

**Draft text on areas not covered in the Possible Common Elements from the 2nd
WGIP¹**

**Submitted by Japan
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Japan proposes the following draft text on areas not covered in the Possible Common Elements from the 2nd WGIP to be discussed in the negotiation of the RCEP.

¹ Japan reserves the right to revise and/or change the draft text at any time before the conclusion of the negotiations of the RCEP.

Article	Elements	Text
Article XX.A.1 General Provisions	Protection of IP and enforcement of IPRs in accordance with the international agreements	1. 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, counterfeiting and piracy, in accordance with the provisions of this Chapter and the international agreements to which the Parties are parties.
	Efficiency and transparency	2. The Parties shall also promote efficiency and transparency in the administration of intellectual property system.
	Reaffirmation of the existing rights and obligations under the multilateral IP agreements	3. The Parties reaffirm their existing rights and obligations 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 other multilateral agreements relating to intellectual property to which the Parties are parties, including multilateral agreements concluded under the auspices of the World Intellectual Property Organization (hereinafter referred to in this Chapter as “the WIPO”). Nothing in this Chapter shall derogate from existing rights and obligations that the Parties have under the TRIPS Agreement or other multilateral agreements relating to intellectual property to which the Parties are parties.
	Early accession efforts to international IP agreements	4. In common recognition of the importance of the following multilateral agreements for international efforts to protect intellectual property, each Party seeks to ratify or accede to the following multilateral agreements to which it is not yet a party:

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		<p>(a) the Patent Law Treaty adopted at Geneva on June 1, 2000;</p> <p>(b) the Patent Cooperation Treaty done at Washington on June 19, 1970, amended on September 28, 1979, modified on February 3, 1984, and on October 3, 2001;</p> <p>(c) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs adopted by the Diplomatic Conference on July 2, 1999;</p> <p>(d) the Trademark Law Treaty adopted at Geneva on October 27, 1994 or the Singapore Treaty on the Law of Trademarks adopted at Singapore on March 27, 2006;</p> <p>(e) the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on June 27, 1989, as amended on October 3, 2006 and on November 12, 2007;</p> <p>(f) the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done at Rome on October 26, 1961 (hereinafter referred to in this Chapter as “the Rome Convention”);</p> <p>(g) the WIPO Copyright Treaty adopted in Geneva on December 20, 1996 (hereinafter referred to in this Chapter as “the WCT”);</p> <p>(h) the WIPO Performances and Phonograms Treaty adopted in Geneva on December 20, 1996 (hereinafter referred to in this Chapter as “the WPPT”);</p> <p>(i) Beijing Treaty on Audiovisual Performances adopted by the</p>

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		<p>Diplomatic Conference on June 24, 2012; and</p> <p>(j) the 1991 Act of the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, on October 23, 1978, and on March 19, 1991 (hereinafter referred to in this Chapter as “the 1991 UPOV Convention”).</p>
<p>Article XX.A.2 Most-Favored-Nation Treatment</p>	<p>Most-Favored-Nation Treatment</p>	<p>Each Party shall accord to nationals of the other Parties treatment no less favourable than the treatment 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.</p>
<p>Article XX.B.1 Procedural Matters</p>	<p>Improvement of administrative procedures concerning IP</p>	<p>1. For the purposes of providing efficient administration of intellectual property system, each Party shall take appropriate measures to improve its administrative procedures concerning intellectual property.</p>
	<p>Prohibition of requiring the authentication of signature on documents to the competent authority</p>	<p>2. No Party may 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 and certifications of assignment, in the course of application procedure or other administrative procedures on patents, utility models, industrial designs, or trademarks.</p>
	<p>Exception to paragraph 2</p>	<p>3. Notwithstanding paragraph 2, a Party may require:</p> <p>(a) the authentication of signatures or other means of self-identification, if the law of the Party so provides, where the signatures or other</p>

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		<p>means of self-identification concern the surrender of a patent or a registration of utility models, industrial designs or trademarks; and</p> <p>(b) the submission of evidence if there is reasonable doubt as to the authenticity of signatures or other means of self-identification on documents submitted to the competent authority of the Party. Where the competent authority notifies the person that the submission of evidence is required, the notification shall state the reason for requiring the submission.</p>
	<p>Power of attorneys relating to one or more applications and/or registrations</p>	<p>4. Each Party shall introduce and 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 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 registrations of that person.</p>
	<p>Prohibition of requiring the submission of power of attorney as a condition for according a filing date</p>	<p>5.No Party may require that the 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.</p>
	<p>Registration system for examination, appeal and judicial actions</p>	<p>6. Each Party shall provide a system for the registration of patents, industrial designs and trademarks which shall include:</p> <p>(a) a requirement to provide to the applicant a communication in writing, which may be electronic, of the decision with reasons for a refusal of</p>

