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INTELLECTUAL PROPERTY RIGHTS IN THE EU TRADE AGREEMENTS

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Introduction

Intellectual property rights (IPRs) became in last twenty years an important aspect of trade policies of governments. The protection and enforcement of IPRs is crucial to innovation and the competitiveness of entire sectors namely in developed economies and on markets with which they are in trade relations. The establishment of the World Trade Organization (WTO) confirmed the need not only for a protection, but also for an effective enforcement of IPRs, as a prerequisite for a fair and free trade (Stoll, Schorkopf 2006). Since then, IPRs are an indispensable part of multilateral trade agreements and very often a subject to bilateral, inter-regional and plurilateral agreements. These agreements in the IPRs part complement the system of agreements on protection of IPRs that dates since the end of the 19th century. International protection and enforcement of IPRs is a complementary element to the matrix of national systems as well.

The enhanced IPRs protection and namely the effective enforcement of this protection establish at the third markets more stable, reliable, transparent and secure business environment that is a condition for extended market access for goods, services and investment. The parts devoted to the IPRs enforcement reflect the pressure from business for achieving higher predictability, transparency and security at target markets, as the business is threatened by losses caused by IPRs infringement and counterfeiting, by loss of exclusivity, by loss of markets and by loss of the credibility in consumers´ eyes. Non-existence of IPRs protection and enforcement could become an obstacle for market entry that undermines development of investment and business activities. The effective enforcement, on the other hand, stimulates positive impacts of market openness in areas of economic growth, advantages for consumers and new jobs establishment. By the same, it strengthens competitiveness of business subjects in knowledge economies.

As the EU's main goal within the common commercial policy is liberalization of world markets and enhanced level of IPRs protection and enforcement is embedded into the European Strategy 2020 (in the part Trade, Growth and World Affairs) as the key component, the EU in considered to be one of the most active initiators of IPRs protection and enforcement at all markets (EC 2010b). It is reflected namely in EU initiatives at multilateral basis, as multilateral changes and new provisions on IPRs would ensure the highest level of transparency and are the most stable groundwork for bilateral negotiations.

At the multilateral level, the basis is provided through the WTO and World Intellectual Property Organization (WIPO). The EU carries intellectual property rights also through bilateral preferential trade agreements that are negotiated within the EU agenda Global Europe as a new generation of agreements that comprise - outside of customs tariffs - also other areas, for example non tariff and

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administrative barriers for goods, services and investment, governmental procurement, protection of innovation, sustainable development, labor standards, protection of environment, etc., including IPRs protection and enforcement (Manger, 2009). The goal is to harmonize IPRs protection and enforcement at markets of the important EU's trade partners at the level that is ensured in the EU. The consideration of IPRs with emphasis on enforcement has been underlined in the Strategy for the Enforcement of IPRs in Third Countries from 2005 that has been reviewed in 2011 based on comments from stakeholders (EC 2010c) and it is also a subject to the EU regulation (JO 2005) . European Commission also monitors infringement of European IPRs at foreign markets within the Market Access Strategy - concrete cases listed according to category are at public disposal in Market Access Database (EC 2013)

The importance of IPRs has been further confirmed by the Lisbon Treaty that considers intellectual property trade aspects as exclusive competences of the EU Common Commercial Policy. This amendment, together with the changes in institutional framework of commercial policy reinforced the position of the European Commission in this field and submitted the area to the active supervision of the European Parliament.With regards to mentioned above, the aim of this article is to analyze the EU's interests in international protection and enforcement through trade agreements.

IPRs in the EU Common Commercial Policy

As mentioned above, the Lisbon Treaty lists trade aspects of IPRs among exclusive competences. Before the 1 December 2009, these aspects were considered as shared competences, issues demanded unanimous decision and bilateral agreements for this area were ratified as mixed agreements by national parliaments of the EU member states. The Lisbon Treaty limited number of competency issues and shifted the IPRs to the areas submitted to the qualified majority decisions. External competences have been complemented by internal ones (Woolcock 2008).

From the perspective of external competences and of praxis for negotiations on trade IPRs aspects, the changes are not too significant as these parts of bilateral agreements were already in the past negotiated by the European Commission on behalf of the EU member states. A theoretical impact of it lies in the fact that the member state, which would not agree with outcomes of the negotiations lead by the European Commission, cannot more appeal a requirement of unanimity.

