

Puutio, Teemu Alexander

Working Paper

Intellectual property rights in regional trade agreements of Asia-Pacific economies

ARTNeT Working Paper Series, No. 124

Provided in Cooperation with:

Asia-Pacific Research and Training Network on Trade (ARTNeT), Bangkok

Suggested Citation: Puutio, Teemu Alexander (2013) : Intellectual property rights in regional trade agreements of Asia-Pacific economies, ARTNeT Working Paper Series, No. 124, Asia-Pacific Research and Training Network on Trade (ARTNeT), Bangkok

This Version is available at:

<https://hdl.handle.net/10419/103853>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.



Asia-Pacific Research and Training Network on Trade

Intellectual property rights in regional trade agreements of Asia-Pacific economies

Teemu Alexander Puntio, LL.B, LL.M

No. 124/May 2013

ARTNeT Working Paper Series

The ARTNeT Working Paper Series disseminates the findings of work in progress to encourage the exchange of ideas about trade issues. An objective of the series is to publish the findings quickly, even if the presentations are less than fully polished. ARTNeT working papers are available online at www.artnetontrade.org. All material in the working papers may be freely quoted or reprinted, but acknowledgment is requested, together with a copy of the publication containing the quotation or reprint. The use of the working papers for any commercial purpose, including resale, is prohibited.

Asia-Pacific Research and Training Network on Trade (ARTNeT) is an open regional network of research and academic institutions specializing in international trade policy and facilitation issues. IDRC, UNCTAD, UNDP, ESCAP and WTO, as core network partners, provide substantive and/or financial support to the network. The Trade and Investment Division of ESCAP, the regional branch of the United Nations for Asia and the Pacific, provides the Secretariat of the network and a direct regional link to trade policymakers and other international organizations.

Disclaimer:

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries. Where the designation “country or area” appears, it covers countries, territories, cities or areas.

Bibliographical and other references have, wherever possible, been verified. The United Nations bears no responsibility for the availability or functioning of URLs. The views expressed in this publication are those of the authors and do not necessarily reflect the views of the United Nations. The opinions, figures and estimates set forth in this publication are the responsibility of the authors, and should not necessarily be considered as reflecting the views or carrying the endorsement of the United Nations. Any errors are the responsibility of the authors. Mention of firm names and commercial products does not imply the endorsement of the United Nations.

ARTNeT Working Paper Series

No. 124/May 2013

Intellectual property rights in regional trade agreements of Asia-Pacific economies

Teemu Alexander Puutio, LL.B, LL.M¹

Please cite this paper as: Teemu Alexander Puutio, 2013, Intellectual property rights in regional trade agreements of Asia-Pacific economies. ARTNeT Working Paper No. 124, May, Bangkok, ESCAP. Available at www.artnetontrade.org.

¹ At the time of writing the author is consulting for the Trade Policy and Analysis Section of the Trade and Investment Division, Economic and Social Commission of the Asia and the Pacific. This working paper has benefitted greatly from the guidance of Dr. Mia Mikić and Mr Adam Heal, ESCAP and Associate Prof. Albert Hu, Department of Economics, National University of Singapore. Assistance in data collection was provided by Ms. Martina Ferracane and Ms. McKenzie Strobach.

Contents

Abstract.....	5
1. The arrival of intellectual property rights to a trade agenda.....	7
2. Is setting IPR norms the responsibility of international organizations such as WIPO and WTO? .	9
3. IPRs in trade agreements: What do they want to accomplish?.....	12
4. Rise of Asian and Pacific countries as active participants of IPR-inclusive trade agreements	15
5. What aspects of IPRs do IPR-inclusive trade agreements cover in the Asia and the Pacific?	18
6. Great variation revealed among the IPR-inclusive trade agreements in Asia and the Pacific	21
7. Mapping the challenges that IPR-inclusive trade agreements pose for developing countries	27
8. Why current IPRs may not work for developing countries	30
9. What comes next?	31
Annex	34
References	36

List of Figures

Figure 1. Number of all trade agreements and IPR-inclusive trade agreements per year since 1992.....	16
Figure 2. Asia-Pacific countries involved in IPR-inclusive trade agreements.....	17
Figure 3. Emergence pattern of various IPR-inclusive trade agreement aspects	21
Figure 4. Number of pages devoted to IPRs per trade agreement.....	23
Figure 5. Share of IPR provisions per agreement	24
Figure 6. Agreements per graded weight	25
Figure 7. Breakdown of the various aspects of IPRs	27

Abstract

Economic growth across the globe increasingly depends on knowledge-based industries. As a consequence Intellectual Property Rights, or IPRs, are becoming increasingly integral to trade agreements. With the stagnation of the Doha Round the prospect of new global standards, to augment those already agreed through TRIPS (the Agreement on Trade Related Aspects of Intellectual Property Rights administered by WTO) is diminishing. Therefore some countries are using bilateral and multilateral trade agreements to push for strengthened IPR standards which they hope will become the new de facto international standards.

At the turn of the millennium there were less than 10 agreements containing IPRs in the Asia-Pacific. At the end of April 2013, 51 trade agreements that include IPR provisions were in some stage of existence, according to Asia-Pacific Trade and Investment Agreements Database (APTIAD). The proliferation of IPRs within trade agreements has been notable and IPRs have become common subject matter for bilateral and multilateral treaties in the Asia-Pacific. Not all agreements give IPRs equal treatment however. In fact, as our research shows, the extent to which IPRs are included varies greatly from agreement to agreement. For example, the agreement between Japan and Switzerland is more than 10 times more significant in terms of IPRs than the agreement between New Zealand and Thailand according to our grading methodology. Using the measure of impact explained in more detail in the paper it is possible to show that developed countries, Australia and the United States as well as the European Union show a persistent pattern of being involved only in high-impact agreements in terms of IPRs. The grading also shows that developing countries do not seek the inclusion of high-impact IPR standards in trade agreements when negotiating with another developing country. This finding validates the notion that the pressure for including IPRs in trade agreements originates from developed countries.

What does the emergence of IPRs in trade agreements entail for Asia-Pacific developing countries? As the capacity to deal with IPRs is distributed unequally, the emergence of IPRs has led to a situation where a handful of developed countries are all but unilaterally ratcheting up the IPR standards one trade agreement at a time. Developing countries have largely consented in exchange for trade normalization or increased market access. There is extensive evidence that the economic effects of IPRs vary greatly, depending on the environment in which they are applied. But in the case of developing countries, it appears that

the current globally upheld level of IPRs might not be the optimal solution for supporting their growth and that IPRs protection is not a significant factor for the economic growth of developing countries (World Bank, 2002).

The number of IPRs-inclusive trade agreements appears certain to continue to grow and the scope and significance of IPR provisions will increase further in the coming years. Introducing higher IPR protection standards can have long-lasting and unexpected consequences for the developing countries of Asia-Pacific. For such countries, committing to higher IPR standards in return for trade normalization or increased market access carries risks which should not be ignored.

JEL Code: K33, O34, F63

Keywords: Intellectual property rights, IPR standards, preferential trade agreements, TRIPS, Asia-Pacific, forum shopping, economic development, patents, traditional knowledge, regionalism, WTO

1. The arrival of intellectual property rights to a trade agenda

As all modern trade negotiators know well, trade agreements are no longer only about tariffs restricting market access. Today, trade negotiators more often than not have to be concerned with sanitary/phytosanitary (SPS) standards, customs cooperation and foreign investment rules. Since the signing of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in Morocco in 1994, more issues were added to already long negotiating mandates including very controversial intellectual property rights (IPRs). Over last 17 years, IPRs have seen a rise from a near obscurity to being an almost mandatory part of modern trade agreements. This rise has been fast, and with the growing importance of knowledge-based industries that momentum is only increasing. We are seeing the provisions introduced in trade agreements becoming effective global standards for IPRs protection (Grosse Ruse-Kahn, 2011).

The mere speed of these developments is making more difficult to properly assess the reasons why IPRs have been incorporated into trade agreements in the first place as well as what effects their sudden emergence is creating. The indecisiveness over what global IPRs standards should look like make the situation even more complex – particularly so for developing countries that have recently found themselves thrown into the deep waters of IPRs.

Many IPRs represent a somewhat intractable collection of different monopoly rights and the restrictions they impose on the use of creative and innovative outputs by many people. For those people the notion that IPRs are also deeply related to trade comes only as an afterthought – if at all. Several free trade proponents condemn the inclusion of IPRs in preferential trade agreements because they are seen as non-trade-related forms of foreign influence aimed at extending such influence over virgin territories through bilateral or plurilateral trade agreements. As provisions concerning non-trade issues such as labour and environment standards are also more frequent, the frustration of proponents over the “trade matter only” approach is understandable. However, decrying the inclusion of IPRs only because they do not directly regulate or affect trade flows means their potential to do so indirectly is being overlooked. The importance of IPR legislation for trade stems from the fact that virtually every industry relies on the use of IPRs to some extent, through trademarked logos or patented processes and the like. Influencing the IPR regime of a trading partner is a means to eliminate competition – i.e., piracy and somewhat more legitimate imitation – and

open new markets for domestic players. It is understandable that trading powers such as the European Union and the United States are eager to tie trade agreement partners down to IPR rules that give their own exporters the greatest possible advantage in foreign markets. Whether it is beneficial for the global trading community or individual trading partners that the hegemonies further these ambitions in the bilateral or plurilateral fora is a different question to that of whether IPRs should be considered as trade related or not.

With these controversies over the inclusion of IPRs in mind it is easy to understand the hesitance of some countries towards openly embracing IPRs. However, reservation or reluctance will do little more than buy time for countries to adjust to the fact that IPRs are here to stay. Instead of ignoring the IPR situation in the hope of not having to deal with IPRs at all, governments everywhere should make sure they are well-equipped to handle these newcomers at the trade negotiation table.

