



*Congress of the United States  
House of Representatives  
Washington, D.C. 20515*

*Anna G. Eskoo  
Eighteenth District  
California*

October 20, 2015

The Honorable Michael Froman  
United States Trade Representative  
600 17th Street NW  
Washington, D.C. 20508

Dear Ambassador Froman:

As you prepare the final text of the Trans-Pacific Partnership (TPP) trade agreement to submit to Congress for approval, I write to seek clarification regarding the agreement's impact on existing U.S. laws that limit damages for infringement of intellectual property (IP) rights.

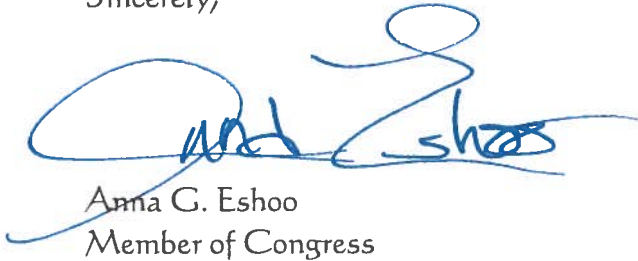
Specifically, I'm concerned that the TPP agreement's language on damages in the IP Chapter provides no room for statutory limitations on damages, and thus conflicts with the Affordable Care Act's provisions regarding biologic drugs under 35 U.S.C. § 271(e)(6)(B), otherwise known as the Biologic Price Competition and Innovation Act (BPCIA). According to this statute, in some cases the "sole and exclusive" remedy for patent infringement pertaining to biologics is a "reasonable royalty." This provision provides an important mechanism to increase timely transparency of relevant patents for biologic drugs, and to decrease the risks of expensive litigation for biosimilar manufacturers.

If the TPP's language on damages, including but not limited to Article QQ.H.4.2 and QQ.H.4.4, is in conflict with U.S. laws like BPCIA that provide limitations on damages for infringement of intellectual property rights, it is my understanding that those conflicts would leave the U.S. vulnerable to costly private sector actions under the TPP's ISDS mechanism which only exempts intellectual property rights to the extent they are consistent with the TPP and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Leaving this issue unresolved could also limit the ability of Congress to provide statutory limitations on damages for other important intellectual property infringement problems.

I request a timely response on the impact of the TPP agreement's language on damages in the IP Chapter on existing U.S. laws that limit damages for infringement of intellectual property rights, and on the potential ISDS ramifications for those conflicts.

Thank you in advance for your cooperation.

Sincerely,



Anna G. Eshoo  
Member of Congress