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## The TPP's New Provision on Party Accession to International Agreements<sup>1</sup>

Article QQ.A.8 of the Trans-Pacific Trade Partnership lists the international agreements and treaties that each member party must accede to or ratify.<sup>2</sup>

Trans-Pacific Partnership Signatory	Patent Cooperation Treaty (1970, as amended in 1979)	Paris Convention for the Protection of Industrial Property (1967)	Berne Convention for the Protection of Literary and Artistic Works (1971)	Protocol Relating to the Madrid Agreements Concerning the International Registration of Marks (1989)	Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977, as amended in 1980)	International Convention for the Protection of New Varieties of Plants (1991) <sup>i</sup>	Trademark Law Treaty (1994) <sup>ii</sup>	WIPO Copyright Treaty (1996)	WIPO Performances and Phonograms Treaty (1996)
Australia	✓ (in force: Mar. 31, 1980)	✓ (in force: Oct. 10, 1925)	✓ (in force: Apr. 14, 1928)	✓ (in force: July 11, 2001)	✓ (in force: July 7, 1987)	✓ (joined: Jan. 20, 2000)	✓ (in force: Jan. 21, 1998)	✓ (in force: July 26, 2007)	✓ (in force: July 26, 2007)
Brunei Darussalam	✓ (in force: July 24, 2012)	✓ (in force: Feb. 17, 2012)	✓ (in force: Aug. 30, 2006)	✗	✓ (in force: July 24, 2012)	✗ <sup>iii</sup>	✗	✗	✗
Canada	✓ (in force: Jan. 2, 1990)	✓ (in force: Sept. 1, 1923)	✓ (in force: Apr. 10, 1928)	✗	✓ (in force: Sept. 21, 1996)	✗ <sup>iv</sup>	✗	✓ (in force: Aug. 13, 2014)	✓ (in force: Aug. 13, 2014)
Chile	✓ (in force: June 2, 2009)	✓ (in force: June 14, 1991)	✓ (in force: June 5, 1970)	✗	✓ (in force: Aug. 5, 2011)	✗ <sup>v</sup>	✓ (in force: Aug. 5, 2011)	✓ (in force: Mar. 6, 2002)	✓ (in force: May 20, 2002)
Japan	✓ (in force: Oct. 1, 1978)	✓ (in force: July 15, 1899)	✓ (in force: July 15, 1899)	✓ (in force: Mar. 14, 2000)	✓ (in force: Aug. 19, 1980)	✓ (joined: Dec. 24, 1998)	✓ (in force: Apr. 1, 1997)	✓ (in force: Mar. 6, 2002)	✓ (in force: Oct. 9, 2002)

<sup>1</sup> Public Citizen's Global Access to Medicines Program. For more information please contact Peter Maybarduk at [pmaybarduk@citizen.org](mailto:pmaybarduk@citizen.org); Burcu Kilic at [bkilic@citizen.org](mailto:bkilic@citizen.org); or Hannah Brennan at [hbrennan@citizen.org](mailto:hbrennan@citizen.org).

<sup>2</sup> Note: The ✓ marks in the table below denote that a nation has acceded to the international agreement in question, and the ✗ marks denote that a nation has not yet signed the agreement. The TPP would force all parties to accede to all the agreements listed in this chart.



