



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

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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

vehicle for the internationalization of developmental state policy. This conceptual framing is then further focused on the topic of intellectual property diplomacy and spatialized in reference to the flying geese model. The following two sections detail the features of the Japanese and Vietnamese patent systems, with emphasis being devoted to the latter's highly transitional institutional environment. The empirical material is then presented to shed light on the three main points of contact between Japanese and Vietnamese patent systems: corporations, state agencies and intermediaries. The paper concludes with suggestions for further research.

2. Japan's international developmental state

2.1. Japan's official development assistance: the extended developmental state

The purpose of what follows is to consider the geographical and sectoral allocations of Japan's ODA as extra-territorial manifestations of the developmental state. A well established literature has identified the main characteristics of Japan's official development assistance ODA (Rix, 1980; Morrison, 1987; Arase, 1994; Hirata, 1998; Hook and Zhang, 1998; Kawai and Takagi, 2004). Until very recently Japan led the world in terms of total ODA (Kawai and Takagi, 2004), yet has seen a significant drop recently: from 0.28% of GNI in 2005 to 0.18% in 2009 (OECD, 2010).

In contrast to other key donor nations, Japan's ODA is principally focused on Asia, illustrating what Rix (1980) refers to as Japan's role within an 'international division of aid labor'. In 1990 the top five recipient nations for Japanese ODA were: Indonesia, China, Philippines, Thailand and Bangladesh. In 1999 the list included Indonesia, China, Thailand, Vietnam, and India (Kawai and Takagi, 2004), while in 2009, the ranking went Iraq, China, Indonesia, India and Vietnam (OECD, 2010). These allocations and their evolution conform to the flying geese hypothesis. The other key characteristic of Japanese ODA is that project-wise it leans substantially towards infrastructure improvement. Indeed Japan allocates just over 30% of its ODA to economic infrastructure, double the proportion allocated by the US and UK (OECD, 2010).

At the height of Japan's bubble economy, Morrison (1987, p. 439) described Japan's aid priorities as being driven by two objectives: "to establish markets for Japanese products and to secure raw materials and resources." Yet counterbalancing these strategic economic imperatives has been a desire to play the role of 'good neighbor' in order to promote a geopolitically stable region (Rix, 1980). To achieve these broad aims, Japanese aid policy formation is decentralized amongst a diverse cross-section of the bureaucracy, and it is here where we can begin to witness the machinations of the developmental state as they are geared towards aligning public and private sector motivations. Japan's aid is orchestrated through the 'four ministry system' (*yonshochō teisei*) comprising the Ministry of Foreign Affairs (MOFA), Ministry of Finance (MOF), the Ministry of Economy, Trade and Industry (METI) and the Economic Planning Agency (EPA) (Hirata, 1998). According to Hook and Zhang (1998) though, the real bureaucratic control of ODA is vested mainly in MOFA, responsible for Japan's International Cooperation Agency (JICA), and METI, which as we shall see oversees the Japan Patent Office (JPO).

The last two decades have witnessed the nominal increase in MOFA's share of bureaucratic power in the allocation of ODA. In order to counter the perception that Japan's ODA was driven by economic self-interest, MOFA lobbied successfully to shift official policy via the 1992 ODA Charter that bespoke Japan's commitment to developmental benevolence. So for example, heading the list of priorities in that document was that "environmental conservation

and development should be pursued in tandem" (for a critique see Taylor, 1999). Moreover, MOFA has been successful in making much (well over 90%) of Japan's aid *untied*, meaning that it does not have to be spent on Japanese goods and services. Yet ultimately this shift has largely been rhetorical (Arase, 1994). Hook and Zhang (1998) conclude that the 'METI discourse' of economic and commercial motives has come to dominate the 'MOFA discourse' of democracy promotion and other such motives. As this bureaucratic context reveals, ODA is very much a creature consistent with the developmental state model. As Arase (1994, p. 198) suggests, analysis of ODA reveals how "Japanese bureaucracy managed the structural inclusion of the private sector in an area that had been as much foreign economic policy as foreign policy." Importantly, Arase continues, "this system functions through intermediary structures that are key to reconciling diverse included interests." One important sphere in which these intermediary functions prove indispensable is in respect to techno-economic development and specifically the institutions of intellectual property.

2.2. Intellectual property (IP) and the developmental state

The IP and especially patent policies of states have long been a central feature of domestic industrialization initiatives (May and Sell, 2006). According to Lerner (2002) variations between national patent policies at any point in time are largely explained by a country's relative stage of industrial development and the path dependency of its initial institutional configuration (see also Penrose, 1951). Depending on the historical stage of industrialization, national patent policies reflect a geographical tension between endogenous and exogenous concerns. Net importers of technology tend to have weaker standards with respect to ensuring the protection of foreign knowledge, while in contrast a major concern of net exporters is the unauthorized appropriation of knowledge by foreigners. Countries that face this latter threat often attempt to export their domestic standards of IP protection (Ostry and Nelson, 1995), for example by advocating for international governance agreements such as TRIPS. As Wade (2003) has commented, their actions evoke Friedrich List's observation that once nations climb the ladder of development their impulse is to 'kick away the ladder' to prevent others from following. A further implication of TRIPS is that developing nations have been obliged to shift their domestic IP policy to align with exogenous concerns. Their policy toolkit is therefore far more circumscribed than countries such as the United States and Japan faced in the past when they crafted their own IP policies.

