A Story of Convergence of IPR Regimes: The IPR Chapter in the China-Korea Free Trade Agreement

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Abstract

The signature of the free trade agreement between China and Korea (China-Korea FTA) on 1 June 2015 marked the first of this type in North-eastern Asia. Noteworthy is that Chapter 15 thereof, which has 31 articles, is dedicated to intellectual property rights (IPR). The IPR chapter covers general principles, copyright and related rights, trademarks, patents and utility model, genetic resources, traditional knowledge and folklore, plant variety protection, undisclosed information, and industrial design. This paper examines the IPR provisions in the China-Korea FTA against the background of the evolving international regime for IPR protection and particularly the IPR provisions in the existing FTAs which China has concluded and those Korea has concluded respectively, and then provides a critical evaluation of the IPR provisions in the China-Korea FTA. It argues that China-Korea FTA is a result of the convergence of various IPR regimes that both countries are shaping separately or jointly, and may serve as a model for upcoming FTAs.

Keywords

China-Korea FTA – intellectual property rights – international regime

In recent years, many countries have been either induced or forced by the United States, for example, to give up the flexibility or the minimum standard mandated by TRIPS Agreement and to accept the so called “TRIPS-plus” obligations while rejoicing the opportunity of concluding free trade agreements (FTAs) with giant economies and the potential markets for their goods. With

the expansion of world trade, an increasing number of FTAs have included these TRIPS-plus provisions, which largely changed the landscape of international protection of intellectual property rights (IPRs) and the economic and social order of developing countries.

On 1 June 2016, the Free Trade Agreement between the Government of the People's Republic of China and the Government of Republic of Korea (China-Korea FTA) was officially signed.¹ Chapter 15, which has 31 articles, is dedicated to IPRs. The IPR chapter covers general principles, copyright and related rights, trademarks, patents and utility model, genetic resources, traditional knowledge and folklore, plant variety protection, undisclosed information, and industrial design, which presents the broadest range of issues among the FTAs signed by China.

This paper compares the specific IPR provisions in the FTAs signed by China and Korea respectively, summarizes the recent development of international regime for the protection of IPRs, analyzes and comments on the IPR provisions in the China-Korea FTA, and anticipates the further development of IPR regime in China and Korea, and beyond.

1 An Examination of the IPR provisions in FTAs to which China is a Party²

China has signed FTAs with countries across Asia, Latin America, Oceania and Europe, i.e. China-ASEAN FTA (2002), Closer Economic and Partnership Arrangement between the mainland and Hong Kong and Closer Economic and Partnership Arrangement between the mainland and Macau,³ China-Chile FTA (2005), China-Pakistan FTA (2006), China-Singapore FTA (2008), China-New Zealand FTA (2008), China-Peru FTA (2009), China-Costa Rica FTA (2010), China-Iceland FTA (2013), China-Switzerland FTA (2014), China-Korea FTA (2015) and China-Australia FTA (2015).⁴

1 See MOFCOM Website, *China, ROK sign free trade agreement*, available at http://fta.mofcom.gov.cn/enarticle/enkorea/enkoreanews/201506/21876_1.html, last visited on 1 August 2016.

2 Please refer to Appendix I for more detailed information.

3 Initially signed in 2003, and supplementary agreements signed in 2004, 2005, 2006, 2007, 2008, 2009.

4 For more information on FTAs to which China is a party, please see MOFCOM website on China FTA Network, available at <http://fta.mofcom.gov.cn/english/index.shtml>, last visited on 1 August 2016.

Chronically speaking, the IPR provisions in these FTAs have undergone great changes, from such merely rough provisions about cooperation in earlier FTAs⁵ to well-organized and comprehensive chapters in the later FTAs such as China-Switzerland FTA, China-Korea FTA and China-Australia FTA. Starting from China-Chile FTA, more specific IPR provisions were included in China's FTAs. For example, the China-Chile FTA embodies articles concerning geographical indications, special requirements related to border measures and cooperation on IPRs,⁶ while China-Pakistan FTA only sets forth special requirements related to border measures.⁷

China-New Zealand FTA is the first FTA signed by China that contains a single and separate IPR chapter. Chapter 12 of China-New Zealand FTA has in place several principles governing IPR and Article 165 generally refer to the protection of genetic resources, traditional knowledge and folklore without providing for detailed rules in this regard.⁸ Chapter 11 of China-Peru FTA, which is dedicated to IPR, has more comprehensive rules than China-New Zealand FTA. In this chapter, Article 145 on Genetic Resources, Traditional Knowledge and Folklore emphasizes the principles and provision established in the Convention on Biological Diversity adopted on 5 June 1992.⁹

Also, China-Peru FTA governs issues such as geographical indications and special requirements related to border measures.¹⁰ China-Costa Rica FTA, apart from provisions governing genetic resources, traditional knowledge and folklore and geographical indications, for the first time discusses intellectual property and public health and refers to the *Doha Declaration on the TRIPS Agreement and Public Health*, which was adopted on 14 November 2001 by the Ministerial Conference of the WTO, and the *Decision of the WTO General Council of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health*, as well as the *Protocol Amending the TRIPS Agreement* (done at Geneva on 6 December 2005) in the Chapter 10 entitled "Intellectual Property".¹¹

5 Examples are the China-ASEAN FTA, Closer Economic and Partnership Arrangement between the Mainland and Hong Kong and the Closer Economic and Partnership Arrangement between Mainland and Macau, and the China-Singapore FTA.

6 China-Chile FTA Article 10, 11 and 111.

7 China-Pakistan FTA Article 10.

8 China-New Zealand FTA Article 165. It reads, "Subject to each Party's international obligations, the Parties may establish appropriate measures to protect genetic resources, traditional knowledge and folklore."

