

EU Soft Power with China: Technical Assistance in the field of intellectual property rights

Paul C. Irwin Crookes*

This article argues that the technical assistance programmes of the EU have been amongst the most effective soft power instruments in shaping the influence that Europe has had within key actor communities during China's re-emergence. The IPR2 project is one such example of this phenomenon. The article locates this initiative within the context of joint interests as an intersection between the EU's motivations in embedding a more sophisticated approach across China towards the importance of intellectual property protection and China's needs to improve her own domestic level of innovation. This method of cooperation is an illustration of normative transference through diffusion and shows how engagement can move beyond a narrow notion of soft power to encompass more wide-ranging interpretations that highlight the importance of a nation's technological capability and the influence possessed by a country's scientific achievement. The success of IPR2 is examined in two ways: first, through qualitative analysis of political dimensions in its formation and outcome, and second, in quantitative terms through reviewing increased IP activism by Chinese institutional and corporate actors. The article concludes by maintaining that engagement strategies of this kind offer a model for future relations and deserve sustained political support.

1. INTRODUCTION

This article analyses the European Union's (EU) soft power in the context of its technical assistance and capacity building programmes. In so doing, it focuses on the bilateral relationship with China as a way to explain how these policy instruments can be used to enhance Europe's normative outreach and to show why they can be amongst the most effective ways for the EU to exert influence during China's re-emergence. It argues that China's distinctive view of soft power as a tool in international relations usefully intersects with the characteristics and delivery processes of EU technical assistance programmes, whilst also maintaining that a key part of success has been to ensure overlaps between particular EU capacity building policies and the domestic needs of China's own economic development.

Specifically, this article uses as a case study the EU-China Project on the Protection of Intellectual Property Rights (IPR2), which operated from 2007 to 2011, as an exemplar of how such power transmissions can overcome tensions and mistrust in other domains of engagement to construct positive outcomes for both sides.

* Dr Paul Irwin Crookes is Lecturer in the International Relations of China at the Contemporary China Studies Programme, School of Interdisciplinary Area Studies, University of Oxford.

Qualitative and quantitative evidence will be presented that show just how significant a part this project has been in shaping Chinese attitudes to their own IP regulatory evolution. The IPR2 initiative will be examined from both a theoretical and empirical perspective to show how normative transference can take place even beyond the EU's near neighbourhood.

Beyond this introduction, the text is divided into five further parts. Part Two, *China's Strategic Embrace of Soft Power*, shows how China's interest in the concept has evolved over recent times. This provides the context into which the EU's technical assistance programmes can be further examined in part three, *Technical Assistance and Soft Power in EU-China Relations*, which explores these initiatives in the policy panoply of the EU's engagement with China in different domains of activity. Part four, *Locating IPR2 within the EU's Technical Assistance Policies to China* introduces the IPR2 project, explaining its purpose, objectives, and methods of delivery, showing how its focus on domestic Chinese empowerment through training by EU IP experts coincided with increased visibility of the need for tighter IP regulations to sustain China's own technological transformation.

An assessment of the project is made in part five, *Assessing IPR2 in Qualitative and Quantitative Terms*, which examines positive discourses from European and Chinese elites on the benefits of the project, supported by statistical evidence of increased IP activism at various levels of sophistication across the project's timeline. Part six, *Future Directions for the Legacy of IPR2*, concludes by arguing how technical assistance projects such as IPR2 provide a meaningful engagement model for the EU in its deepening bilateral links with China and suggests that future programmes to use IP as an instrument of the EU's soft power deserve sustained political support.

2. CHINA'S STRATEGIC EMBRACE OF SOFT POWER

The concept of soft power at a theoretical level made a rather slow start in China's political and academic discourses gaining serious traction only after Hu Jintao's speech to the 17th Chinese Communist Party congress in 2007, which led to 'an explosion of academic interest in soft power'.¹ This focus has been to examine how soft power can best fit within China's strategy of peaceful development. In this

¹ Zhimen Chen & Lilei Song, *The Conceptual Gap on Soft Power between China and Europe and its impact on bilateral relations*, in *Conceptual Gaps in China-EU relations: Global Governance, human rights and strategic partnerships* 50, 51 (Zhongqi Pan ed., Palgrave Macmillan 2012).

context, the use of soft power can be seen as part of a diplomacy spectrum that includes reengagement with regional neighbours, bilateral links with major powers, securing required energy resources, and public diplomacy that includes aspects of education and cultural projection.² Whether soft power should now be considered to be part of China's nascent grand strategy is more open to question. One recent analysis has overlapped the evolution of a Chinese approach to building grand strategy with a recognition in elite circles that such a concept needs also to include cultural and ideological characteristics inherent in soft power discourses as well as more traditional political, economic and military features in order to secure China's national interests.³

There are a number of important features that differentiate Chinese conceptualisations of soft power from those as outlined in Nye's original discussions. In his works, Nye can be seen to have focused more on a country's political values, the attractiveness of its culture and a government's foreign policies.⁴ He outlined key differences between what could be termed the coercive and forceful nature of hard power and the intangible attractiveness of soft power. Whilst building on these principles, the Chinese have adopted a different approach, particularly in the primary use for which soft power resources are deployed and in the construction of what those elements comprise. These differences have important implications for the effectiveness through which the European Union's engagement strategy with China should be developed and so merit further consideration.

2.1 CHINESE CONCEPTUALISATIONS OF SOFT POWER

The first difference is that China's nurturing of soft power resources is much more defensive in character than Nye's rather evangelical call for a projection of US norms and values into the international system. Lai maintains that soft power is particularly used by China 'to fend off the China threat arguments', pointing to how Chinese manifestations of the concept focus on reassuring political discourses, rich cultural histories and diplomatic self-restraint.⁵ Some scholars have also argued that China's wielding of soft power resources and her strategy for their integration in wider foreign policy processes takes account of her different relative position in economic, military

² Zhiqun Zhu, *China's New Diplomacy: Rationale, Strategy and Significance* (Ashgate 2010).

