The Crux and Countermeasures of China-US Trade Disputes Over Intellectual Property Rights

Xiaoling Xu¹,a, Yunqin Zou²,b

¹Jiangxi Normal University Business College, China, 330022
²Jiangxi Normal University Education College, China
Xiaoling Xu, Vice Professor, 707477684@qq.com

Key words: China-US trade; intellectual property; influence; countermeasure

Abstract: With the rapid development of China's economy, the rapid expansion of the scale of imports and exports, the degree of integration into the world economy gradually deepened, accompanied by more and more frequent trade disputes between countries. Among them, intellectual property disputes between the United States and the United States is the most typical. Sino-US intellectual property rights disputes to China and Chinese enterprises brought great loss, and also to encourage China to accelerate the establishment and perfection of the intellectual property system, improve their consciousness of intellectual property protection and enhance the capability of independent innovation, so as to effectively reduce the parties to a dispute, and promote the sustainable development of China's foreign trade and economic cooperation.

1 Introduction

According to the latest relevant regulations of the world trade organization, from 2010 to 2020 period, the trade between the members of the WTO will gradually implement zero tariff. This shows that the tariff measures as the main means of trade protection will gradually disappear between the vast majority of countries. With intellectual property rights in international trade plays a more and more important role, the protection of intellectual property is bound to cause the attention of governments of all countries. The implementation of intellectual property strategy, can effectively enhance the competitiveness of a country in the international, therefore, intellectual property strategy has been promoted to the national strategic level in many countries, in order to long-term development.

2 Comparison of the legal protection of intellectual property rights between China and America

2.1 Intellectual property law in the United States

The United States is one of the earliest countries in the world to implement the intellectual property rights system. So far, the United States has established a complete set of legal system of intellectual property rights, including the "patent law", "trademark law", "copyright law" and "Anti Unfair Competition Law" and so on. The 1930 tax law of Section 337, later known as "section 337", become the United States used to limit and prevent foreign products to enter the domestic market an important means. By 1970s, the United States on the "1974 Trade Law" in the 301st terms of a major modification to increase the famous special 301". Its aim is to protect American intellectual property in foreign countries to get effective protection, a problem is found, the US trade representative will on the initiation of an investigation, through negotiation and trade sanctions and other means to force it to change the protection of intellectual property rights and market access problems of laws, policies and practices.

2.2 Legal protection of intellectual property rights in China

The establishment of the legal system of intellectual property rights in China started late, has implemented the "trademark law", "patent law", "technical contract law", "copyright law" and "Anti Unfair Competition Law". That is to say, the main legislation of intellectual property protection in China has been introduced. Echoing with the domestic intellectual property law, China joined a
series of international treaties, which mainly consisted of the Paris Convention, the international registration of trademarks Madrid Agreement, Nepal Convention for the protection of literary and artistic works, the Universal Copyright Convention and the and trade related intellectual property rights agreement ", China's accession to the WTO legal documents in commitment: "China will in full compliance with the WTO agreement based on the basis, by modifying the current domestic laws and make new laws, with effective and unified way implementation WTO agreement." Therefore, our country once again on the domestic legislation of intellectual property rights were greatly modified and perfect, amendments to the "patent law", "trademark law" and "copyright law", announced the "integrated circuit layout design protection regulations", the implementation of the new "Regulations for the protection of computer software". In the period, the law of intellectual property right related to foreign trade was also established.

3 The main reasons of intellectual property disputes in China -US trade

3.1 The United States

Trade imbalance with China. With the development of China-US economic and trade relations, the bilateral trade volume between China and the United States continued to increase, the number of China's exports grew rapidly, but at the same time the huge trade surplus in China and the United States continued to emerge. The huge U.S. deficit is an important reason for intellectual property disputes between China and the United States. It is widely believed in the United States that the trade deficit will lead to an increasing number of unemployed people.

The rise of American trade protectionism. Trade protectionism always as a normal existence in the field of international trade, especially when after the outbreak of the American subprime mortgage crisis in 2008, the global economic situation is grim, the U.S. economy hit, so trade protection becomes the United States out of the economic difficulties of an important way. This has prompted them to take a variety of trade protectionism measures to curb China's exports to the United States, to suppress Chinese competitors, the monopoly of the market and technology, to ensure the maximization of its trade interests

The US economy is highly dependent on intellectual property. In today's world, science and technology research and development level of the highest countries belong to the United States, so the protection of intellectual property rights in the United States is the most rigorous and comprehensive, the United States highly dependent on intellectual property rights as the core technology trade export, rely on the protection of intellectual property rights to promote and guarantee the continuous development of the economy, protection of intellectual property rights has become the United States in the international competition in one of the most important strategies.

