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The acceptance of international regimes by Third World countries: China's and Taiwan's compliance with the intellectual property rights regime.

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THE ACCEPTANCE OF INTERNATIONAL REGIMES
BY THIRD WORLD COUNTRIES

-- CHINA'S AND TAIWAN'S COMPLIANCE WITH
THE INTELLECTUAL PROPERTY RIGHTS REGIME

A Thesis Presented
by
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THE ACCEPTANCE OF INTERNATIONAL REGIMES
BY THIRD WORLD COUNTRIES

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CHAPTER 1
INTRODUCTION

1.1 Transformation of the World Trading System in the 1980s

During the 1980s and the early 1990s, many developing countries as well as the Soviet Union and other communist countries were reconsidering and reevaluating their traditional economic policies of high protection and a dominant state control in economy.¹ Many of them had come to perceive involvement in international trade and investment and encouragement of private economic activity as crucial to success in promoting national economic growth. They shifted their developmental direction from a central-planned economic strategy to a market-oriented approach with stress on private-sector alternative. The most remarkable and successful experience in privatization of public enterprises and export-driven growth was in East Asia. The United States encouraged the way to a burgeoning Asia-Pacific economy and export-oriented growth in the area. Japan rose as an economic superpower, followed by the "four little dragons" -- Hong Kong, Taiwan, Singapore and South Korea -- as well as China and Southeast Asia countries.

One result of these changed policies was wider acceptance of the international economic regimes developed by the western industrial countries after 1945. Since 1947, the GATT has played a significant role in promoting greater openness in world trade policies, and its principles and mechanisms have helped countries to grow by allowing international companies to specialize and thereby fostering greater economic benefits through trade relationships.

1.2 Variations in the Acceptance of the Western Multilateral Economic Regimes

Though there is greater willingness to accept the western economic regimes, the shift remains uneven. Some of the western international regimes have been more widely accepted than others. For example, in December 1995, 176 countries were members of International Monetary Fund (IMF). At the same time, however, only 115 accepted the General Agreement on Tariffs and Trade (GATT) and participated in the new World Trade Organization (WTO). Intellectual Property Protection provides another good example. Although 157 countries were members of the Permanent Committee of World Intellectual Property Organization (WIPO) in 1996, many of them still failed to enforce the rules of the intellectual property protection regime. As WIPO Director-General Arpad Bogsch noted in 1992, one hundred countries had national patent laws, but only half of them protected chemicals and pharmaceuticals.2

In recent years, however, an increasing number of companies based in industrial countries began to seek redress for their intellectual property grievances in countries allowing production of pirated goods and services, unauthorized use of inventive and innovative materials, and illegal duplication and distribution of chemicals and pharmaceuticals. According to the estimates of the International Intellectual Property Alliance (IIPA) in 1992, American business lost around $2 billion in potential trade in the ten worst-offending Asian countries: Thailand accounted for $123 million of estimated losses; Taiwan cost American business $669 million worth.3 The Pharmaceutical Manufacturers Association (PMA) accounted in 1992 that U.S. pharmaceutical firms have been losing $245 to $305 million a year from piracy of patented U.S. drugs in China.4

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3"Caveat Vendor," special report from the South-East Asia correspondent, The Economist, May 1st, 1993, p. 35.
Many analysts believed that these figures underestimate the problem. Alix Parlour, chief lawyer in Asia for Microsoft, a computer software company, thinks her company might be losing $750 million a year in potential sales in Asia. Brandt Handley, head of Walt Disney's consumer products division in South-East Asia, found that unauthorized copies of the video tapes of their famous films *Aladdin* and *The Lion King* were widely distributed in those Asian Third World countries. In 1994, Reebok Company worked with China's Administration for Industry and Commerce, leading to raids on 45 factories and the confiscation of some 120,000 pairs of counterfeit shoes. Though these Asian governments attempted officially to urge consumers to boycott pirated discs and products, a software and entertainment industry losing some $900 million each year to such piracy will demand efforts to go after suppliers.5

1.3 China and Taiwan as Case Studies in Regime Acceptance

1.3.1 The Contrasting Policies

This thesis will explore the variation in Third World policies toward the intellectual property rights regime by examining the contrasting choices of the People's Republic of China and the Republic of China on Taiwan. Although China and Taiwan officially adopted laws establishing intellectual property protection during 1980s, they continued to reject the international IPR regime.

In May 1989, Taiwan was placed on the "priority watch list" under the "Special 301" provisions of the 1988 Trade Act. The Taiwanese government and private anti-piracy groups made strong commitment to increase the level of intellectual property protection and to reduce the extent of piracy. As a result of Taiwan's progress in

protecting IPR, the United States Trade Representative (USTR) removed Taiwan from the Special 301 priority watch list in 1994. In addition, Taiwan was not included on the list of countries with which the U.S. had trade disputes in the 1995 Annual Report of Trade Agreement Program.6

China was also identified by the USTR as a priority foreign country in 1991 and designated under the Special 301 provisions, which almost triggered Chinese retaliation and a China-U.S. trade war. Although the United States and China signed a Memorandum of Understanding (MOU) on intellectual property protection in January 1992,7 China continues to take full advantage of western technological products and to reject the IPR regime in practice. Although China did adopt new IPR regulations, more consistent with the international IPR regime. According to U.S. trade officials, in reality, many of the initial changes have proven to be inadequate. In February 1995, U.S. Trade Representative Mickey Kantor asserted that China’s IPR policies and practices were unreasonable, and continued piracy of computer software, foreign compact discs and laser discs caused an extreme burden on the U.S. commerce.

1.3.2 Possible Explanations

Studies of international regimes have identified a number of factors determining the degree of compliance with international regimes. Two, coercion applied by stronger states and seeking of greater international recognition through conformity with shared norms, operate at the international level. These involve relations between countries, and suggest that regime obedience is a product of governments' foreign policy decisions. Two others, the overall level of industrial and economic development and the perceptions of

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interest shared members of the social coalition having greatest influence over policy-making, operate at the domestic level, and suggest that regime obedience is determined by the internal characteristics or politics of states.

On the international dimension, the first explanation attributes acceptance to efforts by stronger states to impose international regimes of their liking on others. Both Taiwan and China have been singled out for USTR's special attention to improve IPR protection under the Section 301 of the Trade Act of 1974. In addition, Taiwan has long depended on the U.S. for military protection, political support and, most important of all, economic aid and privileged allowance of wide market access. On the contrary, China is far less dependent on U.S. support. Besides, its traditional self-reliance and anti-hegemonial strategies as well as its potentially large market have also permitted it to engage in more equal bargaining.

A second possible explanation concerns the ideas, norms, and notions of national identity in international arena. Taiwan seems more likely to accept the Western international economic regimes as a way to gain the participation and recognition that it cannot attain at the purely political level because of the rivalry with China. Having been replaced as the representative of China by the People's Republic of China in most significant international organizations during 1970s, the Taiwanese government has been longing for a return to international society. This desire became even stronger after Taiwan's rapid economic development in the 1980s. Policymakers believe that sincere compliance with the rules of major international regimes will help obtain such recognition. Since the IPR regime derives from the Western civilized tradition, accepting it will win Taiwan more international recognition. In contrast, China's size and potential have allowed it to become one of the most influential countries in the world. China thus has less need to

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comply with international regimes in order to win recognition of its identity and importance.

As for the domestic dimension, on the other hand, one possible explanation focuses on the overall levels of economic development. In this structuralist view, countries with higher industrial and private-sector development accept a wider range of the market-oriented international economic regimes established since 1945. After the reform in 1978, China's economic growth away from agriculture and towards light industry, commerce and the service industry has been substantial. On the other hand, Taiwan's consistent economic growth in the past two decades means that Taiwan's comparative advantage has shifted away from cheap labor and towards technology- and skill-intensive goods.

Generally speaking, the accumulation of capital and expertise can push a country into next stage of industrialization. Some study evidence suggests that national IPR regimes will develop in response to the particular development of industries, and the absence of strong IPR protection contributed or compelled little economic growth in the long run. Thus a country which offers only "high tech" and branded goods will be very concerned with the IPR protection. This structuralist explanation suggests that Taiwan and China are actually at different levels of development, with Taiwan protecting IPR because it has something to protect and China pirating because it has nothing to protect. A comparison of economic development, and the portion of GDP from various sectors between China and Taiwan will be made in order to prove the different levels.

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A final explanation concentrates more on convergence of interests based on changes in the domestic social coalition having the greatest influence over government policy. One of the most important effects of economic liberalization is that it leads a government to permit a wider variety of private economic activity and to encourage more people to engage in internationally-oriented interactions. This explanation suggests that the influence of trade and foreign investment groups on the policy process is far stronger in Taiwan than in China. Taiwanese society has been composed of various political parties, interest groups, and private enterprises. The success of private sectors and capitalist enterprises was the main source of economic development. Since these groups caused considerable impact on national economy, and therefore the integration of them possesses great potential to influence governmental policies. However, with a more rigid political apparatus and the lack of legal protection, the outward-oriented businesspeople in China acquired only limited channels to communicate with national leaders to change policies toward their advantage.

Assessing which explanation or combination of explanations best explains the differences in Taiwan's and China's policies will be based on two comparisons. The first will focus on determining which factors were most important in triggering Taiwan's shift to greater enforcement of IPR in 1993-94. The second will focus on comparing Taiwan's and China's current situations to assess what accounts for the differences in their policies toward the IPR regime.

Because of its strong efforts to promote implementation of the IPR regime, the United States government is both a significant factor in Taiwan's and China's policies and a major source of information about their policies. Thus much of the information about China's and Taiwan's actual response to the IPR regime comes from Office of the United States Trade Representative (USTR) sources and Congressional hearings. However, this

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information has been supplemented from Chinese and Taiwanese sources. Both local and foreign scholars' and journalists' assessments have been used to determine the extent to which various groups influence policy regarding IPR.
CHAPTER 2
THE BASIC FEATURES OF
THE INTELLECTUAL PROPERTY RIGHTS REGIME

2.1 Definition of Intellectual Property Rights (IPR)

Intellectual Property can be defined most generally as information with a commercial value. Intellectual property rights (IPR) are created when there is a public willingness to bestow the status of property on ideas, inventions, and creative expression. Intellectual property describes an intangible property which is not related to a physically visible object. Both intangible and tangible property can be the object of legal rules, protecting the owner's rights to use and dispose of the property.

