

## EU-JAPAN FREE TRADE AGREEMENT

### CHAPTER INTELLECTUAL PROPERTY

**Notes / comments:**

- text in black normal “Times New Roman” is common / agreed;
- text in red italic “*Times New Roman*” is Japan’s proposal;
- text in blue normal “Times New Roman” is EU’s proposal.

### SECTION A GENERAL PROVISIONS

#### Article 1 Initial Provisions

1. In order to facilitate the production and commercialisation of innovative and creative products and the provision of services between the Parties and increase the benefits from trade and investment, the Parties shall grant and ensure adequate, effective and non-discriminatory protection of intellectual property and provide for measures for the enforcement of intellectual property rights against infringement thereof, including counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are party.

2. A Party may, but shall not be obliged to, provide more extensive protection for, or enforcement of, intellectual property rights under its law than is required by this Chapter, provided that such protection or enforcement does not contravene the provisions of this Chapter.

3. For the purposes of this Chapter “intellectual property” means all categories of intellectual property that are subject of:

- (i) Article [ ] through [ ] of this Chapter; and/or
- (ii) Sections 1 through 7 of Part II of the TRIPS Agreement.

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

4. The objectives and principles set forth in Part I of the TRIPS Agreement, in particular in Article 7 (Objectives) and Article 8 (Principles) shall apply to this Chapter, *mutatis mutandis*.

## **Article 2**

### **Agreed Principles**

Having regard to the underlying public policy objectives of domestic systems, the Parties recognise the need to:

- (a) promote innovation and creativity;
- (b) facilitate the diffusion of information, knowledge, technology, culture and the arts; and
- (c) foster competition and open and efficient markets, through their respective intellectual property systems, while respecting the principles of, inter alia, transparency and non-discrimination, and taking into account the interests of relevant stakeholders including right holders and users.

## **Article 3**

### **International Agreements**

1. The provisions of this Chapter shall complement the rights and obligations of the Parties under other international agreements in the field of intellectual property to which they both are parties.

2. 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 at the date of entry into force of this Agreement and any amendment thereto which becomes effective for both Parties, including the following:

- (a) the TRIPS Agreement;
- (b) the Paris Convention for the Protection of Industrial Property signed at Paris on 20 March 1883, as revised at Stockholm on 14 July 1967 (hereinafter referred to as “the Paris Convention”);
- (c) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on October 26, 1961;
- (d) the Berne Convention for the Protection of Literary and Artistic Works of September 9, 1886, as revised at Paris on July 24, 1971 (hereinafter referred to as “the Berne Convention”);
- (e) the World Intellectual Property Organisation Copyright Treaty adopted at Geneva on December 20, 1996;
- (f) the World Intellectual Property Organisation Performances and Phonograms Treaty, adopted at Geneva on December 20, 1996;
- (g) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure done at Budapest on April 28, 1977, as amended on September 26, 1980;

- (h) the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva, March 19, 1991 (hereinafter referred to as “the 1991 UPOV Convention”);
- (i) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks, adopted at Madrid on June 27, 1989, amended on October 3, 2006; and
- (j) the Patent Cooperation Treaty, done at Washington on June 19, 1970, as amended on October 3, 2001.

3. Each Party shall make all reasonable efforts to ratify or accede to the following multilateral agreements, if, by the date of entry into force of this Agreement, it is not already a party to that agreement:

- (a) the Patent Law Treaty adopted at Geneva on June 1, 2000;  
the Trademark Law Treaty adopted at Geneva on October 27, 1994;
- (b) the Singapore Treaty of the Law of Trademarks adopted at Singapore on 27 March, 2006;
- (c) the Geneva Act to the Hague Agreement Concerning the International Registration of Industrial Designs adopted at Geneva on July 2, 1999;
- (d) the Beijing Treaty on Audiovisual Performances adopted at Beijing on June 24, 2012; and
- (e) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled adopted at Marrakesh on June 27, 2013.

#### **Article 4** **National Treatment<sup>1</sup>**

1. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favourable than the treatment it accords to its own nationals with regard to the protection of intellectual property subject to the exceptions already provided in, respectively, the Paris Convention, the Berne Convention, the Rome Convention or the Treaty of Intellectual Property in respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement.

2. The obligations under this paragraph 1 shall also be subject to exceptions provided under Article 5 of the TRIPS Agreement.

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<sup>1</sup> For the purposes of this Article and Article 5:

- (a) the term “nationals” shall have the same meaning as in the TRIPS Agreement; and
- (b) 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 5**  
**Most-Favoured-Nation Treatment**

Each Party shall immediately and unconditionally accord to nationals of the other Party treatment no less favourable than the treatment it accords to the nationals of a non-Party with regard to the protection of intellectual property, subject to the exceptions provided for in Articles 4 and 5 of the TRIPS Agreement.

