

CHAPTER 15

INTELLECTUAL PROPERTY

SECTION A

GENERAL PROVISIONS

ARTICLE 15.1

Scope

1. The State Parties recall their commitments under the international treaties dealing with intellectual property, including the TRIPS Agreement and the Paris Convention for the Protection of Industrial Property done in Paris on 20 March 1883, as revised at Stockholm on 14 July 1967 (hereinafter referred to as "Paris Convention"). The provisions of this Chapter shall complement the rights and obligations of the State Parties under the TRIPS Agreement and other international treaties in the field of intellectual property to which the State Parties are party.
2. For the purposes of this Chapter, the term "intellectual property rights" refers to:
 - (a) copyright and related rights;
 - (b) patents;
 - (c) trademarks;
 - (d) designs;

- (e) layout-designs (topographies) of integrated circuits;
- (f) geographical indications; and
- (g) protection of undisclosed information.

ARTICLE 15.2

Objectives

The Parties recognise that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

ARTICLE 15.3

Principles

A State Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.

ARTICLE 15.4

Public health

1. The State Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted in Doha on 14 November 2001 by the Ministerial Conference of

the WTO (hereinafter referred to as the "Doha Declaration"). In interpreting and implementing the rights and obligations under this Chapter, the State Parties shall ensure consistency with this Declaration. Accordingly, the State Parties affirm that this Chapter can and shall be interpreted in a manner supportive of each State Party's right to protect public health and, in particular, to promote access to medicines for all.

2. The State Parties shall respect the Decision of the WTO General Council on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, adopted on 30 August 2003, as well as the Decision of the WTO General Council on Amendment of the TRIPS Agreement, adopting the Protocol Amending the TRIPS Agreement, adopted on 6 December 2005.

ARTICLE 15.5

Exhaustion

Each State Party shall be free to establish its own regime for the exhaustion of intellectual property rights subject to the relevant provisions of the TRIPS Agreement.

SECTION B

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

COPYRIGHT AND RELATED RIGHTS

ARTICLE 15. 6

Protection granted

1. The State Parties reaffirm their rights and obligations under the following international agreements taking into consideration that the obligations and rights under these treaties are not binding on those that are not parties to them:

- (a) Articles 2 through 20 of the Berne Convention for the Protection of Literary and Artistic Works, done in Berne on 9 September 1886 as amended on 28 September 1979 (hereinafter referred to as "the Berne Convention");
- (b) Articles 1 through 22 of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, done at Rome on 18 May 1984 (hereinafter referred to as the "Rome Convention");
- (c) Articles 1 through 12 of the Marrakesh Treaty to facilitate access for persons who are blind, visually impaired, or otherwise print disabled, done in Marrakesh on 27 June 2013 (hereinafter referred to as the "Marrakesh Treaty");
- (d) Article 1 through 14 of the WIPO Copyright Treaty, done in Geneva on 20 December 1996 (hereinafter referred to as the "WCT"); and
- (e) Articles 1 through 23 of the WIPO Performances and Phonograms Treaty, done in Geneva on 20 December 1996 (hereinafter referred to as the "WPPT").

ARTICLE 15.7

Term of protection

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and not less than for 50 (fifty) years or, where the laws and regulations of the State Party so provide, for 70 (seventy) years after the author's death.

2. In the case of anonymous or pseudonymous works, the term of protection shall run for not less than 50 (fifty) years or, where the laws and regulations of the State Party so provide, for 70 (seventy) years, after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt about his or her identity, or if the author discloses his or her identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.
3. The term of protection of photographic and cinematographic works shall be established by each State Party according to its laws and regulations.
4. The rights of performers and producers of phonograms shall expire in no less than 50 (fifty) years or, where the laws and regulations of the State Party so provide, 70 (seventy) years¹. This Chapter shall not prevent each State Party from limiting the protection that it accords to those performances that are fixed in phonograms.
5. The term of protection for broadcasts shall be no less than 20 (twenty) years from the end of the year in which the broadcast was first made.
6. The terms laid down in this Article shall be calculated based on the event which gives rise to them in the manner provided by the State Parties' respective laws and regulations.

ARTICLE 15.8

Presumptions relating to copyright or related rights

In civil proceedings involving copyright or related rights, each State Party shall provide for a presumption that, at least with respect to a literary or artistic work, performance or

¹ Each State Party may provide that the publication or lawful communication to the public of the fixation of the performance or of the phonogram must occur within a defined period of respectively the date of the performance (in the case of the performers) or the date of the fixation (in the case of producers of phonograms). Each State Party may also provide that failing such publication of the phonogram within the defined period, the term of protection may be calculated based on when the phonogram was fixed.

phonogram, in the absence of proof to the contrary, the person whose name appears on such work, performance or phonogram in the usual manner, is the right holder and is consequently entitled to institute infringement proceedings.

