

CHAPTER 9

INTELLECTUAL PROPERTY RIGHTS

SECTION 1

GENERAL PROVISIONS

ARTICLE 150

Objectives

The objectives of this Chapter are to:

- (a) facilitate the production and commercialisation of innovative and creative products between the Parties; and
- (b) achieve an adequate and effective level of protection and enforcement of intellectual property rights.

ARTICLE 151

Nature and scope of obligations

1. The Parties shall ensure the adequate and effective implementation of the international treaties dealing with intellectual property to which they are parties including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). The provisions of this Chapter shall complement and further specify the rights and obligations

between the Parties under the TRIPS Agreement and other international treaties in the field of intellectual property.

2. For the purposes of this Agreement, the expression "intellectual property" refers at least to all categories of intellectual property that are covered by Articles 153 to 189 of this Agreement.

3. Protection of intellectual property includes protection against unfair competition as referred to in Article 10bis of the Paris Convention for the Protection of Industrial Property of 1967 (Paris Convention).

ARTICLE 152

Exhaustion

Each Party shall provide for a regime of domestic or regional exhaustion of intellectual property rights.

SECTION 2

STANDARDS CONCERNING INTELLECTUAL PROPERTY RIGHTS

SUB-SECTION 1

COPYRIGHT AND RELATED RIGHTS

ARTICLE 153

Protection granted

The Parties reaffirm their commitment to:

- (a) the rights and obligations set out in the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention);
- (b) the International Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations of 1961;
- (c) the TRIPS Agreement;
- (d) the WIPO Copyright Treaty;
- (e) the WIPO Performances and Phonograms Treaty.

ARTICLE 154

Authors

Each Party shall provide for authors the exclusive right to authorise or prohibit:

- (a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of their works;
- (b) any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof;
- (c) any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

ARTICLE 155

Performers

Each Party shall provide for performers the exclusive right to:

- (a) authorise or prohibit the fixation¹ of their performances;
- (b) authorise or prohibit the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of fixations of their performances;

¹ For the purposes of this Chapter, "fixation" means the embodiment of sounds or images, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device.

- (c) make available to the public, by sale or otherwise, fixations of their performances;
- (d) authorise or prohibit the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them, of fixations of their performances;
- (e) 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 156

Producers of phonograms

Each Party shall provide for phonogram producers the exclusive right to:

- (a) authorise or prohibit the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part, of their phonograms;
- (b) make available to the public, by sale or otherwise, their phonograms, including copies thereof;
- (c) authorise or prohibit the making available of their phonograms to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

ARTICLE 157

Broadcasting organisations

Each Party shall provide for broadcasting organisations the exclusive right to authorise or prohibit:

- (a) the fixation of their broadcasts;
- (b) the reproduction of fixations of their broadcasts;
- (c) the making available to the public, by wire or wireless means, of fixations of their broadcasts; and
- (d) the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

ARTICLE 158

Broadcasting and communication to the public

1. Each Party shall provide a right in order to ensure that a single equitable remuneration is paid by the user, 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, and to ensure that this remuneration is shared between the relevant performers and phonogram producers.
2. Each Party may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

ARTICLE 159

Term of protection

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his/her death, irrespective of the date when the work is lawfully made available to the public.

2. The term of protection of a musical composition with words shall expire 70 years after the death of the last of the following persons to survive, whether or not those persons are designated as co-authors: the author of the lyrics and the composer of the musical composition, provided that both contributions were specifically created for the respective musical composition with words.

3. The rights of performers shall expire no less than 50 years after the date of the performance. However:
 - (a) if a fixation of the performance otherwise than in a phonogram is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier,

(b) if a fixation of the performance in a phonogram is lawfully published or lawfully communicated to the public within this period, the rights shall expire 70 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.

