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CPTPP Intellectual Property Rules and China's Response

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Abstract

In the complex and changeable international environment, due to the serious crisis of the multilateral trading system of the World Trade Organization and the influence of trade protectionism of Western countries, the United States and other developed countries try to promote trade facilitation through institutional changes and innovations in the field of intellectual property in order to seek more benefits. In order to avoid being marginalized in the reconstruction of international economic and trade rules and affecting trade exchanges between China and other countries, China formally submitted a written application to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) in 2021. The CPTPP, which came into effect in 2018, covers a wide range of content, comprehensive and high standards. So far, the issue of intellectual property is still one of the most important issues that some countries want to solve if they want to join the CPTPP. Although CPTPP shelve the 11 high-standard provisions in TPP, there is still a certain gap between China's intellectual property legal system and the CPTPP intellectual property rules at present. In order to successfully connect with the CPTPP intellectual property rules, it is necessary for China to conduct a comprehensive investigation of its intellectual property text and analyze the differences between it and the domestic intellectual property legal system. And put forward countermeasures.

Keywords

CPTPP, Intellectual property rules, International intellectual property.

1. Introduction

At present, the United States interferes with the dispute settlement mechanism of the World Trade Organization (WTO) due to its own trade deficit, economic decline and other reasons, making the reform of the WTO deadlocked. At the same time, the United States vigorously carries out negotiations on bilateral trade agreements, promoting the anti-globalization trend in the world. China should carefully interpret the text of the intellectual property chapter, analyze some high-standard intellectual property provisions in the CPTPP, and explore a suitable path for China to join the CPTPP. First of all, based on the intellectual property chapter of the CPTPP, this paper analyzes the emergence and development of its intellectual property rules, and combs the substantive and procedural laws therein[1]. The possibility of the United States returning to the CPTPP cannot be ruled out in the future, so the suspension clause also needs to be analyzed. Secondly, it compares China's intellectual property legal system with CPTPP's intellectual property rules, and summarizes the differences and shortcomings between China's intellectual property legal system and CPTPP. Finally, in order to deal with the CPTPP intellectual property rules, this paper puts forward suggestions from three perspectives: improving China's intellectual property legal system, promoting high standards first in domestic free trade zones, and enhancing the right to speak in the formulation of international intellectual property rules, so as to explore the development direction of intellectual property suitable for China's national conditions, and better cope with the impact and challenges brought

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by the CPTPP intellectual property rules. To promote the development of China's intellectual property system to a more perfect direction.

2. The emergence and development of CPTPP and its intellectual property rules

Most of the intellectual property provisions of the CPTPP are based on the domestic law of the United States, and further improve the international intellectual property protection standards on the basis of TRIPs. The content of the CPTPP intellectual property text is comprehensive and high standard, which represents the latest development trend of international intellectual property rules to a certain extent.

2.1. The emergence and development of CPTPP

2.1.1. Initial Phase: Trans-Pacific Strategic Economic Partnership (P4)

The emergence of TPP is closely related to APEC. In the 1990s, leaders of the United States, Australia, New Zealand, Singapore, Chile and other countries held many informal discussions in APEC meetings to realize the same demands for trade. Due to different reasons, only two countries, New Zealand and Singapore, continued to negotiate and concluded the New Zealand-Singapore Close Economic Partnership Agreement in 2001. In 2002, Chile participated in the negotiations for the Pacific Three Countries Close Economic Partnership Agreement (P3-CEP). In 2005, after participating in several rounds of negotiations, Brunei participated in the fifth round as a "founding member" of the agreement, which was renamed the Trans-Pacific Strategic Economic Partnership Agreement and entered into force in 2006 for all four countries. The agreement has a total of 20 chapters, of which the tenth chapter is the intellectual property chapter, including seven clauses. The content is relatively simple, and the protection standards are basically the same as the TRIPs agreement. But because the economies of the four countries are small, the agreement's influence in the Asia-Pacific region is limited, and its intellectual property provisions have been ignored.

2.1.2. Development stage: Trans-Pacific Partnership (TPP)

In 2008, the process of global multilateral trade liberalization was blocked, and in order to revive the economy, the United States announced negotiations with P4 members and Australia and other countries, and officially renamed the P4 agreement as the Trans-Pacific Partnership Agreement. The United States' participation has enhanced the global influence of the TPP, attracting several countries including Vietnam, Peru, Malaysia, Canada and Mexico to join. After six years of negotiations, the TPP negotiations were officially concluded in October 2015. On February 4, 2016, 12 parties held a signing ceremony in Auckland, New Zealand, marking the formal signing of the TPP[2]. Since then, a market of about 800 million people and a huge economic circle with a total trade volume accounting for about one-third of the world's total trade volume have emerged, covering a comprehensive and high standard of content, almost covering everything related to international trade. Due to the dominance of the United States, the TPP intellectual property clauses have American colors. In the final text of the TPP, there are 83 intellectual property clauses, including substantive and procedural rules, and the content is detailed. Some high-standard contents of the TPP have attracted attention, but there are also disputes.

2.1.3. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

In order to protect the interests of the domestic middle class and workers and reverse the international trade deficit, the United States officially announced its withdrawal from the TPP and signed an executive order, which makes the prospect of the TPP, which has not yet been implemented, dim. TPP member states held a meeting and at the ministerial meeting on

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November 9, 2017, all ministers reached an agreement on the text of the new agreement, the freeze list, etc., and issued a joint ministerial statement the next day, and announced that the TPP was officially renamed CPTPP. On March 8, 2018, representatives of 11 countries participating in the CPTPP negotiations held a signing ceremony of the agreement in Santiago, Chile. On December 30, the CPTPP came into effect. The CPTTP is the fourth largest free trade agreement in the world. Inheriting the responsibilities and values of the TPP, the CPTPP will strengthen mutually beneficial links among member economies and increase trade, investment and economic growth in the Asia-Pacific region. In the IP chapter, the CPTPP has shelved a total of 11 provisions, but the IP chapter still provides the most advanced and detailed IP standards of any trade agreement to date. It provides companies operating abroad with tangible protection from their innovations being stolen by others.

