

CHAPTER 11
INTELLECTUAL PROPERTY

Section A: General Provisions

Article 11.1
Definitions

For the purposes of this Chapter:

- (a) **“geographical indication”** means an indication that identifies 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;
- (b) **“intellectual property”** means all categories of intellectual property that are covered by Sections 1 to 7 of Part II of the TRIPS Agreement;
- (c) **“national”** means, in respect of the relevant right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement; and
- (d) **“WIPO”** means the World Intellectual Property Organization.

Article 11.2
Objectives

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.

Article 11.3
Principles

1. A Party may adopt appropriate measures to prevent the abuse of intellectual property rights by right holders or the resort to practices that unreasonably restrain trade or adversely affect the international transfer of technology, provided that such measures are consistent with this Chapter.

2. A Party may, in formulating or amending its laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter.

Article 11.4 **Understandings in Respect of this Chapter**

Having regard to the underlying public policy objectives of the respective domestic intellectual property systems, the Parties recognise the need to:

- (a) promote innovation and creativity;
- (b) facilitate the diffusion of information, knowledge, technology (including through technology transfer), culture and the arts; and
- (c) protect against unfair competition in accordance with the TRIPS Agreement,

through their respective intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of right holders, users, and the public.

Article 11.5 **Nature and Scope of Obligations**

Each Party shall 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 under its law than is required by this Chapter, provided that such protection or enforcement does not contravene the provisions of this Chapter. Each Party shall be free to determine the appropriate method of implementing the provisions of this Chapter within its own law and practice.

Article 11.6 **International Agreements**

The Parties affirm their obligations set out in the following multilateral agreements:

- (a) TRIPS Agreement;
- (b) *Patent Cooperation Treaty*, done at Washington on 19 June 1970, as amended on 3 October 2001;

- (c) *Paris Convention for the Protection of Industrial Property*, done at Paris on 20 March 1883, as revised at Stockholm on 14 July 1967, as amended on 28 September 1979;
- (d) *Berne Convention for the Protection of Literary and Artistic Works*, done at Berne on 9 September 1886, as revised at Paris on 24 July 1971, as amended on 28 September 1979 (“Berne Convention”);
- (e) *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, done at Madrid on 27 June 1989, as amended on 12 November 2007;
- (f) *WIPO Performances and Phonogram Treaty*, adopted at Geneva on 20 December 1996 (“WPPT”);
- (g) *WIPO Copyright Treaty*, adopted at Geneva on 20 December 1996 (“WCT”);
- (h) *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*, done at Budapest on 28 April 1977, as amended on 26 September 1980; and
- (i) *Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled*, done at Marrakesh on 27 June 2013.

Article 11.7 **Intellectual Property and Public Health**

1. The Parties affirm their commitment to the *Declaration on the TRIPS Agreement and Public Health*, adopted at Doha on 14 November 2001 by the Ministerial Conference of the WTO (“Doha Declaration”) and confirm that the provisions of this Chapter are without prejudice to the Doha Declaration.
2. Nothing in this Chapter shall limit a Party’s rights and obligations pursuant to Article 31 and Article 31*bis* of the TRIPS Agreement, and the Annex and the Appendix to the Annex to the TRIPS Agreement.
3. Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party’s right to protect public health and, in particular, to promote access to medicines for all.
4. Each Party has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/ AIDS, tuberculosis, malaria, COVID-19, and other epidemics, can represent a national emergency or other circumstances of extreme urgency.

Article 11.8
National Treatment

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than it accords to its own nationals with regard to the protection¹ of intellectual property rights in accordance with Article 3(1) of the TRIPS Agreement.
2. A Party may derogate from paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is:
 - (a) necessary to secure compliance with laws or regulations that are not inconsistent with this Chapter; and
 - (b) not applied in a manner that would constitute a disguised restriction on trade.
3. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 11.9²
Transparency

1. Each Party shall endeavour, subject to its legal system and practice, to make information concerning application and registration of trade marks, geographical indications, industrial designs, and patents accessible for the general public.
2. The Parties also acknowledge the importance of informational materials, such as publicly accessible databases of registered intellectual property rights to enable the public to become acquainted with the registered or granted intellectual property rights.
3. Each Party shall endeavour to make available such information on the internet.

