

Book Review

THE INTERNATIONAL POLITICAL ECONOMY OF INTELLECTUAL PROPERTY RIGHTS

Meir Perez Pugatch

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In December of 2005, the World Trade Organisation (WTO) will convene its Sixth Ministerial Conference in Hong Kong. Among the most contentious and prominent topics of discussion will be that of intellectual property rights (IPRs). Behind the scene, various players representing the European pharmaceutical industry, along with counterparts from other developed countries such as the US, Japan and Canada, will once again be actively lobbying their respective representatives. Their efforts will be focused on safeguarding collective IPR interests of the industry as identified in the agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs).

The recent book from Meir Perez Pugatch attempts to link the internationalisation of IPRs, the TRIPs agreement and collective interests as they relate to the European pharmaceutical industry to determine why and how a strong international IPR agenda has developed. The author begins by taking the position that a purely economic approach fails to adequately explain IPRs. Indeed, economists such as Nobel laureate Kenneth Arrow have long conceded the difficulties in measuring the costs and benefits deriving from patents.

The author suggests that the international IPR system, as exemplified by TRIPs, has developed through the effects of competing as well as mutual interests that can be empirically qualified. He therefore proposes a more appropriate explanation of IPR creation and generation of an international IPR agenda by considering the international political economy (IPE) of interest groups and related systemic outcomes. The author uses well-sourced data from the WTO, its proposals for its members and reports issued by the Secretariat and Dispute Settlement Body, the World Intellectual Property Organisation (WIPO) and the European pharmaceutical industry over a five-year period (1995-99). The author complements primary resources with results from open-ended interviews of key actors in the industry and the WTO.

The author appropriately qualifies limitations to his IPE case-based methodology; the fact that generalisations are difficult from a single industry and region, despite the dominant role in the IPE of European pharmaceutical companies and their influence on the international IPR agenda. The research takes the position a priori that IPRs are socially desirable phenomenon, where IP interests become institutionalised, thus a case study approach to examining a single prominent industry is expected to reveal the reality and practices of IPRs.

The book provides credible evidence that IPRs provide a powerful incentive for collective action among the European pharmaceutical industry. The author's insights into intra-industry (vertical) IP organisational structures of the European pharmaceutical industry suggests that the common risks of industry players – high R&D costs, long lead times for testing and trials, strong competition, etc. - result in

common lobbying interests over IP issues and consequent collaboration at the regional European level. Shared socio-economic interests in IPR are entrenched by day-to-day practice among corporate IP directors who share similar views and objectives through the existence of epistemic communities of practice and who participate in ongoing national, regional and international IP forums.

A further key factor identified by the author in exploiting and preserving the international pharmaceutical IPR agenda is inter-industry (horizontal) collaboration, where alliances between the large pharmaceutical companies – with representation through the European Federation of Pharmaceutical Industries and Associations (EFPIA) - and dominant actors from other industries have resulted in the building of common IPR positions. These actors include the European Chemical Industry Council (CEFIC) and the Union of Industrial and Employer's Confederations of Europe (UNICE). Cooperation is also identified as transatlantic, such as with the US-based Intellectual Property Committee (IPC).

The author argues that in contrast to the position of developing countries and least developed countries (LDCs), the position of the European pharmaceutical industry and its IP allies during the period 1995-99 was premeditated, strategic and tactical, and reflected a high level of consensus and alignment with EU policy-makers. Not surprisingly, the author suggests that provisions of the TRIPs agreement provided substantial benefits to the pharmaceutical industry in Europe. Not only were key industry players cooperating and coordinating activities to ensure exploitation and preservation benefits from TRIPs, but the author argues that governments of the EU member states, the UK and Germany in particular, were remarkably aligned with industry in their views of the TRIPs agreement. The consequences of this European IPE approach were evident at the WTO Ministerial Conference in Seattle in 1999 where the core strategy of the European pharmaceutical industry was to ensure 'non-downgrading' of TRIPs as a pre-condition for negotiations on IPRs, while presenting tough IP demands aimed at diminishing the request by developing countries and LDCs to downgrade the agreement.

An interesting facet of the book is the historical perspective of the TRIPs agreement, particularly the transition by developing countries and LDCs from their position of uncertainty and discomfort over TRIPs during the Uruguay Round negotiations to their harsh criticism of the legitimacy of the agreement and generation of clear demands, such as provisions dealing with technological, technical and financial assistance and a longer transitional period for implementing the agreement.

The author takes a critical view of TRIPs, focusing his concerns at the operational capacity of TRIPs: its failure to deal adequately with its negative side effects, particularly for countries with low IP capabilities; its vague terminology; the lack of dedicated adherence to the terms of the agreement by developed countries; and its ineffectiveness in curtailing anti-competitive practices. It would appear that some of his criticism is actually identifying a lack of implementation and enforcement of TRIPs by the WTO. The author goes on to explain the terms of IPR protection that are significantly advantageous to developed countries and the pharmaceutical industry in particular and assumed by their very nature to be detrimental to developing countries and LDCs.

The book ends with a brief description of recent developments that include the patenting and compulsory licensing of essential medicines and the effects of ongoing changes to the TRIPs agreement. The author concludes by stating his concern over the

future role of the WTO in managing IPRs and offers recommendations for future research that include examining the US pharmaceutical industry using this framework of analysis and evaluating the divergence in views between the EC and European Parliament over international IPRs since 1999.

Overall, the interests-based argument goes some way to meeting the author's intention to explain why and how a strong international IPR agenda has developed. The author does venture into the shady realm of assumptions where evidence is inconclusive, to suggest that EU actions on IPR-related matters are the direct result of industry influence. One assumption is that EU actions, particularly in patent disputes at the WTO level, were motivated primarily to explicitly pursue commercial interests of the European pharmaceutical industry. Another assumption is that the European pharmaceutical industry and its IP allies were instrumental in influencing the EU to take the position of non-downgrading the TRIPs agreement at the WTO Ministerial Conference in Seattle.

The author's decision to lay aside economic arguments in pursuing an international political economy (IPE) perspective naturally leaves some gaps in the analysis. The inclusion of perspectives on trade theory and comparative and competitive advantage would strengthen the analysis of interests-based differences among the players in the IPE that are stakeholders in the IPR agenda and TRIPs. Concepts of industrial economics and innovation would qualify how changes in the pharmaceutical industry, such as its increasing oligopolistic nature as characterised by mergers, acquisitions and strategic alliances, is impacting IPR usage and the consequent role of the industry in pursuing an IPR agenda. These perspectives would also establish the role of other European IPR-based industries in contributing to the IPR agenda and further qualify industry effects on EU decisions and actions.

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