

Concept of IPRs International Protection and Enforcement in Trade Agreements

EU case study

E-Leader, Croatia

6 – 8 June, 2011

Ludmila Sterbova

University of Economics, Prague

Prerequisites for the analysis

- IPRs effective **national** protection and enforcement:
 - represent incentives for attracting FDIs
 - various modes of market entrance available for foreign business operators
 - participation in global innovation network
- IPRs effective **international** protection and enforcement:
 - complementary to the matrix of national systems
 - facilitate business operations in global environment
 - prevent business losses (exclusivity - price, market share, credibility in consumers' eyes)

Hypothesis

- EU strengthened its IPRs initiatives as a consequence of Lisbon Treaty
- IPR protection and enforcement pursued in trade agreements is tailored to interests of research oriented industries and does not take into account consumers
- EU tends to use trade reprisals toward its trade partners on the IPRs protection and enforcement basis

IPRs in trade agreements – EU case

- Multilateral agreements – TRIPS/WTO
- Plurilateral agreement – ACTA
- Bilateral preferential agreements
 - Korea
 - Mercosur
 - Central American Countries
 - CARIFORUM

EU and the TRIPS Agreement

- Enforcement: discussion initiated by EU
 - TRIPS minimum standards do not meet requirements of the 21st century
 - effectiveness of IPRs enforcement in WTO countries should be reviewed
 - stronger commitments on IPRs enforcement multilaterally have to be established
- EU supports Brazilian requirement on disclosure of origin of genetic resources in patent applications with benefit sharing = trade off for a non-opposition to the GIs issue

ACTA - Anti-Counterfeiting Trade Agreement

- Australia, Canada, EU, Japan, South Korea, Mexico, Morocco, New Zealand, Singapore, Switzerland and USA (70% of world trade)
- Catalogue of best practices: how to combat proliferation of IPRs infringement: in individual countries & in extension on exportation, re-export and transfer of goods through the territories of the signatories
- Civil Enforcement, Border Measures, Criminal Enforcement, Enforcement Measures in the Digital Environment, International Cooperation and Enforcement Practices
- Controversial, new standards (internet), not yet in force

ACTA - consequences

- For the world = global enforcement, pushed by developed countries
- For EU-27: Criminal law sanctions against IP infringements:
 - now - a matter of EU member states
 - after ACTA: implemented according to the rules of Common Commercial Policy = EU Regulation!
 - no national approval for criminal laws related to IPRs

EU-South Korea FTA

- Strong IPRs provisions (new for Korea!)
 - extension of the patent protection period for pharmaceuticals
 - protection of undisclosed information
- Protection: copyright, broadcasting, trademarks, designs, integrated circuits, geographical indications, plant varieties
- Enforcement: same provisions as ACTA
- In force: from 1 July 2011

EU - Latin American Countries FTA

- Costa Rica, Guatemala, Salvador, Honduras, Panama and Nicaragua
- Protection: above the TRIPS minimum
- Enforcement: criminal prosecution and seizure of goods at the border or during distribution
- Provisions should be implemented into the national legislation – if ineffective = trade consequences

EU – MERCOSUR FTA

- Started 1995, interrupted 2004, renewed 2010
- Why interrupted: lack of progress in multilateral negotiations, scope, EU competences?
- Why renewed: changes in EU competences?, support of EU for Brazilian requirement in the WTO? New goals of the future agreement (IPRs enforcement not more within these goals)?

EU - CARIFORUM Partnership Agreement

- Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Saint Christopher and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago
- Consequence: effectively implement ACTA (without having been involved in the ACTA negotiation)

Hypothesis: confirmed? yes!

- EU exclusive competences over trade aspects of IPRs are reflected in an intense EU activity in this field within trade negotiations
- Interest of IPRs owners (industry) is prevailing in EU activities, needs of consumers are neglected
- Trade reprisals (compensations) are based on the same principles as in the WTO; but prevailingly with economically less developed partners with lower negotiating power
- If the trade partner prefers not to negotiate than to agree on IPRs enforcement, EU does not insist on it

Other conclusions

TRADE agreements for IPRs protection and enforcement from the EU perspective:

- Preferred option: in multilateral trade agreements
 - advantages: involved countries have same goals and implement measures with same impacts
- Pragmatic „speedy“ option: in bilateral trade agreements
 - consequences: lack of transparency, different approaches in different agreements

Further research

- EU works at all international levels in the sense of strengthened enforcement of IPRs:
 - Initiative of Member States?
 - Is the European Commission under lobby pressure from the industry? Which one?
- IPRs enforcement goals of the EU are in internet environment:
 - how broad and deep will be the use of technical measures?
- Concrete trade reprisals and consequences
 - Measures? industry concerned?

Thank you for your attention

