

## CHAPTER 13

### INTELLECTUAL PROPERTY

#### Article 13.1: Definitions

For the purposes of this Chapter, unless otherwise provided:

**geographical indications** mean indications which identify a good as originating in the Area of a Party, or a region or a locality in that Area, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;

**intellectual property** refers to all categories of intellectual property that are the subject of Sections 1 (Copyright and Related Rights), 2 (Trademarks), 3 (Geographical Indications), 4 (Industrial Designs), 5 (Patents), 6 (Layout – Designs (Topographies) of Integrated Circuits), 7 (Protection of Undisclosed Information) of Part II of the TRIPS Agreement;

**Paris Convention** means the *Paris Convention for the Protection of Industrial Property*, done at Paris on March 20, 1883, as revised or amended from time to time by a revision or amendment that applies to the Parties; and

**WIPO** means the World Intellectual Property Organization.

#### Article 13.2: Objective

The objective of this Chapter is to increase the benefits from trade and investment through the protection, utilisation, commercialisation and enforcement of intellectual property rights in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

#### Article 13.3: Principles

The Parties recognise that:

- (a) establishing and maintaining transparent intellectual property systems and promoting and maintaining balanced, adequate and effective protection and enforcement of intellectual property rights provides certainty to right holders and users;
- (b) protecting and enforcing intellectual property rights should contribute to the promotion of creativity, innovation and to the transfer and dissemination of technology;

- (c) intellectual property protection promotes economic and social development, competitiveness and can reduce distortion and obstruction to international trade;
- (d) intellectual property systems should support open, innovative and efficient markets, including through the effective creation, utilisation, commercialisation, protection and enforcement of intellectual property rights, appropriate limitations and exceptions, and an appropriate balance between the legitimate interests of right holders, users and the public;
- (e) intellectual property systems should not themselves become barriers to legitimate trade;
- (f) appropriate measures, provided they are consistent with the provisions of the TRIPS Agreement and this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders, or the resort to practices which unreasonably restrain trade, are anti-competitive or adversely affect the international transfer of technology; and
- (g) necessary measures to protect public health and nutrition, and to promote the public interest in sectors of vital importance to each Party's socio-economic and technological development, may be adopted provided that they are consistent with the TRIPS Agreement and this Chapter.

#### **Article 13.4: Nature and Scope of Obligations**

Each Party shall, at a minimum, give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights in accordance with its law than this Chapter requires, provided that this additional protection or enforcement is not inconsistent with the provisions of this Agreement. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own legal system and practice.

#### **Article 13.5: International Agreements**

Further to Article 1.2 (Relation to other Agreements) of Chapter 1 (Initial Provisions and General Definitions), each Party affirms its existing rights and obligations under the TRIPS Agreement and any other international agreement relating to intellectual property including the agreements concluded or administered under the auspices of the WIPO, to which the Parties are party.

### **Article 13.6: Exhaustion**

Nothing in this Chapter shall affect the freedom of the Parties to determine whether, and under what conditions, the exhaustion of intellectual property rights applies.

### **Article 13.7: Procedures on Acquisition and Maintenance**

1. Each Party shall:
  - (a) continue to work to enhance its examination and registration systems for registrable intellectual property rights, including through improving examination procedures and maintaining quality registration systems;
  - (b) provide applicants with a communication in writing of the reasons for any refusal of an application for registration of an intellectual property right;
  - (c) provide grounds for interested parties to oppose an application<sup>1</sup> or an opportunity to appeal against any refusal of an application, or to seek, if appropriate, either cancellation, revocation, or invalidation of an existing registered intellectual property right; and
  - (d) require that opposition, appeal, invalidation, cancellation, or revocation (if applicable) decisions be reasoned and in writing.
2. For the purposes of this Article, writing and communication in writing may include writing and communication in an electronic form.

### **Article 13.8: Transparency**

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

### **Article 13.9: Patentable Subject Matter**

1. Subject to paragraph 2 and paragraph 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that the invention is new, involves an inventive step and is capable of industrial application.

