Importance of CPTPP Intellectual Property Clauses to China’s Foreign Trade Economy

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Abstract
The object of this paper study the impact of CPTPP intellectual property rights on China’s foreign trade economy, thereby to explore how to formulate a competition policy that combines China’s national conditions. In this study, the TPP intellectual property clauses and CPTPP intellectual property clauses was summarized and analyzed using analytical methods such as induction, dialectic, comparison, and history analysis. Firstly, a comprehensive understanding of the CPTPP intellectual property clauses was made from the aspects of geographical indicators and trademarks, patents and experimental data, copyright and related rights, and enforcement measures; and then, based on the CPTPP intellectual property clauses, the status quo of property rights and China’s current deficiencies in intellectual property were analyzed. Finally, it discussed the impact of CPTPP intellectual property clauses on China’s foreign trade economy and how to gain a leading edge in future international economic and trade exchanges. The results showed that CPTPP’s new intellectual property regulations have both positive and negative impacts on China’s foreign trade economy and intellectual property rights. The main negative impact is that in the short term, China’s exported goods or commodities to the outside world can easily infringe the intellectual property rights and economic benefits of other countries, especially the 11 countries that signed the CPTPP agreement. The positive impact is that China can refer to the CPTPP intellectual property clauses when revising laws on intellectual property rights. After all, the CPTPP intellectual property clauses represent the highest protection for patents, copyrights and trademarks in developed countries. This paper analyzed and improved the efficiency of China’s foreign trade system and economic exchanges, and found that the CPTPP intellectual property clause has a great impact on China’s foreign economic relations and trade, which provides a strong basis for the future enactment of intellectual property regulations in China.

Key words: Intellectual property, Patent, Copyright, Foreign Trade, CPTPP

1. Introduction

The CPTPP (Comprehensive Progressive Trans-Pacific Partnership) (Khan et al., 2018) was jointly promoted by the Japanese Economic Rehabilitation Minister Mao Mu Min Chong and the Minister of Industry and Trade of Vietnam Chen Junying after the United States dropped out the Trans-Pacific Partnership Agreement (TPP) (Hailies et al., 2018). On February 28, 2018, the New Zealand government announced the official text of CPTPP (Gleeson et al., 2015). On March 8, the same year, 11 CPTPP member states held a signing ceremony in Chile (Townsend et al., 2016), and the 11 member states were Peru, Mexico, Vietnam, Malaysia, Brunei, Singapore, New Zealand, Chile, Australia, Canada, Japan (Halbert, 2017; Drahos and Peter, 2016). The agreement entered into force on December 30, 2018 (Pusceddu and Piergiuseppe, 2018.). CPTPP follows 80% of the basic content of the text of precursor TPP (Posen, 2018), only a small part of it has been changed, 20 clauses in the TPP text have been suspended, of course, this small change does not affect the normal run of TPP text (Trefler, 2019). In the newly revised CPTPP, most of the suspended content was related to intellectual property rights, copyrights, and patents. The terms of the foreign investment section were suspended by 7, and 11 terms of the intellectual property section were suspended (Deng and Huang, 2018). The content of suspension and change are all clauses that are not favored by some other countries that when the United States issue and announce by the TPP (Lawrence, 2018). Obviously, the TPP features of high standard and the wide coverage of the field have been inherited by CPTPP, and more comprehensive and advanced advantages were derived from them.

Many countries have made statements on this time when the United States dropped out the TPP and other relevant countries revised the CPTPP (Chiang, 2019). In China, Professor Han Liyu has carefully and effectively analyzed the advanced and comprehensive nature of CPTPP and the specific performance of its two characteristics in his article “Trans-Pacific Partnership Agreement (TPP) Full Translation Guide”. It gives a way out about China’s future in intellectual property and foreign trade and the choices it faces in the future (Takeuchi, 2019). There is also an article in the Business Culture newspaper, entitled “TPP to CPTPP: Background, Impact and China’s Countermeasures”, pointing out the relationship between China and its
neighboring countries in foreign trade and geopolitics, and putting forward strong suggestions for China to implement a high-quality multilateral trade framework trade strategy (Aaronson and Leblond, 2018). In addition, reports on CPTPP come from news and networks. For example, the Chinese website of British *Financial Times* published an article on March 13, 2018, entitled “How far can the CPTPP competition go?”, which systematically and detailly introduced the future development direction of CPTPP. The article first affirmed Japan’s role and achievements in this CPTPP negotiation. Finally, the author boldly and optimistically predicted the broad prospects of CPTPP (Cheng, 2019; Urata, 2018).

