Rethinking Intellectual Property Rights

BY SUSAN ARIEL AARONSON

A way to reinvent and reinvigorate the global economy.

The prime minister of Singapore doesn't usually travel to China to talk about the United States. But Lee Hsien Loong used his September 6 speech at the Central Party School in Beijing to lecture China's future elites. He wanted to remind them that although the United States "is currently facing some very difficult problems…we should never underestimate the U.S. capacity to reinvigorate and reinvent itself."

With his reelection, President Obama must view reinvigorating the U.S. economy as one of his main tasks. But he can't revive the U.S. economy unless the United States and other countries bolster the World Trade Organization system. In the short run, rising protectionism could thwart global economic recovery. In the longer term, because innovation is one of the main factors driving economic growth, he must find governance strategies that encourage greater productivity and innovation. One way the United States (the world's largest economy, source of much of the world's innovation, and adamant defender of the current approach) could thwart further trade protectionism is to offer a grand bargain. If they agree to maintain their WTO commitments and continue the Doha Round slog, the United States will work with other governments to reform the global system of protecting intellectual property rights.

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Rules governing intellectual property rights set the terms of access for users of knowledge, but the current system (which includes rigorous application of patent and copyright laws) can limit the supply of innovation by restricting access to information. Individuals around the world are increasingly critical of that system as inflexible, out of date, and inequitable. With proper reforms, policymakers may be able to provide a greater supply of innovation and reduce the demand for protectionism.

Alas, more governments are turning to protectionism as their economies slow. The World Trade Organization estimates that trade growth will decline from 5 percent in 2011 to 3.7 percent in 2012, while global economic growth will rise a paltry 2.1 percent. The continued downturn in Europe, rapidly rising oil prices, and geopolitical risks threaten even these relatively low growth levels. Moreover, unemployment and underemployment are at record high numbers in many countries. Although multilateral trade liberalization and coordinated strategies to encourage employment may be the best way to stimulate job growth, national leaders have increasingly adopted inward-looking policies. The hegemons of global trade—the United States, China, and the European Union—are unwilling or unable to offer significant concessions as an incentive for trade liberalization. Not surprisingly, the 157 members of the World Trade Organization have made little progress on the Doha Round. The World Trade Organization did agree to monitor protectionism among member states, and from 2008-2011 this increased transparency seemed to hold protectionism in check.

However, in late 2011, many countries introduced new restrictions on trade including both traditional and more opaque regulations such as procurement preferences or administrative procedures for imports. In June 2012, the European Union described the rise in protectionism as "staggering." Clearly, trade policymakers have found ways to reduce imports without falling afoul of WTO rules.

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Grand Bargain

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For example, some countries have used capital controls to prevent external adjustments, while other countries have undervalued their currency. Many economists believe that China deliberately undervalues the renminbi, and in so doing reduces demand and output in industrialized countries with high unemployment. China's exchange rate policies also hurt developing countries that produce goods or commodities that compete with China, leading to a "beggar-thy-neighbor" effect. This effect can be particularly harmful to developing countries, which are often more trade dependent than industrialized nations and lack the ability to use monetary or exchange rate policies to encourage growth.[1]

Still other countries such as the United States have adopted a loose monetary policy in the hopes of stimulating investment. As the supply expanded, the U.S. dollar fell some 4.9 percent against a basket of currencies. The U.S. Federal Reserve's actions have caused problems in other countries. After Brazil's currency increased 4.7 percent in real terms against the dollar, Brazilian policymakers argued that the United States was using the cheaper dollar to artificially create jobs. While the Fed was not trying to explicitly distort trade, its actions had a trade-distorting effect. In late September 2012, the Brazilian government announced that it would raise tariffs (up to their bound levels) on one hundred manufactured goods. Brazil's retaliatory actions are WTO-legal, yet they are deeply worrying if they set a precedent. Moreover, they could incite "tit-for-tat" retaliation. Brazil's actions come at a particularly difficult time for the World Trade Organization. After eleven years of negotiations on the Doha Round, members have made little progress. Meanwhile, in a secret memo that month, Ukraine advised

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the 156 other members of the World Trade Organization that it planned to raise maximum tariffs on some 350 imported goods over bound levels, affecting some $5 billion in 2011 imports. Ukraine's actions would breach its WTO commitments. Ukraine has already instituted some of these higher tariffs. WTO diplomats are worried that other countries might take similar steps.

Neither WTO trade officials nor the WTO's director general have publicly responded to Ukraine. But the global economy can't afford additional protectionism. Major trade players such as the European Union, the United States, and China might consider coordinated compensatory steps such as unilaterally lowering tariffs. But these countries can't easily lower tariffs without arousing domestic opposition. Moreover, some countries might view such steps as "rewards" for breaching WTO rules; no one knows if compensatory action could yield positive or negative effects on protectionism.

