

CHAPTER TEN INTELLECTUAL PROPERTY

Section A: General Provisions

Article 10.1: Objectives

The objectives of this Chapter are to:

- (a) facilitate the production and commercialization of innovative and creative products in the Parties; and
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

Article 10.2: Nature and Scope of Obligations

1. The Parties shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are party including the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, contained in Annex 1C to the WTO Agreement (hereinafter referred to as the “TRIPS Agreement”). The provisions of this Chapter shall complement and specify the rights and obligations between the Parties under the TRIPS Agreement.

2. For 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, namely copyright and related rights; trademarks; geographical indications; industrial designs; patents; layout designs (topographies) of integrated circuits; protection of undisclosed information; and also includes the protection of plant varieties.

3. Protection of intellectual property includes protection against unfair competition as referred to in article 10*bis* of the *Paris Convention for the Protection of Industrial Property* (1967) (hereinafter referred to as the “Paris Convention”).

Article 10.3: Exhaustion

The Parties shall be free to establish their own regime for the exhaustion of intellectual property rights.

Article 10.4: Intellectual Property and Public Health

The Parties recognize the principles established in the *Declaration on The TRIPS Agreement and Public Health*, done on 14 November 2001 (hereinafter referred to as the "Doha Declaration") by the Ministerial Conference of the WTO and confirm that the provisions of this Chapter are without prejudice to the Doha Declaration.

Section B: Standards Concerning Intellectual Property Rights

Sub-section A: Copyright and Related Rights

Article 10.5: Protection Granted

The Parties shall comply with:

- (a) Articles 1 through 22 of the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (1961) (hereinafter referred to as the "Rome Convention");
- (b) Articles 1 through 18 of the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (hereinafter referred to as the "Berne Convention");
- (c) Articles 1 through 14 of the *World Intellectual Property Organization* (hereinafter referred to as the "WIPO") *Copyright Treaty* (1996) (hereinafter referred to as the "WCT"); and
- (d) Articles 1 through 23 of the *WIPO Performances and Phonograms Treaty* (1996) (hereinafter referred to as the "WPPT").

Article 10.6: Duration of Authors' Rights

Each Party shall provide that, where the term of protection of a work is to be calculated on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death.

Article 10.7: Broadcasting Organisations

1. The rights of broadcasting organisations shall expire not less than 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.
2. Neither Party may permit the retransmission of television signals (whether terrestrial, cable or satellite) on the Internet without the authorization of the right holder or right holders,

if any, of the content of the signal and of the signal.¹

Article 10.8: Cooperation on Collective Management of Rights

The Parties shall foster the establishment of arrangements between their respective collecting societies for purposes of mutually ensuring easier access and delivery of content between the Parties, as well as ensuring mutual transfer of royalties for use of the Parties' works or other copyright-protected subject matters. The Parties shall endeavor to achieve a high level of rationalization and to improve transparency with respect to the execution of the task of their respective collecting societies.

Article 10.9: Broadcasting and Communication to the Public

1. For purposes of this Article:

(a) **broadcasting** means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also "broadcasting"; transmission of encrypted signals is broadcasting where the means for decrypting are provided to the public by the broadcasting organisation or with its consent; and

(b) **communication to the public** means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For purposes of paragraph 5, "communication to the public" includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

2. Each Party shall provide performers with the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

3. Each Party shall provide performers and producers of phonograms with the right to a single equitable remuneration, if a phonogram published for commercial purposes or a reproduction of such phonogram is used for broadcasting by wireless means or for any communication to the public.

4. Each Party shall establish in its legislation that the single equitable remuneration shall be claimed from the user by performers or producers of phonograms, or by both. The Parties may enact legislation that, in the absence of an agreement between performers and producers of phonograms, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.

¹ For purposes of this paragraph, retransmission within a Party's territory over a closed and defined subscriber network that is not accessible from outside the Party's territory does not constitute retransmission on the Internet.

5. Each Party shall provide broadcasting organizations with the exclusive right to authorize or prohibit:

- (a) the re-broadcasting of their broadcasts;
- (b) the fixation of their broadcasts; and
- (c) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee. It shall be a matter for the domestic law of the Party where protection of this right is claimed to determine the conditions under which it may be exercised.

Article 10.10: Limitations and Exceptions

The Parties may, in their legislation, provide for limitations of, or exceptions to, the rights granted to the right holders referred to in Articles 10.5 through 10.9 in certain special cases that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holders.

Article 10.11: Protection of Technological Measures

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that such person is pursuing that objective.