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		<p>the application;</p> <p>(b) an opportunity for the applicant to appeal against an administrative refusal;</p> <p>(c) an opportunity for the applicant to seek judicial review of the final administrative refusal; and</p> <p>(d) an opportunity for interested parties:</p> <p>(i) to petition to oppose, if so provided in its laws and regulations, an application or a registration; and</p> <p>(ii) to seek cancellation or invalidation of the registration.</p>
	Sufficient time period or a chance to request an extension of time limit for a foreign applicant	7. Each Party shall provide an applicant domiciled in a foreign country either with a sufficient time period or with a chance to request an extension of time limit to respond to the competent authority of the Party at a procedure of examination, reconsideration, appeal and trial of patents, utility models, industrial designs and trademarks.
	Introduction of international patent classification system	8. The applications for and the grants of patents and the publications thereof shall be classified in accordance with the international patent classification system established under the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, as amended on September 28, 1979.
	Introduction of international industrial designs classification system	9. Each Party shall include in the official documents for the registration of designs, and, if they are officially published, in the publications in question, the numbers of the classes and subclasses of the classification into which the goods incorporating the designs belong in

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		accordance with the international classification system for industrial designs established under the Locarno Agreement Establishing an International Classification for Industrial Designs signed at Locarno on October 8, 1968 as amended on September 28, 1979.
Article XX.C.1 Patents, Utility Models	Patent protection for computer program	1. Each Party shall ensure that any patent application is not rejected solely on the ground that the subject matter claimed in the application is a computer program and that such a claim may take the form of a computer program itself, a process, a storage medium or a computer readable medium carrying a computer program.
	Prohibition of excluding a claimed invention from the patentable subject matter solely on the ground that the invention is a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or that the invention is a new use for a known substance.	2. Each Party shall ensure that a claimed invention is not excluded from the patentable subject matter solely on the ground that the invention is a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or that the invention is a new use for a known substance.

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	Worldwide novelty for patent /utility model	3. Each Party shall ensure that a claimed invention or a claimed device shall not be new, if it is publicly known, described in a publication distributed or made available to the public through telecommunication line in any Party or in any non-Party before the filing date of the application for a patent or for a registration of a utility model or, where priority is claimed, before the priority date of the application.
	Grace period	4. Each Party shall provide an exceptional measure in which information which forms part of the prior art with respect to a claimed invention shall not affect the patentability with regard to novelty of and inventive step of the claimed invention, at least, where the information was made available to the public during a certain period before the filing of the application of the claimed invention and the disclosure of the information was made as a result of an act of the person having the right to obtain a patent, provided that: (a) the disclosure was not made by the gazette relating to an invention, utility model, industrial design or trademark; and (b) the petition for the exceptional measure meets the procedural requirement(s) stipulated in the laws and regulations of the Party.
	Patent term restoration	5. With respect to the patent which is granted for an invention related to pharmaceutical products, each Party shall, subject to the terms and conditions of its applicable laws and regulations, provide for a compensatory term of protection for any period during which the patented invention cannot be worked due to marketing approval

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		<p>process.</p> <p>6. For the purposes of paragraph 5:</p> <p>(a) “compensatory term of protection” means an extension of a term of patent protection;</p> <p>(b) “marketing approval” means approval or any other disposition by the competent authorities that is intended to ensure the safety and, where applicable, efficacy of the pharmaceuticals as provided for in the relevant laws and regulations of each Party; and</p> <p>(c) the length of the compensatory term of protection shall be equal to the length of extension which the patentee requests, provided that the compensatory term of protection shall not exceed either the length of time during which the patented invention cannot be worked due to marketing approval processes, or a maximum term as provided for in the laws and regulations. Such maximum term shall be at least five years.</p>
	Dividing a patent application	7. Each Party shall ensure that an applicant may, on its own initiative, divide a patent application containing more than one invention into two or more divisional patent applications in a certain period after a notification of reasons for refusal, as well as after a decision of grant or refusal.
	(Patents) Ensuring any person may provide	8. Each Party shall ensure that any person may provide the competent authority of the Party with information in writing that could deny novelty

