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Does the TRIPS Agreement Hold Back African Innovation?

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Abstract: This paper discusses whether the World Trade Organisation's (WTO) Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement hinders African countries' ability to innovate. For the majority of African countries, the road to independence is still new and their first steps have often been constrained by the legacy of colonialism and the constant pressure to join the ranks by participating in the globalisation process. While many scholars have asserted the role of numerous trade agreements in the status quo imposed on African countries. TRIPS does not stand out as an exception, throughout this paper it is demonstrated that such a level of compliance for intellectual property (IP) rights, not only create power asymmetries but an overdependence on foreign technology. The study explores possible ways of explaining the current phenomena. Based on the theory of national innovation systems and using the case study of China and India, low patent rights have been a crucial step for them to promote local innovation capacity. However, they have not been sufficient on their own. This study reiterates the importance to shore up a robust national innovation system as a way for African countries to circumvent obstacles resulting from their participation in the TRIPS agreement.

Keywords: National Innovation system, African innovation, TRIPS Agreement, World Trade Organisation

Introduction

At the time of the Scramble for Africa in the 19th century, almost the entire African continent was colonised and divided among European powers (Pakenham, 1991). Since then, African countries have not fully recovered from colonialism and therefore have been unable to create flourishing economies. As of 2024, 33 out of 45 all least developed countries (LDCs) are African, which is approximately 73.3% according to the United Nations Conference on Trade and Development (UNCTAD 2024). This figure highlights the extent to which African countries have been excluded in the distribution of globalisation's supposed benefits.

African countries, for the most part, had already joined international free trade organisations such as the World Trade Organisation (WTO). However, their integration in itself has not been sufficient in achieving growth. In another way, a fair point could be raised noting these same organisations might have obstructed their access to growth by restrictive laws and regulations.

Ratified on April 15, 1994, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) was negotiated with the aim of establishing „minimum standards" among WTO members regarding intellectual property (IP) rights. By defining the rules of operation, it established a framework within which WTO members must respect and ensure the protection of IP rights within their territory. As specified in the agreement, the TRIPS Agreement has an exhaustive list of IP rights it covers (WTO 2024):

- Copyright and related rights
- Trademarks, including service marks
- Geographical indications
- Industrial designs
- Patents
- Layout-designs (topographies) of integrated circuits
- Undisclosed information, including trade secrets

In light of these IP rights, we will discuss here the potential observations that can be made about the link between innovation development and TRIPS compliance in African economies. This leads us to the following question: *Does the TRIPS Agreement ratified by WTO members deprive its African members from leaping forward in terms of innovation?*

Application

Here, innovation needs to be understood in the language of Science and Innovation Policy. Firstly, by acknowledging the fact that innovation is embedded in a more complex network of interrelated institutions than just IP rights. Even if they are playing a key role, it is only possible because they are supported by other institutions charged with ensuring their compliance. In this regard, the National Innovation System theory provides a useful framework for gaining deeper analysis of our case. The National Innovation System is a combination of several components (softwares, hardwares, ocwares and socwares) comprised in a national framework. It is a frame of reference to apprehend how innovation is influenced by policies and, in our case, how intellectual property rights fit into this model. Even though the National Innovation System has been pointed out as incompatible with the scientific development stage of developing countries, its "mechanistic" approach justifies that it can be studied in any country (Lundvall 2007).

Patents: individual-level based or policy-making crafted

IP rights are key to a prosperous innovation ecosystem. They were created primarily for this purpose: to encourage and reward innovation. In such a sense that IP rights are an incentive to innovation actors to compete and get fruit from this race to create. An intellectual property right entitles its creator to benefit from an exceptional authorisation to be the sole actor to commercialise his invention for a limited time. In contrast to economic market principles, where information should be shared among all competitors and monopolistic situations should be prevented, intellectual property rights as an exception contradict this principle. On paper, this set of protections seems logical and fair in relation to the efforts made by its owner. However, these rules distort the cards for a certain number of newcomers.

By conferring patents to individual inventors and/or private companies. It does not give an accurate picture of the national factors needed to meet such a result (high level of education, presence of scientific hubs, VC investments…). With a reading the National Innovation System model, it shows how inequitable it can be to limit access to certain innovations under the pretext of ownership, when initial conditions to invention stemmed from a larger frame than just an individual or a corporation's ideas.

TRIPS and power asymmetries

By examining the origins and intentions that shaped its signature, the TRIPS Agreement appears to have been a response by developed countries to the implications of the WTO's expansion into new nations and the potential risks to their companies when these latter reach these nations' markets (Deere 2008). The TRIPS agreement constituted a significant and unprecedented step forward in terms of fostering innovation. Yet, it is within this same process that a widening gap emerged between developing countries and developed countries' members. Since its establishment, the WTO has already admitted a considerable number of nations. The WTO currently represents 166 members and accounts for 98% of international trade (WTO n.d.). In other words, for a significant number of African countries even if dubiety had all rights to exists. At the moment to join, they felt constrained to ratify this treaty. Through an informal form of blackmail, developed countries used aid as a leverage to sway the balance in their favour (Lall et al. 2022).

