CHAPTER 11

INTELLECTUAL PROPERTY

SECTION A
GENERAL PROVISIONS AND BASIC PRINCIPLES

Article 11.1: Objectives

1. The objective of this Chapter is to reduce distortion and impediments to trade and investment by promoting deeper economic integration and cooperation through the effective and adequate creation, utilisation, protection, and enforcement of intellectual property rights, while recognising:

   (a) the Parties' different levels of economic development and capacity, and differences in national legal systems;

   (b) the need to promote innovation and creativity;

   (c) the need to maintain an appropriate balance between the rights of intellectual property right holders and the legitimate interests of users and the public interest;

   (d) the importance of facilitating the diffusion of information, knowledge, content, culture, and the arts; and

   (e) that establishing and maintaining a transparent intellectual property system and promoting and maintaining adequate and effective protection and enforcement of intellectual property rights provide confidence to right holders and users.

2. 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 11.2: Scope of Intellectual Property

For the purposes of this Chapter, "intellectual property" means copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits, protection of plant varieties, and protection of undisclosed information, as referred to in Sections 1 through 7 of Part II of the TRIPS Agreement.

Article 11.3: Relation to Other Agreements[1]

In relation to intellectual property, in the event of any inconsistency between a provision of this Chapter and a provision of the TRIPS Agreement, the latter shall prevail to the extent of such inconsistency.

Article 11.4: Principles

1. 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 its socio-economic and technological development, provided that such measures are consistent with this Chapter.

2. Appropriate measures, provided that they are consistent with 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 or adversely affect the international transfer of technology.[2]

3. Further to paragraph 2, the Parties recognise the need to foster competition.

Article 11.5: Obligations

Each Party shall give effect to the provisions of this Chapter. A Party may, but shall not be obliged to, implement in its law more extensive

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[1] For the purposes of the application of this Article, the Parties agree that the fact that this Chapter provides for more extensive protection of intellectual property than is required by the TRIPS Agreement does not mean there is an inconsistency within the meaning of this Article and paragraph 2 of Article 20.2 (Relation to Other Agreements).

[2] The Parties recognise that intellectual property rights by themselves do not necessarily confer market dominance.