4. The rights of producers of phonograms shall expire no less than 50 years after the fixation is made. However:

(a) if a phonogram has been lawfully published within this period, the said rights shall expire no less than 70 years from the date of the first lawful publication. If no lawful publication has taken place within the period mentioned in the first sentence, and if the phonogram has been lawfully communicated to the public within this period, the said rights shall expire not less than 70 years from the date of the first lawful communication to the public;

(b) if 50 years after a phonogram is lawfully published or communicated to the public, the phonogram producer does not offer copies of the phonogram for sale in sufficient quantity, or does not make it available to the public, the performer may terminate the contract by which he/she has transferred or assigned his/her rights in the fixation of his/her performance to a phonogram producer.

5. The rights of broadcasting organisations shall expire no less than 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or wireless means, including by cable or satellite.

6. The terms laid down in this Article shall be calculated from the first of January of the year following the event which gives rise to them.

ARTICLE 160

Protection of technological measures

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she 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 any effective technological measures;
 - (b) have only a limited commercially significant purpose or use other than to circumvent any effective technological measures, or
 - (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitation the circumvention of any effective technological measures.
3. For the purposes of this Agreement, the expression "technological measures" 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 protected subject matter, which are not authorised by the right holder of any copyright or related right as provided for by domestic law. Technological measures shall be deemed "effective" where the use of a work or other protected subject matter is controlled by the right holders through 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 protection objective.

ARTICLE 161

Protection of rights management information

1. Each Party shall provide adequate legal protection against any person performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights-management information, or
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject matter protected under this Agreement from which electronic rights-management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by so doing he/she is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights as provided by domestic law.

2. For the purposes of this Chapter, the expression "rights-management information" means any information provided by a right holder that identifies the work or other subject matter that is the object of protection under this Chapter, 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. Paragraph 1 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 that is the object of protection under this Chapter.

ARTICLE 162

Exceptions and limitations

1. In accordance with the conventions and international treaties to which they are Parties, each Party may provide for limitations or exceptions to the rights set out in Articles 154 to 159 of this Agreement only in certain special cases which do not conflict with a normal exploitation of the protected subject matter and which do not unreasonably prejudice the legitimate interests of the right holders.

2. Each Party shall provide that temporary acts of reproduction referred to in Articles 155 to 158 of this Agreement, which are transient or incidental, which are an integral and essential part of a technological process and the sole purpose of which is to enable:

- (a) a transmission in a network between third parties by an intermediary, or
- (b) a lawful use

of a work or other protected subject matter to be made, and which have no independent economic significance, shall be exempted from the reproduction right provided for in Articles 155 to 158 of this Agreement.

ARTICLE 163

Artists' resale right in works of art

1. Each Party shall provide, for the benefit of the author of an original work of art, a resale right, to be defined as an inalienable right, which cannot be waived, even in advance, to receive a royalty based on the sale price obtained for any resale of the work, subsequent to the first transfer of the work by the author.
2. The right referred to in paragraph 1 shall apply to all acts of resale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art.
3. Each Party may provide that the right referred to in paragraph 1 shall not apply to acts of resale where the seller has acquired the work directly from the author less than three years before that resale and where the resale price does not exceed a certain minimum amount.
4. The royalty shall be payable by the seller. Each Party may provide that one of the natural or legal persons referred to in paragraph 2 other than the seller shall alone be liable or shall share liability with the seller for payment of the royalty.
5. The protection provided may be claimed to the extent permitted by the Party where this protection is claimed. The procedure for collection and the amounts shall be matters for determination by domestic law.

ARTICLE 164

Cooperation on collective management of rights

The Parties shall endeavour to promote dialogue and cooperation between their respective collective management societies for the purpose of promoting the availability of works and other protected subject matter and the transfer of royalties for the use of such works or other protected subject matter.

SUB-SECTION 2

TRADEMARKS

ARTICLE 165

International agreements

The Parties reaffirm their commitment to:

- (a) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, and
- (b) the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

ARTICLE 166

Registration procedure

1. Each Party shall provide for a system for the registration of trademarks in which each final negative decision taken by the relevant trademark administration shall be communicated to the applicant in writing and shall be duly reasoned.
2. Each Party shall provide for the possibility to oppose applications to register trademarks. Such opposition proceedings shall be adversarial.
3. The Parties shall provide a publicly available electronic database of applications and registrations of trademarks.

