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Intellectual Property

The Trans-Pacific Partnership (TPP) levels the playing field for American workers and American businesses, leading to more Made-in-America exports and more higher-paying American jobs here at home. By cutting over 18,000 taxes different countries put on Made-in-America products, TPP makes sure our farmers, ranchers, manufacturers, service suppliers, and small businesses can compete—and win—in some of the fastest growing markets in the world. With more than 95 percent of the world’s consumers living outside our borders, TPP will significantly expand the export of Made-in-America goods and services and support American jobs.

EXECUTIVE SUMMARY

TPP’s Intellectual Property (IP) chapter will help Americans take full advantage of our country’s innovative strengths and help to promote trade and innovation, as well as to advance scientific, technological and creative exchange throughout the region. The chapter combines strong and balanced

protections with effective enforcement of those protections, consistent with existing U.S. law. This will promote high standards of protection, safeguard U.S. exports and consumers against IP infringement, and provide fair access to legal systems in the region to enforce those rights. Drawing from and building on other bilateral and regional trade agreements, it includes commitments to combat counterfeiting, piracy and other infringement, including trade secret theft; obligations to facilitate legitimate digital trade, including in creative content; and provisions to promote development of, and access to, innovative and generic medicines.

CHAPTER OVERVIEW

Common Understanding Relating to IP Systems

The Intellectual Property chapter creates a set of shared understandings regarding IP systems, including that the protection and enforcement of IP rights should contribute to innovation and the dissemination of technology, to the mutual advantage of diverse stakeholders and in a manner conducive to social and economic welfare.

Patents

- **Effective and Clear Patent Standards**

The Intellectual Property chapter defines a robust standard for patentability, consistent with international norms drawn from the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as well as other international best practices, including relevant exclusions. TPP Parties also agree to adopt the best practice of allowing a grace period in which certain public disclosures of the invention (e.g., in papers published by university researchers or small inventors) will not be used to deny a patent application.

- **Cooperation and Transparency**

Cooperation and transparency provisions on patenting in the IP chapter help facilitate the processing of patent applications in multiple jurisdictions, with a minimum of red tape. These features should particularly benefit small- and medium-sized enterprises.

- **Promoting the Development and Availability of Innovative and Generic Medicines**

The Intellectual Property chapter also includes commitments to promote not only the development of innovative, life-saving drugs and treatments, but also robust generic medicine markets. Drawing on the principles underlying the “May 10, 2007” Congressional-Executive Agreement, included in agreements with Peru, Colombia, Panama, and Korea, the chapter includes transitions for certain pharmaceutical IP provisions, taking into account a Party’s level of development and capacity as well as its existing laws and international obligations.

- **Enabling Public Health Protections**

The chapter incorporates the Doha Declaration on the TRIPS Agreement and Public Health, and confirms that Parties are not prevented from taking measures to protect public health, including to respond to epidemics such as HIV/AIDS.

Protection for Regulatory Test Data

- **Promoting Investments in the Development and Testing of Safe and Effective Medicines and Agrochemical Products**

The Intellectual Property chapter includes commitments related to protection of undisclosed test and other data generated to obtain marketing approval of pharmaceuticals and agricultural chemicals.

Trademarks and Geographical Indications

- **Clear and Predictable Trademark Disciplines**

The Intellectual Property chapter includes commitments clarifying and strengthening protection of the brand names and other signs or symbols businesses use to distinguish their goods and services in the marketplace.

- **Keeping Generic Terms Available For U.S. Producers**

The chapter helps address the potential for inappropriately “overprotecting” geographical indications in ways that shut out U.S. agricultural and food producers, including by providing opportunities for due process and requiring guidelines on how TPP partners should determine whether a term is generic in its market, as well as safeguards for owners of pre-existing trademarks.

- **Fair, Efficient and Accessible Procedures**

The TPP Parties agree to efficient and transparent procedures governing trademark applications, including through electronic trademark registration mechanisms, reduction of red tape, ensuring respect for certification and collective trademarks, and promotion of regional harmonization of trademark systems.

Copyright

- **Strong and Balanced Copyright and Related Rights**

The Intellectual Property chapter's copyright provisions establish commitments drawn from international norms to respect the rights of creators and establish clear protection of works such as songs, movies, books, and software programs. They also include strong and balanced provisions on technological protection measures and rights management information, and advance transparency in systems for copyright royalty collection. As a complement to these commitments, the chapter also includes an obligation to promote balance in copyright systems through exceptions and limitations to copyright for legitimate purposes, such as criticism, comment, news reporting, teaching, scholarship, and research. .