**Article 6**  
**Procedural Matters and Transparency**

1. The Parties make all reasonable efforts to promote efficiency and transparency in the administration of intellectual property system.
2. For the purposes of providing efficient administration of intellectual property system, each Party shall take appropriate measures to enhance the efficiency of its administrative procedures concerning intellectual property rights in line with international standards.
3. For the purposes of further promoting transparency in the administration of its intellectual property system, each Party shall make all reasonable efforts to take appropriate measures available to:
  - (a) publish information on:
    - (i) applications for and grant of patents;
    - (ii) registrations of industrial designs;
    - (iii) registrations of trademarks and applications therefore;
    - (iv) registrations of new varieties of plants; and
    - (v) registrations of geographical indicationsand make available to the public information contained in the dossiers thereof;
  - (b) make available to the public information on measures taken by the competent authorities for the suspension of the release of products infringing intellectual property rights as a border measure set forth in Article [ ](Border Measure);
  - (c) make available to the public information on its efforts to ensure effective enforcement of intellectual property rights and other information with regard to its intellectual property system; and
  - (d) make available to the public information on relevant laws, regulations, final judicial decisions, and administrative rulings of general application pertaining to the enforcement of intellectual property rights.

**Article 7**  
**Promotion of Public Awareness Concerning Protection of Intellectual Property**

Each Party shall take necessary measures to continue promoting 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.

**SECTION B**  
**STANDARDS CONCERNING INTELLECTUAL PROPERTY**

**SUB-SECTION A**  
***COPYRIGHT AND RELATED RIGHTS***

**Article 8**  
**Authors**

The Parties shall provide for authors the exclusive right to authorise or prohibit:

- (i) direct or indirect reproduction by any means and in any form, in whole or in part of their works;
- (ii) any form of distribution to the public by sale or otherwise of the original of their works or of copies thereof, provided that the Parties may determine the conditions, if any, under which the exhaustion of the right in this provision applies after the first sale or other transfer of ownership of the original or a copy of the work with authorization of the author; and
- (iii) any communication to the public of their works, by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access them from a place and at a time individually chosen by them.

**Article 9**  
**Performers**

The Parties shall provide for performers the exclusive right to authorise or prohibit:

- (i) the fixation of their performances;
- (ii) direct or indirect reproduction by any means and in any form, in whole or in part of fixations of their performances;
- (iii) the distribution to the public, by sale or otherwise, fixations of their performances in phonograms provided that the Parties may determine the conditions, if any, under which the exhaustion of the right in this provision applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer;

- (iv) the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them of fixations of their performances; and
- (v) the broadcasting by wireless means and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

## **Article 10**

### **Producers of Phonograms**

The Parties shall provide for phonogram producers the exclusive right to authorise or prohibit:

- (i) direct or indirect reproduction by any means and in any form, in whole or in part of their phonograms;
- (ii) the distribution to the public, by sale or otherwise, their phonograms, including copies provided that the Parties may determine the conditions, if any, under which the exhaustion of the right in this provision applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the producer of the phonogram; and
- (iii) the making available to the public, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them of their phonograms;

## **Article 11**

### **Broadcasting Organisations**

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

- the fixation of their broadcasts;
- the reproduction of fixations of their broadcasts;
- the making available to the public<sup>2</sup> of their broadcasts, by wire or wireless means, which is made in response to a request from a member of the public<sup>3</sup>;
- the rebroadcasting of their broadcasts by wireless means; and
- the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee, provided that the conditions under which that exclusive right may be exercised may be determined by each domestic law.

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<sup>2</sup> For greater certainty, in the case of the European Union, this right is limited to situations where the request is made from a place and at a time individually chosen by a member of the public.

<sup>3</sup> For greater certainty, in the case of Japan, this [subparagraph] shall be applied to the form of public transmission which occurs automatically in response to a request from the public, except for those which occur manually.

## **Article 12**

### **Use of Phonograms**

The Parties agree to continue discussion on adequate protection for the use of phonograms for all communication to the public, giving due consideration to the importance of international standards regarding protection for the use of phonograms.

## **Article 13**

### **Term of protection**

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

1.1 Whenever the term of protection for the rights referred to in paragraph 1 is calculated on a basis other than the life of a natural person, such term shall be no less than 70 years after the work is lawfully made available to the public. Failing such making available within 70 years after the creation of the work, such protection shall be no less than 70 years from the work's creation.

2. The rights of performers shall expire not less than 50 years after the date of the performance.

3. The rights of producers of phonograms shall last, at least, until the end of the period of 70 years calculated from the end of the year in which the phonogram was published, or failing such publication within at least 50 years from the fixation of the phonogram, at least 50 years from the end of the year in which the fixation was made<sup>4</sup>.

4. The term of protection for rights in broadcasts shall expire not less than 50 years after the first transmission of the broadcast.

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

[Negotiator's Note] Japan will extend the term of protection referred to in paragraphs 1 through 3 from 50 years to 70 years, provided that the EU will address the wartime prolongation matter simultaneously.

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<sup>4</sup> The Parties may adopt effective measures in order to ensure that the profit generated during the 20 years of protection beyond 50 years are shared fairly between the performers and producers of phonograms.

**Article 14**  
**Exceptions and limitations**

The Parties may provide for limitations or exceptions to the rights set out in Articles 8 to 12 only in certain special cases which do not conflict with a normal exploitation of the subject matter and do not unreasonably prejudice the legitimate interests of the right holders in accordance with the conventions and international agreements to which they are Parties.

