‘The European Union’s role in the People’s Republic of China’s socialisation into the World Trade Organisation.’
‘This is the game that moves as you play’

X, ‘The have nots’
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Introduction

Topic

China, not only one of the oldest, but for a long time the greatest economic power on earth\(^1\) has seen its influence decline at a time when Western civilisation was rapidly evolving. By the end of the Chinese civil war in 1949, the People’s Republic of China (henceforth China\(^2\)) was severely weakened and mostly absent from the stage of international society.\(^3\) The country has risen, or rather resurged, in the past few decades. In doing so, however, it has had to ‘balance power growth and power politics on the one hand; and, on the other, enhance international legitimacy through constructive participation in international society.’\(^4\) One of the means for China to increase its international legitimacy was joining and becoming a responsible member of the World Trade Organisation (WTO). In addition to being a strategic choice, joining the organisation had become a great matter of prestige for China’s elites, which considered it humiliating that their huge trading nation was not yet a member of the global trade organisation.\(^5\)

While China had been in relative decline, the European Union (EU)\(^6\) has grown in both tangible and normative influence over the past few centuries. While its Member States remain mostly independent on a political level, economic integration has advanced more rapidly. The EU has an open internal market, customs union and the majority of its members share a common currency. Most importantly, the EU regulates nearly all external trade on a supra-governmental level.\(^7\) Its independent membership of the G8 and the WTO are indications that as a block, it matters at least as much as its member states. In the tangible sense, it is now the greatest economic block on earth. EU imports accounted for 17.2 percent


\(^2\) Both the People’s Republic of China and the Republic of China can be considered entitled to the use the name, since 1949. Commonly, however, the People’s Republic is referred to as ‘China’, while the Republic is referred to as ‘Taiwan’. I will use this distinction in this proposal, as well. When referring to legislation ‘People’s Republic of China (PRC)’ will be used.

\(^3\) Zhang Yongjin *China in international society since 1949: alienation and beyond* (Basingstoke: Macmillan, 1998)

\(^4\) Yong Deng *China’s struggle for status: the realignment of International Relations* (Cambridge: Cambridge University Press, 2008) 39

\(^5\) Pearson, ‘The major multilateral economic institutions engage China’ 226

\(^6\) Europe’s intergovernmental, and later even supra-governmental institution has gone through many names over the past few decades, from ‘European Economic Community’ (EEC), to ‘European Community’ or ‘European Community’ (EC) to ‘European Union’ (EU). With respect to the many institutional, legislative and even geographic differences between these different forms of organisation, I will refer to them mostly as the ‘European Union’ (EU) for the sake of consistency.

\(^7\) For an overview of the EU external trade regulation, see <http://europa.eu/legislation_summaries/external_trade/>
of the world’s imports in 2009. For comparison, the US and China imported 16.5 percent and 10.4 percent, respectively. Taken as a whole, the EU also accounted for the greatest global exports, in 2009. Its 16.2 percent share was greater than China’s 12.7 percent and the US’ 11.2 percent.\(^8\)

When trade is concerned, the world’s largest trading block and largest single trading nation are very dependent on one another. While in 1995 EU imports and exports from and to China were already 14.7 billion euros and 26.3 billion euros, respectively, these had increased to 113.1 billion euros and 282.0 billion euros, respectively, in 2010.\(^9\) Logically, with such great interdependence, the EU has seized the opportunity of China’s struggle for status to influence it to become a responsible major power, which ultimately benefits the EU as much as it benefits China itself.

The process of norm diffusion through an international institution is known as socialisation. In International Relations, it can be defined as ‘a process of learning in which norms and ideals are transmitted from one party to another’, or as ‘a process resulting in the internalization of norms so that they assume their “taken for granted” nature.’\(^{10}\) However, there is a large grey area between rational calculation of actions without valuing norms at all and fully internalising them. Alastair Iain Johnston describes three micro-processes that may be studied in order to understand the role of socialisation in state behaviour.\(^{11}\) These processes are Mimicking, Social Influence and Persuasion. The major difference between these three forms of socialisation is the degree of internalisation of the collective norms into the domestic structure. Of these three processes, only Persuasion leads to full internalisation of norms, while norms play a role in Social Influence (which is a lot like group pressure) and they play hardly any role in Mimicking. I will argue that Social Influence effectively took place, as a result of the WTO’s aspects as a social environment, China’s struggle for status, and the EU’s role as a bridge-builder in China’s WTO accession.

Furthermore, I will argue that to some extent, Persuasion took place, and that the EU has certainly tried to use this mechanism, but that the differences between China and the EU were too great for China to fully internalise the EU’s norms. Even though the EU is a skilful persuader, without some trust on China’s behalf, it could not motivate it to change its beliefs. In order to establish itself as a partner, the European Commission has striven for ‘Constructive Engagement’, as it stated in its 1995 Communication on China. By this, it meant


\(^{10}\) Johnston, Social states, 21

that it would ‘support the wholehearted participation of China in the international community’. By doing so, it has sought an approach that seems to be more in line with China’s preference of harmony over conflict, rather than the United States’ approach of confrontation. Increasing cooperation between the EU and China led the two countries to proclaim a ‘strategic partnership’ in 2003. Which might explain how, as unlikely as it seems, some degree of persuasion did take place.

Because the scope of a Master’s thesis is limited, I have selected two topics with which I will analyse the process of socialisation between the EU and China in the context of the WTO. This thesis will thereby answer the question:

To what extent has the European Union’s engagement policy towards China, within the context of the WTO, socialised that country to accept the EU’s norms concerning market economy and Intellectual Property Rights?

Research design

I have chosen the subjects of market economy and Intellectual Property Rights for my case studies for several reasons. First, among the many differences between the EU and China, China’s state involvement in the economy, which opposes market economy, and violations of Intellectual Property Rights (IPR) are of top priority to the EU in an economic sense. China’s state import- and export monopolies, non-transparent government procurement, export subsidies and unfair advantages to domestic producers were among the top demands the EU had in China’s WTO accession negotiations. On the subject of IPR, technological catch-up has become very important for the development of China’s economy. Without proper IPR protection however, European companies setting up Joint Ventures (JVs) in China remain at risk of intellectual property theft. Furthermore, in an age of increasingly globalised trade, counterfeit and pirated goods produced in China are not only available in

12 European Commission, Com 279: A long term policy for China-Europe relations (1995)


14 For example, state involvement was mentioned in European Commission, The Sino European WTO agreement on China’s accession to the WTO, summary available at <trade.ec.europa.eu/doclib/html/111851.htm>, both aspects were emphasized in European Commission, Commission staff working document on progress by the People’s Republic of China towards graduation to Market Economy Status in trade defence investigations (2008) and the EU has set up technical support programmes for the protection of IPR in China in the form of the IPR1 and IPR2 programmes.

China’s domestic market, but gradually flooding world trade as well.\[^{16}\] The growing number of Chinese patent- and trademark applications in recent years seems to indicate that the Chinese have come to acknowledge the role that IPR has to play in innovation, however, these indicators have to be interpreted with care: Pascal Lamy, Director-General of the WTO, said that ‘the intended benefits of intellectual property — its “social and economic welfare” — are not realized simply by filing an application. Nor can the impact of intellectual property on an economy be measured by a simple head-count of documents filed.’\[^{17}\] Despite China’s efforts, IPR violations continue to be a problem.

Secondly, these topics offer a logical and ‘simple’ indication of the effects of Social Influence. By joining the WTO, China has become subject to its norms. This means that the WTO Members can decide on whether or not to grant China the status of ‘market economy’ based on the WTO’s standards and that China is now subject to the agreement on Trade—Related aspects of Intellectual Property Rights (TRIPs). The WTO’s members can use the Dispute Settlement Mechanism (DSM) to force China to comply with these standards. The DSM serves as a measures of last resort, however. The social aspects of the WTO take place even if the DSM is not put to use. Its members are part of a club where they judge each others’ behaviour and influence each other on a more subtle level. Therefore, as a member, China may have become subject to the effects of opprobrium and back-patting and it may have had to adapt its behaviour accordingly.

Finally, these two topics offer a ‘hard’ case to indicate the presence of Persuasion. Although the EU might be considered an able persuader, the effects of Persuasion are not likely to take place if the two states involved are ideally very different. China’s ‘Socialist Market Economy’ was so different from other WTO Member economies that China’s WTO Accession protocol allowed the EU and other members to take special anti-dumping measures, based on the prices of a surrogate country of its choice, rather than China’s domestic prices.\[^{18}\] This provision will automatically expire in 2016, 15 years after China’s accession. However, the EU may choose to grant China the coveted ‘Market Economy Status’ (MES) before this date, voluntarily ending its ability to use this form of anti-dumping measures, in addition to recognising China as a an equal economic partner. China has been requesting nation-wide Market Economy Status of the EU since 2003, but the EU has so far

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\[^{16}\] Counterfeited goods stopped at EU customs originating in China comprised 8 percent of the total in 1995 and 64.6 percent of the total in 2010. <http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm> (accessed 5-5-2011)


not granted it. Nonetheless, there are some signs of convergence, as China has made gradual improvements, according to the EU. In a 2008 progress report, the European Commission concluded that ‘China now has in place almost all the legislation which is necessary for granting of Market Economy Status.’ ‘The focus has now switched to the effective implementation of these laws which are crucial for the functioning of any market economy.’

China and the EU’s IPR protection also show some degree of convergence. The substantial regulations for the enforcement of IPR the EU has implemented in its domestic market may serve as an example to China and it has made it its objective ‘to improve the effectiveness of IPR enforcement in China.’ Moreover, the EU’s IPR assistance programs in China, such as the IPR1- and IPR2- programs have not been aimed at containment, but a capacity building within China. Their main goal is to strengthen China’s enforcement capabilities on the one hand and to convert China from an “IP imitation” to an “IP creation” nation on the other. As a result of foreign pressure, China now has the largest volume of IPR protection in the world. Continually improving its IPR regulations was also stressed by the Chinese government in its National Intellectual Property Strategy and it has been able to do so, with help from the EU. Despite these preliminary indicators of the presence of Persuasion, I will argue that the EU has failed to encourage China to fully internalise the EU’s norms concerning these two topics.

To study the micro-processes of socialisation, Johnston suggests a three-step approach. First, the characteristics of the social environment at time $t$ and its capabilities as a ‘teaching environment’ have to be researched. Different social environments lead to different processes of socialisation. For example, large, highly visible organisations, such as the WTO, maximise

19 Anne MacGregor and Annamaria Mangiaracina ‘The EU’s refusal to grant China Market Economy Status and recent amendments to European anti-dumping law’ in International Trade Law Vol. 10 iss. 5 (2004) 111


22 Wei Shi, Intellectual property in global trading system 5 – 10, For an example of the EU’s focus on enforcement building and IPR creation, I suggest taking a look at the IPR2 program’s ‘activities & results’ page: <http://www.ipr2.org/index.php?option=com_content&view=category&layout=blog&id=118&Itemid=70> (Accessed 23-03-11)

23 Martin K. Dimitrov Piracy and the state: the politics of intellectual property rights in China (New York: Cambridge University Press, 2009) 33


25 Johnston, Social states, 26-32
the effects of Social Influence, while small, intimate organisations maximise the effects of Persuasion. Then, by comparing how ‘the characteristics of individual agents involved in the social environment at time \( t \)’ and how ‘these agents then interact with this environment at time \( t + 1 \)’, the effects of Socialisation can be researched. To do so, the thesis will be divided in three chapters, each answering several sub-sections.

Chapter 1 will take a look at the WTO as a social environment. After establishing the characteristics of this environment and examining which effects of Socialisation are most likely to take place, it will also explain the roles the EU and China play within this framework. The second chapter analyses the EU’s concerns with the Chinese concept of a ‘Socialist Market Economy’ and how it uses the concept of Market Economy Status in Anti-Dumping measures to stimulate China to reduce state involvement in the economy. The third chapter will research the problems the EU perceives in China’s protection of Intellectual Property Rights and to what extent Social Influence and Persuasion, in the form of the EU’s dialogues and support programmes have encouraged China to solve them. Both these case studies will start with a sub-chapter analysing the situation in \( t \), 1995 and sub-chapter analysing the situation in \( t+1 \), 2010. China became a WTO member in 2001. The year 1995 serves as a time-frame to indicate China and the EU’s relative position before this date. The year 2010 serves to analyse the effects of China’s accession, without including current day events. Furthermore, it must be understood that the year 1995 and the year 2010 serve merely as ‘soft’ indicators of the two time-frames, as it is practically impossible to capture precisely the situation in those exact years.

Relevance

By joining the WTO, China is trying to convince other states that it is a ‘status quo’ power. ‘Status quo’ powers are not interested in conquering others, even though they could, but prefer to apply self-restraint. From this point of view, China is more likely to identify with other WTO members, and it is more likely to consider itself as having certain obligations towards this group of ‘civilised’ states. The idea of a ‘status quo’ China is much debated, however. Some would argue that China is still a revisionist power, a nation that is seeking to displace US hegemony. It can at least be assumed that China’s position has been gradually shifting away from its ‘revisionist’ origins. Johnston has shown that although China’s political elite could be considered realpolitik hardliners until the ‘90s “the People’s Republic of China

26 For \( t \) I have chosen the year 1995, when the WTO formally commenced, when the EU (or formally, the EC) had already formulated certain norms concerning MES and IPR within the WTO framework, yet China was still an aspiring member of this society

27 Wendt Social Theory of International Politics, 280-293

has become more integrated into and more cooperative within international institutions than ever before."\(^{29}\)

By studying the indications of Socialisation, this thesis establishes to what extent China’s new role offers possibilities for international economic diplomacy. Proving or disproving whether or not China is genuinely trying to become a responsible major power lays outside the scope of this thesis. Although it is not easy to draw hard conclusions about the social position of states, their world views and the way they view each other within the limited scope of a master’s thesis, this thesis may show strong indications that the process of socialisation is present in the selected cases, and may therefore be present in international relations in general.

As Johnston put it: “the goal of diplomacy is often the socialization of others to accept in an axiomatic way certain novel understandings about world politics.”\(^{30}\) Knowledge about these processes may therefore be a powerful tool in the hands of policy makers. Although there has been substantial research on the theory of socialisation in IR, there is only limited information on its function as a diplomatic tool, which this thesis will offer. Furthermore, most of the research that has been done on this subject on a micro-level has focused on the diffusion of norms within Europe.\(^{31}\) Johnston has done a large amount of research on the subject of China in international institutions, however his research focuses mainly on security institutions and less on international political economy.\(^{32}\) However, in international economy, states are forced to strive for closer cooperation, as a result of globalised trade. Also, economic relations are based on ‘soft’ power, rather than the ‘hard’ power associated with security dilemmas. The dynamics of international economy are therefore substantially different from those of other fields.

Something that struck me was the fact that, even in Johnston’s outstanding research, the European Union only plays a minor role. I consider this an indication of what could be considered a rather US-centric bias in IR studies concerning China. Another example of this bias is Gerald Chan’s ‘China and the WTO: the theory and practice of compliance’\(^{33}\), wherein he explains whether or not China is a responsible member of the WTO and how compliant

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30 Johnston, *Social states*, 1


32 Alastair Iain Johnston, *Social states*

China is with its rules. Most of his paper is devoted to the US’ monitoring systems and leaves the EU’s role quietly unexplained.

Not only does this downplay the role of one of the world’s most important trade blocks, it also neglects the effects of engagement policies, which are more dominant in EU policy than in US policy.\textsuperscript{34} Although the US has also professed what was known as ‘engagement policies’ and these are also widely studied\textsuperscript{35}, current US policy mainly focuses on engagement as a balancing factor in containment politics, while the EU seems less concerned with balancing against China and has taken the road of socialisation into the international society, even if it may only be a means to further its own interests.\textsuperscript{36} Some studies have already focused on the EU’s partnership with China and the implications this has for international political economy as a whole, China and the EU.\textsuperscript{37} Very little research has been done, however, on the socialisation effects of this partnership. By studying the way the EU has played its role, first as a teacher and then as a partner, we can draw conclusions about the effectiveness of this sort of foreign relations policy and the role of socialisation in diplomacy in general. Finally, two things have to be noted. First, socialisation is something that takes place regardless of an actor’s decisions. Like morals or norms and relations, socialisation is something that takes place, whether we are aware of it or not. For simplicity, the decisions in socialisation will be treated as being active. For example, instead of suggesting ‘the EU has taken an action which, whether it is aware of this or not, has increased the effects of Social Influence’, ‘the EU has used the effects of Social Influence’ may be used. Second, the effects of socialisation are myriad. Although within this thesis it has been attempted to single out the effects the EU has had on China, this is in no way meant to downplay the effects other actors may have had, nor is it meant to ignore the internal reforms China might have taken, regardless of external influence. Although the direct implications of this research are limited to the diffusion of norms concerning IPR and market economy, its implications might also be valid for other subjects. Environmental protection, or even human rights may be examples of subjects in which China may come to share norms with the EU, if not now, then maybe in the future.

