

**AGREEMENT BETWEEN JAPAN AND THE SOCIALIST REPUBLIC OF  
VIETNAM FOR AN ECONOMIC PARTNERSHIP**

(IP Chapter)

**Chapter 9**

**Intellectual Property**

**Article 80**

**General Provisions**

1. The Parties shall grant and ensure adequate, effective, and non-discriminatory protection of intellectual property, promote efficiency and transparency in the administration of intellectual property protection system, and provide for measures for adequate and effective enforcement of intellectual property rights against infringement, counterfeiting, and piracy, in accordance with the provisions of this Chapter and the international agreements to which both Parties are parties.

2. The Parties, recognizing the growing importance of protection of intellectual property in further promoting trade and investment between the Parties, in accordance with their respective laws and regulations and subject to their available resources, shall cooperate in the field of intellectual property.

3. Intellectual property referred to in this Chapter shall mean all categories of intellectual property:

(a) that are subject of Articles 86 through 92; and/or

(b) that are under the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C to the WTO Agreement (hereinafter referred to in this Chapter as “the TRIPS Agreement”) and/or the relevant international agreements referred to in the TRIPS Agreement.

4. The Parties reaffirm their commitment to comply with the obligations set out in the international agreements relating to intellectual property to which both Parties are parties.

**Article 81**

**National Treatment**

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

Note: For the purposes of Articles 81 and 82, “nationals” shall have the same meaning as in the TRIPS Agreement, and "protection" shall include matters affecting the availability, acquisition, scope, maintenance, and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Chapter.

## **Article 82**

### **Most-Favored-Nation Treatment**

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

## **Article 83**

### **Streamlining and Harmonization of Procedural Matters**

1. For the purposes of providing efficient administration of intellectual property protection system, each Party shall take appropriate measures to streamline its administrative procedures concerning intellectual property.
2. Neither Party may require the authentication of signatures or other means of self-identification on documents to be submitted to the competent authority of the Party, including applications, translations into a language accepted by such authority of any earlier application whose priority is claimed, powers of attorney, and certifications of assignment, in the course of application procedure or other administrative procedures on patents, utility models, industrial designs, or trademarks.
3. Notwithstanding paragraph 2, a Party may require:
  - (a) the authentication of signatures or other means of self-identification, if the law of the Party so provides, where the signatures or other means of self-identification concern the change in ownership of a patent or a registration of utility models, industrial designs, or trademarks; and
  - (b) the submission of evidence if there is a reasonable doubt as to the authenticity of the signature or other means of self-identification on documents submitted to

the competent authority of the Party. Where the competent authority notifies the person that the submission of evidence is required, the notification shall state the reason for doubting the authenticity of the signature or other means of self-identification.

4. Neither Party may require the certification, by any party other than the applicant or his or her representatives, of the accuracy of a translation of an earlier application whose priority is claimed.

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

6. The applications for and grants of patents and publications thereof shall be classified in accordance with the international patent classification system established under the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, as amended. The applications for registrations of, and registrations of, trademarks for goods and services and publication thereof shall be classified in accordance with the international classification system of goods and services established under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as revised and amended.

7. Each Party shall endeavor to improve patent attorney system with a view to further facilitating acquisition and utilization of rights to patents, utility models, industrial designs and trademarks.

## **Article 84**

### **Transparency**

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

(a) take appropriate measures to publish information at least on applications for and grants of patents, registrations of utility models and industrial designs, registrations of trademarks and application therefor, and registration of new varieties of plants and application therefor;

(b) endeavor to make available to the interested parties official information

contained in the dossiers in connection with matters provided for in paragraph (a);

(c) endeavor to make easily available to the public information on intellectual property protection system, including information on its efforts to provide effective enforcement of intellectual property rights.

## **Article 85**

### **Promotion of Public Awareness Concerning Protection of Intellectual Property**

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

## **Article 86**

### **Patents**

1. Each Party shall ensure that any application for a patent is not rejected solely on the ground that the subject matter claimed in the application is related to a computer program.

2. The provisions of paragraph 1 shall not prejudice the patentability of computer programs as such which shall be determined in accordance with the laws and regulations of each Party.

3. Each Party shall ensure that, if an invention claimed in the application for a patent is being worked by any person other than the applicant for the patent in that person's business after the publication of the application, that person or the applicant for the patent may file a request to the competent authority of the Party that the application be examined in advance of other applications, in accordance with its laws and regulations. In this case, the competent authority of the Party may require the applicant for the patent or the person who filed the request to furnish a proof that the invention is being worked, a result of prior art search in relation to the application, or a copy of the final decision by the administrative authority for patents of the other Party or of a non-Party on an application, which the applicant has filed in the other Party or in the non-Party, of an invention that is the same or substantially the same with the invention claimed in the application at issue. Where such a request has been filed, the competent authority of the Party shall take the request into consideration and endeavor to examine the application in advance of other applications, where appropriate.

