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Mechanism of Intellectual Property Enforcement Rules in the Context of 'Belt and Road'-Taking Comprehensive and Progressive Agreement for Trans-Pacific Partnership and Regional Comprehensive Economic Partnership as an Example

Sinuo Li

Faculty of Civil and Commercial Law, Southwest University of Political Science and Law, Chongqing, China
lisnow2025@outlook.com

Abstract. The 'Belt and Road' initiative is a significant endeavor to build a community of shared human destiny, in which an increasing number of countries are now participating. In international trade transactions, intellectual property rights border protection system has always played an irreplaceable role. September 1994, China began to implement border protection of intellectual property rights. At present, China Customs has established a perfect intellectual property rights enforcement system. However, with the progress of 'One Belt, One Road', the frequent trade exchanges between countries have new requirements for China's Intellectual Property Rights (IPR) border protection mechanism. This study takes Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Regional Comprehensive Economic Partnership (RCEP) as the entry point to explore the optimisation of China's intellectual property rights enforcement scope and enforcement follow-up. Through the literature research method and comparative research method, this paper starts from the demand of the 'Belt and Road' initiative, combines the two agreements with China's actual demand, and comes up with specific optimisation suggestions, i.e., to unify the expression from the legislative level, to expand the scope of protection to the 'inbound and outbound', to establish the whole process of information interaction network, the abolition of commercial channels and refinement of classification and disposal rules, clear 'elimination of infringing features' and the establishment of identification mechanisms, and cooperation with professional departments or professionals, etc., to provide certain reference for the theoretical community.

Keywords: One Belt and One Road, IPR border enforcement scope, infringing goods disposal.

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1. Introduction

In 2020, ASEAN officially led the launch of RCEP, which came into force on 2 November 2021. On 30 December 2018, CPTPP, an advanced version of the TPP 'legacy', came into force. As two core trade agreements in the Asia-Pacific region, the most important feature of RCEP and CPTPP is that the design of intellectual property provisions reflects the balance of interests of countries at different stages of development. The most important feature of RCEP and CPTPP, as the two core trade agreements in the Asia-Pacific region, is that the design of IPR provisions reflect the balance of interests of countries at different stages of development. In particular, the IPR border protection provisions, i.e., the provisions that stipulate that a country's customs or border enforcement agencies, in accordance with domestic laws or international agreements, take preventive and interdictive enforcement actions against goods suspected of infringing on intellectual property rights in the process of entering, exiting or transiting goods or articles [1]. At present, the study of intellectual property border protection mechanism, China’s intellectual property border protection system needs to draw on CPTPP and other agreements to make precise fine-tuning, forming China's foreign negotiation of intellectual property border protection standard provisions [2]. To this end, many scholars in the theoretical community have analysed the two major agreements, RCEP and CPTPP, mainly focusing on intellectual property border enforcement rules and the subsequent disposal of the rules of the internationalisation of the improvement of such issues, with a view to perfecting China's intellectual property border protection framework [3-5].

In 2013, the Chinese Government put forward the 'Belt and Road' Initiative, which aims to create an economic and trade community and promote the exchange of goods between countries. However, with the advancement of the 'Belt and Road' initiative, China is faced with the political, economic and cultural differences of many countries along the route, which leads to a more complex environment for the enforcement of intellectual property rights at the borders, and the World Trade Organisation (WTO) and multinational corporations report that, with the expansion of international trade and multinational corporations, IPR issues between different countries are becoming more and more common. The WTO and multinational corporations have reported that with the expansion of international trade and multinational corporations, there are more and more IPR problems between different countries, but there are only a few research results on China's IPR border enforcement rules and the subsequent disposal of IPR problems under the background of the Belt and Road in the theoretical circles [6]. Based on this, this paper uses the comparative research method and the literature research method to explore the differences between the rules of RCEP and CPTPP and the relevant laws of China on the one hand, and on the other hand, reads the relevant materials, understands the progress of the relevant research in the academic community and absorbs the views of various parties to increase the reliability of this paper's thesis.

