

CHAPTER ONE

Introduction

Intellectual property - IP (or human creation or creativity) is protected under Paris Convention, 1883 consist of two main property namely industrial property and copyright administered by the World Intellectual Property Organization (WIPO). The objective of WIPO is to promote the protection of intellectual property throughout the world.

Started at the early 19th century, now IP protection entered a challenging global trade phase when both WIPO and World Trade Organization (WTO)¹ agreed to protect such property as a trading item (considered as a product) via Trade Related Aspect on Intellectual Property Protections (TRIPS) Agreement effectively came into force in January 1 1996². Under such comprehensive agreement, 144 country members are given up to four years (*i.e. Article 65.1 and Article 65.2*) to adopt certain minimal levels of Intellectual Property Rights (IPR) protection³.

¹ WTO was concluded in April 14, 1994 (of the Marrakesh agreement) and entered into force on January 1, 1995.

² The agreement between WTO and WIPO was concluded in Geneva on December 22, 1995, and entered into force on January 1, 1996 [Article 5, WIPO-WTO Agreement 1995]

³ For developed countries, the transitions periods ended on 31 December 1996 and for developing countries member the transitions periods ended on 31 December 1999. However with subject to Article 1 of TRIPS agreement, members may or may not obliged to implement in their law more extensive protection than is required as long as such protection does not contravene the provisions of the agreement.

Most developed countries were required to make major changes to comply, while developing countries focused on meeting the minimum standards that they need to apply. Since the deadline to comply to TRIPS has passed except to all the least developing countries, now the developing countries are confronting on the issue on the effects of stronger IP protection.

Due to the growing activity for both creation and trade pattern for inventions and innovations from developed to developing countries, this become an important agenda for policymakers in each countries member to formulate an effective and efficient strategy and practices not only to comply for but more importantly to reap the benefits that can be taken from the agreement. As per explained under Article 7 of the agreement:

"The promotional of technological innovation and transfer and dissemination of technology will hopefully benefit such users and producers so as to reach the conducive social and economic welfare with balanced rights and obligation." (WIPO: 1996, Pp.18)

In order to balance the benefits between the developed and least-developed a provision under the under paragraph 1 and 2 of Article 66⁴ of the agreement had been added specifically for them to create a sound and viable technological base

⁴ Article 66 of TRIPS agreement is complemented by Article 65 with subject to the provision of Article 3, 4 and 5 in order for these countries to fully comply with the agreements.

with subject to incentives provided by developed members. Numerous studies, such as by Maskus (2000) and Smith (2002) has proved statistically that FDI is a mechanism through which stronger IPR are associated with greater FDI and R&D and can contribute to economic growth and welfare: “ FDI typically carries efficiency advantages through superior technologies, management skills and marketing’.

Thus, this research is interested to examine the importance of economic function of the patent protections for the dynamic performance of the economy using a cross-country analysis for the mixed periods of 1996 up to the year of 2000. The selections of the time periods will look into and provide a pre-empirical evidence of the importance and significant of patent protection to attract FDI as a vital elements to foster economic development for the first five years periods after the agreement came into effect in January 1, 1996.

This research also interested to perceived the impact of the implementation of TRIPS and their harmonizing effect on IPR system whether stronger IPR can attract investment while there's a significant differences existed across countries.

1.2 Objectives of Study

The objective of this paper is to analyze the significant impact (though it is too early to provide conclusive evidence) of IP protection to FDI inflow for selected cross-countries samples for the first five years implementation of the TRIPS agreements. Two designed institutional factors were opted i.e. patent protection index (IPRS) and black market index (BMI).

The IPRS is an indicator for levels of protection (i.e. standard protection derived from the book of law) to the inventors of newly invented products or process with limited⁵ monopoly powers to exercise his/her rights. The BMI is view as the transparency of the domestic market conditions. If, for certain countries, the black market activity (illegal transaction) exists in the economy, the incentives and benefits left to the investor are violated due to the higher implementation cost.

The R&D intensity included in the analysis is to identify the consequences that might turn up to FDI investment. The interaction between explanatory variable will also be examined. The interaction between variables in the analysis will give a different view of certain level of FDI that might exist given by a country level of protection, *ceteris paribus*.

⁵ Granted patent holders are given limited monopoly power to exercise their rights. As a standard protection, according to the TRIPS agreement under Article 33 with subject to exclusive rights conferred which clearly stated under Article 28. For the purposes of this study the standard clause of limited powers which was designed by Park and Ginarte (1997) were mainly referred to years of protection i.e 20 years upon filing the application and 17 years upon granted.

This motivates the research to examine on how the interactions of these variables might affect each other in order to achieve the momentum to speed up the economic development process. An analysis involving developing nations will also be conducted in viewing the implications and the FDI issues. The issues are how developing nations should take advantage in promoting and enhancing their foreign investment policies and also preparation that need to be taken for the countries to reach the desired certain level of development.

1.3 Methodology

In this research, combination of descriptive analysis was used to analyze the data. Since the data is a cross sectional data which includes sets of cross countries variables, pooled regression analysis technique was used with several extension models to capture the behaviour of independent variables through extended regression analysis.

The regression model is then calibrated to detect some sort of multicollinearity, heteroscedasticity and functional problem as a pre-requisite to classical assumptions. An extension of several models was further developed to fully assess the possibility of different development level using several dummy variables.

1.4 Limitations of Study

The applications of model developed in this research are drawn from the assumption of linear relationship between dependent and independent variables. There are limitations in this analysis especially in terms of the types and choices (appropriate) of data availability from (less and least) developing countries that limit the sample size.

1.5 Outline of chapters

The research paper is organized as follows. Chapter 2 discussed the previous literatures which are divided into several issues and sub issues. Chapter 3 the explained the issues of industrial development progress as an impact of advancement of IPR through foreign direct investment (FDI). Chapter 4 critically assessed the theoretical framework used in the analysis. Chapter 5 will further explained the analysis which contains the empirical results and the research were concluded with Chapter 6.