³ Feng Zhang, *Rethinking China's Grand Strategy: Beijing's evolving national interests and strategic ideas in the reform era* 49 *Intl. Pol.*, 318, 19-20 (2012).

⁴ Joseph Nye, *Soft Power: the means to success in world politics* 8 (Public Affairs 2004).

⁵ Hongyi Lai, *Introduction: The Soft Power concept and a rising China*, in *China's Soft Power and International Relations* 1, 2 (Hongyi Lai & Yiyi Lu eds., Routledge 2012).

and social development compared to the United States. Therefore, how she marshals resources to support national interests must inevitably be different to those of the established hegemonic power, necessitating that concepts 'be understood and re-conceptualized on the Chinese, rather than Nye's, terms'.⁶

In this context, China's development and projection of soft power can be seen to intersect with, on the one hand, a set of domestically generated ideas and principles such as harmonious world theory, good-neighbourliness and peaceful rise, and on the other, with an interests-led international engagement to enhance Chinese material utility to sustain a stable environment for continuing modernisation. This instrumentalist view has been described as showing China's understanding of 'smart power'⁷ to locate a more sophisticated nexus between hard and soft power that better reflects China's priorities to achieve what might be termed a vision of the 'rejuvenation of the Chinese nation' as a recognised world power through the careful accumulation of comprehensive national power.⁸

The second difference is that China's definitional scope of what actually comprises soft power is rather more wide-ranging than Nye's original formulation, in that there is much more in the Chinese lexicon than just culture, values and foreign policies. In order to better understand this argument, it is useful to recall that Chinese literature on 'soft power' (*ruan quanli*) also includes the concept of 'soft capacities' (*ruan shili*), which encompasses a more comprehensive approach to power projection and how different elements of national capability have form, influence and meaning internationally.⁹

Whilst it is certainly true that the dominant discourse in China since 2007 has focused on cultural soft power and its instrumentalist potential to reinforce China's position, this should not be seen as having usurped other ways in which states can manifest their attractiveness within a broader definition of soft power. These characteristics include Chinese recognition of a more nuanced interpretation to the construction of soft power resources and how a state's arsenal can include the soft application of hard power assets, such as national economic strength, technological

⁶ Sheng Ding, *Analyzing Rising Power from the Perspective of Soft Power: a new look at China's rise to the status quo power* 19 J. of Contemporary China, 255, 265 (2010).

⁷ Zhu. *supra* n. 2, at 16.

⁸ Zhicheng Ye, *Inside China's Grand Strategy: The Perspective from the People's Republic* 74 (Steven I. Levine and Guoli Liu trans., eds., University of Kentucky Press 2011).

⁹ Chen & Song, *supra* n. 1, at 258.

advancement and scientific capability, together with an emphasis on political dialogues and the use of economic assistance.¹⁰

2.2 MEETING CHINA'S DOMESTIC NEEDS

In this way, capabilities can be maximized as much by the perception of, and reception to, specific resource elements of power than whether those aspects are formally categorised as either hard or soft power.¹¹ Varrall takes forward these ideas by further distinguishing between Nye's American conceptualization of 'get them to *want* what you want' versus China's more subtle interpretation of the concept of soft power as 'getting others to *do* what you want' (emphasis added).¹² This introduces the context of foreign assistance to theoretical analyses of power, wherein factors such as technical and financial aid can be seen as a useful tool in a nation's soft resource armoury, and is one that China herself is not averse to using as a means to build bilateral bridges with allies in Africa and South America in order to achieve Chinese domestic goals and foreign policy objectives.

This position gives opportunity to introduce the use of technical assistance projects by the EU to China as an example of such intersecting power dynamics. It is not therefore hard to see how European specialist help projected to China might gain traction and resonance in Chinese policy circles where such assistance maps with the attractiveness of technological capabilities inherent in the provider and overlaps with China's domestic national interests in achieving enhanced levels of technical and scientific achievement. Before these arguments are explored further, however, it is important to locate technical assistance within the EU's policy spectrum in the context of the strategic nature of contemporary EU-China relations.

3. TECHNICAL ASSISTANCE AND SOFT POWER IN EU-CHINA RELATIONS

The role and extent of technical assistance needs to be understood within the EU's engagement policy panoply with China before its impact on bilateral relations can be properly evaluated. Since establishing full diplomatic links with the People's Republic of China in 1975 (as the European Community), the provision of capacity building

¹⁰ Lai, *supra* n. 5.

¹¹ Yongnian Zheng & Chi Zhang, 'Soft Power' and Chinese Soft Power, in *China's Soft Power and International Relations*, 21, *supra* n. 5.

¹² Merriden Varrall, *Debunking the myth of China's soft power*, in *China's Soft Power and International Relations* 138, 139, *supra* n. 5.

and technical assistance by the EU has been one of four principle policy domains between the two parties, with the other three being global governance, trade and investment, and political transformation¹³. In each of these three latter areas, tensions currently exist to hinder the fruitful evolution of strategic partnership that both sides claim is their intention to foster and consolidate.

