

MOFA's Initiatives to Promote Protection of Intellectual Property Rights



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Part 1 Government's IP Policy

1-1 Intellectual Property Basic Act

1-2 IP Policy as a National Strategy

1-1 Intellectual Property Basic Act (December 2002)

“...for the objective of realizing a dynamic economy and society that is based on the creation of added values through the creation of new intellectual property and effective exploitation of such intellectual property...by stipulating the basic principles on the creation, protection and exploitation of intellectual property and the basic matters to achieve the principles...” (Article 1:Purpose)

(Chapter 2) Basic measures relating to the creation, protection and exploitation of IP

⋮

(Chapter 3) Formulation of strategic programs on the creation, protection and exploitation of IP (IP Strategic Programs)

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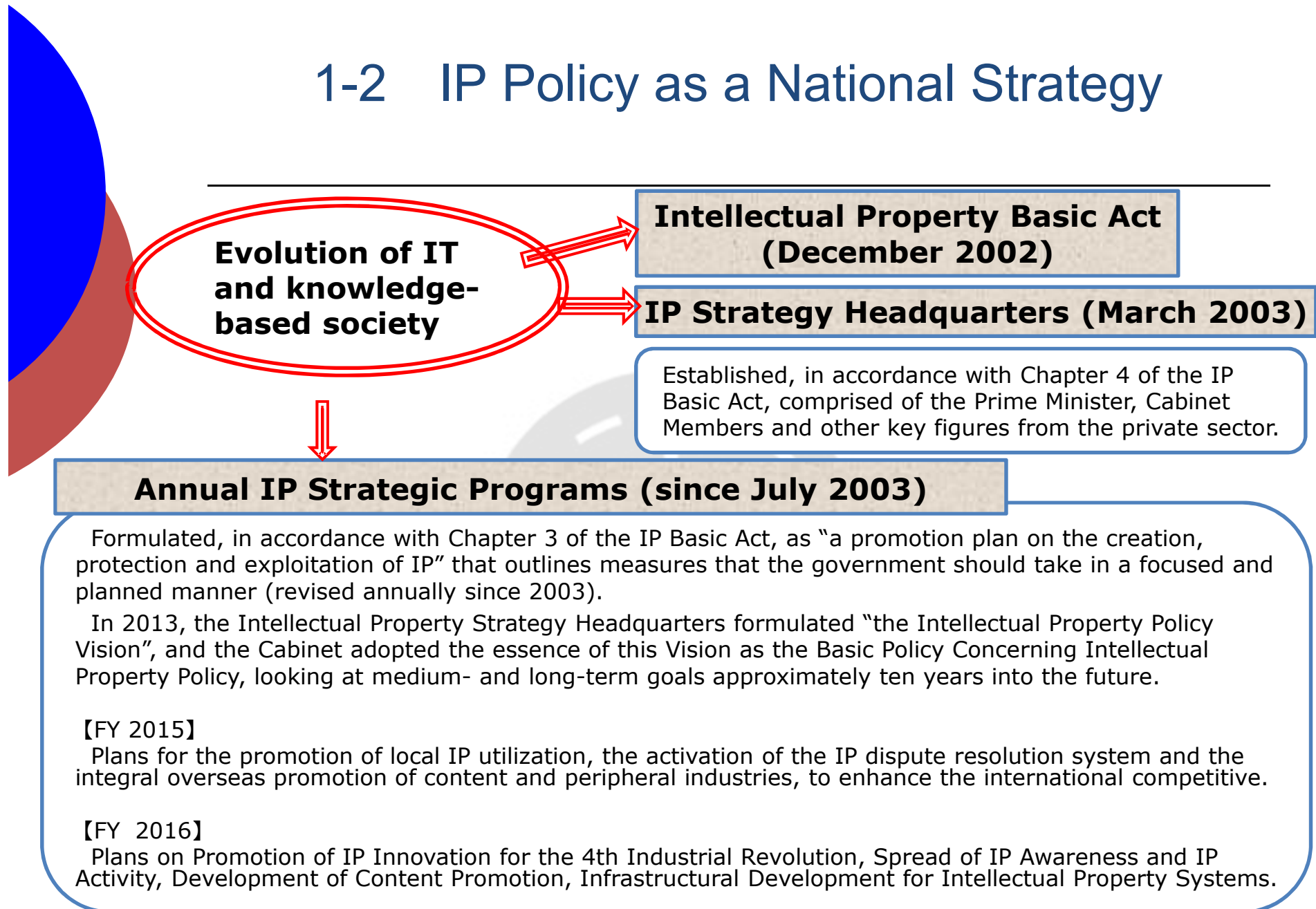
(Chapter 4) Establishment of an IP Strategy Headquarters to implement measures concerning the creation, protection and exploitation of IP in a planned and focused manner