Human creativity, the use and development of new ideas and technologies, is one of the most fundamental elements in the history of human evolution. Through the employment of new goods and services and through improved methods for producing and providing known goods and services, human creativity permits attainment of higher levels of progress and development. The ideas and technologies which are the fruits of this creativity are intellectual property, a form of cherishable resource as significant as land or capital. Intellectual property, "may be sold, transferred, or otherwise disposed of," as all other types of property. Unlike the coal and oil which may someday be used up, new technological knowledge can be employed repeatedly without being worn out, and the same idea can serve many different users at the same time. In other words, intellectual

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property is "a resource which not only is infinitely renewable -- given sufficient human creativity, tools, and time -- but can constantly be enhanced."\textsuperscript{17}

Intellectual property rights protect investments in innovation by granting the innovator a temporary monopoly for the use of the creation. This prevents immediate imitation that could cut into the innovator's returns and reduce the motivation to create or to innovate. Generally, intellectual property includes the rights provided by the laws of patents, copyrights, trademarks, and trade secrets. Nevertheless, the laws recognize other protections for the results of intellectual creativity, such as trade dress, personality, false designation of origin, and other types of unfair competition.\textsuperscript{18}

Patent law provides protection for inventions. An invention is an innovation, resulting in a new or improved product, a new or improved process of making an product, or a new way of doing things.\textsuperscript{19} International industrial property conventions do not establish specific patent rights or regulations, but establish the principle of national treatment. A patent is obtained through an application describing the invention content. The invention must be new or the idea has not existed before. In the United States, for example, the Patent and Trademark Office (PTO) will determine whether the invention is of an appropriate type or is new so as to be qualified to get the patent.\textsuperscript{20} Under patents, the inventor will be given the exclusive rights in the invention for a certain number of years in return for its public disclosure. After the period of exclusive rights defined in the patent has expired, then the invention enters the "public domain" and everyone is free to use the invention that has been explicitly disclosed in the patent.\textsuperscript{21}

Works that may be copyrighted include literary, musical, artistic, photographic, and cinematographic works, maps, and technical drawings.\textsuperscript{22} The oldest and most

\textsuperscript{17}Gadbaw and Richards, Intellectual Property Rights: Global Consensus, Global Conflicts? p. 1.
\textsuperscript{19}Gregory, Introduction to Intellectual Property Law, p. 2.
\textsuperscript{20}Gregory, Introduction to Intellectual Property Law, p. 3.
\textsuperscript{21}Gregory, Introduction to Intellectual Property Law, p. 3.
comprehensive international copyright agreement is the Berne Convention, in effect since 1886. The other major one is the Universal Copyright Convention (UCC), established in 1952 and administered by the UN Educational, Scientific, and Cultural Organization (UNESCO). Many copyright laws also cover works of applied art such as jewelry and furniture, choreographic works, records, tapes, and broadcasts. To be copyrighted, the work should be original or not a copy. Some countries automatically grant protection of copyrights; others require obedience to certain regulations, including registration, registration fees, or copyright notices on published copies. The author of copyrighted work secures the protection for his or her lifetime plus a limited period thereafter. Under copyrights, in a similar way to the patent system, the creator is granted exclusive rights to repeat or reproduce the work for that defined period, after which it also enters the public domain and may be copied or repeated by anyone as often as they wish.

Trademark law attempts to prevent consumers' confusion about the source of a product and to protect the good will that an owner creates in the name or image of the product. Trademark law provides the first user of a mark or design on certain products the exclusive right to use that word or design of those products. The Paris Convention, established in 1883, is the principal international agreement governing industrial properties trademark, trade secret, and industrial design. The trademark rights exist as long as the trademark is used by that person or company or any successors. In the modern western trading system, competition is an important element of liberal economy. Pirating a trademark is regarded as anticompetitive behavior and is seriously restricted. Therefore, the trademark law is an effort to prevent unfair competition. It is also meant to protect the

23Benco, Protecting Intellectual Property Rights, p. 3.
24Benco, Protecting Intellectual Property Rights, p. 3.
general reputation of a company by preventing false or misleading statements about the company's business or products or about a competitor's business or products.\textsuperscript{29}

Trade secret law also provides protection for ideas. However, trade secret law does not clearly define the types of ideas that can be protected. The concept or idea is protected only if it can be viewed maintained as a secret.\textsuperscript{30} Moreover, it is protected only from those who wrongly appropriate the idea from the owner.\textsuperscript{31} Anyone who arrives at the same idea or concept independently is free to use or disclose the idea or concept in any manner whatsoever, obviously this limits the value of the idea as a secret.\textsuperscript{32}

2.2 Justifications for Protecting Intellectual Property Rights

As mentioned in the previous section, the term of "intellectual property" contains both the concept of private activity and the concept of public protection for the results of that creativity. In other words, "invention and creative expression plus protection equals intellectual property."\textsuperscript{33} The concept of "intellectual property rights" involves a redundant expression, because the concept of rights is, definitely, implicit in an understanding of property.\textsuperscript{34} The realization of human rights should be under the protection of effective legal system. Since the intellectual property can be translated as "products of human mind," only when products of the mind are accorded public protection, the concept of intellectual property can be properly used. Whenever there is no protection, there is no right.\textsuperscript{35}

\textsuperscript{29}Gregory, \textit{Introduction to Intellectual Property Law}, p. 4.
\textsuperscript{30}Gregory, \textit{Introduction to Intellectual Property Law}, p. 3.
\textsuperscript{31}Gregory, \textit{Introduction to Intellectual Property Law}, p. 3.
\textsuperscript{32}Gregory, \textit{Introduction to Intellectual Property Law}, p. 3.
\textsuperscript{34}Sherwood, \textit{Intellectual Property and Economic Development}, p. 12. This was pointed out to Sherwood by Dr. Hu Mingzheng, one of the drafters of China's 1985 patent law.
In separate studies, Fritz Machlup and Edith Penrose classified four major arguments used by early supporters of intellectual property rights protection, especially the patent system. The first "natural rights" argument extended the moral and philosophical justifications for individual property rights to intellectual properties. This position was specifically prevalent in France during nineteenth century. The second "reward by monopoly" argument invoked natural rights and moral imperatives, proclaiming that society owed inventors their just rewards for services rendered to society. The third, the "monopoly profits incentives" argument, emphasizes that monopoly privileges or patent rights, whether just or not, were necessary economic motivation to encourage inventive activity and its financial reward. The final argument is that in spite of social incentives to invent, monopolistic property rights are still necessary to encourage inventors to "disclose their secrets" to society, to make their discoveries open to the public.

Contemporary justifications of IPR protection continue to rely heavily on these arguments. According to Edwin Mansfield, the arguments used to justify the existence of IPR protection in the U.S. since 1790 have remained very consistent. First of all, the intellectual property laws are regarded as a foremost incentive to induce inventors to produce an invention. Second, IPR protection is also viewed as a necessary incentive to help firms make the investment in pilot plants and other items required to produce commodities for commercial use. Third, because of the intellectual property laws, inventions are disclosed earlier than would otherwise be the case, thus facilitating other inventive activities.

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Creating new technologies or productions, however, is costly, time consuming, and risky. An inventor will not assume these costs and risks without assurance that, if his or her investment does bring about a valuable new technology, the inventor will possess sufficient control over that creation to earn a return on his or her efforts. It is precisely the implementation of IPR protection that provides the essential assurance. Therefore, the purpose of intellectual property is to encourage the development of new ideas and creations. Because it establishes the economic incentives for creative activity, and then creates development, research, and technological innovation.

Different researchers offer a variety of conclusions about the relationship between the industrial and economic development and IPR protection. Paul David argues that national IPR protection regimes have developed in response to the particular development of industries.\textsuperscript{40} Carlos Primo Braga reckons that there is no evidence that the absence of strong IPR protection has somehow contributed to or compelled economic growth and development.\textsuperscript{41} In their empirical research, David Gould and William Grubin conclude that stronger intellectual property rights protection corresponds to higher economic growth rates in a cross-country sample.\textsuperscript{42} Generally, the accumulation of capital and expertise can push a country into the next stage of industrialization. It has been recognized that the new industrial countries institute stronger levels of IPR protection only after their level of industrial development has risen, a fact that supports the argument that, according to Edward Mansfield, until there is innovation and development, there is no need for IPR protection.\textsuperscript{43}


\textsuperscript{43}Mansfield, , "Intellectual Property, Technology and Economic Growth," p. 27.
2.3 Contrasting the Industrial Developed and Developing Country Views and Approaches

Especially in recent years, intellectual property protection has been regarded as an important aspect of national infrastructure for many countries. There emerged numerous cases concerning about international trade conflicts resulting from the violation of intellectual property protection. As a recent American Enterprise Institute publication indicates with respect to patent protection, "early debate about whether there should be a property in a technological idea has almost completely vanished -- lawyers consider the question solved. The question has recently reappeared, however, in the context of north-south debates and in controversies surrounding new technologies."44 In the north-south context, there are crucial distinctions in perception between the industrial developed and developing countries in their attitudes towards IPR protection.

While clearly perceiving the economic importance of intellectual property protection, most industrial countries regard the IPR protection as a fundamental right comparable to rights to physical property. In their view, intellectual property rights should be respected to provide a fair return to the investors who take substantial risks engaged in developing and commercializing a new technology. "Unless such returns are forthcoming, the incentives for inventive and innovative activity will be impaired, to the detriment of all nations, rich or poor."45 Furthermore, the industrial countries usually argue that the establishment of stronger IPR protection would help promote the indigenous technological and innovative activities within the developing countries. Unless the intellectual property rights are protected, the incentives for industrial innovation, already relatively weak in industries where patents are ineffective and entry is easy, will wither to the point where the investment in new and improved products and processes is far below the socially optimal

44Benko, Protecting Intellectual Property Rights, p. 17.
level. Given the crucial importance of industrial innovation for economic growth, such a consequence would be harmful to these industrial countries.

On the other hand, however, most Third World developing countries tend to consider that IPR protection give inventors and innovators "an undesirable monopoly on advanced technology that can be used to extract unjustifiably high prices, as well as unwarranted restrictions on the application of the technology." In their view, the enforcement of intellectual property rights would do little to facilitate their own development. Indeed, it would hinder their national economic development and prolong the period during which their per capita income falls considerably short of that in the developed countries.47

Another popular argument expressed in developing countries is that the human knowledge ought to be made available at minimal cost to everyone because it is regarded as common property of the whole society.48 It is furthermore argued that since the development of the relatively impoverished countries should be designed to benefit people in those areas, the required technology should therefore be afforded to them at a quite low price.49

Even the more market-oriented Third World countries prefer an international permission that would assure them of access to technology through mandated technology transfer or, if failing that, through a de facto tolerance of unlicensed use.50 These Third

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World developing countries believe that because almost all creation and invention occurs in industrial countries owing to their technological preponderance, requiring payment for licenses to use inventions or reproduce creations provides industrial countries with an extra revenue stream while also pricing creations and inventions beyond the reach of Third World firms and consumers.\footnote{Rozek, "Protection of Intellectual Property Rights: Research and Development Decisions and Economic Growth," p. 36.}

For these and many other reasons, numerous Third World governments have weaker legislation to protect intellectual property and less than diligent enforcement of the laws. They are only interested in policies related to direct foreign investment adopted the ways by which they can obtain the advanced technology. The objections by Third World governments involve not only the criticism that legislation of IPR results in inefficiency at home, but also the criticism that the IPR regime seems another way through which the industrialized countries turn the terms of trade in their own favor.

