

SOCIALIZATION THROUGH INTERNATIONAL INSTITUTIONS? DECODING CHINA'S VIEWS ON INTELLECTUAL PROPERTY RIGHTS SINCE ITS WTO ACCESSION

Yue Lu

PhD Candidate in Politics and International Studies,
The Department of Public and International Affairs, City
University of Hong Kong, Hong Kong, China
e-mail: yuelu28-c@my.cityu.edu.hk

<https://doi.org/10.52536/2415-8216.2023-3.04>

Abstract. Constructivism in the studies of international relations (IR) posits that international institutions have the power to induce a state's socialization into the norms and rules enshrined in these institutions. The study puts this hypothesis to an empirical test by analyzing China's views on intellectual property rights (IPR) since its WTO (World Trade Organization) accession in 2001. The article examines relevant People's Daily commentary articles published from 2001 to 2022 using Structural Topic Model (STM) and domestic scholarly debates. The study identifies four prevalent themes, including IPRs and international competition, strengthening IPR protection, developing indigenous IPRs, and achievements and barriers in IPR development. It finds that although China has increasingly realized the importance of IPRs, China's views on IPRs are predominantly oriented toward a realpolitik discourse on leveraging IPRs to enhance China's overall national power in international competition. While socialization is at best subordinate to China's domestic interests in shaping China's views on IPRs, as the country's worldview acts as a strong mediating force between international ideas and China's views on IPRs.

Keywords: *international institutions, socialization, WTO, China, intellectual property rights.*

СОЦИАЛИЗАЦИЯ ЧЕРЕЗ МЕЖДУНАРОДНЫЕ ИНСТИТУТЫ?
РАСШИФРОВКА ВЗГЛЯДОВ КИТАЯ НА ПРАВА ИНТЕЛЛЕКТУ-
АЛЬНОЙ СОБСТВЕННОСТИ ПОСЛЕ ЕГО ВСТУПЛЕНИЯ В WTO
Юэ Лу

Кандидат политических наук и международных исследований, факультет общественных и международных отношений, Городской университет Гонконга, Гонконг, Китай, e-mail: yuelu28-c@my.cityu.edu.hk

Аннотация. Конструктивизм в исследованиях международных отношений (IR) утверждает, что международные институты обладают властью побуждать государство к социализации в соответствии с нормами и правилами, закрепленными в этих институтах. Исследование подвергает эту гипотезу эмпирической проверке путем анализа взглядов Китая на права интеллектуальной собственности (IPR) с момента его вступления в ВТО (Всемирную торговую организацию) в 2001 году. В статье рассматриваются соответствующие статьи People's Daily commentary, опубликованные с 2001 по 2022 год, с использованием структурной тематической модели (STM) и отечественных научных дискуссий. В исследовании определены четыре основные темы, включая права интеллектуальной собственности и международную конкуренцию, усиление защиты прав интеллектуальной собственности, развитие прав коренных народов, а также достижения и барьеры в развитии прав интеллектуальной собственности. В нем отмечается, что, хотя Китай все больше осознает важность прав интеллектуальной собственности, взгляды Китая на права интеллектуальной собственности преимущественно ориентированы на реальный политический дискурс об использовании прав интеллектуальной собственности для усиления общей национальной мощи Китая в международной конкуренции. В то время как социализация в лучшем случае подчинена внутренним интересам Китая в формировании взглядов Китая на IPR, поскольку мировоззрение страны выступает в качестве мощной посреднической силы между международными идеями и взглядами Китая на IPR.

Ключевые слова: международные институты, социализация, ВТО, Китай, права интеллектуальной собственности.

ХАЛЫҚАРАЛЫҚ ИНСТИТУТТАР АРҚЫЛЫ ӘЛЕУМЕТ-ТЕНДІРУ? ДСҰ-ға КІРГЕННЕН КЕЙІН ҚЫТАЙДЫҢ ЗИЯТКЕРЛІК МЕНШІК ҚҰҚЫҚТАРЫ ТУРАЛЫ КӨЗҚАРАСТАРЫНЫҢ МАҒЫНАСЫН АШУ

Юэ Лу

Саяси ғылымдар және халықаралық зерттеулер кандидаты, қоғамдық және халықаралық қатынастар факультеті, Гонконг қалалық университеті, Гонконг, Қытай, e-mail: yuelu28-c@my.cityu.edu.hk

Аңдатпа. Халықаралық қатынастарды зерттеудегі Конструктивизм (IR) халықаралық институттар мемлекетті осы институттарда бекітілген

нормалар мен ережелерге сәйкес әлеуметтенуге итермелейтін күшке ие деп санайды. Зерттеу бұл гипотезаны 2001 жылы ДСҰ-ға (Дүниежүзілік сауда ұйымы) кіргеннен бері Қытайдың зияткерлік меншік құқығы (IPR) туралы көзқарастарын талдау арқылы эмпирикалық сынақтан өткізеді. Мақалада құрылымдық тақырыптық модельді (STM) және отандық ғылыми пікірталастарды қолдана отырып, 2001 жылдан 2022 жылға дейін жарияланған People's Daily commentary мақалалары қарастырылады. Зерттеу зияткерлік меншік құқығы мен халықаралық бәсекелестікті, зияткерлік меншік құқығын қорғауды күшейтуді, жергілікті құқықтарды дамытуды және зияткерлік меншік құқығын дамытудағы жетістіктер мен кедергілерді қоса алғанда, төрт негізгі тақырыпты анықтайды. Қытай зияткерлік меншік құқықтарының маңыздылығын көбірек түсінгенімен, Қытайдың зияткерлік меншік құқықтарына деген көзқарастары негізінен халықаралық бәсекелестікте Қытайдың жалпы ұлттық қуатын арттыру үшін зияткерлік меншік құқықтарын пайдалану туралы нақты саяси дискурсқа бағытталғанын атап өтті. Әлеуметтену ең жақсы жағдайда Қытайдың IPR-ге деген көзқарасын қалыптастырудағы ішкі мүдделеріне бағынады, өйткені елдің дүниетанымы халықаралық идеялар мен Қытайдың IPR-ге деген көзқарастары арасындағы күшті делдалдық күш ретінде әрекет етеді.

