

ANNEX XV

REFERRED TO IN ARTICLE 7

PROTECTION OF INTELLECTUAL PROPERTY

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SECTION I

GENERAL PROVISIONS

Article 1

Definition of Intellectual Property

For the purposes of the Agreement, “intellectual property” comprises in particular copyrights, including the protection of computer programmes and compilations of data, as well as related rights, trademarks for goods and services, geographical indications (including appellations of origin) for goods, and indications of source for goods and services, designs, patents, plant varieties, topographies of integrated circuits, as well as undisclosed information.

Article 2

International Conventions

1. The Parties reaffirm their obligations set out in the following multilateral agreements:

- (a) TRIPS Agreement;
- (b) Paris Convention of 20 March 1883 for the Protection of Industrial Property, as revised by the Stockholm Act of 1967 (hereinafter referred to as the “Paris Convention”);
- (c) Berne Convention of 9 September 1886 for the Protection of Literary and Artistic Works, as revised by the Paris Act of 1971 (hereinafter referred to as the “Berne Convention”);
- (d) Patent Cooperation Treaty of 19 June 1970, as revised by the Washington Act of 2001;
- (e) Nice Agreement of 25 June 1957 Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, as revised by the Geneva Act of 1979;

- (f) International Convention of 26 October 1961 for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (hereinafter referred to as the “Rome Convention”);
- (g) Protocol of 27 June 1989 relating to the Madrid Agreement concerning the International Registration of Marks;
- (h) Geneva Act of 1999 of the Hague Agreement Concerning the International Registration of Industrial Designs; and
- (i) Budapest Treaty of 28 April 1977 on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure.

2. The Parties shall ratify or accede to the following agreements by 2019, provided they are not parties to these yet, or comply with their substantive provisions by the same date:

- (a) World Intellectual Property Organisation (hereinafter referred to as “WIPO”) Copyright Treaty of 20 December 1996;
- (b) WIPO Performances and Phonogram Treaty of 20 December 1996 (hereinafter referred to as the “WPPT”); and
- (c) International Convention for the Protection of New Varieties of Plants 1991, unless the Party concerned is already a member of the International Convention for the Protection of New Varieties of Plants 1978.

3. Each Party shall make all reasonable efforts to ratify or accede to the Beijing Treaty on Audio-Visual Performances of 24 June 2012.

4. The Parties agree to promptly hold expert meetings, upon request of any Party, on activities relating to the conventions referred to in this Article or to future international conventions on harmonisation, administration and enforcement of intellectual property rights and on activities in international organisations, such as the WTO and WIPO, as well as on relations of the Parties with non-parties on matters concerning intellectual property.

5. The provisions of this Annex shall be without prejudice to the Doha Declaration on the TRIPS Agreement and Public Health as well as the Amendment of the TRIPS Agreement as adopted by the WTO General Council on 6 December 2005.

SECTION II

STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

Article 3

Copyright and Related Rights

1. Without prejudice to the obligations set out in the international agreements to which the Parties are parties, each Party shall, in accordance with its laws and regulations, grant and ensure adequate and effective protection to the authors of works and to performers, producers of phonograms and videograms and broadcasting organisations for their works, performances, phonograms, videograms and broadcasts, respectively.
2. In addition to the protection provided for in the international agreements to which the Parties are parties or which the Parties shall ratify or accede to under the Agreement, each Party shall:
 - (a) grant and ensure protection as provided for in Articles 5, 6, 7, 8 and 10 of the WPPT, *mutatis mutandis*, to performers for their audiovisual and visual performances; and
 - (b) grant and ensure protection as provided for in Articles 11, 12, 13 and 14 of the WPPT, *mutatis mutandis*, to producers of videograms.
3. Each Party shall ensure that a broadcasting organisation has at least the exclusive right of authorising the following acts: the retransmission, the distribution of fixations, the transmission following fixation, the making available of fixed broadcasts and the rebroadcasting by wireless means of broadcasts.
4. Each Party may, in its national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers for their visual and audiovisual performances, to the protection of producers of videograms and of broadcasting organisations as it provides for, in its national legislation, in connection with the protection of copyright in literary and artistic works.
5. The term of protection to be granted to performers under the Agreement shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed.
6. The term of protection to be granted to producers of phonograms and of videograms under the Agreement shall last, at least, until the end of a period of 50 years computed from the end of the year in which the phonogram and videogram was published, or failing such publication within 50 years from fixation of the phonogram and videogram, 50 years from the end of the year in which the fixation was made.