- **Internet Service Provider Safe Harbors**

The Intellectual Property chapter requires Parties to establish copyright safe harbors for Internet Service Providers (ISPs). In the United States, safe harbors allow legitimate ISPs to develop their business, while also helping to address Internet copyright infringement in an effective manner. Safe harbors have contributed to the flourishing of the most vibrant Internet, entertainment and e-commerce industries in the world. TPP does not include any obligations on these ISPs to monitor content on their networks or systems. TPP also provides for safeguards against abuse of such safe harbor regimes.

Trade Secrets

- The Intellectual Property chapter requires TPP Parties to provide for the legal means to prevent misappropriation of trade secrets, including misappropriation conducted by State-owned enterprises. It also requires TPP Parties to establish criminal procedures and penalties for trade

secret theft, including by means of cyber-theft.

IP Enforcement

- **Effective IP Enforcement Systems**

The IP chapter's commitments on enforcement ensure the availability of mechanisms to enforce intellectual property rights, including civil and administrative procedures and remedies, provisional measures, border measures, and criminal enforcement. For example, these measures include disciplines on camcording in movie theaters and theft of encrypted program-carrying satellite and cable signals.

- **Counterfeit Goods in Cross-Border Supply Chains**

The chapter includes robust commitments to tackle the challenges of trafficking in counterfeit trademark goods and pirated copyright goods within supply chains in the Asia-Pacific region. These provisions aim to close loopholes used by counterfeiters and to enhance penalties against trafficking in counterfeit trademark products that threaten health and safety.

- **Effective Border Protection**

The chapter ensures that border officials may act on their own initiative to identify and seize imported and exported counterfeit trademark and pirated copyright goods.

NEW FEATURES

Criminal Penalties for Trade Secret Theft

TPP is the first Free Trade Agreement (FTA) to require criminal penalties for trade secret theft, including by means of a computer system. This is a significant step forward for TPP Parties, and an important precedent in a region in which U.S. companies are facing significant challenges involving trade secret theft.

Clarifications Regarding State-Owned Enterprises

TPP is the first trade agreement to make clear that Parties cannot exclude State-owned enterprises from IP enforcement rules, including trade secret enforcement procedures, subject to certain TRIPS Agreement disciplines.

Tackling the Challenges of Asia-Pacific Counterfeit and Pirated Goods Supply Chains

TPP builds on previous U.S. FTAs that establish criminal penalties against trademark counterfeiting and copyright piracy consistent with U.S. law, breaking new ground by including new provisions aimed at addressing concerns about cross-border supply chains of counterfeit and pirated goods, including those activities that threaten consumer health and safety.

Enforcement in the Digital Environment

TPP is the first FTA to clarify that IPR enforcement should be available against infringement in the digital environment and not just against physical products. Some countries in the WTO have asserted that existing IP enforcement commitments do not apply online or to digital products.

Promoting New Online Business Models for Delivering Content

TPP takes additional steps toward promoting legitimate digital trade, including the delivery of movies, music, software, and books online. In particular, the ISP copyright safe harbor section helps to provide certainty and predictability about the scope of the safe harbors, as in prior FTAs, while also reflecting the diversity of approaches in the TPP countries, and ensuring that existing effective systems, such as ones upon which rights holders, ISPs, and consumers have come to rely in the course of digital trade, can stay in place. TPP also recognizes the important role of collective management societies for copyright and related rights in collecting and distributing royalties through fair, efficient, transparent, and accountable practices, which promote a rich and accessible digital marketplace for content.

Copyright Exceptions and Limitations

As a complement to the TPP provisions aimed at providing effective protection and enforcement of copyright in the digital age and those aimed at ensuring respect for the rights of creators, the TPP requires that Parties continuously seek to achieve an appropriate balance in their copyright systems through providing copyright exceptions and limitations for purposes such as criticism, comment, news reporting, teaching, scholarship, and research.

Preventing Domain Name Cyber-Squatting

In an effort to reduce domain name cybersquatting, the TPP ensures that, in connection with a Party's country-code top-level domain name registration system, appropriate remedies are available in cases of bad faith registration of domain names that are confusingly similar to registered trademarks.

