

## CHAPTER 14

### INTELLECTUAL PROPERTY

#### Article 14.1: Definitions

For the purposes of this Chapter:

**intellectual property rights** means intellectual property rights as defined in Article 1.3 (General Definitions) of Chapter 1 (Initial Provisions, General Definitions and Interpretations);

**TRIPS Agreement** means TRIPS Agreement as defined in Article 1.3 (General Definitions) of Chapter 1 (Initial Provisions, General Definitions and Interpretations); and

**WIPO** means the World Intellectual Property Organization.

#### Article 14.2: Purpose and Principles

1. 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:

- (a) that establishing and maintaining transparent intellectual property systems and promoting and maintaining balanced, adequate and effective protection and enforcement of intellectual property rights provides certainty to rights holders and users;
- (b) that protecting and enforcing intellectual property rights should contribute to the promotion of creativity, technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations;
- (c) the importance of facilitating the diffusion of information, knowledge, content, culture and the arts and the need to promote international trade, innovation and creativity, and economic and social development;
- (d) that 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; and

- (e) that intellectual property systems should not become barriers to legitimate trade.

2. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition and to promote the public interest in sectors of vital importance to its socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter and the TRIPS Agreement.

3. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by rights holders, or the resort to practices which are anti-competitive or unreasonably restrain trade or adversely affect the international transfer of technology.

### **Article 14.3: 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 14.4: Intellectual Property and Public Health**

1. The Parties recognise the principles and flexibilities established in the *Declaration on the TRIPS Agreement and Public Health*, adopted on November 14, 2001 (Doha Declaration) by the Ministerial Conference of the WTO and confirm that the provisions of this Chapter are without prejudice to the Doha Declaration, do not and should not prevent the Parties from taking measures to protect public health, and can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all.

2. The Parties affirm their commitment to contribute to the international efforts to the acceptance and implementation of the *Protocol amending the TRIPS Agreement* attached to the *WTO General Council Decision of 6 December 2005 on the Amendment of the TRIPS Agreement*.

### **Article 14.5: Multilateral Agreements**

1. Each Party affirms its commitment to the TRIPS Agreement and any other multilateral agreements concluded or administered under the auspices of WIPO to which both Parties are party.

2. Each Party shall become a party to or apply the following agreements, or comply with the substantive provisions thereof, if it is not already a party:

- (a) *Paris Convention for the Protection of Industrial Property*, done at Paris on March 20, 1883, as amended on September 28, 1979;
- (b) *Berne Convention for the Protection of Literary and Artistic Works*, as revised at Paris on July 24, 1971, and amended on September 28, 1979;
- (c) *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations*, done at Rome on October 26, 1961;
- (d) *Patent Cooperation Treaty*, done at Washington, D.C. on June 19, 1970, as modified on October 3, 2001;
- (e) *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*, done at Budapest on April 28, 1977, as amended on September 26, 1980;
- (f) *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, done at Nice on June 15, 1957, as revised and amended;
- (g) *World Intellectual Property Organization Performances and Phonograms Treaty*, done at Geneva on December 20, 1996;
- (h) *WIPO Copyright Treaty*, done at Geneva on December 20, 1996; and
- (i) *International Convention for the Protection of New Varieties of Plants* done at Paris on December 2, 1961, as revised at Geneva on March 19, 1991.

3. Each Party shall endeavour to become a party to the following agreements, or to comply with the substantive provisions thereof, if it is not already a party:

- (a) *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, done at Madrid on June 27, 1989, as amended on November 12, 2007; and
- (b) *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled*, done at Marrakesh on June 27, 2013.

#### **Article 14.6: National Treatment**

1. For the purposes of this Article, person of a Party means, in respect of the relevant right, a natural person of that Party or an enterprise of that Party, who would meet the criteria for eligibility for protection provided for in the agreements listed in Article 14.5.2 and the TRIPS Agreement.
2. In respect of intellectual property rights covered in this Chapter, each Party shall accord to persons of the other Party treatment no less favourable than it accords to persons of the first-mentioned Party with regard to the protection of such intellectual property rights, subject to the exceptions provided in the TRIPS Agreement and multilateral agreements concluded or administered under the auspices of WIPO to which a Party is party.
3. For the purposes of this Article, “protection” includes matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights, as well as those matters affecting the use of intellectual property rights covered by this Chapter.
4. A Party may derogate from paragraph 1 in relation to its judicial or administrative procedures, including requiring a person of the other Party to designate an address for service in its Area, or to appoint an agent in its Area, provided that such derogation is:
  - (a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and
  - (b) not applied in a manner that would constitute a disguised restriction on trade.
5. Paragraph 1 shall not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO in relation to the acquisition or maintenance of intellectual property rights.