3.1 ENGAGEMENT DOMAINS WITH CHINA

In terms of global governance, for example, the continued imposition of the EU arms embargo on China and ongoing differences over implementing intervention norms in response to crises such as Syria illustrate a marked difference in attitudes, with China becoming increasingly frustrated by EU calls to adopt a more responsible attitude towards what Europe has defined as 'good governance'.¹⁴ Trade and investment relations are the strongest manifestation of the extent to which both economies are intertwined, with burgeoning levels of bilateral exchange of goods and expanding two-way foreign direct investment. However, even here, the atmosphere is soured by the EU's continuing rejection of China's market economy status, in what the Chinese see as an obsessive reliance on trade defence measures to unfairly protect European manufacturers against stiff competition from Chinese exporters.¹⁵

Tensions are at their most marked when taking into account endeavours by the EU to transform China's political and social landscape to better resemble an idealised norm more reflective of European ideational beliefs than anything that could resemble China's own historical or contemporary social construction.¹⁶ Efforts have been particularly fraught and fruitless in the context of promoting human rights, with a succession of dialogues failing to meet meaningful objectives and often being seen more as enabling Chinese agenda-setting in order for those meetings to be able to take place at all.

¹³ European Commission, *A maturing partnership - shared interests and challenges in EU-China relations*, 7-21, COM(2003) 533 (European Commission 2003)

¹⁴ May-Britt Stumbaum, *Europe's views on China's role in international security*, in *China, Europe and International Security: Interests, roles and prospects* 14 (Frans-Paul van der Putten & Shulong Chu eds., Routledge 2010).

¹⁵ Zhimen Chen & John Armstrong, *China's relations with Europe: towards a 'normal' relationship?*, in *Handbook of China's International Relations* 156 (Shaun Breslin ed., Routledge 2010).

¹⁶ Rosemary Foot, *Strategy, politics and world order perspectives: comparing the EU and US approaches to China's resurgence*, in *US-China-EU Relations: Managing the new world order* 212 (Robert S. Ross, Øystein Tunsjø & Tuosheng Zhang eds., Routledge 2010).

These tensions arise because of the principle point of departure for the EU's external relations: a values-led paradigm. The EU has often been characterized as a normative power in international relations, by which it is meant that since its inception, the EU has prioritized 'placing universal norms and principles at the centre of its relations with ... the world',¹⁷ including concepts such as human rights, democracy, equality, political pluralism and the rule of law. Moreover, the EU has also sought to have these values internalized by third party nations behind-the-border in her bilateral relationships, perhaps most markedly expressed by Romano Prodi in an address to the European Parliament as Commission President in 2000, when he argued that 'Europe needs to project its model of society into the wider world', further emphasising that Europe offered 'a civilisation deeply rooted in religious and civic values'.¹⁸

Despite more recent shifts in rhetoric by the European Commission in their strategy documents about relations with China that have appeared to promote a harder interests-aware edge to dialogue,¹⁹ the ongoing impression left by the EU on the Chinese has frequently been a tendency to 'point fingers' at perceived failings in China's political system.²⁰ This is especially the case in respect to activism by the European Parliament whose hosted debates on China's human rights record have been largely critical in nature and regular in number.²¹

Whilst it is certainly true that the EU has had some clear successes with a values-led strategy with some partners, evidence suggests that such outcomes have mainly been possible where the EU has possessed key hard power leverage to persuade the recipient to accept these norms, and that these accomplishments have been at their most marked when linked to the prospect of eventual EU membership in Central, Eastern European, and Balkan states. However, when this kind of values-laden strategy is applied beyond the near-neighbourhood, positive outcomes appear to become much more difficult to procure. Critically, at the heart of prevalent tensions

¹⁷ Ian Manners, *Normative Power Europe: A contradiction in Terms?* 40 J. Com. Mkt. Stud., 235, 241 (2002).

¹⁸ Romano Prodi, *Shaping the New Europe*, (2000), at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/00/41&format=HTML&aged=1&language=EN&guiLanguage=en> (accessed 16 April 2012).

¹⁹ European Commission, *EU – China: Closer partners, growing responsibilities*, COM(2006) 631 (European Commission 2006); K Van der Borch & L Zhang, *Pragmatism Rules Legal Foundation of China and European Union Relations* 16 Intl. Trade Law & Regulation, 69 (2010).

²⁰ Ying Fu, *Vice Chinese Foreign Minister Fu Ying's Breakfast Session with Journalists in Brussels*, (2011), at <http://www.chinamission.be/eng/jd/t867173.htm>, (accessed 25 April 2012).

²¹ G Balducci, *Prospects and Challenges for the European Promotion of Human Rights in China* 1 EU China Observer, 8 (2009).

in the EU-China relationship is what has been termed a 'values gap', which implies that the EU's normative projection of its principles towards China has not only failed to gain traction but has generated resentment from a re-emerging Asian power now increasingly capable both of resisting external pressures and of pushing her own agenda for change in international forums.²²

3.2 NORM DIFFUSION THROUGH TECHNICAL ASSISTANCE

Given these difficulties, it is reasonable to ask how technical assistance and capacity building locates into this spectrum in such a way that any project could possibly lead to successful engagement outcomes that accord with sustaining European soft power in China? One answer lies in the distinctive nature of assistance and capacity building as a meaningful soft power resource for both the EU and China. Another explanation is that such policies marry overlapping the interests of both sides in such a way as to intersect with the more inclusive definition of the Chinese view of soft power as capacity enabling and thus is met with a positive reception in China. Each of these points interconnects with important theoretical arguments of normative projection and diffusion.

Manners introduces the idea of 'norm diffusion' of the EU's power within international relations.²³ He outlines a number of methods by which such a process can take place, such as through replicated contagion of key principles in regional integration, or via procedural diffusion through the institutionalisation of relationships with certain third party countries on the EU's periphery. Most pertinent to the current analysis, however, is the principle of 'transference' in the context of trade, aid or technical assistance achieved through the effective export of community standards to facilitate the creation of third-country behavioural norms.²⁴ Michalski takes forward these concepts and applies them to the EU-China relationship by illustrating how the EU uses 'diplomacy as education' as part of its soft power arsenal, including programmes in science and technology which can have direct overlaps with China's current needs, showing how elements of the EU's technical assistance framework

²² Andrew Small, *Cooperation between China and the EU in the UN Security Council (1)*, 45 (EU-China Policy Dialogues Support Facility 2011).

