INTELLECTUAL PROPERTY

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United States – Korea Free Trade Agreement, signed 30 June 2007, entered into force, http://www.ustr.gov/trade-agreements/free-trade-agreements/korus-fta/final-text Korea – EU Free Trade Agreement, signed 14 May 2011, entered into force 1 July 2011, http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2011:127:SOM:EN:HTML	
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Articles 10.1-10.69 **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.	**Articles 18.1-18.12** **Article 18.1 General Provisions** ***More Extensive Protection and Enforcement*** 5. A Party may provide more extensive protection for, and enforcement of, intellectual property rights under its law than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.
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	**Article 18.1 General Provisions *International Agreements*** 1. Each party shall, at a minimum, give effect to this Chapter. 2. Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement. 3. Each Party shall ratify or accede to the following agreements by the date this Agreement enters into force:

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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').	(a) the *Patent Cooperation Treaty* (1970), as amended in 1979; (b) the *Paris Convention for the Protection of Industrial Property* (1967) (the Paris Convention); (c) the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (the Berne Convention); (d) the *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (1974); (e) the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks* (1989); (f) the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977), as amended in 1980; (g) the *International Convention for the Protection of New Varieties of Plants* (1991); (h) the *Trademark Law Treaty* (1994); [1] A Party may satisfy the obligation in Article 18.1.3(h) by ratifying or acceding to the *Singapore Treaty on the Law of Trademarks* (2006), provided that treaty has entered into force. (i) the *World Intellectual Property Organization (WIPO) Copyright Treaty* (1996); and (j) the *WIPO Performances and Phonograms Treaty* (1996). 4. Each Party shall make all reasonable efforts to ratify or accede to the following agreements: (a) the *Patent Law Treaty* (2000); (b) the *Hague Agreement Concerning the International*

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	Registration of Industrial Designs (1999); and (c) the *Singapore Treaty on the Law of Trademarks* (2006).
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:	**Article 18.1 General Provisions *International Agreements*** 3. Each Party shall ratify or accede to the following agreements by the date this Agreement enters into force: (c) the *Berne Convention for the Protection of Literary and Artistic Works* (1971) (the Berne Convention);

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(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').	(i) the *World Intellectual Property Organization (WIPO) Copyright Treaty* (1996); and (j) the *WIPO Performances and Phonograms Treaty* (1996). **Article 18.4 Copyright and related rights** 1. Each Party shall provide that authors, performers, and producers of phonograms have the right to authorize or prohibit all reproductions of their works, performances, and phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form). [7] The Parties reaffirm that it is a matter for each Party's law to prescribe that works and phonograms shall not be protected by copyright unless they have been fixed in some material form. [8] "Authors," "performers," and "producers of phonograms" in this Chapter refer also to any successors in title. [9] With respect to copyrights and related rights, the "right to authorize or prohibit" for purposes of this Chapter refers to exclusive rights. [10] With respect to copyright and related rights, a **performance** for purposes of this Chapter means a performance fixed in a phonogram unless otherwise specified. [11] Each Party shall confine limitations or exceptions to the rights described in paragraph 1 to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder. For greater certainty, each Party may adopt or maintain limitations or exceptions to the rights described in paragraph 1 for fair use, as long as any such limitation or exception is confined as stated in the previous sentence. 2. Each Party shall provide to authors, performers, and

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	producers of phonograms the right to authorize or prohibit the making available to the public of the original and copies of their works, performances, and phonograms through sale or other transfer of ownership. [12] As used in paragraph 2, "copies" and "original and copies", being subject to the right of distribution in this paragraph, refer exclusively to fixed copies that can be put into circulation as tangible objects. 3. In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of performers and producers of phonograms, on the other hand, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required. 5. Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to the subject matter, rights, and obligations in this Article and Articles 18.5 and 18.6. 6. Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right in a work, performance, or phonogram:

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	(a) may freely and separately transfer that right by contract; and (b) by virtue of a contract, including contracts of employment underlying the creation of works, performances, and phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right.
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 18.4 Copyright and related rights** 4. 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 25 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.
Article 10.7 Broadcasting organizations 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	**[…]**

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cable or satellite.	
Article 10.7 Broadcasting organizations 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. For the purposes of this paragraph, retransmission with 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.	**Article 18.4 Copyright and related rights** 10.(b) Notwithstanding subparagraph (a) and Article 18.6.3(b), neither Party may permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders of the content of the signal and, if any, of the signal. [15] For purposes of subparagraph (b) and for greater certainty, retransmission within a Party's territory over a closed, defined, subscriber network that is not accessible from outside the Party's territory does not constitute retransmission on the Internet.
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	**Article 18.6 Related rights** 5. For purposes of this Article and Article 18.4, the following definitions apply with respect to performers and producers of phonograms: (a) **broadcasting** means the transmission to the public by wireless means or satellite of sounds or sounds and images, or

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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 of paragraph 5, 'communication to the public' includes making the sounds or representations of sounds fixed in a phonogram audible to the public.	representations thereof, including wireless transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organization or with its consent; "broadcasting" does not include transmissions over computer networks or any transmissions where the time and place of reception may be individually chosen by members of the public; (b) **communication to the public** of a performance or a phonogram means the transmission to the public by any medium, other than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram;
Article 10.9 Broadcasting and communication 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.	**Article 18.6 Related rights** 1. With respect to the rights accorded under this Chapter to performers and producers of phonograms, each Party shall: (a) accord those rights to the performers and producers of phonograms who are nationals of the other Party; and (b) accord those rights with respect to performances and phonograms that are first published or first fixed in the territory of the other Party. [16] For purposes of Article 18.6, "fixation" includes the finalization of the master tape or its equivalent. [17] With respect to the protection of phonograms, a Party may apply the criterion of fixation instead of the criterion of publication. 2. Each Party shall provide to performers the right to authorize or prohibit: (a) the broadcasting and communication to the public of their

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	unfixed performances, except where the performance is already a broadcast performance; and (b) the fixation of their unfixed performances.
Article 10.9 Broadcasting and communication to the public 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.	**Article 18.6 Related rights** 3. (a) Each Party shall provide to performers and producers of phonograms the right to authorize or prohibit the broadcasting and any communication to the public of their performances or phonograms, by wire or wireless means, including the making available to the public of those performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them. (b) Notwithstanding subparagraph (a) and Article 18.4.10, the application of this right to analog transmissions and free over-the-air broadcasts, and exceptions or limitations to this right for such activity, shall be a matter of each Party's law. (c) Each Party may adopt limitations to this right in respect of other noninteractive transmissions in accordance with Article 18.4.10, provided that the limitations do not prejudice the right of the performer or producer of phonograms to obtain equitable remuneration.
Article 10.9 Broadcasting and 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	**[…]**

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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.	**[…]** *Note that the resale right is arguably included in Article 14 of the Berne Convention, referred to in Article 18.1.3 (c)*
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 18.4 Copyright and related rights** [11] Each Party shall confine limitations or exceptions to the rights described in paragraph 1 to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder. For greater certainty, each Party may adopt or maintain limitations or exceptions to the rights described in paragraph 1 for fair use, as long as any such limitation or exception is confined as stated in the previous sentence.
Article 10.12 Protection of technological measures	**Article 18.4 Copyright and related rights**

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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.	7. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms, each Party shall provide that any person who: (i) knowingly, or having reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter; or (ii) manufactures, imports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components, or offers to the public or provides services, that: (A) are promoted, advertised, or marketed by that person, or by another person acting in concert with, and with the knowledge of, that person, for the purpose of circumvention of any effective technological measure; (B) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure; or (C) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure, shall be liable and subject to the remedies set out in Article 18.10.13. [13] In addition, each Party shall provide that any person who, unknowingly

