

Resolution on Intellectual Property Rights in the Transatlantic Trade and Investment Partnership

Introduction

The U.S. Government and the European Commission (EC) have begun negotiating the Transatlantic Trade and Investment Partnership (TTIP). This trade agreement is expected to include provisions concerning copyright, patents, trademarks, geographical indications, commercial confidentiality and other issues that affect Intellectual Property Rights (IPR).

The Transatlantic Consumer Dialogue (TACD), in representing millions of consumers, is concerned that new “international benchmarks” established between the EU and the U.S. in the area of IPR could weaken the rights to health, culture, and free expression of U.S. and EU citizens by unfairly limiting access to knowledge and access to medicine. (For background please see the TACD’s 2009 [resolution on enforcement of copyright, trademarks, patents and other IPR](#))

When considering IPR provisions in the TTIP we call upon negotiators on both sides of the Atlantic to take note of the strong citizen reaction in defence of their fundamental rights that blocked the approval of the Anti-Counterfeiting Trade Agreement (ACTA) in the EU, and the Stop Online Privacy Act (SOPA) and Protect Intellectual Property Act (PIPA) in the U.S. in 2011 and 2012 respectively. We do not consider that consumer rights and human rights can become bargaining chips to be traded off, weakened or amended in exchange for other trade-related issues. IPR enforcement measures should not mean the weakening of legal due process, privacy or any other fundamental right.

TACD recommendations to the TTIP negotiations concerning IPR:

1. TACD objects to the inclusion of investor state dispute mechanisms that would empower investors to sue sovereign nations over IPR rules or conditions that could reduce their expected profits and to challenge national laws outside of the ordinary judicial system. IPR regulation, as with other areas of policy, could be caught up in an investor-state system that provides corporations with a new venue to undermine critical consumer safeguards and to exclude citizen and consumer input.
2. TACD declares that no provision in the TTIP should prevent or weaken the enactment of robust exceptions and limitations to IPR by national governments. TACD supports the promotion in TTIP of Transatlantic exceptions and limitations in the TTIP for libraries, disabled persons, scientific text and data mining (except personal data) and distance education.
3. TACD opposes any provision in the TTIP on “commercial confidentiality” of anonymised medical clinical trial data or any other measure that would prevent clinical trial transparency for the sake of the

efficacy and safety of medical products (medicines and medical devices), except in so far as such measures may be necessary to protect privacy or other rights of trial participants. TACD also opposes any provision on exclusive terms of use for such data (data exclusivity or market exclusivity). The pharmaceutical product monopolies which result from data and market exclusivity raise healthcare costs, compromise access to medicines, are against medical ethics and any extension of exclusivity periods in the US or EU would cost consumers billions of euros/dollars a year.

4. TACD asks the negotiators not to include any provision in the TTIP that would prevent legitimate parallel trade of medical products.

5. TACD opposes any measure in the TTIP that would weaken the ability of governments to enact limitations on remedies and damages and should not reduce the flexibilities regarding injunctions that exist in Article 44.2 of The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

6. TACD believes that the TTIP should ensure protection of intermediary service providers from liability with respect to the transmission or storage of information. Internet intermediaries should not be held liable for the removal of illegal content without court order. Only a court proceeding obtained in a contested proceeding provides adequate safeguards, such as due process and the right to a presumption of innocence. Shifting liability on intermediaries might result in legitimate content being unfairly removed from the internet.

7. TACD affirms that the TTIP should not adopt provisions that allow customs officials to interfere with legitimate goods in transit that could have negative consequences regarding access to essential medicines.

8. TACD asks negotiators not to include in the TTIP text IPR enforcement measures that could undermine privacy, the right to information or other fundamental rights.

9. TACD requests that criminal penalties against patent infringement not be considered in the TTIP negotiations.

10. TACD demands that no measure be taken in the TTIP that constrains citizen's open access to publicly financed education, scientific data, information or materials.

11. TACD opposes any measure in the TTIP that would facilitate or promote life patents, including the patenting of conventionally bred varieties of seeds, plants that exist in nature, genetic traits of illnesses and other living biological matter.