

## CHAPTER TEN

### INTELLECTUAL PROPERTY

#### SECTION A GENERAL PROVISIONS

##### ARTICLE 10.1: OBJECTIVES

The objectives of this Chapter are to:

- (a) facilitate the production and commercialisation 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 the purposes of this Agreement, intellectual property rights embody:

- (a) copyright, including copyright in computer programs and in databases, and related rights;
- (b) the rights related to patents;
- (c) trademarks;
- (d) service marks;
- (e) designs;
- (f) layout-designs (topographies) of integrated circuits;
- (g) geographical indications;
- (h) plant varieties; and

- (i) protection of undisclosed information.

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: TRANSFER OF TECHNOLOGY

1. The Parties agree to exchange views and information on their practices and policies affecting transfer of technology, both within their respective territories and with third countries. This shall in particular include measures to facilitate information flows, business partnerships, licensing and subcontracting. Particular attention shall be paid to the conditions necessary to create an adequate enabling environment for technology transfer in the host countries, including, *inter alia*, issues such as development of human capital and legal framework.

2. Each Party shall take measures, as appropriate, to prevent or control licensing practices or conditions pertaining to intellectual property rights which may adversely affect the international transfer of technology and which constitute an abuse of intellectual property rights by right holders.

#### ARTICLE 10.4: EXHAUSTION

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

### **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 Organisations* (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 Organisation*

(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 authorisation of the right holder or right holders, if any, of the content of the signal and of the signal.<sup>1</sup>

#### ARTICLE 10.8: COOPERATION ON COLLECTIVE MANAGEMENT OF RIGHTS

The Parties shall endeavour to facilitate the establishment of arrangements between their respective collecting societies for the 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 endeavour to achieve a high level of rationalisation 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 the 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 the purposes

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<sup>1</sup> For the 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.

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 authorise 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.

5. Each Party shall provide broadcasting organisations with the exclusive right to authorise 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 State where protection of this right is claimed to determine the conditions under which it may be exercised.

#### ARTICLE 10.10: ARTISTS’ RESALE RIGHT IN WORKS OF ART

The Parties agree to exchange views and information on the practices and policies concerning the artists’ resale right. Within two years of the entry into force of this Agreement, the Parties shall enter into consultations to review the desirability and feasibility of introducing an artists’ resale right in works of art in Korea.

#### ARTICLE 10.11: 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 10.10 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 10.12: 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 the 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 authorised 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 10.13: 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 the 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 10.14: TRANSITIONAL PROVISION

Korea shall fully implement the obligations of Articles 10.6 and 10.7 within two years of the entry into force of this Agreement.

### **SUB-SECTION B TRADEMARKS**

#### ARTICLE 10.15: REGISTRATION PROCEDURE

The European Union and Korea shall provide for a system for the registration of trademarks in which the reasons for a refusal to register a trademark shall be communicated in writing and may be provided electronically to the applicant who will have the opportunity to contest such refusal and to appeal a final refusal judicially. The European Union and Korea shall also introduce the possibility for interested parties to oppose trademark applications. The European Union and Korea shall provide a publicly available electronic database of trademark applications and trademark registrations.

#### ARTICLE 10.16: INTERNATIONAL AGREEMENTS

The European Union and Korea shall comply with the *Trademark Law Treaty* (1994) and make all reasonable efforts to comply with the *Singapore Treaty on the Law of Trademarks* (2006).

#### ARTICLE 10.17: EXCEPTIONS TO THE RIGHTS CONFERRED BY A TRADEMARK

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

## SUB-SECTION C

### GEOGRAPHICAL INDICATIONS<sup>2,3</sup>

#### ARTICLE 10.18: RECOGNITION OF GEOGRAPHICAL INDICATIONS FOR AGRICULTURAL PRODUCTS AND FOODSTUFFS AND WINES

1. Having examined the *Agricultural Products Quality Control Act*, with its implementing rules, in so far as it relates to the registration, control and protection of geographical indications for agricultural products and foodstuffs in Korea, the European Union concludes that this legislation meets the elements laid down in paragraph 6.

2. Having examined *Council Regulation (EC) No 510/2006*, with its implementing rules, for the registration, control and protection of geographical indications of agricultural products and foodstuffs in the European Union, and *Council Regulation (EC) No 1234/2007* on the common organisation of the market in wine, Korea concludes that this legislation meets the elements laid down in paragraph 6.

