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The Intellectual Property Rights in China's Trade Policy

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### Introduction

The Intellectual Property Rights (IPRs) constitute an important and strategic asset in international business and, consequently, an integral part of international trade and governments' trade policies. The international protection of IPRs is governed by international treaties administered by the World Intellectual Property Organisation (WIPO) and by the *Trade-Related Aspects of Intellectual Property Rights Agreement* (TRIPS) concluded within the World Trade Organisation (WTO) that sets forth the minimum standard of both protection and enforcement of IPRs binding upon all WTO members (Štěřbová in Štěřbová et al 2013). China joined the World Intellectual Property Organisation (WIPO) in 1980 and the WTO in 2001. Therefore, it is bound by the TRIPS Agreement as well as by numerous WIPO-administered treaties it has acceded to (*see below*). Additionally, governments, including China, have been recently extensively concluding comprehensive regional trade agreements (RTAs<sup>1</sup>) covering also regulation of both protection and enforcement of IPRs.

A myriad of scholar research articles, policy papers as well as business-oriented consultancy manuals have been devoted to the topic of intellectual property rights in China. The existing literature on China and IPRs might be generally divided into two categories, the first focusing on the IPRs from the international perspective, analysing the role and impact of political negotiations and China's accession to the WTO on the development and amendments of the China's domestic IPRs with the aim to achieve the level of IPRs protection corresponding with international requirements (e.g. Kong 2005; Torremans 2007); the second group focusing on the domestic IPRs regulation (e.g. Ganea et al 2005), lack of protection and, currently, enforcement of the IPRs (e.g. Mertha 2005; Mercurio 2012) and subsequent business concerns and possible managerial strategies (e.g. US Embassy Beijing China 2015; UK GOV 2013; PWC 2005; Štěřbová 2007).

However, while the later remains a significant issue to be addressed by both scholars and businessmen, the on-going changes in China's economy and subsequent developments in its trade policy might lead to a change in the prospects of China's role in international IPRs negotiations. The China's domestic patent regulation might serve as an illustration to start with, as the Chinese domestic patent law was subject to three significant amendments (1992, 2000, 2008). Whereas the first two amendments were initiated by the international pressure, the third amendment in 2008, China being already the member of the WTO bound by the TRIPS Agreement, was drafted based on China's own innovation strategy and its domestic companies' requirements (Li 2010; SIPO: General Introduction to the Third Revision, 2011)

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<sup>1</sup> In line with the prevailing literature and the WTO law (WTO: RTAs 2015), the term RTAs is, used as a reference to both regional and bilateral free trade agreements. The references to specific agreements, however, follow the official designations and therefore often refer to free trade agreements or FTAs.



China adopted the National IP Strategy in 2008, setting a goal to become “*a country with a comparatively high level in terms of the creation, utilization, protection and administration of IPRs*” by 2020, that shall “*improve China’s capacity for independent innovation and aid in efforts to make China an innovative country*“. Additionally, the IPRs strategy shall “*be conducive to improving China’s socialist market economy, standardizing market order and encourage the society to be more creditworthy*”, increase competitiveness of both Chinese enterprises and of China as a whole and finally, shall also “*facilitate China’s opening up further to the outside world*” (National IP Strategy 2008). Despite its vagueness, China’s official strategic visions build upon the paradigm linking intellectual property, innovation and, consequently, economic growth.

Secondly, with regard to its trade policy, China has launched its own FTA strategy, shaping its trade relations, within the playfield determined by international obligations, based on its domestic economic interests.

Consequently, as argued in this article, China’s position in international negotiations on IPRs, no longer characterized by the one-way international pressure extended towards China in order to amend its domestic regulation, has been turning to China becoming a full-fledged participant in discussions and possibly, in setting the international IPRs agenda.

## 1. Methodology

The aim of this paper is to analyse the role of the IPRs in China’s trade policy. Based on the analysis of China’s role in multilateral negotiations on IPRs protection and enforcement, the IPRs-related provisions in China’s regional trade agreements, official statements and corresponding literature, this article argues that *China has been gradually developing its independent strategy concerning the role of IPRs in its trade policy that aims at promoting China’s interests in negotiating and drafting international IPRs regulation*. The international treaties surveyed in this research are listed in the Schedules hereto.

There has been an extensive research in the literature available devoted to the topic of inclusion of IPRs in the PTAs negotiations and the so called TRIPS-plus regulation, provisions on IPRs protection and enforcement going beyond the minimum standard stipulated in the TRIPS Agreement (e.g. Heath and Kamperman 2007; Ruse-Khan 2011), both generally and from an industry-specific perspective, the later focusing mainly on pharmaceuticals (e.g. Correa 2004). However, as stressed in Valdés and Runyowa (2012), the existing research is rarely supported by the analysis of specific provisions negotiated and concluded in relevant RTAs.



Similarly, there has been an extensive literature available dealing with protection and enforcement of the IPRs in China, respectively, the strengthening of the former and the lack of the later (*see above*). However, the existing research focuses mainly on the one-way international-to-domestic law developments, i.e. amendments of China's domestic legal regulations based on its accession to international treaties and to the WTO and based on the international and diplomatic pressure and fails to approach the IPRs as a part of China's own trade policy.

As far as the analysis of the RTAs is concerned, this paper combines a subject-matter analysis, as introduced by R. Valdés and T. Runyowa (2012), with a country-specific approach in which the international obligations of a selected country, i.e. provisions of specific RTAs concluded by the selected country are analysed in the context of its trade policy. However, the Valdés and Runyowa methodology was, due the characteristics of the RTAs concluded by China and their focus on a limited range of IP-related issues, amended. Consequently, the RTAs survey covers mainly topics expressly included in China's RTAs, namely referral to international treaties, geographical indications, border measures and genetic resources, traditional knowledge and folklore. However, as the results of trade negotiations in general are to be characterized not only based on the provisions expressly concluded, but also based on the topics consciously omitted in the final wordings of RTAs, special attention is paid to copyright and related rights protection. Additional focus is devoted to the China-Switzerland FTA that stands out among the China's RTAs with respect to the IPRs covered as well as to the depth of its regulation.

