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Forum



**JOINT RESOLUTION OF BUSINESSEUROPE, IIPPF, AND THE U.S. CHAMBER OF COMMERCE
ON RESTRICTIONS OF IP RIGHTS AND COMPULSORY LICENSING**

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BUSINESSEUROPE, the International Intellectual Property Protection Forum of Japan (IIPPF), and the United States Chamber of Commerce have long advocated for a strong and effective global intellectual property (IP) system, to boost economic competitiveness and technological progress. That system is threatened, however, by a trend toward excessive use of compulsory licensing and other restrictions of intellectual property.

IP rights such as patents spur innovation by providing incentives to inventors and to those who invest in research and development, and facilitate the diffusion of technology through licensing transactions. In addition, the requirement to disclose the invention enables others to study and improve the patented technology. The diffusion of technology through licensing transactions and patent disclosure ultimately benefits developing countries that lack the resources to invest in cutting-edge research. On a macroeconomic level, an OECD empirical study of developing countries (based on data covering the period of 1990 – 2000) found a strong positive correlation between a solid patent system and foreign direct investment.¹ A strong IP system not only promotes technological progress but has been shown to directly contribute to economic development.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”) was a landmark achievement enshrining a baseline level of global IP protection. At the same time, it provides for flexibilities that WTO members can invoke in appropriate circumstances. Preserving the integrity of this balance is vitally important for maintaining technological progress and economic growth.

The TRIPS Agreement, in Article 31, allows governments to issue compulsory licenses to override patent rights with specified conditions. For example, the scope and duration of a compulsory license must be narrowly tailored to the particular situation and the patent owner must be paid adequate remuneration. Some governments, however, have abused or threatened to abuse this requirement by taking expropriative action to constrain patent and other IP rights for industrial policy or political ends. In doing so, they threaten to upset the careful policy balance between preserving the incentives necessary for continued innovation and the need for limited scope to address

¹ The Impact of Trade-Related Intellectual Property Rights on Trade and Foreign Direct Investment in Developing Countries, Working Party of the Trade Committee, OECD, TD/TC/WP(2002)42/Final (May 21, 2003).

extraordinary situations. Continuing along this path, and allowing the exceptions to be used to expropriate well established intellectual property rights will slow technological progress, impede the dissemination of cutting edge research, and weaken economic development.

In this context, BUSINESSEUROPE, IIPPF, and the U.S. Chamber of Commerce reiterate their commitment to strong intellectual property protection and the TRIPS Agreement, and call for governments to:

- refrain from compulsory licensing and similar non-voluntary restrictions on the exercise of IP rights other than in the most exceptional circumstances;
- take vigorous and coordinated action to reverse the growing risk of weakened IP standards occasioned by the unwarranted use of compulsory licensing and other similar restrictions of IP rights; and
- take appropriate actions bilaterally and in multilateral organisations (e.g., WTO, UNFCCC, WHO, WIPO) to halt the harmful use of compulsory licensing and similar restrictions on IP rights.

BUSINESSEUROPE, IIPPF, and the U.S. Chamber of Commerce will continue engaging in a constructive dialogue with governments and all relevant stakeholders to address these important issues.