7. The term of protection to be granted to broadcasting organizations under this Agreement shall last, at least, until the end of a period of 20 years computed from the end of the year in which the broadcast took place.

8. A Party may be exempted from its obligations under paragraphs 6 and 7 where the exemptions provided for in Articles 7 and 7bis of the Berne Convention apply.

Article 4

Trademarks

1. The Parties shall grant adequate and effective protection to trademark right holders of goods and services. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including combinations of words, personal names, letters, numerals, figurative elements, shapes of goods, sounds and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, the Parties may make registrability depend on distinctiveness acquired through use. Parties may require, as a condition of registration, that signs be visually perceptible.

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

3. The protection according to paragraph 2 shall not be limited to identical or similar goods or services where the trade mark is well known in the relevant country and where the use of the trade mark without due cause would be detrimental to the distinctive character or take unfair advantage or be detrimental to the repute of the trade mark.

4. The Parties reaffirm the importance of, and shall be guided by the principles contained in, the WIPO Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO in 1999, and the WIPO Joint Recommendation Concerning Provisions on the Protection of Marks and other Industrial Property Rights in Signs, on the Internet, adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO in 2001.

5. Where a trademark is reproduced in a dictionary, other reference work or in a similar work without mention of the fact that it is registered, the owner of the trademark may require from the publisher or distributor of the work that a corresponding note be included, at the latest in a reprint.

Article 5

Patents

1. The Parties shall at least ensure in their respective domestic laws that patents are available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application. Subject to paragraph 3, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced. Importation and offering on the market of a product shall be deemed to be “working of the patent” in the country of importation.

2. Each Party may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by its law.

3. Each Party may also exclude from patentability:

- (a) any invention of methods for treatment of the human or animal body by surgery or therapy or for diagnostic methods practised on the human or animal body; this Provision shall not apply to products, in particular substances or compositions, for use in any of these methods; and
- (b) plant or animal varieties or essentially biological processes for the production of plants or animals; this Provision shall not apply to microbiological processes or the products thereof.

4. The Parties shall foresee a compensatory term of protection for pharmaceuticals and plant protection products, which shall be calculated from the expiry of the maximum term of patent of 20 years for a period equal to the period which elapsed between the filing date of the patent application and the date of the market authorisation of the product, reduced by a period of five years. Such compensatory protection shall cover a period of five years at the most and shall be granted under the following conditions:

- (a) the product is protected by a patent in force;
- (b) there has been an official marketing authorisation for the medicinal or plant protection product;
- (c) the right conferred by the patent has been postponed by administrative procedures regarding authorisation of market access, so that the effective use of the patent amounts to less than 15 years; and
- (d) the effective protection conferred by the patent and the compensatory protection shall together not exceed 15 years.

5. For pharmaceuticals that have been tested for paediatric use, a six-month

extension of the compensatory term of protection may be granted if the national law of a Party so provides.

Article 6

Undisclosed Information

1. The Parties, when requiring, as a condition of approving the marketing of pharmaceutical or of plant protection products which utilise chemical or biological entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, the Parties shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected from unfair commercial use.

2. The Parties shall prevent applicants for marketing approval from relying on, or from referring to, undisclosed test data or other data submitted to the competent authority by the first applicant for a period, counted from the date of marketing approval, of at least six years for pharmaceutical products and at least ten years for plant protection products.