In the 1980s, both China and Taiwan expressed attitudes like those of other developing countries. Today only China continues to express those attitudes and to avoid implementing the IPR regime. In other words, there emerged a remarkable policy shift from refusal to acceptance to IPR regime in Taiwan during mid-1990s, but no equivalent change in China. In succeeding chapters I will examine why the two countries' policies have diverged.
CHAPTER 3
THE ROOTS OF TAIWAN'S SHIFT FROM REFUSAL TO ACCEPTANCE OF
THE INTELLECTUAL PROPERTY RIGHTS REGIME

By the 1970s, Taiwan was furnishing a burgeoning world market with a host of
counterfeited products. The products ranged from basic standardized goods to higher
technology goods and branded goods. As a consequence, in 1982, Taiwan was labeled as
the counterfeiting capital of the world, and soon thereafter was described as being "to
counterfeiting what Miami is to drug trafficking."\[52\]

In the late 1980s, however, without belonging to any formal international
organizations of protecting intellectual property rights, the Taiwanese government agreed
to properly and reasonably protect copyrights, patents, and trade secrets. At the first
stage, the emphasis laid on the promulgation of laws and the institutionalization of the IPR
regime adoption; the focus was later shifted to the effective enforcement of those laws.

In 1989, the first year the Omnibus Trade and Competitiveness Act of 1988
became effective, the USTR placed Taiwan on its "priority watch list." In June of 1992, 
after a period of inaction, the U.S. and Taiwan entered into a Memorandum of
Understanding (MOU) which contained specific commitments regarding intellectual
property protection and enforcement. The Copyright Law was then revised in 1992. In
winter 1993, Taiwan passed patent and trademark law amendments. The Patent Law was
extensively revised in January 1994. In addition, the Taiwanese government also made
best efforts to obtain, by the end of July 1994, passage of an industrial design law, a
semiconductor law, and a trade secret law.\[53\]

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52 "Taiwan's Brazen Pirates," Newsweek, Nov. 15, 1982.
53 Chung-Sen Yang and Judy Y.C. Chang, "Recent Developments in Intellectual Property Law in the
However, some business executives thought the IPR protection in Taiwan "has been intolerably slow," and Taiwan "totally fail[ed] to meet its MOU obligations in several important respects." 54 Facing serious threats of potential economic retaliation, the Taiwanese government and private anti-piracy groups were also committed to increasing the level of IPR protection and ensuring stronger enforcement of IPR laws. In mid 1993, Taiwan proposed "Guidelines on the Full Administration of Intellectual Property Protection" and started to apply the Guidelines in July. 55

As a result of Taiwan's progress in protecting IPR, the USTR moved Taiwan from the Special 301 priority watch list to the ordinary watch list in 1994. Furthermore, Taiwan was excluded from the list of countries with which the U.S. had trade disputes in the 1995 Annual Report of Trade Agreement Program. Such a removal could be undoubtedly recognized as a measure of the improvement of IPR protection in Taiwan. This chapter tries to explore the reasons why the Republic of China on Taiwan has been moving to accept international IPR regime.

3.1 International Factors

3.1.1 U.S. Pressure

U.S. concern with violations of the IPR regime became prominent in mid 1980s when the U.S. Federal Trade Commission directed the U.S. International Trade Commission (USITC) to investigate the impact of international piracy on world trade.

Interest and activity in the intellectual property area grew in the federal government, Congress, business organizations, and academic research groups. The report of the President's Commission on Industrial Competitiveness in January 1985 urged that the "strengthening of intellectual property rights at home and abroad should be a priority item on the nation's policy agenda." Adopting the advice of the Commission, President Ronald Reagan announced intellectual property rights as a priority in a trade statement on September 23, 1985.

The USITC estimated in 1986 that over 193 U.S. companies lost $23.8 billion, or 2.7% of total worldwide sales of intellectual property-related goods to piracy. The USITC estimated that infringement of U.S. intellectual property rights cost U.S. businesses $5.5 billion in annual sales and cost Americans 131,000 jobs in five countries. A USITC study attributed to Taiwan the greatest amount of piracy occurring in any single country at an estimated loss to U.S. industry of 753 million dollars in 1986. During the period of 1986 to 1990, the U.S. industry expected IPR protection improvements in Taiwan. According to the U.S. Department of Commerce, International Trade Administration, however, no significant change in Taiwan's IPR laws occurred in 1986. Although Taiwan's government tried to enforce stronger IPR protection through promulgation of laws, however, with the pace, scope, and quality of counterfeiting expanding and with a growing awareness of the impact of such activity on the rapidly

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58 United States International Trade Commission, Foreign protection of intellectual Property Rights and the Effect on U.S. Industry and Trade, Report to the United States Trade Representative, USITC Pub. 2065, Inv. No. 332-245, at 1-5 to 1-6, 3-5 to 3-6 (Feb. 1988), [hereinafter USITC Study].
61 Grant G. Erickson, "Intellectual Property Protection in Taiwan: False Face Must Hide What False Heart Doth Know," The Transnational Lawyer, Spring 1991, 4(1): 291-345. This statement was on the basis of telephone conversation with the Department of Commerce (Nov. 30, 1990), especially with the East-Asia desk of that Department.
increasing U.S. trade deficit, the U.S. government still decided to took actions against Taiwan's exacerbated piracy.

At first the U.S. considered canceling its Generalized System Preferences (GSP) benefit to Taiwan. The GSP is a program to eliminate duties on a range of products imported into the U.S. from some designated countries. It assists economic development by promoting trade rather than aid. Through eliminating US import duties thousands of categories, the GSP makes products more competitive in the US market. Notwithstanding, the U.S. government in 1988 renounced this tool. In May 1989, the USTR placed Taiwan on its "priority watch list" under the special 301 provisions.

The U.S. Congress created the Section 301, including Super 301, Special 301, as well as regular 301 provisions, with the 1988 Omnibus Trade and Competitiveness Act. It requires the United States Trade Representatives to systematically identify foreign trade barriers that limit U.S. business opportunities in international liberal markets, and indicate the priority and watch countries that would be receiving USTR's special attention. One purpose of these provisions is to address the inadequacies associated with foreign IPR protection in developing countries and to increase U.S. bargaining power in international trade negotiations. Under Special 301, the USTR each year must identify the foreign countries which deny "adequate and effective protection of intellectual property rights," or deny "fair and equitable market access to United States persons who rely upon intellectual property protection."

After further investigation by USTR, Taiwan was accused of adopting "unfair trade barrier" action and was placed on the "priority watch list" under the Special 301 in May 1989 and as the "priority foreign country" in April 1992. In June 1992, Taiwan

63GIST, September 1990, p. 9.
passed a copyright law entered into a Memorandum of Understanding (MOU) which contained specific commitments regarding intellectual property protection and enforcement. The Taiwanese government and private anti-piracy groups were also committed to increasing the level of IPR protection and have been able to reduce the extent of piracy. They agreed to properly and reasonably protect copyrights, patents, and trade marks and secrets. In the fall and winter of 1993, Taiwan passed patent and trademark law amendments. The Executive Yuan also promised to make best efforts with the Legislative Yuan to obtain, by the end of July 1994, passage of an industrial design law, a semiconductor law, and a trade secret law. As a result of Taiwan's progress in protecting IPR, the USTR determined to move Taiwan from the Special 301 priority watch list to the ordinary watch list in 1994. Furthermore, Taiwan was excluded from the list of countries with which the U.S. had trade disputes in the 1995 Annual Report of Trade Agreement Program.66 Such a removal could be undoubtedly recognized as a turning point of improvement of IPR protection in Taiwan.

It is undeniable that the U.S. pressure has been the immediate catalyst for Taiwan. After 1949 the U.S. government regarded Taiwan as having strategic importance, meriting American military protection, political support, and financial subsidy during the two postwar decades. In addition, the United States also provided technological and administrative assistance, moderated conflicts occurring between two sides of Taiwan Strait, and offered the substantial export market on which Taiwanese economic growth fed.67 In fact, a great part of Taiwan's early economic success benefited from U.S. aid and U.S. allowance of wide market access.

On the other hand, Taiwan has long been as one of the main (sixth largest, 1994; eighth 1996) trade partners of the U.S. as the latter provided considerable economic

support since the 1950s. Even with its share of total amount of all the island’s exports falling from 48.8% in 1984 to 26.2% in 1994, the U.S. remained by far the largest single export market. Even though Hong Kong replaced the U.S. as Taiwan’s largest export destination in March 1995, the potential U.S. market for Taiwan is still considerable.

Michael Ryan argues that the "market sector-specific evidence of 301 implementation shows that, the U.S. has become an ascending hegemon in service and intellectual property-based markets." USTR took many actions against both Third World violators of GATT obligations, and nontariff barriers regarding services and intellectual property-intensive industries. This behavior is consistent with the argument that a hegemon will use its power to impose a preferable order on the weaker states. With huge accumulation of losses resulting from more and more serious piracy, the U.S. government imposed more severe potential punishment in 1993-94 on Taiwan to force the latter to obey the IPR regulations. Because Taiwan was and is to substantial extent dependent on the U.S. support, it remained vulnerable to the U.S. pressure.

3.1.2 Pursuit of International Recognition

There appears to be no doubt that obtaining international recognition is one of the most important foreign policies for countries in world society. This identity explanation suggests that Taiwan is more likely to accept the Western international economic regimes as a way to gain the participation and recognition that it cannot attain at the purely political level because of its rivalry with China.

One basic reason why both China and Taiwan, which with similar cultural resources, disregarded of IPR protection is the difference between traditional Chinese and

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68 The Economist Intelligence Unit Country Profile, Taiwan, 1995, p. 31.
69 The EIU Country Profile, Taiwan, 1995, p. 31.
Western philosophies on property. Generally, the Western countries view IPR protection as essential to promoting creativity and development of new ideas and technologies. Without adequate and assured IPR protection, the incentive to invent new works and develop scientific technologies will be gradually diminished.\(^71\) As for the traditional Chinese viewpoint, however, regards the duplication and widespread of one's ideas or opinions as a manifestation of honor and respect. There is no moral wrong, nor any violation of a 'right', in copying the product of another's ideas.\(^72\) Under such circumstances, confrontation between distinctive cultural environments inevitably occurred.

In modern international society, however, actively participating in major international organizations is one of the most important signs of international status for any country. The Nationalist government of China was one of the founding members of many significant international organizations, such as the United Nations in 1946 and GATT in 1948. After its retreat to Taiwan in 1949 and it encountered a series of diplomatic reverses. The People's Republic of China replaced the Republic of China on Taiwan as the representative of China in most international institutions during the 1970s, and for twenty years there was scant contact between these institutions and Taiwan. On the other hand, China has not been one of the contracting parties of GATT or WTO, mainly because of its non-market economy (NME) status.\(^73\)

However, Taiwan has been longing for a return to the international arena especially after its rapid economic development in the 1980s. On January 1, 1990, Taiwan submitted its formal application to join the GATT as the "autonomous customs territory of

\(^{71}\)Gadbaw and Richards, Intellectual Property Rights: Global Consensus, Global Conflicts?, pp. 1-3.
Taiwan, the Pescadores, Kinmen, and Matsu,\textsuperscript{74} instead of as the "Republic of China." By so doing the ROC government hoped to avoid objections due to sovereignty issue from Beijing. For the ROC government, which used to firmly assert its character as the government of China, such an approach was a major concession.

