
TPP Seminar Intellectual Property

Center for Inclusive and Sustainable Development (CisDev)

Universitas Prasetiya Mulya

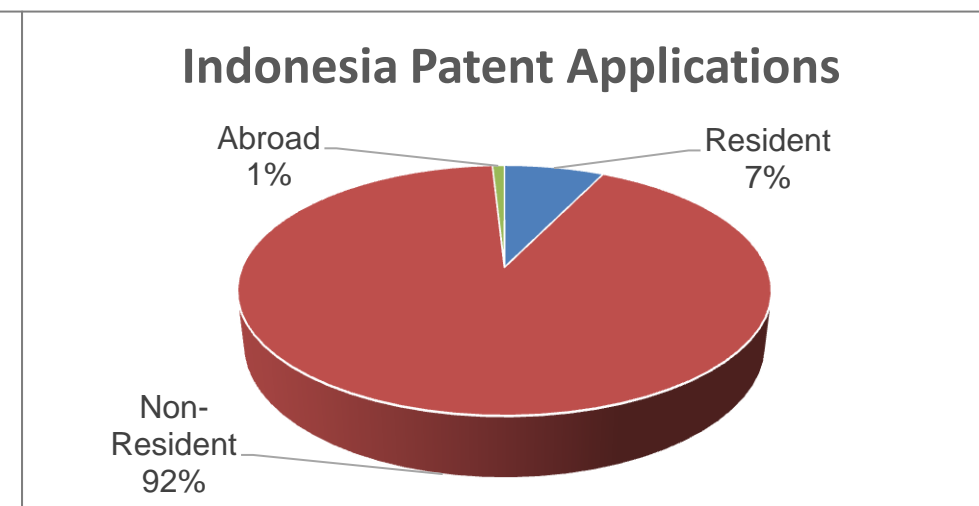
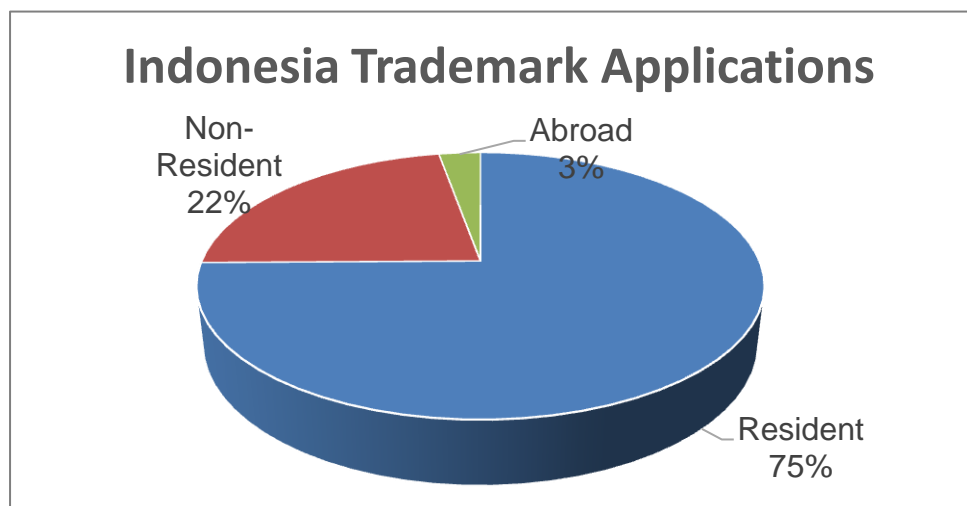
Sep 20th, 2016



INDONESIA INTELLECTUAL PROPERTY: APPLICATIONS

Year	Patent	Copyright	Trademark	Industrial Design	Total
2010	5,821	4,882	47,794	4,047	62,544
2011	6,123	5,541	53,196	4,196	69,056
2012	7,027	6,382	62,445	4,612	80,466
2013	7,800	6,190	62,813	4,258	81,061
2014	8,348	5,142	60,894	3,376	77,760
2015	8,874	5,467	61,787	2,770	78,898

