

## Review Survey on Consistency with TRIPS Agreement of Intellectual Property Related Laws and Regulations in Respective Countries Fiscal 2017 (Summary)

### I. Purpose of the Review Survey

The TRIPS Council established under the "Agreement on Trade-Related Aspects of Intellectual Property Rights" (TRIPS Agreement) which came into force as one of the rules of the World Trade Organization (WTO) on January 1, 1995 is held about three times a year to discuss the issues included in the Agreement (the so-called "built-in agenda"), the review of the Agreement, the progress of the maintenance of domestic legislation in each member country, the specific contents of technical cooperation to developing countries or the like.

With regard to the issues examined by the TRIPS Council, the result of the discussions has major impacts on the international framework of intellectual property protection and economic activities of the domestic industries. In addition, due to the entry into force of the TRIPS Agreement, the expansion of intellectual property protection in each member country is expected, while the problems over institutional operations still exists, such as the manufacture and distribution or the like of illegal goods and infringing articles due to insufficient protection of intellectual property. Securing adequate protection of intellectual property in Japan's trading partner countries is important from the viewpoint of improving the business environments of Japanese companies or the like.

Twenty years have passed since the entry into force of the TRIPS Agreement, the wave of technology innovation and informatization greatly developed the trade and investment environment in the world, and the importance of intellectual property in international trade and economy is increasing more and more. While the TRIPS Agreement functions as the minimum standard for intellectual property protection rules, among various Free Trade Agreements (FTAs) /Economic Partnership Agreements (EPAs), there are movements that, by instituting intellectual property chapters based on the TRIPS Agreement to establish intellectual property rules common among many of countries, aim at further expansion of intellectual property protection. Also there is situations that at various international forums such as the World Intellectual Property Organization (WIPO) or the like, discussions on intellectual property are conducted actively.

In the survey, it was aimed to ensure the effectiveness of protection of intellectual property of Japanese companies or the like through the involvement into various international forums and international negotiations or the like, by picking up such recent issues that were considered as important or influential in intellectual property activities of Japanese companies or the like, surveying, examining, and understanding the discussions and situations in detail thereof.

### II. Contents of the Review Survey

#### 1. Survey on the situations of EPA /FTA (chiefly intellectual property chapters)

With the agreement between Japan and Mongolia on economic cooperation (Agreement between Japan and Mongolia for an Economic Partnership [EPA] [effective June 7, 2016]), it is expected that liberalization and facilitation of trade and investment between Japan and Mongolia

will be promoted as well as the reciprocal economic partnership will deepen in a wide range of fields, and the economies of both countries will be further activated.

As laws and regulations related to intellectual property in Mongolia, there are Patent Law, Law on Trade Marks and Geographical Indications, Law on Copyright and Related Rights, as well as Custom Tariff Law, etc. and these have been actively revised in recent years. However, it is currently uncertain how effectively these intellectual property related laws are operated domestically in Mongolia.

Therefore, it was surveyed and analyzed how domestic laws of Mongolia were in correspondence with the main elements of intellectual property chapter (Chapter 12) of Japan-Mongolia EPA in consideration of the recent revisions of related laws and regulations. Some experts pointed out the importance of encouraging them to increase transparency as some uncertainty remains regarding the operation of the revised laws and regulations.

Also, in past cases, the European Union(EU)'s efforts on the intellectual property chapter of FTA often resulted into general provisions or simple provisions mainly of the obligation to join the treaty. To the contrary, the FTAs concluded in recent years tend to have detailed provisions as compared with the conventional FTAs, so it will be noticed how the EU proceed with FTAs in the future. In this regard, it is considered to be meaningful also for Japan to proceed with future trade negotiations concerning intellectual property to compare and analyze disciplines in the FTAs that the EU has concluded in recent years with the Southeast Asian countries and with Eastern European countries that Japan has not yet concluded EPA/FTA.

Therefore, the following among the EPAs/FTAs that the EU has already entered into were surveyed and analyzed; those with Southeast Asian countries, i.e. the EU-Vietnam FTA and EU-Singapore FTA: that with a Eastern European country, i.e. the EU-Ukraine FTA: as well as that with Central and South American countries, i.e. the EU-Colombia-Peru FTA. Especially, it was compared with discipline in the TRIPS Agreement and analyzed what disciplines on geographical indication and trademark are provided, taking into consideration of the wording of provisions on cooperation subchapters (cooperation clauses) and working documents on the protection strategy of geographical indication by the EU Directorate General for Agriculture and Rural Development (DG AGRI).