Taking the IPR border enforcement provisions in the RCEP and CPTPP as the entry point, this study is committed to systematically analysing the compatibility between the two agreements and China's rules, and focusing on the problems of the IPR border enforcement measures and the subsequent disposal rules in the context of China's co-construction of the 'Belt and Road' economic community, as well as the direction of optimization. On the basis of systematic analysis of the compatibility between the two agreements and China's rules, the study focuses on the problems of IPR border enforcement measures and subsequent disposal rules in the context of China's joint construction of the 'Belt and Road' economic community, as well as the direction of optimisation.

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2. Literature review

To prevent ambiguity in law enforcement, some academics have noted that the terms "import and export" and "entry and exit" in the People's Republic of China's Customs Law and the Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights need to be unified [2-4]. Some scholars suggest that the relevant expressions should be unified as 'entry and exit', i.e., expanding the scope of law enforcement, in order to achieve unity with the previous law [3,4]. Scholars in favour of the inclusion of transit goods in the scope of supervision and application of the link are consistent with the international development trend [5,7], and this can prevent free trade zones and special customs supervision zones from becoming 'infringement of the port' [5].

Opponents argue that such a move would create barriers to trade and suggest simplifying the policies of Free Trade Zones (FTZs) and special customs control zones to facilitate the flow of goods [5]. In addition, some scholars suggest drawing on the experience of the European Union to include counterfeit goods in the scope of transit enforcement and to set 'significant opportunity to enter the market' as a trigger for enforcement [7].

Expanding the scope of enforcement would allow for the monitoring of the entire movement of goods, the immediate suspension of circulation when infringement is suspected, and the prevention of possible risks such as the diversion, destruction or loss of goods, but the implementation of such a mechanism would require that trans-shipment countries cooperate in the establishment of a unified chain of custody, for example, by means of an online database of the entire process, subject to a weighing of the increased costs of the administration of justice.

RCEP and CPTPP two agreements for the disposal of infringing goods are based on the destruction of the main, and China in turn to take for social welfare, paid transfer to the right holder, auction, destruction and other ways, but some scholars have proposed that the first three ways in practice there are legal problems, China should be in line with international standards, with the destruction of the main [2]. U.S. Customs for grey market protection does not apply to the goods to be returned to the shipment, destruction or removal of infringing signs transferred to the government, charitable organisations or auctions and other ways to deal with [8]. Some scholars suggest that China increase the scope of application of destruction and refine the rules for removal from commercial channels [9].

Destruction as the main disposal method is not in line with the principle of green and sustainable development, and it is recommended to co-operate with professional appraisal and assessment departments to categorise and dispose of infringing products based on criteria such as whether or not the infringing characteristics can be eliminated, and whether or not the quality of the goods can meet the standards.

3. Characteristics of intellectual property border protection and requirements for enforcement rules in the context of the 'Belt and Road' programmed

3.1. Characteristics of intellectual property border protection

The 'Belt and Road' program was proposed by the Chinese government in 2013, and as of October 2023, 152 nations had signed cooperation agreements with China. During the 'Belt and Road' initiative, China's IPR border protection practice exhibits the following features.

Firstly, there are differences in the border protection system of intellectual property rights among countries [10]. There are many countries along the 'Belt and Road', the main body of intellectual property protection is extensive, coupled with the history and culture of different countries, the state

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of economic development, domestic policies are different, there are differences in their border protection system; in addition, the regionalisation of intellectual property protection is prominent, due to the background of the establishment of the existing protection organisations, member states and focus on different issues, their respective dispute resolution mechanisms are also relatively independent, the lack of inter-regional cooperation mechanisms [10]. In addition, the regionalisation of intellectual property protection is prominent, due to the different backgrounds, member states and focuses of the existing protection organisations, the dispute resolution mechanisms established by each of them are also relatively independent, and there is a lack of inter-regional cooperation mechanisms [10].

Enforcement of intellectual property rights at the border is the judicial remedial component, which occupies an important place in the overall protection mechanism. Among other things, enforcement requires the state and its authorised agencies not only to provide suitable conditions for the creation of intellectual works, but also to respond to the various manifestations of infringed or disputed rights; and subsequent disposal involves the fate of infringing goods and the protection of the interests of right holders [11]. These two aspects should cater for the above needs.

