
● Scope of Patent

This Paper finds that the scope of patent protection is also an important trade policy issue and is likely to take on increasing importance in future trade negotiations. The scope of a patent means patent coverage, i.e., width or breadth. Because patent coverage is open to interpretation, it has the potential of being abused by some countries either to attract R&D investment or to encourage imitation. It is one of the major recommendation of this Paper that trade policy analysis and negotiations should take into consideration the scope of patents.

● Preliminary Conclusions

This Paper finds that economic theory and empirical studies suggest that a patent term shorter than the present multilateral norm of 20 years will be efficient in most instances. Exceptions include industries, such as chemicals (including the pharmaceutical industry), where a case for a longer patent term is possible. Nonetheless, as long as our trading partners honour the 20 year standard, it is not in Canada's interest to deviate from the international norm. Deviations from that norm run the risk of being exploited by other countries to attract investment and innovative activity and would complicate the multilateral trade environment unless a consensus could be carefully constructed in advance on the merits of variable patent terms depending on the industry concerned, including both the issues of patent length and scope. To arrive at precise numbers for industry-specific patent terms, further cost-benefit work across industries and countries is required.

Finally, innovation activity in Canada does not only nor even primarily respond to intellectual property (IP) rights. Our policies concerning economic growth and investment (especially foreign direct investment), competition, taxation and the development of entrepreneurship are more important. These policies have more effect on a country's rate of innovation than its policies concerning industrial IP rights.

The rest of this Paper is set out as follows. Section II begins an explanation of the basic logic of patent protection. In sub-section II.1, we discuss the Nordhaus model⁹, which provides the most illuminating optic for exploring optimal patent term determination. It is followed, in sub-section II.2, by a review of the literature related to the optimal patent term in a non-trading economy framework. In sub-section II.3, the framework is extended to a trading economy and optimal patent term conclusions are discussed. In order to check

⁹ William D. Nordhaus, *Invention, Growth and Welfare*, Cambridge, Mass.: The MIT Press, 1969, chapter 5. F.M. Scherer, "Nordhaus' Theory of Optimal Patent Life: A Geometric Reinterpretation", *American Economic Review*, 62, June 1972: 422-427. W.D. Nordhaus, "The Optimum Life of a Patent: Reply", *American Economic Review*, 62, June 1972: 428-431.