

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

~~[AU Propose that document be amended to state this is 'WITHOUT PREJUDICE']~~

~~[AU propose: These proposals are without prejudice to Australia's position in the RCEP IP negotiations]~~

**SINGLE WORKING DOCUMENT ON THE
INTELLECTUAL PROPERTY CHAPTER
REGIONAL COMPREHENSIVE ECONOMIC PARTNERSHIP (RCEP)
FREE TRADE AGREEMENT**

~~[*AU, NZ and IN are willing to use the ASEAN text as a basis for negotiations, with suitable amendments to take into account their concerns. In addition, AU and NZ suggested amendments to the ASEAN proposals flagged in the ASEAN proposal. AU also wishes to clarify that it is still considering its proposals with regard to copyright and related rights as well as IP enforcement.]~~

~~(INDIA COMMENT:~~

~~_India has indicated below aspects where it can align its position with that of ASEAN, and has deleted its proposed text to that extent. India has also indicated a few areas where it is opposed to the ASEAN text.~~

~~India has retained its own text on aspects where it seeks to propose alternative/ additional language.~~

~~India's comments below are confined to the ASEAN text, and do not endorse the proposals of Australia, New Zealand, Japan or Korea.~~

~~India's comments/ position expressed below are without prejudice to any further comments and textual suggestions it may make during the course of the negotiations.)~~

~~(JAPAN COMMENT:~~

~~_JAPAN has reviewed and modified its proposed texts as below. Except as expressly provided herein, JAPAN does not endorse the proposals of ASEAN, Australia, New Zealand, India, China or Korea. JAPAN reserves the right to revise its proposed texts and make a comment on other RCEP participating countries' proposals at any time before the conclusion of the negotiation of RCEP.)~~

~~India's comments/ position expressed below are without prejudice to any further comments and textual suggestions it may make during the course of the negotiations.)~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

[ASN/IN/AU/NZ/KR propose: JP oppose: ARTICLE SECTION 1
GENERAL PROVISIONS AND BASIC PRINCIPLES

Paragraph Article 1.1
Objectives

1. [ASN propose; KR oppose: Each Party confirms its commitment]

~~[KR propose: The objectives of this Chapter are:-~~

~~(a) [ASN/KR propose: to [KR oppose: reduce distortion and impediments to] [KR propose: facilitate international] trade and [KR oppose: investment by promoting deeper] [ASN/KR propose: economic [KR oppose: integration and cooperation] [KR propose: , social and cultural development] through [KR oppose: effective and adequate creation, utilisation,] [KR propose: the dissemination of ideas, technology, and creative works; (b) to provide certainty for right holders and users of intellectual property over the] protection and enforcement of intellectual property rights] [KR propose: ;]~~

~~[KR propose; IN oppose: (b) to provide certainty for rights holders and users of intellectual property over the protection and enforcement of intellectual property rights; [KR oppose: , and~~

~~[KR propose: (e)] [ASN/KR propose: to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, [KR propose : taking into account:] [ASN/AU propose; KR oppose: to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare , [AU propose: and to a balance of rights and obligations] taking into account:] [KR propose: ; and (c) to facilitate the enforcement of intellectual property rights with a view, inter alia, to eliminating trade in goods infringing intellectual property rights.] [KR oppose:~~

- ~~i [ASN/KR propose: the different levels of economic development and capacity and differences in national legal systems;]~~
- ~~ii [ASN/KR propose: the need to maintain an appropriate balance between the rights of intellectual property rights holders and the legitimate interests of users [AU/NZ/IN/ASN propose; KR oppose: including intermediaries and consumers,] and the public [KR oppose: interest]]; [KR oppose: and]]~~

~~[AU/NZ/ASN propose; KR oppose: (iii) the importance of facilitating the availability of information, knowledge, content, culture and the arts.]~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

Alt 2 :

~~[JP propose; ASN/AU/KR/IN/NZ oppose: Option Alt 1:~~ Each Party confirms the objectives and principles provided for in Article 7 and 8 of the TRIPS Agreement.

OR}

~~[JP propose; ASN oppose: Option Alt 2:~~ Replace Para 1 and 2 with text of TRIPS Articles 7 and 8, respectively]

Article 1.2
Principles

1. Parties affirm their existing rights and obligations under the TRIPS Agreement [ASN/AU/NZ/JP/KR propose; IN oppose: and any other [JP/KR propose: ASN/AU oppose: international] [ASN/AU propose; JP/KR oppose: multilateral] agreements relating to intellectual property to which they are parties]. [ASN/AU/JP/KR propose; ~~IN oppose:~~ To this end, nothing in this chapter shall derogate from existing rights and obligations that Parties have to each other under the TRIPS Agreement [IN oppose : or other [JP/KR propose; ASN/AU oppose: international] [ASN/AU propose; JP/KR oppose: multilateral] intellectual property agreements.]
2. Parties may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Chapter { and the TRIPS Agreement.
3. Appropriate measures, provided that they are consistent with the provisions of this Chapter, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which [AU/IN/ASN/NZ propose; KR/JP oppose: are anti-competitive or] unreasonably restrain trade or adversely affect the international transfer of technology. [AU propose; CN/KR/IN/JP oppose:¹ FN1}]

~~[AU propose; CN/KR/IN/JP oppose: Footnote 1 — The Parties recognize that intellectual property rights [ASN/NZ propose: by themselves] do not necessarily confer market power.]~~

Article 1.3

1 [AU propose; CN/KR/IN/JP oppose: The Parties recognize that intellectual property rights [ASN/NZ propose: by themselves] do not necessarily confer market power.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

Obligations

Parties shall give effect to the provisions of this Chapter. Parties may, but shall not be obliged to, implement in their law more extensive protection ~~[AU propose: and enforcement]~~ than is required by this Chapter, provided that such protection ~~[AU propose: and enforcement]~~ does not contravene the provisions of this Chapter. Parties shall be free to determine the appropriate method of implementing the provisions of this Chapter within their own legal system and practice.

Article 1.4

Scope of Intellectual Property

[ASN/KR/CN/IN propose; AU oppose: Alt 1: 1. For purposes of this Chapter, intellectual property refers to all categories of intellectual property that are the subject of this Chapter.]

[AU propose; ASN/KR/CN/IN oppose: Alt 2: 2. For the purposes of this Chapter, intellectual property rights means copyright and related rights; rights in trademarks, geographical indications, industrial designs, patents, and layout-designs (topographies) of integrated circuits; rights in plant varieties; and rights in undisclosed information; as referred to in the TRIPS Agreement.]

[JP propose: Definitions Alt 3: 3. For the purposes of this Chapter intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement.]²

~~*Negotiators' Note: Parties agreed to KIV this issue and revisit it after discussions on the types of IP in this Chapter are more advanced.*~~

Article 1.5

Exhaustion of Intellectual Property Rights

[ASN/AU/IN/NZ/CN/KR propose; JP oppose: Alt -1: Each Party shall be free to establish its own regime for exhaustion of intellectual property rights.]

~~[ALT 1 Alt -2: [Nothing in this Agreement shall affect the Parties' right to determine its own regime for exhaustion of intellectual property rights, subject to Article 1.6 of this Agreement.]~~

Alt 3 :

[JP propose; AU/ASN/NZ/~~KR/CN~~ oppose: Alt 3: Nothing in this Chapter addresses the issue of the exhaustion of the intellectual property rights.]

² ~~Negotiators' Note: Parties agreed to KIV this issue and revisit it after discussions on the types of IP in this Chapter are more advanced.~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

OR]

~~[JP propose; AU/ASN/NZ oppose: OPTION 1 Alt 4: Nothing in this Agreement prevents a Party from determining whether and under what conditions the exhaustion of intellectual property rights applies under its legal system.]~~

OR

~~[JP propose; AU/ASN/NZ oppose: OPTION 2 Alt 5: Nothing in this Agreement shall affect the rights of a Party to determine whether and under what conditions the exhaustion of intellectual property rights applies under its legal system.]~~

Article 1.6 National Treatment

1. Each Party shall accord to the nationals [KR propose:³] of other Parties treatment no less favourable than that it accords to its own nationals with regard to the protection; [IN oppose:⁴] of intellectual property, subject to the exceptions provided in the TRIPS Agreement ~~and in the multilateral agreements concluded under the auspices of [JP oppose : administered by]~~WIPO [ASN/KR/AU propose: ,to which a Party is a party)].
2. Parties may avail themselves of the exceptions [ASN/AU/IN/NZ propose; JP/CN/KR oppose: referred to] [JP/CN/KR propose; ASN/AU/IN/NZ oppose: permitted]⁵ ~~under in~~ paragraph ~~[JP oppose : (a)] [JP propose: 1]~~ in relation to its judicial and administrative procedures, including requiring a national of any other Party to designate an address for service of process in its territory, or to appoint an agent in its territory, only where such exceptions are:

3 [KR/AU propose ; JP oppose : For purposes of this paragraph, a national of a Party shall include, in respect of the relevant right, any person (as defined in Article [X.X] (Definitions)) of that Party that would meet the criteria for eligibility for protection provided for in the agreements listed in Article [X.4] and the TRIPS Agreement.]

4 [IN oppose: For the purposes of this [ASN propose; AU/KR/JP oppose: chapter] [AU/KR/JP propose; ASN oppose: paragraph], protection includes matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this [ASN propose; AU/KR/JP oppose: chapter] [AU/KR/JP propose; ASN oppose: paragraph]. Further, for purposes of this [ASN propose; AU/KR/JP oppose: chapter] [AU/KR/JP propose; ASN oppose: paragraph], protection also includes [JP/KR/ASN propose: (i) the [JP/KR propose; ASN oppose: prohibition on] circumvention of effective technological measures set out in Article [X.B.3]]; [KR/JP propose; ASN oppose: and (ii) the rights and obligations concerning rights management information in Article [X.B.4], and [KR propose; JP oppose: encrypted program-carrying satellite signals set out in Article [X.B.5]].]

5 Negotiators' Note: One option is to drop references to both "referred to" and "permitted".

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

- (a) necessary to secure compliance with laws and regulations that are not inconsistent with this Chapter; and
- (b) not applied in a manner that would constitute a disguised restriction on trade.
3. The obligations under paragraph 1 ~~[JP propose: [JP propose; AU/ASN/NZ/KR/CN/IN oppose: s] (a) [JP propose; AU/ASN/NZ/KR/CN/IN oppose: and (b)]]~~ do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

Article 1.7
TRIPS and Public Health⁶

~~[IN proposes that Para 6 should be a separate substantive article given the importance of TRIPS and Public Health]~~

1. The Parties reaffirm ~~[AU/KR oppose: the principles and flexibilities [JP/KR oppose: established] [JP/KR propose: provided] in] [AU/KR propose: their commitments to]~~ the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the WTO. The Parties agree that this Chapter does not and should not prevent Parties from taking measures to protect public health ~~[AU oppose: in line with this Declaration.]~~
2. The Parties ~~[AU oppose; ASN/IN propose: recognise [ASN/IN/CN/NZ propose; JP/KR oppose: their respective commitments to] [JP/KR propose; ASN/IN/CN/NZ oppose: the importance of]] [AU propose; ASN/IN oppose: reaffirm their commitment to contribute to the international efforts to implement] the Decision of the WTO General Council of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as well as the Protocol amending the TRIPS Agreement, done at Geneva on 6 December 2005.~~

~~[AU/ASN propose: 3. Each Party [JP/KR oppose: shall notify the WTO of its acceptance of] [JP/KR propose: shall endeavour to accept] the Protocol amending the TRIPS Agreement done at Geneva on December 6, 2005.]~~

~~[IN/CN/ASN/NZ propose; KR/JP/AU oppose: 4. In interpreting and implementing the rights and obligations under this Agreement, the Parties shall ensure consistency with this Declaration ~~[ASN oppose: and the Protocol.]~~ [IN propose; NZ/AU oppose: and any other legal instrument that succeeds or modifies any of these instruments.]]~~

⁶ ~~Negotiators' Note: IN proposes that Article 1.7 Para 6-1 should be a separate substantive section article given the importance of TRIPS and Public Health.~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

~~[CN propose; AU/JP/KR oppose: 5. Each Party will consider requests for assistance from any Party in a public health crisis in accordance with this Article.]~~

[JP propose: 6] [JP/AU/KR propose; ASN/IN/NZ/CN oppose: 6. Each Party shall [JP/KR propose; AU oppose: endeavor to] [AU propose: where it is not already party to such an agreement,] ratify or accede to the following multilateral agreements [AU oppose: to which it is not yet a party]:

(a) the Patent Law Treaty adopted at Geneva on June 1, 2000;

[AU/KR propose: (*abis*) The Paris Convention for the Protection of Industrial Property (1967);]

(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;

