

APPENDIX 7

NEW CHAPTER 11 (INTELLECTUAL PROPERTY RIGHTS)

CHAPTER 11

INTELLECTUAL PROPERTY RIGHTS

Article 11.1: General Provisions

1. The Parties recognise the importance of intellectual property rights in promoting economic and social development, particularly in the globalization of technological innovation and trade, as well as the transfer and dissemination of technology to the mutual advantage of technology producers and users, and agree to encourage the development of social economic well-being, and trade.
2. 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.
3. Each Party reaffirms its commitment established in existing international agreements in the field of intellectual property rights, to which both Parties are parties, including the TRIPS Agreement.
4. The Parties promote and encourage the technical innovation and transfer of technology, and shall prevent practices which constitute abuse of intellectual property rights by right holders or unreasonably restrain competence or adversely affect or limit technology transfer.
5. Each Party shall establish and maintain transparent intellectual property rights regimes and systems that provide certainty over the protection and enforcement of intellectual property rights.
6. The Parties recognise the principles established in the *Declaration on the TRIPS Agreement and Public Health*, adopted by the WTO at the Fourth WTO Ministerial Meeting held in Doha, Qatar, on November 14, 2001 (Doha Declaration), and the *Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, adopted by the WTO at Geneva, on August 30, 2003.

Article 11.2: Genetic Resources, Traditional Knowledge and Folklore

1. The Parties recognise the contribution made by the genetic resources, traditional knowledge and folklore to the scientific, cultural and economic development. The Parties

recognise the past, present and future contribution of traditional knowledge holders³⁰ and genetic resources to the conservation and sustainable use of biodiversity.

2. The Parties acknowledge and reaffirm the principles and provisions established in the *Convention on Biological Diversity*, done at Rio de Janeiro on June 5, 1992 (CBD), and *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*, done at Nagoya on October 29, 2010 (Nagoya Protocol), and encourage the effort to establish a mutually supportive relationship between the TRIPS Agreement and the CBD, regarding the protection of genetic resources and traditional knowledge associated with genetic resources and folklore.

3. Subject to international obligations and national legislation of each Party, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge associated with genetic resources and folklore.

4. Any Intellectual Property right that is generated from the utilization of biological and genetic resources or traditional knowledge associated with genetic resources of which a Party is the country of origin, shall be subject to compliance of the national laws where the intellectual property application is filed and applicable international agreements to which the Parties are parties.

5. Each Party shall require that in patent applications relying on genetic resources or traditional knowledge associated with genetic resources, the direct and original source of genetic resources or traditional knowledge, shall be indicated as provided by its national laws.

6. If a patent application does not meet the requirements regarding the genetic resources and traditional knowledge associated with genetic resources in accordance with the national laws, each Party shall provide for appropriate legal consequences.

7. If it is discovered after the granting of a patent that the application failed to disclose the source or that intentionally false information was submitted or other relevant laws and regulations were violated, each Party may provide for appropriate legal consequences.

Article 11.3: Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources

1. The Parties recognise the importance and value of their biological diversity and components. Each Party reaffirms sovereignty over its biological and genetic resources; and, consequently, determine the conditions of their access and utilization, in accordance

³⁰ To Peru, traditional knowledge holders means indigenous and local communities in accordance with article 8(j) of the *Convention on Biological Diversity*, done at Rio de Janeiro on June 5, 1992 (CBD) and to China, it includes but not limit to State and Nationality.

with the principles and provisions contained in relevant national laws and regulations and international agreements to which the Parties are parties.

2. The Parties recognise the importance of the following:
 - (a) accessing to genetic resources, including measures to facilitate access for special considerations, subject to their national legislation and international agreements to which the Parties are parties;
 - (b) obtaining prior informed consent from the Party providing such resources that is the country of origin of such resources or the Party that has acquired the genetic resources;
 - (c) ensuring that traditional knowledge associated with genetic resources is accessed with the prior and informed consent or approval and involvement of traditional knowledge holders; and
 - (d) fair and equitably sharing of the benefits arising from the utilization of genetic resources and traditional knowledge associated with genetic resources, and the mutually agreed terms that have been established.

3. Each Party shall create conditions to promote and encourage research, according to paragraph (a) of Article 8 of Nagoya Protocol; pay due regard to cases of present or imminent emergencies that threaten or damage human, animal or plant health, according to paragraph (b) of Article 8 of Nagoya Protocol; and consider the importance of genetic resources for food and agriculture and their special role for food security, according to paragraph (c) of Article 8 of Nagoya Protocol.