***Түйін сөздер:** халықаралық институттар, әлеуметтену, ДСҰ, Қытай, зияткерлік меншік құқығы.*

Introduction

China is now the world's leading national source of IPR applications. According to the World Intellectual Property Organization (WIPO) [1, p. 7], China ranks first in the world in 2021 in applications of five major types of IPRs, including patents, utility models, trademarks, industrial designs, and plant varieties. However, underlying the status is the fact that China has long been a target of international criticism, especially from the West, for inadequate IPR protection. A 2022 report by the European Union Intellectual Property Office [2, p. 29], for example, reveals that China remains the largest provenance of suspected IPR-infringing goods seized at the European Union borders in 2021, accounting for around 70% of the total seizures.

As a member of the WTO, China “shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property” [3] as required by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Despite over two decades of WTO membership and numerous domestic adjustments, the status of IPR protection in China is viewed as concerning by international investors and IPR holders.

Then, does China's engagement in the WTO engender China's socialization into the rules of the WTO TRIPS regime? Studies [4] [5] [6] [7] on China's

relations with the WTO in IR literature have pointed to the ambivalent role of socialization in China's engagement in the WTO. The ambiguity of the power of socialization leans support to a rationalist explanation of China's integration into the WTO. As Zhang (2003) argued, China's selective internalization of WTO rules is mainly dictated by strategic and instrumental considerations. However, what is it that socially nourishes China's rational approach to the internalization of the rules of the WTO?

Given the contradiction between China's emergence as a global "IPR great power" and its debatable record of IPR protection, the study believes that a fuller understanding of China's relations with the WTO TRIPS regime requires an investigation into the Chinese government's official discourse on IPR institutions, as the state is the strong gatekeeper between international social influence and domestic internalization. In other words, it aims to understand what it is that underpins the Chinese government's thinking on IPR institutions in order clarify the role of socialization in drawing China into the TRIPS regime.

The following discussion first embeds the analysis in the theoretical literature on socialization through international institutions. To scrutinize the role of socialization in China's relations with the WTO TRIPS regime, the study relies on commentary articles from People's Daily, the official newspaper of the Communist Party of China (CPC), and established a STM to unearth the specific meanings attached to IPRs. It finds that the most discussed theme is oriented toward a realpolitik discourse that conceptualizes IPRs as a tool for international competition. Related to IPRs and international competition is the theme on developing indigenous IPRs that bolsters China's international competitiveness. The two remaining themes respectively deal with strengthening IPR protection and achievements and barriers in IPR development. The remainder of the analysis details the four themes prevalent since China's WTO accession in 2001. The study concludes with a summary of the findings and a suggestion that international ideas are unlikely to socialize China further into the TRIPS regime, as the realpolitik interpretation of IPRs leaves little room for accommodating socialization.

Socialization and International Institutions

In IR literature, the process of a state being socialized into international ideas is defined as "the process by which states internalize norms originating elsewhere in the international system" [8, p. 417]. Internalization is a normative, political, and institutional three-stage process [8, p. 418–420]. State officials first change their personal beliefs; socialized officials try to persuade other domestic actors to comply with international expectations through a process of bureaucratic politics. At the deepest level, the state institutionalizes norms by creating corresponding legislations, establishing bureaucratic actors to enforce them, and spreading norms to the entire polity and society. For socialization to occur, international institutions are presumed to be a social environment conducive to

the transmission of international ideas to state officials and to the domestic realm. This is because “it is in institutions where the interaction of activists, so-called norm entrepreneurs, is most likely, and where social conformity pressures are most concentrated” [9, p. 508].

The assumed causal link between international institutions and actors’ socialization into the norms and rules of these institutions is widely examined in IR literature. Notably, studies [10] [11] [12] on European politics have identified divergent socialization effects of international institutions on both unitary states and agents operating inside international institutions. However, the socialization of a rising great power such as China is a rather different case from European socialization, as the latter takes place in a highly normative and institutionalized environment. As suggested by Kent [13, p. 358], although China, like most states, participates in international organizations to promote its interests, it also demonstrates an inclination to redefine those interests, to pragmatically accept costs, and to renegotiate its sovereignty. The country’s readiness to accept manifold costs of socialization is usually balanced against four major concerns, including sovereignty, the difficulty of implementing domestic legislation in compliance with international obligations, the tendency to free ride, and the preference for consensual and bilateral agreements [13, p. 358–359]. Nevertheless, when given proper incentives, China is willing to take ideas from international institutions. As Johnston’s [14] research on China’s socialization into global security regimes showed, Chinese leaders’ adoption cooperative and potentially self-constraining commitments between 1980 and 2000 is explained by three microprocesses of socialization—mimicking, social influence, and persuasion, through which Chinese officials socialized inside international institutions brought international ideas back to the domestic arena and triggered domestic internalization.

Data and Methods

The foregoing review suggests that when given proper incentives, China, though having complex motives, is open to socialization through international institutions. To test the socialization premise and uncover the Chinese government’s thinking on IPR institutions, the study investigates China’s official discourse on IPRs from 2001 to 2022. The approach rests on the presumption that if socialized Chinese officials successfully activate domestic internalization, one is to observe relevant pro-social traces in China’s official discourse.

People’s Daily is underscored as the primary source of information representative of China’s views. People’s Daily is the most authoritative official newspaper of the CPC. The articles from People’s Daily were collected from People’s Daily Commentary Article Repository of the People’s Database (<http://data.people.com.cn>). People’s Daily commentary articles are normally authored by internal editors, renowned Chinese scholars, and senior officials commissioned to write on a specific topic; thus, commentary articles are indicative of the Chinese government’s views on a particular subject. The selection process

resulted in 1230 IPR-related commentary articles, which were cleaned to remove information irrelevant to IPR in order to give a more precise estimate of China's views on IPRs. Aside from relying on People's Daily commentary articles, the study also employed academic articles from the Chinese journal Intellectual Property as an additional source of data because academic articles allow the researcher to probe more deeply into China's views on IPRs. The journal is run by the China Intellectual Property Society, which is administered by the China National Intellectual Property Administration (CNIPA).

The study introduces STM. STM is an R-based topic model software program developed by Roberts et al. [15], which uses statistical formulas to estimate the number of latent topics in a large corpus. The program does not automatically uncover the number of topics and attach names to them. As a probabilistic and unsupervised topic model program, STM only generates a handful of keywords associated with each potential topic and rough numbers indicating the overall and changing prevalence of each topic over a period. To determine the validity and content of each topic, the only way is to carefully read original articles, validate the model, and then attach a name to each valid topic. Thus, STM does not replace human coding but aids the process.