\textsuperscript{34} Nicola Casarini, \textit{Remaking global order : the evolution of Europe-China relations and its implications for East Asia and the United States} (Oxford: Oxford University Press, 2009)


\textsuperscript{36} Avery Goldstein ‘The diplomatic face of China's grand strategy: a rising power's emerging choice’ in \textit{The China Quarterly Vol.} 168 (2001) 835-864

Chapter 1: The EU and China’s relationship within the WTO

This chapter will establish the normative and theoretical framework for the two case-studies. Its first sub-chapter will explore the concept of socialisation in international relations. The second sub-chapter will then describe the characteristics of a social institution, which processes of socialisation are most effective within different environments, how the social dynamics behind the WTO, the EU and China fit within this framework and finally how this may influence them and their relationship.

1.1. Socialisation in international relations

‘Socialisation’ is a term that has long been used in International Relations, but that has led to many different interpretations, over the years. For Neorealists, as exemplified by Kenneth Waltz’ influential *Theory of international politics*, it describes the way in which states adapt to the conditions of international anarchy brought about by the lack of a central government. This socialisation can be considered as a Darwinian process of selection and competition: as states fail to adapt to the conditions of anarchy (self-help and balance of power) their numbers decline.\(^1\) As a result, all remaining states will be a homogeneous collection of realpolitik states.\(^2\)

In a critique of Waltz’ idea of socialisation, Alexander Wendt suggests that Waltz’ idea of socialisation flows from implicit assumptions Waltz makes about the nature of states. These two assumptions are that all states are driven by egoistic motivations and that self-help is the only basis for their relations.\(^3\) According to Wendt, international society is a social environment where the system, the actors’ interests and their relations are mutually constitutive. Wendt does not imply that states are not rational beings. States’ actions are the result of their interests and their rationality about fulfilling these interests (as Neorealists and Neoliberals also assume). Their interests are, however, modified by their beliefs about themselves, the other and the system.\(^4\) From Wendt’s point of view, 'anarchy is what states

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2 The term *realpolitik* is often used to signify this political ideal, which focuses mainly on power, survival and calculated relative gains against competition.


4 Wendt, *Social Theory of International Politics*, 122-130
make of it.' The very nature of relations between states and the international system within which they take place is determined by their beliefs.

The motivation behind Waltz reasoning that interests are not socially constructed, but a given is that it allows him to explain 'a small number of big and important things.' The large number of things it leaves unexplained are not less important, however. Social scholars do not dispute that the main driving interests behind state behaviour are power, security and wealth. However, they claim the explanatory power of these assumed interests is severely limited. As Martha Finnemore explains, the real implications of these interests only arise when we wonder: 'what kind of power? Power for what ends? What kind of security? What does security mean? How do you ensure or obtain it? Similarly, what kind of wealth? Wealth for whom? How do you obtain it?'

To states, power, wealth and security are as much a means to an end as they are ends in themselves. The way they will apply these means is very dependent on the state’s beliefs about its own identity. In this sense, although material gains are still important, their real value is defined by their social context. Norms, understood in this sense, are collective associations about proper behaviour for a given identity. International organisations, such as the WTO create new interests and values for states. They do so because states’ interests, beyond the mere ideals of power, wealth and security, are malleable. States sometimes do not know exactly what they want. And although they may identify with the collective identity of an organisation, it is not always clear to them what the appropriate behaviour within that context may be for every given situation. The process of interaction between structure and agent is mutually constitutive. Under these circumstances, actors may wonder “What kind of situation is this?” and ”What should I do now?”

States acquire their identity and interests through interaction. The WTO is a platform for such social interaction. Being a member of this group means being part of a culture of

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10 Finnemore, National interest in international society, 7-9
11 Jeffrey T. Checkel, ‘Review: The Constructivist Turn in International Relations Theory’ in World Politics 326
12 Alexander Wendt, Social Theory of International Politics (Cambridge: Cambridge university press, 1999) 243-244
collective ideas about actors, trade and trade negotiations.\textsuperscript{13} The way in which this social context influences state interests and thereby state action, largely depends on the degree of internalization of the institution’s norms. At the core of socialisation processes lays the ‘logic of appropriateness’ for certain behaviour within that context.\textsuperscript{14} If an actor has indeed fully internalised the institution’s norms, it will ‘identify with it, and therefore feel a sense of loyalty and obligation to the group which the culture defines’.\textsuperscript{15}

Underlying socialisation are different micro-processes, however. These processes are not mutually exclusive, but three ideal types can be distinguished. The main difference between the three processes is the degree to which the actor has internalised the environment’s norms. The ideal type associated with the least internalisation is called Mimicking. Johnston defines it as ‘a microprocess whereby a novice initially copies the behavioural norms of the group in order to navigate through an uncertain environment’.\textsuperscript{16} In the case of Mimicking, states behave according to collective norms out of a mere struggle for survival. As they enter a new environment, they have to adapt to the way the other members behave, without fully understanding why. This micro-process may have explained China initial adaptations to the WTO’s norms. However, it is not likely the decisive factor explaining the socialisation of China for several reasons. First, as the next sub-chapter will explain, Chinese elites are aware of the functioning and reasoning behind the WTO’s norms. Secondly, Chinese elites have become adept at explaining their behaviour in line with these norms. Finally, China’s reforms are largely internally motivated and have been going on for decades. Although Mimicking may factor into China’s reforms, their internalisation of the WTO’s norms goes beyond its explanatory power. Furthermore, as Mimicking is mainly the result of the actor copying others’ behaviour, it is practically impossible to influence this process to a great degree and therefore not a likely motivation behind a socialisation strategy.

A second process, which involves a higher degree of internalisation is called Social Influence. It is defined as ‘a microprocess whereby a novice’s behavior is judged by the ingroup and rewarded with backpatting or status markers or punished by opprobrium and status devaluation.’\textsuperscript{17} Social Influence can be compared to group pressure. After an actor has joined a social institution, and long after it has been a novice, its actions will continually be judged by other members. Because actors will try to increase social rewards, and minimise the amount of social punishment, thereby gaining social status, they will behave according to

\begin{itemize}
\item Jane Ford, \textit{A social theory of the WTO: trading cultures} (Basingstoke: Palgrave Macmillan, 2003) 36
\item Wendt, \textit{Social theory of international politics} 293
\item Johnston, \textit{Social states}, 23
\item Johnston, \textit{Social states}, 24
\end{itemize}
the group’s norms. Indicators that demonstrate the process of Social Influence are the following motivations behind pro-normative behaviour: cognitive discomfort associated with perceived divergence from group norms, a sense of comfort interacting with others with whom they are perceived to share traits, discomfort in being perceived as inconsistent or hypocritical and status. A strive for status, may in itself be indicated by multiple motivations: status may lead to power, even if not direct material power (for example, a scholarly title or military decorations may not necessarily lead to material gains, but the level of authority associated with it may); maximising reputational rewards (for example, a good image may lead to an increased willingness of others to cooperate); a deep sense of one’s own dignity (a positive sensation associated with prestige in itself). As China is actively struggling for status, it is very likely this micro-process offers a reasonable explanation for China’s pro-normative behaviour. This may explain why the EU took a positive stance on China’s WTO membership in its WTO negotiations, focusing on cooperation and flexibility, rather than confrontation, as the US preferred, which placed it in the position of ‘a moderator and a bridge builder’. The effects of Social Influence followed rather automatically, as the EU merely had only to point to common behaviour of the WTO’s large membership when dumping or IPR protection were concerned to motivate China to adapt its behaviour in fear of public shaming.

Although Social Influence leads pro-normative behaviour, based on a thorough understanding of the guiding principles, these norms may still not be fully internalised. Social Influence therefore leads to ‘public conformity without private acceptance.’ By easing China into the WTO, the EU may have changed China’s behaviour through the process of Social Influence. Although this would lead China to adapt its behaviour to conform with the WTO’s, the European Commission’s statement hint at their goal of changing the beliefs of Chinese elites, which would require a higher degree of internalisation. In trying to socialise China beyond the effects of Social Influence, the EU has also tried to motivate China to internalise not only the WTO’s norms in general, but also the EU’s specific interpretation of those norms.

In order to do so, the EU would have to rely on the third micro-process of socialisation: Persuasion. Persuasion is defined by Johnston as ‘a microprocess whereby novices are convinced through a process of cognition that particular norms, values and causal understandings are correct and ought to be operative in their own behavior.’

18 Johnston, Social states, 81-84
19 Eglin, Michaela ‘China’s entry into the WTO with a little help from the EU’ in: International affairs vol. 73 Iss. 3 (1997) 489-508, 495-496
20 Johnston, Social states, 25
21 Johnston, Social states 25-26
the only ideal type through which the socialised country fully internalises the collective norms. Possible indications of Persuasion can again be seen in the actor's motivations to adapt its behaviour. Primary indications of effective Persuasion are: adaptation to a novel environment, a highly authoritative persuader, few prior ingrained attitudes against collective norms, repeated exposure to the norms of the persuader and willingness to comply, because of a low perceived threat associated with compliance, or the technical nature of the topic concerned\textsuperscript{22}. As will be shown in the next sub-chapters and in the empirical studies, the likelihood of effective Persuasion in the context of this thesis was lower than that of Social Influence, although it was not altogether impossible.

\textsuperscript{22} Johnston, \textit{Social states}, 159-160
1.2. The characteristics of a social institution: the social dynamics behind the WTO, China and the EU

As can be concluded from the previous sub-chapter, once we assume that beyond the simple interests of power, security and wealth lay social interests, such as status, our definition of an institution changes. An institution as understood in the context of socialisation is more than just its organisational structure, but includes, for example, its profile, identity and the relations between its members, as well as the relations between the structure and the members. The characteristics of a social institution lead to different levels of effectiveness of the micro-processes of Socialisation. Building on the typology of domestic institutions developed by Ronald Rogowski, Johnston defines institutions as social environments based on five characteristics:

1. *membership: e.g. small and exclusive or large and inclusive*
2. *franchise: e.g. where the authoritativeness of members is equally allocated, or unevenly (though legitimately) allocated*
3. *decision rules: e.g. unanimity, consensus, majority, supermajority*
4. *mandate: e.g. to provide information, to deliberate and resolve, to negotiate and legislate*
5. *autonomy of agents from principals: low through high*²³

Two ideal types of social institutes can be associated with the two micro-processes which are the focus of this thesis. In the case of the ideal type associated with Social Influence, membership is large. This is because Social Influence is like group pressure. As the number of members that praise the actor for behaving according to collective norms or that reprimand the actor for breaching these norms increases, so does the perceived gain from pro-normative behaviour and the perceived loss from non-conforming behaviour.²⁴ In this ideal type, franchise is equally allocated. This means there are no authoritative sources of information, which decreases the effectiveness of Persuasion. If all members are equally well-informed, there is no reason to prefer one member’s point of view over another’s. The effectiveness of Social Influence is further maximised when decision rules are majoritan. This means the actor’s behaviour is on record, which means they can be called out on inconsistent behaviour. As has been mentioned in the previous sub-chapter, striving for a consistent appearance is one of the indicative motivations to behave according to collective norms. This ideal type’s mandate is to negotiate and legislate, so the stakes are high. This increases its profile and thereby again the effectiveness of back-patting and opprobrium. Likewise, autonomy of the

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²³Ronald Rogowski, 'Institutions as constraints on strategic choice’ in David A. Lake and Robert Powell (Eds.) Strategic choice in International Relations (Princeton, Princeton University Press: 1999), Johnston, Social states 31

²⁴ Johnston, Social states, 88-94
The ideal type associated with Persuasion is quite different. In this ideal type, membership is small. This increases the effect of social liking and maximises the chance that the actor associates with the group’s identity. The institution’s franchise recognises the authoritativeness of certain members, which increases their ability to persuade. Its decision rules are based on consensus, which requires deliberation and therefore active cognition. Likewise, the institution’s mandate is deliberative, which not only serves the same purpose as its decision rules, but also lowers the perceived threat to non-conform behaviour. Finally, the autonomy of the institution’s agents is high, which indicates the issue the institution is concerned with is either very narrow, or technical, or the principals simply do not care enough about it.

The WTO as a social institution

At first glance, the WTO seems to mostly fit the ideal type where Social Influence is most effective. Its membership is large. With 153 members, it represents more than 97 percent of world trade. Membership is not open for everyone, however. One of its 30 ‘observer governments’ that wishes to become member is Russia, the world’s seventh largest economy. Furthermore, as with an exclusive club, WTO members can form *sui generis* rules for admission when deciding to admit a new member. According to Johnston, Social Influence is likely to be at work if membership is not just large, but the institution is also high-profile, and ‘a legitimate institution where the overwhelming number of participants are supportive of the process’. The WTO members consider the organisation to be legitimate and are generally supportive of its goals. WTO members seem to assume their interests are interlinked. As Jane Ford puts it: ‘in this, it has a culture of cooperation based on collective identity as a reciprocal trader... Trading interest are defined in terms of the collective trading interest, given that states are increasingly dependent on international trade.’

Authoritativeness of its members is also equally allocated. Since the General Agreement on Tariffs and Trade (GATT) has expanded into the WTO, it’s goals have become more tuned

27 Pearson, ‘The major multilateral economic institutions engage China’, 219
28 Johnston, *Social states*, 78
29 Pearson, ‘The major multilateral economic institutions engage China’, 55
to the desires of both developed and developing countries. The WTO is an indication of the world moving away from regionalism and protectionism. It is a cooperative trading regime, with an equal contribution from each member. Although the current round of negotiations has stalled, this is due to developed countries’ unwillingness to accept the voice of developing countries, rather than the developing countries inability to let themselves be heard.30

When the WTO’s decision rules are considered, Johnston’s ideal type for Social Influence at first does not appear to apply. He assumes that a system in which majority voting is the rule maximizes the effects of Social Influence, because members’ voting behaviour would have to be on record, which makes inconsistent behaviour more apparent.31 This means the crucial point is transparency, as a precondition for a social feedback on behaviour. Although the WTO's trade rounds are ruled by consensus, its members’ behaviour is on record. The WTO has increased the transparency of its members’ actions not through the bargaining for its own foundations, but through bargaining in the resulting trade disputes. In trade agreements, it is inevitable for states to leave some variance in the limits of acceptable behaviour. The WTO’s Dispute Settlement Body, provides a good example of this room for manoeuvre. It offers a combination of consultation phases, encouraging the parties to settle their disputes before a panel, which can formulated a binding decision, is formed. Although the decisions strictly taken do not form a legal precedent, the consultation phase offers a forum for deliberation on the organisation’s norms. Both the statements made during the consultation phase and the final panel decision, which both express the way the organisation’s members view its principles, are on record.32 Thereby, the requirement for Social Influence that inconsistency in an actor’s statements and actions are visible for all is fulfilled.

This also tells us something about the organisation’s mandate. The WTO appears to have some legislative power, through the panel’s decisions. The panel, however, has no power to stop a certain action from taking place. It can only decide that the offending member will have to pay damages to the victim. These damages may not be punitive and therefore only annul the effect of the breach of contract.33 Logically, it flows from this that the autonomy of agents is, indeed, small. It is not WTO officials that make the rules, it is the participants in international trade, themselves.34

30 A good insight in developing countries use of the WTO as a structure to strengthen legalistic trade rule, as opposed to the United States’ protectionism is offered by Jane Ford, A social theory of the WTO: trading cultures (Basingstoke: Palgrave Macmillan, 2003)
31 Johnston, Social states, 84-85
34 Wolfe, ‘See You in Geneva’ 340
The socialisation of China: a struggle for status

The indications of China’s role within this institution also seem to point to Social Influence as the most effective micro-process. Nonetheless, some aspects of China’s role do fit the indications of Persuasion. Initially, China was indeed in a novel environment. It may also have regarded the EU as an authoritative member, as overall the EU has consistently behaved to conform the WTO’s norms and can be considered to be cognitively well developed when deliberating them. As will be more thoroughly examined in the case studies and the paragraphs on the EU’s role, China was also repeatedly exposed to the EU’s point of view. The main issue with Persuasion lays in China’s previously ingrained counter-normative beliefs and the perceived threat the WTO may pose to them. To argue that Persuasion is at work would mean that China feels a ‘sense of loyalty and obligation’ towards other members of the WTO. Although Chinese elites have shown an increasing willingness to cooperate with international society, nationalism and freedom from foreign interference are still very high on the agenda of China’s political elites. Even though China has steadily incorporated many aspects of free trade and market economy, it adheres to its unique interpretation of these concepts. The resulting mix of market economy and Communist Party ideology, known as ‘Socialist Market Economy’ makes China appear like any other WTO member, while at its foundations, it remains distinctively different.

