

## **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.

## ANNEX 17A GEOGRAPHICAL INDICATIONS

### SECTION A: GEOGRAPHICAL INDICATIONS OF PERU

<b>No.</b>	<b>Name to be protected</b>	<b>Product</b>
1	Pisco Per? (Pisco Peru)	Spirit
2	Cer? ica de Chulucanas (Chulucanas Pottery)	Pottery
3	Ma? Blanco Gigante Cusco (Cusco Giant White Corn)	Corn
4	Pallar de Ica (Pallar Bean from Ica)	Kind of bean



**SECTION B: GEOGRAPHICAL INDICATIONS OF KOREA**

<b>No.</b>	<b>Name to be protected</b>	<b>Product</b>	<b>Transcription into Latin alphabet</b>
1	보성녹차 (Boseong Green Tea)	Green Tea	Boseong Nokcha
2	하동녹차 (Hadong Green Tea)	Green Tea	Hadong Nokcha
3	고창복분자주 (Gochang Black Raspberry Wine)	Black Raspberry Wine	Gochang Bokbunjaju
4	서산마늘 (Seosan Garlic)	Garlic	Seosan Maneul
5	영양고춧가루 (Yeongyang Red Pepper Powder)	Red Pepper Powder	Yeongyang Gochutgaru
6	의성마늘 (Uiseong Garlic)	Garlic	Uiseong Maneul
7	괴산고추 (Goesan Red Pepper Dried)	Red Pepper	Goesan Gochu
8	순창전통고추장 (Sunchang Traditional Gochujang )	Red Pepper Paste	Sunchang Jeontong Gochujang
9	괴산고춧가루 (Goesan Red Pepper Powder)	Red Pepper Powder	Goesan Gochutgaru
10	성주참외 (Seongju Chamoe)	Oriental Melon	Seongju Chamoe
11	해남겨울배추 (Haenam Winter Baechu)	Chinese Cabbage	Haenam Gyeoul Baechu
12	이천쌀 (Icheon Rice)	Rice	Icheon Ssal
13	철원쌀 (Cheorwon Rice)	Rice	Cheorwon Ssal
14	고흥유자 (Goheung Yuja)	Citron	Goheung Yuja
15	홍천찰옥수수 (Hongcheon Waxy Corn)	Waxy Corn	Hongcheon Chaloksusu

16	강화약쑥 (Ganghwa Mugwort)	Mugwort	Ganghwa Yakssuk
17	횡성한우고기 (Hoengseong Hanwoo Beef)	Beef	Hoengseong Hanwoogogi
18	제주돼지고기 (Jeju Pork)	Pork	Jeju Dwaejigogi
19	고려홍삼 (Korean Red Ginseng)	Red Ginseng	Goryeo Hongsam
20	고려백삼 (Korean White Ginseng)	White Ginseng	Goryeo Baeksam
21	고려태극삼 (Korean Taekuk Ginseng)	Taekuk Ginseng	Goryeo Taekuksam
22	안동포 (Andong Hemp Cloth)	Hemp Cloth	Andong Po
23	충주사과 (Chungju Apple)	Apple	Chungju Sagwa
24	밀양얼음골사과 (Miryang Eoreumgol Apple)	Apple	Miryang Eoreumgol Sagwa
25	한산모시 (Hansan Mosi)	Ramie Cloth	Hansan Mosi
26	진도홍주 (Jindo Hongju)	Spirits	Jindo Hongju
27	정선황기 (Jeongseon Hwanggi)	Milk Vetch Root	Jeongseon Hwanggi
28	남해마늘 (Namhae Garlic)	Garlic	Namhae Maneul
29	단양마늘 (Danyang Garlic)	Garlic	Danyang Maneul
30	창녕양파 (Changnyeong Onion)	Onion	Changnyeong Yangpa
31	무안양파 (Muan Onion)	Onion	Muan Yangpa
32	여주쌀 (Yeoju Rice)	Rice	Yeoju Ssal
33	무안백련차 (Muan White Lotus Tea)	White Lotus Tea	Muan Baengnyeoncha
34	청송사과 (Cheongsong Apple)	Apple	Cheongsong Sagwa
35	고창복분자 (Gochang Black Raspberry)	Black Raspberry	Gochang Bokbunja

