

KEYNOTE ADDRESS:

**SECURING COMPLIANCE WITH
THE WTO TRIPS AGREEMENT**

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Before I begin my lecture, I would like to introduce the organization that I work for, AIPPI. What is AIPPI? It stands for a French phrase, *L'Association Internationale de Protection de Propriété Industrielle*. In English it means: The International Association for Protection of Industrial Property. This worldwide organization has more than 100 years of history, currently more than the Paris Convention (which celebrated its 100th anniversary last year). AIPPI was one of the driving forces in setting up the Paris Convention. Since its creation, AIPPI has been trying to organize and harmonize the international industrial property systems.

AIPPI Japan is set up differently from AIPPI in other countries. The difference is that our organization is fully supported by the Japanese Government, or more specifically, the Japan Patent Office (JPO). We have been conducting several research projects concerning IP problems. For example, just before coming to Seattle, I was in Canada. I studied in Toronto and then went to Ottawa to meet an officer of Industry Canada. I met with the officer because of their research concerning the protection of traditional knowledge of indigenous peoples, which is related to the Convention on Biodiversity. I also visited Calgary, Banff, and Vancouver, B.C. While in Vancouver, I met several directors and experts from a museum of indigenous people. While visiting these cities I inquired about problems concerning the protection of traditional knowledge. Unfortunately, I won't be addressing that topic here.

Rather, I am now going to address the mechanism for securing WTO TRIPS (Trade Related Aspects of Intellectual Property Rights) compliance, and I will also focus on APEC's role. My first assignment when I transferred to AIPPI Japan was to review legislation of developing countries such as Belize, Cyprus, El Salvador, Hong Kong, Indonesia, Israel, Korea, Macao, Malta, Mexico, Poland, Singapore, and Trinidad and Tobago. These countries have been reviewed and we are scheduled to review ten more countries for the latter half of this year. I was surprised to find out that almost all of these countries were already in compliance with the requirements of the TRIPS Agreement.

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The TRIPS Agreement has five main characteristics. The first characteristic is the elevation of a wide range of intellectual property protection standards. Second, the TRIPS Agreement requires the observance of the Paris Convention on Industrial Property and the Bern Convention on Author's Rights. Third, the TRIPS Agreement requires the preparation of rules concerning enforcement of IP rights. Fourth, it requires the introduction of the non-discriminatory "Most Favored Nation" principles. These are the specific characteristics of this agreement or regime. Finally, the fifth characteristic, Dispute Settlement Procedure, is very important. For example, one of the dispute settlements in WTO TRIPS involved Japan having received a complaint by the United States on measures concerning sound recordings that were set several years ago. To offer a second example, India also had a complaint by the United States and the European Communities for protection of pharmaceutical and chemical products. Like India, Canada has also received a complaint by the European Communities and the United States for patent protection of pharmaceutical products. There are more than 30 cases related to IP issues which have been settled or filled out within the WTO panel. So, this dispute settlement mechanism is ensuring the effectiveness of the TRIPS regime.

I must mention that the TRIPS agreement is not aimed at reinforcing the IP right itself, but rather, it aims to create an affluent society. For example, in Article 8 we read about the clause concerning prevention of the abuse of IP rights. Furthermore, Article 67 refers to technical cooperation for the implementation of this agreement. Even though developing countries are already in the stage of compliance concerning legislation, there are still problems with enforcing compliance with the legislation.

Why has the WTO TRIPS regime been successful? I believe that there are two reasons for its success. The first is that IP issues are not treated in their own context but in the context of the global economy of the WTO. Second, this mechanism of WTO has the power of extortion as well as the power of enforcement. For example, if member countries do not comply with the TRIPS agreement, this panel will punish them. So, the power of extortion and power of enforcement are very effective in making the member countries comply with the requirements.

Having said all that, I must mention the importance of APEC,¹ an inter-governmental economic forum for sustained economic development and its aim is the liberalization and harmonization of trade and investment. One of the main characteristics of APEC is that it is an open cooperative, which can be compared to the EU or NAFTA—two agreements based on protecting certain regions. Through APEC, for example, Chile can be connected with

¹ APEC member countries include Canada, America, Peru, Chile, New Zealand, Australia, Indonesia, Thailand, Vietnam, the Philippines, Taiwan, China, Japan, Korea and Russia.

the Philippines, Indonesia, or countries located on the other side of the Pacific Ocean. This notion of open cooperation is a very important characteristic of APEC.

