

CHAPTER 11
INTELLECTUAL PROPERTY

第十一章 知识产权

ARTICLE 11.1: 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 Agreement¹ 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 anticompetitive 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.

¹ For greater certainty, “TRIPS Agreement” includes any amending protocol in force and any waiver made between the Parties of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement.

第11.1条：目的和原则

本章的目的是通过知识产权的保护和执法来增加贸易和投资的收益。缔约方认识到：

- (a) 建立和维持透明的知识产权制度，促进和维护知识产权的充分和有效保护与执法，为权利持有人和用户提供确定性； (b) 保护和执法知识产权应有助于促进技术创新以及技术的转让和传播； (c) 知识产权保护促进经济和社会发展，并可以减少对国际贸易的扭曲和阻碍； (d) 知识产权制度应支持开放、创新和高效的市场，包括通过有效创造、利用、保护和执法知识产权、适当的限制和例外，以及在权利持有人、用户和公共利益之间的适当平衡； (e) 知识产权制度本身不应成为合法贸易的障碍； (f) 适当的措施可能是必要的，只要它们与与贸易有关的知识产权协定¹ 和本章的规定一致，以防止权利持有人滥用知识产权，或采取不合理地限制贸易、反竞争或不利影响技术国际转让的做法；以及 (g) 在与与贸易有关的知识产权协定和本章一致的情况下，可以采取适当的措施来保护公共卫生生活和营养。

¹ 为明确起见，“与贸易有关的知识产权协定”包括任何生效的修订议定书以及缔约方根据“世界贸易组织协定”授予的世界贸易组织成员根据与贸易有关的知识产权协定所做出的任何豁免。

ARTICLE 11.2: 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;
- (b) **national of a Party** includes, in respect of the relevant right, an entity of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article 1.3 of the TRIPS Agreement;
- (c) **TRIPS Agreement** means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement; and
- (d) **WIPO** means the World Intellectual Property Organization.

ARTICLE 11.3: 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 11.4: INTERNATIONAL AGREEMENTS

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

ARTICLE 11.5: NATIONAL TREATMENT

1. In respect of intellectual property rights covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection of such intellectual property rights, subject to the exceptions provided under the TRIPS Agreement and those multilateral agreements concluded under the auspices of WIPO to which the Parties are party.

第11.2条：定义

就本章而言，除非另有相反意图：

(a) 知识产权是指版权和相关权利、商标权、地理标志、工业设计、专利和集成电路布图设计、植物新品种权以及未披露信息权，如《与贸易有关的知识产权协定》中定义和描述的；(b) 缔约方国民包括，在涉及相关权利方面，符合《与贸易有关的知识产权协定》第1.3条所列协定中规定的保护资格标准的该缔约方实体；(c) 《与贸易有关的知识产权协定》是指包含在世界贸易组织协定附件1C中的《与贸易有关的知识产权协定》；(d) 世界知识产权组织是指世界知识产权组织。

第11.3条：义务为最低义务

每一缔约方应当至少使本章规定生效。缔约方可以，但无义务提供超出本章要求的更广泛的知识产权保护 and 执行，前提是该额外的保护和执行与本协定规定不一致。每一缔约方应自由确定在本国法律体系和实践中实施本章规定的适当方法。

第11.4条：国际协定

每一缔约方确认其致力于与贸易有关的知识产权协定以及任何其他与知识产权相关的多边协定，且缔约双方均为该协定的缔约方。

ARTICLE 11.5: NATIONAL TREATMENT

1. 关于本章涵盖的知识产权，每一缔约方应给予另一缔约方法国民不低于其给予本国国民的保护待遇，但应符合与贸易有关的知识产权协定以及世界知识产权组织主持下缔约方签署的多边协议所规定的例外情况。

2. For the purposes of this Article, “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 covered by this Chapter.

3. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service in its territory, or to appoint an agent in its territory, provided that such derogation is:

- (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.

4. Paragraph 1 shall not apply to procedures provided in multilateral agreements to which either Party is a party concluded under the auspices of the WIPO in relation to the acquisition or maintenance of intellectual property rights.

ARTICLE 11.6: TRANSPARENCY

1. To assist with the transparency of the operation of its intellectual property system, each Party shall make its granted or registered patent for invention, utility model, industrial design, plant variety protection, geographical indication and trade mark databases available on the internet.