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	information that could deny novelty or inventive step	or inventive step of an invention claimed in a patent application during the pendency of the application concerned. Each Party shall take the information, as appropriate, into consideration for examining the application.
	(Utility Models) Ensuring any person may provide information that could deny novelty or inventive step	9. Each Party shall ensure that any person may provide the competent authority of the Party with information in writing that could deny novelty or inventive step of a device claimed in a utility model application at any time during the pendency of the application concerned and at any time while the relevant registration is valid. Each Party shall take the information, as appropriate, into consideration for examining the application or preparing a report of technical opinionasto the validity of the utility model registration.
	Prohibition of rejecting an application for patent nor cancelling a grant of patent solely on the ground that an applicant has not provided information concerning the corresponding foreign applications and grants	10. No Party may reject an application for patent nor cancel a grant of patent solely on the ground that an applicant has not provided information required by the Party concerning the applicant's corresponding foreign applications and grants, including search and examination results, cited documents, and translations thereof.
	Prohibition of requiring submission of information which the patented invention	11. No Party may require submission of information or statements as to the extent to which the patented invention has been commercially worked in the Party after the grant of such patent.

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	has been commercially worked	
	Translation requirement	12. A Party may require the translation of an earlier application for a patent or for a registration of a utility model whose priority is claimed only where the earlier application is not in a language accepted by the competent authority of the Party and the validity of the priority claim is relevant to the determination of whether the invention or the device concerned is valid.
	Prohibition of requiring the certification of translation	13. No Party may require the certification of translation of an earlier application for a patent or for a registration of a utility model whose priority is claimed.
	Prior user's rights of patents and utility models	14. Each Party shall provide that a person may continue to work an invention identical to an invention claimed in a patent application or a device identical to a device claimed in a utility model application, to the extent that the said person has been working or preparing for working the invention or the device; (a) where the said person made the invention or the device without knowledge of the content of the invention or the device claimed in the application, and the said person has been working or preparing for working the invention or the device within its territory at the time of filing the application; or (b) where the said person learned the invention or the device from another person who made the invention or the device without

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		<p>knowledge of the content of the invention or the device claimed in the application, and the said person has been working or preparing for working the invention or the device within its territory at the time of filing the application.</p>
	<p>Definition of “Work” or “Working” of paragraph 14</p>	<p>15. “Work” or “Working” of an invention or a device in this Article means the following acts:</p> <p>(a) in the case of an invention or a device of a product, producing, using, assigning, leasing, exporting, importing, offering for assignment, offering for lease, displaying for the purpose of assignment or displaying for the purpose of lease thereof;</p> <p>(b) in the case of an invention of a process, the use thereof; and</p> <p>(c) in the case of an invention of a process for producing a product, in addition to the action as provided in the preceding item, acts of using, assigning, leasing, exporting, importing, offering for assignment or offering for lease the product produced by the process.</p>
	<p>(Utility Models) Ensuring any person may request for a report of technical opinion of examiner</p>	<p>16. Each Party shall ensure that any person may, at any time after a utility model application has been filed but before being withdrawn or invalidated, request for a report of technical opinion as to the validity of the utility model registration which an examiner shall prepare based on a result of prior art searches, where the Party does not provide a substantive examination before registration.</p>
	<p>(Utility Models) Ensuring a right holder may not exercise</p>	<p>17. Each Party shall ensure that a holder of utility model right or an exclusive licensee may not exercise his or her utility model right or</p>

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	utility model right against an infringer without report of technical opinion	exclusive license against a person who infringes or is likely to infringe said utility model right or exclusive license unless he or she has given warning by showing the report of technical opinion as to the validity of the utility model registration, where the Party does not provide a substantive examination before registration.
Article XX.C.2 Working Group for Patent Examination Cooperation	Establishing the WG for promoting efficient and practical cooperation on patent examination	1. For the purpose of promoting efficient and practical cooperation on patent examination within the region, the Parties hereby establish a Working Group (hereinafter referred to in this Article as “the WG”) on patent examination.
	Functions of the WG	2. The functions of the WG shall include at least: (a) Enhancing mutual utilization of search and examination results, so as to allow applicants to obtain the grant of a patent in an efficient and expeditious manner; (b) Considering establishing a unified and harmonized framework of Patent Prosecution Highway; (c) Cooperation for the development of information technology infrastructure and database of the administrative authorities for patents of all the Parties, so as to promote mutual utilization of search and examination results and provide users such as applicants with an improved access to patent information including dossier, patent family and legal status information; (d) Cooperation in conducting training programs for patent examiners so as to enhance the quality of patent examination of the Parties;