2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes, of devices, products or components, or the provision of services which:

- (a) are promoted, advertised or marketed for the purpose of circumvention of;
- (b) have only a limited commercially significant purpose or use other than to circumvent;
or
- (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,

any effective technological measures.

3. For purposes of this Agreement, **technological measure** means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject matter, which are not authorized by the right holder of any copyright or any right related to copyright as provided for by each Party's legislation. Technological measures shall be deemed effective where the use of a protected work or other subject matter is controlled by the right holders through the application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter, or a copy control mechanism, which achieves the objective of protection.

4. Each Party may provide for exceptions and limitations to measures implementing paragraphs 1 and 2 in accordance with its legislation and the relevant international agreements referred to in Article 10.5.

Article 10.12: Protection of Rights Management Information

1. Each Party shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights management information; or
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject matter protected under this Agreement from which electronic rights management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by doing so it is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by the law of the relevant Party.

2. For purposes of this Agreement, **rights management information** means any information provided by right holders which identifies the work or other subject matter referred to in this Agreement, the author or any other right holder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.

3. Paragraph 2 shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject matter referred to in this Agreement.

Article 10.13: Protection of Encrypted Program-Carrying Satellite and Cable Signals

1. Each Party shall make it a criminal offense:

- (a) to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite or cable signal without the authorization of the lawful distributor of such signal; and
- (b) willfully to receive and make use of,² or further distribute, a program-carrying signal that originated as an encrypted satellite or cable signal knowing that it has been decoded without the authorization of the lawful distributor of the signal, or if

² For greater certainty, "make use of" includes viewing of the signal, whether private or commercial.

the signal has been decoded with the authorization of the lawful distributor of the signal, willfully to further distribute the signal for purposes of commercial advantage knowing that the signal originated as an encrypted program-carrying signal and that such further distribution is without the authorization of the lawful signal distributor.

2. Each Party shall provide for civil remedies, including compensatory damages, for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted programming signal or its content.

Sub-section B: Trademarks

Article 10.14: International Agreements

The Parties shall comply with:

- (a) the *Protocol relating to the Madrid Agreement concerning the International Registration of Marks* (1989); and
- (b) the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (1957), as amended in 1979.

Article 10.15: Trademarks Protection

1. The Parties shall grant adequate and effective protection to trademark right holders of goods and services.
2. Each Party shall provide that trademarks shall include collective, certification, and sound marks.
3. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using, in the course of trade, identical or similar signs for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign, for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Parties making rights available on the basis of use.

Article 10.16: Exceptions

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

Article 10.17: Well-known Trademarks

1. Neither Party may require, as a condition for determining that a mark is a well-known mark, that the mark has been registered in the territory of that Party or in another jurisdiction. Additionally, neither Party may deny remedies or relief with respect to well-known marks solely because of the lack of:
 - (a) a registration;
 - (b) inclusion on a list of well-known marks; or
 - (c) prior recognition of the mark as well-known.
2. Article 6bis of the Paris Convention shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified as a well-known trademark³, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.
3. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, for related goods or services, if the use of that trademark is likely to cause confusion or is likely to deceive or risk associating the trademark with the owner of the well-known trademark, or constitutes unfair exploitation of the reputation of the well-known trademark.

Article 10.18: Bad Faith Trademarks⁴

Each Party shall provide that its competent authority has the authority to refuse an application or cancel a registration where the application to register the trademark was made in bad faith in accordance with its laws and regulations.

Article 10.19: Registration Procedure

1. Each Party shall provide a system for the examination and registration of trademarks which includes among other things:

³ For purpose of determining whether a mark is well-known, neither Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

⁴ For purposes of this Article, the competent authority of a Party may take into consideration whether the trademark is identical or similar to a well-known trademark of another person.

- (a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register a trademark;
 - (b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register a trademark;
 - (c) providing an opportunity to oppose the registration of a trademark or to seek cancellation of a trademark; and
 - (d) requiring administrative decision in opposition and cancellation proceedings to be reasoned and in writing, which may be provided by electronic means.
2. Each Party shall provide a:
- (a) system for the electronic application for, and electronic processing, registering, and maintenance of, trademarks; and
 - (b) publicly available electronic database, including an online database, of trademark applications and registrations.

Article 10.20: Term of Protection

Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than ten years.

Sub-section C: Geographical Indications

Article 10.21: Protection of Geographical Indications

1. Geographical indication means an indication that identifies a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
2. The Parties reaffirm that geographical indications may be protected through a trademark or sui generis system.