Currently, there are differences in border enforcement procedures and standards for intellectual property rights among countries. For example, in terms of customs detention procedures, some countries (e.g.EU member States have adopted the 'ex officio active detention' model, while most developing countries have adopted the 'detention on application' model. Moreover, there are also differences between countries in different regions in terms of evidentiary requirements for the determination of infringement, time limits for detention, and mechanisms for handling objections.

In addition, there are also differences between countries in terms of subsequent disposal and remedies. For detained infringing goods, some countries (e.g., Korea) allow right holders to lift the detention after settling through negotiation, taking into account trade efficiency; while some countries (e.g., India) favour destruction of the infringing goods and impose heavier penalties (including fines, restriction of import qualification, etc.) for repeated infringement. At the same time, the diversity of remedies varies, with some countries providing dual remedies for administrative review and judicial action, while others have administrative processing as the final procedure.

As can be seen from the examples given above, the intellectual property protection systems of various countries lack a uniform application mechanism to facilitate inter-subjective interaction and cooperation. However, this does not mean that the relevant protection rules of each country should be completely unified, and the legislative framework for intellectual property enforcement must be tailored to suit the country's resource capacity, infrastructure and national development strategy, or else the interests of some countries will be sacrificed [12]. For example, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement was formed under the impetus of developed countries represented by the United States, and from the perspective of developing countries or least developed countries, it is flawed and cannot match the development goals and actual national conditions of the country. Given this, the mechanism of intellectual property protection should be coordinated and unified while leaving appropriate white space so as to facilitate the adjustment of each country in accordance with local conditions.

3.2. Study on border enforcement rules for intellectual property rights in RCEP and CPTPP

3.2.1. Scope of intellectual property border enforcement

The scope of enforcement under the RCEP includes 'import and export', and Article 65(1) of Chapter 11 of the RCEP provides that parties must establish procedures to allow rights holders to apply to

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the competent authorities for a suspension of the release of imported goods where there is a reasonable suspicion that the imported goods are suspected of being pirated or counterfeit trademarks. However, the RCEP only mandates parties to take ex officio measures at the import stage, i.e., on the initiative of the customs authorities, and makes ex officio protection at the export stage optional, i.e., the parties can decide whether or not to implement such measures [3].

Border enforcement under the CPTPP covers not only imports and exports, but also explicitly includes transhipment, under CPTPP Article 18.76, paragraph 5, where goods 'destined for export' are considered to be exported and goods 'in transit' for the purposes of the article are goods transported within the territory of a Contracting Party from one customs office to another customs office and ultimately exported [2]. Goods in 'transit' in this article are those that are transported within the territory of a Contracting Party from one customs house to another customs house and are ultimately exported.

In comparison, the relevant provisions in China have the problem of ill-defined scope, centred on the contradictory expressions of domestic legislation. Article 44 of the Customs Law requires the protection of 'inbound and outbound goods', while Article 91 provides for the punishment of 'imported and exported infringing goods'; the subordinate law 'Regulations on Customs Protection of Intellectual Property Rights' follows the "imported and exported The lower law, the Regulations on Customs Protection of Intellectual Property Rights, uses the expression 'import and export', which is not in harmony with article 44 of the Customs Law. 'Import and export ' covers the whole process of import and export, transshipment, transit, etc., the scope is greater than only refers to the actual entry and exit of the customs border 'import and export', resulting in ambiguity in the scope of law enforcement [13].

To address this issue, some scholars have suggested unifying the expression as 'entry and exit' to expand the scope of law enforcement, which is considered to be in line with the international trend [5,7], and can prevent FTZs, etc., from turning into "infringement harbours"; opponents also think that this may create trade obstacles, and they have proposed making the While some scholars suggest using the European Union's experience to include counterfeit goods in transit enforcement and set a "significant opportunity to enter the market" trigger, others argue that this could create trade barriers and suggest simplifying the FTZ policy to facilitate the flow of goods [5,7]. Matching the Scope of Enforcement with the Demands of the Belt and Road.

From the standpoint of 'Belt and Road', expanding the scope of enforcement to 'transit' is more in line with the needs of internationalisation. The concept of 'transit' usually covers the procedures of 'transhipment', "transit" and 'clearance' in China's customs practice. The concept of 'transit' usually covers the procedures of 'transhipment', "transit" and 'clearance' in China's customs practice, so that when suspicious goods are found at any stage, the customs authorities can suspend the circulation in a timely manner. At the same time, in order to promote international co-operation and help customs to enforce the law efficiently, the countries where the goods are in transit can work together to establish a unified chain of custody, for example, the whole process of networking databases, in order to interact with information promptly [14].

