IP and public health in Chile’s FTA’s

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Syposium on current issues in intellectual property and public health

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Provisions related to health in FTAs

Notify to patent holder identity of third parties

Extension of patent term for unreasonable curtailment of

TRIPS +

Revocation only when same grounds exist that would have justified a refusal to grant the patent

Undisclosed information data exclusivity for 5 years

Extension of patent term for unreasonable curtailment due to patent approval

Undisclosed information data exclusivity for 5 years

Revocation only when same grounds exist that would have justified a refusal to grant the patent
Provisions related to health in FTAs

- Bolar exception
- Undisclosed information: Exceptions necessary to protect the public
- Exceptions to patentability preserved
- No limitation of Compulsory licensing
- Limited exceptions permitted
- No mention of parallel importations
- Inclusion of Doha Declaration in Preamble
Implementation of TRIPS and FTAs Flexibilities

Patents

- International exhaustion;
- exceptions to patentability;
- compulsory licensing;
- Bolar exception
Implementation of TRIPS and FTAs Flexibilities

Undisclosed information

- Definition of “undisclosed” (reasonable secrecy measures, not generally known or readily available);

- Right holder must request that data not be disclosed;

- Definition of new chemical entity (active principle not been registered or commercialized in Chile previous to registration);

- Not a new chemical entity: new uses, changes in administration or dosage, changes in formulations and combinations, etc.;

- Prohibited conducts/grounds for no protection: 1. anticompetitive practices; 2. reasons of public health, national security, non-commercial public use, national emergencies; 3. compulsory license; 4. not been commercialized within 12 months from registration; 5. File for registration in Chile after 12 months of register abroad;

- Data protection – Linkage: Improvement of judicial procedures.
Thank you

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