Article 10.22: Administrative Procedures for the Protection of Geographical Indications

1. The Parties shall provide administrative procedures for the registration or recognition of geographical indications through a trademark or a sui generis system. The Parties shall, with respect to applications for that registration or requests for the recognition, ensure that its laws and regulations governing the filing of those applications or requests are readily available to the public and clearly set out the procedures for these actions.

2. The Republic of Korea after having completed an objection/publication procedure in accordance with its domestic laws and regulations shall protect the geographical indications of Georgia listed in Annex 10-A [1-A] to this Agreement, which are registered by Georgia, according to the level of protection laid down in this Sub-section.

3. Georgia after having completed an objection/publication procedure in accordance with its domestic laws and regulations shall protect the geographical indications of the Republic of Korea listed in Annex 10-A[1-B] to this Agreement which have been registered by the Republic of Korea, according to the level of protection laid down in this Sub-section.

4. The Parties agree that the elements for the registration and control of geographical indications are regulated with the legislation of the respective Parties.

Article 10.23: Scope of Protection of Geographical Indications

1. Geographical indications referred to in Annex 10-A [1-A] and [1-B] shall be protected against:

- (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
- (b) the use of a geographical indication identifying a good for a like good⁵ not originating in the place indicated by the geographical indication in question, even where the true origin of the good is indicated or the geographical indication is used in translation or transliteration or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like; and
- (c) any other use which constitutes an act of unfair competition within the meaning of Article 10*bis* of the Paris Convention.

2. This Agreement shall in no way prejudice the right of any person to use, in the course of trade, that person’s name or the name of that person’s predecessor in business, except where such name is used in such a manner as to mislead consumers.

3. Nothing in this Sub-section shall oblige a Party to protect a geographical indication of the other Party which is not or ceases to be protected in its country of origin.

Article 10.24: Right of Use of Geographical Indications

⁵ For all goods, the term ‘like good’ shall be interpreted in line with Article 23.1 of the TRIPS Agreement relating to the use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question.

A name protected under this Sub-section may be used by any operator marketing the products referred to in Annex 10-A conforming to the corresponding specification.

Article 10.25: Addition of New Geographical Indications

The Parties may enter into consultations to protect additional geographical indications, after the entry into force of this Agreement. Such consultation shall consider the Parties' interests and sensitivities concerning the protection of the geographical indications.

Article 10.26: Relationship with Trademarks

1. The Parties shall refuse to register or shall invalidate, *ex officio* or at the request of any interested party in conformity with the legislation of each Party, a trademark that corresponds to any of the situations referred to in Article 10.23 of this Agreement in relation to a protected geographical indication for like goods, provided an application to register the trademark is submitted after the date of application for protection of the geographical indication in the territory concerned.

2. For purposes of paragraph 1 for geographical indications referred to in Articles 10.22.2 and 10.22.3, the date of application for protection shall be the date of entry into force of this Agreement.

3. For geographical indications referred to in Article 10.25 and not listed in Annex 10-A on the date of entry into force of this Agreement, the applicable date for protection shall be the date of entry into force of the amendment to Annex [10-A].

Article 10.27: Individual Applications for Protection of Geographical Indications

The provisions of this Sub-section are without prejudice to the right to seek recognition and protection of a geographical indication under the relevant legislation of Georgia or the Republic of Korea.

Article 10.28: Enforcement of Protection

The Parties shall enforce the protection provided for in Articles 10.21 through 10.27 of this Agreement by appropriate administrative action by their public authorities. The Parties shall also enforce such protection at the request of an interested party.

Sub-section D: Designs

Article 10.29: Industrial Design Protection

1. The Parties shall ensure in their domestic laws adequate and effective protection of industrial designs for an article or a part of an article for a period of protection of at least 20 years.

2. The owner of a protected design shall have the right to prevent third parties not having the owner's consent, at least from making, offering for sale, selling, importing, exporting or using articles bearing or embodying the protected design when such acts are undertaken for commercial purposes, unduly prejudice the normal exploitation of the design, or are not compatible with fair trade practice.

3. Each Party shall ensure that a claimed industrial design shall not be new, if it is publicly known, described in a publication distributed or made available to the public on the internet in any Party or in any non-Party before the filing date of the application for a registration of an industrial design or, where priority is claimed, before the priority date of the application.

Article 10.30: Exceptions

Each Party may provide limited exceptions to the protection of designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected 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.

Article 10.31: Registration Procedure

1. Each Party shall provide a system for the examination and registration of industrial designs which includes among other things:

- (a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to register industrial design;
- (b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to register industrial design;
- (c) providing an opportunity for interested parties to seek cancellation or invalidation of a registered industrial design; and
- (d) making decisions in cancellation, or invalidation proceedings be reasoned and in writing, which may be delivered by electronic means.