Hence policymakers will need to think creatively and find an area of trade liberalization that other countries might find attractive. As noted above, the 157 members of the World Trade Organization have put in place a system of intellectual property rights. With these copyrights, patents, and trademarks, creators obtain limited exclusive rights to whatever economic reward the market may provide (a limited monopoly). These rights are enforceable through government action, national courts, and the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. TRIPS reduced non-tariff trade barriers stemming from different national intellectual property rights regimes and prodded WTO member states to enact a minimum level of intellectual property right protection. However, many analysts now fear that this system has hampered global technological progress. One Federal Reserve study noted, "Patents are very much akin to trade restrictions as they prevent the free entry of competitors in national markets, thereby reducing the growth of productive capacity and slowing down economic growth."[2] Some economists argue that the system may make it harder for governments to provide public goods such as education, affordable medicines, and agricultural innovation. Developing countries must spend scarce funds on intellectual property right enforcement rather than investing in their own capacity to innovate and may not benefit from commercialization of their knowledge or genetic resources when they are patented in industrialized countries. As a result, many developing country policymakers have concluded that the system is rigged against their interests.

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Individuals in the industrialized world are also critical of the current system of intellectual property rights protection. Some analysts believe the system is inappropriate for software and other rapidly changing technologies, may lead to information oligopolies, and could facilitate rent seeking at the national level. For example, the United States allows companies to use trade laws to block imports to protect patents. Moreover, applicants find that getting a patent is expensive, time-consuming, and often accompanied by litigation. The system of protecting copyrights has not caught up to the reality of human behavior online. People want to share information, news, music, movies, and more, but under current international (and many national laws) such sharing is often considered piracy. Around the world, individuals and companies are coordinating education and strategies to alter laws that disallow limited online sharing. In fact, some forty countries have pirate parties—political parties devoted to reforming how nations protect and share information online. The director of the World Intellectual Property Organization has publicly acknowledged that the system is no longer widely respected and piracy has reached "alarming dimensions."

Most importantly, some nations including Great Britain and New Zealand are revamping their approach to intellectual property rights. The European Union is in the process of reforming online copyright. As the host of the September 2012 G-20 meeting, the Russian government has developed proposals for reform which include a new approach to harmonizing intellectual property rights as well as a new approach to blocking and removing content on the web.[3]

U.S. economist Keith Maskus has floated several ideas which could be incorporated into a U.S. and international proposal. He suggests that the World Intellectual Property Organization create a comprehensive database of all existing patents and link this information to grants and scientific literature. Such a database would increase access to information and lower search costs for inventors. To facilitate the flow of information online, he calls for a multilateral agreement to ensure that digital content providers have global transmission rights. He notes license fees could attract more users and generate greater fee income for content creators.[4] However, I believe policymakers would need to supplement this approach with binding language where parties agree not to block the free flow of information online (except for traditional exceptions such as national security or to protect public morals).[5]

With the late law professor John H. Barton, Maskus has called for a global agreement on science and technology to facilitate open reciprocal access to scientific findings. This basic agreement on science and technology would be housed in the World Trade Organization, and would allow governments to leave out (reserve) sensitive areas of technology (such as cybersecurity) and to designate different levels of commitment to open access.

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In so doing, policymakers could commit the bulk of publicly funded basic research to the public domain, thus encouraging knowledge transfers and innovation.[6]

Some sectors such as movie studios and pharmaceutical firms may oppose such a grand bargain; but their leaders also recognize the current system is not working. By focusing on enforcement and sanctions, on the worthy "us" versus the pirate "them," these content creators have failed to build demand for the current approach to intellectual property rights. These interests may recognize that a new approach could in fact give them greater revenue from more sources. Thus, by thinking creatively, by using the crisis as an opportunity, and by offering to reassess how the U.S. and the global system address intellectual property rights, the president might reinvent and reinvigorate both the U.S. and global economies. ◆

NOTES

1. A. Mattoo, P. Mishra, and A. Subramanian, "Spillover Effects of Exchange Rates: A Study of the Renminbi," World Bank Policy Research Paper 5989, 2012.

2. M. Boldrin and David K. Levine, "The Case Against Patents," Federal Reserve Bank of St. Louis, Working Paper 2012-035A, 9/2012, p. 20.

3. http://eng.kremlin.ru/news/1684 and http://www.civilg20.org/2013/.

4. Keith E. Maskus, *Private Rights and Public Problems: The Global Economics of Intellectual Property in the 21st Century,* (Washington: Peterson Institute, 2012), pp. 18–19.

5. The United States and Korea agreed to a variant of this language in the U.S.-Korea FTA and the United States has proposed such language for the Trans-Pacific Partnership. U.S. International Trade Commission, "Potential Economy Wide and Selected Sectoral Effects of the U.S.-Korea Free Trade Agreement," Investigation No. TA-2104-24, Publication 3949, September 2007, pp. 4–5 fn. 98, http://www.usitc.gov/publications/ pub3949.pdf.

6. John H. Barton and Keith E. Maskus, "Economic Perspectives on a Multilateral Agreement on Open Access to Basic Science and Technology," SCRIPTed Vol. 1, no. 3, September 2004, http://www.law.ed.ac.uk/ahrc/script-ed/issue3/barton-maskus.pdf.