From the 1980s, Japanese industry's growing success in securing patent protection abroad and especially in the key US market transformed it into a net technology exporter (see, for example, Reiffenstein, 2006). More recently Japan has more explicitly devoted increased emphasis to intellectual property policy. The impetus for this is twofold. On the one hand, US trade negotiators argued that its patent practices and laws constituted barriers to trade (Linck and McGarry, 1994). On the other hand, increasing competition in East Asia from China and from the developmental states of South Korea and Taiwan has pressured Japan to adopt what Takenaka (1998) describes as a more 'pro-patent' policy that has been extended into other spheres of IP. At the vanguard of these reforms has been METI (Ministry of Economy Trade and Industry) which has always steered IP policy, though it has tended to do so relatively quietly, at arm's-length through the JPO (Japan Patent Office). However, it now appears as though intellectual property might become METI's primary focus, as evidenced by Prime Minister Koizumi's unprecedented nod to IP, in calling Japan a 'chizai rikkoku' (Kantei, 2002; METI, 2007). METI's efforts have been complemented by several other key players including industry and intermediaries (Reiffenstein, 2009). The following section

explains the function of IP in respect to the evolution of Japanese FDI in East and South East Asia with a view to contextualizing the implications of Japanese IP internationalization for Vietnam.

2.3. *Flying geese and the internationalization of intellectual property*

Scholarship on the flying geese model and complementary models of East Asian economic development (e.g. [Hobday, 1995](#)) has not explicitly focused on the role of IP in helping or hindering technology transfer and development from the standpoint of either donor or host countries. Nevertheless, it is possible to read into this literature several ways in which IP shapes these spatial relations. [Hobday \(2000\)](#) for example, has done important work that compares the innovation systems of East Asia (e.g. S. Korea and Taiwan) whose industrial development has been driven by the local original equipment manufacture (OEM) of electronics on behalf of foreign firms, with those in Southeast Asia where development and significant export-led growth in electronics has been led by the FDI of transnational firms. Hobday's examples follow a trajectory of increasing proprietary control of technology from OEM, through own design manufacture (ODM), towards the objective of original idea manufacture (OIM). He does not discuss the role of patents or other IP in these transformations, yet there is significant recent evidence to associate these developments in the South Korean case with that country's improving performance in securing international IP ([WIPO, 2007](#)). In other words, technological learning in both Japan and South Korea appears to have become more self sufficient over time as private industry and public policy coordinated to enhance but also protect new knowledge formation.

[Hayter and Edgington's \(2004\)](#) investigation of Japanese electronics manufacturers' evolving spatial allocation of investments in East Asia provides finer grained detail into the form and content of technology transfers to host country OEM suppliers. From the 1970s Japanese MNCs transferred not only manufacturing, but the blueprints for manufacturing in the form of technology licenses to their partner firms, effectively giving the latter the necessary know-how to develop greater innovative autonomy. So inferentially, IP transfer from Japan appears to have played some role in the development of the NICs. When it comes to other nations in the flying geese regional sphere – namely the ASEAN countries, there is a wealth of literature that investigates the effect of multi-lateral IP governance regimes such as TRIPS. However our understanding of bilateral relations between nations in the region remains underdeveloped. To address this lacuna, the remainder of the article focuses on the specific patterns of private sector, government, and intermediary relations as they have evolved bilaterally between Japan and Vietnam and in respect to IP. In doing so it endeavors to resolve the research aims outlined earlier regarding how Japanese developmental state policy is internationalized, the degree to which there is coordination amongst private and public sectors and the role of intermediary functions performed by specialized professional services. In order to establish the context for these discussions, a brief review of IP regulatory history in Vietnam is first provided.

3. Vietnam, Doi Moi and IP

There is now a fairly established literature that catalogues the implications of Vietnam's Doi Moi reforms for both the domestic and foreign sectors of the economy ([Dixon, 2000, 2003](#); [Turner and Nguyen, 2005](#); [Painter, 2005](#)). The purpose of Doi Moi, according to [Turner and Nguyen \(2005, p. 1697\)](#) was “to create, under the political umbrella of the socialist state, a market-orientated economy, whilst undertaking a series of structural reforms to end Vietnam's economic stagnation.” As for Vietnam's evolving

international economic relations Doi Moi has been accompanied by a number of geographical shifts in Vietnamese economic relations with other places ([Dixon, 2000](#)). These include most significantly a permanent shift in trade away from Eastern Europe towards Pacific Asia that occurred between 1988 and 1992 and the gradual opening up to foreign investment from about 1990 onwards. Yet as [Dixon](#) stresses, the Vietnamese state appears to wish to be part of the process of globalization but on its own terms. A fascinating sector in which to explore the state's evolution as a mediator between domestic and foreign interests is that of intellectual property.

A small but growing literature, primarily written from the standpoints of legal practitioners and policy studies, reveals the evolving features of Vietnam's nascent IP system under Doi Moi ([Thao, 1994](#); [Smith, 1999](#); [Anh, 2005](#); [Treutler, 2006](#); [Vale, 2006](#); [Nguyen et al., 2007](#)). The authors responsible for these contributions are primarily Vietnamese and foreign patent attorneys based in Vietnam and, notably, Vietnamese patent professionals and regulators who have undertaken exchange training programs with the Japan Patent Office. The final study reports produced by this latter group are a testament to their absorption of the Japanese curricula of the exchange. Yet it is in their content, synopses of the Vietnamese system, where it is possible to discern the vital market intelligence these exchange students supply to their Japanese sponsors. Accompanying the positive analysis in these reports, not surprisingly, is a normative bent that reflects their positionality as professionals with an interest in IP protection. Several prominent themes emerge from these studies.