#### **Article 14.7: Transparency**

1. Each Party shall ensure that its laws and regulations of general application that pertain to the availability, acquisition, scope, enforcement and prevention of the abuse of intellectual property rights are published or, if publication is not practical, made publicly available in the English language.
2. Each Party shall provide that final judicial decisions or administrative rulings for the enforcement of intellectual property rights, that in accordance with the laws of the Party are of general applicability, shall preferably be in writing and state any relevant findings of fact and the reasoning, or the legal basis on which the decisions or rulings are based. Each Party shall also provide that those decisions and rulings be published or, if publication is not practicable, otherwise made available to the public, in its official

language in such a manner as to enable governments and rights holders to become acquainted with them.

3. Each Party, shall subject to its laws and regulations, make available on the internet information concerning applications for, and registered or granted trade marks, geographical indications, designs, patent and plant variety rights, sufficient to enable the public to become acquainted with those registered or granted rights.

#### **Article 14.8: 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.

#### **Article 14.9: Procedures on Acquisition and Maintenance**

1. Each Party shall:

- (a) continue to work to enhance its examination and registration systems, including through improving examination procedures and quality systems, and including with a view to achieving efficient and timely grant or registration of intellectual property rights;
- (b) provide applicants with a communication in writing of the reasons for any refusal to grant or register a registrable intellectual property right;
- (c) provide an opportunity for interested parties to either oppose the grant or registration of a registrable intellectual property right, or to seek revocation, cancellation or invalidation of an existing intellectual property right; and
- (d) require that opposition, revocation, cancellation or invalidation decisions be reasoned and in writing<sup>1</sup>.

2. Each Party shall provide patent applicants with opportunities to make amendments, corrections and observations in connection with their applications in accordance with the laws and regulations of that Party.

#### **Article 14.10: Trade Marks**

1. Neither Party shall require, as a condition of registration, that a trade mark be visually perceptible, nor deny registration of a trade mark solely on the grounds that the

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<sup>1</sup> For the purposes of paragraph 1, “writing” and “communication in writing” include writing and communications in an electronic form.

sign of which it is composed is a sound or a scent. A Party may require an adequate description, which can be represented graphically, of the trade mark.

2. Each Party shall provide for the protection of both collective and certification trade marks. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trade mark system.

3. A Party may provide limited exceptions to the rights conferred by a trade mark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trade mark and of third parties.

#### **Article 14.11: Geographical Indications**

1. The Parties recognise that geographical indications may be protected through a trade mark or *sui generis* system or other legal means.

2. If a Party is considering protecting or recognising a geographical indication that Party shall:

- (a) publish the geographical indications proposed for protection or recognition; and
- (b) provide procedures for any interested person to object to such protection or recognition and for any such protection or recognition to be refused or otherwise not afforded. The grounds of objection available shall include the following:
  - (i) the geographical indication is likely to cause confusion with a trade mark<sup>2</sup> that is the subject of a pre-existing good faith pending application or registration in the Area of the Party<sup>3</sup>;
  - (ii) the geographical indication is likely to cause confusion with a pre-existing trade mark, the rights to which have been acquired in accordance with the Party's law, including through use in good faith; and

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<sup>2</sup> For greater certainty, a Party may provide that the trade mark which is subject to a pending application or registration is one that is identical or similar to the geographical indication and is used or to be used in respect of identical or similar goods.

<sup>3</sup> For greater certainty, this sub-subparagraph does not require the interested person to establish at the time of filing an objection to the protection or recognition of the geographical indication that the pre-existing pending application was made in good faith.

(iii) the claimed geographical indication is a term customary in the common language as the common name for the good in the Area of the Party.<sup>4</sup>

3. If a Party protects or recognises a geographical indication, that Party shall provide procedures for any interested person to seek cancellation or invalidation of such protection or recognition.

4. If a Party provides for the protection or recognition of the translation or transliteration of a geographical indication, that Party shall provide procedures for any interested person to object to such protection or recognition in accordance with the publication requirements, procedures and grounds set out in paragraph 2. That Party shall also provide procedures for any interested person to seek cancellation or invalidation of such protection or recognition in accordance with paragraph 3.

5. Each Party shall provide that if a protected or recognised geographical indication contains within it a term customary in common language as the common name for a good in the Area of a Party, that protection or recognition shall not prejudice the right of any person to use that term in the Area of that Party.<sup>5 6</sup>

6. In determining whether a term is the term customary in common language as the common name for the relevant good in the Area of a Party, that Party's authorities shall have the authority to take into account how consumers and people in the trade and industry understand the term in the Area of that Party.

7. Neither Party shall preclude the possibility that the protection or recognition of a geographical indication may be cancelled, revoked or otherwise cease, on the basis that the protected or recognised term has ceased meeting the conditions upon which the protection or recognition was originally granted in that Party.

8. For greater certainty, paragraph 2, paragraph 3, paragraph 4, paragraph 5, paragraph 6 and paragraph 7 only apply to the protection or recognition of geographical indications through administrative procedures or pursuant to an international agreement with a non-Party.

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<sup>4</sup> Nothing in this Article shall require a Party to apply its provisions in respect of a geographical indication of the other Party with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the Area of that Party.

