

## **Chapter 10 Intellectual Property**

### **Article 109: Principles**

1. The Parties recognize the importance of intellectual property rights in promoting economic and social development, particularly in the globalization of technological innovation, science and trade, as well as the transfer and dissemination of knowledge and technology to the mutual advantage of technology producers and users, and agree to encourage the development of socio-economic welfare and trade.
2. The Parties recognize the need to achieve a balance between the rights of right holders of intellectual property rights and the legitimate interests of users and society with regard to protected subject matter.

### **Article 110: General Provisions**

1. Each Party reaffirms its commitments established in existing international agreements in the field of intellectual property rights, to which both are parties, including the TRIPS Agreement.
2. Each Party shall establish and maintain transparent intellectual property rights regimes and systems that provide certainty over the protection and enforcement of intellectual property rights; and facilitate international trade through the dissemination of ideas, technology, science and creative works.
3. The Parties will prevent practices which constitute an abuse of intellectual property rights by right holders, or unreasonably restrain competition, or that may unreasonably impede or limit technology transfer.

### **Article 111: Genetic Resources, Traditional Knowledge and Folklore**

1. The Parties recognize the contribution made by genetic resources, traditional knowledge and folklore to scientific, cultural and economic development.
2. The Parties acknowledge and reaffirm the principles and provisions established in the Convention on Biological Diversity adopted on 5<sup>th</sup> June 1992 and encourage the effort to establish a mutually supportive relationship between the TRIPS Agreement and the Convention on Biological Diversity, regarding genetic resources and the protection of traditional knowledge and folklore.
3. Subject to each Party's international obligations and domestic laws, the Parties may adopt or maintain measures to promote the conservation of biological diversity, share equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components in conformity with what is established in the Convention on Biological Diversity.

4. Subject to future developments of domestic laws and the outcome of negotiations in multilateral *fora*, the Parties agree to further discuss the disclosure of origin or source of genetic resources; and/or prior informed consent obligations in patent applications; and the grant of a patent for an invention that involves or relies on genetic resources, when such resources were acquired or exploited without complying the relevant domestic laws or regulations.

#### **Article 112: Intellectual Property and Public Health**

1. The Parties recognise the principles established in the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14<sup>th</sup> November 2001 by the Ministerial Conference of the WTO. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with this Declaration.

2. The Parties shall contribute to the implementation and respect the Decision of the WTO General Council of 30<sup>th</sup> August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol Amending the TRIPS Agreement, done at Geneva on 6<sup>th</sup> December 2005.

#### **Article 113: Technical Innovation and Transfer of Technology**

1. The Parties recognize the importance of technology and knowledge transfer as a tool to promote innovation and creative works in order to achieve economic growth.

2. The protection and enforcement of intellectual property rights in each Party should contribute to the promotion of technological innovation and the transfer and dissemination of technology. Subject to domestic laws and regulations, the Parties may further discuss the possibility of providing incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to the other Party.

#### **Article 114: Border Measures**

1. Each Party shall provide that any right holder initiating procedures for suspension by the customs administrations of the release of suspected counterfeit trademark or pirated copyright goods<sup>15</sup> into free circulation is

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<sup>15</sup> For purposes of this Article:

**counterfeit trademark goods** shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and

**pirated copyright goods** shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have

required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information to make the suspected goods readily recognizable to the customs administrations. The sufficient information required shall not unreasonably deter recourse to these procedures.

2. The competent authorities shall have the authority to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

3. Where the competent authorities have made a determination that the goods are counterfeit or pirated, a Party shall grant the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee, and of the quantity of the goods in question.

4. Each Party shall provide that competent authorities are permitted to initiate border measures *ex officio* without the need of a formal complaint from the right holder. Such measures shall apply when there is reason to believe or suspect that the goods being imported, or destined for export are counterfeited or pirated, subject to domestic law that is in compliance with each Party's international obligations.

#### **Article 115: Contact Points**

1. Each Party shall designate a contact point or points to facilitate communications between the Parties on any matter covered by this Chapter, and provide the details of such contact points to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

2. By agreement between the Parties or at a Party's request, the designated contact point will exchange information relevant to the other Party on any issues included in this Chapter. The communications carried out through the designated contact points shall comply with the provisions established in Article 130 (Notification and Provision of Information) of Chapter 12 (Transparency).

#### **Article 116: Geographical Indications**

1. The names listed in the Annex 9 (Geographical Indications as Referred to in Article 116.1) are geographical indications in China, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to domestic laws and regulations in a manner that is consistent with the TRIPS Agreement, such

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constituted an infringement of a copyright or a related right under the law of the country of importation.

names will be protected as geographical indications in the territory of Costa Rica.

2. The names listed in Annex 10 (Geographical Indications as Referred to in Article 116.2) are geographical indications in Costa Rica, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to domestic laws and regulations in a manner that is consistent with the TRIPS Agreement, such names will be protected as geographical indications in the territory of China.

3. Subject to consultations and by mutual consent, the Parties may extend the accorded protection for geographical indications listed in Annexes 9 (Geographical Indications as Referred to in Article 116.1) and 10 (Geographical Indications as Referred to in Article 116.2) to other geographical indications of the Parties.<sup>16</sup>

### **Article 117: Cooperation**

1. The Parties shall cooperate, on mutually agreed terms and subject to the availability of appropriate funds, in the following activities:

- (a) education and dissemination projects on the use of intellectual property as a research and innovation tool;
- (b) training and specialization courses for public servants on intellectual property rights and other mechanisms;
- (c) exchange of information regarding conservation and sustainable use of biological diversity;
- (d) exchange of information regarding actions to prevent the illegal access to genetic resources, traditional knowledge, innovation and practices;
- (e) exchange of information regarding internal procedures for sharing equitable benefits arising from the use of genetic resources, traditional knowledge, innovations and practices;
- (f) exchange of information regarding policy dialogues related to intellectual property in multilateral and regional *fora*;
- (g) projects that enhance knowledge of electronic systems used for the management of intellectual property;
- (h) sharing experiences and coordination between the relevant customs administrations in the field of border measures;

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<sup>16</sup> For greater certainty the inclusion of new geographical indications to Annexes 9 (Geographical Indications as Referred to in Article 116.1) and 10 (Geographical Indications as Referred to in Article 116.2) shall be decided by the Commission in consultation with the relevant domestic authorities.

- (i) collaboration in the registration and promotion of geographical indications of the Parties through the exchange of information and experiences on the technical mechanisms and registration procedures available in each Party;
- (j) information exchange regarding the protection and enforcement of intellectual property rights;
- (k) enhancing public awareness of intellectual property rights; and
- (l) other activities and initiatives as may be mutually determined by the Parties.