[JP/KR propose; AU oppose: (c) the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs adopted by the Diplomatic Conference on July 2, 1999;]

(d) [JP/KR propose; AU oppose: 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;

(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;

(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”);

(g) the WIPO Copyright Treaty adopted in Geneva on December 20, 1996 (hereinafter referred to in this Chapter as “the WCT”);

(h) the WIPO Performances and Phonograms Treaty adopted in Geneva on December 20, 1996 (hereinafter referred to in this Chapter as “the WPPT”);

[AU/KR propose: (*hbis*) the Berne Convention for the Protection of Literary and Artistic Works (1971);]

(i) [JP/AU propose; KR oppose: Beijing Treaty on Audiovisual Performances adopted by the Diplomatic Conference on June 24, 2012]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

(*ibis*) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (2013); ~~and~~

(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”); and

(k) the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977);~~]]~~

SECTION 2 COPYRIGHT AND RELATED RIGHTS

[ASN/NZ/JP/IN/KR/AU propose: Article 2.1
[KR oppose: Exclusive Rights]

1. Each Party shall provide to authors of works⁷ the exclusive right to authorise any communication to the public of their works by wire or wireless means. ~~[JP/AU/NZ/KR/IN propose:⁸]], including the making available to the public of their works in such a way that members of the public may access these works [IN propose : simultaneously or] from a place and at a time individually chosen by them.]~~

~~[JP propose: Note: For greater certainty, the exclusive right referred to in paragraph (a) shall include the exclusive right to authorize the making available to the public of works 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.]~~

1. Each Party shall [ASN propose; JP/AU/KR oppose: endeavour to] provide to [ASN propose; JP/AU/KR oppose: authors⁹ of sound recordings¹⁰] [JP/AU/KR propose; ASN oppose: [NZ oppose: performers] and producers of phonograms] the exclusive

⁷ ~~[ASN/NZ/JP/IN/KR propose: For purposes of this chapter, “works” includes a cinematograph film.]~~

⁸ ~~[JP propose: Note: For greater certainty, the exclusive right referred to in paragraph 1 shall include the exclusive right to authorize the making available to the public of works 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.]~~

⁹ ~~[ASN propose; JP oppose: For purposes of this chapter, “authors” is similar to “producers”.]~~

Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.

right [JP/AU/KR propose: to authorise any communication [IN propose : including making available] to the public_] [JP/AU/KR propose: of authorizing the making available to the public] of [ASN propose; JP/AU/KR propose: their sound recordings] [JP/AU/KR propose; ASN oppose: [NZ oppose: their fixed performances] [JP/AU/KR oppose: or] [JP/AU/KR propose: and] phonograms] [JP/AU/KR propose: respectively,] by wire or wireless means [JP/AU/KR propose: in such a way that members of the public may access them from a place and at a time individually chosen by them].]

[KR/JP/AU/NZ propose: 3. Each Party shall provide that authors, [KR/AU propose; NZ oppose: performers,] producers of phonograms, [KR/NZ/AU propose; ASN oppose: and broadcasting organizations] have the right to authorize or prohibit [KR propose; JP/AU/NZ oppose: all] reproductions of their works, [KR/AU propose; NZ oppose: performances,] phonograms [KR/NZ/AU propose; ASN oppose: and broadcasts,] in any manner or form.¹¹

[KR/AU propose; ~~NZ~~/NZ/ASN oppose: 4. Performers and producers of phonograms shall enjoy the right to a single equitable remuneration [IN propose : or the right to receive royalties] for the [IN oppose : direct or indirect] use of phonograms published for commercial purposes for broadcasting.]. [AU propose : FN12].

Article 2.2

Collective Management Organisations

1. Each Party shall {may} foster the establishment of appropriate bodies for the collective management of copyright [JP/AU/IN/KR propose; ASN/CN/NZ oppose: and related rights] and encourage such bodies to operate in a manner that is [JP/ASN/NZ/AU/IN/KR propose; CN oppose: fair,] efficient, publicly transparent and

10 [ASN propose; JP oppose: Where a Party is, or becomes, a member of the WIPO Performances and Phonograms Treaty (WPPT), that Party's obligations under this Paragraph shall be subject to any commitments and reservations that a Party has made, or will make, under the WPPT.]

11 [KR/JP propose; AU/NZ oppose : Each Party shall confine limitations or exceptions to the rights described in paragraph 1 to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder. For greater certainty, each Party may adopt or maintain limitations or exceptions to the rights described in paragraph 1 for fair use, as long as any such limitation or exception is confined as stated in the previous sentence.]

12 [AU propose : Where party is, or becomes, a member of the WIPO Performances and Phonograms Treaty (WPPT), that Party's obligations under this paragraph shall be subject to any commitments and reservations that the Party has made, or will make, under the WPPT.]

Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.

accountable to their members [JP/AU/IN/KR propose; ASN/CN/NZ oppose: including [ASN/NZ propose: which may include] open and transparent record keeping of the collection and distribution of revenues].}

[KR/AU/IN propose; ASN/NZ oppose: ~~Article [X.B.6]: Cooperation on Collective Management of Rights 2.~~ The Parties shall [AU propose : {may} where appropriate.] endeavour to [AU propose : foster cooperation] [AU oppose : facilitate the establishment of arrangements] between their respective collecting societies for the purposes of mutually ensuring easier [IN propose: management of rights, and] ~~licensing access and delivery~~ of content between the Parties, [AU/IN oppose: as well as ensuring mutual transfer of royalties for use of the Parties' works or other copyright-protected subject matters.]]

[ASN/NZ/CN/IN /AU/JP propose; KR oppose: Alt 1: Article 2.3
Circumvention of Effective Technological Control Measures

Each Party shall [ASN propose; JP/AU oppose: endeavour to] provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by [ASN propose; JP/AU oppose: copyright owners] [JP/AU propose; ASN oppose: authors, performers or producers of phonograms] in connection with the exercise of their [ASN/AU propose; JP oppose: copyright rights] [JP propose; ASN/AU oppose: rights in,] and that restrict acts, in respect of their works, [JP/AU propose; ASN oppose: performances, or phonograms,] which are not authorised by the [ASN/AU –propose; JP oppose: copyright owners] [JP propose; ASN/AU–oppose: authors, the performers or the producers of phonograms] concerned or permitted by law.^{13]}

~~FN1: For the purposes of this [ASN propose; JP oppose: chapter] [JP propose; ASN oppose: Article], “[ASN propose; JP oppose: effective] technological measures” means any technology, device, or component that [ASN propose; JP oppose: is used by copyright owners in connection with the exercise of their copyright rights and that restricts acts,] [JP propose; ASN oppose: , in the normal course of its operation, is designed to prevent or restrict acts,] in respect of their~~

13 [ASN/NZ/CN/IN propose: For the purposes of this [ASN propose; JP oppose: chapter] [JP propose; ASN oppose: Article], “[ASN propose; JP oppose: effective] technological measures” means any technology, device, or component that [ASN/AU propose; JP oppose: is used by copyright owners in connection with the exercise of their copyright rights and that restricts acts,] [JP propose; ASN/AU oppose: , in the normal course of its operation, is designed to prevent or restrict acts,] in respect of their works [ASN/AU propose; JP oppose: or sound recordings] [JP propose; ASN oppose: , performances, or phonograms], which are not authorised by [ASN propose; JP oppose: the copyright owners concerned or permitted by law] [JP propose; ASN oppose: authors, performers or producers of phonograms, as provided for by a Party's law].]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

~~works [ASN propose; JP oppose: or sound recordings] [JP propose; ASN oppose: , performances, or phonograms], which are not authorised by [ASN propose; JP oppose: the copyright owners concerned or permitted by law] [JP propose; ASN oppose: authors, performers or producers of phonograms, as provided for by a Party's law].~~

~~[JP propose : [JP propose; ASN oppose: Alt 2: Protection and remedies against the circumvention of effective technological measures (TPM)~~

~~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.^{14]}~~

~~Note: 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.]~~

~~[KR propose; ASN/AU/NZ/IN/CN oppose: Alt 3 [JP propose: Alt 2] : Protection of Technological Measures~~

1. Each Party shall provide adequate legal protection against the circumvention of any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that such person is pursuing that objective.
2. Each Party shall provide adequate legal protection against the manufacture, import, distribution, sale, rental, advertisement for sale or rental, or possession for commercial purposes, of devices, products or components, or the provision of services which:
 - (a) are promoted, advertised or marketed for the purpose of circumvention of;
 - (b) have only a limited commercially significant purpose or use other than to circumvent; or

~~14 [JP propose; ASN oppose: 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.]~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

- (c) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,

any effective technological measures.

3. For the purposes of this Chapter, technological measure 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 or other subject matter, which are not authorised by the right holder of any copyright or any right related to copyright as provided for by each Party's legislation. Technological measures shall be deemed effective where the use of a protected work or other subject matter is controlled by the right holders through the application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject matter, or a copy control mechanism, which achieves the objective of protection.]

- [JP/AU propose; ASN/NZ/KR oppose: Alt 1: Article 2.3bis
Protection for eElectronic rRights mManagement information (RMI)

To protect electronic rights management information,¹⁵ each Party shall provide effective and adequate legal protection and 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 referred to under this Chapter:

- (a) to remove or alter any electronic rights management information;

15 [JP/AU propose; ASN/NZ oppose: For the purposes of this Article, rights management information means: information that identifies the work, the performance, the phonogram; or the broadcast; the author of the work, the performer of the performance, the producer of the phonogram; or the broadcasting organization of the broadcast, or the owner of any right in the work, performance, phonogram or broadcast;

(b) information about the terms and conditions of use of the work, performance, phonogram or broadcast; or

(c) any numbers or codes that represent the information described in (a) and (b) above;

when any of these items of information is attached to a copy of a work, performance, phonogram, or broadcast or appears in connection with the communication or making available of a work, performance, phonogram or broadcast to the public.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

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

~~Note: For the purposes of this Article, rights management information means:~~

- ~~(a) information that identifies the work, the performance, the phonogram, or the broadcast; the author of the work, the performer of the performance, the producer of the phonogram; or the broadcasting organization of the broadcast, or the owner of any right in the work, performance, phonogram or broadcast;~~
- ~~(b) information about the terms and conditions of use of the work, performance, phonogram or broadcast; or~~
- ~~(a) any numbers or codes that represent the information described in (a) and (b) above;~~
- ~~(c) when any of these items of information is attached to a copy of a work, performance, phonogram, or broadcast or appears in connection with the communication or making available of a work, performance, phonogram or broadcast to the public.]~~

[KR propose; ASN/NZ/CN/AU oppose: Alt 2: Protection of Rights Management Information

1. Each Party shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:

- (a) the removal or alteration of any electronic rights management information; or
- (b) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject matter protected under this Chapter from which rights management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by doing so it is inducing, enabling, facilitating or concealing an infringement of any copyright or any rights related to copyright as provided by the law of the relevant Party.

2. For the purposes of this Chapter, rights management information means any information provided by right holders which identifies the work or other subject matter referred to in this Chapter, the author or any other right holder, or information about the terms and conditions of use of the work or other subject matter, and any numbers or codes that represent such information.

Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.

3. Paragraph 2 shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject matter referred to in this Chapter.]

[JP propose : ~~JP propose:~~ Alt 1: Article 2.3ter

[JP propose : Alt 1: Limitations and exceptions in providing protection and remedies for TPM and RMI

1. In providing adequate legal protection and effective legal remedies pursuant to the provisions of Articles 2.3 and 2.3bis paragraphs 4 and 6, a Party may adopt or maintain appropriate limitations or exceptions to measures implementing the provisions of Articles 2.3 and 2.3bis paragraphs 4, 5, and 6. The obligations set forth in Articles 2.3 and 2.3bis paragraphs 4, 5, and 6 are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law.]

[KR Propose: Alt 2: 1. Each Party may provide for exceptions and limitations to measure implementing Articles 2.3 paragraphs X(TPM) and 2.3bis XX(RMI) in accordance with its legislation and the relevant international agreements referred to in Article 1.7.6 X.3.

2. The obligations set forth in Articles 2.3 paragraphs X(TPM) and XX(RMI) Articles 2.3bis are without prejudice to the rights, limitations, exceptions, or defences to copyright or related rights infringement under a Party's law.]