MOFA's Roles and Initiatives on Promoting Protection of IP

- Strengthening our industries' global competitiveness and sustainable development (Article 4)
- Measures against infringements (Article 16)
- Construction of international regimes (Article 17) etc.

1-2 IP Policy as a National Strategy





Part 2 MOFA's Initiatives

2-1 Assisting Japanese Companies Overseas and Addressing Issues of Infringements in Overseas Markets

2-2 International Dialogues and Construction of International Regimes

2-2-1 International Organizations (WIPO,UPOV,WTO/TRIPs)

2-2-2 Initiatives in Multilateral Fora

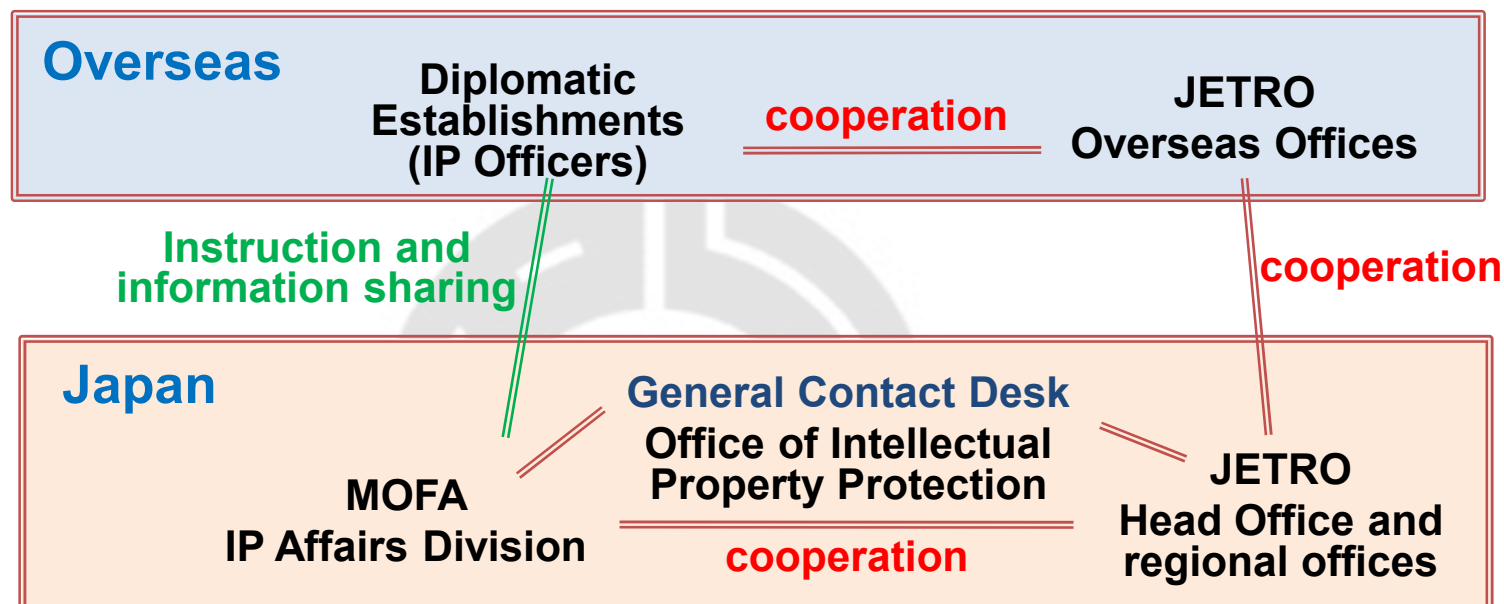
(ACTA, G7/8, APEC, OECD)

2-2-3 Bilateral Cooperations

2-2-4 Trade Agreements

2-1 Assisting Japanese Companies Overseas and Addressing Issues of Infringements in Overseas Markets

2-1-1 Scheme of Assistance



2-1-2 Intellectual Property Officers (IP Officers)

Nomination of IP Officers in all diplomatic establishments overseas (since March 2005)

- By specifying contact persons for IPR infringement matters, and with the head of each diplomatic establishment as the front of assistance, diplomatic establishments overseas support IP protection of Japanese companies.

