

CHAPTER 6

PROTECTION OF INTELLECTUAL PROPERTY

ARTICLE 6.1

General Provisions

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights against infringement thereof, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements referred to therein.
2. Each Party shall give effect to the provisions of this Chapter and may, but shall not be obliged to, implement in the national legislation more extensive protection than is required by this Chapter, provided that such protection does not contravene the provisions of this Chapter.
3. The Parties shall accord to the nationals of the other Parties treatment no less favourable than that they accord to their own nationals with regard to the protection¹ of intellectual property, subject to the exceptions provided in Articles 3 and 5 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as “the TRIPS Agreement”).
4. With regard to the protection¹ of intellectual property, any advantage, favour, privilege or immunity granted by a Party to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of the other Parties, subject to the exceptions provided in Articles 4 and 5 of the TRIPS Agreement.
5. In accordance with paragraph 2 of Article 8 of the TRIPS Agreement, Parties may take appropriate measures, provided that they are consistent with the provisions of this Agreement, if needed 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.

¹ For the purposes of paragraphs 3 and 4, “protection” shall include 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 specifically addressed in this Chapter.

ARTICLE 6.2

Basic Principles

1. In accordance with Article 7 of the TRIPS Agreement, the Parties recognise 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.
2. The Parties recognise that technology transfer contributes to strengthen national capabilities with the aim to establish a sound and viable technological base.
3. The Parties recognise the impact of information and communication technologies on the creation and usage of literary and artistic works.
4. In accordance with paragraph 1 of Article 8 of the TRIPS Agreement, the Parties may, in formulating or amending their laws and regulations, 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 this Chapter.
5. The Parties recognise the principles established in the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the WTO at its Fourth Ministerial Meeting, held in Doha, Qatar, and the Decision of WTO's General Council on the Implementation of Paragraph 6 of the Doha Declaration, adopted on 30 August 2003 and the Amendment of the TRIPS Agreement adopted by the General Council of the WTO on 6 December 2005.

ARTICLE 6.3

Definition of Intellectual Property

For the purposes of this Agreement, “intellectual property” refers to all categories of intellectual property that are the subject of Articles 6.6 (Trademarks) to 6.11 (Undisclosed Information and Measures Related to Certain Regulated Products).

ARTICLE 6.4

International Conventions

1. Without prejudice of the rights and obligations contained in this Chapter, the Parties reaffirm their existing rights and obligations, including the right to apply the exceptions and to make use of the flexibilities, under the TRIPS Agreement and under any other multilateral agreement related to intellectual property and agreements administered under the auspices of the World Intellectual Property Organization (hereinafter referred to as “the WIPO”) to which they are parties, in particular the following:

- (a) Paris Convention of 20 March 1883 for the Protection of Industrial Property (Stockholm Act, 1967, hereinafter referred to as the “Paris Convention”);
- (b) Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works (Paris Act, 1971); and
- (c) International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention).

2. The Parties to this Agreement which are not a party to one or more of the agreements listed below shall ratify or accede to the following multilateral agreements upon entry into force of this Agreement:

- (a) Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;
- (b) International Convention for the Protection of New Varieties of Plants 1978 (1978 UPOV Convention), or the International Convention for the Protection of New Varieties of Plants 1991 (1991 UPOV Convention); and
- (c) Patent Cooperation Treaty of 19 June 1970 (Washington Act, amended in 1979 and modified in 1984).

3. The Parties to this Agreement which are not a party to one or more of the agreements listed below shall ratify or accede to the following multilateral agreements within one year from the date of entry into force of this Agreement:

- (a) WIPO Performances and Phonograms Treaty of 20 December 1996 (WPPT); and
- (b) WIPO Copyright Treaty of 20 December 1996 (WCT).

4. The Parties will carry out as soon as possible the necessary actions to submit to the Parties' competent national authorities the adherence to the Geneva Act (1999) of the Hague Agreement concerning the International Registration of Industrial Designs, and to Protocol of 27 June 1989 Relating to the Madrid Agreement concerning the International Registration of Marks for their consideration.