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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.	and without reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter shall be liable and subject at least to the remedies set out in subparagraphs (a), (c), and (d) of Article 18.10.13. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities. Such criminal procedures and penalties shall include the application to such activities of the remedies and authorities listed in subparagraphs (a), (b), and (e) of Article 18.10.27 as applicable to infringements, *mutatis mutandis*. (b) In implementing subparagraph (a), neither Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise violate any measures implementing subparagraph (a). (c) Each Party shall provide that a violation of a measure implementing this paragraph is a separate cause of action, independent of any infringement that might occur under the Party's law on copyright and related rights. (d) Each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to the following activities, which shall be applied to relevant measures in

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	accordance with subparagraph (e): [14] Either Party may request consultations with the other Party to consider how to address, under subparagraph (d), activities of a similar nature that a Party identifies after the date this Agreement enters into force. (i) non-infringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements of that computer program that have not been readily available to the person engaged in those activities, for the sole purpose of achieving interoperability of an independently created computer program with other programs; (ii) non-infringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, unfixed performance, or display of a work, performance, or phonogram and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of research consisting of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information; (iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device that itself is not prohibited under the measures implementing subparagraph (a)(ii); (iv) non-infringing good faith activities that are authorized by the owner of a computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or

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	computer network; (v) non-infringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work; (vi) lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes; (vii) access by a nonprofit library, archive, or educational institution to a work, performance, or phonogram not otherwise available to it, for the sole purpose of making acquisition decisions; and (viii) non-infringing uses of a work, performance, or phonogram in a particular class of works, performances, or phonograms when an actual or likely adverse impact on those noninfringing uses is demonstrated in a legislative or administrative proceeding by substantial evidence, provided that any limitation or exception adopted in reliance on this clause shall have effect for a renewable period of not more than three years from the date the proceeding concludes. (e) The exceptions and limitations to measures implementing subparagraph (a) for the activities set forth in subparagraph (d) may only be applied as follows, and only to the extent that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of

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	effective technological measures: (i) Measures implementing subparagraph (a)(i) may be subject to exceptions and limitations with respect to each activity set forth in subparagraph (d). (ii) Measures implementing subparagraph (a)(ii), as they apply to effective technological measures that control access to a work, performance, or phonogram, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (d)(i), (iii), (iv), and (vi). (iii) Measures implementing subparagraph (a)(ii), as they apply to effective technological measures that protect any copyright or any rights related to copyright, may be subject to exceptions and limitations with respect to activities set forth in subparagraph (d)(i) and (vi). (f) **Effective technological measure** means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any rights related to copyright.
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	**Article 18.4 Copyright and related rights** 8. In order to provide adequate and effective legal remedies to protect rights management information: (a) Each Party shall provide that any person who without authority, and knowing, or, with respect to civil remedies, having reasonable grounds to know, that it would induce, enable, facilitate, or conceal an infringement of any copyright or related right,

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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.	(i) knowingly removes or alters any rights management information; (ii) distributes or imports for distribution rights management information knowing that the rights management information has been removed or altered without authority; or (iii) distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works, performances, or phonograms, knowing that rights management information has been removed or altered without authority, shall be liable and subject to the remedies set out in Article 18.10.13. Each Party shall provide for criminal procedures and penalties to be applied when any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, is found to have engaged willfully and for purposes of commercial advantage or private financial gain in any of the foregoing activities. These criminal procedures and penalties shall include the application to such activities of the remedies and authorities listed in subparagraphs (a), (b), and (e) of Article 18.10.27 as applicable to infringements, *mutatis mutandis*. (b) Each Party shall confine exceptions and limitations to measures implementing subparagraph (a) to lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, essential security, or similar governmental purposes. (c) **Rights management information** means: (i) information that identifies a work, performance, or

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	phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram; (ii) information about the terms and conditions of the use of the work, performance, or phonogram; or (iii) any numbers or codes that represent such information, when any of these items is attached to a copy of the work, performance, or phonogram or appears in connection with the communication or making available of a work, performance, or phonogram to the public. (d) For greater certainty, nothing in this paragraph shall be construed to obligate a Party to require the owner of any right in the work, performance, or phonogram to attach rights management information to copies of the work, performance, or phonogram, or to cause rights management information to appear in connection with a communication of the work, performance, or phonogram to the public.
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.	**Article 18.12 Transitional provisions** 1. Each Party shall give effect to this Chapter on the date this Agreement enters into force. 2. Notwithstanding paragraph 1, Korea shall fully implement the obligations of Article 18.4.4 within two years after the date this Agreement enters into force.
Sub-section B Trademarks **Article 10.15 Registration procedure** The European Union and Korea shall provide for a system for the	**Article 18.2 Trademarks including geographical indications** 9. Each Party shall provide a system for the registration of

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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.	trademarks, which shall include: (a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a refusal to register a trademark; (b) an opportunity for the applicant to respond to communications from the trademark authorities, to contest an initial refusal, and to appeal judicially a final refusal to register; (c) an opportunity for interested parties to oppose a trademark application and to seek cancellation of a trademark after it has been registered; and (d) a requirement that decisions in opposition and cancellation proceedings be reasoned and in writing. Written decisions may be provided electronically. 10. Each Party shall provide a: (a) system for the electronic application for, and electronic processing, registering, and maintenance of, trademarks; and (b) publicly available electronic database, including an online database, of trademark applications and registrations.
Article 10.16 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 18.1 General Provisions *International Agreements*** 3. Each Party shall ratify or accede to the following agreements by the date this Agreement enters into force: (h) the *Trademark Law Treaty* (1994); 4. Each Party shall make all reasonable efforts to ratify or accede to the following agreements: (c) the *Singapore Treaty on the Law of Trademarks* (2006).

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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.	**Article 18.2 Trademarks including geographical indications** 5. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.
Sub-section C Geographical indications (51) '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. (52) The protection of a geographical indication under this Sub-section is without prejudice to other provisions in this Agreement. **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	[5] For purposes of this Chapter, **geographical indications** means indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign (such as words, including geographical and personal names, as well as letters, numerals, figurative elements, and colors, including single colors) or combination of signs, in any form whatsoever, shall be eligible to be a geographical indication. "Originating" in this Chapter does not have the meaning ascribed to that term in Article 1.4 (Definitions). **[…]**

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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	

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Article 10.18 Recognition of geographical indications for agricultural products and foodstuffs and wines 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; (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 18.2 Trademarks including geographical indications** [5] For purposes of this Chapter, **geographical indications** means indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign (such as words, including geographical and personal names, as well as letters, numerals, figurative elements, and colors, including single colors) or combination of signs, in any form whatsoever, shall be eligible to be a geographical indication. "Originating" in this Chapter does not have the meaning ascribed to that term in Article 1.4 (Definitions). 15. (a) Each Party shall provide that each of the following shall be grounds for refusing protection or recognition of, and for opposition and cancellation of, a geographical indication: (i) the geographical indication is likely to cause confusion with a trademark that is the subject of a good faith pending application or registration in the Party's territory and that has a priority date that predates the protection or recognition of the geographical indication in that territory; (ii) the geographical indication is likely to cause confusion with a trademark, the rights to which have been acquired in the Party's territory through use in good faith, that has a priority date that predates the protection or recognition of the geographical indication in that territory; and (iii) the geographical indication is likely to cause confusion with a trademark that has become well known in the Party's territory and that has a priority date that predates the