## 2. China's role in the multilateral negotiations on IPRs protection and enforcement

China joined the WIPO in 1980. It is a signatory of numerous WIPO-administered treaties including the Paris Convention, the Berne Convention, the Madrid Agreement or the PCT Agreement. The Treaty on Audiovisual Performances, also referred to as the Beijing Treaty, was concluded in Beijing 2012 and has been already ratified by China. On the other hand, China is not a party to the Patent Law Treaty or the Madrid Agreement on Indications of Source (*see Schedule 1*).<sup>2</sup>

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<sup>2</sup> As analysed below, the relationships between individual international treaties is rather complex, as the TRIPS Agreement incorporates the selected Articles of the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits. Consequently, international IPRs provisions might be applied and interpreted in WTO disputes concerning the IPRs, as was also analysed in case of China in DS362 (*see below*). Additionally, some bilateral trade agreements incorporate multilateral IPRs agreement that might consequently also become subject to the interpretation pursuant to the relevant dispute settlement mechanism stipulated in a given bilateral treaty, increasing the complexity of interpreting the inter-treaty relations.



China became a member of the World Trade Organisation (WTO) in 2001 after 15 years of negotiations. The IPRs-related concerns of other WTO members have been highlighted in the China's accession documents, stressing the need to apply more effective enforcement procedures (WTO: China's Working Party Report, General Council Decision 2001).

So far, China has been involved in two disputes in the WTO related to IPRs (DS362 and DS372). In DS362 the USA complained about certain measures affecting the protection and enforcement of the IPRs in China.<sup>3</sup> The dispute concerned procedural matters regarding criminal liability and penalties for copyright infringement and based on the final rulings China further amended its copyright law and customs measures. In DS372 the EC complained about China's measures affecting financial information services, claiming that they are not in compliance with, inter alia, the regulation on undisclosed information in the TRIPS Agreement (Art. 39.2 TRIPS). The case was settled by the parties prior to proceeding to the panel's assessment (in WTO: Dispute Settlement 2015).

Additionally, China joined seven WTO disputes concerning the IPRs as a third party, two of them addressing the protection of GIs in the EU (DS174, DS290) and five interconnected disputes regarding the tobacco plain packaging regulation in Australia (DS443, 435, 441, 458, 467)

### 3. IPRs in China's bilateral relations

So far, China has concluded twelve RTAs including two Economic and Partnership Agreements with Hong Kong and Macau, the FTA with ASEAN and the currently last FTA with Korea signed in June 1<sup>st</sup>, 2015.<sup>4</sup> Currently, China has been negotiating or has recently completed negotiations of eight RTAs including ASEAN FTA Upgrade Negotiations and the negotiations on the RCEP (*see below*).<sup>5</sup> Additionally, China has been considering initiating FTA negotiations with India, Columbia, the Maldives, Moldova and Georgia (MOFA 2015; *see Schedule 2*).

China's RTA strategy has been sometimes characterized by its cautious and gradual approach (Garcia 2015), stressing the fact that China has negotiated some of its RTAs gradually, limiting the negotiations to goods only and then proceeding towards services or investment

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<sup>3</sup> The dispute was joined by Argentina, Australia, Brazil, Canada, European Communities, India, Japan, Republic of Korea, Mexico, Chinese Taipei, Thailand and Turkey as third parties.

<sup>4</sup> The remaining eight RTAs were concluded with Pakistan, Chile, New Zealand, Singapore, Peru, Costa Rica, Iceland, Switzerland. As the final wording of the China-Korea FTA was not available at the time of the research, this FTA was not included in the following research.

<sup>5</sup> The remaining RTAs under negotiation are China-Gulf Cooperation Council FTA, China-Australia, China-Norway, China-Japan-Korea and China-Sri Lanka.



measures. Apart from gradual or cautious, China's RTA strategy is also referred to as pragmatic, focusing on securing strategic resources (Garcia 2015).<sup>6</sup>

F. Snyder (2009) and J. Wang (2004) argue that China's policy towards the RTAs is about to have a major impact on the international trade system, both on multilateral and regional and bilateral levels. Illustrated by economic relations between China and India, F. Snyder (2009) highlights that their RTAs negotiations might provide for, quoting A. Panagariya, an *'alternative template for FTAs'* that would be *'focussing on trade integration rather than on labour standards or intellectual property rights 'which are integral parts of the US FTA template that the US may want eventually to turn into the WTO template.'* Furthermore, J. Wang (2004) adds that China's position and RTAs strategy might influence the direction of the ongoing debate on *'regionalism versus multilateralism'*.

### The IPRs regulation in China's RTAs

China's effective RTAs might be, with respect to IPRs, divided into four groups.

The first group consists of RTAs that fail to cover any regulation of IPRs. These include foremost the RTAs that were negotiated and came into effect in several rows (i.e. China-Pakistan FTA).<sup>7</sup> Similarly, the China-Singapore FTA addresses only trade in goods and services and the China-HK and China-Macau Closer Economic and Partnership Arrangements also lack express regulation of IPRs protection and enforcement. In case of the China-ASEAN FTA, initially not covering the IPRs regulation, China's cooperation with ASEAN countries was later extended to standards, technical regulations, conformity assessment, and intellectual property through complementary agreements (WTO Trade Policy Review: China 2014).

Secondly, China has signed comprehensive RTAs, covering a broad range of topics including goods, services, investment as well as IPRs, concluded in one comprehensive round of negotiations (China-NZ FTA and China-Iceland FTA; *in* MOFCOM: FTA, 2015).<sup>8</sup> Nevertheless, even if there is a separate chapter devoted to the IPRs included in RTA negotiations, the content of the IPRs is often rather vague, such as the China-NZ FTA

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<sup>6</sup> M. Garcia (2013) describes China's FTA partners all as *'markets for Chinese mass-produced manufactures and purveyors of raw materials necessary for the continued development of China's economy'*.

<sup>7</sup> The ASEAN-China FTA, parties first signed the Agreement on Trade in Goods that came into force in July 2005, and then concluded the Agreement on Trade in Services (in force as of July 2007) and finally the Agreement on Investment that was signed in July 2009. Similarly, the China-Pakistan FTA was signed separately for goods (in force as of July 2007) and for services (in force as of October 2009; *in* MOFCOM: FTA, 2015).

