

TRADE AND COOPERATION AGREEMENT

between the European Union and the European Atomic Energy Community, of the one part,
and the United Kingdom of Great Britain and Northern Ireland, of the other part

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TITLE V (p. 303)

INTELLECTUAL PROPERTY

CHAPTER 1

GENERAL PROVISIONS

ARTICLE 219

Objectives

The objectives of this Title are to:

- (a) facilitate the production, provision and commercialisation of innovative and creative products and services between the Parties by reducing distortions and impediments to such trade, thereby contributing to a more sustainable and inclusive economy; and
- (b) ensure an adequate and effective level of protection and enforcement of intellectual property rights.

ARTICLE 220

Scope

1. This Title shall complement and further specify the rights and obligations of each Party under the TRIPS Agreement and other international treaties in the field of intellectual property to which they are parties.
2. This Title does not preclude either Party from introducing more extensive protection and enforcement of intellectual property rights than required under this Title, provided that such protection and enforcement does not contravene this Title.

ARTICLE 221

Definitions

For the purposes of this Title, the following definitions apply:

- (a) "Paris Convention" means the Paris Convention for the Protection of Industrial Property of 20 March 1883, as last revised at Stockholm on 14 July 1967;

- (b) "Berne Convention" means the Berne Convention for the Protection of Literary and Artistic Works of 9 September 1886 revised at Paris on 24 July 1971 and amended on 28 September 1979;
- (c) "Rome Convention" means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961;
- (d) "WIPO" means the World Intellectual Property Organisation;
- (e) "intellectual property rights" means all categories of intellectual property that are covered by Articles 225 to 255 of this Agreement or Sections 1 to 7 of Part II of the TRIPS Agreement. The protection of intellectual property includes protection against unfair competition as referred to in Article 10*bis* of the Paris Convention;
- (f) "national" means, in respect of the relevant intellectual property right, a person of a Party that would meet the criteria for eligibility for protection provided for in the TRIPS Agreement and multilateral agreements concluded and administered under the auspices of WIPO, to which a Party is a contracting party.

ARTICLE 222

International agreements

1. The Parties affirm their commitment to comply with the international agreements to which they are party:
 - (a) the TRIPS Agreement;
 - (b) the Rome Convention;
 - (c) the Berne Convention;
 - (d) the WIPO Copyright Treaty, adopted at Geneva on 20 December 1996;
 - (e) the WIPO Performances and Phonograms Treaty, adopted at Geneva on 20 December 1996;
 - (f) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on 27 June 1989, as last amended on 12 November 2007;
 - (g) the Trademark Law Treaty, adopted at Geneva on 27 October 1994;
 - (h) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, adopted at Marrakesh on 27 June 2013;
 - (i) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, adopted at Geneva on 2 July 1999.
2. Each Party shall make all reasonable efforts to ratify or accede to the following international agreements:
 - (a) the Beijing Treaty on Audiovisual Performances, adopted at Beijing on 24 June 2012;
 - (b) the Singapore Treaty on the Law of Trademarks adopted at Singapore on 27 March 2006.

ARTICLE 223

Exhaustion

This Title does not affect the freedom of the parties to determine whether and under what conditions the exhaustion of intellectual property rights applies.

ARTICLE 224

National treatment

1. In respect of all categories of intellectual property covered by this Title, each Party shall accord to the nationals of the other Party treatment no less favourable than the treatment it accords to its own nationals with regard to the protection of intellectual property subject where applicable to the exceptions already provided for in, respectively, the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, done at Washington on 26 May 1989. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided for under this Agreement.
2. For the purposes of paragraph 1 of this Article, "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 addressed in this Title, including measures to prevent the circumvention of effective technological measures as referred to in Article 234 and measures concerning rights management information as referred to in Article 235.
3. A Party may avail itself of the exceptions permitted pursuant to paragraph 1 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service in its territory, or to appoint an agent in its territory, if such exceptions are:
 - (a) necessary to secure compliance with the Party's laws or regulations which are not inconsistent with this Title; or
 - (b) not applied in a manner which would constitute a disguised restriction on trade.
4. Paragraph 1 does not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

CHAPTER 2

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

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SECTION

TRADE MARKS

ARTICLE 236

Trade mark classification

Each Party shall maintain a trade mark 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 of 15 June 1957, as amended and revised.

