



November 7th 2011

The Honorable Karel De Gucht
EU Commissioner for Trade
European Commission
Rue de la Loi/Wetstraat 170
1040 Brussels
Belgium

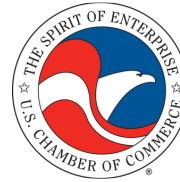
The Honorable Michael Froman
Deputy Assistant to the President and
Deputy National Security Adviser for International
Economic Affairs
The White House
Washington, DC 20504

Re: IPR on the Agenda of the November Transatlantic Economic Council Meeting

Dear Commissioner De Gucht and Mr. Froman:

The transatlantic partnership remains a pillar of the global economy and the largest single economic partnership in the world. The U.S. and the E.U. share many of the same economic and strategic interests, and they generally share a common business, economic, and policy outlook on key issues affecting global trade and innovation.

Intellectual property rights (IPR) are among these key issues. IPR protection is a critical tool to promote innovation and create U.S. and European manufacturing jobs, which, in turn, will enable a resurgence of European and U.S. economic growth, public finances, and employment. Furthermore, IPR protection – because it fosters innovation in the economy – enables the development and uptake of solutions to a range of global challenges with respect to the inter-related issues of the economy, development, environment and health. The global framework for IPR protection, which is essential to the continued success of our businesses in meeting the needs of the market and related challenges, is currently under serious threat in several multilateral forums and emerging markets we depend on to grow our product and service businesses. Transatlantic leadership is urgently needed. We urge you to place IPR protection front and center on the agenda of the upcoming Transatlantic Economic Council (TEC) meeting this November.



The Global Threat of IPR Erosion

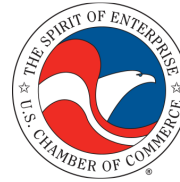
Intellectual property rights are a key driver of private sector investment, growth, and job creation. By creating value and allowing businesses like ours to commercialize the fruits of our innovative efforts, they also play a key role in promoting future U.S. and European economic growth and revenue.

At the technical level, U.S. and European negotiators and policymakers have worked hard over the years to ensure effective protection, focusing particularly on enforcement of IPR. They have engaged in active transatlantic cooperation vis-à-vis China and other BRICS countries, including in response to indigenous innovation policies and customs enforcement issues. Such positive efforts supported by IP offices and the deployment of IP Attachés to key locations, have been well received by business, and we urge that you continue and intensify them. At the same time, however, we are concerned that global IPR policy relating to basic legislation has not consistently enjoyed the high-level *political* leadership and coordination that it requires to succeed.

The framework of protection, including domestic IP legislation and regulations in key emerging markets, and global IP rules at the WTO and elsewhere, is under serious threat. Well-funded NGOs and major emerging economies continue to advocate policies that would weaken IPR, citing climate change, domestic development, health, or equity concerns – with little or no evidence or economic data to support their proposals. Such policies would seriously weaken and in some cases destroy the value of the IP assets that U.S. and European enterprises have built and continue to build as we commercialize our R&D, creating significant harm to our competitive positions in fast-growing markets around the world. They would also slow the much needed globalization of R&D into developing markets and the integration of these fast growing economies into global supply chains. More broadly, IPR erosion will not advance solutions to the many societal challenges we collectively face, but it will undermine our capacity to meet these challenges.

Efforts to renegotiate critical rules for all types of IPR protection are unfolding in a range of forums. In the UNFCCC talks, India has recently proposed that IPR, as well as climate change-related trade issues and “equitable” access to technology, become official agenda items for the upcoming Ministerial level meeting in Durban, South Africa. This proposal strikes at the heart of the global IPR infrastructure that allows investors in and manufacturers of climate change-related technologies to capture the value of innovation.

In addition, at the WTO, proposals have been made to weaken IPR in the context of the environmental goods and services negotiations. In the broader UN context, discussions at the World Health Organization (WHO) led to a recent political statement on non-communicable diseases that calls for weakening IPR with respect to medicines, diagnostic kits, and other technologies (vaccines) and more generally. Furthermore, bilateral FTA negotiations, for



instance those between the E.U. and India, feature proposals that would harm the international IPR system.

Moreover, some governments are proposing or already effectively require U.S. and European innovators to disclose or license trade secrets as a condition of market access. Relevant measures include government-backed testing or certification regimes that require companies to disclose confidential information without appropriate protection mechanisms for the information, and government-led compulsory licensing to force disclosure to domestic competitors. Separately, U.S. and European innovators are routinely the targets of trade secret cyber theft by entities located beyond their borders. This problem is exacerbated both by the unwillingness of some governments to enforce trade secret protections, as well as suspected government complicity based on the increasing sophistication of network breaches documented in several recent cases. The economic value of a trade secret stems from the competitive advantage conferred by the confidential nature of the information. Thus, any forced, misappropriated or otherwise compelled disclosure irreparably destroys a trade secret's entire value – in addition to being inconsistent with global IPR rules.

Finally, government policies that reduce or eliminate the ability of manufacturers to distinguish products from those of competitors through “plain” packaging need to be scrutinized as well. Even in areas where health or environmental concerns exist, the mandated elimination or diminishment of trademarks creates a dangerous precedent with far-reaching implications. More narrowly tailored policy alternatives should be considered instead and an evidence-based approach pursued.

The Need for Transatlantic IPR Leadership

IPR are a critical part of our global trade and investment regime. IPR protection encourages and enhances technology dissemination and deployment, rather than impeding it, as alleged by critics. As transatlantic businesses, we invest heavily in the development and deployment of new technologies and innovation. Innovation, together with the IPR that protect it, is core to our competitive advantage, to our ability to create value, and to our ability to support economic growth, revenue, and job creation in Europe and the United States. We also believe it is a core component of the ability of industry to address today's societal challenges on many fronts. Ensuring a stable innovation system, through proper protection of IPR in global IPR frameworks and rules, represents a core mutual interest for the United States and Europe.

In light of this, and given the range of efforts to weaken the global innovation infrastructure, we call on you, as co-chairmen of the Transatlantic Economic Council, to take up the issue of harm to our IPR and innovation infrastructure in its broadest sense, and to use the TEC as a forum for transatlantic leadership on these challenges in particular. Effective transatlantic



leadership across multiple levels of government and policy areas will be critical to reject attempts to undermine global protection of IPR.

We would welcome the opportunity to discuss any of these issues with you in further detail and are available to answer any questions that you may have. In keeping with past years we will be communicating with you on a broader range of TEC related priorities in the near future.

Sincerely,

American Chamber of Commerce to the European Union

BUSINESSEUROPE

National Association of Manufacturers

National Foreign Trade Council

TransAtlantic Business Dialogue

U.S. Chamber of Commerce