

Overview of “WTO-extra Rules and WTO-plus Rules” in RCEP IP CHAPTER

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Abstract: The conclusion and implementation of the RCEP agreement has gone through a long consultation process. The member countries have fully expressed their value and interests pursuits regarding copyright, trade secrets, patent rights and trademark rights. After consultations, developed and developing countries consider the RCEP agreement acceptable in terms of its differences from WTO rules. Countries that temporarily do not have the conditions to implement the new IPR rules can implement them in phases according to their own national situations respectively. The RCEP agreement takes note of the impact of technological development on the IPR system and actively incorporates some new protection methods. Some countries, including China, are already actively preparing for the implementation of the RCEP agreement.

Keywords: RCEP Agreement, Intellectual Property Protection, WTO-extra rules, WTO-plus rules.

1. Introduction

The trade mechanism established by the WTO was being damaged by protectionism countries led by the United States. These countries attempt to reverse the trend of international cooperation and exchanges, and eager to monopolize the world market with their technological advantages. Thus, the world economic and geopolitical situation have also become complicated.

To keep the technological advantages, the intellectual property right system (hereinafter referred to IRP system) is a sharp sword to protect the market share that creators should have, and it is also an important tool to stimulate human creativity and market vitality. There was a long debate about whether free trade agreements like the RCEP shall include IPR system or nor.

As we all know, RCEP form a win-win geopolitical circle, and brought hope and confidence to developing countries to develop the intellectual property system, for the reason that it will promote mutually beneficial international scientific and technological cooperation and technology transfer.

After 31 rounds of negotiations, the RCEP agreement was finally signed by ASEAN+6 members states, with the intellectual property chapter being the longest chapter. It devoted not to promoting intellectual property first and foremost and for its own sake, but to promoting health, education, and innovation. [1]

Compared to the systems established by the TRIPS, the RCEP raises the IPR protection standards to the same or above as the TRIPS. In the RCEP agreement, some norms and regulations are set up beyond the protection scope stipulated by the WTO, and some are enhanced versions, respectively namely “WTO-extra rules and WTO-plus rules” (hereinafter referred to the RULES).

This paper focuses on the evolution of new rules in the RCEP Intellectual Property Chapter which is different from the WTO, and the implications on China’s implementation.

2. The Evolution of the RULES

This article will try to describe the evolution of these relevant rules from the IP Chapter overall and specific rules.

Firstly, as we all know, because the negotiation process of RCEP is a secret of great significance, we can only infer the evolution of the draft of the IP Chapter by some public report. It was unclear whether the agreement would include an intellectual property chapter, until the ASEAN+6 leaders adopted the “Guiding Principles and Objectives for Negotiating the Regional Comprehensive Economic Partnership” in August 2012. [2] From then on, we start to know that the RCEP Agreement would contain an intellectual property chapter.

The intellectual property issues had been discussed since the second round of the RCEP negotiations. And at the third round of the RCEP negotiations, the negotiators agreed to establish a working group on intellectual property [3]. According to some researches, members like Japan, South Korea, ASEAN, India (negotiator), and then China, began to submit draft intellectual property chapter. [4]

After 8 years, 4 leaders’ meetings and 23 ministerial meetings and 31 rounds of formal negotiations, it was finally decided that the intellectual property chapter will include 14 sections : (a) general provisions and basic principles; (b) copyright and related rights; (c) trademarks; (d) geographical indications; (e) patents; (f) industrial designs; (g) genetic resources, traditional knowledge and folklore; (h) unfair competition; (i) country names; (j) enforcement of intellectual property rights; (k) cooperation and consultation; (l) transparency; (m) transitional period and transitional arrangements; and (n) procedural matters. [5]

The above research result are from extant official and leaked documents, which make us have little idea about details about how so many statutes are included in the IP Chapter. The past rounds of RCEP negotiations have yet to result in the release of any substantive negotiating texts for public scrutiny. [6]

However, we can still infer basing on the relevant facts. Although after reading the articles of the official website of the states, like the MINISTRY OF COMMERCE OF THE PEOPLE’S REPUBLIC OF CHINA [7], we can only have the idea of which chapter is discuss each round, without more information about how an special rule is proposed. [8]

However, we have a strong reason to believe that an special rule may be proposed by the state which have a relatively

complete system for the rule. For instance, the copyright collective management system once used the relevant systems of the Nordic countries as the template, and then China adopted the system since 2004 [9]. The voice trademark originated in the United States and was later adopted by many European countries and Japan [10]. Like this, the RULES may originate from the intellectual property systems of the EU and the United States, and then were introduced into members such as China, Japan, and South Korea. When the negotiations were held, states who have relatively complete system may suggest to adopt the RULES.

