

Resolution on the proposed chapter on Intellectual Property Rights in TTIP

Introduction

The European Commission and the US government are currently negotiating the Transatlantic Trade Investment Partnership (TTIP). This trade agreement seeks to include provisions related to the protection of Intellectual Property Rights (IPR).

TACD is of the view that **there should be no IP Chapter in the TTIP**. There is already an extensive IP acquis on both sides of the Atlantic and at international level. Merely agreeing on or 'recalling' established procedures and practices is not desirable, as this may block the possibility for the EU, EU Member States or the US to change these standards in the future. Especially at a time where strong IP protection as the driver for innovations is questioned in certain sectors, and initiatives calling for increased knowledge sharing are supported, such lock-in is not desirable for consumers. Addressing norms for IP protection by means of negotiations taking place in a trade agreement between the US and the EU is not needed or desired.

Nevertheless, if the US government and the European Commission decide to include an IP chapter in the TTIP, the following high-level principles and recommendations should be followed by the negotiators:

I - Copyright

Recommendation 1: TTIP should not aim to harmonise the term of copyright protection because it is already covered by other international agreements, and it restricts the flexibility of the parties to reduce the term in the future.

Recommendation 2: If TTIP would include a reference to copyright and related rights exceptions and limitations, due consideration must be given to the possibility for the parties to introduce robust exceptions in the benefit of users - including those not currently covered or not covered adequately under existing national legislation in either the US or the EU - such as an exception for derivative works, *e.g.* user-generated content exception for non-commercial purposes.

Recommendation 3: The TTIP IP Chapter should mandate that countries implement copyright exceptions that protect the public's rights in the areas of quotations, news, parody, public affairs and sharing information, including multimedia materials, on social platforms.

Recommendation 4: The TTIP IP Chapter should mandate countries to adopt a "fair-use" flexibility clause for situations not covered in the form of a specific exception or limitation.

Recommendation 5: The TTIP IP Chapter should not have a three-step test to regulate copyright exceptions.

Recommendation 6: The TTIP IP Chapter should not regulate national legislation on the issue of technical protection measures or digital rights management systems, and certainly not undermine the use of copyright exceptions or access, works in the public domain or works licensed for broad public access.

Recommendation 7: The TTIP IP Chapter should require parties to ratify and implement the WIPO Marrakesh Treaty for the blind and persons with other disabilities, and to implement the treaties for the benefit of persons with all disabilities.

II - Patents

Recommendation 8: The TTIP IP Chapter should not regulate the standards nor recall established practices for granting patents.

Recommendation 9: Notwithstanding recommendation 8, the TTIP IP Chapter should restrict the right of parties to grant patents on genes, conventionally bred varieties of seeds, plants that exist in nature, genetic traits of illnesses, living organisms, surgical procedures performed by medical professionals, and inventions created by artificial intelligence.

Recommendation 10: The TTIP IP Chapter should not regulate limitations and exceptions to patent rights, except for an obligation to adopt robust research exceptions.

Recommendation 11: The TTIP IP Chapter should not regulate the terms, scope of limitation and exceptions to rights in regulatory test data.

III - Trade secrets

Recommendation 12: The TTIP IP Chapter should not address trade secret protection.

Recommendation 13: The TTIP IP Chapter should not extend trade secret status to confidential information of public interest including but not limited to public safety, consumer protection, public health, and environmental protection.

Recommendation 14: The TTIP IP Chapter should not undermine the rights of civil society, whistleblowers, researchers, journalists and workers, nor the ability of governments to expand transparency obligations for business information, or promote access to know-how, software code or protocols, or other knowledge, when such disclosures or proactive access are in the public interest.

IV – Safeguards

Recommendation 15: The TTIP IP Chapter should include safeguards of consumer interests, including those necessary:

- for promoting access to medicines for all in TRIPS as reaffirmed in the 2001 Doha Declaration on TRIPS and Public Health,
- to address consumer protection,
- for the control of anticompetitive practices and the protection, and
- for the realization of human rights.

IV - IPR Enforcement

Recommendations 16: The TTIP should not deal with enforcement of IPR by means of civil or criminal proceedings as well as the liability of internet service providers. Any administrative proceedings must duly respect the EU Charter of Fundamental Rights, particularly the right to a fair trial and right to privacy.

Recommendation 17: The TTIP should not create any obligations regarding the enforcement of IP rights for in-transit goods. Under no circumstances should governments enforce patents against medicines or other medical inventions that are in-transit, and where questions of infringement can and should be addressed within the legal systems of the exporting and importing countries. Likewise, disputes over trademarks on products should not give rise to seizures of goods in-transit, when such disputes can and should be addressed in the exporting and importing countries, particularly when the disputes concern mere issues of trade dress and not outright fraud in terms of the names of the manufacture. Concerns over fraud and the safety of products can be addressed through criminal and regulatory processes that operate outside of intellectual property frameworks.

Recommendation 18: The TTIP IP Chapter should protect the current practice of the United States to exempt state institutions from liability for infringement of intellectual property rights.

V - ISDS

Recommendation 19: Intellectual property rights should be excluded from the definition of ‘investment’ in the Investment Chapter.

Recommendation 20: Notwithstanding recommendation 19, under no circumstances should the granting or revoking of patents, the scope of copyright protection, or the compulsory licensing, limitations on remedies for infringement, or any other limitations and exceptions to exclusive rights for patents, copyrights, trademarks, test data, sui generis rights in seeds or any other intellectual property rights be the basis for claims or other remedies under ISDS.

VI - Positive Agenda

Recommendation 21: If an IP chapter is included in the TTIP, it should provide that publicly-funded research results are made publicly available by enabling public knowledge sharing through open data and collaborative innovation, especially in areas of public interest such as health, and environmental protection.

Recommendation 22: With regard to health and medical technologies, research grants and contracts should require that products be made available to persons living in TTIP countries at reasonable and affordable prices, and also that these obligations extend to developing countries. For drugs, vaccines and diagnostic devices, the funding agencies should retain the right to license patents to the Medicines Patent Pool (MPP) of similar initiatives designed to ensure more equal access.

Recommendation 23: For health-related technologies, including drugs, vaccines and diagnostics, the TTIP should require that direct funding mechanisms be progressively reformed to implement the

delinkage of R&D costs from end product prices, and to phase out the grant of monopolies on products as a funding mechanism for R&D.

Recommendation 24: If an IP chapter is included in the TTIP, the EU and the US should commit to reforming the international obligations concerning the protection of copyright stemming from the Berne Convention and other copyright and related rights treaties, in order to strengthen the role of works in the public domain as enablers of creativity, innovation and access to knowledge, and to ensure that robust limitations and exceptions to exclusive rights can be implemented at the national and EU level and when appropriate implemented in cross border.