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VIA E-MAIL

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Business Law
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

In Re: Targeted Consultation Document: Implementation of the Trans-Pacific Partnership Intellectual Property Chapter

Att'n Business Law:

The Global Intellectual Property Center (“GIPC”) at the U.S. Chamber of Commerce appreciates the opportunity to submit the following comments in response to the Ministry’s invitation in the Targeted Consultation Document on Implementation of the Trans-Pacific Partnership Intellectual Property Chapter. The comments below reflect GIPC’s views on three discrete issues related to the Targeted Consultation Document, and are submitted without prejudice to other issues, both within and outside the scope of the current consultation, that GIPC may in the future raise to the Government of New Zealand’s attention.

As a starting point, GIPC notes that the Government of New Zealand has a strong record of utilizing intellectual property (“IP”) laws and related measures to enable innovation. The strength of its IP framework makes New Zealand one of a small group of nations globally that not only enshrine appropriate IP incentives in law, but also implement effective administrative and enforcement measures to provide legal certainty to innovators in the marketplace. Indeed, New Zealand ranked 12th among 38 countries evaluated in the recently released [4th Edition of the U.S. Chamber International IP Index](#) (“the Index”), scoring 21.38 out of a possible 30 points. If

fully and effectively implemented, the Trans-Pacific Partnership (“TPP”) IP Chapter will further enhance New Zealand’s Index score, as well as cement New Zealand’s competitive advantage with respect to the most sought-after innovative industries—industries that depend on patents, copyrights, trademarks, trade secrets, and their effective enforcement to bring new, creative, and innovative products to market.

Strong IP frameworks bring their own reward: In conjunction with the Index, GIPC has undertaken extensive research on the relationships between IP strength and a host of widely-shared socio-economic goals. In a [Statistical Annex](#) to the Index, GIPC found strong positive relationships between IP strength and the degree to which countries succeeded in stimulating innovative output; job creation in knowledge-intensive industries; private sector spending on research and development; and start-up access to venture capital, among other things.

With that as context, the GIPC urges the Ministry of Business, Innovation & Employment (“MBIE”) to consider the following as it provides advice to the Government of New Zealand on the changes to intellectual property law required to ratify TPP:

I. Technological Protection Measures (TPMs)

Implementation of TPP provisions related to TPMs should comport with the spirit of New Zealand’s current law on permissible exceptions, which is tailored to specific permitted uses and includes safeguards, and more closely comports with the TPP than the proposed revisions. Both civil and criminal remedies must be provided for the circumvention of a TPM that controls access to a copyrighted work.

Technological Protection Measures, or TPMs, enable innovation in the business models that deliver creative content, ensuring consumers have a choice of access points. MBIE proposals that facilitate trafficking mean widespread availability of circumvention devices, which means widespread circumvention. Once the content is “in the clear” it can, and experience has demonstrated very clearly that it will, lead directly to widespread infringement, with a depressing effect on creative output. GIPC encourages MBIE to reconsider the proposed exceptions, which we consider overbroad.

II. Copyright Term Extension

The proposed eight year phase-in for copyright term extension relies on flawed data that suggests an erroneous TPP “cost,” and should be reconsidered in light of the benefits of enhanced term to content creators and innovators in New Zealand.

We urge the Government of New Zealand to extend copyright term along with its other TPP partners, notwithstanding the negotiated phase-in period. Harmonization of terms of protection facilitates legitimate trade in creative works, especially in a global digital economy. Extension of term immediately upon TPP implementation will ensure that New Zealand’s creators, as well as those of other nationalities, continue to have the strongest possible incentive to innovate in New Zealand; will minimize disruptions in the digital marketplace caused by unnecessary differences between national regimes (especially TPP regimes); and will enhance the global competitiveness of New Zealand’s creative industries.

III. Regulatory Data Protection for Biologics

Implementation of the strongest possible term of regulatory data protection (“RDP”) for biologics will send a clear signal to the global bio-technology industry that New Zealand intends to be a center for innovative research and development activity. The U.S. law of 12 years sets the current global benchmark; by implementing the strongest TPP provisions on RDP, New Zealand has an opportunity to distinguish itself from the global competition, enhancing both output of and access to innovative, life-saving medicines.

While not included among the proposals that MBIE has deemed necessary changes to New Zealand law in the Targeted Consultation Document, GIPC believes it would be a missed opportunity for the Government of New Zealand to implement anything less than the strongest term of regulatory data protection provided by its TPP partners. The innovative bio-technology industry is today curing diseases that just a few years ago were untreatable. The parties to the TPP have the opportunity to come together to form a community of first markets for the products of this

industry by providing a secure environment for the high-risk innovative research and development investment required to discover these cures. Ultimately, New Zealand can reap the rewards of both innovative production and access if it stakes out a leadership position with respect to appropriately strong IP incentives for bio-technology investment.

GIPC believes that New Zealand can and should be an important global source of creative and innovative products, and that the TPP IP Chapter can be an important policy tool to ensure that it is. The [Statistical Annex](#) to the Index illustrates the strong positive correlations between protection of copyright and domestic output of creative content, and access to such content from all sources, respectively. Likewise, the Annex shows a very clear and direct correlation between IP rights related to the life sciences, such as patents, regulatory data protection, and patent term restoration, and an environment in which bio-technology innovation can thrive.

For all these reasons, we urge the Government of New Zealand to undertake implementation of the TPP IP Chapter in a spirit of preserving and optimizing the appropriate incentives for innovative and creative activity that are already part of New Zealand's legal and economic culture, and enhancing legal certainty for creators and innovators through the TPP's modern IP-related due process provisions. We welcome the opportunity to discuss these views at any time.

Respectfully submitted,

A handwritten signature in black ink that reads "Patrick Kilbride". The signature is written in a cursive, slightly slanted style.

Patrick Kilbride
Executive Director, International IP
Global Intellectual Property Center
U.S. Chamber of Commerce