2. In addition, each Party shall endeavour to publish and make available on the internet patent for invention, trade mark, plant variety protection and geographical indication applications.

ARTICLE 11.7: INTELLECTUAL PROPERTY AND PUBLIC HEALTH

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

2. The Parties reaffirm their commitment to contribute to the international efforts to the implementation of the Decision of the WTO General Council of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration, as well as the *Protocol amending the TRIPS Agreement*, done at Geneva on 6 December 2005.

2. 就本章而言，“保护”包括影响知识产权的可获得性、取得、范围、维持和执法的事项，以及影响本章涵盖的知识产权使用的事项。

3. 一方可在其司法和行政程序方面背离第1段，包括要求另一方的国民指定送达地址在其领土内，或任命其在领土内的代理人，前提是该背离：(a) 必须为保障符合与本章不一致的法律和法规所必需；以及 (b) 不得以构成伪装的贸易限制的方式适用。

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4. 第1段不适用于任何一方作为缔约方缔结的、在WIPO主持下签订的多边协议中提供的、关于获得或维持知识产权的程序。

第11.6条：透明度

1. 为促进其知识产权制度的运作透明度，每一方应将其授予或注册的发明专利、实用新型、工业设计、植物新品种保护、地理标志和商标数据库在互联网上提供。

2. 此外，每一缔约方应努力发布并在互联网上提供发明专利、商标、植物新品种保护和地理标志申请。

第11.7条：知识产权与公共卫生

1. 各缔约方承认世界贸易组织部长会议于2001年11月14日通过并采纳的《与贸易有关的知识产权协定和公共健康宣言》（以下简称“多哈宣言”）所确立的原则，并确认本章规定不妨碍多哈宣言。

2. 缔约方重申其致力于促进实施世界贸易组织总理事会2003年8月30日关于实施多哈宣言第6段的决定，以及2005年12月6日在日内瓦签署的修正与贸易有关的知识产权协定议定书的相关国际努力。

ARTICLE 11.8: 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 11.9: PROCEDURES ON ACQUISITION AND MAINTENANCE

Each Party shall:

- (a) continue to work to enhance its examination and registration systems, including through improving examination procedures and quality 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;
- (d) require that opposition, revocation, cancellation or invalidation decisions be reasoned and in writing; and
- (e) for the purposes of this Article, “writing” and “communication in writing” includes writing and communications in an electronic form.

ARTICLE 11.10: 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 11.11: 18 MONTH PUBLICATION

Each Party shall publish, and make available online, any patent for invention application promptly after the expiry of 18 months from its filing date or from its earliest priority date, if priority has been claimed, unless the application has been published earlier or has been withdrawn, abandoned or refused.

第11.8条：权利穷竭

本章任何规定均不影响缔约方确定是否以及在何种条件下适用知识产权权利穷竭的自由。缔约方同意进一步讨论与专利权穷竭相关的相关问题。

第11.9条：取得和维护程序

每一缔约方应当：

- (a)继续努力提升其审查和注册系统，包括通过改进审查程序和质量体系；(b)向申请人提供书面通知，说明拒绝授予或注册知识产权的理由；(c)为利害关系方提供机会，反对知识产权的授予或注册，或寻求撤销、撤销或无效宣告现有知识产权；(d)要求反对、撤销、撤销或无效宣告的决定具有理由并采用书面形式；以及(e)就本条而言，“书面形式”和“书面通信”包括书面形式和电子形式的通信。

第11.10条：专利申请的修改、更正和意见

每一方应根据各方的法律、法规和规则，为专利申请人提供机会，使其能够就其申请提出修改、更正和意见。

ARTICLE 11.11: 18个月发布

每一缔约方应当在其申请日届满18个月后或在其最早优先权日届满18个月后，迅速公布任何发明申请专利，除非该申请已提前公布或已被撤回、放弃或驳回。

ARTICLE 11.12: 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 11.13: CERTIFICATION AND COLLECTIVE TRADE MARKS

Each Party shall provide for the protection of both collective and certification trade marks.

ARTICLE 11.14: WELL-KNOWN TRADE MARKS

The Parties shall provide protection for well-known trade marks at least in accordance with Article 16.2 and 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.

ARTICLE 11.15: GEOGRAPHICAL INDICATIONS

Each Party recognises that geographical indications may be protected through a trade mark or *sui generis* system or other legal means.