ARTICLE 167

Well-known trademarks

Each Party shall give effect to Article 6bis of the Paris Convention and Article 16(2) and (3) of the TRIPS Agreement concerning the protection of well-known trademarks, and may take into consideration the 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 World Intellectual Property Organisation (WIPO) at the Thirty-Fourth Series of Meetings of the Assemblies of the Member States of WIPO (September 1999).

ARTICLE 168

Exceptions to the rights conferred by a trademark

Each Party shall provide for limited exceptions to the rights conferred by a trademark, such as the fair use of descriptive terms, the protection of geographical indications as provided for in Article 176, or other limited exceptions that take account of the legitimate interests of the owner of the trademark and of third parties.

SUB-SECTION 3

GEOGRAPHICAL INDICATIONS

ARTICLE 169

Scope

1. This Sub-Section applies to the recognition and protection of geographical indications which are originating in the territories of the Parties.
2. In order for a geographical indication of a Party to be protected by the other Party, it shall cover products within the scope of the legislation of that Party referred to in Article 170 of this Agreement.

ARTICLE 170

Established geographical indications

1. Having examined the Law of Georgia on appellations of origin and Geographical Indications of Goods, adopted on 22 August 1999, the Union concludes that that law meets the elements laid down in Annex XVII-A to this Agreement.
2. Having examined Council Regulation (EEC) No 1601/91 of 10 June 1991 laying down general rules on the definition, description and presentation of aromatised wines, aromatized wine-based drinks and aromatized wine-product cocktails, Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs, with its implementing rules, for the registration, control and protection of geographical indications of agricultural products and foodstuffs in the

European Union, Section I of Chapter I of Title II of Part II of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) and Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks, Georgia concludes that those laws, rules and procedures meet the elements laid down in Annex XVII-A to this Agreement.

3. Georgia, after having completed an objection procedure in accordance with the criteria set in Annex XVII-B to this Agreement, having examined a summary of the specifications of the agricultural products and foodstuffs corresponding to the geographical indications of the Union listed in Annex XVII-C to this Agreement and the geographical indications for wines, aromatised wines and spirit drinks listed in Annex XVII-D to this Agreement, which have been registered by the Union under the legislation referred to in paragraph 2 of this Article, shall protect those geographical indications according to the level of protection laid down in this Sub-section.

4. The Union, after having completed an objection procedure in accordance with the criteria set out in Annex XVII-B to this Agreement, having examined a summary of the specifications of the agricultural products and foodstuffs corresponding to the geographical indications of Georgia listed in Annex XVII-C to this Agreement and the geographical indications for wines, aromatised wines and spirit drinks listed in Annex XVII-D to this Agreement, which are registered by Georgia under the legislation referred to in paragraph 1, shall protect those geographical indications according to the level of protection laid down in this Sub-Section.

5. The decisions of the Joint Committee set up by Article 11 of the Agreement between the European Union and Georgia on protection of geographical indications of agricultural products and foodstuffs concerning the amendment of Annexes III and IV to that Agreement, which are taken before the entry into force of this Agreement, shall be deemed to be decisions of the Geographical Indications Sub-Committee, and the geographical indications added to Annexes III and IV to that Agreement shall be deemed to be part of Annexes XVII-C and XVII-D of this Agreement. Accordingly, the Parties shall protect those geographical indications as established

geographical indications under this Agreement.

ARTICLE 171

Addition of new geographical indications

1. The Parties agree on the possibility to add new geographical indications to be protected in Annexes XVII-C and XVII-D to this Agreement in accordance with the procedure set out in Article 179(3) of this Agreement after having completed the objection procedure and after having examined a summary of the specifications as referred to in Article 170(3) and (4) of this Agreement to the satisfaction of both Parties.
2. A Party shall not be required to protect as a geographical indication a name that conflicts with the name of a plant variety or an animal breed and as a result is likely to mislead the consumer as to the true origin of the product.