2-2 International Dialogues and Construction of International Regimes

2-2-1 International Organizations : WIPO/UPOV

Participating International Dialogue on Constructing International IP Regime in International Organizations

World Intellectual Property Organization (WIPO)

A Specialized Agency of the United Nations on IPR (currently has 189 members) in charge of international rulemaking, harmonization of systems, filing and publishing international applications, cooperation on IPR with developing countries.

Main Treaties administrated by WIPO (accession year of Japan)

- Paris Convention (1899)
- Berne Convention (1899)
- Patent Cooperation Treaty (PCT) (1978)
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (2000)
- Patent Law Treaty (2016)
- Singapore Treaty on the Law of Trademarks (2016)
- WIPO Copyright Treaty (WCT) (2002)
- WIPO Performances and Phonograms Treaty (WCCT) (2002)

Treaties under negotiations

- ◆ Treaty on the protection of Broadcasting
- ◆ Design Law Treaty

International Union for the Protection of New Varieties of Plants (UPOV)

Focusing Mainly on technical discussions about the protection of plant varieties (currently 74 members)

2-2-1 International Organizations : WTO / TRIPS*

Participating International Dialogue on *TRIPS(Trade-Related Aspects of Intellectual Property Rights) Agreement (Annex 1C to WTO Agreement)

Outline

- TRIPS is a Multilateral Agreement that legally binds all the member states according to WTO rules. Each member states have to reflects its rule to their domestic laws.
- The Agreement obliges members to ensure sufficient and effective protection and enforcement measures of intellectual property rights in order to establishing and maintaining international order for free trade.

Key Points

- Reinforces the protection standard on IPR of Paris Convention and other existing treaties (Paris plus approach)
- Adopted principles of National Treatment and Most-Favored Nation Treatment
- Established provisions of enforcement of IPR
- Introduced the multinational dispute settlement procedure

D.D.A Issues

- Use of non-violation complaint under the TRIPS
- Transition period extension under TRIPS Article 66.1 for pharmaceuticals
- Establishing multilateral system of notification and registration of geographical indications for wines and spirits etc.



2-2-2 Initiatives in Multilateral Fora: ACTA

Anti-Counterfeiting Trade Agreement (ACTA)

Background

- Digital development opened the door to new type of IP infringement (e.g.: importing commercial labels and counterfeiting products separately and putting them together just before selling, circumvention of effective technological measures, etc.)
 - The proliferation of counterfeit and pirated goods (estimated value doubled from USD 100 billion in 2000 to USD 461 billion in 2013. [OECD])
- ⇒ Need for more effective framework of IPR enforcement

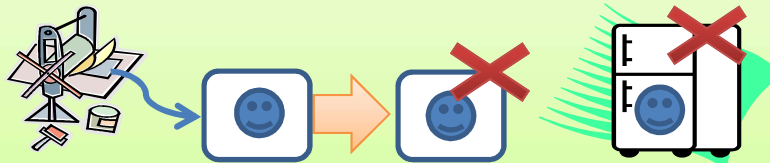
Process and Current Status

- Japan raised the necessity of a legal framework to combat counterfeiting and piracy at the G8 Gleneagles Summit in 2005.
 - 8 countries participated in the signing ceremony on October 2011, and EU and its 22 members succeeded on January 2012, followed by Mexico on July 2012.
 - On October 2012, Japan deposited instruments of accession and became the first Member State of ACTA.
- ⇒ Japan continues to work other signed parties or other Asian countries to join and advance ratification procedures. (ACTA will come into effect in 30 days after the deposit of instruments of accession of the 6th Member State.)