<sup>5</sup> A Party may comply with this paragraph by providing that the owner of a sign or term for which protection as a geographical indication is granted is not entitled to prohibit the use of the sign or term in accordance with honest practices in industrial or commercial matters.

<sup>6</sup> For greater certainty, the Parties understand that this paragraph does not apply if a term that is customary in common language as the common name for a good in the Area of a Party has acquired a secondary meaning through use and has thus become distinctive of the good in the Area of that Party.

#### **Article 14.12: Genetic Resources, Traditional Knowledge and Folklore**

Subject to its international obligations and its laws, a Party may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.

#### **Article 14.13: Protection of Undisclosed Information**

1. In the course of ensuring effective protection against unfair competition, each Party shall protect undisclosed information in accordance with paragraph 2.
2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by or used by others without their consent in a manner contrary to honest commercial practices<sup>7</sup>, so long as such information:
  - (a) is secret, in that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
  - (b) has commercial value because it is secret; and
  - (c) has been subject to reasonable steps under the circumstances, taken by the person lawfully in control of the information, to keep it secret.

#### **Article 14.14: Copyright**

1. Each Party shall foster the establishment or maintenance 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.
2. Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, giving due consideration to legitimate purposes such as criticism, news reporting, teaching, research, review, study, and facilitating access to published works for persons who are blind, visually impaired or otherwise print disabled.

#### **Article 14.15: Enforcement**

1. Each Party commits to implementing effective intellectual property enforcement

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<sup>7</sup> For the purposes of this provision, “a manner contrary to honest commercial practices” shall mean, at least, practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.



systems with a view to eliminating trade in goods and services which infringe 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 trade mark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment or monetary fines sufficient to provide a deterrent, and consistent with the level of penalties applied for crimes of a corresponding gravity.

3. Each Party shall ensure that its procedures concerning the enforcement of intellectual property rights are applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

4. Each Party shall ensure that its procedures concerning the enforcement of intellectual property rights are fair and equitable. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

5. In relation to implementing provisions for the enforcement of intellectual property rights, each Party recognises the importance of the principle of proportionality between the seriousness of the infringement, appropriate remedies and penalties and the interests of third parties.

6. Each Party recognises the importance of specialist knowledge to support decisions on matters relating to the enforcement of intellectual property rights.

#### **Article 14.16: Counterfeit Trade Mark and Pirated Copyright Goods**

1. Each Party shall ensure that the requirements necessary for a right holder to initiate procedures to suspend the release of goods suspected of being counterfeit trade mark or pirated copyright goods shall not unreasonably deter recourse to these procedures.

2. If a Party's competent authorities have made a determination that goods are counterfeit trade mark or pirated copyright goods (or have detained such suspected goods), that Party shall provide that its competent authorities have the authority to inform the right holder of relevant information required by its laws in relation to the goods in question. Without prejudice to the protection of confidential information, such relevant information may include the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

3. Each Party shall provide that its customs authorities may initiate measures *ex officio* with respect to imported or exported goods suspected of being counterfeit trade mark or pirated copyright goods.<sup>8</sup>

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<sup>8</sup> For greater certainty, nothing in this Article shall require a Party to provide that its competent authorities

4. Each Party shall ensure that its competent authorities, on receipt of information or complaints, have the authority to take measures in accordance with its laws and regulations to prevent the export of counterfeit trade mark or pirated copyright goods.

#### **Article 14.17: Cooperation**

1. Each Party shall, on request of the other Party, exchange information relating to:
  - (a) intellectual property policies in their respective administrations;
  - (b) changes to, and developments in the implementation of, their respective intellectual property systems; and
  - (c) measures of general application relating to the administration and enforcement of intellectual property rights.
  
2. The Parties shall cooperate and collaborate with a view to promoting effective utilisation, protection and enforcement of intellectual property rights, consistent with promoting trade in goods and services between the Parties, and subject to the respective laws, regulations and policies of the Parties. Such cooperation may include:
  - (a) cooperation between the Parties' intellectual property authorities under established arrangements;
  - (b) exchanges of information between relevant authorities responsible for the enforcement of intellectual property rights;
  - (c) sharing information and experiences on matters concerning intellectual property rights; and
  - (d) encouraging and facilitating the protection of plant variety rights, including reducing unnecessary duplication in plant variety rights examination systems.
  
3. Cooperation activities and initiatives undertaken in accordance with this Chapter shall be subject to the availability of resources, and on request, and on terms and conditions agreed by the Parties.

#### **Article 14.18: Communications and Contact Points**

1. Each Party shall designate a contact point to facilitate communications between the

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may take *ex officio* measures with respect to counterfeit trade mark or pirated copyright goods that are in transit.

Parties on any matter covered by this Chapter, and shall provide details of such contact point to the other Party. Each Party shall notify the other Party promptly of any amendments to the details of its contact point.

2. A Party may at any time request meetings with the other Party to discuss and consider any issues, subject to available resources, relating to intellectual property covered by this Chapter.

3. A request in accordance with paragraph 2 shall be conveyed through the contact points referred to in paragraph 1 by any means as may be agreed by the Parties.