

The US and EU's intellectual property initiatives in Asia: Competition, coordination or replication?

Jean-Frédéric Morin

Political Science Department, Université Laval, Québec, Canada

Madison Cartwright

Department of Government and International Relations, University of Sydney, Australia

Abstract

Intellectual property rights (IPRs) have been a priority for the European Union (EU) and the United States (US). However, over the past two decades, the EU and US have failed to advance their preferred IPR standards through multilateral forums and have pursued bilateral alternatives instead. How have the EU and US pursued their strategies in this fragmented environment? Looking specifically at the Asia-Pacific, we compare their bilateral initiatives on IPR across three strategies: treaty-making, coercion and socialization. Through this analysis, we examine whether the EU and US' bilateral actions indicate regulatory competition, coordination or replication. We find that the overall tendency has been towards replication, which raises questions about the reasons for this redundancy and its policy consequences. As the rise of bilateralism is not unique to IPR, our findings have implications for global governance more generally.

Policy Implications

- Asian countries negotiating IPR with the US or the EU should take into account the fact that making concessions to the US is unlikely to reduce pressure from the EU and vice versa, even though concessions made bilaterally benefit IPR holders globally. This makes IPR concessions even less attractive to Asian countries.
- EU and US leaders should strive to improve the coordination of their shared goals. When they emulate other countries' interventions, they would gain from assessing the potential marginal contribution generated by an additional intervention. Specialization may be more beneficial than duplication when it comes to resource use.
- Asian countries risk paying for EU/US competition over geographical indications because satisfying them both is increasingly difficult. In this context, Asian countries should prioritize multilateralism and support negotiations in multilateral settings, despite their former criticisms of IPR multilateral institutions.

1. Introduction

The heterogeneity of national regulations can impede global value chains. This phenomenon, known as 'rule overlap' (Farrell and Newman, 2016, p. 721) or 'material externality' (Lake, 2009, p. 229), creates incentives for states to cooperate and reduce transaction costs. However, incentives for harmonization also create opportunities for regulatory competition because states may compete to ensure that their rules are adopted

instead of their competitors' rules. Powerful states, in particular, use various mechanisms to diffuse their own regulations globally (Farrell and Newman, 2015 and 2016; Drezner, 2007).

One area that can be subject to both regulatory cooperation and regulatory competition is intellectual property rights (IPRs). Over the course of the 20th century, states worked towards a greater degree of harmonization of IPR rules in multilateral settings, such as the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). The most significant advancement in multilateral IPR rule-setting was the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in 1995, binding WTO members to common standards of IPR protection and enforcement (Archibugi and Filippetti 2010). The United States (US) and the European Union (EU) were instrumental in securing robust IPR standards in the framework of the TRIPS agreement (Sell, 2003). Arguably, this strategy of pursuing common interests in multilateral organizations remains the EU and US' first best option (Drezner, 2007).

However, this option is less available today than it was 25 years ago. Coalitions of developing countries, non-governmental organizations (NGOs) and activists have fiercely criticized multilateral IPR forums for being biased in favour of IPR holders (Haunss and Shadlen, 2009; Helfer, 2004; May, 2007; Murphy and Kellow, 2014; Sell and Prakash, 2004; David and Halbert 2017). Nevertheless, global IPR regulations remain a major priority for both the EU and US. This is for good reason: collectively they received more than seventy percent of all international revenue for the use of intellectual property worldwide (World Bank, 2020). In response to the unfavourable environment that has emerged at the multilateral level, the EU and US are now pursuing their IPR objectives through bilateral initiatives (Sell 2010).

This article examines the relationship between EU and US bilateral regulatory initiatives on IPR in the Asia-Pacific region. This region is important because it is home to several fast-growing economies. From the perspective of IPR holders, lax protection in some Asia-Pacific countries could represent a loss of revenue. On the contrary, the prospect of domestic IPR reforms could secure their position as dominant players in knowledge-based industries. The Asia-Pacific is also a valuable field of study for examining the interaction of EU and US bilateral initiatives because the region is outside their respective traditional spheres of influence. Although there are important country variations, there are no historical, economic and cultural reasons why the US or the EU should prevail in the region as a whole.

The literature suggests that the growing number of EU and US bilateral initiatives creates two potential outcomes for their interactions in the Asia-Pacific region. The first is *regulatory competition*. Although the EU and US both support greater protection for IPRs, they have different domestic coalitions for different types of IPR (Baldwin, 2014; Weatherall, 2011; Czapracka, 2010; O'Connor and de Bosio 2017). For example, the EU's agricultural industry is interested in geographical indications (GIs), which identify produce in relation to its region of origin (e.g. Parmigiano-Reggiano, Champagne, etc.). On the contrary, the US lacks a local constituency that supports GIs and favours the use of

trademarks to protect designation of origin instead (Hayes, Lence and Babcock, 2005). As a result, GIs have been a source of transatlantic tension (Josling, 2006).

In multilateral settings, where smaller states can form coalitions to oppose great powers, the EU and the US have an incentive to defend their common interests regarding robust IPR protection and avoid the specific issues that set them apart. By contrast, the power asymmetries at the bilateral level mean that the EU and US can extract more concessions from their negotiating partners (Cartwright, 2019). Thus, when working outside multilateral institutions, the EU and US, as global regulatory powers, are likely to attempt to diffuse their own specific regulatory preferences and rally a coalition of countries around them (Drezner, 2005; Drezner, 2007). Under this first perspective, we would expect the EU and US to use similar strategies to pursue their different IPR interests in the Asia-Pacific region, as they seek to establish distinct sets of rival regulations (El Said, 2012, p. 4; Yu, 2004, pp. 389-399).

The second potential outcome of the interaction of EU and US bilateral initiatives in the Asia-Pacific region is *regulatory coordination*. This can take the form of a regulatory division of labour, whereby the EU and the US promote their shared interests through their respective bilateral initiatives in a complementary way. This division of labour does not need to be strategically planned *ex ante*: incremental adjustments can be made in response to the behaviour of the other entity. We envision three different versions of this scenario. First, the EU and US can each focus on a different set of countries. They can operate this geographical division of labour by specializing in different types of economies or focusing on the countries they have closer political ties with.

Second, the EU and the US can specialize in different diffusion mechanisms. According to a ‘good cop / bad cop’ division of labour, the EU or the US can exercise relatively hard and direct power, while the other can use softer and more diffuse mechanisms. Indeed, research has found that the US has a more activist approach to international IPR governance. It focuses more on legal enforceability and less on development issues compared to the EU (Cheek, 2001, pp. 283-284; Horn, Mavroidis and Sapir, 2010; Maskus, 2014).

Third, the EU and US can each specialize in different aspects of IPR protection. For example, one could centre its initiatives on copyright, while the other works on patents, or one could seek to increase legal standards, while the other focuses on enforcement efforts. Under this division of labour hypothesis, we should see the EU and US specialize in different countries, policy mechanisms or IPR issues.

Our findings show some examples of competition and little evidence of coordination. We find that the overall tendency is towards a third outcome, *replication*. Instead of undermining or complementing each other’s work, the EU and US tend to duplicate it. The deadlocks facing multilateral institutions led to the proliferation of IPR rule-setting forums, which appear to have created redundancies in global IPR governance.