For African countries newly members of the WTO, there was no existing room for negotiation under the terms of the TRIPS agreement. All new members are required to comply with all previous treaties and to ratify them without the possibility of adapting them to their own contexts (Grinsted et al. 2021). As a result of their signature, WTO African countries are obliged to strengthen their regulatory authorities in order to protect the intellectual property rights of WTO members, while the level of their patent filings remains relatively low.

This situation has been conducive to the creation of „power asymmetries in global trade". By skewing the natural force of the market, entry barriers are heightened and create a situation where all hopes of technology independency are dashed. For instance, China itself through Huawei accounts for 50% of Africa's 3G and 70% of its 4G networks. In such circumstances, the majority of African countries find themselves in a position of being a „peripheral node" (Rojo 2024). They are reliant on foreign technology, which frequently comes at a higher price. This overreliance on external sources limits opportunities for knowledge transfer and constrains the scope for local actors to learn through reverse engineering.

Weak IP Rights as drivers for early-stage innovation: Lessons from China and India.

Weak IP rights can serve to reinforce innovation during the initial stages of development. While certain industries require a significant investment in technical and labour capital,

chemical and pharmaceuticals are transferable and can be established at the local level. The protection afforded by their patents creates obstacles that impede local actors from employing reverse engineering as a means of developing their technological capabilities. China provides an illustrative case study. Despite the controversy surrounding it and the current challenges the country is now facing due to its weak IP protection, it has still been an important driver of Chinese companies' global competitiveness, enabling them to reach the same level as international companies from developed countries. In the same momentum, China initially imposed foreign companies to form joint ventures in order to gain access to its market (Huang et al. 2024). Similarly, multinational pharmaceutical companies had established research and development operations in India with the objective of outsourcing a part of their large-scale production. A relatively weak level of IP rights has enabled India to develop a generic pharmaceutical industry and become a significant exporter of pharmaceutical goods over time. These examples illustrate how a lack of IP rights can be a driver for innovation during the initial stages of development. Nevertheless, it is not always the case that weak IP rights result in an increase in the capacity of a National Innovation System. This is because, in order to observe such an outcome, a National Innovation System framework must already be established, or at the very least, local agents must be able to connect the incoming flow of technology and render it accessible and utilizable for local actors (Lall 2003). In the absence of this intermediary, even with weak IP rights, patents could not be imitated and used to foster local innovation.

Discussion

In the context of the TRIPS Agreement, it is evident that there are two distinct perspectives on the issue of its revision. Nevertheless, even if there is consensus on the necessity of establishing international minimum standards for IP rights. A debate ensues regarding the proposed changes and their applicability in different contexts. The initial implementation of the agreement was believed to have the potential to significantly stimulate global research and development activities on a global scale. The result was merely the establishment of a monopoly for developed countries and their corporations. If the TRIPS agreement had indeed stimulated research and development since its inception, it is likely that the majority of companies leading the way in innovation would have neglected the African market. Rather than focusing their efforts on meeting the actual needs of the African market, they would have concentrated their activities in

markets where the potential for profit was greater. In order to comprehend the reasons behind the inability of African countries to overcome the obstacles preventing them from establishing a path to innovation, it is essential to consider the role of the National Innovation System.

Despite ongoing efforts, a lack of robust institutions impedes the potential for absorption and dissemination capacity. It is noteworthy that weak IP rights may act as an accelerator in the initial stages of a country's development. It is also possible for the opposite effect to occur. Once a certain technological capacity threshold has been reached, countries may encounter constraints due to the presence of weak IP rights. Consequently, the current framework does not provide sufficient incentives for companies to invest in the creation of groundbreaking inventions. The potential for leaks and the high opportunity cost associated with innovation make it more advantageous for companies to continue copying existing solutions (Huang et al. 2024).

Conclusion

As globalisation became a movement in all countries, it provided a push to growth for many of them around the world. However, benefits of globalisation were not distributed equitably across the globe. The majority of the African continent remained at a relatively underdeveloped stage. The desire to become part of an interconnected global community has prompted many African countries to join international organisations and sign agreements that facilitate international trade. Given the legacy of colonial exploitation by Western powers, the question has been raised as to whether the TRIPS agreement would place African signatories in a disadvantageous position in terms of fostering their innovation capacity. In its original form, the agreement imposes more constraints than it offers benefits for them. African countries are required to protect foreign IP rights within their territory, despite lacking the capacity to file IP rights and export them abroad. A weak or non-existent National Innovation System makes it challenging to ensure strong IP rights or even utilise low IP rights for reverse technology and knowledge transfer to develop their innovation capacity.

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