Article 11.4: Geographical Indications

1. For the purposes of this Agreement, “geographical indications” are indications which identify a good as originating in the territory of a 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.

2. The Parties recognise that geographical indications may be protected through trademark or *sui generis* system or other legal means.

3. The Parties shall take all necessary measures to ensure mutual protection of their geographical indications in accordance with the TRIPS Agreement and in the manner set out in its laws and regulations. Each Party shall provide interested parties with the legal means to prevent the use of such geographical indications for identical or similar goods not originating in the place indicated by the geographical indications in question.

4. The terms listed in the Chinese List of Annex 11-A (Geographical Indications) are geographical indications in China, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to the national laws and regulations of Peru, in a manner that is consistent with the TRIPS Agreement, such terms will be protected as geographical indications in the territory of Peru.

5. The terms listed in the Peruvian List of Annex 11-A (Geographical Indications) are geographical indications in Peru, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to the national laws and regulations of China, in a manner that is consistent with the TRIPS Agreement, such terms will be protected as geographical indications in the territory of China.

6. A Party may request the protection of additional geographical indications in accordance with the national laws and regulations of the other Party.

Article 11.5: Country Brands

The Parties acknowledge the importance of country brands and reaffirm the commitment to prohibit unfair competition practices applicable as provided in article 10 bis of the *Paris Convention for the Protection of Industrial Property*, done at Paris on March 20, 1883 (Paris Convention) and their national laws in relation with country brands.

Article 11.6: Special Requirements Related to Border Measures

1. Each Party shall provide that any right holder initiating procedures for suspension by the customs authorities of the release of suspected counterfeit trademark or pirated copyright goods into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the relevant laws of the Party, there is *prima facie* an infringement of the intellectual property right of the right holder and to supply sufficient information to make the suspected goods reasonably recognizable to the customs authorities. The sufficient information required shall not unreasonably deter recourse to these procedures.

2. Each Party shall provide the competent authorities with the powers to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

3. Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant the competent authorities the right to inform the right holder, upon the request of the right holder, of the names and addresses of the consignor, the importer, and the consignee, as well as the quantity of the goods in question.

4. Each Party shall provide that the competent authorities are permitted to initiate border measures *ex officio*, without the need for a formal complaint from a person or right holder. Such measures shall be used when there is reason to believe or suspect that goods being imported, exported or in transit are counterfeit or pirated.

Article 11.7: Cooperation and Capacity Building

1. The Parties shall continue cooperation under the framework established in the previous *Agreement of Cooperation of Intellectual Property between the Government of the People's Republic of China and the Government of the Republic of Peru*, signed on June 2, 2005, with a common view to increasing capacity building and to fostering the development of intellectual property policies and eliminating trade in goods infringing intellectual property rights, subject to their respective laws, regulations, rules, directives and policies.

2. Without prejudice to the obligations of the Agreement mentioned in paragraph 1, the Parties will cooperate, on mutually agreed terms and subject to the availability of appropriated funds, on educational and dissemination projects on the use of intellectual property rights as an innovation tool.

3. The Parties will cooperate, on mutually agreed terms, to exchange information regarding:

- (a) conservation and sustainable use of biodiversity, as well as benefit sharing of genetic resources;
- (b) actions to prevent the illegal access to genetic resources, traditional knowledge, innovation and practices, including the monitoring in their territories through cooperation between the designated checkpoints of the Parties;
- (c) internal procedures regarding access to genetic resources and traditional knowledge, innovations and practices, as well as, regarding fair and equitable benefits sharing arising from their utilization;
- (d) experiences on international affairs of intellectual property which both Parties have participated;
- (e) improving the public's awareness on intellectual property;
- (f) experiences on protection and enforcement of intellectual property; and
- (g) other intellectual property rights issues.

4. In accordance with national laws, the Parties will cooperate on patent examinations related to genetic resources or traditional knowledge associated with genetic resources, in order to facilitate submitting related documented information if necessary, by the competent national authority of the other Party to ensure the patentability examinations.

5. Each Party shall encourage and facilitate the development of contacts and cooperation in the field of intellectual property rights between their respective government agencies, educational institutions and other organizations including the training of patent examiners particularly in the field of genetic resources and traditional knowledge associated with genetic resources for the proper examination of patent applications, determination of prior art and the granting of patent rights.

Article 11.8: Intellectual Property and Public Health

1. The Parties recognise the principles established in the Doha Declaration and confirm that the provisions of this Chapter are without prejudice to the Doha Declaration.

