

# **The new generation of FTAs with IP provisions and implications for developing countries**

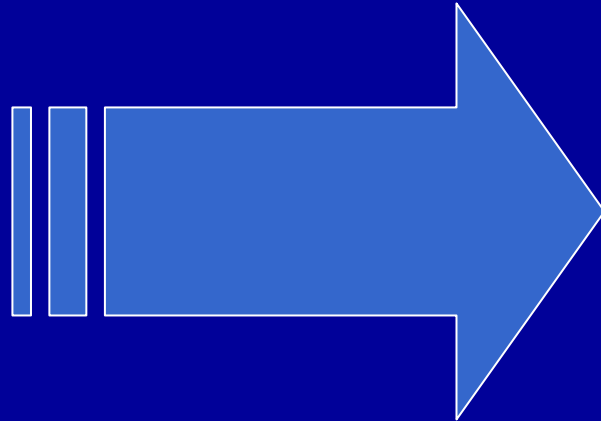
**Maximiliano Santa Cruz S.**

Recent Multilateral and Bilateral Trends in IP Policy Making: Lessons  
and Challenges for Africa

Cape Town, South Africa, 6 October 2006

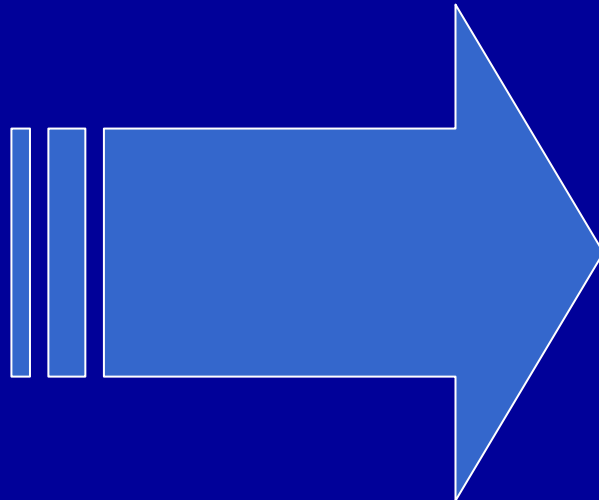
# Main interests

**EU**



- Accession to multilateral treaties
- Protection of GIs for wine and spirits

**US**



- Copyrights in the digital environment
- Patents and protection of undisclosed information
- Enforcement

