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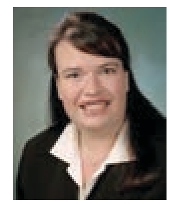
In This Issue

Dear Members and Colleagues,


Lara Fetsco Phillip

Although it may feel more like spring these days, welcome to the winter edition of the Michigan International Lawyer. As this is my first newsletter since having been elected Chair of the International Law Section, I would like to first express how truly appreciative I am of this opportunity to serve as your Chair and for the amazing support I have already received from Council and Section members, other SBM Section Chairs, the staff of the SBM, and from the international legal community at large. With your support, we are well underway in offering an incredibly interesting slate of programming for the 2016 and 2017 year.

We kicked off the 2016-2017 bar year, with our annual meeting on September 13th at the glorious Detroit Institute of Arts, one of the premier art museums in the United States and a local treasure. The annual meeting featured a substantive program on Protecting U.S. Intellectual Property Rights in a Global Economy. Our first panel, moderated by ILS Council Member, Elliott Church of Kreis Enderle, addressed Protecting and Enforcing IP Rights in Software in China and the US: Practice Tips and Legal Challenges and Jurisdictional Differences in International Trademark Application, Registration and Enforcement. Panelists included Jake Grove of Howard and Howard, Thomas Moga with LeClair Ryan, and Emily Tait, from Honigman Miller Schwartz and Cohn LLP. Our second panel, moderated by ILS member John Wright of Burris Law PLLC, addressed Jurisdictional Differences in International Trademark Application, Registration and Enforcement and featured comments from Timothy Gorbatoff (Chief Trademark Counsel for General Motors), Professor Wissam Aoun (University of Detroit Mercy School of Law) and Jennifer Sheehan Anderson (Bridge Intellectual Property Services PLLC). As a special treat and inspired by our locale, our program concluded with a presentation by our own local Indiana Jones, Professor Geoff Emberling, of the University of Michigan's Kelsey Museum of Archaeology on The International Trade in Middle Eastern Antiquities: Notes from the Trenches. Following the substantive program, attendees, including members from the SBM's Intellectual Property and Arts, Communications, Media and Sports sections, partook in cocktails and hors d'oeuvres in the DIA's Diego Rivera Courtyard.

2016-2017 Officer and Council Members

At the annual meeting, the ILS Officer and Council Members were elected. Debra Auerbach Clephane was elected to the office of Chairperson-Elect. Troy

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Exiting the Transpacific Partnership

By Timothy M. Kaufmann

On January 23, 2017, President Donald Trump signed a memorandum requiring the United States Trade Representative to withdraw from the Transpacific Partnership.[1] The Transpacific Partnership ("TPP") has been called the "most ambitious multilateral trade deal in history."[2] This first step of potentially protectionist behavior could be and likely is a signal of far reaching global trade reform from the United States.

What is the TPP?

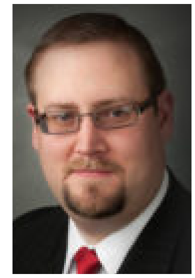
The TPP was the result of a number of years of negotiations which culminated in a final draft in 2015 with approval by the signatory nations. The signatory nations Australia, Canada, Japan, Malaysia, Mexico, Peru, Vietnam, Chile, Brunei, Singapore, New Zealand, and the United States entered into this agreement to expand the Pacific Rim free trade zone and supposedly strengthen the member state economies. The general impact of the TPP was to increase exports, remove barriers to entry of goods (be they tariff or non-tariff), provide more open markets and provide transparency in in trade rules and regulations.

The TPP would have opened up markets in countries accounting for roughly 40 percent of global gross domestic profit (about $28 trillion).[3] The basic intent of the TPP was to provide a counterpoint to China's increasing strength in the Pacific Rim. A study was commissioned to determine the financial impact of the TPP was completed at the Peterson Institute for International Economics. The Institute recruited economists from the Bandies International Business School and John Hopkins University. They estimated that the TPP would likely create no net new jobs, due to displacement in other labor markets, but would increase real incomes by $131 billion annually and increase United States exports by $357 billion annually. [4]

While the TPP would have likely created an increase in trade and incomes, the absence of an impact on jobs likely undermined its status with both President Trump and Senator Sanders. While most voters remember their vehement disagreements, they were both in agreement that the United States should not be a member of the TPP.[5] This free trade animus is a result of the populist groundswell that seems to be sweeping not just the United States but the rest of the world.

