

2017

Foreword

Xuan-Thao Nguyen

Follow this and additional works at: <https://scholar.smu.edu/scitech>

 Part of the [Intellectual Property Law Commons](#), and the [Science and Technology Law Commons](#)

Recommended Citation

Xuan-Thao Nguyen, *Foreword*, 20 SMU Sci. & Tech. L. Rev. 91 (2017).

Available at: <https://scholar.smu.edu/scitech/vol20/iss2/2>

This Foreword is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Science and Technology Law Review by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

Foreword

Xuan-Thao Nguyen

A group of scholars decided in 2015 to conduct an in-depth study of Chapter 18 of the Trans Pacific Pact (TPP). Each of us focused on specific provisions and analyzed them with care. We then took a step further in our study; we applied our understandings and interpretations to Vietnam, as the TPP included different negotiated provisions and a timetable for each developing country. We then offered our observations and made modest recommendations for Vietnam. From our collective endeavors, below are the articles which I am honored to introduce.

Based on his extensive expertise, Professor Peter Yu offers his general reflections on IP, TRIPS and trade agreements in *Thinking About the Trans-Pacific Partnership (and a Mega-Rregional Agreement on Life Support)* to frame the macro issues and raise questions for consideration. From there, Professor Emily Morris addresses perhaps the most controversial provisions in Chapter 18 relating to pharmaceuticals and data exclusivity in the TPP, Articles 18.47–18.54. After careful examination of these provisions and ways in which member states can modify or ameliorate the effects of these provisions, Professor Morris concludes *Much Ado About TPP's Affect on Pharmaceuticals*. Continuing with patents, Professor David Taylor focuses on the TPP's Articles 18.37–18.46 and 18.55–18.56 on *Patents, Industrial Designs, and the Trans-Pacific Partnership: Articles 18.37–18.46 and 18.55–18.56*, comparing the similarities and differences between the TPP, U.S. patent law, Vietnamese patent law, the Patent Cooperation Treaty, and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Achieving patent harmonization requires each country to evaluate its own laws to ensure compliance.

Unlike other multilateral trade agreements, the TPP included trade secrets, encrypted software, and internet service provider (ISP) Safe Harbor provisions in Articles 18.78–18.82. Professor Keith Robinson's *Trade Secrets, Safe Harbors, and International Trade* highlights the absence of two exceptions in the U.S. trade secret and ISP Safe Harbors laws and explores the ramifications of their absence from the TPP. Acknowledging the criticism against the TPP as a political grasp for economic regulatory power with maximalist copyright agenda, Mr. Cole Davis closely analyzes Articles 18.57–18.70 of the TPP. Surprisingly, he arrives at a conclusion similar to what Professor Morris has offered in her analysis of the pharmaceutical provisions. He states that “on closer examination, the final text of the TPP's copyright section contains flexibilities that allow contracting parties to tailor domestic legislation to fit their own political and cultural needs, all while providing adequate protection for creative works in the digital age,” in *Copyright, Rights Management, and the Trans-Pacific Partnership: Best Practices*. Ms. Connie Lindman, SmithAmundsen, focuses on the trademark provisions, Articles 18.18–18.36, providing a succinct paper on the expansion of trademark protection under the TPP, *Trademark Boundaries: The Geography of Non-Conventional Marks*.

The TPP included several provisions on enforcement of intellectual property. Professor Janewa Osei Tutu's *IP Enforcement Under the TPP: Civil and Administrative Procedures and Remedies, Provisional Measures in TPP (Articles 18.71–18.76)* is very useful for Vietnam. She compares enforcement obligations Vietnam has under TRIPS and the potential obligations Vietnam would face under the TPP. She concludes that though the TPP enforcement provisions strengthen the enforcement and deterrence obligations for Vietnam and the TPP member states, there is flexibility in Articles 18.3–18.6 that are perhaps better than what TRIPS provided. In *Criminal Sanctions and the TPP: Section 18.77*, Professor Shawn Boyne scrutinizes the criminal sanctions for copyright infringement and cautions the criminalization of “willful” copyright infringement against casual file sharers rather than enterprises engaged in large scale copying.

The next three articles look beyond the TPP by identifying ways in which Vietnam, in particular, and the TPP member states, in general, may consider moving towards knowledge-based economies. Professor Hamid Piroozii draws on his wealth of experience in university technology creations and transfers to offer valuable lessons for Vietnam in his article *From TPP to University: Transforming Technology Transfer*. Professor Xuan-Thao Nguyen advocates for the availability of credit to small and medium enterprises (SMEs) through the use of SMEs' intellectual property assets for financing in *Beyond TPP: Legal Reform for Financing Intellectual Property and Innovation in Vietnam*. She suggests that future revisions of intellectual property, secured transactions, and insolvency laws should reflect credit availability goals for SMEs. Dr. Apinya Bunditwuthisagul offers concrete examples from Thailand, one of Vietnam's neighbors in the Southeast Asia region, in its desire to transform the Thai economy, in her article *Toward a Knowledge-Based Economy: TPP & Thailand's Experience and Concerns*.

The last article, *Multinational Efforts to Limit Intellectual Property Income Shifting: The OECD's Base Erosion and Profit Shifting (BEPS) Project*, Professor Jeffrey A. Maine contextualizes the TPP in global scope, as he notes that two major Agreements—TPP and BEPS—have been simultaneously formulated to address intellectual property, in part. Significantly, he provides the international IP Tax perspective to illuminate how Vietnam and other nations may be impacted.

With our articles in hand, we had planned to present our work in Vietnam at the International Intellectual Property Conference on the TPP scheduled for December 2016. Then the election results arrived on November 8, 2016. The election of Donald Trump sent the hard-fought Trans Pacific Pact to its premature death. Our host university, the VNU University of Economics & Law in Saigon/Ho Chi Minh City, determined to continue with the Conference. We proceeded with our travel to Vietnam, presented our articles, made new friends and visited the amazing country.

The TPP is no longer in existence without the United States' participation. Nevertheless, issues related to intellectual property and trade will press on in Vietnam and other countries. We humbly believe that Vietnam and

other developing nations should pay attention to intellectual property issues for their own economic development, as they desire to robustly integrate themselves into the global economy. A look into the TPP would help Vietnam and other countries to think and act beyond the TPP.

February 28, 2018.

Xuan-Thao Nguyen, Conference Program Organizer