

Between Protection and Dependency: Rethinking IP Harmonisation and Innovation-Driven FDI¹

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Abstract

This piece reflects the tensions between regional intellectual property (IP) harmonisation and innovation-driven foreign direct investment (FDI) in emerging economies. Rather than offering definitive answers or empirical analysis, it signals the complexity of aligning international IP norms with diverse national innovation ecosystems and their FDI attractiveness. This piece calls attention to critical legal systems theory, dependency theory, the capabilities approach, and innovation systems theory, but it does not claim to fully apply these frameworks on this occasion. It highlights their relevance instead as a preparation for the following research endeavours. Case insights from Chile, Brazil and Vietnam illustrate how harmonisation may reproduce asymmetries and sideline local actors. Therefore, there is no intention to turn this piece into a conclusive study. Instead, it is an invitation to rethink the politics of IP governance and develop a more nuanced, plural, and context-aware research agenda for emerging economies.

Keywords: Intellectual Property (IP). IP Harmonisation. Foreign Direct Investment (FDI). Innovation. Emerging Economies

Introduction

The ever-growing significance of intellectual property (IP) in the global economy has elevated IP protection to a fundamental role in attracting foreign direct investment (FDI), particularly in innovation-intensive sectors such as biotechnology, pharmaceuticals, and information and

¹ This piece forms part of an ongoing research agenda exploring the intersections of intellectual property, development, and innovation governance in emerging economies. Future publications will further develop the theoretical frameworks introduced here and engage with empirical case studies and data-driven analysis.

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communication technologies. In emerging economies, pursuing IP harmonisation through regional trade agreements like the Pacific Alliance and Mercosur has generated enthusiasm and controversy (Daniels 2015). If, on the one hand, some policymakers and scholars argue that harmonisation fosters investor confidence and encourages technology transfer, on the other hand, specialists alike caution that it may hinder local innovation, restrict policy space, and increase dependency on foreign technologies (Maskus 2000).

This piece explores the relationship between regional IP harmonisation⁴ and innovation-driven FDI⁵ in emerging economies through a critical and interdisciplinary proposition. Rather than treating harmonisation as a neutral legal process, it signals the socio-economic, political, and institutional questions that shape its outcomes. The central argument is not that harmonisation leads to specific, measurable results but that it opens a challenged space of development trajectory negotiation. Another important argument states that other factors, such as political stability and infrastructure, may impact FDI more than IP harmonisation (Dunning and Lundan 2008). This paper calls for analyses against the critical legal systems theory, dependency theory, innovation systems theory, and the capabilities approach by offering an initial critique of dominant assumptions and an outline of questions for future inquiry.

At this stage, it does not attempt to resolve the tensions it raises. Instead, it is a conceptual starting point, which demands dedicated empirical, legal, and theoretical exploration in future work.

Theoretical and Critical Framework

Existing grounded literature shows that IP protection can attract FDI (Maskus 2000), but not alone. Adopting stronger IP regimes may come with trade-offs, especially in jurisdictions at early stages of industrialisation (Shadlen 2009). Trends in FDI suggest that if they were different, a significant portion of FDI flows to developing economies would primarily target

⁴ The harmonisation of intellectual property rights refers to the process of aligning and standardising intellectual property (IP) laws and practices in different regions or countries in order to create a more consistent and predictable legal environment for creators and businesses (Rajec 2020).

⁵ This paper does not treat FDI as a neutral outcome of IP policy but as a site of strategic intervention and contestation. The type of FDI attracted—and the way it interacts with national innovation ecosystems—shapes whether IP harmonisation serves development or dependency.

sub-Saharan Africa and Eastern Europe. In this scenario, countries like China and Brazil, despite being high-growth developing economies with large markets and weak protections, might not have drawn as much FDI. If they were, recent FDI flows to developing economies would have gone mainly to sub-Saharan Africa and Eastern Europe. In contrast, China, Brazil, and other high-growth, large market developing economies with weak protection would not have attracted nearly as much FDI (Maskus 2000). Harmonisation efforts embedded in trade agreements may reflect and reinforce global power asymmetries, reproducing patterns of technological dependency and limiting opportunities for local experimentation and learning (Jones and Adam 2023).