However, in regions such as Asia and the Pacific access to such capability is not equally distributed. The unequal distribution of the capacity to deal with IPRs is a sore spot in the body of the multilateral trade system, which, after the failings of the Doha Rounds, is only sustaining its liberalization momentum through bilateral and multilateral trade agreements. In the future, many Asia-Pacific economies will see significant developments in their creative- and knowledge-based economies; in fact, it is most likely that their share in the creation of national welfare will increase. Having these same countries enter into trade agreements that bind them to IPR rules, the long-term effects of which they are unable to foresee, can have surprisingly detrimental effects on their economic development.

Creating the necessary understanding of IPRs in the trade agreement context is not easy, however. In order to determine how to react to IPRs in trade negotiations one should have a clear view of how IPRs relate to their more traditional trade agreement component counterparts. Questions such as “can binding a country to higher IPR standards be compared to giving tariff concessions” or “whether to open foreign access to service sectors” should be answered long before the parties involved meet face-to-face at the negotiation table. For developing countries in the Asia-Pacific region, answering these and other questions concerning IPRs in trade agreements can prove to be extremely difficult due simply to a lack of familiarity with the subject of IPRs.

With the needs of developing countries in mind, this paper is aimed at contributing to not only providing an overview of IPRs in Asia-Pacific trade agreements but also to clarifying the rationale behind the inclusion of IPRs in such agreements as well as their effects. Before venturing deeper into of the various aspects of IPR-inclusive trade agreements, a brief overview of why modern international IPR norm-setting is not happening under the auspices of traditional multilateral organizations is necessary.

2. Is setting IPR norms the responsibility of international organizations such as WIPO and WTO?

In the past, the most significant multinational IPR norms-setting has been carried out under the auspices of multilateral forums such as the World Intellectual Property Organization (WIPO) and WTO. Established in 1893 as an overseeing body in the service of the Paris and Berne Conventions concerning patents and copyrights, WIPO has been the traditional venue for international IPR norms setting. Under its guidance, several crucial treaties such as the Patent Cooperation Treaty have come into being; in fact, for a long time WIPO was validly considered to be the primary source of effective international IPRs norms. After 1995, this view changed drastically when the WTO (operating as GATT prior to 1995) TRIPS agreement came into force. The agreement, which was negotiated during the 1986-1993 Uruguay Rounds, has effectively established a global baseline for IPR protection to which all WTO members adhere. TRIPS covers all the major aspects of modern IPR law and it contains important provisions on the national treatment and most-favoured nation (MFN) treatment. Today, TRIPS is described as one of the three pillars of WTO alongside trade in goods and trade in services, effectively making the protection of IPRs an integral part of the WTO-driven multilateral trading system (WTO, 2012a).

Regardless of the fact that TRIPS has been part of WTO for almost two decades, the notion that patents, copyrights and other IPR-based monopoly rights are connected to international trade comes almost as an forced afterthought. To a great extent, this hesitation in acknowledging the relationship between IPRs and trade is understandable. However, even while the connections between IPRs and trade might not be as obvious as those shared between international trade and tariffs they are undeniable. As stated in a recent United States Patent and Trademark Office (USPTO) (2012) report, IPRs are used in virtually every segment of the United States economy (United States Commerce Department, 2012). In that connection, the USPTO director proclaimed that in his country every job was in some way

produced, supplied, consumed or relied on innovation creativity and commercial distinctiveness, which all fall under the realm of IPRs (USPTO, 2012). Once trade is examined as the activity of industries exchanging and distributing their goods and services, the importance of IPRs for international trade becomes evident. Today, IPR protection is involved in every step of the production of goods, spanning the protection of trade secrets – e.g., from Coca Cola’s secret recipe to the patented compounds giving Viagra its market potency and the trademarked tasty fruit signaling Cupertino’s involvement in all Apple goods. In terms of services, IPRs are no less important. To grasp the significance of IPRs for providers of services one has to only consider the value of the trademarked brand elements for American Express and Citibank, and the importance of protecting proprietary risk calculating algorithms for Geico.

What ultimately brought this new issue to the WTO negotiating table was the significance of IPRs for developed countries such as the United States and the European Union member States that have the capacity to produce and export goods and services reliant on the protection of the outputs of innovation, creativity and, most importantly, significant amounts of R&D expenditure. The practical reason for why TRIPS was born under the auspices of WTO is often attributed to the difficulty of introducing higher standards of protection in traditional forums such as WIPO due to the opposition of developing countries. This is not to say that there were no objections within WTO to the inclusion of IPRs. Within the WTO forum, however, the countries that were most vocal in their opposition to a new set of global IPRs rules were seemingly less organized and eventually unable to stop TRIPS to be included in the Uruguay round package (e.g. Kwa,2012).

Now that the most recent round of negotiations is still virtually stalemated, the developing countries have once again faced difficulties in advancing IPR-related agendas within their previous forum of choice. The rising importance of creative and knowledge-based industries has led to many developed countries feeling an acute need to push for higher global IPR standards but to little avail; while the pressure to strengthen international IPR norms grows in the developed countries, the friction working against the establishment of so-called TRIPS-Plus rules in other parts of the world is only intensifying. Developing countries such as India and Thailand have been adamantly against any attempts to discuss the strengthening of IPR protection under the auspices of the WTO TRIPS Council and elsewhere (WTO, 2012b).

This inertia within the traditional multilateral standard-setting bodies combined with the pressure from national industries, which are calling for enhanced protection of their IPR-protected goods and services, has led to a rather insidious situation where the focus of new IPR provisions has shifted to where there is less friction and multilateral control, namely to free trade agreements. The term “free trade agreement” is used in this paper to refer all trade agreements entered in APTIAD, including regional and preferential trade agreements. By shifting the focus of their actions, heavyweight players such as the United States have been able to bind less influential trading partners with IPR provisions that would have not been endorsed by WTO or WIPO. This tendency of certain countries to prefer bilateral and multilateral settings over the more traditional forums when it comes to pushing for higher IPR norms is aptly referred to as “forum shopping”.

One recent example of introducing global IPR standards outside their traditional habitat is the Anti-Counterfeiting Trade Agreement (ACTA). The agreement was negotiated between Australia, Canada, Japan, Mexico, Morocco, New Zealand, Singapore, the Republic of Korea, the United States and the European Union member States. The coverage of the agreement is large in itself, but it has even more ambitious intentions; as the United States and the European Union have stated, it is intended to become a new global standard for IPRs legislation (United States Trade Representative, 2009). However, due to widespread and heated opposition to ACTA it is not clear whether the agreement will ever enter into force.

A more regionally relevant example of forum shopping is the Trans-Pacific Partnership agreement (TPP). Many simply see this treaty in the making as an attempt by the United States to secure a sturdier foothold in Asia and the Pacific while others also regard it as something more sinister – an attempt to ratchet up global IPR standards. While high-profile plurilateral trade agreements such as TPP get the majority of the attention, the bulk of forum shopping is occurring at the bilateral level where negotiations are typically more streamlined. On the bilateral level, net IPR exporters such as Japan, the United States and the European Union have already included extensive amounts of IPR norms in their trade agreements with developing or least developed Asia-Pacific countries such as the Lao People’s Democratic Republic, Malaysia, Thailand and Viet Nam. More particularly, the efforts of the United States are typically mentioned as the primary reason for demanding increasing levels of IPR protection through free trade agreements (Grosse Ruse-Kahn, 2011).

3. IPRs in trade agreements: What do they want to accomplish?

The act of incorporating IPRs into trade agreements has meant augmenting these bilateral or multilateral treaties, which previously focused on tariffs and rules of origins with new types of provisions concerned with, for example, the extension of the exclusivity of pharmaceutical test data or establishing stricter criminal liability for digital pirates. While provisions such as these are a world apart from the traditional contents, ultimately they share the same purposes. The rationale behind incorporating IPRs into trade agreements is basically (a) a fundamental desire to ensure market access for domestic exporters whose products and services largely rely on IPRs, and (b) to increase the protection these exporters enjoy in foreign markets. What makes negotiating on IPRs different is that instead of urging the trade party to lower its standards or tariffs, pressure is exerted in order to have the other party raise its national standards for the protection of IPRs.

In the case of traditional goods, well-established exporters typically benefit from an absence of limitations in the form of restrictive quality standards, quotas and tariffs. In the case of IPRs, the situation is the opposite – IPR-reliant exporters such as Novartis and Sony Music benefit from higher standards upheld by the importing country, and at times whole business models depend on the existence of sufficiently high standards and their enforcement.

The main reason why IPR standards in an importing country are beneficial to IPR-reliant exporting entities is simple – without an established national legal framework protecting IPRs, the market can become virtually closed to the most sensitive foreign exporters, including high-technology and pharmaceutical industries and exporters whose products can be easily imitated. If the importing country does not grant, for example, digital music any legal protection, foreign exporting companies' business models that rely on vending such goods are naturally unsupportable. Thus, FTA provisions obligating the establishment of a legal framework where there has been little or no pre-existing IPR legislation is beneficial for exporters because the provisions create markets for them that previously did not exist. The bilateral trade agreement between the United States and Viet Nam is a good example of how an article on IPRs can lay the basic foundations for the economic activity of a foreign IPR-reliant industry within the trading partners' borders.

Even when such foundations are already in place in a trading partner territory, pushing for a stricter setting of IPR norms is often worthwhile from an effective exporter's viewpoint. This is because higher IPR standards, which often mean longer periods of protection and a larger number of protected items, directly translate into bigger and more enduring markets for exporters. Consider the gains of copyright term extensions for companies such as Disney, for example, which still enjoys of the returns of creative works created almost a century ago. In addition to extending the term of protection, higher IPR standards also often entail a larger scope of protection, which is beneficial because it allows for more opportunities to extract rents for the exporter. Traditional knowledge and folklore are good examples of relatively new areas of protection, which allows various entities to tap into previously non-existent sources of revenue.

Raising enforcement standards further also makes already opened markets more welcoming for exporters who are sensitive about guarding their IPRs assets. For many exporters, the fear of having their IPR assets either stolen or duplicated within markets where IPRs are not sufficiently protected is a de facto barrier to market access. The most effective way to alleviate this fear as well as expand markets for exporters is to provide high-level IPR protection and access to enforcement in the importing country. Thus, agreeing on higher levels of IPR protection in trade agreements is a way of expanding markets where IPR-reliant exporters can comfortably enter.