Although we focus specifically on IPR, our findings are relevant to international regulation more broadly because forum shopping is not unique to IPR. Many other areas of global policy have reached a deadlock at the multilateral level. As a result, the EU, US and other influential actors have set up their own international regulatory initiatives (Hale, Held and Young, 2013), raising questions about how these initiatives interact.

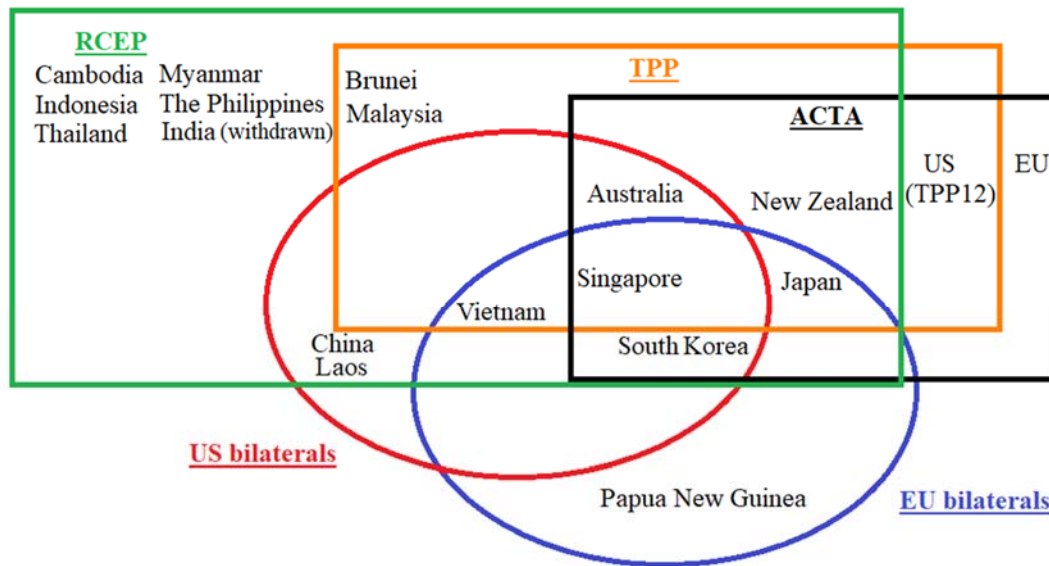
The article is divided into three main sections, which focus on different bilateral mechanisms that the EU and US use in the Asia-Pacific region for IPR protection. These mechanisms are (1) treaty-making (using trade agreements to offer Asia-Pacific countries greater market access in exchange for IPR reforms), (2) coercion (threatening Asia-Pacific countries with trade sanctions if they fail to adopt certain IPR rules), (3) and socialization (using capacity building to convince governments in the Asia-Pacific region to adopt new IPR rules). The literature reveals that these mechanisms are frequently used by regulatory powers to diffuse their IP standard abroad (Morin and Gold, 2014). For each of the three mechanisms, we examine whether the EU and US promote rival rules, operate under a division of labour or merely replicate each other's work.

2. Limited competition in treaty-making

By incorporating IPR provisions into trade agreements, both the EU and US have encouraged other countries to assume levels of IPR protection similar to their own. Many of these provisions are 'TRIPS-plus', i.e. they provide higher levels of protection than the TRIPS agreement. While both the EU and US have used treaty-making to export their IPR rules, the US was the first to adopt this strategy and its approach is more aggressive. The 2002 US-Singapore agreement, for example, includes several TRIPS-plus provisions on copyright and patent protection. However, it was only after the release of the 2006 *Global Europe Strategy* that the EU become more assertive with regard to the inclusion of TRIPS-plus obligations in trade agreements. The EU-CARIFORUM economic partnership agreement signed in 2008 was the first such agreement (Jaeger, 2015; Melo Araujo, 2013; Moerland, 2017).

The Asia-Pacific has not been a priority for either the EU or the US in terms of their respective preferential trade agreement strategies. There does not seem to be greater focus on the Asia-Pacific region than on other regions, such as Latin America. Nevertheless, both the EU and US have a number of trade agreements in the Asia-Pacific, as illustrated by Figure 1. There is no apparent logic for selecting trade partners, at least not on the basis of IPRs. Partner countries include: high income (e.g. Singapore) and developing countries (e.g. Papua New Guinea); high growth (e.g. Laos) and stagnant economies (e.g. Japan); and countries with relatively low IPR standards (e.g. Vietnam) and with relatively high IPR standards (e.g. Australia).

Figure 1: US and EU trade agreements (2000-2018) with Asia-Pacific countries¹



In addition to the EU and US's bilateral agreements in the region, both were also party to the Anti-Counterfeiting Trade Agreement (ACTA), along with five other countries in the Asia-Pacific. All five are high-income countries: Japan, New Zealand, South Korea, Singapore and Australia. However, the European Parliament rejected ACTA in 2012, which has rendered the agreement largely defunct. Apart from ACTA, there have been no joint treaty-making endeavours from the EU and US in the region.

US and EU partner selection does not reveal a clear division of labour. Some countries are only party to a single agreement with either the EU or US, but there is also overlap. As Figure 1 illustrates, South Korea, Vietnam and Singapore have bilateral agreements with the EU and the US. The EU is currently negotiating a trade agreement with Australia, which already has an agreement with the US. The US, meanwhile, pursued TRIPS-plus standards with Japan via the TPP, though not in the 2019 US-Japan trade agreement or the US-Japan Digital Trade Agreement.

It is important to note that the EU and US have not been the only states in the region pursuing TRIPS-plus agreements. For example, South Korea has signed four free trade agreements with other Asian countries and Japan has signed seven. These agreements include an average of twelve TRIPS-plus provisions overall (Morin and Surbeck, 2020). Meanwhile, neither the EU nor the US has a fully-fledged trade agreement with the largest economy in the region, China². Yet, China has signed TRIPS-plus agreements with South Korea, Switzerland, Costa Rica, Peru, Pakistan, Chile and Australia. China is also party to the Regional Comprehensive Economic Partnership (RCEP) negotiations, which is a 'battle... to decide the intellectual property law for half the world's population' (Chander and

¹ The US-Japan trade deal signed in 2019 does not include any IPR provisions and, therefore, is not included in this figure.

² We classify the 2019 US-China agreement as part of a coercion strategy, rather than a treaty-making strategy.

Sunder, 2019, p. 331).³ Therefore, following the US's withdrawal from the TPP and the failure of the ACTA, the most important forum for international law-making on IPRs in the Asia-Pacific does not include the EU or the US.

The agreements that the EU and US have pursued in the region have all included numerous TRIPS-plus provisions, as illustrated by Figure 2. The figure compares the EU and the US's trade agreements with Vietnam, South Korea and Singapore. These countries make good comparisons because all three have bilateral agreements with both the EU and US. Furthermore, all signed their agreements with the EU after the 2006 *Global Europe Strategy*, marking the beginning of the EU's more aggressive TRIPS-plus negotiating strategy.

As Figure 2 illustrates, there are differences in the standards pursued by the EU and US with these three countries. First, the US has included a few more TRIPS-plus provisions on patents and trademarks than the EU. Second, the EU has included some provisions on traditional knowledge and genetic resources and the US has not, though neither issue area has been a priority for the EU. Third, and perhaps more importantly, the EU has included more TRIPS-plus provisions on GIs than the US. In fact, the US has not included any provisions on GIs in its agreements with Vietnam, South Korea or Singapore.