**Article 15**  
**Artist's resale right in works of art**

The Parties agree to exchange views and information on issues related to right to an interest in resale of an original work of art and the situation in this regard in the European Union and in Japan.

**Article 16**  
**Collective management**

The Parties:

- (a) recognise the importance of promoting cooperation between their respective collective management organisations;
- (b) agree to promote the transparency of collective management organisations; and
- (c) endeavour to facilitate non-discriminating treatment by collective management organisations of right-holders they represent either directly or via another collective management organisation.

**Article 17**  
**Protection of existing subject matter**

1. Each Party shall apply Article 18 of the Berne Convention and Article 14.6 of the TRIPS Agreement, *mutatis mutandis*, to works, performances and phonograms, and the rights in and protections afforded to that subject matter as required by this SUB-SECTION A (COPYRIGHT AND RELATED RIGHTS).

2. A Party shall not be required to restore protection to subject matter that on the date of entry into force of this Agreement has fallen into the public domain in its Area.

## **SUB-SECTION B** **TRADEMARKS**

### **Article 18** **Rights conferred by a trademark**

Each Party shall ensure that the owner of a registered trademark has the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of the Parties making rights available on the basis of use.<sup>5</sup>

### **Article 19** **Exceptions**

The Parties shall provide for limited exceptions to the rights conferred by a trademark such as the fair use of descriptive terms<sup>6</sup> and they may provide other limited exceptions, provided such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

### **Article 20** **Preparatory acts deemed as infringement**

With regard to labels and packaging, each Party shall provide that at least the following acts shall be deemed as an infringement of a registered trademark if the act has been performed without the consent of the registered trademark owner:

- (a) manufacture;
- (b) importation; and
- (c) presenting<sup>7</sup>

of labels or packaging bearing<sup>8</sup> a sign which is identical or similar to the registered trademark, for the purpose of using such sign or causing it to be used in the course of trade for goods or services which are identical or similar to those in respect of which the trademark is registered.

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<sup>5</sup> For the purposes of this Article, "using" such sign includes, at least, importing and exporting goods or packages of goods to which the sign is affixed.

<sup>6</sup> The fair use of descriptive terms includes the use of a sign to indicate the geographic origin of the goods or services, and where such use is in accordance with honest practices in industrial or commercial matters.

<sup>7</sup> For the purpose of this Article, the European Union considers "presenting" as "offering" or "putting on the market" and Japan considers "presenting" as "assignment".

## **Article 21**

### **Well-known trademarks**

For the purpose of giving effect to protection of well-known trademarks, as referred to in Article 6bis of the Paris Convention and paragraphs 2 and 3 of Article 16 of the TRIPS Agreement, the Parties reaffirm the importance of the Joint Recommendation adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (hereinafter referred to as “the WIPO”) at the Thirty Fourth Series of Meetings of the Assemblies of the Member States of the WIPO in 1999.

## **SUB-SECTION C**

### ***GEOGRAPHICAL INDICATIONS***

[Separate document](#)

## **SUB-SECTION D**

### ***INDUSTRIAL DESIGNS<sup>9</sup>***

## **Article 22**

### **Industrial Designs**

Negotiators note: after the SUB-SECTION C (GEOGRAPHICAL INDICATIONS) is incorporated in the text, article numbers should be changed accordingly.

1. Each Party shall provide for the protection of independently created designs that are new and original, including to designs of a part of a product<sup>10</sup>, regardless of whether or not the part can be separated from the product. This protection shall be provided by registration and shall confer an exclusive right upon their holders in accordance with the provisions of this Article.

2. A design applied to or incorporated in a product which constitutes a component part of a complex product shall be considered to be new and original in the following circumstances:<sup>11</sup>

- (a) if the component part, once it has been incorporated into the complex product, remains visible during normal use<sup>12</sup> of the latter, and

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<sup>8</sup> For Japan, for the purpose of this paragraph, “bearing” means “indicating”.

<sup>9</sup> For the purpose of this Article, in the European Union, the term “Industrial Designs” refers to registered designs.

<sup>10</sup> For Japan, for the purpose of this paragraph, “product” shall be interpreted as “article”.

<sup>11</sup> As alternative to the circumstances provided under paragraph 2(a) and 2(b), a Party may consider a design applied to or incorporated in a product which constitutes a component part of a complex product to be new and original in circumstances in accordance with its laws and regulations.

- (b) to the extent that those visible features of the component part fulfil in themselves the requirements as to novelty and originality.

3. Each Party may provide limited exceptions to the protection of industrial designs in a manner consistent with paragraph 2 of Article 26 of the TRIPS Agreement.

4. The provisions of this Article shall be without prejudice to any provisions of this Chapter or of the law of each Party relating to other intellectual property including unregistered appearances of products, trademarks or other distinctive signs, and patents.

5. Each Party shall ensure that an owner of a protected registered industrial design has at least the right to prevent third parties not having the owner's consent from making, selling, importing or exporting articles bearing or embodying a design which is identical or similar to the protected design, when such act is undertaken for commercial purposes.