Source: Ditjen Kekayaan Intelektual



Source: WIPO Statistics Database 2015



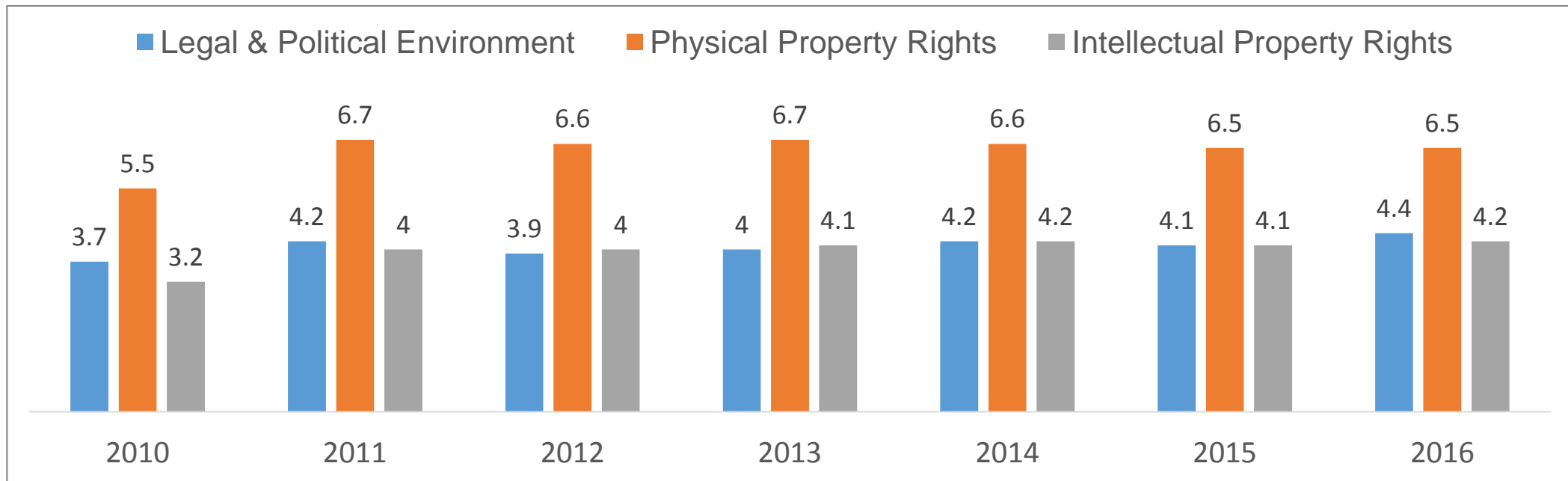
INTERNASIONAL PROPERTY RIGHTS: PROTECTION

Country	2010	2011	2012	2013	2014	2015	2016
New Zealand	8.3	8.2	8.2	8.4	8.3	8.2	8.3
Singapore	8.2	8.3	8.1	8.1	8.2	8.1	8.1
Japan	7.6	7.6	7.7	7.7	7.8	8.0	8.0
Canada	8.0	8.0	8.0	8.0	8.0	7.9	8.0
Australia	8.2	8	7.8	7.9	7.8	7.7	7.9
USA	7.9	7.5	7.5	7.6	7.7	7.6	7.7
Chile	6.4	6.7	6.7	6.8	6.8	6.6	6.7
Malaysia	6.1	6.1	6.5	6.5	6.5	6.6	6.8
Indonesia	4.1	5.0	4.8	4.9	5	4.9	5.0
Mexico	4.7	5.0	5.1	5.2	5.2	4.7	4.8
Peru	4.3	4.9	5.0	5.0	5.0	4.6	4.8
Vietnam	4.5	4.9	4.7	4.7	4.8	4.5	4.7
Brunei Darussalam	-	-	-	-	-	-	-



PROPERTY RIGHTS INDEX: INDONESIA

	2010	2011	2012	2013	2014	2015	2016
PR Index	4.1	5.0	4.8	4.9	5	4.9	5.0
1. LP	3.7	4.2	3.9	4	4.2	4.1	4.4
2. PPR	5.5	6.7	6.6	6.7	6.6	6.5	6.5
3. IPR	3.2	4	4	4.1	4.2	4.1	4.2



INDONESIA PROPERTY RIGHTS SUB-COMPONENT: 2016 SCORE

LP	Score	Rank Globally
Overall	4.4	70 of 128
1. Judicial independence	5.1	57 of 128
2. Rule of law	4.3	83 of 128
3. Political stability	4.3	85 of 128
4. Control of corruption	3.8	86 of 128
IPR	Score	Rank Globally
Overall	4.2	98 of 128
1. Protection of Intellectual Property Rights	5.4	47 of 128
2. Patent Protection	5.5	87 of 108
3. Copyright Protection	1.6	94 of 104

Source: Property Rights Alliance



SPECIAL 301 REPORT: PRIORITY WATCH LIST

2010	2011	2012	2013	2014	2015
Canada	Canada	Canada	Chile	Chile	Chile
Chile	Chile	Chile	Indonesia	Indonesia	Indonesia
Indonesia	Indonesia	Indonesia			

Source: US Trade Representative

Special 301 Report: The reports identify trade barriers to U.S. **companies** and **products** due to the intellectual property (e.g. copyright, patents and trademarks) in other countries and classify the countries into:

1. Priority Watch List (PWL): "serious intellectual property rights deficiencies" that require increased USTR attention
2. Watch List (WL): "serious intellectual property rights deficiencies" but are not yet placed on the PWL

Special 301 Report backed up by US business associations including:

1. Pharmaceutical Research and Manufacturers of America (PhRMA)
2. International Property Alliance (IIPA) e.g. BSA, MPAA, ESA, IFTA, AAP, NMPA, RIAA)



SPECIAL 301 REPORT: WATCH LIST

2010	2011	2012	2013	2014	2015
Malaysia	Malaysia	Mexico	Canada	Canada	Canada
Mexico	Mexico	Peru	Mexico	Mexico	Mexico
Peru	Peru	Vietnam	Peru	Peru	Peru
Vietnam	Vietnam	Brunei Darussalam	Vietnam	Vietnam	Vietnam
Brunei Darussalam	Brunei Darussalam				

