



Parahyangan Catholic University
Faculty of Social and Political Sciences
Department of International Relations

Accredited A

SK BAN –PT NO: 451/SK/BAN-PT/Akred/S/XI/2014

**The United States Measures towards China's IPR Related
Cases: A Comparison between Bush's and Obama's
Presidencies**

Thesis

By

Aditya Pratama

2015330155

Bandung

2019



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Hereby states that this thesis is the product of my own work, and the research in question has not been proposed by other parties in purpose to obtain academic degree. Ideas, information, and data provided by other parties in this thesis have been cited in accordance to the valid scientific writing method.

This statement I made with full responsibility and I am ready to withstood any consequences based on established rules and norm if in the future this statement is proven to be invalid.

Bandung, January 16, 2019

Aditya Pratama

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Abstract

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Title : The United States Measures towards China's IPR
Related Cases: A Comparison between Bush's and
Obama's Presidencies

The United States Special 301 Report is a compilation of Intellectual Property Related Cases occurring in states throughout the world and actions taken by The US to counteract these cases. In the early 2000s, one China rose quickly into the Special 301 Priority Watch List and has remained there ever since due to many IPR related cases occur in the country thus having the US counteracting these violations in numerous measures. It is interesting however, that seeing the measures conducted by the US towards China in the span of 16 years, split between the Bush and Obama administration, shows signs of weakened pressure towards the Chinese.

This weakened pressure is shown through the different approach utilized by the Bush and Obama administration. Bush ended in relying on the World Trade Organization's Dispute Settlement Understanding, while Obama relied on bilateral channels, mostly through the Joint Commission of Commerce and Trade between the two states. This difference in approach and weakened pressure was brought upon by the different leadership style and congress composition during each administration, showing the role of a leader's leadership style in shaping a state's economic foreign policy.

Keywords: United States, China, World Trade Organization, Dispute Settlement Understanding, Bilateral Measures, Congress, Leadership Style, Intellectual Property Rights

Abstraksi

Nama : Aditya Pratama
NPM : 2015330155
Judul : Tindakan Amerika terhadap Kasus Terkait Hak Kekayaan Intelektual di China: Perbandingan antara Kepresidenan Bush dan Obama.

Laporan *Special 301* yang dirilis oleh Amerika adalah kompilasi kasus-kasus terkait hak kekayaan intelektual yang terjadi di dunia dan tindakan yang diambil Amerika untuk menanggulangi kasus-kasus tersebut. Pada awal tahun 2000-an, China menjadi negara yang dengan cepat masuk ke dalam pantauan prioritas *Special 301*, dan status pantauan prioritas China masih belum lepas hingga sekarang. Ini dikarenakan kasus-kasus terkait haki di negara ini banyak terjadi dan melibatkan Amerika untuk menanggulangi kasus-kasus ini melalui berbagai tindakan. Akan tetapi menarik apabila ketika melihat tindakan yang dilakukan Amerika terhadap China dalam kurun waktu 16 tahun dan dibagi menjadi administrasi Bush dan Obama, muncul tanda-tanda terjadinya penurunan tekanan terhadap China.

Penurunan tekanan ini terlihat dari perbedaan pendekatan yang digunakan administrasi Bush dan Obama. Bush pada akhirnya menggunakan *Dispute Settlement Understanding* milik *World Trade Organization*, berbeda dengan Obama yang menggunakan kanal bilateral, sebagian besar melalui *Joint Commission of Commerce and Trade* diantara kedua negara. Perbedaan pendekatan dan penurunan tekanan ini terjadi karena perbedaan gaya kepemimpinan dan komposisi kongres kedua administrasi. Hal ini memperlihatkan peran gaya kepemimpinan pemimpin dalam membentuk kebijakan ekonomi luar negeri negara.

Kata kunci: Amerika, China, *World Trade Organization*, *Dispute Settlement Understanding*, Kanal Bilateral, Kongres, Gaya Kepemimpinan, Hak Kekayaan Intelektual

Proceedings

The increasing interconnectedness of the world's states creates a situation where zero sum game becomes less viable. However a State would nevertheless still need to fulfill its interests, be it political, or in this research case, economical. States thus can opt to utilize the approach of neomercantilism, pursuing economical interest through subtler policies.

States however, is an entity constituted by multitude of individuals, some of which holds power and influence policymaking. This can't be truer in the case of leaders. Leaders, presidents, kings, with their biases and views that form their leadership style will influence policymaking.

This research aims to examine how leadership style of a leader affects foreign policy enacted by a state in an era where subtler approaches are more of a commonplace. As leaders are cornerstone of policymaking in a state, it is interesting to pursue further research on how one person influence policy outcome. As such, the researcher hopes that this research may invoke interests on research towards certain individuals who holds power in decision making, leaders behind the colossal entity called a state.

The researcher would first like to acknowledge favors, aid, and support given by those important around him;

First, an utmost gratitude towards Allah SWT, whom has given health and has allowed the researcher to finish his studies.

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Million thanks and gratitude to my parents, siblings, and family members who gave constant support in my studies and the accomplishment of finishing this research;

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Chapter 1

Introduction

1.1. Background

Mercantilism views economy as the subordinate of the state and used for state's interest. However, the nature of mercantilism which is rooted in the idea of classical realism focuses on competition and especially zero sum game. Thus mercantilist states opt to obtain economic self-sufficiency by implementing protectionist policies.

