

CHAPTER 13

INTELLECTUAL PROPERTY

Article 1

Objectives

Each Party confirms its commitment to reducing impediments to trade and investment by promoting deeper economic integration through effective and adequate creation, utilisation, protection and enforcement of intellectual property rights, taking into account the different levels of economic development and capacity and differences in national legal systems and the need to maintain an appropriate balance between the rights of intellectual property owners and the legitimate interests of users in subject matter protected by intellectual property rights.

Article 2

Definitions

For the purposes of this Chapter:

- (a) **intellectual property rights** means copyright and related rights; rights in trademarks, geographical indications, industrial designs, patents, and layout-designs (topographies) of integrated circuits; rights in plant varieties; and rights in undisclosed information; as referred to in the TRIPS Agreement; and
- (b) **WIPO** means the World Intellectual Property Organization.

第十三章

知识产权

第一条

目的

每一缔约方确认其致力于通过有效和充分的知识产权创造、利用、保护和执行，促进更深层次的经济一体化，以减少贸易和投资的障碍，并考虑到不同经济发展水平和能力、国家法律体系差异以及需要在知识产权权利人与受知识产权保护的客体的合法用户之间保持适当平衡的需要。

第二条

定义

本章所称：

- (a) 知识产权是指版权和相关权利；商标、地理标志、工业设计、专利和集成电路布图设计（拓扑图）的权利；植物新品种的权利；以及未披露信息的权利；如《与贸易有关的知识产权协定》所述；和
- (b) WIPO 指世界知识产权组织。

Article 3
Affirmation of the TRIPS Agreement

Each Party affirms its rights and obligations with respect to each other Party under the TRIPS Agreement.

Article 4
National Treatment

1. Each Party shall accord to the nationals of each other Party treatment no less favourable than it accords to its own nationals with regard to the protection¹ of intellectual property, subject to the exceptions provided in the TRIPS Agreement and in those multilateral agreements concluded under the auspices of WIPO.
2. Each Party may avail itself of the exceptions referred to under Paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of any other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, only where such exceptions are:
- (a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and
 - (b) not applied in a manner that would constitute a disguised restriction on trade.

¹ For the purposes of this Paragraph, “protection” includes 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 covered by this Chapter. Further, for the purposes of this Paragraph, “protection” also includes the prohibition on circumvention of effective technological measures specified in Article 5 (Copyright).

第3条 与贸易有关的知识产权协定确认

每一缔约方确认其根据与贸易有关的知识产权协定对每一其他缔约方的权利和义务。

第4条 国民待遇

1. 每个缔约方应当给予其他缔约方的国民不低于其给予本国国民的知识产权保护¹ 待遇，但应符合与贸易有关的知识产权协定以及在世界知识产权组织主持下缔结的多边协定中规定的例外。
2. 每个缔约方可在其司法和行政程序中援引第1段所述的例外，但仅当这些例外是：
- (a) 为确保遵守与本章不一致的法律和法规所必需的；和
 - (b) 不以构成伪装贸易限制的方式应用。

¹ 就本段而言，“保护”包括影响知识产权的可用性、获取、范围、维持和执行的事项，以及影响本章特别涵盖的知识产权使用事项。此外，就本段而言，“保护”还包括禁止规避第5条（版权）中规定的有效技术措施。

Article 5
Copyright

1. Each Party shall:
- (a) provide to authors of works² the exclusive right to authorise any communication to the public of their works by wire or wireless means;
 - (b) provide criminal procedures and penalties at least in cases where a person wilfully infringes copyright for commercial advantage or financial gain; and
 - (c) foster the establishment of appropriate bodies for the collective management of copyright and encourage such bodies to operate in a manner that is efficient, publicly transparent and accountable to their members.
2. Each Party shall endeavour to:
- (a) provide to authors of sound recordings³ the exclusive right to authorise any communication to the public of their sound recordings by wire or wireless means;

² For the purposes of this Chapter, “works” includes a cinematograph film.

³ Where a Party is, or becomes, a member of the *WIPO Performances and Phonograms Treaty* (WPPT), that Party’s obligations under this Paragraph shall be subject to any commitments and reservations that Party has made under the WPPT.