9 China-Peru FTA Article 145.

10 China-Peru FTA Article 146, 147.

11 China-Costa Rica Article 112.

However, there has been an exception, i.e., the later signed China-Iceland FTA. It only has four articles on IPR, i.e. General Provisions, International Conventions, Co-operation and Exchange of Information, Dialogue and Review, all of which only discusses basic principles without referring to detailed rules.¹²

China-Switzerland FTA, which was signed in 2014, contained the most comprehensive provisions on IPRs until then. Twenty-two (22) articles in Chapter 11 govern issues such as general principles, standards concerning the availability, scope and use of intellectual property rights (including copyright and related rights, trademarks, patents, genetic resource and traditional knowledge, plant variety protection, undisclosed information, industrial designs, geographical indications), acquisition and maintenance of intellectual property rights, enforcement of intellectual property rights, indications of source and country names. To be more specific, in regard to copyright and related rights, the China-Switzerland FTA requires that computer programs fall under copyright protection, and that the term of protection granted to performers, producers of videograms and broadcasting organisations last at least until the end of a period of 50 years.¹³ When it comes to terms of trademarks, the FTA provides that Parties may require, as a condition of registration, that signs be visually perceptible, while signs of sounds may be eligible for registration as trademarks.¹⁴ With respect to patent, the China-Switzerland FTA provided that biotechnology and herbal medicine, among others, be patentable.¹⁵ The principles established in the *Convention on Biological Diversity* adopted on 5 June 1992 are again acknowledged and reaffirmed and the parties may adopt or maintain measures to promote the conservation of biological diversity and the equitable sharing of benefits arising from the use of genetic resources and traditional knowledge.¹⁶ As for plant variety protection, the UPOV Convention is reaffirmed and the conditions and exceptions of authorization of the breeder are clearly stated regarding the genera/species contained in List A of Annex IX.¹⁷ The FTA further states that apart from Article 39 of the TRIPS Agreement, the Parties shall also protect undisclosed test data of pharmaceuticals, including chemical entities and biologics and agricultural chemical products, and agrochemical products for at least 6 years; while under the condition that first applicant is adequately compensated, reliance on or reference to date

¹² China-Iceland FTA Chapter 6.

¹³ China-Switzerland FTA Article 11.6.

¹⁴ China-Switzerland FTA Article 11.7.

¹⁵ China-Switzerland FTA Article 11.8.

¹⁶ China-Switzerland FTA Article 11.9.

¹⁷ China-Switzerland FTA Article 11.10.

of tests of agrochemical products involving vertebrate animals.¹⁸ It requires that the term for the protection of industrial designs be at least ten years, with the term of protection of works of applied art being at least 25 years.¹⁹ Under this FTA, the Parties also agree to protect geographical indications, indications of source and country names and flags.²⁰ Pursuant to the China-Switzerland FTA, enforcement measures include suspension of release, right of inspection, liability declaration, security or equivalent assurance, civil remedies, provisional measures and injunctions, criminal remedies.²¹

China-Korea FTA goes even further, contains 31 articles in its Chapter 15 on intellectual property rights, which will be analyzed below. Only half a month after China and Korea signed the new FTA, on 17 June 2015, China signed another FTA with Australia.²² There are 24 articles in Chapter 11 Intellectual Property, covering issues like general principles, public health, exhaustion, procedures on acquisition and maintenance, collective management of copyright, service provider liability, enforcement, border measures, cooperation and committee on intellectual property, etc.²³ WTO obligations such as national treatment and transparency are emphasized in this Chapter.²⁴ Protection is required to be given to patents, trademarks, geographical indications, plant breeders' rights, genetic resources, traditional knowledge and folklore and undisclosed information.²⁵ Regarding patents, invention application shall be published or made available online after the expiry of 18 months from its filing date or from its earliest priority date.²⁶ The covered trademarks include visual and sound signs, collective and certification trademarks and well-known trademarks.²⁷ Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices.²⁸ And footnote 3 of Chapter 11 defines "a manner contrary to honest

18 China-Switzerland FTA Article 11.11.

19 China-Switzerland FTA Article 11.12.

20 China-Switzerland FTA Article 11.13 and 11.22.

21 China-Switzerland FTA Article 11.16–11.21.

22 See MOFCOM Website, *China-Australia FTA Officially Signed*, available at http://fta.mofcom.gov.cn/enarticle/enaustralia/enaustralianews/201506/22255_1.html, last visited on 1 August 2016.

23 China-Australia FTA Article 11.1–11.9 and 11.19–11.24.

24 China-Australia FTA Article 11.5 and 11.6.

25 China-Australia FTA Article 11.10–11.18.

26 China-Australia FTA Article 11.11.

27 China-Australia FTA Article 11.12–11.14.

28 China-Australia FTA Article 11.18.

commercial practices” as practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition. With regard to other types of IPRs, the Chapter does not provide very detailed rules, only mentioning the mutual protection of these IPR.

Generally speaking, the IPR chapters in FTAs to which China is a Party are basically built on the provisions in the TRIPS Agreement, but also include clauses such as genetic resources and traditional knowledge and folklore and public health, which represent the characteristics of China being a developing country. However, the FTAs do not contain much detailed rules compared to the Korea-US FTA, which is to be discussed below. It is fair to say that there are not many TRIPS-plus provisions in FTAs to which China is a Party, indicating China's preference for a moderate standard for IPR protection.

2 An Examination of The IPR Provisions in FTAs to which Korea is a Party²⁹

The protection of IPR in Korea has reached a comparatively high level and much stricter standards have been applied as a result of its great achievement in economic development and technological innovation. For example, the term of protection for copyrights has been extended to 70 years after the author's death. Similar elevation of standards can be seen in the fields such as trademarks, patents, industrial designs and geographical indications.

In the recent years, Korea has also signed a variety of FTAs with countries and regions in all parts of the world. FTAs in effect are those signed with Chile (2004), Singapore (2006), EFTA (2006), ASEAN (2007), India (2010), the EU (2011), Peru (2011), the US (2012), Turkey (2013), Australia (2014), Canada (2015), New Zealand (2015), Viet Nam (2015) and Colombia (2016).³⁰

Some of these FTAs have imposed higher standards than that required by the TRIPS Agreement, even though they do not necessarily meet the requirements advocated by the US or the EU and they do not contain a larger number of TRIPS-plus obligations. Since the US and the EU are the main advocates of

29 Please refer to Appendix II for more detailed information. Regarding FTAs to which Korea is a Party, please see Korea FTA website, available at <http://www.fta.go.kr/main/>, last visited on 1 August 2016.