36	광양매실 (Gwangyang Maesil)	Apricot	Gwangyang Maesil
37	정선찰옥수수 (Jeongseon Waxy Corn)	Waxy Corn	Jeongseon Chaloksusu
38	진부당귀 (Chinbu Dangui)	Angelica Nakai Root	Chinbu Dangui
39	고려수삼 (Korean Fresh Ginseng)	Fresh Ginseng	Goryeo Susam
40	청양고추 (Cheongyang Hot Pepper)	Red Pepper	Cheongyang Gochu
41	청양고춧가루 (Cheongyang Powdered Hot Pepper )	Red Pepper Powder	Cheongyang Gochutgaru
42	해남고구마 (Haenam Sweet Potato)	Sweet Potato	Haenam Goguma
43	영암무화과 (Yeongam Fig)	Fig	Yeongam Muhwagwa
44	여주고구마 (Yeoju Sweet Potato)	Sweet Potato	Yeoju Goguma
45	보성삼베 (Boseong Hemp Cloth)	Hemp Cloth	Boseong Sambe
46	함안수박 (Haman Watermelon)	Watermelon	Haman Subak
47	고려인삼제품 (Korean Ginseng Products)	White or Taekuk Ginseng Products	Goryeo Insamjepum
48	고려홍삼제품 (Korean Red Ginseng Products)	Red Ginseng Products	Goryeo Hongsamjepum
49	군산찰쌀보리쌀 (Gunsan Glutinous Barley)	Glutinous Barley	Gunsan Chalssalborissal
50	제주녹차 (Jeju Green Tea)	Green Tea	Jeju Nokcha
51	홍천한우 (Hongcheon Hanwoo)	Beef	Hongcheon Hanwoo
52	영월고추 (Yeongwol Red Pepper)	Red Pepper	Yeongwol Gochu
53	영천포도 (Yeongcheon Grape)	Grape	Yeongcheon Podo
54	영주사과 (Yeongju Apple)	Apple	Yeongju Sagwa

55	서생간절곶배 (Seosaengganjeolgot Pear)	Pear	Seosaengganjeolgot Bae
56	무주사과 (Muju Apple)	Apple	Muju Sagwa
57	양양송이 (Yangyang Pine-mushroom)	Pine-mushroom	Yangyang Songi
58	장흥표고버섯 (Jangheung Oak-mushroom)	Oak-mushroom	Jangheung Pyogobeoseot
59	산청곶감 (Sancheong Persimmon Dried)	Persimmon Dried	Sancheong Gotgam
60	정안밤 (Jeongan Chestnut)	Chestnut	Jeongan Bam
61	울릉도삼나물 (Ulleungdo Samnamul)	Aruncus dioicus	Ulleungdo Samnamul
62	울릉도미역취 (Ulleungdo Miyeokchwi)	Golden rod	Ulleungdo Miyeokchwi
63	울릉도참고비 (Ulleungdo Chamgobi)	Fern	Ulleungdo Chamgobi
64	울릉도부지갱이 (Ulleungdo Bujigaengi)	Aster	Ulleungdo Bujigaengi
65	경산대추 (Gyeongsan Jujube)	Jujube(date)	Gyeongsan Daechu
66	봉화송이 (Bonghwa Pine-mushroom)	Pine-mushroom	Bonghwa Songi
67	청양구기자 (Cheongyang Gugija)	Boxthorn	Cheongyang Gugija
68	상주곶감 (Sangju Persimmon Dried)	Persimmon Dried	Sangju Gotgam
69	남해창선고사리 (Namhae Changsun Fern)	Fern	Namhae Changsun Gosari
70	영덕송이 (Yeongdeok Pine-mushroom)	Pine-mushroom	Yeongdeok Songi
71	구례산수유 (Gurye Corni Fructus)	Corni Fructus	Gurye Sansuyu
72	광양백운산고로쇠수액 (Gwangyang baekunsan Acer mono sap)	Acer mono sap	Gwangyang Baekunsan Gorosoe Suaek
73	영암대봉감 (Yeongam Daebong Persimmon)	Persimmon	Yeongam Daebonggam
74	천안호두 (Cheonan Walnut)	Walnut	Cheonan Hodu
75	문경오미자 (Mungyeong Omija)	Schizandra berry	Mungyeong Omija

76	무주머루 (Muju Wild Grape)	Wild Grape	Muju Meoru
77	울진송이 (Uljin Pine-mushroom)	Pine-mushroom	Uljin Songi
78	이천한우 (Icheon Hanwoo)	Beef	Icheon Hanwoo
79	순창고추장 (Sunchang Kochujang)	Red Pepper Paste	Sunchang Kochujang
80	이천도자기 (Icheon Ceramic)	Ceramic	Icheon Dojagi
81	강진청자 (Gangjin Celadon)	Celadon	Gangjin Cheongja
82	남원목기 (Namwon Wooden Vessel)	Wooden Vessel	Namwon Mokgi