¹ For the purposes of this paragraph, “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 covered by this Chapter.

² The commitment contained in Article 16.4 (Review and Appeal) that a review be ‘prompt’ shall not apply to this Chapter.

Article 11.10
Application of Chapter to Existing Subject Matter

This Chapter does not give rise to obligations in respect of acts that occurred before the date of entry into force of this Agreement for a Party.

Article 11.11
Exhaustion of Intellectual Property Rights

Nothing in this Agreement prevents a Party from determining whether or under what conditions the exhaustion of intellectual property rights applies under its law.³

Article 11.12
Concessions for Certain Categories

Each Party may provide concessions, such as reduced fees for filing, processing, registration, grant, and maintenance of intellectual property rights, to small and medium enterprises, startups, and educational institutions, in accordance with its laws and regulations.

Section B: Cooperation

Article 11.13
Cooperation Activities and Initiatives

1. The Parties shall endeavour to cooperate on the subject matter covered by this Chapter, such as through appropriate coordination, training and exchange of information between the respective intellectual property offices of the Parties, or other institutions, as determined by each Party.
2. Cooperation activities and initiatives undertaken under this Chapter shall be subject to the availability of resources, on request, and on terms and conditions mutually agreed upon between the Parties.

³ For greater certainty, this Article is without prejudice to any provisions addressing the exhaustion of intellectual property rights in international agreements to which a Party is a party.

Section C: Trade Marks

Article 11.14 Types of Signs Registrable as Trade Marks

Neither Party shall deny registration of a trade mark only on the ground that the sign of which it is composed is a sound. A Party may require a concise and accurate description, or graphical representation, or both, as applicable, of the trade mark.

Article 11.15 Use of Identical or Similar Signs

Each Party shall provide that the owner of a registered trade mark has the exclusive right to prevent third parties that do not have the owner's consent from using in the course of trade identical or similar signs for goods or services that are related to those goods or services in respect of which the owner's trade mark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

Article 11.16 Exceptions

A Party may provide limited exceptions to the rights conferred by a trade mark, such as fair use of descriptive terms, provided that those exceptions take account of the legitimate interest of the owner of the trade mark, and of third parties.

Article 11.17 Well-Known Trade Marks

For the purposes of giving effect to the protection of well-known trade marks, as referred to in Article 6*bis* of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement, each Party recognises the importance of the *Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks* adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO from 20 to 29 September 1999.

Article 11.18
Procedural Aspects of Examination, Opposition and Cancellation of Registered Trade Marks

Each Party shall provide a system for the examination and registration of trade marks which includes among other things:

- (a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register the trade mark;
- (b) providing the applicant with an opportunity to respond to communications from the competent authorities, to respond to any initial refusal, and to make a judicial appeal against any final refusal to register the trade mark;
- (c) providing an opportunity to oppose the registration of a trade mark or to seek cancellation⁴ of the trade mark; and
- (d) requiring decisions in the administrative proceedings of opposition and cancellation to be reasoned and in writing, which may be provided by electronic means.

Article 11.19
Classification of Goods and Services

Each Party shall adopt or maintain a trade mark classification system that is consistent with the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks*, done at Nice on 15 June 1957, as revised and amended ("Nice Classification"). Each Party shall provide that:

- (a) registrations and the publications of applications indicate the goods and services by their names, grouped according to the classes established by the Nice Classification;⁵ and
- (b) goods or services may not be considered as being similar to each other on the ground that, in any registration or publication, they are classified in the same class of the Nice Classification and conversely that goods or services may not be considered as being dissimilar from each other on the ground that, in any registration or publication, they are classified in different classes of the Nice Classification.

