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ANU COLLEGE OF ASIA & THE PACIFIC

CRAWFORD SCHOOL OF ECONOMICS AND GOVERNMENT

IMMUNISING FUTURE TRADE AGAINST
PROTECTIONISTS: PREVENTING THE
EMERGENCE OF MORE SENSITIVE SECTORS

ANDREW ELEK



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IMMUNISING FUTURE TRADE AGAINST PROTECTIONISTS: PREVENTING THE EMERGENCE OF MORE SENSITIVE SECTORS

Executive summary

Very many goods and services are traded freely among most economies. The recent proliferation of preferential trading arrangements (PTAs) demonstrates that most economies are willing to eliminate border barriers against substantially all products from almost any other economy.

At the same time, the recent proliferation of PTAs also demonstrates the political power of producer interests in a few heavily protected sectors, which remain in all economies. The same sensitive products, which are proving hard to liberalise in the Doha Development Agenda of the WTO, or among APEC economies, are also routinely exempted from 'free trade' deals. Any marginal liberalisation of border barriers to these products tends to be negated by product-specific rules of origin and by retaining the right to impose less transparent forms of protection, such as anti-dumping actions.

It will take a long time, in any forum, to reduce the number of products that are already sensitive and, hence, heavily protected by border barriers or other less transparent forms of contingent protection, such as anti-dumping. Therefore, it is desirable to prevent the emergence of new sensitive products.

This paper proposes collective action by APEC governments to immunise new products against trade policy distortions. It was possible to do so for information technology (IT) products in the 1990s. Following leadership from APEC governments, there is a WTO-wide agreement that such products should remain freely traded.

That agreement has already helped a growing share of products to remain duty free. The integrity of that agreement has been challenged by some who are seeking to narrow the definition of IT products. APEC governments are looking for ways to preserve the spirit of the Information Technology Agreement (ITA).

In addition to this defensive reaction, APEC governments could also consider a proactive option. It should be possible to build on the IT precedent to cover more, or even all, newly invented products.

The new products to be immunised against trade policy barriers would be those whose intellectual property rights (IPRs) are acknowledged. Immunisation would need to involve more than agreeing to set zero tariffs. It would also be essential to prevent future recourse to other less visible means of protection which discriminate between domestic and international sources of competition.

Such immunisation should be politically feasible. At the time of the invention of new products, the comparative advantage they had for their producers was created by the intellectual property embedded in the new products. Therefore, producers are anxious to protect their IPRs.

In the longer term, such initial advantage can be eroded. For example, close substitutes may be invented, using genuinely different ideas or technology. In that case, comparative advantage would come to depend on relative prices in different economies. As products mature, there will be growing pressure for protection against international competition, risking the future emergence of more sensitive sectors.

This potential problem could be avoided if producers or marketers of new products were required to make a choice between protection of IPRs, or protection by means of trade-distorting measures aimed specifically at international competition.

The short-term costs should be negligible, since no existing jobs or profits would be threatened, while the long-term gains will become significant as the share of new products continues to expand.

To implement this proposal, a group of forward-looking governments could agree that newly invented products could be protected by intellectual property rights, but will not receive protection from future border barriers, or any other trade-distorting policies.

Ideally, such a principle could be adopted WTO-wide, but that cannot be expected at the outset. However, an immunisation initiative could be pioneered by a smaller group of governments which formed an open club that provided incentives for others to join.

A group of Asia Pacific economies could lead the way, as a pathfinder initiative for progress towards APEC's agreed Bogor goals. Such an initiative should be launched by as many APEC governments as possible, as part of an effort to accelerate progress towards free and open trade and investment. In time, the policy could be adopted APEC-wide. That would set the stage for a multilateral protocol among many WTO economies that agree to immunise new products against trade policy distortions.

The setting

Changes in technology, especially those changes that reduce the costs of communications, continue to create new opportunities for mutually beneficial international trade and investment. On the other hand, the World Trade Organisation (WTO) rules of international commerce, which are needed to create the confidence to take advantage of these opportunities, are threatened by political pressures to protect sensitive sectors in many economies.

Since 1999, most weeks have been marked by the announcement of a ‘free trade agreement’ among some pair, or small group, of economies. At the same time, negotiations towards a more open and less distorted trading system have become agonisingly difficult and are currently suspended.

What lies behind this apparent paradox? What can be done to avoid similar problems in the future?

