

Protectionist Policies: An Analysis of Tariffs and IP Regulations

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Abstract

Domestic industrial policies, particularly in the forms of IP regulations and tariffs, are prevalent in the global economy . Proponents of such policies posit that they foster domestic innovation and protect local industries from external competition, while the opposition claims that they create artificial scarcity. For IP regulations, copying an invention does not deprive the victim of the original, as intellectual property is not a tangible good. Tariffs, on the other hand, raise consumer prices in the importing country. This paper will primarily explore the negative effects associated with such policies, emphasizing their role in creating economic distress and impeding indigenous innovation. It will first trace the historical origins of the policies, examining the distinct and shared effects. It will then observe the US-Jordan Free Trade Agreement as a case study to show these dynamics in real life. Finally, the paper will present policy reforms aimed to mitigate the negative effects of these policies.

1. Introduction

Although IP regulations were conceived much earlier, it was only by the 15th century that the first codified patent system was developed as a part of Venetian law (Chicago-Kent Journal of Intellectual Property, 2023). The complex legal framework that exists for IP regulation has been a subject of dispute since its integration into international law in 1883, and has undergone continual revision. In 1995, the World Trade Organization signed TRIPS, a treaty that created global standards for all members. TRIPS-Plus emerged shortly thereafter in bilateral agreements, imposing intellectual property rules that go beyond TRIPS requirements (*TRIPS-*

Past to TRIPS-Plus: Upholding the Balance Between Exclusivity and Access, 2021). Today, IPRs exist as patents, copyrights, trademarks, trade secrets, sui generis, and mixed forms. For a good to be considered protected under IP law, it must be nonrivalrous (consumption by one person does not diminish the good for another person) and nonexcludable (consumers are not restricted by payment barriers) (Institute for International Economics, n.d., pp. 27). The industries most directly impacted are pharmaceuticals, IT, manufacturing, and entertainment.

The two main viewpoints of IPRs are the public rights view and the natural rights view. The core distinction is that public rights disregards ownership of intellectual creations, as all information belongs in the public domain, while natural rights “assigns ownership of mental creations to their inventors under the precept that failure to do so constitutes theft of the fruits of their effort and inspiration” (Institute for International Economics, n.d., pp. 27).

Tariffs are another form of domestic industrial policy, which tax foreign goods, mainly to incentivise consumers to buy local products and encourage domestic innovation. Governments collect revenue from these tariffs often at the expense of raised prices.

They first became instruments of national economic policy during the mercantilist era. Countries like Britain, France, and Spain used high tariffs to protect domestic industries and promote exports, consistent with the mercantilist principle of prioritizing power by accumulation of state-owned resources (WITA, 2025).

Today, the manufacturing sector is by far the most affected by tariffs, as governments seek to protect middle-class employment and to guard against the ‘dumping’ of low-cost goods by foreign producers. Despite a consistent decline in tariffs and an upward trend of free trade, there have been recent unprecedented trade disputes between global superpowers. Most notably, the US reached their highest levels of tariff policy since the Great Depression (Buchwald et al.).

2. Examining the Problem

2.1 Negative effects of tariff law

Tariffs create a wedge between prices consumers pay and price producers receive. This gap is collected by the government, and consequently firms are faced with less revenue. To keep its employment costs fixed, the firm will reduce wages. Survey data from the Brookings Institute show that workers view wage reductions as unfair (Akerlof et al.). This will lead to lay-offs and shrink the middle class, the primary driver of domestic consumption, investment, and market demand, negating the intended effect of tariffs. The shrunken middle class will also halt innovation due to a loss of investment: generally, poorer households lack access to credit to be able to borrow funds, while the rich underinvest relative to social optimum (Aghion et al.). The absence of a middle class will stagnate the domestic market from this lack of investment capacity. Advocates of the tariff policy might say such effects are far-fetched, but they are very much relevant in developing countries and superpowers alike.

2.2 Addressing Free Riding Theory

IPRs became a global standard to prevent “free riding”, or benefitting from a good without contributing to its creation. The argument that supports the idea that free riding theory creates economic inefficiency is purely based on the notion that a lack of incentive to innovate creates underproduction, and eventually market failure. Theodore Groves and John Ledyard discuss in their 1977 paper that Pareto-optimal allocation of resources is not compatible with fundamental incentives belonging to individuals, particularly in capitalistic society (Groves and Ledyard). However, in the case of knowledge goods, the free rider problem rarely escalates to market

failure. From a practical lens, intellectual property is not scarce and does not deprive the victim of the original (Lemley). Even in capitalist systems, with mostly private firms in pursuit of profit, the free riding problem is largely mitigated through cooperation. Reward for cooperation can be higher than the reward for defection in a multi-round Prisoners' Dilemma game with no fixed end-point, and open source software proves this theory. Following the launch of the GitHub Sponsors Program, a crowdfund for open source project development, participating users created 54 percent more repositories, a productivity boost that also generated significant value for the broader community (Conti et al.).