From the perspective of internal competences it is possible to predict some problems from the exertion of internal competences as they should apply not only to autonomous measures but also to implementation of agreements. Even if the unanimity of the Council of Ministers is required for some provisions, Viale (2007) argues that competences cannot be violated by voting rules. This issue is discussed in details by Sterbova (2010a, 2010b) and due to its complexity only a short summary above is provided here.

WTO - Trade Related Intellectual Property Aspects Agreement

The establishment of the WTO in 1995 enlarged the multilateral trading system by new areas, among them by the Trade Related Intellectual Property Rights Agreement (TRIPS). It is the most important multilateral trade agreement on protection and enforcement of IPRs that reflects general principles of the WTO multilateral trading rules (non discrimination, predictability, transparency, fair competition, development). It is from the historical perspective and until now the only IPRs agreement that deals with enforcement. TRIPS is devoted exclusively to the trade aspects and its provisions introduce minimum standards of protection and enforcement without providing rules on procedural or harmonization aspects or implementation manner of the standards. Even if the TRIPS Agreement provided for different periods for its implementation into national legislation of the WTO developed and developing members, nowadays all the WTO members with an exception of Least Developed Countries that enjoy an extended implementation period (WTO 2011a), should have a national legislation that grants a minimum level of protection and enforcement for national and foreign IPRs owners alike. Minimum standards are set for all IPRs categories: copyright and neighboring rights, patents, industrial designs, trademarks, geographical indications, lay-out design of integrated circuits, undisclosed information and know-how.

From the EU perspective, protection and enforcement of the TRIPS agreement are important namely for their multilateral impact, but from the perspective of the current expansion of European subjects at third markets, the level of them is not sufficient in some categories, for example in the geographical indications and non disclosed information[50] categories. This is one of reason why the EU uses other platform to secure higher level of IPRs protection and enforcement at foreign markets.

The system of multilateral trading agreements provides for an exemption from the non discrimination principle and members can agree under specific conditions on preferential mutual trade arrangements for the exchange of goods and services (Article XXIV of the General Agreement on Tariffs and Trade and Article V of the General Agreement on Trade in Services). Such an exception from most favored nation (MFN) clause does not, however, apply to trade aspects of IPRs. The WTO member cannot agree with its partner on a specific higher or lower level of IPRs protection and enforcement that would not be at disposal for subjects from other WTO countries. International discussions are held on this topic, the principle has not been yet, however, breached. This feature of the TRIPS agreement influences negotiations on preferential trade agreements with IPRs aspects. The EU has a goal to achieve similar level of IPRs protection and enforcement at third markets that the European subjects are used to. To accept such a commitment means for the trade partner to implement relatively strong level of IPRs protection and enforcement not only for the EU, but for all WTO members. It establishes in many cases an obstacle in negotiations, as namely developing countries consider IPRs protection and enforcement as a disincentive for the technology progress and a tool to deepen the monopoly of the EU industry.
The only field where the applicability of the MFN clause is not a barrier to find an agreement on higher level of IPRs protection and enforcement are geographical indications (GIs). GIs protection is a protection against registration of a trademark which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, against use of GIs in translation or accompanied by expressions such “kind”, “type”, “style”, “imitation” or the like (WTO 1994). GIs protection is negotiated for listed indications limited geographically that are used only by entitled subjects from the given territory, and the MFN clause is not well-founded.

Even if the EU is pursuing the GIs protection bilaterally (see parts on bilateral trade agreements of this article), the priority is to achieve an effective protection at the multilateral level. It is why the EU was very active in discussion and negotiation on GIs, namely within the current round of negotiations of further trade liberalization, the Doha Development Agenda (DDA). Its mandate provides for negotiations on establishment of a system for notification and registration for GIs on wines and spirits. EU promotes establishment of a register with legal effects that should be reflected in the amendment of the TRIPS agreement. GIs registration will enable GIs owners to enforce in all WTO countries protection against unfair use of their GIs like using it as a trademark. This proposal has very many opponents, who agree only with an establishment of a list of GIs that could be optionally used for consultation within registrations of trademarks.