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		<p>(e) Cooperation in conducting training programs for administrative officials so as to promote efficient procedures for mutual utilization of search and examination results;</p> <p>(f) Exchanging views and information on patent examination practice with each other;</p> <p>(g) Seeking harmonization of patent examination practices by taking appropriate measures such as comparative studies; and</p> <p>(h) Seeking harmonization of patent application format.</p>
	Members of the WG	3. The WG shall be composed of the Parties' administrative authorities for patents, 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.
	Times and Venues of the WG	4. The WG shall hold meetings at such times and venues as may be agreed by at least half of the Parties.
Article XX.D Industrial Designs	Worldwide novelty for industrial design	1. Each Party shall ensure that a claimed industrial design shall not be new, if it is publicly known, described in a publication distributed or made available to the public through telecommunication line in any Party or in any non-Party before the filing date of the application for a registration of an industrial design or, where priority is claimed, before the priority date of the application.
	Protection of designs for part of an article	2. Each Party shall ensure that: (a) protection for industrial designs is available for designs embodied in or applied to a part of an article; and

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		(b) the representation of the industrial design may include matter that does not form part of the claimed design if it is shown by means of dotted or broken lines.
	Maintaining the industrial design unpublished for a period	3. Each Party shall provide that an applicant for an industrial design registration may request the competent authority of the Party to maintain the design unpublished for a period designated by the applicant in the request, but not exceeding the period provided for in the laws and regulations of the Party.
	Ensuring any person may request for an assessment report of the validity by examiner	4. Each Party shall ensure that any person may, at any time after a design application has been filed but before being withdrawn or invalidated, request for a report of assessment of the validity of the design registration which an examiner shall prepare based on a result of prior art searches, where the Party does not provide a substantive examination before registration.
	Ensuring a right holder may not exercise a design right against an infringer without assessment report	5. Each Party shall ensure that a holder of design right or an exclusive licensee may not exercise his or her design right or exclusive license against an infringer or alleged infringer unless he or she has given warning by showing the report of assessment, where the Party does not provide a substantive examination before registration.
	Exclusive right of industrial design	6. Each Party shall ensure that the owner of a protected industrial design shall have 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

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		protected design when such acts are undertaken for commercial purposes.

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Article XX.E Trademarks	Protectable subject matter of trademark	1. Each Party shall ensure that any signs, in particular words including personal names, letters, numerals, figurative elements, three-dimensional shapes and combinations of colours as well as any combination of such signs, be eligible for registration as trademarks.

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	Protection of Well-known trademark 1	<p>2.</p> <p>(Option A) Each Party shall refuse or cancel the registration of a trademark, which is identical or similar to a trademark well-known in at least one of the Parties or non-Parties as indicating the goods or services of the owner of the well-known trademark, if use of the trademark in question is for unfair intentions whether or not such use would result in a likelihood of confusion.</p> <p>(Option B) Each Party shall refuse or cancel the registration of a trademark, which is identical or similar to the trademark of another person, if use of the trademark in question is for unfair intentions, whether or not such use would result in a likelihood of confusion, taking into account, where appropriate, whether one of the following conditions is met in accordance with its laws and regulations;</p> <p>(a) the trademark is well-known in any Party or in any non-Party;</p> <p>(b) the trademark has been used in any Party or in any non-Party; or</p> <p>(c) the applicant applies for a trademark registration after knowing the trademark through any business relationship with the owner thereof.</p> <p>Note: “Unfair intentions” shall include, inter alia, intention to gain an unfair profit, intention to cause damage to the owner of the well-known trademark, intention to dilute the distinctiveness of the well-known trademark or intention to impair the reputation.</p>

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	Protection of well-known mark 2	3. Each Party reaffirms the importance of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks as adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the WIPO in 1999.
	Accelerated examination	4. Each Party shall ensure that an applicant may file a request to the competent authority of the Party that examination of its application for registration of a trademark be accelerated, subject to reasonable grounds and procedural requirements. Where such a request has been filed, the competent authority shall accelerate the examination of the application, where appropriate.
	Ensuring any person may provide information that a trademark should not be registered	5. Each Party shall ensure that any person may provide the competent authority of the Party with information in writing that a trademark should not be registered on the ground that such a trademark does not satisfy the requirements of registration under its laws and regulations at any time during the pendency of the application. Each Party shall take the information, as appropriate, into consideration for examining the application.
	Cancellation of the registered trademark not in use	6. Each Party shall ensure that a holder of trademark right may not prevent the cancellation of his or her registered trademark in connection with the relevant designated goods or designated services through a procedure of reconsideration, trial, or appeal for cancellation of a registered trademark not in use where the defendant of the procedure does not prove that the registered trademark has been used by the