⁴ For greater certainty, cancellation for the purposes of this Section may be implemented through nullification or revocation proceedings.

⁵ A Party that relies on translations of the Nice Classification shall follow updated versions of the Nice Classification to the extent that official translations have been issued and published.

Article 11.20
Term of Protection for Trade Marks

Each Party shall provide that initial registration and each renewal of registration of a trade mark is for a term of no less than 10 years.

Section D: Country Names

Article 11.21
Country Names

Each Party may provide the legal means for interested persons to prevent commercial use of the country name of a Party in relation to a good in a manner that misleads consumers as to the origin of that good.

Section E: Geographical Indications

Article 11.22
Protection⁶ of Geographical Indications

The Parties reaffirm that geographical indications may be protected through a trade mark or *sui generis* system or other legal means.

Article 11.23
Opposition Procedures

If a Party provides administrative procedures for seeking protection or recognition of geographical indications, whether through a trade mark or a *sui generis* system, it shall, in accordance with its laws and regulations, provide procedures that allow at least interested persons to oppose applications for such protection or recognition of a geographical indication.

⁶ For greater certainty, protection of geographical indications collectively means protection by registration or recognition, as may be applicable to a Party.

Section F: Patents

Article 11.24 Regulatory Review Exception

Without prejudice to the scope of, and consistent with, Article 11.29 (Exceptions), each Party shall provide that a third party may do an act that would otherwise infringe a patent if the act is done for purposes connected with obtaining regulatory approval⁷ in that Party or a non-Party.

Article 11.25 Other Use Without Authorisation of the Right Holder

Nothing in this Chapter shall limit a Party's rights and obligations under the TRIPS Agreement in relation to the use, or authorisation of the use of, a patent without the authorisation of the right holder.

Article 11.26 Conditions on Patent Applicants

1. Each Party shall require an applicant for a patent to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of application.
2. A Party may require a patent applicant to provide information concerning the applicant's corresponding foreign applications and grants.

Article 11.27 Patent Working Disclosure Requirement

1. Each Party may require a patent owner to provide periodic disclosure of information concerning the working of a patent.
2. Notwithstanding paragraph 1, a Party may require a patent owner to provide a disclosure concerning the working of a patent, in a given case, in accordance with its law.

⁷ For the purpose of this Article, a Party may treat "regulatory approval" to mean "marketing approval".

Article 11.28
**Procedural Aspects of Examination, Opposition, and Invalidation or
Cancellation of Registered Patents**

Each Party shall provide a system for the examination and grant of patents which includes among other things:

- (a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register the patent;
- (b) providing the applicant with an opportunity to respond to communications from the competent authorities, to respond to any initial refusal, and to make a judicial appeal against any final refusal to grant the patent;
- (c) providing an opportunity for interested parties to seek cancellation or invalidation of a granted patent. In addition, each Party may provide an opportunity for interested parties to oppose the grant of the patent;
- (d) making decisions in opposition, revocation or invalidation proceedings, to be reasoned and in writing, which may be delivered by electronic means; and
- (e) providing an applicant with at least one opportunity to make amendments, corrections or observations, in connection with an application that has been filed^{8 9} with the competent authority of the Party in accordance with the laws and regulations of that Party.

Article 11.29
Exceptions

A Party 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 right holder, taking account of the legitimate interests of third parties.

⁸ For greater certainty, for the purpose of this Article, “filed” does not include notional applications or applications deemed to have been filed in a Party.

⁹ A Party may provide that such amendments do not go beyond the scope of the disclosure of the invention, as of the filing date.

Section G: Industrial Designs

Article 11.30 Protection of Registered Industrial Designs

Each Party shall provide for the protection of independently created industrial designs that are new or original. This protection shall be provided by registration and shall confer an exclusive right upon the holder in accordance with the provisions of the TRIPS Agreement.