3. Having examined a summary of the specifications of the agricultural products and foodstuffs corresponding to the geographical indications of Korea listed in Annex 10-A, which have been registered by Korea under the legislation referred to in paragraph 1, the European Union undertakes to protect the geographical indications of Korea listed in Annex 10-A according to the level of protection laid down in this Chapter.

4. Having examined a summary of the specifications of the agricultural products and foodstuffs corresponding to the geographical indications of the European Union listed in Annex 10-A, which have been registered by the European Union under the legislation referred to in paragraph 2, Korea undertakes to protect the geographical indications of the European Union listed in Annex 10-A according to the level of protection laid down in this Chapter.

5. Paragraph 3 shall apply to geographical indications for wines with respect to geographical indications added pursuant to Article 10.24.

6. The European Union and Korea agree that the elements for the registration and control of geographical indications referred to in paragraphs 1 and 2 are the following:

- (a) a register listing geographical indications protected in their respective territories;

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<sup>2</sup> “Geographical indication” in this Sub-section refers to:

- (a) geographical indications, designations of origin, quality wines produced in a specified region and table wines with geographical indication as referred to in *Council Regulation (EC) No 510/2006 of 20 March 2006*; *Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008*; *Council Regulation (EEC) No 1601/1991 of 10 June 1991*; *Council Regulation (EC) No 1493/1999 of 17 May 1999*; and *Council Regulation (EC) No 1234/2007 of 22 October 2007*, or provisions replacing these regulations; and
- (b) geographical indications as covered by the *Agricultural Products Quality Control Act* (Act No. 9759, Jun. 9, 2009) and the *Liquor Tax Act* (Act No. 8852, Feb. 29, 2008) of Korea.

<sup>3</sup> The protection of a geographical indication under this Sub-section is without prejudice to other provisions in this Agreement.

- (b) an administrative process verifying that geographical indications identify a good as originating in a territory, region or locality of either Party, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
- (c) a requirement that a registered name shall correspond to a specific product or products for which a product specification is laid down which may only be amended by due administrative process;
- (d) control provisions applying to production;
- (e) legal provisions laying down that a registered name may be used by any operator marketing the agricultural product or foodstuff conforming to the corresponding specification; and
- (f) an objection procedure that allows the legitimate interests of prior users of names, whether those names are protected as a form of intellectual property or not, to be taken into account.

ARTICLE 10.19: RECOGNITION OF SPECIFIC GEOGRAPHICAL INDICATIONS FOR WINES,<sup>4</sup> AROMATISED WINES<sup>5</sup> AND SPIRITS<sup>6</sup>

1. In Korea, the geographical indications of the European Union listed in Annex 10-B shall be protected for those products which use these geographical indications in accordance with the relevant laws of the European Union on geographical indications.
2. In the European Union, the geographical indications of Korea listed in Annex 10-B shall be protected for those products which use these geographical indications in accordance with the relevant laws of Korea on geographical indications.

ARTICLE 10.20: RIGHT OF USE

A name protected under this Sub-section may be used by any operator marketing agricultural products, foodstuffs, wines, aromatised wines or spirits conforming to the corresponding specification.

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<sup>4</sup> Wines within the meaning of this Sub-section are products falling under heading 22.04 of the HS and which:

- (a) comply with *Council Regulation (EC) 1234/2007 of 22 October 2007*, *Commission Regulation (EC) 606/2009 of 10 July 2009* and *Commission Regulation (EC) 607/2009 of 14 July 2009*, or legislation replacing it; or
- (b) comply with the *Agricultural Products Quality Control Act* (Act No. 9759, Jun. 9, 2009) and the *Liquor Tax Act* (Act No. 8852, Feb. 29, 2008) of Korea.

<sup>5</sup> Aromatised wines within the meaning of this Sub-section are products falling under heading 22.05 of the HS and which:

- (a) comply with *Council Regulation (EEC) No 1601/1991 of 10 June 1991*, or legislation replacing it; or
- (b) comply with the *Agricultural Products Quality Control Act* (Act No. 9759, Jun. 9, 2009) and the *Liquor Tax Act* (Act No. 8852, Feb. 29, 2008) of Korea.

<sup>6</sup> Spirits within the meaning of this Sub-section are products falling under heading 22.08 of the HS and which:

- (a) comply with *Regulation (EC) No 110/2008 of the European Parliament* and of the *Council of 15 January 2008*, and *Commission Regulation (EEC) No 1014/90 of 24 April 1990*, or legislation replacing it; or
- (b) comply with the *Agricultural Products Quality Control Act* (Act No. 9759, Jun. 9, 2009) and the *Liquor Tax Act* (Act No. 8852, Feb. 29, 2008) of Korea.



