CHAPTER 11

INTELLECTUAL PROPERTY

Article 11.1: Basic Principles

1. The Parties recognise that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation, 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 the balance of rights and obligations.

2. The Parties recognise that technology transfer contributes to strengthening national capabilities with the aim to establish a sound and viable technological base.

3. The Parties recognise the impact of information and communication technologies on the creation and usage of literary and artistic works.

4. The Parties may, in formulating or amending their laws and regulations, adopt necessary measures to protect public health and nutrition, and to promote public interest in sectors of vital importance for their social economic and technological development, provided that such measures are consistent with the provisions of this Chapter.

5. The Parties reaffirm their existing rights and obligations under the WTO *Agreement on Trade-Related Aspects of Intellectual Property Rights* (hereinafter referred to as the "TRIPS Agreement) and other multilateral agreements relating to intellectual property rights to which both Parties are party. Nothing in this Chapter shall derogate existing rights and obligations that the Parties have under those agreements.

6. The Parties recognise the importance of the *Doha Declaration* on the TRIPS Agreement, and especially the *Doha Declaration on the TRIPS Agreement and Public Health* adopted on 14 November 2001 by the Ministerial Conference of the WTO and its subsequent developments. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with this Declaration.

7. The Parties shall endeavour to implement and respect the *Decision of the WTO General Council of 30 August 2003, on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*; any amendment to the TRIPS Agreement regarding public health in force between the Parties; and the *Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property*, adopted by means of Resolution WHA61.21 of 24 May 2008.

Article 11.2: Transparency Measures

1. Each Party shall provide a system for the registration, at least, of trademarks 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.

2. Each Party shall endeavour to provide:

(a) a system for the electronic application for, and electronic processing, registering, and maintenance of, trademarks; and

(b) a publicly available electronic information system, including an online database, of trademark applications and of registered trademarks.

3. For published patent applications and issued patents, each Party shall make available to the public information connected with the patent prosecution such as search and examination results, and patent and non-patent related literature citations.

Article 11.3: Measures Related to Genetic Resources and Traditional Knowledge Associated with Genetic Resources

1. The Parties recognise the importance and their rights and obligations as established by the *Convention on Biological Diversity*, done at Rio de Janeiro on 5 June 1992, and other relevant international instruments to which both Parties are parties, including access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilisation of genetic resources and their derivatives[1].

2. Access to biological and genetic resources and their derivatives shall be conditioned to the prior informed consent of the Party that is the country of origin of such resources or by the country that has acquired the genetic resources in accordance with the *Convention on Biological Diversity*, as established in its national legislation. Similarly, access to traditional

[1] The definition of which is as provided by Article 2(e) of the *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 on 29 October 2010.

knowledge of local communities[2] associated to these resources shall also be subject to the prior informed consent of those communities, as established in national legislation. Access, where granted, shall be on mutually agreed terms and subject to the fair and equitable sharing of benefits arising out of the utilisation of such resources and knowledge.

3. The use of biological and genetic resources and their derivative products and/or traditional knowledge from the local communities of which a Party is the country of origin of such resources or is the country that has acquired the genetic resources in accordance with the *Convention on Biological Diversity*, shall meet applicable national and relevant international regulations when it involves an intellectual property right.

4. The Parties agree to collaborate in the exchange of public information related to genetic resources and their derivatives and/or traditional knowledge associated with genetic resources of their local communities, as part of prior art search to ensure quality patent examination.

5. The Parties recognise that the use of databases or digital libraries containing traditional knowledge associated with genetic resources may be a helpful tool during patent examination.

6. At the request of a Party, the Parties agree to collaborate in the investigation and follow-up of alleged infringements to provisions of national law regulating the access to genetic resources and their derivatives and/or traditional knowledge associated with genetic resources, in their territories, in the context of the proceedings of patent applications and plant varieties protection**.**

7. Each Party will take appropriate, effective and non-discriminatory measures, in accordance with its national laws, against the infringement and violations of the terms and conditions for the access to genetic resources and their derivatives and/or traditional knowledge associated with genetic resources.

Article 11.4: Copyright and Related Rights

1. The Parties shall protect effectively and adequately authors of literary or artistic works. Likewise, they shall protect performers, phonogram producers and broadcasting organisations, on their performances, phonograms or broadcasts, respectively, according to national laws and regulations of each Party.

2. Each Party reaffirms its rights and obligations pursuant to copyright-related international treaties to which it is a party.

3. Recognising the importance of the organisation and existence of collective management societies in promoting fair, transparent and effective distribution of copyright and related rights, both Parties agree to promote cooperation, for example, through the exchange of knowledge and/or experiences in this area.

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[2] In the case of Peru, local communities include Afro-Peruvian and/or Indigenous communities as provided in its national legislation.
In the case of Thailand, local communities include traditional communities.

Article 11.5: Geographical Indications

1. For the purposes of this Chapter, geographical indications are indications which identify a product as originating from a territory of a Party, or from a region or locality of that territory, where a given quality, reputation or other characteristic of the product is exclusively or essentially due to its geographical origin, including natural and human factors.[3]

2. Each Party will establish in its national legislation mechanisms for the protection[4] of geographical indications.

3. For production purposes, the use of geographical indications, protected in the territory of the Parties, related to natural, agricultural, craft or industrial products originating in the territory of either one of the Parties shall be reserved exclusively for producers, and/or manufacturers and/or craftsmen with production or manufacturing establishments in the locality or region of the Party as identified by that indication.

