

Chapter 11
Intellectual Property Rights

Article 167
General Provisions

1. The Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property and provide for measures for the enforcement of intellectual property rights against infringement thereof, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are parties.

2. The Parties shall also promote efficiency and transparency in the administration of intellectual property system.

3. The Parties reaffirm their existing rights and obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to in this Chapter as "the TRIPS Agreement") and other multilateral agreements relating to intellectual property to which both Parties are parties, including multilateral agreements concluded under the auspices of the World Intellectual Property Organization (hereinafter referred to in this Chapter as "the WIPO"). Nothing in this Chapter shall derogate from existing rights and obligations that the Parties have under the TRIPS Agreement or other multilateral agreements relating to intellectual property to which both Parties are parties.

Note: For the purposes of this Article and Article 178, the term "existing" means in effect on the date of entry into force of this Agreement.

4. The term "intellectual property" referred to in this Chapter shall mean all categories of intellectual property:

- (a) that are subject of Articles 174 through 180; and/or
- (b) that are under the TRIPS Agreement and/or the relevant international agreements referred to in the TRIPS Agreement.

Article 168
National Treatment

Each Party shall accord to nationals of the other Party treatment no less favorable than the treatment it accords to its own nationals with regard to the protection of intellectual property in accordance with Articles 3 and 5 of the TRIPS Agreement.

Note: For the purposes of this Article and Article 169:

- (a) "nationals" shall have the same meaning as in the TRIPS Agreement; and
- (b) "protection" shall include 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 specifically addressed in this Chapter.

Article 169
Most-Favored-Nation Treatment

With regard to the protection of intellectual property, any advantage, favor, privilege or immunity granted by a Party to the nationals of a non-Party shall be accorded immediately and unconditionally to the nationals of the other Party, in accordance with Articles 4 and 5 of the TRIPS Agreement.

Article 170
Streamlining and Harmonization of Procedural Matters

1. For the purposes of providing efficient administration of its intellectual property system, each Party shall endeavor to take measures to streamline its administrative procedures concerning intellectual property.

2. Each Party shall use a classification for patents and utility models in accordance with the Strasbourg Agreement Concerning the International Patent Classification, of March 24, 1971, as amended. Each Party shall use a classification of goods and services in accordance with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as amended.

Article 171

Acquisition and Maintenance of Intellectual Property Rights

1. Where the acquisition of an intellectual property right is subject to the right being granted or registered, each Party shall ensure that, irrespective of whether an application for the granting or registration of an intellectual property right is filed as a national or as an international application under the applicable international agreement, the procedures for granting or registration of the right, subject to compliance with the substantive conditions for acquisition of the right, are conducive to the granting or registration within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.

2. Each Party shall provide a system for the registration of trademarks, industrial designs and patents which shall include:

- (a) a requirement to provide to the applicant a communication in writing, which may be electronic, of the decision with reasons for a refusal of the application;
- (b) an opportunity for the applicant to appeal against administrative refusal;
- (c) an opportunity for the applicant to ask for judicial review of the final administrative refusal; and
- (d) an opportunity for interested parties:
 - (i) to petition to oppose, if so provided in its laws and regulations, an application or a registration; and

- (ii) to seek cancellation or invalidation of the registration.

Article 172
Transparency

For the purposes of further promoting transparency in the administration of its intellectual property system, each Party shall take appropriate measures available to the extent possible under its laws and regulations to publish or make available to the public information on applications and/or registrations of intellectual property rights where applicable in its laws and regulations and other relevant information on its intellectual property system.

Article 173
Promotion of Public Awareness Concerning
Protection of Intellectual Property

The Parties shall take necessary measures to enhance public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

Article 174
Patents

Each Party shall ensure that any application for a patent is not rejected solely on the ground that the subject matter claimed in the application is related to a computer program. Nevertheless, the provision of this Article shall not prejudice the autonomy of each Party to exclude from patentability computer programs as such.

Article 175
Industrial Designs

Each Party shall ensure adequate and effective protection of industrial designs. Each Party shall also ensure that, at the request of an applicant for industrial design registration, the registrability of the industrial design concerned may be considered by the competent authority based on the design of a part of an article instead of that of the article as a whole.

Article 176
Trademarks

1. Each Party shall grant adequate and effective protection to trademark right holders of goods or services. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements, and combinations of colors as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, each Party may make registrability depend on distinctiveness acquired through use. Each Party may require, as a condition of registration, that signs be visually perceptible.

2. Each Party shall protect well-known marks in accordance with Article 6*bis* of the Paris Convention for the Protection of Industrial Property (1967) (hereinafter referred to in this Chapter as "the Paris Convention") and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement.

Article 177
Geographical Indications

1. For the purposes of this Article, the term "geographical indications" shall have the same meaning as in paragraph 1 of Article 22 of the TRIPS Agreement. Nonetheless, nothing in this Agreement shall require a Party to amend its laws and regulations on the protection of geographical indications or on the protection of appellations of origin which are consistent with the TRIPS Agreement.

2. Each Party shall ensure adequate and effective protection to geographical indications, in accordance with the TRIPS Agreement and in the manner set out in its laws and regulations.