The advantageous aspects of membership in GATT, and its successor WTO, are considerable, including the gradual overall reduction of tariff barriers among the GATT members, enjoyment of "Most Favored Nation" (MFN) status, access to institutions for resolution of trade disputes, and availability of the comprehensive trade and economic information about other countries. As the world's thirteenth largest trading country, and the sixth largest trading partner of the United States, Taiwan quite actively seeks to join the primary international trade regime, which has such important impact on the international economic system. Exclusion from main global and economic trade organizations, such as the World Bank and the WTO, denies Taiwan protection of its economic interests commensurate with its increasing performance in world markets, the more responsible part it has tried to play in the global economic community and its obvious economic power.

For Taiwan, an independent political entity with scant official international recognition, its remarkable economic achievement and relative political stability have given the island sufficient confidence to seek a place in the international arena commensurate with its prosperity. The multiplicity of concerns which motivated Taiwan to pursue the entry to GATT during late 1980s included a desire to play a more active role in international trade and finance. In addition, its practical observance of the "stipulations of the [GATT] organization" as a nonmember was not balanced by enjoyment of the tariff concessions and other favorable treatment received by GATT members.

\textsuperscript{74}Article XXXIII of the GATT. "Members" of the GATT are known officially as "Contracting Parties", and the term will be used interchangeably hereinafter.
Trade related aspects of intellectual property became central issues in the Uruguay Round of the GATT,\textsuperscript{75} the predecessor of WTO, which had taken over most of the functions of the World Intellectual Property Organization (WIPO). Even though excluded from the foremost international organizations, whether dealing with IPR protection or political issues, Taiwan still tries to follow generally-accepted international rules. Neither a member of the GATT nor of any other IPR-related organizations, Taiwan lacks different levels of protection and has only to rely upon bilateral negotiations to resolve any dispute in the international community. Taiwan has sought energetically to participate in international activities in various ways. Many of its government officials express publicly, and the general populace also believe, that sincere compliance with the rules of major international regimes will help it acquire decent international image.\textsuperscript{76}

As it submitted the formal application to join the GATT in September 1991 and the working party established in September 1992,\textsuperscript{77} the ROC government was aware that the costs of being seen as a pirate haven would be substantial. The government leaders wanted to prevent any possible obstacles from jeopardizing its international image. Therefore, the concern for pursuit of international recognition of Taiwan facilitated the shift towards IPR regime in 1993-94.

3.2 Domestic Factors

Not only international elements provide a full explanation of the IPR regime obedience. According to William Alford, the foreign pressure was but one of factors that was leading to changes Taiwan's intellectual property law and policy. In fact, pressure

\textsuperscript{75}GATT Documents MTN.GNG/NG11/W/68-74 (March 30 to May 15, 1990).


would be working in accordance with essentially economic, political, and social changes already underway in Taiwan.\textsuperscript{78}

Taiwan's massive economic growth, increasing availability of indigenous technology, more pluralistic political and intellectual life, and growing commitment to formal legal processes have made evident the need for enforcement of IPR laws and nurtured domestic constituencies with sufficient reasons for supporting IPR protection,\textsuperscript{79} which seems still inadequate in Chinese mainland.

3.2.1 Economic Structure: Level of Industrial and Economic Development

The third explanation of IPR regime acceptance focuses on the overall levels of economic and industrial development. In this structuralist view, countries which begin to develop industrial and service sectors and attain higher levels of general prosperity as a result of market-oriented policies will be inclined to accept a wider range of the current international economic regimes.

Despite having a population of only 21 million, and no diplomatic ties with any major country, Taiwan is the world's 20th largest economy, 13th biggest trader and has the second biggest foreign exchange reserves after Japan. Its economy grew 6.5% in 1994, compared with 6.2% in 1993 and 1992. In general it is making the shift towards have the patterns of a developed economy, but succeeding in maintaining a high growth rate; over the decade 1985-94, it grew by an annual average of 7.8\%.\textsuperscript{80} Taiwan has accomplished considerable economic development and has been interested in participating in the global


economic activities. Its economy has reached the level at which adopting stronger IPR protection would appear to make good economic sense.

Taiwan's economic structure has undergone a series of changes, from a predominantly agrarian economy in 1950s, through developing an export-oriented industrial pattern in 1960s and 1970s, then from labor-intensive industry to capital- and technology-intensive industries, in particular electrical goods and chemicals during 1980s and 1990s. Immediately after the World War II, Taiwan was still a predominantly agricultural economy with over half of its labor force employed in agriculture and about 44 percent of net domestic product (NDP) generated in that sector. The extraordinary economic performance in Taiwan during the following four decades was due largely to the contribution of technology change in the agricultural sector, so that there transferred much more labor force to manufacturing sectors and produced more exportation, especially there happened a turning point in 1985. (See Table 3.1)

Table 3.1: Distribution of Employment (%; annual averages)

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</thead>
<tbody>
<tr>
<td>Agriculture, forestry &amp; fishing</td>
<td>30.4</td>
<td>17.5</td>
<td>17.0</td>
<td>15.3</td>
<td>13.7</td>
<td>12.9</td>
<td>12.8</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>27.5</td>
<td>33.5</td>
<td>33.8</td>
<td>35.0</td>
<td>34.5</td>
<td>33.9</td>
<td>32.0</td>
</tr>
<tr>
<td>Mining &amp; quarrying</td>
<td>1.1</td>
<td>0.6</td>
<td>0.5</td>
<td>0.4</td>
<td>0.3</td>
<td>0.3</td>
<td>0.1</td>
</tr>
<tr>
<td>Construction</td>
<td>5.9</td>
<td>7.0</td>
<td>6.8</td>
<td>6.9</td>
<td>7.3</td>
<td>7.6</td>
<td>8.2</td>
</tr>
<tr>
<td>Utilities</td>
<td>0.4</td>
<td>0.5</td>
<td>0.4</td>
<td>0.4</td>
<td>0.4</td>
<td>0.4</td>
<td>0.4</td>
</tr>
<tr>
<td>Commerce</td>
<td>14.1</td>
<td>18.0</td>
<td>17.8</td>
<td>17.9</td>
<td>19.0</td>
<td>19.5</td>
<td>19.7</td>
</tr>
<tr>
<td>Transportation</td>
<td>5.7</td>
<td>5.2</td>
<td>5.3</td>
<td>5.3</td>
<td>5.3</td>
<td>5.4</td>
<td>5.4</td>
</tr>
<tr>
<td>Other services</td>
<td>14.9</td>
<td>17.9</td>
<td>18.4</td>
<td>18.8</td>
<td>19.4</td>
<td>19.9</td>
<td>21.3</td>
</tr>
<tr>
<td>Total</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td>Total employed ('000)</td>
<td>5,521</td>
<td>7,428</td>
<td>7,733</td>
<td>8,022</td>
<td>8,108</td>
<td>8,258</td>
<td>8,283</td>
</tr>
</tbody>
</table>

Sources: Ministry of Finance, Taiwan Statistical Yearbook; Council for Economic Planning and Development, Industry of Free China; The EIU Country Profile Taiwan, 1991-92.

In addition to activating the agricultural reform to increase the production of farm goods in 1950s, Taiwanese policymakers took initiative in strides towards economic industrialization. Throughout the increasing promotion of productive technology, Taiwan's comparative advantage shifted successfully from the cheaper labor and lower level of technology towards highly technology- and skill-intensive goods.82

Table 3-2: Gross Domestic Product by Sectors (NT$ bn at current prices)

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<tr>
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</tr>
</thead>
<tbody>
<tr>
<td>Agriculture, forestry &amp; fishing</td>
<td>159.1</td>
<td>166.0</td>
<td>165.2</td>
<td>182.4</td>
<td>192.2</td>
<td>214.8</td>
<td>229.0</td>
<td>244.9</td>
</tr>
<tr>
<td>Mining &amp; quarrying</td>
<td>13.9</td>
<td>14.4</td>
<td>15.0</td>
<td>17.8</td>
<td>25.3</td>
<td>31.5</td>
<td>21.0</td>
<td>21.6</td>
</tr>
<tr>
<td>Manufacturing</td>
<td>976.8</td>
<td>1324.3</td>
<td>1371.8</td>
<td>1603.8</td>
<td>1692.2</td>
<td>1790.4</td>
<td>1849.2</td>
<td>1939.1</td>
</tr>
<tr>
<td>Construction</td>
<td>104.1</td>
<td>123.0</td>
<td>161.3</td>
<td>225.7</td>
<td>266.0</td>
<td>309.9</td>
<td>338.8</td>
<td>360.0</td>
</tr>
<tr>
<td>Electricity, Gas &amp; Water</td>
<td>95.3</td>
<td>117.5</td>
<td>143.8</td>
<td>128.3</td>
<td>144.8</td>
<td>158.9</td>
<td>168.2</td>
<td>177.5</td>
</tr>
<tr>
<td>Transport &amp; Communications</td>
<td>163.9</td>
<td>180.2</td>
<td>236.8</td>
<td>297.9</td>
<td>335.8</td>
<td>376.0</td>
<td>417.5</td>
<td>458.1</td>
</tr>
<tr>
<td>Wholesale &amp; retail trade</td>
<td>355.9</td>
<td>429.6</td>
<td>598.4</td>
<td>702.9</td>
<td>799.7</td>
<td>888.7</td>
<td>979.0</td>
<td>1100.3</td>
</tr>
<tr>
<td>Banking, insurance &amp; real estate</td>
<td>343.8</td>
<td>348.0</td>
<td>718.7</td>
<td>858.8</td>
<td>996.2</td>
<td>1135.5</td>
<td>1329.7</td>
<td>1456.7</td>
</tr>
<tr>
<td>Public administration</td>
<td>260.4</td>
<td>270.5</td>
<td>364.0</td>
<td>532.2</td>
<td>588.1</td>
<td>633.5</td>
<td>677.7</td>
<td>724.7</td>
</tr>
<tr>
<td>GDP incl others</td>
<td>2,557.4</td>
<td>3,443.8</td>
<td>3,894.3</td>
<td>4,810.7</td>
<td>5,337.7</td>
<td>5,874.5</td>
<td>6,376.5</td>
<td>6,892.0</td>
</tr>
</tbody>
</table>


The gravity of economy shifted to a combination of small- and medium-scale industrial enterprises interacting with a dynamic manufacture and, increasingly

participating in international trade with the help of the selective adoption of imported industrial technology from mainly the U.S. to Taiwan.\(^{83}\) Table 3-2 shows that not only did the manufacturing sector exceeded others as the most important contributor of gross domestic product, but also that the significance of services increased. The items of wholesale and retail trade and banking, insurance and real estate perform well since 1985.