<sup>8</sup> The China-NZ FTA is also the first FTA for China concluded with a developed country.



referring to the existing international obligations, mainly under the TRIPS Agreement, foreseeing further cooperation and stressing fostering innovation and the promotion and protection of intellectual property rights that will encourage further trade, investment and cooperation. Similarly, the China-Iceland FTA expressly mentions IPRs among its objectives, however, its Chapter 6 on IPRs fails to provide for any strengthening of the substantive or procedural regulation, emphasizing that the IPRs systems shall provide certainty, minimise compliance costs and facilitate international trade.

The third group of China's RTAs is formed by three RTAs with South and Central American countries (China-Costa Rica FTA, China-Peru FTA, China-Chile FTA), representing RTAs concluded between two developing countries as well as comprehensive agreements covering also a separate chapter on IPRs. Nevertheless, the developing nature of parties is obvious even based on the introductory principles that refer to the socio-economic welfare and the transfer and dissemination of knowledge and the balance between rights of a right holder and interests of users and society.<sup>9</sup> Consequently, the RTAs deal expressly with related issues – public health and technical innovation and transfer of technology. Under the China-Costa Rica FTA, parties foresee, subject to domestic laws, a possibility of awarding incentives for its enterprises and institutions to transfer technology to the other party.

Among the effective RTAs, the China-Switzerland FTA clearly stands out as, currently, the only example of the fourth group, covering a complex chapter on IPRs, the only one including substantive regulation of other IPRs provisions apart from geographical indications and genetic resources and traditional knowledge, regulating also patents, trademarks or undisclosed information. This FTA might serve as an example of far-reaching regulation that China is able to accept.

As explained above, the following subject-matter analysis of relevant RTAs provisions focuses separately on the issues of referral to international IPRs treaties, geographical indications, border measures, genetic resources, traditional knowledge and folklore and dispute settlement mechanism. Special attention is devoted to copyright and related rights and the China-Switzerland FTA.

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<sup>9</sup> “The Parties recognize the need to achieve a balance between the rights of right holders of intellectual property rights and the legitimate interests of users and society with regard to protected subject matter.” (Art. 109 Par. 2 China-Costa Rica FTA).



### i. Referral to international IPRs treaties

Generally, RTAs often refer to the multilateral IPRs treaties in order to determine their relationship. These referrals take a form of a general referral in the introductory articles of the RTA's IPRs chapter, or a form of multiple referrals in provisions related to the given subject-matter; or a combination of both. In some RTAs parties undertake to accede to one of the treaties they have not signed yet.

China and NZ confirm their obligations arising from the international agreements they have signed, however, apart from the TRIPS Agreement, they neither mention any other agreement nor undertake to accede to it. Additionally, its definition of the IPRs refers further to the TRIPS Agreement. China and Iceland reaffirmed their obligations under enumerated international treaties<sup>10</sup> and the TRIPS Agreement that was also incorporated into the FTA itself which might have significant consequences related to the dispute (*see* Note 3). Under the China-Switzerland FTA parties reaffirm their commitments under ten international agreements.<sup>11</sup> Additionally, they shall make all reasonable efforts to ratify and accede to the Beijing Treaty.

In the China-Peru FTA, the parties recognize their obligations under international agreements, referring expressly to the TRIPS Agreement and to the public health related WTO documents (*see* below) as well as to the *Convention on Biological Diversity*.

### ii. Geographical indications

The majority of China's RTAs include an express regulation of geographical indications. Geographical indications (GIs) are indications identifying a good as originating in the territory, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin (Art. 22 TRIPS).<sup>12</sup>

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<sup>10</sup> The Paris Convention, the Berne Convention, the Patent Cooperation Treaty, the Budapest Treaty, Protocol of 27 June 1989 relating to the Madrid Agreement concerning the International Registration of Marks and the Nice Agreement.

<sup>11</sup> The TRIPS Agreement, the Paris Convention, the Berne Convention, the Patent Cooperation Treaty, the Budapest Treaty, the Nice Agreement, the Protocol relating to the Madrid Agreement, the WIPO WPPT Treaty, the WIPO Copyright Treaty and the 1978 UPOV Convention.

<sup>12</sup> The WTO members are only bound to provide legal means to prevent a misleading use or a use that constitutes unfair competition. However, GIs might be afforded protection under a combination of trademark, consumer protection and unfair competition laws, whereas existing international treaties do not limit country's choice of regulatory system (Caenegem, Cleary and Drahos 2014). On the multilateral level, generally speaking, the "Old World", i.e. European countries, argues in favour of a separate GIs protection, whereas the "New World" – foremost the USA and Australia – prefers trademark protection (Shimizo 2011; Blakeney 2012), as immigrant settlers brought along the





All China's RTAs concluded with South American countries – Peru, Chile and Costa Rica – provide for the express regulation of GIs and include a list of GIs reciprocally protected. The China-Peru Agreement covers 22 Chinese and 4 Peruvian GIs.<sup>13</sup> Similarly, the China-Chile Agreement also requires protection of enumerated products that shall be provided subject to domestic laws and regulations and in a manner that is consistent with the TRIPS Agreement (Art. 10). However, the list in the China-Chile Agreement includes only two Chinese products, *Shaoxing Wine* and *Anxi Tieguanyin* tea, and one product from Chile, *Chilean Pisco* (Annex 2A). The China-Costa Rica FTA distinguishes between two possible modes of GIs protection in line with the TRIPS Agreement. Additionally, the parties thereto foresee possible future cooperation leading to extension of the current list. On the other hand, the China-Switzerland FTA provides only for the general regulation referring to the TRIPS Agreement.

The GIs have been included into China's trade policy not only by means of RTAs negotiations but also in terms of separate negotiations. China and the EU have initially established a project devoted to the protection of GIs called “10 plus 10” that was completed on November 30th, 2012 (EC 2012). Based on this project, both parties agreed to protect ten selected GIs nominated by their counterpart.<sup>14</sup> The list includes also the often highlighted *Pinggu peaches* grown seventy kilometres northeast from Beijing (WIPO Geographical Indications for Development 2015).<sup>15</sup> The initiative was launched in July 2007 and administered by the European Commission and the *General Administration of Quality Supervision, Inspection and Quarantine* (AQSIQ), an authority responsible for the administration of GIs in China. The 10 plus 10 project should have served as a basis for the negotiations of a more comprehensive and complex bilateral agreement on GIs protection between China and the EU. The subsequent negotiations are still ongoing and are believed to be concluded in the first half of the year 2015. The agreement shall consist of 100 EU's GIs.