[ASN/NZ/CN/AU/KR propose; IN oppose: Article 2.4
Government Use of Software

Each Party confirms its commitment to: (i) maintain appropriate laws, regulations or policies that make provision [JP propose: s] for its central government [JP oppose: agencies] [JP oppose: to continue] to use only [JP/AU/NZ oppose: **legitimate**] [JP/AU/NZ propose: **non-infringing**] computer software in a manner [JP propose: ~~in a manner~~ consistent with law] [JP oppose: authorised by law and consistent with this chapter; and (ii) encourage its respective regional and local governments to maintain or adopt similar measures].¹⁶

16 Negotiators' Note: IN opposes the above ~~paragraph 4 Article 2.4~~. India's view is that the entire chapter is to protect and promote acquisition and protection of IPRs. The Govt. is not undertaking any separate or specific obligations with regard to software.}]

[JP reserves its position and suggest the above modification to further internal coordination.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

[IN opposes the above paragraph 4. India's view is that the entire chapter is to protect and promote acquisition and protection of IPRs. The Govt. is not undertaking any separate or specific obligations with regard to software.]

[JP reserves its position and suggest the above modification to further internal coordination.]

~~[JP propose : [ASN/NZ/KR propose: Alt 1: Article 2.5
[ASN/NZ/KR/IN propose: Alt 1: Exceptions and Limitations]~~

The Parties shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work [KR/JP propose; ASN/NZ oppose: performance, phonograms and broadcasting] and do not unreasonably prejudice the legitimate interests of the right holder.]

[AU propose: ~~Alt 2: [JP propose : Article 2.5]~~ Article 2.5
Limitations and Exceptions

[NZ oppose :

1. With respect to this section {copyright}, each Party shall confine limitations or exceptions to exclusive rights to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interest of the right holder.]

[NZ propose :

2. Paragraph (1) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the TRIPS Agreement, the Berne Convention, the Rome Convention, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.]
3. ~~[AU propose: Each Party shall endeavour to achieve an appropriate balance in its copyright and related rights system, *inter alia* by means of limitations or exceptions that are consistent with Paragraph (1), including those for the digital environment, giving due consideration to legitimate purposes_ (footnote 1)⁻¹⁷— such as, but not limited to: criticism; comment; news reporting; teaching, scholarship, research, and other similar purposes; and facilitating access to published works for persons who are blind, visually impaired, or otherwise print or perceptually disabled.¹⁸ (footnote 2)]~~

~~17 [AU propose: For greater certainty, a use that has commercial aspects may, in appropriate circumstances, be considered to have a legitimate purpose.]~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

~~[AU propose : Footnote 1 : For greater certainty, a use that has commercial aspects may, in appropriate circumstances, be considered to have a legitimate purpose.]~~

~~Footnote 2 : As recognized by the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (June 27, 2013). The Parties recognize that some Parties facilitate the availability of works in accessible formats for beneficiaries beyond the requirements of the Marrakesh Treaty.]~~

~~[AU propose: 3. Each party shall endeavour to provide an appropriate balance in its copyright and related rights system by providing limitations and exceptions, consistent with paragraph 1, for legitimate purposes including education, research, criticism, comment, news reporting, libraries and archives and facilitating access for persons with disability.]~~

~~4. For greater certainty, each Party may adopt or maintain limitations or exceptions to the rights described in paragraph 1 for fair use, as long as any such limitation or exception is confined as stated in the previous paragraph 3 sentence.]~~

~~[KR/AU Propose-; ASN/IN/CN/NZ oppose: Article 2.6
Copyright and Related Rights]~~

~~[KR/AU Propose; ASN/IN/CN/NZ oppose: 1. Each Party shall provide that the term of protection of broadcast shall not be less than 50 years after the taking place of a broadcasting, whether this broadcasting is transmitted by wire or over the air, including by cable or satellite.]~~

~~[KR propose; ASN/CN/NZ-/AU/IN oppose: Broadcasting and Communication to the Public~~

~~2. No Party may permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder or right holders, if any, of the content of the signal and of the signal.¹⁹~~

~~18 [Footnote 2 AU propose: As recognized by the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled (June 27, 2013). The Parties recognize that some Parties facilitate the availability of works in accessible formats for beneficiaries beyond the requirements of the Marrakesh Treaty.]~~

~~19 [KR propose; ASN/CN/NZ oppose: For the purpose of this Paragraph and for better certainty, retransmission within a Party's territory over a closed, defined, subscriber network that is not accessible from outside the Party's territory does not constitute retransmission on the Internet.]~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

[IN propose :

3. Each Party shall provide broadcasting organizations with the exclusive right ^[AU propose :FN20] to [IN oppose : authorize or] prohibit:

- (a) the re-broadcasting of their broadcasts;
- (b) the fixation of their broadcasts;
- (c) the reproduction of fixations; and
- (d) the communication to the public of their television broadcasts [IN propose : by wire or wireless means] if such communication is made in places accessible to the public against payment of an entrance fee. It shall be a matter for the domestic law of the State where protection of this right is claimed to determine the conditions under which it may be exercised.]]

~~[KR/AU propose; ASN/CN/NZ/IN oppose: Protection of Encrypted Program-Carrying Satellite Signals~~ 4. Each Party shall provide adequate legal protection and effective legal remedies against the:

- (a) manufacturing, assembling, modification, importation, exportation, sale, leasing, or any other distribution of a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal; and
- (b) wilful reception²¹ or further distribution of a program-carrying signal that originated as an encrypted satellite signal, knowing that it has been decoded without the authorization of the lawful distributor of the signal.]

[IN propose; KR oppose : Alt 2 :

Each Party shall provide adequate legal protection and effective legal remedies against the:

- a. unauthorized decryption of an encrypted broadcast ; and

20 [AU propose : where Party is, or becomes, a member of the International Convention for the Protection of the Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention), that Party's obligations under this paragraphs shall be subject to any commitments and reservations that a Party has made, or will make, under the Rome Convention.]

21 ~~[KR propose; ASN/CN/NZ/IN oppose:~~ For greater certainty, each Party may determine that reception includes viewing of the signal, whether private or commercial.]

Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.

- b. removal or alteration of any electronic information relevant for the application of the protection of the broadcasting organizations.]]

SECTION 3 TRADEMARKS

Article 3.1

[KR/CN/JP propose; ASN/IN/AU/NZ oppose: Trademarks Protection

1. The Parties shall grant adequate and effective protection to trademark right holders of goods and services.]

~~[AU/KR/JP/NZ/CN/IN propose; ASN oppose: Article 3.1
Trademarks Protection~~

~~[AU/KR/JP/NZ/CN/IN propose; ASN oppose: 2. No Party shall require, as a condition of registration, that trademarks be visually perceptible, nor deny registration of a trademark solely on the grounds that the sign of which it is composed is a sound [JP/NZ/CN/KR/IN oppose: or a scent].²²~~

~~[FN1]: A party may require an adequate description, which can be represented graphically, of the trademark.]]~~

~~Trademarks~~

~~Protectable subject matter of trademark~~

3. Each Party shall ensure that any signs or any combination of signs capable of distinguishing the goods and services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements, [JP/AU/KR/CN/NZ propose; ASN/~~IN~~ oppose: three-dimensional shapes] and combinations of colours as well as any combination of such signs, be eligible for registration as trademarks. [IN/NZ/ASN/AU/KR/CN propose: Where signs are not inherently capable of distinguishing the relevant goods or services, Parties may make registrability depend on distinctiveness acquired through use. [ASN propose; AU/KR oppose: Parties may require as condition of registration, that signs be visually perceptible.]]

²² ~~[AU/KR/JP/NZ/CN/IN propose; ASN oppose: A party may require an adequate description, which can be represented graphically, of the trademark.]~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

Article 3.2 Protection of Certification & Collective Marks

Each Party shall provide that trademarks shall include collective marks [AU/KR/CN/NZ propose; ASN oppose: and] [ASN propose; AU/KR/CN/NZ oppose: or] certification marks] [AU propose:²³.] [AU/KR/CN/NZ propose; ASN/IN/JP oppose: Each Party shall also provide that geographical indications are eligible for protection as trademarks.}]

Article 3.3 Trademarks Classification System

Each Party shall maintain a trademark classification system that is consistent with the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, as amended from time to time.

[ASN/CN/NZ/IN propose; KR/AU/JP oppose: Article 3.4 Examination, Opposition and Cancellation Procedures

Each Party shall provide a trademark registration system with procedures of examination as to substance and formalities, opposition [IN propose: rectification] and cancellation [CN propose: /invalidation]. [ASN propose:²⁴.]

Article 3.5 [KR/CN/AU/IN/JP propose: ~~Alt 1~~: Registration and Applications of Trademarks]

[NZ propose: 1. Each Party shall provide a system for the registration of trademarks, which shall include:

[ASN propose: (a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a refusal to register a trademark;]

²³ [AU propose: For greater certainty, a Party may provide for certification marks under its existing trademark regime.]

²⁴ [ASN propose: For the purposes of this paragraph, “opposition” may include rectification and “cancellation” may include invalidation.]

Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.

- (b) an opportunity for the applicant to respond to communications from the [AU propose; IN oppose: competent] trademark authorities, to contest an initial refusal [IN oppose:, and to appeal judicially a final refusal to register];
- (c) an opportunity for interested parties to oppose a trademark application [JP propose : or- registration] [~~AU/JP oppose: before registration~~] and to seek cancellation or invalidation of a trademark after it has been registered; and

[ASN oppose: (d) a requirement that decisions in opposition and cancellation proceedings be reasoned ~~and in writing.~~ [KR propose : It is encouraged to provide written decisions, which may be provided electronically.]] ~~Written decisions may be provided electronically.~~

2. Each Party shall provide a:

- (a) system for the electronic application for, and electronic [KR propose; AU oppose: processing , registering, and] maintenance of trademarks; and
- (b) publicly available electronic database, including an online database, of trademark applications and registrations.]

[ASN/NZ propose:Alt (b) Each Party is encouraged to adopt an electronic registration system for trademarks, so as to facilitate ease of application by applicants for trademark registration.]

[~~JP propose : KR propose: Alt 2: Article 3.5~~] [KR propose: Alt 2: Article 3.5bis [JP propose : Alt 2] [KR/~~CN/AU/IN~~ propose: Registration and Applications of Trademarks, Patents and Designs

- 3. [NZ propose: Each Party shall provide a system for the registration of trademarks, patents and [JP propose: industrial] designs, which shall include:

[ASN propose: (a) a requirement to provide to the applicant a communication in writing, [IN oppose : which may be provided electronically,] of the reasons for a refusal to register a trademark, patent or [JP propose: industrial] design;]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

- (b) an opportunity for the applicant to respond to communications from the [AU propose; IN oppose: competent] authorities, to contest an initial refusal [IN oppose: , and to appeal judicially a final refusal to register];
- (c) an opportunity for interested parties [JP propose: ,if so provided in its laws and regulations, to petition] to oppose an application [JP propose: or a registration] [AU/JP oppose: before registration] [JP oppose: or an opportunity for any person to provide the competent authority with [IN oppose : information]] that the application does not satisfy the requirements of registration;]
- (d) an opportunity for interested parties to seek cancellation or invalidation of a [JP propose: registration] [JP oppose: trademark] after it has been registered]; and

[ASN oppose: (e) a requirement that decisions in opposition and cancellation proceedings be reasoned. [JP propose: , if so provided in its laws and regulations]. It is encouraged to provide written decisions, [IN oppose : which may be provided electronically.]]

4. Each Party shall provide a:

- (c) system for the electronic application for, and electronic [KR propose; AU oppose: processing , registering, and] maintenance of trademarks; and
- (d) publicly available electronic database, including an online database, of trademark applications and registrations.]

[ASN/NZ propose: ~~ALT~~Alt (b) Each Party is encouraged to adopt an electronic registration system for trademarks, so as to facilitate ease of application by applicants for trademark registration.]

[JP/NZ propose ; AU/CN oppose: Article 3.5terbis
Ensuring any pP person may pP provide iI information that a tT trademark should not be
rR registered

Each Party shall establish or maintain a system which provides, before the registration of a trademark, one of the following:

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

- (a) an opportunity for any person to provide the competent authority with information that the trademark application does not satisfy the requirements of registration; or
- (b) an opportunity for any person to file an opposition against the trademark application.]

Article 3.6 Rights Conferred

Each Party shall provide that the owner of a registered trademark shall have 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 [AU/NZ/KR/CN propose; ASN/IN oppose:, including subsequent geographical indications,] for goods or services that are identical or similar to those goods or services in respect of which the owner's trademark is registered, where such use would result in a likelihood of confusion. In the case of the use of an identical sign, [AU/NZ/KR/CN propose; ASN/IN oppose:, including a geographical indication,] 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 Parties making rights available on the basis of use.

Article 3.7 Exceptions

Parties may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

Article 3.8 Madrid Protocol²⁵

²⁵ [Negotiators' Note: Australia/Korea/Japan support accession to the Madrid Protocol, but prefers a chapter structure where treaties are dealt with under a single Article or Paragraph.](#)

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

~~NOTE: Australia/Korea/Japan support accession to the Madrid Protocol, but prefers a chapter structure where treaties are dealt with under a single Article or Paragraph.~~

Each Party shall endeavour to accede to the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks 1989, where it is not already a Party to such treaty. In doing so, a Party can seek to cooperate with other Parties to support such accession.-

[ASN/AU/IN/NZ/KR propose: Article 3.9
Protection of Trademarks that Predate Geographical Indications

1. Each Party shall protect trademarks where they predate, in its jurisdiction, geographical indications in accordance with [AU/KR oppose: its domestic law and] the TRIPS Agreement.]