It also cannot be argued that China is merely Mimicking: behaving according to the WTO’s norms without comprehending them. This may have been the case before the mid 90’s. However, since then, China has shifted from being a realpolitik hardliner to being a multilateral co-operator. Chinese elites have proven to be very sensitive to the WTO’s norms. Numerous policies adopted in China, and the discourse surrounding them, suggest Chinese elites are not only aware of the WTO’s norms, but that its ideas carry much weight in Chinese policy debates. The influence of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), that is mostly responsible for China’s dealings with the WTO, has gained significant influence in the last few decades and young civil servants are actively propagating the WTO’s ideals. These shifts within China’s bureaucracy indicate that China is not merely adapting in order to survive, but that it is willing to adapt. The many policies that have been

36 For more information on China’s Socialist Market Economy and its implications, see Chapter 2
37 Renamed the Ministry of Commerce (MOFCOM) in 2003
adopted in order to conform with the WTO’s norms fit one of Social Influence’s indicators: a wish to be regarded as being consistent.

A second indicator of Social Influence that seems to fit is China’s discomfort from being different from the group. During WTO negotiations, China’s elites considered it humiliating that their huge trading nation was not yet a member of the global trade organisation.\footnote{Pearson, ‘The major multilateral economic institutions engage China’ 226} Becoming a ‘member of the club’ had become a priority to these leaders, whose legitimacy is depending on it in the sense that China’s quest for great power recognition abroad is an important part of the fundamentals of the Chinese Communist Party’s (CCP) mandate to rule.\footnote{Deng, \textit{China’s struggle for status}, 66}

This also points to another indicator of Social Influence: status, which is also apparent in the case of China. Status is important to the post-Maoist Chinese elite. The Chinese are very sensitive to the idea of \textit{Guoji Diwei} (international status), leading some to treat it as if it was the most desirable value. Judging by the use of this term in Chinese academic and political discourse, China might be considered the most status-conscious country in the world.\footnote{Yong Deng, \textit{China’s struggle for status: the realignment of International Relations} (Cambridge: Cambridge University Press, 2008), 8} Additionally, in both the Chinese press and Chinese academic articles, the frequency of the term “responsible major power” has gradually increased since the mid 90’s.\footnote{Johnston, \textit{Social states}, 147} Even from a revisionist point of view, China’s status as a multilateralist has been used in CCP propaganda as an argument against US unilateralism.\footnote{Avery Goldstein, ‘The Diplomatic Face of China’s Grand Strategy: A Rising Power’s Emerging Choice’ in \textit{The China quarterly} Vol. 168 (2001) 835-865, 846-847} Moreover, China’s participation in international institutions has been instrumental in maintaining the balance between its great power rise, and reassuring other nations there is no such thing as a ‘China threat’.\footnote{Deng, \textit{China’s struggle for status}, 39}

One might argue that, once China had been admitted to the WTO, its status had been gained and reasons for compliance were rather diminished. Reputation continues to play a role for WTO members, however. Countries realise they are likely to be stuck with each other and that they will be so for the foreseeable future. Contract breach is not just observed by its victim, but also by membership as a whole.\footnote{Horn i.a., \textit{A survey on the literature on the WTO DSM}, 6} Negotiations between WTO members are not limited to single cases, either. Trade negotiations span a wide range of subjects and are more or less continuous. The reputational damage one might sustain from defection is not limited
to trade negotiations alone, but is also likely to be invoked in other negotiations. As will be shown in the case studies, even after membership has been attained, further status markers, such as the coveted ‘Market Economy Status’ continue to play a role.

**Europe as a social teacher: getting as much out of this relationship as possible**

Because of the effectiveness of Social Influence in the context of the WTO and China’s susceptibility to this form of socialisation it is logical that supporting China’s WTO membership and letting the effects of Social Influence take place was the first step in the EU’s socialisation strategy. In order to do so, it had to recognise China as a serious applicant and gradually ease them into this context.

In China’s WTO negotiations, the EU’s positive stance on China’s WTO membership, its focus on cooperation and flexibility, rather than confrontation, such as the US preferred, placed it in the position of ‘a moderator and a bridge builder’. It has been sensitive to the enormous task that lay ahead of China when it applied for membership. Not only was it aware of the scale of the task of transforming China’s mainly centrally planned economy to a market economy, it was also sensitive to the shifts within the Chinese bureaucracy, as exemplified by the growing influence of the MOFTEC in China’s policy formulation. Although the EU was overall in favour of China’s WTO membership, it has always made clear which changes it was expecting from China. In the Sino-EU agreement on China’s WTO accession, the EU had already named a number of issues that would dominate the debate between the two powers long after China’s WTO accession: import- and export monopolies, non-transparent government procurement, export subsidies and unfair advantages to domestic producers.

Integrating China into this social environment was likely to be sufficiently effective to socialise China to adapt to the WTO’s norms in general. To socialise it to adapt to the EU’s specific interpretation of these norms would require further reforms from China, including reshaping its international relations and internal reform. Therefore, the EU’s approach to socialising China had to be based on a combination of Social Influence and Persuasion. The case for the EU as a persuader is a bit more complex than the case for Social Influence. Social Influence leads to an actor behaving according to collective norms because the other members of the group offer a social reward, not necessarily because it believes this is in fact

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47 Eglin, Michaela ‘China’s entry into the WTO with a little help from the EU’ in: *International affairs* vol. 73 Iss. 3 (1997) 489-508, 495-496


49 Casarini, remaking the global order 74-76
the best way to behave. While Social Influence leads to ‘public conformity without private acceptance’\(^{50}\), Persuasion is aimed at changing the actor’s internal beliefs, as well. A window to changing China’s internal beliefs is offered by the cognitive nature of the WTO. States must be able to explain their behaviour, whether it is compliant or deviant, in terms of the norms of the society. A failure to do so would ‘end the game’ and lead to the collapse of the society as a whole.\(^{51}\) In this sense, the WTO can be understood as a communicative community: the approval of an actor’s behaviour is decided based on its ability to explain those actions in line with the guiding norms of the society. As Jürgen Habermas has put it in the context of communicative action: ‘only those persons count as responsible who, as members of a communication-community, can orient their actions to intersubjectively recognized validity claims.'\(^{52}\)

By explaining its own behaviour in line with WTO norms and requiring China to do the same, the EU opened up the way for Persuasion; it attempts to use its arguments to change China’s internal beliefs. One indicator of Persuasion, a highly authoritative persuader, does fit the EU: it has well developed cognitive processing abilities; the ability to create an appealing case and the ability to present the strength of its existing attitudes and their consistency with the beliefs it has advocated in the past.\(^{53}\) The same reasons that make Social Influence so effective in the context of the WTO make Persuasion less effective, however. Persuasion is most effective in small, intimate in-groups, based on norms against which the actor has few ingrained beliefs and the threat to non-conform behaviour is perceived as low.\(^{54}\) The opposite is true of the WTO. It’s membership is large and although all members are part of the group, there are multiple cultural and ideological differences making it far from ‘intimate’. China’s foundations as a Communist country and its belief in Socialist Market Economy also ensure that it does not fit in easily, while the semi-legislative nature of the WTO allows it to formally condemn non-conforming behaviour.

The EU has tried to overcome this obstacle by playing in to the third factor deciding the effectiveness of Persuasion: an affect relationship between the persuading and the persuaded: the idea that they may learn from each other, because they are related, or equals.\(^{55}\) The 1985 EEC-China Trade and Economic Cooperation Agreement already consistently speaks of

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50 Johnston, *Social states*, 25


52 Jürgen Habermas, *The theory of communicative action* (transl. by Thomas MacCarthy, Boston: Beacon, 1984), 14

53 Johnston, *Social states*, 156-157

54 Johnston, *Social states*, 160-182

55 Johnston, *Social states*, 156
cooperation based on the ‘mutual interest of both parties.’\textsuperscript{56} In its following communications, especially the 2002-2006 Country Strategy Paper (CSP), the communication entitled \textit{A maturing partnership - shared interests and challenges in EU-China relations}, the 2007-2013 CSP and the communication entitled \textit{EU - China: Closer partners, growing responsibilities}, the EU continues to emphasize their mutually beneficial partnership, cooperation and its support of China’s reform.\textsuperscript{57} China’s 2003 EU policy paper seems to reflect the EU’s approach. It speaks of ‘no fundamental conflict of interest between China and the EU’, and states that ‘the common ground between China and the EU far outweighs their disagreements.’\textsuperscript{58}

The EU’s policy also reflects the final indicator of Persuasion: repeated exposure of China to its arguments. As will be evident from the following case studies, the EU has shared its views on the concepts of IPR and market economy with China and pointed to China’s perceived shortcomings time and again.

\textit{Chapter conclusion}

The Neorealist idea that all states essentially have three interests: power, security and wealth is not necessarily incorrect. These are, however, mostly means to an end, instead of an end in themselves. The way states will apply these means is very dependent on the state’s beliefs about its own identity. Within the framework of the WTO, actors can adopt new interests and values and reshape their identity; the process of socialisation. Socialisation consists of three micro-processes: Mimicking, Social Influence and Persuasion. The difference between the three is best explained by their different degrees of internalisation of the collective norms: Mimicking states are only behaving as the others out of a sense of survival in a novel environment, Social Influence is a process through which states adopt pro-normative behaviour out of a sort of group pressure: public adaptation without private acceptance. Only at the level of Persuasion do states fully internalise collective norms. Within the WTO framework, Social Influence is likely to be the most effective, because of its large membership, near consensus on its goals and high visibility and transparency.

China is no longer a complete novice in the international political economy and the fact that the WTO’s norms have been shown to carry weight in Chinese political debate, is only proof that it is not merely adapting out of a struggle for survival. Rather, China’s motivation

\textsuperscript{56} Council Regulation (EEC) No 2616/85


\textsuperscript{58} Ministry of Foreign Affairs of the People’s Republic of China \textit{China’s EU policy paper} (2003)
can be classified as a struggle for status. The international status that China seeks makes it very susceptible to exactly the type of socialisation this framework is most likely to be effective at: Social Influence. By choosing a cooperative and flexible stance in China’s WTO negotiations, the EU has eased the way for China to become part of this framework and for the forces of Social Influence to do their work. The EU would like to do more, however. It is aiming to use Persuasion to not only to influence China’s behaviour, but also to support internal reforms. To achieve this, the EU has to play the role of a partner, rather than a competitor. Official communications between China and the EU suggest that this approach is working, with both sides often emphasizing their mutually beneficial relationship. Of course, stressing cooperation and partnership is common in diplomacy. Therefore, the degree to which the EU has successfully influenced China’s socialisation into the international political economy, and whether this is more likely to be through Social Influence or through Persuasion, may only be inferred from in-depth case-studies. This is the purpose of the next two chapters.
Chapter 2 Market Economy Status

This first case study will analyse the way in which the EU is using the concept of Market Economy Status to influence China to reduce state involvement in its economy. If the state is indeed distorting the Chinese economy, this would have negative consequences for both China and the world economy. By removing export disincentives from otherwise non-profitable sectors and by keeping alive enterprises that would have gone bankrupt under market economy conditions, China may be flooding global trade markets with goods that no producer under market economy conditions could compete with. This would legitimise anti-dumping measures against Chinese products. By allowing its members to discriminate between market economies and non-market economies, the WTO allowed the EU to use Social Influence on China: By convincing China that it was ‘doing something wrong’ in the eyes of the EU and other WTO members, it was able to motivate China to decrease state involvement in its economy. This fits a number of indicators of Social Influence: perceived discomfort from divergence from group norms and the wish to appear consistent. Above all, it fits the maximisation of status. Only if China would prove to the EU that it is indeed a market economy would the EU offer it Market Economy Status (MES). Not only would the EU thereby reduce its ability to impose anti-dumping duties on Chinese imports, more importantly, it would signify that the EU regards China as an equal economic partner. Gradually upgrading China’s status within the WTO framework, the EU has been able to influence China more than before it joined the trade organisation.

2.1 China’s state involvement in the economy and the EU’s response in 1995

This first sub-chapter will analyse to what extent China had different norms to the EU around 1995, six years before it joined the WTO. In order to do so, it will first take a look to the extent the Chinese government was indeed interfering in its economy and then describe the EU’s response to establish the extent to which this was indeed an issue for the EU. By establishing to what extent their norms and behaviour were different around 1995, it can be measured how much the EU has motivated China to change by 2010 in the next sub-chapter.

During the three decades of Maoist rule, China’s economy had been completely centrally planned. Private entrepreneurship was only marginal and state-owned enterprises (SOEs) accounted for three-quarters of Chinese industrial production in 1978.¹ Twelve national

1 Mathieu Rémond, ‘The EU’s refusal to grant China “Market Economy Status” (MES)’ in Asia Europe Journal Vol. 5 Iss. (2007) 345-356, 348-349
foreign trade corporations (FTCs) monopolised all trade.\textsuperscript{2} In recent decades, the post-Maoist elite has sought to inverse some of Mao’s policies, in order to revitalise China’s crippled economy. To do so, they have sought to incorporate elements from market economy while maintaining the rigid control structure of the Communist Party. It refers to this seemingly odd mix of capitalism and communism as ‘Socialist Market Economy’.

China’s new elite have also replaced the previous regime’s strategy of import-substitution with one of export led growth.\textsuperscript{3} This had led the regime to take export promotion measures, which have likely disturbed the market economy. These include enhanced export credits, preferential interest rates on domestic loans to export-production firms, subsidized domestic transport, storage and insurance of export goods and the development of manufacturing facilities exclusively for export production.\textsuperscript{4} Certain exported products also benefited from tax exceptions or had lower tax rates applied. For example, any enterprise with foreign investments would enjoy an enterprise income tax exemption or reduction when the annual value of its export products accounted for 70 percent of the total value of its production.\textsuperscript{5} The government also largely remained in control of prices. In 1992 it set prices for 141 types of commodities and services.\textsuperscript{6}

Well into the 90’s, SOEs still received large amounts of subsidies (See Table 1.). These direct subsidies were only a small part of state support, though.\textsuperscript{7} Although licensing had been relaxed, the licensing system that limited exit and entry in certain sectors was not entirely abolished. The Foreign Trade Law of 1994 kept control of all rights to exports and imports in the hands of the government.\textsuperscript{8} The state still owned key businesses, or carried out shareholder functions in large companies. The majority of national product was still accounted for by SOE’s.\textsuperscript{9} The four main banks automatically rolled over unpaid credits to SOE’s and interest rates were not liberalised enough to differentiate terms among enterprises.