Finally, higher IPR standards often manifest as stricter enforcement rules, which caters to the whole array of exporters whose goods and services are subject to infringement activities. It is quite obvious that having a legal framework enabling the extraction of rents does exporters little good if the norms can be bypassed without consequences. In the case of creative goods such as music and films in particular, the capacity of exporters to capitalize on their monopoly rights largely depends on the level IPR enforcement in the importing country. In a sense, pushing for higher IPR standards in foreign markets through FTAs protects domestic companies from "unfair" competition. Such protection can also be extended to the home market of the exporter by limiting access of domestic consumers to counterfeit goods bought as substitutes for the genuine products.

These effects are not limited solely to the trade agreement party, however, because IPR legislation is not preferential. In fact, any changes in national IPR legislation through trade

agreement provisions are applicable to all nationalities without preferences due to national and MFN treatment obligations enshrined in key IPR treaties such as the Paris Convention and TRIPS. Such treaties do not contain exceptions to these obligations similarly to GATT Article 24; for example, any benefits the United States expects to enjoy in Viet Nam due to increased IPR protection through their trade agreement will also affect Germany.

All these benefits from increasing the level of standards explain the propensity of net IPR-reliant exporting countries for bringing IPR provisions to the negotiation table. The total effects of increased impound licensing fees and royalties as well as the ability to extract higher rents make seeking higher IPR standards in importing countries desirable. The ability of higher IPR standards to create higher income in the exporting countries is a prime driving force in the proliferation of IPR-inclusive trade agreements that are seen today. Amid this recently changed environment where net IPR-reliant exporters have pushed for higher IPR standards across the board it is easy to forget that elevating these standards can often work positively for the importing party as well.

The above discussion is somewhat singular in the sense that it represents the rationale for incorporating IPRs into trade agreements from a net exporting country's perspective alone. For IPR-reliant importing countries the inclusion of IPRs in trade agreements often occurs for other reasons. Chief among these reasons is the need to concede to the requests from a more powerful trading partner in order to gain access to major markets (Grosse Ruse-Kahn 2011). Relinquishing sovereignty in the area of IPR legislation can buy a small country a big stake in terms of market access – as was the case with the Lao People's Democratic Republic and the United States. In some cases, the inclusion of IPRs can be a willing transplantation of contemporary minimum norms and best practices that are aimed at paving the way for accession to WTO, for example.

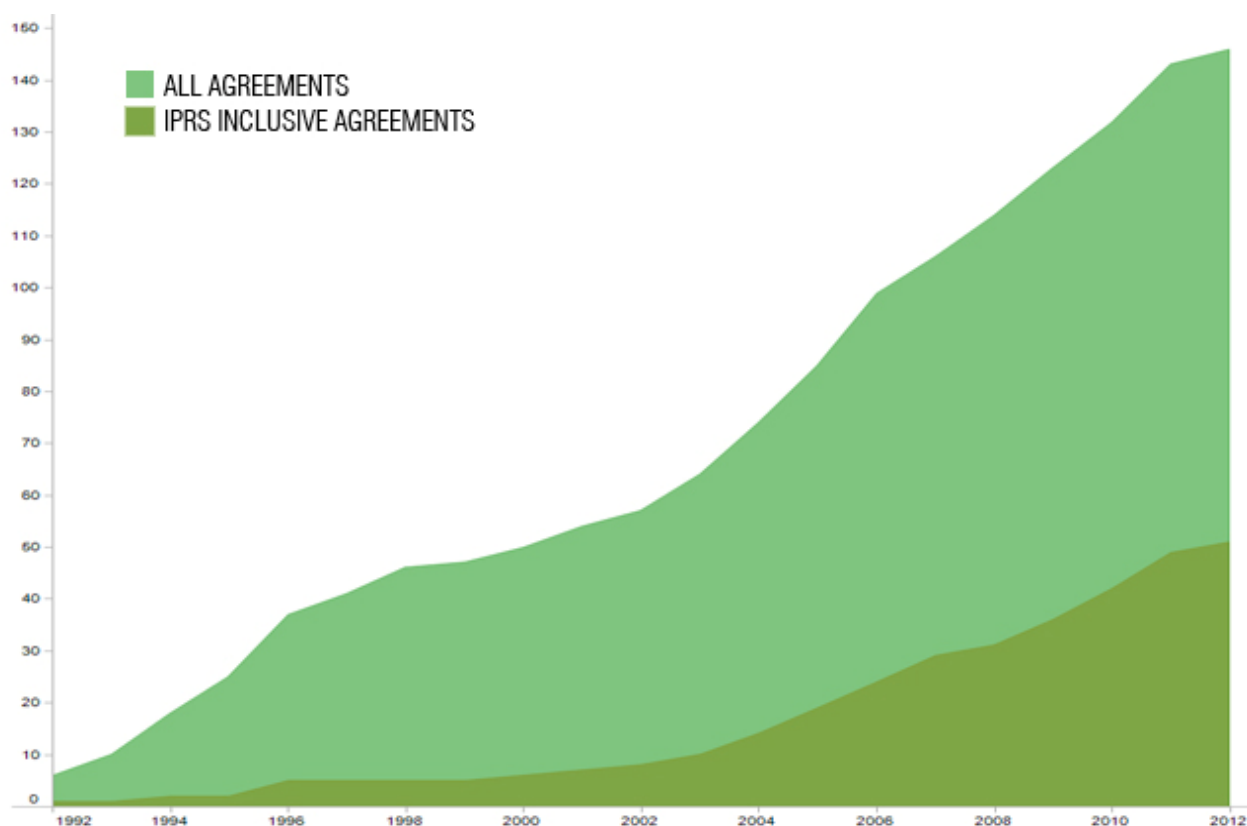
Finally, there are some cases where IPRs appear to have been included only as a tribute or acknowledgement of their emerging importance, instead of the pursuit of trade-related ambitions. Agreements such as that between European Free Trade Association (EFTA) and Hong Kong, China, or Turkey and Morocco do not venture beyond reiterations of obligations of MFN treatment already encapsulated within TRIPS. In the case of such agreements, the rationale for including IPRs might be more political in nature, intended perhaps as an answer to the requests of stakeholder industries at home in the least trade-intrusive manner.

4. Rise of Asian and Pacific countries as active participants of IPR-inclusive trade agreements

For some time, Asia and the Pacific has been the most dynamic region in terms of economic growth (International Monetary Fund, 2011) and, therefore, among the most appealing in terms of a prospective region with which to forge a closer economic relationship. This natural appeal of the region combined with the inability to conclude the Doha Rounds has led to a dramatic increase in the number of trade agreements in the region (Kawai and Wignaraja, 2010). This has also meant an exponential increase in the amount of IPR-inclusive trade agreements IPRs. According to Asia-Pacific Trade and Investment Agreements Database (APTIAD), there were 51 trade agreements that include IPR provisions in different stages of existence in the Asia-Pacific (see annex) at the end of April 2013. The WTO regional trade agreement database shows 44 agreements in force for the same region while leaving out bilateral trade agreements such as that signed between the United States and Viet Nam.

The number is impressive when it remembered that the first trade agreement mentioning IPRs in the region was signed in 1992 (figure 1) between Turkey and EFTA three years before TRIPS came into being. The few agreements signed prior to TRIPS cover IPRs in a superficial manner and IPRs have been seriously discussed only after TRIPS. The full-speed proliferation of IPR-inclusive agreements only started after 2000, prior to which only six IPR-inclusive trade agreements had been signed (APTIAD). Regardless of their expeditious emergence, IPRs are present only in approximate 30 per cent of all regional trade agreements (APTIAD). Taking the growing importance of IPRs for the industries of regional emerging and already established heavyweights such as Australia, China, India, Japan and the Republic of Korea, the upward trend is likely to continue.

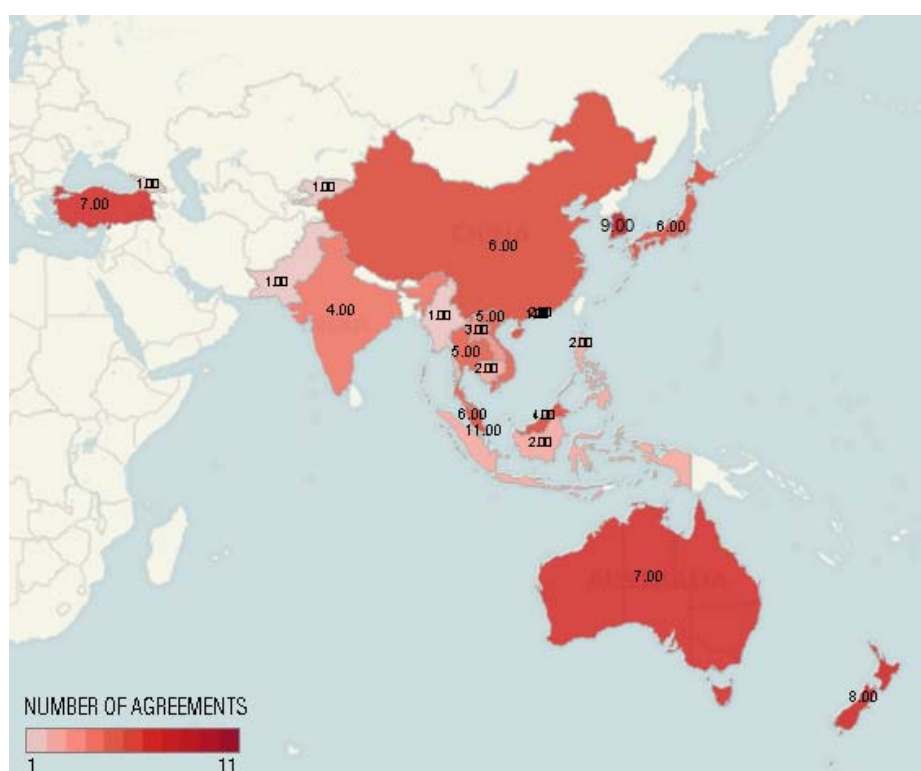
Figure 1. Number of all trade agreements and IPR-inclusive trade agreements per year since 1992



Source: ESCAP based on data accessed from APTIAD

The proliferation of IPR-inclusive trade agreements in the region has led to 22 members (41 per cent), being involved in IPRs inclusive trade agreements (figure 2). The median amount of IPR-inclusive agreements in which those countries are involved is four, with Singapore ranking top at 11. The Republic of Korea and New Zealand are also actively involved in a total of nine and eight agreements, respectively. The countries with least exposure are developing nations such as Georgia, Kyrgyzstan, Myanmar and Pakistan, each with only one IPR-inclusive agreement. In the group of developing countries, Viet Nam leads with five agreements.