ARTICLE 172

Scope of protection of geographical indications

1. The geographical indications listed in Annexes XVII-C and XVII-D to this Agreement, as well as those added pursuant to Article 171 of this Agreement, shall be protected against:
 - (a) any direct or indirect commercial use of a protected name:
 - (i) for comparable products not compliant with the product specification of the protected name, or
 - (ii) in so far as such use exploits the reputation of a geographical indication;

- (b) any misuse, imitation or evocation², even if the true origin of the product is indicated or if the protected name is translated or accompanied by an expression such as "style", "type", "method", "as produced in", "imitation", "flavour", "like" or similar;
- (c) any other false or misleading indication as to the provenance, origin, nature or essential qualities of the product, on the inner or outer packaging, advertising material or documents relating to the product concerned, and the packing of the product in a container liable to convey a false impression as to its origin;
- (d) any other practice liable to mislead the consumer as to the true origin of the product.

2. If geographical indications are wholly or partially homonymous, protection shall be granted to each indication provided that it has been used in good faith and with due regard for local and traditional usage and the actual risk of confusion. Without prejudice to Article 23 of the TRIPS Agreement, the Parties shall mutually 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. A homonymous name which misleads the consumer into believing that products come from another territory shall not be registered even if the name is accurate as far as the actual territory, region or place of origin of the product in question is concerned.

3. Where a Party, in the context of negotiations with a third country, proposes to protect a geographical indication of that third country, and the name is homonymous with a geographical indication of the other Party, the latter shall be informed and be given the opportunity to comment before the name becomes protected.

² The term "evocation" means, in particular, the use in any way for products falling under heading 20.09 of the HS, although only in so far as they are referred to as wines falling under heading 22.04, aromatised wines falling under heading 22.05 and spirit drinks falling under heading 22.08 of that system.

4. Nothing in this Sub-Section shall oblige a Party to protect a geographical indication of the other Party which is not or ceases to be protected in its country of origin. The Parties shall notify each other if a geographical indication ceases to be protected in its country of origin.

ARTICLE 173

Protection of transcription of geographical indications

1. Geographical indications protected under this Sub-Section in the characters of the Georgian alphabet and other non-Latin alphabets officially used in the Member States shall be protected together with their transcription in Latin characters. This transcription may also be used for labelling purposes for the products concerned.

2. Similarly, geographical indications protected under this Sub-Section in a Latin alphabet shall be protected together with their transcription in the characters of the Georgian alphabet and in the characters of other non-Latin alphabets officially used in the Member States. This transcription may also be used for labelling purposes for the products concerned.

ARTICLE 174

Right of use of geographical indications

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

2. Once a geographical indication is protected under this Sub-Section, the use of such protected name shall not be subject to any registration of users or further charges.

ARTICLE 175

Enforcement of protection

The Parties shall enforce the protection provided for in Articles 170 to 174 of this Agreement by appropriate administrative action by their public authorities. They shall also enforce such protection at the request of an interested party.

ARTICLE 176

Relationship with trademarks

1. The Parties shall refuse to register or shall invalidate, ex officio or at the request of any interested party in conformity with the legislation of each Party, a trademark that corresponds to any of the situations referred to in Article 172(1) of this Agreement in relation to a protected geographical indication for like products, provided an application to register the trademark is submitted after the date of application for protection of the geographical indication in the territory concerned.
2. For geographical indications referred to in Article 170 of this Agreement, the date of application for protection shall be 1 April 2012.
3. For geographical indications referred to in Article 171 of this Agreement, the date of application for protection shall be the date of the transmission of a request to the other Party to protect a geographical indication.

4. The Parties shall have no obligation to protect a geographical indication where, in the light of a reputed or well-known trademark, protection is liable to mislead consumers as to the true identity of the product.