The study used two metrics generated by STM—semantic coherence and exclusivity [15, p. 10–13]—to select candidate models. Semantic coherence estimates the degree to which a topic is internally coherent, while exclusivity calculates the degree to which a topic is independent from other topics. After this, the study decided on a list of candidate models and juxtaposed them against one another to select the final model. To further validate the final model, the study conducted semantic validity and predictive validity tests [16, p. 20–23]. To assess semantic validity, the study conducted a detailed reading of the top 15 most prevalent articles of each topic. To check predictive validity—the degree to which the distributional trends of topics predict and correspond to external events, the study compared the machine-produced prevalence trends with relevant real-world events.

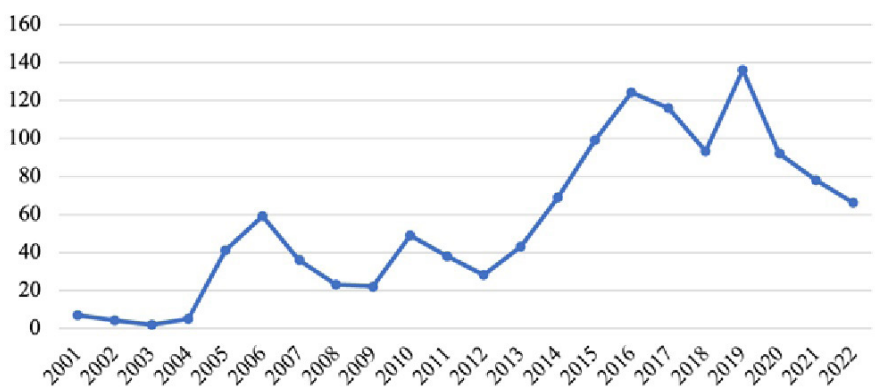
Findings and Discussions: China's Views on IPRs

This section discusses the STM model based on 1230 People's Daily commentary articles to trace China's evolving views on IPRs. It first describes the STM model and then details the four themes uncovered by STM.

Figure 1. counts of the number of IPR-related commentary articles published in People's Daily each year from 2001 to 2022. It shows that the number of relevant commentary articles gradually rises in quantity. What is especially noteworthy about the curve is that IPRs are most likely to be discussed when there are trade disputes with the U.S. The first peak is 2006, a year when the U.S. was preparing to launch a dispute case (DS362) against China on IPR protection to the WTO dispute settlement body [17, p. 34–37]. The second peak is 2010, a year after the WTO dispute settlement body adopted a report regarding the

DS362 case in 2009 and demanded China to implement the ruling [18]. The attention devoted to IPRs has increased exponentially since President Xi Jinping formally assumed power in 2013. The number of articles peaks in 2019 during the U.S.-China trade war. The number then slides down after the outbreak of the Covid-19 pandemic.

Figure 1. The Number of IPR-related Commentary Articles in People’s Daily (2001 to 2022)

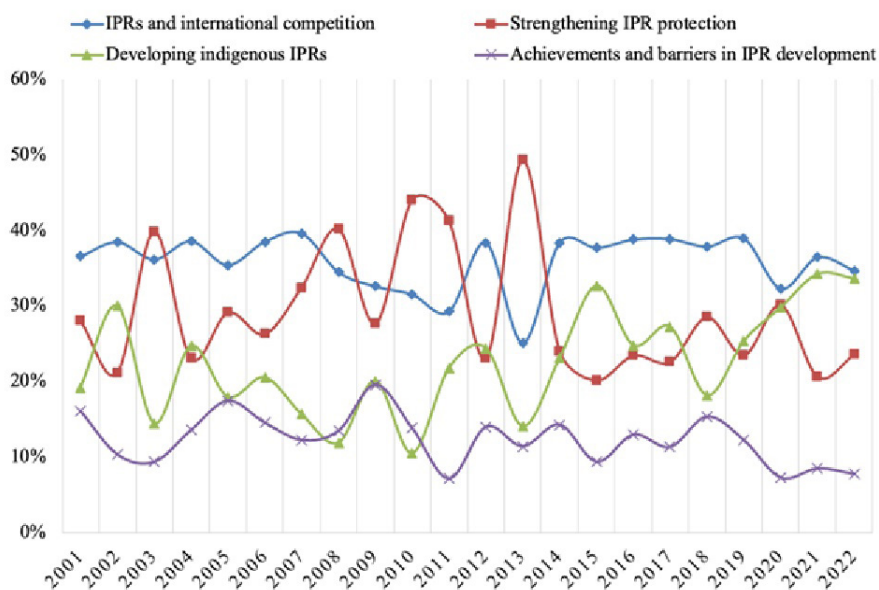


Source: Counted by the Author

The final chosen model has 14 topics. After data coding, the final number of topics was narrowed down to 13 because there were two overlapping topics. To better present the results, the study further grouped the 13 topics into 4 themes. Their changing prevalence trends from 2001 to 2022 are displayed by Figure 2. What is interesting about Figure 2, is the close relationship between “IPR and international competition” and “developing indigenous IPRs,” as the development of indigenous IPRs is critical to increasing China’s international competitiveness. Additionally, the four themes of Figure 2, are generally stable in terms of prevalence throughout the period, despite some periodic fluctuations. Their stability reflects that there are no drastic changes in China’s official rhetoric on IPRs.

The prevalence trends revealed by Figure 2, are also consistent with major events in China’s post-WTO accession IPR development. The emphasis on strengthening IPR protection clearly rises in prevalence during 2003–2013, a period that largely overlaps with the Hu Jintao presidency. This is also a period during which China faced the U.S.’s first attempt (from 2004 to 2007) to engage China on IPR protection after China’s entry into the WTO [17] and the first IPR litigation—DS362 (from 2007 to 2010)—against China in the WTO dispute settlement body [18]. While after President Xi Jinping formally came to power in 2013 and especially after the U.S.-China trade war starting in 2018, more attention is given to developing indigenous IPRs.

Figure 2. Topic Prevalence of the 4 Themes Over Time



Source: Coded by the Author

IPRs and International Competition

After China's accession to the WTO, the immediate challenges that the growing connections of Chinese firms with the international market and trade between China and foreign countries posed to the Chinese government were twofold: (1) IPR disputes with foreign multinational corporations and governments; (2) IPR-related difficulties faced by newly emerging Chinese multinational corporations.

