

CHAPTER 17 - INTELLECTUAL PROPERTY

SECTION A - GENERAL PROVISIONS AND BASIC PRINCIPLES

ARTICLE 17.1 - Objectives

1. The objectives of this Chapter are to:
 - (a) facilitate the production and commercialisation of innovative and creative goods and the provision of innovative and creative services between the Parties; and
 - (b) increase the benefits from trade and investment between the Parties through an adequate and effective level of protection of intellectual property rights, and the provision of measures for the effective enforcement of such rights.
2. The objectives set out in Article 7 of the TRIPS Agreement apply to this Chapter, *mutatis mutandis*.

ARTICLE 17.2 - Principles

1. The principles set out in Article 8 of the TRIPS Agreement apply to this Chapter, *mutatis mutandis*.
2. Taking into consideration the underlying public policy objectives of their respective domestic systems, the interests of relevant stakeholders, including right holders, users and the general public, and the principles of transparency, the Parties recognise the need through their respective intellectual property systems, to:
 - (a) promote innovation and creativity;
 - (b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and
 - (c) foster competition and open and efficient markets.
3. The Parties recognise the importance of effective protection against acts of unfair competition in accordance with Article 10bis of the Paris Convention.

ARTICLE 17.3 - Nature and scope of obligations

1. This Chapter complements the rights and obligations of each Party under the TRIPS Agreement and other international agreements in the field of intellectual property.
2. Each Party shall give effect to this Chapter. A Party may provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement is not inconsistent with this Chapter. Each Party shall be free to determine the appropriate method of implementing this Chapter within its own legal system and practice.

ARTICLE 17.4 - Definitions

For the purposes of this Chapter, the following definitions apply:

- (a) "Berne Convention" means the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 as revised at Paris on 24 July 1971 and amended on 28 September 1979;
- (b) "Declaration on TRIPS and Public Health" means the Declaration on the TRIPS Agreement and Public Health adopted at Doha on 14 November 2001 by the Ministerial Conference of the WTO;
- (c) "Geneva Act (1999)" means the Geneva Act (1999) of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999;
- (d) "intellectual property" means:
 - (i) all categories of intellectual property that are the subject of Sections 1 to 7 of Part II of the TRIPS Agreement, namely:
 - (A) copyright and related rights;
 - (B) trademarks;
 - (C) geographical indications;
 - (D) industrial designs;
 - (E) patents;

(F) layout-designs (topographies) of integrated circuits; and

(G) protection of undisclosed information; and

(ii) plant variety rights;

- (e) "national" means, in respect of the relevant intellectual property right, a person of a Party that would meet the criteria for eligibility for protection provided for in multilateral agreements concluded and administered under the auspices of WIPO, to which a Party is a contracting Party, or in the TRIPS Agreement;
- (f) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as revised at Stockholm on 14 July 1967;
- (g) "Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961;
- (h) "WIPO" means the World Intellectual Property Organization;
- (i) "WCT" means the WIPO Copyright Treaty adopted in Geneva on 20 December 1996; and
- (j) "WPPT" means the WIPO Performances and Phonograms Treaty done at Geneva on 20 December 1996.

ARTICLE 17.5 - International agreements

1. Each Party affirms its commitment to comply with its obligations under the following international agreements:

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

2. Each Party affirms that it has acceded to, or will make all reasonable efforts to ratify or accede to the Singapore Treaty on the Law of Trademarks, done at Singapore on 27 March 2006.
3. Each Party shall ensure that the procedures provided under the Patent Cooperation Treaty, done at Washington on 19 June 1970, as amended on 3 October 2001, are available in its territory.

ARTICLE 17.6 - Exhaustion

Nothing in this Chapter prevents a Party from determining whether and under what conditions the exhaustion of intellectual property rights applies.

ARTICLE 17.7 - National treatment

1. In respect of all categories of intellectual property rights covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than that it accords to its own nationals with regard to the protection¹ of intellectual property rights, subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention, the Rome Convention, the WPPT, or the Treaty on Intellectual Property in Respect of Integrated Circuits, done at Washington on 26 May 1989. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided for under this Chapter.
2. A Party may avail itself of the exceptions permitted pursuant to paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, only where such exceptions are:
 - (a) necessary to secure compliance with laws and regulations of the Party that are not inconsistent with this Chapter; and
 - (b) not applied in a manner that would constitute a disguised restriction on trade.
3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

¹ For the purposes of this paragraph, the term "protection" shall include: (a) matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically addressed in this Chapter; (b) measures to prevent the circumvention of effective technological measures set out in Article 17.21 (Protection of technological measures); and (c) measures concerning rights management information set out in Article 17.22 (Obligations concerning rights management information).

ARTICLE 17.8 - TRIPS Agreement and public health

1. The Parties recognise the importance of the Declaration on TRIPS and Public Health. This Chapter shall be interpreted and implemented consistently with that Declaration.
2. This Chapter does not, and should not, prevent a Party from taking measures to protect public health and should be interpreted and implemented in a manner that promotes access to medicine for all.
3. Each Party shall implement Article 31bis of the TRIPS Agreement and the Annex to the TRIPS Agreement, including its Appendix.
4. Nothing in this Chapter shall limit a Party's rights and obligations pursuant to Article 31 and Article 31bis of the TRIPS Agreement and the Annex to the TRIPS Agreement, including its Appendix.

ARTICLE 17.9 - Indigenous knowledge of Australian First Nations peoples

The Parties recognise the value, for Australia, of enabling the involvement of Australian First Nations peoples in international trade and in the protection of indigenous knowledge of Australian First Nations peoples. Furthermore, the Parties acknowledge the cultural significance, for Australia, of such knowledge, including knowledge about traditional foods, language, song, dance, works of art and the names and uses of plants. To this end, the Parties shall endeavour to cooperate on activities related to such knowledge, including activities on geographical indications, where relevant for the implementation of this Chapter, through the Committee on Investment, Services, Digital Trade, Government Procurement and Intellectual Property Rights, including Geographical Indications.

ARTICLE 17.10 - Genetic resources, traditional knowledge and traditional cultural expressions

1. The Parties recognise the importance and value of genetic resources and associated traditional knowledge, including when related to intellectual property systems.
2. The Parties affirm the importance of working towards a multilateral outcome on intellectual property-related aspects of genetic resources, traditional knowledge and traditional cultural expressions, including through WIPO.