



Trade Facts

Office of the United States Trade Representative

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Bipartisan Agreement on Trade Policy: Intellectual Property Provisions

May 2007

Intellectual Property

- The Administration's agreement with the Congressional leadership preserves a strong overall level of protection for intellectual property in developing country free trade agreements, including the pending Peru, Colombia, and Panama agreements.
- Within this overall framework of strong intellectual property protection, the agreement reached with the Congressional leadership aims to incorporate certain additional flexibilities. These modifications are aimed at further ensuring that developing country free trade agreement partners are able to achieve the best possible balance between fostering innovation in, and promoting access to, life-saving medicines. The results are fully in line with this Administration's long-standing trade policy objectives in the area of intellectual property.
- In particular, the agreement with the Congressional leadership entails the following elements related to intellectual property, medicines, and health (the first three would apply only to developing country partners):
 - Clarification that the period of protection for test data for pharmaceuticals in developing country FTA partners will, in some circumstances, not extend beyond the period that such protection is available for the same product in the United States, coupled with a provision that will encourage our partners to process marketing approval applications for innovative drugs in a timely manner.
 - A more flexible approach, for developing country partners, to restoring patent terms to compensate for processing delays. This flexibility is accompanied by new provisions stipulating that trading partners will make best efforts to process patent and marketing approval applications expeditiously.
 - More flexibility in terms of the types of procedures and remedies that developing country partners may implement to prevent the marketing of patent-infringing pharmaceutical products.
 - Clarification that FTA partners may implement exceptions to the rules for protecting test data if necessary to protect public health.
 - Integration within the intellectual property chapter of a recognition that nothing in the chapter affects the ability of our FTA partners to take necessary measures to protect public health by promoting access to medicines for all, and a statement affirming mutual commitment to the 2001 Doha Declaration on the TRIPS Agreement and Public Health.