Next Steps

The very next day, January 24, 2017, the Signatories to the TPP, most notably Australia and New Zealand were moving to protect the gains already made.[6] With the withdrawal of the United States, the largest economy, the TPP is significantly weakened. However, the Australian Prime Minister joined with the Prime Ministers of New Zealand and Singapore in voicing his support for the continuation of the TPP even with United States' involvement.[7]


Timothy M. Kaufmann

Australia's Prime Minister hinted that it was possible China would be invited to join the TPP in place of the United States.[8] The inclusion of China to the TPP would be a very interesting outcome. China's Foreign Ministry has refused to comment on whether or not China is interested in joining the TPP. However, the comment was made that "the Asian-Pacific should make its own contributions to growth with openness."[9] This statement seems to be supported by China's efforts in proposing a counter agreement called the Free Trade Area of the Asian Pacific and has pushed the Southeast Asian-backed Regional Comprehensive Economic Partnership ("RCEP").[10]

This realignment of priorities has left the signatory parties scrambling to attempt to build new bilateral agreements with Washington while others have said that the RCEP would be "moved to the front burner."[11] Australia has indicated that they read the TPP to allow the inclusion of new members and therefore, that mechanism can be used to bring China into the fold.[12] However, Japan has voiced serious concerns about the longevity or even the likelihood of ratification of the TPP with the absence of the United States.[13]

It appears that once the specter of United States leadership has passed from the TPP the signatory countries are left rudderless and unable to form a cohesive policy to push a single unified agreement forward. This failure to hold the TPP as a balancing force against China could lead to a much more serious imbalance than a trade imbalance. In a world where China is building its ability to project power both military and economic a potential threat exists for the United States.

This is not to say that China intends to take control of the world economy or the Asian Pacific Sea Lines of Communication, but in stepping back from fostering free trade and a position of economic leadership in the region the United States is positioning China to take a further step forward in controlling and managing the affairs, both economic and potentially militarily.

Conclusion

President Trump has called for the United States to focus inwards on our economy and other domestic concerns. While these concerns are of great importance, ignoring the position of the United States in the world and potentially adversely impacting our ability to provide economic pressure over the Asian-Pacific area could seriously weaken the interests of the United States economically in a rapidly evolving area. The freedom of movement over the seas still is the essential aspect of trade and more today than ever ensuring that freedom is an economic measure more than a military measure. Therefore, the United States should assess any further foreign policy considerations prior to simply severing a multinational agreement for purely domestic economic issues.

About the Author

Tim Kaufmann *is a graduate of Michigan State University and Michigan State University College of Law.*

Mr. Kaufmann practices banking, real estate, corporate and bankruptcy law. He represents Talmer Bank & Trust and a number of equity firms. He also practices in all areas of insurance defense law, including first party automobile defense and worker's compensation.

Prior to joining Hewson & Van Hellemont, Mr. Kaufmann practiced in Bloomfield Hills, Michigan and Farmington Hills, Michigan. He successfully represented banks, insurers, reinsurers, corporations, business owners and individuals in many litigation matters. Mr. Kaufman also advised businesses and business owners in the technology, food service, manufacturing and finance industries on entity formations, acquisitions, joint ventures, transactional matters, employment and general corporate governance issues. His current work focuses on advising clients on litigation, corporate transactions, corporate governance and numerous other legal matters.

Mr. Kaufmann is active in the National Eagle Scout Association and his local Council's Eagle Program. He is a Certified Civil Facilitative Mediator. He is also a member of the International Chamber of Commerce's Young Arbitrators Forum.

Endnotes

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3 Kevin Granville, *What is TPP? Behind the Trade Deal that Died*, New York Times, January 23, 2017, (last visited Feb. 1, 2017), https://www.nytimes.com/interactive/2016/business/tpp-explained-what-is-trans-pacific-partnership.html, last accessed.

4 Peter A. Petri and Michael G. Plummer, *The Economic Effects of the Trans-Pacific Partnership: New Estimates*, Peterson Institute for International Economics, January 2016, Working Paper Series, WP 16-2, available at, https://piie.com/publications/wp/wp16-2.pdf.

5 Gourley, *supra* note 2.

6 Charlotte Greenfield and Stanley White, *After US exit, Asian Nations Try to Save TPP Trade Deal*, Reuters, January 24, 2017, (last visited Feb. 1, 2017), http://www.reuters.com/article/us-usa-trump-asia-idUSKBN15800V.

7 *Id.*

8 *Id.*

9 *Id.*

10 *Id.*

11 *Id.*

12 *Id.*

13 *Id.*