2.3 Artificial Scarcity: The Shared Effect

Both tariffs and IP regulations lead to artificial scarcity, which is a shortage of items despite the availability of supply and the ability to share. While goods might be abundant globally, or have the potential to be shared, protectionist policies often disable this in an attempt to develop local industries. There are negative implications of artificial scarcity, the most pertinent being the “spectacle of need”, or the dramatic portrayal of deprivation to draw attention away from faultless accounting of resources (Said). A relevant example of artificial scarcity is data exclusivity in pharmaceuticals, which will be discussed in the case study. The spectacle of need is the prevention of free riding, but the real scarcity is access to affordable medicine. Artificial scarcity creates deadweight loss, undermining social welfare and long-term innovation by prioritizing manipulation of supply over genuine human and societal need (Desai and Lemley).

3. Case Study

In 2000, The USA and Jordan signed a Free Trade Agreement (“Free Trade Agreements | United States Trade Representative”). The agreement eliminated nearly all tariffs on Jordanian exports, but it did not counteract the effects of IPR in pharmaceuticals, inevitably impeding indigenous innovation. In the case of Jordan, "indigenous innovation" is the production of generics, reverse engineered drugs that serve as cheap alternatives (*AGREEMENT between the UNITED STATES of AMERICA and the HASHEMITE KINGDOM of JORDAN on the ESTABLISHMENT of a FREE TRADE AREA*). After the US-Jordan FTA, Jordan was compelled to agree to the TRIPS-Plus framework, which made Jordan require approval and wait for 5 years before they could enter the generics market because of data exclusivity. According to a 2001 analysis of 103 medicines that have no patent protection in Jordan, at least 79% have no competition from a generic equivalent as a consequence of data exclusivity. Despite the US projection of Jordanian drug industry expanding domestic R&D and producing its own innovative medicines, the TRIPS-Plus framework did the opposite. It ultimately made both domestic and foreign pharmaceutical goods exorbitantly priced for ordinary people. The same study revealed that new product launches in Jordan are only a fraction of total product launches in the USA and the EU; and the 16 Jordanian drug companies in the paper are only investing approximately 0.1% of sales into R&D - a negligible figure when contrasted with the 34% R&D intensity of their U.S. counterparts (Malpani).

4. Conclusion and Policy Reform

Tariffs and IPRs are protectionist policies that do more harm than benefit. IPRs are usually unnecessary from a practical lens because free riding does not harm the original inventor. Tariffs can lead to a shrunken middle class which will lower domestic consumption, opposite of

the intended effect. Both policies cause artificial scarcity of resources. There are well studied alternatives that circumvent the effects of artificial scarcity.

Tariff policy could be rethought as a way to protect infant industries, instead of a way to exclude foreign competition. The classic Mill-Bastable test creates guidelines to determine if infant industry protection increases national welfare based on two prerequisites: protection must be temporary, and have a long-term net benefit. A Harvard study revisited this test and evaluated three instruments: tariffs, subsidies, and quotas. They found that quotas, or a government imposed limit on the quantity of goods imported, yielded the highest net benefit, serving as a useful alternative to tariffs (Melitz). Quotas arguably provide greater certainty and adaptability as state policies change because they are a fixed, quantitative limit, whereas tariffs can be reciprocated with exporters absorbing the cost of the tax through several policy levers (“Quotas versus Tariffs”).

Artificial scarcity created by IP regulations, on the other hand, have a less feasible solution. The most effective step would be the elimination of TRIPS-Plus provisions. TRIPS-Plus disproportionately benefits developed countries with greater bargaining power and more advanced institutional capacity (Lindstrom). As seen in the US-Jordan FTA, TRIPS-Plus caused Jordan to have a much smaller share in the generics market.

Tariffs and IP regulations are more about political expediency than economic soundness. They paradoxically hinder indigenous innovation through artificial scarcity. Countries would benefit to take a deeper look at numerous alternatives that are mutually beneficial.

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