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<sup>1</sup> For greater certainty, this provision shall not require a Party to establish in its legislation an objection or opposition procedure for the protection or recognition of an intellectual property right.

2. Each Party may exclude from patentability inventions, the prevention within its Area of the commercial exploitation of which is necessary to protect *ordre public* 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 its laws.

3. Each Party may also exclude from patentability:

- (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and
- (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.

#### **Article 13.10: Amendments, Corrections and Observations on Patent Applications**

Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections and observations in connection with their applications in accordance with the laws, regulations and rules of each Party.

#### **Article 13.11: Trademarks**

The Parties shall grant adequate and effective protection to trademark right holders of goods or services.

#### **Article 13.12: Well-Known Trademarks**

The Parties shall provide protection for well-known trademarks at least in accordance with Articles 16.2 and 16.3 of the TRIPS Agreement and Article 6 *bis* of the Paris Convention.

#### **Article 13.13: Collective and Certification Marks**

Each Party shall provide for the protection of both collective marks and certification marks. Each Party shall also provide that signs that may serve as geographical indications are capable of protection under its trademark system.

#### **Article 13.14: Geographical Indications**

1. Each Party recognises that geographical indications may be protected through a

trademark or *sui generis* system or other legal means.<sup>2</sup>

2. The Parties shall take all necessary measures as required under their laws and regulations to ensure protection of their geographical indications. Each Party shall provide interested parties with the legal means to prevent the use of a geographical indication on a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of those goods or which constitutes an act of unfair competition within the meaning of Article 10 *bis* of the Paris Convention.

3. The terms listed in Annex 13-A are geographical indications in Peru within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement.

4. Subject to the laws and regulations of Hong Kong, China, and in a manner that is consistent with the TRIPS Agreement, the terms listed in Annex 13-A or any other geographical indication registered in Peru in the future may receive relevant protection on intellectual property in Hong Kong, China.<sup>3</sup>

5. Paragraph 4 shall not preclude Hong Kong, China from accepting an application for trademark registration where the relevant requirements for registration are fulfilled.

6. Paragraph 4 shall not be construed to impose any obligation on Hong Kong, China to amend its laws and regulations or affect its international position in relation to intellectual property.

### **Article 13.15: Country Brand**

The Parties acknowledge the importance of Brand Peru for Peru and reaffirm their commitment to prohibit unfair competition practices applicable as provided in Article 10 *bis* of the Paris Convention.

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<sup>2</sup> For greater certainty, without prejudice to the definition of geographical indications, in the case of Peru's commitments exclusively and without extending Hong Kong, China's commitments on geographical indications, Article 13.14 may apply to appellations of origin, which are defined under the Peruvian legislation as denominations consisting of or containing the name of a geographical area, or another denomination known as referring to such area, which serves to designate a good as originating in that geographical area, where the quality or characteristics of the good are due exclusively or essentially to the geographical environment, including natural and human factors, and which has given the good its reputation.

<sup>3</sup> For clarity:

- (a) The terms listed in Annex 13-A or any other geographical indication registered in Peru in the future may receive protection if they are registered and the registrations remain valid in accordance with the *Trade Marks Ordinance (Cap. 559 of the Laws of Hong Kong, China)* of Hong Kong, China and its subsidiary legislation; and
- (b) Any application for the registration of the terms listed in Annex 13-A or any other geographical indication registered in Peru in the future will be processed in accordance with the laws and regulations of Hong Kong, China.

### **Article 13.16: Genetic Resources and Traditional Knowledge**

1. The Parties recognise the importance of intellectual property protection related to genetic resources and traditional knowledge.
2. Subject to the international obligations and laws of each Party, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and traditional cultural expressions.
3. The Parties, or their respective agencies responsible for administering their intellectual property systems or other relevant institutions where appropriate, shall explore the possibility to cooperate to enhance the understanding of and further discuss relevant issues connected with genetic resources and traditional knowledge.

