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What is the TPP and where is it going?

Given the far reaching implications that the Trans-Pacific Partnership may have on IP rights, monitoring the development of the treaty is a must for staying on top of a global IP practice, says Matthew Fedowitz of Merchant & Gould PC.
The Trans-Pacific Partnership, otherwise known as the TPP, is a free trade agreement between Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US, and Vietnam.

It has been under negotiation and expansion for almost a decade. Originally, the TPP began as an agreement between Singapore, Chile, New Zealand, Brunei, and the US in 2009.

The goals of the TPP are to ease the flow of goods between signatory countries by eliminating tariffs, removing non-tariff barriers and aligning regulations between the participating nations.

The countries involved in negotiating the agreement represent some of the largest commercial trading partners in the Pacific Rim. These countries are responsible for approximately 40 percent of the world’s gross domestic product.

Despite the far reaching effects that the TPP may have, the negotiations have largely been conducted in secret. The rationale for trade negotiations being conducted in private is based on the theory that parties involved would not be able to have a meaningful dialogue if their positions are disclosed to the public.

As a result, those involved in TPP negotiations have signed confidentiality agreements requiring them to share proposals only with “government officials and individuals who are part of the government’s domestic trade advisory process”.

This is not to say that not much is known about the TPP because it is known that the treaty has 29 chapters. In addition, there have been several unintentional releases of the draft provisions. In November of 2013, the transparency organisation known as Wikileaks released a draft of the intellectual property chapter of the treaty.

This chapter includes provisions on trademarks, copyright and patents, and proposes granting more patents, the creation of IP rights on data, the extension of patent and copyright terms, and increases in penalties for infringement.

What’s more, the chapter also showed that while each of the involved countries may take issue with particular portions of the proposed TPP, there are certain provisions that remain significantly controversial. One of the most contentious provisions involves IP.

Because this draft document identifies which countries support and oppose certain provisions of the IP chapter, the public’s reaction has not been entirely positive. For example, some of the proposals set forth in the IP chapter appear to demonstrate a heavy handed attempt by large corporations to protect their IP and limit some IP freedoms enjoyed by certain countries involved in the negotiations.

This is particularly true with regard to pharmaceuticals, where the TPP attempts to balance individual country’s needs to address public health issues by ensuring citizens have access to medicines against the corporate interest in having strong IP rights to preserve product monopolies and profits.

Possibly in response to the public’s reaction to the leaked IP provisions of the TPP, the US Trade Representative (USTR) provided an update describing several policy changes that it is undertaking in regard the prices of pharmaceuticals.

Some of these updates being offered address those concerns of developing countries that include access to medicines, biologic medicines, and patent oppositions.

Along the same lines as its approach to access to medicines, the USTR now supports a more flexible approach to patent oppositions, allowing TPP partners to retain reasonable patent pre-grant opposition procedures.

According to the USTR’s update, it is thought that other elements in TPP will meet the overall goals of ensuring high-quality patents and provide incentives for innovation and ensure access to medicines.

With these policy changes before it, the latest round of ministerial talks on the TPP recently concluded in Singapore, in May, without substantive progress. Negotiators, however, reported they revived momentum for an agreement on the TPP, but did not set a timeline for a pact to be concluded because differences still remain between negotiating countries.

Nevertheless, the USTR released a statement after the Singapore meeting stating that is is pursuing intensified engagement over the coming weeks on market access and rules.

Going forward, chief negotiators plan to meet in July to coordinate and tackle these challenging outstanding issues. Among the issues, will be those involving IP, which will likely be at the forefront. Currently, there is no set timeline for completing the negotiations and many of the involved countries may shift their policies on the TPP and its IP provisions over time.

Given the far reaching implications that the TPP may have on IP rights, monitoring the development of the treaty is a must for staying on top of a global IP practice.