Manufactures lie at the heart of Taiwan's economic success. Exports of manufactured goods are the principal source of Taiwan's wealth. In the 1960s, the light-industrial exports initially involved an expansion of textiles, clothing, toys, watches, wood and paper products. In the 1970s, capital-intensive heavy industry was encouraged. Upstream industries were strengthened in order to give Taiwan domestic capacity to produce import substitutes for its major industrial inputs, notably steel, petrochemicals, and automotive industry.

However, the output of consumer goods incorporating such components has tended to fall. For example, the export of consumer electronic products such as color television, telephones and video recorders shrunk by 35% between 1989 to 1993. The manufacturers of labor-intensive products were pushed into high value-added goods, especially in the electronics and information technology industries, as in the case of various computer peripherals such as monitors in the late 1980s.\(^{84}\)

Taiwan now products about one-fifth of the world's computer hardware, with an annual production value of just under US$ 10 billion in 1993. Monitors, personal computers and motherboards form the back bone of the industry (See Table 3-3). Personal computer output, 3.6 million in 1994 (notebook computers not included ), is more than 10% of world output, while its 7.4 million motherboards make it the world's largest supplier.\(^{85}\) However, most of these goods are made under other companies' brand names.

Both its government and industries have gradually discerned that, Taiwan needs to

\(^{84}\)The EIU Country Profile, Taiwan, 1996, p. 26.
\(^{85}\)The EIU Country Profile, Taiwan, 1996, p. 27.
generate its own world-class technology while it is to compete with other advanced economies. Therefore, stronger IPR protection, in the words of the former Minister of Economic Affairs Vincent Siew, will be "crucial to Taiwan's own industrial upgrading, [as] inadequate efforts . . . would dampen research and development."\footnote{Chin Chun-tsung, "From Imitation to Innovation: East Asia's Experience in Protecting Intellectual Property," Paper delivered at the annual meeting of the International Studies Association, Vancouver, B.C., March 21, 1991, p. 42.}

Table 3-3: Output of Main Commodities (,000 tons/units unless otherwise indicated)

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</tr>
</thead>
<tbody>
<tr>
<td>Cotton fabrics (mn m)</td>
<td>756</td>
<td>745</td>
<td>729</td>
<td>1,178</td>
<td>1,092</td>
<td>957</td>
<td>970</td>
<td>774</td>
</tr>
<tr>
<td>Nylon yarn fabrics (mn m)</td>
<td>435</td>
<td>569</td>
<td>808</td>
<td>1,590</td>
<td>1,672</td>
<td>1,785</td>
<td>2,110</td>
<td>1,854</td>
</tr>
<tr>
<td>Polyester yarn</td>
<td>336</td>
<td>406</td>
<td>456</td>
<td>501</td>
<td>575</td>
<td>673</td>
<td>756</td>
<td>793</td>
</tr>
<tr>
<td>PVC</td>
<td>724</td>
<td>779</td>
<td>921</td>
<td>978</td>
<td>1,043</td>
<td>1,078</td>
<td>1,114</td>
<td>976</td>
</tr>
<tr>
<td>Cement</td>
<td>14,806</td>
<td>17,281</td>
<td>18,858</td>
<td>19,399</td>
<td>21,464</td>
<td>23,971</td>
<td>22,722</td>
<td>22,478</td>
</tr>
<tr>
<td>Steel bars, sections, plates &amp; wire rod</td>
<td>6,164</td>
<td>7,562</td>
<td>7,399</td>
<td>11,085</td>
<td>13,643</td>
<td>15,249</td>
<td>15,953</td>
<td>15,313</td>
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<tr>
<td>Computer monitors</td>
<td>4,449</td>
<td>7,168</td>
<td>7,277</td>
<td>9,192</td>
<td>11,480</td>
<td>12,745</td>
<td>14,070</td>
<td>17,754</td>
</tr>
<tr>
<td>Modems</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>1,673</td>
<td>2,102</td>
<td>3,966</td>
<td>6,040</td>
<td>4,868</td>
</tr>
<tr>
<td>Desktop</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>2,960</td>
<td>2,941</td>
<td>3,226</td>
<td>3,584</td>
<td>4,526</td>
</tr>
<tr>
<td>Portable computers</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>534</td>
<td>862</td>
<td>978</td>
<td>1,302</td>
<td>2,101</td>
</tr>
<tr>
<td>Integrated circuits</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>4,006</td>
<td>5,850</td>
<td>7,187</td>
<td>7,294</td>
<td>8,546</td>
</tr>
<tr>
<td>Color television receivers</td>
<td>3,988</td>
<td>3,743</td>
<td>2,403</td>
<td>2,456</td>
<td>1,745</td>
<td>1,424</td>
<td>1,428</td>
<td>1,315</td>
</tr>
<tr>
<td>Video tape recorders</td>
<td>414</td>
<td>1,784</td>
<td>571</td>
<td>725</td>
<td>760</td>
<td>595</td>
<td>474</td>
<td>838</td>
</tr>
<tr>
<td>Electronic calculators</td>
<td>44,925</td>
<td>68,264</td>
<td>44,843</td>
<td>35,138</td>
<td>18,208</td>
<td>12,883</td>
<td>10,631</td>
<td>6,382</td>
</tr>
<tr>
<td>Shipbuilding</td>
<td>552</td>
<td>663</td>
<td>1,212</td>
<td>741</td>
<td>1,342</td>
<td>1,016</td>
<td>1,036</td>
<td>780</td>
</tr>
<tr>
<td>Automobiles</td>
<td>171</td>
<td>269</td>
<td>354</td>
<td>398</td>
<td>428</td>
<td>388</td>
<td>406</td>
<td>385</td>
</tr>
</tbody>
</table>


An important contributor to changing comparative advantage and product-quality upgrading in Taiwan is direct foreign investment (DFI). Such contribution has been to provide manufacturing technology and international marketing know-how. The rapid growth of direct investment in Taiwan started in 1966 with the establishment of export processing zones around the big cities and harbors on the island. These export processing zones provided sufficient infrastructure, access to intermediate and capital goods at world
prices, and a fairly stable political and social environment. The foremost attraction, however, to DFI was the ready availability of motivated workers at relatively low labor wages.\textsuperscript{87} Governmental officials acknowledged the imperative of changing comparative advantage and in the 1970s adopted measures to encourage DFI in more capital- and technology-intensive industries. The most significant measure was the establishment in 1980 of the Hsinchu Science-based Industrial Park, which has seduced foreign and domestic firms engaged in primarily electronics manufacturing.\textsuperscript{88}

The changes in Taiwan's IPR regime can be attributed primarily to two reasons on the economic front. First, the government became aware that Taiwan's exports of counterfeit goods were becoming so widespread that people around the world associated Taiwan with piracy. This will threaten Taiwan's ability to export legitimate products and reduce the competitiveness of products made in Taiwan. Second, Taiwanese people became convinced that enhanced IPR protection would bring benefits for economic development in Taiwan, given the increasing importance of high technology industries in the Taiwan's economy, and national objective of promoting domestic R&D activity.\textsuperscript{89}

With successful production upgrading in early 1990s, the mainstream of Taiwanese product goods and services have been consisted of highly information technology. Since IPR protection provides an incentive to technological promotion and change of comparative advantage for a country's industrial production, which stimulates international trade and investment and facilitates domestic economic development. Taiwan actually produces "high-tech" and branded goods, so that the stronger IPR protection became an urgent issue during 1993-94.

\textsuperscript{89}Gadbaw and Richards, \textit{Intellectual Property Rights: Global Consensus, Global Conflicts}? p. 348.
3.2.2 Social Coalition Most Strongly Influencing Government Policy

The fourth explanation concentrates more on convergence of interests based upon changes in the domestic social coalition having the greatest influence over government policy. Theorists stress on nationally specific processes of policy production where political institutions, politicians, leaders, and interest groups interact. A government is pressed to take positive actions that please its constituencies and attract potential supporters. In many cases, strong preference within the countries push governments in one policy direction or another, which in turn affects their ability to keep international obligations.

Economic liberalization implies that a government tolerates a wider range of private economic activities and more international business. More people are encouraged under such policies to devote themselves to privatizing, international-oriented transactions. Taiwan has taken great strides towards a new developed industrial country whose economic development during a few past decades has been approved. It also converted from agricultural to industrial economies and sensed the need for the development of private capital. It underwent different processes of "privatization, which now come to be recognized as a nearly universal principle, adopted either as a strategic choice to solve national economic problems, or as a by-product of political and social reform."91

In the postwar period, the Nationalist government in Taiwan placed military security and political stability ahead of economic and financial considerations. There preferred government control and policies fostering egalitarianism also interfered with incorporating social elites and business groups. Later on, the government leaders realized

that increased productivity should precede equal distribution of wealth or accumulating government revenue. And that "increased productivity could be more effectively achieved by the use of liberal principles such as entrepreneurship and the market than by a mass movement stimulated by spiritual and moral incentives."  

During the 1960s, there emerged a booming trend of rising profit-led motivation of private entrepreneurs. The government took the responsibility for structuring organization so that it could induce the combination of land, labor, and capital in appropriate ways for enhancing production and fulfilling national reconstruction. To pursue consistent economic growth, Taiwan's government has pushed for industrial upgrading. When industrial upgrading was carried out, and the export-oriented industrialization deepened, the domestic market would be directly tied to its performance in improving international competitiveness. With higher capital and technology requirement, slow and uncertain return to investment, and ambiguous potential competitive advantage in costs of production, private entrepreneurs would inevitably create some pressure upon government policy change in order to correspond with the new trading environment. Theoretically, firms could be very heterogeneous in terms of resources and functional areas of deficiency. However, capital- and technology-intensive productions require higher level of intellectual property equipment. While evaluating the long-term economic utility and viability, the profit-led private firms would necessarily intend to have related policies changed toward their preference through reasonable channels.

Opposition to IPR regime in Taiwan has tended to be sectoral rather than general. Most opposition comes from smaller companies and individuals who benefited from the IPR piracy, and those failed to be organized into effective lobbying groups. In some

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Asian countries, for example, students are major users of unauthorized copies of books and software. For members of this low-income group, the probability that improved IPR protection would increase the cost, which otherwise they could not afford, of their education. However, private sector support for increased IPR protection in Taiwan comes primarily from export-oriented groups. The most important one is the National Anti-Counterfeiting Committee (NACC), which was founded in March 1984, and reorganized as the Intellectual Property Protection Committee (IPPC) in 1990. It was composed of 128 industry associations, with the following common goals: "coordinate with government to carry out the anti-counterfeiting of intellectual property rights; strengthen communication and cooperation with international organization; provide legal consultation services." While Taiwan has thrived on the back of small and medium-sized businesses, the government believes that larger-sized firms would enable economies of scale to be exploited and they would be able to afford significant R&D programs, which requires tremendous technological capability based upon intellectual property. Such groups formed by larger business are now lobbying for more serious IPR protection. In 1992, the Board of Foreign Trade designated the Institute for Information Industry (III) to establish an export inspection system of computer software and to determine whether such exports have been duly authorized by IPR owners. Considerable human resources and over US$ 5 million have been expended in its implementation. It is effective in decreasing the amount of IPR infringement around these years.