## ARTICLE 10.21: SCOPE OF PROTECTION

1. Geographical indications referred to in Articles 10.18 and 10.19 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 good<sup>7</sup> 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 transcription 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. If geographical indications of the Parties are homonymous, protection shall be granted to each indication provided that it has been used in good faith. The Working Group on Geographical Indications shall decide the practical conditions of use under which the homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled. If a geographical indication protected through this Agreement is homonymous with a geographical indication of a third country, each Party shall decide the practical conditions of use under which the homonymous geographical indications will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

4. Nothing in this Agreement shall oblige the European Union or Korea to protect a geographical indication which is not or ceases to be protected in its country of origin or which has fallen into disuse in that country.

5. The protection of a geographical indication under this Article is without prejudice to the continued use of a trademark which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in the territory of a Party before the date of the application for protection or recognition of the geographical indication, provided that no grounds for the trademark’s invalidity or revocation exist in the legislation of the Party concerned. The date of application for protection or recognition of the geographical indication is determined in accordance with Article 10.23.2.

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<sup>7</sup> 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.

#### ARTICLE 10.22: ENFORCEMENT OF PROTECTION

The Parties shall enforce the protection provided for in Articles 10.18 through 10.23 on their own initiative by appropriate intervention of their authorities. They shall also enforce such protection at the request of an interested party.

#### ARTICLE 10.23: RELATIONSHIP WITH TRADEMARKS

1. The registration of a trademark that corresponds to any of the situations referred to in Article 10.21.1 in relation to a protected geographical indication for like goods, shall be refused or invalidated by the Parties, provided an application for registration of the trademark is submitted after the date of application for protection or recognition of the geographical indication in the territory concerned.

2. For the purposes of paragraph 1:

- (a) for geographical indications referred to in Articles 10.18 and 10.19, the date of application for protection or recognition shall be the date when this Agreement enters into force; and
- (b) for geographical indications referred to in Article 10.24, the date of application for protection or recognition shall be the date of a Party's receipt of a request by the other Party to protect or recognise a geographical indication.

#### ARTICLE 10.24: ADDITION OF GEOGRAPHICAL INDICATIONS FOR PROTECTION<sup>8</sup>

1. The European Union and Korea agree to add geographical indications to be protected to the Annexes 10-A and 10-B in accordance with the procedure set out in Article 10.25.

2. The European Union and Korea agree to process, without undue delay, the other's requests for adding geographical indications to be protected to the Annexes.

3. A name may not be registered as a geographical indication where it conflicts with the name of a plant variety, including a grape variety, or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.

#### ARTICLE 10.25: WORKING GROUP ON GEOGRAPHICAL INDICATIONS

1. The Working Group on Geographical Indications established pursuant to Article 15.3.1 (Working Groups) shall meet, as mutually agreed or upon request of a Party, for the

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<sup>8</sup> If a proposal is made by:

- (a) Korea for an originating product falling into the scope of the legislation of the European Union set out under Article 10.18.2 and footnotes of Article 10.19; or
- (b) the European Union for an originating product falling into the scope of the legislation of Korea set out under Article 10.18.1 and footnotes of Article 10.19,

to add a name of origin to this Agreement which has been recognised by either Party as a geographical indication within the meaning of Article 22.1 of the TRIPS Agreement through laws of either Party other than those referred to in Articles 10.18.1 and 10.18.2 and footnotes of Article 10.19, the Parties agree to examine whether the geographical indication can be added to this Agreement pursuant to this Sub-section.

purpose of intensifying cooperation between the Parties and dialogue on geographical indications. The Working Group may make recommendations and adopt decisions by consensus.

2. The location of the meeting shall alternate between the Parties. The Working Group shall meet at a time and a place and in a manner which may include by videoconference, mutually determined by the Parties, but no later than 90 days after the request.

3. The Working Group may decide:

- (a) to modify Annexes 10-A and 10-B to add individual geographical indications of the European Union or Korea that, after having completed the relevant procedure referred to in Articles 10.18.3 and 10.18.4, where applicable, are also determined by the other Party to constitute geographical indications and will be protected in the territory of that other Party;
- (b) to modify<sup>9</sup> the Annexes referred to in subparagraph (a) to remove individual geographical indications that cease to be protected in the Party of origin<sup>10</sup> or that, in accordance with the applicable legislation, no longer meet the conditions to be considered a geographical indication in the other Party; and
- (c) that a reference to legislation in this Agreement should be taken to be a reference to that legislation as amended and replaced and in force at a particular date after the entry into force of this Agreement.