Article 11.31 Exceptions

A Party may provide limited exceptions to the exclusive rights conferred by the protection of an industrial design, provided that such exceptions do not unreasonably conflict with a normal exploitation of an industrial design and do not unreasonably prejudice the legitimate interests of the right holder, taking account of the legitimate interests of third parties.

Section H: Genetic Resources, Traditional Knowledge, And Traditional Cultural Expressions

Article 11.32 Genetic Resources, Traditional Knowledge, and Traditional Cultural Expressions

1. The Parties recognise the relevance of intellectual property systems and traditional knowledge associated with genetic resources to each other, when that traditional knowledge is related to those intellectual property systems.
2. The Parties affirm the importance of the *WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge*, adopted at Geneva on 24 May 2024.
3. The Parties affirm the importance of the work carried out on traditional knowledge and traditional cultural expressions by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.
4. The Parties shall endeavour to exchange views and information and cooperate through their respective agencies responsible for intellectual property rights covered by this Chapter, with the participation of relevant stakeholders, if such participation is appropriate and

practicable, to enhance the understanding of intellectual property related aspects of genetic resources, traditional knowledge, and traditional cultural expressions.

Article 11.33
Patent Examination and Traditional Knowledge Associated with Genetic Resources

The Parties shall endeavour to pursue quality patent examination, which shall include:

- (a) that in determining prior art, relevant publicly available documented information related to traditional knowledge associated with genetic resources may be taken into account;
- (b) an opportunity for third parties to cite, in writing, to the competent examining authority prior art disclosures that may have a bearing on patentability, including prior art disclosures related to traditional knowledge associated with genetic resources;
- (c) if applicable and appropriate, the use of databases or digital libraries such as India's Traditional Knowledge Digital Library ("TKDL"), containing traditional knowledge associated with genetic resources; and
- (d) if agreed and subject to available resourcing, cooperation in the training of patent examiners in the examination of patent applications related to traditional knowledge associated with genetic resources.

Section I: Copyright And Related Rights

Article 11.34
General Provision

Consistent with the obligations set out in the applicable international agreements to which the Parties are party and in accordance with its laws and regulations, each Party shall provide adequate and effective protection to authors for their works, performers for fixations of their performances in phonograms, producers for their phonograms and broadcasters for their broadcasts.

Article 11.35
Limitations and Exceptions

1. A Party may provide limitations or exceptions in its domestic law to the rights provided under this Section, but shall confine such limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.
2. This Article does not reduce or extend the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the WCT or the WPPT.

Article 11.36
Obligations Concerning Protection of Rights-Management Information

Each Party shall provide adequate and effective legal remedies against any person who knowingly and without authorisation:

- (a) removes or alters any electronic rights-management information; or
- (b) distributes, imports for distribution, broadcasts or communicates to the public, works or copies of works, knowing that electronic rights-management information has been removed or altered without authorisation.

Article 11.37
Collective Management

1. The Parties recognise the role of collective management societies for copyright and related rights in collecting and distributing royalties based on practices that are fair, efficient, transparent and accountable, which may include appropriate record keeping and reporting mechanisms.
2. Each Party shall encourage the establishment of reciprocal arrangements between their respective collective management societies for the purposes of ensuring easier licensing of content and sharing of rights revenues.

Section J: Enforcement

Article 11.38 General Obligation in Enforcement

The Parties shall provide in their respective law for the enforcement of intellectual property rights covered by this Chapter consistent with the TRIPS Agreement, in particular Articles 41 through 61.

Article 11.39 Border Measures

1. Each Party shall, in conformity with its law and the provisions of Part III, Section 4 of the TRIPS Agreement, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importations of counterfeit trade mark or pirated copyright goods may take place, to lodge an application in writing with the competent authorities, administrative or judicial, in the Party in which the border measure procedures are applied, for the suspension by that Party's customs authorities of the release into free circulation of such goods.
2. A Party may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of Part III, Section 4 of the TRIPS Agreement are met. A Party may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territory in accordance with its law.