ARTICLE 11.16: 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;
- (b) reducing unnecessary duplicative procedures between their respective plant breeders’ rights examination systems; and
- (c) contributing to the reform and further development of the international plant breeders’ rights laws, standards and practices, including within the South East Asian region.

第11.12条：可作为商标的标志类型

缔约方同意就保护作为商标的标志类型进行合作，包括视觉标志和声音标志。

第11.13条：认证商标和集体商标

各缔约方应当规定对集体商标和认证商标的保护。

第11.14条：驰名商标

各缔约方应当至少按照与贸易有关的知识产权协定第16.2条和第16.3条以及1883年3月20日在巴黎签订的保护工业产权巴黎公约第6条之补充条的规定，为驰名商标提供保护。

第11.15条：地理标志

各缔约方承认地理标志可通过商标或特殊保护制度或其他法律手段获得保护。

第11.16条：植物新品种权’

各缔约方通过其主管机关应合作鼓励和促进植物新品种权的保护和开发，以实现：

- (a) 更好地协调缔约方双方植物新品种权行政体系，包括加强相互感兴趣的物种的保护和交换信息；(b) 减少其各自植物新品种权审查体系之间不必要的重复程序；以及(c) 促进国际植物新品种权法律、标准和实践的改革和进一步发展，包括在东南亚地区。

ARTICLE 11.17: GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

- 1. Subject to each Party’s international obligations and its laws, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.
- 2. The Parties agree 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 11.18: PROTECTION OF UNDISCLOSED INFORMATION²

- 1. In the course of ensuring effective protection against unfair competition, each Party shall protect undisclosed information in accordance with paragraph 2.
- 2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices³, so long as such information:
 - (a) is secret, in that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
 - (b) has commercial value because it is secret; and
 - (c) has been subject to reasonable steps under the circumstances, taken by the person lawfully in control of the information, to keep it secret.

ARTICLE 11.19: 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.

² It is understood that, consistent with the TRIPS Agreement, protection of undisclosed information includes protection of confidential information that is otherwise undisclosed and provided in commercial situations, such as architectural drawings or proprietary commercial-in-confidence information.

³ For the purposes of this provision, “a manner contrary to honest commercial practices” shall mean, at least, practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

第11.17条：遗传资源、传统知识和民间文学艺术

- 1. 各缔约方应在其国际义务及其法律规定的范围内，建立适当的措施以保护遗传资源、传统知识和民间文学艺术。
- 2. 各缔约方同意就遗传资源、传统知识和民间文学艺术的相关问题进行进一步磋商，并考虑到其各自法律以及多边协议的未来发展。

第11.18条：未披露信息的保护²

- 1. 在确保有效防止不正当竞争的过程中，每一缔约方应根据第2段的规定保护未披露信息。
- 2. 自然人和法人应有权防止其控制下的信息在未经其同意的情况下被披露、获取或使用，且该信息：
 - (a) 是秘密的，因为它作为一个整体或其组件的精确配置和组装，在通常处理此类信息的圈子中不被普遍知晓或不易获得；
 - (b) 因为其秘密性而具有商业价值；并且
 - (c) 在当时的情况下，已被合法控制该信息的个人采取了合理的措施来保持其秘密。

第11.19条：版权集体管理

每一方应当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、公开透明的方式运作，并对其成员负责。

² 根据与贸易有关的知识产权协定，人们理解未披露信息的保护包括对在商业情况下提供的、否则未披露的机密信息的保护，例如建筑设计图纸或专有商业秘密信息。

³ 就本条款而言，“违反诚实商业行为的方式”应当指至少，包括违约、违反保密义务和诱使违约等行为，以及第三方明知或重大过失未能知晓此类行为涉及的情况下获取未披露信息。

ARTICLE 11.20: SERVICE PROVIDER LIABILITY

Each Party may take appropriate measures to limit the liability of, or remedies available against, internet service providers for copyright infringement by the users of their online services or facilities, where the internet service providers take action to prevent access to the materials infringing copyright in accordance with the laws and regulations of the Party.

