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The Trans-Pacific Partnership and its Impact on Intellectual Property Rights

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Context of the Trans-Pacific Partnership

- A battle is being fought for the soul of the global trading system.
- The TPP is about nothing less than defining the legal underpinnings of a 21st-century, global market-based economy.
- It's only worth doing if we do it right.

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Ensuring the Trans-Pacific Partnership Becomes a Gold-Standard Trade Agreement

BY STEPHEN J. EZELL | AUGUST 2012

Negotiators must continue to focus foremost on crafting an agreement capable of serving as a model for regional integration throughout the Asia-Pacific region and as a foundation upon which a stronger set of global trade rules can be built.

The fourteenth round of negotiations toward the Trans-Pacific Partnership (TPP) Agreement begins in September 2012. The United States is doing the right thing in pursuing deeper economic and trade integration with key Asia-Pacific partners; but the effort will only be worth it if it concludes with a gold-standard trade agreement that sets the standard for future trade deals the United States enters into.

The TPP involves 11 Asia-Pacific region countries—Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam, and the United States[1]—that have voluntarily come together to deepen economic integration and collaboration across the Asia-Pacific region by crafting a comprehensive, high-standard free trade agreement.[2] The TPP seeks to represent a model free trade agreement that can serve as a platform for broader regional integration by holding the potential to enroll additional partner countries, as evidenced by the fact that both Canada and Mexico have joined TPP negotiations just in the past year. U.S. trade with this region is vitally important, as TPP-member countries account for 34 percent of U.S. trade, while Asia-Pacific Economic Cooperation (APEC) countries account for 63 percent of U.S. trade.[3]

But while the TPP has the potential to be a model 21st century free trade agreement, it will only become so if it both includes and holds the nations that sign it to the very highest standards, including those regarding intellectual property rights (IPR) protection; liberalized trade in services; transparency and openness in government procurement practices; restrictions on preferential treatment toward state-owned enterprises (SOEs); elimination of a host of non-tariff barriers (NTBs), including barriers to foreign direct investment (FDI); and at least equal, if not greater, emphasis on enforcement as on market access.[4] If the TPP is to become more than just another trade agreement for countries to

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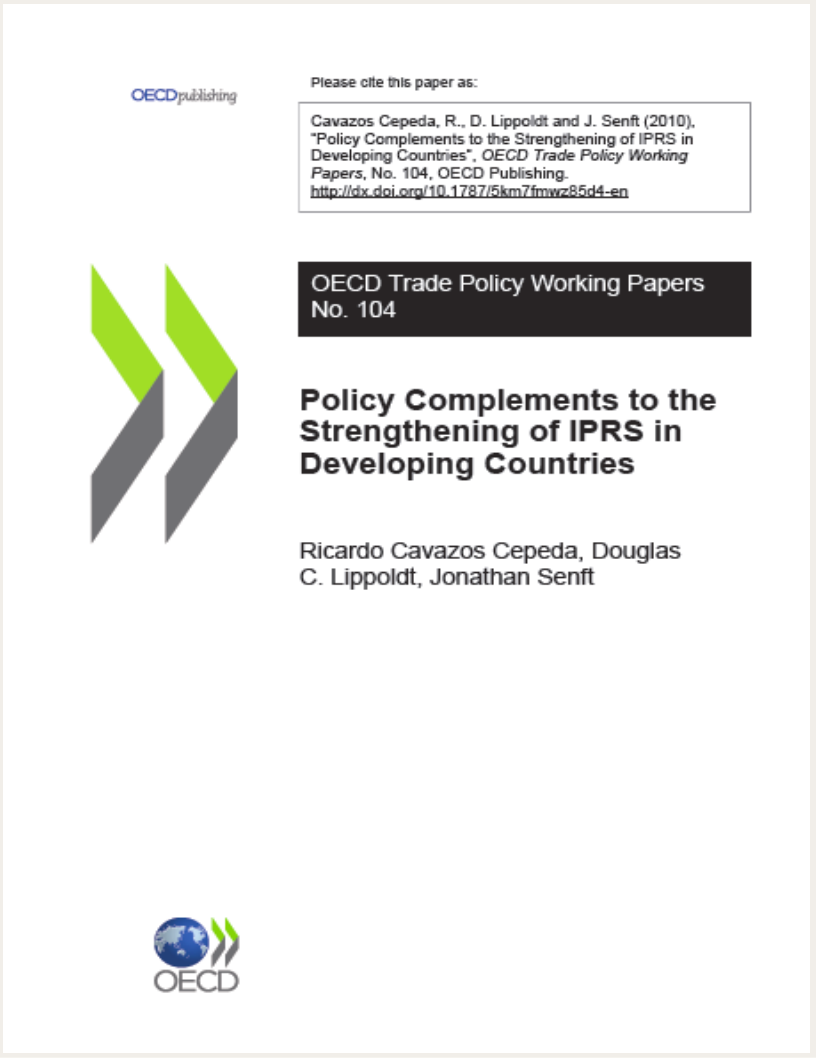
Why Intellectual Property Rights Matter