Next, I will describe the history and procedures of APEC. It was established in 1989. Six years later, in 1995, the seventh ministerial meeting was held in Osaka. On this occasion, the Osaka action agenda for intellectual property was announced. The agenda had two main points, which consisted of guidelines and layouts for cooperative action. The layouts for cooperative action dealt with the implementation of the TRIPS agreement before January 2000. Research concerning the protection of intellectual property was started as a result of cooperative action between the member countries. Other programs, such as the development of a network against counterfeit goods and the exchange of information concerning well-known marks, were all started due to positive relations between the member countries.

I will now address the specific guidelines; there are three. The first deals with the prompt addressing of an IPR problem. The second guideline deals with effective enforcement against infringement. The third, and most important guideline deals with bilateral cooperation for TRIPS compliance.

I will use Japan as an example of this bilateral cooperation. The JPO has promised to invite thousands of trainees to study in Japan. (Ironically, just before leaving Japan, I attended a party celebrating the fulfillment of this invitation of thousands of trainees.) I also gave lectures on the history of Japan's industrial property systems. The purpose of these lectures was to inform trainees on how Japan had implemented industrial property systems since the beginning of the modernized age, the *Meiji* Era. Besides my lectures, the training courses in Japan include such topics as the administration of industrial property, comparative study of the systems of various countries, and how to encourage people to keep inventing. Japan will continue to invite trainees to study issues concerning IP, even after fulfilling the initial promise of training a thousand people.

Moving on, in March of this year, the tenth Intellectual Property Rights Experts Group (IPEG) meeting was held in Sapporo. Also at that time, the Joint Statement on the WTO/TRIPS Agreement implementation was announced. This statement was finally declared at the meeting in Australia. During the IPEG meeting in Sapporo it was stated that:

APEC remains firmly committed to the full implementation of the TRIPS Agreement throughout APEC in the year of 2000. APEC notes that the TRIPS Agreement has entailed major legislative and infrastructure development in many economies in a relatively short time. The technical cooperation to bring about full and sustained TRIPS implementation is also confirmed as a necessity.

This declaration has also been recommended by IPEG. For example, in Article 2 the protection of well-known marks was recommended. Another recommendation mentioned was for the enforcement of the legislation.

There is an expression which states, "Positive proposition both to developing countries' governments and to developed countries' enterprises (that is to say, IPR holders) should cooperate together against counterfeit goods." For technical cooperation, there needs to be development of competent human resources for the search and examination, for training in clerical skills, and for development of computer systems. So, APEC has been very influential to the implementation of TRIPS agreement to the member countries.

Finally, I would like to remark on the future tasks of the WTO and TRIPS. Though China, Taiwan and Vietnam are member countries of APEC, they are still not members of the WTO. It is reported that China will join in the near future, but the exact time line of when they will commit to WTO is unclear. It seems that Taiwan will also become a member once China has committed to WTO. Vietnam, on the other hand, is still not in a state of compliance with the TRIPS requirements. We hope WTO membership will increase in the years to come.

Since the advent of the international intellectual property system, enforcement has always been the problem, and it remains a big problem. Even in countries such as Japan and the United States, enforcement is very difficult. For developing countries, effective enforcement of IPR is required. I would like to introduce an interesting clause, which is called "Built-in agenda of non-violation clause of TRIPS' Article 64." According to Article 64, applicable since January 2000, if a member country remains in the state of nullifying or impairing the attainment of any objective of the Agreement, whether or not any measure conflicts with the provisions of the Agreement, then we can challenge the WTO panel to make that state change. Theoretically, it is possible, but we do not know what is the scope or range of this clause. Furthermore, I believe this clause will have significant meaning to developing countries in complying with the WTO and TRIPS requirements.

Finally, I have to mention the future framework of the IP system. WTO TRIPS has to encourage the realization of a world IP system, but for that we must respect what is called "International Publicness." This is not my own word. This is the word of my friend, Mr. Takakura, who had wanted to be here instead of me. This notion of "international publicness" is the keyword for the future of an IP system in the world. It applies to sustainable development of the world economy, not only for developed countries but also for developing countries.

Thank you very much.

Audience member: Mr. Maruyama, could you say a few words about what you mean by "international publicness"?

Mr. Maruyama: I expected such a question, but I am not fully prepared to answer it. Briefly, "international publicness" implies that there has to be some kind of ethic of morality to maintain the sustainable development.

Andy Sun: Can I ask a quick question, please? There have been growing doubters out there, believing that APEC is dead. It gets into the discussions of substantive matters because of this very built-in structural framework; you cannot possibly come down with a set of binding rules to regulate what should be done on a region-wide basis. I'd also like to know if you have a comment concerning that issue—and what do you see as the likely framework to make Osaka's action plan feasible? A region-wide patent examination system?