2. The Parties reaffirm their commitments to contribute to the implementation and respect the Decision of the WTO General Council of 30th August 2003 and Decision of the 6th December 2005 amending the WTO TRIPS Agreement on the implementation of paragraph 6 of the Doha Declaration.

3. The Parties reaffirm the importance of contributing to the international efforts to implement Article 31 bis of the TRIPS Agreement and the Annex and Appendix to the TRIPS Agreement.

Article 11.9: Patents

1. The Parties shall, in their national laws, at least ensure adequate and effective patent protection for inventions in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. For the Parties, this means protection at least on a level corresponding to the one in paragraph 1 of Article 27 of the TRIPS Agreement.

2. The Parties shall enhance cooperation in sharing experience on search and examination to improve the quality and efficiency.

3. The Parties may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of non-parties.

Article 11.10: Industrial Designs

1. The Parties shall, in their national laws, at least ensure adequate and effective protection for independently created industrial designs that are new or original. The duration of protection available shall amount to at least 10 years.
2. The owner of a protected industrial design shall have the right to prevent non-parties not having the consent of the owner, at least from making, selling or importing the protected design, when such acts are undertaken for commercial purposes.
3. The Parties may provide limited exceptions to the protection of industrial 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 non-parties.

Article 11.11: Trademarks

The Parties shall grant adequate and effective protection to trademark right holders of goods and services. For the Parties, this means protection at least on a level corresponding to Article 15 of the TRIPS Agreement.

Article 11.12: Transparency

1. Each Party, subject to its law, shall make available on the Internet information concerning registered or granted patents, utility models, industrial designs, geographical indications, trademarks and new plant varieties sufficient to enable the public to become acquainted with those registered or granted rights.³¹
2. Each Party shall, subject to its law, make available on the Internet information concerning applications for patents, utility models, industrial designs, geographical indications, trademarks and new plant varieties³².

Article 11.13: Enforcement and Protection

1. The Parties reaffirm their commitments under Part III of the TRIPS Agreement and shall provide in their respective legislation for enforcement provisions of at least the same level as provided in the TRIPS Agreement.

³¹ For greater certainty, paragraph 1 does not require a Party to make available on the Internet the entire dossier for the relevant registered or granted intellectual property right.

³² For greater certainty, paragraph 2 does not require a Party to make available on the Internet the entire dossier for the relevant application.

2. Each Party shall ensure that enforcement procedures, such as judicial or administrative procedures, are available to all users of the intellectual property system including small and medium-sized enterprises (SMEs), so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to future infringements. These procedures shall 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. Each Party shall ensure that its procedures concerning the enforcement of intellectual property rights are fair and equitable to all users of the intellectual property system including SMEs. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays.

ANNEX 11-A

GEOGRAPHICAL INDICATIONS

CHINESE LIST

1. Anxi Tie Guanyin (Tieh-Kuan-Yin) Tea (安溪铁观音)
2. Shaoxing (Yellow) Wine (绍兴酒)
3. Fuling Pickled Mustard Tuber (涪陵榨菜)
4. (Ningxia) Zhongning Matrimony Vine ((宁夏) 中宁枸杞)
5. Jingdezhen Porcelain (景德镇瓷器)
6. Zhenjiang Aromatic Vinegar (镇江香醋)
7. Pu'er Tea (普洱茶)
8. (Xihu) Longjing Tea ((西湖) 龙井茶)
9. Kinghwa (Jinhua) Ham (金华火腿)
10. Shanxi Mature Vinegar (山西老陈醋)
11. Xuanwei Ham (宣威火腿)
12. Longquan Celadon (龙泉青瓷)
13. Yixing Dark-red Enamelled Pottery (宜兴紫砂陶)
14. Korla Fragrant Pear (库尔勒香梨)
15. Min County Tang-Kuei (Chinese angelica root) (岷县当归)
16. Wenshan Notoginseng (文山三七)
17. Wuchang Rice (五常大米)
18. Tongjiang White Fungus (通江银耳)
19. Bama Miniature Pig (巴马香猪)

20. Taihe Blackbone Chicken (泰和乌鸡)
21. Fuding Shaddock (福鼎四季柚)
22. (Nanjing) Cloud-pattern Brocade ((南京)云锦)

PERUVIAN LIST

1. Pisco Peru (Pisco Perú)
2. Chulucanas Pottery (Cerámica de Chulucanas)
3. Cusco Giant White Corn (Maíz Blanco Gigante Cusco)
4. Pallar Bean from Ica (Pallar de Ica)