3. The Difference Between the RULES and the WTO IP System

As one of the most important agreements under the WTO legal framework, TRIPS is the first international convention on intellectual property to bring the full integration of intellectual property protection into the world trade system [11]. However, as technology and world commerce develops, new agreements such as CPTPP tend to improve the IPR protection to a higher standard.

Similar to the recent Free Trade Agreements, the structure of the RCEP Intellectual Property Chapter includes basic rule sets. Meanwhile, the RCEP Intellectual Property Section includes some “WTO-extra rules and WTO-plus rules”, which will be introduced in chapter order.

(1) It's worth noting that the “WTO-extra rules and WTO-plus rules” in the COPYRIGHT AND RELATED RIGHTS SECTION contains:

(a) COPYRIGHT AND RELATED RIGHTS SECTION adds provisions on copyright collective management organization (Article 13). It is difficult to obtain the authorization of a large number of right holders one by one, and the purpose of the copyright collective management organization is to solve such problems. Collective copyright management belongs to the trust system with public welfare nature. Copyright collective management organization is a non-governmental institution or semi-official institution established on the basis of voluntary permission with a certain monopoly. [12] France, Europe, the United States and Japan, China all adopted the system.

(b) COPYRIGHT AND RELATED RIGHTS SECTION adds provisions on technological protection measures and electronic rights management information (Article 14,15). The push for such provisions is the increasing volume of copyright infringement litigation concerning works disseminated through streaming or other digital technologies. Technical protection measures refer to technical methods such as using encryption technology to stop decryption acts taken unauthorized or not permitted by law, and electronic rights management electronic information is the information of identifying the work, the author and other rights holders, or the information about the conditions of use of the work. [13] By adopting these methods, the usage and exchange of the works can be traced. Thus, it is hopeful that the digital copyright protection will be improved.

In addition, COPYRIGHT AND RELATED RIGHTS SECTION includes a provision prohibiting government use of infringing computer software (Article 16). Obviously, RCEP, based on the background of the development of electronic information technology, has adopted “WTO-extra” protection methods such as information protection technology to promote the efficiency of copyright protection

and the dissemination of works in each member state.

(2) The main function of trademarks is to identify the source of goods. In Free Trade Area, enterprises that can provide high-quality goods will be able to protect their overseas market share through the trademark protection system. There are many “WTO-extra rules and WTO-plus rules” in the TRADEMARKS SECTION.

(a) TRADEMARKS SECTION allows the registration of signs that consist of the three-dimensional shapes or sound (Article 19). Compared with the Article 15 in TRIPS, the addition of the language of “three-dimensional shapes” and “sound” means there is an obligation for member states to admit such registration of trademarks. The new form of trademark has just started in China, and there are still a lot of trademark risks to be faced soon.

(b) TRADEMARKS SECTION unifies the trademark classification system and the main process of trademark registration and application (Article 21,22). With the implementation of the agreement, the process of registering trademarks between different countries will be increasingly similar, bringing convenience to the transnational trademark registration.

(c) TRADEMARKS SECTION requires the member states to resist the malicious application for registered trademarks (Article 27). This provides reassurance to foreign trade companies to ensure that their trademarks will not be maliciously registered.

In addition, TRADEMARKS SECTION adds provisions on protection of collective marks and certification marks (Article 20). A system for the electronic application for processing, registering, and maintenance of, trademarks as well as an online electronic database (Article 22) is also required. It is obvious that the TRADEMARKS SECTION includes many “WTO-extra and WTO-plus rules”.

The patent system established by RCEP is similar to the TRIPS. In the PATENT SECTION:

It unifies the main process of patent registration and application (Article 41).

It makes it clear that information existing on the Internet can be effective as a prior technology for dispute resolution (Article 45).

It encourages member states to adopt patent right management system in accordance with international standards (Article 43, 46, 47).

