

CHAPTER 11

INTELLECTUAL PROPERTY RIGHTS

Article 144: General Provisions

1. The Parties recognize the importance of intellectual property rights in promoting economic and social development, particularly in the globalization of technological innovation and trade, as well as the transfer and dissemination of technology to the mutual advantage of technology producers and users, and agree to encourage the development of social economic well-being, and trade.
2. The Parties recognize the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter.
3. Each Party reaffirms its commitment established in existing international agreements in the field of intellectual property rights, to which both are Parties, including the TRIPS Agreement.
4. The Parties will prevent practices which constitute abuse of intellectual property rights by right holders or unreasonably restrain competence or adversely affect or limit technology transfer.
5. Each Party shall establish and maintain transparent intellectual property rights regimes and systems that provide certainty over the protection and enforcement of intellectual property rights.
6. The Parties recognize the principles established in the Declaration on the TRIPS Agreement on Public Health, adopted on November 14th, 2001, by the WTO at the Fourth WTO Ministerial Meeting held in Doha, Qatar, the Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, adopted on August 30th, 2003.

Article 145: Genetic Resources, Traditional Knowledge and Folklore

1. The Parties recognize the contribution made by the genetic resources, traditional knowledge and folklore to the scientific, cultural and economic development.
2. The Parties acknowledge and reaffirm the principles and provisions established in the Convention on Biological Diversity adopted on June 5th, 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 each Party's international obligations and national legislation, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.

4. Subject to future developments of national legislation, the Parties agree to further discuss the disclosure of origin or source of genetic resources and/or prior informed consent obligations in patent applications.

Article 146: Geographical Indications

1. The terms listed in the Chinese List of Annex 10 (Geographical Indications) are geographical indications in China, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to Peru's domestic laws and regulations, in a manner that is consistent with the TRIPS Agreement, such terms will be protected as geographical indications in the territory of Peru.

2. The terms listed in the Peruvian List of Annex 10 (Geographical Indications) are geographical indications in Peru, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to China's domestic laws and regulations, in a manner that is consistent with the TRIPS Agreement, such terms will be protected as geographical indications in the territory of China.

3. Subject to consultations and by mutual consent, the Parties may extend the accorded protection for geographical indications listed in Annex 10 (Geographical Indications) to other geographical indications of the Parties.

Article 147: Special Requirements Related to Border Measures

1. Each Party shall provide that any right holder initiating procedures for suspension by the customs authorities of the release of suspected counterfeit trademark or pirated copyright goods into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the relevant laws of the Party, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information to make the suspected goods reasonably recognizable to the customs authorities. The sufficient information required shall not unreasonably deter recourse to these procedures.

2. Each Party shall provide the competent authorities with the powers to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect

the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

3. Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant the competent authorities the right to inform the right holder, at the right holder's request, of the names and addresses of the consignor, the importer, and the consignee, as well as the quantity of the goods in question.

4. Each Party shall provide that the competent authorities are permitted to initiate border measures *ex officio*, without the need for a formal complaint from a person or right holder. Such measures shall be used when there is reason to believe or suspect that goods being imported, exported or in transit are counterfeit or pirated.

Article 148: Cooperation and Capacity Building

1. The Parties shall continue cooperation under the framework established in the previous *Agreement of Cooperation of Intellectual Property between the Government of the People's Republic of China and the Government of the Republic of Peru*, signed on June 2nd, 2005, with a common view to increasing capacity building and to fostering the development of intellectual property policies and eliminating trade in goods infringing intellectual property rights, subject to their respective laws, rules, regulations, directives and policies.

2. Without prejudice to the obligations of the Agreement mentioned in paragraph 1 of this Article, the Parties will cooperate, on mutually agreed terms and subject to the availability of appropriated funds, on educational and dissemination projects on the use of intellectual property rights as an innovation tool.

3. The Parties will cooperate, on mutually agreed terms, to exchange information regarding:

- (a) conservation and sustainable use of biological biodiversity;
- (b) actions to prevent the illegal access to genetic resources, traditional knowledge, innovation and practices;
- (c) internal procedures regarding sharing equitable benefits arising from the use of genetic resources, traditional knowledge, innovations and practices; and
- (d) other intellectual property rights issues.

4. Each Party shall encourage and facilitate the development of contacts and cooperation in the field of intellectual property rights between their respective government agencies, educational institutions and other organizations.