3.2 China

Intellectual property law is not perfect. China in intellectual property law and related system due to a late start, so in the process of protecting intellectual property exist many problems, such as the legislation is not perfect, law enforcement is not strong enough, which can effectively prevent the domestic and foreign infringement acts of abuse of intellectual property rights. In view of the illegal monopolistic behavior of transnational enterprises abusing intellectual property rights, China's anti-monopoly laws and regulations are not perfect, not enough to deal with.

Enterprise independent innovation ability is insufficient. Issued by the State Intellectual Property Office of the 2011 China Patent annual report shows that China's invention patent year-on-year increase of 23.4%. Among them, enterprises in the domestic invention patent in the proportion of up to 52.8%, over the previous year up by 1.7 percent. Although China invention patent has maintained rapid growth, but not much Chinese enterprises have independent intellectual property rights, and thus fall into sued frequently passive position.

Lack of intellectual property professionals. In international trade, intellectual property professionals to integrated quality requirements higher, China's domestic single teaching theory cannot meet the international trade market to talented person's demand, which also makes our country enterprise in the international trade of frustration. Most of the domestic enterprises have not yet established the intellectual property management department, there is no special responsibility
for the work of intellectual property personnel, real understanding and knowledge of intellectual property rights is not much.

4 The main impact of China-US trade disputes on intellectual property rights in China

4.1 Economic and trade relations between the two countries have become increasingly tense
Chinese enterprises in the face of intellectual property disputes with the United States, always responding to the enthusiasm is not high, even responding to, at the time of the award also rarely defense, even not to appear in court, which prompted U.S. government and companies that Chinese enterprises is the lack of ability of responding, and thus become the stern for intellectual property litigation, which will caused by China's trade retaliation, the trade relations between the two countries become more tense.

4.2 Restrict the technological progress of enterprises
Science and technology is the fundamental driving force for the economic development of a country. Therefore, the diffusion of technical knowledge in China is actually equivalent to the technical progress of China's enterprises. If because of intellectual property disputes, the United States issued a ban, then, all involved in the product's exports to the United States will be prohibited, and thus affect the entire industry. As long as the production of similar products, their products will lose the opportunity to enter the U.S. Market.

4.3 Hinder the upgrading of export product structure
American enterprises with intellectual property rights, not only rely on the market, and the subsequent improvement of the technology and peripheral technology patents, the formation of a patent pool, so that competitors cannot break through. Affected by this, our country's high-tech products export to the United States market encounter resistance is more and more big, is not conducive to the optimization and upgrading of China's export commodity structure.

5 China's strategy to deal with the intellectual property disputes between China and the United States

5.1 Improve the legal system of intellectual property rights
China should gradually improve the system of intellectual property rights, improve the relevant intellectual property rights legislation. For the previous laws and regulations, we must combine the current reality, and gradually revise and improve. In the legislation concerning the protection of intellectual property, we can learn from the experience of developed countries, through the development of intellectual property related to specific regulations or in the relevant laws and regulations set up specialized terms, at the same time pay attention to the latest development trend of international intellectual property protection, in line with international standards.

5.2 Improve enterprise independent innovation ability
The state should introduce relevant intellectual property policies, increase investment in intellectual property and innovation, and encourage enterprises to innovate independently. Enterprises should strengthen the concept of independent innovation, the establishment of technological innovation system with enterprises as the main body, the market as the guidance, the combination of, on the independent innovation to improve the level of industrial technology, as a key link in the adjustment of industrial structure.

5.3 To speed up the cultivation of intellectual property rights
Government and enterprises should be based on the actual situation, through a variety of ways, to cultivate a number of familiar with the rules of WTO, familiar with technical barriers to trade. In addition, faced with the more and more of the intellectual property rights of legal issues of China, our urgent need culture protection of intellectual property rights of professional lawyers, only in this way can we make more enterprises receive professional guidance, in the face prosecution, it will not be excluded in the international market.
6 Conclusions
Due to differences in political and economic interests, China and the United States intellectual property disputes must be long-term, complex, China should be rational to deal with this issue. On the one hand, the United States should be more understanding of China's national conditions, will be more energy to the cooperation and exchanges with the relevant departments of China up to reduce the understanding of the two sides on this issue. On the other hand, China's government and enterprises need to work together to make the system of intellectual property protection more perfect and more in place. Only through the joint efforts of all parties, the economic and trade exchanges between the two countries will be more healthy and prosperous.

References