4. The Working Group shall also ensure the proper functioning of this Sub-section and may consider any matter related to its implementation and operation. In particular, it shall be responsible for:

- (a) exchanging information on legislative and policy developments on geographical indications;
- (b) exchanging information on individual geographical indications for the purpose of considering their protection in accordance with this Agreement; and
- (c) exchanging information to optimise the operation of this Agreement.

5. The Working Group may discuss any matter of mutual interest in the area of geographical indications.

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<sup>9</sup> This refers to the modification of the geographical indication as such, including the name and product category. Modifications of specifications as referred to in Articles 10.18.3 and 10.18.4 or modifications of the responsible control bodies as referred to in Article 10.18.6(d) remain the sole responsibility of the Party where a geographical indication originates. Such modifications may be communicated for information purposes.

<sup>10</sup> A decision to cease protection of a geographical indication remains the sole responsibility of the Party where the geographical indication originates.

## ARTICLE 10.26: 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 the European Union or Korea.

### SUB-SECTION D DESIGNS

## ARTICLE 10.27: PROTECTION OF REGISTERED DESIGNS

1. The European Union and Korea shall provide for the protection of independently created designs that are new and that are original or have individual character.<sup>11</sup>
2. This protection shall be provided by registration, and shall confer exclusive rights upon their holders in accordance with this Sub-section.

## ARTICLE 10.28: RIGHTS CONFERRED BY REGISTRATION

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.

## ARTICLE 10.29: PROTECTION CONFERRED TO UNREGISTERED APPEARANCE

The European Union and Korea shall provide the legal means to prevent the use of the unregistered appearance of a product, only if the contested use results from copying the unregistered appearance of such product.<sup>12</sup> Such use shall at least cover presenting,<sup>13</sup> importing or exporting goods.

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<sup>11</sup> Korea considers designs not to be new if an identical or similar design has been publicly known or publicly worked before the application for design registration is filed. Korea considers designs not to be original if they could have been easily created from the combinations of designs that have been publicly known or publicly worked before the application for design registration is filed. The European Union considers designs not to be new if an identical design has been made available to the public before the filing date of a registered design or before the date of disclosure of an unregistered design. The European Union considers design not to have individual character if the overall impression it produces on the informed users does not differ from the overall impression produced on such a user by any design which has been made available to the public.

<sup>12</sup> For the purposes of this Article, the European Union and Korea consider that "unregistered design" and "unregistered appearance" have a similar meaning. The conditions for protection of "unregistered design" or "unregistered appearance" are provided for:

- (a) by Korea in the *Unfair Competition Prevention and Trade Secret Protection Act* (Act No. 8767, Dec. 21, 2007); and
- (b) by the European Union in *Council Regulation (EC) No 6/2002 of 12 December 2001* on Community designs, as last amended by *Council Regulation (EC) No 1891/2006 of 18 December 2006*.

<sup>13</sup> For the purposes of this Article, the European Union considers "presenting" as "offering" or "putting on the market" and Korea considers "presenting" as "assigning, leasing or exhibition for assigning or leasing."

#### ARTICLE 10.30: TERM OF PROTECTION

1. The duration of protection available in the Parties following registration shall amount to at least 15 years.
2. The duration of protection available in the European Union and Korea for unregistered appearance shall amount to at least three years.

#### ARTICLE 10.31: EXCEPTIONS

1. The European Union and Korea 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.
2. Design protection shall not extend to designs dictated essentially by technical or functional considerations.
3. A design right shall not subsist in a design which is contrary to public policy or to accepted principles of morality.

#### ARTICLE 10.32: RELATIONSHIP WITH COPYRIGHT

A design protected by a design right registered in the European Union or in Korea in accordance with this Sub-section shall also be eligible for protection under the law of copyright applicable in the territory of the Parties as from the date on which the design was created or fixed in any form.<sup>14</sup>

### **SUB-SECTION E PATENTS**

#### ARTICLE 10.33: INTERNATIONAL AGREEMENT

The Parties shall make all reasonable efforts to comply with articles 1 through 16 of the *Patent Law Treaty* (2000).

#### ARTICLE 10.34: 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 (hereinafter referred to as the “Doha Declaration”) by the Ministerial Conference of the WTO. In interpreting and implementing the rights and obligations under this Sub-section, the Parties are entitled to rely upon the Doha Declaration.