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		holder of the trademark right, exclusive right to use, or non-exclusive right to use in connection with the relevant designated goods or designated services in the Party for a certain period as provided for in the relevant laws and regulations of each Party. The cancellation shall not be applied provided that the defendant provides a legitimate reason for the non-use of the registered trademark.
	One and the same application relating to several goods and/or services	7. Each Party shall ensure that one and the same application for registration of trademark may relate to several goods and/or services, irrespective of whether they belong to one class or to several classes of the Nice Classification.
	Exclusive right of trademark	8. 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.
	Indirect infringement of trademarks	9. Each Party shall provide that at least the following acts shall be deemed as an infringement of a trademark if performed without the consent of the owner of a registered trademark: (a) the possession of labels or packaging indicating a sign which is identical or similar to the registered trademark, for the purpose of using the sign in the course of trade for goods or services which are identical or similar to those in respect of which the trademark is

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		<p>registered;</p> <p>(b) the assignment, delivery, or possession for the purpose of assignment or delivery, of labels or packaging indicating a sign which is identical or similar to the registered trademark, for the purpose of causing the sign 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; or</p> <p>(c) the manufacture or importation of labels or packaging indicating a sign which is identical or similar to the registered trademark, for the purpose of using the sign or causing the sign 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.</p>
<p>Article XX.F Copyright and Related Rights</p>	<p>Reaffirmation of the existing rights and obligations under the Berne Convention, the Rome Convention, the WCT and the WPPT</p>	<p>The Parties reaffirm their existing rights and obligations under the Berne Convention; the Rome Convention; the WCT; and the WPPT to which Parties are parties.</p>
<p>Article XX.G.1 Unfair Competition</p>	<p>Effective protection against unfair competition</p>	<p>1. Each Party shall provide for effective protection against acts of unfair competition.</p>
	<p>Categories of Unfair Competition:</p> <p>(a) Corresponding to Article</p>	<p>2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. The following acts of unfair competition, in particular, shall be prohibited:</p> <p>(a) all acts of such a nature as to create confusion by any means</p>

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	<p>10 <i>bis</i> (3)(i) of Paris Convention (“services” is added.)</p> <p>(b) Corresponding to Article 10 <i>bis</i> (3)(ii) of Paris Convention (“services” is added.)</p> <p>(c) Corresponding to Article 10 <i>bis</i> (3)(iii) of Paris Convention (“services” is added.)</p> <p>(d) Imitation of the configuration of another person’s product</p> <p>(e) Wrongful acquisition, possession, and use of a domain name identical or similar to another person’s indication</p> <p>(f) Unauthorized use of a trademark by an agent</p>	<p>whatever with the establishment, the products, the services, or the industrial or commercial activities, of a competitor;</p> <p>(b) false allegations in the course of trade of such a nature as to discredit the establishment, the products, the services, or the industrial or commercial activities, of a competitor;</p> <p>(c) indications or allegations, the use of which in the course of trade is liable to mislead the public as to the nature, the characteristics, the suitability for their purpose, or the quantity, of the products or the services, or the manufacturing process of the products;</p> <p>(d) acts of assigning, leasing, displaying for the purpose of assignment or lease, exporting or importing products which imitate the configuration, excluding configuration which is indispensable for ensuring the function of the products, of another person’s products;</p> <p>(e) acts of acquiring or holding a right to use domain names identical or similar to a specific indication of products or services of another person, or acts of using the domain name, with intention to gain unfair profit or intention of causing damage to another person; and</p> <p>(f) acts by an agent or representative of an owner of a right relating to a trademark, without a legitimate reason and the consent of the right-owner, of using a trademark identical or similar to the trademark for products or services identical or similar to those relating to such right; of using such trademark in assigning, delivering, displaying for the purpose of assignment or delivery, exporting, importing, or providing</p>

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	(partially corresponding to Article 6septies of the Paris Convention)	through an electric telecommunication line products which are identical or similar to the products relating to such right; or of using such trademark in providing services which are identical or similar to the services relating to such right.
Article XX.G.2 Protection ofUndisclosedInformation	Adequate and effective protection of undisclosed information in accordance with paragraph 2 of Article 39 of the TRIPS Agreement	1. Each Party shall ensure in its laws and regulations adequate and effective protection of undisclosed information in accordance with paragraph 2 of Article 39 of the TRIPS Agreement.
	Prohibition of acquiring trade secrets by theft or other wrongful means	2. Each Party shall provide in its law and regulations that the following acts are prohibited: (a) acquiring undisclosed information by theft, fraud, duress or other wrongful means, or using or disclosing the undisclosed information so acquired; (b) using or disclosing undisclosed information, knowing that the undisclosed information has been acquired through the acts of acquisition as provided for in subparagraph (a); (c) using or disclosing undisclosed information, which has been provided by the business operator holding that undisclosed information, with intention to gain unfair profit or to cause damage to the operator; and (d) using or disclosing undisclosed information, knowing that the undisclosed information has been acquired through the acts of disclosure provided for in subparagraph (c).

