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▶ TRANS-PACIFIC PARTNERSHIP AGREEMENT – INTELLECTUAL PROPERTY CHAPTER

The Trans-Pacific Partnership Agreement is a free trade agreement between Australia, Brunei, Chile, Canada, the United States, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. After 7 years of negotiations, which began in February 2008, an agreement was reached on October 5, 2015, and the text was published in English on November 5, 2015. Among other matters, the TPP seeks to establish a common framework for intellectual property, strengthen labor law and environmental law standards, and establish an arbitration mechanism to solve disputes between States and investors.

The TPP has non self-executing provisions, that is to say, these provisions require that Parties to the treaty enact the necessary local provisions so that the former are enforceable in each country.

For the TPP to be enforceable in Chile, or in other words, for it to create an obligation for Chile to adjust its regulations in order to meet the standards established by the TPP; its text must be approved by both houses of Congress and ratified by the President.

Below you will find a summary of the most important topics included in the Intellectual Property chapter of the TPP:

Trademarks. No Party shall require, as a condition of registration, that a sign be visually perceptible, accepting sound marks and suggesting the inclusion of scent marks. It also regulates the exceptions to trademark rights, such as fair use of descriptive terms. For well-known marks, it provides that registration in the respective State or in other jurisdiction cannot be required in order for them to be considered as such. This has already been included in the Industrial Property bill which is currently being discussed in Congress.

Patent Linkage. The Parties are urged to implement alternatively, one of the two Patent Linkage systems recognized in this new legislation. These systems are:

1 Judicial Patent Linkage: Involves the implementation of a mechanism that allows: (a) that the holder of a patent is notified that a third party intends to commercialize a pharmaceutical product approved during the term of validity of a patent that has been granted; (b) adequate time and opportunity for the patent holder to seek remedies to address such situation; and (c) an expeditious and efficient procedure to ensure the timely resolution of the dispute concerning the validity or violation of the patent.

2 Administrative Patent Linkage: A non-judicial system that prevents, based on information regarding patents filed before the administrative authority or based on the direct coordination between the health authority and the patent office, the granting of marketing authorization to any third party when there is a patent in force and the applicant does not have the explicit consent from the patent holder.



If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Carey contact.

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Data Exclusivity. Regarding the Protection of Undisclosed Test or Other Data (Data Exclusivity) for pharmaceutical products, the TPP provides that Parties must ensure protection of at least 5 years as of the sanitary registration of the product in its territory. In connection to biological products, the Parties shall grant an 8 year protection or, alternatively, a 5 year protection as of the registration of the biological product in the territory of the country member, plus additional benefits equivalent to the 8 year protection. Chile currently recognizes and guarantees a period of protection to Undisclosed Test or Other Data of 5 years as of the sanitary registration of the pharmaceutical product, both for chemical synthesis products as well as for biological products.

Responsibility of Internet Service Providers. Parties shall provide legal incentives for Internet Service Providers to cooperate with copyright holders in order to deter the storage and transmission of material protected by copyright, through notice-and-takedown mechanisms. Alternatively, Parties may comply in this area by implementing the standards provided for on Article 17.11.23 of the Free Trade Agreement between the United States and Chile, which refers to the responsibility of Internet Service Providers.

Satellite and cable signals. Parties shall make the following actions a criminal offense: the execution of a series of actions on systems or devices that help decode a satellite signal without authorization, or receiving an unauthorized cable signal; the reception or distribution of a satellite signal knowing that it has been decoded without authorization; or the reception of a cable signal without authorization.

Technological Protection Measures. Civil penalties shall be imposed on those who knowingly (or having reasonable grounds to know), circumvents without authority any effective technological measure, or manufacture, import or distribute devices with that purpose.

Provisional Measures. On a request for relief in respect to an intellectual property right, each Party's authorities shall act *inaudita altera parte* (that is, without listening to the other party) expeditiously in accordance with that Party's judicial rules.