not prevent a person from using, in the course of trade, that person's name or the name of the person's predecessor-in-title, except where the name is used in such a manner as to mislead the public.

### *Exception for comparative advertising*

(2) Subject to [subsection \(3\)](#), [sections 11.14](#) and [11.15](#) do not prevent a person from using a protected geographical indication in comparative advertising in respect of a wine or spirit.

### *Exception not applicable to packaging*

(3) [Subsection \(2\)](#) does not apply to comparative advertising on labels or packaging associated with a wine or spirit.

### *Continued*

**11.17** (1) Where a Canadian has used a protected geographical indication in a continuous manner in relation to any business or commercial activity in respect of goods or services

(a) in good faith before April 15, 1994, or

(b) for at least ten years before that date,

[section 11.14](#) or [11.15](#), as the case may be, does not apply to any continued or similar use by that Canadian.

### *Definition of "Canadian"*

(2) For the purposes of this section, "Canadian" includes

(a) a Canadian citizen:

(b) a permanent resident within the meaning of the *Immigration Act* who has been ordinarily resident in Canada for not more than one year after the time at which the permanent resident first became eligible to apply for Canadian citizenship; and

(c) an entity that carries on business in Canada.

### *Exception for disuse*

**11.18** (1) Notwithstanding [sections 11.14](#) and [11.15](#) and [paragraphs 12\(1\)\(g\) and \(h\)](#), nothing in any of those provisions prevents the adoption, use or registration as a trade-mark or otherwise, in connection with a business, of a protected geographical indication identifying a wine or spirit if the indication has ceased to be protected by the laws applicable to the WTO Member for which the indication is protected, or has fallen into disuse in that Member.

### *Exception for customary names*

(2) Notwithstanding [section 11.14](#) and [11.15](#) and [paragraphs 12\(1\)\(g\) and \(h\)](#), nothing in any of those provisions prevents the adoption, use or registration as a trade-mark or otherwise, in connection with a business, of an indication in respect of a wine or spirit

(a) that is identical with a term customary in common language in Canada as the common name for the wine or spirit, as the case may be; or

(b) that is identical with a customary name of a grape variety existing in Canada on or before the day on which the Agreement comes into force.

### *Exception for names for wines*

(3) Notwithstanding [sections 11.14](#) and [11.15](#) and [paragraphs 12\(1\)\(g\) and \(h\)](#), nothing in any of those provisions prevents the adoption, use or registration as a trade-mark or otherwise, in connection with a business, of the following indications in respect of wines:

(a) Champagne;

(b) Port;

(c) Porto;

(d) Sherry;

(e) Chablis;

(f) Burgundy;

(g) Bourgogne;

(h) Rhine;

(i) Rhin;

(j) Sauterne;

(k) Sauternes;



- (l) Clarel;
- (m) Bordeaux;
- (n) Chianti;
- (o) Madeira;
- (p) Malaga;
- (q) Marsala;
- (r) Medoc;
- (s) Médoc;
- (t) Moselle;
- (u) Mosel; and
- (v) Tokay.

*Exception for genetic names for spirits*

(4) Notwithstanding [sections 11.14](#) and [11.15](#) and [paragraphs 12\(1\)\(g\) and \(h\)](#), nothing in any of those provisions prevents the adoption, use or registration as a trademark or otherwise, in connection with a business, of the following indications in respect of spirits:

- (a) Grappa;
- (b) Marc;
- (c) Ouzo;
- (d) Sambuca;
- (e) Geneva Gin;
- (f) Genièvre;
- (g) Hollands Gin;
- (h) London Gin;
- (i) Schnapps;
- (j) Malt Whiskey;
- (k) Eau-de-vie;

- (l) Bitters;
- (m) Anisette;
- (n) Curacao; and
- (o) Curacao.

### *Governor in Council amendment*

(5) The Governor in Council may, by order, amend [subsection \(3\)](#) or [\(4\)](#) by adding thereto or deleting therefrom an indication in respect of a wine or spirit, as the case may be.