2. Each Party shall provide an applicant for industrial design with at least one opportunity to make amendments⁶ or observations⁷ in connection with its application before registration in accordance with its laws and regulations.

Article 10.32: Introduction of International Classification System for Industrial Designs

Each Party shall use a classification system for industrial designs that is consistent with the *Locarno Agreement Establishing an International Classification for Industrial Designs*, done at Locarno on 8 October 1968, as amended from time to time.

Article 10.33: Confidential Design

Each Party shall provide that an applicant for a design registration may request the competent authority of the Party to maintain the design unpublished for a period designated by the applicant in the request, but not exceeding the period provided for in the laws and regulations of the Party.

Sub-section E: Patents

Article 10.34: International Agreement

Each Party shall comply with:

- (a) the Paris Convention(1967)
- (b) *the Patent Cooperation Treaty* (1970), as amended in 1979, and modified in 1984 and 2001; and
- (c) *the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977), as amended in 1980.

Article 10.35: Patentable Subject Matter

1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that they are new, involve an inventive step, and are capable of industrial application⁸.

⁶ It is understood that the amendments do not change or expand the scope of the design protection.

⁷ For purposes of this article, ‘observation’ means an applicant’s written communications with respect to the submitted application.

⁸ For purposes of Sub-section E, a Party may treat the terms “inventive step” and “capable of industrial application” as synonymous with the terms “non-obvious” and “useful” respectively.

2. Each Party may exclude from patentability inventions, the prevention within its 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 its law.

3. Each Party may also exclude from patentability:

(a) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and

(b) 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.

Article 10.36: Exceptions

Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interests of third parties.

Article 10.37: Registration Procedure

1. Each Party shall provide a system for the examination and registration of patents which includes among other things:

(a) communicating to the applicant in writing, which may be by electronic means, the reasons for any refusal to grant a patent;

(b) providing the applicant with an opportunity to respond to communications from the competent authorities, to contest any initial refusal, and to make a judicial appeal of any final refusal to grant a patent;

(c) providing an opportunity to seek revocation, cancellation or invalidation of a registered patent; and

(d) making decisions in revocation, cancellation, or invalidation proceedings be reasoned and in writing, which may be delivered by electronic means.

2. Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, and observations⁹ in connection with its application.

⁹ For purposes of this article, “observation” means an applicant’s written communications with respect to the submitted application.

3. Each Party shall provide a patent owner with opportunities to make amendments or corrections after registration provided that such amendments or corrections do not change or expand the scope of the patent right as a whole.

Article 10.38: Introduction of International Patent Classification System

Each Party shall use a patent classification system that is consistent with the *Strasbourg Agreement Concerning the International Patent Classification*, done at Strasbourg on 24 March 1971, as amended from time to time.

Section C: Protection of Undisclosed Test or Other Data

Article 10.39: Extension of the Duration of the Rights Conferred by Patent Protection

1. The Parties recognize that pharmaceutical products and plant protection products¹⁰ protected by a patent in their respective territories are subject to an administrative authorization or registration procedure before being put on their markets.

2. The Parties shall provide, at the request of the patent owner, for the extension of the duration of the rights conferred by the patent protection to compensate the patent owner for the reduction in the effective patent life as a result of the first authorization to place the product on their respective markets. The extension of the duration of the rights conferred by the patent protection may not exceed five years¹¹.

Article 10.40: Protection of Data Submitted to Obtain a Marketing Authorization for Pharmaceutical Products

1. The Parties shall guarantee the confidentiality, non-disclosure of and non-reliance on data submitted for the purpose of obtaining an authorization to put a pharmaceutical product on the market.

2. For that purpose, the Parties shall ensure in their respective legislation that data, as

¹⁰ Plant protection products, in the form in which they are supplied to the user, consist of or contain active substances, safeners or synergists, and are intended for one of the following uses:

- (a) protecting plants or plant products against all harmful organisms or preventing the action of such organisms, unless the main purpose of these products is considered to be for reasons of hygiene rather than for the protection of plants or plant products;
- (b) influencing the life processes of plants, such as substances influencing their growth, other than as a nutrient;
- (c) preserving plant products
- (d) destroying undesired plants or parts of plants, except algae unless the products are applied on soil or water to protect plants; or
- (e) checking or preventing undesired growth of plants, except algae unless the products are applied on soil or water to protect plants.