[JP propose; NZ/ASN/IN/CN/AU oppose: [Article 3.10](#)
Protection of Well-known trademark] ±
~~[KR propose: Well-known Trademarks]~~

~~[JP/IN propose ; NZ/ASN/CN/AU oppose:~~

~~1. Each Party shall provide that the registration of a trademark shall be [JP propose: refused or] cancelled, if the trademark is identical or similar to a trademark of another person, which is well known in the Party, and if use of that trademark is [JP propose: in bad faith]. [JP propose:²⁶].]~~

~~[JP propose: Note: For the purposes of this Paragraph, the term “bad faith” may be deemed by a Party to be synonymous with the term “unfair intentions”.]~~

[KR/JP/CN propose; [ASN/AU/IN](#) oppose: 2. Each Party shall provide for appropriate measures to refuse or cancel the registration and prohibit the use of a trademark that is identical or similar to a well-known trademark, for related goods or services, if the use of that trademark is likely to cause confusion, [JP oppose: or to be misleading,] and the interests of the owner of the well-known mark are likely to be damaged by such use.]]

~~[JP/ASN/NZ/IN/CN/KR propose; AU oppose: Protection of well-known mark-2~~

~~[JP/ASN/NZ/IN/CN/KR propose; AU/CN oppose: 3. Each Party recognises the importance of the Joint Recommendation Concerning Provisions on the Protection of~~

~~26 [JP propose: For the purposes of this Paragraph, the term “bad faith” may be deemed by a Party to be synonymous with the term “unfair intentions” [IN propose : and if the trademark is identical with or similar to a well-known trademark and it has been registered in good faith, it shall be allowed].]~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

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.]

~~[KR propose: Well-known Trademarks~~

~~[JP/KR/JP/IN propose; ASN/AU oppose: 4. No party may require, as a condition for determining that a trademark is a well-known trademark, that the trademark has been registered in the territory of the Party or in another jurisdiction, included on a list of well-known trademarks, or given prior recognition as a well-known trademark.]~~

~~Alt. 1 [KR/JP propose; IN/ASN/CN/AU oppose: 5. Article 6bis of the Paris Convention for the Protection of Industrial Property (1967) shall apply, mutatis mutandis, to goods or services that are not identical or similar to those identified by a well-known trademark [KR propose; JP oppose: ²⁷], whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark, and provided that the interests of the owner of the trademark are likely to be damaged by such use.]~~

~~Alt. 2 [IN propose : 5. Article 6bis of the Paris Convention for the Protection of Industrial Property (1967) shall apply, mutatis mutandis, to goods or services which are not identical or similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark, and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.]~~

~~[JP/ASN/KR/NZ/IN/CN propose: AU oppose: Article 3.11~~

~~One and the sSame aApplication rRelating to sSeveral gGoods and/or sServices~~

Each Party shall endeavour to provide that one and the same application for registration of trademark may relate to one or several goods and/or services.]

~~27 [KR propose; JP oppose: For purposes of determining whether a mark is well-known, neither Party may require that the reputation of the trademark extend beyond the sector of the public that normally deals with the relevant goods or services.]~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

SECTION 4 GEOGRAPHICAL INDICATIONS²⁸

[Note: CN is still considering the issue of whether GIs should be dealt with as a separate article and will revert.]

Article 4.1 Protection

[ASN/AU/NZ propose: Alt 1: Each Party recognises that geographical indications may be protected through [~~OPT~~Alt 1.1: any one of the following: a trademark system, a sui generis system or other means] [~~OPT~~Alt 1.2: various means as determined in its domestic law] [~~OPT~~Alt 1.3: a trademark, or sui generis or other legal means], [IN/JP oppose: including through a trademark system,] provided that all requirements under the TRIPS Agreement are fulfilled.]

[IN/JP propose: Alt 2: 1. [JP oppose: The Parties to this Agreement] [JP propose: Each Party] shall ensure in their [JP oppose: national] [JP propose: domestic] laws adequate and effective means to protect geographical indications in conformity with the TRIPS Agreement.

2. For the purposes of this Agreement, “geographical indications” are indications, which identify goods as originating in the territory of a Party, or a region or a locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to their geographical origin.]

[NZ/AU propose; JP/ASN/IN oppose: Alt 3: Protection of Geographical Indications and Country and Regional [~~JP propose: Names~~] Names

1. [current proposed ASEAN text.]
2. Where a Party intends to protect or recognise a geographical indication, that Party shall provide procedures for any interested person to object to such protection or recognition and for any such protection or recognition to be refused or otherwise not afforded. The grounds of objection available shall include the following:
 - (a) the geographical indication is likely to cause confusion with a trademark or geographical indication that is the subject of a pre-existing good faith pending application or registration in the Party;

²⁸[~~Note: Negotiators' Note: CN is still considering the issue of whether GIs should be dealt with as a separate article and will revert.~~]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

- (b) the geographical indication is likely to cause confusion with a pre-existing trademark or geographical indication, the rights to which have been acquired in accordance with the Party's law, including through use in good faith; and
 - (c) the claimed geographical indication is identical with a term customary in the common language as the common name for the good in the Party in respect of which protection is sought
 - (d) [AU propose: the claimed geographical indication is identical with a common name of a type or style of wine or as the name of a variety of grapes in the Party in respect of which protection is sought.]
3. Where a Party protects or recognises a geographical indication, that Party shall provide procedures for any interested person to seek cancellation of such protection or recognition and for any such protection or recognition to be cancelled.
4. Where a Party provides for the protection or recognition of the translation or transliteration of a geographical indication that Party shall provide procedures for any interested person to oppose such protection or recognition and for any such protection or recognition to be refused at least on the grounds provided for in paragraph 2.
5. Each Party shall provide that where a protected or recognised geographical indication contains within it a term customary in common language as the common name for a good in a Party, that protection or recognition shall in no way prejudice the right of any person to use that term in that Party.]

~~[ASN/IN/CN Propose:]~~ SECTION 5
PATENTS

[ASN/IN/CN/NZ/KR propose: Article 5.1
Patentable Subject Matter

1. Subject to the provisions of ~~[JP propose: paragraphs 2 and 3, below]~~ (2) and (3) below, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.²⁹ Subject to paragraph ~~[JP propose: 3 (c) of this Paragraph]~~ (c) of this Paragraph Article and ~~[JP propose: Article 10]~~ SECTION 12 } Article 10 (Special and Differential Treatment, Transitional Period and Transitional Arrangements) below, patents shall be available and patent rights enjoyable without

²⁹ ~~[ASN/IN/CN/NZ/KR propose:]~~ For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Party to be synonymous with the terms "non-obvious" and "useful", respectively.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.

2. Parties may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.
 3. Parties may also exclude from patentability:
 - (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals; and
 - (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Parties shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. [AU/KR oppose: This provision shall be [NZ/IN/ASN propose; reviewed upon any] amendment of Article 27.3(b) of the TRIPS Agreement.]]

Article 5.2

Exceptions to Rights Conferred

1. Each Party 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.

[AU/NZ/IN propose: ~~Other use without the authorization of the right holder~~ 2. For greater certainty, nothing in this Agreement shall limit a Party's rights and obligations pursuant to Article 31 of the TRIPS Agreement, including any waiver or amendments thereto.]

[AU/KR propose: Article 5.3 Experimental Use of a Patent

Without limiting ~~paragraph~~ Article 5.2, each Party shall provide that [IN/CN oppose: a third person] [IN/CN propose: any person] may do an act that would otherwise infringe a patent if the act is done [CN/IN propose: solely] for experimental [CN propose; AU oppose: and/] [IN/CN propose; AU oppose: or research] purposes [IN propose; AU/KR oppose: including the imparting of instruction to pupils] relating to the subject matter of a patented invention.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

[AU propose: Article 5.4
High Quality Rights

Each Party shall:

- (a) continue to work to enhance its examination and registration systems, including through improving examination procedures and quality systems so as to provide a high degree of certainty in the application for and protection of intellectual property rights;
- (b) provide applicants with a communication in writing, of the reasons for any refusal to grant or register an intellectual property right;
- (c) provide an opportunity for interested parties to oppose the grant or registration of an intellectual property right or to seek revocation, cancellation or invalidation of an existing intellectual property right;
- (d) require that opposition or revocation decisions of general application to be reasoned and in writing; and
- (e) for the purposes of this Article writing and communication in writing includes writing and communications in an electronic form.]

[AU/KR/IN/JP propose; ASN/CN/NZ oppose: Article 5.5
Grace Period for Patents

Each Party shall disregard information contained in public disclosures [JP propose: used to determine] if an invention is novel or has an inventive step [JP propose: , at least in the following case~~s~~.] if the public disclosure:

- (a) was made or authorized by, or derived from, the [JP/KR oppose: patent applicant] [JP/KR propose: person having the right to obtain a patent] [IN propose; AU/KR oppose: or in case where he is not the true inventor, the person from whom he derives the title]; and

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

- (b) occurred within [AU propose; JP oppose: 12 months prior to the date of] [JP propose; AU oppose: a certain period before the] filing of the application in the territory of the Party. ~~[JP propose:³⁰]~~

[JP propose: Note: A Party shall not be required to disregard information which was disclosed by the gazette relating to an invention [KR/IN oppose:, utility model, industrial design or trademark].]

[AU/ASN/JP/CN/NZ propose: Article 5.6
Patent Amendments

Each Party shall provide patent applicants with at least one opportunity to make amendments, corrections, [AU propose; ASN/KR oppose: and observations] in connection with their applications [CN propose: in accordance with each Party's laws, regulations and rules]. [ASN/CN propose:³¹~~Footnote 1~~]

~~[Footnote 1: The Parties understand that [NZ propose: the Parties will not be required to] [NZ oppose: amendments and corrections would not] allow an applicant to broaden the scope of the disclosure of the invention as of the filing date.]~~

[ASN/AU/IN/NZ/CN propose; JP/KR oppose: Article 5.7
TRIPS Flexibilities on Compulsory Licenses and LDC Extensions

1. Parties have the right to grant compulsory licenses subject to TRIPS Article 31, and if applicable, the Declaration on the TRIPS Agreement and Public Health (WT/MIN(01)/DEC/2 of 20 November 2001, the Decision of the General Council of 30 August 2003 on the Implementation of Paragraph Six of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540) and the WTO General Council Chairman's statement accompanying the Decision (JOB(03)/177, WT/GC/M/82), or the Decision on the Amendment of the TRIPS Agreement, adopted by the General Council, 6 December 2005 and the WTO General Council Chairperson's statement accompanying the Decision (WT/GC/M/100).]

30 ~~[JP propose: A Party shall not be required to disregard information which was disclosed by the gazette relating to an invention [KR/IN oppose:, utility model, industrial design or trademark].]~~

31 ~~[ASN/CN propose: The Parties understand that [NZ propose: the Parties will not be required to] [NZ oppose: amendments and corrections would not] allow an applicant to broaden the scope of the disclosure of the invention as of the filing date.]~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

2. [ASN/IN/NZ/CN propose: The Parties agree that the least-developed country Parties will not be obliged, with respect to pharmaceutical products, to implement or apply Paragraphs 1(a) of Article 4 (Patentable Subject Matter) and Paragraph 4 of Article 4 (Electronic Registration Regime) or to enforce rights provided for under these Paragraphs until 1 July 2021, without prejudice to the right of least-developed country Parties to seek other extensions of the transition periods as provided for in Article 66.1 of the TRIPS Agreement.]

[ASN/IN/CN/NZ/KR/JP propose: Article 5.8
Electronic Patent Application System

Each Party is encouraged to adopt an electronic patent application system, so as to facilitate ease of application by patent applicants.]

[AU/NZ/JP/CN/IN/KR propose; ASN oppose: Article 5.9
18-Month Publication

1. Each party shall publish any patent application promptly after the expiry of 18 months from its filing date or, if priority is claimed, from its priority date, unless the application has been published earlier or has been withdrawn, abandoned or refused.
2. Each Party shall provide that the applicant may request the early publication of an application prior to the expiry of the period mentioned in paragraph 1.]

[AU/NZ propose: [PLACEHOLDER FOR SUBPARAGRAPH ON ESSENTIAL SECURITY INTERESTS, PUBLIC SAFETY OR PUBLIC ORDER, DEPENDING ON PRESENCE OF GENERAL PROVISIONS FOR THE ENTIRE AGREEMENT.]]