²³ Manners, *supra* n. 16, at 244-245.

²⁴ *Ibid.*, 245.

intersect with the priorities of the Chinese political leadership for economic and technological modernisation.²⁵

In this way, technical assistance and capacity building initiatives by the EU in China overlap with mutual interests in sustaining economic development, fostering innovation-led growth and promoting best practice in scientific endeavours. They facilitate the development of EU power as 'a capacity to empower others' and match with China's own understanding of how soft power can be best projected and absorbed, so avoiding many of the pitfalls apparent in more disputed policy domains.²⁶ Such ideas also match China's interpretation of the word strategic, wherein more priority is given to the breadth and long-term nature of relationship building versus the hallmark of the EU's favoured pattern for external relations which prioritize the immediacy of deepening dialogue in specific political policy spaces. Such a mismatch in expectations typically introduces the potential for disappointment for the EU when dealing with a mainly interests-led actor such as China, whose outlook differs to Europe's in important ways across a number of key areas.

It is perhaps for these reasons that technical assistance as a domain of engagement, when compared to the other three already discussed, has met with some considerable success in a number of areas, offering a positive contribution of European expertise to China.²⁷ Whether in developing low carbon initiatives for clean-tech environmental planning, or in agreements on enhanced consumer protection in manufacturing processes, or even in civil aviation traffic management, initiatives that offer connection between knowledge exchange and learning benefits have a genuine capacity to bring fruitful outcomes on an interests-led basis with China.²⁸ This article's central argument is that the IPR2 initiative is also one such example of a successful capacity building initiative through which important priorities for the EU in fostering intellectual property (IP) regime development and embedding best practice in IP regulation across China has been able to succeed. This helps to explain why a broader definition of soft power is particularly important when evaluating EU-China relations and it is to this case study that subsequent sections of this article now turn.

²⁵ Anna Michalski, *China and the EU: Conceptual gaps in Soft Power*, in *Conceptual Gaps in China-EU relations: Global Governance, human rights and strategic partnerships*, *supra* n. 1, at 65, 72.

²⁶ Kalypso Nicolaidis, *The Power of the Superpowerless*, in *Beyond Paradise and Power: Europe, America, and the Future of a Troubled Partnership* 93, 114 (T. Lindberg ed., Routledge 2005).

²⁷ Baiyi Wu, *An analysis of Chinese images of the United States and EU*, in *US-China-EU Relations: Managing the new world order*, *supra* n. 15, at 164.

²⁸ EEAS, *Institutional Capacity Building for Civil Aviation Sector in China*, (2011), at http://eeas.europa.eu/delegations/china/documents/projects/civil_aviation.pdf, (accessed 16 April 2012).

4. LOCATING IPR2 WITHIN EU TECHNICAL ASSISTANCE POLICIES TO CHINA

The relationship between China and the EU has been officially characterised as strategic for over a decade, since the first warm assessments were made in 2003 by both sides of the potential for building a stronger and more inclusive framework for cooperation beyond the 1985 Trade and Economic Cooperation Agreement (TECA), which actually remains the only legally binding document that covers bilateral links. There are now dozens of disparate dialogues on a plethora of different subjects taking place at multiple levels of political seniority, including annual summits between the post-Lisbon Treaty troika of European Council President, European Commission President, along with the EU's High Representative for Foreign and Security Affairs and their Chinese counterparts. In 2007, the entire process was upgraded as the EU sought to establish a fully-fledged Partnership and Cooperation Agreement (PCA) with China, but thus far, both sides have failed to overcome ongoing tensions in many areas of the agreement's details.²⁹

4.1 STRATEGIC PARTNERSHIP

Formal dialogues on intellectual property issues between the EU and China began in 2004 and form part of the trade remit of the European Commission. Regular meetings to discuss concerns and highlight progress in both regulation and enforcement of IP rights in China are now a continuing feature of political and technical engagement. On the European side, this overlaps with important priorities of trade related aspects of intellectual property rights that the EU promotes both bilaterally and multilaterally in order to defend the interests of European firms conducting business overseas. These IP dialogues cover all aspects of patents, trademarks and copyright regulation, as well as best practice in handling trade secrets and enforcement.³⁰

However, it would be one dimensional to see such issues as pertaining only to EU interests, as the Chinese have also been focusing on enhancing their own levels of scientific achievement to promote innovation-led growth as part of critical domestic

²⁹ Jing Men, *The Chinese Perceptions of the EU, but whose perceptions?* 6 EU China Observer, 6 (2011).

³⁰ European Commission, *Intellectual Property Dialogues - China* (2013), at <http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/dialogues/>, (accessed 26 March 2013).

economic rebalancing away from a dependency on export-led manufacturing towards more knowledge-led invention and licensing. China's Medium and Long-Term Science and Technology Strategy 2006-20 (hereinafter S&T Strategy) encapsulates this new emphasis on Chinese capacity building and shows how the progressive strengthening of China's IP regime overlaps interests on both sides of this particular bilateral dialogue.³¹ Alongside these developments at a cross-cutting level, there have been initiatives to raise awareness amongst Chinese stakeholders of the importance of IP to the creation of a modern economy, primarily delivered through the National IP Strategy of China launched in June 2008.³²

