

DECISION OF THE JOINT COMMITTEE OF THE CENTRAL EUROPEAN FREE TRADE AGREEMENT

No. 5/2024

on Trade-Related Aspects of Intellectual Property Rights

Adopted on 9 October 2024

Preamble

The Joint Committee,

Having regard to Annex 1 to the Agreement on Amendment of and Accession to the Central European Free Trade Agreement, adopted on 19 December 2006 (hereinafter “CEFTA 2006”),

Having regard to Articles 37 and 38 of the CEFTA 2006, according to which the CEFTA Parties shall grant and ensure adequate and effective protection of Intellectual Property Rights in accordance with international standards, in particular in accordance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter “TRIPS”), including effective means of enforcing such rights provided for in international conventions and treaties,

Committing to a better protection and enforcement of Intellectual Property Rights within and among the CEFTA Parties to ensure adequate protection and to encourage better economic cooperation and the elimination of trade barriers related to Intellectual Property Rights,

Has decided as follows:

Article 1

Objective and Purpose

1. This Decision seeks to facilitate cooperation among CEFTA Parties with respect to the protection of Intellectual Property Rights by:
 - (a) harmonising minimum standards for the protection and enforcement of Intellectual Property Rights within the CEFTA Parties with a view to facilitate trade;
 - (b) promoting technological innovation, transferring, and disseminating of knowledge between the CEFTA Parties; and

- (c) promoting effective and adequate protection and enforcement of Intellectual Property Rights by ensuring that implementation of measures and enforcement procedures do not themselves become barriers to trade.

Article 2

Definitions

For purposes of this Decision, the following definitions shall apply:

- (a) 'Decision': This Decision on Trade-Related Aspects of Intellectual Property Rights;
- (b) 'Directive on the Protection of Trade Secrets 2016/943': *Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure* in its version on the date of entry into force of this Decision;
- (c) 'EEA': the European Economic Area;
- (d) 'EU': the European Union;
- (e) 'EUIPO': the European Union Intellectual Property Office;
- (f) 'Goods and Services': any Goods and Services including tangible and digital goods and services as defined by Article 2 of the Additional Protocol 6 of CEFTA 2006;
- (g) 'Intellectual Property Rights': at least the industrial property rights (patents, trademarks, industrial designs, and geographical indications), copyright and related rights, topographies of integrated circuits, protection against unfair competition as referred to in Article 10 bis of the *Paris Convention for the Protection of Industrial Property* and the protection of undisclosed information as referred to in Article 39 of the TRIPS;
- (h) 'Persons originating from other CEFTA Parties': natural or legal persons that meet the criteria for eligibility for protection provided for in Article 1 of the TRIPS;
- (i) 'Product': any industrial or handicraft product, including, inter alia, parts intended to be assembled into a complex product, packaging, graphic symbols and typographic typefaces, but excluding computer programs;
- (j) 'Protection and Enforcement': any measure affecting the availability, acquisition, scope, maintenance, and enforcement of Intellectual Property Rights, as well as those measures affecting the use of Intellectual Property Rights;

- (k) 'Regulation 608/2013 Concerning Customs Enforcement of Intellectual Property Rights': *Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of Intellectual Property Rights and repealing Council Regulation (EC) No 1383/2003* in its version on the date of entry into force of this Decision;
- (l) 'SMEs': Small and Medium-Sized Enterprises as defined by each CEFTA Party;
- (m) 'TRIPS': Agreement on Trade-Related Aspects of Intellectual Property Rights;
- (n) 'Undisclosed Information': any information that meets the requirements as defined in Article 39(2) of the TRIPS.

Article 3

Nature of Obligations

1. Nothing in this Decision shall be construed as a waiver of any existing obligations that any CEFTA Party may have under any international conventions or treaties relating to Intellectual Property Rights to which the respective CEFTA Party is a party.
2. No provision of this Decision may be construed as a waiver of any existing obligations that any CEFTA Party may have under any of such conventions or treaties.

Article 4

Minimum Standards

1. This Decision establishes minimum standards for the protection and enforcement of Intellectual Property Rights within and among the CEFTA Parties.
2. Any CEFTA Party may, but is not required to, incorporate more comprehensive protection into its respective legal system than is required by this Decision.
3. Any CEFTA Party is free to determine the most appropriate method for implementing this Decision's provisions within their legal system and practice.