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Trans-Pacific Partnership Signatory	Patent Cooperation Treaty (1970, as amended in 1979)	Paris Convention for the Protection of Industrial Property (1967)	Berne Convention for the Protection of Literary and Artistic Works (1971)	Protocol Relating to the Madrid Agreements Concerning the International Registration of Marks (1989)	Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977, as amended in 1980)	International Convention for the Protection of New Varieties of Plants (1991)	Trademark Law Treaty (1994) <sup>vi</sup>	WIPO Copyright Treaty (1996)	WIPO Performances and Phonograms Treaty (1996)
Malaysia	✓ (in force: Aug. 16, 2006)	✓ (in force: Jan. 1, 1989)	✓ (in force: Oct. 1, 1990)	✗	✗	✗ <sup>vii</sup>	✗	✓ (in force: Dec. 27, 2012)	✓ (in force: Dec. 27, 2012)
Mexico	✓ (in force: Jan. 1, 1995)	✓ (in force: Sept. 7, 1903)	✓ (in force: June 11, 1967)	✓ (in force: Feb. 19, 2013)	✓ (in force: Mar. 21, 2001)	✗ <sup>viii</sup>	✓ <sup>ix</sup> (Signed Oct. 28, 1994)	✓ (in force: Mar. 6, 2002)	✓ (in force: May 20, 2002)
New Zealand	✓ (in force: Dec. 1, 1992)	✓ (in force: July 29, 1931)	✓ (in force: Apr. 24, 1928)	✓ (in force: Dec. 10, 2012)	✗	✗ <sup>x</sup>	✗	✗	✗
Peru	✓ (in force: June 6, 2009)	✓ (in force: Apr. 11, 1995)	✓ (in force: Aug. 20, 1988)	✗	✓ (in force: Jan. 20, 2009)	✓ (joined: Aug. 8, 2011)	✓ (in force: Nov. 6, 2009)	✓ (in force: Mar. 6, 2002)	✓ (in force: July 18, 2002)
Singapore	✓ (in force: Feb. 23, 1995)	✓ (in force: Feb. 23, 1995)	✓ (in force: Dec. 21, 1998)	✓ (in force: Oct. 31, 2000)	✓ (in force: Feb. 23, 1995)	✓ (joined: July 30, 2004)	✗	✓ (in force: Apr. 17, 2005)	✓ (in force: Apr. 17, 2005)
United States	✓ (in force: Jan. 24, 1978)	✓ (in force: May 30, 1887)	✓ (in force: Mar. 1, 1989)	✓ (in force: Nov. 2, 2003)	✓ (in force: Aug. 19, 1980)	✓ <sup>xi</sup> (joined: Feb. 22, 1999)	✓ (in force: Aug. 12, 2000)	✓ (in force: Mar. 6, 2002)	✓ (in force: May 20, 2002)
Viet Nam	✓ (in force: Mar. 10, 1993)	✓ (in force: Mar. 8, 1949)	✓ (in force: Oct. 26, 2004)	✓ (in force: July 11, 2006)	✗	✓ (joined: Dec. 24, 2006)	✗	✗	✗



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## Brief Summary of the Relevant International Treaties and Agreements

### **Patent Cooperation Treaty**<sup>3</sup>

The Patent Cooperation Treaty (PCT) is an international treaty that streamlines the patent application process across 148 countries. The PCT makes it possible to seek patent protection for an invention simultaneously in a large number of countries by filing a single “international” patent application instead of filing many separate national or regional patent applications. Nevertheless, the PCT does not standardize the grant of patents; the grant of patent applications remains under the control of national or regional patent offices.

### **Paris Convention for the Protection of Industrial Property**<sup>4</sup>

The Paris Convention applies to patents, trademarks, industrial designs, utility models, service marks, trade names (designations under which an industrial or commercial activity is carried out), geographical indications (indications of source and appellations of origin), and the repression of unfair competition. The substantive provisions of the Convention fall into three main categories: national treatment, right of priority, and common rules. As to national treatment, the Convention provides that each contracting state must grant the same protection to nationals of other contracting states that it grants to its own nationals. As to right of priority, the Convention provides that a patent applicant may, after filing his first regular patent application in one of the contracting states, apply for protection in any of the other contracting states within a defined period of time. Finally, the Convention lays down a few common rules. For more information on these rules, visit the World Intellectual Property Organization’s summary of the Paris Convention, available at: [http://www.wipo.int/treaties/en/ip/paris/summary\\_paris.html](http://www.wipo.int/treaties/en/ip/paris/summary_paris.html). The Paris Convention, concluded in 1883, was revised at Brussels in 1900, at Washington in 1911, at The Hague in 1925, at London in 1934, at Lisbon in 1958 and at Stockholm in 1967, and was amended in 1979. The Convention is open to all states and currently has 176 members.

### **Berne Convention for the Protection of Literary and Artistic Works**<sup>5</sup>

The Berne Convention provides for the protection of artistic and literary works and the rights of their authors. It is based on three basic principles and contains a series of provisions that determine the minimum protection to be granted. It also sets forth special provisions for developing countries. The three basic principles are the following:

- (a) All contracting states must afford national treatment to all works originating in other contracting states.

<sup>3</sup> PCT FAQs, WORLD INTELLECTUAL PROPERTY ORGANIZATION, <http://www.wipo.int/pct/en/faqs/faqs.html#note1> (last visited Oct. 7, 2014).

