



The international developmental state: The Japanese intellectual property system in Vietnam

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ARTICLE INFO

Article history:

Received 9 February 2009

Received in revised form 22 February 2011

Available online 31 March 2011

Keywords:

Japan

Vietnam

Intellectual property (IP)

Official development assistance

IP intermediaries

Developmental state

ABSTRACT

This article explores the international implications of the developmental state model of Japanese capitalism. It does so by investigating the extension of Japanese intellectual property (IP) policy and practice in Vietnam. The escalating role of intellectual property within Japanese industrial policy is first framed according to Johnson's developmental state thesis and extended in reference to the 'flying geese' model of regional development in East Asia. This latter approach anticipates Vietnam's growing importance as a site for Japanese foreign direct investment and technology transfer. Interviews with key informants from both countries and analysis of policy documents provide evidence of the extra-territorial practices employed by Japanese companies, government agencies, and IP intermediaries in Vietnam. These accounts bring to light key developmental mechanisms, such as the packaging of IP internationalization within Japan's official development assistance (ODA) and the overseas pro-bono work performed by IP intermediary associations in which the line between benevolence and self-interest is blurred. The paper concludes by interpreting these practices in accordance with the broader strategic imperatives of Japan in the region.

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1. Introduction

Following the seminal work of Chalmers Johnson (1982, 1995, 1999), scholars have interpreted Japan's modern political economy, and subsequently the late-developer trajectories of other East Asian nations, in reference to his idea of the developmental state (Woo-Cumings, 1999; Coe et al., 2007, p. 202). The developmental state model directs its focus on the relations between the state and the market. For Johnson, this relationship hinges on an elite bureaucracy which deploys state power to shape the incentive environment for private sector decision-making. To this point, however, the model's application has been limited principally to explain these nations' domestic institutional features, for instance in regard to industrial policy, labor relations, and so on. In contrast scholars have rarely applied the model to frame the *international* dimensions of developmental states (Olds and Yeung, 2004). Yet at least in the case of Japan, recent theoretical mappings of that country's evolving foreign direct investment patterns in East Asia suggest a way to extend thinking on the developmental state beyond what Agnew (1994) calls 'the territorial trap' of the domestic context.

The 'flying geese' model in particular captures the catalytic role of Japanese foreign direct investment (FDI) in stimulating

economic development through technology transfer in a succession of East Asian countries (Edgington and Hayter, 2000; Hayter and Edgington, 2004; Ozawa, 2007). Provocatively, the model suggests that rounds of investment through, in sequence: the NICs (S. Korea, Taiwan, Hong Kong and Singapore), ASEAN (Malaysia, Thailand, Indonesia, Philippines), China, and most recently Vietnam, reflect both reallocations of capital in pursuit of lower labor costs (as predicted by Frobel et al. (1980)), but also evidence of learning and bargaining by host nations. Indeed, it has proven remarkably prescient in anticipating the timing and nature of Japanese investment into China from the late 1990s, as well as the more recent shifts of Japanese investment to Vietnam (Shimizu, 2007; JETRO, 2008).

Despite these theoretical and empirical advances, several key gaps remain. Principally, scholarship has insufficiently fleshed out how the motivations and behavior of Japanese firms in the flying geese regional sphere are shaped by government policy at home. How, for example, are the investment patterns of Japanese MNCs associated with Japan's official development assistance (ODA), its foreign aid, in the region? What role do ministries besides JICA, Japan's development agency, play in this policy sphere? We similarly do not know very much about how the intermediaries that function in the spaces between the state and industry grease the wheels of this coordination. Yet these are precisely the sorts of relations between the state and the market that are at the heart of the developmental state thesis, albeit in its domestic version.

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The principal purpose of this article is to establish common ground between these two research problems, namely: (i) how developmental states internationalize, and (ii) how Japanese investment in the flying geese archipelago articulates the relationship between firms and the Japanese government. This theoretical synthesis is achieved through an empirical examination of the challenges Japanese MNCs and policy-makers face in seeking protection of their intellectual property rights in Vietnam, a transitional country where the institution of property rights is rapidly evolving. Intellectual property (IP) policy, the regulation and protection of patents, trademarks and copyrights, has emerged as an especially important component of Japanese industrial policy since the late 1990s (Takenaka, 1998). In 2002, Prime Minister Koizumi declared Japan as a ‘chizai rikkoku’ (Kantei, 2002), a nation based on intellectual property. While this initiative has produced sweeping changes in Japanese industry (Nikkei Weekly, 2005, 2006), policy (JPO, 2006; METI, 2007) and professional practice (Reiffenstein, 2009), its international dimensions have not been researched.