Figure 2. Asia-Pacific countries involved in IPR-inclusive trade agreements



Source: ESCAP based on data accessed from APTIAD.

With whom are these connections shared? A total of 12 agreements are with bilateral or plurilateral partners on the European continent. The United States is involved in six agreements, equalling Australia and surpassing China, Japan and the Republic of Korea in its involvement (APTIAD). These figures show the heavy interest that the developed countries in the West hemisphere have in the Asia-Pacific region. The reason why developed economies are interested in the region is natural; recent economic analysis has shown that in the case of exports by the United States, and royalties and licensing receipts from the importing countries that increase their level of IPR protection, have a tendency to increase (Koff, 2011 and ESCAP 2012). The effect of higher IPR protection can be negative for exporters however: it has been shown that increased IPR protection in the ASEAN-5 may reduce China's exports to said countries (Yong, Yew and Yan, 2009). Possible reasons for the drop of exports include the share of imitation goods which would be barred from market entry with higher IPR protection.

From 1992 onwards, all the IPR-inclusive trade agreements affecting the region were signed with Western partners; it was only in 2002 when the first intraregional trade agreement was signed between Japan and Singapore (APTIAD). After 2002 the Asia-Pacific countries, led by

Australia, China, Japan, the Republic of Korea and Singapore, picked up the pace, and at the end of April 2013 39 per cent of all IPR- inclusive trade agreements were exclusively intraregional. At the same time as the Asia-Pacific countries became active within their own region they began creating connections with another dynamic region, Latin-America. Today, seven agreements with Latin-American countries are in effect – five with Chile, three with Peru and two with Costa-Rica.

The underlying story here is one that confirms a common belief that (a) the first IPR-inclusive trade agreements were brought about by Western partners, i.e., EFTA in 1991 with its trade agreement with Turkey, and (b) the Western partners continue to be deeply involved in the region through IPR-inclusive trade agreements. The story also details something far more interesting in terms of the dynamics of how IPR norm-setting works through FTAs – the apprentice becoming the master in a short period through hard-learned lessons. The fact that the first intraregional IPR-inclusive trade agreements emerged with force 11 years after the initial seed was planted by EFTA appears to imply that for some Asia-Pacific countries the inclusion of IPRs in trade agreements was learned behavior, intended to match that which the Western powers had exhibited for more than a decade. It is telling that Singapore signed the first intraregional IPR-inclusive agreement in the same year that it signed a similar IPR-inclusive agreement with EFTA. The speed at which the Asia-Pacific countries were adding IPRs to their intraregional trade agreements after 2002 further supported this learned behavior theory. With the strongest of the Asia-Pacific countries, including Japan and the Republic of Korea, actively targeting developing countries in an emerging region such as Latin-America it is clear that the region has learned its lessons well.

5. What aspects of IPRs do IPR-inclusive trade agreements cover in the Asia and the Pacific?

Based on a thorough examination of the 42 signed agreements it is possible to divide the various aspects of IPRs covered by these agreements into 38 distinct issues. Of these 38 issues, the two most common denominators are somewhat lightweight provisions that affirm the parties' commitments to TRIPS (29 counts) and promising further cooperation with regard to IPRs (28 counts). The national and MFN treatment provisions – already provided by the TRIPS agreement – are also prevalent general provisions (18 counts). It is important to note that the above-mentioned provisions are all but empty clauses; they do not necessitate any action nor do they establish any novel legal circumstances.

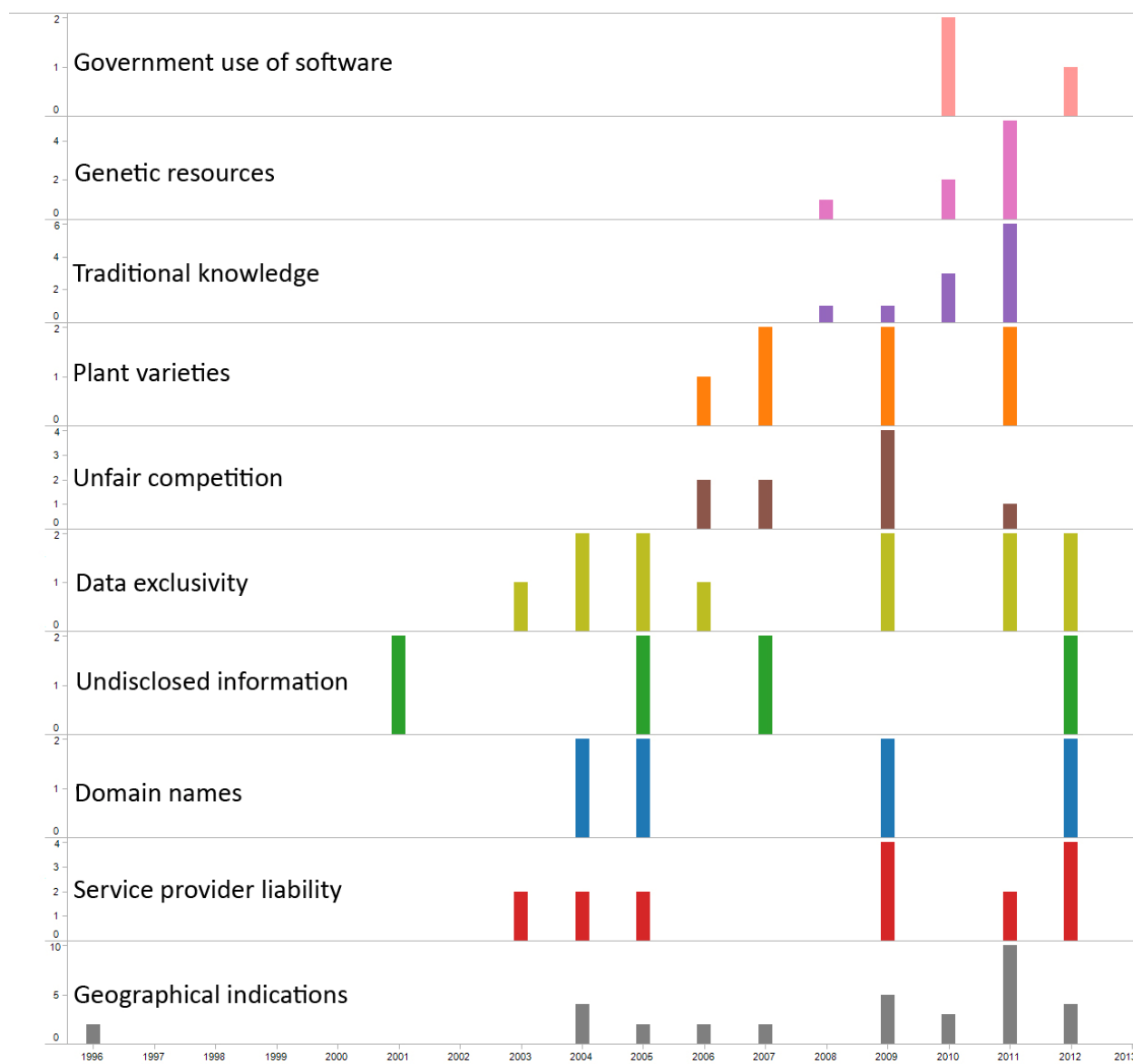
However, the IPR-inclusive trade agreements are not limited to boilerplate provisions without any impact. On the contrary, many of the agreements touch upon important aspects such as IPR instruments, protection and enforcement measures, accession to other international IPR treaties and other emerging issues such as government procurement of software. In terms of specific IPR protection instruments, geographical indications (GIs) appear to be the most prevalent (20 counts). Even though trademarks (18), copyrights (16) and patents (14) are not far behind, the emergence of GIs as the most prevalent is almost surprising. This is because they are not traditional hallmarks of intellectual property legislation in the same sense as, for example, patents or copyrights. One reason for the frequent inclusion of GIs is the scarcity of existing international agreements concerning them when compared with the relative abundance of multilateral agreements on patents, trademarks and copyrights. This scarcity, combined with the impasse at the Doha Rounds, imposes natural pressure for countries that want to extend the reach of GI legislation to do so in the bilateral forum.

In the case of IPR enforcement, provisions concerning border measures are the most commonplace (17 counts), with civil measures (14) being more prevalent than criminal measures and penalties, and remedies (12). Service provider liability issues are included in 8 agreements, reflecting the rather recent emergence of the topic. In the context of accession or referral to other international treaties, the Paris Convention for the Protection of Industrial Property (10 counts) as well as the Berne Convention for the Protection of Literary and Artistic Works (10) are most common. References to the WIPO Copyright Treaty (9 counts), the WIPO Performances and Phonograms Treaty (8), the Madrid Protocol (9) and the Patent Cooperation Treaty (9) are also typical. The aforementioned treaties and agreements establish the backbone of modern patent, copyright and trademark legislation; thus, references to them are expected to be rather commonplace. What is interesting to note is that UPOV, which concerns a much less traditional and much more controversial component of IPRs called plant variety protection, is referred to as often as the WIPO Copyright Treaty. This may well indicate the fact that trade agreements have been used by certain countries to facilitate the spread of UPOV provisions that could prove more difficult in the multilateral forum. The majority of the examined agreements also contain provisions aimed at ensuring compliance, including provisions on cooperation, negotiation and dispute settlement. These provisions cover all aspects of compliance of all other provisions alongside those concerning IPRs, and they were left outside the scope of the analysis due to their more general nature. However, it is worth noting that there is significant variance in the extent and impact of these compliance

ensuring provisions within the agreements and that agreements with more IPRs tend to have more stringent compliance provisions. Whether even the most stringent compliance provision can truly ensure any form of follow-up in terms of national legislation and eventual enforcement is yet another matter, left to be discussed in further papers to come.