3. The term of protection referred to in the second subparagraph in relation to pharmaceutical products shall be extended by a minimum of one year if, at least during that term of protection the marketing authorisation holder obtains an authorisation for one or more new therapeutic indications which, during the scientific evaluation prior to their authorisation, are held to bring a significant clinical benefit in comparison with existing therapies.

4. Reliance on or reference to such data may be permitted in order to avoid unnecessary duplication of tests of plant protection products involving vertebrate animals, provided that the first applicant is adequately compensated.

Article 7

Designs

The Parties shall ensure in their national laws adequate and effective protection of designs by providing in particular a period of protection of at least 25 years in total. The Parties may provide for a shorter period of protection for designs of component parts used for the purpose of the repair of a product.

Article 8

Geographical Indications

1. The Parties shall ensure in their national laws adequate and effective means to protect geographical indications with regard to all goods.

2. For the purposes of this Annex, “geographical indications” are indications, which identify goods 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 such goods is essentially attributable to their geographical origin.

3. Without prejudice to Article 23 of the TRIPS Agreement the Parties shall provide the legal means for interested parties to prevent the use of a geographical indication for goods not originating in the place indicated by the designation in question in a manner which misleads the public as to the geographical origin of those goods or which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

4. The Parties shall provide the legal means for interested parties to prevent the use of a geographical indication for agricultural products and foodstuffs for identical or comparable goods not originating in the place indicated by the designation in question.

Article 9

Indications of Source and Country Names

1. The Parties shall ensure in their national laws adequate and effective means to protect indications of source, names and flags of countries, with regard to all goods and services.

2. Indications of source are direct or indirect references to the geographical origin of goods or services. Nothing in this Annex shall require a Party to amend its legislation if, at the date of entry into force of the Agreement, it limits in its national law the protection of indications of source to cases where a given quality, reputation or other characteristic of the good or service is essentially attributable to its geographical origin.

3. The Parties shall provide the legal means for interested parties to prevent the use of an indication of source for goods not originating in the place indicated by the designation in question in a manner which misleads the public as to the geographical origin of those goods or which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

4. The Parties shall provide the legal means for interested parties to prevent the use of an indication of source for services, including but not limited to cases where such indication is used as a trademark, trade name or company name¹, in a manner which misleads the public as to the geographical origin or constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention.

5. The Parties shall prevent any incorrect or misleading use or registration of country names of a Party or of its territory names, as trademarks, designs, or as any other protected title, such as company names or names of associations.

¹ The commitment of this provision regarding misleading use or registration of company names shall apply to Georgia two years after the entry into force of the Agreement. The provision does not require that the obligation applies to prior registrations of company names.

6. The Parties, in accordance with their obligations under Article 6ter of the Paris Convention, shall prevent that armorial bearings, flags and other State or regional emblems of a Party are used or registered as trademark, designs or as any other protected title, such as company names or names of associations, in non-compliance with the conditions laid down in the laws and regulations of that Party. This protection shall also apply to signs that may be confused with armorial bearings, flags and other State or regional emblems of the Parties.

SECTION III

ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS

Article 10

Acquisition and Maintenance

Where the acquisition of an intellectual property right is subject to the right being granted or registered, the Parties shall ensure that the procedures for granting or registration are at least of the same level as that provided in the TRIPS Agreement, in particular Article 62.

SECTION IV

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Article 11

General

The Parties shall provide in their respective national laws for enforcement provisions for rights covered by Article 1 that shall at least be of the same level as that provided in the TRIPS Agreement, in particular in Articles 41 to 61.

Article 12

Suspension of Release

1. The Parties shall adopt procedures to enable a right holder, who has valid grounds for suspecting that importation or exportation of goods infringing intellectual property rights may take place, to lodge an application in writing with the competent authorities, administrative or judicial, for the suspension by the customs authorities of the release of such goods.

