

# Client Alert

International Trade & Litigation Practice Group

October 8, 2015

## Trans-Pacific Partnership Agreement Features Key Developments in Intellectual Property and Information Technology

On October 5, the 12 Trans-Pacific Partnership (“TPP”) countries announced that they had resolved all remaining issues and reached a final agreement on the long-anticipated regional free-trade agreement. As King & Spalding **reported** earlier this week, if the United States ultimately passes legislation implementing the TPP, it will create an integrated regional economy accounting for 40 percent of global GDP.

TPP will have a vast impact on trade across many sectors, including important developments in the realms of intellectual property and information technology. Although the full text of the agreement has not yet been released, the United States Trade Representative (“USTR”) has issued a **summary** of the key components of the agreement.

The USTR summary states that the TPP chapter will “will make it easier for businesses to search, register, and protect IP rights in new markets.” The IP provisions of the TPP include:

- Standards for patents, based on the WTO’s TRIPS Agreement and international best practices;
- Trademark protections for brand names and signs;
- Safeguards for geographical indications;
- On the much-debated issue of pharmaceuticals, provisions that will “facilitate both the development of innovative, life-saving medicines and the availability of generic medicines, taking into account the time that various Parties may need to meet these standards;”
- Protections for undisclosed data used to seek marketing approval for chemical products;
- Provisions encouraging balanced copyright systems, and protections for works including songs, movies, books, and software;

For more information, contact:

**Gilbert B. Kaplan**  
+1 202 661 7981  
gkaplan@kslaw.com

**Jeffrey M. Telep**  
+1 202 626 2390  
jtelep@kslaw.com

**Joseph A. Laroski Jr.**  
+1 202 626 2647  
jlaroski@kslaw.com

**Elizabeth Owerbach**  
+1 202 626 9223  
eowerbach@kslaw.com

**King & Spalding**  
**Washington, D.C.**  
1700 Pennsylvania Avenue, NW  
Washington, D.C. 20006-4707  
Tel: +1 202 737 0500  
Fax: +1 202 626 3737

[www.kslaw.com](http://www.kslaw.com)

- A requirement for establishing copyright safe harbors for Internet Service Providers; and
- Provisions for establishing strong enforcement systems, targeting especially trade secret misappropriation through cyber theft and other means.

The Information Technology/Communications provisions of the TPP include:

- Provisions to ensure pro-competitive network access for telecommunications providers, including commitments to regulatory transparency;
- Provisions to balance competitive policies with regulation, including an agreement that “if a Party chooses to regulate rates for wholesale international mobile roaming services, that Party shall permit operators from the TPP countries that do not regulate such rates the opportunity to also benefit from the lower rates;” and
- An Electronic Commerce chapter committed to the free flow of information subject to certain limitations to protect privacy and achieve other public policy goals. The chapter includes provisions that:
  - Eliminate “data localization” requirements, which require companies to build data centers in the markets where they wish to operate;
  - Prohibit TPP parties from favoring national producers of electronic transmission products;
  - Promote paperless trading and electronic authorization;
  - Commit parties to adopt and maintain consumer protection laws related to “fraudulent and deceptive commercial activities,” and measures “to stop unsolicited commercial electronic messages;”
  - Promote cooperation to assist smaller businesses with accessing electronic commerce; and
  - Encourage collaboration on cybersecurity.

Importantly, the TPP agreement will also cut tariffs on IT and communications products that the U.S. exports to TPP countries. The White House **reports** that these tariff cuts will be “as high as 35 percent.”

While news of the deal marks a breakthrough after more than five years of negotiations, many are withholding judgment until the full text of the deal is released. The Information Technology Industry Council, for instance, welcomed the news but **stated**: “[f]or the tech sector, the true test of the deal will be whether it is an agreement that will support jobs, drive sustainable growth, foster inclusive development, and promote 21st century innovation.” Senator Orrin Hatch (R-Utah) has **stated** that “[w]hile the details are still emerging, unfortunately I am afraid this deal appears to fall woefully short” of what Congress will require in order to pass the bill.

King & Spalding will continue to monitor TPP developments going forward. In the meantime, please contact us with any questions.

*Celebrating more than 130 years of service, King & Spalding is an international law firm that represents a broad array of clients, including half of the Fortune Global 100, with 900 lawyers in 18 offices in the United States, Europe, the Middle East and Asia. The firm has handled matters in over 160 countries on six continents and is consistently recognized for the results it obtains, uncompromising commitment to quality and dedication to understanding the business and culture of its clients. More information is available at [www.kslaw.com](http://www.kslaw.com).*

*This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.”*