Source: US Trade Representative



UNLICENSED SOFTWARE INSTALLATION: COPYRIGHT PROTECTION

Country	2009	2011	2013	2015
USA	20%	19%	18%	17%
New Zealand	22%	22%	20%	18%
Japan	21%	21%	19%	18%
Australia	25%	23%	21%	20%
Canada	29%	27%	25%	24%
Singapore	35%	33%	32%	30%
Mexico	60%	57%	54%	52%
Malaysia	58%	55%	54%	53%
Chile	64%	61%	59%	57%
Peru	70%	67%	65%	63%
Brunei Darussalam	67%	67%	66%	66%
Vietnam	85%	81%	81%	78%
Indonesia	86%	86%	84%	84%



UNLICENSED SOFTWARE: COMMERCIAL VALUE (\$ MILLIONS)

Country	2009	2011	2013	2015
Brunei Darussalam	\$14	\$25	\$13	\$19
New Zealand	\$63	\$99	\$78	\$66
Peru	\$124	\$209	\$249	\$210
Singapore	\$197	\$255	\$344	\$290
Chile	\$315	\$382	\$378	\$296
Malaysia	\$453	\$657	\$616	\$456
Australia	\$550	\$763	\$743	\$579
Vietnam	\$353	\$395	\$620	\$598
Canada	\$943	\$1,141	\$1,089	\$893
Mexico	\$1,056	\$1,249	\$1,211	\$980
Japan	\$1,838	\$1,875	\$1,349	\$994
Indonesia	\$886	\$1,467	\$1,463	\$1,145
USA	\$8,390	\$9,773	\$9,737	\$9,095

