

CHAPTER “X”

INTELLECTUAL PROPERTY

Section A: General Provisions

Article x.1: Objectives

1. 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.
2. The Parties recognise the importance of intellectual property in promoting economic and social development, particularly in the new digital economy, technological innovation and trade.
3. The Parties recognise the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter.
4. The Parties are committed to the maintenance of intellectual property rights regimes and systems that seek to:
 - (a) facilitate international trade, economic and social development through the dissemination of ideas, technology and creative works;
 - (b) provide certainty for right-holders and users of intellectual property over the protection and enforcement of intellectual property rights; and
 - (c) facilitate the enforcement of intellectual property rights with the view, inter alia, to eliminate trade in goods infringing intellectual property rights.

Article x.2: Affirmation of TRIPS

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

Article x.3: 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.

¹ Placeholder: We may need to define what protection means once we are clear about the scope of the chapter.

2. Each Party may derogate from 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.

Article x.4: Implementation of this Agreement

1. The provisions of this Chapter shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as rights and freedom of expression, fair process and privacy.

Article x.5: Transparency

1. Each Party shall ensure that its laws, regulations and procedures concerning the protection and enforcement of intellectual property rights shall be published, or where such publication is not practical, 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 made available in the English language and on the internet.

3. Each Party shall endeavour to make available on the internet those details of patent, trademark, design and geographical indication applications that are open to public inspection under national law.

Section B: Cooperation

Article x.6: Objectives

1. The Parties recognise the need to cooperate in order to improve the efficiency of international and domestic intellectual property systems and develop those systems in order to foster domestic innovation and reduce compliance costs for businesses.

2. The Parties agree to cooperate in order to achieve the objectives set out in Article 1 of this chapter, and in accordance with the provisions in this section.

Article x.7: Contact Points

1. Each party shall designate contact points in relevant government agencies in order to comply with this section.

Article x.8: Development of intellectual property systems

1. Each party shall, where appropriate and upon request by another party, support that party in implementing any of the following treaties:

- (a) Patent Cooperation Treaty;
- (b) Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks;
- (c) Singapore Treaty on the Law of Trademarks; and
- (d) Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

2. In order to develop the efficiency and transparency of their respective intellectual property administration and registration systems, the parties shall, through their respective agencies responsible for intellectual property:

- (a) exchange information and experiences regarding developments in such systems and develop publicly accessible databases of registered rights; and
- (b) exchange information and experiences regarding the enforcement of intellectual property rights.

Article x.9: Emerging issues

1. Each party shall, through their respective agencies responsible for intellectual property, cooperate to encourage policy dialogue and enhance understanding of emerging intellectual property issues, including:

- (a) how copyright can support and encourage the development of innovative business models and promote better access to works, including enhancing the availability of orphan works and material in the public domain;
- (b) how the intellectual property system can deal with issues associated with traditional knowledge, traditional cultural expressions and genetic resources.

Article x.10: Capacity Building

1. The Parties acknowledge the differences in capacity between some Parties in the area of intellectual property. 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.

Article x.11: IP Committee

1. The Parties hereby establish an Intellectual Property Committee (the Committee) consisting of representatives of the Parties, to monitor the implementation and administration of this Chapter.

2. The 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 Committee shall determine its terms of reference in accordance with this Chapter.
4. The 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.

Article x.12: Resourcing

1. All co-operation under this section is subject to the availability of resources.

Section C: Trade marks

Article x.13: Types of Signs Registrable as Trade Marks

1. No Party may require, as a condition of registration, that trade marks be visually perceptible, nor may a Party deny registration of a trade mark solely on the ground that the sign of which it is composed is a sound or a scent. A Party may require an adequate description, which can be represented graphically, of the trade mark.

Article x.14: Term of Protection for Registered Trade Marks

1. Each Party shall provide that the initial registration period, and each period of renewal of registration, of a trademark shall be for a term of ten years.

Article x.15: Use of the Nice Classification system

1. Each Party shall adopt the classification system (the “Nice Classification”) as provided for under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks as revised and amended. Each Party may use the Nice Classification as either a principal or as a subsidiary system.

Article x.16: Opposition and Cancellation

1. Each Party shall provide high quality trade marks registration regime through the conduct of examination as to substance and formalities and through opposition and cancellation procedures.

Article x.17: Overlap Between Trade Marks and Geographical Indication Protection

1. Each Party shall protect trade marks where they predate, in its jurisdiction, geographical indications, in accordance with its domestic law and the TRIPS Agreement.

Section D: Traditional Knowledge, Traditional Cultural Expressions² and Genetic Resources

Article x.18:

1. The Parties recognise the importance and potential contribution of traditional knowledge, traditional cultural expressions, and biodiversity to cultural, economic, and social development.

Article x.19:

1. Subject to each Party's international obligations, the Parties affirm that they will endeavour to establish appropriate domestic measures to protect traditional knowledge and traditional cultural expressions. Such measures may provide, inter alia:

(a) Protection against the unauthorised disclosure of secret traditional knowledge and traditional cultural expressions;

(b) Acknowledgement of Indigenous Peoples or local communities as the custodians of their traditional knowledge and traditional cultural expressions;

(c) Protection against the offensive use of traditional knowledge and traditional cultural expressions;

(d) Protection against the use of traditional knowledge or traditional cultural expressions in trade that suggests a connection that does not exist with the custodians of the knowledge or expressions; and

(e) For patented inventions utilising traditional knowledge or genetic resources:

(i) Promotion of quality patent examination to ensure the conditions of patentability are satisfied; and

(ii) Promotion of the use of access and benefit sharing contracts.

Section E: Enforcement

Article x.20: General Enforcement

1. Each Party shall ensure that measures, procedures and remedies are available under the Parties' legislation so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter.

Article x.21: Enforcement of Copyright

1. Each Party shall provide for effective enforcement procedures to curtail repetitive copyright infringement by means of the Internet. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as rights and freedom of expression, fair process and privacy.

2. Each Party shall provide criminal procedures and penalties in the following cases:

(a) Where a person wilfully infringes copyright for commercial advantage or financial gain; and

(b) 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.

² The term "traditional cultural expressions" is used synonymously with "expressions of folklore".

Article x.22: Government use of software

1. Each Party confirms its commitment to maintain appropriate laws, regulations or policies that make provision for its government agencies to continue to use only legitimate computer software in a manner authorised by law.

{Place holder for further text proposals}