SUB-SECTION 2

TRADEMARKS

ARTICLE 15.9

International agreements

The State Parties shall comply with all international agreements on trademarks which they have ratified and shall make their best efforts to ratify or accede to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on June 27, 1989, as amended on October 3, 2006 and on November 12, 2007 (hereinafter referred to as the "Madrid Protocol").

ARTICLE 15.10

Registration procedure

Each State Party shall provide for a system for the registration of trademarks in which the relevant trademark administration shall give reasons for a refusal to register a trademark in writing. The applicant shall have the opportunity to appeal against such refusal before a judicial authority. Each State Party shall introduce the possibility for third parties to oppose trademark applications. Each State Party shall provide a publicly available electronic database of trademark applications and trademark registrations².

² For greater certainty, the Parties agree that for the purposes of this paragraph, the opportunity to appeal includes the possibility of review by a judicial or quasi-judicial authority, according to each State Party's laws and regulations.

ARTICLE 15.11

Well-known trademarks

The Parties shall protect well-known trademarks in accordance with the TRIPS Agreement. In determining whether a trademark is well-known, the Parties agree to take into consideration the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999)³.

ARTICLE 15.12

Exceptions to the rights conferred by a trademark

The State Parties may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

SUB-SECTION 3

GEOGRAPHICAL INDICATIONS⁴

ARTICLE 15.13

³ For greater certainty, the Parties recognise that laws and regulations may differ amongst the State Parties.

⁴ For the purposes of this Chapter, "geographical indications" means indications which identify a good as originating in the territory of a State Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

Protection of Geographical Indications

1. Recognising the importance of the protection of geographical indications, each State Party shall provide a system for the protection of geographical indications in accordance with the TRIPS Agreement and protect the geographical indications of another State Party in accordance with its laws and regulations.
2. Each State Party agrees that the system for the registration and protection of geographical indications in its territory for such categories of wines and spirits and agricultural products and foodstuffs as it deems appropriate shall contain the following elements, such as:
 - (a) a register for the geographical indications protected in their respective territories;
 - (b) an administrative process to verify that geographical indications comply with the conditions set forth in the laws and regulations of the respective State Party; and
 - (c) an objection procedure that allows the legitimate interests of third parties to be taken into account.
3. Each State Party shall, through their competent national agencies, provide for a system that facilitates, in an expeditious manner, the registration and protection of the geographical indications of each State Party listed in Annex 15-A1.
4. For the purposes of expediting the registration and protection of geographical indications, each State Party shall:
 - (a) maintain a focal point in charge of receiving all the enquiries from applicants or authorities of the other State Party during the procedure of registration of the geographical indications;
 - (b) process all the applications for the registration and protection of a geographical indication without the imposition of unreasonable formalities;

- (c) provide for the appointment of an authorised representative to accomplish all the procedures related to the registration and protection of a geographical indication on behalf of eligible applicants in the territory of the other State Party;
- (d) provide for the establishment of an electronic online system for the purposes of handling all notifications and communications with the competent authorities; and
- (e) provide for the use of digital means to accomplish all the administrative formalities for the registration of geographical indications.

5. Upon requirement of the Joint Committee, the State Parties shall inform the Joint Committee of the geographical indications listed in Annex 15-A1 that have been registered. Annex 15-A3 shall be updated accordingly by decision of the Joint Committee.

6. A State Party shall maintain a publicly accessible online enquiry channel to provide information and respond to questions related to the registration process of the geographical indications in each territory.

7. Annex 15-A2 sets out a representative list of geographical indications (other than listed in Annex 15-A1) in the territory of the State Parties. Where a geographical indication of a State Party not listed in Annex 15-A1, whether listed or not in Annex 15-A2, is registered, upon requirement of the Joint Committee, the State Parties shall inform the Joint Committee of this registration. Annex 15-A3 shall be updated accordingly by decision of the Joint Committee.

8. In the case of homonymous geographical indications, protection shall be accorded to each indication, subject to the provisions of Article 22(4) of the TRIPS Agreement. Each State Party shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

SUB-SECTION 4

DESIGNS

Article 15.14

Requirements for protection of registered designs

1. The State Parties shall provide for the protection of independently created industrial designs that are new or original. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with the provisions of this Sub-Section.⁵
2. Design protection shall not extend to designs dictated essentially by technical or functional considerations.
3. A design right shall not subsist in a design which is contrary to public order or to accepted principles of morality.⁶

ARTICLE 15.15

Rights conferred by registration

The owner of a protected design shall have the right to prevent third parties, not having the owner's consent, from at least making, offering for sale, selling or importing articles bearing

⁵ It is understood that designs are not excluded from protection simply on the basis that they constitute a part of an article or product, provided that they are visible, fulfil the criteria of this paragraph, and:

- (a) fulfil any other criteria for design protection; and
- (b) are not otherwise excluded from design protection, under the State Parties' respective laws and regulations.

For greater certainty, this article does not require a State Party to provide design protection for parts of articles in isolation if not already provided for in its laws and regulations.