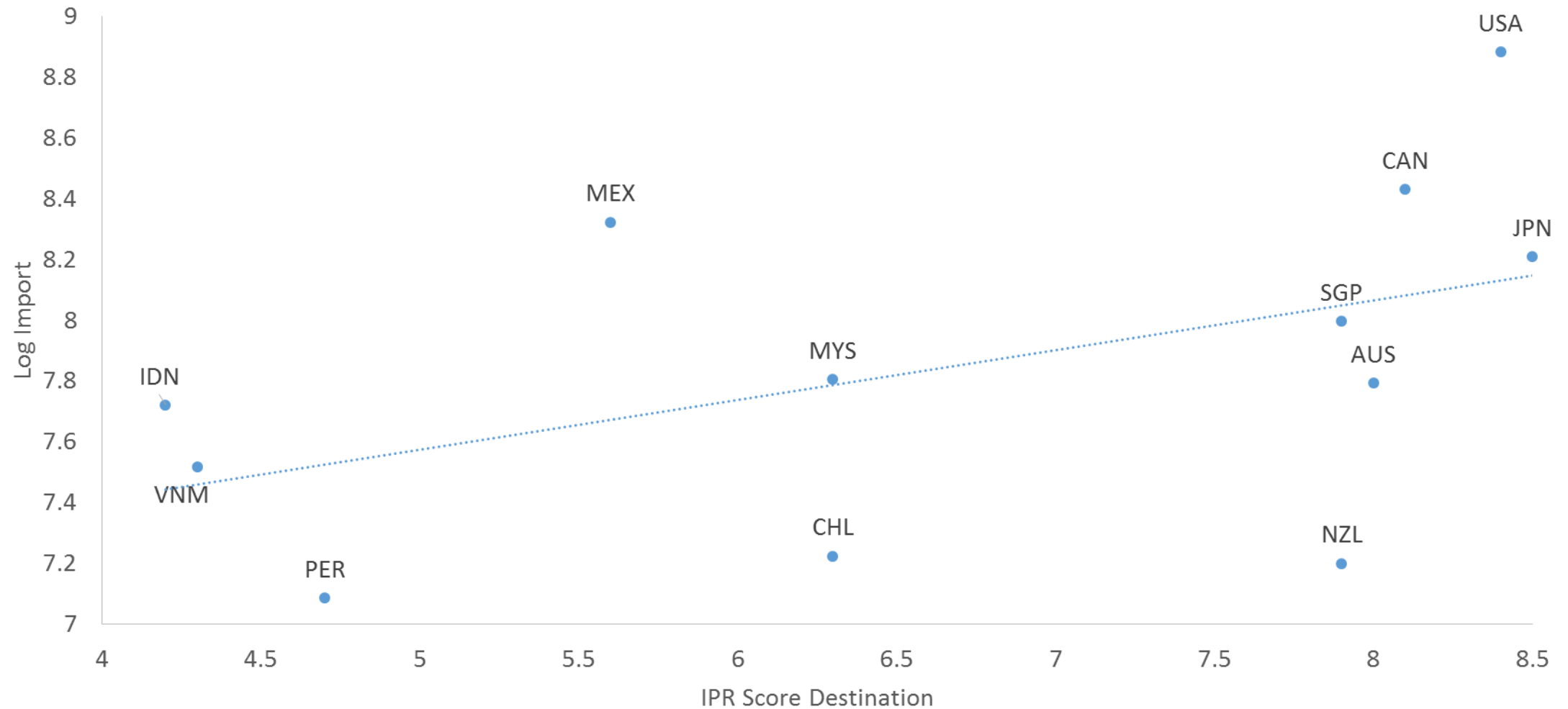


INTELLECTUAL PROPERTY AND TPP: BACKGROUND

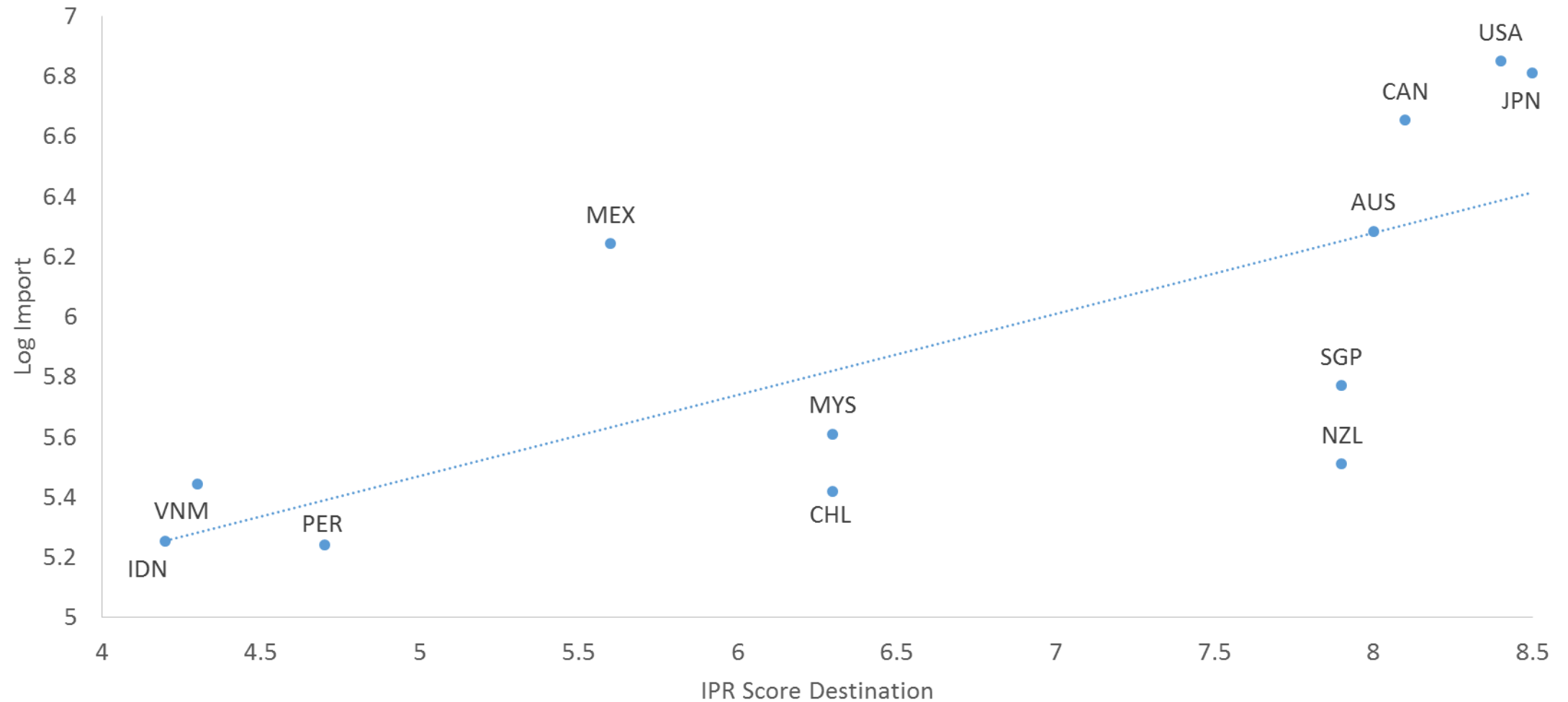
- WTO-TRIPS (Trade-Related Aspects of Intellectual Property Rights) is the first FTA includes intellectual property that sets basic principles/general rules for its protection
- Intellectual property provisions is the most controversial issues in Free Trade Agreement (e.g. Trans-Atlantic Trade and Investment Partnership/TTIP)
- Intellectual property provisions in TPP (and TTIP) are adopted from Anti-Counterfeiting Trade Agreement (ACTA)
- ACTA focuses more on establishing international standard (legal framework, enforcement and practices) relates to Intellectual Property protection in particular to combat counterfeit goods (including generic medicines) and copyright infringement (specifically on internet)
 - 2011: United States, Australia, Japan, New Zealand, Singapore, Morocco, South Korea
 - 2012: Mexico, European Union