Key Points of ACTA: ACTA provides:

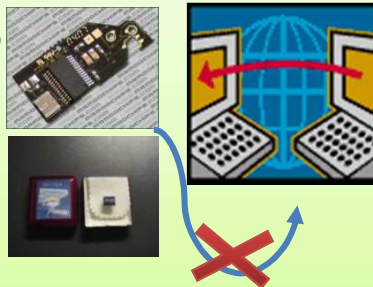
● Countermeasure for new type of infringement : regulation of counterfeited labels

→ Enables to regulate the reproduction, the importation, and the distribution of counterfeited labels and packaging.



● Countermeasure in digital environment : regulation of unlawful secondary use

→ Obligates a Party to provide to regulate the production, the importation, the distribution of software or services for the circumvention of effective technological measures.



● Reinforcement of border measures : regulation of exportation

→ Obligates a Party to provide procedures to suspend the release of suspect goods with respect to export shipments.

→ Obligates a Party to provide that customs authorities act upon their own initiatives to suspend the release of suspect goods with respect to import and export shipments.



● Reinforcement of civil enforcement

→ Includes the export shipments in the scope of judicial injunction by request of a right holder.

→ Obligates a Party to provide that judicial authorities have the authority to order that infringing goods, materials and implements to manufacture or create such goods be destroyed etc..

● Reinforcement of criminal enforcement

→ Provides to establish liability of legal persons.

→ Obligates a Party to ensure the liability for aiding and Abetting.



2-2-2 Initiatives in Multilateral Fora: G7/G8

Raising IPR issues in outcome documents of G7/G8

◇Gleneagles Summit (2005)

Statement on actions to reduce IPR piracy and counterfeiting.
Prime Minister Koizumi raised the necessity of “a legal framework”.

◇Saint Petersburg Summit (2006)

Joint Statement mentioned to continue discussion on “a legal framework” by experts.
Special statement on concrete measures to reduce trade in pirated and counterfeit goods.

◇Heiligendamm Summit (2007)

Statement on concrete measures to promote and protect innovations.
It mentioned to the further study on a “legal framework” by experts.

◇Hokkaido Toyako Summit (2008)

Leaders Declaration referring to an effective protection and promotion of IPR, and the promotion of an effective IP system.

◇L'Aquila Summit (2009)

Leaders stressed the importance of inclusive and ambitious international corporation to tackle counterfeiting and piracy, such as effort to agree ACTA as soon as possible.

◇Deauville Summit (2011)

Leaders declaration referring to an the Internet-related IPR emphasizing the need for an enhancement of law and system in order for more effective enforcement.

◇Camp David (2012)

Leaders took note of the grave threat that counterfeit and falsified medical products pose to public health.



There are no specified statement on IPR afterwards, but subsequent Declarations repeatedly refer to the importance of IPR protection for promoting innovation.



2-2-2 Initiatives in Multilateral Fora : APEC/OECD

Cooperating on projects for IPR protection

APEC

◇APEC Anti-Counterfeiting and Piracy Initiative (2005)

Proposed by US, Korea and Japan and agreed at the Meeting of APEC MRT (Ministers Responsible for Trade)

◇APEC Model Guidelines (2005,2006,2007)

APEC Anti-Counterfeiting and Piracy Initiative requested to draft Model Guidelines.

6 Model Guidelines had been accepted by 2007.

◇International Seminar on “Plant Variety Protection System”(2008)

Economies shared information and views about the Plant Variety Protection (PVP) system under UPOV Convention.

◇APEC iPAC Initiative (2010)

Web-based platform for information exchange on training, educational and research programs organized by IP academies

◇More Coherence under the APEC Cooperation Initiative on Patent Acquisition Procedures (2010)

Setting up “one-stop” website allowing patent system users to download request/petition forms to be used when they request an IP Office to conduct examination by referring to the results of search/examination already carried out by other IP Offices (PPH :Patent Prosecution Highway etc.).

◇Seminar on the Exploitation of Intellectual Property (2010)

A seminar led by Japan focusing on exploitation of IP rights, including buying and selling of a license and right, enforcement and technology transfer, etc.

OECD

◇The Economic Impact of Counterfeiting and Piracy

Estimates that international trade in counterfeit and pirated goods could amount to up to USD 250 billion in 2007.