The US and EU's well-known disagreements on GIs are evident in their respective treaty-making efforts in the Asia-Pacific. The EU-South Korea agreement, for example, 'embraces most of the main pillars of the EU system' on GIs (O'Connor and de Bosio 2017, p. 52). South Korea was forced to strike a delicate balance in both of its agreements with the EU and the US; and it sought to allay US concerns over the GI provisions in its agreement with the EU (Kim 2011). However, the EU has struggled to reach GI provisions in its agreement with Vietnam, which had previously committed to US-favoured provisions during the TPP negotiations (which included the US at the time, as well as countries, such as Australia that supported the US position). Yet, apart from this intense regulatory competition on GIs, the EU and US broadly favour a similar approach to IPR in their respective trade agreements. This replication is particularly noticeable for copyright and enforcement issues.

³ RCEP includes members of the Association of South East Asian Nations (ASEAN), along with China, Japan, South Korea, Australia and New Zealand. India withdrew from the negotiations in November 2019.

Trade Representative (USTR) has the authority to impose trade sanctions on countries that engage in ‘unfair’ trade practices. The USTR began targeting countries with 301 actions for their lack of protection of US-held IPRs in the early-1980s (Sell 2003). The US later created ‘Special 301s’ under the *Trade Act* of 1988 to specifically address IPRs. Every year the USTR releases a Special 301 Report, which identifies countries with a level of IPR protection deemed insufficient or inadequate. The reports use a tiered system: Priority Foreign Countries and the Priority Watch List are the most severe; Watch List countries are less severe. Countries risk trade sanctions if they fail to address problems relating to their protection of IPRs.

Another coercive tool used by the US is to review a country’s Generalized System of Preferences (GSP) status. The GSP was also introduced through the *Trade Act* of 1974. It gives developing countries greater access to the US market. If the US believes that a country is engaging in ‘unfair’ trade practices, it can investigate and review the country’s eligibility for the GSP programme. The *Omnibus Tariff and Trade Act* of 1984 required the US President to consider the level of IPR protection when determining whether a country should be designated as a beneficiary developing country under the GSP programme. Thus, countries risk being denied GSP status or having it revoked for failing to protect IPRs.

In 1984, the EU created a similar ‘retaliatory’ trade mechanism, initially known as the New Commercial Policy Instrument. It later became the Trade Barrier Regulation. However, the EU did not use these unilateral mechanisms to address poor protection of IPRs until later. In 2004, the EU released a strategy paper for addressing IPR protection in third countries – which advocated a more active role for Trade Barrier Regulation (Krizic and Serrano, 2017, p. 65). Under the strategy, the EU mimics the Special 301 approach, including the identification of ‘priority countries’. The EU reports can lead to binding and enforceable decisions, which can be used to pursue sanctions against third parties (Grosse Ruse-Khan, Jaeger and Kordic, 2010). In other words, there is a clear path from ‘priority country’ to sanctions, which is also the case for the Special 301s.

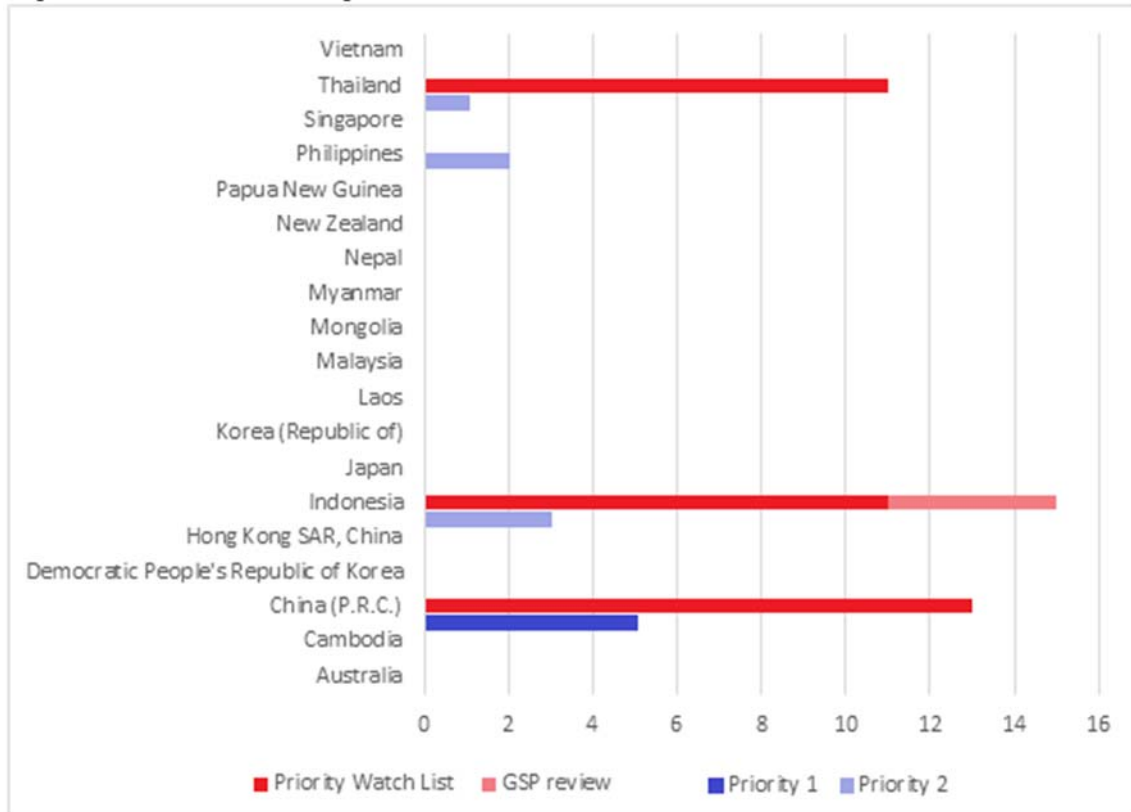
The following analysis compares US and EU reports. On the US side, we analyse: countries on the Priority Watch List of the annual Special 301s reports, from 2006 to 2018; and countries targeted by GSP investigations for their IPR standards during the same period. On the EU side, we identified two groups of countries mentioned in the five EU reports published between 2006 and 2018: priority one (just one country that is *the* highest priority) and priority two.⁴ Thus, the analysis considers the countries most at risk of being sanctioned by the EU and/or the US.

The EU and US have largely targeted the same countries in the Asia-Pacific region. Figure 3 shows the countries that are included in the EU IPR reports. As can be seen, China is clearly the EU’s main priority because it is the priority one country in all reports. China is the only priority one country ever identified by the EU. Indonesia is the next highest priority among Asia-Pacific countries, followed by the Philippines and Thailand. Figure 3 also shows the countries that appear on the Priority Watch List in the Special 301 Reports,

⁴ As the 2003 report does not include priority countries, it is not included.

as well as those targeted with GSP investigations for their poor IPR protection. China is the main target for Special 301s and it is on the Priority Watch List every year. Indonesia is the next highest priority among Asia-Pacific countries for the US, followed by Thailand.

Figure 3: EU and US targets of coercion, 2006-2018



Interestingly, GSP reviews have not been used extensively in the Asia-Pacific on IPR grounds. Since 2000, the US reviewed the GSP status of only one Asia-Pacific country in relation to the IPR criteria – Indonesia in 2011-2012 and 2017-2018. This is despite the fact that several countries in the region are GSP recipients, including Thailand, which has also featured on the Priority Watch List.