- Recognition of IPRs is vital if global trade, FDI, and innovation are to thrive.
- IPRs encourage disclosure but overcome the appropriability problem, incenting innovation by firms and individuals.
- IPRs engender a virtuous cycle of innovation.
- IPRs are especially important for industries with high fixed costs but relatively low marginal costs of production.

Strong IPRs Are Beneficial to Developed and Developing Countries Alike

"The results point to a tendency for IPR reform to deliver positive economic results, for developed and developing nations alike."



Importance of IP to U.S. Economy

- **Jobs:** 40 million directly or indirectly tied to IP industries.
- **Wages:** IP-intensive jobs pay 42 percent more.
- **Exports:** IP-intensive industries account for 74% of U.S. exports.
- **Economy:** IP-intensive industries accounted for 40% of U.S. GDP in 2010.
- **Theft is Bad:** Chinese IP theft in 2009 cost the U.S. economy $48 billion and 1 million U.S. jobs .

Why IPRs Matter to Developing Economies

- Stronger IPRs lead to increased FDI, R&D, and exports

A 1% ↑ in: copyright protection = 3.3 % ↑ in domestic R&D
trademark protection = 1.4 % ↑ in domestic R&D
patent protection = 0.7 % ↑ in domestic R&D

A 1% ↑ in: copyright protection = 6.8% ↑ in inbound FDI
trademark protection = 3.8 % ↑ in inbound FDI
patent protection = 2.8 % ↑ in inbound FDI

- Increased trademark and copyright protections have a "statistically significant" association in relation to the export turnover, sales, and total assets in firms studied.

IPRs and Brazil's Biotech Industry

"Patents provided incentives for biomedical technology entrepreneurs to make risky investments into innovation."

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Patent Incentives, Technology Markets, and Public–Private Bio-Medical Innovation Networks in Brazil

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Summary. — Contested is whether patent laws promote indigenous technology invention and innovation in developing countries. Brazil reformed its patent laws in 1996 to permit pharmaceutical product patents. Study of five post-patent law reform bio-medical technology invention and innovation projects in the state of Sao Paulo supports the propositions that patents provide incentives to Brazilian bio-medical technology entrepreneurs to make risky investments into innovation and that patents facilitate technology markets among public–private technology innovation networks, both Brazilian collaborations and North–South collaborations. Brazil enacted a technology law in 2005 that encourages public–private technology innovation through patent incentives and patent-facilitated technology markets.

Key words — technology innovation, technology networks, patents, intellectual property rights, bio-medical technology, Brazil

1. INTRODUCTION

The 1994 World Trade Organization Agreement regarding Trade-Related Intellectual Property Rights obliges all WTO members to meet certain minimum standards of intellectual property law and enforcement and this means that scores of developing countries must provide higher levels of protection than has been their policy and practice in the past. Contested is whether patent laws promote indigenous technology innovation in developing countries. Runge (2006) rejects enclosure through intellectual property protections to promote technology progress in the North and says that the countries of the South have even more to lose from patent-based enclosure. Evans (2005) calls for an open science model for technology progress in developing countries. The development model should be non-proprietary and non-intellectual property-oriented. A developing country-based scholar says that stronger intellectual property rights in countries such as her Colombia will inhibit scientific research (Forero-Pineda, 2006). She argues that developing country scientists should participate in international professional networks to achieve science and technology advancement.

