

## **CHAPTER 2**

### **INTELLECTUAL PROPERTY RIGHTS**

#### **ARTICLE 2.1: GENERAL PROVISIONS**

1. The Parties recognise the importance of intellectual property in promoting economic and social development, technological innovation, and the transfer and dissemination of technology to the mutual advantage of technology producers and users, particularly in the new digital economy.
2. The Parties shall ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are party, including the TRIPS Agreement. This Chapter shall complement and specify the rights and obligations between the Parties under the TRIPS Agreement.
3. The objectives of this Chapter are:
  - (a) to facilitate the production and commercialisation of innovative and creative products in the Parties; and
  - (b) to achieve an adequate and effective level of protection and enforcement of intellectual property rights.
4. For the purposes of the Turkey-Korea FTA, intellectual property rights embody:
  - (a) copyright, including copyright in computer programmes and in databases, and related rights;
  - (b) patents and utility models;
  - (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.
5. The Parties agree to exchange views and information on their practices and policies affecting transfer of technology, both within their respective territories and with non-parties. 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.

6. Nothing in this Chapter shall prevent a Party from adopting appropriate measures to prevent the abuse of intellectual property rights by right holders or the resort to practices that unreasonably restrain trade or adversely affect the international transfer of technology provided that such measures are consistent with the Turkey-Korea FTA.

7. The Parties shall provide the legal means for interested parties to prevent commercial use of country names of the other Party in relation to goods in a manner which is likely to mislead consumers as to the origin of such goods.

8. 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) notification of contact points;
- (b) exchange of information on the legal framework concerning intellectual property rights and relevant rules of protection and enforcement;
- (c) exchange of experiences on legislative progress;
- (d) exchange of experiences on enforcement of intellectual property rights;
- (e) exchange of information regarding the intellectual property systems, aimed at promoting the efficient registration of industrial property rights;
- (f) capacity-building;
- (g) promotion and dissemination of information on intellectual property rights in, *inter alia*, business circles and civil society;
- (h) promotion of public awareness of consumers and right holders; and
- (i) other activities and initiatives as may be mutually determined between the Parties.

## ARTICLE 2.2: COPYRIGHT AND RELATED RIGHTS

### *Protection Granted*

1. The Parties shall comply with:

- (a) Articles 1 through 22 of the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting*

*Organizations* (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 Organization* (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”).

#### *Protection of Technological Measures*

2. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by right holders of any copyright or related rights in connection with the exercise of their rights under each Party’s domestic laws and that restrict acts, in respect of their works or other subject matters, which are not authorised by the right holders of copyright or related rights concerned or permitted by the law of a Party.

#### *Protection of Rights Management Information*

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

- (a) the removal or alteration of any electronic rights management information; or
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject matter protected under the Turkey-Korea FTA 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.

4. For the purposes of the Turkey-Korea FTA, **rights management information** means any information provided by right holders which identifies the work or other subject matter referred to in the Turkey-Korea FTA, 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.

5. Paragraph 4 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 the Turkey-Korea FTA.

#### ARTICLE 2.3: TRADEMARKS

1. Each Party may provide that trademarks include certification marks or guarantee marks.

2. 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, 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, for identical goods or services, a likelihood of confusion shall be presumed.

3. 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.

4. Both Parties reaffirm the obligations under the *Paris Convention for the Protection of Industrial Property* (1967) and the TRIPS Agreement with respect to protection of well-known marks<sup>3</sup>. Additionally, for the protection of well-known marks with respect to identical or similar goods or services, neither Party shall deny remedies or relief 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.

5. Each Party shall provide a system for the registration of trademarks in which the reasons for a refusal to register a trademark shall be communicated in writing and may be provided electronically to the applicant or his/her representative who will have the opportunity to contest such refusal and to appeal a final refusal judicially. Each Party shall also introduce the possibility to oppose trademark applications. The Parties shall provide a publicly available electronic database of trademark applications and trademark registrations.

6. Each Party shall provide that initial registration and each renewal of registration of a trademark shall be for a term of no less than 10 years.

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<sup>3</sup> For the purposes of determining whether a mark is well-known, neither Party shall require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.

7. Each Party shall provide a system that permits owners to assert rights in marks, and interested parties to challenge rights in marks, through administrative or judicial means, or both.

#### ARTICLE 2.4: PROTECTION OF GEOGRAPHICAL INDICATIONS

1. With the recognition of the importance of the protection of geographical indications, each Party shall provide a system for the protection of geographical indications in accordance with Section 3, Part II of the TRIPS Agreement regarding Geographical Indications and protect the geographical indications of the other Party in accordance with its legislation.

2. The names listed in the Turkish List of Annex 2 are geographical indications which have been registered under Turkey's relevant laws, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to Korea's laws and regulations, in a manner that is consistent with the TRIPS Agreement, such names will be protected as geographical indications in the territory of Korea.

3. The names listed in the Korean List of Annex 2 are geographical indications which have been registered under Korea's relevant laws, within the meaning of paragraph 1 of Article 22 of the TRIPS Agreement. Subject to Turkey's laws and regulations, in a manner that is consistent with the TRIPS Agreement, such names will be protected as geographical indications in the territory of Turkey.

4. The Parties shall enter into consultations to protect additional geographical indications, at the request of any Party, after the entry into force of this Framework Agreement. As a result of these consultations, the Parties shall protect, under the terms stated in the Turkey-Korea FTA, such geographical indications.

#### ARTICLE 2.5: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall establish provisions for the enforcement of intellectual property rights in its domestic laws in accordance with the TRIPS Agreement, in particular Articles 41 through 61.

2. Without prejudice to its domestic laws, each Party shall provide measures to curtail repeated copyright and related rights infringement on the internet.

#### ARTICLE 2.6: MONITORING AND REVIEW

1. The implementation of this Chapter shall be regularly monitored by the Parties. If problems in the area of intellectual property affecting trading conditions were to occur, consultations in the Joint Committee shall be undertaken, on request of a Party, with a view to reaching mutually satisfactory solutions.

2. In pursuance of the objectives of this Chapter, the Parties shall enter into consultations with a view to reviewing the overall implementation of this Chapter and

achieving a higher level of intellectual property rights protection, on request of a Party, after three years from the date of entry into force of this Framework Agreement.

**ANNEX 2**  
**GEOGRAPHICAL INDICATIONS**

**PART A. GEOGRAPHICAL INDICATIONS OF TURKEY**

| <b>Name to be protected</b> | <b>Product</b> | <b>Transcription into<br/>Korean alphabet</b> |
|-----------------------------|----------------|-----------------------------------------------|
| Hereke carpet               | Carpet         | 헤레케 카펫/헤레케<br>카페트                             |
| Bünyan carpet               | Carpet         | 분얀 카펫/분얀 카페트                                  |

**PART B. GEOGRAPHICAL INDICATIONS OF KOREA**

| <b>Name to be protected</b>    | <b>Product</b> | <b>Transcription into<br/>Latin alphabet</b> |
|--------------------------------|----------------|----------------------------------------------|
| 고려홍삼<br>(Korean Red Ginseng)   | Red Ginseng    | Goryeo Hongsam                               |
| 고려백삼<br>(Korean White Ginseng) | White Ginseng  | Goryeo Baeksam                               |