### *Exception for failure to take proceedings*

11.19 (1) [Sections 11.14](#) and [11.15](#) do not apply to the adoption or use of a trade-mark by a person if no proceedings are taken to enforce those sections in respect of that person's use or adoption of the trade-mark within five years after use of the trade-mark by that person or that person's predecessor-in-title has become generally known in Canada or the trade-mark has been registered by that person in Canada, unless it is established that that person or that person's predecessor-in-title first used or adopted the trade-mark with knowledge that such use or adoption was contrary to [section 11.14](#) or [11.15](#), as the case may be.

(2) In proceedings respecting a registered trade-mark commenced after the expiration of five years from the earlier of the date of registration of the trade-mark in Canada and the date on which use of the trade-mark by the person who filed the application for registration of the trade-mark or that person's predecessor-in-title has become generally known in Canada, the registration shall not be expunged or amended or held invalid on the basis of [paragraph 12\(1\)\(g\) or \(h\)](#) unless it is established that the person who filed the application for registration of the trade-mark did so with knowledge that the trade-mark was in whole or in part a protected geographical indication.

11.2 Notwithstanding [sections 11.14](#) and [11.15](#) and [paragraphs 12\(1\)\(g\) and \(h\)](#), where a person has in good faith

(a) filed an application in accordance with [section 30](#) for, or secured the registration of, a trade-mark that is identical with or similar to the geographical indication in respect of a wine or spirit protected by the laws applicable to a WTO Member, or

(b) acquired rights to a trade-mark in respect of such a wine or spirit through use, before the later of the date on which this section comes into force and the date on which protection in respect of the wine or spirit by the laws, applicable to that Member

commences, nothing in any of those provisions prevents the adoption, use or registration of that trade-mark by that person.

193. **Subsection 12(1)** of the Act is amended by striking out the word “or” at the end of **paragraph (e)** and by adding the following after **paragraph (f)**:

(g) in whole or in part a protected geographical indication, where the trade-mark is to be registered in association with a wine not originating in a territory indicated by the geographical indication; and

(h) in whole or in part a protected geographical indication, where the trade-mark is to be registered in association with a spirit not originating in a territory indicated by the geographical indication.

194. The portion of [subsection 14\(1\)](#) of the Act before **paragraph (a)** is replaced by the following:

*Registration of marks registered abroad*

14. (1) Notwithstanding **section 12**, a trade-mark that the applicant or the applicant’s predecessor in title has caused to be duly registered in or for the country of origin of the applicant is registrable if, in Canada,

195. The portion of **subsection 16(2)** of the Act before **paragraph (a)** is replaced by the following:

*registered and abroad*

(2) Any applicant who has filed an application in accordance with **section 30** for registration of a trade-mark that is registrable and that the applicant or the applicant’s predecessor in title has duly registered in or for the country of origin of the applicant and has used in association with wares or services is entitled, subject to **section 38**, to secure its registration in respect of the wares or services in association with which it is registered in that country and has been used, unless at the date of filing of the application in accordance with **section 30** it was confusing with

196. **Section 20** of the Act is renumbered as **subsection 20(1)** and is amended by adding the following:

*Exception*

(2) No registration of a trade-mark prevents a person from making any use of any of the indications mentioned in [subsection 11.18\(3\)](#) in association with a wine or any of the indications mentioned in [subsection 11.18\(4\)](#) in association with a spirit.

197. [Subsection 29\(1\)](#) of the Act is replaced by the following:

## *Inspection*

29. (1) Subject to [subsection \(2\)](#), the registers, the documents on which the entries therein are based, all applications, including those abandoned, the indexes, the list of trade-mark agents and the list of geographical indications kept pursuant to [subsection 11.12\(1\)](#) shall be open to public inspection during business hours, and the Registrar shall, on request and on payment of the prescribed fee, furnish a copy certified by the registrar of any entry in the registers, indexes or lists, or of any of those documents or applications.