6. The European Union and Japan shall provide that an applicant for an industrial design registration may request the competent authority to maintain the design unpublished for a period designated by the applicant not exceeding the period provided for in the laws and regulations of the Party.

7. Each Party shall ensure that the total term of protection available for industrial designs is no less than 20 years.

## **SUB-SECTION E**

### ***UNREGISTERED APPEARANCE OF PRODUCTS***

#### **Article 23**

#### **Unregistered Appearance of Products**

1. Each Party recognises that appearance of products may be protected through industrial design, copyright or unfair competition prevention legislation.

2. The European Union and Japan shall provide the legal means to prevent the use of the unregistered appearance of a product, only if such use results from copying the unregistered appearance of the product to the extent provided by the laws and regulations of each Party. Such use shall at least cover offering for sale, putting on the market, importing or exporting the product.<sup>13</sup>

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<sup>12</sup> For the purpose of this paragraph, “normal use” shall mean use by the end user, excluding maintenance, servicing or repair work.

<sup>13</sup> For the purpose of this Article, the terms “appearances”, “offering”, “putting on the market” and “copying” may be deemed by a Party to be synonymous with the terms “configuration”, “displaying”, “selling” and “imitating”, respectively.

3. The duration of protection available for the unregistered appearance of a product shall amount to at least three years according to the respective laws and regulations of the Parties.

## **SUB-SECTION F** ***PATENTS***

### **Article 24** **Patents**

1. Each Party shall ensure that a patent confers on its owner exclusive rights:
  - (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from making, using, offering for sale, selling or importing for these purposes that product; and
  - (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from using the process, and from using, offering for sale, selling or importing for these purposes at least the product obtained directly by that process.
2. The Parties may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.<sup>14</sup>
3. Each Party recognises the importance of providing a unitary patent protection system including a unitary judicial system, in its Area.
4. The Parties shall continue to cooperate to enhance international substantive patent law harmonization, including on grace period, prior user rights and publication of pending patent applications.
5. The Parties shall give due consideration to the cooperation for enhancing mutual utilisation of search and examination results, such as that based upon the Patent Cooperation Treaty and any other utilisation,<sup>15</sup> so as to allow applicants to obtain patents in an efficient and expeditious manner, without prejudice to substantive patent examination of each Party.

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<sup>14</sup> For the purpose of this [paragraph], "offering for sale" may include "exporting."

<sup>15</sup> Such utilisation may include {those procedures} that {are} based upon the Patent Prosecution Highway.

**Article 25**  
**Patents and Public Health**

1. The Parties recognise the importance of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the World Trade Organisation. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with this Declaration.
2. The Parties shall contribute to the implementation and respect the Decision of the WTO General Council of 30 August 2003 on Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health.

**Article 26**  
**Extension of the period of protection conferred by a patent on pharmaceutical products<sup>16</sup> and agricultural chemical products<sup>17</sup>**

With respect to the patent which is granted for an invention related to pharmaceutical products or agricultural chemical products, each Party shall, subject to the terms and conditions of its applicable laws and regulations, provide for a compensatory term of protection for a period during which the patented invention cannot be worked due to marketing approval process. As of the date of signing this Agreement, a maximum of such compensatory term is stipulated as being five years<sup>18</sup> by the relevant laws of each Party.

**SUB-SECTION G**  
**TRADE SECRETS AND UNDISCLOSED TEST OR OTHER DATA**

**Article 27**  
**Scope of protection of trade secrets**

1. Each Party shall ensure in its laws and regulations adequate and effective protection of trade secrets in accordance with paragraph 2 of Article 39 of the TRIPS Agreement.

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<sup>16</sup> The term “pharmaceutical products” refers in this Article, in the case of the European Union, to medicinal products as defined in Regulation (EC) No. 469/2009 of the European Parliament and of the Council of 6 of May, 2009 concerning the supplementary protection certificate for medicinal products.

<sup>17</sup> The term “agricultural chemical products” refers in this Article, in the case of the European Union, to plant protection products as defined in Regulation (EC) No. 1610/96 of the European Parliament and of the Council of 23 of July, 1996 concerning the creation of a supplementary protection certificate for plant protection products.

<sup>18</sup> In the case of the European Union, a further 6 months extension is possible in the case of medicinal products for which paediatric studies have been carried out, and the results of those studies are reflected in the product information.

2. For purposes of this Article and SUB-SECTION B of Section C (ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS):

- (a) 'trade secret' means information that:
  - (i) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
  - (ii) has commercial value because it is secret; and
  - (iii) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret;
- (b) 'trade secret holder' means any natural or legal person lawfully in control of a trade secret.

