

Preliminary Consultation Draft on IPR Chapter of India- Japan Comprehensive Economic Partnership Agreement

I - Preliminary position of India normal font

J: *Preliminary Position of Japan - italics font*

CHAPTER [++] Intellectual Property

Article ++01 General Provisions

1. The Parties shall grant and ensure adequate, effective, and non-discriminatory protection of intellectual property, promote efficiency and transparency in administration of intellectual property protection system, and provide for adequate and effective measures and remedies against infringement of intellectual property rights, including counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are parties.
2. Intellectual property referred to in this Chapter shall mean all categories of intellectual property:
 - (a) that are subject of Articles [++08] through [++13]; (b) *(J) that are under the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to in this Chapter as "the TRIPS Agreement") and/or the relevant international agreements referred to in the TRIPS Agreement.)*
3. The Parties reaffirm their commitment to comply with the obligations set out in the international agreements relating to intellectual property to which both Parties are parties.

Article ++03 National Treatment

Each Party shall accord to nationals of the other Party treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property in accordance with Articles 3 and 5 of the TRIPS Agreement.

(J) Note: For the purposes of Articles [++03] and [++04], the term "nationals" shall have the same meaning as in the TRIPS Agreement, and the term "protection" shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

Article ++04 Most-Favoured-Nation Treatment

Each Party shall accord to nationals of the other Party treatment no less favourable than that it accords to the nationals of a non-Party with regard to the protection of intellectual property in accordance with Articles 4 and 5 of the TRIPS Agreement.

Article ++05

Streamlining and Harmonisation of Procedural Matters

1. For the purposes of providing efficient administration of intellectual property protection system, each Party shall take appropriate measures to streamline its administrative procedures concerning intellectual property.

2. Neither Party shall require the authentication of signatures or other means of self-identification on documents to be submitted to the competent authority of the Party, including applications, translations into a language accepted by such authority of any earlier application whose priority is claimed, powers of attorney (i.e. documents appointing an agent or a common representative) and certifications of assignment, in the course of application procedures or other administrative procedures on patents, ~~utility models,~~ industrial designs or trademarks.

3. The provisions of paragraph 2 shall not prevent a Party from requiring that evidence be filed with the competent authority of the Party where such authority may reasonably doubt the authenticity of signatures or other means of self-identification on documents submitted to it, [unless such a requirement is not warranted under the respective national laws of the Parties.]

4. Neither Party shall require the certification, by any person other than the applicant or its representative, of a translation of an earlier application whose priority is claimed except in cases where the competent authority of the Party may reasonably doubt the accuracy of the translation.

5. Each Party shall implement a system in which a power of attorney for application procedures or other administrative procedures on patents, ~~utility models,~~ industrial designs or trademarks before the competent authority of the Party may relate to one or more applications, and/or grants or registrations identified in the power of attorney or, subject to any exception indicated by the appointing person, to all existing and future applications and/or grants or registrations of that person.

Note: This paragraph shall not prevent a Party from providing that such power of attorney as referred to in this paragraph may be used only for one particular category of intellectual property referred to in this paragraph.

6. Neither Party shall require that submission of a power of attorney be completed together with the filing of the application as a condition for according a filing date to the application.

7. Each Party shall endeavour to improve its patent attorney or patent or trademark agent system with a view to further facilitating acquisition and utilisation of rights to patents, ~~utility models,~~ industrial designs and trademarks.

Article ++06

Transparency

For the purposes of further promoting transparency in administration of intellectual property protection system, each Party shall, in accordance with its laws and regulations, take appropriate measures to:

- (a) publish information at least on ~~[J: grants][I: grant]~~ of patents and applications therefor, registrations of ~~[J: utility models and]~~ industrial designs, registrations of trademarks and applications therefor and registrations of new varieties of plants and applications therefor, and make available to the public ~~[J: information]~~ ~~[I: correspondence]~~ exchanged between the competent authority and the applicants related to the ~~[J: grants][I: grant]~~ ~~[I: grant]~~ of patents and the registration~~s~~ of ~~[J: utility models,]~~ industrial designs, ~~[I: or]~~ trademarks ~~[J: or new varieties of plants]~~;
- (b) provide the public with access to the information on the efforts of the Party to ensure effective enforcement of intellectual property rights; and
- (c) make available to the public other information with regard to intellectual property protection system including standards or guidelines for examination of applications for grant or registration of patents, ~~[J: utility models,]~~ industrial designs and trademarks, for invocation of compulsory licences and for revocation of patents.

Article ++07

Promotion of Public Awareness concerning Protection of Intellectual Property

The Parties shall take necessary measures to enhance public awareness of protection of intellectual property including educational and dissemination projects on the use of intellectual property as well as on the enforcement of intellectual property rights.