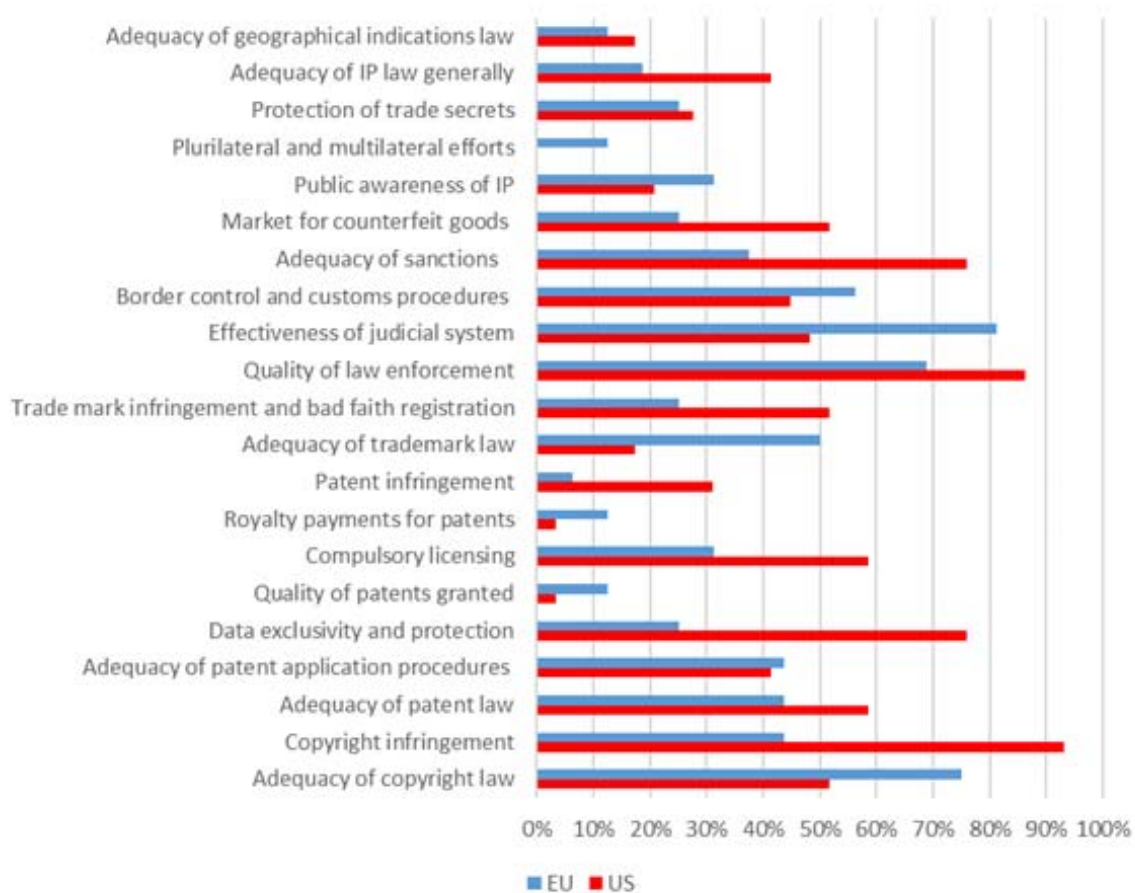
The main difference between the EU and US is the Philippines, which is listed as a priority two country for the EU, but does not appear on the Special 301 Priority Watch List during the period examined. However, with the exception of the Philippines, both the EU and US have used various degrees of coercion with the same pool of countries.

To compare the EU and US priority IPRs issues, we coded US and EU reports for the IPR issues considered: ‘patents’, ‘copyright’, ‘enforcement’ and ‘other’ IPR issues, such as GIs, trade secrets or public awareness of IPRs. Thus, the results compare the substantive

priorities of the EU and US in the Asia-Pacific region⁵. This comparison was possible because the EU and US targeted a similar set of countries with coercion.

Figure 4 shows the IPR issues raised in the reports linked to concerns over the level of protection and/or improvements and progress on the issue. As the analysis includes more Special 301 reports, the data is presented as a percentage of all country-reports that address each issue. Figure 4 reveals some notable differences between the US and the EU. The US appears more concerned with patent, copyright and trademark infringement, for example, whereas the EU is more concerned with the effectiveness of the judicial system, public awareness of IPRs and the adequacy of copyright and trademark laws. The data obscure other differences. For example, the number of references to GIs in the EU and US reports are similar, but they appear for different reasons. The EU is worried that GIs are too lax and the US is concerned that they are too restrictive.

Figure 4: IPR issues for the EU and US, 2009-2018



Nevertheless, the data reveals that overall the EU and US have similar concerns. This is more evident when aggregating the codes under their broader issue area, as illustrated in Table 1. The table indicates the percentage of country-reports that mention each IPR issue

⁵ The 2006 EU IPR report identifies priority countries, but does not highlight the EU’s specific concerns, instead it summarizes the survey results. For this reason, the 2006 report was not included in this coding and the analysis examines the reports from 2009 to 2018 for both the EU and US.

in each category and shows minor variations. For example, more US reports address copyright than EU reports. The EU addresses trademark issues more frequently than the US. However, this is not necessarily evidence of a division of labour. Overall, both the EU and US reports focus more on copyright and enforcement than other IPR issues.

Table 1: Prevalence of issues raised in country reports

	Asia-Pacific		China		Indonesia		Thailand	
	EU	US	EU	US	EU	US	EU	US
Copyright	59%	72%	70%	75%	63%	60%	88%	89%
Patents	25%	39%	54%	43%	21%	31%	25%	30%
Trademarks	38%	34%	55%	75%	50%	15%	25%	33%
Enforcement	54%	61%	76%	65%	55%	60%	55%	47%
Other	20%	21%	32%	30%	20%	22%	5%	9%

There are clear similarities in EU and US priorities when comparing their reports on individual countries. Table 1 shows the IPR issues targeted in the EU and US country reports on China, Indonesia and Thailand. As it illustrates, the EU and US priorities are largely consistent for each country, with the exception of ‘trademarks’ in China and Indonesia, where there are significant differences.

Lastly, it is worth examining the issues raised with respect to China, which is the main priority for both the EU and US. This might suggest that there is greater coordination in their use of coercion against China. Our analysis reveals several differences between the EU and US approach. For example, the US mentions compulsory licensing, the EU does not; the EU refers to China’s involvement in multilateral forums, the US does not. However, the differences between the EU and US approach to China largely reflect the difference shown in Figure 4. The US remains more concerned with infringement and the quality of law enforcement, for example, while the EU is more concerned about the judicial system and the adequacy of laws. The IPR issues pursued by the EU and US against China are more similar than for the Asia-Pacific as a whole, as illustrated in Table 1.

However, whilst both the EU and US have primarily targeted China with their coercion, only the US has actually imposed trade sanctions. IPRs were one of the main reasons for the Trump Administration’s 301 investigation, which was launched in August 2018 and led to tariffs being imposed on \$365.3 billion worth of imports from China (Morrison 2019; Williams and Hammond, 2019). The US bore the costs of these tariffs, which raised the price of imports and triggered retaliatory tariffs from China. Meanwhile, the EU identified China as a ‘systemic rival’ to Europe and condemned China’s ‘unfair’ trade policies and ‘lack of reciprocal market access’ (European Commission, 2019). Yet, despite this strong language, the EU did not increase its tariffs on Chinese goods.