3. For the purpose of this Article and SUB-SECTION B of Section C (ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS), the Parties shall provide, in accordance with its laws and regulations, that at least the following conducts shall be considered contrary to honest commercial practices:

- (a) the acquisition of a trade secret without the consent of the trade secret holder, whenever carried out by wrongful means, or, alternatively, unauthorised access to, appropriation of, or copying of any documents, objects, materials, substances or electronic files, lawfully under the control of the trade secret holder, containing the trade secret or from which the trade secret can be deduced;
- (b) the use or disclosure of a trade secret whenever carried out, without the consent of the trade secret holder, by a person who is found to meet any of the following conditions:
  - (i) having acquired the trade secret in a manner referred to in subparagraph (a);
  - (ii) being in breach of a confidentiality agreement or any other duty not to disclose the trade secret, with an intention to gain unfair profit or to cause damage to the trade secret holder or
  - (iii) being in breach of a contractual or any other duty to limit the use of the trade secret, with an intention to gain unfair profit or to cause damage to the trade secret holder;
- (c) the acquisition, use or disclosure of a trade secret whenever carried out by a person who, at the time of the acquisition, use or disclosure, knew or ought, under the circumstances, to have known<sup>19</sup> that the trade secret had been obtained directly or indirectly from another person who was disclosing the trade secret in a manner referred to in subparagraph (b), including when a person induced another person to carry out the actions referred to in subparagraph (b).

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<sup>19</sup> For the purpose of this Article, a Party may interpret "ought to have known" as "was grossly negligent in failing to know".

4. Nothing in this subsection shall require either Party to consider any of the following conducts as contrary to honest commercial practices or subject those conducts to the measures, procedures, and remedies referred to in SUB-SECTION B of Section C:

- (a) independent discovery or creation by a person of the relevant information;
- (b) reverse engineering of a product by a person who is lawfully in possession of it and who is free from any legally valid duty to limit the acquisition of the relevant information;
- (c) acquisition, use or disclosure of information required or allowed by the relevant domestic law;
- (d) use by employees of their experience and skills honestly acquired in the normal course of their employment; or/and
- (e) disclosure of information in the exercise of the right to freedom of expression and information.

Negotiator's note for legal scrubbing: Both Party agreed that these subparagraphs are independent from each other.

## **Article 28**

### **Treatment of Test Data in Marketing Approval Procedure**

1. Each Party shall prevent applicants for marketing approval for pharmaceutical products<sup>20</sup> which utilise new active pharmaceutical ingredient from relying on or from referring to undisclosed test or other data submitted to its competent authority by the first applicant for a certain period of time counted from the date of approval of that application. As of the date of entry into force of this Agreement, such period of time is stipulated as being no less than six years by the relevant laws of each Party.

2. Each Party, when requiring, as a condition for approving the marketing of agricultural chemical products<sup>21</sup> which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall ensure that, in accordance with its relevant laws and regulations, applicants for marketing approval are either:

- (a) prevented from relying on or from referring to such data submitted to its competent authority by the first applicant for a period of at least ten years counted from the date of approval of that application; or

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<sup>20</sup> The term "pharmaceutical products" refers in this Article, in the case of the European Union, to medicinal products.

<sup>21</sup> The term "agricultural chemical products" refers in this Article, in the case of the European Union, to plant protection products.

- (b) required generally to submit a full set of test data, even in cases where there was a prior application for the same product, for a period, counted from the date of approval of a prior application, of at least ten years.

## **SUB-SECTION H** ***NEW VARIETIES OF PLANTS***

### **Article 29** **New Varieties of Plants**

Each Party shall provide for the protection of new varieties of all plant genera and species in accordance with its rights and obligations under the 1991 UPOV Convention.

## **SUB-SECTION I** ***UNFAIR COMPETITION***

### **Article 30** **Unfair Competition**

1. Each Party shall provide for effective protection against acts of unfair competition in accordance with the Paris Convention.<sup>22</sup>
2. In connection with the respective systems of the EU and Japan for the management of their country-code top-level domain (ccTLD) domain names<sup>23</sup>, appropriate remedies<sup>24</sup> shall be available, in accordance with their respective domestic laws and regulations, at least in cases in which a person registers or holds, with a bad faith intent to profit, a domain name that is identical or confusingly similar to a trademark.
3. Each Party shall provide for effective protection against unauthorized use of trademark through the implementation of paragraph 2 of Article 6 septies of the Paris Convention.

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<sup>22</sup> For greater certainty, it is understood by the Parties that Article 10bis of the Paris Convention covers acts of unfair competition in relation to the supply of services in accordance with their respective domestic laws and regulations.

<sup>23</sup> For greater certainty, in the case of the EU, this provision applies only to “.eu” domain names.

<sup>24</sup> The Parties understand that such remedies may include, among other things, revocation, cancellation and transfer of the registered domain name, injunctive relief against the person that registered or holds the registered domain name and against the domain name registry or damages against the person that registered or holds the domain name.

## **SECTION C**

### **ENFORCEMENT OF INTELLECTUAL PROPERTY**

#### **Article 31 Enforcement – General**

1. The Parties reaffirm their commitments under the TRIPS Agreement and in particular of its Part III, and shall provide for the following complementary measures, procedures and remedies<sup>25</sup> necessary to ensure the enforcement of intellectual property rights. The measures, procedures and remedies shall be fair and equitable, and shall not be unnecessarily complicated or costly, or entail unreasonable time- limits or unwarranted delays.
2. Those measures, procedures and remedies shall also be effective, proportionate and dissuasive<sup>26</sup> and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.
3. Each Party shall make all reasonable efforts to:
  - (a) encourage the establishment of public and/or private advisory groups to address issues of at least counterfeiting and piracy; and
  - (b) ensure internal coordination among, and facilitate joint actions by, its competent authorities concerned with enforcement of intellectual property rights, subject to their available resources.