3.2.2. Enforcement of subsequent disposal methods

RCEP and CPTPP are highly consistent in their requirements for the disposal of infringing goods, with destruction as the primary method, authorising the competent authorities to directly order the destruction of infringing goods after determining that they have been infringed upon, and the goods that have not been destroyed must be eliminated from the commercial channel, especially with

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regard to counterfeit goods, making it clear that the removal of the trademark alone is not sufficient to allow them to return to the commercial channel.

China's Customs Law provides for four disposal methods: transfer to public institutions, transfer of rights holders for a fee, elimination of infringing features after the auction, destruction (destruction is the final means). The first three ways to set up the original intention is to serve the precise poverty alleviation, resource reuse and other goals, but in practice, facing the lack of quality responsibility, trademark disposal responsibility is unclear, etc., to bring difficulties in law enforcement and even cause disputes, so some scholars suggest that the subsequent disposal of the international standards, with destruction as the general principle [3].

China needs to take into account the national situation, and destruction or shredding or dismantling for reuse is not in line with the principle of green sustainability. With reference to the relevant recommendations, China should abolish some of the methods that are prone to disputes and establish classification and disposal rules and professional appraisal standards.

4. Suggestions for improving the border enforcement rules of intellectual property rights in the context of "one Belt and one Road"

4.1. Enlargement of the scope of enforcement

Expanding the scope of enforcement of intellectual property rights in China, people must make clear and uniform provisions in the legal provisions, all expressions will be unified as 'entry and exit', and clear 'entry and exit' scope of the specific links will be included. Clear legal provisions can greatly enhance the operability of law enforcement and improve the efficiency of customs enforcement. However, while the legislation is clear, it is also necessary to set up a provision to make up for the loopholes in the application of the law in practice, and to retain a certain amount of discretionary space. In addition, the broadening of the scope of law enforcement is in line with the CPTPP agreement, which is conducive to promoting the internationalisation of China's development.

On the one hand, the establishment of a whole-process information interaction network can promote interstate cooperation and information flow, reduce the difficulties in evidence collection and the communication and waiting time costs caused by 'judicial' assistance procedures, and greatly improve the effectiveness of law enforcement; on the other hand, the whole process of the chain of custody can cover any transport node of the goods operation, and once a suspected infringement of rights is detected, the circulation can be immediately suspended, effectively preventing possible risks such as subcontracting, destruction or loss of goods. On the other hand, the whole process chain of custody can cover any transport node in the operation of goods, and once suspected of infringement is found, the circulation can be immediately suspended, effectively preventing the possible risks of goods being switched, damaged or lost.

However, in the process of establishment, the following issues should be noted. Firstly, the docking point of the information interaction network should be clarified. Circulating countries clarify through consultation that the information network starts from the exporting country to which node the next country will carry out alternate supervision, or which part will be jointly supervised by the circulating countries, and whether it needs to be supervised by a third-party organisation, so as to prevent jurisdictional conflicts. Secondly, mutual recognition of enforcement bases. As different countries have different legislation on border protection of intellectual property rights, the basis of law enforcement is also different. Therefore, the circulating countries should clarify through consultation which part of the circulation of goods applies with what law enforcement basis, and if the legal standard of the regulating country applies, other countries should express whether they

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agree with it or not. Otherwise, it will cause awkward situations because of the problem of legal application. Finally, to prevent information transmission bias: in the process of information transmission, attention should be paid to whether there will be information loss, and due to the different languages and cultures of different countries, different countries will have a certain degree of bias in the understanding of the same word, resulting in the transmission of incorrect information. The regulating country should pay attention to and prevent the above problems.

In addition, the establishment of Web of Information for Development (WIDE) is likely to involve the co-operation of a number of countries, and the consumption of resources for the administration of justice involved, as well as the measurement of the benefits to be gained, will need to be further assessed.

4.2. Direction of improvement of subsequent disposal

According to the inspiration of the relevant provisions of CPTPP and RCEP, and the realistic problems arising in our practice, China can make the following changes.