Though these scholars do not provide empirical evidence to support their arguments, they do ask important questions for development studies. Research universities, scholarly journals, and science conferences are the institutions that drive scientific progress (Pyenson & Sheets-Pyenson, 1999), but are these institutions sufficient to drive national technology innovation in developing countries (or developed countries, for that matter)? Technology innovation drives long-run national economic growth (Romer, 1986, 1990). Technology stasis leads to national economic stagnation; technology progress leads to national economic growth (Grossman & Helpman, 1991), so it is important to identify the institutional frameworks that best promote national technological innovation in developing countries. Do patent laws provide incentives to entrepreneurs in developing countries to make risky investments into technology innovation? Do patent laws facilitate the development of technology markets among public–private technology innovation networks? Do patent laws facilitate North–South technology innovation collaborations?

This is a study of invention and innovation in national technology development.

> "Invention is the first occurrence of an idea for a new product or process, while innovation is the first attempt to carry it out into practice. … While inventions may be carried out anywhere, for example in universities, innovations occur mostly in firms, though they may also occur in other types of organizations, such as public hospitals. To be able to turn an invention into an innovation, a firm normally needs to combine several different types of knowledge, capabilities, skills, and resources" (Fagerberg, 2005, p. 4).

Post-patent law reform bio-medical technology invention and innovation in Brazil is studied here. Brazil has a long-established pharmaceutical industry, but Brazilian bio-medical R&D traditionally meant that their public and private drug-makers reverse-engineered international pharmaceuticals so that they could manufacture and market medicines and vaccines innovated in the North to the Brazilian marketplace. Brazilian pharmaceutical makers were at liberty to reverse-engineer, manufacture, and market products under patent in the United States and Europe because pharmaceutical compositions were not patentable subject matter in Brazil. But, in 1996 the Cardoso administration led the Brazilian congress to amend the patent laws with Law No. 9,279 to allow for the patentability of pharmaceutical product patents so that, subject to procedural processes and some restrictions, only patent-holders or their licensees would be permitted to market under-patent medicines.

Bio-medical technology invention and innovation in the state of Sao Paulo is the focus of study. The state of Sao Paulo is the wealthiest state of Brazil, representing some 40% of the gross domestic product of the country, and is the main scientific and business center of the country. Federal research support and "the strong support by the state government makes the state

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IP in the TPP

- U.S. negotiators should insist on strong IPRs because not only is it in the U.S.' interests, it's in the interests of developing countries, and indeed the broader word.

- If TPP member countries wish to be those in which innovation flourishes, they will want to ensure strong IP rights.

How do TPP partners perform in protecting IPRs?

TPP Countries on USTR Special 301 List

Status	TPP Party	Status	TPP Party
Watch List	Canada	**Priority Watch List**	Chile
	Mexico		
	Peru		
	Vietnam		

Table 1: TPP Parties' Statuses on USTR's Special 301 Watch or Priority Watch List[14]

Software Piracy in TPP Countries

TPP Party	Unlicensed Software Units as Percentage of Total Software Units
United States	19
New Zealand	22
Australia	23
Canada	27
Singapore	33
Malaysia	55
Mexico	57
Chile	61
Brunei	67
Peru	67
Vietnam	81
TPP Average	**48.6**

Table 2: Software Piracy Rates among TPP Parties[21]

Key IP Issues in the TPP

- **Ensuring twelve years of data protection for biologics**
  - Reflects standards embodied in U.S. law.
  - Maintains competitiveness of U.S. biopharma industry.
- **Trade secret protection**
  - Theft of trade secrets has been growing rapidly.
  - The TPP should require parties to criminalize the willful theft of trade secrets.

Consequences for Nations with Weak IPR Regimes

1. Lack of IP rights stifles incentives for innovators to embark on home-grown technology development.

2. Firms are forced to invest an undue amount of resources in protection rather than innovation.

3. Weak IPRs discourage trade and investment, which hurts a countries' own businesses and consumers by limiting choice and access to best-of-breed technologies.

Thank You

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