<sup>4</sup> *Summary of the Paris Convention for the Protection of Industrial Property (1883)*, WORLD INTELLECTUAL PROPERTY ORGANIZATION, [http://www.wipo.int/treaties/en/ip/paris/summary\\_paris.html](http://www.wipo.int/treaties/en/ip/paris/summary_paris.html) (last visited Oct. 7, 2014).

<sup>5</sup> *Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886)*, WORLD INTELLECTUAL PROPERTY ORGANIZATION, [http://www.wipo.int/treaties/en/ip/berne/summary\\_berne.html](http://www.wipo.int/treaties/en/ip/berne/summary_berne.html) (last visited Oct. 7, 2014).



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(b) Protection cannot be conditioned upon compliance with any formality.

(c) Protection is independent of the existence of protection in the work's country of origin. However, if a contracting state provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ends.

The Berne Convention, concluded in 1886, was revised at Paris in 1896 and at Berlin in 1908, completed at Berne in 1914, revised at Rome in 1928, at Brussels in 1948, at Stockholm in 1967, and at Paris in 1971, and was amended in 1979. The Convention is open to all States and currently has 168 members.

#### **Protocol Relating to the Madrid Agreements Concerning the International Registration of Marks**<sup>6</sup>

The Madrid System for the International Registration of Marks is governed by two treaties: the **Madrid Agreement**, and the **Protocol** relating to that Agreement. The two treaties are parallel and independent, and states may adhere to either or both of them. These treaties enable trademark holders to protect their marks in a large number of countries by obtaining an international registration that has effect in each of the designated contracting parties. The Madrid Agreement and Protocol are open to any country that is party to the Paris Convention and currently have 91 members.

#### **Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure**<sup>7</sup>

This Treaty requires all contracting states which allow or require the deposit of microorganisms for the purposes of patent procedures to recognize the deposit of a microorganism with any "international depositary authority," irrespective of whether such authority is within or outside the territory of the state. This treaty is relevant to the disclosure requirement of patent law: where an invention involves a microorganism or the use of a microorganism, disclosure is not possible in writing but can only be effected by the deposit, with a specialized institution, of a sample of the microorganism. The Budapest Treaty was concluded in 1977 and is open to any country that is a party to the Paris Convention. Currently, 79 nations are party to the Treaty.

<sup>6</sup> *Summary of the Madrid Agreement Concerning the International Registration of Marks (1891) and the Protocol Relating to that Agreement (1989)*, WORLD INTELLECTUAL PROPERTY ORGANIZATION, [http://www.wipo.int/treaties/en/registration/madrid/summary\\_madrid.html](http://www.wipo.int/treaties/en/registration/madrid/summary_madrid.html) (last visited Oct. 7, 2014).

<sup>7</sup> *Summary of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977)*, WORLD INTELLECTUAL PROPERTY ORGANIZATION, [http://www.wipo.int/treaties/en/registration/budapest/summary\\_budapest.html](http://www.wipo.int/treaties/en/registration/budapest/summary_budapest.html) (last visited Oct. 7, 2014).



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### **International Convention for the Protection of New Varieties of Plants**<sup>8</sup>

The International Convention for the Protection of New Varieties of Plants (UPOV) requires signatories to provide plant variety protection to breeders for any plant that is novel, distinct, homogenous, and stable.<sup>9</sup> This treaty prohibits farmers and other consumers from selling and using certain plant varieties, with certain exceptions. Furthermore, this treaty has two principle versions—the 1978 version and the 1991 version—with the later version allowing significantly less flexibility than the earlier version.

### **Trademark Law Treaty**<sup>10</sup>

The aim of the Trademark Law Treaty (TLT) is to standardize and streamline national and regional trademark registration procedures. The majority of the provisions of the TLT concern the procedures for trademark registration, changes after registration, and trademark renewal. The rules concerning each phase are constructed so as to clearly define the requirements for an application or a specific request. The TLT was concluded in 1994 and is open to all countries that are members of WIPO and to certain intergovernmental organizations. Currently, this Treaty has 53 members.