[ASN/NZ/CN/IN propose: Article 5.10
Patent Cooperation Treaty

Each Party shall endeavour to accede to the Patent Cooperation Treaty 1970 (as amended in 1979), where it is not already a Party to such treaty. In doing so, a Party can seek to cooperate with other Parties to support such accession.]³²

[AU propose; ASN/IN/CN/KR oppose: Article 5.11
Client-Attorney Privilege

³² Negotiators' Note: Australia/Korea/Japan support accession to the PCT, but prefers a chapter structure where treaties are dealt with under a single Article or Paragraph.

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

Each Party shall ensure that a communication made for the dominant purpose of, an intellectual property advisor providing professional advice on or relating to intellectual property rights to a client, shall be recognized as confidential to the client and shall be protected from any disclosure to third parties, unless it is or has been made public with the authority of that client.]

[JP/NZ propose; ASN/IN oppose: [Article 5.12](#)
Worldwide ~~n~~Novelty for ~~p~~Patent

Each Party shall ensure that a claimed invention shall not be new, if it is [NZ propose: made available to the public by written or oral description or in any other way] [NZ oppose: [CN propose: known to the public] [CN oppose;: publicly known], [CN oppose: described in a publication distributed or made available to the public through [JP propose: the internet]]] in any Party or in any non-Party before the filing date of the application for a patent, where priority is claimed, before the priority date of the application.]

[JP/~~KR~~ propose; ASN/IN/AU/NZ/CN oppose: [Article 5.13](#)
Patent ~~t~~Term ~~r~~Restoration

1. 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 process.]

[~~JP propose; ASN/IN/AU/NZ/CN oppose: 4~~2. For the purposes of paragraph ~~2~~1:

- (a) “compensatory term of protection” means an extension of a term of patent protection;
- (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
- (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.]

[~~KR propose: ASN/IN/AU/NZ/CN~~[JP](#) oppose: 3. Each Party, at the request of the patent owner, shall adjust the term of a patent to compensate for unreasonable delays that occur in granting the patent. For purposes of this subparagraph, an

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

unreasonable delay shall at least include a delay in the issuance of the patent of more than four years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application, whichever is later. Periods attributable to actions of the patent applicant need not be included in the determination of such delays].]

4. ~~With respect to patents covering a new pharmaceutical product³³ that is approved for marketing in the territory of the Party and methods of making or using a new pharmaceutical product that is approved for marketing in the territory of the Party, each Party, at the request of the patent owner shall make available an adjustment of the patent term or the term of the patent rights of a patent covering a new pharmaceutical product, its approved method of use, or a method of making the product to compensate the patent owner for unreasonable curtailment of the effective patent term as a result of the marketing approval process related to the first commercial use of that pharmaceutical product in the territory of that Party. Any adjustment under this subparagraph shall confer all of the exclusive rights, subject to the same limitations and exceptions, of the patent claims of the product, its method of use, or its method of manufacture in the originally issued patent as applicable to the product and the approved method of use of the product.³⁴}~~

[JP/KR/IN/NZ/CN propose; ASN oppose: [Article 5.14](#)
(Patents) Ensuring any ~~p~~Person may ~~p~~Provide ~~i~~Information that could ~~d~~Deny
~~n~~Novelty or ~~i~~Inventive step

Each Party shall establish or maintain a system which provides, _ before granting a patent, ~~[NZ/CN/IN/KR propose : at least]~~ one of the following:

- (a) an opportunity for any person to provide the competent authority with information that could deny novelty or inventive step of an invention claimed in the patent application; or
- (b) an opportunity for any person to file an opposition against the patent application.]

[JP/KR propose; ASN/IN/NZ/AU/CN oppose: [Article 5.15](#)
Prohibition of ~~r~~Requiring the ~~e~~Certification of ~~t~~Translation

~~33 [KR propose: ASN/IN/AU/NZ/CN oppose: For greater certainty, new pharmaceutical product in subparagraph (b) means a product that at least contains a new chemical entity that has not been previously approved as a pharmaceutical product in the territory of the Party.]~~

~~34 [KR propose: ASN/IN/AU/NZ/CN oppose: For purpose of subparagraph (b), effective patent term means the period from the date of approval of the product until the original expiration date of the patent.]~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

A Party may require the certification of translation of an earlier application for a patent whose priority is claimed only when the office has reasonable doubt as to the accuracy of the translation.]

[JP/KR propose; ASN/AU/IN/NZ/CN oppose: [Article 5.16](#)
Treatment of Test Data in Marketing Approval Procedure

~~Data protection for marketing approval of new pharmaceutical products~~

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~~ five years by the relevant laws of each Party.^{35]}

7.

~~Note: "pharmaceutical products" shall include import products.]~~

[Article 5.17](#)

Patents Protection

~~[KR/JP propose: 1. Each Party may provide an applicant with accelerated examination for the patent application on conditions that the claimed invention is:~~

- ~~(a) being practiced after publication of the application by a person, other than the applicant; or~~
- ~~(b) being practiced or being prepared to practice by the patent applicant.]~~

~~[JP propose: 1]~~ [KR/JP propose; ASN/IN oppose: [21](#). Each Party shall ensure that an applicant may file a request for an accelerated examination, subject to reasonable grounds and procedural requirements, in accordance with each Party's domestic laws and regulations.

[\[JP propose : ASN/IN oppose: 2\]](#) **Recognizing the importance of improving the convenience of the applicants, each Party agrees to cooperate to enhance the accelerated examination system. Such cooperation may include:**

- (a) reducing the pendency of accelerated examination;
- (b) expanding the eligibility for accelerated examination;

³⁵~~[JP/KR propose; ASN/AU/IN/NZ/CN oppose: "pharmaceutical products" shall include import products.]~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

(c) simplifying the procedural requirements for accelerated examination.]

[CN propose ; ASN/IN/NZ oppose: 1. Procedures concerning the patent examination shall not be unnecessarily complicated, or entail unwarranted delays.]

[CN propose ; ASN/IN oppose:

2. Each Party endeavour to provide an applicant with accelerated examination for the patent application in accordance with each Party's laws, regulations and rules.]

[JP/ASN/NZ/IN/KR/CN propose: Article 5.18
Introduction of International Patent Classification System

Each Party shall endeavour to use a patent classification system that is consistent with the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, as amended from time to time.]

[JP/AU/KR propose; ASN/IN/NZ/CN oppose: Article 5.198
New Varieties of Plants

Each Party shall provide for the protection of [~~AU oppose: all~~] plant genera and species by an effective plant varieties protection system which is consistent with the 1991 UPOV Convention.³⁶]

~~12. Note: For greater certainty, “plant” shall include fungi, which are cultivated for use of fruit body, and multicellular algae.]~~

SECTION 6 INDUSTRIAL DESIGNS

[ASN/AU/IN/NZ/CN propose: Article 6.1
Protection of Industrial Designs

1. Parties shall provide for the protection of independently created industrial designs that are new or original. Parties may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Parties may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.
2. Each Party shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably

³⁶ [JP/AU/KR propose; ASN/IN/NZ/CN oppose: For greater certainty, “plant” shall include fungi, which are cultivated for use of fruit body, and multicellular algae.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

impair the opportunity to seek and obtain such protection. Parties shall be free to meet this obligation through industrial design law or through copyright law.

3. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent [KR/JP/CN propose: AU oppose: , at least] from making [KR/JP/CN propose: AU oppose: , offering for sale], selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.
4. Parties may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.]
5. [KR/JP propose; ASN/AU/IN/NZ/CN oppose: 2. The Parties shall ensure in their national laws adequate and effective protection of industrial designs including a part(s) of articles by providing a period of protection of at least 15 years.]

[ASN propose: IN/AU/NZ oppose: Article 6.2
Hague Agreement

Each Party shall endeavour to accede to the Hague Agreement Concerning the International Registration of Industrial Designs (Geneva Act, 1999), where it is not already a Party to such treaty. In doing so, a Party can seek to cooperate with other Parties to support such accession.]

Industrial Designs

[JP/KR propose: NZ/IN/AU/ASN oppose: Article 6.3
Worldwide ~~n~~Novelty for ~~i~~Industrial ~~d~~Design

1. Each Party shall ensure that a claimed industrial design shall not be new, if it is [CN oppose: publicly known] [CN propose: known to the public], [CN oppose: described in a publication distributed or made available to the public through the internet] 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.]

[KR/JP propose; ASN/AU/IN/NZ/CN oppose: 2. The Parties shall ensure in their national laws adequate and effective protection of industrial designs including a part(s) of articles by providing a period of protection of at least 15 years.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

~~[KR/JP/CN propose: AU oppose: 3. The owner of a protected design shall have the right to prevent third parties not having the owner's consent, at least from making, offering for sale, selling, importing, articles bearing or embodying [KR propose: a design which is a copy, or substantially a copy, of] the protected design when such acts are undertaken for commercial purposes.]~~

~~[JP propose : Article 6.4
Registration and Applications of Industrial Designs~~

~~Each Party shall provide a system for the registration of industrial designs, which shall include:~~

- ~~(a) a requirement to provide to the applicant a communication in writing, which may be provided electronically, of the reasons for a refusal to register an industrial design;~~
- ~~(b) an opportunity for the applicant to respond to communications from the industrial designs authorities, to contest an initial refusal, and to appeal judicially a final refusal to register;~~
- ~~(c) an opportunity for interested parties, if so provided in its laws and regulations, to petition to oppose an application or registration;~~
- ~~(d) an opportunity for interested parties to seek cancellation or invalidation of a registration; and~~
- ~~(e) a requirement that decisions in opposition and cancellation proceedings be reasoned, if so provided in its laws and regulations. It is encouraged to provide written decision, which may be provided electronically.]~~

~~[JP/ASN/NZ/IN/KR/CN propose; AU oppose: Article 6.5
Introduction of International Industrial Designs Classification System~~

~~Each Party shall endeavour to use an industrial design classification system that is consistent with the Locarno Agreement Establishing an International Classification for Industrial Designs signed at Locarno on October 8, 1968, as amended from time to time.]~~

~~[JP propose : ASN/CN propose; AU/IN/JP/KR oppose: Alt 1:] [ASN/CN propose;
AU/IN/JP/KR oppose: Alt 1: SECTION 7
GENETIC RESOURCES, TRADITIONAL KNOWLEDGE (GRTK)
AND FOLKLORE (GRTKF)~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

~~[JP propose : Article 7.1]~~

~~[JP propose : ASN/CN propose; AU/IN/JP/KR oppose; 1. Alt 1: Subject to each Party's rights and obligations under the Convention on Biological Diversity (CBD) and other international agreements related to GRTKF, each Party may establish appropriate measures to protect GRTKF and prevent misappropriation and misuse of GRTK. The Parties also recognise the importance of providing disclosure of origin or sources of GRTK used in relevant IP applications.]~~

~~[CN propose; AU/IN/JP/KR/NZ oppose: 2 . In terms of genetic resources, on which the development of the inventions claimed in patent applications relies, the Parties shall ask the applicants to disclose the detailed information about the origin.~~

~~3. The Parties shall take appropriate, effective and proportionate measures that aim to practically curb any violations to the obligations under Paragraph 1 of the Article. Failure to fulfill the disclosure obligations under Paragraph 1 will result in pending of corresponding patent applications and refusal to grant of patent rights.]~~

~~[IN propose; JP/KR/AU/ASN oppose: Alt 2: GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (GRTKF)~~

~~[JP propose : Article 7.1]~~ Article 7.1

~~Genetic Resources, Traditional Knowledge and Folklore~~

- ~~1. The term 'traditional knowledge' as used in this Chapter means and includes knowledge that is dynamic and evolving, which is generated in diverse traditional contexts, collectively preserved and transmitted from generation to generation and includes but is not limited to know-how, skills, innovations, practices and learning, that subsist in a codified, oral/verbal or other forms of knowledge systems, biodiversity and natural resources. Traditional knowledge may be secretly held by holders/beneficiaries, or may be knowledge accessible by a wider cross-section of people.~~
- ~~2. The Parties shall ensure adequate and effective implementation of international treaties dealing with traditional knowledge and genetic resources to which both are parties. The Parties also reaffirm their sovereign rights over natural resources and recognize their rights and obligations as established by the Convention on Biological Diversity with respect to access to genetic resources, and to the fair and equitable sharing of benefits arising out of the utilization of these genetic resources, as well as regards to associated traditional knowledge. The Parties shall endeavour to accede to and implement the provisions of the Nagoya Protocol to the Convention on Biological Diversity, as may be amended from time to time.~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

3. Recognizing the importance and the value of their biological diversity and of the associated traditional knowledge, innovations and practices of indigenous and local communities, the Parties shall take measures to ensure that access to the genetic resources of the other Party is subject to the prior informed consent of the Party providing the genetic resource, in accordance with the principles and provisions contained in the latter's domestic legislation.
4. Each Party shall take legislative, administrative or policy measures as appropriate for putting in place terms and conditions relating to access to genetic resources and associated traditional knowledge within their territorial domain.
5. The Parties shall take legislative, administrative or policy measures to ensure fair and equitable sharing of the benefits arising from the use of genetic resources or traditional knowledge, whether or not associated with genetic resources, with the Party providing such resources. Such sharing shall be based on terms required by the law of the providing Party.
6. The Parties shall require by way of legislation that patent applications contain a mandatory declaration of the origin or source of the genetic resource and traditional knowledge used by the inventor or the patent applicant. The Parties will also require evidence of prior informed consent for access, and fair and equitable sharing of benefits arising from the commercial or other use of such resources and for associated traditional knowledge, with consequences of non-disclosure or wrongful disclosure to be included within the patent legislation.