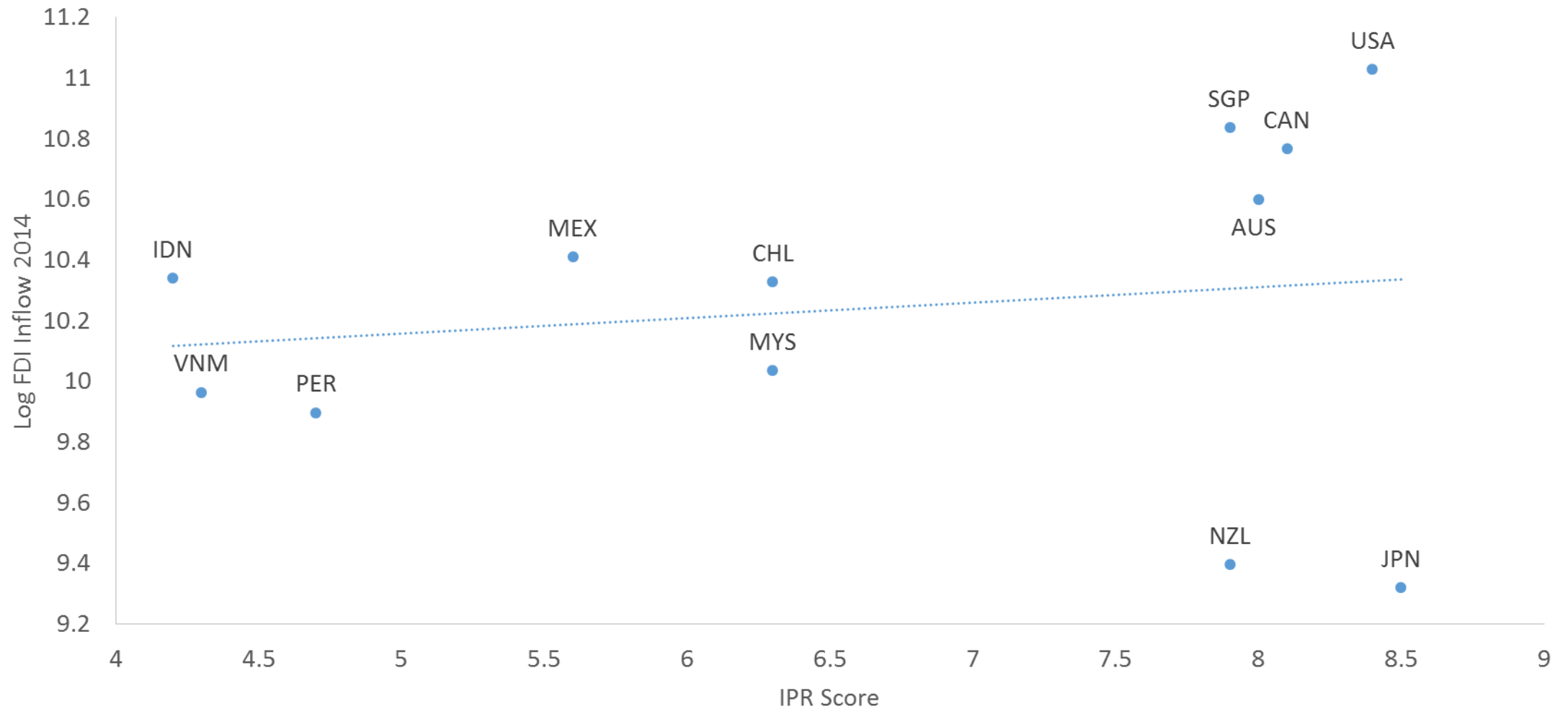
INTELLECTUAL PROPERTY AND TRADE: CORRELATION