2.2. The emergence and development of CPTPP intellectual property rules

From the 20th century to the 21st century, the trade between countries in the world has become increasingly close. Intellectual property as a superstructure plays an important role in the service value of the economic base, thus promoting the establishment of a complete intellectual property protection system at the international level. It was in this context that the World Intellectual Property Organization (WIPO) was established, with a unified body to regulate intellectual property protection at the international level. Since the early 1990s, the status of intellectual property in the international economic and trade system has become increasingly important, and more and more international trade agreements have included intellectual property clauses[3]. One of the most representative is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the framework of the World Trade Organization. TRIPs includes intellectual property within the jurisdiction of WTO and requires all member countries to apply uniform intellectual property standards. Although the purpose is to accommodate the interests of developing countries, due to the unbalanced economic development of member countries, the minimum standards set by TRIPs can no longer meet the demands of developed countries for intellectual property interests. Therefore, developed countries strengthen the level of international intellectual property protection through multilateral institutions such as WTO and WIPO to promote higher standards of intellectual property policies. Since then, the Doha Round of WTO trade negotiations has stalled, making the advancement of international intellectual property issues slow. With little progress on the main battlefield, the WTO, developed countries have to look elsewhere. Since the 1990s, the United States and other developed countries began to restructure intellectual property rules in more flexible and controllable bilateral and regional free trade agreements to achieve the purpose of expanding intellectual property protection. In this context, plurilateral free trade agreements such as the United States-Mexico-Canada Agreement (USMCA), CPTPP and RCEP have become new fields for the restructuring of international intellectual property rules, and generally promoted the level of international intellectual property protection. Among them, the most prominent and influential agreement is the TPP led by the United States. The intellectual property chapter in the CPTPP is the largest in length and coverage. The CPTPP freezes 11 high-standard provisions in the intellectual property chapter, all of which have American overtones. In general, the international intellectual property protection system in the post-TRIPS era shows the characteristics of promoting high-level intellectual property protection with the framework of the international trade system.

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3. The emergence and development of CPTPP and its intellectual property rules

3.1. Trademarks and geographical indications

3.1.1. Expand the scope of trademark registration

Article 18.18 of the CPTPP sets out the types of marks that may be registered as trademarks, and Parties shall not refuse registration of a mark solely on the grounds that it is not visible and consists only of sound, and shall also use their best efforts to allow registration of odor marks. However, the CPTPP does not require the registration of odor trademarks, and the specific inclusion can be determined by the parties themselves. In TRIPs, "visual intelligibility" is not a mandatory condition for the registration of trademarks. The mandatory requirements in CPTPP are in sharp contrast to TRIPs. In the traditional concept, trademarks emphasize visual perceptibility, but with the development of science and technology and economic life, sound and smell are gradually accepted as trademarks. The purpose of the trademark itself is to connect consumers with the product represented by the trademark in their minds, so whether it is a traditional trademark or a non-traditional trademark, it is a potential asset for the producer. But there are also obstacles to bringing non-traditional trademarks into the scope of trademark registrability, such as whether a visually indistinguishable trademark is likely to cause confusion[4]. Will excessive expansion of the scope of trademark registration lead to abuse of intellectual property rights? The EC Trade Mark Regulation considers that a trademark may be applied for as long as it is sufficiently distinguishable from another's product, including sound and smell. The Lanham Act, the trademark law of the United States, adopts an open legislative model and clearly considers that sound and smell can be registered as trademarks. Although the United States and the European Union allow the registration of odor trademarks, they have failed to achieve clear and uniform registration requirements and infringement standards.

3.1.2. Strengthen the protection of well-known trademarks

Article 18.22 of the CPTPP provides for well-known marks. Paragraph 1 provides that registration in the Contracting State or other jurisdiction shall not be a prerequisite for the recognition of a well-known mark; Paragraph 2 provides for cross-class protection of both registered and unregistered well-known trademarks under the premise of Article 6, paragraph 2, of the Paris Convention, which improves the intensity of protection of unregistered well-known trademarks outside the territory. Paragraph 4 provides for confusion of well-known marks. It is worth noting that the CPTPP explains the definition of "well-known" in the footnote of article 13, which requires the public in the relevant scope of the contracting party to know the well-known trademark, without extending the scope to all the public. The move relaxes the criteria for recognition of well-known trademarks outside the territory.

3.1.3. Weakening the protection of geographical indications

Articles 18.19 and 18.30 of the CPTPP require that the Parties shall protect geographical indications in the trademark system, but in order to harmonize the different systems of the member states, there are no more specific requirements on the form of protection. Article 18.20 of the CPTPP clearly states that the owner of a trademark registered earlier has the right to prevent a third party from applying later for the same or similar geographical indication. Article 18.32 gives interested persons the right to object to geographical indications and to request cancellation in three cases. The appearance of this article indicates that the geographical indication may be rejected or revoked when there is a trademark right dispute between the geographical indication and the pre-used or registered trademark. However, when there is a conflict between the prior geographical indication and trademark registration, CPTPP does not allow the owner of geographical indication to raise objections, which shows that CPTPP is more

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inclined to protect the rights of ordinary trademarks. The procedural and substantive provisions of the CPTPP on the protection of geographical indications improve the protection of geographical indications at the international level.