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	protection or recognition of the geographical indication in that territory. (b) For purposes of subparagraph (a), the date of protection of the geographical indication in a Party's territory shall be: (i) in the case of protection or recognition provided as a result of an application or petition, the date of the application or petition; and (ii) in the case of protection or recognition provided through other means, the date of protection or recognition under the Party's laws.
Article 10.19 Recognition of specific geographical indications for wines, aromatized wines and spirits 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.	**[…]**
Article 10.21 Scope of protection	**Article 18.2 Trademarks including geographical**

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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 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.	**indications** 8. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark or geographical indication that is identical or similar to a well-known trademark, for related goods or services, if the use of that trademark or geographical indication is likely to cause confusion, or to cause mistake, or to deceive or risk associating the trademark or geographical indication with the owner of the well-known trademark, or constitutes unfair exploitation of the reputation of the well-known trademark.
Article 10.21 Scope of protection 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	**[…]**

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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.	
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 18.1 General Provisions** *More Extensive Protection and Enforcement* 5. A Party may provide more extensive protection for, and enforcement of, intellectual property rights under its law than this Chapter requires, provided that the more extensive protection does not contravene this Chapter.

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	Article 18.10 Enforcement of intellectual property rights 4. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right. [27] For purposes of Article 18.10, "right holder" includes a federation or an association having the legal standing and authority to assert such rights, and also includes a person that exclusively has any one or more of the intellectual property rights encompassed in a given intellectual property.
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 18.2 Trademarks including geographical indications** 15.(a) Each Party shall provide that each of the following shall be grounds for refusing protection or recognition of, and for opposition and cancellation of, a geographical indication: (i) the geographical indication is likely to cause confusion with a trademark that is the subject of a good faith pending application or registration in the Party's territory and that has a priority date that predates the protection or recognition of the geographical indication in that territory; (ii) the geographical indication is likely to cause confusion with a trademark, the rights to which have been acquired in the Party's territory through use in good faith, that has a priority date that predates the protection or recognition of the geographical indication in that territory; and (iii) the geographical indication is likely to cause confusion with a trademark that has become well known in the Party's territory and that has a priority date that predates the protection or recognition of the geographical indication in that

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	territory. (b) For purposes of subparagraph (a), the date of protection of the geographical indication in a Party's territory shall be: (i) in the case of protection or recognition provided as a result of an application or petition, the date of the application or petition; and (ii) in the case of protection or recognition provided through other means, the date of protection or recognition under the Party's laws.
Article 10.24 Addition of geographical indications for protection (57) 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. 1. The European Union and Korea agree to add geographical indications to be protected to the Annexes 10-A and 10-B in	**[…]**

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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 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	**[…]**

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Party; (b) to modify the Annexes referred to in subparagraph (a) to remove individual geographical indications that cease to be protected in the Party of origin or that, in accordance with the applicable legislation, no longer meet the conditions to be considered a geographical indication in the other Party; and (58) 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. (59) A decision to cease protection of a geographical indication remains the sole responsibility of the Party where the geographical indication originates. (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	

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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.	
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. (60) 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	**Article 18.1 General provisions** 4. Each Party shall make all reasonable efforts to ratify or accede to the following agreements: (b) the *Hague Agreement Concerning the International Registration of Industrial Designs* (1999)

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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. 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 orusing 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. Such use shall at least cover presenting, importing or exporting goods. (61) 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	**[…]**

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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. (62) 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	**[…]**

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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. (63) 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.	**[…]**
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 18.1 General Provisions *International Agreements*** 4. Each Party shall make all reasonable efforts to ratify or accede to the following agreements: (a) 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. 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 18.9 Measures related to certain regulated products** With respect to pharmaceutical products, notwithstanding paragraphs 1 and 2, a Party may take measures to protect public health in accordance with: (a) the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2) (the Declaration); (b) any waiver of any provision of the TRIPS Agreement granted by WTO Members in accordance with the WTO Agreement to implement the Declaration and in force between the Parties; and (c) any amendment of the TRIPS Agreement to implement the

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	Declaration that enters into force with respect to the Parties. **Article 18.11 Understandings regarding certain public health measures** 1. The Parties affirm their commitment to the *Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2). 2. The Parties have reached the following understandings regarding this Chapter: (b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council Chairman's statement accompanying the Decision (JOB(03)/177, WT/GC/M/82) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilization of the TRIPS/health solution.
Article 10.35 Extension of the duration of the rights conferred by patent protection 1. The Parties recognise that pharmaceutical products and plant protection products protected by a patent in their respective territories are subject to an administrative authorisation or registration procedure before being put on their markets. (64) As defined in Annex 2-D (Pharmaceutical Products and Medical Devices). (65) Plant protection products, in the form in which they are	**Article 18.8 Patents** 6. (b) With respect to patents covering a new pharmaceutical product21 that is approved for marketing in the territory of the Party and methods of making or using a new pharmaceutical product that is approved for marketing in the territory of the Party, each Party, at the request of the patent owner, shall make available an adjustment of the patent term or the term of the patent rights of a patent covering a new pharmaceutical product, its approved method of use, or a method of making the product to compensate the patent owner for unreasonable

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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. 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. (66) This is without prejudice to a possible extension for paediatric use, if provided for by the Parties.	curtailment of the effective patent term as a result of the marketing approval process related to the first commercial use of that pharmaceutical product in the territory of that Party. Any adjustment under this subparagraph shall confer all of the exclusive rights, subject to the same limitations and exceptions, of the patent claims of the product, its method of use, or its method of manufacture in the originally issued patent as applicable to the product and the approved method of use of the product. 21 For greater certainty, **new pharmaceutical product** in subparagraph (b) means a product that at least contains a new chemical entity that has not been previously approved as a pharmaceutical product in the territory of the Party. 22 For purposes of subparagraph (b), **effective patent term** means the period from the date of approval of the product until the original expiration date of the patent.

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Article 10.36 Protection of data submitted to obtain a marketing authorisation for pharmaceutical products (67) As defined in Annex 2-D (Pharmaceutical Products and Medical Devices). 1. The Parties shall guarantee the confidentiality, nondisclosure 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.	[21] For greater certainty, **new pharmaceutical product** in subparagraph (b) means a product that at least contains a new chemical entity that has not been previously approved as a pharmaceutical product in the territory of the Party. **Article 18.9 Measures related to certain regulated products** 1. (a) If a Party requires or permits, as a condition of granting marketing approval for a new pharmaceutical or new agricultural chemical product, the submission of information concerning safety or efficacy of the product, the origination of which involves a considerable effort, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the territory of the Party, authorize another to market a same or a similar product based on: (i) the safety or efficacy information submitted in support of the marketing approval; or (ii) evidence of the marketing approval, for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval in the territory of the Party. (b) If a Party requires or permits, in connection with granting marketing approval for a new pharmaceutical or new agricultural chemical product, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval in the other territory, the Party shall not, without the consent of a person that previously submitted

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	the safety or efficacy information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on: (i) the safety or efficacy information submitted in support of the prior marketing approval in the other territory; or (ii) evidence of prior marketing approval in the other territory, for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval of the new product in the territory of the Party. [24] The Parties acknowledge that, as of the date of signature of this Agreement, neither Party permits a person, not having the consent of the person that previously submitted safety or efficacy information to obtain marketing approval in another territory, to market a same or similar product in the territory of the Party on the basis of such information or evidence of prior marketing approval in such other territory.
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	**Article 18.9 Measures related to certain regulated products** 1. (a) If a Party requires or permits, as a condition of granting marketing approval for a new pharmaceutical or new agricultural chemical product, the submission of information concerning safety or efficacy of the product, the origination of which involves a considerable effort, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the territory of the Party, authorize another to market a same or a similar product based on:

