
OWNERS' RIGHTS

INITIATIVE

**Public Statement of Andrew Shore
Executive Director, ORI
13th Round Stakeholders Meeting
Transatlantic Trade and Investment Partnership
New York City, April 28, 2016**

Good Morning

My name is Andrew Shore, I am an attorney in Washington, DC who runs a coalition called the Owners' Rights Initiative. We are an organization of over 20 companies and trade associations that advocate for the free alienability copyrighted and trademarked goods. Or, in a more pedestrian way of putting it, we believe that if you bought, you own it. Before I begin, I would like to thank the negotiators for continuing to make time available to the public for the presentations. I am here today to discuss the matter of international exhaustion for trademarked goods, why it needs to be included in TTIP and its direct impact on small and medium sized enterprises.

Consistent with TTIP's goal of enhancing trade, our goal is to enhance EU-US trade in legitimate, trademarked goods. Let me be clear up front what this issue is not about. It's not about patent and it's not about copyright. It is about the lowest hanging fruit of the IP world – trademark - and market access. What our members in *both* the US and EU, are asking for is a provision that would allow exports from the US to the EU of trademarked goods that have been sold in the US by the mark holder or with their consent.

It appears there are misperceptions about what this proposal entails, so let me be clear. It does *not* require a change in the EU's existing system of regional exhaustion. It's merely a matter of defining the "region", which already extends beyond the EU. Legitimate trademarked goods that have been sold in an EU member State – or any EEA member State - may be freely exported to another member State within the EU/EEA region. Our proposal would simply extend that region to include the U.S. so that if a product is sold anywhere in the EU, EEA or the U.S. by the rights holder or with their consent, the rights holder can no longer block importation of that product into the EU. In short, there would be no substantive change to the underlying EU law. Ratification of TTIP would simply extend the region to grant preferential market access to the U.S. In fact, ORI's request is significantly more limited than the one granted EEA countries. The EU has extended the right to sell goods into the EU to Lichtenstein (as a member of the EEA.) Is Lichtenstein a more valuable trading partner than the US? We are only asking for preferential access for the purposes of trade in genuine trademarked goods. Nothing else – not patent, not copyright.

We've also been told that it is important for EU businesses to stand up and make the case for this provision. They have done that. In June of 2014, the Association of Service and Computer Dealers International (an ORI member), held their annual meeting in Brussels. While there, we met with the negotiators responsible for IPR, SME's and e-commerce, and with trade advisors to key MEP's. The lead EU IPR negotiator, Pedro Velasco Martinez, also spoke at the ASCDI conference, which was much appreciated, where the issue was raised in a Q

and A session. At the most recent stakeholders meeting in Brussels businesses from France and Great Britain presented on this issues and not one, but three questions on the topic were raised by our Members at the final briefing by the lead negotiators. On the US side an SME has appeared at the majority of all stakeholder sessions to make the case for this proposal. In fact, our engagement goes back to 2013 when the ITC held a public hearing on barriers faced by SMEs in trading with the EU, and published our views as part of the record. In short, SMEs in the US and the EU have been publicly raising this issue for a long time.

At the last negotiators briefing in Brussels in response to a question from an ORI member in Germany, we were told that complex IP questions are not often resolved in these types of negotiations. But ORI's proposal is neither complex, as I have just explained, nor has it created controversy. Although we have raised proposal in many public fora for several years, not a single participant has raised an objection. We haven't seen even a press release on the topic. But, anticipating a tweet or two after this presentation I'd challenge any opposition to make a case that substantively rebuts the three years, dozens of presentations, litany of comments, published papers and other supporting evidence for our proposal. And I also believe they have an obligation to make this opposition public in the name of transparency which is something policymakers and politicians have ensured the public is a hallmark of these negotiations.

We also hear constantly that there is a desire to benefit SME's in the agreement. There may very well be provisions of the agreement that benefit everyone by cutting red tape and making it easier to transact cross-border business. However, if you are not permitted to sell your product in Europe, then clearing customs isn't much of a problem. Our proposal will be *most* beneficial to SME's, which make up the majority of independent resellers, by increasing their trade in legitimate trademarked goods between the US and EU. It will translate into jobs both in their businesses and across the supply chain. So, I challenge those who oppose this proposal, which will have a direct positive impact on the economic success of SMEs, to make their case in the light of day.

One final note. Like you, I have been involved in trade policy for many years having served as an aide to the Chairman of the Ways and Means Committee, the Chairman of the Trade Subcommittee and a senior advisor to the House Republican Leadership. I watched as AGOA became the last truly bipartisan agreement even close to this one in magnitude. Now we have Presidential candidates on the left and right whose anti-trade message is so persuasive that our rock solid supporters have begun to shift their views. The bottom line in this is we can't afford to lose the support of small businesses in these efforts or I believe we will not see Congressional passage of large scale agreements for many years to come. Instead we should be showing them that these trade agreements can and will make their businesses thrive.

Again, I'd like to thank the negotiators for taking the time to hear our concerns and I look forward to answering their questions.

ashore@jstpc.com

1100 H Street, NW #410

Washington, DC 20005

<http://www.ownersrightsinitiative.org>