



Protection of Intellectual Property in Free Trade Agreements

European companies thrive worldwide thanks to innovation, creativity, quality, and brand exclusivity. In view of our scarce natural resources, these are some of Europe's main comparative advantages on the world market, and they are protected by intellectual property rights (IPRs). So is European culture and the work of its artists. In order to protect these comparative advantages outside the European Union, the European Commission negotiates provisions on the protection and enforcement of intellectual property rights in bilateral trade agreements.

This factsheet highlights various aspects related to the intellectual property chapter of such agreements, and their benefits for European companies, artists and citizens in general.

Free Trade Agreements and protection of intellectual property rights

The European Commission negotiates [Free Trade Agreements](#) with key trading partners with the aim to reduce import tariffs, remove non-tariff barriers and grant companies better effective access to each other's markets. But more openness requires a basic set of common rules to provide for a level playing field and prevent abuses. Given the importance of adequate protection and enforcement of intellectual property rights, new agreements also include rules on the protection of intellectual property rights such as patents, trademarks, designs, copyrights and geographical indications.

All intellectual property rights provisions in Free Trade Agreements negotiated by the European Commission are fully in line with existing EU rules and compliant with the Charter of Fundamental Rights.

Benefits for European citizens and companies

Through the enhanced protection of intellectual property rights abroad, European artists, inventors, businesses, farmers and publishers will have an increasing possibility to market their ideas and products in third countries under conditions as close as possible to those they enjoy within the European Union. This will create further business opportunities and markets, thus leading to new jobs and economic growth.

Acting against the infringement of such rights, including the traffic of counterfeit products, will reduce illegal copying or free-riding, as well as the safety and health risks that many such products present.

Further benefits of the protection of intellectual property rights can be found here: http://trade.ec.europa.eu/doclib/docs/2009/january/tradoc_142108.pdf

Different aspects of intellectual property rights protection

There are different types and aspects linked to the protection of intellectual property rights. These include amongst others:

Copyright:

Copyright plays a crucial role ensuring that Europeans can reap the pecuniary reward of their creative efforts in works such as music, films, media, software, performances and broadcasts, thus promoting culture, information and innovation. This is all the more important in the digital area, where commercial copying on a massive scale is very easy.

However, the copyright provisions in Free Trade Agreements are not meant to limit liberty of expression or the legitimate free flow of information, in particular on the internet. This is why the Commission proposes rules defining exemptions regarding the liability of internet service providers, and does not require the introduction of any general monitoring requirements so as to prevent legitimate activities from being hampered.

Geographical indications:

Geographical indications are names that identify products as originating in a territory where a given quality, reputation or other characteristic of the product is essentially attributable to its geographical origin. Like trademarks and commercial names, geographical indications are distinctive signs which permit the identification of quality products on the market.

Geographical indications are very important in the EU, which has a rich history of local and specialist agricultural production and many famous products closely linked to their place of origin: think of Parma Ham, Roquefort cheese or Champagne.

Many of these products have a world-wide reputation for excellence, however their names are often not (adequately) protected in non-EU markets. Therefore gains resulting from marketing geographical indications need to be accompanied by prevention of their loss of value through low quality copying or free riding. The European Commission ensures that an adequate level of protection for our geographical indications is provided for in Free Trade Agreements and that European farmers and companies, often Small and Medium sized Enterprises, can market their products abroad as well without facing risks of usurpation or of competitors in other countries free riding on their reputation.

The EU-Korea Free Trade Agreement offers a high level of protection for commercially important EU geographical indications, preventing their misuse in the Korean market. Examples include Champagne, Scotch and Irish whisk(e)y, Prosciutto di Parma, Szegedi szalámi, Bayerisches Bier and České pivo.

Patents:

To date, the only substantive patent-related provisions of harmonised EU legislation ("EU aquis") relate to supplementary protection certificates (SPCs), which concern specifically the pharmaceutical sector. Accordingly, provisions on patents in Free Trade Agreements relate predominantly to pharmaceutical products.

Finding the right balance between adequate legal protection of new pharmaceuticals (which compensates the inventors for the very high costs of creating and testing a new medicine and promotes further research) and affordable access to medicines (especially in developing countries) is a challenge. The level of development of the country concerned is taken into account when negotiating related provisions. Patent provisions related to pharmaceuticals include in particular the establishment of a *patent term restoration* mechanism, making it possible to "recover" some of the effective protection term that was lost due to administrative delays in marketing authorisation procedures.

Related to this are provisions regarding the protection of the regulatory test data that needs to be submitted by the innovator for marketing authorisation purposes ("data protection").

For more info, see <http://ec.europa.eu/trade/wider-agenda/health/access-to-medicines/>

Other aspects

A typical intellectual property chapter also includes provisions on other issues, such as trademarks and designs. Depending on which third country is concerned, provisions on technology transfer and/or on biodiversity and associated traditional knowledge may also be present.

Enforcement of intellectual property rights

While most third countries' legislation regarding intellectual property rights *protection* may be considered to be in line with the international standards required by the World Trade Organisation (with exceptions), the effectiveness of the *enforcement* of these rights is much more variable. The shortcomings or deficiencies which may be noted in many third countries' enforcement systems (including the way in which law enforcement authorities are operating) may be seriously detrimental to EU companies facing infringements of their rights. This is why the inclusion of adequate enforcement provisions in Free Trade Agreements is often crucial.

Such enforcement provisions relate, for instance, to measures to preserve evidence, to remedies such as provisional measures or injunctions, to the determination of damages, to border measures, etc. While such enforcement provisions need to be fair, equitable and proportionate, and must be applied in such a manner as to avoid the creation of barriers to legitimate trade, at the same time they need to provide an effective deterrent to systematic and large scale infringements which, most often, benefit criminal organisations, harm consumers, evade taxes and affect the reputation of the legitimate producer.

The international trade of such fake products puts European jobs, companies and investors at risk.

Co-operation

A typical intellectual property rights chapter also defines co-operation mechanisms between the Parties (exchange of information and experiences; capacity-building; awareness-raising and training; etc.). This is particularly valuable for developing countries, so as to help them develop a suitable intellectual property system ensuring mutual benefits.

Where appropriate, an "Intellectual Property Dialogue" may also be set up, involving regular meetings between the Commission and the IPR authorities of the country concerned, in order to discuss any relevant IPR issue that may emerge, including systemic problems faced by EU companies.

Procedural and legal aspects

The European Commission negotiates Free Trade Agreements with countries on behalf of the European Union's Member States. The final Agreement needs to be approved by the Member States in the Council of the European Union as well as by the European Parliament. Both Member States and Members of the European Parliament are regularly informed about the content and progress of on-going negotiations. For detailed information on the negotiation procedures, see: http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149616.pdf.

The European Commission negotiates the chapter on intellectual property rights protection and enforcement based on existing EU legislation and international agreements such as the [Agreement on Trade-Related Aspects of Intellectual Property Rights \(TRIPS\)](#), an agreement signed in the framework of the World Trade Organisation and which has been in force since 1996.

Brussels, October 2012