Mr. Maruyama: I apologize; I do not know the reasons concerning the state of APEC. However, concerning the protection of IP, I think APEC's law is significant, especially for technical cooperation—inviting, on-going, and doing the training. That method and the effort should be continued, and APEC still has the power to maintain this activity.

Mr. Weeraworawit: Could I answer instead? I have been involved with the APEC process on IP from the very beginning, as a delegate of Thailand. Since the Osaka Ministerial Meeting, APEC has engaged in the exploration and survey of the systems of the member economies. Now we are at the crucial stage of looking at the ways and means to improve our systems. I think all member economies are committed on the administration of trademarks and patents. To do it on the APEC basis will take some time because of the different levels of preparedness among the member economies, but the political will is there. For example, in APEC itself, there is a sub-group like ASEAN. We are implementing regional filings at the end of this year, with the aim of having the so-called ASEAN Trademark, equivalent to the European Community Trademark. The idea is the harmonization of patent procedures and trademark procedures, as has been discussed in the APEC context.

Somehow I have the feeling that the major stumbling block in having APEC involved in finalizing the APEC harmonization process is the U.S. itself. Refusal to adopt the first-to-file system is an anomaly in the international I.P. community. Then, the exorbitant expense of litigation in this country is another barrier to effective enforcement of intellectual property rights, because when you talk about rights it doesn't mean rights belonging to U.S. nationals only; it means rights belonging to everyone. Somehow, whether we like it or not, the system in the U.S. is applied equally to everyone—the cost of litigation is high without any discrimination. When we look at the international context, this makes it impossible for nationals of developing countries to enforce their rights here, but not vice versa. It should not work out that way.

We have been talking about that in the APEC context. We have asked the right holders of developed economies, in particular, to be vigilant, to be more pro-active—the right holders have to protect their rights instead of making complaints. So, that is the new movement in APEC.

Now we've had a separate meeting for right holders to meet with the representatives of member economies. The meeting happened in Chechu; I believe this meeting occurred on the 14th of July, 2000. So, things are moving forward in APEC, at least with the recognition of complications and difficulties in most member economies. In developing economies, we are aware of the issue concerning respect for the rule of law, and questions of good governance, and finally the need to prevent the perversion of justice. In the developed economies, they have fewer problems in this regard.

So, I think things are moving forward in their own way.

Prof. Adelman: To the last speaker, if I can convince you that the United States is basically a first-to-file patent system, would you drop what I think is a specious excuse for not harmonizing the patent system, that the United States is first-to-invent and the rest of the world is first-to-file? If I can convince of this, will you drop this?

Mr. Weeraworawit: Well if you convince me then I have to drop it, because I am convinced. However, if I am not convinced then it does not matter.

Prof. Franzosi: I don't want to be labeled as "the Karl Marx of intellectual property." I would like to make one remark and I will try to keep it short. I believe that exclusive rights may be either socially responsible or socially non-responsible. If they are socially responsible, I think that the society at large will accept even excessive rights. For instance, in medieval times, you should know that the king, the baron or the duke had excessive rights, but this was accepted because they could defend the public from bandits, predators, and so on. So, excessive rights can be socially responsible. If they are not socially responsible, at the end of the day there will be a reaction because the rights are excessive. For instance, the French revolution.

Now I believe that there are two kinds of rights which are very dangerous. First, there are the rights concerning money. The rights on money allow you to move the capital from one place to another place. The downside of this effect is that the rich become richer. If this situation is not socially responsible it creates a problem.

The other aspect is that intellectual property is really something that enhances the wealth of wealthy people. I have to say that I am happy because I belong to the wealthy part of the world. So, when it enhances the money in my pocket, I am happy. But we have a certain responsibility for the other people and for future generations. Since we have certain responsibilities, I think we should consider the fact that enhancing intellectual property without responsibility creates a certain tension and creates a problem that will eventually blow up. IP is not the center of the world. It is not the main problem that we have. I think we have to consider the fact that we cannot enhance intellectual property forever without social responsibility.

In the past we had international agreements which were closely modeled after the European style (more specifically, the cooperation among nations). For example, under the European style, if you wanted to accept the agreement, that would be fine; if you didn't want to accept, it would also be all right. But the TRIPS agreement is a different kind of agreement. It is compulsory: if you don't accept the conditions, you are punished. This is an example of excessive intellectual property rights. I am sorry if I raised this argument here, it is probably not the right moment, but I think that we have a duty to study this issue not for our own benefit, but for avoiding these discrepancies. We have a duty to study this combination of enhancing the exclusive rights but also giving to the owners of the exclusive rights social responsibility.