DIRECT MONETARY COSTS OF INTELLECTUAL PROPERTY FOR DEVELOPING COUNTRIES

A CHANGING BALANCE FOR TRIPS?

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SOUTH CENTRE

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I. Introduction

While the role of intellectual property (IP) in promoting innovation and its relationship with economic growth is highly debated, most economic analyses do not find a direct linkage between them and some are also skeptical about the impact of IP in spurring innovation particularly but not only in developing countries.[1] A large part of the academic literature and reports by the United Nations (UN) and other agencies point to the obstacles and costs that IP creates for developing countries, especially in relation to access to medicines.[2]

It is startling, however, that almost no discussion exists on the direct monetary costs for countries of the IP international regulatory framework. Indeed, on top of the inherent costs on ´access´ or ´learning´ abilities, there are some important tangible, measurable, direct monetary costs to countries. These costs are the financial payments that occur simply for the use of intellectual property. These payments are relevant in any discussion on the role of IP in the context of development.

Unfortunately, there is no systematic analysis of information in this area. For example, the World Trade Organization (WTO) does substantive work on trade flows to understand which countries export or import more, even at very disaggregated levels, but does nothing alike in the case of its agreement on intellectual property rights (IPRs): which Members receive more payments for the use of such rights? Which countries have a permanent deficit? Are these movements of currencies sizable or important enough to appear in the WTO statistics?

The IP-related payments are detectable on an aggregate (State) level. There is information on how large they are and on their trends over time. This report provides a brief analysis of this information and identifies which countries receive/spend more at an aggregate level.

Countries do make records of their IP-related transfers in a specific line in their *Balance of Payments* (BoP) statistics. Indeed, when two private actors agree on the use of an IPR (such as patents, trademarks, copyrights, industrial processes and designs including trade secrets, and franchises) a fee is normally stipulated. When this fee is paid to a foreign right holder, normally it is paid in a foreign currency.[3] These fee payments in foreign currency are recorded, in the national accounts and later in the quarterly Balance of Payments that all countries prepare, as an international transaction. Hence, every country in the world expresses "**charges (or royalties) for the use of intellectual property**" as one of the aggregated lines that explain the movement of currencies across its borders.

An important caveat is that royalties are just a modest proxy for the actual direct monetary costs of IPRs use across borders. Indeed, they capture only a part of what happens in the real world: a significant part of transfers related to IPRs can be shifted to other statistical lines, for example payments of services or goods that have "embedded" the pricing of the IPRs, or transfers of profits by foreign subsidiaries (that have previously received such payments in local currency and do not appear in the BoP) to their headquarters. In addition, mergers and acquisitions (M&As) and general investments can comprise a sizeable portion of IP costs in their operations, that are later recorded as part of other types of transactions and not as a

[1] See, e.g., Carlos Correa, ed., *Intellectual Property and Economic Development* (Edward Elgar, 2020).
[2] See, e.g., Germán Velásquez, Carlos M. Correa and Vitor Ido, *Intellectual Property, Human Rights and Access to Medicines: A Selected and Annotated Bibliography (3rd Edition)* (Geneva, South Centre, 2020). Available from https://www.southcentre.int/book-by-the-south-centre-2020/.
[3] Charges for the use of intellectual property are defined by the International Monetary Fund (IMF) as: "*payments and receipts between residents and nonresidents for the authorized use of proprietary rights (such as patents, trademarks, copyrights, industrial processes and designs including trade secrets, and franchises) and for the use, through licensing agreements, of produced originals or prototypes (such as copyrights on books and manuscripts, computer software, cinematographic works, and sound recordings) and related rights (such as for live performances and television, cable, or satellite broadcast). Data are in current U.S. dollars*".

"royalty for the use of IP". Hence, the statistical line of "royalties for the use of IP" in the BOPs of individual countries is definitely a partial one. But as far as figures are available, they are universal (every country has a BoP), show trends and are comparable (because it is a monetized figure, unlike the indirect costs).

Moreover, these figures, as noted, are readily available. For example, the World Bank has a tool, sourced from the International Monetary Fund (IMF) Yearbook of BoPs, to consolidate such figures.[4] The World Bank tool is not meant for the study of this specific line, but instead for general comparisons among the multiple variables of a BoP. Results are thus not evident nor automatic, and are separated between payments and receipts, but in making use of the source data, interesting patterns do appear.

