

**ALLIANCE FOR CLEAN
TECHNOLOGY INNOVATION**



ECAT Emergency Committee
for American Trade



U.S. CHAMBER OF COMMERCE

July 29, 2015

Fax: (202) 647-2283
The Honorable John Kerry
Secretary of State
United States Department of State
Harry S. Truman Building
2201 C Street, NW, Room 7226
Washington, DC 20520

Fax: (202) 395-4549
The Honorable Michael Froman
United States Trade Representative
Executive Office of the President
600 - 17th Street, NW
Washington, DC 20508

Fax: (202) 482-2741
The Honorable Penny S. Pritzker
Secretary of Commerce
United States Department of Commerce
Herbert Clark Hoover Building
1401 Constitution Avenue, NW
Washington, DC 20230

Re: Safeguarding U.S. innovation, technology, competitiveness in International Sustainability Processes

Dear Secretaries Kerry and Pritzker and Ambassador Froman:

We are writing to request your engagement to resist persistent efforts to undermine American innovation for environmental technologies, including manufacturing techniques, via the UN Framework Convention on Climate Change (UNFCCC) and UN Post-2015 Development Agenda (including the related Financing for Development) negotiations. American manufacturers and innovators need your support.

In recent years, assaults on U.S. manufacturing Intellectual Property Rights (IPRs) have occurred in a range of international forums, as a small handful of countries and nongovernmental organizations propose that patent and other IPR protection be weakened.

These countries assert that environmental technology and other manufacturing IPRs prevent technology diffusion and undermine socio-economic development – without any evidence, in the face of practical experience and despite a vast body of academic literature to the contrary.¹ In reality, the development of effective IP frameworks that apply to environmental technology IPRs, including manufacturing IPRs, has been shown to facilitate the development of new solutions to environmental and development challenges and, especially, their adaptation and deployment on the ground.

The National Academy of Sciences stressed in its recent report, *Diplomacy for the 21st century: Embedding a culture of science and technology throughout the Department of State*, “it is highly unlikely that significant innovation will thrive in a country that does not have a stable IPR system” and recognized that “[t]he international effort to upgrade innovation systems worldwide is increasing. It is desirable for the United States government and for U.S. private sector entities to be on the forefront of this effort.”²

As environmental technology innovators and technology providers, we understand firsthand how IPRs support the deals and partnerships that lead to global technology and knowledge diffusion in our sector. Environmental technology and other manufacturing companies and innovators use IPRs to organize and enable the exchange of knowledge with external partners, to manage risk and capital allocation, and to deploy technology solutions – including for environmental challenges and sustainable development – where they are needed, around the world.

From a U.S. perspective, IPRs for environmental technologies, including manufacturing techniques, play a key role in supporting the technology investments that translate into U.S. innovation, exports, manufacturing, and, ultimately, high-paying American jobs. Proposals aimed at weakening manufacturing IPR, including but not only those tabled within the UNFCCC and Post-2015 Development Agenda processes, threaten our ability to develop and deploy new, cost-effective technology solutions to address society’s most pressing challenges.

As several international negotiations reach key decision points in the coming months, your engagement will be needed to rebuff attempts to erode the protection of American innovation.

IP-weakening proposals in the UNFCCC and the UN Post-2015 discussions are often deceptively worded so as to appear to reflect legitimate environmental and sustainable development goals; they may also be embedded or implicit in certain institutional proposals, such as the Technology Facilitation Mechanism.

¹ See, e.g., Kristina M. Lybecker and Sebastian Lohse, *Innovation and Diffusion of Green Technologies: The Role of Intellectual Property and Other Enabling Factors*, Global Challenges Report, WIPO: Geneva (2015); U.N. Conference on Trade and Development, *Foreign direct investment, the transfer and diffusion of technology, and sustainable development* (2011), available at http://unctad.org/en/docs/ciiem2d2_en.pdf; Daniel K.N. Johnson, Kristina M. Lybecker, *Innovating for an Uncertain Market: A Literature Review of the Constraints on Environmental Innovation*, Colorado College Working Paper 2009-06 (July 2009); Richard Newell, *International Climate Technology Strategies*, 25-27 (Harvard Project on Int’l Climate Agreements, Discussion Paper 08-12) (2008); Walter G. Park & Douglas C. Lippoldt, *Technology Transfer and the Economic Implications of the Strengthening of Intellectual Property Rights in Developing Countries*, (OECD Trade Committee, Policy Working Paper No. 62) (2008); U.N. Framework Convention on Climate Change, *Enabling Environments for Technology Transfer* (June 4, 2003), available at <http://unfccc.int/resource/docs/tp/tp0302.pdf>.

² National Academy of Sciences. 2015. *Diplomacy for the 21st century: Embedding a culture of science and technology throughout the Department of State*. Washington, D.C.: National Academies Press.

In reality, however, they would be counterproductive, ultimately impairing technological innovation and impeding the dissemination and deployment of lower-emission and more energy-efficient technologies around the world.

Problematic proposals include a range of measures, from overt schemes to set aside manufacturing IPRs like compulsory licensing, to the provision of manufacturing IPRs through climate funds,³ patent banks⁴ or pooling mechanisms. Whatever the mechanism, the end result is the same: fewer tools for innovators and greater uncertainty, resulting in higher costs of developing, adapting, and disseminating technology. They could also result in a proliferation of redundant forums with little if any added value and in which both government and private sector resources would be strained to engage.

Effective mechanisms to enhance innovation and encourage its worldwide dissemination could support environmental and development goals. Unfortunately, IPR-related proposals currently under consideration at the UNFCCC and UN would frustrate, not accelerate, technological advancement.

Moreover, IPRs are already well-regulated under the World Trade Organization's Agreement on Trade-Related Intellectual Property Rights (TRIPS). Proposals that relate to IP laws and regulations (in manufacturing or otherwise), are therefore most effectively considered within the TRIPS Council, the WTO body tasked with evaluating the contribution of IPRs to public policy goals, rather than in these other fora. We strongly urge you to ensure that any such references, whether explicit or more implicit, are excluded from any agreement, decision or other texts associated with the UNFCCC and UN Post-2015 Development Agenda negotiations."

Thank you and your teams for your continued support of U.S. innovative industries, innovation, and global trade. We look forward to working with you to support American manufacturers and innovators.

Yours sincerely,

Alliance for Clean Technology Innovation
Business Council for Sustainable Energy
Emergency Committee for American Trade
Information Technology Industry Council
Intellectual Property Owners Association
National Association of Manufacturers
National Foreign Trade Council
U.S. Chamber of Commerce
United States Council for International Business

³ See, e.g., Ad Hoc Working Group on the Durban Platform for Enhanced Action, Negotiating Text (February 12, 2015), available at https://unfccc.int/files/bodies/awg/application/pdf/negotiating_text_12022015@2200.pdf.

⁴ See Synthesis Report of the Secretary-General on the Post-2015 Agenda, *The Road to Dignity by 2030: Ending Poverty, Transforming All Lives and Protecting the Planet*, (December 4, 2014), available at http://www.un.org/disabilities/documents/reports/SG_Synthesis_Report_Road_to_Dignity_by_2030.pdf.