



FLACSO
ARGENTINA

Dinâmica do acordo UE-MERCOSUL

Nicolás Hermida

Historia del Acuerdo 1995 puntapié político

inicio julio 1999 interrupciones varias

relanzamiento octubre 2016

acuerdo junio 2019

más de 40 reuniones entre CNBs,
intersesionales y reuniones ministeriales

2016 reinicio negociaciones
nuevo modelo de acuerdo

modelo centrado en perspectiva
comunitaria y titulares DPIs

molde rígido de la DigiTrade

Objectives Draft 2016

a) facilitate the **production and commercialisation** of innovative and creative products between the Parties;

and

b) achieve an adequate and effective level of **protection and enforcement of intellectual property rights**.

Exhaustion Draft 2016

Each Party shall provide for a regime of **national or regional** exhaustion of intellectual property rights

Shall is the new black
2016

Copyright and related rights Draft 2016

International treaties

The Parties **shall** comply with the rights and obligations set out in:

Berne Convention

Rome

WCT & WPPT [BR]

Aim to comply with
Beijing & Marrakesh

Term of Protection

70 years p.m.a.

all related rights 50 years

Copyright and related rights Draft 2016

Protection of Technological Measures **shall provide** adequate legal protection against the circumvention of any effective technological measures

Rights Management Information **shall provide** adequate legal protection against any person knowingly performing without authority any of the following acts

Droit de Suite = SHALL

Trademarks Draft 2016

shall comply with the *Trademark Law Treaty* TLT

shall accede to the Protocol related to the *Madrid Agreement*

shall comply with and make all reasonable efforts to accede to the *Singapore Treaty on the Law of Trademarks*

Registered Designs Draft 2016

Term of Protection

The duration of protection available **shall** amount to **25 years** from the date of filing of the application.

Unregistered Designs

The European Union and Mercosur **shall provide the legal means** to prevent the use of unregistered designs, only if the contested use results from copying that design

Patents Draft 2016

The Parties **shall** comply with the PLT and PCT [BR]

Patents Draft 2016

Extension of the period of protection conferred by a patent on medicinal products for delays on administrative authorisation procedure.

Extension of the period of protection conferred by a patent on plant protection products for delays on administrative authorisation procedure.

Plant Varieties Draft 2016

The Parties shall protect plant varieties rights,
in accordance with UPOV 91

Protection of undisclosed information

Data Protection

Protection of data submitted to obtain an authorisation to put a **medicinal product** on the market

Protection of data submitted to obtain marketing authorisation **for plant** protection products [BR]

Liability of intermediary service providers (ISPs)

No general obligation to monitor

EU Standards in last FTAs

UE-CANADÁ (CETA)

UE-VIETNAM

UE-CANADÁ (CETA)

Public health concerns

DOHA

(Protocol 2005)

UE-CANADÁ (CETA)

Standards Concerning Intellectual Property Rights ARTICLE 20.6

For the purposes of this Section:

pharmaceutical product means a product including a **chemical drug, biologic drug, vaccine or radiopharmaceutical**, that is manufactured, sold or represented for **use** in:

- (a) making a medical diagnosis, treating, mitigating or preventing disease, disorder, or abnormal physical state, or its symptoms, or
- (b) restoring, correcting, or modifying physiological functions.

UE-CANADÁ (CETA)

COPYRIGHTS

Liability of intermediary service providers ISPs
camcording

UE-CANADÁ (CETA)

Patents

Marketing authorisation Sui generis protection for pharmaceuticals

Data Protection

Protection of undisclosed data related to pharmaceutical products

Protection of data related to plant protection products

Plant varieties

UPOV 91

UE-CANADÁ (CETA)

Patents

Marketing authorisation Sui generis protection for pharmaceuticals

Data Protection

Protection of undisclosed data related to pharmaceutical products

Protection of data related to plant protection products

Border Measures

Each Party may adopt or maintain the procedures with respect to transshipments and shipments in customs **transit**

Plant varieties

UPOV 91

EU-MERCOSUL 2019

Nature and Scope of Obligations

For the purposes of this Agreement, intellectual property rights refer to all categories of intellectual property that are the subject of sections 1 through 7 of Part II of the TRIPS Agreement and **Article X.9 through Article X.43 of this Chapter.**

Plant varieties?

EU-MERCOSUL 2019

Objectives

- a) Facilitate **access**, production and commercialisation of innovative and creative products and foster trade and investment between the Parties contributing to a more sustainable, equitable and inclusive economy for the Parties;
- b) Achieve an adequate and effective level of protection and enforcement of intellectual property rights that provides incentives and rewards to innovation while contributing to the **effective transfer and dissemination of technology** and favouring social and economic welfare and the **balance between the rights of the holders and the public interest**;
- c) Foster measures that will help the Parties to **promote research and development, and access to knowledge, including to a rich public domain.**

Objectives Draft 2016

a) facilitate the **production and commercialisation** of innovative and creative products between the Parties;

and

b) achieve an adequate and effective level of **protection and enforcement of intellectual property rights**.

EU-MERCOSUL 2019

Principles

a) 1. Each Party recognises that the protection and enforcement of intellectual property rights can and must be done in a manner conducive to economic, social and scientific progress [...]