From a dependency theory⁶ perspective, IP harmonisation can function as a legal and economic subordination mechanism (Naseemullah 2023). Legal transplantation of IP norms from developed to developing countries often fails to produce the desired innovation outcomes, partly because these transplanted norms do not reflect local economic structures, institutional capacities, or cultural practices (Muzaka 2011). Rather than catalysing innovation, rigid IP rules may consolidate the position of global firms while marginalising domestic actors who lack the resources to navigate or benefit from such regimes (Blackwell et al. 2009).

To navigate these dynamics, this paper gestures toward a capabilities-based approach⁷ inspired by the work of (Cimoli et al. 2009). From that, one can ask whether IP policies play a role in expanding a country's technological and institutional capabilities or merely aligning them with global rules.

Innovation systems theory⁸ also provides a valuable lens for analysing knowledge production, dissemination, and usage within specific socio-technical contexts (Mariani et al. 2023).

⁶ Dependency theory, as adapted here, highlights how legal and institutional reforms in developing countries often reproduce existing global asymmetries. In the context of IP, harmonisation may entrench rules that benefit transnational corporations and undermine local capacity-building (Farny 2016).

⁷ The capabilities approach reframes innovation policy around societies' capacity to generate, absorb, and adapt knowledge. Rather than focusing on formal compliance or market signals, it emphasises structural learning and the co-evolution of institutions and technologies (Cimoli et al. 2009)

⁸ Innovation systems theory focuses on the networks of actors and institutions involved in producing and using knowledge. It shifts attention from isolated policies to learning, feedback, and coordination dynamics across a country's science, technology, and industrial base (Weerasinghe et al. 2024).

Critical legal systems theory⁹ takes IP law not as a neutral regulatory device but as a terrain of ideological, economic, and geopolitical struggle. Ultimately, the effectiveness of IP harmonisation should be judged not by legal convergence alone but by its ability to contribute to inclusive and sustainable development (Katyal and Goodrich 2013).

Nevertheless, should legal alignment be prioritised over domestic innovation agendas? Who truly benefits from harmonisation—local entrepreneurs? Researchers? Multinational corporations seeking market expansion? Future research could map the distribution of IP-related benefits across actors, using stakeholder interviews, policy impact assessments, or patent ownership data to trace who captures value.

Furthermore, why is there so little empirical interrogation of how these policies affect inequality, knowledge access, or local knowledge systems? A comparative analysis of licensing practices, pricing, and access to technologies in post-harmonisation contexts clarifies these distributive effects. These questions too often remain unasked in policy circles, and this paper aims to bring them to the foreground.

Methodology and Scope¹⁰

Despite the availability of relevant data on this paper's topic from sources such as UNCTAD, ECLAC, and national IP and investment agencies, it is not intended to present empirical data on this opportunity. Instead, it offers a conceptual and critical reflection that frames future research questions and directions. Case insights are stylised and illustrative rather than exhaustive. The intention is to re-examine current assumptions and initiate a broader, critical dialogue on IP harmonisation in emerging economies.

This methodological approach is not value-neutral. It acknowledges that policies are not just technocratic instruments but sites of power, negotiation, and contestation (van 't Klooster 2022). Who takes part in the policymaking processes? Who does not take part? Whose

⁹ Critical legal systems theory views law not as a neutral infrastructure but as a field shaped by power, ideology, and historical struggle. From this view, IP regimes are neither apolitical nor technical—they reflect contested visions of ownership, value, and development (Griffiths and Mylly 2021).

¹⁰ This is a conceptual piece. It does not test a hypothesis or present new data. It aims to open a critical space for discussion by drawing attention to the underlying assumptions and tensions that shape regional IP harmonisation strategies in emerging economies.

knowledge counts in the design of harmonised IP regimes? These questions frame the orientation of this work.

