

Module 5.

Protection of Intellectual Property under the Multilateral Trading System

ECN 330

Analyzing Economic Integration and
Multilateral Trade Liberalization

5. Trade-Related IP Protection

5.1. IP Protection under the WTO Framework

Basic principles	Goods	Services	Intellectual property	Trade disputes
	GATT	GATS	TRIPS	DSM
Additional details	Agreements and Annexes			
Specific sectors or issues	Agriculture, textiles, SPS & TBT, investment	Telecoms, finance, tourism, transport, construction, etc		
Market access commitments	Schedule of Commitments			
Country-specific requirements	Listing of MA restrictions and subsidies	Limitations on MA and national treatment		

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Trade-related IP protection, continued . . .

5.2. Types of intellectual properties: instruments		Subject matter	Areas of application
Industrial property	Patents	New, non-obvious industrial applicable inventions	All industries
	Utility models	Functional designs	Manufacturing
	Industrial design	Ornamental designs	Clothing, cars, etc
	Trademarks	Sign or symbol to distinguish product of a firm from others	All industries
Literacy / artistic property	Geographical indications	Identify place of origin to indicate (1) quality; (2) characteristics	Agricultural products, food/beverage industry (e.g., wine and spirits)
	Copyrights	Original works of authorship, performers, producers of sound recording/broadcast	Printing, entertainment (audio, video, motion pictures), software
Sui generis protection	Breeders' rights	New, stable, homogeneous, distinctive variety	Agriculture, food and beverage industry
Trade secrets	Integrated circuits	Original layout designs	Micro-electronics
		Secret business information	All industries

Source: WTO

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Trade-related IP protection, continued . . .

5.3. Economic, political, and legal issues

- ✖ Economics and economic efficiency
 - ♦ Absence of protection implies a market failure
 - ♦ Protection of IP establishes a monopoly
 - ♦ Income redistribution effects

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- ✧ Political administration:
 - ♦ Is IP protection consistent with socio-political objectives?
 - ♦ How should international income transfers be handled?
 - ♦ Can institutions enforce agreement?
- ✧ Legal application:
 - ♦ Approximation versus harmonization
 - ♦ Does even min harmonization make sense for all?
 - ♦ Enforcement and DSM-related issues

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Trade-related IP protection, continued . . .

- 5.4. Multilateral trade issues on basic ground rules
 - ✧ Issue 1. Monopoly rights vs national emergency: Case of compulsory licensing of drugs
 - ♦ Case 1. US anthrax scare
 - ♦ Case 2. Aids drugs in Brazil and South Africa
 - ✧ What is the difference in the two cases?
 - ✧ How should the aids problem be resolved among rich and poor?

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Trade-related IP protection, continued . . .

- ✧ Illustration of a creative solution: "Plan for Cheap Vaccine to Fight TB Worldwide", *FT*, 23 Mar 2006, p 3
 - ♦ "A *US-based charity* . . . begins work on *becoming a manufacturer of a tuberculosis vaccine*, in a pioneering effort to *give affordable and accessible protection* . . ."
 - ♦ "This marks the *first time that a charity has taken direct responsibility for production of a vaccine* with full control of a process that is currently scattered across a range of privately held factories around the world."
 - ♦ "*Public-private partnerships* between companies, donors and charities in recent years *have taken the lead in intensifying research and distribution of vaccines and medicines* for the . . . developing world."

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Trade-related IP protection, continued . . .

- ♦ "... The plant would *supply the vaccine* to the developed world, *using a 'Robin Hood model'* to charge higher prices in richer countries to subsidise the cost in poorer ones."

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Trade-related IP protection, continued . . .

❖ Issue 2. How should the least developed be treated?

- ◆ Differential treatment
 - Longer phase-in periods
 - Temporary exemptions
- ◆ When and how should graduation occur?

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Trade-related IP protection, continued . . .

❖ An illustration of graduation: "Microsoft Scores China Piracy Win", *WSJ*, 6 Apr 2006, p. 3

- ◆ "China's top three makers of personal computers have agreed to ship their products loaded with legitimate copies of Microsoft Corp.'s *Windows operating system*, a step that addresses some of the piracy concerns straining commercial ties with the US"
- ◆ "Illegal copies of Microsoft's products can be bought . . . for just a few dollars. . . . Most computer users [unwilling] to pay full price for the official versions."

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Trade-related IP protection, continued . . .