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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.	(i) the safety or efficacy information submitted in support of the marketing approval; or (ii) evidence of the marketing approval, for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval in the territory of the Party. (b) If a Party requires or permits, in connection with granting marketing approval for a new pharmaceutical or new agricultural chemical product, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval in the other territory, the Party shall not, without the consent of a person that previously submitted the safety or efficacy information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on: (i) the safety or efficacy information submitted in support of the prior marketing approval in the other territory; or (ii) evidence of prior marketing approval in the other territory, for at least five years for pharmaceutical products and ten years for agricultural chemical products from the date of marketing approval of the new product in the territory of the Party.
Article 10.38 Implementation The Parties shall take the necessary measures to ensure full effectiveness of the protection foreseen in this Sub-section and	**Article 18.8 Patents** 11. The Parties shall endeavor to establish a framework for cooperation between their respective patent offices as a basis

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actively cooperate and engage in a constructive dialogue in that regard.	for progress towards the mutual exploitation of search and examination work.
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 18.1 General Provisions *International Agreements*** 3. Each Party shall ratify or accede to the following agreements by the date this Agreement enters into force: (g) 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	**[…]**

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(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 covered by this Agreement. (68) As defined in Article 10.2.2(a) through (h). 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 18.10 Enforcement of intellectual property rights** 5 Each Party shall provide that: (a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer to pay the right holder: (i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; or 28 In the case of patent infringement, damages adequate to compensate for the infringement shall not be less than a reasonable royalty. (ii) at least in the case of copyright or related rights infringement and trademark counterfeiting, the profits of the infringer that are attributable to the infringement, which may be presumed to be the amount of damages referred to in clause (i); and (b) in determining damages for infringement of intellectual property rights, its judicial authorities shall consider, *inter alia*, the value of the infringed good or service, measured by the market price, the suggested retail price, or other legitimate measure of value submitted by the right holder.

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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; (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.	**Article 18.10 Enforcement of intellectual property rights** 4. Each Party shall make available to right holders civil judicial procedures concerning the enforcement of any intellectual property right. [27] For purposes of Article 18.10, "right holder" includes a federation or an association having the legal standing and authority to assert such rights, and also includes a person that exclusively has any one or more of the intellectual property rights encompassed in a given intellectual property.

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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 18.10 Enforcement of intellectual property rights** 10. Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide, for the purpose of collecting evidence, any information that the infringer possesses or controls regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of such goods or services, including the identification of third persons involved in the production and distribution of the infringing goods or services or in their channels of distribution, and to provide this information to the right holder or the judicial authorities.
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	**Article 18.10 Enforcement of intellectual property rights** 13. In civil judicial proceedings concerning the acts described in paragraphs 7 and 8 of Article 18.4, each Party shall provide that its judicial authorities shall, at the least, have the authority to: (a) impose provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity; *Provisional Measures* 17. Each Party shall act on requests for provisional measures *inaudita altera parte* expeditiously. 18. Each Party shall provide that its judicial authorities have the authority to require the plaintiff, with respect to provisional measures, to provide any reasonably available

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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.	evidence in order to satisfy themselves with a sufficient degree of certainty that the plaintiff's right is being infringed or that such infringement is imminent, and to order the plaintiff to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.
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,	**Article 18.10 Enforcement of intellectual property rights** 10. Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide, for the purpose of collecting evidence, any information that the infringer possesses or controls regarding any person or persons involved in any aspect of the infringement and regarding the means of production or distribution channel of such goods or services, including the identification of third persons involved in the production and distribution of the infringing goods or services or in their channels of distribution, and to provide this information to the right holder or the judicial authorities.

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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	**Article 18.10 Enforcement of intellectual property rights** 8. In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of allegedly infringing goods, materials, and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement. 14. In civil judicial proceedings concerning the enforcement of intellectual property rights, each Party shall provide that its

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intermediary whose services are being used by a third party to infringe copyright, related rights, trademarks or geographical indications. (69) 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. 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.	judicial authorities shall have the authority to order a party to desist from an infringement, in order, *inter alia*, to prevent infringing imports from entering the channels of commerce and to prevent their exportation. 13. In civil judicial proceedings concerning the acts described in paragraphs 7 and 8 of Article 18.4, each Party shall provide that its judicial authorities shall, at the least, have the authority to: (a) impose provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity;
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.	**Article 18.10 Enforcement of intellectual property rights** 9. Each Party shall provide that: (a) in civil judicial proceedings, at the right holder's request, goods that have been found to be pirated or counterfeit shall be destroyed, except in exceptional circumstances; (b) its judicial authorities shall have the authority to order that materials and implements that have been used in the manufacture or creation of such pirated or counterfeit goods be, without compensation of any sort, promptly destroyed or, in exceptional circumstances, without compensation of any

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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.	sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements; and (c) in regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce. 13. In civil judicial proceedings concerning the acts described in paragraphs 7 and 8 of Article 18.4, each Party shall provide that its judicial authorities shall, at the least, have the authority to: (a) impose provisional measures, including seizure of devices and products suspected of being involved in the prohibited activity; (b) provide an opportunity for the right holder to elect award of either actual damages it suffered or pre-established damages; (c) order payment to the prevailing right holder at the conclusion of civil judicial proceedings of court costs and fees, and reasonable attorney's fees, by the party engaged in the prohibited conduct; and (d) order the destruction of devices and products found to be involved in the prohibited activity. Neither Party may make damages available under this paragraph against a nonprofit library, archives, educational institution, or public noncommercial broadcasting entity that sustains the burden of proving that it was not aware and had no reason to believe that its acts constituted a prohibited

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	activity.
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 whose services are being used by a third party to infringe copyright, related rights, trademarks or geographical indications. (70) 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 18.10 Enforcement of intellectual property rights** 11. Each Party shall provide that its judicial authorities have the authority to: (a) fine, detain, or imprison, in appropriate cases, a party to a civil judicial proceeding who fails to abide by valid orders issued by such authorities; and (b) impose sanctions on parties to a civil judicial proceeding, their counsel, experts, or other persons subject to the court's jurisdiction, for violation of judicial orders regarding the protection of confidential information produced or exchanged in a proceeding.
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.	**[…]**

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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 18.10 Enforcement of intellectual property rights** ***Civil and administrative procedures and remedies*** 6. In civil judicial proceedings, each Party shall, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in cases of trademark counterfeiting, establish or maintain pre-established damages, which shall be available on the election of the right holder. Pre-established damages shall be in an amount sufficient to constitute a deterrent to future infringements and to compensate fully the right holder for the harm caused by the infringement. [29] Neither Party is required to apply paragraph 6 to actions for infringement against a Party or a third party acting with the authorization or consent of a Party. 13. In civil judicial proceedings concerning the acts described in paragraphs 7 and 8 of Article 18.4, each Party shall provide that its judicial authorities shall, at the least, have the authority to: (b) provide an opportunity for the right holder to elect award of either actual damages it suffered or pre-established damages;
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	**Article 18.10 Enforcement of intellectual property rights** ***Civil and administrative procedures and remedies*** 7. Each Party shall provide that its judicial authorities, except

