

PART FIVE
INTELLECTUAL PROPERTY RIGHTS

CHAPER 15

INTELLECTUAL PROPERTY

Section A - General Provisions

Article 15.01 Application

The Parties confirm the protection of Intellectual Property Rights included in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The Parties agree to establish the appropriate measures to ensure adequate and effective protection according to international regulations on this matter.

Section B - Protection of Intellectual Property Rights

Article 15.02 Protection of Geographical Indications

1. The Parties, within a term of two (2) years as of the date of entering into force of this Agreement, shall initiate consultations to protect and/or recognize the geographical indications of both Parties, in the terms set out in Articles 23 and 24 of the TRIPS.
2. Each Party shall provide the measures to prevent the importation, manufacture or sale of goods which use a geographical indication protected in the territory of the other Party. To have access to protection, each Party shall notify the other Party of its protected geographical indications.

Article 15.03 Protection of Traditional Knowledge

1. Each Party shall protect the collective rights of intellectual property and traditional knowledge of its indigenous peoples and local communities regarding their creations that are commercially used. This shall be accomplished by means of a special system of registry, promotion and commercialization of their rights, with a view towards emphasizing the sociological and cultural native values of the indigenous towns and the local communities in order to grant them social justice.
2. Each Party shall recognize that the customs, traditions, beliefs, spirituality, religiosity, cosmos vision, folklore expressions, artistic manifestations, traditional skills and any other form of traditional expression of the indigenous peoples and local communities are a part of their cultural heritage.
3. The cultural heritage shall not be subject to any form of exclusivity from non-

authorized third parties who apply the intellectual property system, unless the request is made by the indigenous peoples and local communities or by a third party authorized by them.

Article 15.04 Protection of Folklore

Each Party shall ensure the effective protection of all folkloric expressions and artistic manifestations of the traditional and popular culture of the indigenous peoples and local communities.

Article 15.05 Relation between Access to Genetic Resources and Intellectual Property

1. Each Party shall protect the access to its genetic resources and to the traditional knowledge developed by its indigenous peoples and local communities regarding the use of biological resources that contain these genetic resources, from the indiscriminate use of biological diversity, as well as ensuring the participation in the benefits derived from the use of its genetic resources.

2. Each Party shall agree to a fair and equitable participation in the benefits derived from the access to its genetic resources and from the use of its traditional knowledge and folklore expressions.

3. Each Party shall ensure that the protection granted to the intellectual property will safeguard its biological and genetic heritage. Consequently, the licensing of patents on inventions developed from material obtained from such heritage or traditional knowledge shall comply with the conditions under which this material was acquired according to the relevant national and international laws and regulations.

Section C – Enforcement

Article 15.06 Transparency

The Parties shall notify the Intellectual Property Committee of this Agreement of their laws, regulations and procedures in respect to intellectual property rights. In relation to final judicial decisions and administrative rulings of general application, the foregoing shall be published, or where such publication cannot be made available, other means of availability shall be provided to the public, so as to enable the Parties and right holders to become acquainted with them.

Article 15.07 Intellectual Property Committee

1. The Parties hereby establish the Intellectual Property Committee, as set out in Annex 15.07.

2. The Intellectual Property Committee shall meet at least once a year, and upon request of a Party or the Commission, to ensure the effective implementation and administration of this Chapter.

3. The Committee will hear matters relating to this Chapter, and without prejudice to the provisions of Article 17.05 (Committees) shall:

- a) seek the most suitable means to effectively apply the provisions of this Chapter;
- b) review any proposed modification or addition upon request of any of the Parties;
- c) perform any task assigned by the Commission; and
- d) establish subcommittees or technical groups.

Article 15.08 Dispute Settlement

When a Party requests consultations and notifies the Committee, such action shall constitute the activation of the consultation process as set forth in Article 18.05 (Consultations).

Article 15.09 Technical Cooperation

The Parties shall establish a system of technical cooperation, based upon mutually agreed terms and conditions and within the framework of the WTO on matters relating to intellectual property, and in the areas of newly developed issues related to intellectual property, as well as:

- a) promote and develop information disclosure and the transfer of technology based on the technological content stated in the patent documents, for which adequate databases must be supplied;
- b) promote and execute national as well as international training programs on intellectual property rights and related topics (including traditional knowledge, biodiversity and folklore);
- c) promote and strengthen training programs to ensure that intellectual property rights and related topics are observed;
- d) execute and implement automated systems for managing all intellectual property system and related topics; and

- e) promote information exchange on technological issues as well as legal aspects between the Intellectual Property Office and other institutions.

ANNEX 15.07

INTELLECTUAL PROPERTY COMMITTEE

The Intellectual Property Committee, established in Article 15.07, will be composed of:

- a) in the case of the Republic of Guatemala, by the Registro de la Propiedad Intelectual del Ministerio de Economía, or its successor;
- b) in the case of the Republic of China (Taiwan) by the Intellectual Property Office of the Ministry of Economic Affairs, or its successor.