

**JAPAN – U.S. JOINT PROPOSAL**

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**JAPAN – U.S. JOINT PROPOSAL**

**Anti-Counterfeiting Trade Agreement**

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## CHAPTER ONE INITIAL PROVISIONS AND DEFINITIONS

### Section A: Initial Provisions

[To be completed]

### Section B: General Definitions

[To be completed]

## CHAPTER TWO LEGAL FRAMEWORK FOR ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

### Section 1: Civil Enforcement

[To be completed]

### Section 2: Border Measures<sup>1</sup>[<sup>2</sup>]

[\[Opening Article\]](#)

#### [ARTICLE 2.6: SCOPE OF THE BORDER MEASURES](#)

- [1. This section sets out the conditions for action by the competent authorities when goods are suspected of infringing intellectual property rights, within the meaning of this agreement, when they are imported, exported or in-transit.](#)
- [2. For the purposes of this section, 'goods infringing an intellectual property right ' means goods infringing any of the intellectual property rights covered by TRIPS<sup>3</sup>, with the](#)

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<sup>1</sup> Where a Party has dismantled substantially all controls over movement of goods across its border with another Party with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

<sup>2</sup> [*Option J*: Each Party shall implement the obligations in respect of importation and exportation set out in this Section so as to be applied to shipments of goods consigned to [a local party/a party in the territory] but destined for outside the territory of the Party.]

<sup>3</sup> [The provisions of this section shall also apply to confusingly similar trademark goods, which means any goods, including packaging, bearing without authorization a sign that is similar to the trademark validly registered in respect of such or similar goods where it exists a likelihood of confusion on the part of the public between the sign and the trademark.](#)

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exception of the protection of undisclosed information and layout- designs (topographies) of integrated circuits.

3. Where a traveller's personal baggage contains goods of a non-commercial nature within the limits of the duty-free allowance and there are no material indications to suggest the goods are part of commercial traffic, each Party may consider to leave such goods, or part of such goods outside the scope of this section.

### ARTICLE 2.76: APPLICATION BY RIGHT HOLDER

1. Each Party shall provide procedures ~~for import, export [Option US: , and in-transit<sup>4</sup>]~~ shipments by which right holders may request the competent authorities to suspend the release<sup>5</sup> of goods suspected of infringing an intellectual property right, suspected counterfeit trademark goods<sup>6</sup> or confusingly similar trademark goods, and suspected pirated copyright goods<sup>7</sup> into free circulation.

2. The competent authorities shall require a right holder requesting the procedures described in paragraph 1 to provide adequate evidence to satisfy themselves that, under the laws of that country<sup>8</sup>, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected infringing goods reasonably recognizable by the customs authorities. The requirement to provide sufficient information shall not unreasonably deter recourse to the procedures described in paragraph 1.

3. Each Party shall permit right holders to supply the competent authorities information to assist them in taking border measures provided for under this Section. Each Party may authorize the competent authorities to request right holders to supply any such information.

<sup>4</sup> For purposes of this Section, **in-transit goods** means goods under “Customs transit” and goods “transhipped,” as defined in the *International Convention on the Simplification and Harmonization of Customs Procedures* (Kyoto Convention).

<sup>5</sup> For purposes of this Section, where the competent authorities suspend the release of suspected counterfeit [Option J: or confusingly similar] trademark or pirated copyright goods, the authorities shall not permit the goods to be released into free circulation, exported, or subject to other customs procedures, except in exceptional circumstances.

<sup>6</sup> For purposes of this Section, **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 in which the procedures set out in this Section are invoked.

<sup>7</sup> For purposes of this Section, **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 in which the procedures set out in this Section are invoked.

<sup>8</sup> [Definition of “country”]

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~~4. The right-holder shall not be charged a fee to cover the administration costs occasioned by the processing of the application.~~

~~3. Each Party shall provide that the application to suspend the release of goods shall apply to all points of entry to and exit from its territory and remain applicable for a period of not less than one year from the date of application, or the period that the relevant article is protected by copyright or the relevant trademark registration is valid under the laws of the country taking border measures provided for under this Section, whichever is shorter.~~

~~45. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application. Where the competent authorities have accepted the application, they shall also inform the applicant of the period of validity of the application.~~

~~56. Each Party may also provide procedures for import, export [Option U.S.: , and in-transit] shipments by which right holders may request the competent authorities to suspend release of goods suspected of infringing other intellectual property rights.~~

### ARTICLE 2.78: EX-OFFICIO ACTION

~~1. Each Party shall provide that its customs authorities may act upon their own initiative, to suspend the release of goods suspected of infringing an intellectual property right. suspected counterfeit or confusingly similar trademark goods or suspected pirated copyright goods with respect to imported, exported [Option US: , or in-transit] goods including suspected counterfeit or confusingly similar trademark goods or suspected pirated copyright goods admitted to, withdrawn from, or located in free trade zones. [Option J: Each Party shall endeavor to provide its customs authorities the same authority as the foregoing provision of this Article in respect of in-transit goods that are suspected counterfeit or confusingly similar trademark goods or suspected pirated copyright goods.]~~