The EU and US also have other trade-related concerns with China, over and above IPRs. First, the US tariffs were ostensibly pursued because of IPR concerns, yet the true motivations are intrinsically linked to broader US-China tensions. The tariffs increased in response to Chinese retaliation and not because of the deterioration in IPR enforcement in China. Second, despite the EU’s concerns about China’s trade policies, it is keen to

maintain multilateral trade governance, which the EU thinks the US' unilateral approach is jeopardizing. This is illustrated by joint statements released by the EU and China reiterating their shared commitment to multilateral governance and their opposition to unilateralism and protectionism (European Commission, European Council and Peoples Republic of China, 2019).

In December 2019, the US and China announced that they had agreed to a 'Phase One' deal to begin easing their trade dispute. Part of this included a trade agreement with an IPR chapter. The Phase One deal addresses many of the issues repeatedly raised in the US' 301 reports, such as: trade secret protections; delays in patent approvals; online copyright infringement; the production and distribution of counterfeit goods; use of unlicensed software; enforcement and penalties for IPR infringement; and trademark registration.

Furthermore, the agreement reflects the US's position on GIs, which is hostile to the EU. Notably, the agreement includes a requirement that China's pending and future trade agreements 'do not undermine market access for U.S. exports to China of goods and services using trademarks and generic terms' (The United States of America and the People's Republic of China, Article 1.15.1). Thus, whilst the agreement specifically addresses the US's grievances with China over IPR protection, it also seeks to advance its preferred approach to GIs in the region, which is in sharp contrast with EU preferences.

Despite these notable exceptions, the EU and US have largely replicated each other's efforts on coercion. They target a similar cohort of countries and focus on a similar set of IPR issues. Of course, countries are identified as targets for coercion *because* they are perceived as having insufficient protection on specific issues. In other words, we would expect the same countries to be targeted for the same reason. Yet, the replication in terms of coercion is not coordinated to serve their shared interests, nor does it undermine the work of either party. Therefore, there is no apparent regulatory competition or coordination via a division of labour. This is particularly interesting, given that the EU did not establish its IPR-focused coercive mechanism until the mid-2000s, well over a decade after the introduction of Special 301s. It raises questions about why the EU felt compelled to pursue this mechanism, despite the fact that the US was already using coercion for IPR issues.

4. Promoting the maximalist agenda at different degrees

International socialization is the process of transferring the social norms of a given community to another. When the US and EU socialize foreign government representatives, they advocate that western IPR standards are appropriate in other contexts. This process occurs through various inter-government channels, including technical cooperation and capacity-building initiatives (May, 2004). For both the EU and US, the use of socialization is closely linked to other mechanisms. For example, the EU holds bilateral political dialogues that lie somewhere 'between a coercive and persuasive tool' (Krizic and Serrano, 2017, p. 7). The dialogues are used in conjunction with the EU's coercive mechanisms, usually as a remedy for 'priority' countries.

Socialization as a mechanism involves a variety of actors. For example, different US agencies offer IPR training to foreign government representatives, including the Department of Justice, the US Library of Congress Copyright Office, the United States Patent and Trademark Office, Customs and Border Protection, United States Agency for International Development, the Department of State, the USTR and the United States Trade and Development Agency. The European agencies engaged in socialization include the European Commission, the European Intellectual Property Office (EUIPO)⁶ and the European Patent Office (EPO), as well as numerous agencies from Member States. In addition to the above public institutions, a number of non-state organizations provide technical assistance to developing countries.

Both the EU and US have engaged in extensive socialization initiatives in the Asia-Pacific, which target most of the region’s developing states. From 1995 to 2014, the EU engaged in at least one capacity-building initiative with all developing countries in the Asia-Pacific region, except for East Timor, North Korea and Taiwan. The US engaged with all countries except East Timor, North Korea and Brunei. Socialization is decentralized, which makes it difficult to collect and compare data. However, our analysis examines some of the available information on the EU and US’s socialization initiatives within the Asia-Pacific and more broadly. This work draws primarily on government documents, press statements and websites, as well as data from previous studies (Morin, 2020).

Table 2 below details the EU’s main socialization initiatives in the Asia-Pacific, including information on the administrating agency, recipient county, scope and budget. As it shows, the EU has engaged in socialization with ASEAN countries for over 25 years, including through the ASEAN Project on the Protection of Intellectual Property Rights (ECAP). From 1993 until 2016, ECAP had three phases: the first focused on the protection of patent and trademark; the latter phases included a broader range of IPR issues. From 2018, the ECAP programme was incorporated into the ASEAN Regional Integration Support initiative (ARISE+)⁷. ARISE+ provides technical cooperation to help ASEAN develop a more integrated internal market. ASEAN countries are also involved in the IP Key South-East Asia initiative launched in 2017. IP Key is a forum of cooperation between the EU and other jurisdictions, to encourage convergence on IPRs (European Intellectual Property Office, 2019).

Table 2: EU socialization initiatives in Asia

Program	Agency	Recipients	Scope	Period	EU Budget
ECAP I	EPO	ASEAN member states.	Industrial property rights.	1993-1997	ECU 6.5 million
ECAP II	EPO and EUIPO*	ASEAN member states**	Patents, trademarks, industrial designs, copyrights, GIs, designs of integrated circuits and undisclosed information	2000-2007	€9 million
ECAP III – Phase I	EPO	ASEAN member states.	Trademarks, industrial designs, GIs, copyright,	2010-2011	€5.1 million

⁶ Formerly the Office for Harmonization in the Internal Market.

⁷ Known as ‘ARISE’ 2013-2016 and ‘ARISE+’ from 2017.

			traditional knowledge and IP enforcement.		
ECAP III – Phase II	EUIPO*	ASEAN member states.	Trademarks, industrial designs, GIs, copyright, traditional knowledge and IP enforcement.	2012-2016	€5.1 million***
ARISE+ IPR	EUIPO	ASEAN member states	Trademarks, industrial designs, GIs, copyright, traditional knowledge and IP enforcement.	2018 - 2023	€5.5 million
IPR1	EPO and EUIPO*	China	Trademarks, industrial designs, GIs, copyright, patents and enforcement.	1999-2004	Data unavailable.
IPR2	EPO and EUIPO*	China	Trademarks, industrial designs, GIs, copyright, patents and enforcement.	2007-2011	€10.8 million
IP Key (China)	EUIPO and EPO	China	Trademarks, industrial designs, GIs, copyright, patents and enforcement.	2013-2017	€7.5 million
IP Key	EUIPO	China, Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam.	Trademarks, industrial designs, GIs, copyright, plant variety rights and IP enforcement.	2017 - 2021	€20 million****
Political dialogues	European Commission	China, Thailand, South Korea	As identified in the IPR Enforcement Reports	From 2004	European Commission's budget.
IP working groups	European Commission	China	As identified in the IPR Enforcement Reports	From 2005	European Commission's budget.

*Then called the Office for Harmonization in the Internal Market.
** Excluding Myanmar.
*** Same funding from Phase I.
**** Funding is for the whole IP Key program, which also includes Latin America.
Sources: European Union documents, websites and press releases.