Article 5

Non-discrimination

1. Each CEFTA Party shall accord non-discriminatory treatment to Persons originating from the other CEFTA Parties that is no less favourable to that accorded to its own subjects.
2. CEFTA Parties may invoke exceptions to paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within a CEFTA Party, only if such exceptions are necessary to ensure legal compliance that are not inconsistent with the provisions of this Decision and where such practices are not applied in a manner that creates a barrier to trade.
3. In accordance with and subject to exceptions and limitations set forth in Article 4 of the TRIPS, any advantage, favour, privilege, or immunity granted by a CEFTA Party to Persons originating from any other CEFTA Party shall be immediately and unconditionally extended to the subjects of all other CEFTA Parties.

Article 6

Exhaustion of Rights

1. With respect to certain Intellectual Property Rights, at least with respect to industrial designs and trademarks, the CEFTA Parties shall implement the principle of exhaustion of rights in a way that a trademark or industrial design recognised by any CEFTA Party shall not entitle its rightsholder to prohibit its use in connection with Goods and Services designated by the trademark or Products incorporating the protected industrial design that are put on the market anywhere in any CEFTA Party by the rightsholder or a person authorised by the rightsholder. Alternatively, the CEFTA Parties may implement the principle of international exhaustion.
2. The foregoing shall not apply in the case of the existence of a legitimate interest of the rightsholder to oppose the further commercialisation of Products incorporating a protected design or Goods designated by the trademark, especially where, in the meantime, such Products or Goods become defective or otherwise changed.
3. The burden of proof regarding the existence of a legitimate interest bears the rightsholder.
4. The CEFTA Parties shall stipulate in their legal system that the exhaustion of trademark and industrial design rights applies to the territory of the EU and the EEA from the date of that CEFTA Party's accession to the EU.

Article 7

Protection and Enforcement

1. The protection and enforcement of Intellectual Property Rights should contribute to the promotion of technological innovation and to the transfer and dissemination of knowledge.
2. The foregoing shall be achieved, inter alia, by the protection of Undisclosed Information, reasonable and effective protection and enforcement procedures, and capacity building of relevant CEFTA Party's institutions.

Article 8

Undisclosed Information

1. The CEFTA Parties shall ensure an effective protection of Undisclosed Information as referred to in Article 39 of the TRIPS.
2. The CEFTA Parties shall provide for the measures, procedures, and remedies necessary to ensure the availability of civil redress against the unlawful acquisition, use, and disclosure of Undisclosed Information. These measures, procedures, and remedies shall:
 - (a) be fair and equitable;
 - (b) not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays; and
 - (c) be effective and dissuasive.
3. The measures, procedures, and remedies provided for in this Decision shall be applied in a manner that is proportionate, avoids the creation of trade barriers between the CEFTA Parties, and provides for safeguards against their abuse.
4. The CEFTA Parties shall, upon the request of the injured Person, order an infringer, who knew or should have known that they were engaging in an unlawful acquisition, use, or disclosure of Undisclosed Information, to pay the holder of Undisclosed Information damages appropriate to the actual prejudice suffered as a result of the unlawful acquisition, use, or disclosure of the Undisclosed Information. When determining the damages, the CEFTA Parties must consider all appropriate factors, including the injured party's negative economic consequences, including lost profits, any unfair profits made by the infringer, and, when appropriate, elements other than economic factors, such as the moral prejudice caused to the holder by the unlawful acquisition, use, or disclosure of the Undisclosed Information.
5. Alternatively, in suitable situations, the CEFTA Parties may fix the damages as a lump sum based on criteria such as, at a least, the amount of royalties or fees that would have been payable had the infringer asked permission to use the Undisclosed Information in consideration.

6. The CEFTA Parties may impose sanctions on any person that fails or refuses to comply with any measure adopted pursuant to this Article in line with the Directive on the Protection of Trade Secrets 2016/943.
7. Recognising the economic value of Undisclosed Information, and the critical nature of its protection, the CEFTA Parties shall seek to implement, in addition to the TRIPS provisions on Undisclosed Information, the Directive on the Protection of Trade Secrets 2016/943.

Article 9

Protection Procedures

1. Where the acquisition of an Intellectual Property Right or its protection is subject to the right being granted or registered, the CEFTA Parties shall ensure that the procedures for rights' granting or registration, subject to compliance with the substantive conditions for acquisition of the right, allow the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.
2. The CEFTA Parties shall take reasonable steps to provide for the possibility of filing electronic applications related to the granting of Intellectual Property Rights.