In addition to traditional aspects such as patents and copyrights, Asia-Pacific IPR-inclusive trade agreements cover several new issues. The newcomers include provisions concerning government use of software, genetic resources, traditional knowledge and folklore, to name but a few. What these greenhorn provisions have in common is that there is little to no global consensus on how these subjects should be treated in IPR legislation. In fact, with some issues such as genetic resources, there is a distinct lack of consensus among professionals and academia at the national level. Figure 3 illustrates how the most recent additions to the various aspects of IPR-inclusive trade agreements have emerged over time. The most recent issue to have emerged is government use of software, which was introduced as a trade agreement topic in 2010. Figure 3 shows that genetic resources and traditional knowledge have also been covered only recently by trade agreements. Interestingly, although service provider liability and domain names emerged in Asia-Pacific trade agreements in 2004, they have only recently garnered significant public interest.

Figure 3. Emergence pattern of various IPR-inclusive trade agreement aspects



6. Great variation revealed among the IPR-inclusive trade agreements in Asia and the Pacific

In the discussions concerning the emergence of IPRs in Asia-Pacific trade agreements, little focus is placed on the great variation between the so-called seriousness and weight of these agreements. A more detailed look reveals that not all IPR-inclusive trade agreements are created equal in terms of how far-reaching their effects are on national legislation. The variation between the seriousness of the agreements and their effects ranges from tributary acknowledgments of already existing and fulfilled obligations to a host of provisions that expand the scope of IPR protection as well as new, but yet-to-be covered, territories such as rules concerning government procurement of software.

One admittedly crude way of uncovering these differences is to examine how much space in terms of pages is given to IPR provisions in the Asia-Pacific trade agreements (figure 4). The enormous difference between the limited references to IPRs of the agreement between Turkey and EFTA and the 44 pages of the Republic of Korea-European Union agreement shows how important it is to look further than just searching for IPR-inclusive trade agreements. This approach is also an effective tool for uncovering patterns followed by certain countries. For example, it is clear that the United States routinely requires high IPR content while other heavyweight negotiators such as the Republic of Korea are more flexible in how they fine-tune their requests when dealing with different parties. In the case of China, it is interesting to note that while the country has a high rate of involvement in IPR-inclusive trade agreements, the agreements themselves are not heavily saturated by IPRs. This tendency to only pay lip service to IPRs can, perhaps, be attributed to the lack of an established and internationally competitive IPR regime, the existence of which would necessitate not only high standards but also efficient enforcement.

Although comparing the number of pages devoted to IPRs with the total number of pages is an equally crude way of assessing the seriousness of the IPR provisions of the agreements, it does provide further insight into how IPR provisions relate to provisions concerning other aspects of the agreements (figure 5). The figure illustrates the fact that in the vast majority of agreements, less than 10 per cent of the whole agreement concerns IPRs. The most notable exceptions are the bilateral agreements signed by the United States with Viet Nam and the Lao People's Democratic Republic which were intended to normalize trade relations between the partners – 48 per cent and 40 per cent of these agreements, respectively, cover IPRs. The considerable number of pages devoted to IPRs in these two agreements is testament to the importance that the United States gives to IPRs in international trade. In this case the United States has taken a proactive stance to establish high levels of protection in countries which might not even be members of the WTO. These agreements also show that the United States does not make concessions on IPRs even when dealing with developing countries, where the positive effects of stronger IPR protection have yet to be proven.

Figure 4. Number of pages devoted to IPRs per trade agreement

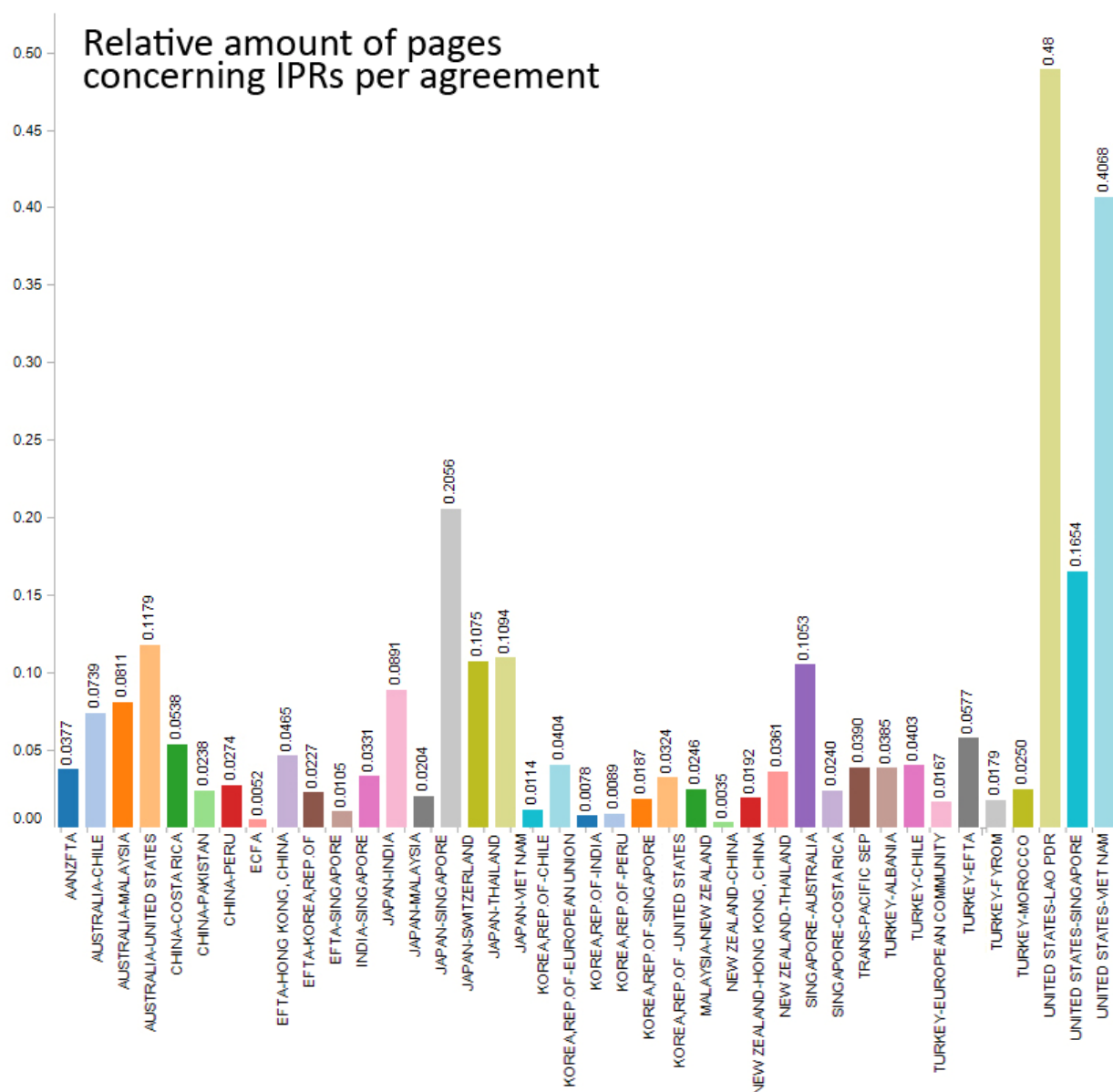
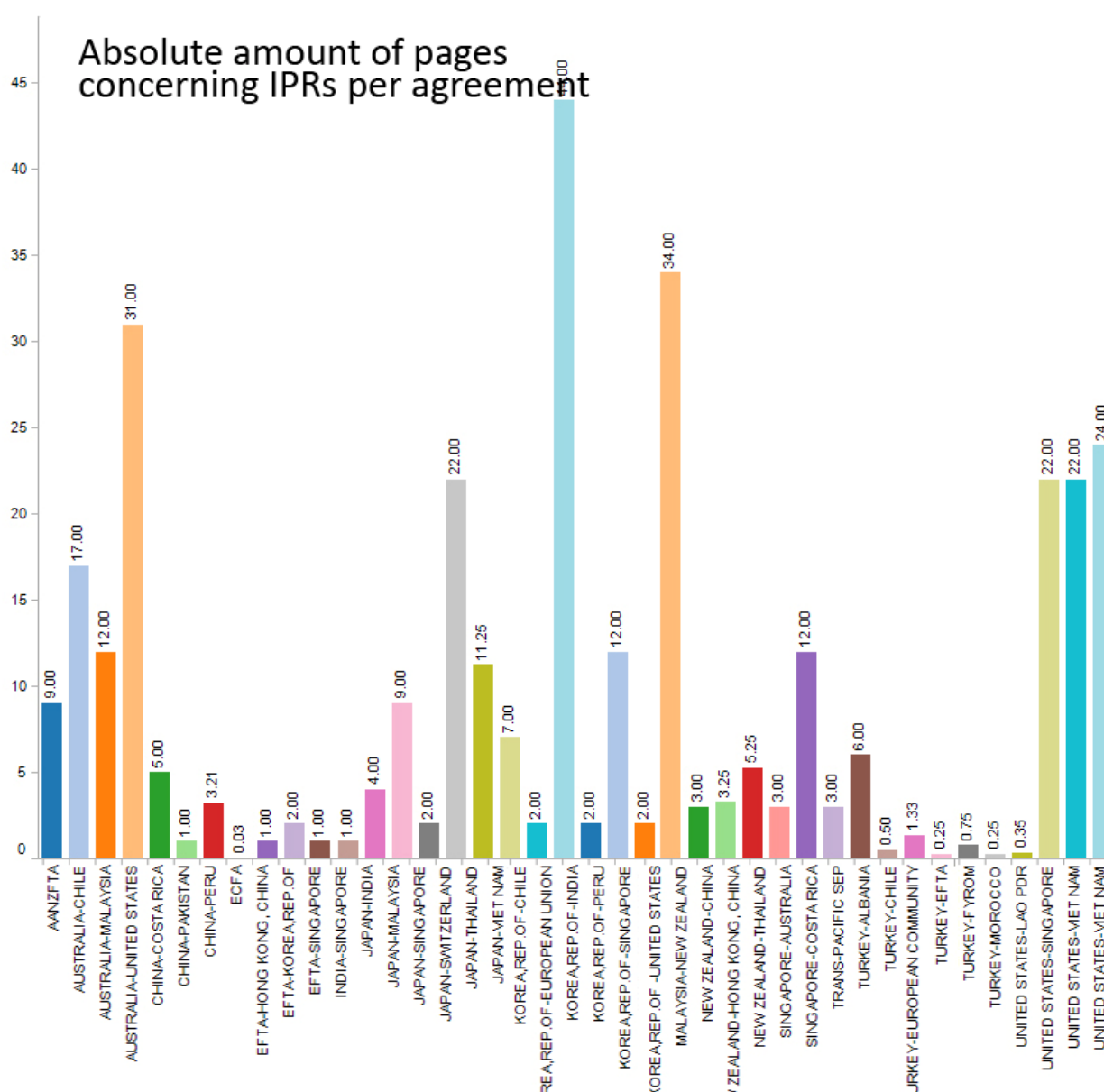


