

## **PART SIX**

### **Intellectual Property Rights**

#### **Chapter 17**

### **Intellectual Property Rights**

#### **Section A - General Provisions**

##### **Article 17.01 General Provisions**

The Parties agree that TRIPS Agreement, as well as the substantive provisions contained in the following intellectual property conventions shall apply to all issues arising from this Agreement:

- (a) Article 1 through 11, the Paris Convention for the Protection of Industrial Property(1967);
- (b) Article 2 through 19, and 21, the Berne Convention for the Protection of Literary and Artistic Works (1971);
- (c) Article 1 through 15, the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961);
- (d) Article 1 through 7, the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms;
- (e) Article 2 through 14, the World Intellectual Property Organization (WIPO) Copyright Treaty (1996);
- (f) Article 2 through 20, and 22 through 23, the WIPO Performances and Phonograms Treaty (1996); and
- (g) Article 1 through 14, the International Convention for the Protection of New Varieties of Plants (UPOV), (Act 1978).

#### **Section B- Protection of Intellectual Property Rights**

##### **Article 17.02 General Obligations**

1. A Party shall, in its territory, grant nationals from the other Party, adequate and effective protection and shall comply with intellectual property rights, while ensuring that the measures intended to comply with said rights do not become obstacles to legitimate trade.

2. Each Party may, in its own legislation, implement broader protection as required in this Chapter, as long as such protection does not contravene the provisions of this Agreement.
3. The Parties may freely establish the most adequate method of implementing the provisions of this Chapter, within the framework of their own legal system and practice.
4. This Chapter does not give rise to obligations on the Parties regarding acts that occurred before the date of entry into force of this Agreement.
5. Nothing in this Chapter prevents a Party from adopting measures necessary to prevent anticompetitive practices that may result from the abuse of the intellectual property rights set out in this Chapter, provided that such measures are consistent with the provisions in this Chapter.

### **Section C – Application**

#### **Article 17.03 Relation with Other Agreements**

1. The Parties assert their rights and obligations under the TRIPS Agreement.
2. Each Party asserts the rights and obligations under the multilateral agreements relating to intellectual property rights, in particular those concluded under the auspices of the WIPO and to which they are Parties.
3. The Parties confirm that if either of them that is not a party to one or more of the multilateral treaties listed in Article 17.01, it commits itself to put forth its best efforts to seek to join those treaties in due time.

#### **Article 17.04 Applications**

1. Intellectual property rights in this Chapter shall include each and every one of the rights in the area of patents (inventions, utility models and industrial designs), trade secrets or confidential information or undisclosed information, integrated circuits, trademarks and other distinctive signs, geographical indications, new varieties of plants, and copyrights and related rights.
2. This Chapter also includes the protection of traditional knowledge and folklore as well as access to genetic resources.
3. Each Party shall maintain or establish effective administrative, civil and criminal procedures in its legislation, with the aim of achieving adequate protection of intellectual property rights. Such procedures shall take into account the due process concerning the relationship between the plaintiff and the defendant.

## **Article 17.05 Transparency**

Each Party shall ensure that all laws, regulations and procedures regarding the protection of intellectual property rights shall be in writing and published. If such publication is not practicable, it shall be made available to the public on the Internet, so as to enable governments and right holders to obtain *prima facie* information, and to ensure the transparency of the intellectual property rights protection system.

## **Section D – Intellectual Property Committee**

### **Article 17.06 Intellectual Property Committee**

1. The Parties hereby establish an Intellectual Property Committee, as set out in Annex 17.06, to review all issues related to intellectual property that arise from this Agreement. This Committee is also authorized to review and follow the progress of issues that concerned by both parties under the framework of WIPO and WTO.
2. In a period of time not exceeding 18 months upon the date of entry into force of this Agreement, the Committee shall establish a technical cooperation system regarding matters related to intellectual property.
3. The Intellectual Property Committee may establish a group of experts comprising of professionals from the Intellectual Property Offices of each Party, when it is necessary.
4. The Committee and/or the Group of Experts may meet, in principle, every two years or by request of the parties. The venue for the meeting shall rotate between the Parties, subject to mutual agreement.

## **Section E – Trademarks, Geographical Indications, and Domain Names**

### **Article 17.07 Trademarks**

1. Each Party shall provide that a trademark may consist of any sign or combination of signs that is capable of distinguishing the goods or services of one undertaking from those of other undertakings, including personal names, designs, letters, numerals colors figurative elements, sound, or the shape of goods or of their packaging. In addition, each Party may provide that scent marks are eligible for protection. Trademarks shall include service marks, collective marks, certification marks.
2. Insofar as possible, each Party shall provide a system for the electronic application, processing, registration and maintenance of trademarks, and shall work to establish, insofar as possible, a publicly available electronic on-line database of trademark applications and registrations.

#### **Article 17.08 Well-known Marks**

Each Party shall apply Article 6 *bis* of the Paris Convention, to goods and services, *mutatis mutandis*. In order to determine if a trademark is well-known, the Parties shall take into account the knowledge of the trademark among the relevant sector of the public, including the knowledge obtained.

#### **Article 17.09 “Telle quelle” Marks**

Each Party shall apply Article 6 *quinquies* of the Paris Convention concerning the protection of trademarks, in accordance with the “*telle quelle*” or “as is” clause.

#### **Article 17.10 Geographical Indications**

For the purposes of this Chapter, geographical indications are indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where the quality, reputation or any other characteristic of the good can be essentially attributed to its geographical origin. Any sign or combination of signs, in any form, is eligible to be a geographical indication.

#### **Article 17.11 Procedures with respect to Geographical Indications**

The Parties shall provide the legal means to identify and protect the geographical indications that comply with the criteria of Article 17.10, in accordance with the legislation of each Party.