Starting in 2004, the U.S. began to press China on IPR protection. The issue first emerged at the 2004 Joint Commission on Commerce and Trade meeting. Against this background, the Chinese government faced an immediate possibility that Washington could eventually file an IPR case against China to the WTO dispute settlement body.

In response, the Chinese government resorted to international competition as the prevailing framework to characterize rising IPR disputes beyond national boundaries. A 2006 People's Daily commentary article, for example, openly framed the IPR-related behavior of some developed countries, especially the U.S., and transnational corporations through the lens of international competition. It stated as follows:

On the one hand, related IPR cases have increased significantly. Take the "Section 337 Investigation" of the U.S. as an example. The main target countries have shifted from Japan and South Korea to China. This Investigation has become another roadblock to "Made in China" exports to the U.S...On the other hand, IPRs have become one of the tools used by

some multinational companies to suppress Chinese competitors and seek greater profits... It can be said that the period of high incidence of IPR disputes in China has arrived ahead of schedule [19].

The statement plainly illustrates a disposition to prioritize China's economic interests, particularly China's competitiveness in international trade. The article further called on Chinese firms to develop indigenous IPRs and core technologies because "IPRs...are related to a country's international status and dignity" and "have become the strategic commanding heights of world technology and economic competition" [19].

Through the lens of international competition, IPR actions of foreign countries and multinational firms assume tacit protectionist intent to expand their interests at the expense of limiting China's development. For instance, a 2007 commentary article cautioned against "neo-trade protectionism" among developed countries. The concept refers to the strengthening of discourse and rule-making power in the globalizing world economy based on a country's socio-economic traits, the aim of which is ultimately to maintain its dominant position in international economic competition [20]. One of the primary characteristics of "neo-trade protectionism" among developed countries is the utilization of their superior economic position to create various new trade barriers, practice nomological protection of core technologies, and directly challenge WTO rules [20]. In a similar fashion, another commentary article contended that the U.S.'s "Section 337 Investigation" is not intended to protect IPRs but to protect its market share, and "'Section 337 Investigation' is gradually becoming an instrument of competition" [21]. To neutralize trade protectionism, China needs to not only "use American rules to play games with Americans" but also "find ways to acquire our own IPRs" [21].

The emphasis on competition is also conspicuous in the discussions on IPR protection of Chinese transnational corporations. In an article on a trademark squatting case where a Laotian firm pre-emptively registered a famous Chinese trademark, the case was characterized in relation to the broader difficulties that Chinese firms have in international trade. The article suggested that:

As international market competition becomes more intense, multinational companies will adopt more measures to build trade barriers out of self-interests, such as trademark squatting...To increase the exports of indigenous brands, companies must not only further improve their own technological innovation capability but also increase their intellectual properties. Protecting IPRs from infringement has become a problem that Chinese enterprises must face when entering the international market [22].

In more recent years, especially after the series of far-reaching events since 2017, much attention has been directed to de-globalization. Largely because of the changing global economic environment, although competition is a persistent

theme, the focus has been simultaneously placed on attracting foreign investments and increasing China's international discourse power in IPRs. In a 2020 commentary article, Yang Song, a Chinese expert in international law and a representative of the 13th National People's Congress, submitted that:

At present, international economic and trade rules pay more attention to the promotion of institutional opening-up, that is, the promotion of the standard of opening-up through trade and investment facilitation, the optimization of business environment, and the strengthening of IPR protection...Recently, the trend of anti-globalization has been on the rise in the world. A few countries are undermining the globally recognized concepts and rules of trade for their own benefits, which has seriously harmed the multilateral trading system...In 2019, the Second Session of the 13th National People's Congress passed the Foreign Investment Law...This law...reflects that our country's foreign investment legal system keeps pace with the times in terms of market access, investment environment improvement, and IPR protection...The promulgation and implementation of the Foreign Investment Law is an important step in our country's promotion of institutional opening-up [23].

Yang's statement highlights a correlation between the creation of the Foreign Investment Law and anti-globalization. Article 22 of the Law stipulates that "the State protects the IPRs of foreign investors and foreign-invested enterprises, protects the legitimate rights, and interests of IPR holders and related rights holders, and holds IPR infringers legally accountable in strict accordance with the law" [24]. This is the first time that the protection of foreign IPRs is institutionalized in formal Chinese legislation. Indeed, the inclusion of foreign IPR protection seems to be driven by the need to attract foreign investments, which have long been an important engine of China's economic growth, in the changing international environment. The inclusion is a major step to enhance IPR protection of foreign investors.

Meanwhile, strengthening China's international discourse power in IPRs is also important for China's IPR development. This is because China's "status in global intellectual property governance has been continuously improving, but it is still in a relatively weak position in terms of discourse power"; thus, China needs to strengthen national security in the field of IPRs [25]. As further explained by Ma Yide [26, p. 45–49], a professor at the University of Chinese Academy of Sciences, Western developed countries have sought to utilize IPR advantages and trade protectionism to contain China's rise and develop other "small-circle" institutions to ostracize China to their own advantage. China should propose a Chinese approach to the global governance of IPRs that is centered on strengthening the country's institutional discourse power in order to reshape international norms and rules [26].

The recent co-emphasis on further institutionalizing IPR protection to attract foreign investments and on proactively reshaping global IPR governance to bolster China's international discourse power reflects a dilemma posed by the long-

standing significance of foreign investments to China's economy and a desire to enhance international influence. It seems that the Chinese government attempts to reshape global IPR governance as a proactive approach to coping with recent global economic and political uncertainties, but meanwhile, China is yet to entirely forgo its reliance on foreign investments to boost economic growth. Therefore, the recent efforts to further institutionalize IPR protection is a strategic decision compatible with the abiding tendency to subsume IPRs under the framework of international competition.

Strengthening IPR Protection

As the issue of IPR protection is colossal in scope, the following discussion focuses on China's views on IPR protection with an eye on the motives behind China's understandings of IPR protection, the relative strategic position of IPR protection in its domestic and international IPR policy, and the evolution of these ideas.