An overview of some findings is presented below, with the aim of promoting an assessment and discussion at the WTO and other fora whenever there is a consideration of the impacts of the IP international regulatory framework, notably the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in individual countries.

II. The figures: preliminary results

At the outset, it is important to note that most IP-related payments happen between developed countries. The bulk of the payments and receipts reliant on the IP system is expressed in mutual transactions among developed countries, and the sums are roughly balanced between payments and receipts.[5]

However, when zooming in to the exchanges between developing and developed countries, some outstanding patterns emerge.

First, the transfers from developing to developed countries are quite sizeable in absolute terms:

- In 2020 alone, low- and middle-income countries paid 77 billion USD in royalties for the use of IP, and received 13 billion USD.
- The least developed countries (UN classification) paid 267 million USD, and received 68.6 million USD.
- The Arab World paid 636 million USD, and received 55 million USD.
- Argentina paid 1.2 billion USD, and received 219 million USD.
- Brazil paid 4 billion USD, and received 634 million USD.
- Chile paid 1.5 billion USD, and received 39 million USD.
- Colombia paid 1.1 billion USD, and received 123 million USD.
- Costa Rica paid 623 million USD, and received 6 million USD.
- Guatemala paid 259 million USD, and received 16 million USD.
- India paid 7.2 billion USD, and received 1.2 billion USD.
- Indonesia paid 1.5 billion USD, and received 83 million USD.

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[4] World Bank, "Charges for the use of intellectual property" (BoP, current US$). Available fromhttps://data.worldbank.org/indicator/BX.GSR.ROYL.CD, for receipts and https://data.worldbank.org/indicator/BM.GSR.ROYL.CD?name_desc=false, for payments.

These sites have been designed for other purposes not related to IP searches. A double research is needed, as "payments" and "receipts" are separated. Moreover, the user would preferably need to download the whole data, or click on "Databank" and do individual queries for countries or regions, one by one. In spite of these difficulties, these are excellent sources of comparable official information.

[5] For example, for the members of the Organisation for Economic Co-operation and Development (OECD) payments for the use of IP amounted in 2019 to USD 347,783,948,439, and receipts amounted to 377,368,171,263.

- Malaysia paid 2.3 billion USD, and received 232 million USD.
- Pakistan paid 183 million USD, and received 11 million USD.
- Peru paid 348 million USD, and received 25 million USD.
- The Philippines paid 519 million USD, and received 15 million USD.
- The Russian Federation paid 6.8 billion USD, and received 1.1 billion USD.
- South Africa paid 1.1 billion USD, and received 108 million USD.

The relative sizes vary vastly, but the dis-proportion of payments and receipts is constant. The resulting deficits, translated to other aspects of trade, would be, at a minimum, serious object of study.

On the opposite side of the spectrum the USA, for instance, paid 43 billion USD and received 113 billion USD.