[IN/NZ/ASN propose: 7. The Parties recognize that data bases or digital libraries which contain relevant information constitute useful tools for patentability examination of inventions related to genetic resources and associated traditional knowledge.]

8. In accordance with applicable international law and domestic law, the Parties agree to collaborate in the application of domestic frameworks on access to genetic resources and associated traditional knowledge, innovations and practices.
9. The Parties may review this article subject to the results and conclusions of multilateral discussions.
10. Each Party shall provide for legal means to revoke IPRs granted in their territory when any other Party brings before it instances of cases of non-compliance with applicable legal provisions of such other Party relating to access to genetic resources and traditional knowledge, innovations and practices. Each Party also agrees to take adequate and effective deterrent measures in cases which do not involve grant of IPRs.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

~~[CN propose; AU/IN/JP/KR/NZ oppose: Alt 3: 1. In terms of genetic resources, on which the development of the inventions claimed in patent applications relies, the Parties shall ask the applicants to disclose the detailed information about the origin.~~

4. ~~The Parties shall take appropriate, effective and proportionate measures that aim to practically curb any violations to the obligations under Paragraph 1 of the Article. Failure to fulfill the disclosure obligations under Paragraph 1 will result in pending of corresponding patent applications and refusal to grant of patent rights.]~~

[JP/KR/NZ propose: ~~SECTION~~ection 8
UNFAIR COMPETITION

Article 8.1

Effective ~~p~~Protection against ~~u~~Unfair ~~e~~Competition

[JP/NZ/IN/ASN/~~KR~~ propose: 1. Each Party shall provide for effective protection against acts of unfair competition in accordance with [JP ~~propose~~ oppose: Article 10bis of] the Paris Convention.][JP/NZ propose; IN/ASN oppose:³⁷]

[JP propose; IN/ASN oppose : Note : For greater certainty, it is understood by the Parties that the scope of Article 10bis of the Paris Convention extends to acts of unfair competition in relation to the supply of services.]

[NZ propose: 2. Each Party shall prohibit any use in the course of trade of the name of a Party, or a regional name of a Party, in relation to the supply of a good or the promotion by any means of a good that misleads, or is likely to mislead, the public as to the origin of the good.]

37 [JP/NZ propose; IN/ASN oppose: For greater certainty, it is understood by the Parties that ~~the scope of~~ Article 10bis of the Paris Convention ~~extends to~~ covers acts of unfair competition in relation to the supply of services.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

[KR/JP propose; AU/ASN oppose: 3. The Parties shall be bound to assure to the nationals of each Party effective protection against unfair competition. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition. The following in particular shall be prohibited:

- (a) all acts of such a nature as to create confusion by any means whatever with the establishment, the goods, or the industrial or commercial activities, of a competitor;
- (b) false allegations in the course of trade of such a nature as to discredit the establishment, the goods, or the industrial or commercial activities, of a competitor;
- (c) indications or allegations the use of which in the course of trade is liable to mislead the public as to the nature, the manufacturing process, the characteristics, the suitability for their purpose, or the quantity, of the goods;

[NZ oppose : (d) acts of using, or acquiring or holding the right to use, a domain name identical with or [JP oppose: confusingly] similar to [JP propose: a specific indication of products or services of] another [JP propose: person with; JP oppose: person's name, trade name, trademark, or other mark widely recognized by one of the Parties for the purposes specified in that Party's laws and regulations, such as regarding] the intention to gain unfair profit or to cause damage to another person.]]

[JP/KR propose; NZ oppose : (e) acts of assigning, leasing, displaying for the purpose of assignment or lease, exporting or importing products which imitate the configuration of another person's products, [JP propose : subject to the terms and conditions of its applicable except as provided for in the laws and regulations of each Party] subject to the terms and conditions of its applicable laws and regulations.]]

Protection of Undisclosed Information

[JP propose; NZ/IN/CN oppose: Article 8.2

Protection of Undisclosed Information

~~Adequate and effective protection of undisclosed information in accordance with paragraph 2 of Article 39 of the TRIPS Agreement~~

[JP propose : ASN/IN/KR/CN/NZ oppose : Alt. 1. Recognizing the importance of protection of undisclosed information, each Party shall ensure in its laws, regulations or guidelines adequate and effective protection of such information in accordance

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

with paragraph 2 of Article 39 of the TRIPS Agreement. ^[JP propose : 38] [JP propose : In the course of ensuring effective protection of undisclosed information as provided in Article 39 of the TRIPS Agreement, no Party shall take any measure forcing disclosure of the undisclosed information without legitimate reasons, and limiting the duration of protection of the undisclosed information stipulated in private contracts.]

~~Note: For greater certainty, it is recognized by the Parties that 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 nullify or impair the benefit derived from the protection of undisclosed information.]~~

[KR propose; CN/IN oppose: Alt. 2. The Parties shall ensure [ASN propose : that] in its laws and regulations [ASN oppose : adequate and effective protection of undisclosed information ; ASN propose : are] in accordance with Article 39(2) of the TRIPS Agreement.]

[IN propose : Alt. 3 : Each party shall ensure that natural and legal person shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices in accordance with paragraph 2 of Article 39 of the TRIPS Agreement.]

~~[ASN/IN propose:~~ SECTION 9
ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

[ASN/IN propose ; AU/KR/JP oppose : Article 9.1

The Parties shall provide for enforcement provisions as required under the TRIPS Agreement, in particular Articles 41 to 61. However, Parties may provide for more extensive enforcement provisions.]

[AU propose : Article 9.1bis

Each Party shall ensure that enforcement procedures as specified in this Section are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Chapter, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a

38 ~~Note: [JP propose : [JP propose; NZ/IN/CN oppose: For greater certainty, it is recognized by the Parties that 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 nullify or impair the benefit derived from the protection of undisclosed information.]~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.]

[AU/JP/NZ/KR propose; ASN oppose: Article 9.2

Procedures adopted, maintained, or applied to implement the provisions of this Chapter shall be fair and equitable, and shall provide for the rights of all participants subject to such procedures to be appropriately protected. These procedures shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.]

[AU/JP/NZ/KR propose; ASN oppose: Article 9.3

In implementing the provisions of this Section, each Party shall take into account the need for proportionality between the seriousness of the infringement, the interest of third parties, and the applicable measures, remedies and penalties.]

[AU propose : Article 9.3bis

It is understood that this Section does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Parties to enforce their law in general. Nothing in this Section creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.]

[KR/AU propose; CN/ASN/NZ oppose: Article 9.4
Presumption of Authorship or Ownership

In [KR/AU propose; IN oppose: civil, administrative, and criminal] [KR/AU oppose; IN propose: infringement proceedings] involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the person whose name is indicated in the usual manner is the right holder in the work, performance, phonogram, or broadcast as designated.]

[JP/KR/AU propose: SECTION 9^{bis}
~~ENFORCEMENT Enforcement – CIVIL REMEDIES Civil Remedies~~]

[KR/AU propose; ASN oppose: Article 9^{bis}.1

Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.

1. Each Party shall make available to right holders³⁹ civil judicial procedures concerning the enforcement of any intellectual property right covered by this Chapter.]

[JP/KR/AU propose ; ASN/IN oppose: Article 9^{bis}.2]

~~[JP propose ; [KR/JP propose:]2.~~ Civil and Administrative Procedures and Remedies

Each Party shall provide that:

in civil judicial proceedings [JP/KR/AU propose: concerning the enforcement of intellectual property rights], its judicial authorities [KR/AU propose: shall] have the authority to order the infringer [JP/AU propose: who, knowingly or with reasonable grounds to know, engaged in infringing activity] to pay the right holder:

- (i) damages adequate to compensate for the injury the right holder has suffered as a result of the infringement [KR propose: ⁴⁰; or
- (ii) [AU/KR propose : at least in the case of copyrights or related rights infringements and trademark counterfeiting,] the profits of the infringer that are attributable to the infringement which may be presumed to be the amount of damages referred to in clause (i); ~~and~~
- (iii)

~~in]~~ **[JP propose: . In] In determining [JP/AU propose: the amount of] damages [KR/AU propose: for infringement of intellectual property rights] [JP/AU/KR propose: referred to in the paragraph above], [KR propose: its] [JP/AU propose: a Party's] judicial authorities shall have the authority to consider, inter alia, [JP/KR propose: any legitimate measure of value the right holder submits, [KR/AU oppose: which may include lost profits,]] the value of the infringed [JP/KR/AU propose: goods or services], measured by the market price, [JP/AU/KR propose: or] the suggested retail price.]**

[KR propose; JP/NZ/ASN/IN/AU oppose: Article 9^{bis}.3

In civil judicial proceedings, each Party shall, at least with respect to works, phonograms, and performances protected by copyright or related rights, and in case of trademark counterfeiting, establish or maintain pre-established damages, which

³⁹ [KR/AU propose: For purposes of this Article, "right holder" includes a federation or an association having the legal standing and authority to assert such rights, and also includes a person that exclusively has any one or more of the intellectual property rights encompassed in a given intellectual property.]

⁴⁰ [KR propose: In the case of patent infringement, damages adequate to compensate for the infringement shall not be less than a reasonable royalty.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

shall be available on the election of the right holder. Pre-established damages shall be in an amount sufficient to constitute a deterrent to future infringements and to compensate fully the right holder for the harm caused by the infringement.⁴¹]

[KR/AU propose; ASN oppose: Article 9^{bis}.4

Each Party shall provide that its judicial authorities, [JP oppose: except in exceptional circumstances] [JP propose: where appropriate,] shall have the authority to order, at the conclusion of civil judicial proceedings concerning copyright or related rights infringement, [AU oppose: patent infringement,] or trademark infringement, that the prevailing party shall be awarded payment by the losing party of court costs or fees and reasonable attorneys' fees.]

[KR/AU propose; ASN oppose: Article 9^{bis}.56

In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of allegedly infringing goods, materials, and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.]

[JP/KR/AU propose ; ASN oppose: Article 9^{bis}.65]

~~[JP/KR propose: Destroying iInfringing gGoods and mMaterials and iImplements~~

1. With respect to at least pirated copyright goods and counterfeit trademark goods, 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, except in exceptional circumstances, without compensation of any sort.
2. Each Party shall further provide that its judicial authorities have the authority to order that materials and implements, the [KR oppose: 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.]

[KR propose : 3. iIn regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.]

[KR propose: Article 9^{bis}.6

41 [KR propose; JP/NZ oppose: No Party is required to apply paragraph 3 to actions for infringement against a Party or a third party acting with the authorization or consent of a Party.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

In civil judicial proceedings concerning copyright or related rights infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of allegedly infringing goods, materials, and implements relevant to the act of infringement, and, at least for trademark counterfeiting, documentary evidence relevant to the infringement.]

[KR propose; ASN/AU/JP oppose: Article 9^{bis}.7

~~[KR propose~~: Each Party shall provide that in civil judicial proceedings concerning the enforcement of intellectual property rights, its judicial authorities shall have the authority to order the infringer to provide the right holder or the judicial authorities with information that the infringer possesses or controls regarding the persons or means involved in the production and distribution of the infringing goods or services and their channels of distribution.]

[KR/JP/AU propose; ASN/IN oppose: Article 9^{bis}.8

Each Party shall provide that ~~[JP/KR propose~~: in civil judicial proceedings concerning intellectual property rights,] its judicial authorities have the authority to impose sanctions on parties to the proceeding, their counsel, experts, or other persons subject to the court's jurisdiction, for violation of judicial orders regarding the protection of confidential information produced or exchanged in a proceeding.]

[KR/JP/AU propose; ASN/IN oppose: Article 9^{bis}.9

Each Party may permit the [AU oppose : right holder or any other interested person to]] use [AU propose : of] alternative dispute resolution procedures to resolve civil disputes concerning intellectual property rights.]