\textsuperscript{3} Hoogmartens, EC trade law following China’s accession to the WTO, 86-87
\textsuperscript{4} Feng, The politics of China’s accession to the WTO, 49
\textsuperscript{5} European Commission, Commission staff working document on progress by the People’s Republic of China towards graduation to Market Economy Status in trade defence investigations (2008), 8
\textsuperscript{7} Harrold, ‘China: Foreign trade reform’, 136-140
\textsuperscript{8} Foreign Trade Law of The PRC Adopted: 7th session, SC, 8th NPC, May 12, 1994, amended: 8th session, SC, 10th NPC, April 6, 2004
\textsuperscript{9} Broadman, ‘A litmus test for China’s accession to the WTO’, 47-59
according to credit risk.\textsuperscript{10} Certain key corporations received preferential loans from state projects, state banks, and privileged access to international stock markets.\textsuperscript{11}

\textbf{Table 1: Chinese subsidies for SOEs}

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\textbf{The EU’s response}

Whether China was following an aggressive mercantilist trade strategy, combining export promotion with domestic protection, or not is debated.\textsuperscript{12} Regardless, fostering internationally competitive industries has been a key to China’s development.\textsuperscript{13} In 1995, the EU’s imports from China were already twice as large as the Community’s exports to the country. Its trade deficit with China was well over 11 billion euros.\textsuperscript{14} Part of this may indeed be explained by the country’s development, but state involvement in the economy also plays a large role. The World Bank has noted that China’s policies of export promotion and producer protection were offsetting export disincentives and disturbing global trade.\textsuperscript{15} It may thereby have disturbed not only its domestic economy, but the world economy as a whole.\textsuperscript{16} As a result of the aid given to Chinese exporters, combined with import protection, these producers had become able to compete unfairly on the global market by using this domestic advantage to sell at below-market prices in an export market. This practice is known as ‘dumping’.\textsuperscript{17} Dumping is generally considered unfair and harmful to the economy of the

\textsuperscript{10} Broadman, ‘A litmus test for China’s accession to the WTO’, 59-63
\textsuperscript{11} Peter Nolan, ‘China and the WTO: the challenge for China’s large-scale industry’ in Heike Holberg and Robert Ash (Eds.), \textit{China’s accession to the World Trade Organization : national and international perspectives} (London: RoutledgeCurzon, 2002) 45
\textsuperscript{12} Nicolas R. Lardy, \textit{China in the world economy} (Washington: Institute for International Economics, 1994) 35
\textsuperscript{16} Jan Hoogmartens, \textit{EC trade law following China’s accession to the WTO} (The Hague: Kluwer Law International, 2004), 87
\textsuperscript{17} Francis Snyder, \textit{The EU, the WTO and China: legal pluralism and international trade regulation} (Oxford: Hart, 2010) 100-101
importing country." When a country levies additional import duties on products it considers to be dumped, this is known as anti-dumping.

The EU has had full power in anti-dumping measures since the establishment of the common commercial policy under article 113 EEC in 1968. In this year, the first incarnation of the EU’s ‘basic Regulation’ came into force. Since then, the basic Regulation has been adapted many times, amongst other reasons to reflect changes in the shift from GATT to the WTO. In deciding on anti-dumping regulations, the Council and the Commission have to determine a number of criteria. First, whether or not dumping took place. This is done by investigating normal prices in a country's domestic market and then comparing these with the export price of the product. Then it has to be considered whether or not the home industry has sustained injury by the dumping and the ‘margin of injury’, the degree to which the home industry has sustained damage has to be established. Finally, the Council and Commission have to decide whether taking anti-dumping measures would be in Community interest.

Even before China had joined the WTO, the trade organisation offered an opportunity for its members to take measures against countries that do not have a market economy. The EU’s basic regulation is largely based on article VI of the original General Agreement on Tariff and Trade (GATT), which is now a part of the WTO. Although it does not distinguish between WTO members and non-WTO members, it did allow the EU to distinguish between market economies, like itself, and non-market economies, like China. A note to article VI of the GATT reads:

\[
\text{It is recognized that, in the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases importing contracting parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.}\]

The basic Regulation’s Article 3(6) is almost identical to this note. In practice, this means that the European Commission will establish the normal price of a good based on the

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19 EEC Council Regulation 459/68
20 Edwin Vermulst, *EU anti-dumping law and practice*
21 Note 2, paragraph 1 *ad Article VI*, GATT 1947
22 EEC Council Regulation 459/68 Article 3(6): *In the case of imports from countries where trade is on a basis of near or total monopoly and where domestic prices are fixed by the state, account may be taken of the fact that an exact comparison between the export price of a product to the Community and the domestic prices in that country may not always be appropriate, since difficulties may arise in determining the comparability of the price.*
‘surrogate country’ approach. The Commission chooses a third country, which prices for the investigated product will be considered to be representative of the price of this product in China, had the state not been involved. This influences not only the establishment of dumping in the first place, but also the margins of injury sustained and therefore the size of the measures to be taken. In the 1990’s the EU increasingly used this tool to discourage imports from China. (See Table 2)

Table 2: EU Anti-Dumping measures against China

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The EU was not alone in taking anti-dumping measures against China. In 1995 anti-dumping measures against China accounted for 22 percent of the world total (See table 3). By comparison, China accounted for less than 3 percent of world exports in that year.23

Table 3: Anti-dumping measures taken by WTO members: share of China.

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<td>26</td>
<td>16</td>
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<td><strong>Total</strong></td>
<td><strong>119</strong></td>
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<td><strong>181</strong></td>
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European anti-dumping measures in the 90’s reflected China’s status as a non-market economy. For example, in a complaint from the European Bicycles Manufacturers

Association, it was stated that between 1989 and September of 1991, imports of bicycles from China increased by more than 200 percent. 24 During the same period, EU consumption of bicycles rose by only 32.2 percent. The share of EU industry declined from 33 to 27 percent. Community producers were simply unable to compete with Chinese prices, which were 43.8 percent lower.25

The Commission questioned Chinese companies in a sample of both SOEs and Joint Ventures (JVs) that represented about 85 percent of total exports from China. Taiwan was selected as a surrogate country, partly because Taiwanese exporters were already involved and producers from other comparable countries were unwilling to cooperate.26 Some JVs demanded to be exempted from the surrogate country approach and instead requested an individual dumping duty based on their own domestic prices, known as individual treatment. The commission judged that in a ‘centrally planned economy’ this was only appropriate in exceptional cases.27 Based on the information it had gathered, the Commission adopted a provisional anti-dumping measure of 34.4 percent.

The Council quickly adopted a definitive measure against Chinese imported bicycles.28 It fully supported the Commissions choice not to grant individual treatment and to choose a surrogate country to establish the normal value. It concluded that:

‘it is in practice extremely difficult to establish in the case of a country such as the People’s Republic of China whether a company really enjoys, both in law and in fact, independence from the State[…] The economy of the People’s Republic of China is in transition from a fully State controlled economy to a partially market orientated economy. State control subsists in very many aspects of economic life and the law and institutions necessary for the functioning of a market economy are not sufficiently developed and familiar to the economic operators and officials. It is not therefore possible to be certain that contracts and apparent legal guarantees will be effective and the actions of exporters free from governmental interference. Indeed it is clear that the influence of the State on all economic activity in China is still dominant. The State can at any time change the rules applicable to the employment and payment of workers, it controls the supply of energy and can impose limitations on the convertibility and transfer of currency.’29

The Council also maintained that is hard to judge, even in the case of a JV, to what degree a company can in fact be independent from the state. Even a minor share held by the

24 Bicycles from China [1993] (Provisional) OJ L85/12
25 Snyder, The EU, the WTO and China, 96-99
26 Snyder, The EU, the WTO and China, 100-101
27 Snyder, The EU, the WTO and China, 102
28 Council Regulation (EEC) 2474/93
29 Council Regulation 2474/93 paragraph 19
state can lead to great interference in normal market functioning. It also mentioned that during the hearings, a Chinese official, who claimed to represent all bicycle manufacturers with a shareholding by the state, had declared that the Chinese state coordinated the activities of all bicycle manufacturers in China. In defending the measure in a case before the European Court of Justice\(^\text{30}\), it also maintained that it was further troubled in judging a company’s level of independence, because some Chinese laws are not published. Foreigners do not have access to these laws and certain practices take precedence over the law.\(^\text{31}\)

Although the Commission can legitimately select a surrogate country in establishing the normal price of a product its choice of surrogate country can be disputed. In a 1991 case concerning anti-dumping duties on paintbrushes imported from China\(^\text{32}\), the European Court of Justice decided the Commission had inappropriately selected Sri Lanka, because it could not prove production methods were comparable, because there was much less competition with regard to paint brushes in Sri Lanka and because Sri Lanka had to import most raw materials for the production of paint brushes, while they were domestically available in China.

*Photo albums*\(^\text{33}\), a case running at approximately the same time, shares many of the themes and issues covered in the *Bicycle* case. Together, they are illustrative of the European Commission’s opinion of the China’s ‘Socialist Market Economy’. In both cases, it reasoned it would not be appropriate to give Chinese companies individual treatment, citing, among other reasons, that it was difficult to establish whether a company was really independent from the state and that individual treatment could lead to circumvention of the measure. In *Photo albums*, it added that the existence of a joint venture by itself was not a sufficient reason for granting individual treatment.\(^\text{34}\)

**Conclusion**

In 1995, the differences between China and the EU where market economy is concerned were indeed large. Although China’s Socialist Market Economy was a market economy in name, in practice in was quite different from it. The Chinese government had taken export promotion measures and given tax exemptions to exporting enterprises. It maintained a tough grip on

\(^{30}\) Case T-170/94 *Shanghai Bicycle corporation Vs Council of the European Union*

\(^{31}\) A point of view it has expressed more often, for example in Case T-155/94, *Climax Paper Converters Ltd v Council*

\(^{32}\) Case C-16/90 *Detlef Nölle v. Hauptzollamt Bremen-Freihafen* (1991)

\(^{33}\) Council Regulation (EC) No 3664/93, imposing a definitive anti-dumping duty on imports into the Community of photo albums in bookbound form originating in the People’s Republic of China and collecting definitively the provisional anti-dumping duty

\(^{34}\) 34 Francis Snyder, *The EU, the WTO and China: legal pluralism and international trade regulation* (Oxford: Hart, 2010) 272-273
which enterprises were allowed to import and export. Furthermore, it controlled prices for a large amount of commodities and services. State Owned Enterprises accounted for a large share of the economy. They received large subsidies and had easier access to commercial finance. Party Members took up key positions within enterprises and even in the case of seemingly independent companies, it was virtually impossible to ascertain whether the government did or did not play a ‘guiding’ role within the company.

Based on European law and practice, which makes a strict distinction between public and private, the Commission was not able to accept the China’s Socialist Market Economy as a real market economy. The WTO’s rules for anti-dumping measures against non-market economies allowed the EU to use the third country approach to calculate dumping measures against Chinese imports. Because Chinese prices could not be considered representative of actual costs, a comparable product from a third country would be chosen. Not only did this serve as a measure to protect the EU domestic producers, it also sent a clear signal to China: that it was different from other large trading nations. Joining the WTO would do little to stop these anti-dumping measures. It would only make China a member of the organisation that allowed its members to discriminate against it by using the third country approach in the first place. It has been argued that in some circles in China it was believed that by simply producing and exporting other products than those to which the, usually narrowly formulated, anti-dumping measures applied, it might not be forced to drastically reform its economy. Material gains from joining the WTO would therefore, at least initially, be very limited. However, status rewards would be instant. The next sub-chapter will try to explain how the EU has used this to its advantage.

2.2 China’s progress towards being granted MES by the EU by 2010

Despite the differences between WTO members and China, if China would want to be taken seriously as a large trading nation it would have to join the WTO. However, in order to achieve that, it would have to be a market economy, at least in appearance. Although joining the WTO would definitely not end anti-dumping measures against China, or the permission of the third country approach, it opened the possibility for China to upgrade its status. Discrimination against China as a non-market economy was codified in its WTO accession protocol. However, the protocol also offered its members the possibility to voluntarily upgrade China’s status. This sub-chapter will analyse the extent to which the EU was able to motivate China to decrease its state involvement in its economy through first upgrading it to the status of an economy in transition, thereby opening the door to the upgrade to Market Economy Status (MES).

In 2001, discrimination against China as a non-market economy became part of China’s WTO accession protocol. Article 15 (a-ii) explicitly permits using the prices of a third country as long as China remains a non-market economy. It reads:

*The importing WTO Member may use a methodology that is not based on a strict comparison with domestic prices or costs in China if the producers under investigation cannot clearly show that market economy conditions prevail in the industry producing the like product with regard to manufacture, production and sale of that product.*

The protocol also opened a narrow window for Chinese producers to avoid this form of anti-dumping:

*If the producers under investigation can clearly show that market economy conditions prevail in the industry producing the like product with regard to the manufacture, production and sale of that product, the importing WTO Member shall use Chinese prices or costs for the industry under investigation in determining price comparability.*

In 1998, the European Council for the first time acknowledged that ‘the process of reform in Russia and the People’s Republic of China has fundamentally altered their economies and has led to the emergence of firms for which market economy conditions prevail’. In its revision

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1 World Trade Organisation, WT/L/432, Accession of the People’s Republic of China (2001)
2 WTO, Accession of the People’s Republic of China, Article 15(a)(i)
3 Council Regulation (EC) No 905/98
of the Basic Regulation\textsuperscript{4}, it allowed the use of normal value for producers from China or Russia that were able to prove they were operating under market economy conditions. In order to qualify for market economy treatment, a producer would have to show that the company’s decisions regarding prices, costs and inputs are made independently from the State, that it has a clear set of accounting records, that its production costs and financial situation of firms are not subject to significant distortions carried over from the former non-market economy system, that it is subject to effective bankruptcy and property laws and that it converts currency at market rates.

This de facto classification of China as an economy in transition, rather than a non-market economy, as the US still classifies it, was a large step towards acknowledging China as a full ‘member of the club’. Between 1999 and 2004, the Commission has granted MES to a total of 28 out of 111 Chinese companies that have asked for it, which is more than 25 percent.\textsuperscript{5}

\textit{MES as a status marker leads to less state involvement}

The provisions in Article 15 of China’s accession protocol will expire 15 years after its accession. However, once China has established that it is a market economy, according to the criteria of the importing WTO member, the WTO member may voluntarily end its own ability to use this method and formally proclaim China as an economic equal, where market economy is concerned.\textsuperscript{6} This means that if China can convince the EU that, based on the EU’s criteria, it is a market economy, the EU will from then on use Chinese normal prices in all anti-dumping measures. Although the provision expires in 2016, it is logical that China would want to attain market economy status as soon as possible. This would not only put an end to the third country approach, but also offer a great amount of prestige.

As early as September 2003, China applied for countrywide MES, but as of 2011, it has yet to be granted. The EU’s requirements for countrywide MES are based on those applicable to individual Chinese companies under Basic Regulation Article 2(7).\textsuperscript{7} In full, they are:

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\textsuperscript{4} Council Regulation (EC) No 384/96

\textsuperscript{5} Anne MacGregor, and Annamaria Mangiaracina ‘The EU’s refusal to grant China Market Economy Status and recent amendments to European anti-dumping law’ in \textit{International Trade Law} Vol. 10 iss. 5 (2004) 111

\textsuperscript{6} WTO, \textit{Accession of the People’s Republic of China}, Article 15(d)

\textsuperscript{7} European Commission, \textit{The 24th annual report from the commission to the European Parliament on the community’s anti-dumping, anti-subsidy and safeguard activities} (2005)
Criterion 1: Degree of Government influence over the allocation of resources and decisions of enterprises, whether directly or indirectly (e.g. public bodies), for example through the use of state-fixed prices or discrimination in the tax, trade or currency regime.

Criterion 2: Absence of state-induced distortions in the operation of enterprises linked to privatisation (i.e. “carry over” from the old system). Absence of use of nonmarket trading or compensation system (e.g. barter trade).

Criterion 3: Existence and implementation of a transparent and non-discriminatory company law which ensures adequate corporate governance, the application of international accounting standards, protection of shareholders’ rights and public availability of accurate company information.

Criterion 4: Existence and implementation of a coherent, effective and transparent set of laws which ensure the respect of property rights including intellectual property rights and the operation of a functioning bankruptcy regime.

Criterion 5: Existence of a genuine financial sector which operates independently from the state and which in law and practice is subject to sufficient guarantee provisions and adequate supervision.  

The following will be an in-depth analysis on the progress China has made towards these criteria set by the EU.

Criterion 1

In order to meet Criterion 1, the Chinese government would have to demonstrate it completely refrains from price fixing, obligations to produce for export, restrictions imposed on exports of raw materials or subsidies for industrial inputs.

The Chinese government acknowledged that export obligations had been part of its initial ‘opening up’ strategy, but that these obligations have since been abandoned. It had also abandoned local content requirements, restrictions on foreign exchange holdings and other legal requirements that were inconsistent with WTO rules in 2001.  

With the new Enterprise Income Tax Law of 2008, all tax reductions and tax exemptions for exported products had also been abolished. Nonetheless, some export taxes and VAT rebates on exports remain.