3.2. Patent related provisions

3.2.1. Expand the scope of patentable objects

Article 18.37 (2) of the CPTPP provides that a Party may grant a patent for at least one of the "new uses of a known product, a new method of using a known product, or a new process of using a known product." This means that a pharmaceutical company can apply for a new patent by making a small improvement to an already patented drug use or method in the development of a patented drug. This will extend the protection period of "evergreen patents" in the medical field. This provision to increase the burden of public health, at the expense of public health to safeguard the monopoly of pharmaceutical companies with core technology in the field of medicine, was opposed by many negotiating countries, but also became an unresolved issue in the TPP negotiations, and was finally shelved in the CPTPP. Article 18.37 (4) of the CPTPP requires that a Party may grant patent protection for at least an invention of plant origin[5].

3.2.2. Extend the grace period for patent novelty

Article 18.38 of the CPTPP does not affect the criteria for the establishment of the grace period for invention-creation novelty, if the applicant makes a public disclosure act, and if the public disclosure act occurs within 12 months before the date of filing the application with the Patent Office. Article 18.38 of the TPP refers to the patent grace period provisions of the United States, which combines the "first to invent" and "first to apply" systems, and includes the patent grace period obligations into international economic and trade agreements for the first time. Although CPTPP provides a relatively lenient environment for the public to obtain invention information, it does not specify the form and scope of disclosure, which may cause uncertainty to the public's access and waste social resources. The setting of the novelty grace period can ensure that the applicant's behavior that causes the invention to be disclosed for some reasons can also be protected by the patent law. The patent applicant can file a patent application after the invention is disclosed to the public. This system enables the inventor to disclose the invention in time for scientific research and other needs and avoid the bondage of novelty.

3.2.3. Provide exclusive rights protection for drug test data

Drug trial data refers to the data obtained from a series of clinical tests conducted on new drugs by pharmaceutical companies to ensure the safety and effectiveness of drugs. Drug test data, as a new intellectual property, should be the exclusive right of the original drug research enterprise[6]. Article 18.50 of the CPTPP is a TRIPs-plus provision on the protection of drug trial data, which stipulates that if a Party submits undisclosed experimental and other data demonstrating the safety and efficacy of the product as a condition of the authorization of the marketing of a new drug, it shall, for at least five years from the date of the marketing authorization of the drug, The Party shall not approve the same or similar products of third parties on the basis of this data. This clause completely eliminates the flexibility provided for in Article 39.3 of TRIPs concerning drug test data. In terms of the scope of protection, Article 39.3 of TRIPs limits the protection of undisclosed test or other data of drugs to the extent that drugs "contain new chemical components", while TPP does not have this limitation. In terms of protected objects, TRIPs protects undisclosed data, while TPP provides protection for all test data regardless of whether it has been disclosed before. In terms of protection purposes, TRIPs protects drug data from "improper commercial use", providing a form of protection similar to trade secrets, while under the provisions of TPP, whether it is improper commercial use or not, as long as the use is prohibited without the consent of the right holder. In general, the relevant provisions of TPP drug trial data have reached the protection limit of data exclusivity norms in

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international intellectual property rights, and the strict provisions and clear protection period make it impossible for parties to flexibly set up according to their own conditions, which is resisted by most countries in the negotiation, so it is shelved in the CPTPP. If the United States returns to the CPTPP in the future, this provision will be restarted, and in essence, a new drug monopoly system may be formed. The exclusive right of drug trial data belongs to the right of regulatory exclusion. Under the drug trial data protection provisions of TPP, overlapping protection of patent right and data exclusive right may be caused, resulting in the situation that the patent protection period of drug trial data expires earlier, and the right holder of drug trial data still has the monopoly right. Exclusive rights to drug trial data do provide incentives for original drug companies to develop new drugs, but to provide the drug trial data protection required by the TPP, it means that generic drug manufacturers need to conduct their own testing, including clinical trials, or wait until the data exclusivity period expires before applying for marketing approval. The generation of safety or efficacy data from drug clinical trials is often expensive and time-consuming, and generic drug manufacturers could have avoided these costs by obtaining "reference rights" to these data, but the monopoly of data causes the generic drug to have to delay entering the market, or the generic drug manufacturers spend a lot of money and time testing the data themselves. This will not only waste resources, but also leave generic drugs with no price advantage over the original drugs, and the ultimate cost will be passed on to developing country health systems and ordinary consumers[7].

3.3. Copyright and related rights

3.3.1. Expand the scope of protection of replication rights

Article 18.58 of the CPTPP states that "Each Party shall provide authors, performers and producers of phonograms with the exclusive right to authorize or prohibit all reproduction of their works, performances or recordings in any manner or form, including in electronic form". This clause clearly indicates that the reproduction of works, performances, etc. in electronic form will be investigated by the owner of the right of the work. This clause expands the protection of the right of reproduction of works, but does not indicate whether temporary reproduction is covered. Temporary copy behavior is a kind of copy situation that is temporarily stored in computer memory and can be quickly accessed when needed for a short time, but will disappear after computer shutdown, restart or information run. In other words, under the regulation of Article 18.58 of the CPTPP, such as temporary storage of digital works in the process of dissemination, there is a possibility of infringement of the right to reproduction. Although the intellectual property provisions of CPTPP indicate that the work is protected by copyright, it needs to satisfy that the work, performance or sound recording has been fixed in a certain material form, but there is no specific elaboration on "fixed" once. There is no unified opinion on the recognition of temporary copying in the world, and the protection provisions are different due to the different intensity of intellectual property protection in different countries. Although the United States, Europe, Singapore, Australia, Brazil and other countries have clearly included temporary copying into the scope of reproduction right control, it is difficult to implement and controversial in practice. As early as during the negotiations of the TPP agreement, the United States and other negotiating parties had a debate on whether to explicitly include temporary copying acts into the scope of protection of copyright owners' rights, and finally reached a compromise with the weakened wording of the reproduction right clause in the CPTPP.