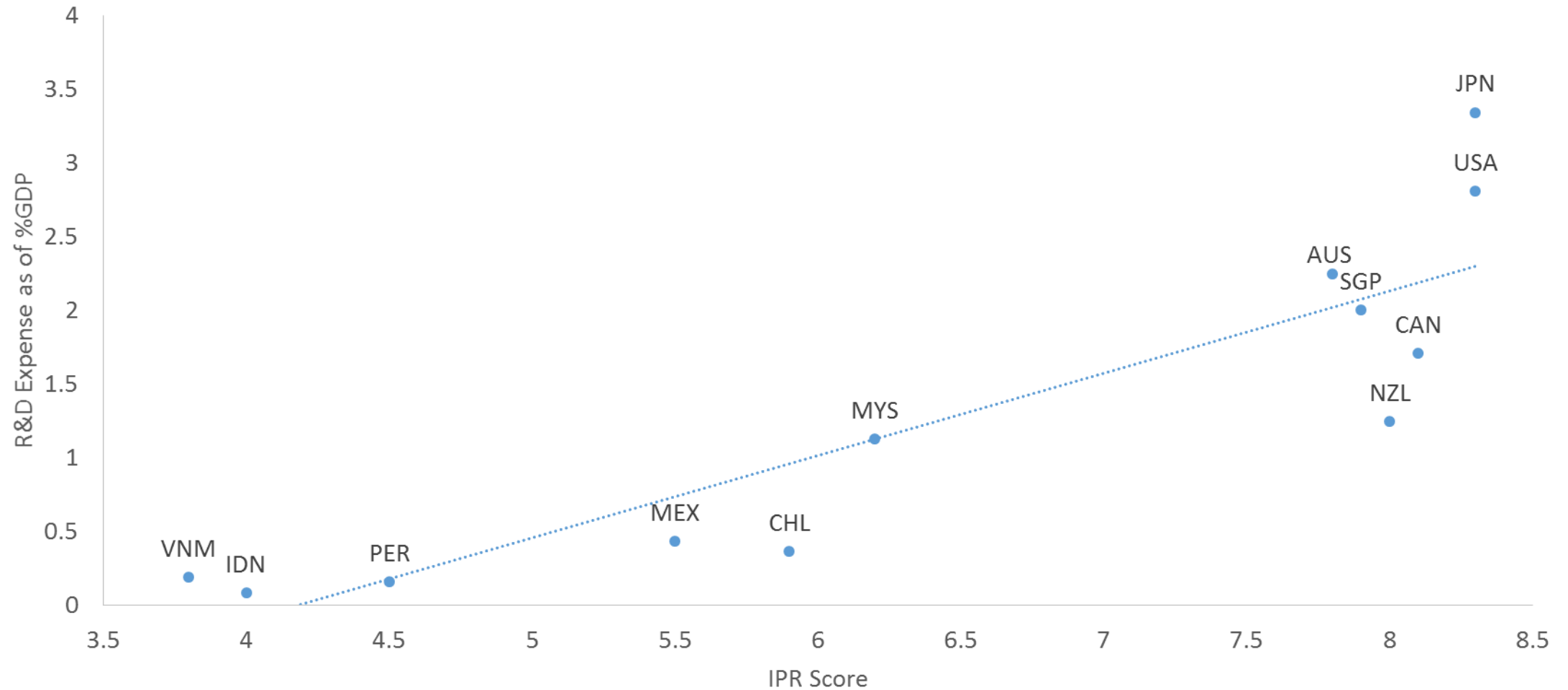
INTELLECTUAL PROPERTY AND TRADE: PHARMACEUTICALS



INTELLECTUAL PROPERTY AND FDI: CORRELATION



INTELLECTUAL PROPERTY AND R&D EXPENSE: CORRELATION



INTELLECTUAL PROPERTY AND TPP: PROVISIONS

Intellectual Property provisions in TPP: Chapter 18, 83 articles, Section A to K:

A. General Provisions

- International Agreement (article 18.7): Each party has ratified at least 3 international conventions:
 - (1) Patent Cooperation Treaty (patent),
 - (2) Paris Convention (patent and trademarks)
 - (3) Berne Convention (copyright)

B. Cooperation

C. Trademarks

- Term of Protection for Trademarks (article 18.26): Minimum 10 years
- Domain name (article 18.278): Disputes settlement of cybersquatter based on Uniform Domain-Name Dispute *Resolution* (UDRP).

D. Country Name

E. Geographical Indications

- Grounds of Opposition and Cancellation (article 18.32)



INTELLECTUAL PROPERTY AND TPP: PROVISIONS

F. Patent and Undisclosed Test or Other Data

- *Patentable Subject Matter* (article 18.37): Patents are available for inventions claimed as: new uses of a known product, new methods of using a known product, or new processes of using a known product
- *Patent Term Adjustment for Patent Office Delays* (article 18.46): Delay in the issuance of a patent of more than five years from the date of filing of application or three years after a request for examination
 - of the application
- *Protection of Undisclosed Test or other Data for Agricultural Chemical Product* (article 18.47): the marketing approval of the new product shall not: to use previously submitted undisclosed test or other data concerning the safety and efficacy, to market the same or a similar product based on that undisclosed test or other data, **for at least ten years** from the date of marketing approval
- *Protection of Undisclosed Test or other Data for Pharmaceutical Product* (article 18.50): the marketing approval of new product shall not to market the same or a similar product based on (i) that information previously submitted ; or ii) the marketing approval granted to the person that submitted such information, for **at least five years** from the date of marketing approval



INTELLECTUAL PROPERTY AND TPP: PROVISIONS

- *Measures Relating to the Marketing of Certain Pharmaceutical Products* (article 18.51):
 - Procedures and expeditious remedies, such as preliminary injunctions for the timely resolution of disputes concerning the validity or infringement of an applicable patent **(ACTA article 8)**.
 - Adopt or maintain a system other than judicial proceedings that precludes, based upon patent-related information submitted to the marketing approval authority by a patent holder
- *Biologics* (article 18.52): A new pharmaceutical product that is or contains a biologic, provide effective market protection:, for a period of **at least five years** from the date of first marketing approval

G. Industrial Designs

H. Copyright (Reproduction, Communication to public, Distribution) and Related Rights

- *Term of Protection for Copyright and Related Rights* (article 18.63): The term shall be not less than the life of the author and 70 years after the author's death
- *Rights Management Information* (article 18.69) : Provide adequate and effective legal remedies to any person that, without authority, and knowing, or having reasonable grounds to know, that it would induce, enable, facilitate or conceal an infringement of the copyright or related right of authors, performers or producers of phonograms **(ACTA article 27)**.