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originally European trademarks and territorial names. That dichotomy is obvious also in bilateral negotiations and subsequent PTAs.

<sup>13</sup> Whereas the Chinese list covers a wide range of products from tea, wine and vinegar to ham and chicken, the Peruvian list is limited to pisco or pottery (Annex 10).

<sup>14</sup> The list of the EU's GIs protected in China covers five kinds of cheese (two French – *Comté* and *Roquefort*, Italian – *Grana Padano* and *West Country Farmhouse Cheddar* and *White Stilton Cheese/Blue Stilton Cheese* from the United Kingdom), Italian *Prosciutto di Parma*, two kinds of Spanish olive oil, French dried fruit and Scottish Farmed Salmon. The Chinese list of products protected on the entire EU's market includes a wide range of food products ranging from fruit (peach, apple and honey pomelo) to vegetables (asparagus, garlic, and yam) to tea, crayfish, and a type of noodles or rice vinegar (EU 2012). Simultaneously, the EU has launched a marketing campaign ‘*Tastes of Europe*’ promoting the EU's GIs on the China's market (EC 2015).

<sup>15</sup> The GIs under China's domestic law are to be awarded to a group or an association of producers. Following the GIs registration and public campaign, the prices of Pinggu beaches grew significantly and led to consequent economic development of the region (WIPO: Geographical Indications for Development 2015).



Apart from its negotiations, China has internationally attracted public attention concerning the GIs with regard to the rise of Chinese wine counterfeits. As highlighted by L. Zanzig (2013), the increase in the demand for foreign wines among the Chinese has resulted to a corresponding increase in wine counterfeits on the Chinese market, including products claiming their origin in the USA, Australia or Canada.<sup>16</sup> Therefore, L. Zanzig (2013) argues that the USA and China shall conclude an agreement establishing a bilateral registry of GIs. On the other hand, further to the point of wine counterfeits, New Zealand being also an important producer of wine, the China-NZ failed to include any regulation of GIs apart from mentioning GIs among rights covered by the definition of IPRs. Additional details concerning the role of GIs in China's trade policy will be revealed based on the text of the concluded China-Australia FTA.

### iii. Border measures

Border measures that directly affect trade in goods across borders belong to the most often included provisions in the FTAs.<sup>17</sup> The China-Peru FTA, China-Costa Rica FTA and the China-Chile FTA cover special requirements related to border measures. Under the China-Chile FTA, procedures for suspension of suspected counterfeit trademark or pirated copyright goods into free circulation might be initiated by the right holder only based on adequate evidence that there is a prima facie infringement. The Agreement further provides for its own definition of counterfeit trademark goods and pirated copyright goods. Additionally, the parties might require an applicant to provide a reasonable security. However, the requirements shall not unreasonably deter recourse to the border measures procedures. Furthermore, it expressly stipulates that the parties may initiate border measures ex officio.

### iv. Genetic resources, traditional knowledge and folklore

The China-NZ FTA expressly mentions protection of genetic resources, traditional knowledge and folklore. However, the provision itself is not binding, allowing only for a possibility to establish appropriate measures to protect the given institutes.

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<sup>16</sup> L. Zanzig (2013) illustrates the case with the Chinese wine producer who, having been unsuccessful with the attempt to register the trademark *Napa Valley*, later successfully registered the trademark '*Valley Napa*'. However, later, after the successful lobbying by the Napa Valley Vintners Association, the term '*Napa*' was finally granted the protection by the Chinese government.

<sup>17</sup> More than two thirds of RTAs surveyed by Runyowa, Valdés 2012 include border measures provisions.



China and Peru acknowledge the *Convention on Biological Diversity*. Among their shared interests, they stress foremost the issue of conservation and sustainable use of biological biodiversity and illegal access to genetic resources and traditional knowledge.

### v. Public health-related regulation

China's treaties do not include any special regulation referring to pharmaceuticals.<sup>18</sup> On the other hand, China's RTAs often expressly refer to public health-related documents negotiated within the WTO, recognising the principles established in the *Doha Declaration on the TRIPS Agreement and Public Health* and the *Decision of the WTO General Council of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration*. Nevertheless, none of the parties to the RTAs surveyed has notified their implementation of Paragraph 6 (WTO 2015; further in Malbon, Lawson, Davison 2014).<sup>19</sup>

### vi. Dispute settlement mechanisms

Besides the dispute settlement mechanism incorporated in the RTA itself, several RTAs include a separate dispute settlement mechanism (DSM) or at least a specific adjusted procedure applied in case of IPRs matters. The China-NZ FTA stipulates a separate IPRs DSM, referring to both the dispute settlement mechanism in the FTA itself and the DSM within the WTO. Parties are expected to request consultations of IPRs-related matters prior to proceeding to the DSM foreseen under the FTA. These consultations between the stipulated contact points are to a certain extent formalized, expecting the commencement within sixty days after the request. Under the China-Iceland FTA, any IPRs related concerns shall be addressed by a dialogue conducted through the Parties' designated contact points within 60 days. Should this dialogue fail to provide for a solution, the Parties might refer the issue to the dispute settlement mechanism stipulated in the FTA (Chapter 11).

### vii. China-Switzerland FTA

As highlighted above, the China-Switzerland FTA goes beyond the scope of the IPRs regulation in other effective RTAs concluded by China, providing for regulation of copyright, trademarks, patents, plant variety protection as well as a separate section on

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<sup>18</sup> The RTAs often include in its IPRs chapters extensive regulation providing for special treatment of pharmaceutical patents, i. e. extension of its duration by supplementary protection certificates that are meant to compensate for the long regulatory procedures required for market approval of pharmaceutical or chemical products.

<sup>19</sup> So far, only Canada notified its implementation as an exporting country, and Rwanda as an importing country.



enforcement. Furthermore, it expressly includes its own national treatment and most-favoured nation principles. Even though it extensively repeats the wording of the TRIPS Agreement, as in case of criminal remedies (Art. 11.21), or refers to the WIPO-administered treaties, an express inclusion of these provisions might have impact on dispute settlement, as the disputes arising under the FTA might be settled pursuant to the mechanism foreseen therein, i.e. by an arbitration panel independent of the WTO DSM; for disputes arising under both FTA and the WTO law the complainant has a discretion to choose the DS mechanism, consequently excluding the other (Chapter 15).

