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Rue Belliard 4-6 1040 Brussels, Belgium
www.ecipe.org — info@ecipe.org

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Intellectual Property Rights: Getting Priorities Right

By Fredrik Erixon

Fredrik Erixon is Director at ECIPE

Brussels, Belgium, 10 June 2015 - This paper stands in the nexus of trade policy and IPRs – and it aims to provide a different economic foundation for IPR policies by discussing how they are anchored in trade and economics. It is a “think piece” rather than a policy brief, and even if it comes with some policy recommendations, its core ambition is to revisit some key economic elements of IPRs and discuss them in a new light.

What is an appropriate defence of intellectual property rights (IPRs) – and what aspects of the IPR family deserve an embrace of policy in order to promote commerce and economic growth? Few issues in trade, the European Union and international commercial policy have in the past decade provoked as much contention as intellectual property rights (IPRs). In Europe, the big debate over ACTA – or, the Anti-Counterfeiting Trade Agreement – ushered in a new dimension of controversy as the European Commission, and most member states (who favoured ACTA), were denied entry to this international agreement by the European Parliament. For many years, politicians and officials have wrestled with opposition to patents and copyrights. Recently, trademarks have also become subject of criticism, especially in areas like tobacco where countries believe they can reduce smoking by plain packaging regulations.

It is easy to understand the ascending role of intellectual property rights. It reflects the profound changes in the world economy over the past decades. Industrial countries have climbed the value- added chain by sourcing labour-intensive production from emerging countries and investing substantially more human and capital resources into research and innovation. A significant, yet increasing, share of output, value-added and trade builds on innovation. Innovative sectors take up a larger share of the world economy. The amount of resources spent on research and development (R&D) has multiplied over the past decades. Competition has grown tougher as many regulations that previously protected markets and incumbents have been swept away. Technological development has speeded

up the pace of imitation in the economy and shortened the life cycle of a product. Friends and foes of IPRs agree on one thing, it is difficult to disregard how evolving economies and fundamental economic change have put greater emphasis on the exclusive economic rights granted by IPRs. Nor is it an area of dispute that the value of IPRs to individual firms generally is much greater today than in the past.

For economists, IPRs are of interest because they may or may not facilitate commerce, productivity growth, and – ultimately – economic growth. In other words, they can facilitate or deter specialisation or innovation gains. Even if the “economist view” has grown in importance over a longer period of time, most policymakers tend to take a “legalistic view” on IPRs and/ or just treat all different IPRs as one and the same. However, economic development has most probably made different parts of the IPR family more unlike each other, and the more the economy is defined by cross-border economic integration, the bigger these differences get – and the more important it becomes to get the policy priority of IPRs right. In other words, policymakers need to consider more carefully how priorities are made in IPR policy, both in domestic IPR policy and in external IPR policy, the way IPRs are addressed in international and trade agreements.

Negotiations over the Transatlantic Trade and Investment Partnership (TTIP) has ushered in some urgency in that discussion. Policymakers on both sides have clearly expressed a desire to use TTIP not just to address bilateral policy frictions but also to provide a platform for future trade negotiations with other countries. Some argue that TTIP can set standards for new trade agreements in future. While such rhetoric exaggerates the capacity of the EU and the US to determine the course of future trade policy with other key economies in the world, it is correct that trade agreements with the key developed economies today – the EU, Japan and the US – will have systemic effects on future trade and IPR policy. Consequently, Europe needs to acknowledge that it is now presented with a new opportunity to revisit key planks of its thinking about IPRs – at home and abroad – and formulate an agenda that fits its economic profile.

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Media Contact: Fredrik Erixon at fredrik.erixon@ecipe.org