We can see that this section enhances the protection of patents through electronic application, rapid procedures, new application scope, etc. In addition to the traditional objects of intellectual property rights, RCEP includes a section on genetic resources, traditional knowledge and folklore.

4. The Implications on China's Implementation

The “WTO-plus and WTO-extra rules” may be proposed from the states with complete IPR system, like China, Japan, Korea, Australia and even the U.S.A or British. Since RCEP came into force, member states are actively preparing. Moving ahead, the RCEP Secretariat will also play an important role in persuading the contracting Parties to implement the RCEP commitments. [14]

The State Intellectual Property Office of China has systematically sorted out the relevant obligations and formed a list of obligations. [15] As we all know, China's trade volume with RCEP members accounts for about one-third of

China's total trade.¹⁶ It is believed that there will be more and more trade concerning intellectual property rights in the future. The new rules of RCEP IP CHAPTER provide a better guarantee and more opportunities for investors to conduct foreign investment activities.

For most of the new rules of RCEP, China has a complete legal system and is ready to face overseas legal risks. Products with China's independent intellectual property rights are being exported to the members, with rail transport, shipping, etc., improving the influence of each other and promote the regional economic development.

References

- [1] See “The Battle to Define Asia's Intellectual Property Law: From TPP to RCEP”, By Anupam Chander & Madhavi Sunder, 8 U.C. Irvine L. Rev. 331 (2018).
- [2] See “The RCEP Negotiations and Asian Intellectual Property Norm Setters”, Legal Studies Research Paper Series Research Paper No. 18–20, Peter K. Yu, Texas A&M University School of Law.
- [3] See “The RCEP and Trans-Pacific Intellectual Property Norms The RCEP and Trans-Pacific Intellectual Property Norms”, Peter K. Yu, Texas A&M University School of Law, 2017W.-K. Chen, Linear Networks and Systems (Book style). Belmont, CA: Wadsworth, 1993, pp. 123–135.
- [4] See “The RCEP and Intellectual Property Normsetting in the Asia-Pacific”, Peter K. Yu, Texas A&M University School of Law, 2017.
- [5] RCEP TEXT, <https://www.dfat.gov.au/trade/agreements/in-force/rcep/rcep-text>, 2022.1.2 last visited
- [6] See “Statement of Public Interest Principles for Copyright Protection under the Regional Comprehensive Economic Partnership (RCEP).”, By Haochen Sun, Associate Professor of Law and Director, Law and Technology Centre, The University of Hong Kong
- [7] The MINISTRY OF COMMERCE OF THE PEOPLE'S REPUBLIC OF CHINA, 2022.1.3 last visited. http://search.mofcom.gov.cn/swb/swb_search/searchList_main.jsp#
- [8] Such as Third round : http://english.mofcom.gov.cn/article/zt_cv/lanmua/201402/20140200479894.shtml, Fourth round: <http://bgt.mofcom.gov.cn/article/c/d/201403/20140300534349.shtml>, Eighteenth round : <http://www.mofcom.gov.cn/article/ae/ai/201705/20170502574345.shtml>, etc. 2022.1.3 last visited
- [9] See “What is the copyright extended collective management system”, Xiong Qi. Intellectual Property Rights, 2015 (06).
- [10] See “Legal Research on Voice Trademark Registration and Protection in China”, He Xiaodong, Xinjiang Social Science Forum, 2021 (02).
- [11] Agreement on Trade-Related Aspects of Intellectual Property Rights (unamended), https://www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm, 2022.1.3 last visited .
- [12] “On the Improvement of the Collective Copyright Management System in China”, by Jiang Wanlai, Electronic Intellectual Property Rights, 2003 (11).
- [13] See “Discussion on technical measures and copyright protection”, by Feng Xiaoqing. Law Journal, 2007 (04).
- [14] See “RCEP IP Chapter: Another TRIPS-Plus Agreement?”, By María Vázquez Callo-Müller/ Pratyush Nath Upreti, 20 March, 2021 Forthcoming in GRUR International 70 (7) (2021) Oxford University Press.
- [15] China Patent Information Center, <https://www.cnpat.com.cn/Detail/index/id/460/aid/15866.htm>.
- [16] The RCEP taking effect has injected new momentum into the global economic, http://www.gov.cn/xinwen/2022-01/02/content_5666152.htm.