Based on the above background, this paper further analyzes and studies the CPTPP intellectual property clauses on the basis of the research of various scholars at home and abroad. Moreover, from the aspects of geographical indicators and trademarks, patents and experimental data, copyright and related rights, and law enforcement measures, this paper analyzed and improved the efficiency of China’s foreign trade system and economic exchange, and proposed countermeasures and development suggestions for China’s foreign trade and economic cooperation in the future.

2. Methodology

2.1. Research Idea and Methods

Table 1 compares the GDP, trade volume and population of TPP and CPPP. This paper took the intellectual property protection clauses of TPP and CPTPP as the research subject, and used the methods of induction, dialectic, comparison and history analysis to explore the impact of the clause on China’s foreign trade economy and the revision of China’s future competition policy. In this study, firstly, a comprehensive understanding of the CPTPP intellectual property clauses was made from the aspects of geographical indicators and trademarks, patents and experimental data, copyright and related rights, and enforcement measures; and then, based on the CPTPP intellectual property clauses, the status quo of property rights and China’s current deficiencies in intellectual property were analyzed. Finally, it discussed the impact of CPTPP intellectual property clauses on China’s foreign trade economy and how to gain a leading edge in future international economic and trade exchanges. Figure 1 below shows the research path of the CPTPP intellectual property clause in this paper. Based on the above content, China should conduct reasonable and effective treatment of intellectual property protection according to the international situation, find out the clauses for reference and absorption, and do not need to copy the rules that do not meet the development needs of China, and timely adjust the relevant intellectual property rights in China, actively promote the negotiation of free trade agreements, improve the soft power in the field of intellectual property, and prioritize the development of intellectual property strategies.

| Table 1. Comparison of GDP, trade volume and population between TPP and CPPP |
|-----------------------------|---------------|---------------|
|                             | GDP | Value of trade | Population |
| TPP                         | 38.9 | 26.3 | 11.9 |
| CPTPP                       | 13.2 | 15.4 | 7.5 |

![Figure 1](image-url)  
**Figure 1.** Research route of CPTPP intellectual property clauses

2.2. Sound and Smell can Be Applied for Trademark Registration

In the intellectual property agreement, it is clearly stated that the necessary conditions for trademark registration. The constituent elements of a trademark must conform to the regulations and must be visually perceptible. In the CPTPP intellectual property clause, it is also mandatory that “a contracting party shall not take the visually perceptible feature as a condition of registration, nor may not refuse to sign a mark because the mark consists solely of sound.” At present, in China, the voice or smell are not visually perceptible. Therefore,
sound or smell is not yet able to be registered in as a trademark in China. The new clause that voice can also be registered as a trademark was added in the CPTPP intellectual property clauses, and the protection clauses in the trademark law also apply to sound, which makes the clauses more flexible than the intellectual property agreement. Sound refers to the sound wave generated when the object vibrates. It can be perceived by the sound. The sound mark has also been called the auditory trademark in the past period of time. On March 28, 2006, the Singapore Government adopted the revised Trademark Law Treaty; which recognizes the use of sound marks as trademark for the first time, extending the scope of trademarks, making the registration of trademarks not limited to visual markings, but also extends to the auditory and olfactory markers. So far, the Treaty has gradually formed a consensus on the recognition and application of effective trademarks by various countries.

On August 30, 2013, China’s newly revised Trademark Law stipulated that the combination of sound and other elements should be included in the trademark registration. It can be known from the many revisions and experimental results of the Trademark Law in China that allowing odor to be registered as a trademark is also just around the corner.