On the other hand, over the course of the past decade, Taiwan has in many respects transformed itself from a centralized single-party authority to a vigorous multiparty democracy. The political democratization in Taiwan during the 1980s resulted in the emergence of a pluralistic society. The Nationalist Party has no longer been the only ruling dictatorship, but the establishment of a variety of political parties and social interest groups instead. These groups or unions, which attempted to increase public support and visibility by working with organizations and community groups likely to share their interests, possess powerful potential to influence government decision-making. Moreover, the large number and more secure establishment of private businesspeople within Taiwanese society is the main resource of its extraordinary economic development. For example, some local businesses developed their own famous trademarks, such as Kenex and Acer, with a decent reputation around the world. All of these are quite vulnerable to IPR infringement. On the other hand, many companies in Southeast Asian, South America and mainland China are still producing counterfeiting goods, Taiwanese industries therefore become the victims of IPR violation. As the number of proprietors increased and their firms grew, Taiwanese licensee authorized by foreign branded producers would protect their products from local pirates, the call for policy shift was therefore strengthened.

Taiwan's growing democratization has also helped diminish the effect of traditional censorship system and facilitate circumstances in which multiple voices could be introduced into the negotiating process.\textsuperscript{100} More and more secure establishment and operation of broadcast, mass media, and information station have created unparalleled opportunities for the expression of opinions other than those of the central authority and party.\textsuperscript{101} In recent years, Taiwan's judicial system has also begun to change because of a genuine commitment to pluralism and multiparty democracy. Indeed, no law could be

\textsuperscript{100}Alford, \textit{To Steal a Book Is an Elegant Offense}, p. 108-9.
\textsuperscript{101}Alford, \textit{To Steal a Book Is an Elegant Offense}, p. 109.
effectively enforced without the domestic rule of law; the IPR protection in Taiwan's court system seems no longer an obstacle of social efficiency and now becomes a means of remediing infringement and associating solve difficulties instead. Especially there sequentially promulgated and passed Copyright Law, Trademark Law and Patent Law during 1993-94, the court would correspondingly take its responsibility to have them implemented.

3.3 Conclusion

In this chapter, I explore the reasons why Taiwan shifted from refusal to acceptance of the intellectual property regime in 1993-94. Two phases of change are found in Taiwan's case: it received foreign pressure then adopted laws and MOU in 1989-92, and started serious implementation of proposed Guidelines in 1993-94. The government and private anti-piracy groups were both committed to increasing higher level of IPR protection and ensuring stronger enforcement of IPR-related laws. For Taiwan, the potential trade sanctions from the U.S. was a considerable catalyst. Both because it is a small island substantially depending upon the U.S. support, and because as an export-led economy it has relied heavily on the access to the U.S. market. On the other hand, Taiwan has in many respects transformed itself from a politically centralized single-party authority to a multiparty democracy since late 1980s. There gradually formed an open society. More and more opportunities for the expression of opinions and voices were attracted into the negotiating process. In order to increase productive combativeness and create better trading environment, the booming well-established private sector and interest groups in Taiwanese society since 1990s integrated some pressure upon government policy change toward IPR enforcement.

In this regard, the Taiwanese government was mainly caught in two pressures: the U.S. from outside and local entrepreneurs from inside. By contrast, the recognition
seeking and the overall economic level were less strongly relevant. It is thus that the overall level of economic development promoted the growth of coalition favoring acceptance of the international IPR regime. But without their lobbying activity, there would not have any real reason for the Taiwanese government to shift from verbal acceptance to active implementation. Therefore, the combination of the two pressures provided the deeper roots of IPR genuine regime obedience in Taiwan.
CHAPTER 4
THE ROOTS OF CHINA'S APPROACHES TO THE INTELLECTUAL PROPERTY RIGHTS REGIME

In the late 1970s and early 1980s, China pursued further reform and an open-door policy, and has enjoyed considerable progress. Its economy has been booming, foreign investment has been increasing, and people's living standards expectations have continued to rise.\(^\text{102}\) Generally speaking, China roughly followed the same track of economic development and advancement as Taiwan, privatizing common property and adopting export-oriented economic liberalization; there engender a restructuring of the entire economic system and a readjustment of the interests of various sectors.\(^\text{103}\) Ironically, even pirating various goods, from toys and clothing to video and computer software, remains similar to earlier Taiwanese practice.

As early as 1979 a U.S.-China Trade Agreement called for both countries to offer copyright, patent, and trademark protection equal to that of other countries.\(^\text{104}\) In several years of discussion, the two governments had developed some common methods in detail for improving IPR protection. In spite of such efforts, China was still identified by the USTR as a "priority foreign country" in 1991 and designated for investigation under the Special 301 provisions and potential retaliation. After rounds of negotiation, the investigation was terminated in a positive manner in January 1992 when the U.S. and China reached agreement and signed a Memorandum of Understanding (MOU).

In the MOU, the Chinese government agreed to join the Berne Conventions and the Geneva Phonograms Convention and to take necessary steps over the next two years.


to provide improved IPR protection. On copyrights, it also agreed to protect computer software as literary works, to enforce foreign owners' copyrights, and to give these international standards precedence over existing domestic laws. On patents, China promised its "best efforts" to amend its laws, to make pharmaceuticals and agricultural chemicals patentable, and to limit compulsory licensing of patents. China also already had a revised trademark law scheduled for enactment within late 1992. More importantly, all improvements would benefit Chinese and other foreign rights holders, not merely Americans.105

However, even with so many "efforts", China was still reckoned by the USTR in 1994 to have insufficient IPR policies and practices, and the financial losses attributable to piracy were still causing a serious financial burden for Western developed countries. For example, it was widely believed that most foreign software used in China today was copied without authorization from the copyright owners.106 The U.S. government concluded that China was not serious about enforcing IPR protection, and in February 4, 1995 the U.S. Trade Representative Mickey Kantor slapped 100% tariffs on $1.08 billion of Chinese exports to the U.S. The sanctions were in retaliation for the $1.1 billion in sales that U.S. companies claimed they were losing to Chinese pirates annually.107 China's Ministry of Foreign Economic Relations and Trade responded with its own list of U.S. exports that would be subject to 100% import duties. It also threatened to suspend joint-venture negotiations with U.S. car makers, to shelve applications for holding companies, to delay approvals of IPR protection, and to obstruct the setting up of new investment companies.108 For a short time it appeared that a trade war between two countries was

likely. Fortunately, after nine rounds of talks, the Chinese and U.S. government formally signed an intellectual property rights agreement on March 11, 1995.109

Even so, the 1995 USTR annual report still indicated that the enforcement of IPR laws "remained sporadic at best, and virtually nonexistent with regard to copyrighted works... In addition, domestic piracy in China constituted a serious barrier to the entry of U.S. companies into the Chinese market."110 Most pirating and counterfeiting behaviors occurred with the acquiescence of government officials or prosecutors. Though the Chinese government urged consumers to boycott pirated discs and products, piracy continued. A software and entertainment industry losing some $900 million each year to such piracy will demand efforts to go after suppliers.111

Therefore, the reform of IPR protection in China in early 1990s was no more than a fanfare. This chapter will explore the reasons for China's continued rejection of the IPR regime. Again, the relative importance of U.S. pressure, desire for international recognition, level of economic development, and social coalition will be assessed.

4.1 International Factors

4.1.1 U.S. Pressure

Many U.S. firms complained about China's lack of IPR protection. The U.S. Pharmaceutical Manufacturers Association (PMA) estimated in 1992 that its member firms have been losing $245 to $305 million a year from piracy of patented U.S. drugs in

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According to the International Intellectual Property Alliance (IIPA), intellectual property companies lost an estimated $827 million in China in 1993 due to piracy, including $110 million in book losses. In 1994, Walt Disney's video tapes of their famous films *Aladdin* and *The Lion King* were massively duplicated even before available in their authorized versions. Reebok Company worked with China's Administration for Industry and Commerce, leading to raids on 45 factories and the confiscation of some 120,000 pairs of counterfeit shoes.

China's IPR violations have drawn special attention from the U.S. government, which has made efforts to enforce the international IPR regime through Section 301 of Trade Act. China was designated by the USTR as a priority foreign country in 1991 and then designated for severe investigation under Special 301. Protracted and hard-fought negotiations led to the January 1992 Memorandum of Understanding (MOU). Under this bilateral agreement, China committed to "take[ing] important steps" toward upgrading its patent, copyright, and trade mark laws, and bringing its trading regime much closer to international standard. As a result, "this agreement should create significant opportunities for U.S. firms interested in marketing high-value-added products to China," concluded U.S. Trade Representative Carla A. Hills. Principal beneficiaries will include the pharmaceutical, entertainment, publishing computer, and agrichemical industries. However, the MOU was not followed by serious efforts to enforcing any of the new IPR rules.

China could resist U.S. pressure more than Taiwan for a few reasons. First, China was ruled under the Chinese Communist Party and hostile to the West since 1949. It has long adopted self-reliance and anti-hegemony policies against the Western society. Even

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after the economic reform in the mid 1980s and its gradual move into the Western liberal economic system, China has seldom changed its viewpoint. Some preoccupied Chinese leaders felt that the U.S. treated China particularly harshly just for political reasons. In their view the Americans disguise a political conflict as a trade dispute and bring unfair trade pressure to bear in order to undermine China's political system.\textsuperscript{117} China also adopted the Soviet view that, because of the unique "territorial character" of IPR based on the legislation of any single country, "there are no standards in international law which compel a country to enforce IPR standards in respect of [creative] work."\textsuperscript{118} Other Chinese rejected IPR implementation because they regard it as a Western imperialist intervention with Chinese domestic affairs, more radically as part of the intrigue for peaceful transition of China's political system. In other words, for China the IPR regime seems a tool through which the U.S. imperialism and hegemony infringe Chinese sovereignty.

Second, on the economic dimension, China is less dependent than Taiwan on access to the U.S. for its exports even after economic reform. In the past decade, China became the third largest trade partner of the United States in 1995, and even before then ran a large trade surplus. Its bilateral trade surplus reached $29 billion in 1994 on U.S. figures and $7.5 billion on Chinese figures.\textsuperscript{119} Nevertheless, there exists sufficient domestic market with 1.2 billion population to absorb its massive production if the U.S. market were closed to it.

To sum up, China regards itself as a rising power with little dependence on the U.S. assistance. It sees itself as at least a regional power in the world arena, and essentially opposes external pressure. The size of its domestic consuming market is so large that its

\textsuperscript{117} Overholt, \textit{The Rise of China}, p. 384.
\textsuperscript{119} The EIU \textit{Country Profile, China}, 1996, p. 35.
economy depends less on export. Its self-sufficiency position is therefore strong enough to resist U.S. pressure on IPR matters.