Case Insights

Selected case insights illustrate how different national contexts respond to IP harmonisation pressures.

Brazil

Brazil has a relatively strong domestic innovation ecosystem supported by public research institutions, industrial policy tools, and targeted state investment (Mazzucaro 2025). Nevertheless, bureaucratic inefficiencies, particularly within the National Institute of Industrial Property (INPI), and fragmented enforcement practices are the most common obstacles to FDI inflows (Cimoli et al. 2009). Recent developments, such as the MCSFTA¹¹ concluded in 2022, underscore Mercosur's strategic pivot towards engaging with dynamic Asian economies to bolster economic relations and attract FDI (Carls and Amal 2022). The Brazilian example features a "middle ground" model, which gives room to some timely questions: Is this model replicable? To what extent? Does it reveal internal contradictions? Can a country simultaneously defend its policy space and enhance its role in the global IP system? Or are these goals contradictory in nature?

Chile

Chile often appears as a model of IP harmonisation and liberalisation. It has strong IP protections, aligned its domestic laws with international standards. Over time, it signed numerous trade agreements with extensive IP chapters. That has attracted foreign investment in high-tech sectors, including biotechnology and software development. However, these legal reforms have not necessarily translated into increased domestic innovation capacity. The innovation system relies heavily on imported technologies and foreign patents, while local SMEs face significant barriers to entry into global value chains (Forero-Pineda 2006).

¹¹ Mercosur-Singapore Free Trade Agreement

Critically, Chile's approach raises questions: Is pursuing foreign capital through legal certainty worth the potential erosion of local technological autonomy? Has IP harmonisation become a substitute for industrial policy? Moreover, if so, what are the long-term consequences of outsourcing innovation to the Global North?

Vietnam

Vietnam has actively engaged in IP harmonisation as part of its broader strategy to attract innovation-oriented FDI. As a member of both the CPTPP¹² and the EVFTA¹³, Vietnam has restructured its IP framework to meet international standards. This includes stronger copyright enforcement, pharmaceutical patent protections, and procedural reforms in IP litigation. These changes have helped facilitate FDI attraction in manufacturing and technology sectors (World Bank 2020). Vietnam's experience illustrates both the promise and peril of harmonisation as a development tool, raising questions such as: From a dependency theory lens, does Vietnam's alignment with high-income economies' IP norms support its national development, or does it entrench patterns of legal dependency and trade asymmetry? Through the lens of critical legal systems theory, whose norms are being internalised, and how are domestic legal traditions adapting—or being displaced? Can harmonisation be a credible development tool if it constrains policy autonomy and institutional experimentation? From an innovation systems perspective, does IP reform enable knowledge absorption and capability building, or merely improve compliance optics for multinational investors? Future research might explore whether harmonisation in Vietnam supports deeper structural transformation or reinforces its peripheral position within global innovation chains.

Policy Analysis and Discussion

A comparative assessment of regional IP harmonisation efforts reveals various approaches and outcomes. While the Pacific Alliance has prioritised alignment with international norms and investor expectations, Mercosur countries have shown greater reluctance to cede regulatory

¹² Comprehensive and Progressive Agreement for Trans-Pacific Partnership.

¹³ EU–Vietnam Free Trade Agreement.

autonomy. Vietnam, by contrast, has exemplified an assertive use of harmonisation as part of its trade-oriented development strategy, integrating stringent IP reforms into high-level trade negotiations with the European Union and other partners. However, the extent to which this legal alignment enhances domestic innovation capacity—as opposed to merely satisfying external expectations—remains an open question. The key (preliminary) lesson is that harmonisation, when pursued uncritically, may reproduce global inequalities and undermine local innovation systems.

This paper proposes the following policy directions to avoid those pitfalls.

Integrating flexibilities: Regional IP frameworks should explicitly protect countries' right to tailor IP laws to their development needs, including exceptions and limitations, differential implementation schedules, and safeguard clauses (Oke 2018).