5. Without prejudice to paragraph 4, the Parties shall protect geographical indications also where a prior trademark exists. A prior trademark shall mean a trademark the use of which corresponds to one of the situations referred to in Article 172(1) of this Agreement, which has been applied for, registered or established by use, if that possibility is provided for by the legislation concerned, in the territory of one of the Parties before the date on which the application for protection of the geographical indication is submitted by the other Party under this Sub-Section. Such trademark may continue to be used and renewed notwithstanding the protection of the geographical indication, provided that no grounds for the trademark's invalidity or revocation exist in the legislation on trademarks of the Parties.

ARTICLE 177

General rules

1. This Sub-Section shall apply without prejudice to the rights and obligations of the Parties under the WTO Agreement.

2. The import, export and marketing of any product referred to in Articles 170 and 171 of this Agreement shall be conducted in compliance with the laws and regulations applying in the territory of the importing Party.

3. Any matter arising from technical specifications of registered names shall be dealt with in the Sub-Committee established in Article 179 of this Agreement.

4. Geographical indications protected under this Sub-Section may only be cancelled by the Party in which the product originates.

5. A product specification referred to in this Sub-Section shall be that approved, including any amendments also approved, by the authorities of the Party in the territory of which the product originates.

ARTICLE 178

Cooperation and transparency

1. The Parties shall, either directly or through the Geographical Indications Sub-Committee established pursuant to Article 179 of this Agreement, maintain contact on all matters relating to the implementation and the functioning of this Sub-Section. In particular, a Party may request from the other Party information relating to product specifications and their modification, and contact points for control provisions.

2. Each Party may make publicly available the specifications or a summary thereof and contact points for control provisions corresponding to geographical indications of the other Party protected pursuant to this Article.

ARTICLE 179

Geographical Indications Sub-Committee

1. The Geographical Indications Sub-Committee is hereby established. It shall consist of representatives of the Union and of Georgia with the purpose of monitoring the development of this Sub-Section and of intensifying their cooperation and dialogue on geographical indications. It shall report to the Association Committee in Trade configuration, as set out in Article 408(4) of this Agreement.

2. The Geographical Indications Sub-Committee adopts its decisions by consensus. It shall determine its own rules of procedure. It shall meet at the request of either of the Parties, alternatively in the EU and in Georgia, 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 Geographical Indications Sub-Committee shall also see to 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) amending Article 170(1) and (2) of this Agreement, as regards the references to the law applicable in the Parties;
- (b) modifying Annexes XVII-C and XVII-D to this Agreement as regards geographical indications;
- (c) exchanging information on legislative and policy developments on geographical indications and any other matter of mutual interest in the area of geographical indications;
- (d) exchanging information on geographical indications for the purpose of considering their protection in accordance with this Sub-Section.

SUB-SECTION 4

DESIGNS

ARTICLE 180

International agreements

The Parties reaffirm their commitment to the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs of 1999.

ARTICLE 181

Protection of registered designs

1. Each Party shall provide for the protection of independently created designs that are new and are original³. This protection shall be provided by registration, which shall confer an exclusive right upon the holder of a registered design in accordance with the provisions of this Article.

2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall only be considered to be new and original:
 - (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use of the latter, and

 - (b) to the extent that those visible features of the component part fulfil in themselves the

³ For the purposes of this Article, a Party may consider that a design having individual character is original.

requirements as to novelty and originality.

3. The expression "normal use" in point (a) of paragraph 2 shall mean use by the end user, excluding maintenance, servicing or repair work.
4. The holder of a registered design shall have the right to prevent third parties not having the owner's consent from, at a minimum, making, offering for sale, selling, importing, exporting, stocking or using a product 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 practices.
5. The duration of protection available shall amount to 25 years, from the date of filing of the application for registration or from a date established in accordance with the Hague Agreement Concerning the International Deposit of Industrial Designs, without prejudice to the Paris Convention.

ARTICLE 182

Exceptions and exclusions

1. Each Party 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. In particular a design right shall not subsist in features of appearance of a product which are required to be reproduced in their exact form and dimensions in order to permit the product in which the design is incorporated or to which it is applied to be mechanically connected to or placed in, around or against another product so that either product

may perform its function.