30 See Korea FTA Website, available at <http://www.fta.go.kr/main/>, last visited on 1 August 2016.

new international standards of IPR protection, the Korea-US FTA and Korea-EU FTA contain the most comprehensive IPR provisions and incorporate the highest standard for the IPR protection among all the FTAs to which Korea is a Party. And this section is going to probe into Chapter 18 of Korea-US FTA and Chapter 10 of Korea-EU FTA on Intellectual Property Rights as follows:³¹

2.1 *Korea-US FTA*

2.1.1 General Provisions

The US is the worlds' leading advocator of stronger IPR protection and management, and thus the Korea-US FTA contains sophisticated IPR provisions and imposes higher standard on IPR protection than the other FTAs to which Korea is a Party. At the beginning of the IPR Chapter, both parties to Korea-US FTA affirm their existing rights and obligations under the TRIPS Agreement. Specifically, WTO obligations, such as national treatment and transparency, which have been widely accepted across the world, also have been incorporated in the Korea-US FTA.³² For example, Article 18.1.12 on transparency requires the parties to ensure all laws, regulations, and procedures concerning the protection or enforcement of intellectual property rights are in writing and are published, or where publication is not practicable made publicly available, in its national language in such a manner as to enable governments and right holders to become acquainted with them.

The FTA confirms that the contracting parties shall ratify or accede to other Agreements including the *Patent Cooperation Treaty*, the *Paris Convention for the Protection of Industrial Property*, the *Berne Convention for the Protection of Literary and Artistic Works*, the *Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite*; the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*; the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*; the *International Convention for the Protection of New Varieties of Plants*; the *Trademark Law Treaty*; the *World Intellectual Property Organization (WIPO) Copyright Treaty*; and the *WIPO Performances and Phonograms Treaty*.³³ The Korea-US FTA states that with respect to the *Patent Law Treaty*, the *Hague Agreement Concerning the International Registration of Industrial Designs* and the *Singapore Treaty on the Law of Trademarks*, the Parties shall make all reasonable efforts to ratify or

31 The text of Korea-US FTA can be seen at Korea FTA Website, available at <http://www.fta.go.kr/us/doc/1/>, last visited on 1 August 2016.

32 Korea-US FTA Article 18.1.6–18.1.8 and 18.1.12.

33 Korea-US FTA Article 18.1.2 and 18.1.3.

accede to.³⁴ These international agreements constitute the foundation of this IPR Chapter of Korea-US FTA.

2.1.2 Trademarks

Article 18.2, which has 15 paragraphs, lays down the rules on how Korea and US should treat trademarks including geographical indications.

Firstly, neither Party may require that signs be visually perceptible, nor may either Party deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound or scent.³⁵ This means that Korea and US recognize sound trademarks and scent trademarks. Also, geographical indications are eligible for protection as trademarks.³⁶

With regard to well-known trademarks, neither Party may require, as a condition for determining that a mark is a well-known mark, that the mark has been registered in the territory of that Party or in another jurisdiction. Also, lack of a registration, or inclusion on a list of well-known marks, or prior recognition of the mark as well-known shall not constitute the reasons for denial of remedies or relief.³⁷ Moreover, Article 6bis of the *Paris Convention* shall apply, to goods or services that are not identical or similar to those identified by a well-known trademark, whether registered or not.³⁸ That means the well-known trademarks shall be protected regardless of the status of registration.

Another feature in this Chapter is that the term for initial registration of a trademark and each renewal of registration is extended from 7 years in TRIPS Agreement to no less than 10 years.³⁹

2.1.3 Domain Names on the Internet

One of the new types of IPRs that has been included in the Korea-US IPR Chapter is domain names on the Internet. Each Party shall require that the management of its country-code top-level domain (ccTLD) provide an appropriate procedure for the settlement of disputes, based on the principles established in the Uniform Domain-Name Dispute-Resolution Policy as well as

34 Korea-US FTA Article 18.1.4.

35 Korea-US FTA Article 18.2.1.

36 Korea-US FTA Article 18.2.2. Requirements and procedures of recognition and cancellation concerning geographical indications are provided in Article 18.2.14 and 18.2.15.

37 Korea-US FTA Article 18.2.6.

38 Korea-US FTA Article 18.2.7.

39 Korea-US FTA Article 18.2.12.

online public access to a reliable and accurate databases of contact information concerning domain-name registrants.⁴⁰

2.1.4 Copyright and Related Rights

Article 18.4, 18.5 and 18.6 provide detailed rules on copyright and related rights. The term of protection of a work (including a photographic work), performance, or phonogram shall be less than the life of the author and 70 years after the author's death,⁴¹ extending the 50 year-term provided in TRIPS Agreement.

Also, the parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that authors, performers, and producers of phonograms use in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances, and phonograms.⁴² Here, effective technological measures are referred to as any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter, or protects any copyright or any rights related to copyright.⁴³ Also, the parties are required to provide adequate and effective remedies to protect rights management information, which is defined in Article 18.4.8 (c) as: (i) information that identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or owner of any right in the work, performance, or phonogram; (ii) information about the terms and conditions of the use of the work, performance, or phonogram; or (iii) any numbers or codes that represent such information.⁴⁴

2.1.5 Encrypted Program-Carrying Satellite and Cable Signals

Encrypted program-carrying satellite and cable signals are given protection in Korea-US FTA by requiring that each party criminalise infringement of the lawful rights of encrypted program-carrying satellite or cable signal distributor or any person that holds an interest in the encrypted programming signal or its content and provide civil remedies for the right holder.⁴⁵

40 Korea-US FTA Article 18.3.

41 Korea-US FTA Article 18.4.4.

42 Korea-US FTA Article 18.4.7.

43 Korea-US FTA Article 18.4.7 (f).

44 Korea-US FTA Article 18.4.8.

45 Korea-US FTA Article 18.7.

2.1.6 Patents

Regarding patents, it is conformed by each Party that the patents shall be available for any new use or methods of using a known product,⁴⁶ which is beyond the scope of patent protection as required by the TRIPS Agreement Article 27. And the term of protection can be adjusted for unreasonable delays that occur in granting the patent, particularly for patents covering a new pharmaceutical product and methods of making or using a new pharmaceutical product.⁴⁷

Certain regulated products are also given special protection under the Korea-US FTA.⁴⁸ The term of protection of pharmaceutical products shall be at least 5 years longer, while the term of protection of agricultural chemical products shall be at least 10 years longer. Particularly, the term of protection of pharmaceutical products that include a chemical entity shall be at least 3 years longer.