Enhancing institutional coordination: Effective harmonisation requires synergy between IP offices, science and technology ministries, industrial development agencies, and education systems (OECD 2023).

Fostering inclusive innovation ecosystems: Legal reform should be combined with investments in infrastructure, skills development, and support to ensure that innovation benefits are broadly shared (Coyle and Selvi 2024).

Promoting regional collaboration: Beyond legal alignment, countries should invest in regional knowledge-sharing platforms, joint research initiatives, and collective negotiation strategies to enhance their bargaining power and innovation capacity (King et al. 2023).

Ensuring democratic governance: Policymaking processes should be transparent, participatory, and evidence-based. Stakeholders from academia, industry, civil society, and local communities must have a voice in shaping IP reforms (OECD 2020).

However, these recommendations require a more profound reflection. What forms of knowledge do IP regimes legitimise—and which they do not? Can harmonisation be truly participatory in the context of structural asymmetries? What would a decolonial approach to IP policy look like in emerging economies such as Latin America? One direction could be to engage with Indigenous, Afro-descendant, and community knowledge practices that challenge dominant notions of ownership and innovation, reframing IP as protection and

relational stewardship. These are not merely theoretical questions; they point to the political nature of knowledge governance in the global economy.

Final Remarks

The questions posed in this piece are not rhetorical; they reflect ongoing dilemmas in academic and policy debates. While this article does not aim to resolve them, it lays the groundwork for a research agenda that will develop these inquiries through empirical, doctrinal, and comparative analysis across multiple forthcoming studies. This is not a conclusion — it is a beginning. What follows will build out the questions raised here with deeper theoretical and practical engagement. This piece addresses how regional IP harmonisation affects innovation-driven FDI in emerging economies, drawing on critical theory¹⁴, policy analysis, stylised data, and case studies. It finds that while harmonisation may support FDI inflows, its developmental outcomes are far from guaranteed. Without institutional capacity, policy coherence, and inclusive governance, harmonisation may exacerbate dependency and inequality rather than foster innovation-led development.

The analysis challenges the assumption that stronger IP protection leads to more innovation. Instead, it calls for a more balanced and critical approach that recognises the political economy of IP regimes, values domestic experimentation, and prioritises capability building. Likewise, innovation-driven FDI must be treated not only as a policy objective, but also as a political and economic mechanism that shapes who benefits from harmonisation. Future work should explore which types of FDI generate real learning and technological upgrading—and which merely replicate extractive or dependent investment patterns under the guise of innovation.

In this view, IP harmonisation is not an end but a tool supporting equitable and sustainable development when adequately designed and governed.

Future research should ask more pointed questions: What alternative models exist beyond harmonisation? How can regional integration be reimagined to privilege solidarity over competition? Moreover, what institutional architectures can ensure that innovation serves

¹⁴ Critical theory refers to a family of theories that aim to critique and transform society by integrating normative perspectives with empirically informed analysis of society's conflicts, contradictions, and tendencies.

public interests, not just private ones? How can innovation-driven FDI be evaluated beyond volume or sectoral destination—focusing instead on its developmental quality, knowledge spillovers, and impact on domestic capabilities?

Future Research Directions

Future research should adopt longitudinal and comparative methods to examine the long-term impacts of IP harmonisation on national innovation systems and social outcomes. Studies focusing on sectors such as digital technologies, renewable energy, and public health may yield deeper insights into IP regimes' differentiated effects (Roffe and Santa Cruz 2006).

Cross-regional comparisons between different emerging economies could illuminate alternative pathways and best practices. Interdisciplinary collaborations between legal scholars, development economists, and science and technology studies researchers are essential to further an understanding of the complex interplay between IP, FDI, and innovation (Antons and Hilty 2015).

This research aims to contribute to more inclusive approaches to innovation governance in emerging economies and beyond by foregrounding IP harmonisation's political, institutional, and distributive dimensions.

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