第5条
版权

1. 每一方应：
- (a) 向作品² 的作者提供授权通过有线或无线方式向公众传播其作品的专有权利；(b) 在个人为获取商业利益或经济利益故意侵犯版权的情况下，提供刑事程序和处罚；以及(c) 促进建立适当的版权集体管理机构，并鼓励此类机构以高效、公开透明并对其成员负责的方式运营。
2. 每个缔约方应当努力做到：
- (a) 向音响录音作者³ 提供独家授权其通过有线或无线方式向公众传播其音响录音的权利；

² 在本章的范围内，“作品”包括电影。

³ 如果一方是或成为世界知识产权组织表演和录音条约（WPPT）的成员，则该方在本段下的义务应受该方在WPPT下所做的任何承诺和保留的约束。

- (b) provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures⁴ that are used by copyright owners in connection with the exercise of their copyright rights and that restrict acts, in respect of their works, which are not authorised by the copyright owners concerned or permitted by law; and
- (c) provide criminal procedures and penalties at least in cases where a person wilfully commits a significant infringement of copyright, that is not committed for commercial advantage or financial gain and which is not otherwise permitted by law, but which has a substantial prejudicial impact on the owner of the copyright.

Article 6 Government Use of Software

Each Party confirms its commitment to:

- (a) maintain appropriate laws, regulations or policies that make provision for its central government agencies to continue to use only legitimate computer software in a manner authorised by law and consistent with this Chapter; and
- (b) encourage its respective regional and local governments to maintain or adopt similar measures.

⁴ For the purposes of this Chapter, “effective technological measures” means any technology, device, or component that is used by copyright owners in connection with the exercise of their copyright rights and that restricts acts, in respect of their works or sound recordings, which are not authorised by the copyright owners concerned or permitted by law.

(b) 提供充分的法律保护及有效的法律救济，以防止规避版权所有者在行使其版权权利的过程中所采用的有效技术措施⁴，这些技术措施限制了对作品的行为，而这些行为未经相关版权所有者授权或法律允许；和

(c) 提供刑事程序和处罚，至少在以下情况下：即个人故意实施重大版权侵权行为，该行为并非出于商业利益或经济利益，且法律未允许，但该行为对版权所有者造成重大不利影响。

第13章 政府软件使用

每一缔约方确认其致力于：

- (a) 维持适当的法律、法规或政策，以便其中央政府机构能够继续仅以法律授权且与本章节一致的方式使用合法计算机软件；以及
- (b) 鼓励其各地区和地方政府维持或采取类似措施。

⁴ 就本章节而言，“有效技术措施”是指版权所有者在行使其版权权利相关时使用的任何技术、设备或组件，该组件限制未经有关版权所有者授权或法律允许的对其作品或音响录音的行为。

Article 7
Trademarks and Geographical Indications

1. Each Party shall maintain a trademark classification system that is consistent with the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, as amended from time to time.
2. Each Party shall provide high quality trademark rights through the conduct of examination as to substance and formalities and through opposition and cancellation procedures.
3. Each Party shall protect trademarks where they predate, in its jurisdiction, geographical indications in accordance with its domestic law and the TRIPS Agreement.
4. Each Party recognises that geographical indications may be protected through a trademark system.

Article 8
Genetic Resources, Traditional Knowledge and Folklore

Subject to each Party's international obligations, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.

Article 9
Co-operation

1. The Parties acknowledge the significant differences in capacity between some Parties in the area of intellectual property. Mindful of this, where a Party's implementation of this Chapter is inhibited by capacity constraints, each other Party shall, as appropriate, and upon request, endeavour to provide co-operation to that Party to assist in the implementation of this Chapter.

第13章 商标和地理标志

1. 每个缔约方应维持一个与《关于服务与商品国际分类的尼斯协定》及其不时修订的版本一致的商标分类制度。
2. 每个缔约方应通过实质性审查和形式审查、异议和撤销程序，提供高质量的商标权保护。
3. 每个缔约方应根据其国内法以及与贸易有关的知识产权协定，保护在其管辖范围内先于地理标志出现的商标。
4. 每个缔约方承认地理标志可以通过商标制度得到保护。

第8条 遗传资源、传统知识和民间文学艺术

在不损害每个缔约方国际义务的前提下，每个缔约方可以采取适当措施保护遗传资源、传统知识和民间文学艺术。

第九条 合作

1. 各缔约方承认在知识产权领域，部分缔约方之间存在显著的能力差异。鉴于这一点，当一个缔约方的本章实施因能力限制而受阻时，其他缔约方应根据适当情况并在收到请求时，努力向该缔约方提供合作以协助其本章的实施。

2. At the request of a Party, any other Party may, to the extent possible and as appropriate, render assistance to the requesting Party in order to enhance the requesting Party's national framework for the acquisition, protection, enforcement, utilisation and creation of intellectual property, with a view to developing intellectual property systems that foster domestic innovation in the requesting Party.