5. The Parties to this Agreement may agree, upon mutual consent, to have an exchange of views of experts on activities relating to existing or future international conventions on intellectual property rights and on any other matter related to intellectual property rights as the Parties may agree upon.

ARTICLE 6.5

Measures Related to Biodiversity

1. The Parties reaffirm their sovereign rights over their natural resources and recognise their rights and obligations under 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 utilisation of these genetic resources.

2. The Parties recognise the importance and the value of their biological diversity and of the associated traditional knowledge, innovations and practices of indigenous and local communities. Each Party shall determine the access conditions to its genetic resources in accordance with the principles and provisions contained in applicable national and international law.

3. The Parties recognise past, present and future contributions of indigenous and local communities and their knowledge, innovations and practices to the conservation and sustainable use of biological and genetic resources and in general the contribution of the traditional knowledge of their indigenous and local communities to the culture and economic and social development of nations.

4. The Parties shall consider collaborating in cases regarding non compliance with the applicable legal provisions on access to genetic resources and traditional knowledge, innovations and practices.

5. According to their national law, the Parties shall require that patent applications contain a declaration of the origin or source of a genetic resource, to which the inventor or the patent applicant has had access. As far as provided in their national legislation, the Parties will also require the fulfilment of prior informed consent and they will apply the provisions set out in this Article to traditional knowledge as applicable.

6. The Parties, in accordance with their national laws, shall provide for administrative, civil or criminal sanctions if the inventor or the patent applicant wilfully make a wrongful or misleading declaration of the origin or source. The judge may order the publication of the ruling.

7. If the law of the Party so provides:
- (a) access to genetic resources shall be subject to the prior informed consent of the Party providing the genetic resources; and
 - (b) access to traditional knowledge of indigenous and local communities associated to these resources shall be subject to the approval and involvement of these communities.
8. Each Party shall take policy, legal and administrative measures, with the aim of facilitating the fulfilment of terms and conditions for access established by the Parties for such genetic resources.
9. The Parties affirm and recognise their existing rights and obligations with respect to each other under the International Treaty of Plant Genetic Resources for Food and Agriculture of the Food and Agriculture Organization.
10. The Parties shall take legislative, administrative or policy measures, as appropriate, with the aim of ensuring the fair and equitable sharing of the benefits arising from the use of genetic resources or associated traditional knowledge. Such sharing shall be based on mutually agreed terms.

ARTICLE 6.6

Trademarks

1. The Parties shall grant adequate and effective protection to trademark right holders of goods or 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, 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. Parties shall use the International Classification of Goods and Services for the Purposes of the Registration of trademarks (hereinafter referred to as “International Classification”) established by the Nice Agreement of 15 June 1957 and its effective amendments to classify the goods and services to which the trademarks shall be applied.

3. The classes of goods and services of the International Classification shall not be used to determine whether the goods or services listed for a specific trademark are similar or different to those of another trademark.

4. The Parties recognise the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (1999), and the Joint Recommendation Concerning Provisions on the Protection of Marks, and other Industrial Property Rights in Signs, on the Internet (2001), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO, and shall be guided by the principles contained in these Recommendations.

ARTICLE 6.7

Geographical Indications, including Appellations of Origin, and Indications of Source

1. The Parties to this Agreement shall ensure in their national laws adequate and effective means to protect geographical indications, including appellations of origin², and indications of source.

2. For the purposes of this Chapter:

- (a) “geographical indications” means indications which identify goods as originating in the territory of a Party, or in a region or locality of that territory, where a given quality, reputation or other characteristic of those goods is essentially attributable to their geographical origin; and
- (b) “indications of source” means names, expressions, images, flags or signs that constitute direct or indirect references to a particular country, region, locality or place as the geographical origin of goods or services. Nothing in this Agreement shall require a Party to this Agreement to amend its legislation if, at the date of entry into force of this Agreement, in its national law, it limited the protection of indications of source to cases where a given quality, reputation or other characteristic of those goods or services is essentially attributable to their geographical origin.