ARTICLE 237

Signs of which a trade mark may consist

A trade mark may consist of any signs, in particular words, including personal names, or designs, letters, numerals, colours, the shape of goods or of the packaging of goods, or sounds, provided that such signs are capable of:

- (a) distinguishing the goods or services of one undertaking from those of other undertakings; and

- (b) being represented on the respective trade mark register of each Party, in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

ARTICLE 238

Rights conferred by a trade mark

1. Each Party shall provide that the registration of a trade mark confers on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having the proprietor's consent from using in the course of trade:
 - (a) any sign which is identical with the registered trade mark in relation to goods or services which are identical with those for which the trade mark is registered;
 - (b) any sign where, because of its identity with, or similarity to, the registered trade mark and the identity or similarity of the goods or services covered by this trade mark and the sign, there exists a likelihood of confusion on the part of the public, including the likelihood of association between the sign and the registered trade mark.
2. The proprietor of a registered trade mark shall be entitled to prevent all third parties from bringing goods, in the course of trade, into the Party where the trade mark is registered without being released for free circulation there, where such goods, including packaging, come from other countries or the other Party and bear without authorisation a trade mark which is identical to the trade mark registered in respect of such goods, or which cannot be distinguished in its essential aspects from that trade mark.
3. The entitlement of the proprietor of a trade mark pursuant to paragraph 2 shall lapse if during the proceedings to determine whether the registered trade mark has been infringed, evidence is provided by the declarant or the holder of the goods that the proprietor of the registered trade mark is not entitled to prohibit the placing of the goods on the market in the country of final destination.

ARTICLE 239

Registration procedure

1. Each Party shall provide for a system for the registration of trade marks in which each final negative decision taken by the relevant trade mark administration, including partial refusals of registration, shall be communicated in writing to the relevant party, duly reasoned and subject to appeal.
2. Each Party shall provide for the possibility for third parties to oppose trade mark applications or, where appropriate, trade mark registrations. Such opposition proceedings shall be adversarial.
3. Each Party shall provide a publicly available electronic database of trade mark applications and trade mark registrations.
4. Each Party shall make best efforts to provide a system for the electronic application for and processing, registration and maintenance of trade marks.

ARTICLE 240

Well-known trade marks

For the purpose of giving effect to protection of well-known trade marks, as referred to in Article 6*bis* of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement, each Party shall apply the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the

Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO on 20 to 29 September 1999.

ARTICLE 241

Exceptions to the rights conferred by a trade mark

1. Each Party shall provide for limited exceptions to the rights conferred by a trade mark such as the fair use of descriptive terms including geographical indications, and may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the proprietor of the trade mark and of third parties.
2. The trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade:
 - (a) the name or address of the third party, where the third party is a natural person;
 - (b) signs or indications concerning the kind, quality, quantity, intended purpose, value, geographical origin, the time of production of goods or of rendering of the service, or other characteristics of goods or services; or
 - (c) the trade mark for the purpose of identifying or referring to goods or services as those of the proprietor of that trade mark, in particular where the use of that trade mark is necessary to indicate the intended purpose of a product or service, in particular as accessories or spare parts, provided the third party uses them in accordance with honest practices in industrial or commercial matters.
3. The trade mark shall not entitle the proprietor to prohibit a third party from using, in the course of trade, an earlier right which only applies in a particular locality if that right is recognised by the laws of the Party in question and is used within the limits of the territory in which it is recognised.