ARTICLE 183

Relationship to copyright

A design shall also be eligible for protection under the law of copyright of a Party as from the date on which the design was created or fixed in any form. The extent to which, and the conditions under which, such a protection is conferred, including the level of originality required, shall be determined by each Party.

SUB-SECTION 5

PATENTS

ARTICLE 184

International agreements

The Parties reaffirm their commitment to the WIPO Patent Cooperation Treaty.

ARTICLE 185

Patents and public health

1. The Parties recognise the importance of the Declaration of the Ministerial Conference of the WTO on the TRIPS Agreement and Public Health adopted on 14 November 2001.
2. The Parties shall respect the Decision of the WTO General Council of 30 August 2003 on paragraph 6 of the declaration referred to in paragraph 1 of this Article and shall contribute to its implementation.

ARTICLE 186

Supplementary protection certificate

1. The Parties recognise that medicinal and plant protection products protected by a patent on their respective territory may be subject to an administrative authorisation procedure before being put on their market. They recognise that the period that elapses between the filing of the application for a patent and the first authorisation to place the product on their respective market, as defined for that purpose by domestic law, may shorten the period of effective protection under the patent.
2. Each Party shall provide for a further period of protection for a medicinal or plant protection product which is protected by a patent and which has been subject to an administrative authorisation procedure, that period being equal to the period referred to in the second sentence of paragraph 1, reduced by a period of five years.
3. Notwithstanding paragraph 2, the duration of the further period of protection may not exceed five years.

4. In the case of medicinal products for which paediatric studies have been carried out, and provided that the results of those studies are reflected in the product information, the Parties shall provide for a further six months extension of the period of protection referred to in paragraph 2.

ARTICLE 187

Protection of data submitted to obtain a marketing authorisation for medicinal products⁴

1. The Parties shall implement a comprehensive system to guarantee the confidentiality, non-disclosure and non-reliance of data submitted for the purpose of obtaining an authorisation to put a medicinal product on the market.
2. Each Party shall ensure, in its law, that any information submitted to obtain an authorisation to put a medicinal product on the market remains confidential and undisclosed to third parties and benefits from protection against unfair commercial use.
3. For that purpose, each Party shall not, for a period of at least six years from the date of the first authorisation in one of the Parties, permit other applicants to market the same or a similar product, on the basis of the marketing authorisation granted to the applicant which had provided the test data or studies, unless the applicant which had provided the test data or studies has given his consent. During such period, the test data or studies submitted for the first authorisation shall not be used for the benefit of any subsequent applicant aiming to obtain a marketing authorisation for a medicinal product, except when the consent of the first applicant is

⁴ This Article shall be without prejudice to Georgian Governmental Regulation No 188 of 22 October 2009 on the establishment of the list of countries and relevant authorities eligible for the simplified regime of registration of medicinal products in Georgia. The list established by the above Regulation refers to the following countries/authorities: EMA - European Medicines Agency; Australia; Austria; Belgium; Bulgaria; Canada; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Ireland; Italy; Japan; Korea; Latvia; Lithuania; Luxemburg; Malta; Netherlands; New Zealand; Norway; Poland; Portugal; Romania; Slovakia; Slovenia; Spain; Sweden; Switzerland; UK; USA.

provided.

4. The six year period referred to in paragraph 3 shall be extended to a maximum of seven years if, during the first six years after obtaining the initial authorisation, the holder obtains an authorisation for one or more new therapeutic indications which are considered of significant clinical benefit in comparison with existing therapies.

5. Georgia undertakes to align its legislation concerning data protection for medicinal products with that of the Union at a date to be decided by the Association Committee in Trade configuration, as set out in Article 408(4) of this Agreement.

ARTICLE 188

Protection of data to obtain a marketing authorisation for plant protection products

1. Each Party shall determine safety and efficacy requirements before authorising the placing on the market of plant protection products.

2. Each Party shall ensure that data submitted for the first time by an applicant to obtain a marketing authorisation for a plant protection product benefits from protection against unfair commercial use and is not used for the benefit of any other person aiming to obtain a marketing authorisation, unless the proof of the explicit consent of the first holder is provided.