## 2. Survey on the situation of protection of intellectual property rights in respective countries

Under the situation that companies activities are more and more globally expanded, management of sensitive technical information or the like such as trade secrets is also important for companies activities. In this regard, it cannot be said that the actual state of protection of trade secret in such countries as China, ASEAN countries and India, etc. are well known in Japan, where the transfer or new establishment of production and business activities of Japanese companies is expected also in the future, so that the latest information on these may be a very important source for the overseas deployment of Japanese companies.

Therefore, the legal institutions and operations thereof on trade secret protection in China, ASEAN countries and India were surveyed, including information on court practices.

Furthermore, as a new trend over protection of intellectual property rights, a trend of protection of medicines in the intellectual property systems of China and Indonesia were examined, such as the policy proposal by State Food and Drug Administration (SFDA) of China and the revised Patent Law of Indonesia. In addition, the contribution of Japanese new pharmaceuticals manufacturers to access to medicine was also examined.

In relation thereto, the latest situation on health and safety damage caused by a deluge of counterfeit drugs or the like in developing countries or the like was surveyed from a higher perspective.

### 3. Survey on international discussion of intellectual property system

There is the situation that discussions based on procedures for international dispute settlement related to intellectual property and cases thereof as well as discussions on data utilization such as AI, big data, IOT or the like according to development of information and communication technology are also becoming internationally active.

Therefore, as a survey on the international discussions of the intellectual property system, survey and analysis were conducted on the situation of international discussions on data utilization such as AI, big data, IOT or the like. Also, from the viewpoint of utilization of big data and competition law, recent trends of the EU competition law was analyzed, including analysis of cases of business combination in the EU.

On the other hand, as an case of international dispute settlement related to intellectual property, the arbitral award of *Eli Lilly v. Canada* was examined, and issues or the like in cases where disputes related to intellectual property rights are dealt with in investment arbitration were discussed. In addition, discussions on concept of Common Heritage of Mankind (CHM) and intellectual property, as well as patent eligibility of research results using biological resources or genetic information and human rights were examined from the viewpoint of human rights and intellectual property.

Furthermore, efforts related to capacity building toward developing countries such as the training by patent examiners dispatched or the like by the Japan Patent Office, as well as cross border enforcement of intellectual property infringing goods and international cooperation by the customs were also discussed.

### 4. Discussions at the WIPO, the WTO/TRIPS Council and other forums

In recent years, discussions at the WIPO, the WTO/TRIPS Council and other forums have been made for developing countries to weaken intellectual property protection based on public health, global environment, biodiversity, human rights or the like. Under the circumstances, with the aim of paying close attention to policy discussion and the positions of respective countries on the effectiveness of intellectual property protection, understanding the current situation and proceeding

with the necessary examination, the situation of discussion at the Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources of WIPO and recent trends related to copyright at the WIPO.

Trends of discussion at the TRIPS Council and cases of disputes related to the TRIPS Agreement as well as the Anti-Counterfeiting Trade Agreement (ACTA) were also organized and analyzed.

### III. Summary

With respect to survey on the situation of the Economic Partnership Agreement (EPA) / Free Trade Agreement (FTA) (mainly Intellectual property chapter), survey on the status of protection of intellectual property rights in respective countries, and survey on international discussion of intellectual property system, as well as the situation or the like of the discussion at the WIPO, the WTO/TRIPS Council and other forums, examination were conducted at the study group comprised of practitioners, academic experts and the like, taking into account the presentations of other experts.

In recent years, as the globalization of the economy and the progress of the information society are remarkable and the importance of international protection of intellectual property rights has become increasing, it is necessary to constantly gather information and continue consideration on not only multilateral treaties including the TRIPS Agreement and bilateral economic partnership agreements, but also the trend of the legal systems of respective countries, the new frameworks of international dispute resolution procedures and the appropriate execution of intellectual property law system. It is expected to conduct continuously surveys on the international aspects of the intellectual property system.