3.3.2. Expand the scope of protection of the right to communicate to the public

Article 18.59 of the CPTPP provides that, without prejudice to the relevant provisions of the Berne Convention, Parties shall grant authors the right to authorize or prohibit the communication of their works to the public by wired or wireless means. This article extends the scope of the protection of broadcasting rights provided for in the Berne Convention to

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include "interactivecommunication". The CPTPP's right of communication to the public, through the use of technology-neutral means, endows the communication behavior with the copyright quality that does not harm the right holder and promotes the dissemination of excellent works. The act of digital transmission is justified through technology neutrality, and each contracting party can build a system of communication rights that meets its own needs according to its own level of intellectual property protection. In addition, Article 18.59 of the CPTPP, compared with the Berne Convention and the WCT, removes the restriction of "literature and art" before "works", which means that any form of works can be protected by the right to communicate to the public.

3.3.3. The extension of the copyright term was shelved

Article 18.63 of the CPTPP extends the term of copyright protection to 70 years, while TRIPs and the Berne Convention both have a term of protection of 50 years, which is much higher than the current standard of TRIPs. This standard is derived from the provisions of the US copyright law on the protection period of copyright and related rights, but the US copyright law regards this standard as the "ceiling" maximum standard of the protection period, while the TPP regards this standard as the "floor" minimum standard. After shelving this provision in the CPTPP, the standard in TRIPs is still used. The provisions of the CPTPP on the term of copyright protection are copied from the provisions of the copyright law of the United States. The copyright industry has made important contributions to the growth of the domestic economic aggregate of the United States. Of course, the United States should protect its copyright industry to inject long-term impetus into the economy. From the perspective of copyright owners, the extension of the term of copyright protection will expand the commercial use of works and enhance the vitality of works. Moreover, allowing copyright monopoly for a certain period of time can provide an economic basis for the creation of copyright owners, so as to encourage the right holders to invest in creation and promote cultural development. However, excessive extension of the copyright protection period will make it difficult for works to enter the public works pool and cannot be obtained for free by the public, and ultimately lead to the failure of wide dissemination of excellent civilization achievements. The "ratchet effect" of copyright term will increase the cost for the public to obtain high-quality cultural resources, the public works in the public domain will be reduced in form, and the orphan works will continue to increase. And many economists argue that such an extraordinary period of protection makes no sense, providing no further incentives for creation and little additional income for creators or their families - except for a very few. For countries with underdeveloped copyright industries, this provision will not only result in the forced flow of public funds to large copyright trading countries, but also endanger the ability of the public to benefit from their own cultural products[8].

3.3.4. Limit the limitation and exception space of rights

Compared with previous international treaties, Article 18.65 of the CPTPP makes more strict provisions on the restrictions and exceptions of rights. Article 18.65, paragraph 1, sets out three preconditions for the system of limitation and exception of rights, which are: "certain special circumstances", "shall not conflict with the normal exploitation of the work, performance or phonogram", and "shall not unreasonably prejudice the legitimate interests of the right holder". In addition, the TRIPs Agreement only extends the application of rights limitations and exceptions to works, excluding performances or phonograms, while CPTPP expands the application of the three conditions. At the same time, the intellectual property provisions of the CPTPP require States parties not to restrict the scope of rights limitations and exceptions provided for in other intellectual property conventions. This means that if States parties want to establish new rights limitations and exceptions according to their domestic circumstances, they may not be able to establish them because they are not within the scope of the provisions

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of the above four treaties, and Article 18.65 (2) of the CPTPP actually reduces the space for States parties to establish new rights limitations and exceptions. Some scholars have pointed out that the wording of the provisions of the CPTPP seems to be flexible, giving certain legislative space to the contracting parties. In fact, the test of any situation is regulated in the "three-step test law", including the limitations and exceptions of rights established in the domestic laws of member states, and it may not meet the first step test requirements of "certain special circumstances" in the "three-step test Law". In general, Article 18.65 of the CPTPP further limits the application space of rights limitations and exceptions compared with the above four international treaties.

3.3.5. The Internet safe harbor system will be suspended

Article 18.81 of the TPP defines four types of Internet service providers: network access service providers, network information storage service providers, network information positioning service providers and network caching service providers. Article 18.82 (1) (a) of the TPP provides that Parties shall provide "legal incentives" to prevent storage or transmission without the authorization of the copyright owner; Subparagraph (b) provides for the exclusion of liability for infringements that occur in a system or network controlled and operated by or on behalf of an Internet service provider that is not controlled, initiated or directed by it. These four actions highlight the use of a "notice-and-delete" safe haven regime only if the Internet service provider's actions fall under the listed categories. Some scholars say that such "legal incentives" mean that Internet service providers may pose a threat to freedom of speech and users' personal information online, which is not conducive to the healthy development of the Internet environment. The TPP also provides that States parties are free to choose whether or not to provide for a "counter-notification procedure" for users, that is, a "counter-notification" to an Internet service provider after a user receives a notice of Internet deletion. However, the "notice-delete" right of copyright owners is a mandatory provision, which focuses more on protecting the interests of the right holders, but may also cause the abuse of rights. The CPTPP suspends the application of that provision[9].