3. The test or study report submitted for the first time to obtain a marketing authorisation shall fulfil the following conditions:

- (a) that it is for the authorisation, or for an amendment of an authorisation in order to allow the use on other crops, and
- (b) that it is certified as compliant with the principles of good laboratory practice or of good

experimental practice.

4. The period of protection of data shall be at least ten years starting from the date of the first marketing authorisation in the Party concerned.

ARTICLE 189

Plant varieties

The Parties shall protect plant varieties rights, in accordance with the International Convention for the Protection of New Varieties of Plants and shall cooperate to promote and enforce those rights.

SECTION 3

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

ARTICLE 190

General obligations

1. The Parties reaffirm their commitments under the TRIPS Agreement, and in particular Part III thereof, and shall provide for the complementary measures, procedures and remedies set out in this Section necessary to ensure the enforcement of intellectual property rights⁵.

⁵ For the purposes of this Section the notion of "intellectual property rights" includes at least the following rights: copyright; rights related to copyright; sui generis right of a database maker; rights of the creator of the topographies of a semi-conductor product; trademark rights; design rights; patent rights, including rights derived from supplementary protection certificates; geographical indications; utility model rights; plant variety rights; trade names in so far as these are protected as exclusive rights by domestic law.

2. Those complementary measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.

3. Those complementary measures and remedies shall also be effective, proportionate and dissuasive and shall 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 191

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 licencees, 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,
- (d) professional defence 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.

SUB-SECTION 1

CIVIL ENFORCEMENT

ARTICLE 192

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 his/her claims that his/her 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. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the alleged infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. Those measures shall be taken, if necessary without the other party being heard, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.
3. Where measures to preserve evidence are adopted without the other party having been heard, the parties affected shall be given notice without delay and at the latest after the execution of the measures.

ARTICLE 193

Right of information

1. Each Party shall ensure that, in the context of 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 that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:

- (a) was found in possession of the infringing goods on a commercial scale;
- (b) was found to be using the infringing services on a commercial scale;
- (c) was found to be providing on a commercial scale services used in infringing activities; or
- (d) was found to be producing, manufacturing or distributing infringing goods or to be providing services, through information provided by any person referred to in points (a), (b), or (c).

2. The information referred to in paragraph 1 shall, as appropriate, comprise:

- (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers, and
- (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.

3. Paragraphs 1 and 2 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 to his/her own participation or that of his/her 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 194

Provisional measures

1. Each Party shall ensure that the judicial authorities may, at the request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by domestic law, 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, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right.

2. An interlocutory injunction may also be issued to order the seizure or delivery up of 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 alleged infringement committed on a commercial scale, the Parties 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 his/her bank accounts and other assets. To that end, the competent authorities may order access, where appropriate, to banking, financial or commercial documents under the control of the alleged infringer.

ARTICLE 195

Measures resulting from a decision on the merits of the case

1. Each Party shall ensure that the competent judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, at least the definitive removal from the channels of commerce, or the destruction, of goods that they have found to be infringing an intellectual property right. If appropriate, the competent judicial authorities may also order the destruction of materials and implements predominantly used in the creation or manufacture of those goods.

2. The Parties' judicial authorities shall have the power to order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

3. 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 as well as against any intermediary whose services are used by a third party to infringe an intellectual property right an injunction aimed at prohibiting the continuation of the infringement.

4. The Parties may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in this Article, the competent judicial authorities may

order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in this Article if that person acted unintentionally and without negligence, if execution of the measures in question would cause him/her disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

ARTICLE 196

Damages

1. Each Party shall ensure that the judicial authorities, on application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the right holder damages appropriate to the actual prejudice suffered by that right holder as a result of the infringement. When the judicial authorities set the 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 moral prejudice, caused to the right holder by the infringement; or
- (b) as an alternative to (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 lay down that the judicial authorities may order in favour of the injured party the recovery of profits or the payment of damages which may be pre-established.