3. An indication of source may not be used in the course of trade for goods or services where that indication is false or misleading with respect to its geographical origin or where its use is likely to cause confusion in the public as to the geographical origin of those goods or services, or which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

² For greater certainty, if any Party foresees the protection of appellations of origin in its national legislation, nothing in this Agreement shall require to amend this.

4. Without prejudice to Article 23 TRIPS Agreement, the Parties shall provide the legal means to interested parties to prevent the use of a geographical indication for identical or comparable goods not originating in the place indicated by the designation in question in a manner which misleads or confuses the public as to the geographical origin of those goods, or which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

5. In order to further strengthen the protection of geographical indications among each other, Peru and Switzerland agree to negotiate a bilateral agreement on the mutual recognition and protection of geographical indications aiming to conclude it within three years after the entry into force of this Agreement. Any other Party to this Agreement may join the negotiations or accede to the agreement after its entry into force.

ARTICLE 6.8

Copyright and Related Rights

1. The Parties shall grant and assure to the authors of literary and artistic works and to performers, producers of phonograms and broadcasting organisations, an adequate and effective protection of their works, performances, phonograms and broadcasts, respectively.

2. Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim, at least, authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honour or reputation.

3. The rights granted to the author in accordance with paragraph 2 shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorised by the legislation of the country where protection is claimed.

4. Rights granted under paragraphs 2 and 3 shall be granted, *mutatis mutandis*, to performers as regards their live performances or fixed performances.

ARTICLE 6.9

Patents

1. 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. Subject to paragraph 3, 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. Each Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre 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 its law.
3. Each Party 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. However, Parties shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. Notwithstanding the foregoing, a Party that does not provide patent protection for plants, shall undertake reasonable efforts to make such patent protection available consistent with paragraph 1.
4. Each Party shall make best efforts to process patent applications and marketing approval applications expeditiously with a view to avoiding unreasonable delays. The Parties shall co-operate and provide assistance to one another to achieve this objective.
5. With respect to any pharmaceutical product that is covered by a patent, each Party may make available a restoration or compensation of the patent term or patent rights to compensate the patent owner for unreasonable curtailment of the effective patent term resulting from the marketing approval process related to the first commercial marketing of the product in that Party. Any restoration under this paragraph shall confer all exclusive rights of a patent subject to the same limitations and exceptions applicable to the original patent.

ARTICLE 6.10

Designs

The Parties shall ensure in their national laws adequate and effective protection of industrial designs by providing in particular, an adequate term of protection in accordance with internationally prevailing standards. Parties shall seek to harmonise their respective term of protection.

ARTICLE 6.11

Undisclosed Information and Measures Related to Certain Regulated Products

1. The Parties to this Agreement shall protect undisclosed information in accordance with Article 39 TRIPS Agreement.
2. Where a Party requires, as a condition for marketing approval of pharmaceutical products or agricultural chemical products which utilise new chemical entities³, the submission of undisclosed test data related to safety and efficacy the origination of which involves a considerable effort, the Party shall not allow the marketing of a product which contains the same new chemical entity, based on the information provided by the first applicant without his consent, for a reasonable period, which, in the case of pharmaceutical products, means normally five years and, in the case of agricultural chemical products, ten years from the date of the marketing approval in the territory of the Party. Subject to this provision, there shall be no limitation on any Party to implement abbreviated approval procedures for such products on the basis of bioequivalence or bioavailability studies.
3. Reliance on or reference to data referred to in paragraph 2 may be permitted:
 - (a) where approval is sought for re-imported products that have already been approved before exportation; and
 - (b) in order to avoid unnecessary duplication of tests of agricultural chemical products involving vertebrate animals where the first applicant is adequately compensated.

³ For the purposes of this paragraph, “new agricultural chemical product” means a product that contains a chemical entity that has not been previously approved in the territory of the Party. If a Party needs to define “new chemical entity” for pharmaceutical products in the domestic legislation in order to implement this Agreement, it shall take into consideration prevailing international standards and do so before the entry into force of this Agreement.

