

HOW THE UNITED STATES CAN
IMPROVE THE INTELLECTUAL
PROPERTY RIGHTS OF
DEVELOPING TRADE PARTNERS

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The role of intellectual property rights is important for any trade relationship because it grants creators temporary exclusivity on the manufacturing and commercialization of new and innovative products. Two common kinds of such rights are patents and copyrights: the former applies to pharmaceuticals and electronics and generally last for twenty years, while the latter applies to books, movies and processors and generally last for fifty years. I argue that institutional and policy changes in the United States could lead to the negotiation of a more balanced and socially responsible standard for intellectual property rights with developing country trade partners.

The prevalent view is that intellectual property rights are important because they aim to assure that those who innovate will reap the economic outcomes of their efforts, thereby fostering further innovation. At the same time, the intellectual property protection has been balanced by exceptions devised to either address temporary emergencies or promote broader development goals. In India, for instance, its own domestic policy regulations did not allow patents to be given to any medicine until 2005. In Thailand and Brazil, patents of certain medicines to address the HIV/AIDS epidemic in the mid-2000s were temporarily revoked. Even the United States Department of Health and Human Services considered temporarily revoking the patent of an antibiotic to address the anthrax attacks in the aftermath of 9/11.

The World Trade Organization's agreement on intellectual property rights also allows member countries to provide development and emergency-related exceptions. Notwithstanding this broad international intellectual property rights deal, the United States signed alternative trade agreements – most of them with developing countries in Latin America – that grant intellectual property right holders *more* benefits than those provided by the World Trade Organization. Examples of such benefits include increases in the duration of copyrights from fifty to seventy years, the establishment of additional bureaucratic requirements for the production of generic, cheaper medicines, and very detailed rules on border and domestic inspection.

Since 2002, the Office of the United States Trade Representative, the federal agency responsible for negotiating and enforcing trade agreements, has been required to mind not only the instructions and opinions stated by the President and Congress members, but also the reports issued by private industrial advisory committees, whereby they evaluate trade agreements under negotiation and state their views on what objectives the U.S. negotiators should pursue. One such committee is composed of representatives of industries that benefit from intellectual property rights protection. Though their views are certainly important, an analysis of their reports reveals that they usually support laws and institutions that potentially raise their earnings and control over the knowledge they produce¹. As a result, they seem to favor profit maximization over other values.

Other producers of basic and applied research in the U.S., such as the National Institutes of Health and NASA, have not been invited to officially report their views to the federal trade office. Non-governmental organizations have not been party to the official advisory committee on intellectual property, either; several such organizations provide healthcare and education assistance to communities in developing countries – or do research on this

¹ All such reports are available at <https://ustr.gov/trade-agreements/free-trade-agreements> (accessed on December 14, 2018).

topic – and therefore know firsthand the social impacts of the high cost of patented medicines and educational material protected by copyrights².

Due to these shortcomings in representation, the creation of new, non-industrial advisory committees to the U.S. trade office could be expected to propitiate the negotiation of more balanced intellectual property rights with trade partners. Such committees could invite representatives of public research institutions, universities, non-governmental organizations, independent specialists, and other high-profile interested stakeholders to officially manifest their views on trade-related intellectual property rights, as much as industries currently do. Another viable possibility is the inclusion of new, non-industrial representatives to the current intellectual property rights advisory committee. As exemplified by other changes to U.S. trade institutions made over the past forty-five years, these suggested enlargements are legally and politically feasible.

By expanding its intellectual property rights advisory committee, the U.S. federal trade agency would benefit from more nuanced and precise views on the subject, as representatives from private corporations do not necessarily understand in depth the specific needs of public research institutes and research universities. They may also lack the expertise possessed by those providing healthcare and education in developing countries, who would probably demand that the health- and education-related exceptions provided by the World Trade Organization to developing countries are not eroded by U.S. trade agreements.

In sum, by enlarging its advisory committee system, the Office of the United States Trade Representative would enhance the legitimacy of the trade agreements it negotiates by assessing a broader range of domestic views related to intellectual property rights. A more diverse committee could also facilitate the negotiation of trade agreements that address the needs of innovators while ensuring that development-related exceptions are not undermined.

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² Knowledge Ecology International, headquartered in Washington, and Millennium Promise, headquartered in New York, are examples of this kind of non-governmental organizations. See <https://www.keionline.org/> and <https://www.millenniumpromise.org/> (both accessed on December 14, 2018).

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