

## Summary of U.S.-Chile FTA Intellectual Property Chapter

### **General Provisions**

- \$ Obligation for Chile to ratify or accede to several international IPR agreements, including the International Convention for the Protection of New Varieties of Plants (UPOV 1991), the Trademark Law Treaty, the Brussels Convention relating to the Distribution of Program-Carrying Satellite Signals, and the Patent Cooperation Treaty.
- \$ National treatment obligation, with no exceptions for digital products

### **Trademarks**

- \$ First-in-time, first-in-right for trademarks vis a vis Geographical Indications (GIs), to prevent abuse of GIs
- \$ Domain name management requirements that assure a dispute resolution procedure to prevent trademark cyber-piracy

### **Copyrights (and Related Rights)**

- \$ Right of reproduction encompasses temporary copies, an important principle in the digital realm.
- \$ New rights unique to the digital age, which help ensure the effective implementation of standards set out in several international agreements on intellectual property. For instance, the right of communication to the public ensures that authors, program writers, and composers have the exclusive right to make their works available online
- \$ Longer terms of protection for works and phonograms (consistent with U.S. standards and international trends) (Life + 70 for works measured by a person's life; 70 years for corporate works)
- \$ Anti-circumvention obligations to prevent persons from tampering with technology designed to guard against copyright piracy and to manage access to, and compensation for, music, programs, and literary works provided over the internet, reflecting the balance attained in US law.
- \$ Requirement that that governments only use legitimate computer software, setting examples for the rest of the country
- \$ Limited liability for Internet Service Providers, reflecting the balance in U.S. law between legitimate activity and infringement of intellectual property rights.

\$ Protection of encrypted program-carrying satellite signals, extending protection to the signals themselves, rather than just the content contained in the signals

\$ **Patents**

\$ Patent term extension to be granted to compensate for unreasonable administrative or regulatory (including marketing approval) delays that occur while granting the patent

\$ Limited use of patented subject matter to support an application for marketing approval of a pharmaceutical products

\$ Grounds for revoking a patent that are limited to the same grounds that would have justified a refusal to grant the patent, to guard against arbitrary revocation of patents

\$ **Trade Secrets (Data Protection)**

\$ Protection of test data submitted for marketing approval against ~~un~~unfair commercial use<sup>@</sup> through data exclusivity for 5 years for pharmaceuticals and 10 years for agricultural chemicals

\$ Linkage between the marketing approvals and patent protection, so that, for instance, marketing approval is not granted to a product that infringes a patent.

\$ **Enforcement**

\$ Actual damages that include compensation for any harm suffered, based on the value of the legitimate goods, as well as on the infringer's profits

\$ Statutory damages, to ensure appropriate damages where there are inadequate records of actual damages and to further deter piracy

\$ Authority to seize suspected pirated and counterfeit goods, the equipment used to make or transmit them, and documentary evidence

\$ Authority to forfeit and/or destroy pirated and counterfeit goods and the equipment used to make or transmit them, and documentary evidence

\$ Ex-officio action with respect to border measures and criminal enforcement

\$ Ex-officio enforcement with respect to goods in transit, to deter infringers from using ports and free trade zones within the Parties to traffic in infringing products.

\$ Criminalization of end-user piracy