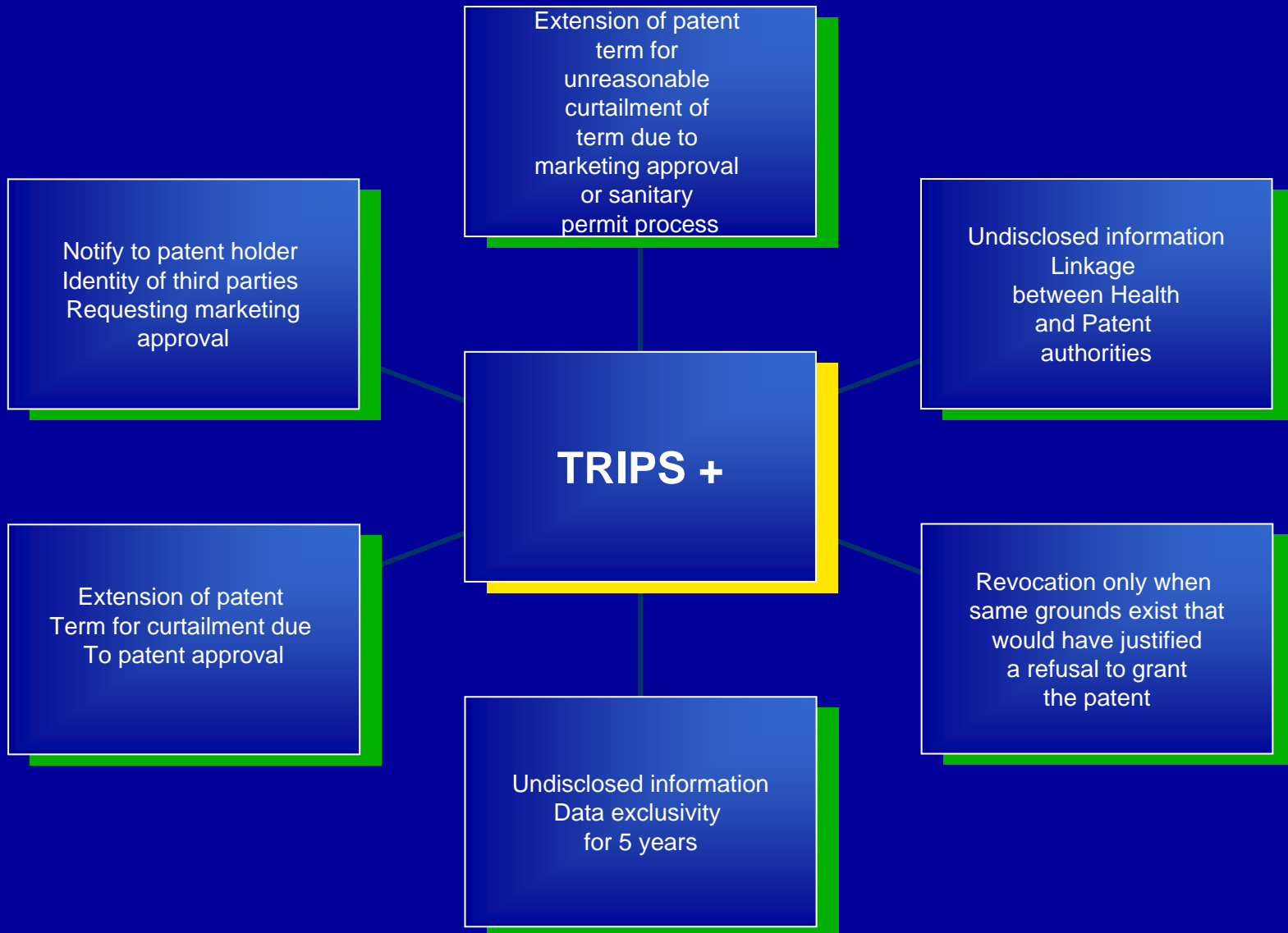
# EU IPRs Chapters

1. Broad definition of IPRs
2. Confirmation of the importance of IPRs
3. Desired level of protection: (highest - prevailing) international standards or level of protection similar to that existing in the EU
- 4. *Accession to multilateral treaties***
5. open to incorporation of new treaties
6. Referral of problems in the area of IPRs to committees
7. MFN treatment
  