2.1.7 Enforcement

With regard to enforcement of IPRs, Korea-US FTA provides that each Party shall adopt measures including civil and administrative procedures and remedies, alternative dispute resolution, provisional measures, special requirements related to border measures, criminal procedures and remedies, and liability for service providers and limitations.⁴⁹

Apart from Korea-US FTA, which has included certain TRIPS-plus obligations, other FTAs Korea signed with the EU, Canada, Australia also contain similar provisions (please refer to Appendix II for more details). This is a reflection of the correlation of economic development and IPR protection level, which illustrates that a country with better economic achievement would pay more attention on IPR protection and thus have higher IPR protection standards than those economic inferior countries.

2.2 *Korea-EU FTA*

The EU also has a very high level on IPR protection, resulting very comprehensive IPR provisions in Korea-EU FTA Chapter 10 Intellectual Property. For this FTA, intellectual property rights embody: (a) copyright, including copyright in computer programs and in databases, and related rights; (b) the rights related to patents; (c) trademarks; (d) service marks; (e) designs; (f) layout-designs (topographies) of integrated circuits; (g) geographical indications;

⁴⁶ Korea-US FTA Article 18.8.1.

⁴⁷ Korea-US FTA Article 18.8.6.

⁴⁸ Korea-US FTA Article 18.9.

⁴⁹ Korea-US FTA Article 18.10.

(h) plant varieties; and (i) protection of undisclosed information.⁵⁰ Korea-EU FTA shares many similarities with Korea-US FTA, with its own features stated as follows:

2.2.1 Copyright and Related Rights

Like Korea-US FTA, the Korea-EU FTA requires the term of protection for author's rights be extended to 70 years after the author's death.⁵¹ Also, the rights of broadcast organisations shall expire not less than 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.⁵²

Technological measures and rights management information have also been incorporated into this FTA, which requires that each Party shall provide adequate legal protection against the circumvention of any effective technological measures and any person knowingly performing acts related to rights management information without authority.⁵³

2.2.2 Trademarks

For patents, exception to the rights conferred by a trademark shall be acceptable, in the form of fair use of descriptive terms or other limited exceptions.⁵⁴

2.2.3 Geographical Indications

One prominent feature of Korea-EU FTA is its rules on geographical indications, which is a major concern for EU. Both Korea and the EU agree to protect geographical indications listed in the Annex (64 for Korea and 162 for EU), the scope for protection is restricted to agricultural products including foodstuffs (63 for Korea and 60 for EU), wines including aromatized wine (80 for EU) and spirits (1 for Korea and 22 for EU).⁵⁵ Geographical indications shall be protected against: (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good; (b) the use of a geographical indication identifying a good for a like good not originating in the place indicated by

⁵⁰ Korea-EU FTA Article 10.2.2.

⁵¹ Korea-EU FTA Article 10.6.

⁵² Korea-EU FTA Article 10.7.

⁵³ Korea-EU FTA Article 10.12 and 10.13.

⁵⁴ Korea-EU FTA Article 10.17.

⁵⁵ Korea-EU Free Trade Agreement Regarding Intellectual Property Rights, Newsletter, Kim & Chang, A Quarterly Update of Korean IP Law & Policy, Winter 2009/10.

the geographical indication in question, even where the true origin of the good is indicated or the geographical indication is used in translation or transcription or accompanied by expressions such as “kind”, “type”, “style”, “imitation” or the like; and (c) any other use which constitutes an act of unfair competition.⁵⁶ And the registration of a trademark in relation to a protected geographical indication for like goods shall be refused or invalidated provided an application for registration of the trademark is submitted after the date of application for protection or recognition of the geographical indication.⁵⁷

2.2.4 Designs

Independently created designs shall be protected by registration and shall confer exclusive rights upon their holders, the duration of which shall amount to at least 15 years; while the use of unregistered appearance of a product shall be prevented by legal means, the duration of which shall amount to at least 3 years.⁵⁸

2.2.5 Patents

In the patents part, principles concerning public health in the *Declaration on the TRIPS Agreement and Public Health*, the *Decision of the WTO General Council of 30 August 2003* and the *Protocol amending the TRIPS Agreement* are emphasized.⁵⁹

At the request of the patent owner, extension of the duration of the rights is provided to compensate the patent owner for the reduction in the effective patent life as a result of the first authorization to place the product, which may not exceed five years.⁶⁰

The confidentiality, non-disclosure of and non-reliance on data submitted for the purpose of obtaining an authorization to put a pharmaceutical product on the market shall be guaranteed; and safety and efficacy requirements shall be determined before authorizing the placing on their respective markets of plant protection products.⁶¹

⁵⁶ Korea-EU FTA Article 10.21.

⁵⁷ Korea-EU FTA Article 10.23.

⁵⁸ Korea-EU FTA Article 10.27, 10.29, 10.30.

⁵⁹ Korea-EU FTA Article 10.34.

⁶⁰ Korea-EU FTA Article 10.35.

⁶¹ Korea-EU FTA Article 10.36 and 10.37.