To fill this knowledge gap we analyze the extra-territorial practices employed by Japanese IP producers, state regulators and intermediaries in Vietnam. Through analysis of secondary sources and policy documents, as well as evidence derived from the authors’ interviews with key informants in Japan and Vietnam, we draw attention to the ways that Japanese concerns over intellectual property animate its developmental role in Vietnam. These in turn are framed in accordance with the broader strategic imperatives of Japan in the region. Our analysis offers new theoretical suggestions and empirical perspective for the literature that examines intellectual property diplomacy in the developing world (Shiva, 2000; Drahos, 1996, 2008; May and Sell, 2006; Wright, 2005, 2008; Parry, 2002; Wade, 2003). While Japan is frequently mentioned in this literature as one of the three trilateral powers (The United States, European Union and Japan) that exert an outsized influence on the international IP landscape, it has received far less attention in comparison to its Western counterparts. Yet compelling evidence points to a set of unique motivations and practices guiding Japan’s relations with the developing world and particularly within East Asia that reflect its variety of capitalism (e.g. Taylor, 1999; Matthews and Munoz-Tellez, 2006). The case of its intellectual property relations may also fit these patterns. It is with this need for more finer-grained analysis that this paper seeks to further understanding of Japan’s double developmental role, as an international developmental state and as a vehicle for development in Vietnam.

1.1. IP diplomacy and the transitional state

Vietnam, as a ‘transitional state’, serves as a fascinating context to evaluate the roles of both Japan and IP in the development process. It took more than a decade following the Vietnam War for the country to reconsider its strict adherence to communist principles. However, the Doi Moi ‘reforms’ that began in 1986 have shifted Vietnam’s path towards a capitalist market economy, producing tremendous institutional changes across the spectrum (Dixon, 2000, 2003; Turner and Nguyen, 2005; Painter, 2005). Notwithstanding the inevitable slumps that followed the regional and global financial crises of 1998 and 2008, Vietnam’s overall rapid pace of economic growth of approximately 7.5% per year since the reform period began reflects its increasing attractiveness to foreign investment. Beyond this broad upwards trend, Vietnam’s transition has been neither immediate nor constant, but rather has evolved across discrete regulatory thresholds, the most recent being Vietnam’s entry into the World Trade Organization (WTO) in 2007. Investment has anticipated and responded to these changes accordingly.

The recent flood of Japanese investment into Vietnam follows that country’s entry into the WTO. The media has additionally characterized the more general shift of investment to Vietnam as reflecting a ‘China plus one’ strategy (Murano, 2007; Bradsher, 2008). This argument holds that as a hedge against the potential twin threats of political risk and inflation in China, Japanese firms are investing in Vietnam. Theoretically, the flying geese model anticipates this increased profile for Vietnam in the investment plans of Japanese multinationals. Yet relative to other nations in the flying geese regional sphere (South Korea, the original ASEAN nations), Vietnam’s socialist political economy is distinctive, with China, another transitional economy, representing the closest comparison. As foreign investment opens up Vietnam, the pace of institutional reform in the regulation of IP and other property rights must contend with the ongoing legacy of a socialist bureaucracy.

The key feature of Vietnam’s unique landscape of intellectual property governance is its profoundly transitory nature. Drahos (2002, p. 766) for example mentions Vietnam as being exceptional amongst its peers in the developing world for not having derived the foundations of its IP systems from Western or other advanced OECD countries like Japan. Indeed, the formative influence on the Vietnamese system since the onset of socialism has been the Soviet Union. Consequently, the regulatory structures, many of the regulators and domestic inventors within the Vietnamese patent system nominally, and to a degree ideologically also, reflect the legacy of socialism. This ideological disposition is thus often at odds with other actors in the IP system such as intermediaries and foreign applicants. Against this backdrop, the measured sequence of regulatory reform – IP rights have only been recognized as property rather than civil rights since 2005 (NOIP, 2005) – has slowly given foreign applicants more confidence in the system. Indeed at present foreign applicants including Japanese are overwhelmingly the principal users of the Vietnamese patent system. Drahos (2008) argues that the increased integration of developing nations including Vietnam into globalizing systems of IP regulation such as the WTO’s TRIPS (Trade Related Aspects of Intellectual Property) accord has not been inevitable. Rather, it is a situation policy makers in these countries have let happen. As we further demonstrate, foreign firms, states and intermediaries have played various roles in influencing the choice of institutional adoption.

1.2. Methodology

The empirical investigation derived its data from primary and secondary sources. As part of a larger project the authors have conducted over sixty interviews with internationally-oriented Japanese IP regulators, professionals and experts. From this population, six Japanese attorneys with publicly-defined associations with Vietnam were interviewed in June 2007 and June 2009 to learn about: (i) the work they perform for Japanese firms in regard to Vietnam and, (ii) their professional pro-bono activities on behalf of the Japan Patent Attorney Association (JPAA). In regard to this latter role, the respondents can be considered key informants since they included several senior ranking members in the Japan Patent Attorney Association (JPAA), including a former president and chair of the international outreach committee. Three of the respondents were also presenters at a JPAA sponsored ‘IP Practitioners Seminar’ in Ho Chi Minh City in March 2007, and they were asked to comment about this event. To complement the Japanese interviews, in August 2007, the authors conducted fieldwork in Ho Chi Minh City and Hanoi, interviewing fourteen Vietnamese IP attorneys at twelve different firms. Secondary data were gathered through analysis of Japanese and Vietnamese policy documents and professional journals.

The article is organized as follows. It first considers Japan’s official development assistance, in its many forms, as a bureaucratic

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