



Intellectual Property

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Scope of Chapter

- The intellectual property (IP) chapter covers patents, trademarks, copyrights, industrial designs, geographical indications, trade secrets, other forms of intellectual property, and enforcement of intellectual property rights, as well as areas in which TPP countries agree to cooperate.

Structure of Chapter



IPR Chapter

<i>General Provisions</i>	<i>IP Protection</i>	<i>Enforcement</i>	<i>Internet Service Providers</i>	<i>Final Provisions</i>
<ul style="list-style-type: none"> • Definitions of IP • Objectives • Principles • Nature and scope of obligations • Understandings on Public Health Measures • International Agreements • National Treatment • Transparency • Exhaustions of IP • Cooperation 	<ul style="list-style-type: none"> • Trademarks • Geographical Indications • Patents • Pharmaceutical Product • Agricultural Chemical Product • Industrial designs • Copyright and related rights 	<ul style="list-style-type: none"> • General Enforcement • Presumptions • Civil Procedures and Remedies • Provisional Measures • Criminal Procedures and Penalties • Border Measures • Trade Secrets • Protection of Satellite and Cable Signals • Government Use of Software 	<ul style="list-style-type: none"> • Safe harbours • Limitations • Notice and counter-notice • Remedies 	<ul style="list-style-type: none"> • Country-specific transitions • Country-specific Annex



Key Provisions

- The chapter reflect the commitment to ratify multilateral IP treaties:
 - a. Patent Cooperation Treaty (1979);
 - b. Paris Convention for the Protection of Industrial Property (1967);
 - c. Berne Convention for the Protection of Literary and Artistic Works (1971);
 - d. Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (1989)*;
 - e. Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977), as amended in 1980*;
 - f. International Convention for the Protection of New Varieties of Plants (1991) (UPOV Convention)*;
 - g. Singapore Treaty on the Law of Trademarks (2006)*;
 - h. WIPO Copyright Treaty (1996); and
 - i. WIPO Performances and Phonograms Treaty (1996).



Key Provisions

Trademarks

- This section provides for protections of brand names and other signs that businesses and individuals use to distinguish their products in the marketplace. Key elements includes:
 - protection for non-traditional marks, such as sound mark
 - protection for well-known mark
 - domain name cybersquatting

Geographical Indications (GI)

- This section provides for transparency and due process to the protection of new GI. Key elements includes:
 - due process to the protection of new GI protected through international agreements
 - safeguards regarding the use of commonly used terms
 - rules regarding the relationship between trademarks and GI



Key Provisions cont...

Patents

- This section provides for standards for patents. Key elements includes:
 - patentable subject matter
 - patent term adjustment if there are unreasonable delays of more than 5 years. Current practice in Malaysia is within 5 years, hence patent term would not be extended.

Agricultural Chemical products

- This sub-section provides protection of 10 years for undisclosed test and other data submitted to obtain marketing approval.

Key Provisions cont...



Pharmaceutical products

- This sub-section contains provisions that facilitate both the development of innovative and the availability of generic medicines, taking into account the various system with similar outcome. Key elements includes:
 - patent term adjustment due to unreasonable curtailment of patent term. Current practice in Malaysia is within 2 years, hence patent term would not be extended.
 - protection of 5 years for data submitted to obtain marketing approval for small molecules. Similar to current practice.
 - soft linkages between the system of patent and marketing approval, through administrative or judicial procedures. Similar to current practice.



Key Provisions cont...

- biologics : non-chemical drugs such as vaccines, gene therapy.
- Data Protection of 8 years for data submitted to obtain marketing approval for biologics; or alternatively, protection of 5 years and options for additional years through other measures such as patent protection and regulatory approval. There is also review mechanism 10 years after entry into force of TPP. Even though Malaysia currently does not provide data protection for biologics, the obligations is similar to current practice provided for small molecules.
- 'Access window' specific for Malaysia to encourage early entry of new medicines, for both small molecules and biologics. This is a very important flexibility for Malaysia.
- transition period of 5 years for Malaysia to introduce data protection for biologics.
- confirmation that Parties are not prevented from taking measures to protect public health



Key Provisions cont...

Copyright

- This section provides for protection for works, performances, and phonograms such as songs, movies, books, and software. Key elements includes:
 - provisions on technological protection measures (TPMs) and rights management information (RMI) to address copyright in the digital world.
 - exceptions and limitations for legitimate purposes, such as for teaching, research, and other similar purposes, facilitating access to persons who are blind or visually impaired.
 - copyright term of 70 years. Although Malaysia currently provides for 50 years, Malaysia recognize the significant contribution of copyright to domestic economy.



Key Provisions cont...

Internet Service Providers (ISPs)

- This section provides for a framework of copyright safeguards for Internet Service Providers (ISPs), in cases of infringing activity that occurs online.

Enforcement

- This section provide for effective enforcement systems, including civil procedures, provisional measures, border measures, and criminal procedures and penalties for commercial-scale trademark counterfeiting and copyright piracy.
- This section also prescribe the legal means to prevent the misappropriation of trade secrets, and establish criminal procedures and penalties for trade secret theft, including by means of cyber-theft, and for unlawful recording of a movie in the cinema.



Thank you



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