2.2.6 Enforcement

In the section C of Korea-EU FTA Chapter 10, rules on enforcement of intellectual property rights are designed so as to permit effective action against any act of infringement of intellectual property rights. Civil measures, procedures and remedies include evidence, provisional measures for preserving evidence, right of information, provisional and precautionary measures, corrective measures, injunctions, alternative measures, damages, legal costs, publication of judicial decisions and presumption of authorship or ownership.⁶² Criminal enforcement include geographical indications and designs counterfeiting, liability of legal persons, aiding and abetting, seizure, penalties, confiscation, and rights of third parties.⁶³ Liability for online service providers is classified into three categories: “mere conduit”, “caching” and “hosting”.⁶⁴ Other provisions are border measures, codes of conduct and cooperation.⁶⁵

It can be seen from the above analysis and the comparison in the following Appendix II, the FTAs to which Korea is a Party also underwent a evolving process, from simple articles to more sophisticated provisions, representing by Korea-US FTA and Korea-EU FTA, both of which contains more TRIPS-plus obligations.

3 A Critical Evaluation of the IPR Provisions in the China-Korea FTA

3.1 *An Overview of the IPR Provisions in the China-Korea FTA*

China-Korea FTA has entered into force on 20 December 2015.⁶⁶ Chapter 15 on intellectual property rights contains the largest number of articles, i.e. 31 articles, among all the FTAs to which China is a Party.

3.1.1 General Provisions

Like the IPR Chapters in other FTAs, China-Korea FTA adopts several general principles in its first section General Provisions. One of the objectives emphasizes the balance between the legitimate interest of the right holders and

62 Korea-EU FTA Article 10.43–10.53.

63 Korea-EU FTA Article 10.54–10.61.

64 Korea-EU FTA Article 10.62–10.66.

65 Korea-EU FTA Article 10.67–10.69.

66 See MOFCOM website, China-ROK, China-Australia FTA to take effect on December 20, available at http://fta.mofcom.gov.cn/enarticle/enkorea/enkoreanews/201601/30417_1.html, last visited on 1 August 2016.

the public at large,⁶⁷ which lays out the fundamental framework of how the provisions are designed and presented. Also, principles contained in TRIPS Agreement and other WTO documents, such as national treatment and public health are incorporate into the IP Chapter.⁶⁸ Apart from the TRIPS Agreements, the Parties also affirm their commitments established in existing international agreements in the field of intellectual property rights to which both Parties are party, including the *Paris Convention for the Protection of Industrial Property*, the *Berne Convention for the Protection of Literary and Artistic Works*, the *Patent Cooperation Treaty*, the *Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure*, the *Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks*, the *WIPO Performances and Phonograms Treaty*, the *WIPO Copyright Treaty*, the *Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms*, the *International Convention for the Protection of New Varieties of Plants* and the *Convention Establishing the World Intellectual Property Organization*.⁶⁹

3.1.2 Copyright and Related Rights

In terms of copyright and related rights, the obligations in the international agreements concerning intellectual property rights are reaffirmed. With regard to the terms of protection, for broadcast, it shall be at least 50 years after the taking place of broadcasting, whether this broadcasting is transmitted by wire or over the air, including by cable or satellite.⁷⁰

Also, it should be noted that the China-Korea FTA stresses the relevance of technological measures and rights management information to the protection of IPRs and highlights the importance of protection of such measures and information.⁷¹ It is required that both Parties shall provide adequate and effective legal protection concerning technological measures and rights management information, but, unlike other FTAs such as Korea-US FTA, there is no detailed rules on what are the measures that should be taken exactly. While exception is acceptable, there is no mention on how the exception conditions or requirements shall be devised neither.

67 China-Korea FTA Article 15.1.

68 China-Korea FTA Article 15.2 and 15.5.

69 China-Korea FTA Article 15.3.

70 China-Korea FTA Article 15.6.

71 China-Korea FTA Article 15.8 and 15.9.

3.1.3 Trademarks

In China-Korea FTA, it no longer requires the signs to be visually perceptible, which is a step forward compared to the previous China-Switzerland FTA.⁷² Similarly, a trademark cannot be denied for registration solely on the basis that the sign of which it is composed is a sound.⁷³ However, whether scent can be registered as a trademark is left unbound, and this is the same as the *Trademarks Law of PRC*.

With regard to well-known trademarks, China-Korea FTA continues to follow the requirements set by TRIPS Agreement and Article 6*bis* of the Paris Convention that the protection shall not be limited to identical or similar goods or services.⁷⁴ However, whether unregistered trademark can enjoy the protection of well-known trademarks is left unbound.

Besides, for registration and application of trademarks, it is required that a system of registration where a communication can be provided to the applicant, applicant can have the opportunity to respond, interested parties can have the opportunity to oppose a trademark applicant, and decisions in opposition and cancellation proceedings can be reasoned, together with a system of electronic application for, and electronic processing, registering, and maintenance of trademarks shall be established, and publicly available electronic database shall be provided.⁷⁵

3.1.4 Patents and Utility Mode

Regarding patents and utility mode, rules in other multilateral and bilateral agreements IPR are again reaffirmed, with an emphasis on the balance of right holders and the public.⁷⁶ Items that may be excluded from patentability include (a) diagnostic, therapeutic, and surgical methods for the treatment of humans or animals; and (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes.⁷⁷ This is also related to the public health and it is a reflection of how China and Korea perceive inventions that are necessary for the human, plant, and animal life.

⁷² China-Korea FTA Article 15.11.

⁷³ China-Korea FTA Article 15.11.

⁷⁴ China-Korea FTA Article 15.13.

⁷⁵ China-Korea FTA Article 15.14.

⁷⁶ China-Korea FTA Article 15.15 and 15.16.

⁷⁷ China-Korea FTA Article 15.15.

3.1.5 Genetic Resources, Traditional Knowledge and Folklore

For genetic resources, traditional knowledge and folklore, China and Korea acknowledge and reaffirm the principles in the *Convention on Biological Diversity* and respect the requirements in *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*.⁷⁸ Future discussion and cooperation is promoted, but the relevant rules are quite general and vague lacking of detailed instructions.