In 2009 published the research report of “Piracy of Digital Content”, and also in 2016 reported that the trade in counterfeit and pirated goods amounted from 1.9 % of world trade in 2008 to 2.5% in 2013.



2-2-3 Bilateral Cooperations (with US/EU)

United States

◇ **United States-Japan Economic Harmonization Initiative (EHI)**

The EHI is a framework of dialogue launched in “Fact sheet on new Japan-US initiative”, fruit of the Japan-US summit meeting at Yokohama in November 2010, which dealt with following observations regarding IPR bilateral cooperation.

- Japan and US have worked closely and continuously in the field of IPR protection and enforcement in various bilateral and multilateral fora.
- Both countries have worked together in APEC to promote Patent Prosecution Highway (PPH).

European Union

◇ **Japan –EU Dialogue on IPR**

Based on the agreement of Japan-EU Summit Meeting in 2003, the meeting is held annually in Tokyo and Brussels one after the other. The opinions were exchanged in the fields of patent, copyright, trademark, measures against counterfeiting and piracy, geographical indication, and customs cooperation. The 9th meeting was held in Tokyo in April 2012.

◇ **Japan-EU Action Plan on IPR Protection and Enforcement**

Launched by the 16th Japan-EU Summit in 2007, as the expanded version of the cooperative framework “Japan-EU Joint Initiative for the Enforcement of IPR in Asia” agreed in 2004 for the promotion of innovation and reinforcement of protection of rights and interests for consumers and Business players. Both sides, as developed and knowledge intensive industries, shared a high interests on IPR issues.



2-2-3 Bilateral Cooperations (with China/Republic of Korea)

China

◇Japan- China High-Level Economic Dialogue

- When Premier Wen Jiabao of China made an official visit to Japan, Japan-China High-Level Economic Dialogue was founded as a framework of cross fields dialogue at minister level. The first meeting was held in December 2007.
- In June 2009, the second meeting was held. With regard to IP issues, both parties appreciated the Memorandum agreed between METI and Ministry of Commerce and the decision to continue exchanging IP mission. IPR protection issues were also raised at the third meeting in August 2010.

◇Japan-China Economic Partnership Consultation

- Launched in February 2002 as a result of Japan-China Summit Meeting, and the first meeting was held in October 2002.
- Japan requests to reinforce IPR enforcement, as one of the important topic of the Consultation agenda.
- In the 10th Meeting in December 2015, the main discussion topic was concerning the cooperation between Customs of both countries to improve Customs controls.

Republic of Korea

◇Japan-ROK High-Level Economic Consultation

- Launched in accordance with the "Japan-Republic of Korea Joint Declaration - A New Japan-Republic of Korea Partnership towards the Twenty-first Century" and its annex "the Action Program", which were announced in October 1998.
- In the 13th Consultation in January 2015, IPR issues were discussed in the working level session.



2-2-4 Trade Agreements

Improving the IPR protection system through Negotiations

Tries to achieve the IPR protection superior to the provisions of TRIPS or other related existing treaties/agreements through the negotiation of bilateral/multilateral Free Trade Agreements(FTAs) or Economic Partnership Agreements(EPAs). Works on ensuring the effective IPR protection and enforcement, taking into account the views and needs of Japanese Industries. As a result, many FTAs/EPAs negotiated by Japan have the IPR Chapter or provisions.

Agreements in force

Singapore(2002), Mexico(2005), Malaysia(2006), Chile(2007), Thailand(2007), Indonesia(2008), Brunei Darussalam(2008), ASEAN(2008), Philippines(2008), Switzerland(2009), Vietnam(2009), India(2011), Peru(2012), Australia(2015), Mongolia(2016)

Agreements signed

Trans-Pacific Partnership (TPP) Agreement(2016)

Agreements in process of negotiation

Japan-EU Economic Partnership Agreement, Regional Comprehensive Economic Partnership(RCEP), Japan-China-ROK Free Trade Agreement, Japan-Turkey Economic Partnership Agreement, etc.

Following-up

- ✓ Assures the implementation of Agreements by other Parties.
- ✓ Tries to solve emerging problem in the same framework taking into account the needs of Japanese Industries.