The good news ...

All governments that give priority to rising prosperity believe in outward-looking development strategies. All economies, even North Korea, are becoming more open to international trade and investment. Unilateral decisions to reduce obstacles to trade and investment are being taken, despite the difficulty of improving multilateral rules. Part of the drive towards preferential trading arrangements (PTAs) is prompted by the desire to help sustain the momentum towards more open policies.²

The share of traded products with low (zero or negligible) protection is already high. The share is also growing, for two main reasons:

- while some products, such as rice and clothing, remain heavily protected, GATT/WTO negotiations have been able to limit, and sometimes to reduce, protection;
- the share of heavily protected goods and services is falling as a share of both global production and trade, as new products generally appear in international markets with no policy barriers to trade.

The 1997 WTO agreement that information technology (IT) products should not become subject to future border barriers is encouraging. It should be possible to build on that precedent to ensure that products associated with significant new technological breakthroughs will not become sensitive products of the future.

The bad news ...

Most governments understand the long-term, economy-wide benefits of reducing the costs and risks of international economic transactions. But political considerations mean that almost all of them have some sensitive sectors, where the short-term costs of liberalisation are perceived to outweigh the potential longer-term benefits.

These sensitive sectors tend to be long-established ones, including some parts of agriculture and other, relatively low-technology, labour-intensive products. The economic, as against electoral, importance of these sectors is declining rapidly in rich economies. However, they are very important to the currently least developed economies with weak economic and social infrastructure, whose comparative advantage is in these sectors.

In some well-publicised cases, sensitive products are protected at the border by means of high tariffs and/or quantitative restrictions. But there is a growing tendency to use less transparent and less predictable forms of protection against new sources of competition for more products. Such forms of protection, that can be invoked whenever vested domestic interests are threatened, are usually termed contingent protection.

For example, anti-dumping actions are used against competitors who are asserted to be resorting to 'unfair' pricing. Other instruments of contingent protection include countervailing duties which may be applied if an international competitor is asserted to receive 'unfair' subsidies. Sanitary and phyto-sanitary regulations, intended for quarantine purposes, can also be used to block new competition.³

Several of these forms of contingent protection can be justified under WTO rules, under certain circumstances. Protectionists can find it easy to persuade their governments to impose such measures, since the WTO disciplines on such contingent protectionism are often weak and ambiguous. For example, the criteria used to define anti-dumping are usually arbitrary, which allows this instrument to be used as an effective tool of protection, often for indefinite periods. The dispute settlement procedures of the WTO are slow.

Therefore, even if some forms of contingent protection are eventually deemed to breach WTO rules, they can still be an effective means of protecting a domestic market. Since more and more governments are resorting to anti-dumping and other means of contingent protection, it is hard to envisage agreement on a satisfactory set of WTO disciplines which can prevent them from being abused by protectionists.

Prospects for progress

In view of these problems, it is important to keep using all available means to reduce the number of products that are already sensitive, but it will take a long time to make much progress, in any forum.

The Asia Pacific Economic Cooperation (APEC) process has been able to sustain, and even accelerate, the trend towards unilateral ‘opening to the outside world’ in much of the Asia Pacific region. However, peer pressure for unilateral liberalisation is not likely to be enough to eliminate barriers to trade in some sensitive products. In these cases, where concerted unilateral liberalisation is not perceived to be a positive-sum game, international negotiations are needed.

WTO negotiations are designed to help governments to outflank vested interests of protected producers, by offering perceptible gains to others from the simultaneous liberalisation of markets for exporters. The launching of the Doha Development Agenda indicated that most governments remain willing to use such negotiations to reduce obstacles to trade. But even if this round of WTO negotiations is eventually concluded, only limited reductions of border barriers can be expected.

Turning to PTAs, most governments are willing to bind border protection of most products at zero for a wide range of partners. On the other hand, they have not been effective in terms of negotiating significant liberalisation of sensitive products. That is to be expected, since negotiations among a pair, or small group, of economies offers less incentive than the WTO to counter the political pressure of protectionists.⁴

Governments may be willing to use the negotiation of PTAs to liberalise sensitive products to some extent (sometimes more rapidly than in the WTO) but only with respect to trading partners who do not threaten serious competition. This tends to limit the choice of PTA partners or to lead to the exemption of sensitive products.

