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**CHAPTER QQ[1]
{INTELLECTUAL PROPERTY RIGHTS/INTELLECTUAL PROPERTY}**

{Section A: General Provisions}

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**CHAPTER QQ[1]
{INTELLECTUAL PROPERTY RIGHTS/INTELLECTUAL PROPERTY}**

{Section A: General Provisions}

Article QQ.A.1: {Definitions}

For the purposes of this Chapter **intellectual property** refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement.

Article QQ.A.X: {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 QQ.A.Y: {Principles}

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

QQ.A.Z: {Understandings in respect of this Chapter}

Having regard to the underlying public policy objectives of national systems, the Parties recognise the need to:

[1] Section and Articles titles and headings appear in this text on a without prejudice basis. Parties have agreed to defer consideration of the need for, and drafting of, Section and Article titles and headings. Such titles or headings that appear in braces (i.e., ‘{ }’) are included for general reference and information purposes only.

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- promote innovation and creativity;
- facilitate the diffusion of information, knowledge, technology, culture and the arts; and
- foster competition and open and efficient markets;

through their intellectual property systems, while respecting the principles of transparency and due process, and taking into account the interests of relevant stakeholders, including rights holders, service providers, users and the public [CL/CA propose; US/JP oppose; , and acknowledging the importance of preserving the public domain.]

Article QQ.A.5: {General Provisions}

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, and enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection and 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 legal system and practice.

Article QQ.A.7: {Understandings Regarding Certain Public Health Measures}

1. The Parties affirm their commitment to the *Declaration of the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2). In particular, the Parties have reached the following understandings regarding this Chapter:

- (a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health. Accordingly, while reiterating their commitment to this Chapter, the 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. Each Member had 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 and other epidemics, can represent a national emergency or other circumstances of extreme urgency.
- (b) In recognition of the commitment to access to medicines that are supplied to accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council

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Chairman's statement accompanying the Decision (JOB/(03)/177, WT/GC/M/82), as well as the Decision on the Amendment of the TRIPS agreement, adopted by the General Council, 6 December 2005 and the WTO General Council Chairperson's statement accompanying the Decision (WT/GC/M/100) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilization of the TRIPS/health solution.

(c) With respect to the aforementioned matters, if any waiver of any provision of the TRIPS Agreement, or any amendment of the TRIPS Agreement, enters into force with respect to the Parties, and a Party's application of a measure in conformity with the waiver or amendment is contrary to the obligations of this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the waiver or amendment.

2. Each Party shall notify the WTO of its acceptance of the Protocol amending the TRIPS Agreement done at Geneva on December 6, 2005.

Article QQ.A.8 {existing Rights and Obligations / International Agreements} [2]

[NZ/MY/CA/MX/VN/BN/PE/CL oppose: 1. Each Party affirms that it has ratified or acceded to the following agreements, ~~as revised and amended~~:

- (a) *Patent Cooperation Treaty (1970), as amended in (1979)*;
- (b) *Paris Convention for the Protection of Industrial Property (1967)*; and
- (c) *Berne Convention for the Protection of Literary and Artistic Works (1971)*.

~~[JP oppose: 2. Each party shall ratify or accede to each of the following agreements, where it is not already a Party to such agreement, subject to the fulfillment of its necessary domestic requirements and in any event no later than 1 January 2015, or alternatively, by the date of entry into force of this Agreement for the Party concerned.} :~~

- (a) *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989)*;

[2] Parties reserve right to revisit in light of outcome of AA.2 and QQ.C.2.2.

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(b) *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977), as amended in 1980;

(c) *International Convention for the Protection of New Varieties of Plants* (1991) (UPOV Convention);

(d) ~~{Singapore Treaty on the Law of Trademarks (2006) [3]/ the Trademark Law Treaty (1994) [4]}~~;

(e) *WIPO Copyright Treaty* (1996); and

(f) ~~WIPO Performances and Phonograms Treaty (1996).~~]

4. ~~{Each Party shall undertake reasonable efforts to ratify or accede to the following agreements:~~

(a) [SG oppose: *Patent Law Treaty* (2000);]

(b) *Hague Agreement Concerning the International Registration of Industrial Designs* (1999)

(c) [JP oppose: *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (1974).]}]

Addendum V Version of National Treatment

Article QQ.A.9: {National treatment}

Negotiator's note: Copyright group to continue consideration of this provision , including with respect to TRIPS national treatment language as well as “enjoyment” and “benefits” in the first sentence.

1. In respect of all categories of intellectual property covered in this chapter, [5] each Party shall accord to nationals [6] of the other Party treatment no less favorable that it

[3] A Party may satisfy the obligation in Article QQ.A.8.2(a) and (d) by ratifying or acceding to either the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989) or the Singapore Treaty on the Law of Trademarks (2006).