INTELLECTUAL PROPERTY AND TPP: PROVISIONS

I. Enforcement

- *Enforcement practices with Respect to Intellectual Property Rights* (article 18.73):
 - Provide that final judicial decisions: (a) preferably are in writing and state any relevant findings of fact and the reasoning or the legal basis on which the decisions are based; and (b) are published or made available to the public to enable interested persons and Parties to become acquainted with them (**ACTA article 7**)
 - Collecting and analysing statistical data and other relevant information concerning infringements of intellectual property rights as well as collecting information on best practices to prevent and combat infringements.
 - Publish information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal systems, such as statistical Information
- *Civil and Administrative Procedures and Remedies* (article 18.74):
 - Provide that its judicial authorities have the authority to order injunctive relief to prevent goods that involve the infringement of an intellectual property right from entering into the channels of commerce.
 - Judicial authorities have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder
 - Have the authority to consider legitimate measure of value the right holder submits, which may include lost profits, the value of the infringed goods or services measured by the **market price, or the suggested retail price (ACTA article 9)**



INTELECTUAL PROPERTY AND TPP: PROVISIONS

Jual Online Windows Bajakan Untung Rp 50 Juta Per Bulan

Senin, 13 Juni 2016 | 16:25 WIB

TEMPO.CO, Jakarta - Direktorat Kriminal Khusus Polda Metro Jaya membongkar kasus pemalsuan merek dalam program Microsoft Windows. Kepala Bidang Hubungan Masyarakat Polda Metro Jaya, Komisariss Besar Awi Setiyono, menjelaskan pengungkapan kasus ini berawal dari laporan pihak Microsoft Windows kepada jajaran Polda Metro Jaya terkait dengan dugaan adanya pemalsuan merek mereka. Laporan tersebut diterima Polda pada 16 Mei 2016.

"Dari laporan itu, kami menyelidiki. Kemudian kepolisian menggeledah dua toko, toko M dan toko V, di daerah Jakarta Pusat," kata Awi di Markas Polda Metro Jaya, Jakarta, Senin, 13 Juni 2016.

Dari penggeledahan di dua toko tersebut, polisi menemukan 289 keping *software* Microsoft Windows yang diduga bajakan, 30 lembar stiker lisensi (COA) yang digunakan untuk program windows, dan satu lembar bon pembelian. Selain menyita barang bukti, polisi menangkap dua pemilik toko tersebut, yakni FY dan F.

Awi menambahkan, FY, selaku penanggung jawab toko M, memperdagangkan program *software* Microsoft Windows dan stiker lisensi COA (key) Windows yang palsu dengan cara menjual melalui *online* (www.kaskus.co.id).

Sementara F, selaku pemilik toko V, memperdagangkan kepingan CD *software* Microsoft Windows tersebut kepada konsumen yang datang ke tokonya. "Dari pengakuan tersangka, mereka menjual Rp 500-750 ribu dari harga asli Rp 2,5 juta. Mereka meraup untung Rp 50 juta per bulan," katanya.

Akibat tindakannya, kedua pelaku dijerat dengan Pasal 94 Undang-Undang Nomor 15 Tahun 2001 tentang Merek dengan pidana kurungan paling lama satu tahun **atau** denda paling banyak Rp 200 juta.

Ditemui di tempat yang sama, Kanit III Subdit I Indag Direktorat Reserse dan Kriminal Khusus Polda Metro Jaya Komisariss Faisal mengatakan, pihaknya terus mengembangkan kasus ini untuk menangkap produsen barang tersebut. "Ada produsen sedang diselidiki. Mereka (FY dan F) hanya peredaran saja," ujarnya.



INTELLECTUAL PROPERTY AND TPP: PROVISIONS

I. Enforcement (Continued)

- *Special Requirements related to Border Measures* (article 18.76): Provide for applications to suspend the release of, or to detain, any suspected counterfeit trademark or pirated copyright goods that are imported (**ACTA article 16**)
- *Criminal Procedures and Penalties* (article 18.77): Provide for **criminal procedures and penalties** to be applied trademark counterfeiting or copyright or related rights piracy
- *Trade Secret* (article 18.78): Provide for criminal procedures and penalties for one the unauthorised and wilful access to a trade secret held in a computer (hackers)
- *Government Use of Software* (article 18.80): Central government agencies use only non-infringing computer software protected by copyright and related rights, and, if applicable, only use that computer software in a manner authorised by the relevant licence

J. Internet Service Providers

- *Legal Remedies and Safe Harbours* (article 18.82): Internet Service Providers to cooperate with copyright owners to deter the unauthorised storage and transmission of copyrighted materials or, in the alternative, to take other action to deter the unauthorised storage and transmission of copyrighted materials