2.3. Upgrade Protection of Well-Known Trademarks

A well-known Chinese trademark refers to a trademark that has been identified as a “well-known trademark” by a competent authority in accordance with legal procedures. Ordinary trademarks can only be protected by law in the category of goods or services that are authorized to be registered and have exclusive rights to trade, and well-known trademarks and their creativity and importance are protected to varying degrees by the same category or across categories. Well-known trademarks have higher commercial value than ordinary trademarks. In the Paris Convention signed in 1883, it proposed for the first time that a well-known trademark is protected by special laws. Each contracting party may prohibit special protection of trademarks of different types or similar types of goods or services by appeal (such as refusal or cancellation), and may not require that well-known trademarks must be registered. It can be known that CPTPP’s recognition conditions for well-known trademarks are basically loose, almost no restrictions, and the legal protection measures for this category are also very strong. As long as the use of the goods or service mark has any connection to the owner of the well-known mark and may harm the interests of the trademark owner, the contracting party may take steps to refuse or cancel the registration of the mark. In the free trade agreement between the United States and many countries, the cross-category protection of unregistered well-known brands is indeed reflected, which directly improves the protection of well-known trademarks.

China does not allow administrative agencies to identify well-known brands in batches by oneself. Therefore, in specific cases, the administrative agencies follow the principle of identification and application for protection. If the right holder is illegally infringed, before the effective protection of their legitimate rights and interests, the relevant administrative agencies should be required to identify the trademark on their own. In addition, it is not forbidden for everyone to register and use well-known trademarks in cross-category products or services. First, the registration conditions must be met. Second, the trademarks registered in China and those not registered in China are classified according to the registered location. Only well-known brands registered in China are truly registered well-known trademarks. China’s handling of well-known trademarks is not flexible enough, and its protection is not enough. In order not to make well-known trademarks lose their proper characteristics and values, in the process of legislation and law enforcement, the protection of well-known trademarks is gradually strengthened.

2.4. Protection and Recognition of Geographical Indications

Geographical indications must be real “geographical names” that is not fabricated. It is stipulated in the CDTPP agreement that the trademark system can be used to protect the marking of geographical indications, which can bring economic benefits to the people of the geographical indications and have high value. In China, geographical indications can be allowed to apply for registration as a certification mark or collective mark. A natural person, legal person or other organization that meets the requirements for the use of trademark geographical indications in the region may freely apply for the use of the trademark or collective mark. In terms of geographical protection, China’s intellectual property provisions are consistent with the intellectual property clauses of the CDTPP. In addition, in the CDTPP agreement, the protection measures and protection of geographical indications was listed in the single chapter, but this does not affect the provisions of the Trademark Law for geographical indications. On the contrary, this approach has enhanced the protection of geographical indications to a certain extent. The recognition and protection of geographical indications in the CDTPP is partly aimed at combating counterfeiting and unfair competition. The legislative model for the protection of geographical indications varies from country to country. In general, there are the Trademark Law and the Unfair Competition Law. However, in terms of the strength of trademark protection, CDTPP still has some shortcomings. The special case of geographical indication protection indicates that if the previously used trademark conflicts with the trademark used in good faith, then countries still tend to protect the latter.
2.5. Expanding the Scope of Granting Patents

Trade-related intellectual property rights agreements have a set of standards for patent applications, and patents must be creative, novel, and industrially applicable before they can be granted for patents. Both the TRIPS (Trade Related Intellectual Property System) agreement and the CDTPP agreement have been creative and annotated as non-obvious, but there are differences between the two in terms of creative understanding. The scope of the patent application extended by the CDTPP agreement is not limited to non-obviousness. It has gradually extended the scope to new methods and procedures for known products. In other words, the CDTPP agreement lowers the threshold for granting patents. According to the survey of the number of patent applications in China in recent years, as shown in the following figure, the number of patent applications in China has increased significantly in recent years due to the expansion of patent grants and the reduction of thresholds. In the early days of the revision of the precursor of the CDTPP agreement, the United States required the diagnosis and surgical methods of plants, animals, humans and animals to be included in the scope of patents. However, under the strong opposition of developing countries, the United States finally made concessions. The TPP stipulates that except for plants, a member state may refuse to grant a patent for the above. In principle, countries can grant and reject plant patents, but at least “plant invention patents can be granted.” In other words, the plant genetic resource of the United States in developing countries is a secret plunder of genetic resources in developing countries.

![Figure 2. Number of patent applications in recent years](image)

2.6. Law Enforcement Measures

China’s handling of intellectual property infringement does not comply with the provisions of the Trademark Law for the suspected infringement of trademark exclusive rights. If the circumstances are serious, the amount of trademark compensation can be added to tripled, but it is based on the treatment of infringement compensation in relation to trade-related intellectual property rights agreements. Compared with traditional property rights, intellectual property rights have greater influence on damages and consequences. Therefore, compensation for damages caused by infringement of intellectual property rights and damage to intellectual property can’t be treated in the same way, the determination of possession and destruction of physical objects, and the amount of losses are very difficult, and punitive clauses are rarely used directly. Therefore, the principles and standards for compensation for infringement of intellectual property rights have not yet been fully determined in China. In the case of low cost of intellectual property infringement and repeated infringements, the deterrent of punitive damages is incompatible with other forms of compensation. Therefore, this paper suggests that, if conditions permit, this principle can be used to find a better way to deal with intellectual property civil litigation.