3.1. *Rapid institutional change in Vietnamese IP regulation*

Vietnam's current patent system is the result of a 25 year transition period that largely encompasses, but notably precedes the Doi Moi reforms (see [Table 1](#)). Several dates stand out: The first is 1981 when Decree No. 31/CP established the national Invention Office based on the institutional blueprint of its Soviet counterpart. The decree also instituted rewards and protection for novelty. In the years following Doi Moi, Vietnamese patent policy changes started to reflect tension between domestic and foreign interests. So in 1989, the system was characterized by a bifurcated asymmetry whereby domestic inventors received inventor certificates that transferred their acknowledged rights to invention over to the state. Foreign inventors, meanwhile, were granted patents, and ownership. This situation was short-lived and replaced a year later with a system that sought to treat domestic and foreign interests the same. The next major policy shift occurred in 1995 when IP rights became codified in Vietnam's civil code. This event coincided with Vietnam's application to join the WTO. For the first time, IP were acknowledged by the highest level of the socialist state apparatus. Finally, and most importantly, in advance of Vietnam's entry to the WTO in 2007, the government enacted the Intellectual Property Law which granted inventors property title to their inventions. This law was far more comprehensive than any ordinance that preceded it. [Vale \(2006, p. 22\)](#) comments on the legislative and regulatory rush to meet the WTO's deadlines:

“As part of its bid to enter the WTO, Vietnam has consolidated its confusing maze of IP rules and regulations into a streamlined law. . . . At one point, drafting was proceeding at such a pace that the people preparing the English translation simply could not keep up. Drafting and consultation over the law – which covers copyright, industrial property and plant varieties – took less than 24 months.”

At this point the National Office of Industrial Property (NOIP) formally introduced itself to the world, largely in a bid for transparency. Thus far the 2005 annual report is the first and, frustrat-

Table 1

Institutional transformation of the Vietnamese patent system since 1981. Sources: Anh (2005) and Nguyen et al. (2007).

Year	Policy	Comments
1981	Decree No. 31/CP	Establishes provisions for rewards, protection of IPR; Invention Office (later NOIP) established
1984	First patent issued	
1988	Decree No. 200/HDBT	Asymmetrical protection: domestic inventions via "Inventor Certificate"; foreign inventions under patents
1989	Ordinance on Protection of Industrial Property (OPIP)	Abolishment of asymmetrical protection (patent term 16 years from priority date). Designed to attract FDI
1993	Vietnam ratifies PCT treaty	The Patent Cooperation Treaty obliges its 140 signatories to follow a standard international patent filing procedure. Individual signatories then gauge novelty according to their own criteria when applicants enter the national phase of filing
1995	IPR codified in civil code	Vietnam applies to join WTO. Replaces OPIP with 61 articles covering IPR. IPR recognized as a kind of civil right (patent term 20 years from filing date). First time IPR were recognized by highest level of state apparatus
2000	MOIPA project	Sponsored by JICA to improve the electronic administration of patent system
2003	Procedures for establishment of industrial property rights	To prepare Vietnam for entry to the WTO and accession to TRIPS (Trade Related Aspects of Intellectual Property) accord
2005	National assembly enacts Intellectual Property Law	Six parts, 18 chapters, 222 articles codifying IPR as property rights. Increased assurance of IPR for foreign investors
2007	Vietnam joins WTO	Vietnam subject to stipulations of TRIPS accord

ingly, only publicly accessible document published by NOIP, and thus constitutes the key set of data that many researchers appear to have worked with (NOIP, 2005). A key issue to be explored shortly is how the velocity of institutional reform has exceeded the pace of cultural change within Vietnam's patent system, and particularly within the NOIP itself.

3.2. The internationalization of the Vietnamese IP system

As Vietnamese patent policy has evolved, the NOIP has operationally been experiencing a sustained flood of foreign applications that have swamped the relative weighting of domestic inventors (see Table 2). In 1990 Vietnamese inventors accounted for 78% of applications. In 2005 they represented less than 10%. US, Japanese and German applicants comprise the largest shares of the market (see Fig. 1). Similar in many ways to patent offices throughout the developing world the NOIP has deepened its integration with

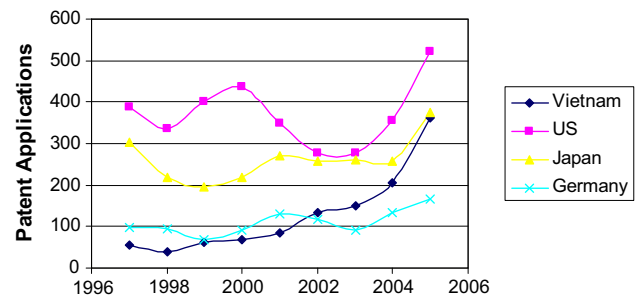


Fig. 1. Patent applications to National Office of Industrial Property (NOIP) Vietnam by Country 1997–2005. Source: NOIP (2005).

what Drahos (2008) calls the “emerging system of global patent administration.”

Notably though, in contrast to the utter foreignness of the situation for patents, since 1999 Vietnamese applicants have represented the majority of trademark applications and in 2005 accounted for 72% of the total.

3.3. The problem of counterfeiting and IPR enforcement

The third theme that characterizes the Vietnamese IP system is its perceived unlawfulness. Similar to China, Vietnam is often cited as a location for counterfeiting risk. A JETRO (Japanese External Trade Organization) survey ranks Vietnam second behind China as a site of concern with respect to the protection of IPR (JETRO, 2008). To put this ranking in perspective, the problem appears a lot less severe in Vietnam with only 11% of 236 respondents citing it as a major risk factor, than in China where the figure was almost 60%.