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	Prohibition of taking compulsory measures with respect to undisclosed information	3. In addition, no Party shall take any measure which nullifies or impairs the protection of undisclosed information. Such measure includes, inter alia, measures forcing disclosure of the undisclosed information without legitimate reasons, and measures limiting the duration of protection of the undisclosed information stipulated in private contracts.
Article XX.G.3 Treatment of Test Data in Marketing Approval Procedure	Data protection for marketing approval of new pharmaceutical products	<p>1. Each Party shall prevent applicants for marketing approval for pharmaceutical products which utilize new chemical entities from relying on or from referring to 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.</p> <p>Note: "pharmaceutical products" shall include import products.</p>
	Prevention of marketing pharmaceutical products infringing effective patent	2. [Placeholder for provisions concerning Marketing Approval Procedure of pharmaceutical products infringing patent]
Article XX.H.1 Enforcement – Border Measures	Suspension of IPR infringing goods by ex-officio action and right holder's request	1. Each Party shall adopt or maintain procedures with respect to import and export shipments under which:its customs authorities may act upon their own initiative to suspend the release of goods suspected of infringing rights to patents, utility models, industrial designs, trademarks, copyrights and related rights, and/or plant breeder's rights for new varieties of plants (hereinafter referred to in this Article as "suspect

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		goods”); and a right holder may request its competent authorities to suspend the release of suspect goods.
	Ex-officio Suspension of IPR infringing goods in transit	<p>2. Each Party shall adopt or maintain procedures with respect to suspect goods in transit or in other situations where the suspect goods are under customs control under which its customs authorities may act upon their own initiative to suspend the release of, or to detain, suspect goods.</p> <p>Note : For the purposes of this Article:</p> <p>(a) the term “in transit” means under customs transit or transshipment;</p> <p>(b) the term “customs transit” means the customs procedure under which goods are transported under customs control from one customs office to another; and</p> <p>(c) 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.</p>
	Infringement determination within reasonable period and destruction order by competent authorities	<p>3.</p> <p>(a) Each Party shall adopt or maintain procedures by which its competent authorities may determine, within a reasonable period after the initiation of the procedures described in paragraphs 1 and 2, whether the suspect goods infringe rights to patents, utility models, industrial designs, trademarks, copyrights and related rights, and/or</p>

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		<p>plant breeder's rights for new varieties of plants.</p> <p>(b)Each Party shall provide that its competent authorities have the authority to order the destruction of goods following a determination referred to in subparagraph (a) that the goods are infringing. In cases where such goods are not destroyed, each Party shall ensure that, except in exceptional circumstances, such goods are disposed of outside the channels of commerce in such a manner as to avoid any harm to the right holder.</p>
	Information provided by competent authorities to right holders	<p>4. Without prejudice to a Party's laws pertaining to the privacy or confidentiality of information, with respect to import and export shipment, a Party shall authorize its competent authorities to provide a right holder with information about goods, including the description and quantity of the goods, the name and address of the consignor, importer, exporter, or consignee, and, if known, the country of origin of the goods, and the name and address of the manufacturer of the goods, to assist in the determination referred to in subparagraph 3(a).</p>
	Ensuring right holders do not bear unreasonable burden	<p>5. Each Party shall ensure that right holders do not have to bear an unreasonable burden because of the fees and the cost of storage and destruction of the goods the release of which has been suspended pursuant to paragraphs 1 and 2 and which have been found to be infringing goods.</p>
	Information provided by right holders to competent	<p>6. Each Party shall [ensure that][adopt or maintain procedures by which] the right holder may provide within a reasonable period any information</p>

