

WEBINAR

# *Key Issues at the Intersection of International Trade and IP*

APRIL 21, 2021

Speakers: Chris Cherry, Lauren Mandell, Jamieson Greer

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# *Overview*

- Intellectual Property in International Trade
- WTO and the TRIPS Agreement
- US-China Phase One Trade Agreement
- US-Mexico-Canada Agreement (USMCA)
- Bilateral Investment Treaties and Other Investment Agreements
- Other Tools
- The Biden Administration Approach to Trade and IP

# *Intellectual Property in International Trade*

- Why international trade law addresses IP
- U.S. and international agencies and personnel
- International IP agreements
- International trade and investment agreements

## *WTO and the TRIPS Agreement*

- 1994 Agreement on Trade-Related Aspects of Intellectual Property Rights
- Covers seven forms of IP: patents, trademarks, geographical indications, industrial designs, copyright, layout-designs of integrated circuits, undisclosed information
- Basic commitments as well as flexibilities
- State-to-State dispute settlement
- Proposed “waiver” of TRIPS obligations to protect IP: a political effort

# *US-China Phase One Trade Agreement*

- US-China trade war: 2017-today
- Phase One Deal entered into force in February 2020
- Key rules
  - Requires fair, adequate, and effective protection and enforcement of IPR
  - Trade secrets: burden of proof, civil and criminal liability
  - Prohibits compelled or pressured technology transfer
- Dispute settlement
- Phase 2?

# *US-Mexico-Canada Agreement (USMCA)*

- Advanced protections for innovators and creators
- Important developments on copyright
- Data exclusivity period for biologics
- Dispute settlement

# *Bilateral Investment Treaties and Other Investment Agreements*

- Thousands of investment agreements worldwide
- US: 52 investment agreements (41 BITs and 11 FTAs covering investment)
- Intellectual property: protected investment under most agreements
- Guarantee national treatment, due process, and no uncompensated expropriation
- Investor-state dispute settlement (ISDS): *Eli Lilly v. Canada*
- ISDS scaled back in USMCA

## *Other Tools*

- Section 337 – beyond patent
- Section 301
- Special 301
- Notorious Markets List
- Generalized System of Preferences (GSP) and other preference programs

# *Biden Administration Approach to Trade and IP*

- Worker-centered trade policy
- Enforcement
- No new trade agreements on horizon
- Provocative comments on certain industries

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