~~2. Each Party may also provide that its customs authorities may act, upon their own initiative, to suspend the release of goods suspected of infringing other intellectual property rights, not covered by this section.~~

### ARTICLE 2.8: PROVISION OF INFORMATION FROM RIGHT HOLDER

~~Each Party shall permit right holders to supply the competent authorities information to assist them in taking border measures provided for under this Section. Each Party may authorize the competent authorities to request right holders to supply any such information.~~

### ARTICLE 2.9: SECURITY OR EQUIVALENT ASSURANCE

Each Party shall provide that its competent authorities shall have the authority to require a right holder requesting procedures described under Article 2.76 to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Each Party shall provide that such security or equivalent assurance shall

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not unreasonably deter recourse to these procedures. Each Party may provide that such security may be in the form of a bond conditioned to hold the defendant harmless from any loss or damage resulting from any suspension of the release of the goods in the event the competent authorities determine that the good does not infringe intellectual property rights covered by this section.~~is not a counterfeit or confusingly similar trademark good or a pirated copyright good.~~ No Party may permit a defendant to post a bond or other security to obtain possession of suspected counterfeit or confusingly similar trademark goods or suspected pirated copyright goods.

### ARTICLE 2.10: DISCLOSURE OF INFORMATION

With a view to establishing whether an intellectual property right has been infringed under national law and in accordance with national provisions on the protection of personal data, commercial and industrial secrecy and professional and administrative confidentiality, the competent authorities have detained infringing goods, shall inform the right holder of the names and addresses of the consignor, importer, exporter, or consignee, and provide to the right holder a description of the goods, the quantity of the goods, and, if known, the country of origin and name and addresses of producers of the goods.

### ARTICLE 2.110: DETERMINATION AS TO INFRINGEMENT

Each Party shall provide a procedure by which competent authorities will determine, within a reasonable period of time after the initiation of the procedures described under Article 2.67 or 2.78, whether the suspected infringing goods infringe an intellectual property right.

### ARTICLE 2.12+: REMEDIES

1. Each Party shall authorize its competent authorities to impose penalties in connection with the importation and exportation of goods following a determination under Article 2.110 that the goods are infringing.<sup>9</sup>

2. Each Party shall provide that goods that have been forfeited as infringing following a determination under Article 2.110 shall be destroyed, except in exceptional circumstances.

3. No Party may authorize the competent authorities to permit forfeited infringing goods to be released into free circulation, exported, or subject to other customs procedures, except in exceptional circumstances. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, ~~{Option J.},~~ other than in exceptional cases, ~~to~~ permit the release of the goods into the channels of commerce. **|**

<sup>9</sup> Negotiator's Note: Subject to negotiation of general provision on deterrent penalties.

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### ARTICLE 2.13~~2~~: FEES

1. Each Party shall provide that any ~~application fee~~, merchandise storage fee, or destruction fee to be assessed in connection with procedures described in this Section shall not be allocated in a manner or set at an amount that unreasonably burdens right holders or unreasonably deters recourse to these procedures.

~~2. Each Party shall provide that if the competent authorities have made a determination under Article 2.10 that the suspected infringing goods infringe an intellectual property right, the right holder shall not be liable for payment of any storage or destruction fees described in paragraph 1.~~

### ARTICLE 2.13: ~~DISCLOSURE OF INFORMATION~~

~~Where the competent authorities have confiscated infringing goods, the competent authority shall inform the right holder within 30 days<sup>10</sup> of confiscation, or at an earlier time, of the names and addresses of the consignor, importer, exporter, or consignee, and provide to the right holder a description of the goods, the quantity of the goods, and, if known, the country of origin and name and addresses of producers of the goods.~~

### ARTICLE 2.14: LIABILITY OF THE COMPETENT AUTHORITIES

1. The acceptance of an application shall not entitle the right-holder to compensation in the event that goods infringing an intellectual property right are not detected by a customs office and are released or no action is taken to detain them.

2. The competent authorities shall not be liable towards the persons involved in the situations referred to in Article 2.6 for damages suffered by them as a result of the authority's intervention, except where provided for by the law of the Party in which the application is made or in which the loss or damage is incurred.

## Section 3: Criminal Enforcement

[To be completed]

## Section 4: Special Requirements Related to Information Technology and Internet Distribution

<sup>10</sup> For purposes of this Article, “days” shall mean “business days.”

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[To be completed]

**CHAPTER THREE  
INTERNATIONAL COOPERATION**

[To be completed]

**CHAPTER FOUR  
ENFORCEMENT PRACTICES**

[To be completed]

**CHAPTER FIVE  
INSTITUTIONAL ARRANGEMENTS**

[To be completed]

**CHAPTER SIX  
FINAL PROVISIONS**

[To be completed]

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