The second aspect discussed in the WTO is the EU interest in enhancing the level of GIs protection for other products than wines and spirits, as they – according to the TRIPS agreement – enjoy lower protection against misuse, based only on the consumers´ misleading concept. Two levels of GIs protection are an outcome of the Uruguay round of negotiations (that led to the establishment of the WTO). The EU interest has many opponents, but it is promoted by some developing

[50] Non disclosed information, referred also as data exclusivity, is an information on results of clinical trials and impact of the product that is required by governmental institutions for granting a marketing approval for pharmaceuticals and chemicals in agricultures.

countries including China and India. This issue has not been yet included into the multilateral negotiations; it should be, according to the DDA mandate, a subject to discussion. If the EU succeeds in extension of the high level of GIs protection to products other than wines and spirits, these GIs would be included into the eventually established GIs registration system, what would have important trade impacts and it would allow EU to eliminate GIs issue from bilateral negotiations on preferential trade agreements. With regard to a weak overall progress of the DDA, however, this aim currently seems not to be realistic.

In order to complete the picture it should be added that the EU tabled a proposal for a retroactive GIs protection within agricultural negotiations that is for the majority of EU partners unacceptable. The EU is active also in discussion on other areas of IPRs that could lead to an amendment of the TRIPS agreement, namely in discussion on origin of genetic resources requirement in patent applications (referred also as biodiversity) and on enforcement.

Some developing countries leaded by Brazil claim an obligation to disclose origin of genetic resources and traditional knowledge in connection to the innovation in patent applications. This information should be followed by benefit sharing, what will ensure a certain financial income for developing countries. The EU is within this topic in an antagonistic position: some member states, namely those with a strong research oriented industry and high number of patent applications, do not agree with the mentioned request and do not want to accept it until the processes on equitable benefit sharing are designed. For other member states, the publication of the origin of genetic resources is not a problem, but they do not consider it neutrally – on the contrary, they support it, as they have an interest in another issue bound with it – in the discussion of higher level of protection for GIs. In the discussions on GIs, it is possible to gain – on a reciprocal basis – support from the countries asking the publication of genetic resources origin. With the view to the internal situation, the EU proposes a compromise: „legal effects of the publication of the origin of genetic resources outside of the patent law“. The EU's support to the request of Brazilian initiative became apparently one of the positive stimuli for the re-launch of negotiations on preferential trade agreement EU-MERCOSUR.

The EU initiated at the WTO a discussion on enforcement of IPRs. IPRs enforcement and boarder measures as a barrier for importation of goods infringing IPRs is a problem of many states, namely in effectiveness and speed of enforcement measures. TRIPS agreement dates more than 18 years and does not reflect the current level of information technology and internet that are used for the IPRs infringement very often. The EU's aim is to pursue an effective enforcement at multilateral level and as a consequence, to facilitate bilateral negotiations that should not - after multilateral commitments are agreed - take this issue into consideration.

The EU interest to resolve some IPRs enforcement aspects in bilateral trade agreements is caused also by extended moratorium on non-violation complaints from the TRIPS agreement (WTO 2011b), it means by moratorium on trade disputes caused by distortive trade impacts of existing IPRs protection and enforcement, even if any provision is violated (for example by the length of judicial procedures).

ACTA Agreement

The Anti-Counterfeiting Trade Agreement (ACTA) is provided here as complementary information about the interests within IPRs in the EU trade agreements, even if this agreement has been rejected by the European Parliament namely for unclear impacts on the society (EP 2011). The ACTA was negotiated as a plurilateral agreement among Australia, Canada, EU, Japan, South Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and USA in the period of 2006 - 2010. The goal of the Agreement was to set up a basis for an effective combat against proliferation of IPRs infringement in individual countries and also in extension on exportation, re-export and transfer of goods through the territories of the signatories (EC 2010a). ACTA should have ensured a high level of enforcement by participating countries, limited the market for counterfeit goods and strengthened protection for copyright and trademarked goods and products with geographical indications (WTO 2011c). The European Commission declared the agreement being an important part of the European Union's Lisbon Agenda for building a European knowledge economy and introduced it as a catalogue of best practices that help members to fight effectively with IPRs copying and infringement. ACTA developed new international standards for the internet related areas and strengthened enforcement aspects. Besides civil and criminal enforcement, ACTA contained also a detailed and effective mechanism for international cooperation in the IPRs fields. ACTA also formulated modes that could have been used by IPRs holders while seeking judicial enforcement at borders or within internet.

Negotiations on ACTA agreement, from the EU part, has been facilitated by the changes in the EU Common Commercial Policy, namely by establishing exclusive EU competences over trade related aspects of IPRs (Sterbova 2010c). Individual EU Member States did not participated in negotiations and were informed about the text of the agreement alongside with the European Parliament at the almost last stage of them.

