

## INTELLECTUAL PROPERTY AND THE TRADE AGENDA

### ISSUE

Commitments regarding the protection and enforcement of intellectual property (IP) have proven key to advancing Canada's bilateral free trade agenda; nonetheless, Canada prefers to develop IP rules at home and then seek to reflect these outcomes in multilateral forums.

### CURRENT POSITION

- Canada's approach to IP in international trade negotiations is driven by its domestic policy, which in Canada's view requires the careful balancing of appropriate incentives to generate innovation and creativity in Canada while also ensuring appropriate access by end users. The role of the Minister of International Trade is to oversee the negotiation of IP rules in Canada's international trade negotiations. Respective ministers from Industry Canada, Canadian Heritage, Health Canada, Public Safety Canada, and Agriculture and Agri-Food Canada share responsibility for the legislation and regulations that make up Canada's IP regime.
- Canada's preferred strategy is to establish international IP rules through multilateral forums such as the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). However, in the context of the Canada-EU Comprehensive Economic Trade Agreement (CETA) and the Trans-Pacific Partnership (TPP), Canada negotiated trade obligations that, while reflective of recent domestic reforms, are beyond those standards set through multilateral forums, and which will likely require amendments to domestic practice, such as in the areas of geographical indications (GIs) and patent protection for pharmaceuticals.

### BACKGROUND

IP rights are private legal rights given to persons over their creations and inventions and are divided into two main areas: (i) copyright and related rights, which protect authors, performers and producers of literary and artistic works; and (ii) industrial property rights, such as patents and industrial designs, which protect inventors, the unique aesthetic properties of products, trademarks and geographic indications, which provide rights for words and other signs that distinguish a brand or regional origin of a product.

IP rights provide individuals and firms with an incentive to innovate and create new works, while at the same time promoting a competitive marketplace and ensuring that beneficial innovations are accessible and available to users, and eventually enter the public domain. IP typically provides for an exclusive right over the use of creations and inventions for a period of time, subject to certain limitations aimed at balancing the interests of creators and end users. Setting higher or lower IP protection inevitably creates winners and losers and thus involves trade-offs among stakeholders. Balance is essential, given that inappropriate IP protection can impede economic growth and competition and prevent ideas from entering the public domain.

Canada has amended its major domestic IP legislation over the past four years through a concerted modernization effort that has also positioned Canada to implement obligations under a score of multilateral (WIPO) treaties that Canada has recently ratified or intends to ratify. These reforms will also help facilitate the conclusion and implementation of major free trade agreements (FTAs), namely the CETA and the TPP.

Canada provides a high level of protection and enforcement for IP. However, key trading partners such as the United States and European Union can be expected to be critical of Canadian policy, particularly with regard to their export interests in the copyright and pharmaceutical sectors where their view of the appropriate policy balance differs from Canada. Canada is a net importer of IP meaning that there is a net loss on international tech transfer and patent licensing payments as well as a trade deficit in IP-intensive industries. Canada's international negotiating positions are driven by the balance between incentives to create/innovate and measures to ensure appropriate access by end users which is struck in Canadian domestic policy.

Canada's involvement in international rule and standard-setting has been primarily through multilateral forums, in particular via WIPO and the WTO. Two factors drive this multilateral preference: first, the high standards of protection and enforcement already established under multilateral agreements respond to Canadian interests; and second, more practically, under WTO rules, the extension of IP obligations to one trading partner, such as via a bilateral FTA, must be made available to all WTO members, despite the inability to seek concessions from other WTO members. Given the level of protection for Canadian interests established multilaterally, Canada's bilateral FTA approach is focused on ensuring that its partners live up to their IP obligations under WTO and WIPO agreements and on establishing a bilateral avenue for the resolution of specific IP irritants and concerns of Canadian stakeholders.

Despite Canada's multilateral preference, IP has been as a key issue in the context of recent FTA negotiations with net exporters of IP. Canada agreed to negotiate detailed IP chapters with the United States (under the TPP), European Union, Japan and South Korea – the foremost advocates for stronger IP protection globally. These negotiations have seen Canada consider and, in some cases, accept obligations that exceed multilateral benchmarks. These bilateral commitments largely reflect Canadian domestic practice, though some would necessitate changes. For example, Canada undertook new commitments under CETA to protect EU geographical indications for food names and to increase protection for pharmaceuticals. Implementation of these commitments will necessitate policy choices that involve consideration of the effects on interests ranging from food producers to the health and life sciences sectors.

Officials anticipate that current trends will see major IP intensive economies continue to move the IP norm setting agenda outside of multilateral forums and into bilateral, regional and plurilateral deals, like the TPP. This is in part due to a strong divide between developed and developing countries, with net-importing developing countries pushing for: broader user exceptions, citing the need to ensure greater access to technology, copyright materials and medicines; greater commitments toward technical assistance and capacity building; and the establishment of new IP rights related to genetic resources such as plants, traditional knowledge and culture.

## **STRATEGIC COMMUNICATIONS IMPLICATIONS**

In recent months, IP has garnered a moderate amount of media coverage, almost entirely in the context of the TPP negotiations. This issue has generally been managed through a responsive communications approach, where the Department responds to specific media and stakeholder requests, but does not have broader engagement activities planned at this time. Qs & As have been prepared.