3.4. Law enforcement provisions

3.4.1. Penalties for violations of civil rights have been increased

Article 18.74 of the CPTPP details the civil and administrative procedures and remedies for intellectual property violations. According to the standard of calculating damages, Article 18.74 (3) of CPTPP holds that the infringer should pay compensation to the right holder. Paragraph 4 of Article 18.74 provides that the judicial organs can reasonably adopt the reasonable standard of damages proposed by the right holder. This means that the right holder is given the freedom to choose the value of the compensation, and the right holder will choose the value measurement standard that is favorable to himself as much as possible. In terms of the way of compensation for damages, the CPTPP clearly stipulates the statutory compensation system or the additional compensation system in articles 6 and 7 of this article. The note to paragraph 7 states that additional damages may include exemplary and punitive damages, but does not further specify the criteria and procedures for damages, and the premise that the malicious infringement is not necessarily a prerequisite for the application of punitive damages. In addition, the statement in paragraph 8 of the article that the amount of statutory damages should satisfy both the compensatory effect and the punitive effect of deterring the infringement has gone beyond the filling principle advocated by TRIPs. The same is true of the requirement for additional compensation in paragraph 9, which also gives the judiciary discretion to award reasonable compensation.

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3.4.2. Stricter border enforcement measures

Some provisions of border enforcement, compared with the relevant provisions of TRIPs, expand the types of infringement controlled by border measures and strengthen the enforcement of customs. Compared with Article 51 of TRIPs, Article 18.76 (1) of CPTPP adds confusingly similar trademarks to the scope of enforcement, and at the same time adds the authority of border management agencies to "detain" infringing goods, which further expands the scope of the subject matter of border enforcement goods and the enforcement power of management agencies. At the same time, the CPTPP states in a footnote that it is based on the law of the contracting party to determine whether the goods constitute infringement, while the requirements of TRIPs are based on the law of the importing country. It is worth noting that confusingly similar marks are a vague definition and are not clearly defined by the CPTPP, which will increase the risk of seizure of non-infringing goods in practice. Moreover, since the meaning of the words "piracy" and "counterfeiting" is not the same among the parties, but CPTPP requires that whether the goods constitute infringement needs to be based on the contracting method, so the legality of trade will become unstable. Article 18.76 (4) of the CPTPP provides that the competent authority of a Contracting Party shall have the right to inform the right holder of the name, address, description, quantity and country of origin of the consignor, exporter, consignee or importer of the infringing goods. Article 57 of TRIPs also stipulates that the competent authority has the right to provide the above information to the right holder, but the premise is that the competent authority has made a relatively clear judgment on the case, and the CPTPP will inform the time to the competent authority to detain or suspend the release. This reflects CPTPP's more rights-based attitude compared with TRIPs. CPTPP expands the application of border measures and empowers the customs with more law enforcement powers. It stipulates that the enforcement power of border measures by the competent authorities can be exercised according to their functions and involves three links: import, export and transit. But these strict measures also increase the risk of transit goods being detained, and there is the possibility of abuse of customs authority[10].

3.4.3. Lower the threshold for criminal punishment

Article 18.77 of the CPTPP sets out the procedures and thresholds for criminal penalties for trademark counterfeiting, copyright infringement and related rights. It argues that infringements "on a commercial scale" should be subject to criminal penalties. There are two cases of this kind of "commercial scale", one is that the infringer subjectively believes that its behavior is for commercial purposes, and the other is that although the infringer subjectively has no commercial purposes, it actually damages the market interests of the legitimate right holder. Therefore, whether it has the purpose of making profits is not the condition for determining whether it constitutes an intellectual property crime. Article 18.77(1) of CPTPP clearly defines "commercial scale" on the basis of Article 61 of TRIPs. Because the specific quantity or value criteria for determining commercial scale are not detailed, criminal penalties may be imposed on infringement of small commercial scale.

4. The impact of the CPTPP on China's intellectual property system

4.1. Legislative situation of intellectual property protection system in China

Intellectual property rights are the product of historical development to a certain extent. They are produced with the development of commodity production and develop continuously with the development of commodity economy. The establishment of the intellectual property system started relatively late in the development of China, and the intellectual property legislation developed rapidly after the opening to the outside world and accession to the WTO. Before the reform and opening up, the intellectual property system was almost unknown, because there was no awareness of intellectual property protection and no construction of related systems.