ARTICLE 242

Grounds for revocation

1. Each Party shall provide that a trade mark shall be liable to revocation if, within a continuous period of five years it has not been put to genuine use in the relevant territory of a Party by the proprietor or with the proprietor's consent in relation to the goods or services for which it is registered, and there are no proper reasons for non-use.
2. Each Party shall also provide that a trade mark shall be liable to revocation if within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the relevant territory by the proprietor or with the proprietor's consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use.
3. However, no person may claim that the proprietor's rights in a trade mark should be revoked where, during the interval between expiry of the five-year period and filing of the application for revocation, genuine use of the trade mark has been started or resumed. The commencement or resumption of use within a period of three months preceding the filing of the application for revocation which began at the earliest on expiry of the continuous period of five years of non-use, shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application for revocation may be filed.
4. A trade mark shall also be liable to revocation if, after the date on which it was registered:

- (a) as a consequence of acts or inactivity of the proprietor, it has become the common name in the trade for a good or service in respect of which it is registered;
- (b) as a consequence of the use made of the trade mark by the proprietor of the trade mark or with the proprietor's consent in respect of the goods or services for which it is registered, it is liable to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

ARTICLE 243

The right to prohibit preparatory acts in relation to the use of packaging or other means

Where the risk exists that the packaging, labels, tags, security or authenticity features or devices, or any other means to which the trade mark is affixed could be used in relation to goods or services and that use would constitute an infringement of the rights of the proprietor of the trade mark, the proprietor of that trade mark shall have the right to prohibit the following acts if carried out in the course of trade:

- (a) affixing a sign identical with, or similar to, the trade mark on packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark may be affixed; or
- (b) offering or placing on the market, or stocking for those purposes, or importing or exporting, packaging, labels, tags, security or authenticity features or devices, or any other means to which the mark is affixed.

ARTICLE 244

Bad faith applications

A trade mark shall be liable to be declared invalid where the application for registration of the trade mark was made in bad faith by the applicant. Each Party may provide that such a trade mark shall not be registered.

SECTION 3

DESIGN

ARTICLE 245

Protection of registered designs

1. Each Party shall provide for the protection of independently created designs that are new and original. This protection shall be provided by registration and shall confer exclusive rights upon their holders in accordance with this Section.

For the purposes of this Article, a Party may consider that a design having individual character is original.

2. The holder of a registered design shall have the right to prevent third parties not having the holder's consent at least from making, offering for sale, selling, importing, exporting, stocking the product bearing and embodying the protected design or using articles bearing or embodying the protected design where such acts are undertaken for commercial purposes.

3. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and original:

- (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter; and
 - (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.
4. For the purposes of point (a) of paragraph 3, "normal use" means use by the end user, excluding maintenance, servicing or repair work.

ARTICLE 246

Duration of protection

The duration of protection available for registered designs, including renewals of registered designs, shall amount to a total term of 25 years from the date on which the application was filed¹.

ARTICLE 247

Protection of unregistered designs

1. Each Party shall confer on holders of an unregistered design the right to prevent the use of the unregistered design by any third party not having the holder's consent only if the contested use results from copying the unregistered design in their respective territory². Such use shall at least cover the offering for sale, putting on the market, importing or exporting the product.
2. The duration of protection available for the unregistered design shall amount to at least three years as from the date on which the design was first made available to the public in the territory of the respective Party.

ARTICLE 248

Exceptions and exclusions

1. Each Party may provide limited exceptions to the protection of designs, including unregistered designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of designs, and do not unreasonably prejudice the legitimate interests of the holder of the design, taking account of the legitimate interests of third parties.
2. Protection shall not extend to designs solely dictated by technical or functional considerations. A design shall not subsist in features of appearance of a product which must necessarily be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product may perform its function.
3. By way of derogation from paragraph 2, a design shall, in accordance with the conditions set out in Article 245(1), subsist in a design, which has the purpose of allowing the multiple assembly or connection of mutually interchangeable products within a modular system.

¹ Each Party may determine the relevant date of filing of the application in accordance with its own legislation.

² This section does not apply to the protection known in the United Kingdom as a design right.

