



# International and domestic dynamics of intellectual property protection



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## ABSTRACT

I examine the variation in the extent of intellectual property (IP) protection across countries. Combining insights from the 'old' and 'new' institutional perspectives, I argue that global pressures stemming from commitments to the World Trade Organization influence IP protection, but countries differ in their sensitivity to external pressures due to differences in domestic characteristics. The presence of a domestic interest group positively moderates the relationship between WTO commitment and stronger IP protection while domestic public health concerns negatively moderates this relationship. Data on IP protection for 65 countries during the period 1995–2006 provide support for the hypotheses.

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## 1. Introduction

With the global expansion of business activity, the role of intellectual property (IP) institutions in host countries is gaining increased importance. A number of recent studies have found this aspect of a country's institutional environment to be a significant determinant of a multinational firm's strategic choice (see, for example, Lee & Mansfield, 1996; Oxley, 1999; Javorcik, 2004; Jandhyala, 2013). Yet, large variations persist in the effectiveness of IP protection across countries, and there is a growing international debate on the costs and benefits of stronger IP protection (Huang & Murray, 2009).

New global rules regarding the treatment of intellectual property were created with the establishment of the World Trade Organization (WTO). The global governing body established rules regarding the treatment of IP through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)—a binding international agreement governing how countries grant and protect IP. In this paper, I examine how a country's WTO commitments can influence the nature of IP protection. A deliberate use of coercive economic power in the form of trade-related punishments for countries that fail to protect IP assets adequately can elicit instrumental compliance among countries. As commitments to the WTO vary by country, and change over time, variation in the extent of IP protection is observed.

Further, building on the 'new' and 'old' institutional theories, I analyze how the global pressure stemming from the WTO interacts with domestic pressures to explain the variation in IP protection across countries. In other words, I examine how countries differ in their sensitivity to external pressures due to domestic characteristics. I examine the differences in country sensitivity by focusing on two domestic aspects—the presence of domestic groups whose interests are aligned with IP protection and the domestic public health concerns which lead social actors to demand concessions of IP protection. Together, this analysis addresses how the global pressures and their moderating factors influence country choices.

In characterizing the environment for IP protection, the literature has primarily focused on the formal regulations that govern it. Hence, countries that proclaim membership in international treaties, or develop policies and procedures geared toward enforcement are considered to have stronger IP regulations. However, a growing body of work cutting across fields observes that formal policies are imperfectly correlated with their effectiveness. International obligations and external pressures may usher in IP reforms that have little to do with day to day practices (Shadlen, Schrank, & Kurtz, 2005). In other fields, we observe that Russian shareholders' rights are systematically trampled upon in spite of a highly refined corporate law (Berkowitz, Pistor, & Richards, 2003) and restrictions on current account exist notwithstanding commitments to international monetary law (Simmons, 2000). Thus, even among countries with seemingly similar regulations, the *de facto* IP protection may vary. As a result, my analysis focuses on *de facto* IP protection (henceforth, IP protection).

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