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a general rule be borne by the unsuccessful party, unless equity does not allow as such.	in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning copyright or related rights infringement, patent infringement, or trademark infringement, that the prevailing party shall be awarded payment by the losing party of court costs or fees and, at least in proceedings concerning copyright or related rights infringement or willful trademark counterfeiting, reasonable attorney's fees. Further, each Party shall provide that its judicial authorities, at least in exceptional circumstances, shall have the authority to order, at the conclusion of civil judicial proceedings concerning patent infringement, that the prevailing party shall be awarded payment by the losing party of reasonable attorneys' fees. 13. In civil judicial proceedings concerning the acts described in paragraphs 7 and 8 of Article 18.4, each Party shall provide that its judicial authorities shall, at the least, have the authority to: (c) order payment to the prevailing right holder at the conclusion of civil judicial proceedings of court costs and fees, and reasonable attorney's fees, by the party engaged in the prohibited conduct
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	**Article 18.10 Enforcement of intellectual property rights** 1. Each Party shall provide that final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights be in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions and rulings are based. Each Party shall also provide that those decisions and rulings be

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provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.	published or, where publication is not practicable, otherwise made available to the public, in its national language in such a manner as to enable governments and right holders to become acquainted with them. [25] A Party may satisfy the publication requirement in paragraph 1 by making the decision or ruling available to the public on the Internet. 2. Each Party shall publicize information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative, and criminal systems, including any statistical information that the Party may collect for such purposes. [26] For greater certainty, nothing in paragraph 2 is intended to prescribe the type, format, and method of publication of the information a Party must publicize.
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.	**Article 18.10 Enforcement of intellectual property rights** 3. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated as the author, producer, performer, or publisher of the work, performance, or phonogram in the usual manner is the designated right holder in such work, performance, or phonogram. Each Party shall also provide for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter. In civil, administrative, and criminal proceedings involving trademarks, each Party shall provide for a rebuttable presumption that a registered trademark is

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	valid. In civil and administrative proceedings involving patents, each Party shall provide for a rebuttable presumption that a patent is valid, and shall provide that each claim of a patent is presumed valid independently of the validity of the other claims.
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 piracy on a commercial scale. (71) The term 'related rights' is defined by each Party in accordance with its international obligations.	**Article 18.10 Enforcement of intellectual property rights** 26. Each Party shall provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale. Willful copyright or related rights piracy on a commercial scale includes: (a) significant willful copyright or related rights infringements that have no direct or indirect motivation of financial gain; and (b) willful infringements for purposes of commercial advantage or private financial gain. Each Party shall treat willful importation or exportation of counterfeit or pirated goods as unlawful activities subject to criminal penalties. [33] For purposes of paragraph 26 and Articles 18.4.7(a), 18.4.8(a), and 18.10.27 and for greater certainty, "financial gain" includes the receipt or expectation of anything of value. [34] A Party may comply with the obligation in paragraph 26 in relation to exportation of pirated goods through its measures concerning distribution.
Article 10.55 Geographical indications and designs counterfeiting Subject to its national or constitutional law and regulations, each	**[…]**

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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 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 18.10 Enforcement of intellectual property rights** 27. Further to paragraph 26, each Party shall provide: (b) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements used in the commission of the offense, any documentary evidence relevant to the offense, and any assets traceable to the infringing activity. Each Party shall provide that such orders need not individually identify the items that are subject to seizure, so long as they fall within general categories specified in the order;
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 18.10 Enforcement of intellectual property rights** 27. Further to paragraph 26, each Party shall provide: (a) penalties that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent to future infringements, consistent with a policy of removing the

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	infringer's monetary incentive. Each Party shall further encourage judicial authorities to impose those penalties at levels sufficient to provide a deterrent to future infringements, including the imposition of actual terms of imprisonment when criminal infringement occurs for purposes of commercial advantage or private financial gain;
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 18.10 Enforcement of intellectual property rights** 27. Further to paragraph 26, each Party shall provide: (e) that its judicial authorities shall have the authority to order, among other measures, the forfeiture of any assets traceable to the infringing activity; (d) that its judicial authorities shall, except in exceptional cases, order (i) the forfeiture and destruction of all counterfeit or pirated goods, and any articles consisting of a counterfeit mark; and (ii) the forfeiture and/or destruction of materials and implements that have been used in the creation of pirated or counterfeit goods. Each Party shall further provide that forfeiture and destruction under this subparagraph and subparagraph (c) shall occur without compensation of any kind to the defendant; (e) that, in criminal cases, its judicial or other competent authorities shall keep an inventory of goods and other material proposed to be destroyed, and shall have the authority temporarily to exempt these materials from the destruction order to facilitate the preservation of evidence on notice by the right holder that it wishes to bring a civil or administrative

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	case for damages.
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** (72) 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. Footnote: 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	**Article 18.10 Enforcement of intellectual property rights** **Liability for Service Providers and Limitations** 30. For the purpose of providing enforcement procedures that permit effective action against any act of copyright infringement covered by this Chapter, including expeditious remedies to prevent infringements and criminal and civil remedies that constitute a deterrent to further infringements, each Party shall provide, consistent with the framework set out in this Article: (xii) For purposes of the function referred to in clause (i)(A), **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 purposes of the functions referred to in clauses (i)(B) through (D) **service provider** means a provider or operator of facilities for online services or network access.

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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.	
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 18.10 Enforcement of intellectual property rights** **Liability for Service Providers and Limitations** 30. Each Party shall provide (a) legal incentives for service providers to cooperate with copyright35 owners in deterring the unauthorized storage and transmission of copyrighted materials; and [35] For purposes of paragraph 30, "copyright" includes related rights. (b) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate, or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth in this subparagraph (b). [36] Subparagraph (b) is without prejudice to the availability of defenses to copyright infringement that are of general applicability. (i) These limitations shall preclude monetary relief and provide reasonable restrictions on court-ordered relief to compel or restrain certain actions for the following functions, and shall be confined to those functions:37 [37] Either Party may request consultations with the other Party to consider how to address under subparagraph (b) functions of a similar nature that a Party identifies after the date this Agreement enters into force. (A) transmitting, routing, or providing connections for

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	material without modification of its content, or the intermediate and transient storage of such material in the course thereof; (B) caching carried out through an automatic process; (C) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and (D) referring or linking users to an online location by using information location tools, including hyperlinks and directories. (ii) These limitations shall apply only where the service provider does not initiate the chain of transmission of the material, and does not select the material or its recipients (except to the extent that a function described in clause (i)(D) in itself entails some form of selection). (iii) Qualification by a service provider for the limitations as to each function in clauses (i)(A) through (D) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in clauses (iv) through (vii).
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	**Article 18.10 Enforcement of intellectual property rights** **Liability for Service Providers and Limitations** 30. Each Party shall provide (iv) With respect to functions referred to in clause (i)(B), the limitations shall be conditioned on the service provider: (A) permitting access to cached material in significant part only to users of its system or network who have met

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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.	conditions on user access to that material; (B) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available; (C) not interfering with technology consistent with industry standards accepted in the Party's territory used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and (D) expeditiously removing or disabling access, on receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site. (v) With respect to functions referred to in clauses (i)(C) and (D), the limitations shall be conditioned on the service provider: (A) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity; (B) expeditiously removing or disabling access to the material residing on its system or network on obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with clause (ix); and

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	(C) publicly designating a representative to receive such notifications. (vi) Eligibility for the limitations in this subparagraph shall be conditioned on the service provider: (A) adopting and reasonably implementing a policy that provides for termination in appropriate circumstances of the accounts of repeat infringers; and (B) accommodating and not interfering with standard technical measures accepted in the Party's territory that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks.
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.	**Article 18.10 Enforcement of intellectual property rights** **Liability for Service Providers and Limitations** 30. Each Party shall provide (x) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, each Party shall provide that the service provider shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in

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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.	an infringement suit, to restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time.
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.	**Article 18.10 Enforcement of intellectual property rights** **Liability for Service Providers and Limitations** 30. Each Party shall provide (vii) Eligibility for the limitations in this subparagraph may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures. (ix) For purposes of the notice and take down process for the functions referred to in clauses (i)(C) and (D), each Party shall establish appropriate procedures in its law or in regulations for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification that causes injury to any interested party as a result of a service provider relying on the misrepresentation.