3.3.1. Vignette: Honda's counterfeit bike problem

The motorbike sector and especially Honda serve as a fascinating illustration of the counterfeit problem in Vietnam for Japanese industry (Fujita, 2007; Nguyen, 2007). Between 1995 and 2005 Vietnam's population of motorbike users experienced a fivefold increase. In 1998, 2 years after Honda established a joint venture motorcycle plant (35% Honda, 35% Honda Asia, 30% Vietnam Engine & Agricultural Machine Corp.), its market share of sales accounted for 69% of the total market. With competition from imported Chinese motorcycles starting in 1999, and following the 2002 FDI by Lifan, a Chongqing-based bike maker, Honda's share dropped to a 13% in 2001, and by 2003 had only recovered to 33% (Fujita, 2007, pp. 11–13). Chinese bike makers, in contrast, accounted for a staggering 73% in 2001 and 40% in 2003. Yet, ironically, though Honda and other Japanese bike makers have lost ground in sales to Chinese competition, their reputation has never been better. As the *Financial Times* reported in 2002, “Honda dominates Vietnam's motorcycle market so completely that its name has slipped into slang as a generic term for motorbike.” In reality, this domination is more measured. Nguyen (2007, p. 4) quotes a Honda Vietnam manager remarking:

“In our country, after buying a Chinese motorcycle, [the owner] is willing to pay about only \$2 USD to replace the old label with a new imitation label of Honda products, looking like he is riding a Honda motorcycle. You can easily see the availability of repair services where people can modify their Chinese motorbikes to be like Japanese ones. . . Obviously, preference toward Honda products is reflected in huge consumption of Chinese motorcycles by local customers.”

Besides pointing to the contingent negotiation of authenticity in Vietnam (Vann, 2006), the manager's comments almost speak to a unique application of Gresham's law which notes the propensity

Table 2

Patent applications to National Office of Industrial Property (NOIP) Vietnam 1990–2005. Source: NOIP (2005).

Year	Vietnamese applicants	Foreign applicants	Total applications
1990	62	17	79
1993	33	194	227
1996	37	971	1008
1999	35	1107	1142
2002	69	1142	1211
2005	180	1767	1947

for bad currency to drive out the good. In this case though it is the counterfeit goods that are simultaneously reducing sales of legitimate Honda's while also, perhaps, tarnishing the brand. Honda has responded by seeking enforcement of its IPR. The details of this reaction will be discussed shortly. According to a Vietnamese patent attorney:

"The question of how to combat counterfeiting effectively in Vietnam is always a tough one for trade mark owners because of the great number of factual difficulties faced in Vietnam in dealing with counterfeiting. The primary difficulties include the incomplete and inadequate legal enforcement system, the limited knowledge of IP law by law enforcement staff, and the habit of buying discounted goods bearing foreign or well-known trade marks by the majority of Vietnamese consumers." (Pham, 2002, p. 49)

Besides the violation of trade-marks, another attorney mentioned the problem of trade dress as an additional source of concern:

"In Vietnam, trade dress is often copied, particularly in the pharmaceutical and consumer food products sectors. The packaging style, including colors and lines, is typically copied to mimic the look and feel of the genuine brand. Although the infringer may copy the trade dress, the infringer may adopt a different trade mark. In such cases, there will be no grounds for a trade mark infringement action, but there may be an action for unfair competition, which may be filed in court or administratively." (Treutler, 2006, p. 1)

In the remainder of the paper, we explore three avenues through which elements of the Japanese IP system (corporations, the state and intermediaries) have engaged with the rapidly evolving Vietnamese IP system.

4. Japan–Vietnam: avenues of IP Integration

4.1. Corporate interactions: how do Japanese firms assert IP rights in Vietnam?

There is not a great deal of literature that explicitly discusses Japanese industry's involvement with the Vietnamese IP system. We know industry's perceptions regarding counterfeiting (JETRO, 2008), and how these problems relate to the larger competitive situation in Vietnam. The main concern of IP owners is that of trade-mark and trade dress infringement. As we saw in the case of the motorbike industry, the problem seems mainly to be a combination of design similarity by Chinese bike makers, which represents a competitive though not specifically legal challenge, and ad hoc sticker re-branding by a large number of Vietnamese.

Honda's response to this situation is once more instructive. After Honda's market share slipped from almost 70% to 13%, it responded in several ways. Production-wise, besides introducing a new lower priced brand of scooter called the Wave Alpha, Honda re-organized its supply chains, for instance by shifting the supply of standard components (e.g. headlights) to low cost first-tier suppliers in China (Nguyen, 2007). By 2002, the Financial Times credited Vietnamese parts suppliers with providing 60% of inputs to the Japanese bike makers there. Yet at the time, the Vietnamese government thought the figure lower than this and imposed an import quota on motorcycle parts kits. Following diplomatic pressure from Japan, and the dispatch of emissaries from METI, the quotas were dropped (Abrami, 2003). Since then, Honda has proceeded to transfer technology, by sequentially introducing more complex components (die casting, machining and cam-shaft production) to the Vietnam division. Local inputs to Honda Vietnam's bike plant in

2005 were estimated at 80% (Nguyen, 2007). In July 2007, Vietnam announced the construction of a second motorcycle factory.