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With the development of economy and politics, China began to take the initiative to explore intellectual property rights, because China's intellectual property protection in the early stage of the main purpose is to meet the needs of reform and opening up, the legislative focus is biased towards international standards, the lack of the overall planning of the intellectual property system. As the State attaches great importance to intellectual property issues, The State Council promulgated the Outline of the National Intellectual Property Strategy in 2008, and officially issued and implemented the Action Plan for In-depth Implementation of the National Intellectual Property Strategy in 2014, which provides guidance for the development of China's intellectual property cause, promotes the construction of the intellectual property legal system, and defines the direction of intellectual property development. Strive for the goal of building an intellectual property power[11]. On the whole, China's intellectual property protection has shown a change from high-speed development to high-quality development. The protection of intellectual property in China is mainly embodied in the implementation of the minimum standards required by TRIPs, while carrying out scientific legislation, and constantly improving the top-level design and basic legal norms of China's intellectual property system. So far, China has promulgated the Trademark Law, the Patent Law, the Copyright Law and the Anti-Unfair Competition Law successively in 1982, 1984, 1990 and 1993, and has made amendments in the subsequent implementation in order to serve the practical needs. In addition, China has also promulgated the implementation Rules of the Patent Law, the Implementation Regulations of the Copyright Law and the Implementation Regulations of the Trademark Law, as well as relevant judicial interpretations and administrative regulations, so as to be compatible with the Patent Law, the Copyright Law and the Trademark Law. The promulgation of the Civil Code in 2020 has played an important role in the development of China's intellectual property legal system, confirming the nature of the formulation of basic laws on intellectual property. In terms of criminal law, China has a special chapter in the Criminal Law of 1997, which stipulates criminal sanctions for serious infringement of intellectual property rights. Despite this, the problems encountered in judicial practice have not been completely solved, so the Supreme People's Court has successively issued judicial interpretations on the trial of intellectual property cases. Therefore, China's intellectual property system has gradually improved and formed a complete system during the development. While improving the domestic intellectual property legal system, China always pays close attention to the new developments in the field of international intellectual property in the context of international trade liberalization and the globalization of knowledge economy, and actively participates in the global governance of intellectual property along with the development trend of international intellectual property. So far, China has joined the World Intellectual Property Organization in 1980 and the World Trade Organization in 2011, and has acceded to important international conventions on intellectual property. Article 18.7 of the CPTPP stipulates the international treaties on intellectual property that all member states must have ratified or acceded to when joining the CPTPP, including: The Patent Cooperation Treaty, the Paris Convention and the Berne Convention. At the same time, the parties that have not acceded to the Madrid Protocol, the Budapest Treaty, the Singapore Treaty, the 1991 UPOV, WCT and WPPT must join these treaties when the CPTPP comes into force for them, and China fully meets the requirements of the CPTPP at present.

4.2. The impact of CPTPP on China's intellectual property system

As CPTPP parties are members of the TRIPs Agreement, when IP provisions are incorporated into their governing laws, higher standards of IP protection may be applied to trade in goods and services from non-CPTPP parties in accordance with the principle of national treatment. The impact of CPTPP on China has two aspects: on the one hand, the economic and trade development and cooperation between China and these parties will be affected; on the other hand, it may have further impact on China's intellectual property legislation. First of all, on the

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economic side, the CPTPP will exclude China from the Asia-Pacific region and limit China's future development in a small space, which will make our country at a disadvantage in international trade competition, which will affect our economy and suffer losses, and this adverse impact will restrain and weaken China's influence in the Asia-Pacific region. With the continuous updating of international economic and trade rules, the level of intellectual property protection and law enforcement in various countries are also constantly improving, and intellectual property protection has become an important part of a country's business environment. The formulation of international economic and trade rules is not only the result of a country's economic strength, industrial structure, development level, scientific and technological level and other factors, but also the result of the interest game between countries. In the CPTPP intellectual property rules, the intellectual property enforcement provisions not only involve the legitimate rights and interests of intellectual property rights holders, users and other stakeholders, but also involve the responsibilities and powers of international organizations[12]. The CPTPP border measures make the customs enforcement authority larger and the object and scope of law enforcement increase, which will cause obstacles to some of the goods trade with high intellectual property intensity in China. Customs can initiate border enforcement measures ex officio, which means that a Party can also use this authority to prevent the smooth entry of legitimate goods from a particular country into commercial channels in the absence of sufficient evidence. In addition, the extension of the application of border measures to transit goods, there is also the possibility of our goods passing through the customs of a contracting party facing the implementation of border measures. Some of China's OEM processing enterprises, due to the weak awareness of intellectual property rights, for the entrusting party's goods whether there is infringement of vigilance awareness is not enough, a variety of reasons led to China's export goods infringement phenomenon is serious. Once it is identified as infringing, not only the exported goods will be destroyed, but also the raw materials and tools used to produce infringing goods will be destroyed, which will undoubtedly cause a fatal blow to the long-term development of these enterprises, even if the final goods are identified as non-infringing goods, but also need to bear the costs incurred during the detention period. In general, the short-term existence of the above measures increases the possibility of suspension of release or detention of export transit goods, easily creating new non-tariff barriers to trade, thus impeding the normal flow of goods, as well as some irreparable hidden losses. If this situation continues for a long time, and these provisions are accepted by more and more non-CPTPP parties, it may hinder the globalization process of relevant industries in China. In the era of knowledge economy, it will have a significant negative impact on China's economic and trade development and cooperation, and the right to speak in the formulation of international economic and trade rules. In addition, the impact of CPTPP on intellectual property protection cannot be easily ignored. Intellectual property is the product of economic development, and intellectual property barriers are common means to prevent trade competition. The provisions of the intellectual property chapter of the CPTPP on trademarks, patents, Copyrights and related rights and enforcement measures are one by one corresponding to China's domestic intellectual property laws. Some provisions are basically consistent, while some still have gaps. For the provisions with gaps, some need to be considered and used for reference in the future legislation. It is necessary for some to chase after our country without taking into account the concrete conditions. Some scholars have summarized the TRIPs-plus clause of CPTPP into three types: the flat clause, the catch-up clause and the distance clause. The flat clause is the clause that our domestic law has implemented and even higher its standard. The catch-up clause is that there is no relevant provision in our domestic law, but the standard can be obtained through efforts. This kind of clause is worth our careful study. The distance clause refers to the clause which is not stipulated in our domestic law, but is almost impossible to realize according to the reality. As mentioned earlier, the CPTPP