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Sub-section D Other provisions **Article 10.67 Border measures** 1. Each Party shall, unless otherwise provided for in this Section, adopt procedures to enable a right holder, who has valid grounds for suspecting that the importation, exportation, re-exportation, customs transit, transhipment, placement under a free zone, placement under a suspensive procedure or a bonded warehouse of goods infringing an intellectual property right 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. (73) 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. (74) 'customs transit, transhipment and placement under a free zone' as defined in the Kyoto Convention. (75) 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. (76) 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	**Article 18.10 Enforcement of intellectual property rights** **Special Requirements Related to Border Measures** 19. Each Party shall provide that any right holder initiating procedures for its competent authorities to suspend release of suspected counterfeit or confusingly similar trademark goods, or pirated copyright goods30 into free circulation is required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by its competent authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to these procedures. Each Party shall provide that the application to suspend the release of goods shall apply to all points of entry to its territory and remain applicable for a period of not less than one year from the date of application, or the period that the good is protected by copyright or that the relevant trademark registration is valid, whichever is shorter. 30 For purposes of paragraphs 19 through 25: (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 (b) **pirated copyright goods** means any goods that are copies made

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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. 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	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. 20. Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures to suspend the release of suspected counterfeit or confusingly similar trademark goods, 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. Each Party shall provide that the security or equivalent assurance shall not unreasonably deter recourse to these procedures. Each Party may provide that the security may be in the form of a bond conditioned to hold the importer or owner of the imported merchandise harmless from any loss or damage resulting from any suspension of the release of goods in the event the competent authorities determine that the article is not an infringing good. In no case shall an importer be permitted to post a bond or other security to obtain possession of suspected counterfeit or confusingly similar trademark goods, or of pirated copyright goods. 21. Where its competent authorities have seized goods that are counterfeit or pirated, a Party shall inform the right holder within 30 days of the seizure of the names and addresses of the consignor, importer, exporter, or consignee, and provide to the right holder a description of the merchandise, the quantity of the merchandise, and, if known, the country of origin of the

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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 of the goods. (77) Including at least the person who is the owner of the goods or the person who has a similar right of disposal over them.	merchandise. 22. Each Party shall provide that its competent authorities may initiate border measures *ex officio* with respect to imported, exported, or in-transit merchandise, or merchandise in free trade zones, that is suspected of being counterfeit or confusingly similar trademark goods, or pirated copyright goods. [31] For greater certainty, the Parties understand that *ex officio* action does not require a formal complaint from a private party or right holder. [32] For purposes of paragraph 22, **in-transit merchandise** means goods under "Customs transit" and goods "transshipped," as defined in the *International Convention on the Simplification and Harmonization of Customs Procedures* (Kyoto Convention). 23. Each Party shall provide that goods that have been suspended from release by its customs authorities, and that have been forfeited as pirated or counterfeit, shall be destroyed, except in exceptional circumstances. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of the goods into the channels of commerce. In no event shall the competent authorities be authorized, except in exceptional circumstances, to permit the exportation of counterfeit or pirated goods or to permit such goods to be subject to other customs procedures. 24. Where an application fee or merchandise storage fee is assessed in connection with border measures to enforce an intellectual property right, each Party shall provide that the fee shall not be set at an amount that unreasonably deters recourse

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	to these measures. 25. Each Party shall provide the other Party, on mutually agreed terms, with technical advice on the enforcement of border measures concerning intellectual property rights, and the Parties shall promote bilateral and regional cooperation on these matters.
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;	**Article 18.10 Enforcement of intellectual property rights** **Special Requirements Related to Border Measures** 25. Each Party shall provide the other Party, on mutually agreed terms, with technical advice on the enforcement of border measures concerning intellectual property rights, and the Parties shall promote bilateral and regional cooperation on these matters.

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(c) exchange of experiences on enforcement at central and subcentral level by customs, police, administrative and judiciary bodies; coordination 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.	
[…]	**Article 18.1 General Provisions** ***National Treatment*** 6. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals2 of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection and enjoyment of such intellectual property rights and any benefits derived from such rights. With respect to secondary uses of phonograms by means of analog communications, analog free over-the-air radio broadcasting, and analog free over-the-air television broadcasting, however, a Party may limit the rights of performers and producers of phonograms of the other Party to the rights its persons are accorded in the territory of the other

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	Party. [2] For purposes of paragraphs 6 and 7 and Articles 18.2.14(a), and 18.6.1, a "national" of a Party shall include, in respect of the relevant right, any person (as defined in Article 1.4 (Definitions)), of that Party that would meet the criteria for eligibility for protection of that right provided for in the agreements listed in paragraph 3 and the TRIPS Agreement. [3] For purposes of paragraph 6, "protection" includes: (1) matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Chapter; and (2) the prohibition on circumvention of effective technological measures set out in Article 18.4.7 and the rights and obligations concerning rights management information set out in Article 18.4.8. 7. A Party may derogate from paragraph 6 in relation to its judicial and administrative procedures, including requiring a national of the other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, provided that such derogation is: (a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and (b) not applied in a manner that would constitute a disguised restriction on trade. 8. Paragraph 6 does not apply to procedures provided in multilateral agreements to which either Party is a party concluded under the auspices of the WIPO in relation to the acquisition or maintenance of intellectual property rights.
[…]	**Article 18.1 General Provisions** ***Application of Agreement to Existing Subject Matter and***

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	Prior Acts 9. Except as it provides otherwise, including in Article 18.4.5, this Chapter gives rise to obligations in respect of all subject matter existing at the date this Agreement enters into force that is protected on that date in the territory of the Party where protection is claimed, or that meets or comes subsequently to meet the criteria for protection under this Chapter. 10. Except as otherwise provided in this Chapter, including in Article 18.4.5, a Party shall not be required to restore protection to subject matter that on the date this Agreement enters into force has fallen into the public domain in the territory of the Party where the protection is claimed. 11. This Chapter does not give rise to obligations in respect of acts that occurred before the date this Agreement enters into force.
[…]	**Article 18.1 General Provisions** *Transparency* 12. Further to Article 21.1 (Publication), and with the object of making the protection and enforcement of intellectual property rights transparent, each Party shall ensure that all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights are in writing and are published,4 or where publication is not practicable made publicly available, in its national language in such a manner as to enable governments and right holders to become acquainted with them. [4] For greater certainty, a Party may satisfy the requirement in paragraph 12

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	to publish a law, regulation, or procedure by making it available to the public on the Internet.
[…]	**Article 18.2 Trademarks including geographical indications** 1. Neither Party may require, as a condition of registration, that signs be visually perceptible, nor may either Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or scent. 2. Each Party shall provide that trademarks shall include certification marks. Each Party shall also provide that geographical indications are eligible for protection as trademarks. [5] For purposes of this Chapter, **geographical indications** means indications that identify a good as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Any sign (such as words, including geographical and personal names, as well as letters, numerals, figurative elements, and colors, including single colors) or combination of signs, in any form whatsoever, shall be eligible to be a geographical indication. "Originating" in this Chapter does not have the meaning ascribed to that term in Article 1.4 (Definitions). 3. Each Party shall ensure that its measures mandating the use of the term customary in common language as the common name for a good or service (common name), including, *inter alia*, requirements concerning the relative size, placement or style of use of the trademark in relation to the common name, do not impair the use or effectiveness of trademarks used in relation to such good or service.