- 8. *Agreements on Wines and Spirits***

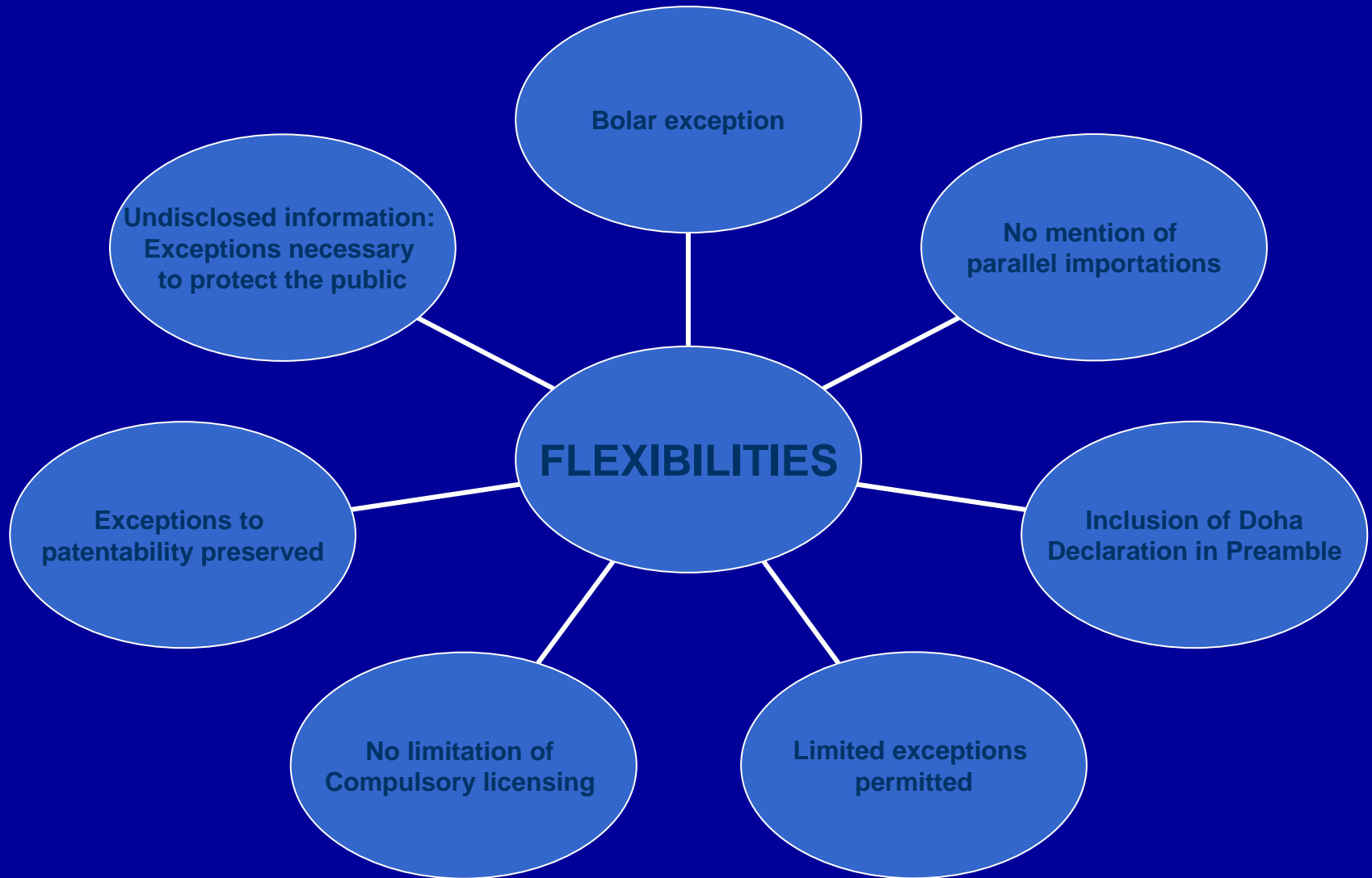
# US IPRs Chapters

1. Preamble
2. Ratification or Accession to multilateral IPRs Treaties and principles
3. Trademarks
4. Domain Names on the Internet
5. Geographical Indications
6. ***Copyrights and Related Rights***
7. Protection of Encrypted Program-Carrying Satellite Signals
8. ***Patents***
9. ***Regulated Products***
10. ***Enforcement***
11. Transition Periods