On the IP front, Honda has accomplished several things. First it has won a trademark infringement case in China against Lifan, the Chinese motorbike maker that was selling knock-off bike designs under the 'Hongda' brand (BusinessWeek, 2005). The ramifications of this decision spilled over into Vietnam, putting a damper on Hongda sales there. Second, in order to combat the counterfeiting and brand-stickering problem, Honda funded a substantial publicity campaign to raise the awareness of IPR to the Vietnamese. For instance it has sponsored a WIPO country inventor prize and contracted a prominent Vietnamese IP law firm to run a seminar/workshop campaign to raise awareness and improve the understanding and respect for IPR in Vietnam. On behalf of Honda, this firm, Pham & Associates, worked with the 'economic police' and Market Management Bureau, while also arranging meetings with government officials (Pham, 2002). At its 2007 awards dinner in London, the international trade publication *Managing Intellectual Property* presented its top country award for Vietnam to Pham & Associates, noting its:

"solid reputation as one of Vietnam's leading law firms with an excellent all-round IP practice. The firm is active at every level of IP enforcement and has been conducting a nationwide IP awareness campaign on behalf of Honda since August 2005." (MIP, 2007, p. 1)

Much more needs to be explored with respect to the Japanese private sector's IP involvement in Vietnam. Basic statistics are lacking. For example, WIPO's Patent Cooperation Treaty (PCT) search is not sufficiently linked with the NOIP, so public data on the foreign patent registrations in Vietnam is missing. Yet we know that it is the private sector and especially large firms with significant foreign investments (i.e. Honda), and increasingly also SMEs that are active there (Murano, 2007) that are agitating for change. Yet much of their behavior is unknown. We do know, however, the Japanese government has been buttressing these private efforts.

4.2. State interactions: how Japan's official developmental assistance enhances Vietnam's nascent IP system

Japanese developmental assistance to the Vietnamese IP system are channeled through two key government bodies, Japan's International Cooperative Agency (JICA) under MOFA and the Japan Patent Office (JPO) under METI. We know that Japan's official development assistance (ODA) to the developing world in general favors infrastructure development. In this vein, JICA and the JPO have sought to develop the 'infrastructure' of Vietnam's nascent patent system (Matthews and Munoz-Tellez, 2006). This assistance has taken two key forms: administrative assistance via the donation of technology that manages patent information and human resources training and international exchanges for Vietnamese patent bureaucrats and professionals.

4.2.1. Administrative technology transfer

In particular, from 2000 JICA has financed and advised Vietnam's Modernization of Industrial Property Administration (MOIPA) project that aims to "improve the technology for handling industrial property applications [patents, trademarks, design applications]... thus increasing the reliability, accuracy, stability, reduction of shortcomings in the application process of handling applications, facilitating the management of the increasing number of industrial property applications as well as monitoring the validity of granted protection titles" (NOIP, 2005, p. 17). This project affects virtually all aspects of NOIP's mandate. Practically speaking, the principal accomplishment of MOIPA has been the introduction

of the Industrial Property Administration System (IPAS), an information technology apparatus that organizes into one package the means for applicants to submit their patent/trademark applications, a set of programs and databases for examiners at NOIP to process and review these filings against the state of prior art contained in the database, issue notifications back to the applicants, and publish the body of awarded patents in a publicly accessible database. Through these functions, JICA has provided NOIP with the means to improve the efficiency and transparency of its IP system. Since 2005 the second phase of this project, 'Utilization of Intellectual Property Information in Vietnam', has sought to achieve the objective that "IP rights will be controlled and promoted more efficiently" (JPO, 2008b). Although projects such as these cannot on their own dissuade the impulse of Vietnamese and others from infringing IP, they at least discipline the systems designed to record and monitor IP.

Interestingly as an emerging digital knowledge repository IPAS is still only partially accessible to Vietnamese IP attorneys, as the following comments from the authors' interviews attest:

"With the assistance from JICA, the database is improved but still not comprehensive enough for us to use. In fact, we never bother to use it but instead go search the separate databases of each examiner and each division within NOIP instead." (VPA11C)

Another respondent noted the asymmetries between foreign prior art and that available within their own country:

"As for the search for prior art, it is straightforward with incoming/ international applications as the applicants and their representatives are very well-prepared, yet very hard with domestic ones since the NOIP database is still very poor. This forms one reason for the low number of outgoing [Vietnamese] applications." (VPA11B)

Beyond these limitations that affect applicants and their intermediaries, the implications for Vietnamese IP examiners at NOIP must also be considered.

"The database is much better compared with what it used to be in the past... but poor compared to other countries. No wonder the examiners have nowhere to search for information about the case they are processing. No up-to-date information is available despite a lot of money put into collecting papers from all over the country. Also, the examiners are not technologically-savvy nor knowledgeable about science. They try, but cannot use the computers effectively." (VPA11G)

These problems of MOIPA's implementation reflect cultural barriers as much as they speak to the growing pains accompanying developmental capacity-building. Few respondents offered praise about MOIPA, though many conceded it was still a work in progress.

"The new database makes our search more convenient... [offering] 5 servers and 100 client PCs that deal with the utilization of the database. This will eventually enable e-filing. (VPA11D)

4.2.2. Human resource development and exchange

Besides MOIPA, JICA also operates by sponsoring Japanese experts from the JPO to serve as short and long term expert advisors to MOIPA's implementation (Table 3). To complement these outward exchanges, the JPO along with several quasi-public Japanese associations such as the Japan Institute of Invention and Innovation (JIII) and Asia Pacific Industrial Property Center (APIC) pay for trainees from developing Asian economies including Vietnam to travel to Japan to learn about its systems of IP management (JPO,

Table 3

Dispatch of short-term Japanese IP experts to Vietnam, by funding source 2003–2006. Source: JPO (2008a,b).

	2003	2004	2005	2006	Total
JICA ^a	1	2	3	3	9
WIPO F/T (JPO) ^b	1	2	2	1	6

^a Japan International Cooperation Agency (direct funding).

^b World Intellectual Property Organization Funds in Trust (indirect funding provided by Japan Patent Office).