Figure 5. Share of IPR provisions per agreement

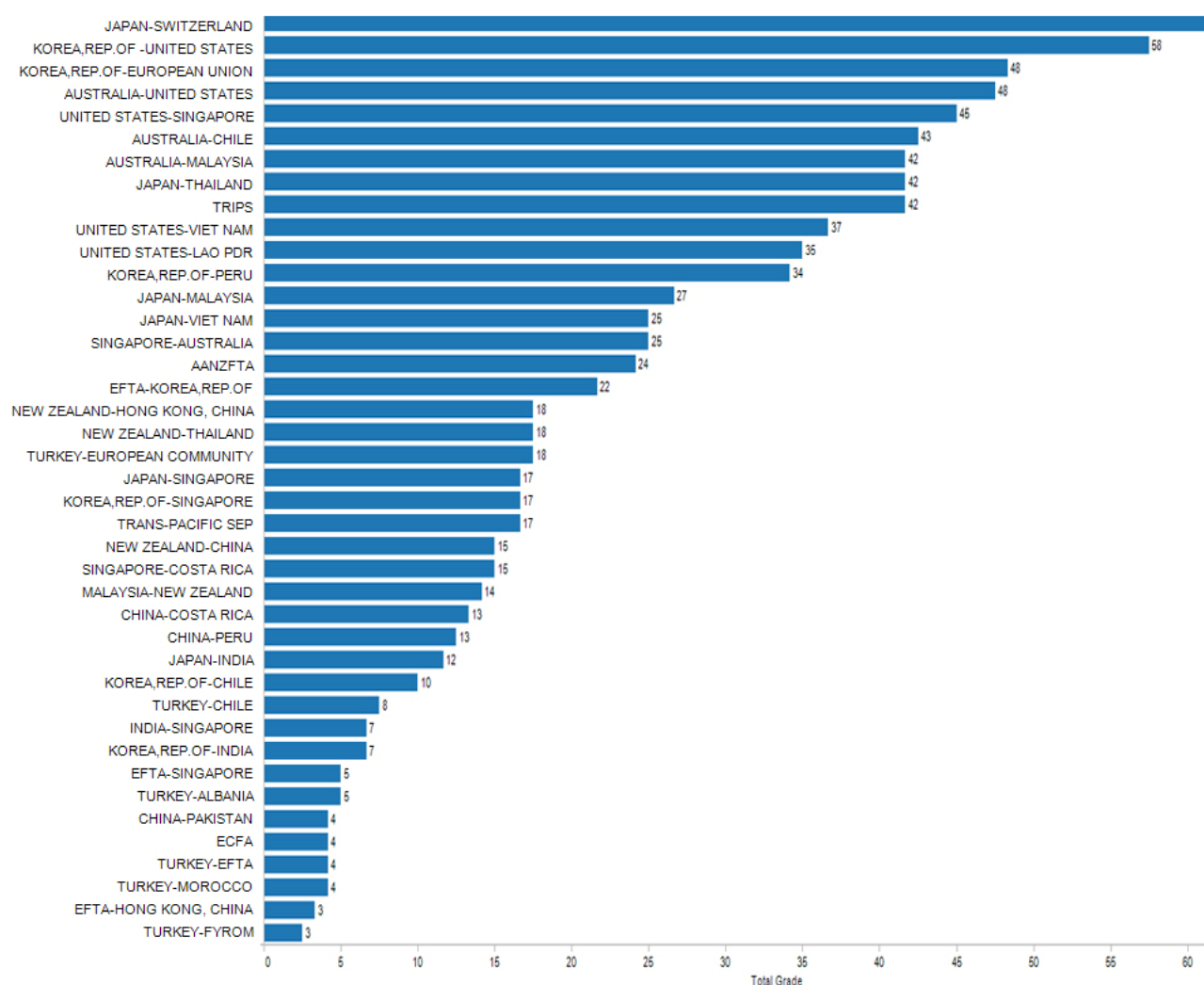


Revealing the full diversity of the Asia-Pacific IPR-inclusive trade agreements requires more than just looking at how much space was given for IPRs; in order to show the extent of the differences it is necessary to examine the actual contents of the provisions. Therefore, a unique grading system has been established² that rates the agreements on a scale of zero to 100. The grade for any single agreement is calculated by giving the various IPR provisions a

² The grading was conducted with the invaluable assistance of Ms. Martina Ferracane and Ms. McKenzie Strobach, research assistants at the Trade Policy and Analysis Section of Trade and Investment Division, ESCAP.

“weight” of zero, 1 or 2 in accordance with the substantiality of the provision. The method uses zero to indicate a lack of provisions in a specific area of IPR legislation, 1 to indicate the existence of weak, non-substantial or non-binding provisions and 2 for indicating the existence of binding provisions. The areas of IPR legislation that have been given weight include issues that are currently covered by trade agreements such as: (a) national treatment; (b) accession to the main international IPR treaties; (c) IPR enforcement, such as border measures; and (d) data exclusivity, patents, copyrights, plant variety protection and numerous others subsets of IPR legislation. Collating the individual numerical weights of all these areas enables a grade to be assigned that reflects the scope of each agreement in terms of coverage of various aspects of IPRs as well as the significance of the agreement in terms of whether or not it establishes binding obligations. The grading shows that there are considerable differences among trade agreements in scope and liberalizing impact of IPR provisions (figure 6).

Figure 6. Agreements per graded weight



Using the measure of impact explained above, it is possible to show that, for example, the agreement between Japan and Switzerland is more than 10 times more significant in terms of IPRs than the agreement between New Zealand and Thailand. The results make it possible to discern the extent of the agreement's impact on individual countries. In the case of developed countries, Australia and the United States as well as the European Union show a persistent pattern of being involved only in high-impact agreements. Although Japan, the Republic of Korea and Singapore are also involved in many high-impact agreements, they have also shown flexibility through involvement in agreements that have a lesser impact. This appears to indicate the absence of a firm agenda for strengthening IPR protection in trading partners – strongly contrasting with the approach taken by the United States and the European Union. The grading also shows that developing countries do not seek the inclusion of high-impact IPR standards in trade agreements when negotiating with another developing country. This finding validates the notion that the pressure for including IPRs in trade agreements originates from developed countries.

The results of this study also show that the Japan-Switzerland and the Republic of Korea-United States agreements have a higher grade than the TRIPS agreement, which was also graded for reference purposes. While this finding shows that the two agreements go well beyond the scope and impact of TRIPS, it does not imply that the other agreements do not contain provisions that obligate stricter norms than those presented by TRIPS. The Australia-Malaysia agreement is an example of how agreements often hold some TRIPS-Plus provisions – in this case provisions concerning service provider liability – without matching the overall scope of the subject matter covered by the TRIPS agreement.

A thematic breakdown of the different aspects of IPRs as per their combined weight in all agreements shows that in Asia-Pacific trade agreements the provisions concerning IPRs instruments overshadow the remaining themes, including those of enforcement and relationship to other international agreements (figure 7). According to the breakdown, regardless of their status as hyper-sensitive themes, specific pharmaceutical issues (including data exclusivity) as well as issues related to IPRs and public health are, in fact, quite rare provisions.

Figure 7. Breakdown of the various aspects of IPRs

	Total
Instruments	397.0
Relation to international agreements	264.0
Enforcement	189.0
Cooperation, assistance, awareness	141.0
Affirmation of TRIPS	39.0
Transparency	24.0
Specific pharmaceutical patent issues	18.0
IPRs and public health	14.0

7. Mapping the challenges that IPR-inclusive trade agreements pose for developing countries

Since the start of the current millennium, a significant number of Asia-Pacific developing countries have been bound to strict IPR norms through trade agreements with more developed trading partners. As the Asia-Pacific region is steadily moving towards an economic structure where knowledge-based industries play an increasingly significant role, mapping out the economic consequences of heightened levels of IPR protection is of extreme importance to ensuring that the development of the region is not unnecessarily hindered. Today, the Asia-Pacific region is registering some of the world's most impressive growth rates with regard to the economic contributions of IPR-based industries. For example, in Thailand the export value of the copyright-based industries more than doubled from 2004 until the end of 2008 (WIPO, 2012a) and, according to a report published in 2009, Thailand's creative industries were also growing faster than the rest of the economy (Kenan Institute Asia, 2009). These developments only heighten the need to ensure that developing countries do not recklessly trade off their growth potential.