By the end of 2001, China has established an IPR regime compliant with the TRIPS Agreement as part of the effort to prepare the country's WTO entry. In an internal speech by the head of the CNIPA Wang Jingchuan to the heads of local IPR administrations in 2002, Wang underscored five major challenges for China's post-WTO accession IPR work. The first point was the stage of development of China's IPR enterprise. He commented that even though China has established a competent IPR regime, "our country's IPR work...is still in an elementary phase of development and is incompatible with the overall requirements of our country's socio-economic development in many respects... and with the increasingly intense international IPR competition" [27, p. 6]. In a post-WTO accession world, "the trade frictions between our country and foreign countries are growing, and the challenges are still severe, so we must not take it lightly" [27]. Second, in terms of the number of IPR products, China has become an IPR great power, but in terms of quality, China is far behind developed countries [27]. Third, "we must watchfully observe the newest trends of international IPR development" in order to "obtain the priority in international competition"; this is because developed countries are continuously strengthening IPR protection and development to "serve their economic development and keep their great power status and international influence" and intend to "westernize and divide China and to contain China's development" [27]. Fourth and fifth, China needs to localize international IPR institutions and constantly adjust its strategy and approach toward IPRs according to the requirements of development [27, p. 7]. As stressed by Wang:

We can no longer simply copy the practices of foreign countries or follow their track. Instead, we should timely shift the overall development of our country's IPR from relying on the experience of others to the exploration of a development path with Chinese characteristics based on the experience of others...It can be said that we are also facing a problem

of Sinicization of the IPR system... We need to base on how to better safeguard our national interests, national economic security, and national sovereignty; base on innovation and development and unswervingly following our own path. For this reason, we must seriously examine our work in the spirit of advancing with the times... We should also strengthen the construction of IPR institutions, implement IPR strategy, and further develop indigenous IPRs of our own in order to nurture and advance our country's core competitiveness [27].

Wang's statement clearly highlights an inclination to utilize and localize IPR institutions to serve China's specific socio-economic interests and broader strategic ambitions. At the heart of China's thinking on IPR institutions appears to be not only the protection of IPRs as a form of private property but also, first and foremost, leveraging IPR institutions as an instrument to advance China's core competitiveness in international competition.

Viewed through this lens, IPR protection is an issue subservient to macro-strategic objectives, such as the stimulation of economic growth and improvements in international standing. As summarized by Cao Jianming, who served as Vice President of the Supreme People's Court from 2003 to 2008, "the strategic decisions of the CPC and the state, China's economic development, and social progress have brought forward new requirements for IPR adjudication... IPR protection is no longer a generic issue of civil rights protection but is concerned with the country's general development strategy and major national interests" [28, p. 12]. Particularly, China's judicial IPR protection would both demand further efforts to fill legislative and institutional gaps and face more judicial cases emanating from international competition [28]. With respect to the inadequacies in legal and administrative protection of IPRs, Cao acknowledged in another speech in 2006 that "our country's economy has rapidly developed in recent years, but the status of IPR protection is yet to adjust itself to new developments, and the legal environment for the judicial protection of IPRs needs to be considerably improved" [29, p. 7]. He [29] identified six pitfalls in China's legal and administrative IPR protection: (1) the lack of awareness in local governments and the public and local protectionism; (2) loopholes in China's legislation; (3) defects in China's administrative enforcement mechanism; (4) regional imbalances in terms of implementation and enforcement; (5) the lack of enforcement resources; (6) the high costs of protecting IPRs.

The recognition of the problems with IPR protection at the national level implies that IPR protection is an existent element in the Chinese government's planning of national IPR development and protection. However, overriding IPR protection is the strategic objective to employ IPR institutions to realize China's economic and political interests, and IPR protection seems to be secondary vis-à-vis national development.

In 2008, the State Council released the Guiding Principles of National IPR Strategy. The document set out rather moderate goals for enhancing IPR protection, focusing mainly on immediate administrative measures and improvements.

The Guiding Principles planned to transform China into a country with a fairly high level of creating, utilizing, and protecting IPRs by 2020 [30]. For the next five years (2008 onward), China would noticeably contain the misuse of IPRs and reduce the number of counterfeit products, the level of IPR piracy and infringement, and the barriers to IPR protection [30]. At the operational level, there were two noteworthy items. First, the amelioration of the IPR legal enforcement and management mechanism was defined as one of the strategic priorities for the improvement of IPR institutions [30]. Second, the document included strengthening customs enforcement as one of the areas for the acceleration of the construction of an IPR legal system [30].

In 2021, the State Council upgraded the 2008 Guiding Principles with the 2021 Guiding Principles of Building an IPR Power (AIPRP). The new document draws more attention to the institutionalization of IPR protection and prescribes the specific areas for implementation. It sets forth three major areas of IPR protection, which are the construction of an IPR institutional system for socialist modernization, the construction of an IPR protection system to build a world-class business environment, and the construction of a socio-cultural environment that respects knowledge and innovation [31]. The first two objectives entail a series of plans to further institutionalize IPR protection. The document states that to ameliorate China's IPR institutional system, China will revise relevant laws and regulations and devise new ones in a number of areas, including trademarks, copyrights, patents, geographical indications, trade secrets, the abuse of IPRs, anti-monopoly, and anti-unfair competition; China will also respond to new technological developments and trends by revising and drafting relevant laws and regulations in a timely manner [31]. To improve business environment, China will upgrade the administrative protection system by taking a number of measures, such as the toughening of enforcement and punishment, the standardization of enforcement rules and procedures, the professionalization of relevant personnel, and the establishment of a centralized, collaborative IPR protection configuration to ensure effective and efficient IPR protection [31].

The shift from a shallow administrative approach to an integrated approach based on both institutional and legal reforms and tougher administrative measures for IPR protection is consistent with China's overall goal to use IPR institutions to serve national development. However, the change evidently demonstrates the heightened importance of IPRs in China's overall strategic planning and the growing need to develop and protect IPRs for achieving China's industrial upgrading. As explained in a People's Daily commentary article, "our country has entered a new stage of development, and the role of IPRs as a strategic resource for national development and a core element of international competitiveness has become more prominent," but China's IPR legislation is yet to catch up with new technological developments, and high-quality IPRs still fall short [32]. Thus, the adoption of the AIPRP policy is an inevitable development "to build a socialist modern power...and promote high-quality development" [32].