ARTICLE 249

Relationship to copyright

Each Party shall ensure that designs, including unregistered designs, shall also be eligible for protection under the copyright law of that Party as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

SECTION 4

PATENTS

ARTICLE 250

Patents and public health

1. The Parties recognise the importance of the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the Ministerial Conference of the WTO at Doha (the "Doha Declaration"). In interpreting and implementing the rights and obligations under this Section, each Party shall ensure consistency with the Doha Declaration.
2. Each Party shall implement Article 31*bis* of the TRIPS Agreement, as well as the Annex to the TRIPS Agreement and the Appendix to the Annex to the TRIPS Agreement.

ARTICLE 251

Extension of the period of protection conferred by a patent on medicinal products and on plant protection products

1. The Parties recognise that medicinal products and plant protection products³ protected by a patent in their respective territory may be subject to an administrative authorisation procedure before being put on their respective markets. The Parties recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on the market, as defined for that purpose by the relevant legislation, may shorten the period of effective protection under the patent.
2. Each Party shall provide for further protection, in accordance with its laws and regulations, for a product which is protected by a patent and which has been subject to an administrative authorisation procedure referred to in paragraph 1 to compensate the holder of a patent for the reduction of effective patent protection. The terms and conditions for the provision of such further protection, including its length, shall be determined in accordance with the laws and regulations of the Parties.
3. For the purposes of this Title, "medicinal product" means:
 - (a) any substance or combination of substances presented as having properties for treating or preventing disease in human beings or animals; or
 - (b) any substance or combination of substances which may be used in or administered to human beings or animals either with a view to restoring, correcting or modifying physiological functions by exerting a pharmacological, immunological or metabolic action, or to making a medical diagnosis.

³ For the purposes of this Title, the term "plant protection product" shall be defined for each Party by the respective legislations of the Parties.

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CHAPTER 4
OTHER PROVISIONS

ARTICLE 273

Cooperation

1. The Parties shall cooperate with a view to supporting the implementation of the commitments and obligations undertaken under this Title.
2. The areas of cooperation include, but are not limited to, the following activities:
 - (a) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;
 - (b) exchange of experience on legislative progress, on the enforcement of intellectual property rights and on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies;
 - (c) coordination to prevent exports of counterfeit goods, including coordination with other countries;
 - (d) technical assistance, capacity building, exchange and training of personnel;
 - (e) protection and defence of intellectual property rights and the dissemination of information in this regard in, among others, to business circles and civil society;
 - (f) public awareness of consumers and right holders;
 - (g) the enhancement of institutional cooperation, particularly between the intellectual property offices of the Parties;
 - (h) educating and promoting awareness among the general public regarding policies concerning the protection and enforcement of intellectual property rights;
 - (i) the promotion of protection and enforcement of intellectual property rights with public-private collaboration involving small and medium-size enterprises;
 - (j) the formulation of effective strategies to identify audiences and communication programmes to increase consumer and media awareness of the impact of intellectual property rights' violations, including the risk to health and safety and the connection to organised crime.
3. The Parties shall, either directly or through the Trade Specialised Committee on Intellectual Property, maintain contact on all matters related to the implementation and functioning of this Title.

ARTICLE 274

Voluntary stakeholder initiatives

Each Party shall endeavour to facilitate voluntary stakeholder initiatives to reduce intellectual property rights infringement, including online and in other marketplaces focusing on concrete problems and seeking practical solutions that are realistic, balanced proportionate and fair for all concerned including in the following ways:

- (a) each Party shall endeavour to convene stakeholders consensually in its territory to facilitate voluntary initiatives to find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement;

- (b) the Parties shall endeavour to exchange information with each other regarding efforts to facilitate voluntary stakeholder initiatives in their respective territories; and
- (c) the Parties shall endeavour to promote open dialogue and cooperation among the Parties' stakeholders, and to encourage the Parties' stakeholders to jointly find solutions and resolve differences regarding the protection and enforcement of intellectual property rights and reducing infringement.

ARTICLE 275

Review in relation to geographical indications

Noting the relevant provisions of any earlier bilateral agreement between the United Kingdom of the one part and the European Union and European Atomic Energy Community of the other part, the Parties may jointly use reasonable endeavours to agree rules for the protection and effective domestic enforcement of their geographical indications.