### **WIPO Copyright Treaty**

“The WIPO Copyright Treaty (WCT) is a special agreement under the Berne Convention that deals with the protection of works and the rights of their authors in the digital environment. Any contracting party (even if it is not bound by the Berne Convention) must comply with the substantive provisions of the 1971 (Paris) Act of the Berne Convention for the Protection of Literary and Artistic Works (1886). Furthermore, the WCT mentions two **subject matters** to be protected by copyright:

- (i) computer programs, whatever the mode or form of their expression; and
- (ii) compilations of data or other material ("databases"), in any form, which, by reason of the selection or arrangement of their contents, constitute intellectual creations. (Where a database does not constitute such a creation, it is outside the scope of this Treaty.)<sup>11</sup>

The Treaty was concluded in 1996 and entered into force in 2002. The Treaty is open to countries that are members of WIPO and currently has 92 members.

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<sup>8</sup> For more information on the UPOV, see: *Existing Protection of Plant-Related Intellectual Property in International Agreements*, PUBLIC CITIZEN, available at <http://www.citizen.org/documents/existing-protection-of-plant-related-intellectual-property-in-international-agreements.pdf>.

<sup>9</sup> International Convention for the Protection of New Varieties of Plants arts. 6-9, Mar. 19, 1991.

<sup>10</sup> *Summary of the Trademark Law Treaty (TLT) (1994)*, WORLD INTELLECTUAL PROPERTY ORGANIZATION, [http://www.wipo.int/treaties/en/ip/tlt/summary\\_tlt.html](http://www.wipo.int/treaties/en/ip/tlt/summary_tlt.html) (last visited Oct. 7, 2014).

<sup>11</sup> *Id.*



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### **WIPO Performances and Phonogram Treaty**

“The WIPO Performances and Phonograms Treaty (WPPT) deals with the rights of two kinds of beneficiaries, particularly in the digital environment: (i) performers (actors, singers, musicians, etc.); and (ii) producers of phonograms (persons or legal entities that take the initiative and have the responsibility for the fixation of sounds). These rights are addressed in the same instrument, because most of the rights granted by the Treaty to performers are rights connected to their fixed, purely aural performances (which are the subject matter of phonograms). As far as performers are concerned, the Treaty grants performers economic rights in their performances fixed in phonograms (not in audiovisual fixations, such as motion pictures): (i) the right of reproduction; (ii) the right of distribution; (iii) the right of rental; and (iv) the right of making available.”<sup>12</sup> The Treaty was concluded in 1996 and entered into force in 2002. It has 93 members.

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<sup>i</sup> For more on the UPOV and its impact on negotiating parties to the TPP, see: *Impact of the Trans-Pacific Partnership on Farmers and Food Security*, PUBLIC CITIZEN, available at: <http://www.citizen.org/documents/impact-of-the-trans-pacific-partnership-on-farmers-and-food-security.pdf>; *Existing Protection of Plant-Related Intellectual Property in International Agreements*, PUBLIC CITIZEN, available at <http://www.citizen.org/documents/existing-protection-of-plant-related-intellectual-property-in-international-agreements.pdf>.

<sup>ii</sup> A Party may satisfy the obligation in Article QQ.A.8.2(d) by ratifying or acceding to the *Singapore Treaty on the Law of Trademarks* (2006).

<sup>iii</sup> However, Brunei Darussalam will join the 1991 UPOV by 2015. Intellectual Property Office of Brunei Darussalam, *Intellectual Property Regime*, BruIP, <http://www.brunei-patents.com.bn/index.php/about-us/ip-regime> (last visited Sept. 30, 2014).

<sup>iv</sup> Canada has acceded to the 1978 UPOV.

<sup>v</sup> Chile has acceded to the 1978 UPOV.

<sup>vi</sup> A Party may satisfy the obligation in Article QQ.A.8.2(d) by ratifying or acceding to the *Singapore Treaty on the Law of Trademarks* (2006).

<sup>vii</sup> Malaysia has acceded to the 1978 UPOV.

<sup>viii</sup> Mexico has acceded to the 1978 UPOV.

<sup>ix</sup> The Trademark Law Treaty has not yet entered into force in Mexico.

<sup>x</sup> New Zealand has acceded to the 1978 UPOV.

<sup>xi</sup> The United States has joined the 1991 UPOV with a reservation pursuant to Article 35(2) of the 1991 Act.

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<sup>12</sup> *Summary of the WIPO Performances and Phonograms Treaty (WPPT) (1996)*, WORLD INTELLECTUAL PROPERTY ORGANIZATION, [http://www.wipo.int/treaties/en/ip/wppt/summary\\_wppt.html](http://www.wipo.int/treaties/en/ip/wppt/summary_wppt.html) (last visited Oct. 7, 2014).