

## CHAPTER 14

### INTELLECTUAL PROPERTY

#### Article 14.1: Purposes 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.
2. The Parties recognize 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, utilization, 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 Agreement<sup>49</sup> 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 anti competitive or adversely affect the international transfer of technology; and

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<sup>49</sup> 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.

- (g) appropriate measures to protect public health and nutrition may be adopted provided they are consistent with the TRIPS Agreement and this Chapter.

#### **Article 14.2: Scope of Intellectual Property**

For the purposes of this Chapter, except as otherwise provided, intellectual property rights refers to copyright and related rights, rights in trademarks, geographical indications, industrial designs, patents and layout-designs (topographies), rights in plant varieties, and rights in undisclosed information, as defined or described in the TRIPS Agreement.

#### **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: 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 14.5: Intellectual Property and Public Health**

The Parties recognize 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 14.6: 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 14.7: 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 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 14.8: 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. The Parties may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect order 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 domestic laws.
3. The Parties 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 14.9: 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 domestic laws, regulations and rules.

#### **Article 14.10: Transparency**

1. In order to ensure transparency of the system of protection and enforcement of intellectual property rights, each Party shall ensure that all domestic laws, regulations and procedures relating to the protection or enforcement of intellectual property rights are published in writing or, where publication is not feasible, made available to the public in their national language, in order to make them known to governments and rights holders.
2. To assist with the transparency of the operation of its intellectual property system, each Party shall make its related information on granted or registered patent for invention, utility model, industrial design, plant variety, trademark and geographical indication easily available.

#### **Article 14.11: 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 14.12: Well-Known Trademarks**

The Parties shall provide protection for well-known trademarks at least in accordance with Articles 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 14.13: Geographical Indications**

1. Each Party recognizes that geographical indications may be protected through a trade mark or *sui generis* system or other legal means.<sup>50</sup>
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.

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<sup>50</sup> 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.

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 14.14: 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 14.15: Copyrights**

1. Each Party shall provide that authors, performers, producers of phonograms broadcasting organizations shall have the right to authorize or prohibit any reproduction of their works, performances, phonograms and broadcasts in any manner or form.

2. Each Party shall grant authors, performers, producers of phonograms and broadcasting organizations the right to authorize the making available to the public of the original or copies of their works, performances, phonograms and broadcasting by sale or other means of transfer of ownership.

#### **Article 14.16: Collective Management of Copyright**

1. The Parties recognize the importance of the collective management of copyright and the establishment of agreements between them.

2. 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 14.17: 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 the international obligations of each Party and its domestic laws, the Parties may adopt or maintain measures to promote the conservation of biological diversity, equitably share the benefits derived from the use of traditional knowledge, innovations and practices relevant to the conservation of biodiversity and the sustainable use of its components in accordance with the Convention on Biological Diversity and its Protocols.
4. 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 domestic laws and in multilateral agreements to which both Parties are party.

#### **Article 14.18: 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 reaffirm its rights and commitments under the TRIPS Agreement, and in particular Part III thereof, and shall adopt or maintain the measures, procedures and additional resources necessary to ensure the enforcement of property rights intellectual. Such measures, procedures and remedies shall be fair, proportionate and equitable and shall not be unnecessarily complex or costly, nor will they cause unreasonable deadlines or delays unnecessary.
3. 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 14.19: Ex officio compliance at the border**

Each Party shall provide that the competent authorities are authorized to initiate border measures ex officio. Such measures shall be applied where there is reason to believe or suspect that the goods being imported or destined for export are counterfeit or pirated, subject to domestic law that is in compliance with each Party's international obligations.

#### **Article 14.20: 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 cooperation 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:
  - (a) enforcement of intellectual property rights;
  - (b) raising public awareness on intellectual property issues;
  - (c) specialized training and courses for public officials on intellectual property and other mechanisms; and
  - (d) other activities and initiatives mutually agreed by the Parties.