

CHAPTER 11

INTELLECTUAL PROPERTY

ARTICLE 11.1: PURPOSE AND PRINCIPLES

The purpose of this Chapter is to increase the benefits from trade and investment through the protection and enforcement of intellectual property rights. The Parties recognise that:

- (a) establishing and maintaining transparent intellectual property systems and promoting and maintaining adequate and effective protection and enforcement of intellectual property rights provide certainty to right holders and users;
- (b) protecting and enforcing intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology;
- (c) intellectual property protection promotes economic and social development, and can reduce distortion and obstruction to international trade;
- (d) intellectual property systems should support open, innovative and efficient markets, including through the effective creation, utilisation, protection, and enforcement of intellectual property rights, appropriate limitations and exceptions, and an appropriate balance between the legitimate interests of rights holders, users and the public interest;
- (e) intellectual property systems should not themselves become barriers to legitimate trade;
- (f) appropriate measures, provided they are consistent with the provisions of the TRIPS Agreement¹ and this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders, or the resort to practices which unreasonably restrain trade, are anticompetitive or adversely affect the international transfer of technology; and
- (g) appropriate measures to protect public health and nutrition may be adopted provided they are consistent with the TRIPS Agreement and this Chapter.

¹ For greater certainty, “TRIPS Agreement” includes any amending protocol in force and any waiver made between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

ARTICLE 11.2: DEFINITIONS

For the purposes of this Chapter, unless the contrary intention appears:

- (a) **intellectual property rights** refers to copyright and related rights, rights in trade marks, geographical indications, industrial designs, patents and layout-designs (topographies) of integrated circuits, rights in plant varieties, and rights in undisclosed information, as defined and described in the TRIPS Agreement;
- (b) **national of a Party** includes, in respect of the relevant right, an entity of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 1.3 of the TRIPS Agreement;
- (c) **TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement; and
- (d) **WIPO** means the World Intellectual Property Organization.

ARTICLE 11.3 : OBLIGATIONS ARE MINIMUM OBLIGATIONS

Each Party shall, at a minimum, give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, and enforcement of, intellectual property rights than this Chapter requires, provided that this additional protection and enforcement is not inconsistent with the provisions of this Agreement. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

ARTICLE 11.4: INTERNATIONAL AGREEMENTS

Each Party affirms its commitment to the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which both Parties are party.

ARTICLE 11.5: INTELLECTUAL PROPERTY AND PUBLIC HEALTH

The Parties recognise the principles established in the *Doha Declaration on the TRIPS Agreement and Public Health* adopted on 14 November 2001 by the Ministerial Conference of the WTO and confirm that the provisions of this Chapter are without prejudice to this Declaration.

ARTICLE 11.6: EXHAUSTION

Nothing in this Chapter shall affect the freedom of the Parties to determine whether, and under what conditions, the exhaustion of intellectual property rights applies. The Parties agree to further discuss relevant issues relating to the exhaustion of patent.

ARTICLE 11.7: PROCEDURES ON ACQUISITION AND MAINTENANCE

Each Party shall:

- (a) continue to work to enhance its examination and registration systems, including through improving examination procedures and quality systems;
- (b) provide applicants with a communication in writing of the reasons for any refusal to grant or register an intellectual property right;
- (c) provide an opportunity for interested parties to oppose the grant or registration of an intellectual property right, or to seek either revocation, cancellation or invalidation of an existing intellectual property right;
- (d) require that opposition, revocation, cancellation, or invalidation decisions be reasoned and in writing; and
- (e) for the purposes of this Article, “writing” and “communication in writing” may include writing and communications in an electronic form.

ARTICLE 11.8: PATENTABLE SUBJECT MATTER

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.
2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.
3. Members may also exclude from patentability:

- (a) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and
- (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.

ARTICLE 11.9: AMENDMENTS, CORRECTIONS AND OBSERVATIONS ON PATENT APPLICATIONS

Each Party shall provide patent applicants with opportunities to make amendments, corrections and observations in connection with their applications in accordance with each Party's laws, regulations and rules.

