

For Free Trade's Sake, Get IP Out of the TPP

By: Bill Watson – November 22, 2013

The prospects for timely completion of the Trans-Pacific Partnership (TPP) trade agreement are looking increasingly bleak. Just as the president was struggling to secure fast track trade negotiating authority from Congress, a barrage of anti-TPP sentiment erupted last week when WikiLeaks published a classified draft text of the agreement's intellectual property rules. The text was rightly criticized for enabling Hollywood and other industries to improperly influence U.S. and foreign law in their favor.

The first instinct of trade advocates is to be defensive, but this time the criticism actually offers an excellent opportunity: Instead of mumbling unconvincingly about the political power of innovative U.S. industries, free traders should put their collective foot down and demand a stop. Imposing intellectual property rules through trade agreements has become a political liability that serves special interests at the expense of free trade.

Getting intellectual property out of the TPP would increase the agreement's ability to open markets, improve its chances for passage in Congress, and bring the negotiations back to what they ought to be about in the first place: lowering protectionist trade barriers.

Despite being tightly wedded in the U.S. trade agenda for the last 20 years, trade policy and intellectual property policy don't fit together very well. Trade agreements are useful because they provide an effective but imperfect way to improve U.S. trade policy. By offsetting the political power of protectionist industries with the political power of exporting industries, trade agreements offer the promise of open markets at home and abroad.

But this model doesn't make any sense for intellectual property laws. Unlike tariff reductions, extending intellectual property rights in foreign markets does not directly benefit foreign consumers. At the same time, there is the potential for harm to U.S. consumers when international obligations make domestic intellectual property laws harder to reform or, in some cases, stricter than they would be otherwise. Using trade negotiations to set patent and copyright policy gives excessive power to industry without any justification.

Global rules already exist that prevent piracy or severe regulatory differences. The World Trade Organization imposes minimum standards for patent copyright protection and prohibits discrimination. Intellectual property rules in the TPP, on the other hand, are about things like extending copyright terms

from really long to really, really long. Getting Canada to impose a longer copyright term may benefit Disney, but that shouldn't be a goal of U.S. economic relations.

You don't have to oppose stronger intellectual property laws to recognize that they reduce the value of trade agreements. The United States is expending a significant amount of negotiating capital to secure patent and copyright rules at the behest of a narrow set of industries. As the leaked text reveals, U.S. proposals are facing coordinated opposition from most, and sometimes all, TPP partners. What other negotiating goals have had to be sacrificed in order to push these unpopular rules through?

U.S. negotiators can accomplish more in other areas if they stop fighting for detailed intellectual property provisions. Hollywood and biotech are not the only industries hoping that the TPP will secure foreign markets for them. The American dairy industry, for instance, doesn't benefit if negotiators give New Zealand a pass on milk barriers in order to secure concessions on medical procedure patents. More importantly, consumers in New Zealand don't benefit either.

Most proponents of the TPP wrongly claim that we must have intellectual property in agreements to get enough political support. That may have been true in the past, but times have changed. U.S. negotiators would do well to remember how the Stop Online Piracy Act crashed so dramatically after internet activists got popular opposition to go viral. Good news about how the TPP lowers regulatory barriers for financial service firms operating in Asia is not going to assuage the online masses who think you're coming to kill the internet.

A common criticism of the TPP has been that the agreement is not really about free trade. It's time to fix that and remove intellectual property negotiations from the TPP.