

**CHAPTER ON INTELLECTUAL PROPERTY
REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP (RCEP)
FREE TRADE AGREEMENT**

**ARTICLE 1
GENERAL PROVISIONS AND BASIC PRINCIPLES**

Paragraph 1
Objectives

Each Party confirms its commitment to reduce impediments to trade and investment by promoting deeper economic integration and cooperation through effective and adequate creation, utilisation, protection and enforcement of intellectual property rights, and to 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, taking into account:

- (i) the different levels of economic development and capacity and differences in national legal systems; and
- (ii) the need to maintain an appropriate balance between the rights of intellectual property owners and the legitimate interests of users in subject matter protected by intellectual property rights.

Paragraph 2
Principles

- (a) Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement and any other multilateral agreements relating to intellectual property to which they are parties. To this end, nothing in this chapter shall derogate from existing rights and obligations that Parties have to each other under the TRIPS Agreement or other multilateral intellectual property agreements.
- (b) Parties may, in formulating or amending their 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.
- (c) 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.

Paragraph 3
Scope of Intellectual Property

For purposes of this Chapter, intellectual property refers to all categories of intellectual property that are the subject of this Chapter.

Paragraph 4
Exhaustion of Intellectual Property Rights

Each Party shall be free to establish its own regime for exhaustion of intellectual property rights.

Paragraph 5
National Treatment

- (a) Each Party shall accord to the nationals of other Parties treatment no less favourable than that it accords to its own nationals with regard to the protection¹ of intellectual property, subject to the exceptions provided in the TRIPS Agreement and in the multilateral agreements concluded under the auspices of WIPO.
- (b) Parties may avail themselves of the exceptions referred to under paragraph (a) in relation to its judicial and administrative procedures, including requiring a national of any other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, only where such exceptions are:
- (i) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and
 - (ii) not applied in a manner that would constitute a disguised restriction on trade.

Paragraph 6
TRIPS and Public Health

- (a) The Parties reaffirm the principles and flexibilities established in the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the WTO. The Parties agree that this Chapter does not and should not prevent members from taking measures to protect public health in line with this Declaration.
- (b) The Parties recognise their respective commitments to the Decision of the WTO General Council of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005.

ARTICLE 2
COPYRIGHT AND RELATED RIGHTS

Paragraph 1
Exclusive Rights

¹ For purposes of this chapter, "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. Further, for the purposes of this chapter, "protection" also includes the circumvention of effective technological measures specified in Paragraph 3 of Article 2.

(a) Each Party shall provide to authors of works² the exclusive right to authorise any communication to the public of their works by wire or wireless means.

(b) Each Party shall endeavour to provide to authors³ of sound recordings⁴ the exclusive right to authorise any communication to the public of their sound recordings by wire or wireless means.

Paragraph 2
Collective Management Organisations

Each Party shall foster the establishment of appropriate bodies for the collective management of copyright and encourage such bodies to operate in a manner that is efficient, publicly transparent and accountable to their members.

Paragraph 3
Circumvention of Effective Technological Control Measures

Each Party shall endeavour to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures⁵ that are used by copyright owners in connection with the exercise of their copyright rights and that restrict acts, in respect of their works, which are not authorised by the copyright owners concerned or permitted by law.

Paragraph 4
Government Use of Software

Each Party confirms its commitment to: (i) maintain appropriate laws, regulations or policies that make provision for its central government agencies to continue to use only legitimate computer software in a manner authorised by law and consistent with this chapter; and(ii) encourage its respective regional and local governments to maintain or adopt similar measures.

Paragraph 5
Exceptions and Limitations

2 For purposes of this chapter, “works” includes a cinematograph film.

3 For purposes of this chapter, “authors” is similar to “producers”.

4 Where a Party is, or becomes, a member of the WIPO Performances and Phonograms Treaty (WPPT), that Party’s obligations under this Paragraph shall be subject to any commitments and reservations that a Party has made, or will make, under the WPPT.