Table 4

Number of IP trainees accepted by Japan from Vietnam 2004–2006. Source: JPO (2008a,b).

	2004	2005	2006	Total
Governmental	11	13	17	41
Private	13	8	10	31

2008a,b) – (see Table 4). Much of the time these trainees are sponsored through WIPO 'funds in trust'.

So while JICA, the development agency, is the official organizer of these programs, its role is that of banker. In contrast, the JPO (under METI) and other associated organizations representing the interests of the Japanese IP community (i.e. JIII) appear to be primarily performing the technology transfer and infrastructure development. Collectively these groups coordinate to assist the development of the Vietnamese patent system, not surprisingly in a way that is favorably disposed to Japanese industry.

It is finally instructive to contrast Japan's role of developmental mentor to Vietnam's NOIP with that of other trilateral jurisdictions in Vietnam. According to Drahos (2008) Europe, in the guise of the EPO, has been perhaps the most significant player in shaping the broad regulatory protocols at the NOIP. Indeed, many decisions made by Vietnamese patent examiners, for example, derive their guidance from previous decisions on a particular technology's application made by European examiners; a fact concurred anecdotally by several of the authors' Vietnamese IP lawyer respondents. This perhaps signals a greater overall European influence on the NOIP. Given the narrow technological context of IP examiner decisions, there may also be a language issue at work here since EPO decisions, which appear in English as opposed to Japanese, may be more legible to Vietnamese. Yet it is notably the EPO and not the USPTO that is frequently cited as institutional inspiration for IP regulation in Vietnam. The larger point is that whether it is in the form of judicial guidance or technical assistance, both the EPO and Japan (via JICA and the JPO) have been instrumental in modernizing the regulation of IP in Vietnam. Besides fleshing out the Japanese role in a way that complements existing knowledge of European influence on IP governance in Vietnam, our research is further suggestive of a third avenue of bilateral guidance. Beyond industry and the state, indeed operating between them, within and across national borders are IP intermediaries, attorneys whose skills blend knowledge of techno-science and law and whose job it is to shepherd inventions into property rights (Reiffenstein, 2009). How is their work important to the internationalization of the Japanese developmental state and development of IP regulation in Vietnam?

4.3. Intermediaries: professional adjuncts to the international regulation of IP

Legal professionals have long been referred to as the 'shock troops of capitalism' (Sellers, 1994). While there is an emerging geographical literature that focuses on the internationalization of

the legal profession (Beaverstock, 2004; Jones, 2007; Faulconbridge and Muzio, 2007; Faulconbridge, 2008), these studies have tended to mainly consider these subjects according to the roles they play within firms. As a result the literature has thus far not sufficiently considered the broader institutional arena in which legal intermediaries function, specifically as they work to bridge the regulatory demands of states and private demands of their clients. Yet as the following analysis that compares Japanese and Vietnamese intermediary perspectives reveals, this space between the state and the market is a crucial and complex terrain, especially when questions of international development are concerned.

4.3.1. Japanese IP intermediaries: international professional outreach

A useful point of departure to examine the role of Japanese IP professionals in respect to Vietnam is to consider their public pro-bono work within their professional society. In March 2007, the Japan Patent Attorney Association (JPAA) sponsored an “IP Practitioners Seminar” in Ho Chi Minh City. In addition to the Japanese presenters, participants included:

“98 participants, of which 29 were Vietnamese, 12 were Thai, 9 were from the Philippines, 8 from Taiwan, 5 from India, 5 from China, 4 Malaysia, 4 Singapore, 3 Australia, 2 Pakistan, 1 Russia, 1 Laos, 1 Indonesia, 1 from Japan, and 13 guests. The guests included high ranking Vietnamese patent office representatives and people from the patent attorney association.” (JPAI2P)

The following illustrative excerpts from interviews with Japanese participants speak to the attorneys’ developmental perceptions of Vietnam and how these shape both their client-centered and professional outreach objectives.

“By introducing the merits of the Japanese system the purpose of the JPAA seminar is to make them realize the important role of IPR within the overall development of industry, though not necessarily with the objective that they should emulate directly the Japanese system.” (JPAI1P)

“Patent law there is still primitive. However they are working to catch up quickly. At the moment, it is still challenging to work with them on both a conceptual and practical level. My hope is that from this meeting, since Vietnamese are so industrious, through more engagements their level of IP sophistication will improve and consequently become a more significant power in Asia.” (JPAI2H)

Several of the respondents conferred with this appraisal of the Vietnamese as an industrious society. The limits of this industriousness, however, were also acknowledged in terms of structural constraints inherent to Vietnam’s transitional (quasi-socialist) context as reflected in the institutional form of the Vietnamese IP system.

“The environment is still not established. Once you are there you ask yourself, ‘what is socialist about this country?’ It is nominally a socialist country. So the market economy is not fully grown, the technological level cannot grow too much. The principle of competition does not yet apply.” (JPAI1Q)

“There is a clash between the chain of command of the new government and the old communist party. Things do not go well if you do not ask for protection from the right person. It is necessary to know this power structure.” (JPAI1P)

International IP work often involves linguistic and technical translation. One of the Japanese respondents characterized the role that Vietnamese IP attorneys play in inward technology transfer as that of linguistic rather than technical translation.