The ACTA awoke concerns of the civil society, various non-governmental associations and business. After it has been challenged and rejected also by parliaments of other signatory countries than the EU, negotiations were abandoned.

Bilateral trade agreements EU -Asia

Free Trade Agreement EU- **South Korea** that has been approved by the European Parliament as the first trade agreement under the Lisbon Treaty, is in force since 2012 being provisionally applied since July 2011. It contains strong IPRs provisions (Sterbova 2010d). Both partners were interested in strengthening the criminal sanctions on IPRs infringement, namely on internet. The agreement encompasses reciprocal protection of copyrights and neighboring rights, trademarks for good and services, design, topography of integrated circuits, GIs, protection of plant varieties and boarder measures (Ermert 2011)

The most important provisions are the extension of the patent protection period for pharmaceuticals and protection of so called non disclosed information, what reflects the EU main interests. The mentioned protection for pharmaceuticals is called Supplementary Protection Certificate, which is an extension of 5 or 5 and half years above 20 years of general patent protection. It is a part of the EU legislation and it compensates owners of pharmaceuticals patents for the long time needed to obtain marketing approval for their product. It extends the patent monopoly and enhances a profitability of finances invested into the research. In addition, also in accordance with the EU legislation, protection of 10 years is introduced for non disclosed information (data exclusivity, usually results of clinical trials) that is requested by governmental institutions as a basis for the marketing approval –in the period of protection, these data cannot be used by generic pharmaceutical industries.

The agreement comprehends also the same provisions that were embedded into the ACTA agreement, as EU and South Korea were negotiators of it. It deals with criminal prosecution for IPRs infringement at internet and also with such delinquency as crime of "aiding and abetting" copyright and trademark infringement on a commercial scale, covers broadcasters right to prohibit further dissemination to the public for free and includes searches and seizures of goods at boarders upon request of right holders.

From the perspective of IPRs the agreement on free trade opens the Korean market and established more favorable conditions for European exportation and investment. As explained above, Korea - based on the application of the MFN clause – ensures these conditions also for all other WTO members.

Free trade agreement with **Singapore** has been signed in the end of 2012 and is considered to be one of the most comprehensive EU agreements. It opens Singaporean market for EU industrial, agricultural and services businesses and will be followed by negotiations on investment protection. As for the IPRs, Singapore committed itself for a high level of GIs protection that means to establish a register for GIs of wines, spirits and foodstuffs. Through the registration, the European GIs will be protected from the considerable competition from third country producers of meat and dairy products. The agreement deals also with remuneration of rights for creative activities and contains strong enforcement rules, but without criminal sanctions that could undermine the effectiveness of it.

Bilateral trade agreement EU-India

IPRs protection and enforcement is also a subject to the negotiations on free trade agreement between the EU and India. These negotiations were launched in 2006 as a part of the strategy Global Europe. According to several analyses, the benefits for the EU would reach in short run €4,4bn and for India €4.9bn (EC 2009). The difference will be balanced by a more stable business environment in India, including the IPRs.

The IPRs importance is stressed in the chapter of the EU-India Report: Intellectual Property and Geographical Indications. The reference of GIs witnesses how important they are for European exporters – it is specifically also recognized that "geographical indications constituted a potentially important part in bilateral trade and should be covered in any possible bilateral agreement. Both the EU and India are committed to the reinforcement of GI protection as part of the DDA negotiations. Bilaterally, the protection of GIs on each others' markets would be enhanced by the negotiation of an agreement on GIs." (Report 2006). In the Report, IPRs enforcement is mentioned only generally, even if it is one of the weakest points of the Indian IPRs legislation. India, accordingly with other developing countries is reluctant to negotiations on it within the bilateral trade agreement. These countries prefer not to continue in negotiations if the commitment on stronger IPRs enforcement is a part of it, despite the possible impact that lies in preservation of the current market access under the General System of Preferences that is unilaterally decided and less advantageous than reciprocal preferences. It is probable that IPRs enforcement will not be a part of the free trade agreement.