One reason for the popularity of PTAs is that they allow participants to announce and negotiate new deals without offending vested interests. But they create new vested interests against the inclusion of new partners. Least developed economies, with comparative advantage in agriculture and labour-intensive products, are most likely to be left out.

Avoiding new infection

Given the difficulty of dealing with already sensitive products, it would be desirable avoid the appearance of new ones.

Part of the solution is to use the WTO's option of 'binding' protection below an agreed ceiling. All governments can be encouraged to bind the rates of already lightly protected products at their currently applied, zero or negligible, rates. Considerable progress has been made in these terms in past WTO negotiations and more bindings at relatively lower rates can be expected in the current and future Rounds.

The many PTAs which are being negotiated are also helpful, at least in this respect. More and more pairs, or groups, of economies are binding border barriers to zero for selected trading partners, for substantially all trade among them. In theory, thousands of such PTAs would bind border barriers to trade in most products among more and more economies at zero. But this is a cumbersome process that is generating a systemic threat to a non-discriminatory international trading system.

Moreover, as already discussed, eliminating border barriers is no longer sufficient for free trade. If resorting to contingent protection continues to spread, then even low and bound rates of border barriers to trade will not provide the confidence needed for economies to specialise in line with their comparative advantage. The number of products where trade is subject to serious distortion could increase, despite a steady reduction in the number of products subject to transparent border barriers. A growing share of trade could still become subject to disruption by less transparent means.

Therefore, it is not sufficient to work towards reducing the high transparent border barriers which remain, then to bind them at low rates. It is also essential to find ways to avoid more and more sectors obtaining high rates of effective protection against international competition, using various forms of contingent protection.

Preventing the emergence of new sensitive sectors

The highest rates of protection apply to 'sunset industries', where established producers are losing comparative advantage. However, as time goes by, new sensitivities could emerge as the comparative advantage of economies continues to change. Even products which are currently seen as relatively new and 'high-tech' could become more like well-known, and widely produced, commodities and face competition from new sources. That will lead to pressure to protect them.

This is a real threat, not a theoretical one, as illustrated by a 2004 article on creeping protectionism which begins as follows:

When does a computer monitor stop being a computer monitor?

As soon as it can be used to watch movies or television shows, according to Dutch

customs officials who in March began adding a 14 percent duty on imported computer screens.⁵

There have been threats of protection of quite recently invented products, like compact disks. But, thanks to the interests of users and consumers, there is hope that some governments would be willing to prevent such backward moves.⁶

At their 2006 meeting in Hanoi, APEC Ministers noted the need to review the coverage of the ITA in order to take account technological developments since its inception, including the convergence of new IT-related technologies. Ministers noted that the effectiveness of the ITA could be eroded by an overly narrow interpretation of its product coverage.⁷

One option would be to clarify the interpretation of the ITA and possibly adding to the set of products to be covered.

This paper proposes a more systematic way to avoid the emergence of new sensitive sectors and associated new pressures for rent-seeking. That requires a means of ‘immunising’ some products against protection by means of trade distortions. To be effective, the set of products that is immunised against protectionists, should expand automatically over time.

It is not easy to quantify the potential benefits of implementing such a proposal. The benefits would depend on the effectiveness of any immunisation, on the number of governments willing to be involved, and on the set of products they may be willing to immunise. Under some circumstances, the long-term gains could be very large.

For example, let us imagine that the founding, then subsequent, members of the General Agreement on Tariffs and Trade (GATT) had agreed that products which had not yet been invented when the GATT came into effect would never be subjected to any form of protection against international competition. If such an agreement had been reached in the 1940s, then a significant and ever-growing proportion of global trade would already be immunised against protectionists and it would be easier to defend a rules-based international trading system.

That opportunity was missed. But better late than never. Those governments who do understand the long-term benefits of an open rules-based global economic order should be able to agree on a way to immunise trade in some products against some forms of rent-seeking. This paper sets out a proposal which builds on the successful precedent set for information technology (IT) products and should prove acceptable to some governments.

Immunising products against rent-seekers

At the outset, we need to define the problems against which a set of products are to be immunised against policy border barriers to trade.

A thorough immunisation would seek to prevent any form of protection against international competition. That is unlikely to be acceptable, since most governments will want to retain the right to restrict imports of products considered to be harmful to their citizens, for health, moral or security reasons. Most governments will also want to prevent damage to the environment and to prevent undue domination of markets.