ARTICLE 11.21: 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 trademark 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 11.22: BORDER MEASURES

1. Each Party shall ensure that the requirements necessary for a right holder to initiate procedures to suspend the release of goods suspected of being counterfeit trade mark or pirated copyright goods shall not unreasonably deter recourse to these procedures.
2. Where its competent authorities have made a determination that goods are counterfeit trade mark or pirated copyright goods (or have detained such suspected goods), each Party shall provide that its competent authorities have the authority to inform the right holder of at least the names and addresses of the consignor and the consignee, and of the quantity of the goods in question.
3. Each Party shall provide that its customs authorities may initiate border measures *ex officio* with respect to imported or exported goods suspected of being counterfeit trade mark or pirated copyright goods.
4. Each Party shall ensure that its laws, regulations or policies permit relevant competent authorities, on receipt of information or complaints, to take measures in accordance with its laws to prevent the export of counterfeit trademark or pirated copyright goods.

第11.20条：服务提供者责任

每一方可以采取适当措施，限制因用户使用其在线服务或设施而侵犯版权，对互联网服务提供者的赔偿责任或可获得的救济措施，前提是互联网服务提供商根据该方的法律和法规采取行动，以防止对侵犯版权的材料进行访问。

第11.21条：执法

1. 各方承诺实施有效的知识产权执法系统，以消除侵犯知识产权的商品和服务贸易。
2. 各方应根据与贸易有关的知识产权协定规定刑事程序和处罚，至少在商业规模的故意假冒商标或版权海盗行为案件中适用。可获得的救济措施应包括监禁和/或足以提供威慑作用的罚款，并与相应严重程度的罪行的处罚级别相一致。

第11.22条：边境措施

1. 每一方应确保，权利持有人启动暂停涉嫌假冒商标或盗版版权商品放行程序的必要要求，不会不合理地阻碍对这些程序的援引。
2. 当其主管当局已作出认定该商品为假冒商标或盗版版权商品（或已扣押此类涉嫌商品）时，每一方应规定其主管当局有权将发货人和收货人的姓名和地址，以及所涉商品的数量至少信息告知权利持有人。
3. 每一方应规定其海关当局可以对涉嫌为假冒商标或盗版版权商品的进口或出口商品主动采取边境措施。
4. 每一方应确保其法律、法规或政策允许相关主管当局在收到信息或投诉后，根据其法律采取措施，以防止假冒注册商标或盗版版权商品的出口。

5. The Parties may exclude from the application of this Article the importation or exportation of small quantities of goods which are considered to be of a non-commercial nature.

ARTICLE 11.23: 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 national intellectual property systems; and
 - (c) on the 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) work sharing 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 will consider requests for assistance from the other Party in a public health crisis in accordance with Article 11.7.

ARTICLE 11.24: CONSULTATIVE MECHANISM: COMMITTEE ON INTELLECTUAL PROPERTY

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Intellectual Property (“the Committee”).

5. 各方可以将被认为是非商业性质的少量商品的进口或出口排除在本条文的适用范围之外。

第11.23条：合作 – 一般

1. 每一方应根据另一方的请求交换信息：
 - (a) 与各自管理机构中的知识产权政策相关的信息；(b) 关于其国家知识产权制度的变化和发展；以及 (c) 关于知识产权的管理和执法。
2. 每一方应根据另一方的请求考虑知识产权问题以及私人利益相关者的切身利益。
3. 各方将考虑在共同利益领域内继续合作的机会，这些领域旨在改善各自司法管辖区的知识产权制度（包括行政程序）的运作。这种合作可能包括但不限于：
 - (a) 专利审查中的工作共享；(b) 知识产权执法；(c) 提高公众对知识产权问题的认识；(d) 提高专利审查质量和效率；以及 (e) 降低获得专利授权的复杂性和成本。
4. 每一方将根据第11.7条考虑从另一方获得公共卫生危机中的援助请求。

ARTICLE 11.24: CONSULTATIVE MECHANISM: COMMITTEE ON INTELLECTUAL PROPERTY

1. 为有效实施和运行本章，缔约方特设立知识产权委员会（“该委员会”）。

2. The functions of the Committee shall be to:
 - (a) review and monitor the implementation and operation of this Chapter;
 - (b) discuss any issues related to intellectual property covered by this Chapter; and
 - (c) report its findings to the FTA Joint Commission.
3. The Committee shall be composed of representatives of each Party.
4. The Committee shall meet at such venues and times and by such means as may be agreed by the Parties.

2. 该委员会的职能应为：
 - (a) 审查和监督本章的实施和运行；
 - (b) 讨论本章涵盖的与知识产权相关的问题；以及
 - (c) 向自由贸易协定联合委员会报告其发现。
3. 该委员会应由各缔约方的代表组成。
4. 该委员会应在缔约方商定的地点、时间和方式下举行会议。