¹¹ This is without prejudice to a possible extension for paediatric use, if provided for by the Parties.

referred to in Article 39 of the TRIPS Agreement, concerning safety and efficacy, submitted for the first time by an applicant to obtain a marketing authorization for a new pharmaceutical product in the territory of the respective Parties, is not used for granting another marketing authorization for a pharmaceutical product, unless proof of the explicit consent of the marketing authorization holder to use these data is provided.

3. The period of data protection should be at least five years starting from the date of the first marketing authorization obtained in the territory of the respective Parties.

4. For purpose of this Article, a new pharmaceutical product is one that does not contain an active ingredient that has been previously approved in the territory of the Party for use in a pharmaceutical product.

Article 10.41: Protection of Data Submitted to Obtain a Marketing Authorization for Plant Protection Products

1. The Parties shall determine safety and efficacy requirements before authorizing the placing on their respective markets of plant protection products.

2. The Parties shall ensure that tests, study reports or information submitted for the first time by an applicant to obtain a marketing authorization for a plant protection product are not used by third parties or relevant authorities for the benefit of any other person aiming at achieving a marketing authorization for a plant protection product, unless proof of the explicit consent of the first applicant to use these data is provided. This protection will be hereinafter referred to as data protection.

3. The period of data protection should be at least 10 years starting from the date of the first marketing authorization in the respective Parties.

Section D: Unfair Competition

Article 10.42: Protection against Unfair Competition

1. Each Party shall ensure, according to its domestic laws and regulations, adequate and effective protection of undisclosed information in accordance with Article 39 of the TRIPS Agreement.

2. The Parties shall endeavor to provide the legal means to prevent the use of the unregistered appearance of a product according to respective legislation of the Parties, in cases where the contested use results from copying the unregistered appearance of such product.

Section E: Other Provisions

Article 10.43: Plant Varieties

Each Party shall provide for the protection of plant varieties and comply with the *International Convention for the Protection of New Varieties of Plants (1991)*.

Article 10.44: Domain Names

1. In connection with each Party's system for the management of its country-code top-level domain(ccTLD) domain names, the following shall be available:

(a) an appropriate procedure for the settlement of disputes, based on, or modelled along the same lines as, the principles established in the Uniform Domain-Name Dispute-Resolution Policy, as approved by the Internet Corporation for Assigned Names and Numbers (ICANN) or that:

(i) is designed to resolve disputes expeditiously and at low cost;

(ii) is fair and equitable;

(iii) is not overly burdensome; and

(iv) does not preclude resort to judicial proceedings; and

(b) online public access to a reliable and accurate database of contact information concerning domain name registrants,

in accordance with each Party's law and, if applicable, relevant administrator policies regarding protection of privacy and personal data.

2. In connection with each Party's system for the management of ccTLD domain names, appropriate remedies¹² shall be available at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.

Section F: Enforcement of Intellectual Property Rights

Article 10.45: General Obligations

1. The Parties reaffirm their commitments under the TRIPS Agreement, and in particular Part III thereof and shall ensure that the following complementary measures, procedures and remedies are available under their legislation so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement.

¹² The Parties understand that such remedies may, but need not, include, among other things, revocation, cancellation, transfer, damages or injunctive relief.

2. Those measures, procedures and remedies shall:
- (a) include expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements;
 - (b) be fair and equitable;
 - (c) not be unnecessarily complicated or costly, or entail unreasonable time limits or unwarranted delays; and
 - (d) be effective, proportionate and dissuasive, and be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article 10.46: Entitled Applicants

Each Party shall recognize as persons entitled to seek application of the measures, procedures and remedies referred to in this Section and in Part III of the TRIPS Agreement:

- (a) the holders of intellectual property rights in accordance with the provisions of the applicable law;
- (b) all other persons authorized to use those rights, in particular licensees, in so far as permitted by, and in accordance with, the provisions of the applicable law;
- (c) intellectual property collective rights management bodies which are regularly recognized as having a right to represent holders of intellectual property rights, in so far as permitted by, and in accordance with, the provisions of the applicable law; and
- (d) a federation or an association having the legal standing and authority to assert those rights, in so far as permitted by, and in accordance with, the provisions of the applicable law.

Sub-section A: Civil and Administrative Measures, Procedures and Remedies¹³

Article 10.47: Evidence

Each Party shall take such measures as necessary, in the case of an infringement of an intellectual property right committed on a commercial scale, to enable the competent judicial authorities to order, where appropriate and following a party's application, the submission of

¹³ Nothing in this Sub-section title prevents a Party from applying specific measures, procedures, or remedies in a civil or administrative manner in accordance with its domestic legal system.

banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

Article 10.48: Provisional Measures for Preserving Evidence

1. Each Party shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support its claims that its intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.