However, it should be possible to agree that, at least for some products, such objectives would be addressed by policies which did not discriminate against internationally sourced products.⁸ That would rule out contingent protection aimed solely at imports.

An acceptable compromise might be to define a product to be immunised against trade policy distortions if:

- tariffs are bound at zero;
- there is national treatment of products when applying measures to protect consumers or to protect intellectual property—any such measures should apply equally to all suppliers, domestic or international;
- no subsidies other than those explicitly permitted under WTO disciplines; and
- no other form of protection designed to protect products from international competition.

This definition of immunisation is used in this proposal.⁹

The next challenge is to define the set of products to be immunised in these terms against rent-seeking by means of trade restrictions.

The economic benefits of immunisation would increase with the number of products included, but the resistance to a proposal for immunisation would also increase and fewer governments would be willing to consider it. To achieve significant and growing benefits, the proposal will need to define an acceptable ‘compromise’ set of products:

1. whose immunisation would not impose either large political costs;
2. but which would represent a steadily growing share of all products. The second of these conditions is only likely to be met if:
3. there is some incentive for including products in the set to be immunised.

There are two basic options for defining any set of products; namely to create a ‘negative list’ or a ‘positive list’.

A positive list

This approach would seek to build on the successful immunisation of IT products against protectionists.

The agreement on free trade in IT products proved possible since most of them were relatively new at the time and received negligible protection. It remains to be seen whether the terms of the WTO agreement will be adequate to prevent imaginative ways of protecting some IT products against international competition in future, whenever comparative advantage moves away from current producers. It also remains to be seen whether a similar agreement can be reached for other products.

Following the positive experience with IT products, APEC leaders sought to liberalise a further set of 15 sectors under their 1997 early voluntary sectoral liberalisation (EVSL) initiative. That attempt failed for several reasons; two of them are certainly relevant to the prospects for future immunisation:

- the sectors selected included some which were known to be sensitive to some APEC economies; and
- simultaneous progress was required on at least nine of these sectors by all economies.

The failure of EVSL suggests caution about the range of products that governments could be expected to immunise. It does not appear promising to try to include any well-established products on a positive list.

It may be possible to immunise some additional new sectors where there is a broad consensus that trade should not be impeded. For example, consideration is being given to guarantee free trade in products which can reduce damage to the environment. It may also be possible to reach agreement to immunise relatively new categories of products, such as nano-technology or bio-technology.

More generally, a positive list of selected products that are not yet sensitive could be considered. However, by the time something has become a well-defined product, there will be some vested interests against its immunisation. The WTO agreement on IT may have been achieved just in time and may prove a hard act to follow.

Rather than seek to add some new products to a positive list in an opportunistic way, it would be preferable to design criteria and incentives which could assure that the range of immunised products would expand in a systematic manner. It may be possible to agree that 'new' products become automatically immunised, together with an incentive for producers or marketers to want to have their products be defined as 'new'.

A negative list

Under this approach, governments which accepted the proposal would agree that all products would be immunised unless they were included in a negative list of exemptions. Unless new items were continually added to the negative list, the share of immunised products would widen automatically.

The negative list could be based on sectors. That could work well if governments could agree to immunise all products except those (like agriculture and some others) which remain subject to high levels of protection. In practice, almost all sectors include some old as well as some very new products. Producers of relatively old products are likely to be worried about competition from other economies and would seek to have their sectors included on the negative list.¹⁰ There is a risk that the negative list of sectors would be a very long one.

It would be preferable to reach consensus on a negative list based on distinguishing new products from already existing ones. All new products would be immunised against protection in the terms described above. All existing products could retain existing protection as well as the right to seek new protection against international competition.

Such a distinction would avoid the need to confront producer lobbies concerned about current or prospective competition. Nor would there be any threat to existing jobs. The WTO could seek to limit and, where possible, reduce the protection of existing products. But there would be no risk of the emergence of new sensitive products.

The next challenge is to define that are new products. As discussed below, it is possible to avoid the risk that makers of new products will seek to retain the right to seek protection some time in the future.

Defining new products

Developing new ideas is usually costly. Creators of new products generally want them to be defined to be new, since they fear imitation which could allow their prices to be undercut by those who did not have to pay for the development costs.

These fears have led to the adoption of a wide range of measures such as patents, copyright and other means of protecting intellectual property rights (IPRs). These measures are embodied in various forms of domestic legislation and regulations, or in international agreements such as the (Trade-Related Intellectual Property (TRIPs) provisions agreed in the WTO.