⁶ Nothing in this Article precludes a State Party from providing other specified exclusions from design protection under its laws and regulations. The State Parties understand that such exclusions shall not be extensive.

or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

ARTICLE 15.16

Term of protection

The duration of protection available shall, including renewals, amount to at least 15 (fifteen) years of protection.

ARTICLE 15.17

Exceptions

The State Parties may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

SUB-SECTION 5

PATENTS

ARTICLE 15.18

International agreements

The State Parties shall make their best efforts to ratify or accede to the Patent Cooperation Treaty, done at Washington on 19 June 1970, amended on 28 September 1979 and modified on 3 February 1984 (hereinafter referred to as "PCT").

ARTICLE 15.19

Patentable subject matter

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application⁷. Subject to paragraph 3, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. The State Parties may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect public order or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.

3. The State Parties may also exclude from patentability:
 - (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;

 - (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, the State Parties shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof.

ARTICLE 15.20

Grace period

⁷ For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a State Party to be synonymous with the terms "non-obvious" and "useful" respectively.

Each State Party shall disregard the information contained in public disclosures used to determine if an invention is novel if the public disclosure:

- a) was made by the inventor or his or her successors in title or, where the laws and regulations of the State Party so provide, by a person who obtained the information directly or indirectly from the inventor; and
- b) occurred within 12 (twelve) months prior to the date of the filing of the patent application or, where applicable, subject to the State Party's laws and regulations, of the recognised priority.

ARTICLE 15.21

Genetic resources, traditional knowledge, and folklore⁸

1. Subject to its international obligations, each State Party may establish appropriate measures⁹ to protect genetic resources, traditional knowledge, and folklore.
2. Where a State Party has disclosure requirements relating to the source or origin of genetic resources¹⁰ as part of its patent system, that State Party shall endeavour to make available its laws and regulations with respect to such requirements, including online where feasible, in such a manner as to enable interested persons and other State Parties to become acquainted with them.

⁸ For greater certainty, this Article is without prejudice to the position of a State Party on genetic resources, traditional knowledge, and folklore, including in any bilateral or multilateral negotiations through any fora, such as the World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

⁹ For greater certainty, the State Parties understand that such "appropriate measures" are a matter for each State Party to determine and may not necessarily involve its intellectual property system.

¹⁰ The State Parties recognise the fact that some State Parties also require, if applicable, in their patent systems, evidence of prior informed consent and access and benefit sharing for genetic resources and associated traditional knowledge.

3. Each State Party shall endeavour to pursue quality patent examination.

SECTION C

ENFORCEMENT

ARTICLE 15.22

Enforcement of intellectual property rights

1. The State Parties shall provide suitable and effective protection of intellectual property rights in line with the TRIPS Agreement and other international agreements to which the State Parties are party. The State Parties shall ensure enforcement procedures as specified in Part III of the TRIPS Agreement so as to permit effective action against any act of infringement of intellectual property rights.
2. In particular, the measures, procedures and remedies referred to in paragraph 1, and provided for by each State Party under its laws and regulations, shall:
 - (a) take into account, as appropriate, the need for proportionality between the seriousness of the infringement and the interests of third parties;
 - (b) be fair and equitable;
 - (c) not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays; and
 - (d) be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.
3. Nothing in this Chapter affects the capacity of a State Party to enforce its laws and regulations in general or creates any obligation on a State Party to amend its existing laws and

regulations as they relate to the enforcement of intellectual property rights. Without prejudice to the foregoing general principles, nothing in this Chapter creates any obligation on the State Parties:

- (a) to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general; or
- (b) with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

ARTICLE 15.23

Publication of judicial decisions

In civil judicial proceedings instituted for infringement of an intellectual property right, each State Party shall take appropriate measures, pursuant to its laws, regulations and policies, to publish or make available to the public information on final judicial decisions. Nothing in this Article shall require a State Party to disclose confidential information, the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

ARTICLE 15.24

Legal costs

Each State Party shall provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of intellectual property rights, that the prevailing party be awarded payment by the losing party of court costs or fees and appropriate attorney's fees, or any other expenses as provided for under that State Party's laws and regulations.

SECTION D

COOPERATION

ARTICLE 15.25

Cooperation

1. The Parties agree to cooperate with a view to supporting the implementation of the commitments and obligations undertaken in this Chapter. Areas of cooperation include, but are not limited to, the following activities:
 - (a) exchange of information on legal frameworks concerning intellectual property rights, including those pertaining to the implementation of intellectual property legislation and systems, aimed at promoting the efficient registration of intellectual property rights;
 - (b) exchange of information and cooperation on public outreach and appropriate initiatives to promote awareness of the benefits of intellectual property rights and systems; and
 - (c) any other areas of cooperation or activities as may be discussed and agreed between the Parties.

2. Cooperation under this Chapter shall be carried out subject to each State Party's laws, rules, regulations, directives or policies. Cooperation shall also be on mutually agreed terms and conditions and be subject to the availability of resources of each State Party.