Article 10

Enforcement Procedures

1. The CEFTA Parties shall ensure that Intellectual Property Rights enforcement is conducted in accordance with Part III of the TRIPS.
2. The CEFTA Parties shall ensure that enforcement procedures are available so as to permit effective action against any act of infringement of covered Intellectual Property Rights, including expeditious remedies to prevent infringements and remedies that constitute a deterrent to further infringements.
3. These procedures shall be applied in such a manner so as to avoid the creation of barriers to legitimate trade and to provide safeguards against their abuse.
4. Procedures concerning the enforcement of Intellectual Property Rights must not be unnecessarily complicated or costly or have unreasonable time limits or unjustified delays, with the emphasis that the appeal against the decision on customs measures and/or related proceedings to be handled in accordance with the procedural deadlines defined in the laws, regulations and administrative provisions, in order to achieve the goal of preventing high storage costs of seized goods.

5. The CEFTA Parties shall take reasonable steps to provide for the possibility of filing electronic applications related to the enforcement of Intellectual Property Rights through Customs measures.

Article 11

Further Harmonisation with the EU Acquis

The CEFTA Parties endeavour to seek close adherence to future legislative developments within the European Union, particularly any future amendments to Regulation 608/2013 Concerning Customs Enforcement of Intellectual Property Rights and Directive on the Protection of Trade Secrets 2016/943 or the legal instruments repealing and replacing them.

Article 12

Cooperation between the CEFTA Parties

1. The CEFTA Parties shall cooperate in the field of Intellectual Property Rights protection and enforcement, information exchange and public awareness raising activities through the CEFTA Sub-Committee on Intellectual Property Rights.
2. In particular, the CEFTA Parties shall:
 - a. conduct awareness raising activities on the importance of Intellectual Property Rights as intangible assets and their significance for trade. The CEFTA Parties shall make reasonable efforts to assist SMEs in protecting their Intellectual Property Rights through education, marketing, and similar activities;
 - b. facilitate the exchange of relevant information and of best practices with respect to Intellectual Property Rights;
 - c. promote and encourage the exchange of information, knowledge, and best practices in the field of Intellectual Property Rights;
 - d. agree to facilitate the exchange of real-time data relating to Customs measures;
 - e. provide each other assistance and shall put in place measures for effective cooperation in order to ensure the implementation of this Decision; and
 - f. work in close collaboration and shall provide mutual assistance in order to facilitate the application of this Decision.

Article 13

Capacity Building in the Area of Intellectual Property Rights

1. With a view to fostering data and knowledge exchange and comparable practices among the CEFTA Parties, the CEFTA Secretariat shall seek to organise training courses, workshops, study visits, and technical assistance missions on a regular basis with the CEFTA Parties. These activities should contribute to enhancing data exchange, coordination between the CEFTA Parties, and knowledge sharing. CEFTA Parties commit to establish a virtual training centre.
2. The specific activities to be implemented in this context shall be defined on an annual basis by the Sub-Committee on Intellectual Property Rights.

Article 14

Transposition

The CEFTA Parties shall bring into force the laws, regulations, and administrative provisions necessary to comply with this Decision no later than two years after the ratification, approval, or adoption of this Decision in accordance with Article 15 of this Decision.

Article 15

Final Provisions

1. This Decision is subject to ratification, acceptance, or approval in accordance with the requirements foreseen by the CEFTA Parties. The instruments of ratification, acceptance, or approval shall be deposited with the Depositary.
2. This Decision shall enter into force on the thirtieth day of the deposition of the third instrument of ratification, acceptance, or approval.
3. For each CEFTA Party depositing its instrument of ratification, acceptance, or approval after the date of the deposit of the third instrument of ratification, acceptance, or approval, this Decision shall enter into force on the thirtieth day of that CEFTA Party depositing its instrument of ratification, acceptance, or approval.
4. If its legal requirements allow, a CEFTA Party may apply this Decision provisionally until that CEFTA Party has deposited its instrument of ratification, acceptance, or approval in accordance with paragraph 1. Any provisional application of this Decision shall be notified to the Depositary.

Done in Belgrade, on 9 October 2024, in the presence of representatives of all CEFTA Parties, in a single authentic copy in the English language, which shall be deposited with the Depositary of the CEFTA 2006 and which shall transmit certified copies to all CEFTA Parties.