Economic theory lends some legitimacy to the protection of ideas. At the same time,

like any other opportunity for capturing rents, such protection of intellectual property can be abused. There will be a constant struggle to find a balance between protecting the rights of those who have genuinely new ideas, while limiting rent-seeking by those marketing the ideas of others. How that struggle is (or should be) played out is beyond the scope of this paper. However, it is safe to assume there will be a suite of policies in most economies which protect intellectual property, enforced through a combination of domestic law and international agreements.

In this policy environment, it may be possible to define ‘new’ products to be those whose producers want to have access to domestic or international measures to protect intellectual property rights. The next challenge is whether products which are defined to be ‘new’ can be immunised against subsequently resorting to other means to protect them against international competition.

To meet that challenge, governments could decide that, in future, products could only have access to measures to protect intellectual property rights if they were immunised against protection from international competition in the terms defined above. Governments would also need to agree that measures to protect intellectual property would not discriminate between domestic and international suppliers.

Setting up such an ‘either-or’ choice would create a set of new products which would be ‘off-limits’ to any form of trade policy protection which would seek to discriminate against international competition. Moreover, the share of products thus immunised would grow quite rapidly. Could producers be made to choose?

Producers or marketers are most likely to fear competition in the early years of sales, when they are seeking to recoup their research and development costs. For new products, such new competition is most likely to be from potential imitators, who are just as likely to be domestic, rather than international, imitators. At the outset, the comparative advantage of the innovators is due to the intellectual property embodied in their new products, rather than differences in factor costs in different markets.

In the longer term, it is possible that such initial advantage will be eroded, for example if close substitutes are invented, using genuinely different ideas or technology. In that case, comparative advantage will come to depend increasingly on the relative prices of other factors or products in different markets. Relative prices are often more likely to differ among economies, rather than within economies. Therefore, as products mature, there will be growing pressure for protection which discriminates against international suppliers, risking the emergence of more sensitive products.

Producers would, of course, prefer to have both kinds of protection, but governments

should be able to insist on a choice. Short-term concerns can be expected to dominate the commercial interests of those producing or marketing new products. If producers or marketers of ‘new’ products were given an ‘either-or’ choice between potential border protection in future, or immediate protection of intellectual property, then would be most likely to opt to protect their intellectual property rights (IPRs).¹¹

The political costs of imposing this choice would be small, since only those seeking IPRs for new products would be required to make the choice. Moreover, there would be limited sympathy for lobbying for protection against the fear of possible future losses due to international competition, in addition to the immediate protection of IPRs.

As noted above, many governments are looking for ways to overcome vested interests of particular producers. They are hoping for progress in WTO negotiations and are often willing to have free trade with many partners in products which are not already sensitive. At least some governments should be able to require new producers to choose between protection from potential imitators or protection through policy-induced distortions of international trade.¹²

Implementing the proposal

To prevent the future emergence of new sensitive sectors, as many governments as possible should be encouraged to immunise all new products. These governments would commit themselves to a policy that products which have claimed intellectual property rights will not receive any other form of protection against international competition. Markets for new products would thus be immunised against trade-distorting measures in the terms described above. The governments involved would need to make their commitments binding by means of domestic legislation and, where possible and appropriate, by means of international agreements.

As for other decisions to avoid, or reduce protection, the economic benefits would accrue largely to the economy whose government made such a commitment. Accordingly, there is some incentive to make unilateral commitments to immunise new products. The incentive to do so would be greater if others made similar commitments. That means that there is scope for concerted unilateral decisions by, or negotiated agreements among, groups of economies to introduce an immunisation initiative.

A WTO-wide initiative could also be considered, whereby all all WTO members would be required to commit themselves to immunise new products. This would need a consensus among a very large number of economies who are finding it difficult to deal with an already crowded and divisive agenda. Given the demonstrated resistance to the

addition of new items, such as the ‘Singapore agenda’ canvassed at the beginning of the Doha Round, such a consensus cannot be expected in the near future.

Setting positive examples

A more feasible option would be for a group of economies to pioneer such an initiative. Their governments would commit themselves to immunise all products which were granted some protection of IPRs.