3.1.6 Plant Variety Protection

Adequate and effective protection to breeders of new plant varieties are also required concerning plant variety protection, and authorization of the breeder shall be required for: (a) production or reproduction (multiplication) for the purposes of commercial marketing; (b) conditioning for the purpose of commercial propagation; (c) offering for sale; (d) selling or other marketing; and (e) importing or exporting.⁷⁹

3.1.7 Undisclosed Information

For undisclosed information, only Article 39 of the TRIPS Agreement is mentioned.⁸⁰

3.1.8 Industrial Designs

The rules concerning industrial designs in TRIPS Agreement are again incorporated in this Chapter. The term of protection for industrial designs shall be at least 10 years.⁸¹ And the rights of owners are also explicitly stated as preventing third parties from making, offer for sale, selling, importing articles bearing or embodying the protected design with limited exceptions.⁸²

3.1.9 Acquisition and Maintenance of Intellectual Property Rights

In this part, it is required that the Parties shall ensure that the procedures for grant or registration are in accordance with Article 62 of TRIPS Agreement.⁸³

⁷⁸ China-Korea FTA Article 15.17.

⁷⁹ China-Korea FTA Article 15.18.

⁸⁰ China-Korea FTA Article 15.19.

⁸¹ China-Korea FTA Article 15.20.

⁸² China-Korea FTA Article 15.20.

⁸³ China-Korea FTA Article 15.21.

3.1.10 Enforcement

One feature of this IPR Chapter is that it provides detailed rules on enforcement, including issues like presumption of authorship or ownership, civil and administrative procedures and remedies, provisional measures, special requirements related to border measures, criminal procedures and remedies, measures against repetitive copyright infringement on the Internet, request for information on the alleged infringer, which is quite comprehensive among all the FTAs to which China and Korea are parties.⁸⁴ Publication of final judicial decisions and administrative rulings, as well as information on the effort to provide effective enforcement of intellectual property rights, is required as the general obligation.⁸⁵

Regarding presumption of authorship or ownership, this Chapter adopts the same method as employed by other FTAs, i.e. in the absence of proof to the contrary, the person whose names is indicated in the usual manner is the right holder in such work, performance, phonogram, or broadcast as designated.⁸⁶

During civil and administrative proceedings, the right holder shall be entitled to damages adequate to compensate for the injury the right holder has suffered as a result of the infringement or the profits of the infringer that are attributable to the infringement which may be presumed to be the amount of damages; the right holder shall be able to establish or maintain pre-established damages in an amount sufficient to constitute a deterrent to future infringements.⁸⁷ The judicial authorities shall have the authority to order that the prevailing party shall be awarded payment by the losing party of court costs or fees and reasonable attorneys' fees; to order the seizure of allegedly infringing good and of any materials and implements the predominant use of which has been in the creation of infringing good and at least for trademark counterfeiting, documentary evidence relevant to the infringement; to order goods found to be pirated or counterfeit to be destroyed, and materials and implements that have been predominantly used in the manufacture or creation of such pirated or counterfeit goods to be destroyed or disposed of outside the channels; to order the infringer to provide any information; to impose sanctions for violation of judicial orders regarding the protection of

84 China-Korea FTA Article 15.22–15.29.

85 China-Korea FTA Article 15.22.

86 China-Korea FTA Article 15.23.

87 China-Korea FTA Article 15.24.

confidential information produced or exchanged in a proceeding.⁸⁸ Also, alternative dispute resolution shall be permitted.⁸⁹

For provisional measures, the judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse.⁹⁰

Special requirements related to border measures include: adopt procedures for a right holder to apply for suspension by the customs authorities of the release into free circulation or the detention of goods infringing an intellectual property right when the right holder provide sufficient information and a reasonable security or equivalent assurance; competent authorities may act *ex officio* to suspend the release of the goods that are infringing an intellectual property right; the goods that have been confiscated shall be destroyed; the application fee shall not be set at an amount that unreasonably deters recourse to border measures.⁹¹

Criminal procedures and remedies such as sentences of imprisonment, monetary fines as well as seizure, forfeiture or destruction of counterfeit or pirated goods or materials or implements may apply to willful trademark counterfeiting or copyright piracy on a commercial scale as well as unauthorized copy of a cinematographic work, or any part thereof, from a performance in a movie theater on a commercial scale.⁹²

With respect to repetitive copyright infringement on the Internet, the China-Korea FTA requires the Parties to take effective measures. It also requires an administrative or judicial procedure to be established, enabling relevant authorities or copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.⁹³

88 China-Korea FTA Article 15.24.

89 China-Korea FTA Article 15.24.

90 China-Korea FTA Article 15.25.

91 China-Korea FTA Article 15.26.

92 China-Korea FTA Article 15.27.

93 China-Korea FTA Article 15.28 and 15.29.

3.1.11 Other Provisions

The China-Korea FTA also emphasizes the importance on cooperation between the two parties and the Committee on Intellectual Property Rights established for further communication and implementation.⁹⁴

3.2 *A Critique on the IPR Provisions in the China- Korea FTA*

As stated above, China and Korea have concluded a quite comprehensive FTA and reached consensus on a wide range of IPR issues. The IPR Chapter has the following characteristics:

- a. The scope of IPR stipulated in the FTA is quite wide, not only including traditional IPRs like trademarks, copyright and related rights, patents, and undisclosed information, but also covering newly-emerging items such as genetic resources, traditional knowledge and folklore, plant varieties. It even goes so far to embody technological measures, and rights management information. However, the scope of IPR mentioned in this FTA does not include issues that are the new focus of IPRs, such as unregistered well-known trademarks, new use or methods of using a known product, domain names on the Internet, encrypted program-carrying satellite and cable signals, pharmaceutical products or geographical indication.
- b. The FTA adopts a rather flexible approach towards the term of protection. It only refers to broadcast and industrial designs, no mentioning of other categories like trademarks (10 years for both China and Korea) and copyright (50 years for China and 70 years for Korea). Also, the term of protection for pharmaceutical products or agricultural chemical products is left unbound, as well as situations where an unreasonable delay occurs when granting or reissuance of IPRs. Also, the guiding rules for specific IPR types are somehow flexible or soft, such as technological measures or rights management information, which may prejudice the uniform enforcement and implementation of IPR between the two Parties.
- c. The implementation rules are quite exquisite such as presumption of authorship or ownership; civil, administrative and criminal procedures and remedies; provisional measures; border measures; and infringement on the Internet, which set forth uniform procedures for both parties to follow so as to provide certainty for right holders and users over the protection and enforcement of IPR, facilitate the forceful enforcement of

94 China-Korea FTA Article 15.30 and 15.31.

IPR in each country and pave way for effective cooperation between the two countries in this regard. Unfortunately, other issues concerning general principles or enforcement rules such as transparency, collective management and exhaustion, liability for online service provider that have been referred to in other FTAs to which China or Korea is a Party are not clearly stated or even not mentioned in this Chapter, which may require further exchange and cooperation between the two parties.