Firstly, it can abolish the transfer with compensation and auction in accordance with the law. Whether RCEP or CPTPP, they have emphasised the infringing goods, except for special circumstances, to remove the commercial channels, but for this 'special circumstances' is not stipulated, in practice, it is easy due to the 'user perception' and 'interests of the rights' and other vague criteria resulting in a misjudgment. In practice, it is easy to be misjudged due to the 'user perception' and 'interests of the right holder' and other fuzzy standards, coupled with the fact that the price determination problem has also arisen in China. It is recommended that the two methods of disposal of paid transfer and legal auction be abolished, and that only the two methods of retaining for public welfare and destruction be put into practice.

Secondly, a classification and disposal mechanism are established, that is, goods are not prioritised in terms of the way they are disposed of but are classified and disposed of on the basis of the nature and value of the goods. For example, firstly, products whose intrinsic value lies in their infringing characteristics, such as pirated books, imitation works of art, and infringement of product designs, may be disposed of by destruction. However, attention should be paid to the way of destruction should be green and environmental protection and try not to dispose of them by burning. Secondly, for those with the possibility of eliminating infringing features, such as garments infringing on trademark rights, they can be put into use for public welfare, such as for emergency livelihood areas such as disaster relief materials, after eliminating the infringing features and carrying out product quality and safety inspections.

The categorisation and disposal mechanism enables, on the one hand, targeted solutions to the real problems identified in our practice (price determination) and, on the other hand, further convergence with international standards on the basis of the country's historical situation and the implementation of the principle of green development.

For the infringing goods that affect public welfare, they should eliminate the infringing characteristics, after the infringement of the assessment of the effect of product quality and product quality testing and then put into use. China's Customs Law, Article 33 provides that the infringing goods are directly transferred to the public welfare institutions for the public welfare, without elimination of infringing characteristics and quality testing provisions.

Without eliminating the infringing features, even if it is put into public welfare, it will cause damage to the interests of the right holder. For example, if the clothes infringing on the trademark right are put into public welfare use, if the quality of the infringing goods is lower than that of the

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brand originally, it will have an impact on the public's cognition during the process of using the infringing goods, which will affect the image of the brand.

Quality appraisal is also an indispensable part of the process, especially in the case of food products infringing on trademark rights, which, without safety appraisal, could easily lead to a large-scale food safety crisis, which would not only affect the development of the industry, but also undermine the people's trust in public welfare organisations and state organs, and even cause panic among the public.

Due to the high professionalism of the identification of infringing features and product safety identification, it is recommended that the Customs and Excise Department cooperate with professional departments and industry insiders to formulate identification and assessment standards from the perspective of the interests of the right holder and the user's cognition. On the one hand, it reduces the burden of Customs, and on the other hand, a more professional and meticulous way of handling can more firmly protect the interests of right holders.

5. Conclusion

This study analyses the expectations of the Belt and Road Initiative on China's IPR border enforcement rules and subsequent disposal rules in light of the objectives of the Belt and Road Initiative and combines the needs for internationalisation and localisation with the RCEP and CPTPP agreements. Combination of internationalisation and localisation needs with RCEP and CPTPP agreements. It is proposed to unify the expression at the legislative level, expand the scope of protection to 'entry and exit', establish a network of information interaction in the whole process, abolish the commercial channel and refine the rules of classification and disposal, clarify the requirement of 'eliminating the infringing features' and set up an identification mechanism, and cooperate with professional departments or professionals to optimise the rules and regulations. The paper also provides further analyses and reflections on the optimisation direction, with a view to providing certain references for the improvement of China's intellectual property rights protection rules at the border. However, due to the limited space of this paper, there is still a lack of research on the activation conditions and procedures of border measures, guarantee and counter-guarantee system, etc. It is hoped that theoretical and practical circles will pay further attention to the relevant procedural issues of the IPR border protection rules, so as to ensure that the IPR border protection rules can better facilitate the benign development of the 'One Belt, One Road'. People hope that the theoretical and practical circles will pay more attention to the relevant procedural issues of IPR border protection rules, so that the IPR border protection rules can better help the benign development of the 'Belt and Road'.

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