

## Review Survey on Consistency with TRIPS Agreement of Intellectual Property Related Laws and Regulations in Respective Countries Fiscal 2016

### I. Purpose of This Research

The Council for Trade-Related Aspects of Intellectual Property Rights ("TRIPS Council"), which was established based on the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") that came into force as one of the rules of World Trade Organizations (WTO) on January 1, 1995, is held for approximately three times a year to discuss issues such as the challenges contained in the Agreement (what is generally called the "built-in agendas"), review of the Agreement, progress of development of national laws and regulations in the member countries and the specific details of technical cooperation given to developing countries. These challenges examined by the TRIPS Council are those for which the outcomes of the discussions have a major impact on the international framework of protection of intellectual properties and the economic activities of national industries. The fact that TRIPS Agreement came into force raised expectation for the improvement of protection of intellectual properties in the member countries but issues concerning the operation of the system regarding such problems as the manufacture and distribution of counterfeit and infringing products due to insufficient protection of intellectual properties still remain. It is important to secure appropriate protection of intellectual properties in the trading partners of Japan from the perspective of improving the business environment of Japanese companies, etc. In the 20 years since the effectuation of the TRIPS Agreement, the waves of technological innovation and informatization have greatly contributed to the development of the global trade and investment environment and intellectual properties have become increasingly important in the international economy. While the TRIPS Agreement has functioned as a minimum standard for rules concerning protection of intellectual properties, there are efforts in developed countries including Japan to further improve the protection of intellectual properties by establishing an intellectual property chapter based on the TRIPS Agreement in Free Trade Agreements (FTAs)/Economic Partnership Agreements (EPAs) and thereby develop common intellectual property rules among multiple countries. These negotiations also contribute to the appropriate protection of intellectual properties in trading partners and are important from the standpoint of developing an intellectual property environment in countries in which Japanese companies expand their business. The purpose of this research is to develop policies for the TRIPS Council and FTA/EPA negotiations and to secure effective protection of intellectual properties held by Japanese companies, etc. by dealing with recent issues that are considered to be important or to have a substantial impact and by conducting studies and examinations and striving to grasp the fine points of the relevant discussions and the detailed status thereof.

### II. Contents of This Research

#### 1. Outline of the Intellectual Property Chapter Contained in the TPP Agreement and Studies on the Intellectual Property-Related Systems of Each Country

The intellectual property chapter (Chapter 18) of the Trans-Pacific Partnership Agreement ("TPP Agreement") has major significance as an international treaty providing protection on a higher level than that under the TRIPS Agreement which is part of the WTO agreement and an exercise of intellectual property rights. In this regard, although the TPP Agreement is yet to enter into force, it has and will always have a significance and value as a model of a 21<sup>st</sup> century-type rule in the Asia-Pacific Region.. Moreover, there is no doubt that the rules provided in the Agreement will serve as the basis in the future negotiations for economic partnership.

As such, studies and analysis were made on the comparison between the rules provided in Chapter 18 of the TPP Agreement and the existing international rules concerning intellectual property rights such as the TRIPS Agreement and the Anti-Counterfeiting Trade Agreement (ACTA) as well as on the relationship between the status of securing the application of the intellectual property chapter of the TPP Agreement in the ASEAN-4 countries and the transitional measures provided in the TPP Agreement.

## 2. Studies on the International Intellectual Property Issues Related to the Provisions of the TPP Agreement

With respect to the opinions, etc. raised by U.S. industries, etc. during the negotiation and after the agreement on the intellectual property chapter of the TPP Agreement, the "Trans-Pacific Partnership (TPP) Agreement Principles" published by the U.S. Business Coalition for TPP during the negotiation as the opinions of U.S. industries, etc. were examined while views of the stakeholders presented in the reports of the Advisory Committee for Trade Policy and Negotiations (ACTPN) and the reports of the International Trade Center (ITC) were examined as the opinions and evaluations made by U.S. industries, etc. after the agreement.

Moreover, as the outline of the provisions related to rights and obligations of intellectual property that are among the provisions of chapters other than the intellectual property chapter of the TPP Agreement, studies were made on the outline of the provisions related to source code in the e-commerce chapter as well as the investment chapter and dispute resolution chapter, and thereby their relationship with the intellectual property chapter was examined.

As the opinion of Japanese industries on the provisions of the intellectual property chapter of the TPP Agreement, the committee members pointed out the importance of encouraging each country to appropriately apply intellectual property laws to enable the intellectual property law system to be truly effective while they expressed their expectations for improvement of the intellectual property law systems through the economic partnership agreements, etc. entered into between the countries.

## 3. Studies on International Intellectual Property Issues Related to the Provisions of the TPP Agreement

As a result of the United Kingdom European Union Membership referendum which took place

on June 23, 2016, the U.K.'s movements for withdrawal from the EU (BREXIT) are in progress. As the procedures for withdrawal from the EU will proceed in the future once the U.K. gives notice, the impact of BREXIT on Japanese companies was studied using survey sheets. Moreover, as recent significant activity related to legislation for the protection of trade secrets, studies and examinations were made on the enactment of the Defend Trade Secrets Act of 2016, the adoption of the EU directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure and the state of reaction of major countries. Furthermore, concerning recent significant activity in the intellectual property system in India, studies were made on the future direction of the institutional design from the perspective of raising awareness on intellectual properties, creating intellectual property rights, establishing legal frameworks, managing intellectual properties, commercializing intellectual properties, enforcing judicial rules and developing human resources, with respect to the "National Intellectual Property Rights Policy" published by the Department of Industrial Property and Promotion (DIPP).

With respect to the systems of geographical indications for agricultural products, the amendment law (enforced in December 2016) enacted with the idea that mutual protection will be provided between Japan and foreign countries having an equivalent system to that of Japan was examined. In addition, with respect to Investor-State Dispute Settlement (ISDS) in intellectual property disputes, examinations were made on the Philip Morris case. Furthermore, studies were made on the progress of the dispute between Eli Lilly and Canada to examine the roles played by investment agreements in the protection of intellectual property rights in foreign countries.

#### 4. Studies on the Situation, etc. of Discussions made at WIPO, WTO/TRIPS Council and Other Forums

Recently, developing countries are conducting discussions to weaken the protection of intellectual properties on the grounds of public health, global environment, biodiversity and human rights, etc. at WIPO, WTO/TRIPS Council and other forums. Amidst such a situation, examinations were made on the report of the UN High Level Panel on Access to Medicines while studies were made on the trends in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) since February 2016 and the recent trends related to copyrights in WIPO by making a close observation of the political discussions made on the effectiveness of protection of intellectual properties and stances of each country, etc. for the purpose of grasping the current situation and making further examinations. Moreover, studies were also made on the trends in the discussions held at the WTO/TRIPS Council, dispute cases related to the TRIPS Agreement and the ACTA.

### III. Summary

The outline of the intellectual property chapter of the TPP Agreement, trends in the intellectual property related systems of each country, international intellectual property issues related to the provisions of the TPP Agreement, the new climate concerning intellectual property protection and the situation of discussions held at WIPO, WTO/TRIPS Council and other forums were examined by a study group consisting of practitioners and academic experts, etc.

In recent days, where economic globalization and the information-based society are showing a significant progress and the international protection of intellectual property rights is becoming increasingly important, it is necessary to constantly collect information and to make examination not only on multilateral treaties including the TRIPS Agreement and bilateral economic partnership agreements but also on the developments of the legal system of each country, new framework for international dispute resolution procedures and appropriate enforcement of the intellectual property law system. It is expected that studies will continuously be made on the international aspects of the intellectual property system.