

CHAPTER 11

INTELLECTUAL PROPERTY

Article 1 Objectives

The objectives of this Chapter are to:

- (a) promote the importance of intellectual property rights in fostering trade in goods and services, innovation, and economic, social and cultural development;
- (b) promote the effective protection, enforcement and maintenance of intellectual property rights;
- (c) recognise the need to achieve a fair balance between the rights of intellectual property right holders, the legitimate interests of users and the wider interest of the public with regard to the protected subject matter; and
- (d) uphold commitments to combating the infringement of intellectual property rights that occurs through the pirating of copyright works and counterfeiting of trademarks.

Article 2 Definitions

For the purposes of this Chapter:

- (a) **intellectual property rights** refers to copyright and related rights, rights in trade marks, geographical indications, industrial designs, patents, layout designs of integrated circuits, rights in plant varieties and rights in undisclosed information as defined in the *TRIPS Agreement*; and

- (b) **TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, which is part of the *WTO Agreement*.

Article 3

General Provisions

1. Each Party reaffirms its commitment to abide by the *TRIPS Agreement* and any other multilateral agreement relating to intellectual property which are applicable to both Parties.

2. Each Party shall ensure that it maintains an effective legal framework that gives effect to the rights and obligations applicable to it under the *TRIPS Agreement*, and includes clearly defined rights and obligations that provide certainty over the protection and enforcement of intellectual property rights to holders of intellectual property rights and users of intellectual property.

3. Subject to the international obligations that are applicable to each Party, the Parties affirm that each Party may:

- (a) provide for the international exhaustion of intellectual property rights;
- (b) establish that provisions in non-negotiated standard form end-user licence agreements for goods and services⁴ do not prevent consumers from exercising the limitations and exceptions recognised in domestic intellectual property laws; and
- (c) establish provisions to facilitate the exercise of permitted acts where technological protection measures have been applied.

⁴ This does not include compulsory licensing agreements.

4. Each Party shall also maintain transparent regulations, efficient and non-discriminatory enforcement mechanisms, and access to expeditious remedies, in accordance with the obligations applicable to each Party under the *TRIPS Agreement*.

5. In line with the obligations applicable to each Party under the *TRIPS Agreement*, each Party shall maintain an effective framework for the enforcement of intellectual property rights, including through:

- (a) the provision of fair and equitable civil judicial procedures for private enforcement of those rights;
- (b) the enforcement of criminal laws relating to wilful activities in respect of copyright piracy and trademark counterfeiting on a commercial scale; and
- (c) the provision of effective border control measures and procedures for right holders.

6. All issues pertaining to intellectual property rights in this Agreement shall be interpreted and applied consistent with the object and purpose of this Chapter, unless the context otherwise requires.

Article 4

Contact Points

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 such contact point to the other Party. The Parties shall notify each other promptly of any amendments to the details of their contact points.

Article 5

Exchange of Information

1. Each Party shall, on request of the other Party and subject to its domestic law, provide information relating to:

- (a) any new laws that enter into effect in relation to intellectual property;
- (b) changes to, and developments in, the implementation of intellectual property systems, aimed at promoting effective and efficient registration or grant of intellectual property rights; and
- (c) developments in intellectual property rights enforcement.

2. Any information provided under this Article shall be conveyed through the contact points referred to in Article 4.

Article 6

Cooperation

1. Subject to their respective domestic laws and policies, the Parties agree to cooperate, as set out in this Article, with a view to eliminating trade in goods infringing intellectual property rights and ensuring that the enforcement of intellectual property rights does not itself become a barrier to legitimate trade.

2. The Parties shall endeavour to facilitate the development of contacts and cooperation between their respective government agencies, educational institutions, and other organisations with an interest in the field of intellectual property rights.

3. 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.

4. Any proposal for cooperation shall be conveyed through the contact points referred to in Article 4.

Article 7 Business Facilitation

Each Party shall endeavour to reduce transaction costs associated with the implementation of its intellectual property regime, where practicable and taking into account local conditions and developments in the international community.

Article 8 Genetic Resources, Traditional Knowledge and Folklore

Subject to the international obligations that are applicable to each Party, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions or folklore.

Article 9 Consultations

1. Either Party may at any time request consultations with the other Party with a view to seeking a timely and mutually satisfactory resolution in relation to any intellectual property issue, including enforcement, within the scope of this Chapter.

2. Such consultations shall be conducted through the contact points referred to in Article 4 and shall commence within 60 days of the receipt of the request for consultations, unless the Parties mutually determine otherwise. In the event that consultations fail to resolve any such issue, the requesting Party may refer the issue to the Joint Commission for consideration.

3. Any action taken pursuant to this Article shall be without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement) or under the *WTO Dispute Settlement Understanding*.