Due to the questionable scope of the non-discrimination principle in the TRIPS Agreement, as the TRIPS Agreement fails to provide for exemptions as set forth in Art. XXIV GATT and Art. V GATS (Štěrbová 2012), the China-Switzerland FTA, as the most far-reaching RTA in terms of IPRs China has concluded so far, would be the decisive agreement to establish China's obligations towards all WTO members. Consequently, it should be used as a background material for other trading partners negotiating bilateral or regional trade liberalisation agreements with China in the future.

### viii. Copyright and related rights

The protection and insufficient enforcement of copyright and related rights (Art. 9 to 14 TRIPS Agreement) in China have been continuously raised on the international level (USTR 2014 Special 301 Report). Nevertheless, as oppose to other IPRs discussed above, copyright protection exceeding the minimum standard set out in the TRIPS Agreement does not belong to topics that China is interested in incorporating in its RTAs. Among the RTAs surveyed, only the China-Switzerland FTA covers specific provisions governing copyright and related rights. Nevertheless, the FTAs still often refer to the TRIPS Agreement and the relevant WIPO-administered treaties, e.g. China-Switzerland FTA referring to the relevant WIPO-administered treaties, namely the Berne Convention and two WIPO internet treaties.<sup>20</sup> Thereunder, parties “*reaffirm their commitments*” established in these existing treaties. As discussed above in more detail, the wording of the reference to international treaties might be crucial in determining the potential dispute settlement mechanisms available.

Secondly, the China-Switzerland FTA stipulates that authors of works, performers and, going beyond the international commitments, also producers of phonograms and videograms and broadcasting organisations, shall be granted adequate and effective protection in accordance with domestic laws and regulation. Furthermore, the FTA provides for *mutatis mutandis* protection as in the WPPT treaty to performers for their audio-visual performances and to producers of videograms. The term of protection shall be at least 50 years with possible

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<sup>20</sup> The WIPO Performances and Phonogram Treaty and WIPO Copyright Treaty (see WIPO Internet Treaties 2015).



exemption as in the Berne Convention. Additionally, the FTA stresses the moral rights of the author<sup>21</sup> that remain with the author even if the economic rights have been transferred (Article 11.6).

### ix. IPRs in the RCEP negotiations

Apart from bilateral RTAs, the countries in the Asian-Pacific region currently pursue two plurilateral free trade negotiations, namely *the Transpacific Partnership* (TPP) and *the Regional Comprehensive Economic Partnership* (RCEP), China participating in the negotiations of the later.<sup>22</sup>

Based on the *Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership*, the RCEP should represent a modern and comprehensive trade agreement covering trade in goods, trade in services, investment, economic and technical cooperation, intellectual property, competition, dispute settlement and other issues. Therefore, IPRs are to be covered within the liberalisation talks and the Guidelines expect the chapter on IPRs to reduce IP-related barriers to trade and investment.<sup>23</sup>

## 4. IPRs in China's policy on provincial level

The international IPRs relations are not restricted to the intergovernmental level, as, based on economic and business connections, Chinese provinces build cooperation with cross-border elements, the pioneering example being *the Pan-Pearl River Delta Regional Cooperation Framework Agreement*. Concluded between nine Mainland provinces<sup>24</sup> and Hong Kong and Macao, it foresees cooperation in order „to remove barriers of local protectionism“ as well as to promote transfer of technologies and commercialisation of technologies. As highlighted by F. Snyder (2009), the PPRD Agreement does not refer to the WTO or the TRIPS Agreement.

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<sup>21</sup> Right to object to any modification, distortion, mutilation or other derogatory action.

<sup>22</sup> The RCEP Agreement is negotiated between the ASEAN countries and Australia, China, India, Japan, South Korea and New Zealand.

<sup>23</sup> “The text on intellectual property in the RCEP will aim to reduce IP-related barriers to trade and investment by promoting economic integration and cooperation in the utilization, protection and enforcement of intellectual property rights.” (RCEP Guidelines 2012)

<sup>24</sup> Guangdong, Fujian, Jiangxi, Hunan, Guangxi, Hainan, Sichuan, Guizhou and Yunnan.



### Conclusions

Intellectual property rights and China represent a widely discussed phenomenon. Nevertheless, the gradual changes in Chinese economy have led also to changes in China's attitude towards the IPRs regulation and consequently, to the international IPRs negotiations. As analysed in this paper, China's economic interests and the developments in its trade policy might be traced also in the analysis of China's position in international IPRs negotiations. Simultaneously, the analysis of a subcategory of a trade policy, in this case the IPRs, might serve as a basis for the following research and debate on the position of China in multilateral and regional trade negotiations.

As a member of the WIPO and the WTO, China is bound by the TRIPS Agreement and ratified 19 WIPO-administered treaties. The *WIPO Treaty on Audiovisual Performances* was concluded in Beijing in 2012, China has been among the first parties to ratify the agreement (WIPO 2015) and also expressly promotes the accessions in its bilateral relations. Despite the often discussed issue of the lack of IPRs enforcement, China has served as a respondent in two disputes in the WTO so far, the one raised by the EU being settled prior to the final rulings. On the other hand, China joined two interconnected groups of disputes concerning GIs and trademark protection, topics relevant to China's IPRs interests.

As illustrated by its individual RTAs, China has gradually included the IPRs regulation into its bilateral trade negotiations. Its effective RTAs might be divided into four groups. The first group lacks any IPRs regulation and includes RTAs concluded gradually in negotiation rounds devoted to goods followed by services or investment, i.e. China-Pakistan together with the China-Singapore FTA and the China-HK and China-Macau Closer Economic and Partnership Arrangements. The second group, represented by the China-Iceland and China-NZ FTAs, comprises of treaties negotiated as comprehensive trade agreements that include a separate chapter devoted to IPRs regulation. Nevertheless, the scope and the depth of the regulation differ, the China-Iceland and the China-NZ RTAs being rather vague, stressing the role of cooperation. The third group represents RTAs concluded between two developing countries – China and Chile, Peru and Costa Rica, regulating only selected topics of IPRs, mainly geographical indications. The fourth group is, for the time being, represented by the only example of the China-Switzerland FTA. This Agreement clearly stands out, as it includes a complex chapter on IPRs, the only one covering substantive regulation of other IPRs provisions apart from GIs and genetic resources and traditional knowledge, regulating also patents, trademarks or undisclosed information. Consequently, the Agreement with Switzerland should be used as a background material for other trading partners negotiating bilateral or regional trade liberalisation agreements with China in the future.