To be most effective globally, such a pioneering group should be designed as an ‘open club’. In other words, the group should be required to accept additional members who were also willing to immunise all new products. Potential new members would be required to agree not to impose trade policy restrictions on any products which receive protection of IPRs under the legislation of any club member and/or under other international, including WTO, disciplines.

Participants in an immunisation initiative could create an incentive for others to join, if their commitments applied only to other members of the club. Members could undertake not to initiate any protection of new products other than by means of IPRs, which did not discriminate among members of the open club.

At the same time, the members could retain the right to retaliate against those who sought to protect new products by means of trade restrictions, in addition to IPRs. If a group of economies which accounted for a sizeable proportion of global trade took an immunisation initiative along these lines, then there would be little reason for others to invite potential retaliation from club members.¹³

Rather than risk such retaliation, potential producers of new products would have an incentive to join the club of immunisers. That would assure them unimpeded access to the markets of all club members, provided they observed IPRs.

Preferential trading arrangements as pathfinders?

An immunisation commitment could be embodied in closer economic partnerships among any group of economies, including partnerships which involve PTAs. The commitment would be consistent with the stated motive of these partnerships: namely, to reduce the costs and risks of international economic transactions among the economies involved more rapidly than what can be achieved in the WTO.

Most of these economic partnerships involve the elimination of all border barriers to a substantial proportion of trade in goods and services, as required under WTO disci-

plines. The exemption of any sensitive sectors or products is normally set out by means of positive or negative lists.

If the partners in a trading arrangement draw up a negative list of exemptions, then new products can be immunised by an additional agreement that no new products will be added to the negative list if they receive any protection of IPRs.

If the trading arrangements set out a positive list of products which are to be free of border barriers to trade, then the members could agree that any products benefiting from intellectual property rights would be added automatically to the positive list.

In both cases, the partners would agree to immunise such new products against potential contingent protection and other trade-related obstacles in the terms described in this proposal.

Recent PTAs are often based on a negative list of exemptions from free trade. As long as participants also agree never to add to these negative lists, then such PTAs will contribute to the broad objective of immunising new products against protectionism.¹⁴

In 2004, APEC governments endorsed a set of 'APEC Best Practices for RTAs/FTAs'. These encourage trading arrangements which are more likely than others to contribute to region-wide free and open trade and investment. Such agreements would be relatively more comprehensive, with tight timetables and simple rules of origin.

These guidelines for best practice could be extended to include an additional guideline that all PTAs involving APEC economies should have a negative list of exemptions from free trade and no new products should ever be added to the negative list.

That would be a step in the right direction, especially if such a guideline could be adopted as a binding principle by all APEC governments. However, such an improvement in the quality of PTAs would not guarantee efficient progress towards achieving this objective globally.

If bilateral and sub-regional PTAs could be expected to be merged in the foreseeable future, then they could lead smoothly towards a world standard of immunising new products against protectionists. But, if they cannot be linked easily, then thousands of agreements would be needed to achieve the same result.

The recent pattern of PTAs does not suggest that they can be linked easily to form larger ones. Since each of them is usually designed to avoid the sensitive issues of the parties to the agreement, it is difficult to admit any new partners who would threaten these interests. This is leading to a pattern of many overlapping, discriminatory arrangements with different, tailor-made, exemptions and product-specific rules of origin.

To sum up, PTAs which implicitly immunise new products against future protectionism will take us in the right direction. This should not rule out a more concerted effort to establish this principle more widely—ideally globally.

An opportunity for APEC

APEC governments, who renewed their commitment to free and open trade and investment in the Busan Roadmap¹⁵, could take the lead in immunising new products against protectionists.

APEC is finding it difficult to promote the full liberalisation of all sensitive products. On the other hand, the track record suggests that all APEC economies are making good progress in terms of reducing border barriers in all but a few sensitive sectors. They may, therefore, be willing to consider the policy option set out in this paper to prevent the emergence of additional sensitive products.

This proposal would not cause any short-term disruption to any economy, but would give them the opportunity to signal that they want to avoid new barriers to trade and investment.

Implementing such an initiative would give a practical expression of the 1995 Osaka Action Agenda of ‘standstill’ on barriers to trade. An agreement to prevent the emergence of sensitive products in the future would also guarantee that the goal of free and open trade and investment would be achieved for a growing share of all goods and services.

Ideally, all APEC economies could agree that new products which seek to protect their intellectual property rights (IPRs) should not be given any future protection from international competition.

