

PART SIX
INTELLECTUAL PROPERTY RIGHTS

CHAPTER 16
INTELLECTUAL PROPERTY

Section A - General Provisions

Article 16.01 General Provisions

The Parties agree that TRIPS and the following intellectual property (IP) related international conventions shall govern and apply to all intellectual property issues arising from this Agreement:

- (a) the Paris Convention for the Protection of Industrial Property (1967);
- (b) the Bern Convention for the Protection of Literary and Artistic Works (1971);
- (c) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations;
- (d) the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Reproduction;
- (e) the Convention of the International Union for the Protection of New Varieties of Plants (UPOV), Act of 1978 or Act of 1991 according to the country;
- (f) the World Intellectual Property Organization (WIPO) Copyright Treaty of 1996; and
- (g) the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty of 1996.

Section B - Protection of the Intellectual Property Rights

Article 16.02 General Obligations

1. Each Party shall accord nationals of the other Party appropriate protection and

enforcement of intellectual property rights referred to in this Chapter and shall ensure that measures intended for the enforcement of these rights do not create obstacles to legitimate trade.

2. Each Party may accord in its legislation a broader protection to the intellectual property rights than the protection required in this Chapter, provided that this protection is not inconsistent with the provision of the Chapter.

Article 16.03 Exhaustion of the Copyright and Related Rights

1. The Parties agree to apply the principle of the copyright and related rights exhaustion, meaning that the holder of the copyright and related rights shall not hinder free trade of legitimate products in a Party, once legally introduced for trade into that Party, by the same right or license holder or by any other authorized third person, provided that these products and the packages that are in immediate contact with them have not suffered any modification or alteration.

2. The Parties have one year from the entry into force of this Agreement to incorporate this principle into its national legislation.

Article 16.04 Protection of Geographic Indications

1. Each Party shall recognize and protect the geographical indications of another Party provided for in this Article.

2. Neither Party shall permit the importation, manufacture or sale of goods using a geographical indication protected by the other Party, unless it is processed and certified in the originating Party according to the applicable legislation governing the geographic indication.

3. The provisions in paragraphs 1 and 2 shall only be effective with regard to the geographical indications that are protected by the legislation of the Party demanding protection and whose definition agreed upon by section 3 of TRIPS. Likewise, to accede to protection, each Party shall notify the other Party of the geographical indications, which comply with the above-mentioned requirements and shall be included in the scope of protection.

4. The above mentioned provisions shall be understood without prejudice to the recognition that the Parties may accord to the homonymous geographical indications that may lawfully belong to a non-Party.

Appellation of Origin for Seco

5. The ROC shall recognize the appellation of origin “Seco” for exclusive use as a kind of spirits made from sugarcane originating in Panama. Consequently it shall not be permitted in the ROC the importation, manufacture or sale of this product, unless it is processed in Panama, according to Panamanian laws, rules, technical regulations and standards applicable to the said product.

6. **The provisions of Section C (Enforcement) of this Chapter, as well as those established in Article 23 (1) of TRIPS shall be applicable to the appellation of origin for Seco.**

Article 16.05 Protection of Traditional Knowledge

1. Each Party shall protect the collective intellectual property rights and the traditional knowledge of indigenous people on their creations, subject to commercial use, through a special system of registration, promotion and marketing of their rights, aiming at emphasizing the indigenous sociological and cultural values of the indigenous people and the local communities and bring to them social justice.

2. Each Party shall recognize that the customs, traditions, beliefs, spirituality, religiosity, cosmos vision, folklore expressions, artistic manifestations, traditional skills and any other form of traditional expression of the indigenous people and local communities are a part of their cultural heritage.

3. The cultural heritage shall not be subject to any form of exclusivity by unauthorized third parties applying the intellectual property system, unless the request is done by the indigenous people and local communities or by third parties with their authorization.

Article 16.06 Protection of Folklore

Each Party shall ensure the effective protection of all folklore expressions and manifestations and of artistic manifestations of the traditional and popular culture of the indigenous and local communities.

Article 16.07 Relation between Access to Genetic Resources and Intellectual Property

1. Each Party shall protect the access to its genetic resources and the traditional knowledge developed by indigenous people and local communities on the uses of the biological resources containing these genetic resources, against the indiscriminate use of biological diversity, as well as ensuring that the Party will participate in benefits derived from the use of its genetic resources.