[JP/KR/AU propose ; ASN oppose: Article 9^{bis}.10
Provisional ~~m~~Measures]

[JP propose: 1. With respect to at least pirated copyright goods and counterfeit trademark goods, 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 suspected goods, and of materials and implements relevant to the act of infringement, and documentary evidence, either originals or copies thereof, relevant to the infringement.]

[KR/AU propose ~~:~~; JP oppose: 2. Each Party shall provide that its judicial authorities have the authority to act on requests for provisional measures inaudita altera parte expeditiously.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

[~~KR/JP/AU~~ propose: 3. Each Party shall provide that its judicial authorities have the authority to require the applicant, with respect to provisional measures, to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty [~~AU~~ propose: that the applicant is the right holder and] that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures.]]

~~[With regard to Border Measures, KR/JP proposes the following revised texts.]~~

[~~JP/KR/AU~~ propose; ~~ASN/IN~~ oppose: SECTION 9^{ter}
~~ENFORCEMENT Enforcement – BORDER MEASURES Border Measures~~]

[~~JP/KR/AU~~ propose; ~~ASN~~ oppose: Article 9^{ter}.1
Suspension of IPR ~~i~~Infringing ~~g~~Goods by ~~r~~Right ~~h~~Holder's ~~r~~Request

Each Party shall adopt or maintain procedures with respect to import shipments under which a right holder may request its competent authorities to suspend the

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

release of, [AU oppose: at least,] suspected counterfeit trademark or pirated copyright goods [AU propose: in accordance with Article 51 of TRIPS].^{42]}

[AU propose: Definition

“Competent authorities”; for purposes of this Chapter, unless otherwise specified, competent authorities includes the appropriate judicial, administrative, or law enforcement authorities under a Party’s law.]

— [JP/KR/AU propose; ASN oppose: Article 9^{ter}.2
Applications for ~~s~~Suspension or ~~d~~Detention

Each Party shall

- (a) [AU/KR propose: provide that such applications remain in force for a period of not less than one year from the date of application, or the period that the good is protected by copyrights or the relevant trademark registration is valid, whichever is shorter] [AU/KR oppose : ensure that such request to suspend set forth in ~~paragraph Article 9^{ter} 1~~ above remains in force for] [JP propose; AU/KR oppose: at least one year]; [AU oppose: ; or alternatively]
- (b) [AU oppose : adopt or maintain procedures that enable a right holder to register its [JP propose: trademark or copyright] [KR propose: rights], which remains in force for at least one year, in order to request the competent authorities to suspend the release of suspected goods.]]

[KR/JP/AU propose; ASN oppose: Article 9^{ter}.3

Each Party shall provide that its competent authorities shall have the authority to require a right holder initiating procedures to suspend the release of suspected [AU propose: counterfeit trademark or pirated copyright] [AU oppose: infringing] goods, to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall

42 [JP/KR propose: For purposes of this article, (a) counterfeit trademark goods means any goods, including packaging, bearing without authorization a trademark that is identical to the trademark validly registered in respect of such goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question under the law of the country of importation; and

(b) pirated copyright goods means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and that are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

provide that the security or equivalent assurance shall not unreasonably deter recourse to these procedures.]

[JP/KR/AU propose; ASN oppose: Article 9^{ter}.4
Information ~~p~~rovided by ~~e~~Competent ~~a~~uthorities to ~~r~~ight ~~h~~olders

Without prejudice to a Party's laws pertaining to the privacy or confidentiality of information, [AU propose: where its competent authorities have detained or suspended the release of goods that are suspected of being counterfeit trademark goods or pirated copyright goods, a Party may provide that its competent authorities have the authority to inform the right holder of] [AU oppose: with respect to import 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, [AU propose: a description of goods, quantity of goods] and, if known, the country of origin of the goods [AU oppose: , and the name and address of the manufacturer of the goods, to assist in the determination of whether, at least, suspected counterfeit trademark or pirated copyright goods are infringing intellectual property rights.]

[JP/KR/AU propose; ASN oppose: Article 9^{ter}.5
Suspension of IPR ~~i~~nfringing ~~g~~oods by ~~e~~Ex-~~e~~fficio ~~a~~Action

Each Party ~~shall~~ adopt or maintain procedures with respect to import and export shipments under which its [AU oppose: customs] [AU propose: competent] authorities may act upon their own initiative to suspend the release of, [AU oppose: at least,] ~~]-~~suspected counterfeit trademark or pirated copyright goods [KR propose; ~~:AU oppose: in case where there is clear evidence that the importation and exportation of the suspected goods take place].]~~

[AU propose: FN: A Party may comply with the obligation in this Article with respect to a determination that suspect goods under Article 9^{ter} infringe an intellectual property right through a determination that the suspect goods bear a false trade description.]

[JP/KR propose; ASN oppose: Article 9^{ter}.6
Information ~~p~~rovided by ~~r~~ight ~~h~~olders to ~~e~~Competent ~~a~~uthorities

Each Party shall ensure that the right holder may provide within a reasonable period any information that may assist the competent authorities in the determination of

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

whether [AU oppose: , at least,] suspected counterfeit trademark or pirated copyright goods are infringing intellectual property rights.]

[JP/KR/AU propose; ASN oppose: Article 9^{ter}.7
Infringement ~~d~~Determination within ~~r~~Reasonable ~~p~~Period by ~~e~~Competent
~~a~~Authorities

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 Article 9^{ter} 1 and 9^{ter} 5~~, whether [AU oppose: , at least,] suspected counterfeit trademark or pirated copyright goods are infringing intellectual property rights.]

[JP/KR/AU propose; ASN oppose: Article 9^{ter}.8
Destruction ~~e~~Order by ~~e~~Competent ~~a~~Authorities

Each Party shall provide that its competent authorities have the authority to order the destruction of [AU propose: counterfeit trademark or pirated copyright] goods following a determination referred to in ~~paragraph Article 9^{ter} 7~~ that the goods are infringing [AU propose: intellectual property rights]. 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.] [KR propose: In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient [JP propose: , other than in exceptional cases,] to permit the release of the goods into the channels of commerce.]

[KR/JP/AU propose; ASN oppose: Article 9^{ter}.9

Where an application fee, merchandise storage fee or disposal expense is assessed in connection with border measures to enforce an intellectual property right, each Party shall provide that the fee shall not be set at an amount that unreasonably deters recourse to these measures.]

[JP/KR/AU Propose ; ASN oppose: SECTION 9^{quater}
~~BORDER MEASURES Enforcement – CRIMINAL REMEDIES Criminal Remedies~~]

[JP/KR/AU Propose ; ASN oppose: Article 9^{quater}.1]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

Scope of IP ~~r~~Rights for ~~e~~Criminal ~~p~~Procedures

[KR/JP propose: Each Party shall provide for criminal procedures and penalties to [KR propose: be applied; JP propose: apply] at least in cases of willful trademark counterfeiting or copyright [AU oppose: or related rights] ~~–~~piracy on a commercial scale.]

AU propose: Definitions

For the purpose of this Agreement; “pirated copyright goods” means any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

For the purpose this Agreement; “copyright piracy” means making copies of material embodying content protected by copyright and/or neighbouring rights), without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the party.

[JP/KR/AU propose; CN/ASN oppose: Article 9^{quater}.2

Treating ~~i~~Importation of ~~i~~nfringing ~~g~~Goods subject to ~~e~~Criminal ~~p~~Procedures and ~~p~~Penalties

Each Party shall treat wilful importation of, at least, counterfeit trademark or pirated copyright goods as unlawful activities subject to criminal procedures and penalties referred to in ~~paragraph Article 9^{quater}.1. 1.~~ A Party may comply with its obligation relating to importation under this ~~Article subparagraph~~ by providing for distribution, sale or offer for sale of such goods on a commercial scale as unlawful activities subject to criminal penalties.]

[JP propose; ASN oppose: Article 9^{quater}.3

Scope of IP ~~r~~Rights for ~~e~~Criminal ~~p~~Procedures

Each Party shall provide for criminal procedures and penalties to apply in cases of wilful importation [AU oppose:or production], and domestic use, in the course of trade and on a commercial scale, of labels or packaging:

- (a) to which a mark has been applied without authorization which is identical to, or cannot be distinguished from, a trademark registered in the Party; and

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

- (b) which are intended to be used in the course of trade in goods or supply of services, which are identical to goods or services for which such trademark is registered.]

[JP propose; CN/ASN/AU/KR oppose: Article 9^{quater}.4
Criminal liability for aAiding and aAbetting

With respect to the offences specified in this Article paragraph, each Party shall ensure that criminal liability for aiding and abetting is available under its law.]

[JP propose; CN ; ASN/AU/KR -oppose: Article 9^{quater}.5
Criminal liability of lLegal pPersons

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 Article paragraph. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the criminal offences.]

[JP/KR/AU propose ; ASN oppose: Article 9^{quater}.6]

[JP/KR propose: Forfeiture or eDestruction of [KR oppose: aAll infringing gGoods, mMaterials and implements uUsed in the eCreation of the infringing gGoods]

1. [KR oppose: With respect to the offences specified in subparagraphs Articles 9^{quater} 1(a) through 9^{quater} 5 (e),] each Party shall provide that its [KR propose: judicial] [KR oppose: competent] authorities have the authority [KR propose: , except in exceptional cases.] to order [AU propose: at least for serious offences] the forfeiture or destruction of [KR oppose: all [KR oppose: infringing goods] [KR propose: all counterfeit or pirated 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.]

[KR propose: 2. Each Party shall provide:

- (a) penalties that include sentences of imprisonment as well as monetary fines sufficient to provide a deterrent to future infringements, consistent with a policy of removing the infringer's monetary incentive;
- (b) that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements used in the commission of the offense, any documentary evidence relevant to the offense, and any assets traceable to the infringing activity;

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

- ~~(c) that its judicial authorities shall have the authority, except in exceptional cases, to order~~
- ~~(i) the forfeiture or destruction of all counterfeit or pirated goods, and any articles consisting of a counterfeit mark; and~~
- ~~(ii) the forfeiture or destruction of materials and implements that have been used in the creation of pirated or counterfeit goods.~~

3. ~~Each Party shall provide that forfeiture and destruction under this subparagraph shall occur without compensation of any kind to the defendant.]~~

~~[JP/KR/AU propose ; ASN oppose: SECTION 9^{quinquies}
ENFORCEMENT Enforcement — IN THE DIGITAL ENVIRONMENT In the Digital
Environment]~~

~~[JP/AU propose; ASN oppose: Article 9^{quinquies}.1
Effective aAction against iInfringement in the dDigital eEnvironment~~

~~1. Each Party shall endeavour to ensure that enforcement procedures, to the extent set forth in Articles XX.H.2 sections 9^{bis} (ENFORCEMENT Enforcement — CIVIL REMEDIES Civil Remedies) and XX.H.3 9^{quater} (ENFORCEMENT Enforcement — CRIMINAL REMEDIES 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.]~~

~~[AU propose: 2. 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.]~~

~~[JP propose; ASN/AU oppose: Article 9^{quinquies}.2
Enforcement pProcedures to iInfringement of eCopyright or rRelated rRights over
dDigital nNetworks~~

~~Further to paragraph Article 9^{quinquies} 1, each Party's enforcement procedures shall endeavor to 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,~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

consistent with that Party's law, preserves fundamental principles such as freedom of expression, fair process, and privacy.⁴³]

~~Note: For instance, without prejudice to a Party's law, adopting or 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.]~~

[KR propose; JP/ASN/AU oppose : Article 9^{quinquies}.3
Measures against Repetitive Copyright Infringers on the Internet

Each Party shall take effective measures to curtail repetitive infringement of copyright and related rights on the Internet or other digital network.]

[JP propose; ASN/AU/KR oppose: Alt. 1 Article 9^{quinquies}.4
Disclosure of information sSufficient to iIdentify a sSubscriber whose aAccount was
aAllegedly uUsed for iInfringement

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.]

[KR: propose; ASN/AU/JP oppose: Alt. 2 Article 9^{quinquies}.45
Request for Information on the Alleged Infringer

Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.]

43 [JP propose: For instance, without prejudice to a Party's law, adopting or 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.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

[KR propose; NZ/ASN/AU oppose: Article 9^{quinquies}.56
Criminal Procedures and Remedies]

~~[KR propose; NZ oppose~~: Each Party shall provide for criminal procedures to be applied against any person who, without authorization of the holder of copyright or related rights in a motion picture or other audiovisual work, knowingly uses or attempts to use an audiovisual recording device to transmit or make a copy of the motion picture or other audiovisual work, or any part thereof, from a performance of the motion picture or other audiovisual work in a public motion picture exhibition facility.]