ARTICLE 11.10: TRANSPARENCY

To assist with the transparency of the operation of its intellectual property system, each Party shall make its granted or registered patent for invention, utility model, industrial design, plant variety, trademark and geographical indication databases available on the internet.

ARTICLE 11.11: TYPES OF SIGNS AS TRADEMARKS

The Parties agree to cooperate on the means to protect types of signs as trademarks, including visual and sound signs.

ARTICLE 11.12: WELL-KNOWN TRADEMARKS

The Parties shall provide protection for well-known trademarks at least in accordance with Article 16.2 and 16.3 of the TRIPS Agreement and Article 6 *bis* of the *Paris Convention for the Protection of Industrial Property*, done at Paris on 20 March 1883.

ARTICLE 11.13: GEOGRAPHICAL INDICATIONS

1. Each Party recognizes that geographical indications may be protected through a trade mark or *sui generis* system or other legal means.²

² The Parties exchanged English translation of their existing legislations on geographical indications for reference. After entry into force of any new legislation and/or amendments to the existing legislations, the Parties agree to provide reliable English translation thereof for reference.

2. For the purposes of this Agreement, “geographical indications” are indications which identify a product as originating in the territory of a Party, or a region or a locality in that territory, where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin.

3. Without prejudice to Articles 22 and 23 of the TRIPS Agreement, the Parties shall take all necessary measures, in accordance with this Agreement, to ensure mutual protection of the geographical indications referred to in paragraph 2 that are used to refer to goods originating in the territory of the Parties. Each Party shall provide interested parties with the legal means to prevent the use of such geographical indications for identical or similar goods not originating in the place indicated by the geographical indication in question.

ARTICLE 11.14: PLANT BREEDERS’ RIGHTS

The Parties, through their competent agencies, shall cooperate to encourage and facilitate the protection and development of plant breeders’ rights with a view to:

- (a) better harmonising the plant breeders’ rights administrative systems of both Parties, including enhancing the protection of species of mutual interest and exchanging information; and
- (b) reducing unnecessary duplicative procedures between their respective plant breeders’ rights examination systems.

ARTICLE 11.15: COLLECTIVE MANAGEMENT OF COPYRIGHT

Each Party shall foster the establishment of appropriate bodies for the collective management of copyright and shall encourage such bodies to operate in a manner that is efficient, publicly transparent and accountable to their members.

ARTICLE 11.16: GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

1. Subject to each Party’s international obligations and its laws, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.

2. The Parties agree to explore the possibility to further discuss relevant issues concerning genetic resources, traditional knowledge and folklore, taking into account future developments in their respective laws and in multilateral agreements.

ARTICLE 11.17: ENFORCEMENT

1. Each Party commits to implementing effective intellectual property enforcement systems with a view to eliminating trade in goods and services infringing intellectual property rights.

2. Each Party shall provide for criminal procedures and penalties in accordance with the TRIPS Agreement to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, and consistent with the level of penalties applied for crimes of a corresponding gravity.

ARTICLE 11.18: COOPERATION – GENERAL

1. Each Party shall, on request of the other Party, exchange information:

- (a) relating to intellectual property policies in their respective administrations;
- (b) on changes to, and developments in the implementation of, their national intellectual property systems; and
- (c) on the administration and enforcement of intellectual property rights.

2. Each Party shall, on request of the other Party, consider intellectual property rights issues and questions of interest to private stakeholders.

3. The Parties will consider opportunities for continuing cooperation under established arrangements in areas of mutual interest that aim to improve the operation of the intellectual property rights system, including administrative processes, in each other's jurisdictions. This cooperation could include, but is not necessarily limited to:

- (a) work sharing in patent examination;
- (b) enforcement of intellectual property rights;
- (c) raising public awareness on intellectual property issues;
- (d) improvement of patent examination quality and efficiency; and
- (e) reducing the complexity and cost of obtaining the grant of a patent.