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<sup>14</sup> The protection of a design under the law of copyright is not granted automatically, but granted only if a design qualifies for protection in accordance with the law of copyright.

2. Each Party shall contribute to the implementation of and shall respect the *Decision of the WTO General Council of 30 August 2003* on paragraph 6 of the Doha Declaration, as well as *the Protocol amending the TRIPS Agreement*, done at Geneva on 6 December 2005.

#### ARTICLE 10.35: EXTENSION OF THE DURATION OF THE RIGHTS CONFERRED BY PATENT PROTECTION

1. The Parties recognise that pharmaceutical products<sup>15</sup> and plant protection products<sup>16</sup> protected by a patent in their respective territories are subject to an administrative authorisation 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 authorisation 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 years<sup>17</sup>.

#### ARTICLE 10.36: PROTECTION OF DATA SUBMITTED TO OBTAIN A MARKETING AUTHORISATION FOR PHARMACEUTICAL<sup>18</sup> PRODUCTS

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

2. For that purpose, the Parties shall ensure in their respective legislation that data, as 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 authorisation for a new pharmaceutical product in the territory of the respective Parties, is not used for granting another marketing authorisation for a pharmaceutical product, unless proof of the explicit consent of the marketing authorisation 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 authorisation obtained in the territory of the respective Parties.

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<sup>15</sup> As defined in Annex 2-D (Pharmaceutical Products and Medical Devices).

<sup>16</sup> 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, in so far as such substances or products are not subject to the European Union's special provisions on preservatives;
- (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.

<sup>17</sup> This is without prejudice to a possible extension for paediatric use, if provided for by the Parties.

<sup>18</sup> As defined in Annex 2-D (Pharmaceutical Products and Medical Devices).

#### ARTICLE 10.37: PROTECTION OF DATA SUBMITTED TO OBTAIN A MARKETING AUTHORISATION FOR PLANT PROTECTION PRODUCTS

1. The Parties shall determine safety and efficacy requirements before authorising 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 authorisation 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 authorisation 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 authorisation in the respective Parties.

#### ARTICLE 10.38: IMPLEMENTATION

The Parties shall take the necessary measures to ensure full effectiveness of the protection foreseen in this Sub-section and actively cooperate and engage in a constructive dialogue in that regard.

### **SUB-SECTION F OTHER PROVISIONS**

#### ARTICLE 10.39: 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 10.40: GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

1. Subject to their legislation, the Parties shall respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for 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 and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations and practices.
2. The Parties agree to regularly exchange views and information on relevant multilateral discussions:
  - (a) in WIPO, on the issues dealt with in the framework of the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore;

- (b) in the WTO, on the issues related to the relationship between the TRIPS Agreement and the *Convention on Biological Diversity* (hereinafter referred to as the “CBD”), and the protection of traditional knowledge and folklore; and
- (c) in the CBD, on the issues related to an international regime on access to genetic resources and benefit sharing.

3. Following the conclusion of the relevant multilateral discussions referred to in paragraph 2, the Parties agree, at the request of either Party, to review this Article in the Trade Committee in the light of the results and conclusion of such multilateral discussions. The Trade Committee may adopt any decision necessary to give effect to the results of the review.

## SECTION C

### ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

#### ARTICLE 10.41: 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<sup>19</sup> covered by this Agreement.

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 10.42: ENTITLED APPLICANTS

Each Party shall recognise 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;

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<sup>19</sup> As defined in Article 10.2.2(a) through (h).



- (b) all other persons authorised 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 recognised 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 MEASURES, PROCEDURES AND REMEDIES**

#### **ARTICLE 10.43: 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 banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

#### **ARTICLE 10.44: 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 10.45: 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:

- (a) grant the right holder rights to receive fuller information;
- (b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
- (c) govern responsibility for misuse of the right of information;
- (d) 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
- (e) govern the protection of confidentiality of information sources or the processing of personal data.

#### ARTICLE 10.46: 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 intermediary<sup>20</sup> 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 10.47: CORRECTIVE MEASURES

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 10.48: 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 intermediaries<sup>21</sup> whose services are being used by a third party to infringe copyright, related rights, trademarks or geographical indications.

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<sup>20</sup> For the 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.

<sup>21</sup> For the 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.

#### ARTICLE 10.49: 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 10.47 or 10.48, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in Article 10.47 or 10.48 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 10.50: DAMAGES

1. Each Party shall ensure that when the judicial authorities set damages:
  - (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 authorisation 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 10.51: 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 10.52: 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 10.53: 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 10.54: 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 rights<sup>22</sup> piracy on a commercial scale.

