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Summary Report for the Capacity Building Needs Initiative Workshop on Intellectual Property Rights

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Summary Report for the APEC Capacity Building Workshop
on Intellectual Property Rights under the 3rd REI CBNI

(June 27-28, 2018, Seoul, Republic of Korea)

1. Background of the Workshop

The APEC Capacity Building Workshop on Intellectual Property Rights was held in Seoul on June 27-28, 2018 as one of the programs under the 3rd phase of the Regional Economic Integration Capacity Building Needs Initiative. The workshop was designed to enhance the capacity and skills of government officials from APEC economies for addressing intellectual property issues.

Intellectual property was selected as the theme of this workshop given the fast pace of the evolution of regional trade agreements around the world and the significance of intellectual property issues in the current global trade negotiations. The goal of the workshop was to provide an opportunity for negotiators and policymakers to experience in-depth capacity building with practical relevance, participate in intellectual property negotiations, and share best practices and experiences in preparing for negotiations.

2. Overview of the Workshop (speakers and program)

The workshop was attended by more than 27 delegates from 12 APEC economies—namely China, Chinese Taipei, Indonesia, Japan, Korea, Malaysia, Peru, the Philippines, Russia, Singapore, Thailand, and Viet Nam. Also, the following distinguished scholars and experts from international organizations, universities, and law firms shared their expertise and had discussions with participants from APEC economies: Prof. Chaho Jung from SungKyunKwan University Law School; Director General Mr. Jae-kwon Kang from the Ministry of Foreign Affairs of the Republic of Korea; Mr. Heetae Kim from the Korean Intellectual Property Office; Mr. Wolf R. Meier-Ewert from the World Trade Organization; Dr. Nahoko Ono from Lerner David Littenberg Krumholz & Mentlik LLP; Dr. Jinseok Park from the Darae Law & IP Group; and Mr. Young-Woo Yun from the World Intellectual Property Organization.

The workshop was moderated by Dr. Jinseok Park of the Darae Law & IP Group of Korea and consisted of eight presentations and seven sessions entitled “WTO/TRIPS Agreement and Recent Trends of Global Intellectual Property Issues”, “Changes in the Intellectual Property Legal Landscape with FTAs”, “WTO/TRIPS-plus Agenda in FTA Negotiations on Intellectual Property”, “Experience Sharing on Preparing and Implementing Intellectual Property Chapters in FTA” , “Mock Negotiation”, “Discussions and Sharing Experience of APEC Members”, and “Wrapping up and Evaluations”.

3. Short Summary of the Presentations

Session 1: WTO/TRIPS Agreement and Recent Trends of Global Intellectual Property

Issues

In Session 1, Mr. Wolf Meier-Ewert, Counsellor of Intellectual Property at the Government Procurement and Competition Division of the World Trade Organization, provided an overview of the WTO/TRIPS Agreement and its relation to the intellectual property provisions of free trade agreements. Counsellor Meier-Ewert also provided the statistics of dispute settlement cases at the WTO and explained its dispute settlement process for TRIPS issues in terms of subject matter, ongoing panel proceedings and pending consultations at the WTO/TRIPS Council. He elaborated on the implications of the WTO/TRIPS Agreement in trade agreements with a focus on the principles of non-discrimination and most-favored-nation treatment.

Mr. Young-Woo Yun, Head of the International Classifications and Standards Division of the World Intellectual Property Organization, did a presentation focusing on the recent trends in the global intellectual property system. He introduced the role of the World Intellectual Property Organization in improving access to the intellectual property system and in strengthening protection measures for global intellectual property assets. According to Mr. Yun, there have been a huge increase in the number of patent applications in the areas of artificial intelligence, the IoT, robotics, the blockchain, and they are reshaping the global intellectual property system by affecting the market, the workforce, business operations and the society. He suggested IP authorities should work together more closely to adapt better to new systems and technologies.

Session 2: Changes in the Intellectual Property Legal Landscape with FTAs

In Session 2, Mr. Heetae Kim, Director for Examination Quality Assurance Office of the Korean Intellectual Property Office, discussed the changes in intellectual property laws caused by free trade agreements. Mr. Kim introduced Korea's experience in revising intellectual property laws, including laws on patents, trademarks, geographical indications, copyrights and enforcement, as a result of its free trade agreements with the US and the EU. He provided a detailed analysis on the extension of patent terms following delayed registration, the patent approval linkage system, and enhanced protection for geographical indications. In addition, Mr. Kim shared his experience in FTA negotiations from the stages of preparation to implementation. He also touched upon the following topics: enhancing the quality of FTA implementation; a post analysis on the economic effects of free trade agreements and political considerations; ways to address the low utilization rate of free trade agreements by SMEs.

Dr. Nahoko Ono, an IP attorney at Lerner David LLP, addressed the changes caused by free trade agreements in the intellectual property legal landscape. She presented Japan's case covering its basic policy, history and status of FTA negotiations on intellectual property. In an effort to describe the various aspects and purposes of Japan's free trade agreements, Dr. Ono covered a number of intellectual property chapters. Dr. Ono emphasized that, at a multilateral level, Japan places a high priority on the WTO-supremacy approach while considering bilateral specialty when it comes to free trade agreements and regional negotiations. She noted that Japan's free trade agreements have been effective in addressing domestic issues and that they have provided an opportunity for Japan to make the transition from a reactive to a proactive legal reform. Her overall assessment was that, with its free

trade agreements, Japan has worked hard to improve its intellectual property system and achieve the WTO/TRIPS plus level.