The above mentioned conclusion is a function of the EU and India positions within the multilateral trading system and their trade policies. The EU and India share same interests and perspectives as for the enhancement of the level of GIs protection for all products. Both partners are members of the WTO GIs Friends Group – an informal group of countries that has been initiated by Switzerland and Czech Republic in 1997 and that pursues „equality" for all GIs into the mandate for negotiations. Until now these initiative was not successful and prospects for it are not optimistic. It is why the enhanced GIs protection would enable to protect Indian GIs as Basmati or Darjeeling at the EU market, and European GIs for cheeses (for example Roquefort) or beers (for example Budweiser beer) would find similar protection at Indian market. The importance of the enhanced GIs protection lies not only in the protection from misuse by EU or Indian producers, but namely from importation to the EU and India from third countries where these GIs are used (for example, Basmati rice or beer Budweiser, both produced in the USA, are exported to the EU and Indian markets).

Despite same interests of the EU and India in GIs protection and in biodiversity, other IPRs fields in the negotiations reveal to be a problem, namely data exclusivity and extension of the patent protection for pharmaceuticals. If non disclosed information is not protected, it opens space for production of generic medicines sooner than the costs of research and testing are redeemed to the originator. Data exclusivity issue is supported by the research oriented European pharmaceutical industry and by the Indian association of pharmaceutical producers (Gasiorek, Holmes, Robinson 2007). It is promoted also by the European generic industry that has to respect a 10 year protection of non disclosed information, while its competitor, Indian generic industry, does not face such a condition. Indian government is not willing to accept the data exclusivity requirements, as it would influence negatively production and namely exportation of generic medicines. As a consequence of the MFN clause, data exclusivity should be extended all WTO members, including the USA and Switzerland. Officially the Indian governments argues that such a step would have severe impacts on access of poor people from developing countries to affordable medicines and that the EU interest is in contradiction to the resolution of the European Parliament on TRIPS agreement and access to (EP 2007).

Related IPRs area in negotiations is the patent term extension mechanism, referred as Supplementary Protection Certificate. It addresses the issue of delays in the processing of marketing approval applications and compensates research oriented industry for long delays during patent life in the obtaining of marketing approval. As India rejected the mentioned requirement, the EU does not further pursue the supplementary protection. IPRs issues are not closed. Except of GIs, biodiversity, patents and data exclusivity there exist some signals that India could request protection of traditional knowledge in relation to some products. Traditional knowledge is a IPRs category that is not yet fully identified and mechanism for the protection does not exist, even if it is discussed in the WIPO.

Trade Agreements EU - Latin America

In 2012, the EU signed the Association Agreement with a group of **Central America** countries that includes Costa Rica, Guatemala, Salvador, Honduras, Panama and Nicaragua. Free Trade Agreement is a pillar of the Association Agreement and it includes also a part dedicated to the IPR protection and enforcement. EU succeeded to introduce some important commitments that not only enhance the level of IPRs protection above the minimum standard of the TRIPS Agreement, but also provisions of an effective enforcement of these rights, as criminal prosecution and seizure of goods infringing intellectual property rights. The procedures to defend European rights more effectively in case of infringements will be implemented. Counterfeited goods can be seized at the border as well as in any phase of its distribution. These provisions should be implemented into the national legislation of all Central American countries mentioned what will establish the same conditions for IPRs protection and enforcement in the business environment that private subjects find within the EU, namely - since 2003 - in the area of border measures. Breaking these commitments could have trade consequences, as compensations in enhancing tariffs for importation of goods from the country that does not comply with these commitments to the EU market.

The mentioned provisions should concern counterfeited goods, as branded clothing, computers, mobile phones or pirated CD and movies. Some analysts (Cronin 2010) argue, however, that these measures could be used also as a basis for seizure and destruction of a good that infringes patent rights. If generic medicines exported to the Central America and aimed to help the poor population are concerned by this provision, they can be confiscated, even if such pharmaceuticals are produced and consumed in countries where the patent protection of such medicines does not exist. It could harm very significantly access to pharmaceuticals needed for public health protection. There is an evidence for such a situation from 2008 and 2009, when Indian pharmaceuticals on HIV in transit through Netherlands to Nigeria and to Brazil had been seized because of a complaint of research oriented pharmaceutical industry on infringement of their patent rights in Netherlands. This case is now a subject for a dispute settlement at the WTO and is not yet resolved. The EU ensures, however, that nothing in the agreement would limit access to medicines what is in accordance with the TRIPS Agreement and the Doha Declaration on the TRIPS Agreement and Public Health (EP 2007).

The agreement protects at very wide extent GIs on the Central American markets, in a manner similar to the EU. Additionally, over 200 European GIs are specifically protected (e.g. Champagne, Parma ham, Scotch whisky). Specific reference is made to the importance of protection of biodiversity.