4. Each Party shall ensure that a patent owner may file a request for correction

of the description, the scope of the claims, or the drawings, that are attached to the application, to the administrative authority for patents for the purpose of restricting the scope of the claims.

## **Article 87**

### **Industrial Designs**

Each Party shall ensure adequate and effective protection of industrial designs in accordance with Articles 25 and 26 of the TRIPS Agreement.

## **Article 88**

### **Trademarks**

Each Party shall ensure adequate and effective protection of trademarks in accordance with Articles 15 through 21 of the TRIPS Agreement.

## **Article 89**

### **Copyright and Related Rights**

1. Each Party shall ensure effective protection of copyright and related rights in accordance with its laws and regulations and international agreements to which it is a party.
2. Each Party shall ensure that its laws and regulations be implemented with appropriate legal remedies in order to protect copyright and related rights in the digital environment.
3. Each Party shall, in accordance with its laws and regulations, take appropriate measures to promote the development of the collective management organizations for copyright and related rights in that Party.

## **Article 90**

### **New Varieties of Plants**

Each Party recognizes the importance of providing a system of protection of new varieties of plants and shall endeavor to provide for the protection of all plant genera and species as early as practicable in accordance with the 1991 Act of the

International Convention for the Protection of New Varieties of Plants.

## **Article 91**

### **Geographical Indications**

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

## **Article 92**

### **Unfair Competition**

1. Each Party shall provide for effective protection against acts of unfair competition.

2. Any act of competition contrary to honest practices in industrial or commercial matters constitutes an act of unfair competition.

3. The following acts, in particular, shall be prohibited as acts of unfair competition:

(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 characteristics, the suitability for their purpose, or the quantity, of the goods or the services, or the manufacturing process of the goods;

(d) acts of acquiring or holding the right to use or using a domain name identical with or confusingly similar to a protected trade name and trademark of another person, for the purposes specified in the laws and regulations of each Party, such as with the intention to gain an unfair profit or the intention to cause damage to that other person.

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

5. Each Party shall establish appropriate remedies to prevent or punish acts of unfair competition. In particular, each Party shall ensure that any person that considers its business interests to be affected by an act of unfair competition may bring legal action and request suspension or prevention of the act, destruction of the goods which constitute the act, removal of materials and implements used for the act, or damages to compensate for the injury which result from the act, unless otherwise provided for in the laws and regulations of the Party.

### **Article 93**

#### **Enforcement – Border Measures**

Each Party shall ensure adequate and effective enforcement of border measures in accordance with Articles 51 through 60 of the TRIPS Agreement.

### **Article 94**

#### **Enforcement – Civil Remedies**

1. Each Party shall ensure that the right holder of intellectual property has the right to claim against the infringer damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

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

3. Each Party shall endeavor, as necessary, to take necessary measures to improve its judicial system with a view to providing effective civil remedies against infringement of intellectual property rights.

### **Article 95**

#### **Enforcement – Criminal Remedies**

Each Party shall ensure that criminal procedures and penalties be applied in accordance with Article 61 of the TRIPS Agreement.

### **Article 96**

## **Cooperation**

1. The Parties shall cooperate in the field of intellectual property in accordance with paragraph 2 of Article 80.
2. Areas and forms of cooperation under this Article shall be set forth in the Implementing Agreement.
3. Costs of cooperation under this Article shall be borne in as equitable a manner as possible.
4. Chapter 13 shall not apply to this Article.

## **Article 97**

### **Sub-Committee on Intellectual Property**

1. For the purposes of the effective implementation and operation of this Chapter, the Sub-Committee on Intellectual Property (hereinafter referred to in this Article as “the Sub-Committee”) shall be established pursuant to Article 11.
2. The functions of the Sub-Committee shall be:
  - (a) reviewing and monitoring the implementation and operation of this Chapter;
  - (b) discussing any issues related to intellectual property with a view to enhancing protection of intellectual property and enforcement of intellectual property rights and to promoting efficient and transparent administration of intellectual property protection system, such as:
    - (i) issues on patents;
    - (ii) issues on industrial designs;
    - (iii) issues on trademarks;
    - (iv) issues on liability of internet service providers;
    - (v) issues on unfair competition;
    - (vi) issues on border measures;
    - (vii) issues on geographical indications; and
    - (viii) issues on administrative remedies;
  - (c) reporting the findings and the outcome of discussions of the Sub-Committee to

the Joint Committee; and

(d) carrying out other functions as may be delegated by the Joint Committee in accordance with Article 11.

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

4. The Sub-Committee shall be:

(a) composed of representatives of the Governments of the Parties; and

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

### **Article 98**

#### **Security Exceptions**

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