China has also been a major target of EU socialization through a variety of initiatives. The first was the EU-China Intellectual Property Rights Project (IPR1) in 1999. The IPR1 programme provided technical assistance to China as it strengthened its intellectual property legislation during its accession to the World Trade Organization. The second phase, IPR2 (2007-2011), focused on enforcement (Crookes, 2014; Krizic and Serrano, 2017, p. 69; Wyzycka and Hasmath, 2017). After the IPR2 project, technical assistance was provided through the IP Key programme. China has also engaged in annual political dialogues with the EU since 2004 ‘to share information on IPR strategies, multilateral and bilateral IPR issues, and national IP legislation and practices, with the goal of identifying shortcomings and proposals for improvement’ (European Commission, 2018a, p. 1).

Additionally, since 2005, China and the EU have met biannually in an ‘IP Working Group’ to focus on specific technical issues. Industry and other IPR holders also participate in the

working group (European Commission, 2018a, p. 1). The EU is keen to engage other Asia-Pacific countries in political dialogues, including South Korea and Thailand (European Commission, 2017 and 2018b). Meanwhile, IPR issues are also discussed as part of the EU-Indonesia Business Dialogue and the EU-Philippines Working Group on Trade and Investment (European Commission 2018c).

The US's socialization initiatives are less institutionalized than the EU's. Table 3 shows the recipient countries of trade capacity programmes from 1999-2014. The table also specifies the implementing agencies and the funding provided. As the table illustrates, ASEAN countries and China have been the primary recipients of this support. More generally, from 2005 to 2010, both state and non-state organizations in the US sponsored 370 events for Asia-Pacific countries. The largest recipient country was China, which accounted for over a third of these events, followed by ASEAN countries, which collectively accounted for over sixty percent of the events.

Table 3: US IPR trade capacity building program recipients, 1999-2014

Country	Agencies	Funding
Philippines	Department of Commerce, Department of Justice, USAID	\$1,671,064
China	Department of Commerce, Department of Justice, Trade and Development Agency	\$1,125,458
ASEAN	Department of Commerce	\$1,099,318
Vietnam	Department of Commerce, Department of Justice, USAID	\$1,040,793
Laos	Department of Commerce, Department of Homeland Security, Department of Justice, USAID	\$769,613
Thailand	Department of Commerce, Department of Homeland Security, Department of Justice, Department of State, USAID	\$754,588
Indonesia	Department of Commerce, Department of Homeland Security, Department of Justice, USAID	\$539,278
Myanmar	USAID	\$200,000
Cambodia	Department of Commerce, Department of Homeland Security, Department of Justice	\$151,529
Malaysia	Department of Commerce, Department of Justice	\$72,123
South Korea	Department of Commerce, Department of Justice	\$48,319

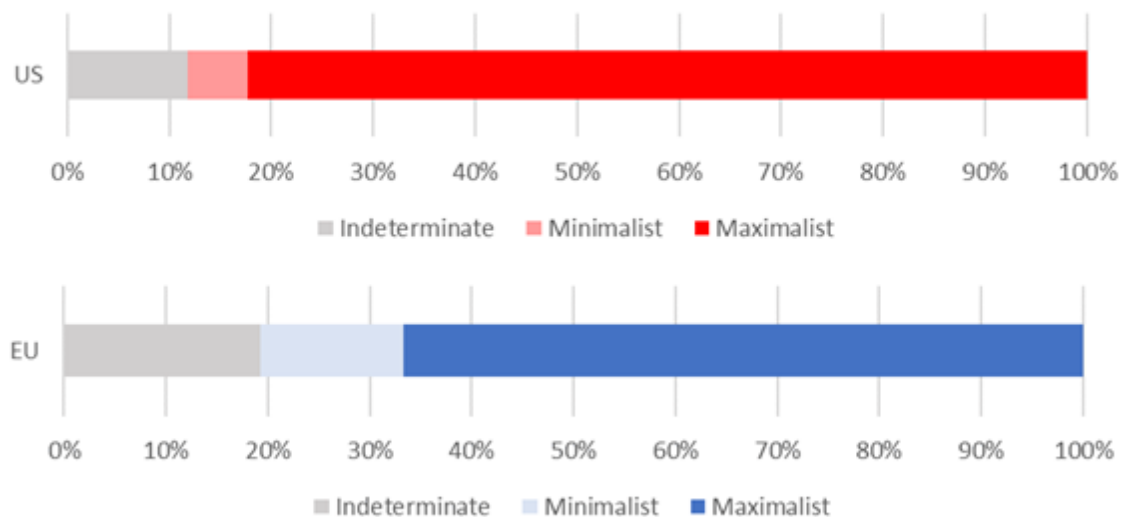
Source: Morin 2018

The EU's socialization has addressed a broad set of IPR issues, as shown in Table 2. However, the EU may prioritize different issues, which are subject to change over time and/or between recipient countries. This data is extremely difficult to gather, as socialization initiatives involve numerous individual events and meetings and a huge variety of actors. As the US's socialization initiatives are less institutionalized and more ad hoc, data on the priority IPR issues is even more difficult to find. Nevertheless, the US agencies involved in socialization do provide some insight into US priorities. Some agencies, such as the US Copyright Office and the US Patent and Trademark Office focus on their specific areas. Others, such as the US Department of Commerce and the US Department of State address a broad range of concerns.

While it is difficult to measure exactly how the EU and US prioritize different issues, we have identified some differences in their approach to socialization initiatives, as well as in the way they prioritize IPR issues. This is evident when we examine the other organizations that EU and US agencies cooperate with when they deliver their socialization programmes. Data from Morin (2020) measures the cooperation between different state and non-state entities in delivering technical assistance programmes from 1995-2014, along with their agenda on IPR issues. There are two primary IPR agendas: a maximalist agenda and a minimalist agenda. Maximalists support robust protection mechanisms for IPRs, whereas minimalists support flexible IPR protection. Both the EU and US have maximalist preferences, which they pursue through all their mechanisms.

However, the EU has also cooperated with minimalist organizations more than the US. Of the organizations to have cooperated with at least one EU agency, fourteen percent are minimalist versus six percent for the US. The EU's minimalist partners include civil society groups, such as the International Centre for Trade and Sustainable Development, as well as international organizations, such as UNCTAD. These minimalist partners are generally concerned with development issues. In contrast, the US is more likely to collaborate with maximalist private organizations, particularly industrial trade groups, such as the Motion Picture Association of America. Therefore, there are measurable differences in how the EU and US engage in socialization. Nevertheless, the EU still favours maximalist IPRs and largely cooperates with other organizations that support a maximalist agenda.

Figure 5. Ideological orientation of US and EU partners for delivering capacity building



As Matthew and Munoz-Tellez have found, ‘there is little evidence that EC programmes are incorporating TRIPS flexibilities, presenting policy alternatives or focusing on capacity building to enable developing countries to negotiate proactively on IP issues’ (Matthew and Munoz-Tellez, 2006, p. 640). This suggests that there is neither transatlantic regulatory competition nor a division of labour. Instead, it illustrates that the EU is more willing to engage with development concerns and civil society groups than the US. Both remain

committed to their maximalist agenda overall, although the intensity in which different IPR issues are pursued is difficult to assess.