Developing Indigenous IPRs

The rise of the idea of developing indigenous IPRs is closely associated with the Strategy of Invigorating China through Science and Education advanced in 1995. In the Suggestions Regarding the 11th Five-year Plan passed at the Fifth Plenary Session of the 16th CPC Central Committee in 2005, strengthening indigenous innovation capacity was defined as the strategic basis for achieving the Strategy and the central link for upgrading China's industrial structure and growth mode [33]. Doing so requires the development of more brands with indigenous IPRs and "broadening the exportation of products with indigenous IPRs and brands" [34, p. 15]. The "science" part of the Strategy was further specified in a speech by President Hu Jintao at the First National Scientific Technology Conference in 2006. In the speech, President Hu brought forward for the first time the concept of Constructing an Innovative Country (CAIC), which was incorporated into the Guiding Principles of National Mid to long-term Science and Technology Development Plan (2006–2020) [35]. IPRs occupied a strategic place in the Chinese government's conception of the CAIC strategy. Section 4 Part 8 of the Guiding Principles stated that China would adopt an IPR and technological standard strategy, and according to the needs of national strategy and industrial development, China planned to "produce a batch of inventions and creations that are of great significance to economic, social and technological development, with the goal of developing indigenous IPRs" [36]. Subsequently, the State Council devised the Guiding Principles of National IPR Strategy in 2008. In 2009 and 2010, the Ministry of Science and Technology, the Ministry of Finance, and the National Development and Reform Commission issued two guiding documents for the recognition of indigenous innovation and IPRs, which were intended to operationalize the indigenous innovation policy.

As an organic component of China's grand policy to stimulate indigenous innovation, the development of indigenous IPRs is considered a key policy measure for international competition. The rationale was explained by Lu Yongxiang [37], President of the Chinese Academy of Sciences, who stated that developed countries use IPRs to maintain vested interests and technological leadership, while developing countries need to obtain more IPRs based on indigenous innovation and at the same time actively participate in the innovation of the international IPR system to strive for a fairer and more reasonable institutional environment. He then suggested that under the current circumstances, "our country needs to further...strengthen the protection of IPRs...and encourage the government and the whole society to increase investment in science and technology [37]. In a similar vein, Xu Guanhua [38], China's Science and Technology Minister, cited three reasons for adopting the CAIC strategy and developing indigenous IPRs in his speech to a group of cadres: (1) technological innovation determines a country's international competitiveness; (2) the introduction of technology is not equivalent to the introduction of technological innovation ability; (3) real core technologies can be bought with money. Thus, to enhance innovation capacity,

China can skillfully make the most of the central role of the government, cultivate talents, protect and develop IPRs, and carry out international technological cooperation [38].

Although less attention has been directed to the CAIC policy and the development of indigenous IPRs since 2007 and 2008, for the policy has entered an implementation phase, the idea of developing indigenous IPRs has taken on a new emblem after President Xi Jinping formally came to power. In 2021, the State Council revealed the Guiding Principles of Building AIPRP (2021–2035). The notion of AIPRP is intended to be a comprehensive IPR strategy for a new era. The strategy sets out two envisions. By 2025, China will increase the added value of its patent-intensive industries and copyright industries to 13% and 7.5% of GDP respectively, increase the total annual import and export of IPRs to around 350 billion yuan, and increase the number of high-value invention patents per 10,000 people to 12 [31]. By 2035, China will become a leading country in terms of global IPR competitiveness and comprehensively participate in global IPR governance and protection [31].

A marked departure of the AIPRP strategy from the CAIC strategy is a shift from the sole emphasis on indigenous innovation and IPRs to the organic combination of both domestic IPR development and protection and active participation in global IPR governance. As Ma Yide [26] contended, the AIPRP strategy is a natural requirement of China's IPR strategy and a pragmatic response to the increasingly dysfunctional global IPR regime. Regarding the former, there are primarily four justifications: (1) new information technologies have qualitatively transformed the global economic and political configuration; (2) de-globalization has driven Western states to re-locate manufacturing industries to the West and other developing countries; (3) the changing international distribution of power has prompted Western states to lock China in a low-end position on the global value chain; (4) it is growingly difficult for China to maintain the conventional high-growth development model [26, p. 42–43]. To mitigate new challenges, China needs to make use of IPR institutions because “unlike the Soviet collective approach to scientific development that can only stimulate economic and technological growth in a short period of time...but cannot maintain long-term ‘physical and mental health,’” IPR institutions can properly incentivize growth and development in a relative persistent and virtuous manner [39, p. 105]. However, in the meantime, China will both localize IPR institutions with the government playing a central role [39, p. 109–115] and proactively shape global IPR governance by (1) participating in the existing global IPR institutions, (2) shaping regional IPR cooperation, and (3) cooperating with other countries to improve IPR protection in order to increase China's discourse power [26, p. 52–53].

Apparently, developing indigenous IPRs is an integral component of China's IPR strategy and one of the means to achieving its international ambition. The new AIPRP strategy reveals a recognition of the inseparability of the cultivation of indigenous IPRs and adequate IPR protection. The realization at the policy

level not only grows out of the need to boost international competitiveness but also is a response to reconcile recent international and domestic pressures on the sustainability of China's economic development.

Achievements and Barriers in IPR Development

The most dominant topic in this theme revolves around the growing number of Chinese IPR products but the lack of high-quality and high-value products and the existence of numerous obstacles to IPR development, application, and protection. China is now the world's leading national source of IPR products.

However, the real concern behind the soaring number of IPR products for the Chinese government is the quality of these products. As early as 2006, a commentary article from People's Daily already warned against the triumphalism over China becoming the world's largest applicant and producer of IPRs. The article stated that patent applications in China amounted to around 476,000 pieces in 2005, a 34.6% increase compared with 2005; while the number of Chinese trademark applications also reached around 650,000 in 2005 [40]. "The quantity of IPRs is indeed one of the criteria for measuring the achievements of indigenous innovation, but...an unreliable criterion because a large part of these IPRs may be just 'knowledge' that cannot be transformed into real products and enter the international market," and "our country needs to improve its indigenous innovation capability" in pursuit of the increase in the added value of the products and mastering core technologies in key areas [40].

