



Intellectual Property Rights in the Transatlantic Trade & Investment Partnership

Intellectual property is essential to economic growth, innovation and competitiveness for the U.S. and the EU. Both economies are reliant on its many IP-based industries. U.S. IP-intensive industries support over 40 million jobs and contribute more than \$5 trillion - or 34.8% - of the U.S GDP¹, while European IP-intensive industries directly account for 56 million jobs (or 26% of EU employment)².

With between one quarter and one third of the jobs in the transatlantic economy depending on a well-functioning approach to IP, the Transatlantic Trade & Investment Partnership (TTIP) should promote laws and policies to ensure that our IP systems properly incentivize innovation and to encourage together a similar approach throughout the global economy.

The U.S. and EU economies share a long-standing recognition that well-functioning IP systems spur innovation, create higher-paying jobs, and increase technology-driven exports. TTIP should reflect this shared understanding of, and dependence on, intellectual property and our mutual interest in fostering strong, balanced IP standards globally.

Therefore, the Trans-Atlantic Business Council (TABC) calls for:

- **A solid IPR chapter:** TABC supports the inclusion of a chapter on IPR in the TTIP to reflect shared commitment to robust and well-functioning protection of all forms of IPRs. The TTIP is a unique opportunity to demonstrate global leadership on IPR by reiterating the importance of high intellectual property standards globally and encouraging proper protection and enforcement of valid IPR in third countries.
- **Patents:** Abusive patent litigation, resulting from high litigation costs, speculative damages awards and unreasonable litigation behavior, is a concern in the U.S system. The TABC recognizes recent procedural changes to the US patent litigation system resulting from the recommendations of the Judicial Conference and related judicial decisions, which are intended to deal with some of our concerns. Nonetheless, TABC urges continued efforts to address our concerns in a balanced manner ensuring that valid patent rights receive appropriate protection while deterring such abusive litigation behavior. Other concerns could also be addressed: for example, there should be no requirement to file first locally except in case of inventions relevant to state security, and declarations signed by inventors should only be requested in case the patent office has reason to doubt the applicant's statements. Both parties should continue to engage in worldwide patent harmonization.

¹ Intellectual property rights intensive industries: contribution to economic performance and employment in the European Union, joint project by the European Patent Office and the Office for Harmonization in the Internal Market, September 2013

² Intellectual Property Right and the US Economy – Industries in Focus, prepared by Economics Statistics Administration and U.S. Patent and Trademark Office, March 2012

- **Trademarks:** Provisions in an IPR chapter in TTIP should aim at maintaining a strong, balanced and proportionate trademark system as an incentive to innovation, creativity and investment. Trademarks are key to indicate the source and origin of goods, to guide consumers' choice and to enable competition and innovation for companies. Provisions of the IPR chapter should recall US and EU's international trademark obligations under TRIPS, Paris Convention etc.
- **Trade secrets:** Trade secrets are critical to the competitiveness of many companies as they contribute to protecting their investments that, and in many instances, represent their most valuable assets. Improved cooperation on trade secrets legislation would be a useful element for the IP talks in TTIP. With legislative reviews ongoing on both sides of the Atlantic, TTIP offers an opportunity to develop an aligned approach for the legal pursuit of misappropriation of trade secrets, which could be promoted in the global context, bearing in mind the need to strike the right balance between trade secret owners' ability to seek robust protection while protecting competitors from unmeritorious claims. Harmonization between the parties on trade secrets is desirable.

In this regard, TABC strongly recommends EU & US negotiators to address the following elements in relation to trade secrets:

- Definition of key terms as "trade secrets", "misappropriation" etc., according to TRIPS definition;
 - Action possible before civil courts and possibility to get damages;
 - Preservation of evidence and protection of confidential information during proceedings;
 - Reasonable secondary liability involving a knowledge requirement for third parties.
- **Global leadership to combat IPR erosion:** Some third countries and emerging markets are undermining the protection and enforcement of IPRs by encouraging protectionist or nationalistic practices adopting legislation in areas such as:
 - Indigenous innovation policies such as procurement policies that discriminate against "foreign" IP or impose local content requirements; forced technology transfer, preferences for products that implement domestic standards;
 - State-sponsored IP theft;
 - Calls for greater "IP flexibilities" in multilateral platforms such as the UNFCCC, WIPO, WTO, WHO portraying IP as a barrier to economical and societal development.

TTIP is a unique opportunity to demonstrate global leadership to promote robust IP standards globally. The IPR chapter should include specific provisions on transatlantic collaboration to foster robust IPR protection in third countries to prevent unbalanced use of IP systems to serve only local, short-term economic interests. Collaboration between the US and the EU could build on existing initiatives that have proved to be successful, such as the Transatlantic Economic Council's (TEC) Transatlantic IPR Working Group.