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	authorities	that may assist [the] competent authorities in the determination referred to in subparagraph 3(a).
	[Placeholder for provisions of custom registrations]	[Placeholder for provisions of custom registrations]
Article XX.H.2 Enforcement – Civil Remedies	Adequate compensation for the injury as a result of the infringement	1. Each Party shall provide that, in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities have the authority to order the infringer who, knowingly or with reasonable grounds to know, engaged in infringing activity to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement.
	Legitimate measure of value the right holder submits	2. In determining the amount of damages referred to in paragraph 1, a Party's judicial authorities shall have the authority to: (a) consider, inter alia, any legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the market price, or the suggested retail price; and
	Presuming the amount of damages	(b) where appropriate, presume to be the amount of the such damages: (i) the quantity of the products infringing the right holder's intellectual property rights and actually transferred to third persons, and the amount of profit per unit of products which would have been sold by the right holder if there had not been the act of infringement; (ii) the profits earned by the infringer from the act of infringement; or (iii) the amount that the right holder would have been entitled to

Article	Elements	Text
		receive for the exercise of his or her intellectual property rights.
	Destroying infringing goods and materials and implements	<p>3.</p> <p>(a) With respect to goods that have been found to be infringing an intellectual property right, each Party shall provide that, in civil judicial proceedings, at the right holder's request, its judicial authorities have the authority to order that such infringing goods be destroyed without compensation of any sort.</p> <p>(b) Each Party shall further provide that its judicial authorities have the authority to order that materials and implements, the predominant use of which has been in the manufacture or creation of such infringing goods, be, without undue delay and without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements.</p>
	Provisional measures	<p>4. Each Party shall provide that its judicial authorities have the authority to order prompt and effective provisional measures against an infringer to prevent an infringement of any intellectual property right from occurring, and in particular, to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce.</p>
	Provisional measures	<p>5. Each Party shall provide that, in civil judicial proceedings, its judicial authorities have the authority to adopt provisional measures 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</p>

Article	Elements	Text
		evidence, either originals or copies thereof, relevant to the infringement.
Article XX.H.3 Enforcement – Criminal Remedies	Scope of IP rights for criminal procedures	<p>1.</p> <p>(a) Each Party shall provide for criminal procedures and penalties to be applied at least in cases of the following acts committed wilfully and on a commercial scale:</p> <p>(i) infringement of rights to patents, utility models, industrial designs or trademarks, copyrights or related rights, or plant breeder's rights for new varieties of plants;</p> <p>(ii) infringement of rights to layout-designs of integrated circuits;</p> <p>(iii) disclosure of undisclosed information provided for in paragraph 1 of Article XX.G.2 and the acts referred to in paragraph 2 of Article XX.G.2 to the extent provided for in the laws and regulations of the Party; and</p> <p>(iv) the acts of unfair competition provided for in subparagraphs 2(a) and 2(c) through 2(f) of Article XX.G.1 to the extent provided for in the laws and regulations of the Party.</p> <p>Note: Infringement to trademark right means 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 without owner's consent, where such use would result in a likelihood of confusion.</p>
	Treating importation or	(b) Each Party shall treat importation or exportation of goods that have

Article	Elements	Text
	exportation of infringing goods subject to criminal procedures and penalties	been found to be wilfully infringing on a commercial scale rights to patents, utility models, industrial designs, trademarks, copyrights or related rights, or plant breeder's rights for new varieties of plants as infringement of rights subject to criminal procedures and penalties referred to in subparagraph (a). A Party may comply with its obligation relating to importation and exportation under this subparagraph by providing for distribution, sale or offer for sale of such goods on a commercial scale as unlawful activities subject to criminal penalties.
	Criminal procedures and penalties for the unauthorized copying of cinematographic works from a performance in a motion picture exhibition facility	(c) Each Party shall provide criminal procedures and penalties in appropriate cases for the unauthorized copying of cinematographic works from a performance in a motion picture exhibition facility generally open to the public.
	Criminal liability for aiding and abetting	(d) With respect to the offences specified in this paragraph, each Party shall ensure that criminal liability for aiding and abetting is available under its law.
	Criminal liability of legal persons	(e) Each Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability, which may be criminal, of legal persons for the offences specified in this paragraph. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.