The most important trade negotiations in the region were re-launched with the group of **MERCOSUR** countries. Negotiations started already in 1995, but they were interrupted in 2004 due to the lack of progress in the multilateral liberalization negotiations at the WTO. MERCOSUR countries, namely Brazil, did not want to commit itself to any market liberalization until the results of the WTO talks are settled. In 2010, negotiations have been renewed and since then, several rounds of negotiations had been held. The interruption had been caused also by different views of negotiating parties on the extent of the future agreement. EU pursued a broad, comprehensive agreement, covering not only trade in goods and services but also other areas including investment and IPRs protection and enforcement. Countries of MERCOSUR, whose economic integration did not reach the EU's depth and level, preferred a trade agreement on goods, at certain limit also on services. IPRs protection and enforcement system in MERCOSUR ensures only minimum standards and governments consider it as a barrier to the development of their economy. Meunier (2007) deduces also that MERCOSUR was concerned by the lack of EU exclusive competences for negotiations on investment and intellectual property rights, because EU mixed competences in these fields could have caused difficulties in the ratification process in all EU-27 member states if a frangible compromise was reached.

Negotiations on the free trade agreement have been renewed in May 2010. As the reason for renewing them cannot be found in any progress of the WTO multilateral negotiations, it is possible to assign it to other factors. Among them, the fundamental change in Common Commercial Policy under the Lisbon Treaty embeds new competences for the area of trade related intellectual property rights. Competences defined as exclusive ones are a more secure basis for "passing" any future trade agreement with IPRs and investment elements through the whole approval and ratification process in European Parliament and EU Council (Sterbova 2011). Such a high probability is very important as the result of negotiations is a compromise within which different areas are balanced. The negotiations have been renewed on a basis of a new goal formulation of the future Association Agreement. It should comprise mutual liberalization of trade with goods and services, with respect to sensitive products and sectors of economy, non-tariff barriers to trade, namely sanitary and phytosanitary measures and rules of origin, investment rules, governmental procurement principles, fair competition and dispute settlement system. The key point of negotiations remained intellectual property rights protection; the IPR enforcement is not, however, explicitly stated. Underlined are only GIs as one of the main EU interest.

GIs, it means the EU interest to protect European GIs on MERCOSUR market, could become a source of conflicts in negotiations. Argentina belongs to opponents of all EU initiatives in this field at the WTO, namely because Argentinean wine producers and other agricultural products use European GIs as a heritage from historical immigrants from Europe. Other MERCOSUR countries are not in the same position (for example Brazil traded off a European support for biodiversity for not to opposing GIs at the WTO), but to achieve a higher GIs protection in the agreement than is provided by the TRIPS agreement is not very realistic. The EU signed also a Multi-Party Trade Agreement with **Peru and Colombia**, as a result of negotiations with the Andean Communities. The agreement has an important part on IPRs what was one of reasons why Ecuador and Bolivia did not join it. It ensures an effective level of protection of IPRs and a specific protection of about 100 GIs on the Colombian and Peruvian markets. Effective IPRs enforcement is also strengthened – necessary procedures will be at disposal to European business to defend their IPRs through civil and administrative and border measures that cover copyright, trademarks and GIs.

Other preferential trade agreements are concluded between the EU and **Mexico** and between the EU and **Chile**. Both agreements concerns IPRs only at very general level.The agreement with Mexico underlines the great importance of the protection of intellectual property rights - copyright including the copyright in computer programmes and databases and neighbouring rights, the rights related to patents, industrial designs, geographical indications including designation of origins,

trademarks, topographies of integrated circuits, as well as protection against unfair competition and protection of undisclosed information, but does not go beyond the TRIPS agreement. As for the IPRs enforcement, the agreements state a commitment to establish the appropriate measures with a view to ensuring an adequate and effective protection in accordance with the highest international standards, including effective means to enforce such rights.
The agreement with Chile underlines cooperation of parties in matters relating to the practice, promotion, dissemination, streamlining, management, harmonisation, protection and effective application of intellectual property rights, the prevention of abuses of such rights, the fight against counterfeiting and piracy, and the establishment and strengthening of national organisations for control and protection of such rights. More details are provided on technical cooperation and training in the IPRs field.