2. The Parties shall enable their competent authorities to act upon their own initiative and suspend the release of goods when they have valid grounds for suspecting that importation or exportation of those goods would infringe intellectual property rights.²
3. The Parties authorise their customs authorities to inform the right holder in order to enable the lodging of an application according to paragraph 1.
4. It is understood that there shall be no obligation to apply procedures set forth in paragraphs 1 and 2 to the suspension of the release of goods put on the market by or with the consent of the right holder.
5. In case of suspension pursuant to paragraphs 1 and 2 with respect to importation into or exportation from the customs territory of a Party, the competent authorities of the Party suspending the release of the goods shall notify the right holder of the suspension including necessary information to enforce his or her rights, such as the name and addresses of the consignor³ or consignee, and the importer or exporter, as applicable, and the quantity of the goods in question.
6. Each Party shall ensure that the competent authorities, administrative or judicial, on request from the right holder, have the authority to decide that the goods, the release of which has been suspended pursuant to paragraphs 1 or 2, shall be held seized until a final decision is reached in the infringement dispute.
7. Each Party shall provide that if the competent authorities have made a determination that the suspected goods infringe an intellectual property right, procedures are made available to enable the right holder to seek recovery of and be indemnified against costs and expenses that the right holder may have incurred in connection with the exercise of rights and remedies provided in this Article.

Article 13

Right of Inspection

1. The competent authorities shall give the applicant for the suspension of goods and other persons involved in the suspension the opportunity to inspect goods whose release has been suspended.
2. When examining goods, the competent authorities may take samples and, according to the rules in force in the Party concerned, hand them over or send them to the right holder, at his express request, strictly for the purposes of analysis and of facilitating the subsequent procedure. Where circumstances allow, samples must be returned on completion of the technical analysis and, where applicable, before goods are released or their detention is lifted. Any analysis of these samples shall be carried out under the sole responsibility of the right holder.

² Applicable to Georgia at the latest by 1 January 2018.

³ Georgia to provide the right holder with the information on the consignor at the latest by 1 January 2018.

3. The declarant, holder or owner of the suspected infringing goods may be present at the inspection with a view to protecting his trade secret.

Article 14

Injunctions

1. Each Party shall ensure that its judicial authorities have the authority to order prompt and effective provisional measures:

- (a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance; and
- (b) to preserve relevant evidence in regard to the alleged infringement.

2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed. On request for provisional measures, the judicial authorities shall act expeditiously and make a decision without undue delay.

3. Each Party shall ensure that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to order a party to desist from an infringement, inter alia, to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right.

Article 15

Removal from Commerce

1. The Parties shall ensure that the competent judicial authorities in an infringement dispute may, at the request of the right holder, order the definitive removal from the channels of commerce or destruction of goods that have been found to be infringing an intellectual property right.

2. In appropriate cases, judicial authorities shall also have the authority to order that materials and implements, predominantly used in the creation or manufacture of goods that have been found to be infringing an intellectual property right, can be definitively removed from the channels of commerce or destroyed. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

Article 16

Civil Remedies

Each Party shall provide that:

- (a) in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer, who knowingly or with reasonable grounds to know engaged in infringing activity of intellectual property rights, to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement; and
- (b) in determining the amount of damages for intellectual property rights infringement, its judicial authorities shall consider, *inter alia*, the actual damage, or establishing a fair licence fee.

Article 17

Criminal Remedies

Each Party shall provide for criminal procedures and penalties for wilful intellectual property rights infringements on a commercial scale.

Article 18

Liability Declaration, Security or Equivalent Assurance

The competent authorities shall have the authority to require an applicant to declare to accept liability towards the persons involved and, in justified cases, to provide a security or equivalent assurance, sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

Article 19

Cooperation in the Field of Intellectual Property

The Parties, recognising the growing importance of intellectual property rights as a factor of social, economic and cultural development, agree to enhance their cooperation in the field of intellectual property rights.