ARTICLE 197

Legal costs

Each Party shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall as a general rule be borne by the unsuccessful party, unless equity does not allow this and without prejudice to exceptions provided by domestic procedural rules.

ARTICLE 198

Publication of judicial decisions

Each Party shall ensure that, either in legal proceedings instituted for infringement of an industrial property right or in legal proceedings instituted for infringement of copyright, or in both cases, the judicial authorities may order 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.

ARTICLE 199

Presumption of authorship or ownership

For the purposes of applying the measures, procedures and remedies provided for in this Sub-Section:

- (a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner;

- (b) the provision under point (a) shall apply mutatis mutandis to the holders of rights related to copyright with regard to their protected subject matter.

SUB-SECTION 2

OTHER PROVISIONS

ARTICLE 200

Border measures

1. Without prejudice to Article 75 of this Agreement and to Annex XIII to this Agreement, this Article establishes the general principles of this Agreement governing the enforcement of intellectual property rights by customs authorities and the obligations of the customs authorities of the Parties to engage in cooperation.
2. When implementing border measures for the enforcement of intellectual property rights the Parties shall ensure consistency with their obligations under GATT 1994 and the TRIPS Agreement.
3. The provisions on border measures in this Article are of procedural nature. They set out the conditions and procedures for action by the customs authorities where goods suspected of infringing an intellectual property right are, or should have been, under customs control. They shall not affect in any way the substantive law of the Parties on intellectual property.
4. To facilitate the effective enforcement of intellectual property rights, the customs authorities shall adopt a range of approaches to identify shipments containing goods suspected of infringing intellectual property rights. These approaches include risk analysis techniques based, inter alia, on information provided by rights holders, intelligence gathered and cargo inspections.

5. The Parties agree to effectively implement Article 69 of the TRIPS Agreement in respect of international trade in goods suspected of infringing intellectual property rights. For that purpose, the Parties shall establish and notify contact points in their customs administrations and shall be ready to exchange data and information on trade in such goods affecting both Parties. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods. Without prejudice to the provisions of Protocol II on Mutual Administrative Assistance in Customs Matters to this Agreement customs authorities shall, where appropriate, exchange such information swiftly and with due respect to data protection laws of the Parties.

6. The customs authorities of each Party shall cooperate, upon request or upon their own initiative, to provide relevant available information to the customs authorities of the other Party, in particular for goods in transit through the territory of a Party destined for (or originating in) the other Party.

7. The Sub-Committee referred to in Article 74 of this Agreement shall establish the necessary practical arrangements concerning the exchange of data and information referred to in this Article.

8. Protocol II on Mutual Administrative Assistance in Customs Matters to this Agreement shall be applicable in respect to breaches of intellectual property rights, without prejudice to forms of cooperation resulting from the application of paragraphs 5 to 7 of this Article.

9. The Sub-Committee referred to in Article 74 of this Agreement shall act as the responsible Sub-Committee to ensure the proper functioning and implementation of this Article.

ARTICLE 201

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;
- (b) the submission to their respective competent authorities of draft codes of conduct and of any evaluations of the application of those codes of conduct.

ARTICLE 202

Cooperation

1. The Parties agree to cooperate with a view to supporting the implementation of the commitments and obligations undertaken under this Chapter.
2. 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 in those areas;
 - (b) exchange of experiences and information on the enforcement of intellectual property rights;
 - (c) exchange of experiences on central and sub-central enforcement by customs, police, administrative and judiciary bodies; coordination to prevent exports of counterfeit goods,

including with other countries;

- (d) capacity-building; exchange and training of personnel;
- (e) promotion and dissemination of information on intellectual property rights in, inter alia, business circles and civil society; public awareness of consumers and right holders;
- (f) enhancement of institutional cooperation, for example between intellectual property offices;
- (g) actively promoting awareness and education of the general public on policies concerning intellectual property rights: formulate effective strategies to identify key audiences and create communication programmes to increase consumer and media awareness on the impact of intellectual property violations, including the risk to health and safety and the connection to organised crime.