#### **Article 32**

##### **Entitled Applicants**

The Parties shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in Section C:

- (a) the holders of intellectual property rights in accordance with their respective laws and regulations,
- (b) the trade secret holder referred to in Article 27,
- (c) all other persons and entities, as far as permitted by and in accordance with their respective laws and regulation.

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<sup>25</sup> Without prejudice to the civil and administrative measures, procedures and remedies laid down in this Chapter, a Party may provide for other appropriate sanctions in cases where intellectual property rights have been infringed.

<sup>26</sup> For the purpose of this Article, the term “dissuasive” may be deemed by a Party to be synonymous with the term “deterrent” under Article 41 of the TRIPS Agreement.

**SUB-SECTION A**  
**ENFORCEMENT – CIVIL REMEDIES<sup>27 28</sup>**

**Article 33**  
**Measures for Preserving Evidence**

1. The judicial authorities shall have the authority to order prompt and effective provisional measures to preserve relevant evidence in regard to the alleged infringement, under procedures which ensure the protection of confidential information in appropriate cases.
2. Judicial authority shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.
3. In case of intellectual property rights infringement, each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to order the seizure or other taking into custody of suspect goods, and of materials and implements relevant to the act of infringement, and, documentary evidence, either originals or copies thereof, relevant to the infringement.

**Article 34**  
**Right of information**

Without prejudice to its law governing privilege, the protection of confidentiality of information sources or the processing of personal data, each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority, upon a justified request of the right holder, to order the infringer or the alleged infringer, to provide to the right holder or to the judicial authorities, at least for the purpose of collecting evidence, relevant information as provided for in its applicable laws and regulations that the infringer or alleged infringer possesses or controls. Such information may include information regarding any person involved in any aspect of the infringement or alleged infringement and regarding the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of such goods or services and of their channels of distribution.

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<sup>27</sup> This SUB-SECTION applies for intellectual property rights described in SUB-SECTIONS [A] through [I] of Section [B], excluding SUB-SECTION [G].

<sup>28</sup> For Japan, civil enforcement for geographical indications will be provided within the scope of 10bis of the Paris Convention and Article 22 of the TRIPS Agreement.

## **Article 35**

### **Provisional and Precautionary Measures**

1. The Parties shall ensure that the judicial authorities may, at the request of the applicant, issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by domestic law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder. An interlocutory injunction may also be issued, under the same conditions where appropriate against a third party<sup>29</sup> over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right.
2. An interlocutory injunction may also be issued to order the seizure or delivery up of goods suspected of infringing an intellectual property right, so as to prevent their entry into or movement within the channels of commerce.
3. In the case of an alleged infringement committed on a commercial scale, the Parties shall ensure that, if the applicant demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets.

## **Article 36**

### **Corrective Measures**

1. The Parties shall ensure that the competent judicial authorities may order, at the request of the applicant and without prejudice to any damages due to the right holder by reason of the infringement, and without compensation of any sort, at least the definitive removal from the channels of commerce, or the destruction, except in exceptional circumstances, of goods that they have found to be infringing an intellectual property right. If appropriate, the competent judicial authorities may also order destruction of materials and implements predominantly used in the creation or manufacture of those goods.
2. The Parties' judicial authorities shall have the authority to order that those measures shall be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

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<sup>29</sup> A Party may provide that a “third party” includes an intermediary.

### **Article 37** **Injunctions**

The Parties shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer as well as where appropriate against a third party<sup>30</sup> over whom the relevant judicial authority exercises jurisdiction and whose services are used to infringe an intellectual property right, an injunction aimed at prohibiting the continuation of the infringement.

### **Article 38** **Damages**

1. Each Party shall provide that in civil judicial proceedings, its judicial authorities shall have the authority to order the infringer who knowingly or with reasonable grounds to know, engaged in infringing activity of intellectual property rights to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement.
2. In determining the amount of damages for infringements of intellectual property rights, its judicial authorities may consider, inter alia, any legitimate measure of value that may be submitted by the right holder, which may include lost profits.
3. A Party's law may provide presumptions<sup>31</sup> for determining the amount of damages referred to in paragraph 1.

### **Article 39** **Legal Costs**

Each Party shall provide that its judicial authorities, where appropriate, have the authority to order, at the conclusion of civil judicial proceedings concerning infringement of intellectual property rights that the prevailing party be awarded payment by the losing party of court costs

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<sup>30</sup> A Party may provide that a “third party” includes an intermediary.

<sup>31</sup> The presumptions referred to in this paragraph 3 may include a presumption that the amount of damage is:

- (a) at least the amount that the right holder would have been entitled to receive for the exercise of his or her intellectual property rights, which may include reasonable royalty, to compensate a right holder for the unauthorized use of its intellectual property;
- (b) the profits earned by the infringer from the act of infringement; or
- (c) the quantity of the goods infringing the right holder’s intellectual property rights and actually transferred to third persons, multiplied by the amount of profit per unit of goods which would have been sold by the right holder if there had not been the act of infringement.

or fees and appropriate attorney's fees, or any other expenses as provided for under that Party's law.