Central to the quality problem is the shortage of high-tech and high-value products. According to the statistics from the CNIPA [41], the CNIPA approved around 4.46 million domestic patents in 2021, among which around 3.1 million were utility models. Compared with other patents, such as inventions and designs, utility models only provide technical, short-term, and minor improvements to an existing product. These patents tend to require less research and development resources and potentially generate less commercial and technological value. The structural problem with China's patent quality is suggestive of the lack of innovative elements in most Chinese IPR products. Dong Tao [42], who was a senior researcher at the Development Research Center of the CNIPA, contended that China's initial wariness with IPR institutions and emphasis on industrial security in the early 2000s had unfortunately driven foreign firms to move many research and development activities outside China, which is not an ideal development. This is because one of the goals of the reform and opening-up is to use the advantages of foreign companies in technological innovation to play a positive demonstration role for domestic companies and lead our country onto a road of healthy development" [42, p. 57–58]. However, many domestic firms, especially state-own enterprises, are not willing to innovate but are more inclined to purchase patents and engage in financial investments for immediate benefits; China's IPR institutions are now in a dilemma where many patents are unable to be applied in industrial production, and "our country's innovation system seems

to be suffering from the symptoms of ‘myocardial infarction’” [42, p. 58].

Dong’s views tend to imply that China’s insufficient IPR protection and enforcement in the 2000s was due to the lack of knowledge about IPR institutions and a strong tendency to protect industrial security, namely the survival of nascent domestic industries and inefficient state-owned enterprises. Nevertheless, there is an obvious shift from highlighting the legal and administrative deficiencies as obstacles to China’s IPR development to focusing on the barriers to innovation as obstacles to China’s IPR development. As expressed by Dong [39, p. 114–116] in a more recent article, China’s AIPIA strategy faces four existent obstacles: (1) China has not established an innovation structure that effectively incentivizes innovators and researchers; (2) the existing IPR institutions are yet to catch up with economic and technological developments; (3) IPRs have not become a widely shared normative consensus in the society due to instrumentalism with IPR institutions; (4) the global IPR regime is becoming increasingly fragmented, as developed countries intend to alienate China. The first three barriers are the products of longstanding problems with IPR institutions and protection as partly pointed out by Cao Jianming back in 2006, whereas the last obstacle is a direct result of the radically restructuring international geopolitical landscape in recent years. Thus, it appears that the main driving force of the AIPRP strategy is the interplay between a growingly unfavorable international environment and the exhaustion of domestic economic dividends. When combined, these factors bring the persistent barriers impeding innovation under the spotlight of China’s IPR policy, as the prospects for accessing foreign IPRs are shrinking and industrial upgrading is highly innovation and technology-dependent.

These problems allude to both the states’s sensitivity to changing domestic and international conditions essential to China’s international competitiveness and structural impediments hindering China’s IPR development, as the AIPIA strategy is intended to navigate the country through recent internal and external pressures by ameliorating structural vulnerabilities in China’s IPR system. Above all this is still the subsumption of IPRs under China’s broader aspiration for strengthening national power and international competitiveness.

Conclusion

Although the IR literature on China’s relations with the WTO points to China’s instrumentalism with internalizing WTO rules and norms, the striking predominance of the pragmatic conception of IPRs as an instrument of international competition is non-negligible. The view has had little alteration since 2001 and is consistent across the four themes unveiled by the STM model. Underlying the pragmatic interpretation is a deep-seated realpolitik discourse that sees the international arena as a vicious place where China needs to always stay vigilant and advance its national power in international competition. Thus, IPR institutions are not merely private property institutions but are ultimately a pathway to international influence and status. As the evidence suggests, the recent advent of

the AIPRP strategy that accentuates the further institutionalization of IPR protection and the development of indigenous IPRs appears to stem from the state's sensitivity to changing international and domestic developments unfavorable to China's international competitiveness and a determination to mitigate structural problems in China's IPR system that undermine indigenous innovation and the utility of IPR institutions in promoting domestic development. The prevalence of the realpolitik view on IPRs poses challenges to the socialization thesis that engagement in the WTO IPR institutions can foster China's continued socialization into these institutions.

Indeed, there may be divergent views not encompassed by the analysis, and one should also avoid overgeneralizing the findings to conclude that China's overall approach to the WTO is dominated by a realpolitik worldview. As China continues to march toward national rejuvenation and as the hegemonic realpolitik discourse on IPRs continues to reify a pragmatic approach to IPRs under the framework of international competition, the impact of international ideas in socializing China into external IPR standards is likely to be not only secondary vis-à-vis domestic factors but also forcefully resisted if international ideas do not accommodate China's pursuit of international competitiveness. Therefore, China's engagement in the WTO TRIPS regime and improvement of IPR protection will not be a linear process of socialization but strongly moderated by China's sustained quest for international competitiveness in light of evolving domestic and international conditions.

References:

1. WIPO. (2022). World Intellectual Property Indicators 2022. [Online] [Accessed 11 August 2023]. Available from: <https://www.wipo.int/edocs/pubdocs/en/wipo-pub-941-2022-en-world-intellectual-property-indicators-2022.pdf>
2. European Union Intellectual Property Office. (2022). EU Enforcement of Intellectual Property Rights: Results at the EU Border and in the EU Internal Market 2021. [Online] [Accessed 11 August 2023]. Available from: https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/2022_EU_enforcement_of_IPRs_2021/2022_EU_enforcement_of_IPRs_results_2021_FullR_en.pdf
3. WTO. (2023a). Agreement on Trade-Related Aspects of Intellectual Property Rights as Amended by the 2005 Protocol Amending the TRIPS Agreement. [Online] [Accessed 18 August 2023]. Available from: https://www.wto.org/english/docs_e/legal_e/trips_e.htm#art1
4. Zhang, Y. (2003). Reconsidering the Economic Internationalization of China: Implications of the WTO Membership. *Journal of Contemporary China*, 12(37), pp. 699–714.
5. Pang, Z. (2004). China as a Normal State? Understanding China's Unfinished Transformation from a State Socialisation Perspective. *The*