- ◆ "... The Chinese government has pressured computer manufacturers to take new measures to curb piracy. . . the timing [of which] reflects the rising international pressure . . . to toughen up on piracy and counterfeiting, which US officials blame for contributing to the ballooning trade deficit. But China's recent progress on piracy might also reflect a feeling in officialdom that the problem could be hurting domestic companies as well."
- ◆ "The government has often tolerated IP rights violations in the past, and has sought ways to avoid paying for international technologies."
- ◆ "... with China spending more than 1% of its GDP on research, better protection of the patents and other inventions being created is now a matter of self-interest"
- ◆ "The Chinese manufacturers' new willingness to do deals with Microsoft also reflects the changed dynamics in the domestic industry since market leader Lenovo transformed itself into a global player with the purchase of IBM Corp.'s PC business last year. . ."

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Trade-related IP protection, continued . . .

❖ Issue 3. Protection of luxury goods: "Fact and Fiction about the Trade in Fakes", *Fin Times*, 24 Jan 06, p. 11

- ◆ "... Complaints by French-based association of luxury goods makers that fake products were costing its members \$4.3 bn (€3.5bn) a year in lost sales in Japan."
- ◆ "The figure turns out to be, if not fake, somewhat contrived. It was arrived at by multiplying the estimated unit sales of counterfeit products by the price of genuine ones, [. . . which] assumes that if . . . consumers could not buy pirated copies, they would all buy the real thing."
- ◆ "Does anyone really believe that? . . . International studies [find] that the overwhelming majority of sales of counterfeit products are to people who would never have bought genuine ones, because they could not afford them."

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Trade-related IP protection, continued . . .

- ♦ "[I]t could be argued that . . .] *some of the retail business that brand owners forfeit to fakes could be considered a long-term marketing investment*. . . . Owning a Picasso reproduction does not reduce the desire to possess an original; *today's buyer of fakes are often tomorrow's eager customers*."
- ♦ "In east Asia, the . . . *newly rich flaunt the symbols of success* more ostentatiously than anywhere else. Those who have made it . . . would never dream of wearing [fakes]. . . . *Chinese shoppers* pour into Hong Kong to *buy western luxury goods, when they could buy near-indistinguishable knock-offs* for a fraction of the price on the other side of the border."

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Trade-related IP protection, continued . . .

- ♦ "*Claims that piracy deters innovation by reducing the incentive to invent are also sometimes overstated [e.g. for 2 reasons]. . . products such as computers and software. Although, even there, [1] Linux and the growth of 'freeware' tell a different story.*"
- ♦ "However, relatively [2] *few luxury goods take much research or capital to develop and produce*. Those that sell on 'heritage' [e.g., GIs] almost none. *Most of the investment is in advertising and marketing.*"
- ♦ "Of course *producers are upset when pirates cash in*. But *whether society at large loses is far less clear*. . . . [The idea is] not condoning IP violations: *free and prosperous economies require private property rights* that are clear-cut and effectively enforced – however, *if [producers] want to rally society to the defence of their interests*, they should *do so with arguments that are genuine and reputable* as their products."

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Trade-related IP protection, continued . . .

- ♦ "It is true that *fake product sales often escape tax and help fund organised crime*. But *when producers also insist that their self-interest is identical to that of the consumer, scepticism is in order*."
- ♦ There is a *clear social gain from banning counterfeiters that pose health and safety risks*, but which consumers cannot easily identify as such, [e.g., pharmaceuticals] . . . Cigarette companies shelter behind the same argument. . . .
- ♦ "[*Luxury goods cannot use this argument*.] If a product bearing a familiar brand name is unusually cheap, it is unlikely to be authentic. And *if a fake is indistinguishable in quality and appearance from the real thing, where is the consumer harm?*"

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6. The Economics of Multilateral IP Protection			
WTO issues	Labor	Environment	IP
Trade flows and foreign investment distortions	Trade based on wage differences is not a distortion; wage differences can reflect different regs or sids or leisure-work decisions	Do different regulations distort trade?	Piracy and illegal copy do divert trade; pirated and genuine versions of goods are rival in consumption
	FDI is not just a function of regs and sids; labor and environmental policy are national sovereignty issues	Do different regulations distort foreign investment?	Enforcement of IP protection can → ↓ illegal I, R+D, product development
Cross-border externality and/or mkt failure	Does trade with low-wage risks have neg effect for high wage mkt? i.e. (1) ↓ wage; (2) ↑ unemployment; (3) ↓ sids; (4) exploit L; (5) ↑ child labor; (6) slave L	Externalities exist, but a bilateral cross-border issue is a bilateral issue. If problem is of common resource, then need more multilateral solution, e.g. assign property rights.	Mkt failure → ↓ SW (illegal copy prevents R+D-intensive firm from developing products); IP protection/enforcement with safeguards can work
Trade policy effectiveness (sanctions)	Trade sanctions on child labor can simply move it underground	Trade sanctions not likely to stop <i>real</i> over-fishing or logging	Trade sanction can be more direct tool against illegal copy/pirated good

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