4.1.2 Pursuit of International Recognition

The GATT and its successor WTO were basically designed for integrating liberal market economies,\textsuperscript{120} which are exactly the extension of Western free-trading system. In 1949-1978, the Chinese Communist Party pursued strongly central-planned economic pattern. In other words, despite some experiments with limited private enterprise, China was basically a gigantic non-market economy (NME), which was incompatible with the GATT primary principles. GATT contracting parties held considerable concerns about the NME's policies in accordance with both import and export trade.\textsuperscript{121} For many reasons GATT contracting parties have elaborated negotiations and set terms and conditions of participation in the system, instead of treating a NME state's entry as merely a simple matter.

China's economic liberalization has brought it into the global economy, and made conformity with prevailing international economic regimes more important to it. Recognizing the rules and needs of the world's most prominent trading countries, China has joined major international organizations concerning IPR protection, including both the Universal Copyright Convention and the Berne Convention for the Protection of Literary and Artistic Works administered by the WIPO in 1992, as well as Geneva Phonograms


\textsuperscript{121}John H. Jackson, The World Trading System, pp. 283-98. As regards imports into NME's, tariff concessions from an NME could be rendered meaningless by virtue of arbitrary or manipulative pricing decisions made by state authorities; and prohibitions on quotas could be evaded by central decisions to limit orders of imported goods. Concerning the exports of NME's, the absence of market pricing makes judgments concerning sales at less than fair value especially elusive, and the concept of subsides seems virtually meaningless when applied to a centrally planned economy. Moreover, NME's are perceived as being able to target their exports in ways that threaten disruption of existing markets.
Convention in 1993. It also promulgated some of the most sophisticated copyright and software regulations, and incorporated international IPR norms into its domestic legal system.

China is less vulnerable to foreign pressure than Taiwan. The Chinese economy is less dependent on exports to fuel economic growth, and China is an important state less dependent on other sources for security than Taiwan. Even so, foreign pressure did help bring about China's verbal acceptance of the international IPR regime.

4.2 Domestic Factors

4.2.1 Economic Structure: Level of Industrial and Economic Development

The transformation of the Chinese economy from centrally-planned to a market-oriented economy is one of the most significant dynamics in contemporary history. Before the economic reform, the economic institutions for agricultural and industry operated essentially under a planned control of central authority. From the 1950s on, the Chinese economic system did not remain static but was subject to two very serious political disturbances. One was the Great Leap Forward Movement from 1958 to 1961; the other was the Cultural Revolution of 1966 to 1976. During these disturbances, economic planning and agricultural production were tremendously disrupted.

In 1978, two years after the death of Mao Zedong, who mainly initiated these political movements above, Deng Xiaoping succeeded as the leader of China. Many influential Chinese leaders and economic officials, who had experimented with the communist system and central economic strategies for more than two decades, were aware of the deficiencies and shortcomings of the planning system. They started to appreciate some virtues of liberal economic model. In 1978, the "Four Modernizations" in "science,

agriculture, industry and defense" were put forth as a program for the modernization and industrialization of China. The general direction of economic reform, however, has gone towards a more market-oriented economy, "in the sense of reducing central control and providing economic reward to individuals and economic units willing to produce more."¹²³

Economic policy in the Deng Xiaoping era was dominated by attempts to dedicate resources to achieving economic development through sustained economic growth, and stimulating growth through the expansion of trade and market forces.¹²⁴ In recent years, rates of real economic growth have been led by huge increases in industrial production, and by a combination of rapid growth in personal consumption and consistently high rates of fixed investments. Industrial output growth averaged 12.6% per year in real terms throughout the 1980s.

China's economy grew rapidly after reform in the 1980s and Chinese society has been moving away from its agrarian roots. However, the commodity economy is still in its nascent stage. The Chinese economic system is now a mixed institution, which relies upon market forces, bureaucratic administration at the enterprise and local levels, and some central planning. During the central-planned period, the acute shortage of basic consumer goods at the end of the 1970s had induced enormous demand for both domestic and imported goods. However, the trend has gradually shifted away from a traditional dominance by heavy industrial products towards light industry. Refrigerators and electronic equipment were more demanded in the mid-1980s.¹²⁵ Thereafter, a more sophisticated consumer market preferred to pay for imported products that were seen as of higher quality. A new approach after reform to economic development was adopted that emphasized specialization, private markets, division of labor, strategic

¹²⁴Chow, Understanding China's Economy, pp. 75-81.
¹²⁵The EIU Country Profile, China, 1996, p. 31.
decentralization, and more international transaction. However, Table 4-1 shows that the employment of the primary sector was still twice as large as that of the secondary and tertiary industry even in 1995.

Table 4-1: Labor Force by Sector (m; year-end)

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<tr>
<td>State-owned units of which</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>industry</td>
<td>93.3</td>
<td>99.8</td>
<td>103.5</td>
<td>106.6</td>
<td>108.9</td>
<td>109.2</td>
<td>112.1</td>
<td>112.6</td>
</tr>
<tr>
<td>government agencies &amp; people's organizations</td>
<td>39.6</td>
<td>42.3</td>
<td>43.6</td>
<td>34.8</td>
<td>35.3</td>
<td>34.4</td>
<td>33.2</td>
<td>33.3</td>
</tr>
<tr>
<td>Collectives in towns of which industry</td>
<td>7.4</td>
<td>8.2</td>
<td>9.0</td>
<td>9.5</td>
<td>9.7</td>
<td>10.1</td>
<td>10.1</td>
<td>10.2</td>
</tr>
<tr>
<td>commerce, catering &amp; other services</td>
<td>34.2</td>
<td>35.3</td>
<td>35.5</td>
<td>36.3</td>
<td>36.2</td>
<td>33.9</td>
<td>32.8</td>
<td>30.8</td>
</tr>
<tr>
<td>Self-employed in towns of which industry</td>
<td>17.8</td>
<td>18.5</td>
<td>18.8</td>
<td>17.8</td>
<td>17.5</td>
<td>16.0</td>
<td>15.1</td>
<td>14.2</td>
</tr>
<tr>
<td>commerce, catering &amp; other services</td>
<td>7.5</td>
<td>7.8</td>
<td>8.1</td>
<td>7.9</td>
<td>8.0</td>
<td>7.4</td>
<td>7.2</td>
<td>6.9</td>
</tr>
<tr>
<td>rural collectives and self-employed</td>
<td>4.8</td>
<td>6.6</td>
<td>6.7</td>
<td>7.6</td>
<td>8.4</td>
<td>11.2</td>
<td>15.6</td>
<td>8.8</td>
</tr>
<tr>
<td>commerce, catering &amp; other services</td>
<td>3.4</td>
<td>4.4</td>
<td>4.3</td>
<td>4.9</td>
<td>5.5</td>
<td>7.1</td>
<td>9.7</td>
<td>7.4</td>
</tr>
<tr>
<td>Total incl others of which</td>
<td>512.8</td>
<td>543.3</td>
<td>567.4</td>
<td>583.6</td>
<td>594.3</td>
<td>602.2</td>
<td>614.7</td>
<td>623.9</td>
</tr>
<tr>
<td>Primary industries</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>340.5</td>
<td>348.8</td>
<td>347.7</td>
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<tr>
<td>Secondary industries</td>
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<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>121.6</td>
<td>124.7</td>
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<tr>
<td>Tertiary industries</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
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<td>/</td>
<td>105.3</td>
<td>110.1</td>
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</table>


China's economic growth depends not only on its own improving domestic economic structure, but the level of trade with and investment from the U.S. and Western and Asian wealthy countries. Since 1978, China's exports have outpaced world export growth. The manufacturing sector has also increased its importance as a proportion of merchandise exports.

The success of national economic development depends on China's ability to accomplish stable and sustained economic growth over the next decades. A key point to

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such growth is "effective assimilation of science and foreign technology." With the belief that the promotion of scientific and other intellectual work to be important if the whole country is to make up for the developmental and training loss within the decade of Cultural Revolution, the Chinese leadership has given priority to the importation of certain state-of-the-art technologies for the requirements of its economic development plans and tried to attract certain high-technology foreign investment.

However, China's competitive advantages as an exporter still lies in its massive and cheap labor force. Its exports are still organized on the basis of the assembly-type arrangements it has used so successfully for light manufactured goods such as clothes, and electronics products. For example, in 1994 textiles (including garments) accounted for 28.3% of Chinese exports. Pharmaceuticals also showed impressive growth because of the popularity of traditional Chinese herb medicines among overseas Chinese.

Table 4-2 reveals two points. First, after 1984 the production of manufactured commodities gradually exceeded primary goods and became the most important exported productivity for China. Second, the heavy and light industrial productions are still the mainstream of its manufactured goods. Most of these have few IPR-related ingredients; therefore IPR protection is not crucial for Chinese production.

129 The EIU Country Profile, China, 1996, p. 34.
130 The EIU Country Profile, China, 1996, p. 34.
Table 4-2: Major Traded Commodities

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<tbody>
<tr>
<td><strong>Primary Products</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Food &amp; live animals etc.</td>
<td>8369</td>
<td>13231</td>
<td>16145</td>
<td>17004</td>
<td>16666</td>
<td>19708</td>
<td>21487</td>
</tr>
<tr>
<td>(46%)</td>
<td>(34%)</td>
<td>(22%)</td>
<td>(20%)</td>
<td>(18%)</td>
<td>(16%)</td>
<td>(14%)</td>
<td></td>
</tr>
<tr>
<td>Beverages &amp; tobacco</td>
<td>2489</td>
<td>4781</td>
<td>7226</td>
<td>8309</td>
<td>8399</td>
<td>10015</td>
<td>9954</td>
</tr>
<tr>
<td>(13.6%)</td>
<td>(12%)</td>
<td>(10%)</td>
<td>(10%)</td>
<td>(9%)</td>
<td>(8%)</td>
<td>(6.6%)</td>
<td></td>
</tr>
<tr>
<td>Non-edible raw materials</td>
<td>84</td>
<td>529</td>
<td>720</td>
<td>901</td>
<td>1002</td>
<td>1369</td>
<td></td>
</tr>
<tr>
<td>(0.5%)</td>
<td>(0.7%)</td>
<td>(0.8%)</td>
<td>(1%)</td>
<td>(0.8%)</td>
<td>(1%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mineral fuels, lubricants etc.</td>
<td>1436</td>
<td>3486</td>
<td>3143</td>
<td>3052</td>
<td>4127</td>
<td>4375</td>
<td></td>
</tr>
<tr>
<td>(7.8%)</td>
<td>(4.9%)</td>
<td>(3.7%)</td>
<td>(3.3%)</td>
<td>(3.4%)</td>
<td>(3%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Animal &amp; vegetable oils, fats, waxes</td>
<td>171</td>
<td>150</td>
<td>170</td>
<td>205</td>
<td>495</td>
<td>454</td>
<td></td>
</tr>
<tr>
<td>(1%)</td>
<td>(0.2%)</td>
<td>(0.2%)</td>
<td>(0.2%)</td>
<td>(0.4%)</td>
<td>(0.3%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Manufactured Goods</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Chemicals &amp; related products</td>
<td>9856</td>
<td>26206</td>
<td>55698</td>
<td>67936</td>
<td>75078</td>
<td>101298</td>
<td>127283</td>
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<tr>
<td>(54%)</td>
<td>(67%)</td>
<td>(78%)</td>
<td>(80%)</td>
<td>(82%)</td>
<td>(84%)</td>
<td>(86%)</td>
<td></td>
</tr>
<tr>
<td>Light industrial products, rubber, minerals etc.</td>
<td>3285</td>
<td>2235</td>
<td>3818</td>
<td>4348</td>
<td>4623</td>
<td>6236</td>
<td>9094</td>
</tr>
<tr>
<td>(18%)</td>
<td>(6%)</td>
<td>(5.3%)</td>
<td>(5%)</td>
<td>(5%)</td>
<td>(5%)</td>
<td>(6%)</td>
<td></td>
</tr>
<tr>
<td>Machinery &amp; transport equipment</td>
<td>6571</td>
<td>8570</td>
<td>14456</td>
<td>16135</td>
<td>16392</td>
<td>23218</td>
<td>32243</td>
</tr>
<tr>
<td>(36%)</td>
<td>(22%)</td>
<td>(20%)</td>
<td>(19%)</td>
<td>(18%)</td>
<td>(19%)</td>
<td>(21%)</td>
<td></td>
</tr>
<tr>
<td>Miscellaneous products</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(4%)</td>
<td>(10%)</td>
<td>(16%)</td>
<td>(17%)</td>
<td>(18%)</td>
<td>(21%)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Products not classified elsewhere</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(23%)</td>
<td>(40%)</td>
<td>(42%)</td>
<td>(41%)</td>
<td>(37%)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>18225</td>
<td>39437</td>
<td>71843</td>
<td>84940</td>
<td>91744</td>
<td>121006</td>
<td>148770</td>
</tr>
</tbody>
</table>