5. Conclusion

This article compared the bilateral IPR initiatives of the EU and US in the Asia-Pacific, specifically examining their use of three mechanisms: treaty-making, coercion and socialization. Through this comparison, the article assessed how the EU and US have pursued their interests on IPR despite the deadlock facing multilateral institutions. It considered three possible outcomes. First, regulatory competition, which suggests that the EU and US have attempted to undermine each other's efforts in their pursuit of distinct and rival IPR priorities. Second, division of labour, which suggests a degree of coordination between the EU and US because they have focused their resources on different mechanisms, IPR issues or countries that are of common interest to them both. Last, replication, which suggests that the EU and US have not engaged in a coherent strategy of competition or coordination, but have merely duplicated each other's efforts.

Our analysis illustrates that neither regulatory competition nor regulatory coordination is dominant in the Asia-Pacific. Instead, the EU and US generally replicated each other's work. Overall, they both use all three mechanisms, largely target the same countries and focus on the same IPR issues. There are notable exceptions. For example, the well-documented disagreement on GI is evident: the EU includes GI standards in its trade agreements and the US does not. The EU and US are applying counterpoising pressure on countries through coercion: the EU is demanding greater GI protection, while the US wants less. This suggests that there is regulatory competition on this specific issue. Furthermore, the US has clearly prioritized trademarks and patents in its trade agreements more than the EU. This may indicate that there is some limited regulatory competition here as well.

There are other non-trivial differences: the EU targets the Philippines with coercion and the US does not; the EU includes more civil society groups and development-oriented issues in its socialization; the US has been more assertive than the EU when using coercion against China. However, these differences do not indicate regulatory competition or a division of labour. The differences are too isolated to illustrate a broader IPR strategy, and/or are linked with other non-IPR political goals. The general tendency across the mechanisms is one of replication.

Replication can be more accurately described as the EU duplicating the US's international IPR initiatives. The EU's IPR reports reflect the US's Special 301 Reports, which were introduced in the 1980s. The EU developed its more aggressive TRIPS-plus trade strategy after the US's spate of TRIPS-plus agreements in the early 2000s. The EU's imitation of (or learning from) the US has generated redundancies. This begs the question: why does the EU duplicate US efforts in the first place? As a result of the most-favoured-nation principle, concessions made by Asian countries to the US are automatically extended to the EU. Therefore, there is little need for EU instruments to reaffirm them. Moreover, if US trade pressure failed to extract concessions from Asian countries, there is little reason to believe that the EU would be more successful. Replication has the potential to act as a

de facto form of coordination, if the EU and US reinforce each other's efforts. However, there is little evidence to suggest that the combined US and EU efforts are more successful than when they exert pressure individually.

Understanding why the EU is following the US is a subject for future research. One potential explanation could be linked to the EU's domestic political economy: European leaders might duplicate US strategies to signal to their IPR-dependent constituents that they care about their interests. Another explanation could be that bureaucrats and negotiators reinforce their professional identity and reduce political risks by sticking to established norms and procedures. Or perhaps the EU's strategic objective is to increase the number of forums to negotiate rules and adjudicate disputes with a view to creating opportunities for forum shopping strategies. This question is beyond the scope of this paper.

Our findings raise important policy implications related to the increase in bilateral actions that follow multilateral deadlocks. This research suggests that even in cases where powerful actors agree, bilateral responses can be uncoordinated, which exacerbates global institutional complexity. Policy makers should be aware of other states' actions and consider how to improve the coordination of their shared goals. Emulating other countries' interventions should be accompanied by an assessment of the marginal contribution that an additional intervention could make. In some cases, specialization may be a more beneficial use of limited resources than duplication.

The increase in bilateral action raises policy implications for Asian countries as well. When Asian governments negotiate IPR with the US or the EU, they should be aware that making concessions to one is unlikely to reduce pressure from the other, even though bilateral concessions benefit IPR holders globally. Moreover, by engaging bilaterally with the US and the EU, Asian countries are likely to bear the brunt of the EU/US rivalry over GIs. In this context, it is in their interest to prioritize multilateralism and support negotiations in multilateral settings. Even if some Asia-Pacific countries have expressed strong criticisms of IPR multilateral institutions in the past, multilateral institutions might still be their best option for negotiating IPRs.

References

- Allee T. and Elsig, M. (2019) "Are the Contents of International Treaties Copied and Pasted? Evidence from Preferential Trade Agreements", *International Studies Quarterly*, 63(3), pp. 603-613.
- Archibugi, D and Filippetti A. (2010) 'The Globalisation of Intellectual Property Rights: Four Learned Lessons and Four Theses', *Global Policy*, 1 (2), pp. 137-149.
- Baldwin, P. (2016) *The Copyright Wars: Three Centuries of Trans-Atlantic Battle* Princeton and Oxford: Princeton University Press.
- Cartwright, M. (2019) 'Preferential trade agreements and power asymmetries: the case of technological protection measures in Australia', *The Pacific Review*, 32 (3), pp. 313-335.
- Chander, A, and Sunder, M. (2018) 'The Battle to Define Asia's Intellectual Property Law: TPP to RCEP', *UC Irvine Law Review*, 8 (3), pp. 331-362.

- Cheek, M. L. (2001) 'The Limits of Informal Regulatory Cooperation in International Affairs: A Review of the Global Intellectual Property Regime', *George Washington International Law Review*, 33 (2), pp. 277-323.
- Crookes, P.C.I. (2014) 'EU Soft Power with China: Technical Assistance in the Field of Intellectual Property Rights', *European Foreign Affairs Review*, 19 (3), pp. 77-96.
- Czapracka, K. (2010) *Intellectual Property and the Limits of Antitrust: A Comparative Study of US and EU Approaches*. Cheltenham, UK and Northampton, USA: Edward Elgar Publishing.
- David M. and Halbert D. (2017) 'Intellectual Property & Global Policy' *Global Policy* 8 (2), pp. 149-158.
- Drezner, D. (2005) 'Globalization, Harmonization, and Competition: the Different Pathways to Policy Convergence', *Journal of European Public Policy*, 12 (5): pp. 841-859.
- Drezner, D (2007) *All Politics is Global*. Princeton: Princeton University Press.
- El Said, M. (2012) 'The Morning After: TRIPS-Plus, FTAS, and Wikileaks: Fresh Insights on the Implementation and Enforcement of IP Protection in Developing Countries', *American University International Law Review*, 28 (1), pp. 71-104.
- Engelhardt, T. (2015) 'Geographical Indications Under Recent EU Trade Agreements' *International Review of Intellectual Property and Competition Law* 46 (7), pp. 781-818.
- European Commission (2017) *Bilateral Interactions with Korea*. November.
- European Commission (2018a) *Bilateral Interactions with China*. April.
- European Commission (2018b) *Bilateral Interactions with Thailand*. April.
- European Commission (2018c) *EU dialogues with priority countries on intellectual property issues*.
- European Commission (2019) *EU-China – A strategic outlook*. March. <https://ec.europa.eu/commission/sites/beta-political/files/communication-eu-china-a-strategic-outlook.pdf>
- European Commission European Council, & Peoples Republic of China. (2019). *EU-China Summit Joint statement, 9 April 2019*. <https://www.consilium.europa.eu/media/39020/euchina-joint-statement-9april2019.pdf>
- European Intellectual Property Office (2019) *About ARISE+ IPR*. <https://euipoef.eu/en/ariseplusipr/about-arise-ipr>
- Farrell, H. and Newman, A. (2015) 'The New Politics of Interdependence: Cross-National Layering in Trans-Atlantic Regulatory Disputes', *Comparative Political Studies*, 48 (4), pp. 497–526.
- Farrell, H. and Newman, A. (2016) 'The New Interdependence Approach: Theoretical Development and Empirical Demonstration', *Review of International Political Economy*, 23 (5), pp. 713–736.
- Grosse Ruse-Khan, H., Jaeger, T. and Kordic, R. (2010) 'The Role of Atypical Acts in EU External Trade and Intellectual Property Policy', *European Journal of International Law*, 21(4), pp. 901-939.
- Hale, T., Held, D. and Young K. (2013) *Gridlock: Why Global Cooperation is Failing When We Need it Most*. Cambridge: Polity Press.