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	4. Each Party shall provide that the owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, at least for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign, including a geographical indication, for identical goods or services, a likelihood of confusion shall be presumed. 6. Neither Party may require, as a condition for determining that a mark is a well-known mark, that the mark has been registered in the territory of that Party or in another jurisdiction. Additionally, neither Party may deny remedies or relief with respect to well-known marks solely because of the lack of: (a) a registration; (b) inclusion on a list of well-known marks; or (c) prior recognition of the mark as well-known. 7. Article 6*bis* of the Paris Convention shall apply, *mutatis mutandis*, to goods or services that are not identical or similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.

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	[6] For purposes of determining whether a mark is well-known, neither Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services. 11. Each Party shall provide that: (a) each registration and publication that concerns a trademark application or registration and that indicates goods or services shall indicate the goods or services by their names, grouped according to the classes of the classification established by the *Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (1979), as revised and amended (Nice Classification); and (b) goods or services may not be considered as being similar to each other solely on the ground that, in any registration or publication, they appear in the same class of the Nice Classification. Conversely, each Party shall provide that goods or services may not be considered as being dissimilar from each other solely on the ground that, in any registration or publication, they appear in different classes of the Nice Classification. 12. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than ten years. 13. Neither Party may require recordation of trademark licenses to establish the validity of the license, to assert any rights in a trademark, or for other purposes. 14. If a Party provides the means to apply for protection or petition for recognition of geographical indications, through a

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	system of protection of trademarks or otherwise, it shall, with respect to such applications and petitions (as relevant to the means chosen by the Party): (a) accept those applications and petitions without requiring intercession by a Party on behalf of its nationals; (b) process those applications and petitions with a minimum of formalities; (c) ensure that its regulations governing filing of those applications and petitions are readily available to the public and set out clearly the procedures for these actions; (d) make available contact information sufficient to allow the general public to obtain guidance concerning the procedures for filing applications and petitions and the processing of those applications and petitions in general; and to allow applicants, petitioners, or their representatives to ascertain the status of, and to obtain procedural guidance concerning, specific applications and petitions; and (e) ensure that applications and petitions for geographical indications are published for opposition, and provide procedures for opposing geographical indications that are the subject of applications or petitions. Each Party shall also provide procedures to cancel a registration resulting from an application or a petition.
[…]	**Article 18.3 Domain names on the internet** 1. In order to address the problem of trademark cyber-piracy, each Party shall require that the management of its country-code top-level domain (ccTLD) provide an appropriate

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	procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy. 2. Each Party shall require that the management of its ccTLD provide online public access to a reliable and accurate database of contact information concerning domain-name registrants.
[…]	**Article 18.4 Copyright and related rights** 3. In order to ensure that no hierarchy is established between rights of authors, on the one hand, and rights of performers and producers of phonograms, on the other hand, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required. Likewise, each Party shall provide that in cases where authorization is needed from both the author of a work embodied in a phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the performer or producer does not cease to exist because the authorization of the author is also required. 6. Each Party shall provide that for copyright and related rights, any person acquiring or holding any economic right in a work, performance, or phonogram: (a) may freely and separately transfer that right by contract; and (b) by virtue of a contract, including contracts of employment

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	underlying the creation of works, performances, and phonograms, shall be able to exercise that right in that person's own name and enjoy fully the benefits derived from that right. 9. Each Party shall provide appropriate laws, orders, regulations, government-issued guidelines, or administrative or executive decrees providing that its central government agencies not use infringing computer software and other materials protected by copyright or related rights and only use computer software and other materials protected by copyright or related rights as authorized by the relevant license. These measures shall provide for the regulation of the acquisition and management of software and other materials for government use that are protected by copyright or related rights.
[…]	**Article 18.6 Related rights** 4. Neither Party may subject the enjoyment and exercise of the rights of performers and producers of phonograms provided for in this Chapter to any formality. 5. For purposes of this Article and Article 18.4, the following definitions apply with respect to performers and producers of phonograms: (c) **fixation** means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced, or communicated through a device; (d) **performers** means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or

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	expressions of folklore; (e) **phonogram** means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work; (f) **producer of a phonogram** means the person who, or the legal entity which, takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds; and (g) **publication** of a performance or a phonogram means the offering of copies of the performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity.
[…]	**Article 18.7 Protection of encrypted program-carrying satellite and cable signals** 1. Each Party shall make it a criminal offense: (a) to manufacture, assemble, modify, import, export, sell, lease, or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite or cable signal without the authorization of the lawful distributor of such signal; and (b) willfully to receive and make use of, or further distribute, a program-carrying signal that originated as an encrypted satellite or cable signal knowing that it has been decoded without the authorization of the lawful distributor of the

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	signal, or if the signal has been decoded with the authorization of the lawful distributor of the signal, willfully to further distribute the signal for purposes of commercial advantage knowing that the signal originated as an encrypted program-carrying signal and that such further distribution is without the authorization of the lawful signal distributor.[18] [18] For greater certainty, "make use of" includes viewing of the signal, whether private or commercial. 2. Each Party shall provide for civil remedies, including compensatory damages, for any person injured by any activity described in paragraph 1, including any person that holds an interest in the encrypted programming signal or its content.
[…]	**Article 18.8 Patents** 1. Each Party shall make patents available for any invention, whether a product or process, in all fields of technology, provided that the invention is new, involves an inventive step, and is capable of industrial application. In addition, each Party confirms that patents shall be available for any new uses or methods of using a known product.[19] [19] For purposes of Article 18.8, a Party may treat the terms "inventive step" and "capable of industrial application" as synonymous with the terms "non-obvious" and "useful" respectively. 2. Each Party may only exclude from patentability: (a) inventions, the prevention within its territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal, or plant life or health or to avoid serious prejudice to the

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	environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law; and (b) diagnostic, therapeutic, and surgical procedures for the treatment of humans or animals. 3. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties. 4. Each Party shall provide that a patent may be revoked only on grounds that would have justified a refusal to grant the patent. A Party may also provide that fraud, misrepresentation, or inequitable conduct may be the basis for revoking a patent or holding a patent unenforceable. Where a Party provides proceedings that permit a third party to oppose the grant of a patent, the Party shall not make such proceedings available before the grant of the patent. 5. Consistent with paragraph 3, if a Party permits a third person to use the subject matter of a subsisting patent to generate information necessary to support an application for marketing approval of a pharmaceutical product, that Party shall provide that any product produced under such authority shall not be made, used, or sold in its territory other than for purposes related to generating such information to support an application for meeting marketing approval requirements of that Party, and if the Party permits exportation of such product, the Party shall provide that the product shall only be

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	exported outside its territory for purposes of generating information to support an application for meeting marketing approval requirements of that Party. 6. (a) Each Party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent. For purposes of this subparagraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than four years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application, whichever is later. Periods attributable to actions of the patent applicant need not be included in the determination of such delays. [20] Notwithstanding Article 18.1.9, subparagraph (a) shall apply to all patent applications filed on or after January 1, 2008. 7. Each Party shall disregard information contained in public disclosures used to determine if an invention is novel or has an inventive step if the public disclosure: (a) was made or authorized by, or derived from, the patent applicant, and (b) occurred within 12 months prior to the date of filing of the application in the territory of the Party. [23] Notwithstanding Article 18.1.9, paragraph 7 shall apply to all patent applications filed on or after January 1, 2008. 8. Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, and observations in connection with their applications.