#### **Article 17.12 Domain Names on the Internet**

Each Party shall require that the management of its country-code top-level domain (ccTLD) provides an appropriate procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy (UDRP), in order to address the problem of trademark cyber-piracy.

### **Section F – Patents, New Varieties of Plants and Regulated Products**

#### **Article 17.13 Patents**

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, as long as the invention is new, involves an inventive step and is capable of industrial application.
2. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, on condition that such exceptions do not conflict with the normal exploitation of a patent in an unreasonably manner, nor prejudice the legitimate interests of the patent owner, taking into account of the legitimate interests of third parties.

#### **Article 17.14 New Varieties of Plants**

1. Each Party shall recognize and ensure the rights of plant breeders through a special registry system as provided in the legislations in the territory of each Party. The rights of plant breeders shall be protected as an intellectual property right which can be marketable and transferable.

2. The Parties recognize that the UPOV contains exception to the rights of plant breeders, including acts undertaken by farmers in the private sphere and with non-commercial objectives. Further, the Parties recognize that UPOV establishes restrictions on the exercise of the rights of plant breeders for reasons of public interest, as long as the Parties take all the necessary measures to ensure that the plant breeder receives equitable remuneration. The Parties also recognize that each Party may make use of the exceptions and restrictions contained in UPOV, and that there is no contradiction between the UPOV and the capacity of a Party to protect and conserve its genetic resources.

#### **Article 17.15 Regulated Products**

A Party shall observe and respect the national legislations and international treaties adopted by the other Party relating to the manufacturing, marketing and distribution of pharmaceutical and agrochemical goods.

### **Section G – Copyright and Related Rights**

#### **Article 17.16 Obligations Pertaining to Copyright and Related Rights**

1. Copyrights include those of a moral and property in nature that confer upon the author the exclusive right to exploit a work, under the legislation of each Party.

2. Each Party shall provide that the authors, artists, singers or performers, producers of phonograms have the right to authorize or prohibit the reproduction of their works, in any manner or form, permanent or temporary (including temporary storage in electronic form).

3. Each Party shall grant authors, artists, singers or performers, producers of phonograms the right to authorize the original or copies of their works, interpretations or performances and their phonograms be made available to the public by means of sale or any other means of transferring property.

### **Section H – Collective Rights, Protection of Folklore and Genetic Resources**

#### **Article 17.17 Protection of Traditional Knowledge**

1. Each Party shall protect the collective intellectual property rights and the traditional knowledge of indigenous peoples and local and ethnic communities in which any of their creations that are used commercially. Such protection

shall be done through a special system of registering, promoting, and marketing their rights, with a view to emphasize the autochthonous sociological and cultural values of the indigenous people and the local and ethnic communities and to bring them social justice.

2. Each Party shall protect the collective rights, traditional knowledge and practices of its indigenous peoples and local and ethnic communities in association with the conservation and sustainable use of biological diversity through a special *sui generis* intellectual property registration system.

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

4. Each Party shall recognize that the cultural heritage is not subject to any type of exclusivity by third parties applying an intellectual property system. However, the indigenous peoples and local and ethnic communities may authorize third parties to make use of such heritage, in the understanding that this shall not be an exclusive right.

#### **Article 17.18 Protection of Folklore**

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

#### **Article 17.19 Relation between Access to Genetic Resources and Intellectual Property**

Each Party shall protect the conservation and sustainable use of biological diversity, the access to its genetic resources and the traditional knowledge developed by the indigenous peoples and local and ethnic communities regarding the use of biological resources that contain such genetic resources, while recognizing a fair and equitable participation in the benefits derived from the access to its genetic resources and the traditional knowledge associated with these resources by the indigenous peoples and local and ethnic communities.

### **Section I – Border Measures**

#### **Article 17.20 Application of border measures**

1. Each Party shall provide that its customs authorities have the authority to take border measures with respect to imported, exported, or in-transit goods suspected of infringing an intellectual property right.

2. Each Party shall act on requests for specific “*inaudita altera parte*” precautionary measures and shall implement such requests expeditiously, in accordance with the regulations governing its legal procedures.

## **Section J – Cooperation on Intellectual Property**

### **Article 17.21 Technical Cooperation**

For establishing the technical cooperation system regarding intellectual property, the Parties shall bear in mind the following initial priority activities, based upon mutually agreed terms and conditions:

- (a) the development and implementation of electronic systems for the administration of the entire intellectual property system;
- (b) the development of educational projects and the dissemination of information regarding the use and benefits of intangible goods as an instrument for research and innovation;
- (c) the development of projects towards strengthening respect and observance of intellectual property rights;
- (d) the holding of training programs that include seminars, workshops, practical training or *in situ* internships and specialization courses, as well as the exchange of technical personnel;
- (e) the exchange, whenever possible, of available information between the Intellectual Property Offices and other institutions pertaining to the Parties, on any legal issue relevant to this Chapter, in particular the evolution of legislation regarding regulations, executive decisions, operational practices, procedures and legal rulings regarding intellectual property rights. Exchanged could also be any publications regarding intellectual property rights, such as newspaper or magazine articles, official publications, booklets, and so on. All information exchanged is suggested to be written in English whenever possible; and
- (f) the development of projects on the use of information and technology transfer between the Parties.

## **Annex 17.06**

### **Intellectual Property Committee**

The Intellectual Property Committee under Article 17.06 shall consist of:

- (a) in the case of Nicaragua, the Ministerio de Fomento, Industria y Comercio, through the Registro de Propiedad Intelectual ; and
- (b) in the case of the Republic of China (Taiwan), the Ministry of Economic Affairs, through the Intellectual Property Office,

or their successors.