2. Each Party shall accord a fair and equitable participation in the benefits derived from the access to its genetic resources and from the uses of its traditional knowledge

and folklore expressions.

3. Each Party shall ensure that the protection accorded to the industrial property shall safeguard its biological and genetic heritage. Consequently, the licensing of patents on inventions developed from material obtained from such heritage or traditional knowledge shall be subject to the condition that this material was acquired according to relevant national and international laws and regulations.

Article 16.08 Plant breeders

1. Each Party shall recognize and ensure the so called “breeder’s right” through a special system of registration as provided for in the relevant laws and regulations in the territory of each Party, as well as through the mechanism of mutual recognition to be developed as agreed upon by the Parties, with the aim of protecting the rights originating from the use of plant varieties.

2. The right accorded to the breeder of a plant variety is an intellectual property right which accords to its holder an exclusive right, so that his or her authorization is required to conduct some acts of exploitation of the protected variety.

3. The breeder’s right shall be marketable, transferable and inheritable. The owner of the right may accord to third persons license to exploit the protected varieties.

4. The breeder’s right covers all plant species and genera and shall be applied to any kind of plants and seeds, and to any part thereof that can be used as reproduction or propagation material. The breeder’s right shall also be accorded where the variety is new, different, homogeneous and stable.

5. The right conferred on the breeder shall be granted for twenty (20) years in Panama and for fifteen (15) years in the ROC from the date of concession of the title of protection. In the case of vines, forest trees, fruit trees and ornamental trees, including in each case their rootstocks, the protection shall have a term of twenty five (25) years in Panama and of fifteen (15) years in the ROC. Once the protection term expires, the varieties shall be considered as in the public domain.

Section C - Enforcement

Article 16.09 Applications

1. The Parties confirm the effective rights and obligations among them with respect to the procedures of observance in accordance with TRIPS.

2. The Parties recognize that the growing importance of IP protection in traditional knowledge and folklore, genetic resources, geographic indications, plant breeders and

other related matters is critical to economic competitiveness in the knowledge-based economy and to sustainable economic development. The Parties, therefore, confirm that either Party which is not party to one or more of the multilateral agreements listed in Article 16.01 shall undertake with the best efforts to pursue affiliation, in due course, to the said agreements.

Article 16.10 Enforcement of Intellectual Property Rights

Each Party shall establish in its legislation administrative, civil and criminal procedures, effective with the objective to reach an adequate and effective protection of the intellectual property rights. Also for all the procedures as mentioned above, the due process as regards the relationship between the plaintiff and the defendant shall be taken into account.

Article 16.11 Enforcement of Border Measures

Each Party shall adopt legislation on measures in border control, to the extent that the customs authorities shall be granted action to inspect or to retain merchandise, with the purposes of suspending or avoiding the free circulation of the merchandise involved to accord the rightholders protection.

Article 16.12 Transparency

The Parties shall notify the Committee on Intellectual Property under this Agreement the laws, regulations and the dispositions. In relation to final judicial decisions and administrative rulings of general application, the foregoing shall be published, or where such publication is not practical made publicly available, to enable the governments of each Party and right holders to become acquainted with them.

Article 16.13 Committee on Intellectual Property

1. The Parties hereby establish the Committee on Intellectual Property, as set out in Annex 16.13, to discuss and review all IP related issues arising from this Agreement.
2. An Expert Group of Intellectual Property shall be established under the Committee on Intellectual Property, composed of three IP experts from the Intellectual Property Office in each Party. The Committee or the Expert Group on Intellectual Property shall meet, in principle, once a year or as requested by either Party, subject to mutual agreement. The location of the meeting shall rotate between the Parties.

Article 16.14 Technical Cooperation

The Parties shall establish a system of technical cooperation between the Parties and within the framework of the WTO on matters relating to intellectual property,

particularly in areas of newly developed IP-related issues.

ANNEX 16.13
COMMITTEE ON INTELLECTUAL PROPERTY

The Committee on Intellectual Property under Article 16.13 shall be composed of:

- (a) in the case of Panama, the Ministry of Trade and Industries through the Vice-ministry of Foreign Trade, or its successor; and
- (b) in the case of the ROC, Ministry of Economic Affairs through the Intellectual Property Office, or its successor.