

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 provides certainty to rights 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: NATIONAL TREATMENT

1. In respect of intellectual property rights covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection of such intellectual property rights, subject to the exceptions provided under the TRIPS Agreement and those multilateral agreements concluded under the auspices of WIPO to which the Parties are party.

2. 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.

3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service in its territory, or to appoint an agent in its territory, 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.

4. Paragraph 1 shall not apply to procedures provided in multilateral agreements to which either Party is a party concluded under the auspices of the WIPO in relation to the acquisition or maintenance of intellectual property rights.

ARTICLE 11.6: TRANSPARENCY

1. 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 protection, geographical indication and trade mark databases available on the internet.

2. In addition, each Party shall endeavour to publish and make available on the internet patent for invention, trade mark, plant variety protection and geographical indication applications.

ARTICLE 11.7: INTELLECTUAL PROPERTY AND PUBLIC HEALTH

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

2. The Parties reaffirm their commitment to contribute to the international efforts to the implementation of the Decision of the WTO General Council of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration, as well as the *Protocol amending the TRIPS Agreement*, done at Geneva on 6 December 2005.

ARTICLE 11.8: 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. The Parties agree to further discuss relevant issues relating to the exhaustion of patent rights.

ARTICLE 11.9: 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” includes writing and communications in an electronic form.

ARTICLE 11.10: 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 11.11: 18 MONTH PUBLICATION

Each Party shall publish, and make available online, any patent for invention application promptly after the expiry of 18 months from its filing date or from its earliest priority date, if priority has been claimed, unless the application has been published earlier or has been withdrawn, abandoned or refused.

ARTICLE 11.12: TYPES OF SIGNS AS TRADE MARKS

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

ARTICLE 11.13: CERTIFICATION AND COLLECTIVE TRADE MARKS

Each Party shall provide for the protection of both collective and certification trade marks.

ARTICLE 11.14: WELL-KNOWN TRADE MARKS

The Parties shall provide protection for well-known trade marks 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 11.15: GEOGRAPHICAL INDICATIONS

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

ARTICLE 11.16: 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;
- (b) reducing unnecessary duplicative procedures between their respective plant breeders' rights examination systems; and
- (c) contributing to the reform and further development of the international plant breeders' rights laws, standards and practices, including within the South East Asian region.

ARTICLE 11.17: 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 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 11.18: PROTECTION OF UNDISCLOSED INFORMATION²

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 practices³, 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 11.19: 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.

² It is understood that, consistent with the TRIPS Agreement, protection of undisclosed information includes protection of confidential information that is otherwise undisclosed and provided in commercial situations, such as architectural drawings or proprietary commercial-in-confidence information.

³ 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.

ARTICLE 11.20: SERVICE PROVIDER LIABILITY

Each Party may take appropriate measures to limit the liability of, or remedies available against, internet service providers for copyright infringement by the users of their online services or facilities, where the internet service providers take action to prevent access to the materials infringing copyright in accordance with the laws and regulations of the Party.

ARTICLE 11.21: 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 11.22: BORDER MEASURES

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. Where its competent authorities have made a determination that goods are counterfeit trade mark or pirated copyright goods (or have detained such suspected goods), each Party shall provide that its competent authorities have the authority to inform the right holder of at least the names and addresses of the consignor and the consignee, and of the quantity of the goods in question.
3. Each Party shall provide that its customs authorities may initiate border measures *ex officio* with respect to imported or exported goods suspected of being counterfeit trade mark or pirated copyright goods.
4. Each Party shall ensure that its laws, regulations or policies permit relevant competent authorities, on receipt of information or complaints, to take measures in accordance with its laws to prevent the export of counterfeit trademark or pirated copyright goods.

5. The Parties may exclude from the application of this Article the importation or exportation of small quantities of goods which are considered to be of a non-commercial nature.

ARTICLE 11.23: 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.
4. Each Party will consider requests for assistance from the other Party in a public health crisis in accordance with Article 11.7.

ARTICLE 11.24: CONSULTATIVE MECHANISM: COMMITTEE ON INTELLECTUAL PROPERTY

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Intellectual Property (“the Committee”).

2. The functions of the Committee shall be to:
 - (a) review and monitor the implementation and operation of this Chapter;
 - (b) discuss any issues related to intellectual property covered by this Chapter; and
 - (c) report its findings to the FTA Joint Commission.
3. The Committee shall be composed of representatives of each Party.
4. The Committee shall meet at such venues and times and by such means as may be agreed by the Parties.