On the basis of the above analysis, it should be noted that this FTA represents a high standard for IPR protection and management in both countries, with the text of IPR Chapter well structured, the scope of IPR expanded, and the rules more sophisticated. But this agreement is also the result of compromise of both parties. On the one hand, for example, China has raised its management requirements, adding rules such as technological measures and rights management information; on the other hand, some of the relevant rules are not mandatory and some issues like scent trademark or unregistered well-known trademark are left unbound, considering the economic and social development of both parties. One thing that has been left unbound is about patents for pharmaceutical and agricultural chemical products. While undisclosed test data and other data regarding pharmaceutical and agricultural chemical products are given protection under the China-Switzerland FTA and also under the Korea-US FTA, only pharmaceutical and agricultural chemical patents are protected.

4 Concluding Remarks

The difference in IPR protection and management between China and Korea could be found in a variety of fields such as newly emerging issues like pharmaceutical products protection, as well as trademarks, copyright and domain names on the Internet, patents. There were also differences between the two countries regarding the term of protection. Moreover, the difference even loomed larger when it came to enforcement of IPRs. Despite the differences, the FTA reached by the two parties is a reflection of the consensus of both countries to have in place higher standard for IPR protection.

The China-Korea FTA is the result of a long-term negotiation and consultation. It is a result of the convergence of various IPR regimes that both countries are shaping separately or jointly. While borrowing rules from or keeping in pace with IPR Chapters in vanguard FTAs, the China-Korea FTA attaches great importance to the need of striking a balance between the legitimate interest

of the right holders and the public at large. This has an inevitable impact on the laying-out of IPR Chapter in general. Therefore, it shall also be noticed that on one hand, it represents the higher, if not the highest standard for the protection of IPRs in other FTAs to which China is a Party, on the other hand, still there is certain disparity between it and the IPR Chapters in other FTAs to which Korea is a Party.

The entry into force of this FTA indicates a new era and a new level of IPR protection and management for both parties presents the possibility for future cooperation and communication. China and Korea will cooperate on matters like respective policies, technical assistance, training courses, implementation of IPR system, information sharing, fighting against cross-border crimes, online enforcement and energy-saving and green technologies.⁹⁵ It is estimated that in the near future the FTA will facilitate protection of IPR, as well as enhance the bilateral trade. This FTA is surely a milestone for both Parties, indicating the protection and management of IPR in both countries have achieved a new level.

Incorporation of TRIPS-plus obligations into the IPR Chapter in the China-Korea FTA inevitably has an impact on the landscape of IPR protection and management beyond both countries. It is clear that China-Korea FTA will help upgrade the IPR regimes of both countries and particularly that of China, and may serve as a model for upcoming FTAs.

95 China-Korea FTA Article 15.30.

Appendix 1: IPR Provisions in FTAs to which China is a Party

WTO Obligations		Cooperation	Scope of IPR	Terms of Protection	Enforcement	Miscellaneous
China-Chile FTA	Build on the foundations established in existing international agreements in the field of intellectual property, to which both are parties, including the TRIPS Agreement	Cooperation on IPR	Geographical indications		Special requirements related to border measures	
China-Pakistan FTA	Reaffirm the Parties' existing rights and obligations with respect to each other under the WTO Agreement and other agreements to which both Parties are parties				Special requirements related to border measures	
China-New Zealand FTA	Reaffirm the Parties' commitment to the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which both are party	Contact points; Notification and exchange of information; Cooperation and capacity building	Genetic resources, traditional knowledge and folklore			Consultation

(cont.)

	WTO Obligations	Cooperation	Scope of IPR	Terms of Protection	Enforcement	Miscellaneous
China-Peru FTA	Reaffirm the Parties' commitments established in existing international agreements in the filed of intellectual property rights, to which both are Parties, including TRIPS Agreement	Cooperation and capacity building	Genetic resources, traditional knowledge and folklore, geographical indications		Special requirements related to border measures	
China-Costa Rica FTA	Reaffirm the Parties' commitments established in existing international agreements in the filed of intellectual property rights, to which both are Parties, including TRIPS Agreement	Contact points; Cooperation on IPR	Genetic resources, traditional knowledge and folklore, geographical indications		Border measures	Public Health; Technical innovation and transfer of technology

	WTO Obligations	Cooperation	Scope of IPR	Terms of Protection	Enforcement	Miscellaneous
China-Iceland FTA	Reaffirm the Parties' obligations to the TRIPS Agreement, which is incorporated into and made part of this Agreement; Reaffirm their obligations set out in the following multilateral agreements relating to intellectual property rights to which both are parties	Cooperation and exchange of information				Dialogue and review
China-Switzerland FTA	Reaffirm the Parties' commitments established in existing international agreements in the filed of intellectual property rights, to which both are Parties, including TRIPS Agreement	Notification and exchange of information	Copyright and related rights, trademarks, patents, genetic resources and traditional knowledge, plant variety protection, undisclosed information, industrial designs, geographical indications, indication of source and country names	Copyright: 50 years; Broadcast: Undisclosed information (Pharmaceuticals and agrochemical products); 6 years	Suspension of release, right of inspection, liability declaration, security or equivalent assurance, civil remedies, provisional measures and injunctions, criminal remedies	Public Health; Acquisition and maintenance

(cont.)