Article ++08

Patents

1. Patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application, in accordance with the TRIPS Agreement.
2. Each Party shall provide that any application for patent is not rejected solely on the ground that the subject matter claimed in the application includes, ~~[I: among other things, [I: a computer programme]]~~ ~~[J: computer programmes]~~.

Note: This paragraph shall not prejudice the patentability of computer programmes as such which shall be determined in accordance with the laws and regulations of each Party.

3. Where the competent authority of a Party intends to render its decision to the effect that an application for a patent is to be refused, it shall notify the applicant for the patent of the reasons for refusal and give the said applicant an opportunity to present, in accordance with the laws and regulations of the Party, its case against the reasons for refusal within a reasonable period of

time.

4. Each Party shall ensure, in accordance with its laws and regulations, that an applicant may, on his own initiative, [I: and before the grant of patent,] divide an application for patent containing more than one invention into a [J: certain] number of divisional applications for patent.

Note: This paragraph shall not prevent a Party from providing that the [J: application to be divided shall not be a divisional application][I: divisional application shall not be further divided].

5. Each Party shall provide that a patent owner may file a request for correction of the description, the scope of the claims, or the drawings, that are attached to the application, to the administrative authority for patents for the purpose of restriction of the scope of the claims.

6. Each Party shall provide that a request for invalidation or revocation of patents may be filed to an appropriate authority.

Article ++09

Industrial Designs

1. Each Party shall provide that industrial designs which are not new or original [I: or which if they] do not significantly differ from known industrial designs shall not be registered.

2. Each Party shall provide that computer graphic of the industrial design for which registration is sought may be submitted instead of the drawing or photograph of the industrial design.

3. Each Party shall provide that an owner of a registered industrial design or an exclusive licensee has the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying an industrial design which is identical or similar to the registered industrial design, when such acts are undertaken for commercial purposes.

Article ++10

Trademarks

i. (a) Each Party shall, ex officio if its laws [J: and regulations] so permits, or [J: at the request of an interested person][I: on objection raised in opposition or rectification (or cancellation) proceedings by the proprietor of the well known mark, in accordance with its law], refuse the application for, or cancel, the registration of a trademark, which is identical or similar

to a trademark well-known in either Party as indicating the goods or services of the [J: owner][i: proprietor] of the well-known trademark, [J: if use of that trademark is for unfair intentions, inter alia, intention to gain an unfair profit or intention to cause damage to the owner] [i: if the use of that mark would take unfair advantage of or be detrimental to the distinctive character or repute of the well-known mark] whether or not such use would result in a likelihood of confusion.

(b) For the purposes of subparagraph (a), each Party may prescribe special formalities for establishing whether a trademark is well-known in the other Party.

2. Each Party shall ensure that an applicant may file a request to the competent authority that its application for registration of trademarks be examined in preference to other applications, subject to reasonable grounds. Where such a request has been filed, the competent authority shall take the request into consideration and endeavour to examine the application in preference to other applications, where appropriate.

Article ++11

Copyright and Related Rights

1. Each Party shall provide to authors, performers and producers of phonograms the exclusive right of authorising the making available to the public of their works, performances fixed in phonograms and phonograms, respectively, 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.

[J: 2. Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, performers or producers of phonograms in connection with the exercise of their rights under the laws and regulations of the Party and that restrict acts, in respect of their works, performances or phonograms, which are not authorised by the authors, performers or producers of phonograms concerned, or permitted by the laws and regulations of the Party.]

[J: 3. Each Party shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of copyright or related rights:

(a) to remove or alter any electronic rights management information without authority; and

(b) to distribute, import for distribution, broadcast, communicate, or make available to the public, without authority, works, copies of works, performances, copies of fixed performances or phonograms, knowing that electronic rights management information has been removed or altered without authority.]

[J: 4. Each Party shall provide for appropriate measures concerning limitations on liability for service providers:

(a) in case where a service provider provides a necessary deterrent to the transmission of information through telecommunication systems or networks controlled or operated by the service provider which it believes to be the infringement of copyright or related rights; and

(b) in case where the infringement of copyright or related rights occurs by the transmission of information through telecommunication systems or networks controlled or operated by a service provider and where the service provider is technically unable to deter the transmission or has difficulty in finding the infringement of copyright or related rights.]

5. Each Party shall take necessary measures to promote the development of the collective management organisations for copyright and related rights in the Party.

Article ++12

New Varieties of Plants

1. Each Party recognises the importance of protecting new varieties of plants in a manner based on international standards for protection of new ~~[I: variety]~~ *[J: varieties]* of ~~[I: plant]~~ *[J: plants]*. For this purpose, each Party shall ensure that rights relating to new varieties of plants are adequately protected.

2. Each Party shall, having due regard to concerns of the other Party, endeavour to provide for protection of all plant genera or species in a manner stated in paragraph 1 as early as practicable.

3. Notwithstanding Articles ++03] and ++04], each Party may, in accordance with its laws and regulations, limit the scope of the plant genera or species for which the Party accords the rights referred to in paragraph 1 to the nationals of the other Party to the genera or species for which the other Party accords the rights to the nationals of the former Party.