Some APEC governments may not be ready to make such a commitment. However, a group of APEC economies could set an example, acting in line with the pathfinder principle endorsed by APEC leaders in 2001.¹⁶

As expected under the pathfinder principle, the original group of ‘immunisers’ should be an open club. The group should be open to subsequent accession to new members who also accepted a commitment to immunise new products against trade restrictions.

An APEC initiative on immunising new products could lead to a region-wide protocol on immunising new products. This, in turn, could provide the basis of a multi-lateral accord, or protocol, within the WTO system which could prevent the emergence of additional sensitive products.

Notes

- 1 I would like to acknowledge the contribution of Professor Peter Drysdale, who has pointed out that concerted unilateral liberalisation of lightly protected products by APEC economies is worthwhile, since they would be less likely to become the sensitive products of the future. I would also like to thank Professor Richard Feinberg who encouraged me to finalise this draft.
- 2 Several names are being used to describe new, closer economic partnerships among pairs, or small groups, of economies. These partnerships usually consist of a preferential arrangement (PTA) to liberalise border barriers to trade, complemented by a number of arrangements to address new issues in order to facilitate trade and investment among the participants. The PTAs are often called free trade areas (FTAs) or regional trading arrangements (RTAs). This paper uses the term PTA, in order to emphasise that these arrangements are discriminatory agreements which do not necessarily lead to genuine free trade, since sensitive products usually continue to be protected.
- 3 Chunlai Chen, Jun Yang and Christopher Findlay, 'Measuring the Effect of Food Safety Standards on China's Agricultural Exports', Review of World Economics, Volume 144, Number 1, April, 2008, discuss the cost of the costs of such measures.
- 4 This point is made in Findlay, C., Mohd. H. Piei, M. Pangestu (2003) 'Trading with Favourites: free trade arrangements in the Asia Pacific', Pacific Economic Papers, No. 335, January, Australia-Japan Research Centre, Canberra.
- 5 'EU may redefine the computer screen', Jennifer L. Schenker, International Herald Tribune, May 20, 2004
- 6 This potential problem is discussed in 'EU ends tariff threat on blank CDs', Bloomberg News, available at <http://www.ihl.com/articles/2006/10/23/business/tariff.php>
- 7 See the Joint Statement of the 18th APEC Ministerial Meeting, Ha Noi.(pages 10 and 11).
- 8 The general principle that economic policies should not discriminate between sources of supply (domestic or international) is a central element of the APEC Competition Principles adopted by APEC leaders in 1999.
- 9 Such a definition would need to be translated into the language of international trade negotiators. In principle, it should be possible to refine the definition of immunisation in response to imaginative new forms of protection against international competition. The definition should be expressed in clear and broad terms to guard against exemptions and loopholes.
- 10 This point was emphasised by Fred Bergsten at a 2001 Symposium on the future of APEC, in Mexico City.
- 11 In rare cases, producers or marketers of 'new' products may choose to forego IPRs, since they are more concerned about lower cost interaction competition. That would suggest that the new product did not contain significant intellectual property. If there was significant intellectual property, then the product could be threatened by imitators. Such an experience would make it even more likely that inventors would opt to protect their IPR rather than seek the option of protection through trade policy barriers.
- 12 The extent of immunisation would be greater if all existing products which are protected by IPRs were immunised, rather than those yet to be invented. However, it would be harder to reach any agreement which has a retrospective element. It would be pragmatic to start with new products, where there is no case for protection by means other than IPRs.
- 13 The threat of retaliation could be expected to be an effective deterrent, since economies which sought to protect any new product by means other than IPRs could not be confident of marketing that product in any economy which belonged to the club of immunisers.
- 14 This point was made by Richard Feinberg, at the APEC Studies Centers Consortium meeting in Korea, in May 2005
- 15 This option was included in 'The mid-term review of the Bogor goals: strategic issues and options', by the author, published in The future of APEC and Regionalism in Asia Pacific, Centre for Strategic and International Studies, Jakarta, Indonesia, April 2005 and in the author's input to APEC Senior Officials Policy Dialogue on regional economic integration in April 2007.
- 16 In the 2001, Shanghai Accord, APEC leaders decided to encourage pathfinder initiatives to facilitate trade and investment. Any group of APEC economies which was ready to implement a co-operative arrangement for facilitation is encouraged to proceed as long as others are allowed, and encouraged, to join these arrangements as soon as they perceive the benefits of doing so.

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