Article	Elements	Text
	Forfeiture or destruction of all infringing goods, materials and implements used in the creation of the infringing goods	2. With respect to the offences specified in subparagraphs 1(a) through (e), each Party shall provide that its competent authorities have the authority to order the forfeiture or destruction of all infringing goods, [or] materials and implements used in the creation thereof. Each Party shall ensure that the forfeiture or destruction of such goods, [or] materials and implements thereof shall occur without compensation of any sort to the infringer.
Article XX.H.4 Enforcement – In the Digital Environment	Effective action against infringement in the digital environment	1. Each Party shall ensure that enforcement procedures, to the extent set forth in ArticlesXX.H.2 (Enforcement - Civil Remedies) and XX.H.3 (Enforcement - Criminal Remedies), are available under its law so as to permit effective action against an act of infringement of intellectual property rights which takes place in the digital environment, including expeditious remedies to prevent infringement and remedies which constitute a deterrent to further infringements.
	Enforcement procedures to infringement of copyright or related rights over digital networks	2. Further to paragraph 1, each Party's enforcement procedures shall apply to infringement of copyright or related rights over digital networks, which may include the unlawful use of means of widespread distribution for infringing purposes. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy. Note: For instance, without prejudice to a Party's law, adopting or

Article	Elements	Text
		maintaining a regime providing for limitations on the liability of, or on the remedies available against, online service providers while preserving the legitimate interests of right holder.
	Disclosure of information sufficient to identify a subscriber whose account was allegedly used for infringement	3. A Party may provide, in accordance with its laws and regulations, its competent authorities with the authority to order an online service provider to disclose expeditiously to a right holder information sufficient to identify a subscriber whose account was allegedly used for infringement, where that right holder has filed a legally sufficient claim of trademark or copyright or related rights infringement, and where such information is being sought for the purpose of protecting or enforcing those rights. These procedures shall be implemented in a manner that avoids the creation of barriers to legitimate activity, including electronic commerce, and, consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy.
	Protection and remedies against the circumvention of effective technological measures (TPM)	<p>4. 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 in, and that restrict acts in respect of, their works, performances, and phonograms, which are not authorized by the authors, the performers or the producers of phonograms concerned or permitted by law.</p> <p>5. In order to provide the adequate legal protection and effective legal</p>

Article	Elements	Text
		<p>remedies referred to in paragraph 4, each Party shall provide protection at least against:</p> <p>(a) to the extent provided by its law:</p> <ul style="list-style-type: none"> (i) the unauthorized circumvention of an effective technological measure carried out knowingly or with reasonable grounds to know; and (ii) the offering to the public by marketing of a device or product, including computer programs, or a service, as a means of circumventing an effective technological measure; and <p>(b) the manufacture, importation, or distribution of a device or product, including computer programs, or provision of a service that:</p> <ul style="list-style-type: none"> (i) is primarily designed or produced for the purpose of circumventing an effective technological measure; or (ii) has only a limited commercially significant purpose other than circumventing an effective technological measure. <p>Note 1: For the purposes of this Article, “technological measures” means any technology, device, or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works, performances, or phonograms, which are not authorized by authors, performers or producers of phonograms, as provided for by a Party’s law. Without prejudice to the scope of copyright or related rights</p>

Article	Elements	Text
		<p>contained in a Party's law, technological measures shall be deemed effective where the use of protected works, performances, or phonograms is controlled by authors, performers or producers of phonograms through the application of a relevant access control or protection process, such as encryption or scrambling, or a copy control mechanism, which achieves the objective of protection.</p> <p>Note 2: In implementing paragraphs 4 and 5, neither Party shall be obligated to require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications, or computing product provide for a response to any particular technological measure, so long as the product does not otherwise contravene its measures implementing these paragraphs.</p>
	<p>Protection for electronic rights management information (RMI)</p>	<p>6. To protect electronic rights management information, each Party shall provide adequate legal protection and effective legal remedies against any person knowingly performing without authority any of the following acts knowing, or with respect to civil remedies, with reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related rights:</p> <p>(a) to remove or alter any electronic rights management information;</p> <p>(b) to distribute, import for distribution, broadcast, communicate, or make available to the public copies of works, performances, or</p>

Article	Elements	Text
		<p>phonograms, knowing that electronic rights management information has been removed or altered without authority.</p> <p>Note: For the purposes of this Article, rights management information means:</p> <p>(a) information that identifies the work, the performance, or the phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance, or phonogram;</p> <p>(b) information about the terms and conditions of use of the work, performance, or phonogram; or</p> <p>(c) any numbers or codes that represent the information described in (a) and (b) above;</p> <p>when any of these items of information is attached to a copy of a work, performance, or phonogram, or appears in connection with the communication or making available of a work, performance, or phonogram to the public.</p>
	<p>Limitations and exceptions in providing protection and remedies for TPM and RMI</p>	<p>7. In providing adequate legal protection and effective legal remedies pursuant to the provisions of paragraphs 4 and 6, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of paragraphs 4, 5, and 6. The obligations set forth in paragraphs 4, 5, and 6 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under</p>

Article	Elements	Text
		a Party's law.