The IPR2 initiative should therefore be seen in this context, in that it consolidated earlier programmes and created a structured framework for using IP as a strategic tool in business development. Launched jointly by the European Commission and the government of China, the project was implemented on the European side by the European Patent Office which facilitated links to individual Member State bodies whilst also drawing on further expertise from the Office for Harmonization in the Internal Market (OHIM) in order to create a specialist European team based in the EU delegation in Beijing. This team was able to forge effective working relations with both China's State Intellectual Property Office (SIPO) which has overall responsibility for China's IP regime evolution and the State Administration for Industry and Commerce (SAIC) which has a network of regional offices that coordinate aspects of IP administrative enforcement procedures. The implementing organisation for the Chinese government was the Ministry of Commerce (MOFCOM).³³

What distinguished IPR2 from earlier dialogues was its emphasis on education and empowerment of Chinese actors in defending their own IP as much as its aims to reach accord with China over the pace and content of her regulatory and enforcement system when compared with the EU's IP best practice. These goals were to be achieved through a combination of workshops, study tours, symposiums and formal training programs, with activities being held in both China and Europe, and included participation from business stakeholders in addition to officials and politicians. This helps to explain why the programme included cross-cutting policy

³¹ Junru Li, *The right direction?* 2 The Parliament Mag., 41 (2013).

³² State Council of China, *Outline of the National Intellectual Property Strategy*, (2008), at http://english.gov.cn/2008-06/21/content_1023471.htm, (accessed 14 March 2013).

³³ OHIM, *OHIM's contribution to IPR2's success*, (2011), at <http://oami.europa.eu/ows/rw/pages/OHIM/OHIMPublications/newsletter/1109/MORENEWS/morenews1.en.do>, (accessed 25th March 2013); EPO, *EU and China celebrate successful co-operation on intellectual property protection*, (2011), at <http://www.epo.org/news-issues/press/releases/archive/2011/20110913.html>, (accessed 25 March 2013).

areas that involved more than 20 Chinese government agencies and institutions and why the project's website could meaningfully claim that the initiative was a 'partnership project' that represented a 'milestone for EU-China co-operation on the protection and enforcement of intellectual property rights'.³⁴

4.2 STRUCTURE AND FUNDING OF IPR2

The project was funded with a budget of just under EUR16.3 million over a four-year period from September 2007, with a little over EUR10.8 million from the European Commission and the remaining funds being contributed by the Chinese government. The project's structure and delivery was divided into a number of key components, with the most high-profile being actions on China's legal framework development, local capacity building, access to information, and support to rights holders.³⁵ In particular, aspects of enforcement deficiencies and improving best practice in the protection of IP at trade fairs and through internet purchasing gained increasing visibility as the project evolved, requiring focused dialogue between IP judges from China and Europe as well as a greater emphasis on developing substantive procedures and enhanced knowledge levels amongst Chinese industry specialists of the growing prevalence of online piracy. A series of activity promotions, performance review processes, and project milestones ensured ongoing visibility for IPR2, whilst an integrated bilingual online document centre provided a lasting knowledge base for ongoing reference of key IP concepts and concerns for participants.

A related initiative for European SMEs to have access to a dedicated IPR Helpdesk for advice and best-practice guidance on securing their IP rights within China was piloted in parallel with the key stages of IPR2, with separate funding from DG Enterprise under the Competitiveness and Innovation Framework Programme (CIP). In a similar vein to IPRs, Helpdesk services include webinars, e-learning tools such as those which outline important differences in the IP regulatory system between Europe and China, as well as multilingual online assistance through a dedicated website and publicly visible email IDs of key staff. This facility has since entered a second, more wide-ranging phase of operation with further funding, illustrating that the principle of empowerment with IP concepts for the EU is seen as a two-way

³⁴ IPR2, *About IPR2*, (2011), at <http://www.ipr2.org/aboutipr2.html>, (accessed 25 March 2013).

³⁵ EPO, *supra* n. 32; Mingde Li, *Overall Evaluation Report IPR2 Project Result 1 - CC1.AW4.001*, (2011), at <http://ipr2.org/document-centre/document.php?id=321>, (accessed 25 March 2013).

process and not one limited to Chinese businesses alone. The most recent operational stage was due to expire at the end of 2013.³⁶

It is therefore clear that a plethora of related and distinctive activities took shape after 2007 that put safeguarding the commercialisation of intellectual property assets and transforming Chinese capabilities in defending these assets centre-stage within the EU's capacity building strategy towards China. The IPR2 project should be seen as a principal part of this overall approach to transfer EU best practice into China and to facilitate increased levels of legal and commercial cooperation between key stakeholders. With the conclusion and formal closure of IPR2 in September 2011, it is useful to seek ways to review the extent to which this initiative succeeded in delivering on its objectives, and the next section considers success criteria within an overall analytical framework of normative transference.

5. ASSESSING IPR2 IN QUALITATIVE AND QUANTITATIVE TERMS

The IPR2 project included its own review procedures that involved the production of a number of formal and independently written evaluation reports. This article does not propose to duplicate these reports, nor simply include their findings as a single statement of assessment, but instead will draw out key indicators and use them to contextualize how success for a project of this breadth and scope might be best considered within both a qualitative and quantitative framework as a best-practice example of normative transference. Clearly, risks exist in the extent to which dependence is made on the views of those with possible vested interests in having this project seen as a success, on both the Chinese and European sides, but this can be mitigated to some extent at least by cross-referencing with statistical support from reliable sources and qualitative input from private networks. Finally, the sheer volume of positive indicators and enthusiastic statements about IPR2 creates a singular impression of its own.