3. Each of the indication(s) for wines and spirits listed in paragraph 1 of Annex 10 identifies a good as originating in Japan where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin and is protected as a geographical indication within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement under the laws and regulations of Japan. Peru agrees that each of the indication(s) listed in paragraph 1 of Annex 10 is a geographical indication within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement and as such is qualified for protection as a geographical indication in Peru subject to provisions in Section 3 of Part II of the TRIPS Agreement and to Peru's domestic laws and regulations.

4. Each of the indication(s) for wines and spirits listed in paragraph 2 of Annex 10 identifies a good as originating in Peru where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin and is protected as a geographical indication within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement under the laws and regulations of Peru. Japan agrees that each of the indication(s) listed in paragraph 2 of Annex 10 is a geographical indication within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement and as such is qualified for protection as a geographical indication in Japan subject to provisions in Section 3 of Part II of the TRIPS Agreement and to Japan's domestic laws and regulations.

5. Subject to consultations and by mutual consent, the Parties may modify Annex 10 as to geographical indications of the Parties to be protected under this Article. Such modifications shall be confirmed by an exchange of diplomatic notes.

Article 178
Copyright and Related Rights

The Parties reaffirm their existing rights and obligations under the Berne Convention for the Protection of Literary and Artistic Works; the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations; the WIPO Copyright Treaty; and the WIPO Performances and Phonograms Treaty.

Article 179
Protection of Undisclosed Information

Each Party shall ensure in its laws and regulations effective protection of undisclosed information in accordance with Article 39 of the TRIPS Agreement.

Article 180
Unfair Competition

Each Party shall provide for effective protection against acts of unfair competition in accordance with Article 10*bis* of the Paris Convention.

Article 181
Enforcement - General

1. The Parties shall ensure that the provisions for the enforcement of intellectual property rights in their domestic laws and regulations are consistent with the TRIPS Agreement, in particular Articles 41 through 61.

2. Each Party shall facilitate development of specialized expertise of competent authorities concerned with enforcement of intellectual property rights, in order to ensure effective enforcement of intellectual property rights.

3. Each Party shall endeavor to promote collection and analysis of statistical data and other relevant information concerning infringement of intellectual property rights, especially trade in goods infringing intellectual property rights. Each Party shall further endeavor to promote collection of information on best practices to prevent and combat intellectual property right infringement.

4. Each Party shall endeavor to enhance coordination among, and joint actions by, competent authorities concerned with enforcement of intellectual property rights.

Article 182
Enforcement - Border Measures

1. Each Party shall provide for procedures concerning the suspension at the border by its customs authority, upon request of the right holder or *ex officio*, of the release of counterfeit trademark or pirated copyright goods which are destined for importation into or exportation from that Party.

2. In the case of the suspension pursuant to paragraph 1 with respect to importation into and exportation from a Party, the competent authorities of the Party suspending the release of the goods shall notify the right holder of the names and addresses of the consignor or consignee, and the importer or exporter, as applicable, of the goods in question.

Article 183
Enforcement - Civil Remedies

Each Party shall ensure that its judicial authorities have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

Article 184
Enforcement - Criminal Remedies

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity.

Article 185
Internet Service Providers

1. Each Party shall establish a legal framework for the limitation of liabilities of internet service providers (hereinafter referred to in this Article as "ISPs") for the purposes of encouraging ISPs to delete from their servers materials infringing copyright and related rights.

2. Each Party shall establish procedures to enable right holders whose copyright and related rights have been infringed to expeditiously obtain from ISPs the information identifying the suspected infringer, where there are legitimate reasons for such right holders to obtain such information.

Article 186
Cooperation

The Parties, recognizing the growing importance of protection of intellectual property in further promoting trade and investment between them, in accordance with their respective laws and regulations and subject to their available resources, shall cooperate in the field of intellectual property.

Article 187
Sub-Committee on Intellectual Property Rights

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Sub-Committee on Intellectual Property Rights (hereinafter referred to in this Article as "the Sub-Committee").

2. The functions of the Sub-Committee shall be:
 - (a) reviewing and monitoring the implementation and operation of this Chapter;
 - (b) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights under the provisions of this Chapter and to promoting efficient and transparent administration of intellectual property system;
 - (c) discussing, with a view to promoting, cooperation activities formulated on a mutually agreed basis which are relevant to the provisions of this Chapter; and
 - (d) reporting the findings and the outcome of discussions of the Sub-Committee to the Commission.

3. The Sub-Committee shall be composed of government officials of the Parties.

Article 188
Other Considerations

1. 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.

2. This Chapter should be interpreted and implemented in a manner supportive of the Parties' rights to take measures to protect public health in accordance with the TRIPS Agreement and the decisions by the Ministerial Conference or the General Council of the WTO, related to the TRIPS Agreement and public health.

3. No provision of this Chapter will prevent a Party from adopting appropriate measures, provided that they are consistent with the provisions of this Agreement and any other international agreement to which both Parties are parties, to prevent the abuse of the intellectual property rights referred to in this Chapter by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.