[4] A Party may satisfy the obligation in Article QQ.A.8.2 (d) by ratifying or acceding to the *Singapore Treaty on the Law of Trademarks (2006)*.

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accords to its own nationals with regards to the protection [7] [MY/CA/VN/BN/NZ oppose : and enjoyment] of such intellectual property rights [MY/CA/VN/BN/NZ oppose, and any benefits derived from such rights [8]].

[US propose: With respect to secondary uses of phonograms by means of analog communications [CA propose: ,] [CA oppose: and] free over-the-air broadcasting [AA/JP propose; US/MX oppose: and other non-interactive communications to the public], however, a Party may limit the rights of the performers [MX oppose: and producers] of the other Party [CA oppose: to the rights its persons] [CA propose, US oppose: to the extent to which the rights] are accorded [CA propose, US propose: to its persons] within the jurisdiction of the other Party.]

ALTERNATIVE to the previous paragraph: [CA/MX/VN propose: US oppose: With respect to secondary uses of phonograms, a Party may limit the rights of the performers [MX oppose: and producers] of the other Party to the rights its persons are accorded within the jurisdiction of the other Party.]

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 and regulations that are not inconsistent with this Chapter; and
- (b) not applied in a manner that would constitute a disguised restriction on trade.

[5]For greater certainty, nothing in the Agreement limits Parties from taking an otherwise permissible derogation from national treatment with respect to {copyright and related rights} that are not covered under Section G (Copyright and Related Rights) of this Chapter. Negotiator's note: Chile will confirm

[6]For purposes of Articles [QQ.A.9.1-2__ (National Treatment and Judicial/Admin Procedures), QQ.D.2.a__ (GIs/Nationals), and QQ.G.14.1 (Performers/Phonograms/Related Rights),] a ‘national of a Party’ shall mean, in respect of the relevant right, a person of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in [Article QQ.A.6.4] and the TRIPS Agreement. Negotiator’s note: Parties to remember to insert correct cross references to other treaties including WPPT (Article 3) depending on whether chapter includes an obligation to accede to a list of treaties.

[7]For purposes of this paragraph (Article QQ.A.9.1), “protection” shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter. Further, for purposes of paragraph 1, “protection” also includes the prohibition on circumvention of effective technological measures set out in Article QQ.G.10 and the provisions concerning rights management information set out in Article QQ.G.13

[8]For greater certainty, “benefits derived from such rights” refers to benefits such as copyright levies.

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3. Paragraph 1 does not apply to procedure provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article QQ.A.10: {Transparency}

1. Further to Article ZZ.2 {Publication} and QQ.H.3.1 {Enforcement Practices With Respect to Intellectual Property Rights}, each Party shall endeavour to make available on the Internet its laws, regulations, procedures and administrative ruling of general application concerning the protection and enforcement of intellectual property rights.
2. Each Party shall, subject to its national law, endeavour to make available on the Internet information that it makes public concerning applications for trademarks, geographical indications, designs, patents and plant variety rights. [9] [10]
3. Each party, subject to its national law, make available on the Internet information that it makes public concerning registered or granted trademarks, geographical indications, designs, patents and plant variety rights, , sufficient to enable the public to become acquainted with the registration or granted rights. [11]

{Article QQ.A.10bis: {Application of Agreement to Existing Subject Matter and Prior Acts}}

1. Except as it otherwise provides, including in Article QQ.G.8__ (Berne 18/TRIPS 14.6) this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter.
2. [CL/NZ/PE/MY/BN/VN/CA/MX oppose: Except as otherwise provided in this Chapter, including Article QQ.G.8__ (Berne 18/TRIPS 14.6),] a Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its territory. [12]

[9] For greater certainty, paragraphs 2 and 3 are without prejudice to a Party's obligations under QQ.C.7 {Electronic Trademarks System}.

[10] For greater certainty, it is understood that paragraph 2 does not require parties to make available the entire dossier for the relevant registered or granted right on the Internet.

[11] For greater certainty, it is understood that paragraph 3 does not require parties to make available the entire dossier for the relevant registered or granted right on the Internet.

[12] Negotiator's Note: AU/NZ/CL/SG/PE/MY/BN/VN/JP/MX/CA/US reserve positions {on paragraphs 1 and 2} pending final outcome of Chapter. All Parties agree to revisit this provision at the conclusion of this chapter.

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

Article QQ.A.11: {Exhaustion of IP Rights}

Nothing in this Agreement prevents a Party from determining whether and under what conditions the exhaustion of intellectual property rights applies under its legal system [13].

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=====end page 8=====