TRIPS-Plus provisions in the EU new generation of FTAs with Asian countries

In an era of knowledge-based economies, an effective protection of intellectual property (IP) has been increasingly emphasized by different administrations around the world, including the United States, Japan and even China. Over many years, the EU has built a harmonized legal framework and intellectual property system that contribute to develop and promote creativity and innovation. The IP protection is also characterized as an important matter in European foreign trade policy, especially in view of the fact that the EU competiveness largely relies on strong export performance of the high-tech sector. However, intellectual property rights (IPRs) protection and enforcement are both governed by the principle of territoriality. In order to ensure appropriate levels of IP protection in the third countries, the international trade deals have been identified by EU trade policy as one of the key external instruments.

Facing an impasse in the Doha round of multilateral trade negotiations, the EU and its main trading partners have expanded and intensified the use of bilateral trade agreements to achieve what cannot be agreed on in the multilateral fora. The EU has indeed reached bilateral free trade agreements (FTA) with certain Asian countries that incorporate the entire spectrum of IPRs, including copyright and related rights, patents, trademarks, service marks, designs, layout-designs (topographies) of integrated circuits, geographical indications, plant varieties and protection of undisclosed information. In particular, the EU’s new generation of FTAs (NGFTAs) with South Korea, Singapore, Vietnam and Japan respectively, not only define IPRs protection rules but strengthen their enforcement as well. These high levels of IP protection and enforcement standards represent further commitments beyond the World Trade Organization’s (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), referred to as TRIPS-plus provisions.

IP protection and enforcement has therefore become a key element in EU’s NGFTAs with its Asian trading partners. Although several research studies have been conducted to discuss the obligations derived from TRIPS-plus provisions in the EU and the US’s FTAs, no research prior to this study has examined specifically how the EU NGFTAs are articulated with other international instruments related to IP, notably the World Intellectual Property Organization (WIPO) treaties concluded post-TRIPS, such as WIPO Copyright Treaty (WCT) (1996), WIPO Performances and Phonograms Treaty (WPPT) (1996) and Singapore Treaty on the Law of Trademarks (2006). The paper further aims to investigate if EU NGFTA is a relevant vector to reinforce its normative influence on international standards for IP protection, with specific focus on the provisions promoting stronger geographic indications (GIs) protection. Through the analysis of regulatory convergence on IP standards, this study allows the assessment of the EU’s impacts and limits vis-à-vis its Asian trading partners.