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8 Based on: European Commission, Commission staff working document on progress by the People’s Republic of China towards graduation to Market Economy Status in trade defence investigations (2008)

9 European Commission, progress by the People’s Republic of China towards graduation to MES, 7

Officially, they are only readjusted from time to time to reflect the changing international environment, or to save energy, protect the environment, and conserve natural resources.\textsuperscript{11}

Non-tariff border measures, such as import and export licensing, are still used as instruments of China’s trade and industrial policies.\textsuperscript{12} The licensing procedures, however, have been liberalised and sped up. In July 2004, China’s new Foreign Trade Law took effect.\textsuperscript{13} This law introduced a new registration system for operating a foreign trade business in China. Any person (legal or natural, both national and foreign) may engage in the import and export of goods after registration with the Ministry of Commerce (MOFCOM). This registration procedure is mostly for identification purposes and the ministry must complete the registration within five days after receiving the required documents. Increased transparency and ease of licensing procedures is a trend within Chinese legislation. The procedures for granting such licenses were standardised by the Law on Administrative Permissions.\textsuperscript{14} Under this law, unpublished documents can no longer be used as the basis for granting administrative permissions and outcomes of all administrative permissions must be published, except for those involving state or business secrets or individual privacy.\textsuperscript{15} Also, certain administrative decisions on trade-related matters, such as patents and trademarks and determinations in antidumping cases are now subject to judicial review.\textsuperscript{16}

Although China still adopts five-year plans, these are no longer detailed line-by-line plans but rather set broad development objectives. By 2001, the number of commodities for which the government controlled prices had been reduced from 141 to 13, while only only five commodities, namely timber, gold, cigarettes, salt and natural gas, remained under mandatory planning.\textsuperscript{17} However, the State Council still differentiates between product categories and classifies industries into several categories such as “encouraged”, “restricted” or “prohibited”. Projects that do not fall into these three groups are "permitted". These objectives are reflected in the "Catalogues" issued by the NDRC (National Development and Reform Commission) which still monitors the overall price levels.\textsuperscript{18}


\textsuperscript{12} WTO, China 2010 TPR, 24

\textsuperscript{13} Foreign Trade Law of The PRC Adopted: 7th session, St. C, 8th NPC, May 12, 1994, amended: 8th session, SC, 10th NPC, April 6, 2004

\textsuperscript{14} The Administrative Permission Law of the PRC, adopted: 4th Meeting, St. C, 10th NPC, August 27, 2003

\textsuperscript{15} Julia Ya Qin, ‘Trade, investment and beyond: the impact of WTO accession on China’s legal system’ In The China quarterly Vol. 191 (2007) 720-742, 735

\textsuperscript{16} Qin, ‘Trade, investment and beyond’ 736


\textsuperscript{18} European Commission, progress by the People’s Republic of China towards graduation to MES, 9
By ‘guiding’ the economy, the government still plays a key role in the development of certain sectors. SOE’s are benefiting disproportionately from this government stimulus.\(^{19}\) By 2004, China’s SOEs, half of which were believed to be loss-making, still produced almost 30 percent of China’s industrial output and employed about half of the Chinese urban labour force.\(^{20}\)

**Criterion 2**

The second criterion is the only criterion that China completely fulfils, and in fact already fulfilled during the EU’s first assessment in 2004\(^{21}\). By 2004, irregularities in the privatisation of SOEs by themselves were only minor and did not significantly distort the Chinese market. Barter trade was marginal, accounting for no more than 0.13 permille of total trade.\(^{22}\)

**Criterion 3**

In order to meet this criterion the Chinese government must demonstrate, for example, that Chinese companies are subject to international accounting standards and international standards for shareholder protection and transparency.

The Commission acknowledged that for joint-stock limited companies that issue "listed" shares, the highest authority now rests with shareholders and their board of directors is the decision-making body. They are regulated by the Chinese Company Law\(^{23}\), but also by the Securities Law of 2006 and a series of rules including the Code of Corporate Governance for Listed Companies, issued by the China Securities Regulation Commission and the State Economic and Trade Commission in January 2002 and the Guidelines for Internal Control System of Listed Companies Issued by the Shanghai Stock Exchange on 5 June 2006.\(^{24}\) Nearly all State-owned enterprises have undergone transformation into joint-equity companies in compliance with China’s *Company Law*.\(^{25}\) New regulations concerning the management of state assets\(^{26}\) provide that enterprises managing state owned assets enjoy

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19 WTO, *China 2010 TPR*, 24-25
21 Rémond, ‘The EU’s refusal to grant China MES’ 351
22 Rémond, ‘The EU’s refusal to grant China MES’ 352
24 European Commission, *progress by the People’s Republic of China towards graduation to MES*, 13
26 Decree of the State Council of the PRC No. 378, Interim Regulations on Supervision and Management of State-owned Assets of Enterprises, adopted: 8th Executive Meeting, St.C., May 13, 2003
operational autonomy, but some continued interference with managerial decisions has also been reported.\(^{27}\)

In some cases of applications regarding individual market economy treatment by Chinese companies, the Commission had found that companies did not follow basic accounting rules or had no accounts at all. According to the commission, “the direct consequence of the problems is that any anti-dumping investigation involving Chinese companies cannot automatically rely on the truthfulness of these companies’ accounts and on the fact that they would accurately reflect costs and prices.”\(^{28}\) An amendment to China’s Accounting law was introduced in 1999.\(^{29}\) Further improvement was made by the introduction of new Accounting Standards for Business Enterprises (ASBE), by the Chinese Ministry of Finance (MoF). The new standards consist of a new Basic Standard and 38 Specific ASBEs. The ASBE came into force on January 1, 2007. Its standards are in line with international norms and, cover nearly all of the necessary topics as set out in current International Financial Reporting Standards (IFRS).\(^{30}\) To what extent new standard setting can improve the trustworthiness of Chinese companies’ accounts remains to be seen, however. The main problem the Commission was facing in 2004 was not a lack of standard setting. It was the implementation and enforcement of these standards that still showed major deficiencies. It was found that, despite accounting errors being found by companies’ auditors, the companies in error did not face legal consequences.\(^{31}\)

**Criterion 4**

To meet this criterion, China needs an effective legal regime with respect to property rights, bankruptcy, and the protection of intellectual rights.

China's new Bankruptcy Law\(^{32}\) is a positive development. It sets out three procedures for insolvent enterprises: reorganization, reconciliation and liquidation. Additionally, certain supportive measures for companies facing bankruptcy were adopted. Its intention was also for it not to discriminate between SOEs and private companies. Although intrinsically no distinction is made, the Law in its entirety does not apply to the 2000 worst-performing SOEs.\(^{33}\) Additionally, effective implementation of the bankruptcy law is very dependent on

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\(^{27}\) European Commission, *progress by the People’s Republic of China towards graduation to MES* 13


\(^{29}\) Decision on Amending the Accounting Law of the PRC adopted: 5th session, St. C, 8th NPC, December 29, 1993, revised: 12th session, SC, 9th NPC, October 31, 1999)

\(^{30}\) European Commission, *progress by the People’s Republic of China towards graduation to MES*, 14

\(^{31}\) Rémond, ‘The EU’s refusal to grant China MES’ 352

\(^{32}\) Bankruptcy Law of the PRC, adopted: 23rd session, SC, 10th NPC, 27 August 2006

\(^{33}\) European Commission, *progress by the People’s Republic of China towards graduation to MES*, 17
the training of judges. The Commission acknowledges that China has introduced a standard and internationally recognised training system.\textsuperscript{34}

The adoption of the Anti-Monopoly Law\textsuperscript{35}, which should ensure that all companies can develop and compete on a level playing field is another step forward. It will: ‘1. explore and develop the competition policy; 2. organise studies and assess the overall competition situation on the market, publish the relevant assessment reports; 3. develop and publish Anti-trust guidelines; 4. Coordinate administrative works on Anti-trust implementation; and 5. fulfil any other mandate given by the State Council.’\textsuperscript{36} According to the WTO, the various Ministries that enforce the Law have implemented various implementing regulations on different aspects of competition, however, certain aspects of the Law still need to be clarified.\textsuperscript{37}

All Chinese land is legally property of the State. It permits long-term leases, but is entitled to fix their terms, or even revoke them. Before 2004, the State was allowed to allocate land however it saw fit, which disadvantaged the private sector. Since then, the constitution’s Article 11 makes it the government’s duty to protect “the lawful rights and interests of individual and private economies.’ The Property Law of 2007 further indicated that the government will ‘encourage, support and guide the development of the non-public sectors of the economy.’ and that it will ensure ‘equal legal status and right for development of all market players.’\textsuperscript{38}

The Commission pointed out in its 2008 assessment of China’s progress towards obtaining MES that the Chinese government had made efforts to align their IPR laws with international standards and enforce IPR through administrative actions and judicial measures. It added however, that the lack of effective enforcement, low penalties and burdensome requirements have not made deterrence effective enough.\textsuperscript{39} Observance of both property rights and Intellectual Property Rights are amongst the Commission’s major concerns. Chapter 3 will offer an in-depth look at China’s current IPR regime.

\textsuperscript{34} European Commission, progress by the People’s Republic of China towards graduation to MES, 16

\textsuperscript{35} Anti-monopoly Law of the PRC, adopted: 29th meeting of the Standing Committee of the 10th National People’s Congress of the PRC on August 30, 2007.

\textsuperscript{36} Rémond, ‘The EU’s refusal to grant China MES’, 18

\textsuperscript{37} WTO, China 2010 TPR, 25


\textsuperscript{39} European Commission, progress by the People’s Republic of China towards graduation to MES, 16
Criterion 5

To meet this criterion the Chinese must demonstrate that its financial sector operates free from state control and is governed by commercial standards in terms of the cost of credit.

Although financial institutions had been granted more freedom in regulating the interest rates on loans by the Law on Commercial Banks, interest rates set by commercial banks are to be set “in line with the upper and lower limits for interest rates prescribed by the People’s Bank of China”. Commercial banks may charge lending rates above benchmark (but not below) and offer deposit rates below (but not over) benchmark. Although lending and deposit-taking has been partially deregulated, “Commercial banks shall conduct their business of lending in accordance with the needs of the national economic and social development and under the guidance of the industrial policies of the State.” Currently, China Inter-Bank Offered Rate (CHIBOR), rates for treasury bond repurchasing and cash bond trading on the national inter-bank market are unrestricted.

According to the Chinese authorities, neither the Government nor Chinese banks discriminate between state-owned, joint-stock or private companies with regard to loans. Nonetheless, in 2008, 70 percent of loans made by state-owned commercial banks were directed to SOEs, although their estimate share in GDP was below 30 percent. The People’s Bank of China (PBOC) and related agencies have attempted to increase the access to finance for SMEs through various policies or regulation, such as the Opinions on Further Improving Financial Services to Small- and Medium-sized Enterprises, which seeks to reform the SME credit management system, improve the multi-layered organisation of SME financial services and expand the financial channels for SMEs. Despite the PBOC’s efforts, in 2010 SOE’s continue to have better access to capital than private enterprises, even though the conversion of non-tradable shares of listed SOEs to tradable shares contributed to the development of China’s capital market.

The largest four commercial banks in China, the China Construction Bank, the Industrial and Commercial Bank of China, the Agricultural Bank of China and the Bank of

41 European Commission, progress by the People’s Republic of China towards graduation to MES, 21
43 BNU SERM, A Report on the Development of China’s Market Economy, 18-19
44 European Commission, progress by the People’s Republic of China towards graduation to MES, 19
46 WTO, China 2010 TPR, 55
China continue to dominate the Chinese financial sector.\(^{47}\) They are the primary source of finance for Chinese SOEs and are therefore burdened with large non-performing loans (NPLs). Asset quality has increased, however. At the end of the first quarter of 2007 the ratio of NPLs over total loans of major commercial banks was 7.1 percent, down from almost 25 percent in 2002.\(^{48}\)

**MES, the EU and China in the WTO Dispute Settlement**

If WTO members fail to resolve their trade differences, the WTO’s Dispute Settlement Mechanism offers a final resort. China’s use of this mechanism may indicate that it is not merely mimicking the behaviour of other members, but has come increasingly adapt and comfortable in using the WTO’s norms and procedures to serve their own purposes.

The Chinese government dominates dispute settlement, unlike fellow WTO members, such as the EU, where private interest groups have great influence over the proceedings.\(^{49}\) In its first years of dispute settlement, China opted for a low-profile approach, seldom using the mechanism as a complainant and opting to settle as much in bilateral agreements or during the consultation phase.\(^{50}\) This makes sense, as Chinese officials were both inexperienced with the mechanism and trying to save face. Chinese usually regard being charged at a courtroom as an extremely shameful experience, being accused in front of the global free trade community initially meant face-losing for the Chinese government.\(^{51}\) Much has changed since 2001, though. Not only has China become more experienced in using the WTO Dispute Settlement Mechanism (DSM), there has also been a considerable change of attitude among Chinese officials: they are growing to see the DSM as a normal tool of trade relations, rather than a means of political assault by a complaining member.\(^{52}\) China has since made its entrance in the top five of countries that most frequently implement new antidumping trade

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51 Zhang, "China's experience in the WTO DSS", 11

52 Henry Gao and Han Liyu 'China’s experience in the WTO Dispute Settlement Mechanism' in Shaffer, Gregory C. and Ricardo Meléndez-Ortis (Eds.) *Dispute settlement and the WTO – The developing country experience* 168
restrictions, most of which concern its industrial chemicals industry. Some would argue that China’s increased willingness to use the dispute settlement mechanism is an example of China turning to ‘aggressive legalism’. China has indeed turned to the DSM more often in recent years (three times as a complainant and three times as a third party in 2009 alone, for example). Other analysts have argued, however, this is not an indication of China turning to aggression, but simply that it is becoming more confident in using the DSM as a tool of trade and more skilled in using legal arguments. It has developed an experienced cadre of lawyers and trade specialists and is taking a turn towards multilateral institutionalism, gradually becoming more willing to invoke and accept binding international adjudication. This confirms that China is not merely Mimicking. It has grown confident in at least presenting the WTO’s norms as its own.

A recent example of China’s willingness to take its disputes to the courtroom is the Steel Fasteners saga. When the EU decided to impose AD measures ranging from 26.5 percent to 85 percent on certain fasteners from China, affecting over 200 Chinese companies, the Chinese proclaimed the EU’s decision inconsistent with WTO rules. Based on its own Anti-dumping regulations, created at the advent of China’s WTO accession, China levied Anti-Dumping levies on steel fasteners from the EU, mostly in retaliation against the EU’s measures. The EU especially considers article 56 of China’s anti-dumping regulations, which states that China may take corresponding measures against a country if it “discriminatorily imposes anti-dumping measures on the products exported from the People’s Republic of China”, inconsistent with WTO rules.

Interestingly, the EU decided not to delay the formation of a panel in the dispute settlement China had requested against its measure. Although the EU officially cited

53 Chad Philips Bown, ‘China’s WTO Entry : Antidumping, Safeguards, and Dispute Settlement’ in Robert C. Feenstra and Shang-Jin Wei (eds.) China’s growing role in world trade (Chicago: University of Chicago Press, 2010)33-38


56 E.g. Marcia Don Harpaz ‘Sense and Sensibilities of China and WTO Dispute Settlement’ Journal of world trade Vol. 44, Iss. 6 (2010), 1155-1187

57 Dispute DS397 (2009- ) European Communities — Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China, Dispute DS407 (2010- ) China — Provisional Anti-Dumping Duties on Certain Iron and Steel Fasteners from the European Union

58 Council Regulation (EC) No 91/2009 of 26 January 2009 imposing a definitive anti-dumping duty on imports of certain iron or steel fasteners originating in the People’s Republic of China


60 WTO, WT/DS397/1, European communities - definitive anti-dumping measures on certain iron or steel fasteners from China Request for Consultations by China

61 Anti-dumping Regulations of the PRC Promulgated by Decree 328 of the State Council of PRC on November 26, 2001
administrative restraints, such as available resources, as their reason, this may also have indicated that the EU wanted to implicitly acknowledge China's fair use of this procedure.\textsuperscript{62} In its report, the panel decided that by comparing the export price data provided by the Chinese exporters on a PCN [Product Control Numbers] basis with normal value data provided by the producer in the analogue country on a "product type" basis, the EC failed to make a fair comparison.\textsuperscript{63} It also concluded the EU had not made proper adjustments for the difference in quality between the Chinese fasteners and those of the chosen surrogate producer in establishing the normal price. To date, no panel has yet been formed in the dispute settlement requested by the EU against China’s countermeasures.

\textit{Conclusion}

The WTO allows its members to discriminate against China as long as it is unable to prove it is a market economy. It thereby enables its members to use Social Influence. One the one hand, social punishment plays a role as WTO members try to convince China it is ‘doing something wrong’, as it has now been labelled ‘different’ from other members. On the other hand, status markers are a tool to publicly support China’s reforms. The EU has upgraded China’s status from a non-market economy to an economy in transition. This has slightly opened up the EU market, but more importantly, offered China a glimpse of what may come if it plays by the EU’s rules. Before it will grant China the coveted Market Economy Status, many additional demands will have to be met. The Chinese authorities have made substantial progress in reforming their economy. On all five criteria the EU observes in order to decided whether Market Economy Status can be granted, it has made at substantial improvements. Nonetheless, there is still some progress to be made.

