

**CHAPTER 10**  
**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; and
- (c) recognise the need to achieve a fair balance between the rights of intellectual property rights holders, the legitimate interests of users and the wider interest of the public with regard to protected subject matter.

**Article 2**  
**Definitions**

For the purposes of this Chapter:

**intellectual property rights** refers to copyright and related rights, rights in trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, and rights in plant varieties as defined in the TRIPS Agreement; and

**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 the TRIPS Agreement and any other multilateral agreement relating to intellectual property rights to which both are Parties.
2. For the purpose of this Chapter, the TRIPS Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.
3. 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 for holders and users of intellectual property rights over the protection and enforcement of intellectual property rights.
4. 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; and
  - (b) establish provisions to facilitate the exercise of permitted acts where technological protection measures have been applied.

5. 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.
6. 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 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 customs control measures and procedures for right holders.
7. 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 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**

### **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 responsible 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. Cooperation activities and initiatives undertaken in this Chapter shall be subject to the availability of resources.
4. Any proposal for cooperation shall be conveyed through the contact points referred to in Article 4.

## **Article 6**

### **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 7**

### **Trademarks and Geographical Indications**

1. Each Party shall protect trademarks where they predate, in its jurisdiction, geographical indications in accordance with its domestic law and the TRIPS Agreement.
2. Each Party recognises that geographical indications may be protected through a trademark system.
3. Where a Party provides for the protection of a geographical indication by means of registration or designation, that Party shall provide an opportunity for interested parties to oppose such registration or designation, and seek cancellation of such registration or designation. The grounds for opposing or cancelling the registration or designation of a geographical indication shall include that:
  - (a) the geographical indication is likely to cause confusion with a trademark or geographical indication that is the subject of a pre-existing good faith pending application or registration in such Party;
  - (b) the geographical indication is likely to cause confusion with a pre-existing trademark or geographical indication, the rights to which have been acquired in the Party through use in good faith; and
  - (c) the claimed geographical indication is identical with a term customary in the common language, or used in legitimate and established practices of trade, for the good to which the geographical indication relates.

4. Where the protection of a geographical indication by means of registration or designation for goods other than wines and spirits extends to a translation or transliteration of the geographical indication, the Parties shall provide the opportunity for third parties to oppose such registration or designation, and seek cancellation of such registration or designation, at least on the grounds provided for in paragraph 3.

## **Article 8**

### **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 rights 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 21 (Dispute Settlement) or under the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes*.

## **Article 9**

### **Termination of 1998 Intellectual Property Arrangements**

The Parties acknowledge the advice received from the New Zealand Commerce and Industry Office and Taipei Economic and Cultural Office of their intention to terminate the following arrangements upon entry into force of this Agreement:

- a. *Arrangement between the New Zealand Commerce and Industry Office and the Taipei Economic and Cultural Office, New Zealand, on the Reciprocal Protection and Enforcement of Copyright*, done at Auckland on 15 June 1998; and
- b. *Arrangement for the Protection of Industrial Property Rights between the Taipei Economic and Cultural Office in New Zealand and the New Zealand Commerce and Industry Office*, done at Taipei on 20 October 1998.