Session 3: WTO/TRIPS-plus Agenda in FTA Negotiations on Intellectual Property

In Session 3, Counsellor Wolf Meier-Ewert provided an analysis of intellectual property provisions in recent free trade agreements. According to Counsellor Meier-Ewert, intellectual property provisions in regional trade agreements vary widely in scope and breadth. Among various types of intellectual property, geographical indications have been the most debated issue in negotiations for intellectual property provisions of free trade agreements followed by trademarks, copyrights and patents. Then, he elaborated on the various intellectual property provisions in free trade agreements, such as health-related intellectual property provisions, intellectual property as investment, border measures, exhaustion, and non-violation complaints. He also dealt with provisions about technology protection measures in CETA, the CPTPP and the Korea-US FTA.

Dr. Nahoko Ono covered the WTO/TRIPS-plus agenda in FTA negotiations on intellectual property based on Japan's experience. Dr. Ono provided examples of the provisions in the intellectual property chapters of Japan's free trade agreements that exceeded the level of WTO/TRIPS Agreement. She explained that, when it comes to intellectual property provisions in free trade agreements, Japan's key goals are to simplify and increase the transparency of patenting and other administrative procedures; to strengthen intellectual property protection; and to strengthen enforcement on border measures and criminal remedies.

Session 4: Experience Sharing on Preparing and Implementing Intellectual Property Chapters in FTA

In Session 4, Mr. Heetae Kim addressed the issue of preparing and negotiating intellectual property chapters in free trade agreements. Mr. Kim stressed the importance of analyzing the trade environment and reviewing relevant international treaties prior to FTA negotiations. Mr. Kim noted that Korea is striving to be an export-driven economy and expand its economic territory through free trade agreements, and as a result, trade with its FTA partners accounted for 68% of the economy's total trade in 2017.

Mr. Kim went on to say that Korea puts much effort in preparing, negotiating and implementing free trade agreements with the goal of maximizing the utilization of free trade agreements in the intellectual property area. According to Mr. Kim, the criteria for selecting Korea's FTA partners include: economic benefits; the economy's readiness level; the economy's representativeness in the region; compatibility with diplomacy/security issues; and economic impacts. He concluded his presentation by saying Korea has learned the importance of the following: considering political situations when preparing for free trade agreements; upgrading industrial competitiveness to maximize FTA effects; establishing a support system to help SMEs utilize free trade agreements more; enhancing cooperation between the private and public sector in building public consensus; and increasing industrial competitiveness rather than providing subsidies for losses.

Prof. Chaho Jung from SungKyunKwan University covered how Korea prepared for and implemented its free trade agreements with the US and Europe. Professor Jung elaborated on Korea's top ten lessons in intellectual property-related negotiations and his general impression of intellectual property issues in FTA negotiations. According to his evaluation, patent law issues in the Korea-US FTA revolved around the patent term restoration system; the approval-patent linkage system; and enhanced damage system. He emphasized it is crucial to take full advantage of the FTAAP to enhance and advance the intellectual property system of each economy. As an alternative to the harmonization of the global intellectual property system, Professor Jung suggested unifying the patent acts of Korea, Japan and China and establishing an Asia Patent Court.

Session 5: Mock Negotiation

In Session 5, Dr. Jinseok Park, a senior patent attorney at the Darae Law & IP Group, led a mock negotiation on the intellectual property chapter of a free trade agreement. The participants were divided into two groups, Economy A and B, and did a mock negotiation for a regional trade agreement. The mock negotiation was based on a hypothetical scenario in which each economy had different economic characteristics and different policy frameworks for intellectual property issues. The topics of the mock negotiation were selected from a range of much-debated issues in free trade agreements, such as geographical indications and patent term adjustment for delayed examination. Each group was given 30 minutes to prepare negotiation strategies, and the negotiation went on for an hour.

The leaders of the two groups negotiated enthusiastically on behalf of their groups. The highlight of the negotiation, and indeed one that was most challenging, was the debate about the level of protection for geographical indications. The participants assessed that they had a frank and useful exchange of views in the mock negotiation. They also assessed that the mock negotiation helped them to better understand the importance of preparing before going into negotiations and focusing on a specific issue (e.g. geographical indications) and the need to have a general understanding about the different positions of each economy. Furthermore, participants learned the importance of clear communication during negotiations and the need for the whole team to participate, give full support, collaborate and stick to the its position during the negotiation.

Session 6: Discussions and Sharing Experience of APEC Members

In Session 6, APEC member economies discussed and shared their own experiences. Delegates who had participated in trade negotiations shared their experiences in dealing with intellectual property issues. Furthermore, they shared their insight and experiences in the area of intellectual property from their own economies' perspectives. Some participants also emphasized the importance of negotiators having a comprehensive perspective and understanding on up-to-date trade policies, political issues as well as intellectual property issues.

4. General Evaluation

Overall, the workshop provided a good opportunity for government officials from APEC member economies to have useful discussions on intellectual property laws and practices.

Most participants expressed appreciation that the topics discussed were relevant to their daily work and that valuable materials on various intellectual property issues were provided throughout the workshop. Participants also commented that the workshop provided a great opportunity for networking with experts from in and out of the APEC region. As a result, the workshop achieved its intended goal by allowing participants to enhance their understanding, share experiences and exchange views on ways to better negotiate on intellectual property issues in FTAs/RTAs.

A survey was conducted after the workshop, and the results showed that the participants were quite satisfied with the program, the expertise of the speakers, the quality of the discussions as well as the logistical arrangements of the workshop. A more detailed report on the workshop will be submitted to the CTI by the end of this year, and all materials from the workshop will be uploaded on the official website of APEC. /End/