

Article 1

General Provisions and Basic Principles

1. The Parties shall ensure adequate, effective, and non-discriminatory protection of intellectual property, in accordance with the provisions of the TRIPS Agreement.
2. Intellectual property referred to in this Chapter shall mean all categories of intellectual property that are under the TRIPS Agreement.
3. The Parties recognize that the protection and enforcement of intellectual property rights should contribute to the promotion of 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.
4. The Parties may in formulating or amending their laws, adopt measures necessary to protect public health and nutrition and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of the TRIPS Agreement and the provisions of this Chapter.
5. The Parties recognize the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organization Decision of the WTO General Council of 30 August 2003 on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, concluded at Geneva on 6 December 2005. In interpreting and implementing the rights and obligations under this Agreement, the Parties shall ensure consistency with this Declaration and the Protocol, and any other legal instrument that succeeds or modifies any of these instruments.
6. The Parties further recognize that appropriate measures consistent with the TRIPS Agreement and the provisions of this Chapter may be undertaken to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

Article 2

Definitions

1. For the purpose of this Chapter the term “intellectual property rights” means copyright and related rights; rights in trademarks, geographical indications, industrial designs, patents, and layout-designs (topographies) of integrated circuits; rights in plant varieties; and rights in

undisclosed information; as referred to in the TRIPS Agreement as may be revised and amended.

Article 3

Relationship with International Conventions

1. The Parties shall comply with: the provisions on Copyright under the TRIPS Agreement, Articles 1 through 21 of the Berne Convention for the Protection of Literary and Artistic works and appendix thereto (1971); However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived therefrom.

Article 4

Duration of Author's Rights

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for at least 50 years after his death, irrespective of the date when the work is lawfully made available to the public.
2. In the case of a work of joint authorship, the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. In the case of anonymous or pseudonymous works, the term of protection shall run for at least 50 years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.
4. In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within at least 50 years from their creation, the protection shall terminate.

Article 5

Duration of Related Rights

1. The rights of performers shall expire not less than 50 years after the date of the performance.
2. The rights of producers of phonograms shall expire not less than 50 years after the publication is made.

3. The rights of producers of the first publication of a film shall expire not less than 50 years after the publication is made. The term "film" shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

4. The rights of broadcasting organizations shall expire not less than 20 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or wireless, including by cable or satellite.

****Article 6****

1. The Parties shall grant adequate and effective protection to trademark right holders of goods and services. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including combinations of words, personal names, letters, numerals, figurative elements, shapes of goods, sounds and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, the Parties may make registrability depend on distinctiveness acquired through use. Parties may require, as a condition of registration, that signs be visually perceptible.

2. The Parties shall not provide registration of trademarks if it is of such a nature as to deceive the public or cause confusion or is misleading.

3. The parties shall provide, in accordance with the requirements of national law, for:

a) an opportunity to oppose a trade marks application,

b) communication of a written and reasoned order to the applicant, and

c) an appeal procedure to the appellate authority against a refusal order. The parties shall endeavor to make publicly available the database of trade mark applications and registrations.

4. Parties shall apply the NICE Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks ('NICE Classification') published by World Intellectual Property Organization (WIPO).

5. Each Party shall endeavour to accede to and implement the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks 1989 as may be amended from time to time.

6. Each Party shall endeavour to develop and adopt an electronic registration system for trademarks in accordance with its domestic law.

Article 7

Well Known Trademarks

1. The Parties shall provide protection for well-known trademarks in accordance with TRIPS Agreement and their respective laws.
2. The protection of well-known trademarks shall not be limited to identical or similar goods or services in situations where the trade mark is well known in that Party and where the use of the trade mark without due cause would be detrimental to the distinctive character or repute of the earlier trademark, or take unfair advantage of the earlier trade mark.

Article 8

Exceptions to the Rights Conferred by Trademarks

1. The Parties shall provide for the fair use of descriptive terms when such terms relate to the bona fide description of the character of quality of a person's goods or services, as a limited exception to the rights conferred by a trademark. They may provide other limited exceptions, provided that such limited exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 9

Protection of Geographical Indications

1. The Parties to this Agreement shall ensure in their national laws adequate and effective means to protect geographical indications in conformity with the TRIPS Agreement.
2. For the purposes of this Agreement, "geographical indications" are indications, which identify goods 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 such goods is essentially attributable to their geographical origin.

Article 10

Patents

1. In accordance with Article 27 of the TRIPS Agreement, Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided they are new, involve an inventive step and are capable of industrial application. Patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Parties may, consistent with the terms of the TRIPS Agreement, provide under their law for:

(a) exclusions from patentability, and

(b) provisions relating to use of subject-matter of a patent without authorization from the right holder.

3. Each Party shall endeavor to accede to and implement the Patent Cooperation Treaty as may be amended from time to time.

4. Each Party shall endeavor to develop and adopt an electronic registration system for patents in accordance with its domestic law.