### **Article 13.17: Plant Breeders' Rights**

The Parties, through their competent agencies, shall cooperate to encourage and facilitate the protection and development of plant breeders' rights with a view to:

- (a) better harmonising the plant breeders' rights administrative systems of the Parties, including enhancing the protection of species of mutual interest and exchanging information; and
- (b) reducing unnecessary duplicative procedures between their respective plant breeders' rights examination systems.

### **Article 13.18: Collective Management of Copyright or Related Rights**

Each Party shall foster the establishment of appropriate bodies for the collective management of copyright or related rights and shall encourage such bodies to operate in a manner that is efficient, publicly transparent and accountable to their members.

### **Article 13.19: Protection of Undisclosed Information**

1. In the course of ensuring effective protection against unfair competition, each Party shall protect undisclosed information in accordance with paragraph 2.
2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others

without their consent in a manner contrary to honest commercial practices<sup>4</sup> as long as such information:

- (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- (b) has commercial value because it is secret; and
- (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

### **Article 13.20: 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<sup>5</sup> into free circulation, is required to provide adequate evidence to satisfy its competent authorities that, under the relevant laws of that Party, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information to make the suspected goods reasonably recognisable to the customs authorities. The sufficient information required shall not unreasonably deter recourse to these procedures.

2. Each Party shall provide its 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 of a Party have made a determination that goods are counterfeit or pirated, that Party shall grant its competent authorities the right to inform the right holder, at the right holder's request, of the names and addresses of the

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<sup>4</sup> For the purposes of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

<sup>5</sup> For the purposes of this Article:

- (a) "counterfeit trademark goods" means any goods, including packaging, bearing without authorisation a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and
- (b) "pirated copyright goods" means any goods that are copies made without the consent of the right holder or person duly authorised by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

consignor, the importer, and the consignee, as well as the quantity of the goods in question, in accordance with its laws.

4. Each Party shall provide that its 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 or exported are counterfeit or pirated.

5. When there is a reason to believe or suspect that goods in transit are counterfeit or pirated, each Party may also permit its competent authorities to initiate border measures *ex officio* as provided by its laws.

#### **Article 13.21: Enforcement**

1. Each Party commits to implementing effective intellectual property enforcement systems with a view to eliminating trade in goods and services infringing intellectual property rights. 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.

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

#### **Article 13.22: Exchange of Information**

Each Party shall, on request of the other Party, exchange through their contact points designated in accordance with Article 13.24, experiences and information related, but not limited, to:

- (a) intellectual property policies in their respective administrations;
- (b) changes to, and developments in the implementation of, their respective intellectual property systems such as the protection regimes of country brands and traditional specialties guaranteed in Peru; and
- (c) the laws, procedures and practices of general application relating to the administration and enforcement of intellectual property rights.

#### **Article 13.23: Cooperation**

1. The Parties will consider opportunities for continuing cooperation under established



arrangements in areas of mutual interest that aim to improve the operation of the intellectual property rights system, including administrative processes, in each other's jurisdictions. This cooperation may include:

- (a) capacity building, experience sharing and collaboration, such as in improving patent examination quality and efficiency;
- (b) enforcement of intellectual property rights; and
- (c) raising public awareness on intellectual property issues.

2. Each Party shall, on request of the other Party, give due consideration to any specific cooperation proposal made by the other Party relating to the protection or enforcement of intellectual property rights, promotion of intellectual property trading and commercialisation of intellectual property, or promotion, including organising seminars and workshops, of the use of alternative dispute resolution such as arbitration and mediation to resolve intellectual property disputes between private parties.

#### **Article 13.24: Communications and Contact Points**

1. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Chapter, and shall provide details of its contact point to the other Party. Each Party shall notify the other Party promptly of any amendment to the details of its contact point.

2. Either Party may at any time request meetings with the other Party to discuss and consider any issue related to intellectual property covered by this Chapter. Either Party may also request the Joint Commission to review and recommend amendments to this Chapter (including Annex 13-A) during the general review of this Agreement as provided under Article 17.4 (General Review) of Chapter 17 (Administrative and Institutional Provisions).

3. A request under paragraph 2 shall be conveyed through the contact points referred to in paragraph 1 by any means as may be agreed by the Parties.