2. Each Party may provide that such measures include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and in appropriate cases, the materials and implements used in the production or distribution of these goods and the documents relating thereto. Those measures shall be taken, if necessary without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

Article 10.49: Right of Information

1. Each Party shall ensure that, during civil proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order the infringer and/or any other person which is party to a litigation or a witness therein to provide information on the origin and distribution networks of the goods or services which infringe an intellectual property right.

(a) “Any other person” in this paragraph means a person who:

- (i) was found in possession of the infringing goods on a commercial scale;
- (ii) was found to be using the infringing services on a commercial scale;
- (iii) was found to be providing on a commercial scale services used in infringing activities; or
- (iv) was indicated by the person referred to in this subparagraph as being involved in the production, manufacture or distribution of the goods or the provision of the services.

(b) Information shall, as appropriate, comprise:

- (i) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers; or

- (ii) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

2. This Article shall apply without prejudice to other statutory provisions which:

- (i) grant the right holder rights to receive fuller information;
- (ii) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
- (iii) govern responsibility for misuse of the right of information;
- (iv) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit his own participation or that of his close relatives in an infringement of an intellectual property right; or
- (v) govern the protection of confidentiality of information sources or the processing of personal data.

Article 10.50: Provisional and Precautionary Measures

1. Each Party shall ensure that the judicial authorities may, at the request of the applicant, issue an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by its legislation, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued against an intermediary¹⁴ whose services are being used by a third party to infringe copyright, related rights, trademarks or geographical indications.

2. An interlocutory injunction may also be issued to order the seizure of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.

3. In the case of an infringement committed on a commercial scale, each Party shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of bank accounts and other assets.

Article 10.51: Corrective Measures

¹⁴ For purposes of this paragraph, the scope of “intermediary” is determined in each Party’s legislation, but shall include those who deliver or distribute infringing goods, and also where appropriate, include online service providers.

1. Each Party shall ensure that the competent judicial authorities may order, at the request of the applicant and without prejudice to any damages to the right holder by reason of the infringement, and without compensation of any sort, destruction of goods that they have found to be infringing an intellectual property right or any other measures to definitively remove those goods from the channels of commerce. If appropriate, the competent judicial authorities may also order destruction of materials and implements principally used in the creation or manufacture of those goods.

2. The judicial authorities shall order that those measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

3. In considering a request for corrective measures, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

Article 10.52: Injunctions

1. Each Party shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement.

2. Where provided for by law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. Each Party shall also ensure that right holders are in a position to apply for an injunction against intermediaries¹⁵ whose services are being used by a third party to infringe copyright, related rights, trademarks or geographical indications.

Article 10.53: Alternative Measures

Each Party may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in Article 10.51 or 10.52, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 10.51 or 10.52 if that person acted unintentionally and without negligence, if execution of the measures in question would cause him or her disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Article 10.54: Damages

1. Each Party shall ensure that when the judicial authorities set damages:

¹⁵ For purposes of this paragraph, the scope of “intermediary” is determined in each Party’s legislation, but shall include those who deliver or distribute infringing goods, and also where appropriate, include online service providers.

- (a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the right holder by the infringement; or
- (b) as an alternative to subparagraph (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorization to use the intellectual property right in question.

2. Where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity, the Parties may provide that the judicial authorities may order the recovery of profits or the payment of damages which may be pre-established.

3. In civil judicial proceedings, each Party, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in cases of trademark counterfeiting, may establish or maintain pre-established damages, which shall be available on the election of the right holder.

Article 10.55: Legal Costs

Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall as a general rule be borne by the unsuccessful party, unless equity does not allow as such.

Article 10.56: Publication of Judicial Decisions

In cases of infringement of an intellectual property right, each Party shall ensure that the judicial authorities may order, where appropriate, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part. Each Party may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

Article 10.57: Presumption of Authorship or Ownership

In civil proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person or entity whose name is indicated as the author or related right holder of the work or subject matter in the usual manner is the designated right holder in such work or subject matter.

Sub-section B: Criminal Enforcement

Article 10.58: Scope of Criminal Enforcement

Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting and copyright and related rights¹⁶ piracy on a commercial scale.

Article 10.59: Liability of Legal Persons

1. Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for the offences referred to in Article 10.58.
2. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

Article 10.60: Seizure

In case of an offence referred to in Article 10.58, each Party shall provide that its competent authorities shall have the authority to order the seizure of suspected counterfeit trademark goods or pirated copyright goods, any related materials and implements predominantly used in the commission of the alleged offence, documentary evidence relevant to the alleged offence and any assets derived from, or obtained directly or indirectly through, the infringing activity.

