

CHAPTER 11

INTELLECTUAL PROPERTY

Article 1

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; and
- (b) **TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement, as revised or amended from time to time by a revision or amendment that applies to both Parties and including any waiver of any provision thereof granted by the General Council of WTO.

Article 2

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

Article 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 4

International Agreements

Each Party affirms its commitment to the TRIPS Agreement and any other international agreement relating to intellectual property which applies to both Parties.

Article 5

Intellectual Property and Public Health

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

Article 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 rights.

Article 7

Procedures on Acquisition and Maintenance

1. Each Party shall:
 - (a) continue to work to enhance its examination and registration systems, including through improving examination procedures and maintaining quality registration 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; and
 - (d) require that opposition, revocation, cancellation or invalidation decisions be reasoned and in writing.
2. For the purposes of this Article, writing and communication in writing may include writing and communications in an electronic form.

Article 8

Patentable Subject Matter

1. Subject to 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 Area 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 their law.

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 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 laws, regulations and rules.

Article 10

Transparency

To assist with the transparency of the operation of its intellectual property system, Georgia shall make available its registers of patents for invention, utility models, industrial designs, plant varieties, trade marks and geographical indications on the internet for public inspection, and Hong

Kong, China shall, subject to its laws, make available its registers of standard patents, short-term patents, registered designs and trade marks, containing such particulars as are required to be entered therein in accordance with its laws, on the internet for public inspection.

Article 11

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 12

Well-Known Trade Marks

The Parties shall provide protection for well-known trade marks at least in accordance with Article 16.2 and Article 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, as revised or amended from time to time by a revision or amendment that applies to both Parties.

Article 13

Geographical Indications

1. Each Party recognises that geographical indications may be protected through a trade mark or *sui generis* system or other legal means.¹⁰
2. For the purposes of this Chapter, “geographical indications” are indications which identify a good as originating

¹⁰ Georgia agrees to provide to Hong Kong, China the English version of any new legislation and/or amendments to legislation on registration of geographical indications, and Hong Kong, China agrees to provide to Georgia the English version of any new legislation and/or amendments to legislation on registration of certification marks and collective marks, through the means referred to in Article 19 (Communications) after the entry into force of such new legislation and/or amendments to the legislation.

in the Area of a Party, or a region or a locality in that Area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

3. Without prejudice to Article 22 and Article 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 Area 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

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 15

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.

Article 16

Genetic Resources, Traditional Knowledge and Folklore

1. Subject to the international obligations that are applicable to each Party and each Party's laws, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.
2. 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 laws and in multilateral agreements.

Article 17

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 trade mark 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 18

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 respective intellectual property systems; and
- (c) on the laws, procedures and practices of general application relating to 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) experience sharing and collaboration 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 shall, on request of the other Party, give due consideration to any specific cooperation proposal made by the other Party relating to the protection or enforcement of intellectual property rights, promotion of intellectual property trading, or promotion (including organising seminars and workshops) of the use of alternative dispute resolution such as arbitration and mediation to resolve intellectual property disputes between private parties.

Article 19

Communications

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of its contact point to the other Party. Each Party shall notify the other Party promptly of any amendment to the details of its contact point.

2. Either Party may at any time request meetings with the other Party to discuss and consider any issue related to intellectual property covered by this Chapter.

3. A request under paragraph 2 shall be conveyed through the contact points referred to in paragraph 1 by any means as may be agreed by the Parties.