

CHILE TPP SUBMISSION

PRELIMINARY CONSIDERATIONS FOR TPP IP CHAPTER

- Definitions

For the purposes of the Chapter:

TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, which is part of the WTO Agreement;

Intellectual property refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II of the TRIPS Agreement namely: copyright and related rights; trade marks; geographical indications; industrial designs; patents; layout designs (topographies) of integrated circuits; protection of undisclosed information ¹.

- Intellectual Property Principles

The parties:

1. Recognise the importance of intellectual property in promoting economic and social development, particularly in the new digital economy, technological innovation and trade;
2. Recognise the need to achieve a balance between the rights of right holders and the legitimate interests of users and the community with regard to protected subject matter;
3. Convinced of the importance of efforts to encourage private and public investment for research, development, and innovation;
4. Reaffirm the principles set out in the Declaration on the TRIPS Agreement on Public Health, adopted on November 14, 2001, by the WTO at the Fourth WTO Ministerial Conference, held in Doha, Qatar;
5. Recognise the importance of promoting efficiency and transparency in the administration of intellectual property systems of the Parties;

¹ For the purpose of this Chapter “intellectual property” also includes the protection of plant varieties.

6. Recognise the importance of identifying, promoting access to, and preserving the public domain;
7. Agree on the importance of promoting high quality intellectual property rights in the granting procedures;
8. Are committed to the maintenance of intellectual property rights regimes and systems that seek to:
 - (a) facilitate international trade, economic and social development through the dissemination of ideas, technology and creative works;
 - (b) provide certainty for right-holders and users of intellectual property over the protection and enforcement of intellectual property rights; and
 - (c) facilitate the enforcement of intellectual property rights with the view, inter alia, to eliminate trade in goods infringing intellectual property rights.
9. Agree on the importance of ensuring that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

- General Provisions

1. The Parties affirm their existing rights and obligations with respect to each other under the TRIPS Agreement and any other multilateral agreement relating to intellectual property to which they are party. To this end, nothing in this Chapter shall derogate from existing rights and obligations that Parties have to each other under the TRIPS Agreement or other multilateral intellectual property agreements, such as those concluded or administered under the auspices of the World Intellectual Property Organization (WIPO), the World Health Organization and United Nations Educational, Scientific and Cultural Organization (UNESCO).
2. Parties shall be free to determine the appropriate method of implementing the provisions of this Chapter within their own legal system and practice.
3. Nothing in this Chapter shall prevent a Party from adopting appropriate measures to prevent the abuse of intellectual property rights by right holders or the resort to practices that unreasonably restrain trade or adversely affect the international transfer of technology, provided that such measures are consistent with this Agreement. In particular, nothing in this Chapter shall prevent a Party from adopting measures necessary to prevent anti-competitive practices that may result from the abuse of intellectual property rights.
4. Subject to each Party's international obligations the Parties affirm that they may:

- (a) provide for the international exhaustion of intellectual property rights;
- (b) establish that provisions in standard form non-negotiated licenses for products do not prevent consumers from exercising the limitations and exceptions recognised in domestic intellectual property laws;
- (c) establish provisions to facilitate the exercise of permitted acts where technological measures have been applied; and
- (d) establish appropriate measures to protect traditional knowledge.

5. The Parties shall provide for reproduction rights and communication to the public rights to copyright owners and phonogram producers that are consistent with the World Intellectual Property Organization Copyright Treaty (WCT) and the World Intellectual Property Organization Performances and Phonograms Treaty (WPPT).

The Parties shall provide performers' rights consistent with the TRIPS Agreement. The Parties may establish limitations and exceptions in their domestic laws as acceptable under the Berne Convention for the Protection of Literary and Artistic Works (1971), the TRIPS Agreement, the WCT and the WPPT. These provisions shall be understood to permit Parties to devise new exceptions and limitations that are appropriate in the digital environment.

6. Subject to their obligations under the TRIPS Agreement, each Party may limit the rights of the performers and producers of phonograms and broadcasting entities of the other Party to the rights its persons are accorded within the jurisdiction of the other Party.

- Cooperation

The Parties agree to cooperate, consistent with the principles set out in the Chapter. Such cooperation may include, inter alia:

- (a) the notification of contact points for the enforcement of intellectual property rights;
- (b) exchange of information relating to developments in intellectual property policy in their respective agencies. Such developments may include, but are not limited to, the implementation of appropriate limitations and exceptions under copyright law and the implementation of measures concerning the appropriate protection of digital rights management information;
- (c) exchange of information on the implementation of intellectual property systems, aimed at promoting the efficient registration of intellectual property rights;
- (d) promotion of intellectual property rights of the highest quality;

- (e) promotion of the development of contacts and cooperation among their respective agencies, including enforcement agencies, educational institutions and other organisations with an interest in the field of intellectual property rights;
- (f) share policies and programs to promote the use of and access to the public domain through the development of a shared database, among other measures;
- (g) share policies and programs to promote technology transfer and dissemination;
- (h) policy dialogue on initiatives on intellectual property in multilateral and regional forums;
- (i) policy dialogue on granting procedures in order to ensure high quality of rights;
- (j) exchange of information and cooperation on appropriate initiatives to promote awareness of intellectual property rights and systems; and
- (k) such other activities and initiatives as may be mutually determined among the Parties.