IPR-inclusive trade agreements pose two distinct challenges for developing countries. First, because of the limited negotiating power of developing countries, agreements with exporting partners that are strong IPR supporters tend to be lopsided in terms of novel obligations. In search of higher market access developing countries like Viet Nam have entered into agreements which require action mostly on their side, with little to none legislative changes required from the counterparty. One-on-one setting parties such as the United States and the

European Union are able to exploit their negotiation power more fully, which can lead to agreements mostly benefiting the stronger party. For developing countries the situation is quite different. The lack of sufficient mechanisms for upholding the checks and balances and the lack of homegrown capacity to deal with IPRs endangers the ability of those countries to ensure that their interests are duly represented. It is easy to understand that the shift from WTO to the bilateral negotiation floor spells out fewer dangers for countries familiar with IPRs, such as Australia, the copyright-based industries of which accounted for 10 times that of Brunei Darussalam (WIPO, 2012b).

The second significant challenge faced by developing countries is gaining access to knowledge about the economic effects of IPRs. Without the support of multilaterally drafted memoranda and background notes disseminated in WTO and WIPO meeting rooms, developing countries face a daunting problem in independently creating sufficient information to assess the benefits and adverse effects of establishing higher IPR norms. For some developing countries this task can prove to be all but impossible. In fact, creating accurate data on the economic effects of IPRs is no easy task for even the most developed of countries.

Attempting to quantify trade expansion caused by strengthening copyright enforcement, for example, is more likely to produce white hair among researchers than white papers on their desks, even in the most well-equipped research facilities. Regardless of extensive efforts, the task of connecting changes in IPR legislation with economic effects has only given rise to tentative or inconsistent research results. This is because the economic effects of IPRs stubbornly defy measurement. Whereas the effects of lowering tariffs on imports of pharmaceutical products by 15 per cent can be easily quantified, accurately estimating the effects of extending the exclusivity period of the test data of such pharmaceuticals by five years can prove all but impossible.

A further hindrance to the assessment of IPRs is that many of their positive effects only emerge in the long term. Increases in national innovation and creativity do not manifest themselves overnight. The same goes for the amount of foreign direct investment. While the positive effects often take time to emerge, the negative effects are typically felt in the short term. With extended patent protection terms come immediate obligations to pay further licensing fees, whereas the offsetting boost in national innovation brought by increased direct investment can take time to appear. At the same time, imitation-related production facilities

might be forced to close down, leaving consumers who depend on these imitative products worse off.

Another issue that complicates estimating the economic effects of IPRs is that such effects might not always result from issues that are typically accounted for in trade negotiations. In the case of Jordan, which signed a trade agreement with the United States in 2000, the effects of TRIPS+ provisions were sharply felt in the health-care sector, which is not typically perceived to be substantially linked to IPRs. Government health programmes were placed under increasing budgetary stress and one hospital reported a 20 per cent increase in its expenditure on medicines following the signing of the trade agreement, which affected access to patented medicines (Oxfam, 2007).

In the case of the trade agreement between the Republic of Korea and the United States, the extension of the patent term for three additional years could cost the Republic of Korea more than US\$ 750 million. These costs are ultimately born by civil society, making the issue of IPRs inclusive trade agreements increasingly more sensitive. Ultimately, in addition to untangling the mass of economic causes and consequences, countries negotiating IPRs also need to understand the social impacts. The far-reaching social interconnections make agreeing upon a balanced set of IPR norms in trade negotiations challenging; the compound effects of patents, copyrights and similar issues also involve sensitive subjects such as freedom of speech and expression.

The difficulties in translating the language of IPRs into that of trade agreements as well as the uncertainties involved can easily lead to unbalanced sets of concessions, with the losing party being unaware of the fact. The threat of eventually losing out by setting higher and higher IPR norms applies to developed and developing countries alike. However, the consequences of such losses can be quite different due to the very different levels of urgency for facilitating economic and social development through, for example, access to advanced technologies. It is easy to understand that whereas developed welfare nations might be able to easily manage the adverse effects of higher IPR norms – such as exponential price increases of medicines – developing countries are often unable to do so; this can lead not only to increased costs but also increased human suffering.

8. Why current IPRs may not work for developing countries

Despite the difficulty of the task, researchers have been able to provide some results regarding the economic effects of IPRs. One way to summarize the multitude of findings is to argue that there is no single set of economic effects of IPRs. In fact, there is extensive evidence supporting the conclusion that the economic effects of IPRs vary greatly, depending on the environment in which they are applied (Montobbio, Primi and Sterzi, 2009). In the case of developing countries, it appears that the current globally upheld level of IPRs might not be the optimal solution for supporting their growth. In fact, recent research findings imply that IPRs protection is not a significant factor influencing economic growth of developing countries (World Bank, 2002). In the case of least developed countries, positive results from strengthening IPRs are even rarer (Lindstrom 2010).

In developed settings, IPR norms can increase expenditure on research and development (R&D) (Kanwar and Evenson, 2003) and reduce transaction costs of contracting (Yang and Maskus, 2001), but it is not clear whether IPRs provide similar positive effects for developing countries. Although there are tentative signs of increased overall direct investment in developing countries, it is clear that the ultimate effects of such investments are not always positive (World Bank, 2002).

It has been shown that for developing countries strengthening patent law standards can cause negative outflows of royalties and licences, which imposes a redistributive effect of establishing higher IPR legislation. In addition, it has been shown that no evident relationship exists between the level of IPRs, investments in R&D, and patenting in developing countries (World Bank, 2002).

In lieu of technology transfers through direct investments to R&D as well as the establishment of manufacturing facilities, transfers that do occur appear to be through increased imports brought about by the strengthening of IPRs (World Bank, 2002). In the case of China, for example, it has been shown by means of gravity modelling that imports of knowledge-intensive goods have grown in line with national increases in IPRs protection (Koff, 2011). Increased imports of such goods are an integral part of technology transfers; however, such increases in imports can also allow foreign industries to dominate domestic markets, thus preventing local infant industries from gaining a secure foothold.

Establishing stringent IPR norms can have not just ambiguous effects but can also work against economic growth of developing countries by limiting such growth through reverse engineering and imitation. While a higher level of IPRs increases imports, it effectively slows down the technological acquisition and development of the importing country (Connolly and Valderrama, 2005). This is because limitations in the ability to imitate and reverse engineer slow down the diffusion of technology in the importing country (McArthur, Sacsh, 2002). For developing countries, the ability to catch up through imitation should not be disparaged. These mechanisms were key elements in the rise of the Republic of Korea and Taiwan Province of China before the 1980s (World Bank, 2002). Imitation has also contributed to the growth of currently industrialized countries such as Switzerland and Sweden; the lack of chemical patent protection prior to 1978 was undoubtedly a key contributor to the rise of those countries' pharmaceutical industries.

The reason why the results of strengthened IPR protection are so ambiguous is most likely a consequence of IPRs being more suitable as supportive elements than as catalysts for economic growth. It must be clearly understood that establishing patent or copyright legislation alone does not directly contribute to a single output of innovation or creativity. What it does do is ensure that once such outputs emerge, the gains are enjoyed in a way that resonates with the concept of fairness. Making the playing field fair is naturally expected to stimulate further outputs since creators can rest assured that they will be able to enjoy of the benefits of their work. Such assurance carries few incentives in the majority of developing countries, where there is little creative capacity and where the overall infrastructure, business climate and human capital are not ready to take on the challenges of running effective creative economies. Because developing countries would first need to fulfill the lowest common denominators for creativity and innovation, it would be beneficial for them to have the necessary policy space to create a mixture of policies that would carry them until such time when establishing IPRs becomes relevant. However, with the introduction of TRIPS and the emergence of IPRs in trade agreements, finding such space has become impossible.

9. What comes next?

Given the steady increase in the importance of creative economies and the ongoing rise of innovative industries, the author is convinced that IPRs will play a more crucial role in international trade in the future. This will undoubtedly mean a more steadfast positioning of IPRs in trade agreements in the Asia-Pacific region. It is obvious that the number of IPR-

inclusive trade agreements will grow and that the scope and significance of IPR provisions will also increase in the coming years. Stronger and more extensive IPR provisions will definitely be on the agenda of developed countries which have long since understood the economic importance of their IPR-reliant industries. Stronger IPRs will also be sought by developing countries due to the so-called cycle effect, i.e., the more developing countries apply stronger IPRs standards, the more the baseline in their future negotiations will be steered towards more and stronger IPRs.

With the fragility of the developing world in mind, it is crucial to ensure that IPR-inclusive trade agreements do not sacrifice long-term development goals for short-term gains in market access. This requires that the developed countries readjust their IPR agendas to honour the spirit of the Doha declaration and Rio+20, which call for enhanced support for inclusive and sustainable development. The developed world should fully respect the boundaries of the very limited policy space given to developing countries and refrain from carving out further sovereignty by demanding restrictions on compulsory licensing, for example. Granting the least developed countries extensions to the deadline of implementing certain aspects of TRIPS should also be seriously considered.

As the world becomes more saturated with IPRs it is important that the developed countries fulfill their obligations to provide technical assistance to the developing world as per TRIPS Article 67. This assistance should be given as broadly and generously as possible. This means that WIPO must take an active stance in doing more than just setting up computers with databases, as it currently doing in the Democratic People's Republic of Korea. Instead of technical facilities, the focus of such assistance should be on the human aspect of technical capacity – efforts to build that capacity need to be focused on government officials and policymakers who can ensure that long-term decisions are the right ones. Paradoxically, the countries that could best support the developing nations are also first in line to benefit from the relative disadvantage of those countries that are less well off. If nothing else, the lack of true commitment to building the capacity of current and potential counter-parties in trade agreement negotiations is understandable as a trade strategy. However, as a global development strategy it is unacceptable.

To enable the most vulnerable countries, e.g., Myanmar, to better orient their IPR legislation with their developmental needs, the global IPR norms-setting activities need to move back to

forums better equipped with checks and balances mechanisms. Sadly, this is not likely to happen in the foreseeable future. On the contrary, IPRs will most likely become increasingly more prevalent in trade agreements within regions of dynamic growth such as Asia and the Pacific. Also, with the importance of IPRs growing within the Asia-Pacific region, the number of intraregional agreements is bound to increase.