**Article 40**  
**Presumption of authorship or ownership**

The Parties shall recognise that for the purposes of applying the measures, procedures and remedies provided for in this Chapter (a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner; (b) Parties may apply the provision under (a) *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

**SUB-SECTION B**  
***ENFORCEMENT OF PROTECTION AGAINST MISAPPROPRIATION***  
***OF TRADE SECRETS***

**Article 41**  
**Civil Judicial Procedures and Remedies**

1. Each Party shall provide for appropriate civil judicial procedures and remedies for a trade secret holder to prevent, and obtain redress for, the acquisition, use or disclosure of a trade secret whenever carried out in a manner contrary to honest commercial practices.
2. Each Party shall provide, in accordance with its laws and regulations, that its judicial authorities shall have the authority to order that the parties, their lawyers and other persons concerned in the civil judicial proceedings referred to in the paragraph 1 of this Article, are not permitted to use or disclose any trade secret or alleged trade secret which the competent judicial authorities have, in response to a duly reasoned application by an interested party, identified as confidential<sup>32</sup> and of which they have become aware as a result of their participation in such civil judicial proceedings.
3. In the civil judicial proceedings referred to in the paragraph 1 of this Article, each Party shall provide that its judicial authorities have the authority at least to:
  - (a) order injunctive relief to prevent the acquisition, use or disclosure of the trade secret in a manner contrary to honest commercial practices;

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<sup>32</sup> For greater certainty, a Party may provide that judicial authorities may identify a trade secret as confidential through a protective order.

- (b) order the person that knew or ought to have known<sup>33</sup> that he, she or it was acquiring, using or disclosing a trade secret in a manner contrary to honest commercial practices to pay the trade secret holder damages appropriate to the actual prejudice suffered as a result of such acquisition, use or disclosure of the trade secret;
- (c) take specific measures to preserve the confidentiality of any trade secret or alleged trade secret produced in civil proceedings relating to the alleged acquisition, use and disclosure of a trade secret in a manner contrary to honest commercial practices. Such specific measures may include, in accordance with their respective domestic law, the possibility of restricting access to certain documents in whole or in part; of restricting access to hearings and their corresponding records or transcript; and of making available a non-confidential version of judicial decision in which the passages containing trade secrets have been removed or redacted; and
- (d) impose sanctions on the parties, their lawyers and other persons concerned in the civil judicial proceedings for violation of judicial orders referred to in paragraph 2 of this Article concerning the protection of a trade secret or alleged trade secret produced in that proceedings.

4. The Parties shall not be required to provide for the judicial procedures and remedies referred to in the paragraph 1 of this Article when the conduct contrary to honest commercial practices is carried out, in accordance with their relevant domestic law, to reveal misconduct, wrongdoing or illegal activity or for the purpose of protecting a legitimate interest recognised by law.

## **SUB-SECTION C**

### ***ENFORCEMENT – BORDER MEASURES***

#### **Article 42**

#### **Enforcement – Border measures**

With respect to goods imported or exported<sup>34</sup>, each Party shall adopt or maintain procedures under which a right holder may submit applications requesting customs authorities to suspend the release of or detain goods suspected of infringing trademarks, copyrights and related

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<sup>33</sup> For the purpose of this Article, a Party may interpret "ought to have known" as "was grossly negligent in failing to know".

<sup>34</sup> For the purpose of this Article, 'goods imported or exported' means, for the EU, goods under customs control, being brought into or taken out from its customs territory or being there in temporary storage, placed under a customs procedure or re-exported.

rights, geographical indications<sup>35</sup>, patents, utility models, industrial designs, and plant variety rights (hereinafter referred to in this Article as ‘suspect goods’) in its customs territory<sup>36</sup>.

2. Each Party shall have in place electronic systems for the management by its customs authorities of the applications once they have been granted or recorded.

3. Customs authorities shall decide about granting or recording such applications within a reasonable period of time from the submission of the applications.

4. Each Party shall provide for such applications to apply to multiple shipments.

5. With respect to goods imported or exported, customs authorities shall have the authority to act upon their own initiative to suspend the release of or detain suspect goods in its customs territory.<sup>37</sup>

6. Article 10 (Risk Management) of Customs Matters and Trade Facilitation Chapter *[Y]* shall cover detection of suspect goods referred to in this Article.

7. Without prejudice to its laws and regulations pertaining to the privacy or confidentiality of information, a Party may authorise customs authorities to provide a right holder with information about goods, including the description and quantities, and if known, the name and address of the consignor, importer, exporter, consignee, and the country of origin of the goods, whose release has been suspended, or which have been detained.

8. A Party may adopt or maintain procedures by which its competent authorities may determine, within reasonable period after the initiation of the procedures described in paragraphs 1 and 5, whether the suspect goods are infringing. In such case, the competent authorities shall have the authority to order the destruction of goods following a determination that the goods are infringing.