Public Health

- The Parties support the World Health Assembly Resolution WHA 60.28 and the Pandemic Influenza Preparedness (PIP) Framework

- The Parties recognise the importance of promoting the implementation of Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, adopted by the World Health Assembly on 24 of May 2008 (Resolution WHA 61.21 as amended by Resolution WHA 62.16).

EU-MERCOSUL 2019

Protection of Biodiversity and Traditional knowledge

Parties furthermore reaffirm their sovereign rights over their natural resources and recognise their rights and obligations as established by Convention of Biological Diversity (**CBD**) with respect to access to genetic resources, and to the fair and equitable **sharing of benefits** arising out of the utilisation of these genetic resources.

Access to genetic resources for food and agriculture shall be subject to specific treatment in accordance with the International Treaty on Plant Genetic Resources for Food and Agriculture (2001).

TIRFAA

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The Parties recognise the importance of the declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 (hereinafter referred to as the “**Doha Declaration**”) by the Ministerial Conference of the WTO. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with the Doha Declaration.

The Parties shall implement Article 31bis of the TRIPS Agreement, as well as the Annex and Appendix to the Annex related thereto, which entered into force on January 23, 2017

Copyright and related rights 2019

International treaties

Each Party affirms its rights and obligations under the following international agreements taking into consideration that treaties are **not binding on those that are not parties to them**:

Berne Convention

Rome

Marrakesh

WCT & WPPT

Beijing

Copyright and related rights

Term of protection

50 years or, where the domestic legislation of the Party so provides, for **70** years after the author's death.

With respect to **photographic and cinematographic** works each Party will establish the term of protection according to their domestic law

The term of protection of the rights of the **broadcasting organisations** shall be at least **20** years or, where the domestic legislation of the Party so provides, **50** years from the first broadcast.

Copyright and related rights

Technological Protection Measures

Each Party shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by right holders in connection with the exercise of their rights under this Sub-Section and that restrict acts which are not authorised by the right holders concerned or permitted by law.

Each Party, where permissible in accordance to their domestic law **may ensure that right holders make available to the beneficiary of an exception or limitation the means of benefiting from that exception or limitation, to the extent necessary to benefit from that exception or limitation.**

Copyright and related rights

Obligations concerning Rights Management Information

1. Each Party shall provide adequate legal protection against any person knowingly performing without authority any of the following acts:

(a) The **removal or alteration** of any electronic rights-management information;

(b) The **distribution, importation for distribution, broadcasting, communication or making available** to the public of works or other subject-matter protected under this Sub-Section from which electronic rights-management information has been removed or altered without authorisation, if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any related rights.

2. For the purposes of this article "rights-management information" means any information provided by right holders which identifies the work or other subject-matter referred to in this Sub-Section, the author or any other right holder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information.

3. The subparagraph 1 shall apply when any of these items of information is associated with a copy of, or appears in connection with the communication to the public of, a work or other subject-matter referred to in this Article.

4. The Parties shall ensure that this protection shall not harm non-infringing uses.

Resale right (Droit de Suite)

Each Party **may provide**

Trademarks

Shall make best efforts to comply with the Protocol
related to the Madrid Agreement

DESIGNS 2019

Term of Protection

The duration of protection available, including renewals, shall amount to at least **15 years** from the date of filing the application.

Protection Conferred to Unregistered Designs

Each Party **may** establish legal means to prevent the use of unregistered designs, according to their **domestic law**.

Registered Designs Draft 2016

Term of Protection

The duration of protection available shall amount to **25 years** from the date of filing of the application.

Unregistered Designs

The European Union and Mercosur **shall provide the legal means** to prevent the use of unregistered designs, only if the contested use results from copying that design

Geographical Indications

GIs **for products other than** agricultural foodstuffs products, wines, spirit drinks or aromatised wines **may be protected** according to the laws and regulations applicable in each Party

EFTA concern

Patents

International treaties

The Parties shall make best efforts to adhere to the Patent Cooperation Treaty (PCT)

Patents 2019

NO Extension of the period of protection conferred by a patent on medicinal products for delays on administrative authorisation procedure

NO Extension of the period of protection conferred by a patent on plant protection products for delays on administrative authorisation procedure.

Plant Varieties

International Agreements

Each Party shall protect plant varieties rights, in accordance with UPOV 1978 or UPOV 1991.

Protection of undisclosed information

NO Data Protection

Draft 2016

Protection of data submitted to obtain an authorisation to put a **medicinal product** on the market

Protection of data submitted to obtain marketing authorisation **for plant** protection products [BR]

Border Measures

There shall be **no obligation to apply** the procedures set forth in this Sub-Section to goods in transit.

CETA

Each Party may adopt or maintain the procedures with respect to transshipments and shipments in customs **transit**

Liability of intermediary service providers (ISPs)

Not included

Conclusions

MFN and FTAs ongoing negotiations
EFTA, Singapore, Korea

Asymmetry by different standards in EU and MCS

Muchas gracias

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FLACSO - Maestría de Propiedad Intelectual



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de Derecho Industrial y Económico