\textit{Chapter conclusion}

It has been established that in 1995, China’s Socialist Market Economy was quite different from what the WTO generally accepts to be a market economy. Therefore, the EU was allowed to take special anti-dumping measures against Chinese products. Joining the WTO did not change this, it actually made discrimination part of China’s accession protocol. By allowing WTO members to voluntarily acknowledge China as a market economy, based on the acknowledging member’s interpretation of the WTO’s norms, it did offer the possibility of positive change, however. This plays into the aspects of Social Influence. First, it establishes China as being different from other members. Second, a clear status marker, Market

\textsuperscript{62} Wenhua, ‘China’s Experience in Dealing with WTO DS’, 10-11

\textsuperscript{63} WTO, WT/DS397/R, European Communities - Definitive anti-dumping measures on certain iron or steel fasteners from China - Report of the Panel
Economy Status is being offered. Finally, the burden to proof that its behaviour has consistently been in line with the requirements of a market economy lays with China, although the final decision to acknowledge this remains with the other members, each on their own terms. The EU has offered China numerous reports on its progress towards obtaining MES. The first of these were not made public, the latter were, however. In these reports, the EU has laid down clear criteria which China has to fulfil. This has led China to make some very apparent changes to its legislation and equally apparent reductions in its support to SOE’s, amongst other reforms. Nonetheless, China’s reforms have yet to satisfy the EU. Especially in the enforcement of its commitments, the EU finds China lacking. This again fits the theory of Social Influence, as it results in an appearance of public conformity without private acceptance. The next chapter will focus on Intellectual Property Rights, one issue where the difference between appearance and internalisation, between Social Influence and Persuasion, essentially, becomes most apparent.
Chapter 3: Intellectual Property Rights

Estimates about the scale of Chinese IPR infringement range from the frankly absurd to the plausible, but still striking. Proper IPR protection is important, not only to China itself, but for the world economy as a whole. Not only does IP theft damage right-holder and possibly consumers, an insecure IPR environment inhibits creativity and technological development in general, as well. Furthermore, proper IPR protection is an important aspect of China’s image as a responsible major power. Chapter 3.1 will study the issues the EU took with Chinese IPR infringement between 1995 and 2000. Subsequently, it will look for explanations for the differences in attitude between the EU and China and try to seek ways in which the effects of Social Influence and Persuasion might have changed that. Chapter 3.2 will then research to what extent these effects did take place and to what extent they have motivated China to improve its IPR protection by 2010. In both chapters, the distinction between apparent changes and internal changes will be made, mirroring the distinction between Social Influence and Persuasion.

3.1. IPR protection between 1995 and 2000: possibilities for EU influence

After establishing what the EU understands as ‘counterfeit’ and ‘piracy’, the first part of this chapter will look at the scale of Chinese IPR infringement from different perspectives. After determining the extent of the problem, it will consider the possible causes and the degree to which the EU can influence them. First, it will look at the more apparent possible explanations. Among these are the possibility that China, as a developing country, simply has not had time to introduce the legislation required for IPR protection. This is one aspect that, especially through Persuasion, the EU could easily influence. EU aid programs could be very effective, by both setting an example and speeding up the internal reform process by offering financial and technical aid. Secondly, if elites did prove willing to introduce IPR protection legislation, maybe the concept of intellectual property theft is simply foreign to the Chinese populace. The EU might be able to help the Chinese government increase awareness of IPR in its population, although this would require some internal change from China’s population. Finally, this chapter will study the most internal cause of lacking IPR enforcement: the structure of China’s IPR enforcement regime. Governmental restructuring would logically require the greatest degree of internalisation of the WTO’s norms and more specifically, the EU’s interpretation of these norms.
The EU’s conception of IPR

The EU’s policy concerning IPR protection is based on the EU’s common commercial policy, as established in Article 113 EEC, now Article 207 TFEU. Its first formulation of common IPR protection was Council Regulation (EEC) No 3842/86. This regulation was revised in 1994 by Council Regulation (EC) No 3295/94 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods. Regulation 3295/94 established ‘counterfeit goods’ as:

‘- goods, including the packaging thereof, being without authorization a trade mark which is identical to the trade mark validly registered in respect of the same type of goods, or which cannot be distinguished in its essential aspects from such trade mark, and which thereby infringes the rights of the holder of the trade mark in question under Community law or the law of the Member State in which the application for action by the customs authorities is made,
- any trade mark symbol (logo, label, sticker, brochure, instructions for use or guarantee document) whether presented separately or not, in the same circumstances as the goods referred to in the first indent,
- packaging materials bearing the trade marks of counterfeit goods, presented separately in the same circumstances as the goods referred to in the first indent;’¹

‘Pirated goods’, according to this Regulation, means²:

‘goods which are or embody copies made without the consent of the holder of the copyright or neighbouring rights, or of the holder of a design right, whether registered under national law or not, or of a person duly authorized by the holder in the country of production, where the making of those copies infringes the right in question under Community law or the law of the Member State in which the application for action by the customs authorities is made;’

Although it is generally agreed that between 1995 and 2000 a large share of the world’s counterfeit and pirated goods already originated in China, estimates vary greatly. For example, in August of 1995, China was said to produce an estimated 45 million pirated CDs.³ At the time, 95 percent of software used in China was approximated to be illegal copies.⁴ In

¹ Council regulation (EC) 3295/94 Art 2(a)
² Council Regulation (EC) 3295/94 Art 2(b)
2000, some estimated that a third of China’s watch production was counterfeit.\(^5\) These estimates put 10-30 percent of China’s manufacturing base as depending on counterfeit.\(^6\) In the same year, the well-reputed Centre for Economics and Business Research published a report commissioned by the Global Anti-Counterfeiting Group. This report put the GDP losses to counterfeit in the European Union in just the sectors clothing and footwear, perfumes and cosmetics, toys and sports equipment, and pharmaceuticals at 8.04 billion euros annually.\(^7\)

Though some estimates are more reliable than others, it is hard to produce completely reliable data on operations that almost exclusively take place on the black market. The EU’s customs statistics on intercepted counterfeit goods might serve as one of the few unbiased indicators of the scale of China’s counterfeit and pirated goods production before its WTO accession. In 2000, 8 percent of the EU’s intercepted counterfeit originated in China\(^8\). Although the US accounted for 10.5 percent of intercepted counterfeit in the same year, keep in mind that EU imports from the US were more than three times the amount of goods it imported from China.\(^9\) (See Graph 1)

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6 Behar, ‘Beijing’s Phony War On Fakes’, 189
9 Eurostat <http://epp.eurostat.ec.europa.eu>
Graph 1: Share in the EU’s intercepted counterfeit compared with total imports in 2000

Legislation in China before its WTO accession

If the EU’s to aid China in improving its IPR legislation was to be effective, it would first have to be established that lacking legislation was in fact the cause of the large share of counterfeit in China’s exports. One might think that a novice to the concept of Intellectual Property protection may need more time to put the required legislation in place. In the past, however, China had already had Intellectual Property protection laws, quite comparable to the Western standard. The Republic of China already promulgated a trademark law in 1923, a copyright law in 1928 and a patent law in 1944. Upon its victory in the Chinese civil war, the Chinese communist party abolished nearly all legislation that had been introduced by the former regime. This absence of IPR protection lasted only a few decades, however. In 1978, when Deng Xiaoping, a firm believer in the rule of law, rose to power, steps were taken to reinstate a comprehensible legal system. In the 1980’s, the foundations for China’s new IPR protection regime were laid down. These include the Trademark law\textsuperscript{11} (1982), the Patent law\textsuperscript{12} (1984), and the copyright law\textsuperscript{13} (1990). Several regulations on the implementation of these laws were enacted. The Patent and Trademark Laws were significantly amended in 1992 and 1993, respectively.\textsuperscript{14} The anti-unfair competition law of 1993 prohibits the unauthorised use of te you (unique) names, packaging and appearance like zhi ming (‘famous’, or ‘well-known’) products. The protection of ‘unique’ names also appears to suggest the protection of trademarks that have not been registered with the Trademark Office.\textsuperscript{15}

The Chinese copyright and its implementing regulations law offer quite robust potential for protecting intellectual property. It lists actions that will result in ‘civil liability for such remedies as ceasing the infringing act, eliminating its ill effects, making a public apology or paying compensation for damages, etc., depending on the circumstances.’\textsuperscript{16} Certain violations may also lead to administrative penalties. These are defined as ‘warning, injunction in relation to production and distribution of infringing copies, confiscation of unlawful gains and seizure of infringing copies and equipments used for making infringing

\textsuperscript{10} Shi, Intellectual property in global trading system, 70-71

\textsuperscript{11} Trademark law of the PRC (adopted by Standing Committee, 5th National People’s Congress, 24th Session, promulgated by Standing Committee, 5th NPC, Order No. 10, Aug. 23, 1982)

\textsuperscript{12} Patent law of the PRC (adopted by Standing Committee,6th National People’s Congress, 4th Session, Mar. 12, 1984)


\textsuperscript{14} Shi, Intellectual property in global trading system, 71-72

\textsuperscript{15} Joseph T. Simone Jr. ‘Damming the counterfeit tide’ in China Business Review Vol. 20 Iss. 6 (1993), 52-59, 54-55

\textsuperscript{16} Reiko R. Feaver, ‘China’s copyright law and the TRIPS Agreement’ in Journal of transnational law & policy Vol. 5, Iss. 2, (Spring 1996) 431-458, 449-450
copies, as well as a fine.\textsuperscript{17} The copyright law also clearly describes the procedures and designates jurisdictional agencies. In the 1980’s the first IPR specialised tribunals appeared at Chinese courts. The tribunals are located at ordinary courts, but are staffed by judges that have received specialized training. In 1995, they collectively accepted 3756 First Instance cases on IPR. By 2000, this number had grown to 4811.\textsuperscript{18} In 1994, the Resolution on punishing crime of copyright violations was passed. It allowed violators to be prosecuted under criminal law, with sanctions including jail terms up to seven years.\textsuperscript{19}

While the legislation for IPR protection was in place, it was actually the enforcement that had been lacking. Even when counterfeiters were prosecuted, their fines were far less than compensatory. In 1994, the Shenzhen Reflective Materials Institute of Shenzhen University was fined the equivalent of 252 US dollars for the unauthorised copying of the Microsoft Corporation’s trademark holograms, an offence it had already committed in 1992. Similarly, the Walt Disney Corporation was awarded 100 US dollars for the infringement of Mickey Mouse.\textsuperscript{20} In many cases, Chinese courts calculated the value of damages based on the price of the illegitimate goods on the black market, rather than the value of the goods on the legitimate market.\textsuperscript{21}

One of the reasons for lacking IPR enforcement was the limited judicial expertise in China. Outcomes of trials are often quite unpredictable, which makes litigation in Chinese courts a risky and costly business.\textsuperscript{22} There was no established system of qualification or competence and Chinese judges were not required to be trained attorneys.\textsuperscript{23} The problem of lacking legal consciousness and education was only exacerbated by the lack of transparency of the Chinese legal system. China does not routinely publish its new rules and regulations, and some laws remain internal. They are not available for foreigners and may supersede other laws. Even in courts, relations, rather than rules, are decisive.\textsuperscript{24}

\begin{flushleft}
\textsuperscript{17} Feaver, ‘China's copyright law and the TRIPS Agreement’, 450
\textsuperscript{18} Martin K Dimitrov, Piracy and the state: the politics of intellectual property rights in China (New York: Cambridge University Press, 2009), 103 - 105
\textsuperscript{19} Feaver, ‘China's copyright law and the TRIPS Agreement’, 451
\textsuperscript{20} Feaver, ‘China's copyright law and the TRIPS Agreement’ 450
\textsuperscript{21} Shi, Intellectual property in global trading system, 102-103
\textsuperscript{22} Angela Gregory, ‘Chinese trademark law and the TRIPs agreement – Confucius meets the WTO’ in Deborah Z. Cass, Brett G. Williams and George Barker (Eds.) China and the world trading system: entering the new millennium (Cambridge: Cambridge University Press, 2003) 321-344, 329
\textsuperscript{23} Feaver, ‘China's copyright law and the TRIPS Agreement’, 455-456
\textsuperscript{24} Shi, Intellectual property in global trading system, 99-100
\end{flushleft}
Confucianism

Why would enforcement be lacking, while most legislation is actually in place? One theory is that the idea of Intellectual Property is simply not compatible with Confucian thought, the foundation of China’s traditional culture. This poses a double problem for the EU’s socialisation strategy. First, this would require internal change from China, which would require Persuasion, instead of Social Influence. As became apparent in Chapter 1, this would be the more challenging socialisation approach in the social context of the WTO, the EU and China. Second, socialisation in the international political economy functions mainly on a government-to-government basis. Therefore, the EU would be able to do little to change the minds of the Chinese population, though socialisation.

The way Chinese behave towards one another is ruled by the core relationships of Confucianism. These are the relationships between sovereign and subject, father and a son, husband and wife, young and old and the relationship between friends. Within these relationships, there would be little room for the individualistic idea of ‘owning’ the rights to a book. In the West, this is often exemplified by a Chinese saying, thought to be of unknown origin, which goes ‘to steal a book is an elegant offence’.25 The fact that Chinese general education is based on students faultlessly reproducing classic works, rather than applying critical thinking does little to contradict this view.26

The phrase, however, is not of unknown origin. ‘To steal a book is an elegant offence’ originated in the fictional book Kong Yiji, by novelist Lu Xun.27 In the novel, Kong Yiji is depicted as an eternal student, never passing the imperial examinations. Poor and ridiculed, he earns a living copying manuscripts for rich patrons, which he often steals to trade for wine. He is severely beaten for the theft, which he motivates by saying ‘to steal a book is an elegant offence’. There is nothing inherently Confucian about this story (despite maybe the fact they share a last name). To steal a book is very much in violation of the Confucian concept of li (‘Rituals’ but also understood to mean ‘morals’ or ‘natural law’) and this would not at all be considered ‘elegant’. In a poll conducted among the Chinese population, 58 percent of the interviewees said they saw IPR infringement as an ‘inelegant offence’, with an additional 22 inclined to share the same belief. 59 percent stated there is no negative impact of Confucian philosophy on their attitude towards IPR protection.28 Therefore, the concept of Intellectual Property theft is not foreign to China and its Confucian roots are likely not the

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27 Shi, Intellectual property in global trading system, 114-115
28 Shi, Intellectual property in global trading system, 115-116
primary cause for the lack of IPR enforcement. Although China’s Confucian roots may offer part of the explanation of its IPR infringement, other causes offer a more likely explanation.

**China’s political structure**

One alternative explanation is offered by another internal factor. China’s political structure makes it very different from the EU: the Chinese Communist Party has a near totalitarian rule. Local governments keep a close watch on the local courts that rule in IPR violation cases. These local governments were sometimes actively involved in the perpetuation of IPR violations. Relatives of Party members have been on the boards of some of the CD pirating factories. The economic benefits of producing counterfeit goods or turning a blind eye to their production outweigh the costs involved in enforcing intellectual property rights. China’s political structure has also led to institutional complications. There are many overlapping jurisdictions and responsibilities between governmental agencies. Furthermore, the copyright bureaucracy is partially housed within the propaganda department, where copyright enforcement only serves the propagation of the government’s ideology and purposes.

At the root of these problems was the dichotomy in Chinese politics: Chinese elites did not believe that Western style democracy would be good for China. They feared rapid Westernisation would fragment the country, like it has fragmented the former Soviet Union, or that the Communist Party would lose its status as the ruling party. The CCP’s stated objective of political reform is just a way to strengthen its own legitimacy. Yet ongoing economic reform has led to new institutional demands, which cannot be met without dismantling the totalitarian political structure. IPR enforcement as the EU envisions it may therefore require far more structural reforms of the Chinese bureaucracy.