4. The Parties shall protect, in accordance with their respective national laws, the geographical indications of the other Party which are protected in its territory. The Parties shall not permit the importation, manufacture or sale of products under such geographical indications, unless such products have been manufactured and certified in the country of origin, according to national laws applicable to such products.

5. The names listed in Annex 11-A (Peruvian Geographical Indications) are geographical indications in Peru within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to Thailand's domestic laws and regulations and in accordance with the terms and conditions set out in paragraph 4, such names will be protected as geographical indications in the territory of Thailand.

6. The names listed in Annex 11-B (Thai Geographical Indications) are geographical indications in Thailand within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to Peru's domestic laws and regulations and in accordance with the terms and conditions set out in paragraph 4, such names will be protected as geographical indications in the territory of Peru.

7. A Party may request the addition of additional geographical indications in Annexes 11-A (Peruvian Geographical Indications) or 11-B (Thai Geographical Indications) and may request the removal of a name listed in their respective Annex.[5]

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[3] For greater clarity, in the case of Peru geographical indications include appellations of origin.

[4] For greater certainty, and if the legislation of a Party establishes it, "protection" may refer to both recognition and protection of a geographical indication.

[5] Upon request of a Party, the Sub-Committee on Intellectual Property may decide on the addition or removal referred to in this paragraph.

Article 11.6: 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[6] into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of that Party, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may be reasonably expected to be within the right holder's knowledge to make the suspected goods reasonably recognisable to customs authorities. The requirement to provide information shall not unreasonably deter recourse to these procedures.

2. Each Party shall provide the competent authorities with the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit trademarked goods or pirated copyright goods 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 authority to inform the right holder, at the right holder's request, of the names and addresses of the consignor, the importer and the consignee, and of 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 a 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, as provided by national law, may also establish that the competent authorities are permitted to initiate border measures *ex officio*.

Article 11.7: Cooperation and Technology Transfer

1. The Parties, recognising the growing importance of protection of intellectual property in further promoting trade and investment between them, in accordance with their respective

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[6] 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 a person duly authorized 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.

laws and regulations and subject to their available resources, shall cooperate in the field of intellectual property.

2. The Parties should promote cooperation on activities relating to international conventions, to which both Parties are party, on administration and enforcement of intellectual property rights and on activities in international organisations including the WTO and the *World Intellectual Property Organization* (WIPO).

3. Subject to the availability of resources, the Parties will cooperate in the areas of common interest and on mutually agreed terms, which may include:

(a) educational and dissemination projects on the use of intellectual property as a research and innovation tool;

(b) training and specialisation courses for government officials on intellectual property rights and other mechanisms;

(c) establishing incentives for research, innovation, transfer and diffusion of technology between the Parties aimed at, among others, enterprises, universities, research centres and technological centres;

(d) promoting effective modalities for the participation of entities and experts of the national systems of science, technology and innovation, in projects and joint research, development and innovation networks with the purpose of strengthening national capacities in science, technology and innovation;

(e) exchange of researchers, scientists, technicians, and technology base entrepreneurs;

(f) designing a promoting system for fostering and founding Start-Ups;

(g) comprehensive management training on technological parks and business incubators and accelerators;

(h) cooperation in the commercialisation of products and services into the global market, as a result of scientific and technological innovation projects; and

(i) any other cooperation on science, technology and innovation.

4. The Parties will cooperate, on mutually agreed terms, to exchange information relating to intellectual property rights issues in areas of common interest, which may include:

(a) preservation and sustainable use of biological biodiversity;

(b) actions to prevent the illegal access to genetic resources, traditional knowledge, innovation and related associated practices;

(c) internal procedures regarding the distribution of benefits derived from the access to genetic resources, traditional knowledge, innovations and related associated practices; and

(d) other intellectual property rights issues.

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 organisations.

6. The implementing agencies of both Parties shall discuss and agree the conditions to be considered[7] for the development of cooperation activities under this Chapter as well as of the Article 12.4(g) (Fields of Cooperation).

7. Each Party designates as contact entities responsible for the fulfilment of the purposes of this Article and to facilitate the development of collaborative and cooperation projects, the following:

(a) in case of Peru: the National Institute for the Defence of Competition and the Protection of Intellectual Property (*Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* - INDECOPI) or, the National Council for Science, Technology and Innovation (*Consejo Nacional de Ciencia, Tecnología e Innovación* - CONCYTEC), as appropriate or their respective successors; and

(b) in case of Thailand: the Department of Intellectual Property, Ministry of Commerce or the National Research Council of Thailand, as appropriate or their respective successors.

[7] Such conditions could be on the ownership and management of intellectual property rights, among others.

ANNEX 11-A

PERUVIAN GEOGRAPHICAL INDICATIONS

1. Pisco (AO)
2. Chulucanas (AO)
3. Maíz Blanco Gigante Cusco (AO)
4. Loche de Lambayeque (AO)
5. Pallar de Ica (AO)
6. Café Villa Rica (AO)
7. Café Machu Picchu - Huadquiña (AO)
8. Maca Junín - Pasco (AO)
9. Aceituna de Tacna (AO)
10. Cacao Amazonas Perú (AO)
11. Orégano de Tacna (AO)
12. Sal de Maras (GI)

ANNEX 11-B

THAI GEOGRAPHICAL INDICATIONS

1. Sangyod Maung Phatthalung Rice
2. Thung Kula Rong-Hai Thai Hom Mali Rice
3. Surin Hom Mali Rice
4. Nakonchaisri Pomelo
5. Phetchabun Sweet Tamarind
6. Doi Tung Coffee
7. Doi Chaang Coffee
8. Lamphun Brocade Thai Silk
9. Praewa Kalasin Thai Silk
10. Chiangmai Celadon