Article 10.61: Penalties

For the offences referred to in Article 10.58, each Party shall provide for penalties that include sentences of imprisonment and/or monetary fines that are effective, proportionate and dissuasive.

Article 10.62: Confiscation

1. For the offences referred to in Article 10.58, each Party shall provide that its competent authorities shall have the authority to order confiscation and/or destruction of all counterfeit trademark goods or pirated copyright goods, materials and implements predominantly used in the creation of counterfeit trademark goods or pirated copyright goods and the assets derived from, or obtained directly or indirectly through, the infringing activity.
2. Each Party shall ensure that the counterfeit trademark goods and pirated copyright goods that have been confiscated under this Article shall, if not destroyed, be disposed of outside the channels of commerce, under the condition that the goods are not dangerous for the health and security of persons.
3. Each Party shall further ensure that confiscation and destruction under this Article shall occur without compensation of any kind of the defendant.

¹⁶ The term “related rights” is defined by each Party in accordance with its international obligations.

4. Each Party may provide that its judicial authorities have the authority to order the confiscation of assets the value of which corresponds to that of such assets derived from, or obtained directly or indirectly through, the infringing activity.

Sub-section C: Liability of Intermediary Service Providers

Article 10.63: Liability of Intermediary Service Providers¹⁷

The Parties recognize that the services of intermediaries may be used by third parties for infringing activities. To ensure the free movement of information services and at the same time enforce intellectual property rights in the digital environment, each Party shall provide for the measures set out in Articles 10.64 through 10.67 for intermediary service providers where they are in no way involved with the information transmitted.

Article 10.64: Liability of Intermediary Service Providers: “Mere Conduit”

1. Where an information society service is provided that consists of the transmission in a communication network of information provided by a recipient of the service, or the provision of access to a communication network, the Parties shall ensure that the service provider is not liable for the information transmitted, on condition that the provider:

- (a) does not initiate the transmission;
- (b) does not select the receiver of the transmission; and
- (c) does not select or modify the information contained in the transmission.

2. The acts of transmission and of provision of access referred to in paragraph 1 include the automatic, intermediate and transient storage of the information transmitted in so far as such storage takes place for the sole purpose of carrying out the transmission in the communication network, and provided that the information is not stored for any period longer than is reasonably necessary for the transmission.

3. This Article shall not affect the possibility, in accordance with the Parties’ legal systems, of a judicial or administrative authority requiring the service provider to terminate or prevent an infringement.

Article 10.65: Liability of Intermediary Service Providers: “Caching”

1. Where an information society service is provided that consists of the transmission in a

¹⁷ For purposes of the function referred to in Article 10.59, service provider means a provider of transmission, routing, or connections for digital online communications without modification of their content between or among points specified by the user of material of the user’s choosing, and for the purpose of the functions referred to in Articles 10.60 and 10.61 service provider means a provider or operator of facilities for online services or network access.

communication network of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the automatic, intermediate and temporary storage of that information, performed for the sole purpose of making more efficient the information's onward transmission to other recipients of the service upon their request, on condition that the provider:

- (a) does not modify the information;
- (b) complies with conditions on access to the information;
- (c) complies with rules regarding updating of the information, specified in a manner widely recognized and used by industry;
- (d) does not interfere with the lawful use of technology, widely recognized and used by industry, to obtain data on the use of the information; and
- (e) acts expeditiously to remove or to disable access to the information it has stored upon obtaining actual knowledge¹⁸ of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a judicial or an administrative authority has ordered such removal or disablement.

2. This Article shall not affect the possibility, in accordance with the Parties' legal systems, of a judicial or administrative authority requiring the service provider to terminate or prevent an infringement.

Article 10.66: Liability of Intermediary Service Providers: "Hosting"

1. Where an information society service is provided that consists of the storage of information provided by a recipient of the service, the Parties shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that the provider:

- (a) does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or
- (b) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Article shall not affect the possibility, in accordance with the Parties' legal

¹⁸ For purpose of this Sub-section the "actual knowledge" shall be interpreted in accordance with each Party's domestic law and regulations.

systems, of a judicial or administrative authority requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility of the Parties establishing procedures governing the removal or disabling of access to information.

Article 10.67: No General Obligation to Monitor

1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles 10.64 through 10.66, to monitor the information which they transmit or store, nor a general obligation to actively seek facts or circumstances indicating illegal activity.