Other EU agreements

IPRs are subject to other bilateral agreements already signed or under negotiations. Except of analyzed agreements, the EU has preferential trade agreements with Switzerland, Balkan countries, Faroe Islands, Norway, Island, some of Mediterranean and ACP countries (African, Caribbean and Pacific Group of States) and customs union with Turkey, Andorra and San Marino. Free trade agreement has been signed with Ukraine and others are negotiated or negotiations are in project with Canada, Malaysia, Thailand, Vietnam, Japan, Georgia, Moldova and USA. Some of the former agreements are subject to negotiations on extension for other areas, as regulatory, recognition, competition and government procurement issues and IPRs, as a condition for transparent and legally stable business environment. The EU faces, however, an obstacle in low preparedness of developing countries to implement commitments in the IPRs protection and enforcement.

The EU pursues its interests in IPRs at the bilateral cooperation with other states, even if it does not negotiate preferential trade agreements with them. The framework is provided by partnership and cooperation agreements, namely with some Eastern European countries, Caucasus, Iraq, Mongolia and middle Asia countries. In parallel, cooperation on enforcement of European IPRs has been strengthened with Argentina, Brazil, Russia, Thailand Ukraine and China (for example the dialog on IPRs, action plan or strengthening of boarder measures).

The EU signed also bilateral agreements on protection of specific GIs: GIs for wines and spirits with Albania, Chile, Canada, Croatia, Macedonia, South Africa, Serbia, for wines with Australia, for spirits with Mexico, for wines, spirits and food with Bosnia and Herzegovina, Montenegro and South Korea.

Concluding remarks

Intellectual Property Rights, namely trade aspects of them, are related to all important EU strategies. IPRs were identified in the Lisbon agenda as one of the key elements contributing to the European competitiveness, the Global Europe Strategy identifies IPRs enforcement as the main goal and new strategy Europe 2020 considers IPRs as an important liberalization tool.
The importance of IPRs for trade and for presence of European business at foreign markets is reflected through exclusive competences of the EU Common Commercial Policy. It strengthens feasibility in pursuing the EU interests abroad. New procedures in implementation of IPRs provisions from trade agreements into the EU legislation will further lead to a single legal act (EU Regulation) on IPRs enforcement in all EU member states.

The EU declares the multilateral trade liberalization as the main manner in pursuing its strategic interests; the length and difficulties in these negotiations; however, are the reasons for considering IPRs segment as an integral part of bilateral preferential trade agreements. It allows achieving higher level of IPRs protection and enforcement at foreign markets that contributes positively to export and investment expansion of European subjects.

In the bilateral agreements, the EU concentrates on these main issues: protection of European geographical indication generally and specifically, supplementary protection for patents on pharmaceuticals, protection of non disclosed information for pharmaceutical clinical tests and effective enforcement of IPRs including boarder measures consisting in penalties and seizure of goods that infringe IPRs. These requirements are more easily accepted by countries with a developed economy, which also provide in their legislation high level of IPRs protection and enforcement, as South Korea, Canada, Singapore. Different situation is faced in negotiation with developing countries. One group of them accepts the EU requirements if they are balanced by EU commitments in other areas, as market access or trade aid. Representatives of these countries are for example Central American countries, Peru and Colombia, Mediterranean countries, Balkan countries or Ukraine. The other group represented by emerging economies as Brazil and India refuses the IPR commitments that they consider being harmful for their industries.

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ABSTRACT

The protection and enforcement of IPRs is crucial to innovation and the competitiveness of entire sectors of the EU industry at home and abroad. It is why the EU initiates IPRs protection and enforcement at multilateral, plurilateral and bilateral level of negotiations with trading partners. The importance of IPRs has been also underlined by the Lisbon Treaty that embedded exclusive competences for IPRs within the Common Commercial Policy. The EU pursues its interests in IPRs at the multilateral level at the World Trade Organization and at the World Intellectual Property Organization. It participates in discussions and negotiation on several IPRs topics, as geographical indications, biodiversity and enforcement. It attempted also to achieve a very effective IPRs enforcement through plurilateral negotiations of the Anti Counterfeited Trade Agreement that ratification in the end failed. The EU interests in IPRs issues are further pursued in bilateral trade agreements that are aimed at opening foreign markets for European subjects and at providing a secure business environment on partner's markets. Analysis of the EU interests in IPRs and perspectives in achieving these goals in agreements with representatives of trade partner countries are subject of the article. Based on the analysis, the conclusion is driven for other trade agreements.

Key words: EU, intellectual property rights, trade agreements