3. The Parties agree to promote dialogue on intellectual property issues, including by:

- (a) designating contact points in relevant government agencies, including contact points for the enforcement of intellectual property rights at the border;
- (b) encouraging interaction between intellectual property experts in order to broaden understanding of each others' intellectual property systems; and
- (c) exchanging information concerning the infringement of intellectual property rights, in accordance with domestic law.

4. The Parties shall endeavour to co-operate in order to promote the efficiency and transparency of intellectual property administration and registration systems, including by exchanging information regarding developments in such systems and by developing publicly accessible databases of registered rights.

5. The Parties shall endeavour to co-operate in order to promote education and awareness regarding the benefits of effective protection and enforcement of intellectual property rights.

2. 应一方缔约方的请求，任何其他缔约方可在可能和适当的情况下，向请求方提供协助，以增强请求方获取、保护、执行、利用和创造知识产权的国家框架，旨在发展促进请求方国内创新的知识产权制度。

3. 各方同意就知识产权问题促进对话，包括通过：

- (a) 在相关政府机构指定联系点，包括边境知识产权权利的执法联系点；(b) 鼓励知识产权专家之间的互动，以增进对彼此知识产权制度的理解；以及(c) 根据国内法交换有关知识产权权利侵权的情报。

4. 各方应努力合作，以促进知识产权管理和注册系统的效率和透明度，包括通过交换有关此类系统发展情况的信息，以及开发注册权利的公开可访问数据库。

5. 各方应努力合作，以促进有关有效保护知识产权权利和执行知识产权权利之益的教育和意识。

6. Parties shall co-operate on border measures with a view to eliminating trade which infringes intellectual property rights. Parties who are members of the WTO shall also co-operate with each other to support the effective implementation of the requirements relating to border measures set out in Articles 51 to 60 of the TRIPS Agreement.

7. Recognising the importance of achieving the objectives of this Chapter, should any Party intend to accede to any of the following treaties, it can seek to co-operate with other Parties to support its accession to, and its implementation of, the following treaties:

- (a) the *Patent Cooperation Treaty 1970*;
- (b) the *Strasbourg Agreement Concerning the International Patent Classification 1971*;
- (c) the *Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure 1977*;
- (d) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks 1989*;
- (e) the *Patent Law Treaty 2000*;
- (f) the *International Convention for the Protection of New Varieties of Plants 1991*;
- (g) the TRIPS Agreement;
- (h) the *Singapore Treaty on the Law of Trademarks 2006*;
- (i) the *WIPO Copyright Treaty 1996*; and

6. 各方应在边境措施方面合作，以消除侵犯知识产权的贸易。世界贸易组织成员方亦应相互合作，支持有效实施TRIPS协定第51条至第60条规定的边境措施要求。

7. 认识到实现本章目标的重要性，如果任何缔约方打算加入以下任何条约，它可以寻求与其他缔约方合作，以支持其加入和实施以下条约：

- (a) 1970年专利合作条约； (b) 1971年关于国际专利分类的斯特拉斯堡协定； (c) 1977年关于国际微生物保藏用于专利程序的布达佩斯条约； (d) 1989年关于马德里协定国际商标注册的议定书； (e) 2000年专利法条约； (f) 1991年保护植物新品种国际公约； (g) 与贸易有关的知识产权协定； (h) 2006年商标法新加坡条约； (i) 1996年世界知识产权组织版权条约； 以及

(j) the *WIPO Performances and Phonograms Treaty 1996*.

8. Each Party shall, on request and as it considers appropriate, endeavour to provide co-operation to support any Party's efforts to implement an inclusive system⁵ of trademark registration.

