

## **CHAPTER SEVENTEEN INTELLECTUAL PROPERTY RIGHTS**

### **ARTICLE 17.1: OBJECTIVES**

The objectives of this Chapter are to:

- (a) increase the benefits from trade and investment;
- (b) foster creations and innovations in their respective territories;
- (c) enhance production and commercialization of innovative and creative products; and
- (d) facilitate and promote technology transfer between the Parties, through the recognition of intellectual property rights and cooperation.

### **ARTICLE 17.2: AFFIRMATION OF INTERNATIONAL AGREEMENTS**

1. The Parties affirm the rights and obligations under the TRIPS Agreement, as well as under any other multilateral agreement related to intellectual property, including the agreements administered by the World Intellectual Property Organization (hereinafter referred to as “WIPO”), that are in force between the Parties.

2. Nothing in this Chapter shall prejudice the rights and obligations under multilateral agreements referred to in paragraph 1.

### **ARTICLE 17.3: MORE EXTENSIVE PROTECTION**

The Parties may provide more extensive protection for and enforcement of intellectual property rights under their respective laws than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.

### **ARTICLE 17.4: GENERAL PRINCIPLES**

1. The Parties shall grant and ensure adequate, effective, and non-discriminatory protection of intellectual property rights, and provide for measures for the enforcement of such rights.

2. The Parties recognize that technology transfer contributes to strengthening their capabilities with a view to establishing a sound and viable technological base.

3. The Parties shall accord to the nationals of the other Party treatment no less favorable than that it accords to its own nationals regarding the protection<sup>1</sup> of intellectual property, subject to the exceptions provided in Articles 3 and 5 of the TRIPS Agreement.

4. The Parties recognize the principles established in the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2) (hereinafter referred to as the “Declaration”), adopted on November 14, 2001 by the WTO Ministerial Conference, and the *Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health* (WT/L/540) (hereinafter referred to as the “Decision”), adopted on August 30, 2003 by the WTO General Council. Likewise, the Parties recognize the importance to promote the implementation and full use of *Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property* (WHA61.21), adopted on May 24, 2008 by the 61<sup>st</sup> World Health Assembly.

5. In accordance with Article 8.1 of the TRIPS Agreement, the Parties may use, in formulating or amending their laws and regulations, the exceptions and flexibilities allowed by multilateral agreements related to the protection of intellectual property, and in particular, adopt measures necessary to protect public health and nutrition, taking into consideration the TRIPS Agreement and the principles established in the Declaration and the Decision.

6. Nothing in this Chapter shall hinder a Party from adopting the necessary measures to prevent the abuse of the intellectual property rights by its holders or the resort to practices that unreasonably restrain trade or international transfer of technology.

#### ARTICLE 17.5: GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE

1. The Parties acknowledge paragraph 19 of the Ministerial Declaration (WT/MIN/(01)DEC/1), adopted on November 14, 2001 by the WTO Ministerial Conference, on the relationship between the TRIPS Agreement and the CBD and the protection of genetic resources, traditional knowledge, and folklore.

2. The Parties recognize the value and importance of biological diversity, traditional knowledge as well as the contribution of knowledge, innovations, and practices of indigenous and local communities to the conservation and sustainable use of biological diversity. Each Party shall have the authority to determine access to genetic resources in accordance with its domestic legislation and endeavor to create conditions to facilitate transparent access to genetic resources for environmentally sound uses.

3. Subject to their domestic legislations and the CBD, the Parties respect knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant to the conservation and sustainable use of biological diversity and promote their wider application with the involvement and approval of the holders of such knowledge, innovations, and practices.

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<sup>1</sup> For purposes of this paragraph, “protection” shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

4. Each Party shall endeavor to seek ways to share information on patent applications based on genetic resources or traditional knowledge by providing:

- (a) publicly accessible database that contains relevant information; and
- (b) opportunities to file prior art to the appropriate examining authority in writing.

5. The Parties agree to share views and information on discussions in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore, the WTO TRIPS Council, and any other relevant fora in addressing matters related to genetic resources and traditional knowledge.

6. Subject to future developments of multilateral agreements or their respective domestic legislations, the Parties agree to further discuss relevant issues on genetic resources.

#### ARTICLE 17.6: RECOGNITION AND PROTECTION OF GEOGRAPHICAL INDICATIONS

1. Recognizing the importance of the protection of geographical indications, each Party shall provide a system for the protection of geographical indications in accordance with Section 3 of Part II of the TRIPS Agreement and protect the geographical indications of the other Party in accordance with its domestic legislation. This Article shall not prejudice the rights and obligations under free trade agreements that each Party previously concluded with a non-Party.

2. The names listed in Section A of Annex 17A are geographical indications in Peru within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to Korea's domestic laws and regulations, in a manner that is consistent with the TRIPS Agreement, such names will be protected as geographical indications in the territory of Korea.

3. The names listed in Section B of Annex 17A are geographical indications in Korea within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to Peru's domestic laws and regulations, in a manner that is consistent with the TRIPS Agreement, such names will be protected as geographical indications in the territory of Peru.

4. The Parties shall enter into consultations to protect additional geographical indications, upon request of a Party, after the entry into force of this Agreement. Subject to the result of these consultations and by mutual consent, the Parties shall protect, in accordance with this Chapter, such geographical indications.

