

9. WTO TRIPS AGREEMENT: A HINDRANCE TO THE ECONOMIC DEVELOPMENT OF LEAST DEVELOPED COUNTRIES? THE CASE OF MALAWI AND RWANDA

is that LDCs keep on making requests for extension of dates

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ABSTRACT

The Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement) is a brainchild of the World Trade Organization (WTO), an organization established in 1995 as an outcome of the Uruguay Round of trade negotiations, which took place from 1986 to 1994, within the framework of the General Agreement on Tariffs and Trade (GATT). Many studies have been conducted on the socio-economic benefits of the TRIPS Agreement for developing countries such as those sanctioned by the Organization for Economic Co-operation and Development (OECD), the World Intellectual Property Organization (WIPO) and the European Union Intellectual Property Office (EUIPO). However, little attention has been paid to the plight of Least Developed Countries (LDCs) in relation to the extent to which they are able to make

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Such unforeseen imbalances being observed overtime should ordinarily be reason enough to necessitate full utilization of TRIPS flexibilities by LDCs. Observably also, there has been some growing concerns that the benefits of higher IP protection through the TRIPS has been unevenly distributed with the developed world getting the most out of the cake, despite all countries bearing the transaction costs.¹⁸ These observations rubberstamp the need for LDCs to ensure full utilisation of the TRIPS flexibilities, including continued extensions of transition period to allow for technological catch-up period.¹⁹

3. COMPLIANCE WITH INTERNATIONAL AGREEMENTS: DO LDCS REALLY UNDERSTAND TRIPS AND ITS FLEXIBILITIES?

International relations literature on accession to and compliance with international agreements outlines three approaches that seem to inform poor countries when it comes to compliance to international agreements. One approach contends that national characteristics of developing countries are the core source of variation, suggesting that this may have played a role as regards TRIPS implementation. This view looks at such issues as overall economic worth; relative weight of IP related imports and exports, technological factors and the structure of the domestic industry and the potential for cultural and creative industry as being the potential driving forces for signing an agreement.²⁰The expectation therefore is that the wealthier developing countries should be able to offer higher IP standards, especially where they are able to export IP related goods.

A second approach focuses on the role of international power

industry, there emerged the need to have the Intellectual Property legislation reviewed.

Table 1. Summary of reforms in the 2018 Rwanda Intellectual Property Policy

| Area | Policy Reforms |
|-----------------------|--|
| Legislative framework | <ul style="list-style-type: none"> • Domestication provisions of international treaties including TRIPS • Cover all categories of IP • Establishment of penal provisions against offences to IPR. • Takes advantage of TRIPS flexibilities to the Rwandan context. <p>Clarifies institutional responsibilities</p> |
| Patents | <ul style="list-style-type: none"> • Revision of patent legislation with the view to attract FDI • Empowerment of the new IP office with infrastructure, resources and know-how <p>Establishment of an administrative opposition.</p> |
| Utility models | <ul style="list-style-type: none"> • Empowerment of the new IP office with infrastructure, resources and know-how • Establishment of an administrative opposition procedure. • Engage the IP office to create advisory service <p>Create opportunities for learning from others on innovation culture.</p> |
| Industrial designs | <ul style="list-style-type: none"> • Accede to Locarno Agreement on international classification for industrial designs • Provide for substantive examination of applications for industrial design • Establish an administrative opposition procedure for the registration of IDs • Empowerment of the new IP |

| Area | Policy Reforms |
|------------------------------|---|
| | <p>office with infrastructure, resources and know-how.</p> <ul style="list-style-type: none"> • Establish an administrative opposition procedure. <p>Empower IP office to provide advisory services.</p> |
| Trademarks | <ul style="list-style-type: none"> • Accede to the Nice Agreement International Classification as well as Banjul Protocol. • Align to international standards • Provide for mechanism of appeal and dispute resolution. • Empowering the IP office • Establish an administrative opposition procedure <p>Empower IP office</p> |
| Geographical Indications | <ul style="list-style-type: none"> • Create appropriate legislative framework for GI • Accede to the Lisbon Agreement on Appellations of origin • Create awareness as regards the potential of GIs <p>Empower IP office to deal with GIs.</p> |
| Copyright and Related rights | <ul style="list-style-type: none"> • Create appropriate legislative framework • Empower IP office to deal with copyright registration • Engage in efforts to create awareness. <p>Rationalize the roles of different institutions Liaise with CMOs to take advantage of systems such as WIPOCCOS</p> |

7. THE MALAWI CASE

Malawi is a small land-locked country in Sub-

| Priority Area | Problems Identified | Strategies |
|---|---|--|
| | High filing fees | generation of IP as a performance indicator <ul style="list-style-type: none"> • Promote development of institutional IP policies • Establish an innovation fund • Develop guidelines for supporting international protection of locally generated IP assets • Promote reverse engineering • Promote Traditional Knowledge (TK) & Traditional Cultural Expression (TCE) based innovations |
| Effective Exploitation and Commercialization of IP Assets | R&D activities not leading into commercialization | <ul style="list-style-type: none"> • Develop and implement guidelines for supporting commercialization of IP • Promote establishment of innovation centres • Develop contractual and licensing guidelines |

| Priority Area | Problems Identified | Strategies |
|---------------|---------------------|---|
| | | <ul style="list-style-type: none"> • Develop capacity for enforcement and dispute resolution |

8. RWANDA-MALAWI COMPARISON

As can be appreciated from Tables 1 and 2, Malawi and Rwanda's IP legislations are by far not comparable. Rwanda already had a fairly modern IP legislation as early as 2009 and has over time begun considering creating a conducive

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