[ASN/IN/NZ/AU/KR propose: SECTION 10
COOPERATION AND CONSULTATION

Article 10.1

~~[-AU/NZ oppose~~ : Provision of Assistance]

[AU/NZ propose : Cooperation : Dialogue and information exchange]

1. The Parties acknowledge the significant differences in capacity between some Parties in the area of intellectual property. Mindful of this, ~~[-AU/NZ propose : each Party shall, subject to the availability of resources, and on mutually agreed terms, upon request of any other Party engage in dialogue and information exchange on intellectual property issues.]~~ ~~[-AU/NZ oppose~~ : where a Party's implementation of this chapter is inhibited by capacity constraints, each other Party shall, as appropriate, and upon request, endeavour to provide cooperation to that Party to assist in the implementation of this chapter].
2. [AU/NZ oppose: At the request of a Party, any other Party may, to the extent possible and as appropriate, render assistance to the requesting Party in order to enhance the requesting Party's national framework for the acquisition, protection, enforcement, utilisation and creation of intellectual property, with a view to developing intellectual property systems that foster domestic innovation in the requesting Party].

[AU/NZ oppose : Article 10.2

[CN propose; AU/JP/KR oppose: 5. Each Party will consider requests for assistance from any Party in a public health crisis in accordance with this Article.]⁴⁴

Dialogue and Information Exchange

44. Negotiators' Note : To be discussed in the Section 10 : Cooperation and Consultation.

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

The Parties agree to promote dialogue and information exchange on intellectual property issues, and, at the request of any other Party, may:

- (a) exchange information relating to intellectual property policies and developments in implementation of national intellectual property systems in their respective administrations;
- (b) encourage interaction between intellectual property experts in order to broaden understanding of each Parties' intellectual property systems;
- (c) ~~[CN oppose: exchange information relating to international conventions on harmonisation, administration and enforcement of intellectual property rights [CN oppose: and on activities in international organisations, such as the World Trade Organisation and the World Intellectual Property Organisation]]~~; and
- (d) exchange information relating to licensing of intellectual property.]]

~~[-AU oppose : Article 10.3
Cooperation~~

~~AU/NZ propose : Article 10.2 Cooperation : Patent Examination, Border measures and IP Awareness]~~

[JP propose; IN/CN oppose: 1. ~~[AU/NZ oppose : Each Party, recognizing ;] [AU/NZ propose–: Recognizing]~~ the ~~[AU/NZ oppose: growing]~~ importance of protection of intellectual property in further promoting trade and investment among them, ~~[AU/NZ oppose: in accordance with its respective laws and regulations]~~ ~~[AU/NZ propose: each Party shall, subject to the availability of resources, and on mutually agreed terms, upon request of another Party.] [AU/NZ oppose: and subject to its available resources, shall endeavour to]~~ cooperate with other Parties in ~~[AU/NZ propose ; relation to Patent Examination, Border measures and IP awareness.] [AU/NZ oppose: the field of intellectual property. Such cooperation may include:~~

- (a) enhancing mutual utilization of search and examination results, so as to improve quality and efficiency in its patent examination;
- (b) cooperation for the development of information technology infrastructure and database of the administrative authorities for patents of the other Parties, so as to promote efficiency and transparency in its patent examination;
- (c) in conducting training programs for patent examiners and other officials so as to advance the capabilities of its patent offices;
- (d) exchanging views and information on patent examination practice among the Parties; and

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

(e) seeking improvement of patent examination practices.]]

2. ~~[AU oppose :~~ The Parties shall endeavour to cooperate in order to promote education and awareness regarding the benefits of effective protection and enforcement of intellectual property rights.]
3. The Parties shall cooperate on border measures [JP propose; ASN/IN oppose: such as exchanging information which is conducive to identification of suspects in importation, exportation or transit] with a view to eliminating trade which infringes intellectual property rights. Parties who are members of the WTO shall also cooperate with each other to support the effective implementation of the requirements relating to [JP propose; ASN/IN oppose: enforcement, including] border measures set out in Articles 51 to 60 of the TRIPS Agreement [JP propose; ASN/IN oppose: and this Chapter].

[AU/NZ propose; CN oppose: 3bis. ~~[AU propose : 2.]~~ The Parties shall endeavour to cooperate among their respective patent offices to facilitate the sharing and use of search and examination work of other Parties in order to improve quality and efficiency in the Parties' patent systems. This may include making search and examination results available to the patent offices of other Parties, and exchanges of information on quality assurance systems and quality standards relating to patent examination.]

~~[AU propose : 4. The Parties shall endeavour to cooperate in order to promote education and awareness regarding the benefits of effective protection and enforcement of intellectual property rights.]~~

~~[ASN propose; AU oppose: 4. All cooperation under this chapter is subject to the availability of resources and on terms and conditions mutually agreed upon between the Parties involved]].~~

~~[AU oppose : 5. ; AU propose : 1. All cooperation under this chapter shall be harmonised with an existing regional structure such as the ASEAN Working Group on Intellectual Property Cooperation (AWGIPC).]⁴⁵ ~~{IN needs to understand more on the AWGIPC}~~~~

[JP/ASN propose; AU oppose : 6. Upon a request of a Party regarding the matters of the cooperation, protection and enforcement of the intellectual property, another Party agrees to cooperate and consider ways of reaching mutually satisfactory solution in accordance with that other Party's domestic laws and this Chapter.]

7. Each Party shall designate the contact points for the effective implementation of this paragraph.]

45 ~~Negotiators' Note: IN needs to understand more on the AWGIPC.~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

[KR/AU propose; ASN oppose: [Article 10.4](#)
Committee on Intellectual Property Rights]

[KR propose; ASN/AU oppose: 1. The Parties hereby establish the Committee on Intellectual Property Rights (hereinafter referred to in this Article as "the Committee") as specified in the Annex X-C of Chapter X (Institutional Provisions).]

[AU propose : 1. For the purposes of the effective implementation and operation of this Chapter, the Parties agree to establish a Committee on Intellectual Property.]

2. [AU oppose : For the purposes of the effective implementation and operation of this Chapter,] [AU propose : the functions of the Committee shall include, but are not limited to:] the functions of the Committee shall include, but not limited to:

- (a) reviewing and monitoring the implementation and operation of this Chapter;
- (b) discussing ways to facilitate cooperation between the Parties;
- (c) exchange of information on laws, systems and other issues of mutual interest concerning intellectual property rights;

[AU oppose: (d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article [X.X]; and]

(e) [AU oppose: seeking to resolve] [AU propose : resolving] disputes that may arise regarding the interpretation or application of this Chapter.

[AU propose: (d) [AU oppose: reporting] [AU propose: report] its findings to the Joint Committee]

[AU oppose: 3. The Committee shall meet within one year after the date this Agreement enters into force and annually thereafter unless the Parties otherwise agree. The Committee shall inform the Joint Committee of the results of each meeting.]]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

~~[AU propose: 3. The Committee shall be composed of representatives of each Party.
4. The Committee shall meet at venues, times, and by means as agreed by the Parties]~~

Article 10.5

[CN propose; AU/JP/KR oppose: ~~5~~. Each Party will consider requests for assistance from any Party in a public health crisis in accordance with this Article.]⁴⁶

~~[ASN/IN/AU/NZ propose: Section [JP propose: SECTION 11~~

TRANSPARENCY

~~[ASN/IN/AU/NZ/JP propose: Alt. 1~~

1. Each Party shall ensure that its laws and regulations of general application that pertain to the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights are [KR/AU propose; IN oppose: in writing and are published or where publication is not practical,] made publicly available in at least the national language of that Party or in the English language. Each Party shall [KR oppose: also endeavour to] provide that final judicial decisions and administrative rulings pertaining to the aforesaid matters are made publicly available in at least the national language of that Party or in the English language.]

[AU/KR propose; CN oppose: Alt. 2_1. Each Party shall provide that final judicial decisions or administrative rulings for the enforcement of intellectual property rights that under the Party's law are of general applicability shall be in writing and shall state any relevant findings of fact and the reasoning, or the legal basis on which the decisions or rulings are based.] [KR propose: Each Party shall also provide that those decisions and rulings be published or, where publication is not practicable, otherwise made available to the public, in its national language in such a manner as to enable governments [NZ oppose: and right holders] [NZ propose: , rights holders, third parties and the public] to become acquainted with them.}]

~~[ASN/NZ propose:~~

46 Negotiators' Note : To be discussed in the Section 10 : Cooperation and Consultation.

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

2. Each Party shall endeavour to make available on the internet databases of all pending and registered trademark rights in its jurisdiction.]]

[JP propose: 34. Each Party shall take appropriate measures, to the extent possible under its laws and regulations, to publish or make available to the public information on applications and registrations of intellectual property rights, and where applicable, legal status information thereof, such as registration and expiration dates, and other relevant information on its intellectual property system, including standards or guidelines on examination of the applications for patents and the applications for registration of industrial designs and trademarks.]

[ASN/IN/NZ/CN propose: SECTION 12
[AU oppose : SPECIAL AND DIFFERENTIAL TREATMENT] [AU propose :
ADDITIONAL FLEXIBILITIES FOR LDC], TRANSITIONAL
PERIOD AND TRANSITIONAL ARRANGEMENTS

~~[JP propose : Article 12.1]~~

[JP oppose:

1. The Parties shall recognise [AU oppose: appropriate] [AU propose: the] forms of flexibility [AU oppose: as] agreed by the Council for TRIPS, including [AU oppose : provisions for special and differential treatment and] additional flexibilities accorded to least developed countries under Articles 65 and 66 of the TRIPS Agreement, and the provisions for patent protection of pharmaceutical and agricultural chemical products under paragraph 8 of Article 70 of the TRIPS Agreement, consistent with existing FTA obligations of the Parties, where applicable.]
2. Nothing in this chapter shall derogate from any transitional [JP oppose: period] [JP propose: measure] for implementing a provision of the TRIPS Agreement that has been or may be agreed [JP oppose: by the Council for TRIPS, established pursuant to Section IV of the WTO Agreement] [JP propose: under the WTO], either prior or subsequent to the entry into force of this Agreement.]

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

3. [JP propose : A Party shall not be obliged to apply the provisions of this Chapter, except Articles XX⁴⁷ as long as it ~~is~~ the Party is recognized as least-developed country ~~as~~ by the United Nations and not required to apply the provisions of the TRIPS Agreement].]

[JP propose: SECTION 13
~~Procedural Matters~~ PROCEDURAL MATTERS

Article 13.1

Improvement of ~~a~~AAdministrative ~~p~~Procedures ~~e~~Concerning IP]

[JP/KR/ASN/~~NZ/IN/CN~~ propose: Each Party recognises the importance of providing efficient administration of intellectual property system ~~[NZ oppose: [IN oppose: and in this regard each Party shall endeavor to improve its administrative procedures concerning intellectual property].]~~[NZ propose: where there is inefficiency.]

[JP propose; ASN/IN oppose: Article 13.2

Prohibition of ~~r~~Requiring the ~~a~~Authentication of ~~s~~Signature on ~~D~~Documents to the ~~C~~Competent ~~A~~Authority

A 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, in the course of application procedure or other administrative procedures on patents, industrial designs, or trademarks, only when the signature concerns the surrender of a patent or a registration of industrial designs or trademarks, or the office has a reasonable doubt as to the authenticity of the signature.]

~~[JP propose: Article 13.3~~

~~Registration sSystem for eExamination, aAppeal and JJudicial Actions~~

~~Each Party shall provide a system for the registration of at least patents, and trademarks which shall include:~~

- ~~(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 the application;~~

~~47 Tto be determined, at least including] National Treatment provisions and other provisions that the Party] can implement)~~

~~Confidentiality Notice: This document is confidential and is intended for use and circulation by RCEP Officials only and should not be disclosed to any other person. Information contained in this document may not be reproduced, in whole or in part, by any other person for any other purpose, without the consent of the relevant RCEP Officials.~~

- ~~(b) an opportunity for the applicant to appeal against an administrative refusal;~~
- ~~(c) an opportunity for the applicant to seek judicial review of the final administrative refusal; and~~
- ~~(d) an opportunity for interested parties:
 - ~~(i) to petition to oppose, if so provided in its laws and regulations, an application or a registration; and~~
 - ~~(ii) to seek [ASN/JP propose: revocation,] cancellation or invalidation of the registration.]~~~~

~~[JP/ASN/NZ/IN/KR/CN propose: Article 13.4
Introduction of international patent classification system~~

~~Each Party shall endeavour to use a patent classification system that is consistent with the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, as amended from time to time.]~~

~~[JP/ASN/NZ/IN/KR/CN propose; AU oppose: Article 13.5
Introduction of international industrial designs classification system~~

~~Each Party shall endeavour to use an industrial design classification system that is consistent with the Locarno Agreement Establishing an International Classification for Industrial Designs signed at Locarno on October 8, 1968, as amended from time to time.]~~