- Journal of East Asian Affairs, 18(2), pp. 340–370.
6. Snyder, Q. Z. (2013). The Illiberal Trading State: Liberal Systemic Theory and the Mechanism of Socialization. *Journal of Peace Research*, 50(1), pp. 33–45.
 7. Oh, S. Y. (2015). How China Outsmarts WTO Rulings in the Wind Industry. *Asian Survey*, 55(6), pp. 1116–1145.
 8. Anderson, K. (2001). Making Sense of State Socialization. *Review of International Studies*, 27(3), pp. 415–433.
 9. Johnston, A. I. (2001). Treating International Institutions as Social Environments. *International Studies Quarterly*, 45(4), pp. 487–515.
 10. Flockhart, T. (2004). 'Masters and Novices': Socialization and Social Learning through the NATO Parliamentary Assembly. *International Relations*, 18(3), pp. 361–380.
 11. Kelley, J. (2004). International Actors on the Domestic Scene: Membership Conditionality and Socialization by International Institutions. *International Organization*, 58(3), pp. 425–457.
 12. Schimmelfennig, F. (2005). Strategic Calculation and International Socialization: Membership Incentives, Party Constellations, and Sustained Compliance in Central and Eastern Europe. *International Organization*, 59(4), pp. 827–860.
 13. Kent, A. (2002). China's International Socialization: The Role of International Organizations. *Global Governance*, 8(3), pp. 343–364.
 14. Johnston, A. I. (2008). *Social States: China in International Institutions, 1980-2000*. Princeton: Princeton University Press.
 15. Roberts, M. E., Stewart, B. M., and Tingley, D. (2019). Stm: An R Package for Structural Topic Models. *Journal of Statistical Software*, 91, pp. 1–40.
 16. Grimmer, J. and Stewart, B. M. (2013). Text as Data: The Promise and Pitfalls of Automatic Content Analysis Methods for Political Texts. *Political Analysis*, 21(3), pp. 267–297.
 17. Cheung, G. C. K. (2009). *Intellectual Property Rights in China: Politics of Piracy, Trade and Protection*. New York: Routledge.
 18. WTO. (2023b). China — Measures Affecting the Protection and Enforcement of Intellectual Property Rights. [Online] [Accessed 23 August 2023]. Available from: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds362_e.htm
 19. Gong, W. (2006). China Should Face up to IPR Competition. *People's Daily (Overseas Version)*. 22 May, pp. 1.
 20. Huang, Q. (2007). Be Alert to the Rise of "Neo-trade Protectionism". *People's Daily (Overseas Version)*. 18 June, pp. 1.
 21. Wu, C. (2012). The U.S.'s "Section 337 Investigation" Is Becoming an Intellectual Property Barrier. *People's Daily*. 22 May, pp. 22.
 22. Zheng, X. and Du, H. (2005). Properly Manage Our IPRs. *People's Daily*. 10 May, pp. 8.
 23. Yang, S. (2020). Expanding the New Opportunities of Institutional Opening-up. *People's Daily*. [Online] [Accessed 15 August 2023]. Available from: <http://opinion.people.com.cn/n1/2020/1030/c1003-31911650.html>
 24. China Daily. (2019). Foreign Investment Law of the People's Republic of China (Bilingual). [Online] [Accessed 25 July 2023]. Available from: <https://language.chinadaily.com.cn/a/201903/22/WS5c94798ca3104842260b205f.html>
 25. Cao, L. (2020). Safeguarding National Security in the Field of Intellectual Property. *People's Daily (Overseas Version)*. [Online] [Accessed 22 July 2023]. Available from: https://paper.people.com.cn/rmrhbwb/html/2020-12/03/content_2021432.htm

26. Ma, Y. (2021). The Construction of AIPRP in the Context of Global Governance. *Intellectual Property*, 2021(10), pp. 41–54.
27. Wang, J. (2003). In-depth Study and Implementation of the Spirit of the 16th National Congress of the CPC to Comprehensively Create a New Situation in the Cause of Intellectual Property. *Intellectual Property*, 2003(01), pp. 3–11.
28. Cao, J. (2004). New Developments in the Judicial Protection of IPRs in China. *Intellectual Property*, 2004(04), pp. 9–12.
29. Cao, J. (2006). Strengthening the Judicial Protection of IPRs and Promoting the Construction of an Innovative Country. *Intellectual Property*, 2006(5), pp. 5–7.
30. State Council. (2008). The Guiding Principles of National Intellectual Property Strategy. [Online] [Accessed 3 August 2023]. Available from: http://www.gov.cn/zwggk/2008-06/10/content_1012269.htm
31. State Council. (2021). The Guiding Principles of Building AIPRP. [Online] [Accessed 18 August 2023]. Available from: http://www.gov.cn/zhengce/2021-09/22/content_5638714.htm
32. Gu, Y. (2021). Advancing Toward AIPRP. *People's Daily*. 8 October, pp. 5.
33. *People's Daily*. 2005. *People's Daily Commentator: Focusing on Indigenous Innovation*. 21 October, pp. 1.
34. CPC. (2005). Suggestions of the CPC Central Committee on the Formulation of the 11th Five-year Plan for National Economic and Social Development. [Online] [Accessed 22 July 2023]. Available from: <http://www.qingdao.gov.cn/n172/upload/140530141735400426/140825195321431753.pdf>
35. *People's Daily*. (2006). Striving to Build an Innovative Country. 9 January, pp. 1.
36. State Council. (2006). The Guiding Principles of National Mid to Long-term Science and Technology Development Plan (2006–2020). [Online] [Accessed 1 August 2023]. Available from: http://www.gov.cn/gongbao/content/2006/content_240244.htm
37. Lu, Y. (2006). Taking the Road of Indigenous Innovation with Chinese Characteristics and Build an Innovative Country. National People's Congress. [Online] [Accessed 24 July 2023]. Available from: <http://www.npc.gov.cn/npc/c541/200606/ea8ae893572746e7b84fc4d43a2182e3.shtml>
38. Xu, G. (2006). Indigenous Innovation and Technology Introduction. Ministry of Science and Technology. [Online] [Accessed 16 August 2023]. Available from: https://www.most.gov.cn/ztzl/jqzxcxxqx/jqzxcxx-qxtcx/200604/t20060406_33912.html
39. Dong, T. (2021). Historical Dimension and Contemporary Implications of the AIPRP Notion. *Intellectual Property*, 2021(10), pp. 102–120.
40. Qin, P. (2006). Be Cautious of Becoming the World's Number One. *People's Daily*. 13 January, pp. 6.
41. CNIPA. (2022). Inquiry Indexes for Intellectual Property Statistical Data Disclosure (2022). [Online] [Accessed 25 July 2023]. At https://www.cnipa.gov.cn/art/2022/7/28/art_88_172404.html