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intellectual property rules formally meet the high standards of the TRIPs Agreement, but their content goes far beyond those stipulated in the TRIPs Agreement. Specifically, based on the TRIPS Agreement, the CPTPP further improves the level of intellectual property protection by revising and improving specific rules on copyright, patent, trademark, geographical indication, etc. The scope, strength and depth of the intellectual property rules involved in the CPTPP are at the leading level in the world. CPTPP also has a positive impact on the broader protection of intellectual property rights. For example, the high-standard intellectual property rules of CPTPP can be used as a template for reference when China is improving relevant laws. It represents the protection level of developed countries in the world today, and its protection methods and ideas in some fields are also worthy of our study and research. This kind of forced back mechanism is advantageous to our country. With the deepening development of the world globalization process, our country cannot develop without external exchanges. Due to our close geopolitical relations and economic and trade relations with the CPTPP parties, as well as the economic and political influence of these countries in the Asia-Pacific region, our country cannot develop independently outside the agreement. Therefore, we must observe the implementation of CPTPP in time and analyze the impact of CPTPP on China's intellectual property system. In addition, the possibility of the United States returning to the CPTPP cannot be completely ruled out, if the resumption of the suspension clause, China will face the risk of further improvement of the CPTPP intellectual property standards. Due to the continuous improvement of China's intellectual property system and the improvement of the level of intellectual property protection, although there is still a certain gap with some CPTPP intellectual property provisions, except for trademark and law enforcement provisions, it will not pose too much threat to China's intellectual property legislation. When TRIPS-plus gradually becomes an international trend, China should pay more attention to the intellectual property rules in international conventions and regional agreements.

5. The impact of the CPTPP on China's intellectual property system

5.1. Gradually improve the legal system of intellectual property rights in our country

There is a certain distance between China's intellectual property protection system and the CPTPP intellectual property rules. Although China, as a non-member country, does not abide by the obligations of the relevant provisions of the CPTPP, China, as the largest economy in the Asia-Pacific region, has close contacts with the CPTPP parties in various aspects[13]. By studying CPTPP intellectual property rules, we will timely understand the development trend of international intellectual property rules, compare CPTPP intellectual property provisions with China's current intellectual property system, find out the gaps and shortcomings in our country, and learn and absorb them critically which are in line with our practice and interests, which is of great significance to the development of our intellectual property system. To promote China's transformation from a major country in intellectual property rights to a strong country in intellectual property rights. This paper puts forward the following suggestions: (1)trademark. First, odor trademarks can be included in the scope of protection in a timely manner. Although the CPTPP only requires the contracting parties to make their best efforts to protect odor trademarks, there is no mandatory requirement, for odor trademarks, according to China's Trademark Law, China can selectively include odor trademarks in the scope of protection in a timely manner according to the development of its intellectual property rights. Set a more strict registration threshold to prevent monopoly of rights and unfair competition. Second, it can strengthen the protection of unregistered well-known trademarks. Although CPTPP's cross-class protection of unregistered well-known trademarks is controversial in the field of trademark law in China, the need for cross-class protection of unregistered well-known

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trademarks has been reflected in domestic trademark practice and has been recognized by all countries in the world. Therefore, it can be combined with the specific situation in China's trademark practice. Consider incorporating the provisions in due course. (2)Patent related provisions. Extending the grace period of patent novelty. The 6-month grace period stipulated in Article 24 of China's Patent Law is gradually unable to meet the needs of inventors for research and innovation. China can take advantage of the opportunity to extend the grace period of patent novelty to 12 months, fulfilling the mandatory obligations of CPTPP and conforming to the development trend of its international intellectual property rules. Avoid risks while applying them. In view of the undisclosed data protection clauses for drugs and agricultural chemicals, there is indeed a lack of drug patent protection in China to a certain extent, but there is no need to blindly sacrifice their own interests and blindly catch up with the protection standards of this clause. China still needs to improve the exclusive right system of domestic drug test data according to its own situation, and gradually take relevant measures to cope with it. (3)Copyright related provisions. In the Copyright Law revised in 2020, China has added a "digital" copy mode to the definition of copy right, which can be understood as the possibility of infringement of temporary copy to a certain extent. Therefore, for the problem of temporary copy, the current law has already left institutional resources, and there is no need to prematurely change the definition of copy right. At the same time, based on the comparative analysis of various countries' setting of the term of copyright, combined with the judicial practice of our country, this paper holds that the term of protection of copyright and related rights should not be blindly extended. (4)Law enforcement provisions. The CPTPP border measures put forward higher requirements for the customs and border law enforcement of various countries. Under the background of actively promoting the implementation of the national intellectual property strategy and improving the intellectual property protection system, China can appropriately improve the intellectual property border protection measures. For the initiation procedures of border measures, China can consider accepting relevant provisions, and adopt the procedure of applying according to the authority for intellectual property rights that have been filed, and enterprises do not need to submit applications on a case-by-case basis, reducing the procedural burden on right holders. In terms of civil measures, punitive damages focus on the malicious torts with serious circumstances. The general torts are based on the principle of damage compensation, and the main function is to compensate the damage suffered by the right holder. In the field of criminal procedure and punishment, the expanded criminal attack of CPTPP is inconsistent with the development needs of intellectual property rights in our country, and the excessive protection of right holders and the attack on infringer goes against the purpose of intellectual property legislation.