The subject-matter analysis serves as a basis for determining China's interests in terms of individual IPRs. In line with China's overall trade policy, its position in IPRs negotiations



might be also described as pragmatic, the majority of China's RTAs focusing on specific categories of IPRs, namely GIs and genetic resources and traditional knowledge or border measures, often omitting any reference to other categories, i.e. copyright, patents, trademarks or IPRs enforcement.

China has been actively promoting its interests in the protection of geographic indications. The individual GIs to be reciprocally protected were included in its RTAs concluded with South and Central American countries and, additionally, China has also pursued separate negotiations devoted specifically to the GIs (EU). The GIs represent an interesting marketing tool, as customers are willing to pay more for niche and location-related products, and therefore a suitable tool for protecting China's rich cultural and culinary heritage worldwide; on the other hand, as illustrated by the wine industry, its trading partners are also expected to exert further pressure to eliminate counterfeits infringing their specific GIs on the Chinese market. Nevertheless, further agreements covering the reciprocal recognition of specific GIs might be expected. The negotiated and currently to-be-signed FTA between China and Australia might reveal the significance of GIs in China's negotiation priorities, particularly in connection to trade in wines.<sup>25</sup> Secondly, the majority of China's RTAs expressly refer to genetic resources and traditional knowledge. That is understandable based on the significance of Chinese traditional medicine. Thirdly, as highlighted in relation to the China-Switzerland FTA, a regulation of a separate dispute settlement mechanism often included in China's RTAs might overlap with the WTO's dispute system. On the other hand, besides the China-Switzerland FTA, China is not willing to conclude provisions governing copyright and related rights regulation exceeding the minimum standard set in the TRIPS Agreement.

Considering the downplayed discussion within the WTO, China's IPRs strategy and its trade policy might become not only the full-fledged, but also one of the decisive ones, setting or, on the other hand, downplaying the issues that will be addressed in international negotiations on the multilateral or plurilateral level. As far as the ongoing RCEP negotiations are concerned, even though the guidelines were meant as a rather general proclamation of the aims of the negotiations, its wording and the reference to IP-related barriers as well as to the relationship of IPRs and investment might foresee negotiations among participants with diverse IP-related interests.

The IPRs protection and enforcement is also closely connected to the investment policy that constitutes an important part of the trade policy. In order to fully cover the role of IPRs in China's trade policy, further research shall be devoted to the investment-related aspects of IPRs, namely the inclusion of the IPRs in China's international investment agreements (IIAs) as well as the role of IPRs in China's investment promotion incentives, IPRs being used as a reference tool to establish high-tech industries eligible for investment incentives or in

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<sup>25</sup> For further expectations from the Australia-China FTA and its Chapter on IPRs also on the political level *see* Jane Ogge-Cowan 2008.



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connection with alleged technology transfer requirements in case of foreign direct investments (FDIs).





### Schedules

**Schedule 1** – Summary Tables of China's Membership of the World Intellectual Property Organization (WIPO) and the Treaties Administered by WIPO, plus UPOV, WTO and UN

Treaty	Signature	Instrument	In force
Beijing Treaty on Audiovisual Performances*	June 26, 2012	Ratification: July 9, 2014	
Berne Convention		Accession: July 10, 1992	October 15, 1992
Budapest Treaty		Accession: April 1, 1995	July 1, 1995
Locarno Agreement		Accession: June 17, 1996	September 19, 1996
Madrid Agreement (Marks)		Accession: July 4, 1989	October 4, 1989
Madrid Protocol		Accession: September 1, 1995	December 1, 1995
Marrakesh VIP Treaty*	June 28, 2013		
Nice Agreement		Accession: May 5, 1994	August 9, 1994
Paris Convention		Accession: December 19, 1984	March 19, 1985
Patent Cooperation Treaty		Accession: October 1, 1993	January 1, 1994
Phonograms Convention		Accession: January 5, 1993	April 30, 1993
Singapore Treaty	January 29, 2007		
Strasbourg Agreement		Accession: June 17, 1996	June 19, 1997
Trademark Law Treaty	October 28, 1994		
UPOV Convention		Accession: March 23, 1999	April 23, 1999
Washington Treaty	May 1, 1990		
WIPO Convention		Accession: March 3, 1980	June 3, 1980
WIPO Copyright Treaty		Accession: March 9, 2007	June 9, 2007
WIPO Performances and Phonograms Treaty		Accession: March 9, 2007	June 9, 2007



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<b>WIPO-administered treaties China is not a member</b>
Patent Law Treaty
Madrid Agreement (Indications of Source)
Hague Agreement
Hague Agreement Concerning the International Registration of Industrial Designs
Lisbon Agreement
Rome Convention
Vienna Agreement
Brussels Convention
Nairobi Treaty
Trademark Law Treaty
Washington Treaty*
Singapore Treaty
Marrakesh VIP Treaty

\*Treaty not yet in force.

Source: Author's adaptation based on WIPO 2015.

Available at: <http://www.wipo.int/treaties/en/summary.jsp>, Feb 18, 2015.



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### Schedule 2: China's RTAs Surveyed

RTAs in force	Entry into effect
<a href="#">China-ASEAN FTA</a>	Goods: July 2005 / Services: July 2007 / Investment: signed in August 2009
<a href="#">China-Pakistan FTA</a>	Goods: July 2007 / Services: October 2009
<a href="#">China-Chile FTA</a>	Goods: October 2006 / Services: implemented in August 2010
<a href="#">China-New Zealand FTA</a>	October 2008 – China's first comprehensive FTA (goods, services, investment)
<a href="#">China-Singapore FTA</a>	Signed on October 23, 2008
<a href="#">China-Peru FTA</a>	Signed on April 28, 2009
<a href="#">Mainland and Hong Kong Closer Economic and Partnership Arrangement</a>	Signed in 2003, supplements I-VI signed between 2004-2009.
<a href="#">Mainland and Macau Closer Economic and Partnership Arrangement</a>	Dtto
<a href="#">China-Costa Rica FTA</a>	August 1, 2011
<a href="#">China-Iceland FTA</a>	July 1, 2014
<a href="#">China-Switzerland FTA</a>	July 1, 2014