**Conclusion**

Social Influence is an effective tool in changing a country's behaviour. However, it is not effective in creating internal change. In this sub-chapter, it has been established that legislation, one of the more apparent aspects of China’s lacking IPR protection and therefore

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29 Feaver, ‘China’s copyright law and the TRIPS Agreement’ 457
30 Sell, ‘Intellectual property protection and antitrust in the developing world’ 329-330
31 Gregory, ‘Chinese trademark law and the TRIPs agreement’ 332
32 Shi, Intellectual property in global trading system, 94-99
33 Margaret M. Pearson, ‘China’s integration into the international trade an investment regime.’ In Elizabeth Economy, Michel Oksenberg (Eds.), China joins the world: progress and prospects (New York: Council on Foreign Relations Press, 1999) 173
34 Shi, Intellectual property in global trading system, 117-118
the aspect that could most effectively be changed through Social Influence, was not likely to be its primary cause. Although there was some room for improvement, the foundations of IPR protection were already part of the Chinese legal system in the 1990’s. Other possible explanations lay within China. China’s Confucian culture is also not likely to blame for the large amount of Chinese counterfeit, worldwide, as the idea of intellectual property theft is not as foreign to Confucian culture as is sometimes assumed to be in the West.

An internal explanation for China’s lacking IPR enforcement lies in the way Chinese politics are structured. To influence the internal changes required for solid IPR protection as the EU envisions it through socialisation would require Persuasion. However, as has already been established, the context of the WTO, the EU and China is less than ideal for this approach. The next sub-chapter will analyse how the EU has, nonetheless tried to socialise China with a combination of Social Influence and Persuasion, where IPR protection is concerned.
3.2. IPR protection in China by 2010: EU influence in practice

This sub-chapter will look at the way the EU has been trying to influence China’s IPR protection. With China now a part of the WTO, its IPR framework is judged in the light of the agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS). This increases the effects of Social Influence, as lacking IPR enforcement is considered improper behaviour within this context and the WTO's Trade Review increases the visibility of such behaviour. The EU has, however, tried to achieve more. By positioning itself as a partner, trying to aid China in its IPR enforcement reforms, it has sought to use the effects of Persuasion.

China as a WTO member: TRIPS and improvements to China's legislation

Although China had already become member to various IPR protection treaties before its WTO accession in 2001, its WTO membership also made it subject TRIPS, which is fully incorporated in the WTO. Within the framework, China’s IPR legislation and enforcement performance is now part of the scrutiny of the WTO’s Trade Policy Review, for all members to see and respond to, maximising the effects of Social Influence. The TRIPS agreement includes the principle of National Treatment, by which a Member agrees to ‘accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals.’ and the principle of Most Favoured Nation, by which ‘any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members.’ TRIPS also binds its members to several elements from the major IPR agreements, such as the Paris convention and the Berne convention. The TRIPS agreement includes a full section on the obligations of enforcement of IPR. These include civil and administrative procedures, provisional measures, criminal penalties and border measures.

At its WTO accession, and therefore accession to TRIPS, the Chinese government amended all its major IPR legislation. It’s Patent Law was amended in August 2000 and the Chinese Trademark Law and Copyright Law were both amended in October of 2001, not

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37 TRIPS article 4

38 TRIPS section III


40 Decision on Amending the Trademark Law of the PRC, adopted: 24th Session, SC, 9th NPC, October 27, 2001

41 Decision on Amending the Copyright Law of the PRC adopted: 24th session, SC, 9th NPC, October 27, 2001
coincidentally one month before the country’s WTO accession. In the same year, new regulations for the protection of computer software, layout-designs of integrated circuits and new plant varieties were introduced.\textsuperscript{42} Amendments to these laws have since continued to bring Chinese legislation further in line with its international obligations. In its National Intellectual Property Strategy, the Chinese government stressed the need to continually improve its IPR regulations.\textsuperscript{43} The 2000 amendment of the patent and copyright laws established the State Intellectual Property Office (SIPO). Ideally, SIPO would oversee all aspects of IP protection, be it patent, copyright or trademark.\textsuperscript{44} In reality, however, SIPO’s ability to do so has proven to be limited.\textsuperscript{45} China joining the WTO has certainly given its IPR protection more impetus. Indications of Social Influence appear to be present, here: China desired an image as a responsible group member, and therefore had to appear consistent with its TRIPS commitments. Under the scrutiny of the WTO’s Trade Policy Review, China has made clear that it is willing to make reforms to its legislation. Regardless, in the previous sub-chapter it had already been established that legislation was not the main issue. In order to influence China’s internal change, the EU had to rely on other forms of socialisation.

\textit{The EU steps up its game}

The EU has positioned itself as a consistent proponent of solid IPR protection. This consistency has contributed to its authority, which is one of the components required for effective Persuasion.\textsuperscript{46} In recent years, the EU has further established its image as an authoritative member where IPR is concerned. Based on article 95 EC (Now article 114 TFEU), the EU harmonised its IPR protection in 2004. The Directive created the general obligation for EU Member States to ‘provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights’.\textsuperscript{47} Furthermore, it introduced a strategy for the enforcement of intellectual property rights in third countries.\textsuperscript{48} China is one of the priority countries of this strategy. This meant that the EU would attempt to intensify cooperation in the forms of institutional partnership, technical assistance, raising IPR awareness and sharing of its own experiences. The EU will also constantly remain in

\textsuperscript{42} Qin, Julia Ya “Trade, Investment and Beyond : The Impact of WTO Accession on China’s Legal System” in \textit{The China quarterly} Vol. 191 (2007), 720-741, 734-735


\textsuperscript{44} Shi, Wei \textit{Intellectual property in global trading system: EU-China perspective} (Berlin; London: Springer, 2008), 82

\textsuperscript{45} For a detailed examination of China’s IPR enforcement structure, including SIPO, see chapter 3.2

\textsuperscript{46} Johnston 157-159


\textsuperscript{48} European Commission, Strategy for the enforcement of intellectual property rights in third countries (2005)
dialogue with priority countries, like China. If all else fails, a WTO dispute or trade sanctions may offer a last resort.

Another important component of Persuasion is the repeated exposure of the actor to counter-attitudinal information, over time.\textsuperscript{49} The Sino-European IPR dialogues exemplify this. The dialogues take place once a year. Their main purpose is the exchange of information and views on “a wide range of IPR issues, including legislative, regulatory and enforcement aspects of trademark, patent, design, geographical indication and copyright protection”. Additionally, the IP Working Groups, in which the European industry participates, take place twice a year in Beijing. The Working Groups focus on more specific issues or sectors.\textsuperscript{50}

Some of the major outcomes of the dialogues include: China’s agreement to take action against its "fake markets", in particular three markets in Beijing (Silk Market, Hongqiao and Sanlitun), against Chinese plants manufacturing pirated optical discs and a list of other markets that were investigated.\textsuperscript{51} In 2004, the EU and China had already come to an agreement for intensive customs cooperation.\textsuperscript{52} During the dialogues, they agreed to intensify their customs cooperation further, by means of a customs action plan.\textsuperscript{53} The dialogues are also a platform to learn from each other’s experiences. For example, the third revision of the Chinese patent law was extensively discussed. Additionally, the EU presented several of its own IPR protection directives to Chinese policy makers, explaining which were its best practises and how the Chinese might learn from them.

As established in Chapter 1.2, the EU has emphasized it is trying to aid China in its reforms as part of a 'mutually beneficial relationship'.\textsuperscript{54} Part of its cooperation with China is the technical assistance programme "IPR2", which aims to ‘improve the effectiveness of IPR enforcement in China through the provision of assistance to Chinese legislative, judicial, administrative and enforcement agencies and institutions."\textsuperscript{55} It has a budget of over 16 million EUR for the period of 2007-2011.\textsuperscript{56} The IPR2 program has issued publications, organised conferences, organised study tours and offered workshops in order to aid China in improving all aspects of IPR enforcement: the legal framework, access to information,

\begin{thebibliography}{99}
\bibitem{49} Johnston, \textit{Social states}, 160
\bibitem{50} European Commission, \textit{IPR enforcement report 2009}
\bibitem{51} EU-China IP dialogue meeting 2005. All dialogue outcomes are available at \<http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/dialogues/\>
\bibitem{52} European Council, \textit{Decision on the conclusion of an Agreement between the European Community and the Government of the People's Republic of China on cooperation and mutual administrative assistance in customs matters (Official Journal L 375 of 23 December 2004)}
\bibitem{53} EU-China IP dialogue meeting 2008, 2009
\bibitem{54} European Commission, as in note 48 p.18
\bibitem{55} EU-China IP dialogue meeting 2007
\bibitem{56} \<http://www.ipr2.org/index.php?option=com_content&view=article&id=46&Itemid=55> (Accessed 29-06-2011)
\end{thebibliography}
capacity building, enforcement and support for right holders.\textsuperscript{57} It also aims to improve cooperation between the EU’s Office of Harmonization for the Internal Market and China’s State Administration for Industry and Commerce. Comparative studies between the two agencies have been issued. The studies have led to numerous workshops and visits between the two agencies, where they exchanged experiences in subjects such as design and trademark registration.\textsuperscript{58}

If the dialogues and support program do not generate the desired outcome, however, the EU might want to opt for using the Dispute Settlement Mechanism in order to coerce China to improve its IPR enforcement. Preparing and initiating a WTO case were some of the recommendations made to DG Trade in \textit{Study on the future opportunities and challenges of EU-China trade and investment relations nr 12: exploring China’s IP environment - strategies and policies}.\textsuperscript{59} The US has already been successful in using the DSM to force China to increase protection for foreign works that have not been authorized for publication or distribution in China and to put a stop to the re-release into commerce of confiscated IP infringing goods after removing their infringing features, rather than destroying them.\textsuperscript{60}

The next section will study the extent to which the effects of Social Influence and the EU’s Persuasion have been successful in stimulating China to improve its IPR protection in the last decade. As in the last sub-chapter, a distinction will be made between the more apparent aspects, such as legislation and internal aspects, such as China’s governmental structure.

\textit{Improvement of legislation}

By improving its legislation, China has been able to publicly demonstrate their commitment to improving their IPR protection regime.

\textit{Copyright and Patent Law}

The most notable improvements of the 2001 amendment to the copyright law are the non-discriminatory treatment of foreigners on reciprocal arrangements and international treaties. It also expanded the scope of protection to bring it in line with the Berne convention.\textsuperscript{61}

\textsuperscript{57} <http://www.ipr2.org/index.php?option=com_content&view=category&layout=blog&id=118&Itemid=70> (Accessed 29-06-2011)


\textsuperscript{59} Ranjard, Exploring China’s IP Environment, 26

\textsuperscript{60} WTO, China – Intellectual property rights (DS362), Decision on Amending the Copyright Law of the PRC, adopted: 13th session, SC, 11th NPC, February 26, 2010 and Decree of the State Council of the PRC No.572 Amendment of the Regulations of the PRC on Customs Protection of Intellectual Property rights, adopted: 103rd executive meeting of the State Council, March 17, 2010, respectively.

\textsuperscript{61} Shi, Intellectual property in global trading system, 77
Meanwhile, the second amendment of the Patent Law improved judicial review of patent cases, property reservation and provisional measures.\textsuperscript{62} Since then, it has again been amended in 2008. This amendment includes the following major changes: Inventions completed in China must no longer first be filed in China. Instead, new confidentiality examinations by SIPO before application will now allow registration abroad. Foreigners are also no longer limited to patent agencies that are designated by SIPO for their patent applications.\textsuperscript{63} The new law also adopts the standard of absolute novelty. This means that any technology/design known to the public before the date of filing by way of public disclosure in publications, public use or any other means in China or abroad destroys the novelty of an item, a requirement for patent registration.\textsuperscript{64} It also includes the protection of genetic resources. Patent applicants must now disclose the direct and original source of genetic resources when the completion of an invention depends on such genetic resources.\textsuperscript{65} Additionally, the new Law introduces improvements to the regulations of ownership and management of Patent Right and improves the protection of Design Patents.\textsuperscript{66} Finally fines, as well as legal compensation, have been increased and penalties for infringement and counterfeit cases now include the patent owner's expenditure in protecting the patent.\textsuperscript{67}

\textit{Trademarks}

The improvements to the Trademark Law in 2001 consisted of 47 changes and amendments. It now includes obligations of the Paris Convention, such as the right of priority, granting foreigners who have filed a trademark abroad six months priority period to register the brand in China\textsuperscript{68} and national treatment.\textsuperscript{69} Among its other major improvements is the fact that it now applies to both legal and natural persons.\textsuperscript{70} It also introduced protection of collective marks, certification marks and geographic indications.\textsuperscript{71} Furthermore, it enhanced the

\textsuperscript{62} Shi, \textit{Intellectual property in global trading system}, 82-83
\textsuperscript{63} EU-China Project on the Protection of Intellectual Property Rights (IPR2), \textit{Third revision of China's Patent Law: legal texts and documents on the drafting process 2006-2008} Available at: <www.ipr2.org/patentlaw> 3
\textsuperscript{64} IPR2, \textit{Third revision of China’s Patent Law}, 3-4
\textsuperscript{65} WTO, \textit{China 2010 TPR}, 65
\textsuperscript{66} IPR2, \textit{Third revision of China’s Patent Law}, 4-7
\textsuperscript{67} WTO, \textit{China 2010 TPR}, 64-65
\textsuperscript{69} Trademark Law of the PRC, article 18
\textsuperscript{70} Trademark Law of the PRC, Article 4
\textsuperscript{71} Trademark Law of the PRC, article 3
protection of ‘well-known’ trademarks, including foreign brands. Conclusively, final decisions in trademark cases would no longer be taken by the Trademark Review and Adjudication Body, but can be appealed before the People’s Court. The Trademark Law is currently being revised for the third time. When introduced, it should both shorten the examination period and further enhance trademark protection. The large backlog of unfiled applications has long been troubling the State Trademark Office. In 2007, it was estimated to have a backlog of over 30,000 trademark opposition cases. In 2008, for the first time, the number of trademarks reviewed was higher than the number of applications. Improving the efficiency of trademark examination, shortening the time for examination and improving the quality of examination remain some of the focus points of China’s National Intellectual Property Strategy. From 2003, Geographical Indications (GIs) can be registered as collective marks or certification marks with the State Trademark Office under the same procedures as for trademarks. From 2008, the Trademark Office accelerated its examination of applications for protection of GIs: from 1994 to 2007, the Trademark Office approved 301 GIs, while in 2008 and the first half of 2009, 321 were approved.

Enforcement issues remain

In line with the expectations based on the effects of Social Influence, China has been able to establish a public image of a responsible player through the amendments to its legislation. However, the idea of the EU’s Persuasion efforts was to also improve the underlying causes of China’s lacking IPR protection, which were mostly internal. Despite the improvements in China’s IPR legislation, IPR infringement remains a large issue. Although EU imports from China have grown in the past ten years, the amount of seized counterfeit goods that the EU intercepted that was originated in China has grown exponentially (see Graph 2). Especially online and audiovisual piracy are on the rise. In an IPR survey conducted by the European Commission in 2009, China remains the main concern of EU companies. While respondents admit China’s legal framework appears to be reasonably adequate,

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72 Trademark Law of the PRC, article 13
73 Trademark Law of the PRC, article 32, 33, 43, 49
74 Paul Ranjard and Benoit Misonne, Study on the future opportunities and Challenges of EU-China Trade and Investment Relations, No. 12 Exploring China’s IP Environment (European Commission: 2007), 11
75 WTO, China 2010 TPR, 66
76 State Council of the PRC Outline of the NIPS, section IV.2
77 WTO, China 2010 TPR, 67
78 Ranjard, Exploring China’s IP Environment, 13-14
79 European Commission, Commission staff working document: IPR enforcement report 2009, 5
implementation remains a problem. Reasons cited are inefficient and slow administrative procedure, while judicial expertise remains too low. There is also a low likelihood of criminal sanctions being invoked; they are only applied when a certain threshold of profits (which differs by province) has been reached by the counterfeiter. Fines imposed by customs were often considered too low to be deterrent.

Graph 2: Share of EU imports originating from China and Share in EU intercepted counterfeit originating from China compared.


The volume of IPR enforcement can certainly not be the issue. As a result of, amongst others, the EU’s pressure, the Chinese government has increased the frequency of special operations, such as campaigns, targeting on specific areas of IPR protection. As a result, controlling for population, China already has the highest volume of IPR enforcement in the world. China’s improvement of its legislation, the National Intellectual Property Strategy and dramatically increased volume of IPR enforcement are likely stimulated by the social responsibility of being a WTO member and its will to respond to the EU’s Persuasion accordingly. The reach of socialisation remains limited, however. As will be demonstrated in the remainder of this sub-chapter, the structure of China’s IPR enforcement bureaucracy remains the primary

80 European Commission, Commission staff working document: IPR enforcement report 2009, Survey Results: China, 5
81 European Commission, IPR enforcement report 2009, Survey Results: China 6
82 WTO, China 2010 TPR, 62
83 Martin K. Dimitrov Piracy and the state: the politics of intellectual property rights in China (New York: Cambridge University Press, 2009) 33
cause for its IPR enforcement issues. To change this likely goes beyond the possibility of socialisation, within the context of the WTO, the EU and China.