K. Final Provisions



INTELECTUAL PROPERTY AND TPP: SUMMARY

1. Extensive Term of Protection

- Delays in approval by patent office (e.g. Ditjen HKI)
- Delays in marketing approval by health authority (e.g. BPOM)
- Protection of safety and efficacy tests and other data

2. Extensive Coverage

- Patentable: New uses, new methods, new processes

3. Effective Enforcement

- Standard of judicial law and enforcement practices



INTELLECTUAL PROPERTY AND TPP: IMPACT ON INDONESIA

Positive impacts:

Short-run:

- Increase in trade volume (import of IP-intensive products and services)

Medium- to Long-run:

- Increase in investment
 - Instruksi Presiden (Inpres) Nomor 6 Tahun 2016 tentang Percepatan Pengembangan Industri Farmasi dan Alat Kesehatan
- Improvement in Research and Development
 - UU tentang Paten Tahun 2016 “Pemegang Paten wajib membuat produk atau menggunakan proses di Indonesia. Membuat produk atau menggunakan proses sebagaimana dimaksud pada ayat (1) harus menunjang transfer teknologi, penyerapan investasi dan/atau penyediaan lapangan kerja” (Pasal 20)



INTELLECTUAL PROPERTY AND TPP: IMPACT ON INDONESIA

Negative impacts:

- Disputes in enforcement
- Longer time to market for generic medicines
 - Peraturan Pemerintah No. 51/2009 tentang Pekerjaan Kefarmasian (?)
- Development of local small-medium enterprises (SMEs)
- Limitation of affordable IP-intensive products (e.g. medicines, software)
- Government budget pressure due to costly *Jaminan Kesehatan Nasional*



INTELECTUAL PROPERTY AND TPP: IMPACT

Badan POM Izinkan Versi Generik Obat Paten Rp 13 Juta/Butir

Senin, 04 Juli 2016 | 20:35 WIB

TEMPO.CO-JAKARTA - Badan Pengawas Obat dan Makanan resmi menerbitkan izin edar obat Sofosbuvir versi generik. Sofosbuvir merupakan obat bagi pasien Hepatitis C. Deputi Bidang Pengawasan Produk Terapeutik dan NAPZA, Bahdar J. Hakim, meneken surat persetujuan itu pada 1 Juli 2016.

Direktur Eksekutif Indonesia Aids Coalition (IAC), Aditya Wardhana, menyebut terbitnya izin edar Sofosbuvir generik adalah kemenangan besar bagi tiga juta pasien Hepatitis C di Indonesia. "Obat ini sudah dinantikan oleh pasien," ujarnya lewat keterangan tertulis kepada *Tempo*, Senin, 4 Juli 2016.

IAC bersama sejumlah lembaga swadaya masyarakat membentuk perkumpulan yang dinamai Koalisi Obat Murah. Kelompok ini memperjuangkan akses pasien, khususnya penderita penyakit kronis dan langka, mendapatkan obat murah namun berkualitas.

Aditya menjelaskan Sofosbuvir sebetulnya diproduksi oleh perusahaan farmasi di Amerika Serikat. Versi paten obat ini dijual US\$ 1,000 alias Rp 13 juta per butir. Dengan masa pengobatan standar selama tiga bulan, pasien perlu 84-90 butir yang setara dengan US\$ 84 ribu atau Rp 1,1 miliar.

Adapun versi generik obat ini diproduksi tujuh perusahaan farmasi di India. Harganya sekitar US\$ 5 per butir yang artinya butuh US\$ 700 untuk masa pengobatan pasien Hepatitis C.

Menurut Aditya, Sofosbuvir adalah obat penting bagi penderita Hepatitis C. Sebab, tingkat kesembuhan obat ini mencapai 99 persen. "Tak bisa lagi pasien Hepatitis C meninggal hanya karena tak mampu mengakses obat," ia berujar.

Selanjutnya, IAC dan Koalisi Obat Murah mendesak Menteri Kesehatan Nila Moeloek agar memasukkan Sofosbuvir versi generik ini ke dalam daftar Jaminan Kesehatan Nasional. "Agar semua rakyat Indonesia, khususnya pasien, bisa mengakses obat yang menyelamatkan nyawa ini," Aditya menjelaskan.



INDONESIA IP PROTECTION: CONCLUDING REMARK

Strengths

- New notification system being implemented and used and infringing websites being blocked by local rights holders
- Basic IP framework in place including 20-year patent term of protection
- FTA obligation for legal government software
- Major auction sites provides notice and takedown for online counterfeiting

Weaknesses

- Draft 2015 Patent Law includes localization provisions and technology transfer of all patented products
- History of pharmaceutical compulsory licensing (article 82 Patent Law 2016)
- Persistent high levels of piracy (e.g. Notorious market: Bukalapak and Harco Glodok)
- No patent term restoration or regulatory data protection available
- Limited protection for unregistered marks
- Market access conditional on local manufacturing requirement or licensing IP (e.g. TKDN)

Source: US Chamber of Commerce