“When lawyers in ASEAN countries work with patents they usually just translate from the US and Japan and submit it as

a patent. So the JPAA suggested that they should have real patent attorneys that understood technology. Then they said they would like to adopt such a system. Then we asked if they would like support from the JPAA.” (JPAI1N)

From these perspectives, we can start to flesh out the nature of Japanese intermediary involvement in Vietnam. There is certainly a developmental component, for instance in terms of outreach and education. Moreover we can start to see how the agency of the professional association, as an avenue of engagement, filters the developmental process. It is appropriate here to consider Glassman’s (1999) use of the phrase ‘fractions of capital’ to suggest the ways in which distinct class and economic interests within nations extend across space to coordinate with their kind in other countries. Yet in this case, the category of professional, though certainly allied with a broader set of pro-IP interests, simultaneously connotes a guild-like occupational pride and independence that is likely to be shaped by the national context (Faulconbridge and Muzio, 2007). One of the organizers for the conference several times referred to the objective to plant the JPAA’s ‘flag’, to make their presence known in the Vietnamese market. For him the purpose of the Ho Chi Minh seminar:

“was to plant the JPAA flag, similar to how US and Europe are doing it with their flags. We don’t want to be seen as just about business, we wanted to be seen as providing some sort of contribution.” (JPAI1M)

Functionally speaking, by educating their Vietnamese counterparts about the effective intermediation of international IP, the efforts of the JPAA facilitate the alignment between Japanese private and public sector interests. It was interesting, then, to hear one of our respondents go out of their way to assert the independence of their professional organization from Japanese policy. The Vietnamese, he argued,

“...trust the JPO and they recognize the JPO’s flag. But we are independent. I want to stress the JPAA’s independence from the JPO.” (JPAI1M)

To square this circle it is important to keep in mind that since each if these attorneys are primarily engaged in private practice and not pro-bono work, their principal engagement with the Vietnamese IP system is on behalf of their clients, even if their more visible presence is seen through their professional society. In this regard, their private interests are very much complementary to the Japanese government’s objectives which assist Vietnamese development as they simultaneously seek to shape an environment that is conducive for Japanese firms. Important allies in this quest are their counterparts, Vietnamese attorneys who then take over and represent the files of Japanese corporations before the NOIP. What role do they play in the evolution of IP governance in Vietnam?

4.3.2. Vietnamese IP intermediaries: at the vanguard of domestic IP reform?

The Doi Moi reforms in Vietnam have revealed deep seated institutional cleavages between socialist modes of organization and an environment characterized by incipient capitalism. Vietnamese patent attorneys operate in this uncertain space while also serving as the key intermediary that links Vietnam with the rest of the world. The following interview excerpts offer a window on the respondents’ interpretations of this operating environment and provide a window on the political and cultural barriers that Doi Moi must reconcile.

“Previous IP law existed piece-by-piece in numerous regulations, circulars, decrees, and even at the civil court. In short,

the development of IP in a country depends on the development of the country's economy. Under a socialist collective economy nobody was interested in IP." (VPAI1D)

"I think the law is good but the enforcement is somewhere near developing. The government adopted quite a lot of international standards and treaties. But somehow, because Vietnam is still developing, it takes time to study the law and implement it." (VPAI1I)

"All the law makers graduated from the USSR to begin with. They are hence not up-to-date. The socialist idealism is at the core of our law system. On the other hand, current events require them to comply with international treaties and requirements. It is, for them, an impossible mission to harmonize their Russian background, which is no longer valid, with a market-oriented system. Capitalism and socialism clash in every way so why and how to harmonize them? That being said, the leaders will have to change their mindsets first, harmonization is vital; otherwise they will be replaced." (VPAI1B)

From these perspectives, the entire economy, but especially the state apparatus is struggling to adapt to its new mandate to administer intellectual property rights (IPR). Beyond the state, the attorney respondents also spoke of the great developmental challenge in raising awareness of IPR amongst the population – a process essential to arresting the sorts of problems seen in the motorbike industry. The following suggests a dearth of IP legitimacy:

"Take a look at the degree of technological infringement in Vietnam. Despite an increased awareness, the living standard is too low for Vietnamese to pay attention to the fact that infringement is illegal. In order to get by in a transforming economy, infringement is the easiest and fastest choice." (VPAI1D)

We saw earlier the relative decline and negligible role that Vietnamese inventor's play in their own patent system. IP attorneys in our study offer several comments that reveal the major developmental hurdles that must be overcome to raise domestic technological capability. These barriers are not strictly a product of socialism, but also reflect underdeveloped relations between inventors and the institutions that facilitate the knowledge economy:

"The first challenge is that Vietnamese inventors are not in a technologically developed country. The second one is their inexperience in writing their claims since they are not familiar with using legal services and consultancy." (VPAI1F)

"I do think that Vietnamese inventors have a few very useful inventions, especially for agricultural use. Yet the problem is they do not come to patent their inventions." (VPAI1E)

Professionally, there has been considerable evolution in the IP attorney occupation since Doi Moi. As one respondent noted bluntly,

"with the changes, the job as an IP attorney became a real job." (VPAI1B)

"The newest estimation of the Vietnamese Intellectual Property Association (VIPA) reveals the number of IP law firms to be nearly 100 while NOIP says that there are 150 registered attorneys, a fivefold increase in 12 years from 30 attorneys distributed evenly among 15 agents according to the law in 1995." (VPA11E)

Finally, the respondents were also asked to comment on the prospects for improvement of the Vietnamese IP system via institutional emulation and developmental assistance from abroad, including Japan. Matthews and Munoz-Tellez (2006) have observed how Japanese IP developmentalism differs from that of other leading patent countries. These quotations speak to the differences in Vietnamese perceptions of these models

"Vietnam is not a pioneer in this field but inherits a lot of good things from other countries. The way it goes now is to distinguish the good and the bad and adopt the good things. It is more likely a mixed product. (VPAI1I)