Although China emphasizes intellectual property rights through protection from political actions, China has always supported the two-way system of judicial protection of property rights and administrative protection of property rights. At present, China does not have to abide by the criminal procedures of CPTPP. However, it is still necessary to think about whether China’s crackdown on infringement of intellectual property rights is too weak, and regard it as a reference for China’s future handling of infringements, to provide a strong theoretical basis for further improving the legislation and law enforcement system of intellectual property law.
3. Results and Discussion


China’s intellectual property laws and regulations were promulgated relatively late, and the establishment of its system has not been perfect. From 1970 to 1990, China’s understanding of intellectual property rights was scarce. Later, with China’s accession to the World Trade Organization, and with the opening up of economic and trade with the outside world, the awareness and germination of intellectual property legislation has gradually taken shape. In 1997, after the China’s delegation of the Promotion of International Trade attended the meeting, Premier Zhou’s report first mentioned the term “intellectual property”. China’s intellectual property protection is mainly manifested in the following two aspects: scientific legislation based on the minimum standards of trade-related intellectual property rights agreements, and continuous improvement of China’s intellectual property legal system. Table 2 below shows the promulgation period and name of China’s Intellectual Property Protection Law.

<table>
<thead>
<tr>
<th>Year of promulgation</th>
<th>Name of the law</th>
</tr>
</thead>
<tbody>
<tr>
<td>1982</td>
<td>Trade mark Act</td>
</tr>
<tr>
<td>1984</td>
<td>Patent Law</td>
</tr>
<tr>
<td>1990</td>
<td>Copyright Law</td>
</tr>
<tr>
<td>1992</td>
<td>First revision of the Patent Law</td>
</tr>
<tr>
<td>1993</td>
<td>Anti-Unfair Competition Law</td>
</tr>
<tr>
<td>2000</td>
<td>Second revision of the Patent Law</td>
</tr>
<tr>
<td>2001</td>
<td>Second revision of the Trademark Law</td>
</tr>
<tr>
<td>2008</td>
<td>Third revision of the Patent Law</td>
</tr>
<tr>
<td>2010</td>
<td>Second revision of the Copyright Law</td>
</tr>
<tr>
<td>2013</td>
<td>Third revision of the Trademark Law</td>
</tr>
</tbody>
</table>

Of course, when discussing and improving national intellectual property legislation and law enforcement systems, China did not forget to pay attention to new trends in the field of international intellectual property in the context of liberalism. So far, China has joined the WIPO (World Intellectual Property Organization) and the WTO (World Trade Organization) in the 1980s and 2011 respectively. All major international intellectual property conventions have been accepted and fully comply with the requirements of CPTPP. The international intellectual property rights conventions specifically incorporated by China are shown in the following table:

<table>
<thead>
<tr>
<th>International convention on intellectual property</th>
<th>Abbreviation</th>
<th>Join time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Paris Convention for the Protection of Industrial Property</td>
<td>Paris Convention</td>
<td>Tuesday, March 19, 1985</td>
</tr>
<tr>
<td>Berne Convention for the Protection of Literary and Artistic Works</td>
<td>Berne Convention</td>
<td>Thursday, October 15, 1992</td>
</tr>
<tr>
<td>Convention for the Protection of Producers of Phonograms from Unauthorized Duplication of the Phonograms</td>
<td>Record convention</td>
<td>Tuesday, January 05, 1993</td>
</tr>
<tr>
<td>Trademark Law Treaty</td>
<td>Trademark Law Treaty</td>
<td>Friday, October 28, 1994</td>
</tr>
<tr>
<td>Beijing Treaty on Audiovisual Performances</td>
<td>Beijing Treaty on Audiovisual Performances</td>
<td>Wednesday, July 09, 2014</td>
</tr>
</tbody>
</table>