2. The Parties may establish obligations for information society service providers to promptly inform the competent authorities of alleged illegal activities undertaken or information provided by recipients of their service, or to communicate to the competent authorities, at their request, information enabling the identification of recipients of their service with whom they have storage agreements.

Sub-section D: Other Provisions

Article 10.68: Border Measures

1. Each Party shall, unless otherwise provided for in this Section, adopt procedures¹⁹ to enable a right holder, who has valid grounds for suspecting that the importation, exportation, re-exportation, placement under a free zone, placement under a suspensive procedure or a bonded warehouse of goods infringing an intellectual property right²⁰ may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation or the detention of such goods.

¹⁹ It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder.

²⁰ For purposes of this Article, **goods infringing an intellectual property right** means:

- (a) counterfeit goods, which are:
 - (i) goods, including packaging, bearing without authorization a trademark identical to the trademark duly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the trademark holder's rights;
 - (ii) any trademark symbol (logo, label, sticker, brochure, instructions for use or guarantee document), even if presented separately, on the same conditions as the goods referred to in subparagraph (a)(i); or
 - (iii) packaging materials bearing the trademarks of counterfeit goods, presented separately, on the same conditions as the goods referred to in subparagraph (a)(i);
- (b) pirated copyright goods, which are or contain copies made without the consent of the right holder, or of a person duly authorized by the right holder in the country of production, of a copyright or related right, regardless of whether it is registered in each Party's legislation; or
- (c) goods which, according to the legislation of the Party in which the application for customs action is made, infringe:
 - (i) a patent;
 - (ii) a plant variety right;
 - (iii) a registered design; or
 - (iv) a geographical indication.

2. The Parties shall provide that when the customs authorities, in the course of their actions and before an application has been lodged by a right holder or granted, have sufficient grounds for suspecting that goods infringe an intellectual property right, they may suspend the release of the goods or detain them in order to enable the right holder to submit an application for action in accordance with the paragraph 1.

3. Any rights or obligations established in the implementation of Section 4 of Part III of the TRIPS Agreement concerning the importer shall also be applicable to the exporter or if necessary to the holder²¹ of the goods.

Article 10.69: Cooperation

The Parties agree to cooperate with a view to supporting implementation of the commitments and obligations undertaken under this Chapter. 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; exchange of experiences on legislative progress;
- (b) exchange of experiences on enforcement of intellectual property rights;
- (c) exchange of experiences on enforcement at central and sub-central level by customs, police, administrative and judiciary bodies; co-ordination to prevent exports of counterfeit goods, including with other countries;
- (d) capacity-building; and
- (e) promotion and dissemination of information on intellectual property rights in, *inter alia*, business circles and civil society; promotion of public awareness of consumers and right holders.

Article 10.70: Effective Action against Infringement in the Digital Environment

1. Each Party confirms that the enforcement procedures set out in Sub-section A (Civil and Administrative Measures, Procedures and Remedies) and Sub-section B (Criminal Enforcement) shall be available to the same extent with respect to acts of infringement of copyright or related rights and trademarks, in the digital environment.
2. Each Party shall take effective measures to curtail repetitive infringement of copyright and related rights on the Internet or other digital networks.

²¹ Including at least the person who is the owner of the goods or the person who has a similar right of disposal over them.

3. In order to identify and mitigate copyright infringements in digital trade, each Party shall have in place measures to block access to and shut down online services making profits primarily from distribution of copyright infringing materials.

Section G: IP COMMITTEE

Article 10.71: Sub-Committee on Intellectual Property Rights

1. The Parties hereby establish the Sub-Committee on Intellectual Property Rights (hereinafter referred to in this Article as the “Sub-Committee”). It shall consist of representatives of the Republic of Korea and of Georgia with the purpose of monitoring the development of this Chapter and of intensifying their cooperation and dialogue on intellectual property matters including geographical indications.

2. For purposes of the effective implementation and operation of this Chapter, the functions of the Sub-Committee shall include, but are not limited to:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) discussing ways to facilitate cooperation between the Parties;
- (c) exchange of information on laws, systems and other issues of mutual interest concerning intellectual property rights;
- (d) carrying out other functions as may be delegated by the Joint Committee;
- (e) seeking to resolve disputes that may arise regarding the interpretation or application of this Chapter; and
- (f) amending Annex 10-A to this Agreement as regards geographical indications.

3. The Sub-Committee shall inform the Joint Committee of the results of each meeting²². The Sub-Committee adopts its decisions by consensus. It shall determine its own rules of procedure.

²² The meeting can be held through virtual means.