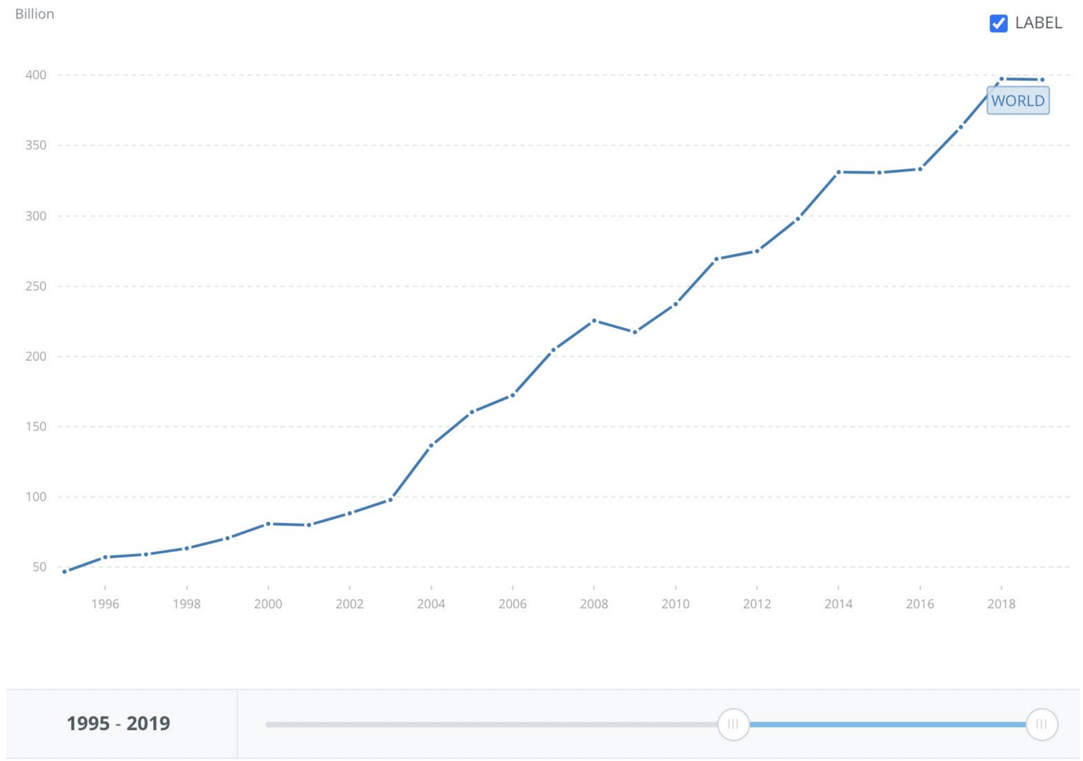
Second, these transfers are sizeable in comparative terms as well. Figures on different types of international transfers show that the numbers associated to IP royalties are not negligible as compared to other flows across borders, for instance:

- The figure for Official Development Aid (ODA) for 2020 was 161 billion USD a year, according to the Organisation for Economic Co-operation and Development (OECD) ODA Statistics. This compares bluntly to a transfer of 77 billion in payments of IP royalties from the South to the North.
- Foreign Direct Investment (FDI) inflows to India in 2020 were 64 billion USD[6], while IP payments outflows were 7.2 billion USD. In Colombia, FDI inflows were 8 billion USD[7], while IP payments outflows were 1.1 billion USD.
- South Africa's total trade in goods surplus in 2020 was 1.77 billion USD[8], while it paid almost the same amount (1.6 billion USD) in IP royalties to the world, during that year.

These figures illustrate the size of incoming and outgoing transfers - which are normally well monitored - in important areas as compared to IP royalty payments. While the latter are not negligible at all, they are generally overlooked.

Third, these figures are growing by the day. Since the signature of the TRIPS Agreement in 1994, for example, the amount of IP-related transfers increased from 50 billion to 449 billion in 2020, i.e., an increase by nine times of the amount transferred.

[6] World Bank Statistics, Indian BoP.
[7] World Bank Statistics, Colombian BoP.
[8] See https://www.statista.com/statistics/578960/trade-balance-of-south-africa/.



Source: World Bank, Charges for the use of intellectual property (BoP, current US$)

III. Conclusions

A first conclusion is thus straightforward: the IP international regulatory framework does have direct monetary costs for developing countries, on top and beyond discussions on its indirect costs to development (either impediments to access, and obstacles in the ability to learn). These direct monetary costs are sizeable both in absolute and relative terms. And they are growing.

A second conclusion is that IP royalties are a sizeable transfer of resources from the South to the North. It is a finding that should be informing the development dimension of the discussions on the IP regime.

A third conclusion is that there is no discussion on this issue. IP discussions tend to be among experts on a highly sophisticated environment of rules, and rarely bring to the table the Ministries of Finance, the development and planning agencies, or the Heads of Government that have a broad view on costs and benefits of strategies for development across the board.

As a normal export/import discussion, an "export/import" of IP-related transfers should be part of the WTO Members' array of data to inform public policy and negotiations. Figures and balances should be permanent, fine-grained on different realms of IP, and improved to capture more of other direct costs on top of the simple payment of royalties. A discussion on the presumed “balances” of the international IP regime, particularly as shaped under the TRIPS Agreement, should consider the direct monetary costs and in the context of more comprehensive analyses on the development impact of the Agreement.

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