Source: China FTA Network 2015



### References

- Blakeney, Michael Leslie, Geographical Indications and the International Trade in Australian Wines (2012). *International Trade Law & Regulation*, Vol. 18, No.1, pp. 70-78, 2012; UWA Faculty of Law Research Paper No. 2012-12. Available at SSRN: <http://ssrn.com/abstract=2177444> or <http://dx.doi.org/10.2139/ssrn.2177444>.
- Correa, M.C. Bilateralism in Intellectual Property: Defeating the WTO System for Access to Medicines. *Case Western Reserve Journal of International Law*, 2004, vol. 36, no. 1. pp. 79-94 ProQuest Central. ISSN 00087254.
- Ganea, Peter; Patloch, Thomas; Heath Christopher (2005). *Intellectual property law in China*. Munich: Max Planck Institute for Foreign and International Patent, Copyright, and Competition Law.
- Garcia, M. 2013, "Resources and Trade: Linking the Pacific through Bilateral Free Trade Agreements (FTA)", *Journal of World Trade*, vol. 47, no. 2, pp. 329-357.
- Heath, Christopher, Kamperman Anslem (ed.) (2007). *Intellectual Property and Free Trade Agreements*, Hart Publishing.
- Kong, Qingjiang (2005). *WTO, Internationalization and the Intellectual Property Rights Regime in China*, May 31, 2005. Cavendish Square Publishing.
- Li, Y. (2010). *Imitation to Innovation in China: The Role of Patents in Biotechnology and Pharmaceutical Industries*. Glos UK: Edward Elgar Publishing Limited.
- Malbon, Justin; Lawson, Charles; Davison, Mark: *The WTO Agreement On Trade-Related Aspects Of Intellectual Property Rights. A Commentary*. Elgar Commentaries 2014, Australia.
- Mercurio, Bryan (2012). The protection and enforcement of intellectual property in China since accession to the WTO: Progress and retreat. *China Perspectives*, (1), 23-28. Retrieved from <http://search.proquest.com/docview/1496998730?accountid=17203>.
- Mertha, A. (2005). *The Politics of Piracy: Intellectual Property in Contemporary China*. USA: Cornell University Press.
- Ogge-Cowan (2008). THE AUSTRALIA-CHINA FREE TRADE AGREEMENT: IMPLICATIONS FOR INTELLECTUAL PROPERTY LAW. Available at: [http://ses.library.usyd.edu.au/bitstream/2123/2363/1/CopyrightAsiaPacific\\_Ch16.pdf](http://ses.library.usyd.edu.au/bitstream/2123/2363/1/CopyrightAsiaPacific_Ch16.pdf), May 5, 2015.
- Ruse-Khan, Henning Grosse, The International Law Relation between TRIPS and Subsequent TRIPS-Plus Free Trade Agreements: Towards Safeguarding TRIPS Flexibilities? (May 19, 2011). *Journal of Intellectual Property Law*, Vol. 18, No. 2, p. 1, 2011. Available at SSRN: <http://ssrn.com/abstract=1849204>.



Shimizu, M. (2011). Protection of Trademarks for Geographical Indications and Geographic Terms, IIP Bulletin, 20, 1-6. Available at:

[http://www.iip.or.jp/e/e\\_summary/pdf/detail2010/e22\\_03.pdf](http://www.iip.or.jp/e/e_summary/pdf/detail2010/e22_03.pdf), February 24, 2015.

Snyder, F. 2009, "China, Regional Trade Agreements and WTO Law", Journal of World Trade, vol. 43, no. 1, pp. 1-57.

Štěrbová, Ludmila (2007). Business Decisions and Intellectual Property. In The Proceedings of E-Leader. New Jersey: CASA, 2007, s. 1-57. ISSN 1935-4800.

Štěrbová, Ludmila (2012). Práva k duševnímu vlastnictví jako nástroj EU pro obchodní liberalizaci a podporu exportu. Současná Evropa. 2012. sv. XVII, č. 2, s. 23-42. ISSN 1804-1280. URL: <http://ces.vse.cz/wp-content/2-2012-Sterbova.pdf>.

Štěrbová, Ludmila a kol. (2013). Mezinárodní obchod ve světové krizi 21. století. Grada Publishing a.s., Praha. ISBN: 978-80-247-4694-4.

Torremans, P., Hailing, S. and Erauw, J., eds. (2007). Intellectual Property and TRIPs compliance in China: Chinese and European Perspectives. Edward Elgar Publishing.

Valdés, R. and Runyowa, T. 2012, INTELLECTUAL PROPERTY PROVISIONS IN REGIONAL TRADE AGREEMENTS. World Trade Organisation. Staff Working Paper ERSD-2012-21, October 31, 2012. Available at:

[https://www.wto.org/english/res\\_e/reser\\_e/ersd201221\\_e.pdf](https://www.wto.org/english/res_e/reser_e/ersd201221_e.pdf), March 2, 2015.

Van Caenegem, W., Cleary, J. A., & Drahos, P. (2014). Pride and profit: Geographical indications as regional development tools in Australia. Journal of Economic and Social Policy, 16(1), 0\_1,0\_2,1-23. Retrieved from

<http://search.proquest.com/docview/1550518786?accountid=17203>.

Wang, J. 2004, "CHINA'S REGIONAL TRADE AGREEMENTS: THE LAW, GEOPOLITICS, AND IMPACT ON THE MULTILATERAL TRADING SYSTEM", Singapore Year Book of International Law, vol. 8, pp. 119-147.

WTO: Trade Policy Review, 2014. Available at:

[https://www.wto.org/english/thewto\\_e/countries\\_e/china\\_e.htm](https://www.wto.org/english/thewto_e/countries_e/china_e.htm), March 16, 2015.

Zanzig, L. (2013). THE PERFECT PAIRING: PROTECTING U.S. GEOGRAPHICAL INDICATIONS WITH A SINOAMERICAN WINE REGISTRY. Washington Law Review, 88(2), 723-757. Retrieved from

<http://search.proquest.com/docview/1412586100?accountid=17203>.



### International treaties

China-ASEAN FTA

China-Pakistan FTA

China-Chile FTA

China-New Zealand FTA

China-Singapore FTA

China-Peru FTA

Mainland and Hong Kong Closer Economic and Partnership Arrangement

Mainland and Macau Closer Economic and Partnership Arrangement

China-Costa Rica FTA

China-Iceland FTA

China-Switzerland FTA

(Available at MOFA 2015)

TRIPS - Agreement on Trade-Related Aspects of Intellectual Property Rights, contained in Annex 1C of the WTO Agreement.