WTO Obligations		Cooperation	Scope of IPR	Terms of Protection	Enforcement	Miscellaneous
China-Australia FTA	Affirm the Parties' commitment to the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which both Parties are party	Cooperation; Committee on Intellectual Property	Patents, trademarks (including visual and sound signs, collective and certification trade marks and well-known trade marks), geographical indications, plant breeders' rights, genetic resources, traditional knowledge and folklore and undisclosed information		Enforcement; Border measures	National treatment; Transparency Public Health; Exhaustion; Procedures on acquisition and maintenance; Collective management of copyright; Service provider liability

Appendix II: IPR Provisions in FTAs to which Korea is a Party

	WTO Obligations	Cooperation	Scope of IPR	Terms of Protection	Enforcement	Miscellaneous
Korea-Chile FTA	Faithfully implement the international conventions it has acceded to, including the TRIPS Agreement	Consultative mechanism	Trademarks including well-known trademarks; geographical indications			
Korea-Singapore FTA	Reaffirm the Parties' obligations under the TRIPS Agreement	Cooperation on IPR; Joint Committee on intellectual property			Consistent with the TRIPS Agreement	Designation of KIPO as an ISA and IPEA under PCT; Facilitation on patenting process; Promotion of education and awareness
Korea-EFTA FTA	TRIPS Agreement	Cooperation on IPR				National treatment; Most-favored-nation treatment

(cont.)

	WTO Obligations	Cooperation	Scope of IPR	Terms of Protection	Enforcement	Miscellaneous
Korea-ASEAN FTA		Cooperation on IPR				
Korea-India CEPA	Reaffirm the Parties' rights and obligations under the TRIPS Agreement	Cooperation on IPR			Consistent with the TRIPS Agreement	
Korea-EU FTA	Ensure an adequate and effective implementation of the international treaties dealing with intellectual property to which they are party including the TRIPS Agreement	Transfer of technology; cooperation on enforcement	Copyright, including copyright in computer programs and in databases, and relate rights, the rights related to patents, trademarks, service marks, designs, layout-designs (topographies) of integrated circuits, geographical indications, plant varieties, undisclosed information, genetic resources, traditional knowledge and folklore	Copyright: 70 years; Broadcast: 50 years; Designs: 15 years; Unregistered appearance: 3 years; Data submitted to obtain a marketing authorization from plant protection products: 10 years	Civil measures, procedures and remedies, criminal enforcement, liability of online service providers, border measures, codes of conduct	Exhaustion

WTO Obligations		Cooperation	Scope of IPR	Terms of Protection	Enforcement	Miscellaneous
Korea-Peru FTA	Affirm the Parties' rights and obligations under the TRIPS Agreement and any other multilateral agreement	Cooperation and technology transfer	Genetic resources and traditional knowledge, geographical indications, copyright and related rights	Copyright: 70 years	Special requirement related to border measures	National treatment; Public health
Korea-US FTA	Affirm the parties' existing rights and obligations under the TRIPS Agreement and other agreements	Cooperation between their respective patent offices; bilateral and regional cooperation on the enforcement of border measures	Trademarks including geographical indications, well-known trademarks, domain names on the Internet, copyright and related rights; Encrypted program-carrying satellite and cable signals; patents	Trademarks: 10 years; Copyright: 70 years; Pharmaceutical products: 5 years; Agricultural chemical products: 10 years; Pharmaceutical products that include a chemical entity: 3 years	Civil and administrative procedures and remedies, alternative dispute resolution, provisional measures, special requirements related to border measures, criminal procedures and remedies, and liability for service providers and limitations	National treatment; Transparency; Public Health

(cont.)

WTO Obligations		Cooperation	Scope of IPR	Terms of Protection	Enforcement	Miscellaneous
Korea-Turkey FTA	Customs cooperation					
Korea-Australia FTA	Affirm the Parties' rights and obligations under the TRIPS Agreement and any other multilateral agreement	Committee on intellectual property	Trademarks including well-known trademarks, domain names on the Internet, copyright and related rights, patents	Trademarks: 10 years; Copyright: 70 years; Broadcast: 50 years	Civil and administrative procedures and remedies, alternative dispute resolution, provisional measures, special requirements related to border measures, criminal procedures and remedies, special measures against repetitive copyright infringer on the Internet, limitations on liability for online service providers	National treatment; Transparency; Public health

	WTO Obligations	Cooperation	Scope of IPR	Terms of Protection	Enforcement	Miscellaneous
Korea-Canada FTA	Affirm the Parties' rights and obligations under the TRIPS Agreement and other intellectual property agreements to which both Parties are party	Cooperation on IPR; Committee on intellectual property; Consultations	Trademarks including well-known trademarks; geographical indications; copyright and related rights, including technological measures, rights management information, encrypted program-carrying satellite signals; Patents	Trademarks: 10 years	Presumption of authorship or ownership; civil and administrative procedures and remedies, injunctions, damages, other remedies, information related to infringement, provisional measures; special requirements related to border measures; criminal procedures and remedies; special measures against copyright infringers on the Internet	Public Health; National treatment; Exhaustion; Disclosure of Information
Korea-New Zealand FTA	Affirm the Parties' rights and obligations under the TRIPS Agreement and any other multilateral agreement	Contact points; Exchange information; Consultations	Trademarks including well-known trademarks, copyright and related rights; genetic resources, traditional knowledge and folklore	Trademarks: 10 years		National Treatment; Transparency

(cont.)

	WTO Obligations	Cooperation	Scope of IPR	Terms of Protection	Enforcement	Miscellaneous
Korea-Viet Nam FTA	Affirm the Parties' rights and obligations under the TRIPS Agreement and other intellectual property agreements	Cooperation on IPR	Trademarks including well-known trademarks, patents; copyrights and related rights including encrypted program-carrying satellite signals	Trademarks: 10 years	Presumption of authorship or ownership, civil and administrative procedures and remedies, provisional measures; special requirements related to border measures, criminal procedures and remedies, special measures against repetitive copyright infringers on the Internet	National Treatment; protection against unfair competition
Korea-Colombia FTA	Affirm the Parties' rights and obligations under the TRIPS Agreement and other multilateral agreements	Technology transfer and cooperation	Trademarks including well-known trademarks, copyright and related rights including technological measures, rights management information, encrypted program-carrying satellite signals	Trademarks: 10 years	Presumption of authorship or ownership; special measures against repetitive copyright infringer on the Internet; special requirements related to border measures	National treatment; Public health