#### ARTICLE 17.7: COPYRIGHT AND RELATED RIGHTS

1. The Parties shall protect authors of literary or artistic works, the performers, phonogram producers, and broadcasting organizations regarding their works, performances, phonograms, or broadcasts in the most effective way.

*Term of protection*

2. Each Party shall provide that, where the term of protection of a work (including a photographic work), performance, or phonogram is to be calculated:

- (a) 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; and
- (b) on a basis other than the life of a natural person, the term shall be:
  - (i) not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance, or phonogram; or
  - (ii) failing such authorized publication within 50 years from the creation of the work, performance, or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance, or phonogram.

3. Korea shall fully implement the obligations under paragraph 2 within two years after the date of entry into force of this Agreement.

*The rights of broadcasting organizations*

4. The rights of broadcasting organizations shall expire not less than 50 years after the transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

5. Neither Party may permit the retransmission<sup>2</sup> 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.

6. Each Party shall provide for broadcasting organizations the exclusive right to authorize or prohibit:

- (a) the re-broadcasting of their broadcasts;
- (b) the fixation of their broadcasts; and
- (c) the reproduction of fixations, made without their consent, of their broadcasts.

7. The Parties may provide in their domestic laws limitations or exceptions to rights of broadcasting organizations in accordance with the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations*, adopted at Rome on October 26, 1961 (hereinafter referred to as the "Rome Convention").

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<sup>2</sup> For purposes of this paragraph and for greater certainty, 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.

8. The Parties shall affirm the existing rights and obligations under the *Berne Convention for the Protection of Literary and Artistic Works (1971)*, the Rome Convention, the *WIPO Copyright Treaty*, and the *WIPO Performances and Phonograms Treaty*.

9. The Parties will endeavor to promote the activities of collective management associations of copyrights and related rights for the effective distribution of royalties, so that they may be fair and proportional to the use of the works, performances, phonograms, or broadcasts of the right holders of the Parties, in a transparent and good business practices frame, in accordance with their domestic legislation.

#### ARTICLE 17.8: ENFORCEMENT

1. The Parties shall establish provisions for the enforcement of intellectual property rights in their domestic laws in accordance with the TRIPS Agreement, in particular Articles 41 through 61.

2. The Parties shall cooperate with a view to eliminating trade in goods infringing intellectual property rights subject to their respective laws, regulations, or policies. Such cooperation may include:

- (a) exchange of information on the infringement of intellectual property rights between their respective responsible agencies;
- (b) policy dialogue on initiatives for the enforcement of intellectual property rights;
- (c) initiatives to control piracy including supervision of provision of equipment and material to organizations involved in piracy activities; and
- (d) other activities and initiatives for the enforcement of intellectual property rights as may be determined by the Parties.

The Parties will designate contact points responsible for the implementation of this Article.

#### ARTICLE 17.9: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES

1. Each Party shall provide that any right holder initiating procedures for suspension by customs authorities of the release of suspected counterfeit or confusingly similar trademark or pirated copyright goods<sup>3</sup> into free circulation is required to provide adequate evidence to

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<sup>3</sup> For purposes of this Article:

- (a) “counterfeit trademark goods” means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and

satisfy the competent authorities that, under the laws of the importing Party, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may be reasonably expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable to customs authorities. The requirement to provide information shall not unreasonably deter recourse to these procedures.

2. Each Party shall provide that the competent authorities have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark or pirated copyright goods to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

3. Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer, and the consignee, and of the quantity of the goods in question.

4. Each Party shall provide that its competent authorities may initiate border measures *ex officio* with respect to imported, exported, or in-transit merchandise, without the need for a formal complaint from a private party or right holder. Such measures shall be used when there is reason to believe or suspect that such merchandise is counterfeit or pirated.

#### ARTICLE 17.10: COOPERATION AND TECHNOLOGY TRANSFER

1. The Parties recognize the importance of technological innovation as well as the transfer and dissemination of technological information to the mutual advantage of technology producers and users, particularly in the new digital economy. Accordingly, the Parties will seek to develop and encourage cooperation programs, through collaboration in science, technology, and innovation.

2. The Parties agree to exchange views and information on the legal framework concerning protection and enforcement of intellectual property rights in accordance with their respective laws, regulations, and policies to:

- (a) improve and strengthen intellectual property systems to promote the efficient enforcement of intellectual property rights; and
- (b) stimulate the creation and development of intellectual property by persons of each Party, particularly small and medium-sized enterprises.

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- (b) "pirated copyright goods" means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

3. The Parties will encourage and facilitate the following activities, including, but not limited to:

- (a) educational projects on the use of intellectual property including information systems on intellectual property;
- (b) training and specialization courses for officials on intellectual property rights and other mechanisms;
- (c) international search and international preliminary examination under the *Patent Cooperation Treaty* and facilitation of international patenting process;
- (d) patent technology, licensing, and market intelligence;
- (e) plant variety protection, including exchange of technical expertise and knowledge; and
- (f) other issues of mutual interest concerning intellectual property rights.

4. The Parties shall designate contact points responsible for the compliance of the objective of this Article and for the facilitation of cooperation. The contact points are:

- (a) for Peru, the *National Council of Science, Technology and Innovation (Consejo Nacional de Ciencia, Tecnología e Innovación Tecnológica-CONCYTEC)*, or its successors; and
- (b) for Korea, the *Ministry of Foreign Affairs and Trade*, or its successors.