### Internet resources

China FTA Network (2015). MOFCOM. China's Free Trade Agreements. Available at: [http://fta.mofcom.gov.cn/english/fta\\_qianshu.shtml](http://fta.mofcom.gov.cn/english/fta_qianshu.shtml), June 4 2015.

EC (2012): EU-China Geographical Indications – "10 plus 10" project is now complete, Brussels, November 30, 2012. Available at: [http://europa.eu/rapid/press-release\\_IP-12-1297\\_en.htm](http://europa.eu/rapid/press-release_IP-12-1297_en.htm), March 23 2015.

EC (2015): Promotion campaign on European GI (PDO/PGI) products in China 2015. Brussels, 04/03/2015. DIRECTORATE-GENERAL FOR AGRICULTURE AND RURAL DEVELOPMENT. Available at: [http://www.ifap.min-agricultura.pt/portal/page/portal/ifap\\_publico\\_recurso/GC\\_RP\\_util/GC\\_RP\\_noticias/Tastes%20of%20Europe%20China%20campaign.pdf](http://www.ifap.min-agricultura.pt/portal/page/portal/ifap_publico_recurso/GC_RP_util/GC_RP_noticias/Tastes%20of%20Europe%20China%20campaign.pdf), March 23, 2015.

Embassy of the US: Beijing, China (2015). IPR Toolkit. Available at: [http://beijing.usembassy-china.org.cn/protecting\\_ipr.html](http://beijing.usembassy-china.org.cn/protecting_ipr.html), May 5, 2015.

GOV UK (2015). Intellectual Property Rights in China (March 2013). Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/306144/ipchina.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/306144/ipchina.pdf), May 5, 2015.

Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership (2012). ASEAN. Available at: <http://www.asean.org/images/2012/documents/Guiding%20Principles%20and%20Objective>



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[s%20for%20Negotiating%20the%20Regional%20Comprehensive%20Economic%20Partner%20ship.pdf](#), April 3, 2015.

National IP Strategy (2008). China's Outline of the National Intellectual Property Strategy. Available at: WIPO <http://www.wipo.int/edocs/lexdocs/laws/en/cn/cn021en.pdf>, May 5, 2015.

PWC (2005). Redefining Intellectual Property Value: The Case of China. Available at: [https://www.pwc.com/en\\_US/us/technology-innovation-center/assets/ipr-web\\_x.pdf](https://www.pwc.com/en_US/us/technology-innovation-center/assets/ipr-web_x.pdf), May 5, 2015.

SIPO. (2011). General Introduction to the Third Revision. Available at: [http://english.sipo.gov.cn/laws/lawsregulations/201012/t20101210\\_553631.html](http://english.sipo.gov.cn/laws/lawsregulations/201012/t20101210_553631.html), May 5, 2015.

USTR 2014 Special 301 Report (2014). Available at: <https://ustr.gov/sites/default/files/USTR%202014%20Special%20301%20Report%20to%20Congress%20FINAL.pdf>, May 5, 2015.

WIPO Internet Treaties (2015). Available at: [http://www.wipo.int/copyright/en/activities/internet\\_treaties.html](http://www.wipo.int/copyright/en/activities/internet_treaties.html), May 5, 2015.

WIPO Geographical Indications for Development (2015). Available at: <http://www.wipo.int/ipadvantage/en/details.jsp?id=2595>, June 4, 2015.

WTO Trade Policy Review: China (2014). Available at: [https://www.wto.org/english/tratop\\_e/tpr\\_e/s300\\_e.pdf](https://www.wto.org/english/tratop_e/tpr_e/s300_e.pdf), May 5, 2015.

WTO: Amendment of the TRIPS Agreement, 2005. GENERAL COUNCIL, WT/L/641, Decision of 6 December 2005. Available at: [http://www.wto.org/english/tratop\\_e/trips\\_e/wtl641\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/wtl641_e.htm), February 23, 2015.

WTO: China's Working Party Report and General Council Decision (2001). Available at: [https://www.wto.org/english/thewto\\_e/acc\\_e/completeacc\\_e.htm](https://www.wto.org/english/thewto_e/acc_e/completeacc_e.htm), April 4, 2015.

WTO: Declaration on the TRIPS agreement and public health. DOHA WTO MINISTERIAL 2001: TRIPS. WT/MIN(01)/DEC/2, adopted on 14 November 2001. Available at: [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_trips\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm), February 23, 2015.

WTO: Dispute Settlement (2015). Available at: [https://www.wto.org/english/news\\_e/news\\_e.htm#whatson](https://www.wto.org/english/news_e/news_e.htm#whatson), April 5, 2015.

WTO: RTAs (2015). Regional Trade Agreements. Available at: [https://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](https://www.wto.org/english/tratop_e/region_e/region_e.htm), May 5, 2015.

MOFA (2015): China FTA Network. Available at: <http://fta.mofcom.gov.cn/topic/ennewzealand.shtml>, May 22, 2015.



### Abstract

The Intellectual Property Rights (IPRs) constitute a strategic asset in international business and, consequently, an integral part of international trade and governments' trade policies. The international protection of IPRs is governed by international treaties administered by the WIPO and by the TRIPS Agreement within the WTO. Recently, governments have been extensively concluding comprehensive regional trade agreements (RTAs) covering i.a. regulation of both protection and enforcement of IPRs. Meanwhile, China has been also developing its RTAs strategy reflecting its domestic interests that, gradually, focuses also on provisions on protection and enforcement of IPRs.

As oppose to the prevailing literature focusing on the role of international IPRs regulation in framing China's domestic legal regulation, this paper analyses the role of the IPRs in China's trade policy. Based on the China's role in the multilateral negotiations on IPRs protection and enforcement, the survey of IPRs-related provisions in China's regional free trade agreements, official statements and corresponding literature, this article argues that *China has been gradually developing its independent strategy concerning the role of IPRs in its trade policy that aims at promoting China's interests in negotiating and drafting international IPRs regulation.*

### Keywords

Intellectual Property Rights, IPRs, Trade Policy, Regional Trade Agreement, RTA, FTA, China

### JEL Classification codes

F13, F15, F53, O34





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