Qualitatively, a review of the discourse on the overarching achievements of the IPR2 project will be made from European and Chinese perspectives, drawing on publicly available sources in media and other contexts as well as using the author's own network of interested parties. Quantitatively, a review will be made of the increased IP activism that can be argued is now present across China, drawing on some of the

³⁶ IPR Helpdesk, *About the Helpdesk*, (2011), at <http://www.china-iprhelpdesk.eu/en/about-the-helpdesk>, (accessed 25 March 2013).

latest statistics from internationally reliable agencies such as WIPO and the OECD. In conclusion, whilst direct correlations between the activities of IPR2 and Chinese progress in regulatory and enforcement methods are difficult to make categorically, and will always be somewhat speculative, a confluence of positive attitudes and meaningful outcomes will be shown to exist. In this way, IPR2 will be shown to have exerted pivotal influence as a key part of a multilayered series of initiatives to improve China's IP regime, to the benefit of China and of the EU.

5.1 CHINESE PERSPECTIVES ON IPR2

The text of the Overall Evaluation Report for IPR2, written by Professor Li Mingde of the Chinese Academy of Social Sciences, makes a clear case for considering the initiative to have been a success. It maintains that the project has reached its purpose 'to promote Chinese legal framework of IPR laws and regulations to be more predictable, transparent, coherent, and in line with the WTO agreements' and that 'because many suggestions, views, and opinions by IPR2 have been accepted, considered by Chinese legislators, officials, and experts, it can be said that the IPR legal system of China now bore a clear European mark', maintaining that 'IPR2 is a successful story'.³⁷ In this review of the Chinese perspective on IPR2, due regard is made to the influence that international treaties and domestic drivers have also had on China's IP regulatory progress showing how important it is not to take just one project's outcomes in isolation from other push-pull factors. Nevertheless, the influence of IPR2 is seen as especially significant because of the nature of its interactions with Chinese legislators, ministry officials, IP-trained judges and specialist academics, through workshops, forums and policy debates. Professor Li's clearly articulated position is that IPR2 has 'impacted greatly on the framework of Chinese IPR laws and regulations'.³⁸

A further evaluation report by the Chinese, grounded more technically in the impact that IPR2 may have had in China's IP legal system evolution and carried out by the Centre for Studies of IPR at Zhongnan University of Economics and Law, reinforced this favourable perception by drawing on instances of how regulatory and enforcement activism had progressed during the four-year lifespan of the project. In terms of seized batches of infringing goods by the General Administration of China Customs (GACC), for example, the report shows that the recorded number rose from

³⁷ Li, *supra* n. 34, at 2

³⁸ *Ibid.*, 3.

just over 8,000 batches seized in 2007 to more than 20,000 batches by 2010, having reached a peak in seizures of 66,000 batches the previous year.³⁹ A summary of closing phase milestones included reference to a 233% increase in IP cases heard by Chinese courts, quoting a Chinese specialist commentator who maintained that the training opportunities offered through IPR2 had 'contributed a great deal to the quality of the body of Chinese judges',⁴⁰ whilst a Chinese media source recently reported that almost 30,000 people were convicted for IP related crimes between 2008 and June 2012.⁴¹

Such numeric progress is also reflected in an increase in the number of enforcement officials dispatched across the country and in the more rigorous levels of training provided to them in support of the investigatory work. Similarly, fines issued by the National Copyright Administration of China (NCAC) rose consistently over the same period, from RMB19 million in 2007 to nearly RMB150 million by 2010.⁴² This is particularly significant because copyright has always been an especially difficult area of IP for the Chinese to fully appreciate and for her legal system to properly articulate, with legislative progress in this area typically characterised as less extensive than for patents and trademarks.⁴³

5.2 EUROPEAN PERSPECTIVES ON IPR2

Positive discourse is also apparent in international media and official EU statements, although many commentators simultaneously recognize that much work remains to be done and that enforcement consistency of IP regulations in different parts of rural and urban China is still a problem, even whilst acknowledging the progress that the IPR2 project helped to spearhead.⁴⁴ An interesting comparative assessment of progress may be made by reviewing the tone, content and emphasis of the joint minutes from early and later EU-China IP Working Group Meetings. Whilst allowing for the fact that minutes do not necessarily convey all aspects of specific statements

³⁹ Evaluation Report, *Evaluation Report Project Result 2- CC2.AW4.001*, 5 (2011), at <http://ipr2.org/document-centre/document.php?id=326#>, (accessed 25 March 2013).

⁴⁰ EU in China, *IPR2 Closing Phase: A milestone for EU-China co-operation on Intellectual Property protection*, (2011), at http://newsletter.eu-in-china.com/newsletters/201108/012_en.html, (accessed 25 March 2013).

⁴¹ Beijing Review, *China Convicts Nearly 30,000 for IPR Crimes*, (2012), at http://www.bjreview.com/headline/txt/2012-12/26/content_509130.htm, (accessed 25 March 2013).

⁴² Evaluation Report, *supra* n. 38, at 9.

⁴³ Paul Irwin Crookes, *Intellectual Property Regime Evolution in China and India: Technological, Political and Social Drivers of Change* (Brill 2010).

⁴⁴ Julian Hale, *EU-China Project trains more than 2,700 Officials*, 15th September, (2011), at <http://www.managingip.com/Article/2900595/EU-China-project-trains-more-than-2700-officials.html>, (accessed 25 March 2013).

in a meeting, noticeable differences in content may be gleaned from examining minutes taken and published online by the European Commission between 2006 and 2011 – a period largely overlapping the IPR2 project.