5 For the purposes of this chapter, “effective technological measures” means any technology, device, or component that is used by copyright owners in connection with the exercise of their copyright rights and that restricts acts, in respect of their works or sound recordings, which are not authorised by the copyright owners concerned or permitted by law.

The Parties shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

**ARTICLE 3
TRADEMARKS AND GEOGRAPHICAL INDICATIONS**

Paragraph 1
Trademarks Classification System

Each Party shall maintain a trademark 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, as amended from time to time.

Paragraph 2
Examination, Opposition and Cancellation Procedures

Each Party shall provide a trademark registration system with procedures of examination as to substance and formalities, opposition and cancellation.

Paragraph 3
Exceptions

Parties may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Paragraph 4
Madrid Protocol

Each Party shall endeavour to accede to the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks 1989, where it is not already a Party to such treaty. In doing so, a Party can seek to cooperate with other Parties to support such accession.

Paragraph 5
Electronic Registration System for Trademarks

Each Party is encouraged to adopt an electronic registration system for trademarks, so as to facilitate ease of application by applicants for trademark registration.

Paragraph 6
Protection of Trademarks that Predate Geographical Indications

Each Party shall protect trademarks where they predate, in its jurisdiction, geographical indications in accordance with its domestic law and the TRIPS Agreement.

Paragraph 7
Protection of Geographical Indications

Each Party recognises that geographical indications may be protected through various means, including through a trademark system, provided that all requirements under the TRIPS Agreement are fulfilled.

**ARTICLE 4
PATENTS**

Paragraph 1
Patentable Subject Matter

- (a) Subject to the provisions of paragraphs (b) and (c) below, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.⁶ Subject to paragraph (c) of this Paragraph and Article 10 (Special and Differential Treatment, Transitional Period and Transitional Arrangements) below, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.
- (b) Parties may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.
- (c) Parties may also exclude from patentability:
- (i) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and
- (ii) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Parties shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. This provision shall be amended upon the conclusion of the amendment of Article 27.3(b) of the TRIPS Agreement.

Paragraph 2
Exceptions to Rights Conferred

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal

⁶ For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Party to be synonymous with the terms "non-obvious" and "useful", respectively.

exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Paragraph 3
TRIPS Flexibilities on Compulsory Licenses and LDC Extensions

- (a) Parties have the right to grant compulsory licenses subject to TRIPS Article 31, and if applicable, the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2 of 20 November 2001, 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 Chairman's statement accompanying the Decision (JOB(03)/177, WT/GC/M/82), or 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).
- (b) The Parties agree that the least-developed country Parties will not be obliged, with respect to pharmaceutical products, to implement or apply Paragraphs 1(a) of Article 4 (Patentable Subject Matter) and Paragraph 4 of Article 4 (Electronic Registration Regime) or to enforce rights provided for under these Paragraphs until 1 July 2021, without prejudice to the right of least-developed country Parties to seek other extensions of the transition periods as provided for in Article 66.1 of the TRIPS Agreement.

Paragraph 4
Electronic Registration Regime for Patents

Each Party is encouraged to adopt an electronic registration system for patents, so as to facilitate ease of application by applicants for patents registration.

Paragraph 5
Patent Cooperation Treaty

Each Party shall endeavour to accede to the Patent Cooperation Treaty 1970 (as amended in 1979), where it is not already a Party to such treaty. In doing so, a Party can seek to cooperate with other Parties to support such accession.

ARTICLE 5
INDUSTRIAL DESIGNS

Paragraph 1
Protection of Industrial Designs

- (a) Parties shall provide for the protection of independently created industrial designs that are new or original. Parties may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Parties may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.

- (b) Each Party shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Parties shall be free to meet this obligation through industrial design law or through copyright law.
- (c) The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.
- (d) Parties may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.

Paragraph 2
Hague Agreement

Each Party shall endeavour to accede to the Hague Agreement Concerning the International Registration of Industrial Designs (Geneva Act, 1999), where it is not already a Party to such treaty. In doing so, a Party can seek to cooperate with other Parties to support such accession.