4. Any plant breeder who has duly filed an application for the protection of a variety of plants in a Party shall, for the purpose of filing an application for the grant of a breeder's right for the same variety of plants with the authority of the other Party, enjoy the right of priority for a period of 12 months ~~[I: after]~~ *[J: from]* the date of filing of the application in the former Party. *[J: The day of filing shall not be included in such period.]*

5. Each Party may, within reasonable limits and subject to the safeguarding of the *[J: legitimate]* interests of the breeder, restrict the plant breeder's right in relation to any variety ~~[I: --Farmers will be entitled to save, use, sow, re-sow, exchange, share or sell his farm produce including seed of a protected variety, but the farmer shall not be entitled to sell branded seed of a protected variety.]~~ *[J: in order to permit farmers to utilise, in accordance with the laws and regulations of the Party, the product of the harvest which they have obtained by planting, on their own holdings(?), the protected variety.]*

Article ++12 bis

Geographical Indication

Each Party shall ensure protection of geographical indications in accordance with its laws and regulations and in conformity with the TRIPS Agreement.

Article ++12 ter

Protection of Undisclosed Information

Each Party shall ensure in its laws and regulations adequate and effective protection of undisclosed information in accordance with Article 39 of the TRIPS Agreement.

Article ++13
Unfair Competition

J Each Party shall provide for effective protection against acts of unfair competition in accordance with Article 10 bis of the Paris Convention.

Article ++14
Border Measures

1. Each Party shall provide for procedures concerning the suspension by its customs authority, upon request of a right holder and *ex officio*, of the release of the goods infringing rights to patents, industrial designs or trademarks, or copyrights which are destined for importation into the Party.

2. In the case of suspension pursuant to paragraph 1, the customs authority of the importing Party shall (l) at the request of the right holder and without prejudice to the protection of confidential information, inform the right holder of the names and addresses of the (l) consignor and the importer (l) and additional relevant information relating to the consignment whose clearance has been suspended.

3. Each Party shall ensure that its customs authority does not allow the re-exportation of the goods infringing (l) rights to trademarks or copyrights in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

Article ++15
Civil Remedies

1. Each Party shall ensure that civil remedies be available to the right holder of intellectual property in accordance with Article 45 of the TRIPS Agreement.

2. In cases where it is extremely difficult for the right holder of intellectual property to prove the actual economic damages due to the nature of facts concerned, each Party shall ensure, subject to its laws and regulations, that its judicial authorities have the authority to determine the amount of damages based on the totality of the evidence presented to them.

Article ++16
Criminal Remedies

1. Each Party shall provide for criminal procedures and penalties to be applied in cases of infringement of rights to trademarks, copyrights or related rights, or rights to layout-design of integrated circuits committed wilfully and on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent that are consistent with the level of penalties applied for crimes of a corresponding gravity.

2. [J: Each Party shall ensure, at least in cases of infringement of rights to trademarks committed willfully and on a commercial scale, that its competent authorities may institute investigation and institute prosecution *ex officio*, without the need for a formal complaint by the right holder whose intellectual property has been infringed.]

[I: Each Party shall, (I) ~~if subject to its laws and regulations so permits,~~ (I) ensure that its competent authorities may on the basis of reliable information received, order an investigation and prosecute the accused of infringement of right holder whose intellectual property has been infringed.]

Article ++17

Cooperation

1. The Parties, recognising the growing importance of protection of intellectual property in further promoting trade and investment between the Parties, in accordance with their respective laws and regulations and subject to their available resources, shall [I: endeavour to] cooperate in the field of intellectual property. Costs of cooperation under this Article shall be borne in as [I: much] an equitable manner as possible.

2. The dispute settlement procedures provided for in Chapter [] shall not apply to this Article.

Article ++18

Sub-Committee on Intellectual Property

1. For the purposes of the effective implementation and operation of this Chapter, a Sub-Committee on Intellectual Property (hereinafter referred to in this Article as "the Sub-Committee") shall be established on the date of entry into force of this Agreement.

2. The functions of the Sub-Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights, and to promoting efficient and transparent administration of intellectual property protection system;
- (c) reporting the findings and the outcome of discussions of the Sub-Committee to the Joint Committee; and
- (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article [] [Joint Committee].

3. The Sub-Committee shall meet at such venues and times as may be agreed by the Parties.

4. The Sub-Committee shall be:

- (a) composed of representatives of the Governments of the Parties, and may invite representatives of relevant entities other than the Governments of the Parties, including those from private sectors, with the necessary expertise relevant to the issues to be discussed; and

(b) co-chaired by officials of the Governments of the Parties.

Article ++19
Security Exceptions

For the purposes of this Chapter, Article 73 of the TRIPS Agreement is incorporated into and forms part of the Agreement, *mutatis mutandis*.

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