Minutes from meetings taken early in the period laid considerable emphasis on expressing EU concerns about numerous aspects of Chinese IP practice. The 2nd EU-China IP Working Group meeting was held in June 2006 in Beijing. Whilst the minutes acknowledge some progress made by China in dealing with fake trademarks and the establishment of complaint centres, the record is largely dominated by ongoing difficulties and “priority issues” that remained to be resolved.⁴⁵ By contrast, the joint minutes from the 8th Working Group meeting held in Beijing in March 2011 show a level of considerable Chinese activism on introducing new procedures, new legal amendments and new remedies for rights holders, in areas as diverse as geographical indicators, trade name protection and certification signs. The minutes single out IPR2 in particular as a successful example of technical bilateral cooperation and genuinely expressed appreciation is recorded by the EU side of Chinese willingness to continue their efforts.⁴⁶

Such views are supported by the author’s own communications with individual stakeholders. In communication with the author, one former senior official at the European Commission expressed the view that DG Enterprise, for example, was a satisfied client in respect to the outcomes of IPR2 as an enabler for reinforcing awareness of IPR issues across China.⁴⁷ Moreover, communication from a business executive well versed in the challenges of safeguarding IP in China is also instructive. In this assessment of a particular partnership with a domestic Chinese software service provider in Beijing, whilst software IP was still carefully secured through use of modular development techniques,⁴⁸ the relationship with the Chinese partner had now reached a point where competency assessments of their technical, marketing and sales capabilities had equal salience alongside IP questions, with protection strategies taken just as seriously as an issue by the Chinese firm as by other partners in this multinational development project.⁴⁹ Each of these different

⁴⁵ IP Working Group, *Joint Minutes*, (2006), at <http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/dialogues/>, (accessed 25 March 2013).

⁴⁶ IP Working Group, *Joint Minutes*, (2011), at <http://ec.europa.eu/trade/creating-opportunities/trade-topics/intellectual-property/dialogues/>, (accessed 25 March 2013).

⁴⁷ Email communication with the author, February 2013, followed by face-to-face dialogue, April 2013.

⁴⁸ This is a process whereby complex software programs are broken down into small discrete units to be developed separately by different teams, sometimes in different countries, before being re-integrated.

⁴⁹ Email communication with the author, March 2013, followed by face-to-face dialogue, August 2013.

perspectives taken in isolation might not amount to sufficiently compelling evidence, but when taken as a whole and combined with the volume of positive responses from both sides of the project's delivery structure, convincing momentum is generated.

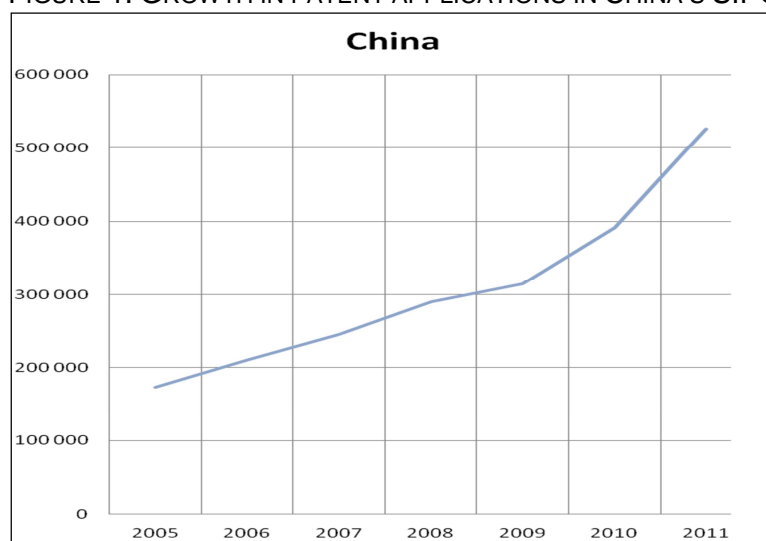
5.3 INTERNATIONAL DIMENSIONS OF CHINA'S PROGRESS

It is also useful to briefly review the wider dimensions of how this project might have helped support China's own interests in fostering increased levels of technological capability and scientific achievement. A couple of international agencies are helpful in providing such context – the World Intellectual Property Organisation (WIPO) and the Organisation for Economic Cooperation and Development (OECD), both of which regularly produce detailed reports analysing IP progress and industrial competitiveness of key economies. These organisations record statistics that can be usefully overlapped with the timelines of the IPR2 project, from the mid-2000's to the project's end in 2011, in order to provide an illustration of detectable trends in China's IP activism.

According to these sources, some useful progress in promoting the importance of IP across China has been made during these years. For example, OECD data shows that the volume of IP fundamentals, such as patents, filed with China as their country of origin has grown markedly in recent times (see Figure 1). Moreover, according to WIPO, average annual growth in filings for the Chinese State Intellectual Property Office (SIPO) between 2008 and 2011 was 26% for trademarks, 22% for patents and 18% for designs respectively. In 2011, SIPO accounted for 24% of world patent filings and 53% of industrial design filings, with the vast majority of applicants being domestic residents.⁵⁰

⁵⁰ WIPO, *World Intellectual Property Indicators*, 5 (World Intellectual Property Organisation 2012).

FIGURE 1: GROWTH IN PATENT APPLICATIONS IN CHINA'S SIPO 2005-11



Source: Adapted from OECD Science, Technology and Industry Outlook 2012, 196.

Statlink: <http://dx.doi.org/10.1787/888932690073>

However, many analysts now broadly accept that too great an emphasis on volume growth of the numbers of patents in an economy is an insufficient single pointer to progress. This is especially the case in China, where financial subsidies may act as a possible artificial stimulus to distort patenting activity, and where neither commercial motivations to protect a genuinely original idea nor foreign influences such as IPR2 need always be the most salient drivers.⁵¹ In this situation, a number of additional factors need to be considered in an assessment of China's recent activism.