For a country willing to embark on international trade or to attract foreign investment, a higher level of economic development could be acquired by changing the comparative advantage by improving domestic scientific or industrial technology. Its availability would result from stronger protection of intellectual property. In other words, there emerges an explicit circle: IPR protection gives an impetus to technological advancement and change of comparative advantage for a country’s industrial production, which stimulates international trade and investment and induces domestic economic development.
4.2.2 Social Coalition Most Strongly Influencing Government Policy

The fourth explanation of international regime compliance concentrates more on convergence of interests based on changes in the domestic social coalition having the greatest influence over government policy. In this view, economic liberalization has triggered policy change not by affecting the overall level of development but by strengthening the influence of trade- and investment-oriented groups over government policy-making.

After the economic reform during the 1980s, the Chinese government recognized the need for the development of private capital and has become an industrializing country. China's private business after reform was initially revived as supplement to the state and collective sectors. The early arguments in its favor emphasized its smallness, its subordination to the socialist economy, and the ability of the government to limit its activities to "the trades that the state and collective economies do not do or do not do enough." The private sector in China grew from a tiny beginning to play a significant role in providing employment, developing the market economy, and delivering an acceptable standard of goods distribution. Under such circumstances, the private sector became much more than just a fringe dweller on the edge of the socialist economy, and private entrepreneurs formed close and complex relationships with enterprises and individuals both in other ownership sectors and in government. In fact, private enterprises have grown to become a major new force in the Chinese economy and society.

The reformist emphasis focused on economic performance -- in terms of increased output and profitability, increasing employment, and rising general standards of living -- as

131 He Jainzhang, "Jiji fuchi, shidang fazhan chengzhen geti jingji," (Actively support and appropriately develop the urban individual economy), Hongqi, No. 24, 1981, pp. 13-16.
the main criterion of administrative or managerial success. The reforms generated strong incentives to promote economic development through market activity. From the perspective of the party or state, there has been a recognition that the old forms of control and regulation are increasingly ineffective in the new context of market-oriented economy, and new organizational forms have become necessary to cope with the demand. Therefore there gradually has emerged some social organizations and sort of "civil society" in China during the past decade. The establishment of such a model reflects the desire to check and balance the overweening power of state or party through a sphere of social organizations enjoying more freedom from the central apparatus. The essential aims are attempting to seek greater autonomy and a new identity for themselves, and to have their views and opinions expressed through legitimate channels.

In China, although private sector has become an important force, it remains at the fledgling stage. First of all, the majority of private businesses in China are very small, not particularly glamorous or powerful. Chinese traditional attitudes toward businesspeople have been "a combination of disdain for their moneygrubbing, dishonest, uncultured popular image," and jealousy of the "high income they are generally supposed to earn." Private businesspeople still fail to enjoy public respect in China. Second, China's private entrepreneurs are not independent actors in the market economy, because local and middle-level cadres are still allowed to employ their planned economy powers to manipulate the market and private sector. So the private sector still to some extent must rely on the single-party's central command. In addition, local and mid level cadres often

137Young, "Private Entrepreneurs and Evolutionary Change in China," p. 108.
139Young, "Private Entrepreneurs and Evolutionary Change in China," p. 121.
encourage or at least tolerate the activities of pirate producers of software, videos, compact discs, and branded goods. Third, even though businesspeople have formed several economic organizations in public arena in recent years, they do not play a role in representing the interests of a particular group. For example, there were twenty of these organizations in Xiaoshan as of 1990, including sixteen embarked on agriculture, stock-breeding, industry and commerce, and four for quality management, enterprise information and consumer affairs.\textsuperscript{140} The main functions and activities of these organizations are relatively specialized, involving raising professional standards through "exchanges of information, technology and management expertise and cooperation in the management of markets."\textsuperscript{141} They are not essentially linked with party-state in accordance with specific interest preferences. Fourth, the outward-oriented businesspeople in China confront many more competitors for influence over policy-making: in the economic realm more inward-oriented businesspeople and state agencies pursuing economic opportunities within the border; and in politics the existing Communist Party and the booming social and labor movement.

As suggested by its level of economic development, most of Chinese industry does not rely on high technology or other forms of intellectual property. Thus even among private businesses, the group desiring better IPR protection remains very weak. There is, however, one source of change in this Chinese firms to produce their products.\textsuperscript{142} These Chinese licensees do have an interest in securing protection from local pirates.

\textsuperscript{140} White, "Prospects for Civil Society," p. 204.  
\textsuperscript{141} White, "Prospects for Civil Society," p. 203.  
4.3 Conclusion

In this chapter, I explored the reasons for China's continuing refusal to implement the IPR regime. The Chinese government was willing to offer equal IPR protection with other countries, reached a MOU with the U.S. in 1992, joined major international IPR-related organizations, and passed sophisticated laws for IPR improvement during 1993-94. However, the USTR indicated in late 1994 that the enforcement of IPR laws remained sporadic and disappointing. In other words, China's shift to accepting the IPR regime remained merely a verbal policy change. The further stage of policy implementation was still incomplete.

China is relatively powerful and less dependent on the U.S. assistance and market access. It is therefore able to engage in more equal bargaining and be more resistant to the U.S. pressure for imposing IPR regime adoption. With substantial economic growth after reform, the trade liberalization facilitated loose central control and emerged some social organizations. However, the private sector, specifically capitalist enterprises, is still weak in China. Such organizations failed to play a role in representing particular interests groups. Even with the emergence of a group of Chinese licensees of western firms, the pirates' ties to local bureaucrats give them considerable influence. That is, the social coalition in China was not strong enough to influence the government to move toward implementing the new IPR rules. In short, the external pressure from the U.S. was sufficient to inspire policy change verbally. Without the inner motivation from social coalition, China did not continue on to sincere implementation of the IPR regime.
CHAPTER 5
CONCLUSION

With the wide acceptance of concepts of Western trade liberalization in the 1980s and early 1990s, international intellectual property rights protection has become a much more important. Development of the IPR regime requires extending the premise that creation and invention would be encouraged by adopting a principle of "user pays" across as well as within individual countries' borders. In Third World countries, however, mass production of pirated computer software or counterfeited goods usually brings about large short-term economic benefits for those countries with weaker IPR protection. Such a policy, however, results in slower technological advancement and reduced direct foreign investment in the long run, because innovators have no incentive to produce innovations.

Deriving from similar ethic and cultural resources, but with differential economic and ideological backgrounds, China and Taiwan have separately developed their own ways of coping with international relations. Both have faced and will continue to face the problems of deciding how far to go in adopting the liberal economic regimes established by the Western industrial countries. Both Taiwan and China neglected the international IPR regulations and became "piracy heavens" during the 1980s. However, in 1992-94 Taiwan underwent a drastic change of attitude from refusal through verbal acceptance to implementation of IPR protection, whereas China has so far only accepted the international IPR regime verbally.

5.1 The Mixed International and Domestic Roots of Regime Acceptance

External pressure was sufficient to bring about verbal acceptance. Though China was less vulnerable to U.S. pressure, did not need to use obedience to IPR regimes to gain
recognition, and had weak domestic bases for regime acceptance, however, the Chinese government still found it useful to express verbal acceptance.

On the other hand, a stronger domestic coalition favoring IPR protection is necessary to the shift from verbal acceptance to actual enforcement of IPR regimes. In Taiwan, the high level of economic development promoted formation of a pro-IPR lobby of local high-technology firms, local branded name owners, and local licensees of foreign firms. It was able to use the opportunities afforded by democratization to influence the government policy change. In China, a lower level of economic development, a lack of local intellectual property owners, and the tolerance of piracy by low and mid-level cadres combine to limit the extent of pro-IPR sentiment. A local lobby is beginning to develop as western firms license Chinese producers to use their trademarks or produce such goods as software, videos, and compact discs, but the single party system limits their ability to influence the government policy.

5.2 Implications for Understanding Government Attitudes towards International Regimes

Studies of international regimes suggest that the interaction of international and domestic factors determines the degree of international regime obedience. Carlos Primo Braga believes that although bilateral pressures from the U.S. has been credited with success in bringing the New Industrial Economies (NIEs) closer to the standards of the industrialized countries, this success may have been helped by an internal push for increased IPR protection.143 In contrast, Susan Sell argues that the foremost factor of IPR protection policies has been coercion.144 The U.S. applied tremendous pressure on those Third World countries to offer stronger IPR protection. Nonetheless, the actual effect of external pressure depends on the ability of powerful countries to exploit the vulnerability

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of targeted ones. When weaker countries can exert counter-pressures, efforts at coercion will have limited success. Second, if a targeted country does not accept the value orientation preferred by the powerful one, nonimplementation and robust domestic resistance will occur. In other words, the difference between adopting policies on paper and believing in their intrinsic merits is also important. External coercion can only change the countries' policies, but not their minds. According to Peter Alexis Gourevitch, compliance with international regimes relies largely on international cooperation, which requires social support at home in each country. Even though governments make policy commitments to cooperate, constructing a regime within a country is a complex process of strategic interaction among actors in the market, policymakers, interest groups, and voter groups operating through politics.

The IPR cases studied in this paper indicate that regime acceptance occurs in two stages: verbal change of laws and actual enforcement of laws. They also show that even powerful foreign pressure can only produce verbal policy adoption. Without support from a domestic social coalition, there will be little actual implementation of policy consistent with the rules of an international regime.

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