#### ARTICLE 10.55: GEOGRAPHICAL INDICATIONS AND DESIGNS COUNTERFEITING

Subject to its national or constitutional law and regulations, each Party shall consider adopting measures to establish the criminal liability for counterfeiting geographical indications and designs.

#### ARTICLE 10.56: 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 10.54.
2. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

#### ARTICLE 10.57: AIDING AND ABETTING

The provisions of this Sub-section shall apply to aiding and abetting of the offences referred to in Article 10.54.

#### ARTICLE 10.58: SEIZURE

In case of an offence referred to in Article 10.54, each Party shall provide that its competent authorities shall have the authority to order the seizure of suspected counterfeit trademark

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<sup>22</sup> The term “related rights” is defined by each Party in accordance with its international obligations.

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 10.59: PENALTIES

For the offences referred to in Article 10.54, each Party shall provide for penalties that include sentences of imprisonment and/or monetary fines that are effective, proportionate and dissuasive.

#### ARTICLE 10.60: CONFISCATION

1. For the offences referred to in Article 10.54, 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.
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.

#### ARTICLE 10.61: RIGHTS OF THIRD PARTIES

Each Party shall ensure that the rights of third parties shall be duly protected and guaranteed.

### **SUB-SECTION C** **LIABILITY OF ONLINE SERVICE PROVIDERS**

#### ARTICLE 10.62: LIABILITY OF ONLINE SERVICE PROVIDERS<sup>23</sup>

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<sup>23</sup> For the purposes of the function referred to in Article 10.63, 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 10.64 and 10.65 service provider means a provider or operator of facilities for online services or network access.

The Parties recognise 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 10.63 through 10.66 for intermediary service providers where they are in no way involved with the information transmitted.

#### ARTICLE 10.63: LIABILITY OF ONLINE 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 10.64: LIABILITY OF ONLINE SERVICE PROVIDERS: “CACHING”

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, 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 recognised and used by industry;
- (d) does not interfere with the lawful use of technology, widely recognised 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 knowledge 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 10.65: LIABILITY OF ONLINE 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 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 10.66: NO GENERAL OBLIGATION TO MONITOR

1. The Parties shall not impose a general obligation on providers, when providing the services covered by Articles 10.63 through 10.65, 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 10.67: BORDER MEASURES

1. Each Party shall, unless otherwise provided for in this Section, adopt procedures<sup>24</sup> to enable a right holder, who has valid grounds for suspecting that the importation, exportation, re-exportation, customs transit, transshipment, placement under a free zone,<sup>25</sup> placement under a suspensive procedure<sup>26</sup> or a bonded warehouse of goods infringing an intellectual property right<sup>27</sup> 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.

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 holder<sup>28</sup> of the goods.

4. Korea shall fully implement the obligation under paragraphs 1 and 2 with respect to subparagraph (c)(i) and (c)(iii) of footnote 27 within two years of the entry into force of this Agreement.

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<sup>24</sup> 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.

<sup>25</sup> “customs transit, transshipment and placement under a free zone” as defined in the Kyoto Convention.

<sup>26</sup> For Korea, “placement under a suspensive procedure” includes temporary importation and bonded factory. For the European Union, “placement under a suspensive procedure” includes temporary importation, inward processing and processing under customs control.

<sup>27</sup> For the purposes of this Article, **goods infringing an intellectual property right** means:

- (a) counterfeit goods, which are:
  - (i) goods, including packaging, bearing without authorisation 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 authorised 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.

<sup>28</sup> Including at least the person who is the owner of the goods or the person who has a similar right of disposal over them.

#### ARTICLE 10.68: CODES OF CONDUCT

The Parties shall encourage:

- (a) the development by trade or professional associations or organisations of codes of conduct aimed at contributing towards the enforcement of intellectual property rights, particularly by recommending the use on optical discs of a code enabling the identification of the origin of their manufacture; and
- (b) the submission to the competent authorities of the Parties of draft codes of conduct and of any evaluations of the application of these codes of conduct.

#### ARTICLE 10.69: COOPERATION

1. 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.

2. Without prejudice and as a complement to paragraph 1, the European Union and Korea agree to establish and maintain an effective dialogue on intellectual property issues (IP Dialogue) to address topics relevant to the protection and enforcement of intellectual property rights covered by this Chapter, and any other relevant issue.