"We learn from other IP law systems. Our current IP system, especially the part that deals with patents, resembles EPO (European Patent Office) a lot. But it will most likely also model after the Japanese IP system. Even our digital library is exactly the same as the Japanese one. It comes as no surprise since most of the NOIP office is equipped and built with the help of the Japanese government. (VPAI1G)

"I do not think that we follow any particular model. We are trying to extract the best from the best and form our own system. We have been influenced more and more by the US since the BTA (Bilateral Trade Agreement) and accession to WTO. At the same time, through the help of the Japanese government, a lot of our law makers are sent to be trained in Japan. It is quite difficult to say which direction we will take." (VPAI1D)

It is worthwhile to juxtapose these findings with the practices of Vietnamese patent examiners who follow a decision-tree that almost always looks first to EPO decisions on a technology, but may also consult how the USPTO and JPO have handled the file (Drahos, 2008). Notably, though, is that the decision-making autonomy of the examiner is always deferential.

As the above analysis reveals, intermediaries are crucial in facilitating both the extension of Japanese interests in Vietnam and, in the case of Vietnamese attorneys, in opening up their domestic market to international norms of professional conduct. Intermediaries are well positioned to integrate the requirements of their private sector clients with the regulatory functions of the Japanese and Vietnamese states. Moreover their status as quasi-independent professionals enables them to function in an environment in which they have a stake in reforming under the guise of development. So while not necessarily 'shock troops of capitalism' their work on behalf of, and toned-down advocacy in support of international property rights are instrumental in the institutional evolution of Vietnam.

5. Discussion and conclusions

This article's main contribution has been to demonstrate a spatially dynamic interpretation of the developmental state concept. Animated in accordance with the flying geese model, and filtered through the context of Japan's ODA, it is possible to view the internationalization of Japan's developmental state as an extension of bureaucratic planning and coordination with the private sector. The key to connecting and extending these various literatures is property rights. Despite their different functional roles and the lack of any overt coordination, there is a pronounced coherence in the activities of the three principal components of the Japanese IP system in Vietnam. Japanese IP owners have become increasingly concerned with the protection of IPR, for instance in key export sectors such as motorcycles, and in less rigid domains of IP such as trademarks. Honda, for example, has ramped up its efforts, both directly and indirectly to raise awareness of IP in Vietnam. The Japanese state, meanwhile, through the auspices of ODA, and in line with Japan's overall developmental mandates and modes of bureaucratic organization, has channeled its efforts into improving the infrastructure of Vietnam's IP system. Finally, Japanese IP intermediaries both through their pro-bono service work and on behalf of their clients are actively engaged in advocating for a model of IP intermediation in Vietnam that is conducive to Japan's broader interests in that nation. Though some of our respondents were adamant about their independence from Japanese government direction, their actions nonetheless smooth the coordination between state and market. For this reason it is worthwhile reaffirming Arase's

(1994) observation that intermediaries constitute an overlooked component of Japan's overseas development apparatus.

What this suggests is that at a certain point of maturity the policy thrust of developmental states like Japan shifts to the international arena and in support of exports and FDI. Yet due to the challenge of extraterritoriality, it is in these overseas contexts that policy may have the greatest problem gaining traction. This is why bilateral policies targeted at property rights and specifically IP are such an important vehicle for securing Japanese investment in the flying geese archipelago. They simultaneously preserve Japanese accumulated industrial advantage while promising to host nations an opportunity to learn and adopt key institutional features of capitalism. Moreover, by focusing on the bilateral details of international IP diplomacy, this article advances a literature that has tended to emphasize more monolithic if multilateral forms of developmental coercion such as TRIPS.

Though this article's vantage point is necessarily partial, it is still worthwhile offering comment on whether Japanese involvement is good for Vietnam's development. While the answer is beyond the scope of this study alone, our evidence can contribute a few things to the body of work on North–South IP developmental diplomacy. First of all, if good governance is taken as a measure of development, then gradual improvement in Vietnam's IP infrastructure and the training of experts represent key institutional gains. MOIPA, if it can effectively be harnessed, goes a long way to improving the transparency of the IP system. Yet as we saw in the case of MOIPA, technical progress hinges on cultural change within the regulatory structures of a transitional state. In order for Vietnamese IP regulators to most effectively ensure their national interests, they must have the sufficient skills to effectively mediate between domestic and international pressures for IP development. Vietnam, along with other ASEAN countries is often framed by IP owners as an unlawful space, in terms of its embryonic regulatory environment for IP. To a large degree its intermediaries and their Japanese counterparts are the brokers of this IP developmental boom, since their professional socialization has occurred outside a socialist context. Indeed, the ranks of Vietnamese IP professionals have swelled as IP has become more legitimized. However beyond the technocrats within the state apparatus and the intermediaries, the prospects for Vietnamese inventors are a bit bleaker. Despite modest improvement in the rate of domestic invention, the system appears to be almost entirely colonized by foreign applicants. In a purely bilateral view, given all the efforts of cooperation, it is a stretch to say, however, that Japan alone has fulfilled List's maxim of 'kicking the [developmental] ladder away.' Japan and the trilateral nations have proposed their respective models and Vietnam, in line with Dixon's (2000) optimistic appraisal, has chosen and crafted a unique environment that draws on these diverse sources. However, it is likely too late for Vietnam to engineer a national IP policy with the sort of favorable conditions that Japan and other rich nations once enjoyed. Perhaps, then, all the bilateral developmental policy and rhetoric that we saw in this study is necessary to convince policy makers in developing host nations like Vietnam that any flaws inherent to multilateral agreements such as TRIPS are not the responsibility of the individual nations such as Japan that contributed so much to their design and imposition.

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