4. A Party may take measures to protect public health in accordance with:
- (a) implementation of the Declaration of the TRIPS Agreement and Public Health⁴ (in this paragraph referred to as the “Declaration”);
 - (b) any waiver of any provision of the TRIPS Agreement adopted by WTO members in order to implement the Declaration; and
 - (c) any amendment to the TRIPS Agreement to implement the Declaration.
5. Where a Party relies on a marketing approval granted by another Party, and grants approval within six months of the filing of a complete application for marketing approval filed in the Party, the reasonable period of exclusive use of the data submitted in connection with obtaining the approval relied on shall begin on the date of the first marketing approval.

ARTICLE 6.12

Acquisition and Maintenance of Intellectual Property Rights

Where the acquisition of an intellectual property right is subject to the right being granted or registered, the Parties shall ensure that the procedures for grant or registration are of the same level as provided in the TRIPS Agreement, in particular Article 62.

ARTICLE 6.13

Enforcement of Intellectual Property Rights

The Parties shall establish provisions for the enforcement of intellectual property rights in their national laws that are of the same level as that provided in the TRIPS Agreement, in particular Articles 41 to 61.

⁴ WT/MIN(01)/DEC/2.

ARTICLE 6.14

Right of Information in Civil and Administrative Procedures

The Parties may provide that, in civil and administrative procedures, the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.⁵

ARTICLE 6.15

Suspension of Release by Competent Authorities

1. The Parties shall adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation of copyright or trademark infringing goods may take place, to lodge an application in writing with the competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. The Parties shall consider the application of these measures to other intellectual property rights.

2. It is understood that there shall be no obligation to apply procedures set forth in paragraph 1 to the suspension of the release into free circulation of goods put on the market in another country by or with the consent of the right holder.

ARTICLE 6.16

Right of Inspection

1. The competent authorities shall give the applicant for the suspension of the release of goods and the other persons involved in the suspension the opportunity to inspect goods whose release has been suspended or which have been detained.

⁵ For greater certainty, this provision does not apply when it conflicts with constitutional or statutory guarantees.

2. When examining goods, the competent authorities may take samples and, according to the rules in force in the Party concerned and at the express request of the right holder, hand over or send such samples to the right holder, strictly for the purposes of analysis and facilitating the subsequent procedure. Where circumstances allow, samples must be returned on completion of the technical analysis and, where applicable, before goods are released or their detention is lifted. Any analysis of these samples shall be carried out under the sole responsibility of the right holder.

Article 6.17

Liability Declaration, Security or Equivalent Assurance

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse, or in the cases provided in their domestic legislation to declare to accept liability for damages resulting from the suspension of release.

2. The security or equivalent assurance shall not unreasonably deter recourse to these procedures.

ARTICLE 6.18

Promotion of Research, Technological Development and Innovation

1. The Parties acknowledge the importance of promoting research, technological development and innovation, of disseminating technological information, and of building and strengthening their technological capacities, and they will seek to co-operate in such areas, taking into account their resources.

2. Co-operation in those fields, between Peru and Switzerland, may be based, in particular, on the respective Letters of Intent between the State Secretariat for Education and Research of the Federal Department of Home Affairs of the Swiss Confederation and the *Consejo Nacional de Ciencia, Tecnología e Innovación Tecnológica* (CONCYTEC) of 28 December 2006.

3. Accordingly, Peru and Switzerland may seek and encourage opportunities for co-operation pursuant to this Article and, as appropriate, engage in collaborative scientific research projects. The authorities referred to in paragraph 2 shall act as contact points to facilitate the development of collaborative projects and they shall periodically review the status of such collaboration through mutually agreed means.

4. Peru on one side and Iceland, Liechtenstein and Norway on the other side will seek opportunities for co-operation pursuant to this Article. Such co-operation shall be based on mutually agreed terms and will be formalised through appropriate means.

5. Any proposal or inquiry regarding scientific and technological collaboration between the Parties shall be directed to any of the Parties through the contact points set out in Annex XII (Contact Points for Scientific Collaboration).