In respect to patents, two further indicators stand out as useful metrics. First, the extent to which international filings through the Patent Cooperation Treaty (PCT) have been made with China as the country of origin, and second, the number of filings from China that involve the 'triadic' patent family of the US Patent and Trademark Office (USPTO), the European Patent Office (EPO) and the Japan Patent Office (JPO).⁵² There were about 49,000 triadic patent families filed in 2010.

Here, the evidence in respect to China's positioning appears to be more mixed.

⁵¹ Peter Ollier & Janice Qu, *China's Global IP Plans Revealed*, (2010), at <http://www.managingip.com/Article/2706178/Chinas-global-IP-plans-revealed.html>, (accessed 25 March 2013); Paul Irwin Crookes, *China's new development model: Chinese prospects in technology innovation* 26 China Info., 167 (2012).

⁵² OECD *Factbook: Economic, Environmental and Social Statistics*, 154 (Organisation for Economic Co-operation and Development 2013). <http://dx.doi.org/10.1787/factbook-2013-62-en>.

TABLE 1: NUMBER OF PCT FILINGS BY COUNTRY OF ORIGIN - TOP 5 BY 2012 DATA

Year							
Country of Origin	2007	2008	2009	2010	2011	2012	2012 Share (%)
United States	54,043	51,643	45,628	45,029	49,060	51,207	26.7
Japan	27,743	28,760	29,802	32,150	38,874	43,660	22.5
Germany	17,821	18,855	16,797	17,568	18,851	18,855	9.7
China	5,455	6,120	7,900	12,296	16,402	18,627	9.6
Republic of Korea	7,064	7,899	8,035	9,669	10,447	11,848	6.1

Source: WIPO PCT Yearly Review 2013, 27.

There does seem to be a clear indication of positive movement observable in PCT activism by Chinese enterprises (see Table 1). Indeed, WIPO reports that, of the 194,000 PCT applications filed in 2012, Shenzhen-based ZTE submitted the largest number of filings at 3,906, overtaking Japan's Panasonic with 2,951. Moreover, China is now also challenging Germany as third most active PCT country of origin.⁵³

However, China continues to remain significantly under-represented in global triadic patents filed, especially when factors such as the size of the resident population and the volume of domestic filings are considered, which may imply a lower level of internationally competitive innovation taking place across the country when compared with leading OECD economies. Nevertheless, even in respect to such filings, during the timeline of the IPR2 initiative, triadic applications from China nearly doubled (see Table 2).

TABLE 2: TRIADIC PATENT FAMILIES – NUMBER BY SELECTED COUNTRY/REGION, 2010

Year						
Country / Region	2006	2007	2008	2009	2010	2010 % Share
Japan	15,048	14,543	13,106	13,070	15,067	30.6%
EU27	14,707	14,723	14,371	14,072	14,124	28.6%
United States	15,857	15,033	14,096	13,862	13,837	28.1%
Germany	5,960	5,942	5,741	5,625	5,685	11.6%
Korea	2,134	2,202	1,780	2,067	2,182	4.4%
China	365	467	507	709	875	1.8%

Source: OECD Factbook 2013: Economic, Environmental and Social Statistics, 155.
doi: <http://dx.doi.org/10.1787/factbook-2013-table160-en>

⁵³ WIPO, *PCT Yearly Review*, 34 (World Intellectual Property Organisation 2013).

Overall, the combination of qualitative impressions and quantitative indicators do offer evidence of an alignment with significant improvements in China's IP activism and achievements in IP regulations with the IPR2 project. Whilst, undoubtedly, account must be taken of concurrent domestic stimulus factors, such as those framed within the S&T Strategy, diffusion of the EU's IP principles into China's evolving legal and behavioural mindset in defining and defending intellectual property assets appears to have been broadly successful through the implementation of the IPR2 project. This would seem to be a useful illustration of transference in action: projection from the EU coupled with willingness to receive by China.

6. FUTURE DIRECTIONS FOR THE LEGACY OF IPR2

The project itself has now closed, and it is unclear how this momentum can be maintained going forward, despite enthusiasm on both sides for such progress to be maintained.⁵⁴ Enforcement continues to remain a challenge in China, especially outside the major urban areas, whilst the newly emerging e-tailing sector introduces formidable trademark and quality control concerns for both producers and consumers alike. China also continues to need greater interconnection with international IP best practice in order to fully realize her potential to develop as an innovation-led economy.

Unfortunately, the future of EU funding for further stages in IP technical assistance remains unclear. One senior official from the European Commission has indicated to the author that bilateral development programmes to China (along with those to 18 other countries) are being phased out. This is explained as part of a long-term realignment for EU expenditure of this type towards poorer countries, such that, during 2014, an evaluation will be made of how best to disengage from offering this kind of assistance to countries such as China.⁵⁵ This is a puzzling priority as the expenditure of relatively small amounts of investment appears to have given the EU significant leverage under IPR2 to shape outcomes in China's IP legal evolution and persuade numerous Chinese experts to take account of EU norms in this policy space.

The project would seem to be a successful illustration of soft power at both a theoretical and empirical level. Moves by the EU to divert priorities away from such

⁵⁴ Ollier & Qu, *supra* n. 47; IP Working Group, *supra* n. 45.

⁵⁵ Email communication with the author, February 2013.

an emphasis may only result in diminishing, rather than enhancing, the EU's overall outreach to China in the future.

7. CONCLUSION

This article has considered the EU's use of soft power as an instrument in its bilateral relations with China. In particular, the IPR2 project has been closely examined and offered as an exemplar of how norm diffusion can take place through transference of both principles and practice in regulating intellectual property assets. Evidence has been presented in qualitative and quantitative terms to show that this initiative overlapped with definitions of how soft power can be constructed and projected, matching the objectives of both sides in the relationship. In conclusion, such initiatives have been shown to offer a meaningful model for the future and to deserve sustained political support.