

Patent Provisions in Chinese Trade Agreements

Salam Alshareef

Salam.alshareef@upmf-grenoble.fr

Evolution of International Trading System: Prospects And Challenges

Saint-Petersburg

October 29 - 30, 2015

Plan

- Introduction
- Papers objectives
- Results discussion
- Conclusions

Introduction: the Evolutionary Approach

- Rehabilitation of evolutionary approach to development (Stiglitz et al, 2009, Cimoli et al 2014)
 - Development is the other side of the accumulation of Technological capabilities
- Access to Knowledge and accumulation of technological capabilities is influenced by Intellectual Property Rights regime.

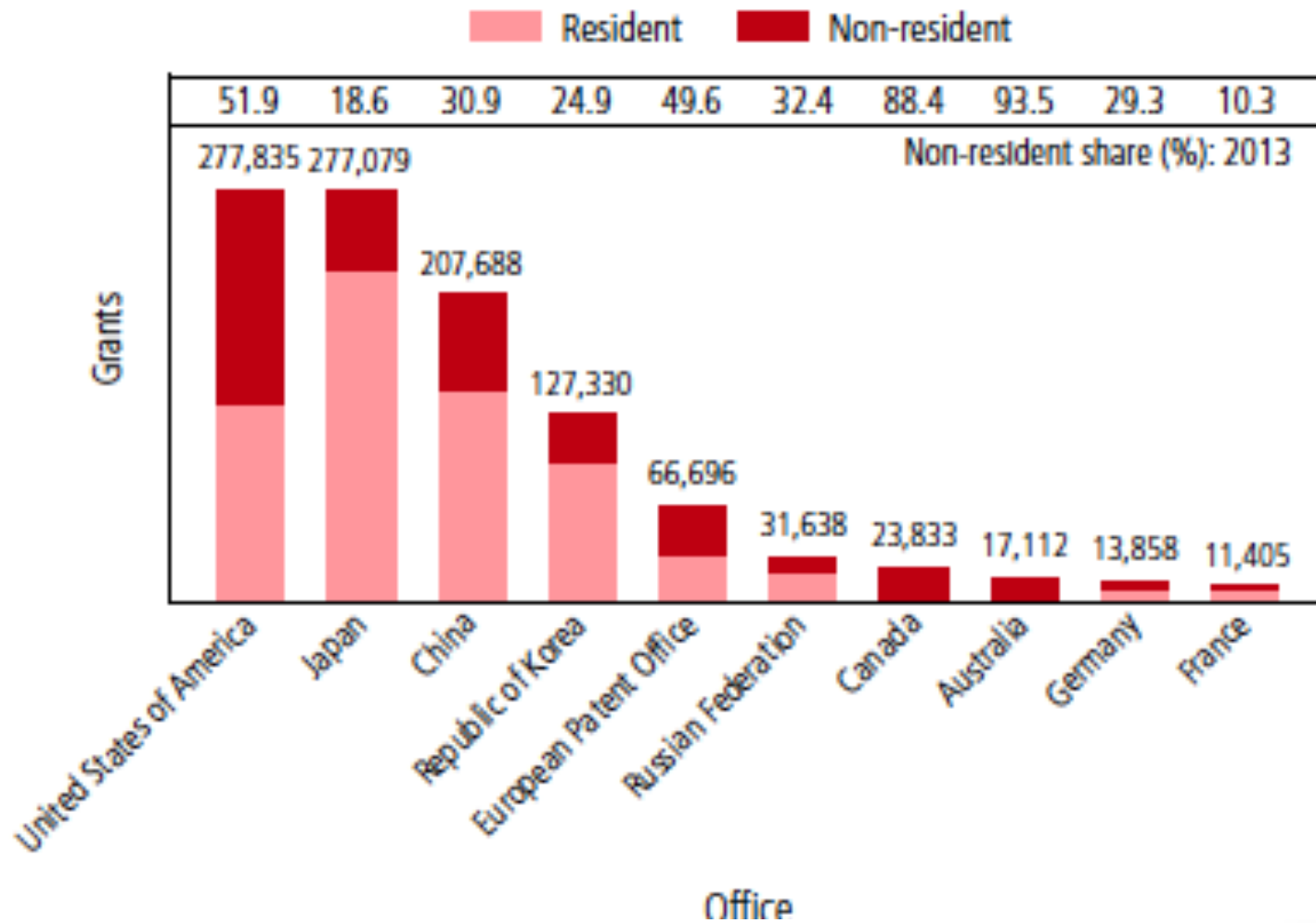
Introduction: IPR in international Trade Regime

- TRIPS: historical impediment on access to knowledge and technology
- TRIPS flexibilities: limited but important for countries with minimum industrial and technological capabilities
- More restriction introduced by US and EU PTA's
- Overall tendency is the restriction of *de jure* policy space for the implementation of national innovation system that favour both access and production of knowledge.

Introduction: South-South Trade

- The relative increase of South-South Trade weight, in 2010 :
 - nearly 60% of total import of DC came from other DC.
 - Over 53% of all high technology products imported by DC as a group were sourced from DC (2010)
 - 54% Of china's export go to DC (2010)
 - 54% of China's high technology products were exported to other developing countries.

Patent Grants for 10 top offices 2013



Paper objective

- How China regulate its patent related issues in its trade agreements with DC.
- Whether TRIPS Flexibilities were eliminated, kept or affirmed in the studied agreements.
- Whether China use its trade agreements as a vehicle to internationalize a predefined patent model
- Observing consequences of Chinese patent approach on *de jure* marge of maneuver for policies aiming at fostering national technological capabilities

Patent in Chinese trade agreements with DC

- Either do not cover IPR, including patent, or provide very limited coverage with no mandatory engagements.
- General non mandatory provisions recognizes
 - The need to attain balance between patentee rights and the legitimate interest of users and community
 - prevent any practice that constitute an abuse of IPR by patentee and have the effect of adversely affecting or limiting technology transfer

Patent in Chinese trade agreements with DC

- Genetic resource, traditional knowledge and folklore
 - affirm the CBD principles and encourage the establishment of mutually supportive relationship between the CBD and TRIPS
 - affirm each country right to adopt or maintain measures aimed at promoting the equitable sharing of benefits arising from the use of genetic resources and traditional knowledge.
 - No mandatory obligation concerning resource disclosure and prior informed consent obligations in patent applications. But recognize members rights to adopt measures that address bio-piracy.

Patent in China's trade agreements with developing countries

- recognize principals established in Doha declaration
 - the first WTO instrument to specifically use the concept of 'flexibility' with regard to the TRIPS.
 - liberty of to define the ground upon which compulsory licenses are issued .

Conclusions

- no additional commitment to parties previous one. Many of the terms in patent provisions are vague, flexible and laden.
- It does not promote a predefined model of patent through its trade agreements.
- In contrast to Us and EU Trade Agreements, De jure Policy space available under TRIPS for practices aimed at fostering local technological capabilities is amply preserved under Chinese Trade Agreements.

Thank you