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Axis 2: Normative convergences and divergences between the different partnerships: EU-Asia Pacific, ASEAN, EUCM, KORUS, Comprehensive and Progressive Trans-Pacific Partnership (CPTPP)

Convergences and divergences of intellectual property- related provisions in the EU-Asia-Pacific trade partnership agreements

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Abstract

In the context of globalization and knowledge-based economies, an effective and adequate protection of intellectual property (IP) has become a crucial element in the trade policy established by different countries around the world, notably the United States (US), Canada and Japan. The common objective of their foreign trade policy is to promote enhanced IP protection and enforcement standards in other countries. More specifically, this kind of assertive IP strategy seeks to strengthen the existing multilateral norms stated in the World Trade Organization’s (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS agreement). The “TRIPS-plus” approach, often implemented via regional or bilateral trade deals, concerns entire the spectrum of IP, including copyright and related rights, patents, trademarks, designs, geographical indications, plant varieties and protection of undisclosed information. It also sets the obligations to enforce IP in a more rigorous manner, such as stricter civil, criminal and custom measures.

The offensive IP strategy has been reflected in recent trade partnership agreements in Asia-Pacific region, namely the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP)[[1]](#footnote-1) and negotiations of Regional Comprehensive Economic Partnership (RCEP) including China[[2]](#footnote-2). Under the direct or indirect impact of the EU, the US and Japan, major promotors of stronger international IP regulation, these two regional agreements are also involved in incorporating TRIPS-plus provisions. On the one hand, the EU’s new generation of free trade agreements (FTA) with Canada[[3]](#footnote-3) and four other Asian countries (South Korea[[4]](#footnote-4), Singapore[[5]](#footnote-5), Vietnam[[6]](#footnote-6) and Japan[[7]](#footnote-7)) respectively not only define higher IP protection but strengthen their enforcement as well. The US has played as well an important role in reinforcing IP provisions in US-Korea FTA (KORUS) and Canada-US-Mexico Agreement (USMCA). On the other hand, since the publication of its Outline of national IP strategy in June 2008, China has begun to advocate for an adequate IP regime through its bilateral FTAs, especially with Korea and Australia.

A certain number of overlapping countries between the different partnerships has been observed in Asia Pacific region. As for the presence and involvement of the above three economies in regional IP regulation, a comparative analysis of the IP chapters of their trade agreements will reveal a degree of regulatory convergences and divergences regarding this subject matter. Considering the state of IP harmonization between the different partners, a further aim of this study is to discuss the possible normative influence of China, the EU and the US on regional standards for IP protection and enforcement, with specific focus on a selection of key and challenging issues (geographic indications, genetic resources protection and criminal measures). Taking into account China’s participation of RCEP, the study will also allow the assessment of China’s position vis-à-vis the TRIPS-plus demand from other participants (notably Japan, South Korea) and possible future demand from the EU or US.

It’s worth noting that both the EU and US have adopted similar TRIPS-plus approach to enhance international IP standards. By imposing certain requirements in its recent FTAs going beyond the scope of the TRIPS agreement, it seems that China has joined this trend in order to fulfil its national innovation and development policy. This emerging and gradual normative convergence amongst the EU, the US and China can be illustrated through the rapprochement of rules providing better protection for certain IP (I).

Despite of the newly appearing merger of TRIPS-plus strategy amongst this three influential actors, some differences still continue to exist with regard to certain key issues reflecting their divergent interests. Rather than a general discussion of global IP issues, emphasis will be placed on the diverse positions on geographical indications (GI), genetic resources (GR) protection and criminal enforcement procedures (II).

**Outline of the presentation**

**Introduction**

**I. An emerging convergence of TRIPS-plus approach**

**1. Toward a uniform IP chapter covering TRIPS-plus provisions**

**2. Reference to post-TRIPS international agreements**

**3. Rapprochement of positions regarding TRIPS-plus protection for related rights: broadcasting organizations and audiovisual performers**

**II. Current divergences between the EU, China and the US on certain specific issues**

**1. The EU and China’s promotion on geographical indications protection**

**2. The EU and China’s support for TRIPS-plus protection of genetic resource and traditional knowledge**

**3. The EU and China’s reserve on TRIPS-plus criminal measures**

**Conclusion**

1. Between Canada and 10 other countries in the Asia-Pacific region: Australia, Brunei, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. [↑](#footnote-ref-1)
2. RCEP negotiations involve 10 member states of the Association of Southeast Asian Nations (ASEAN) (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam) and the 6 Asia-Pacific states, namely India, China, Japan, South Korea, Australia and New Zealand. [↑](#footnote-ref-2)
3. EU – Canada Comprehensive Economic and Trade Agreement (CETA). [↑](#footnote-ref-3)
4. EU – South Korea FTA. [↑](#footnote-ref-4)
5. EU – Singapore FTA. [↑](#footnote-ref-5)
6. EU – Vietnam FTA. [↑](#footnote-ref-6)
7. EU – Japan Economic Partnership Agreement (EPA). [↑](#footnote-ref-7)