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The North's intellectual property rights standard for the South?

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Abstract

We build a multi-sectoral North–South trade model to analyze international intellectual property rights (IPR) protection. By comparing the Nash equilibrium IPR protection standard of the South (the developing countries) with that of the North (the developed countries), we find that the former is naturally weaker than the latter. Moreover, we show that both regions can gain from an agreement that requires the South to harmonize its IPR standards with those of the North, and the North to liberalize its traditional goods market. This demonstrates the merits of multi-sectoral negotiations in the GATT/WTO.

Keywords: Intellectual property rights; Multi-sector negotiation; TRIPS

JEL classification: F1; O31; O34

1. Introduction

One important breakthrough of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) is the signing of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), which stipulates

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that all members adopt a set of universal minimum standards on intellectual property rights (IPR) protection.[1] According to many observers (e.g., Reichman, 1995), most of the terms of the agreement are based on the prevailing standards in developed countries (the North) at the time of the negotiation. The major consequence is that developing countries (the South) have to strengthen substantially the legal protection of IPR. Based on this observation, it is often argued that the agreement 'forces' the South to harmonize its IPR standards with those of the North.

The TRIPS Agreement has raised several questions. For example, has the South been doing too little to protect IPR (from the South's and the global welfare points of view)? What are the welfare consequences, for the South, the North and the world, from strengthening IPR protection in the South? From the global welfare point of view, does the South protect too much if it adopts the North's IPR standard? How can we make the TRIPS Agreement compatible with the South's incentive? Answers to these questions would help us address other important issues as well. For example, if raising the South's IPR standard improves the world's welfare, then the TRIPS can potentially make all regions better off. This paper deals with the above questions and issues.

We build a model with two regions in the world, the North and the South, which trade two types of goods, differentiated products and traditional products. Innovation and imitation are carried out in the differentiated-products sectors of both regions. We assume that the North and the South adopted their respective Nash equilibrium IPR standards before the TRIPS was put in place, and the TRIPS Agreement requires both regions to adopt the pre-TRIPS IPR standard of the North as a minimum standard. The cost–benefit analysis we adopt is not fundamentally different from Nordhaus's (1969) classical work in which he calculates the optimal patent length. Like his analysis, our optimal IPR protection strikes an optimal balance between the gains from increased R&D efforts and the deadweight losses resulting from the prolonged monopoly power of the innovators. Based on our analysis, we find that the South's equilibrium IPR standard is naturally not as strong as that of the North. Moreover, it is globally welfare-improving for the South to raise its IPR standard to harmonize with the North's pre-TRIPS level. The major effects of the TRIPS are: the South's consumers lose by paying higher prices, the North's producers gain higher profits, but all consumers gain from a larger variety of goods. On balance, the South's welfare decreases, the North's increases, but the total welfare of the two regions rises, because of the existence of a positive inter-regional externality. The externality arises because an increase in a region's IPR protection raises the profits of firms and enlarges the product variety in another region without raising the deadweight loss in the latter. However, an agreement that requires the South to raise its IPR standard without compensation

[1] See UNCTAD (1997) and Maskus (1998, 2000) for more about the TRIPS Agreement and related issues.