A large number of government agencies, with different bureaucratic ranks and overlapping portfolio’s

No other country has as many agencies sharing IPR enforcement responsibility as China. In China, IPR is enforced by six ministerial-level agencies, seven vice-ministerial level agencies and two bureau-level agencies.\(^\text{84}\) Technically, the State Intellectual Property Office coordinates all state IP enforcement. However, its rank as a vice-ministry does not allow it to issue binding orders to ministerial level agencies or other vice-ministerial-level agencies. SIPO is also lacking in international cooperation. While many patent offices, including the European Patent Office (EPO) have given partial or full access to their respective registration databases, the Chinese Patent Office does not give any reciprocal rights for these offices to access the Chinese database.\(^\text{85}\)

Exacerbating this problem, IPR enforcement agencies are also often subject to dual subordination. Vertically they are subordinate to the agency with which they have a bureaucratic relationship, horizontally to the local government at the level at which they operate. Agencies will often side with local governments if administrative disagreement arises, further limiting the grip of the central authorities on IPR enforcement.\(^\text{86}\) Because of overlapping portfolios, agencies may shirk their responsibilities. Agencies may be inclined to do so because their financial and human resources are sometimes lacking.\(^\text{87}\) When applying for IPR enforcement, applicants may sometimes be told a different agency would be better suited to proceed a case. Overlapping competences also lead to duplicated efforts, when multiple agencies get involved with the same case.\(^\text{88}\)

\(^{84}\) Dimitrov, *Piracy and the state*, 51-53, They are the Ministry of Public Security, the Ministry of Justice, the Ministry of Agriculture, the Ministry of Commerce, the Ministry of Culture, the Ministry of Health, the General Administration of Customs, the State Administration of Industry and Commerce, the General Administration of Quality Supervision, Inspection, and Quarantine, the State Administration of Radio, Film, and Television, the General Administration of Press and Publications, the National Copyright Administration of China, the State Intellectual Property Office, the State Tobacco Monopoly Administration and the State Food and Drug Administration.

\(^{85}\) Ranjard, *Exploring China’s IP Environment*, 11

\(^{86}\) Dimitrov *Piracy and the state*, 47-49

\(^{87}\) Ranjard, *Exploring China’s IP Environment*, 24

\(^{88}\) Dimitrov *Piracy and the state*, 186
Limited judicial measures

China’s IPR enforcement regime is unique in that it is a double track system: on the one hand there are the administrative actions, on the other judicial measures. By far the greatest amount of cases is dealt with through administrative action; administrative disputes outnumber courts cases three to one.\(^{89}\) IPR cases are divided by a ‘criminal threshold’ at 50,000 RMB when carried by an individual and three times higher (150,000 RMB) for a ‘work unit’ (i.e. a company).\(^{90}\) Transfer from administrative agencies to police and judicial authorities has proven to be problematic. When a case offers the potential of a substantial fine, administrative agencies are reluctant to transfer it. When they do transfer the case, they sometimes insist on issuing a fine beforehand, which in turn makes police reluctant to pick it up, as they consider it has already been decided.\(^{91}\) To resolve this matter, the Economic Crime Investigation Department of the Ministry of Public Security has proposed joint provisional regulations, where the concept of “transfer” would be replaced by the idea of “cooperation”\(^{92}\).

Domestic pressure for customs protection is low in China. In other countries, the government is more occupied with protection domestic luxury brands from counterfeit and the population is more concerned with the health and safety risks associated with counterfeit. Customs are also reluctant to hand cases over to the police and procuratorate if the criminal liability threshold is met. They, in turn are reluctant to accept these cases.\(^{93}\) Nonetheless, it has been noted that “although the TRIPS Agreement does not oblige Members to apply border measures in cases of the exportation of counterfeit trademark or pirated copyright goods, China has paid special attention to the intellectual property protection of exports.”\(^{94}\)

Although the assumption that Chinese courts had poorly qualified judges was certainly true in the 1980’s and the 1990’s the creation of specialised IPR tribunals since the 1990’s has increased the quality of enforcement. Since China’s WTO accession, the number of these courts has increased dramatically, from only a handful in the 1990’s to 172 in 2006.\(^{95}\)

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89 WTO, China 2010 TPR, 62-64
90 Ranjard, Exploring China’s IP Environment, 11
91 Ranjard, Exploring China’s IP Environment, 11
92 Ranjard, Exploring China’s IP Environment, 12
93 Dimitrov Piracy and the state, 71-94
94 WTO, China 2010 TPR, 62
95 Dimitrov Piracy and the state, 101-105
Local protectionism and corruption

Local governments are sometimes inclined to turn a blind eye to IPR violations in their jurisdictions under the assumption that it would develop their local economy, maintain employment or serve the needs of local consumers.\textsuperscript{96} In some cases, local governments have been found guilty of the abuse of technology transfer and procurement practices. In some cases, a large amount of confidential information was required for obtaining the authorisation to build a factory, or to market a product. Subsequently, the local government would provide this information to local industry, which used it to develop similar activities in the region. In some public procurement procedures, a foreign company would be granted a tender, but forced to enter into a JV with a Chinese counterpart to whom it has to license out its patents. If the project turned out successful, the authorities launched larger scale similar projects, but the former Chinese JV partner, rather than the foreign company would be granted the tender, applying the transferred technologies without license.\textsuperscript{97}

Control for corruption is also rather limited in China. Civil control is comprised of two options: administrative reconsideration (lodging a complaint with an agency’s hierarchical superiors) and administrative litigation. Bureaucrats of course prefer administrative reconsideration. It decreases the chance of having their decisions overturned and the chance to lose face. Courts are also reluctant to accept administrative litigation cases if administrative reconsideration has not been attempted first.\textsuperscript{98} Governmental control is executed by the Central Discipline Inspection, the Ministry of Supervision and Procuratorate’s General Administration for Combating Embezzlement and Bribery (GACEB). These agencies are not effective in fighting corruption. They suffer from overlapping mandates, lack of coordination. Only a very small amount of bureaucrats are ever investigated by either of these agencies and only a small number of investigations is turned over to the Procuratorate, which is the only agency that can initiate the process of imposing criminal punishment.\textsuperscript{99}

Conclusion

China’s WTO accession has given large impetus to its IPR protection improvement efforts. Chinese counterfeit and piracy has not diminished, however. The EU has stepped up its game and introduced technical assistance, IP dialogues and working groups and is likely to be considering a WTO dispute. The EU’s technical assistance has been able to aid China in

\textsuperscript{96} Ranjard, Exploring China’s IP Environment, 21-22
\textsuperscript{97} Ranjard, Exploring China’s IP Environment, 15
\textsuperscript{98} Dimitrov Piracy and the state, 37-40
\textsuperscript{99} Dimitrov Piracy and the state, 40-44
improving its legislation. And through the IP dialogues and working groups, the EU has stimulated the Chinese government to take a more aggressive stance against counterfeiters. Through Social Influence and Persuasion, the EU and other WTO members have been able to stimulate China to improve its IPR legislation and dramatically increase the volume of its IPR protection. Legislation, however, was likely not the main issue, nor was the volume of IPR protection, as China has the highest volume of IPR protection in the world. Foreign as well as domestic pressure has lead the Chinese government to undertake large campaign style anti-IP-violation operations. Though these send out a clear message, they are ultimately ineffective in combating the root problem of IPR enforcement. Although the establishment of specialised IPR tribunals has been a great leap forward, the transfer from administrative enforcement to judicial enforcement is limited. Administrative enforcement in itself is inefficient and ineffective, as a result of the complex system of multiple agencies with overlapping portfolio’s, multiple subordination and a lack of coordination.

Chapter conclusion

Socialisation has been a powerful tool in changing China’s behaviour and appearance, where IPR is concerned. Through Social Influence, China has had a desire to appear consistent with its TRIPS commitments. The EU’s assistance programs, dialogues and working groups have done much to aid China in these reforms. As a strategy of Persuasion, however, they have failed. The main cause for China’s increasing share in world counterfeit and pirated goods is likely to be the structure of its enforcement bureaucracy. This lies at the core of China’s beliefs, which are different from the EU’s to a degree where socialisation is not likely to make a difference. Many aspects of Persuasion were met: the EU is an authoritative persuader, it has behaved consistently according to its beliefs and has repeatedly exposed China to its views. However, one decisive factor of successful Persuasion was absent: the EU has been unable to convince China that they share a similar fate, that their goals are mutual and that they are therefore alike. Therefore, much has changed it China’s appearance, while IPR violations continue to be a problem.
Conclusion

The EU’s policy has played a role in changing China’s behaviour, mostly through shaping China’s identity. This process of socialisation takes effect in the form of three micro-processes: Mimicking, Social Influence and Persuasion. The difference between the three is essentially the degree of internalisation of collective norms. Mimicking states are only changing their behaviour to adapt to a novel environment, where they do not know how to otherwise behave. In the case of Social Influence the actor adopts pro-normative behaviour in order to maximise status rewards, yet internally it does not change. Only as a result of Persuasion do actors fully internalise collective norms.

Although these three processes can take effect simultaneously, the effectiveness of these processes depends on the previously existing beliefs of the actor, the type of social environment and the authority of the persuader. Although China may originally only have been Mimicking, since its WTO accession it cannot be considered a complete novice in this framework. The WTO’s norms have been shown to carry weight in Chinese political debate and China has become increasingly capable and comfortable in navigating through the WTO's norms, as exemplified by its willingness to use the WTO’s Dispute Settlement Mechanism, not as a form of political assault, but as a normal tool of trade relations. Mimicking can therefore be disregarded as a micro-process that has taken place in this context.

In contrast, Social Influence is likely to be very effective within the WTO framework. Its large membership, near consensus on its goals and high visibility and transparency lead to the maximisation of the effects of collective social pressure and the reward of status. The concept of international status has also been demonstrated to be very important to Chinese elites. It has become a tool against fears of a ‘China threat’, a matter of recognition of China as a major trading nation and an important element in China’s Communist Party’s legitimacy. Early in the process of China’s WTO accession negotiations, the EU was able to position itself as a bridge builder and a negotiator, by stressing cooperation and flexibility, instead of confrontation.

The effects of Social Influence become apparent when looking at the two case studies of this thesis: Market Economy Status (MES) and Intellectual Property Rights (IPR). By 1995, China had established what has come to be known as a Socialist Market Economy. Although a market economy in name, in truth the Chinese state was largely involved in the economy. European law and practise, which makes a strict distinction between public and private, did not allow the European Union to classify China as a market economy before it made drastic changes to these practises. Because China was not classified as a market economy, the EU was able to take special anti-dumping measures against it. In some
circles in China, it was believed that by simply producing and exporting other products than those to which the, usually narrowly formulated, anti-dumping measures applied, it might not be forced to drastically reform its economy.

The WTO facilitated this discrimination against non-market economies. Generally, it allows its members to use discriminating anti-dumping measures if the exporting country in question is a non-market economy. When China is concerned specifically, discrimination against Chinese products in anti-dumping measures is allowed until 2016, according to China’s WTO accession protocol. Being eased into the WTO was therefore not directly beneficial to China’s trade, where anti-dumping is concerned. A likely alternative explanation for China’s desire to join the WTO is status. By joining the WTO, it opened the possibility that WTO members would gradually upgrade its status to ‘economy in transition’ or even ‘market economy’, not only ending the special anti-dumping measures, but mostly offering a great amount of prestige.

Upgrading China’s status gradually is exactly what the EU has done. The EU allows individual producers from China to apply for individual market economy treatment. In more than 25 percent of the cases, they have granted this. China would of course prefer nation-wide MES, but the EU has stipulated five criteria which China will have to fulfil before it will be granted this status. Using this status marker, the EU has successfully encouraged China to make reductions in the degree of government influence over the allocation of resources and decisions of enterprises, the implementation of a transparent and non-discriminatory company law, the creation of improved property and intellectual property laws and reforms of the financial sector. Although five years into the process the European Commission acknowledged that substantial progress had been made, it still requires a change in China’s bureaucracy’s behaviour before the status marker will be granted.

Nearly all indications of effective Social Influence were present in the case of MES: China found itself in a novel environment. It also had a desire to appear to be consistently adhering to WTO norms and a clear status marker was offered: MES. The EU has laid down specific criteria China would have to meet before it would grant this status and China has made considerable progress towards meeting them. However, as can also be expected from the results of Social Influence, the changes China has made in its public appearance, mostly through improving its legislation, were not followed by internalisation of the WTO’s norms, resulting in lacking enforcement of its commitments.

This becomes more apparent in the case of Intellectual Property Rights. In 1995, China took a share in the EU intercepted counterfeit and pirated goods that was larger than the share of any other country exporting to the EU, relative to the total volume of its exports. In this context, the effects of Social Influence also play a role, as China’s
intellectual property regime became subject to the agreement on the Trade Related aspects of Intellectual Property rights and to the WTO's Trade Policy Review mechanism, which maps the progress of China’s IPR reforms for all to see. China’s WTO accession has given large impetus to its IPR protection improvement efforts. Despite the Chinese government’s efforts to put a stop to IPR violations, the number of violations has only increased in the last 15 years and China is now by far the largest source of counterfeit and pirated goods intercepted at the EU’s customs.

Although legislative improvements were a welcome change, substantial legislation had already been in place in the 1990’s. The limitations of Social Influence as a tool became apparent. From the evidence presented, it could be concluded that in order to meet the EU’s desires for China’s IPR protection, changes to China’s public appearance would not suffice and internalisation of the WTO’s norms on China’s part would be required. In order to encourage China to make the required changes, the EU has tried to use the process of Persuasion. Many indicators of successful Persuasion were met. China found itself in a novel environment, the EU was an authoritative persuader, as evident by its consistent adherence to the WTO’s norms and it has repeatedly exposed China to its views. The EU has emphasised that the EU and China have a mutually beneficial strategic partnership, it regularly holds dialogues to inform China of its position and to exchange information and it has set up support programmes to aid China in the required reforms. It has thereby been able to support the reforms of China’s IPR legislation and been able to pressure China to increase its volume of IPR enforcement. The increase of China’s volume of IPR enforcement, in the form of large campaign style anti-IP-violation operations and the establishment of specialised IPR tribunals sent out a clear signal to the EU.

Regardless, these are ultimately still ineffective in combating the root problem of IPR enforcement. Raids may put a stop to individual companies’ violations, but offer only a limited disincentive for other companies to stop their operations. The transfer from administrative enforcement to judicial enforcement remains limited and chances of legal or criminal punishment for violator remains slim. Administrative enforcement in itself is inefficient and ineffective, as a result of the complex system of multiple agencies with overlapping portfolio’s, multiple subordination and a lack of coordination. In order to improve its IPR protection to the level the EU wishes, the Chinese government will have to make drastic internal reforms in its bureaucracy, which it is unlikely willing to do. Even though most factors in deciding successful Persuasion were met, one crucial factor was missing. The EU has unsuccessfully tried to establish a meaningful partnership with China and was unsuccessful in convincing China that they shared a common goal. Without this crucial element, Persuasion was unlikely to be effective.
This finding goes a long way towards answering the main question of this thesis: *To what extent has the European Union’s engagement policy towards China, within the context of the WTO, socialised that country to accept the EU’s norms concerning market economy and Intellectual Property Rights?* The EU has successful socialised China to accept its norms concerning MES and IPR to the extent that China’s public appearance where these topics are concerned has become very similar to the EU’s. This has led to drastic improvements in China’s legislation and especially where MES is concerned has done a lot to resolve the EU’s greatest issues. This success mostly lies in effective Social Influence. However, through this micro-process the EU has only been able to make China *behave* like itself, but unable to make it *become* like itself. By establishing itself as an authority, as a partner and by offering dialogues and support, the EU has tried to use Persuasion to get China to make change not only its public behaviour, but also its internal workings. China, however, holds a firm belief in its own ideologies and is likely not willing to compromise too much to the EU’s wishes. This is evidence of the limits of socialisation. Even though many factors that are decisive in successful Persuasion were met, without the crucial aspect of establishing a partnership, it ultimately failed. Reforms of the Chinese political structure, which the EU would expect of the modern economy China has become, can only be made by the Chinese themselves and remain outside the effects of Socialisation and therefore outside the EU’s reach.
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