5.2. Promoting high standards in the free trade area first

The construction of China's pilot free trade zone plays a more and more important role in the construction of intellectual property system, and is an important link linking the domestic and international intellectual property system test zones. In the current context of preparing to join the CPTPP, it is necessary to continue to strengthen the intellectual property innovation reform with the pilot free trade zone as a pilot, to conduct some high-standard rules in the free trade zone, give full play to the function of the free trade zone system test, and explore the intellectual property system with Chinese characteristics. At the same time, we will improve the IPR protection system in the FTA, provide reference experience for other regions in China, and create a demonstration window for the international community to observe China. At the same time, to promote the FTA negotiations, the FTA negotiations as the best way to achieve regional economic integration, China should actively integrate into the negotiations, so as to minimize the impact of CPTPP on our country. Taking RCEP as an example, the establishment of RCEP is of great significance to China's ability to improve economic risk. Although China is not in an absolutely dominant position in the negotiation process of RCEP, China can actively promote

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the cooperation process of RCEP, engage in dialogue with other countries in a timely manner, and use appropriate strategies to game contentious issues for win-win cooperation. In addition, multilateral FTAs are also an important part of economic policy and can be an option to meet the challenges of economic globalization. China can establish a Greater China Free Trade Area based on CEPA, including Hong Kong, Macao and Taiwan, and build a broader trade area on this basis, and actively promote the establishment of a China-Japan-ROK free trade area. In the establishment of these trade zones, it is necessary to improve the intellectual property protection system of the free trade zone, create a good implementation environment for the high-standard intellectual property rules of the CPTPP, so that the free trade zone can better serve as a legal model and promote the development of China's intellectual property cause. Establish a diversified mechanism for resolving intellectual property disputes, give full play to the mediation role of all parties, build a convenient and efficient intellectual property service system, and improve the efficiency of dispute resolution.

5.3. Increase the voice in making international rules on intellectual property rights

China should recognize its own advantages. First, it should continuously improve its hard and soft power in the field of intellectual property, so as to reduce the adverse impact and impact of CPTPP on China's intellectual property system. Second, in the context of the globalization of knowledge economy, the right to speak in the formulation of international rules on intellectual property rights should be enhanced. Intellectual property is the core element of national competitiveness and the core issue of economic game between developing countries and developed countries, which makes intellectual property strategy in the international strategy in a priority position. With the advent of the era of knowledge-based economy, the power of intellectual property to the economy is far more than property rights, and it is also a powerful weapon in opening up the market. Therefore, countries have formulated their own intellectual property strategies. To be specific, first of all, IPR cooperation under the multilateral system should be continued. China should continue to participate in the improvement and formulation of international rules on intellectual property under the framework of multilateral platforms such as WTO and WIPO, and promote the development of international rules on intellectual property in an open, inclusive, balanced and effective direction. Secondly, China can call on developing countries with common interests to set up priority negotiation topics, promote the balanced development of international intellectual property protection, provide new ideas for the construction of a new order, change from passive to active, and adapt to the development trend of world intellectual property while enhancing the international discourse power, and meet the international intellectual property order that meets the needs of China's economic development.

6. Conclusion

Our country should adjust the domestic law with an open mind, we should carefully analyze the distance clause, and the relevant content of our country has a big gap, we should not ignore the actual situation of our country's intellectual property and blindly catch up. China has clearly expressed its willingness to join the CPTPP. China needs to pay attention to the international trend, and on the basis of improving the domestic legal system, actively participate in cooperation, enhance the international discourse power of intellectual property rights, and give play to the advantages of pilot free trade zones. Under the premise of conforming to China's national conditions, the requirements of CPTPP intellectual property rules can be smoothly met.

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References

[1] J. M. Yi, M. Chu. The new development of international protection of intellectual property in the post-TRIPS era and China's countermeasures, Intellectual property, Vol.1(2020)No.2, p.3-16.

[2] Q. Y. Su, R. Y. Wang. China's accession to CPTPP: An analysis of a unified framework, Journal of Northeast Normal University(Philosophy and Social Sciences Edition), Vol.1(2021)No.3, p.63-72.

[3] J. Chang. The feasibility and strategic path of China's accession to CPTPP, Foreign economic and trade practice, Vol.1(2021)No.3, p.27-30.

[4] Y. Liu. Analysis and Enlightenment of CPTPP Copyright Maximization Protection Rules, Electronic Intellectual Property, Vol.1(2019)No.5, p.16-25.

[5] C. Wang, Y. Jin. CPTPP Agreement and Intellectual Property Protection in Chinese legal system, Application of law, Vol.1(2022)No.2, p.48-55.

[6] C. Shi. From TPP to CPTPP: Combing, analysis and inspiration of intellectual property clauses--and suggestions for China's international cooperation in intellectual property protection, Journal of Shihezi University (Philosophy and Social Sciences Edition), Vol.33(2019)No.4, p.68-74.

[7] W. Xia. Research on the path of making intellectual property rules in China's free trade agreements, Journal of Shanghai University of International Business and Economics, Vol.29(2022)No.3, p.101-110.

[8] T. Chu. Analysis of international intellectual property rules under the framework of giant free trade agreements and China's countermeasures, Vol.35(2019)No.9, p.80-95.

[9] B. Yuan. Main characteristics, impacts and countermeasures of CPTPP, International economic cooperation, Vol.1(2018)No.12, p.20-23.

[10] Y. Y. Guan. CPTPP intellectual property clauses and the response of our legal system, Journal of law, Vol.43(2022)No.2, p.95-108.

[11] W. T. Cheng. Evolution of international rules for intellectual Property Protection of test data, Intellectual property, Vol.1(2018)No.8, p.82-96.

[12] L. F. Wang, T. Zeng. Improvement of China's unregistered well-known trademark protection system from the international perspective, Intellectual property, Vol.1(2021)No.3, p.54-68.

[13] X. Wang, Y.Yin. Dilemma and Development of China's Geographical Indication Protection System under the Background of the Civil Code, Journal of Guizhou University (Social Science Edition), Vol.40(2022)No.2, p.89-99.