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<sup>35</sup> With respect to geographical indications, Japan may comply with the obligations set out in this Article by providing for administrative measures to prevent the release into its domestic market of suspect goods by appropriate competent authorities, in accordance with its laws and regulations.

<sup>36</sup> For the purpose of this Article (Enforcement – Border measures), customs territory is as defined in Article 3 (Definitions) of Customs Matters and Trade Facilitation Chapter.

<sup>37</sup> For the purpose of this paragraph, Japan may provide for penalties to be applied in cases of customs transit or transshipment of infringing goods. For that purpose,

- (a) the term “customs transit” means the customs procedure under which goods are transported under customs control from one customs office to another; and
- (b) the term “transshipment” means the customs procedure under which goods are transferred under customs control from the importing means of transport to the exporting means of transport within the area of one customs office which is the office of both importation and exportation.

A Party may have in place procedures allowing for the destruction of suspect goods without there being any need for the formal determination on the infringement, where the persons concerned agree or do not oppose to destruction.

9. If a Party requests right holders to bear the cost actually incurred for the storage or destruction of the goods whose release has been suspended, or which have been detained in accordance with paragraphs 1 and 5, those costs shall correspond to the services rendered for the storage or destruction of the goods.

10. There shall be no obligations to apply this Article to import of goods put on the market in another country by or with the consent of the right holders.

A Party may exclude from the application of this Article small quantities of goods of a non-commercial nature contained in travellers' personal luggage.

11. Consultations referred to in Paragraph 4 of Article 4 (Transparency) of Customs Matters and Trade Facilitation Chapter [Y] shall also deal with the border measures by the customs authorities under this Article.

12. The Customs authorities of the Parties may cooperate on border measures against infringements of intellectual property covered by this SUB-SECTION.

13. Without prejudice to competence of the Committee on Intellectual Property referred to in Article 44 of this Chapter, the Committee on Customs Related Matters and Rules of Origin referred to in Article [ ] of the Customs Matters and Trade Facilitation Chapter may consider the possibility of the following cooperation:

- (a) exchanging general information regarding seizures of infringing goods or suspect goods,
- (b) holding a dialogue on specific topics of common interests:
  - (i) general information regarding the use of risk management systems in the detection of suspect goods, and
  - (ii) general information regarding risk analysis in the fight against infringing goods.

## **SECTION D**

### **COOPERATION AND INSTITUTIONAL ARRANGEMENTS**

#### **Article 43**

#### **Cooperation**

1. The Parties, recognising the growing importance of the protection of intellectual property in further promoting trade and investment between them, in accordance with their respective laws and regulations and subject to their available resources, shall cooperate in the field of intellectual property, including by exchanging information on relations of the Parties with non-Parties on matters concerning intellectual property.

2. For the purpose of paragraph 1, forms of cooperation may include exchange of information and sharing experiences and skills and any other form of cooperation or activities as may be discussed and agreed between the Parties. Such cooperation may cover areas such as:

- (a) developments in domestic and international intellectual property policy;
- (b) intellectual property administration and registration systems;
- (c) education and awareness relating to intellectual property;
- (d) intellectual property issues relevant to:
  - (i) small and medium-sized enterprises;
  - (ii) science, technology and innovation activities; and
  - (iii) the generation, transfer and dissemination of technology;
- (e) policies involving the use of intellectual property for research, innovation and economic growth;
- (f) implementation of multilateral intellectual property agreements, such as those concluded or administered under the auspices of the WIPO;
- (g) technical assistance for developing countries;
- (h) best practices, projects and programmes related to the fight against infringements of intellectual property rights; and
- (i) exploration of the possibility for further work on common efforts against infringements of intellectual property rights worldwide.

3. The Parties shall seek for cooperation on activities to improve the international intellectual property regulatory framework, including by encouraging further ratification of existing treaties and by fostering international harmonisation, administration and enforcement of intellectual property rights and on activities in international organisations including the World Trade Organization and the WIPO.

4. *Chapter X (Dispute Settlement)* shall not apply to this Article.

## **Article 44**

### **Committee on Intellectual Property**

1. For the purposes of the effective implementation and operation of this Chapter, the Parties hereby establish a Committee on Intellectual Property (hereinafter referred to in this Article as “the Committee”).

2. The functions of the Committee shall be:

- (a) reviewing and monitoring the implementation and operation of this Chapter [EU: , including any matter arising from specifications of protected geographical indications];
- (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 system;
- (c) reporting its findings and the outcomes of its discussions to the Joint Committee; and
- (d) carrying out other functions which may be delegated by the Joint Committee.

[EU: 3. The Committee shall decide on modifying Annex XX (Laws and Regulations of the Parties) and Annex XY (List of Geographical Indications). Each Party shall process without undue delay the other Party’s request for modifying Annex XY (List of Geographical Indications), as per Article C.9 of the SUB-SECTION C (Geographical Indications).]

4. The Committee shall meet at such times and venues or by means, as may be agreed by the Parties.

5. The Committee shall be:

- (a) composed of representatives of the Parties, and may invite representatives of relevant entities other than 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 Parties.

*[JP: Article 45 Security Exceptions*

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

EU note: Security exceptions are possibly to be placed in the General provisions part of the Agreement, not in each Chapter