Article 11

Patents and Public Health

1. The Parties recognize the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organization. In interpreting and implementing the rights and obligations under this Agreement, 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 August 2003 on 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 December 2005. Nothing in this Agreement shall be construed as to impair the capacity of the Parties to promote access to medicines and protect public health.

Article 12

Protection of Plant Varieties

1. The Parties shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof, in accordance with the TRIPS agreement.

Article 13

Industrial Designs

1. The Parties to this Agreement shall ensure in their national laws appropriate and effective protection of industrial designs in accordance with and subject to the flexibilities in the TRIPS Agreement.

Article 14

Genetic Resources, Traditional Knowledge and Folklore

1. The term 'traditional knowledge' as used in this Chapter means and includes knowledge that is dynamic and evolving, which is generated in diverse traditional contexts, collectively preserved and transmitted from generation to generation and includes but is not limited to know-how, skills, innovations, practices and learning, that subsist in a codified, oral/verbal or other forms of knowledge systems, biodiversity and natural resources. Traditional knowledge may be secretly held by holders/beneficiaries, or may be knowledge accessible by a wider cross-section of people.
2. The Parties shall ensure adequate and effective implementation of international treaties dealing with traditional knowledge and genetic resources to which both are parties. The Parties also reaffirm their sovereign rights over natural resources and recognize their rights and obligations as established by the Convention on Biological Diversity with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilization of these genetic resources, as well as regards to associated traditional knowledge. The Parties shall endeavor to accede to and implement the provisions of the Nagoya Protocol to the Convention on Biological Diversity, as may be amended from time to time.
3. Recognizing the importance and the value of their biological diversity and of the associated traditional knowledge, innovations and practices of indigenous and local communities, the Parties shall take measures to ensure that access to the genetic resources of the other Party is subject to the prior informed consent of the Party providing the genetic resource, in accordance with the principles and provisions contained in the latter's domestic legislation.
4. Each Party shall take legislative, administrative or policy measures as appropriate for putting in place terms and conditions relating to access to genetic resources and associated traditional knowledge within their territorial domain.
5. The Parties shall take legislative, administrative or policy measures to ensure fair and equitable sharing of the benefits arising from the use of genetic resources or traditional knowledge, whether or not associated with genetic resources, with the Party providing such resources. Such sharing shall be based on terms required by the law of the providing Party.
6. The Parties shall require by way of legislation that patent applications contain a mandatory declaration of the origin or source of the genetic resource and traditional knowledge used by the inventor or the patent applicant. The Parties will also require evidence of prior informed consent for access, and fair and equitable sharing of benefits arising from the commercial or other use of such resources and for associated traditional knowledge, with consequences of non-disclosure or wrongful disclosure to be included within the patent legislation.

7. The Parties recognize that data bases or digital libraries which contain relevant information constitute useful tools for patentability examination of inventions related to genetic resources and associated traditional knowledge.

8. In accordance with applicable international law and domestic law, the Parties agree to collaborate in the application of domestic frameworks on access to genetic resources and associated traditional knowledge, innovations and practices.

9. The Parties may review this article subject to the results and conclusions of multilateral discussions.

10. Each Party shall provide for legal means to revoke IPRs granted in their territory when any other Party brings before it instances of cases of non-compliance with applicable legal provisions of such other Party relating to access to genetic resources and traditional knowledge, innovations and practices. Each Party also agrees to take adequate and effective deterrent measures in cases which do not involve grant of IPRs.

Article 15

General Obligations

1. The Parties reaffirm their commitments under the TRIPS Agreement and in particular Part III of the TRIPS Agreement, and shall provide for the measures, procedures and remedies necessary to meet their obligations therein.

Article 16

Cooperation and Consultancy

1. The Parties acknowledge the significant differences in capacity between some Parties in the area of intellectual property. Mindful of this, at the request of a Party, any other Party may, to the extent possible and as appropriate, render assistance and cooperation to the requesting Party in order to enhance the requesting Party's national framework for the acquisition, protection, enforcement, utilisation and creation of intellectual property, with a view to developing intellectual property systems that foster domestic innovation in the requesting Party.

2. The Parties shall endeavour to co-operate through capacity building, awareness generation and human resource development in order to promote the efficiency and transparency of intellectual property administration and registration systems, including by exchanging information on intellectual property issues.

3. The Parties shall endeavour to co-operate in order to promote education and awareness regarding the benefits of effective protection and enforcement of intellectual property rights and border measures with a view to eliminating trade, which infringes intellectual property rights.

Article 17

Transparency

1. Each Party shall ensure that its laws and regulations of general application that pertain to the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights are made publicly available in at least the national language of that Party or in the English language. Each Party shall also endeavor to provide that final judicial decisions and administrative rulings pertaining to the aforesaid matters are made publicly available in at least the national language of that Party or in the English language.

2. Each Party shall endeavour to make the information referred to in Paragraph 1, which is publicly available, made available in the English language and on the internet.