Biologics and Pharmaceutical IP

The TPP includes additional specific rules related to biologic medicines, reflecting the growing importance of these cutting-edge technologies. These commitments are intended to promote innovation and promote access to affordable medicines in developing countries. TPP gives partner countries two ways to meet a strong standard for effective market protection. One way is to provide a minimum standard of 8 years of data protection; the other way is to deliver a comparable outcome through a combination of at least 5 years of data protection measures and a country's other measures (e.g. regulatory procedures or administrative actions). Both paths will result in the first extended term of market protection for biologics medicines in a trade agreement, both paths create further incentive for innovators to develop lifesaving medicines, and both paths will meet the balance we have been seeking between innovation and access in TPP. TPP also specifies the types of biologic products subject to the enhanced protection, and ensures that the Parties can review the provisions to keep pace with technological changes and other developments and recommend modifications, if appropriate. None of these provisions will change any U.S. healthcare program or the data protection that's in existing U.S. law.

Geographical Indications (GIs)

The TPP will enhance due process and other disciplines on the use of GIs to address growing concerns of U.S. exporters, whose access to foreign markets can be undermined through overly expansive GI protections advocated by certain countries whose agricultural producers compete with U.S. exporters.

Cooperation Activities

Building on cooperative work in other fora, the TPP Parties agree to endeavor to cooperate, including on IP issues relevant to small- and medium-sized

enterprises, technical assistance for developing countries, and exchanging information on patent office search and examination results.

IMPACT

The United States, as an intellectual property-driven economy, is a center and global model for the development of 21st-century innovation, including in the Internet, medical, pharmaceutical technology, entertainment, agricultural, apparel, aerospace, and other rapidly advancing industries. American businesses, universities, and government labs conduct over \$450 billion per year in research and development—30 percent of the global R&D spending measured by the OECD. The United States is the world's leader in fiber-optics, satellite technology, and aviation. It has developed thriving arts and entertainment, Internet, and digital industries. It is a center for the development of new medicines and biotechnology resulting in groundbreaking treatments and cures.

These industries thrive and rely on a sophisticated IP system, which creates incentives for investment in research and innovation not only through strong and balanced copyright, trademark, trade secret, and patent laws, but also through effective enforcement of IP rights. The data are striking—nearly 40 million American jobs were estimated to be directly or indirectly attributable to “IP-intensive” industries in 2012. American artists, inventors, and other innovators received \$128 billion in IP royalties, license fees, and payments for audiovisual services in 2013—39 percent of the world total. In 2014, the United States had an \$88.2 billion surplus in services trade with respect to IP-related licensing, which is, in turn, the driving force behind the U.S. trade surplus in services.

The Asia-Pacific region presents unique opportunities for U.S. innovators and creators. By 2030, estimates suggest, the region will be home to a middle class of 3.2 billion people. As such it will be the world's fastest-growing market for a wide variety of innovative and creative products—from film, medicines, and new digital products for consumers, to civil aircraft and satellites for governments and businesses. America's ability to serve this demand will help to underwrite a generation of growth in the United States, provide the revenue that will keep the United States at the leading edge of innovation and creativity in the future, and promote improvements in daily life, health, and safety throughout the region. Many of the TPP participants are already major markets for U.S. IP-intensive goods and services, and their companies are partners for U.S. creators and innovators. TPP offers a critical opportunity to deepen these relationships and

create new ones.

The Asia-Pacific also presents critical challenges from an IP policy perspective. Regional piracy rates remain high, and cyber theft of trade secrets is rapidly growing. The region is also a thriving environment for the counterfeit industry. The trafficking in counterfeit goods drains revenues from innovative firms and threatens public health and safety through the proliferation of potentially adulterated medicines, unsafe auto parts, and other products. As home not only to a large and growing middle class, but also to over one billion people earning \$5 per day or less, the Asia-Pacific region is one in which promoting both the development of, and affordable access to, innovative and generic medicines requires effective and creative policies.

TPP's IP chapter helps address these and related challenges, including through:

- Improving strong and balanced protection of rights and enforcement of laws;
- Bolstering incentives for the development of, and trade related to, IP-intensive products;
- Addressing common threats, including piracy, counterfeiting, and other related infringements, as well as misappropriation (including cyber theft) of trade secrets;
- Promoting transparent, efficient, and fair regulatory systems, including for patent and trademark application and registration;
- Promoting development of and access to innovative and generic medicines;
- Facilitating legitimate digital trade, including in creative content; and
- Preventing the spread of overly-restrictive geographical indication policies, including by safeguarding the rights of prior trademark owners and rules clarifying the use of generic terms.