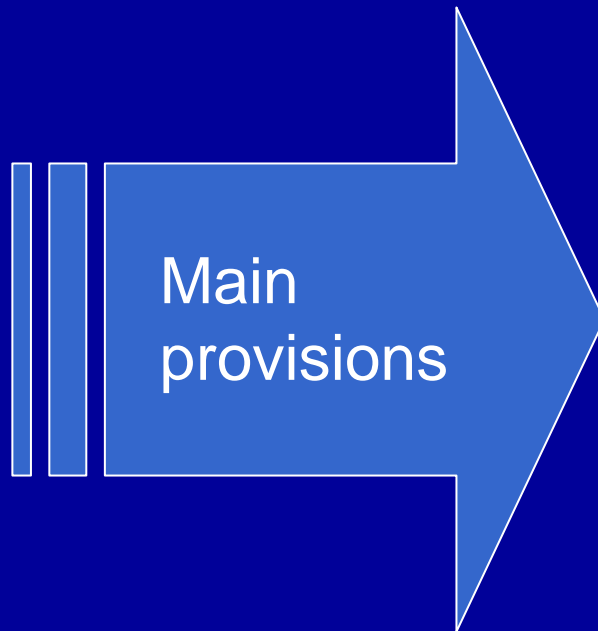
# Patents and regulated products



# Patents and regulated products



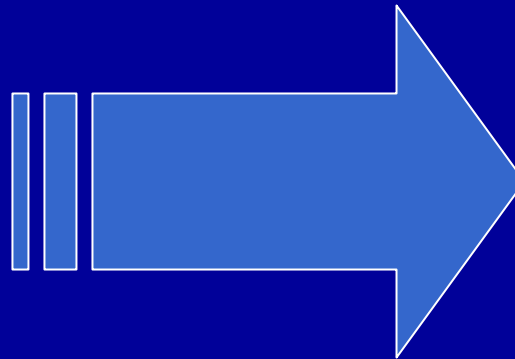
# Copyrights



- New exclusive rights
- ***Increase of term of protection***
- Presumption of ownership and subsistence of copyright
- ***TPMs***
- RMI
- Liability of Internet Service Providers
- Enforcement

# Copyrights – term of protection

Life of the Author  
+ 50 years  
or  
50 years since  
publication or  
performance



Life of the Author  
+ 70 years  
or  
70 years since  
publication  
or  
70 years since  
creation if not  
published within 50  
years



# Copyrights – technological protection measures (TPMs)

## Civil/Criminal measures if:

- Circumvention of TPMs which control access to a work;
- Manufacture, import, distribution, sale or rental, of devices, products or components or of services useful for circumvention of TPMs which control access or protects any copyright.

## Exceptions:

- Reverse engineer / Compatibility; Identify flaws and vulnerabilities in encryption; Protection of minors; Test, investigate, correct security of computer; Disabling collection of personal information function; Gov. Employees / intelligence activities; Libraries for acquisition decisions.

• \*\*\*Adverse effect on non-infringing uses through administrative or legislative process\*\*\*

# Copyrights – other provisions

- Recognition of temporary copies (exception);
- Interactive digital right of communication to the public for performers;
- Rights Management Information (RMIs);
- Limitation of liability of Internet Service Providers;
- Use of authorized software by government agencies;
- Domain Names in the Internet UDRP – ‘whois’;

# Enforcement

- Destruction of goods in civil procedures w/ exceptions for purpose of charity
- Statutory damages
- Border measures – goods in transit and for export
- Presumption of ownership and subsistence of copyright

# Implementation of TRIPS and FTAs

## Flexibilities

### Patents

- International exhaustion;
- exceptions to patentability;
- compulsory licensing;
- Bolar exception

# Implementation of TRIPS and FTAs Flexibilities Undisclosed information

- Definition of undisclosed (reasonable measures, not generally known or readily available);
- must indicate that data is undisclosed;
- definition of NQE (active principle not been registered or commercialized in Chile);
- what shall not be considered a NQE (new uses, changes in administration or dosage, changes in formulations and combinations, etc.);
- prohibited conducts/grounds for no protection (1. anticompetitive practices, 2. reasons of public health, national security, non-commercial public use, national emergencies, 3. compulsory license, 4. not been commercialized within 12 months from registration, 5. registered in Chile after 12 months of register abroad);
- Data protection – Linkage:** Improvement of judicial procedures.

**MUCHAS GRACIAS**

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