Second, it is argued that establishing higher IPR standards through trade agreements will have undesirable consequences. Considering the fact that many countries have only recently become aware of IPRs and their economic significance, many more have yet to do that (sub-Saharan Africa is an example). Introducing higher IPR protection standards with global ambitions through trade agreements, particularly as the majority of countries in the Asia-Pacific region have yet to come to grips with how to effectively manage and upkeep national IPR regimes can have long-lasting negative consequences. For such countries, committing to even higher IPR standards would therefore be very risky and such commitments should be weighed carefully against the expected benefits in terms of trade normalization or market access.

It is understandable that key IPR-reliant exporters are keen to benefit from the early setting of higher IPR standards in trade agreements in the hopes of creating a universal baseline for future international IPR agreements negotiated, for example, under WIPO. This particularly holds true in a situation where the latest significant multilateral agreement on IPRs is almost 20 years old, and modernizing the standards through multinational institutions appears to be all but impossible. However, from the viewpoint of developing countries, a situation where a handful of developed countries are all but unilaterally ratcheting up the IPR standards one trade agreement at a time is a rather different story.

Annex

Agreements in force				
AANZFTA	Country -Bloc			
Australia-Chile	Bilateral	FTA and EIA	In force since	2009
Australia -United States	Bilateral	FTA and EIA	In force since	2005
China-Costa Rica	Bilateral	FTA and EIA	In force since	2011
China-Macao Province of China	Bilateral	FTA and EIA	In force since	2004
China-Pakistan	Bilateral	FTA	In force since	2007
China-Peru	Bilateral	FTA and EIA	In force since	2010
EFTA-Korea, Rep. of	Country - Bloc	FTA and EIA	In force since	2006
EFTA-Singapore	Country - Bloc	FTA and EIA	In force since	2003
Georgia-Ukraine	Bilateral	FTA	In force since	1996
India-Singapore	Bilateral	FTA and EIA	In force since	2005
Japan-India	Bilateral	FTA and EIA	In force since	2011
Japan-Malaysia	Bilateral	FTA and EIA	In force since	2006
Japan-Singapore	Bilateral	FTA and EIA	In force since	2002
Japan-Switzerland	Bilateral	FTA and EIA	In force since	2009
Japan-Thailand	Bilateral	FTA and EIA	In force since	2007
Japan-Viet Nam	Bilateral	FTA and EIA	In force since	2009
Korea, Rep. of-Chile	Bilateral	FTA and EIA	In force since	2004
Korea, Rep. of-European Union	Country - Bloc	FTA and EIA	In force since	2011
Korea, Rep. of-India	Bilateral	FTA	In force since	2010
Korea, Rep. of -Peru	Bilateral	FTA and EIA	In force since	2011
Korea, Rep. of -Singapore	Bilateral	FTA and EIA	In force since	2006
KORUS	Bilateral	FTA	In force since	2012
Kyrgyzstan-Moldova	Bilateral	FTA	In force since	1996
Malaysia-New Zealand	Bilateral	FTA and EIA	In force since	2010
NAFTA	Regional	FTA and EIA	In force since	1994
New Zealand -China	Bilateral	FTA and EIA	In force since	2008
New Zealand-Hong Kong, China	Bilateral	FTA and EIA	In force since	2011

New Zealand -Thailand	Bilateral	FTA and EIA	In force since	2005
Singapore-Australia	Bilateral	FTA and EIA	In force since	2003
TRANS-PACIFIC SEP	Regional	FTA and EIA	In force since	2006
Turkey-Albania	Bilateral	FTA	In force since	2008
Turkey -Chile	Bilateral	FTA	In force since	2011
Turkey - European Commission	Country - Bloc	Customs Union	In force since	1996
Turkey -EFTA	Country - Bloc	FTA	In force since	1992
Turkey -Egypt	Bilateral	FTA	In force since	2007
Turkey -FYROM	Bilateral	FTA	In force since	2000
Turkey -Morocco	Bilateral	FTA	In force since	2006
United States-Lao PDR	Bilateral	PTA	In force since	2005
United States -Singapore	Bilateral	FTA and EIA	In force since	2004
United States-Viet Nam	Bilateral	Framework Agreement	In force since	2001
Agreements pending ratification				
Australia-Malaysia	Bilateral	FTA and EIA	Pending ratification	2012
ECFA	Bilateral	FTA	Pending ratification	
EFTA-Hong Kong, China	Country - Bloc	FTA	Pending ratification	
Singapore-Costa Rica	Bilateral	FTA	Pending ratification	
Agreements under negotiation				
ASEAN-European Union	Bloc - Bloc	FTA	Under negotiation since	2007
Australia-Korea, Rep. of	Bilateral	FTA	Under negotiation since	2005
India-European Union	Country - Bloc	FTA	Under negotiation since	2007
New Zealand- Korea, Rep. of	Bilateral	FTA	Under negotiation since	2009
Thailand-United States	Bilateral	FTA	Under negotiation since	2004
TPP	Cross-Continental Plurilateral	FTA	Under negotiation since	2009

References

- Allred, B. B. and W. G. Park, 2007. "The influence of patent protection on firm innovation investment in manufacturing industries." *Journal of International Management*.
- Connolly M. and D. Valderrama, 2005. "Implications of intellectual property rights for dynamic gains from trade," Working Papers in Applied Economic Theory 2004-23, Federal Reserve Bank of San Francisco.
- ESCAP, 2012. "Asia-Pacific Trade and Investment Report" Bangkok. Available at <http://www.unescap.org/publications/detail.asp?id=1524>.
- Grosse Ruse-Khan, H., 2011. "The international law relation between TRIPS and subsequent TRIPS-Plus free trade agreements: Towards safeguarding TRIPS flexibilities?" *Journal of Intellectual Property Law*, vol. 18, No. 2; p. 1.
- Kanwar S. and R. Evenson, 2003. "Does intellectual property protection spur technological change?" *Oxford Economic Papers*, Oxford University Press, vol. 55(2).
- Kawai, M. and G. Wignaraja, 2010. "Free trade agreements in East Asia: A way toward trade liberalization?" ADB briefs. Asian Development Bank, Manila. Available at www.adb.org/sites/default/files/pub/2010/ADB-Briefs-2010-1-Free-Trade-Agreements.pdf.
- Kenan Institute Asia, 2009. "Economic contributions of Thailand's creative industries". Bangkok. Available at www.kiasia.org/userfiles/S%20CREATIVE%20INDUSTRIES.pdf.
- Koff, A. W., 2011. "Study on the economic impact of 'TRIPS-Plus' free trade agreements". International Intellectual Property Institute, Washington, D.C. Available at <http://iipi.org/wp-content/uploads/2011/09/IPI-USPTO-TRIPS-Plus-Study-10-Aug-2011.pdf>.
- Kwa, A., 2012. "The WTO and Developing Countries: a Foreign policy in Focus Brief on WTO" Available at: <http://focusweb.org/node/62>
- International Monetary Fund, 2011. "Asia remains world's most dynamic region, although pockets of overheating pose risks." Washington, D.C. Available at www.imf.org/external/np/sec/pr/2011/pr11150.htm.
- Lindstrom B., 2010. "Scaling Back TRIPS-Plus: An Analysis of Intellectual Property Provisions in Trade Agreements and Implications for Asia and the Pacific." *New York University Journal of International Law and Politics*. Available at: <http://ssrn.com/abstract=1585574>
- McArthur J.W ,and J.D. Sachs. 2002. "The growth competitiveness index: Measuring technological advancement and the stages of development." In *The Global Competitiveness Report 2001–2002*. New York: Oxford University Press.

- Montobbio F., A. Primi, and V. Sterzi, 2009. "Meet me after the TRIPs. Does IPRs Reinforcement Facilitate International Technological Cooperation?"
- Oxfam, 2007. "All costs, no benefits: How TRIPS-Plus intellectual property rules in the US-Jordan FTA affect access to medicines." Oxford, United Kingdom. Available at www.oxfam.org/sites/www.oxfam.org/files/all%20costs,%20no%20benefits.pdf.
- United States Commerce Department, 2012. "Intellectual property and the U.S. economy: Industries in focus". Washington, D.C. Available at www.uspto.gov/news/publications/IP_Report_March_2012.pdf.
- United States Patent and Trademark Office, 2012. Press release No. 12-25. Alexandria, VA , United States. Available at www.uspto.gov/news/pr/2012/12-25.jsp.
- United States Trade Representative, 2009. "ACTA Summary". Washington, D.C. Available at [www.ustr.gov/about us/press-office/fact-sheets/2009/ november/acta-summary-key-elements-under-discussion](http://www.ustr.gov/about%20us/press-office/fact-sheets/2009/november/acta-summary-key-elements-under-discussion).
- World Bank 2002, World Bank Report, *Integrating Intellectual Property Rights and Development Policy*.
- WIPO, 2012a. Thailand country report 2012. Geneva. Available at www.wipo.int/meetings/en/doc_details.jsp?doc_id=196841.
- , 2012b. "Creative industry statistics." Geneva. Available at www.wipo.int/export/sites/www/ipdevelopment/en/creative_industry/pdf/table_results_of_studies.pdf.
- WTO, 2012a. "WTO TRIPS Gateway." Geneva. Available at www.wto.org/english/tratop_e/trips_e/tripfq_e.htm.
- , 2012b. "Intellectual Property Council discusses anti-counterfeiting pact, tobacco packaging." Geneva. Available at www.wto.org/english/news_e/news12_e/trip_28feb12_e.htm.
- Yang, G. and K. E. Maskus. 2001. "Intellectual Property Rights, Licensing, and Innovation in an Endogenous Product-cycle Model". *Journal of International Economics*.
- Yong, C., S. Yew and B. and H. Tan, 2009. "The impacts of intellectual property rights on China ASEAN bilateral exports", ICS Working Paper No. 2009-12. Institute of China Studies, Kuala Lumpur.

ARTNeT Working Paper Series

is available at www.artnetontrade.org



ARTNeT Secretariat
United Nations
Economic and Social Commission for Asia and the Pacific
Trade and Investment Division
United Nations Building
Rajadamnern Nok Avenue
Bangkok 10200, Thailand
Tel.: +66 (0)2-288-2251
Fax.: +66 (0)2-288-1027
E-mail: artnetontrade@un.org
Web site: www.artnetontrade.org