198. [Paragraph 30\(d\)](#) of the Act is replaced by the following:

(d) in the case of a trade-mark that is the subject in or for another country of the Union of a registration or an application for registration by the applicant or the applicant's named predecessor in title on which the applicant bases the applicant's right to registration, particulars of the application or registration and, if the trade-mark has neither been used in Canada nor made known in Canada, the name of a country in which the trade-mark has been used by the applicant or the applicant's named predecessor in title, if any, in association with each of the general classes of wares or services described in the application:

199. [Subsection 34\(1\)](#) of the Act is replaced by the following:

### *Date of application abroad deemed date of application in Canada*

34. (1) When an application for the registration of a trade-mark has been made in or for any country of the Union other than Canada and an application is subsequently made in Canada for the registration for use in association with the same kind of wares or services of the same or substantially the same trade-mark by the same applicant or the applicant's successor in title, the date of filing of the application in or for the other country is deemed to be the date of filing of the application in Canada, and the applicant is entitled to priority in Canada accordingly notwithstanding any intervening use in Canada or making known in Canada or any intervening application or registration if

(a) the application in Canada, including or accompanied by a declaration setting out the date on which and the country of the Union in or for which the earliest application was filed for the registration of the same or substantially the same trade-mark for use in association with the same kind of wares or services, is filed within a period of six months after that date, which period shall not be extended;

(b) the applicant or, if the applicant is a transferee, the applicant's predecessor in title by whom any earlier application was filed in or for any country of the Union was at the date of the application a citizen or national of or domiciled in that country or had therein a real and effective industrial or commercial establishment; and

(c) the applicant furnishes, in accordance with any request under **subsections (2) and (3)**, evidence necessary to establish fully the applicant's right to priority.

200. (1) [Subsection 45\(1\)](#) of the Act is replaced by the following:

*Registrar may request evidence of year*

45. (1) The Registrar may at any time and, at the written request made after three years from the date of the registration of a trade-mark by any person who pays the prescribed fee shall, unless the Registrar sees good reason to the contrary, give notice to the registered owner of the trade-mark requiring the registered owner to furnish within three months an affidavit or a statutory declaration showing, with respect to each of the wares or services specified in the registration, whether the trade-mark was in use in Canada at any time during the three year period immediately preceding the date of the notice and, if not, the date when it was last so in use and the reason for the absence of such use since that date.

1993.c. 44. x. 232(2)

(2) [Subsection 45\(3\)](#) of the Act is replaced by the following:

*Effect of non-use*

(3) Where, by reason of the evidence furnished to the Registrar or the failure to furnish any evidence, it appears to the Registrar that a trade-mark, either with respect to all of the wares or services specified in the registration or with respect to any of those wares or services, was not used in Canada at any time during the three year period immediately preceding the date of the notice and that the absence of use has not been due to special circumstances that excuse the absence of use, the registration of the trade-mark is liable to be expunged or amended accordingly.

201. [Section 65](#) of the Act is amended by striking out the word “and” at the end of **paragraph (d)** and by adding the following after **paragraph (d)**:

(d.1) the procedure by and form in which an application may be made to the Minister. as defined in [section 11.11](#). requesting the Minister to publish a statement referred to in [subsection 11.12\(2\)](#); and

3. [Paragraph \(b\)](#) of the definition “royalties” in **section 2** is replaced by the following:

(b) claims for damages for the infringement or use of any registered topography within the meaning of the *Integrated Circuit To Topography Act* or of any patent or registered industrial design:

4. [Section 22](#) is replaced by the following:

### *Relief from classes and proceedings for royalties*

22. (1) The Minister may, on behalf of Her Majesty, contract with any person that Her Majesty will relieve that person from any claims, actions or proceedings for the payment of royalties for the use of infringement of any patent, registered industrial design or registered topography by that person in, or for the furnishing of any engineering or technical assistance or services to that person for, the performance of a defence contract.

### *Relief from royalty*

(2) A person with whom the Minister has contracted under [subsection \(1\)](#) is not liable to pay royalties under any contract, statute or otherwise by reason of the use or infringement of a patent, registered industrial design or registered topography in, or in respect of engineering or technical assistance or services furnished for, the performance of a defence contract and to which the contract under [subsection \(1\)](#) applies.

### *Compensations for use*

(3) A person who, but for [subsection \(2\)](#), would be entitled to a royalty from another person for the infringement or use of a patent, registered industrial design or registered topography or in respect of engineering or technical assistance or services is entitled to reasonable compensation from Her Majesty for the infringement, use or services and, if the Minister and that person cannot agree as to the amount of the compensation, it shall be fixed by the Commissioner of Patents.

### *Appeal*

(4) Any decision of the Commissioner of Patents under [subsection \(3\)](#) is subject to appeal to the Federal Court under the *Patent Act*.

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