



**AGREEMENT ESTABLISHING
THE ASEAN-AUSTRALIA- NEW ZEALAND FREE TRADE AREA**

CHAPTER 13

INTELLECTUAL PROPERTY

Article 1 Objectives

Each Party confirms its commitment to reducing impediments to trade and investment by promoting deeper economic integration through effective and adequate creation, utilisation, protection and enforcement of intellectual property rights, taking into account the different levels of economic development and capacity and differences in national legal systems and 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.

Article 2 Definitions

For the purposes of this Chapter:

(a) **intellectual property rights** means copyright and related rights; rights in trademarks, geographical indications, industrial designs, patents, and layout-designs (topographies) of integrated circuits; rights in plant varieties; and rights in undisclosed information; as referred to in the TRIPS Agreement; and

(b) **WIPO** means the World Intellectual Property Organization.

Article 3 Affirmation of the TRIPS Agreement

Each Party affirms its rights and obligations with respect to each other Party under the TRIPS Agreement.

Article 4 National Treatment

1. Each Party shall accord to the nationals of each other Party treatment no less favourable than it accords to its own nationals with regard to the protection¹ of

¹ For the purposes of this Paragraph, “protection” includes 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 Paragraph,

intellectual property, subject to the exceptions provided in the TRIPS Agreement and in those multilateral agreements concluded under the auspices of WIPO.

2. Each Party may avail itself of the exceptions referred to under Paragraph 1 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:

(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.

Article 5 Copyright

1. Each Party shall:

(a) Provide to authors of works² the exclusive right to authorise any communication to the public of their works by wire or wireless means;

(b) Provide criminal procedures and penalties at least in cases where a person wilfully infringes copyright for commercial advantage or financial gain; and

(c) 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.

2. Each Party shall endeavour to:

(a) provide to authors of sound recordings³ the exclusive right to authorise any communication to the public of their sound recordings by wire or wireless means;

(b) provide adequate legal protection and effective legal remedies against the

“protection” also includes the prohibition on circumvention of effective technological measures specified in Article 5 (Copyright).

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

³ 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 Party has made under the WPPT.

circumvention of effective technological measures⁴ 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; and

(c) provide criminal procedures and penalties at least in cases where a person wilfully commits a significant infringement of copyright, that is not committed for commercial advantage or financial gain and which is not otherwise permitted by law, but which has a substantial prejudicial impact on the owner of the copyright.

Article 6 Government Use of Software

Each Party confirms its commitment to:

(a) 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

(b) encourage its respective regional and local governments to maintain or adopt similar measures.

Article 7 Trademarks and Geographical Indications

1. 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.

2. Each Party shall provide high quality trademark rights through the conduct of examination as to substance and formalities and through opposition and cancellation procedures.

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

4. Each Party recognises that geographical indications may be protected

⁴ 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.

through a trademark system.

Article 8

Genetic Resources, Traditional Knowledge and Folklore

Subject to each Party's international obligations, each Party may establish appropriate measures to protect genetic resources, traditional knowledge and folklore.

Article 9

Co-operation

1. 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 co-operation to that Party to assist in the implementation of this Chapter.

2. 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.

3. The Parties agree to promote dialogue on intellectual property issues, including by:

(a) designating contact points in relevant government agencies, including contact points for the enforcement of intellectual property rights at the border;

(b) encouraging interaction between intellectual property experts in order to broaden understanding of each others' intellectual property systems; and

(c) exchanging information concerning the infringement of intellectual property rights, in accordance with domestic law.

4. The Parties shall endeavour to co-operate in order to promote the efficiency and transparency of intellectual property administration and registration systems, including by exchanging information regarding developments in such systems and by developing publicly accessible databases of registered rights.

5. The Parties shall endeavour to co-operate in order to promote education

and awareness regarding the benefits of effective protection and enforcement of intellectual property rights.

6. Parties shall co-operate on border measures with a view to eliminating trade which infringes intellectual property rights. Parties who are members of the WTO shall also co-operate 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.

7. Recognising the importance of achieving the objectives of this Chapter, should any Party intend to accede to any of the following treaties, it can seek to co-operate with other Parties to support its accession to, and its implementation of, the following treaties:

- (a) the *Patent Cooperation Treaty 1970*;
- (b) the *Strasbourg Agreement Concerning the International Patent Classification 1971*;
- (c) the *Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure 1977*;
- (d) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks 1989*;
- (e) the *Patent Law Treaty 2000*;
- (f) the *International Convention for the Protection of New Varieties of Plants 1991*;
- (g) the TRIPS Agreement;
- (h) the *Singapore Treaty on the Law of Trademarks 2006*;
- (i) the *WIPO Copyright Treaty 1996*; and
- (j) the *WIPO Performances and Phonograms Treaty 1996*.

8. Each Party shall, on request and as it considers appropriate, endeavour to provide co-operation to support any Party's efforts to implement an inclusive system⁵ of trademark registration.

⁵ An inclusive system of trademarks does not limit the scope of registrable trademarks and thus permits the registration of all trademarks that are capable of distinguishing a good or service, such as shapes, aspects of packaging, single and multi-colour marks, sounds and scents.

9. All co-operation under this Article is subject to the availability of resources.

Article 10

Transparency

1. 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.
2. Each Party shall endeavour to make the information referred to in Paragraph 1, which is publicly available, made available in the English language and on the internet.
3. Each Party shall endeavour to make available on the internet databases of all pending and registered trademark rights in its jurisdiction.

Article 11

Recognition of Transitional Periods under the TRIPS Agreement

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 Article IV of the WTO Agreement, either prior or subsequent to the entry into force of this Agreement.

Article 12

Committee on Intellectual Property

1. Recognising the importance of achieving the objectives of this Chapter, the Parties hereby establish a Committee on Intellectual Property (IP Committee), consisting of representatives of the Parties to monitor the implementation and administration of this Chapter.
2. The IP Committee shall meet annually or as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.
3. The IP Committee shall determine its terms of reference in

accordance with this Chapter.

4. The IP Committee shall determine its work programme in response to priorities as identified by the Parties.

5. In the course of fulfilling its functions, the IP Committee may agree that existing or new mechanisms be utilised or developed in order to promote dialogue between the Parties on intellectual property issues, including by providing opportunities for stakeholders to engage with the Parties on such issues.

6. Each Party shall notify the IP Committee annually of its progress in meeting its commitments under Article 5 (Copyright), and developments regarding accession to treaties listed in Article 9.7 (Co-operation). These notifications shall be submitted at least 30 days prior to the first IP Committee meeting of the year.