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	9. Each Party shall provide that a disclosure of a claimed invention shall be considered to be sufficiently clear and complete if it provides information that allows the invention to be made and used by a person skilled in the art, without undue experimentation, as of the filing date. 10. Each Party shall provide that a claimed invention: (a) is sufficiently supported by its disclosure if the disclosure allows a person skilled in the art to extend the teaching therein to the entire scope of the claim, thereby showing that the applicant does not claim subject matter which the applicant had not recognized and described or possessed on the filing date; and (b) is industrially applicable if it has a specific, substantial, and credible utility.
[…]	**Article 18.9 Measures related to certain regulated products** 1. (c) For purposes of this Article, a **new pharmaceutical product** is one that does not contain a chemical entity that has been previously approved in the territory of the Party for use in a pharmaceutical product, and a **new agricultural chemical product** is one that contains a chemical entity that has not been previously approved in the territory of the Party for use in an agricultural chemical product. 2. If a Party requires or permits, as a condition of granting marketing approval for a pharmaceutical product that includes a chemical entity that has been previously approved for marketing in another pharmaceutical product, the submission of new clinical information that is essential to the approval of

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	the pharmaceutical product containing the previously approved chemical entity, other than information related to bio-equivalency, the Party shall not, without the consent of a person that previously submitted such new clinical information to obtain marketing approval in the territory of the Party, authorize another to market a same or a similar product based on: (i) the new clinical information submitted in support of the marketing approval; or (ii) evidence of the marketing approval based on the new clinical information, for at least three years from the date of marketing approval in the territory of the Party. (b) If a Party requires or permits, in connection with granting marketing approval for a pharmaceutical product of the type specified in subparagraph (a), the submission of evidence concerning new clinical information for a product that was previously approved based on that new clinical information in another territory, other than evidence of information related to bioequivalency, such as evidence of prior marketing approval based on the new clinical information, the Party shall not, without the consent of the person that previously submitted such new clinical information to obtain marketing approval in the other territory, authorize another to market a same or a similar product based on: (i) the new clinical information submitted in support of the prior marketing approval in the other territory; or (ii) evidence of prior marketing approval based on the new

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	clinical information in the other territory, for at least three years from the date of marketing approval based on the new clinical information in the territory of the Party. (c) If a Party requires or permits, as a condition of granting marketing approval for a new use, for an agricultural chemical product that has been previously approved in the territory of the Party, the submission of safety or efficacy information, the origination of which involves a considerable effort, the Party shall not, without the consent of a person that previously submitted such safety or efficacy information to obtain marketing approval in the territory of the Party, authorize another to market a same or similar product for that use based on: (i) the submitted safety or efficacy information; or (ii) evidence of the marketing approval for that use, for at least ten years from the date of the original marketing approval of the agricultural chemical product in the territory of the Party. (d) If a Party requires or permits, in connection with granting marketing approval for a new use, for an agricultural chemical product that has been previously approved in the territory of the Party, the submission of evidence concerning the safety or efficacy of a product that was previously approved in another territory for that new use, such as evidence of prior marketing approval for that new use, the Party shall not, without the consent of the person that previously submitted the safety or efficacy information to obtain marketing approval in the other territory, authorize another to market a same or a similar

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	product based on: (i) the safety or efficacy information submitted in support of the prior marketing approval for that use in the other territory; or (ii) evidence of prior marketing approval in another territory for that new use, for at least ten years from the date of the original marketing approval granted in the territory of the Party. 4. Subject to paragraph 3, when a product is subject to a system of marketing approval in the territory of a Party in accordance with paragraph 1 or 2 and is also covered by a patent in that territory, the Party may not alter the term of protection that it provides in accordance with those paragraphs in the event that the patent protection terminates on a date earlier than the end of the term of protection specified in those paragraphs. 5. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting safety or efficacy information, to rely on that information or on evidence of safety or efficacy information of a product that was previously approved, such as evidence of prior marketing approval in the territory of the Party or in another territory, that Party shall: (a) provide that the patent owner shall be notified of the identity of any such other person that requests marketing approval to enter the market during the term of a patent notified to the approving authority as covering that product or its approved method of use; and

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	(b) implement measures in its marketing approval process to prevent such other persons from marketing a product without the consent or acquiescence of the patent owner during the term of a patent notified to the approving authority as covering that product or its approved method of use.
[…]	**Article 18.10 Enforcement of intellectual property rights** ***Civil and administrative procedures and remedies*** 12. To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, each Party shall provide that such procedures conform to principles equivalent in substance to those set out in this Chapter. 15. In the event that a Party's judicial or other competent authorities appoint technical or other experts in civil proceedings concerning the enforcement of intellectual property rights and require that the parties to the litigation bear the costs of such experts, the Party should seek to ensure that such costs are closely related, *inter alia*, to the quantity and nature of work to be performed and do not unreasonably deter recourse to such proceedings. ***Alternative Dispute Resolution*** 16. Each Party may permit use of alternative dispute resolution procedures to resolve civil disputes concerning intellectual property rights. ***Criminal procedures and remedies*** 28. Each Party shall also provide for criminal procedures and penalties to be applied, even absent willful trademark

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	counterfeiting or copyright piracy, at least in cases of knowing trafficking in: (a) counterfeit labels or illicit labels affixed to, enclosing, or accompanying, or designed to be affixed to, enclose, or accompany: a phonogram, a copy of a computer program or other literary work, a copy of a motion picture or other audiovisual work, or documentation or packaging for such items; and (b) counterfeit documentation or packaging for items of the type described in subparagraph (a). 29. Each Party shall also provide for criminal procedures to be applied against any person who, without authorization of the holder of copyright or related rights in a motion picture or other audiovisual work, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of the motion picture or other audiovisual work, or any part thereof, from a performance of the motion picture or other audiovisual work in a public motion picture exhibition facility.

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[…]	**Article 18.10 Enforcement of intellectual property rights** **Liability for service providers and limitations** 30. (b) (viii) If the service provider qualifies for the limitations with respect to the function referred to in clause (i)(A), court-ordered relief to compel or restrain certain actions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in clause (i), court-ordered relief to compel or restrain certain actions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary, provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Each Party shall provide that any such relief shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service provider's communications network, each Party shall provide that such relief shall be available only where the service provider has received notice of the court order proceedings referred to in this subparagraph and an opportunity to appear before the judicial authority. (xi) Each Party shall establish an administrative or judicial

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	procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.
[…]	**Article 18.11 Understanding regarding certain public health measures** 2. The Parties have reached the following understandings regarding this Chapter: (a) The obligations of this Chapter do not and should not prevent a Party from taking measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency. Accordingly, while reiterating their commitment to this Chapter, the Parties affirm that this Chapter can and should be interpreted and implemented in a manner supportive of each Party's right to protect public health and, in particular, to promote access to medicines for all. (b) In recognition of the commitment to access to medicines that are supplied in accordance with the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council Chairman's statement accompanying the Decision (JOB(03)/177, WT/GC/M/82) (collectively, the "TRIPS/health solution"), this Chapter does not and should not prevent the effective utilization of the TRIPS/health

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	solution. (c) With respect to the aforementioned matters, if an amendment of the TRIPS Agreement enters into force with respect to the Parties and a Party's application of a measure in conformity with that amendment violates this Chapter, the Parties shall immediately consult in order to adapt this Chapter as appropriate in the light of the amendment.