ARTICLE 6
GENETIC RESOURCES, TRADITIONAL KNOWLEDGE (GRTK)
AND FOLKLORE (GRTKF)

Subject to each Party's rights and obligations under the Convention on Biological Diversity (CBD) and other international agreements related to GRTKF, each Party may establish appropriate measures to protect GRTKF and prevent misappropriation and misuse of GRTK. The Parties also recognise the importance of providing disclosure of origin or sources of GRTK used in relevant IP applications.

ARTICLE 7
ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

The Parties shall provide for enforcement provisions as required under the TRIPS Agreement, in particular Articles 41 to 61. However, Parties may provide for more extensive enforcement provisions.

ARTICLE 8
COOPERATION AND CONSULTATION

Paragraph 1
Provision of Assistance

- (a) The Parties acknowledge the significant differences in capacity between some Parties in the area of intellectual property. Mindful of this, where a Party's implementation of this chapter is inhibited by capacity constraints, each other Party shall, as appropriate, and upon request, endeavour to provide cooperation to that Party to assist in the implementation of this chapter.
- (b) At the request of a Party, any other Party may, to the extent possible and as appropriate, render assistance to the requesting Party in order to enhance the requesting Party's national framework for the acquisition, protection, enforcement, utilisation and creation of intellectual property, with a view to developing intellectual property systems that foster domestic innovation in the requesting Party.

Paragraph 2
Dialogue and Information Exchange

The Parties agree to promote dialogue and information exchange on intellectual property issues, and, at the request of any other Party, may:

- (i) exchange information relating to intellectual property policies and developments in implementation of national intellectual property systems in their respective administrations;
- (ii) encourage interaction between intellectual property experts in order to broaden understanding of each Parties' intellectual property systems;
- (iii) exchange information relating to international conventions on harmonisation, administration and enforcement of intellectual property rights and on activities in international organisations, such as the World Trade Organisation and the World Intellectual Property Organisation; and
- (iv) exchange information relating to licensing of intellectual property.

Paragraph 3
Cooperation

- (a) The Parties shall endeavour to cooperate in order to promote education and awareness regarding the benefits of effective protection and enforcement of intellectual property rights.
- (b) The Parties shall cooperate on border measures with a view to eliminating trade which infringes intellectual property rights. Parties who are members of the WTO shall also cooperate with each other to support the effective implementation of the requirements relating to border measures set out in Articles 51 to 60 of the TRIPS Agreement.
- (c) All cooperation under this chapter is subject to the availability of resources.
- (d) All cooperation under this chapter shall be harmonised with an existing regional structure such as the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC).

**ARTICLE 9
TRANSPARENCY**

- (a) Each Party shall ensure that its laws and regulations of general application that pertain to the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights are made publicly available in at least the national language of that Party or in the English language. Each Party shall also endeavour to provide that final judicial decisions and administrative rulings pertaining to the aforesaid matters are made publicly available in at least the national language of that Party or in the English language.
- (b) Each Party shall endeavour to make available on the internet databases of all pending and registered trademark rights in its jurisdiction.

**ARTICLE 10
SPECIAL AND DIFFERENTIAL TREATMENT, TRANSITIONAL
PERIOD AND TRANSITIONAL ARRANGEMENTS**

- (a) The Parties shall recognise appropriate forms of flexibility as agreed by the Council for TRIPS, including provisions for special and differential treatment and additional flexibilities accorded to least developed countries under Articles 65 and 66 of the TRIPS Agreement, and the provisions for patent protection of pharmaceutical and agricultural chemical products under paragraph 8 of Article 70 of the TRIPS Agreement, consistent with existing FTA obligations of the Parties, where applicable.
- (b) Nothing in this chapter shall derogate from any transitional period for implementing a provision of the TRIPS Agreement that has been or may be agreed by the Council for TRIPS, established pursuant to Section IV of the WTO Agreement, either prior or subsequent to the entry into force of this Agreement.