- Haunss, S. and Shadlen, K.C., eds. (2009) *Politics of Intellectual Property: Contestation Over the Ownership, Use, and Control of Knowledge and Information* Gloucestershire: Edward Elgar.
- Hayes, D.J., Lence, S.H. and Babcock, B. (2005) 'Geographic Indications and Farmer-Owned Brands: Why do the US and EU Disagree?', *EuroChoices*, 4 (2), pp. 28-35.
- Helfer, L.R. (2004) 'Regime Shifting: the TRIPs Agreement and New Dynamics of International Intellectual Property Lawmaking', *Yale Journal of International Law*, 29 (1): pp. 1-83.
- Horn, H., Mavroidis, P.C and Sapir, A. (2010) 'Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements', *The World Economy*, 33 (11), pp. 1565-1588.
- Jaeger, T.(2015) 'The EU Approach to IP Protection in Partnership Agreements', in C. Antons and R.M. Hilty (eds.), *Intellectual Property and Free Trade Agreements in the Asia-Pacific Region*. Berlin, Heidelberg: Springer, pp. 171-210.
- Josling, T. (2016) 'The War on Terroir: Geographical Indications as a Transatlantic Trade Conflict', *Journal of Agricultural Economics*, 57 (3), pp. 337-363.
- Kim, JH. (2001). Letter to The Honourable Ron Kirkman, United States Trade Representative, June 20 2011. Ministry of Foreign Affairs and Trade (Seoul, South Korea).
<https://ustr.gov/sites/default/files/uploads/pdfs/PDFs/December%202012/062011%20Kim-Kirk%20Letter%20on%20GIs.pdf>.
- Krivic, I. and Serrano, O. (2017) 'Exporting Intellectual Property Rights to Emerging Countries: EU and US Approaches Compared', *European Foreign Affairs Review*, 22 (2), pp. 57-75.
- Lake, D.A. (2009) 'Open Economy Politics: A Critical Review', *The Review of International Organizations*, 4 (3), pp. 219–244
- Maskus, K.E. (2014) 'Assessing the Development Promise of IP Provisions in EU Economic Partnership Agreements', in J. Drexl, H.G. Ruse-Khan and S. Nadde-Phlix (eds), *EU Bilateral Trade Agreements and Intellectual Property: For Better or Worse?* Berlin, Heidelberg: Springer, pp. 171-188.
- Matthews, D. and Munoz-Tellez, V. (2006) 'Bilateral Technical Assistance and TRIPs: The United States, Japan and the European Communities in Comparative Perspective', *The Journal of World Intellectual Property*, 9 (6), pp. 629-653.
- May, C. (2007) 'The World Intellectual Property Organization and the Development Agenda', *Global Governance*, 13 (2), pp. 161-170.
- Melo Araujo, B.A. (2013) 'Intellectual Property and the EU's Deep Trade Agenda', *Journal of International Economic Law*, 16(2), pp. 439-474.
- Moerland, A. (2017) 'Do Developing Countries Have a Say? Bilateral and Regional Intellectual Property Negotiations with the EU', *IIC-International Review of Intellectual Property and Competition Law*, 48 (7), pp. 760-783.
- Morin, J-F. (2020) 'Concentration Despite Competition: The Organizational Ecology of Technical Assistance Providers', *The Review of International Organizations*, 15(1) pp. 75-107.
- Morin, J-F. and Surbeck, J. (2020) 'Mapping the New Frontier of International IP Law: Introducing a TRIPs-plus Dataset', *World Trade Review*, 19(1) pp. 1-14.

- Morin, JF and R. Gold (2014) 'An Integrated Model for Legal Transplantation : The Diffusion of Intellectual Property Law in Developing Countries', *International Studies Quarterly*, 58(4), pp. 781-792.
- Morrison, W.M. (2019) *Enforcing U.S. Trade Laws: Section 301 and China*. Congressional Research Service, 26 June. <https://fas.org/sgp/crs/row/IF10708.pdf>.
- Murphy, H. and Kellow, A. (2013) 'Forum Shopping in Global Governance: Understanding States, Business and NGOs in Multiple Arenas', *Global Policy*, 4 (2), pp. 139-149.
- O'Connor B and de Bosio G (2017) 'the Global Struggle Between Europe and United States Over Geographical Indications in South Korea and in the TPP Economies' in W. Van Canenegem and J. Cleary (eds) *The Importance of Place: Geographical Indications as a Tool for Local and Regional Development*. New York: Springer, pp. 47-79.
- Pugatch, M. P. (2007) *A Transatlantic Divide? The US and EU's Approach to the International Regulation of Intellectual Property Trade-Related Agreements*. No. 02/2007. ECIPE Working paper.
- Sell, S.K. (2003) *Private Power, Public Law: The Globalization of Intellectual Property Rights*. Cambridge: Cambridge University Press.
- Sell, S.K. (2010) 'TRIPS Was Never Enough: Vertical Forum Shifting, FTAs, ACTA, and TPP', *Journal of Intellectual Property Law*, 18 (2), pp. 447-478.
- Sell, S.K, and Prakash, A. (2004) 'Using Ideas Strategically: The Contest Between Business and NGO Networks in Intellectual Property Rights', *International Studies Quarterly*, 48 (1), pp. 143-175.
- United States of America and the People's Republic of China, (2019). 'Economic and Trade Agreement Between the Government of the United States Of America and the Government of the People's Republic Of China'. https://ustr.gov/sites/default/files/files/agreements/phase%20one%20agreement/Economic_And_Trade_Agreement_Between_The_United_States_And_China_Text.pdf
- Weatherall, K. (2011) 'ACTA as a New Kind of International IP Lawmaking', *University International Law Review*, 26 (3), pp. 839-901.
- Williams, B.R. and Hammond, K.E. (2019) *Escalating U.S. Tariffs: Affected Trade*. Congressional Research Service, 12 September. <https://fas.org/sgp/crs/row/IN10971.pdf>.
- World Bank (2020) *Charges for the use Of Intellectual Property, Receipts (BoP, Current US\$)*. <https://data.worldbank.org/indicator/bx.gsr.royl.cd>.
- Yu, P.K. (2004) 'Currents and Crosscurrents in the International Intellectual Property Regime', *Loyola of Los Angeles Law Review*, 38 (1), pp. 323-444.
- Wyzycka, N. and Hasmath, R. (2017) 'The Impact of the European Union's Policy Towards China's Intellectual Property Regime', *International Political Science Review*, 38 (5), pp. 549-562.