3.2. The Impact of CPTPP on China’s Foreign Trade Economy

CPTPP has mandatory protection measures. It never allows the use of other people’s inventions or copyright knowledge to produce works without the permission of others, even things derived from research or original works that have previously been protected by intellectual property are often not permitted. The
CPTPP’s new intellectual property regulations have both positive and negative impacts on China’s foreign trade economy and intellectual property rights. The main negative impact is that in the short term, China’s exported goods or commodities to the outside world can easily infringe the intellectual property rights and economic benefits of other countries, especially the 11 countries that signed the CPTPP agreement. Another point is that, because of the protection of the intellectual property regulations of CPTPP, the strong intellectual property rights of other countries will weaken the influence and competitiveness of commodities in the international market to a certain extent, reducing the income of China’s foreign trade economy. The positive impact is that China can refer to the CPTPP intellectual property clauses when revising laws on intellectual property rights. After all, the CPTPP intellectual property clauses represent the highest protection for patents, copyrights and trademarks in developed countries. From a long-term perspective, this kind of reversal mechanism is an opportunity for the rapid development and maturity of China’s intellectual property rights. China’s rapid development is inseparable from foreign trade. Based on the special geographical, political, and economic and trade relations between China and 11 member states, China can’t develop independently. Moreover, based on the international status and economic and political influence of these 11 member states, China must constantly and closely pay attention to the implementation of the CPTPP knowledge protection regulations, and conduct a serious and comprehensive analysis on the impact of CPTPP knowledge protection regulations on China’s intellectual property system, as well as foreign economic relations and trade.

3.3. Intellectual Property Competition Measures

In the face of CPTPP intellectual property clauses, China need to adjust domestic intellectual property rights laws in a timely manner, promote the negotiation of free trade agreements, improve the hard power and soft power in the field of intellectual property rights, and make the intellectual property strategy a priority in the international strategy, vigorously promote the implementation of competition policies, gradually strengthen the reform of state-owned enterprises, go deep into international cooperation of competition policies, promote the international coordination of competition policies, and improve China’s competition policy in light of national conditions. When formulating intellectual property competition policies in line with China’s national conditions, it should not only learn from foreign experience, but also build a competition policy system with Chinese characteristics in the new era according to China’s national conditions. China faces a huge market and a complex international environment. Therefore, it is impossible to mechanically imitate the competition policy model of other countries. It is necessary to formulate a competition policy system that suits China’s national conditions through practice and exploration, and pay more attention to the issue of international coordination. Nowadays, international economic cooperation and exchanges are increasingly close, and multilateral and regional cooperation is also growing rapidly. Competition policy issues are increasingly becoming the focus of negotiations. It is important to coordinate the relationship between China’s competition law enforcement agencies and strengthen information collection, filing, exchange and consultation in international competition policy coordination. In the face of international coordination of competition policy, it is necessary to take a positive attitude, absorb the essence in the process, and enhance the connotation and level of China’s competition policy.

4. Conclusions

CPTPP can be called a high standard of trade rules, both in terms of objectives and content. It covers all the issues that member states may be involved in economic development, and also elaborates on the labor, environment, competition policy, and state-owned enterprise issues in single chapter. From the perspective of the impact of CPTPP on China, it can be described as complex and diverse. It is full of opportunities and full of challenges. CPTPP’s new intellectual property regulations have both positive and negative impacts on foreign trade economy and intellectual property rights. Its high standards and innovations in trade rules are what need to be learned and improved in China. If China wants to dominate global trade, it must carry out all-round reforms to adapt to new trade rules. This is actually forcing us to speed up the pace of reform, turning pressure into motivation and achieving longer-term development. To this end, China must improve the domestic competition law system as soon as possible and form a competition policy that is in line with China’s national conditions.

Although this article is carefully completed with care, there are inevitably many shortcomings. First of all, intellectual property rights, as a relatively obscure subject in the field of law, has a high research threshold. It is difficult to complete this paper without a certain intellectual property legal basis, especially the field of copyright protection, and the protection of agricultural chemicals and pharmaceuticals in the field of infringement and patent rights involve very difficult interdisciplinary knowledge, which has caused much trouble to the writing of this article. Secondly, the CPTPP intellectual property rules studied in this paper are also widely covered. Due to time constraints and limited levels, it seems difficult to analyze in depth and comprehensively. Therefore, there are some issues that are not sufficiently deep and comprehensive.
References