9. All co-operation under this Article is subject to the availability of resources.

Article 10
Transparency

1. Each Party shall ensure that its laws and regulations of general application that pertain to the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights are made publicly available in at least the national language of that Party or in the English language. Each Party shall also endeavour to provide that final judicial decisions and administrative rulings pertaining to the aforesaid matters are made publicly available in at least the national language of that Party or in the English language.

2. Each Party shall endeavour to make the information referred to in Paragraph 1, which is publicly available, made available in the English language and on the internet.

3. Each Party shall endeavour to make available on the internet databases of all pending and registered trademark rights in its jurisdiction.

⁵ An inclusive system of trademarks does not limit the scope of registrable trademarks and thus permits the registration of all trademarks that are capable of distinguishing a good or service, such as shapes, aspects of packaging, single and multi-colour marks, sounds and scents.

(j) 1996年世界知识产权组织表演和录音条约。

8. 每一缔约方应根据请求并视其认为适当，努力提供合作以支持任何缔约方实施包容性商标注册系统⁵。

9. 根据本条规定的所有合作均以资源的可用性为条件。

第10条 透明度

1. 每一缔约方应确保其关于知识产权的可获得性、范围、获取、执行和防止滥用的一般适用法律和法规以该缔约方的本国语言或英语至少公开提供。每一缔约方还应努力确保与上述事项有关的最终司法判决和行政裁决以该缔约方的本国语言或英语至少公开提供。

2. 每一缔约方应努力将第1段所述的公开信息以英语和互联网上提供。

3. 每个缔约方应努力在其管辖范围内将所有在先和注册商标权的数据库在互联网上提供。

⁵ 包容性商标系统不限制可注册商标的范围，因此允许注册所有能够区分商品或服务的商标，例如形状、包装方面、单色和多色标记、声音和气味。

Article 11
Recognition of Transitional Periods under the TRIPS Agreement

Nothing in this Chapter shall derogate from any transitional period for implementing a provision of the TRIPS Agreement that has been or may be agreed by the Council for TRIPS, established pursuant to Article IV of the WTO Agreement, either prior or subsequent to the entry into force of this Agreement.

Article 12
Committee on Intellectual Property

1. Recognising the importance of achieving the objectives of this Chapter, the Parties hereby establish a Committee on Intellectual Property (IP Committee), consisting of representatives of the Parties to monitor the implementation and administration of this Chapter.
2. The IP Committee shall meet annually or as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.
3. The IP Committee shall determine its terms of reference in accordance with this Chapter.
4. The IP Committee shall determine its work programme in response to priorities as identified by the Parties.
5. In the course of fulfilling its functions, the IP Committee may agree that existing or new mechanisms be utilised or developed in order to promote dialogue between the Parties on intellectual property issues, including by providing opportunities for stakeholders to engage with the Parties on such issues.

第13章 与贸易有关的知识产权协定项下的过渡期承认

本章的任何规定均不得减损根据世界贸易组织协定第IV条设立的与贸易有关的知识产权理事会所同意的，或可能同意的，与贸易有关的知识产权协定某项条款的实施过渡期，无论该过渡期是在本协定生效之前还是之后。

第12条 知识产权委员会

1. 认识到实现本章目标的必要性，缔约方特此设立知识产权委员会（知识产权委员会），由缔约方代表组成，以监督本章的实施和管理。
2. 知识产权委员会应每年召开一次或由缔约方共同决定。会议可采取面对面形式，或由缔约方共同决定的其他方式举行。
3. 知识产权委员会应根据本章确定其工作范围。
4. 知识产权委员会应根据缔约方确定的首选事项确定其工作计划。
5. 在履行其职能的过程中，知识产权委员会可以同意利用或开发现有或新的机制，以促进缔约方之间就知识产权问题进行对话，包括为利益相关者提供与缔约方就此类问题进行接触的机会。

6. Each Party shall notify the IP Committee annually of its progress in meeting its commitments under Article 5 (Copyright), and developments regarding accession to treaties listed in Article 9.7 (Co-operation). These notifications shall be submitted at least 30 days prior to the first IP Committee meeting of the year.

6. 每个缔约方应每年通知知识产权委员会其履行第5条（版权）项下承诺的进展情况，以及关于加入第9.7条（合作）项下所列条约的发展情况。这些通知应在当年第一次知识产权委员会会议前至少30天提交。