

## **INTELLECTUAL PROPERTY RIGHTS**

The U.S.-Korea FTA requires high levels of intellectual property protection, consistent with U.S. standards of protection, and will support the growth of trade in valuable digital and other intellectual property-based products. Although Korea has made great strides modernizing its intellectual property laws, shortcomings remain, and effective enforcement continues to be a challenge. Implementation of the commitments made under this Agreement will reinforce Korea's national efforts to strengthen intellectual property law enforcement. Like our other free trade agreements, this Agreement takes into account significant legal and technological developments that have taken place since WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and NAFTA were negotiated. The Industry Trade Advisory Committee on Intellectual Property Rights' report to the U.S. Trade Representative states that, "taken as a whole, this Agreement is very strong and [the Committee] commends U.S. negotiators. Accordingly, ITAC-15 strongly supports the chapter on intellectual property and notes that it restores key provisions that had not been included in recent TPAs or FTAs." The Committee "strongly supports Congressional approval of this Agreement."

### ***Key Intellectual Property Facts:***

#### *Protection for copyrighted works*

- Copyright-based industries are among the fastest growing and most productive of any sector of the U.S. economy. They employ new workers in higher-paying jobs at over three times the rate of the rest of the economy; create new revenue at over two times that rate; and contribute close to \$90 billion to the U.S. economy each year through foreign sales and exports. The industries' principal barrier to trade is the lack of effective protection and enforcement of intellectual property rights.

#### *Stronger protections for patents & trade secrets*

- Innovation has historically been a driving force in U.S. industry. Competitive advantage based on innovation needs to be protected and defended. U.S. companies need access to legal tools in all markets across the globe.

#### *Tough penalties for piracy and counterfeiting*

- The high level of enforcement required by the U.S.-Korea FTA will benefit industry and set a precedent throughout the region.

#### *Trademarks*

This Agreement helps innovative U.S. companies by providing trademark protection for sound and scent marks, as well as certification marks. It also requires a system to resolve disputes about trademarks used in Internet domain names, which benefits U.S. companies with a presence on the web by preventing "cyber-squatting" with respect to high-value domain names.

This Agreement applies the principle of "first-in-time, first-in-right" to trademarks and geographical indications, so that the first person who acquires a right to a trademark or geographical indication is the person who has the right to use it. It also provides for an on-line system for the registration and maintenance of trademarks, as well as a searchable database and requires transparent procedures for the registration of trademarks, including geographical indications. And in an effort to clear bureaucratic hurdles to the protection of valuable trademarks, the Agreement prevents requirements for license recordation in order to establish the validity of that license.

### *Copyright*

The International Intellectual Property Alliance estimates that U.S. companies lost over \$400 million in Korea in 2006 due to piracy of motion pictures, records and music, business application software, videogames, and books. Korea also has extremely high rates of broadband Internet access, and Internet-based copyright piracy has been rampant. The U.S.-Korea FTA includes many important provisions for stemming these losses and otherwise benefiting U.S. copyright industries. One of the most important provisions is the prohibition on the circumvention of technological protection measures (TPMs) that authors, performers, and producers of phonograms use in the exercise of their rights to prohibit or restrict unauthorized acts (e.g., unauthorized access to a work or illegal copying). Defined and limited exceptions to the circumvention of TPMs will provide further certainty by bolstering its effective implementation. This prohibition on circumvention of TPMs is an important tool for addressing the challenges presented in the digital environment.

The protection of encrypted program-carrying satellite and cable signals was included as a direct response to the concerns of U.S. broadcasters and content providers. Korea has also committed to mandating that government agencies use computer software only as

authorized by the right holder and to actively regulate the acquisition and management of the software, a high priority for the U.S. software industry. In addition to the needs addressed by the industry-specific challenges, Korea has also agreed to increase the term of protection, which will allow a broad range of right holders to continue to benefit from their intellectual property. It has also agreed to implement a system of statutory damages for copyright infringement, which should increase the efficacy of civil enforcement.

### *Patents and Regulated Products*

The Agreement provides for the extension of patent terms to compensate for delays in granting the original patent, which will benefit innovative pharmaceutical and other U.S. companies.

The Agreement permits inventors to publish their inventions in journals and still have 12 months to apply for a patent on that invention. It also protects against arbitrary revocation of patents and assures protection for newly developed plant varieties and animals.

In a significant gain for the U.S. pharmaceutical and agrochemical producers, the FTA clarifies that test data submitted to a government for the purpose of product approval will be protected against unfair commercial use for a period of five years for pharmaceuticals and 10 years for agricultural chemicals. Moreover, the FTA requires measures to prevent the marketing approval of pharmaceutical products that would infringe a patent and to provide notice when the validity of a pharmaceutical patent is to be challenged. Patent holders will also enjoy the benefits of patent extension to compensate for delays in the marketing approval process for pharmaceutical products.

### *Enforcement*

The U.S.-Korea FTA criminalizes end-user piracy, providing strong deterrence against copyright piracy and trademark counterfeiting. It requires Korea to authorize the seizure, forfeiture, and destruction of counterfeit and pirated goods and the equipment used to produce them. In addition, the FTA provides for customs enforcement against goods-in-transit, to deter violators from using ports or free trade zones to traffic in pirated products; streamlines customs procedures to increase efficiency of enforcement; and permits customs officials and prosecutors to bring an IPR enforcement action without having to wait for a formal complaint from the right holders, providing for more effective enforcement of laws that benefit innovative U.S. companies.