



**The Transatlantic Trade and
Investment Partnership (TTIP)**
Towards an EU-US trade deal

Intellectual property
EU position paper

20 March 2015

Introduction

Intellectual property rights (IPR) are one of the principal means through which companies, creators and inventors generate returns on their investments in knowledge, innovation and creativity. As a result, trade between the EU and the US in IPR-intensive goods and services is already high, and the **Transatlantic Trade and Investment Partnership (TTIP) can support and increase this by delivering a number of specific improvements.**

A recent study has estimated that IPR-intensive sectors account for around **39% of EU GDP (worth some EUR 4.7 trillion annually)** and, taking indirect jobs into account, up to 35% of all jobs.

In practical terms, through the granting of temporary exclusive rights, IP is directly linked to the production and distribution of new and authentic goods and services, from which all citizens benefit. The key to maintaining this is an optimal and economically efficient IP "infrastructure" which spans the legal recognition, registration, use and balanced enforcement of all forms of IPRs.

The EU has over many years developed a **modern, integrated IPR infrastructure** that makes a major contribution to economic growth and job creation, while at the same time ensuring that a proper balance is struck between the interests of rights-holders and users.

The US also has a highly sophisticated IPR infrastructure. Together we base our policies on broadly similar principles, and the transatlantic IP landscape is relatively predictable for traders.

Outline

Nonetheless, the EU would like to address a **limited number of specific IPR issues in TTIP** that in our view currently limit the growth potential of transatlantic trade in IPR-intensive goods and services. We propose a chapter that would not cover all the classic IP subjects, but

would instead focus on cooperation and a few core issues, while at the same time stressing the central role of IP in the transatlantic economy as a tool for innovation, growth and jobs.

A possible architecture for the TTIP IPR chapter could include four sections:

1. *List of international IP agreements to which both sides are committed;*
2. *General principles stressing the importance of IP as a tool for innovation, growth and jobs, as well as a number of high-standard agreed principles on key topics;*
3. *Binding commitments on a limited number of significant IP issues;*
4. *Cooperation on areas of common interest.*

Content

This paper does not address issues of possible "offensive interest" to the U.S., i.e., matters that the U.S. negotiators or stakeholders may identify as requests to be made to the EU as being predominantly in their interest.

Although the two parties have discussed in some detail a wide range of IPR related issues and explained the functioning of their respective systems, the U.S. has not yet formally identified the areas of interest that it could consider as priorities. In the EU's view, the four sections should cover the following topics:

a. Compliance with international IP treaties (section 1)

A non-exhaustive list that may be updated could include:

- TRIPS Agreement

- Rome Convention; Berne Convention; WIPO Copyright Treaty; WIPO Performances and Phonograms Treaty; WIPO Beijing Treaty and Marrakesh Treaty (if ratified in the meantime)
- Trademark Law Treaty; Singapore Treaty on the Law of Trademarks; Protocol Relating to the Madrid Agreement
- The Hague Agreement on Designs
- Patent Law Treaty
- International Convention for the Protection of New Varieties of Plants (UPOV 1991)

b. Preambular narrative (section 2)

The aim of this introductory section would be to raise awareness about the importance of IP's role in encouraging innovation and creativity, and therefore its key contribution to smart and sustainable growth. This is in line with the EU's policy to frame intellectual property in a broader economic and social context, including in its trade agreements: *"IP is not a purpose in itself. It is a tool for jobs and growth"*.

In detail, this could include a description of the role and benefits of IP as part of the innovative and creative economy - as set out in the inventor-creator trail¹ - such as encouraging investment in R&D, which is a cornerstone for sustainable and smart growth; facilitating the generation of ideas, branding, and launch of new products and services to the market and export activities; protecting creations and ideas through the registration of IP rights and balanced enforcement; facilitating funding and licensing, and more.

c. High-standard agreed principles (section 2)

The purpose of this section would be for the EU and the US to set out a jointly agreed interpretation, implementation and/or practice in relation to certain IP issues debated in the international framework. The goal is to find a common denominator between EU and US rules, without modifying them, in jointly identified areas, thus increasing legal clarity and certainty for transatlantic trade.

A non-exhaustive list of subjects to address could include:

- Anti-bad-faith registration of trademarks;
- Customs enforcement, including of counterfeit goods in small consignments;
- Recalling established practices on patent procedures and patentability criteria including regarding secondary use or incremental innovation; interference of regulatory entities; provisional protection of patent applications.

d. Geographical indications (section 3)

The EU has an extensive *acquis* that includes EU-wide *sui generis* systems of protection for agricultural products and foodstuffs, wines and spirits. The US uses mainly trademark rules in place of a *sui generis* system, with the exception of wine and spirits for which specific labelling systems do exist.

The EU is therefore seeking:

- Rules guaranteeing an appropriate level of protection for EU GIs;
- Administrative enforcement against the misuse of EU GIs;

¹ http://ec.europa.eu/internal_market/intellectual-property/docs/ipr-leaflet_en.pdf

- Establishment of list(s) of GI names, to be protected directly through the agreement. This list could include both European and American GI names;
- Specific arrangements for certain specific GI names;
- Exclusive protection for the 17 EU wine names included in Annex II of the EU and the U.S. agreement concluded in 2006 on "trade in wine";
- Protection for additional EU GI spirits names.

e. Copyright and related rights (section 3)

The three key copyright issues that the EU seeks to address are:

- remuneration rights for broadcasting and communication to the public (public performance) for performers and producers in phonograms;
- a full right of communication to the public (public performance) for authors in bars, restaurants and shops;
- a resale right for creators of original works of art.

The EU already grants protection in all three areas through its *acquis*. It is important to obtain reciprocal treatment in the US to that currently available in the EU for US right-holders. The US is undergoing a review of its copyright legislation.

f. Cooperation with regards to multilateral and third-country IP issues (section 4)

The Transatlantic IP Working Group includes rights-holders and users, and has operated for nearly 10 years. The work of this group is concrete and valued by IP stakeholders. The goal of this section would be to formalise and possibly strengthen the work

already done by the Transatlantic IP Working Group in the areas identified.

A non-exhaustive list of subjects to address could include:

- Transatlantic IP Working Group online portal;
- Coordination of technical assistance to third countries;
- Collaboration of EU and US IP attachés;
- Customs cooperation.

g. Trade secrets and confidential business information (section 4)

There is shared interest among EU and US rights-holders in this area. The Commission has presented a draft proposal for a Directive². In the US there are also several legislative initiatives in place to harmonise the civil law rules on trade secrets since there is still no federal law in this field. Priority must be given to the domestic legislative process.

² Available online at http://eur-lex.europa.eu/legal-content/EN/ALL/ELX_SESSIONID=D121Tj8KGv51SY9GYW9fQmVp7PSCQxIHvIvwPytwGjbTtJ161mnl-601324978?uri=CELEX:52013PC0813