Some of these protectionist policies such as high tariff barriers and boycotting exports from other states are costly and may produce negative impact to society. However the paradox here is that dependency can still create significant impact towards states. David Balaam and Dillman elaborated the impact of dependency in a short case study of price raise and oil embargo done by OPEC in 1973. Oil importers such as the US are weakened economically due to their dependency towards OPEC oil. This drives the US and its allies to turn towards neo-mercantilism.¹ The main idea of avoiding vulnerability is still the same idea that exists in the old mercantilist perspective, however due to the increased interdependence of contemporary international world, being isolationist

¹ David N. Balaam and Bradford Dillman, *Introduction to international political economy*, (London: Routledge, 2011), 65.

is counterproductive. Vulnerability is then tackled through subtle policy making that still ensures the commitment of a state towards free trade.²

Thus like mercantilism, in neo mercantilism, economy is still the subordinate of the state and used for state's interest. However the way states utilize and regulate economy is subtler and instead of dodging free trade completely, neo mercantilist commits to it. Thus a case that is interesting to examine using the eye of neo-mercantilism is that of the US-Sino Intellectual property Rights (IPR) conflict that are spread out through many IPR related cases as documented in the US own Special 301 Report.

The US disdain towards IPR violations dated back to 1988, where the USITC publish the "Foreign Protection of Intellectual Property Rights and the Effect on U.S. Industry and Trade" report. This publication is a study of 269 firms across the US, with an estimated loss due to IPR violation to be 23.8 billion US\$. It is clear that IPR violation has direct impact towards the US economy, and one of the five states that have concentrated cases of IPR violation is China.³

It is then natural for the US to counteract these infringement cases by opting on negotiations and forming treaties with the Chinese. An example is the memorandum of understanding between US and China in 1992⁴. The friction between the two states in regards of IPR was not only in terms of act of

² *Ibid*

³ United States International Trade Commission (USITC) (1998) Foreign Protection of Intellectual Property Rights and The Effect on U.S. Industry and Trade, February 1998. Washington, DC: USITC.

⁴ US Department of State (USDS) (1992) 'Intellectual property: Memorandum of Understanding between the United States of America and the People's Republic of China. 17 January), Treaties and Other International Acts Series, no. 12036.

infringement however, as the Special 301 report released annually by the United States contains multiple IPR related issues in China, such as inadequate IPR protection and problematic innovation policies. These issues are spread throughout the years and with a change in the US administration, these issues persist. It is then interesting to take a look of how the US under different administration deals with IPR cases in China. Framing this research as a comparison between two of the recent presidents, Republican President George W. Bush, and the Democrat President Barack Obama, may reveal further insight on each administration's approach on China's IPR cases in the context of neo-mercantilism. Thus, this thesis will be appropriately titled:

***“The United States Measures towards China’s IPR Related Cases: A
Comparison between the Era of Bush and Obama”***

1.2. Research Problem Identification

1.2.1. Research problem Description

As stated in the background, the US suffers from IPR violations done by various states, China being one of them. These cases show the vulnerability of the US economy and thus must be counteracted. This vulnerability of course again, is derived from the rising interdependence between states in the contemporary international environment. The US itself documented related IPR cases in its

annually published Special 301 Report, which contains assessment of individual countries in regards to IPR.⁵

Several cases are documented throughout both the Bush and Obama administration, however what is unique between the two administrations is the way how these issues was solved by each administration. The Bush administration utilized the WTO Dispute Settlement Understanding to solve two cases, namely China's inadequate IPR protection and China's restriction on trading rights of audiovisual products. Obama's administration however, never utilized the WTO DSU to solve any of China's IPR cases, even if those cases, as elaborated in later chapters, also has a possibility of being a TRIPS violation, the same as the case of China's inadequate IPR protection which Bush brought to the WTO.

Obama's administration instead only utilized bilateral measures, mainly through the Joint Commission of Commerce and Trade, or other bilateral dialogues and memorandum of understanding, as documented in the Special 301. This might be a sign of a weakening pressure, whereas WTO DSU provides an explicitly written retaliatory and compliance clause, these bilateral measures may not. It is then imperative to further examine both president's administration and how their leadership style led to the decisions they made in regards of solving Chinese IPR issues. These series of examination will then culminates in the answer of how does the difference in Bush and Obama's leadership style contributes in the weakening pressure towards the Chinese.

⁵ "Special 301," Special 301 | United States Trade Representative, <https://ustr.gov/issue-areas/intellectual-property/Special-301>.

1.2.2. Limitation of the problem

This thesis will limit the timeframe of analysis from the issuance of the 2001 Special 301 Report until the 2016 JCCT. However it has to be noted that this thesis will also use documents, working papers, or books that provides data on the inner workings of each Bush and Obama administration.

1.2.3. Research Question

This thesis uses the thinking of neo-mercantilism and the idea of classical mercantilism and realism behind it, with the addition of the theory of Bureaucratic Politics and models/theories in regards to leaders as policymakers to answer the question:

“How does the different leadership style of Bush and Obama contributes towards the weakening pressure by the US towards China, in terms of IPR related cases from 2001-2016?”

1.3. Research Objective and Contribution

1.3.1. Research Objective

This thesis will attempt to provide an explanation of How does the different leadership style of Bush and Obama contributes towards the weakening pressure by the US towards China, in terms of IPR related cases from 2001-2016. Measures that are constituted as weak pressure are bilateral measures such as dialogues and measure that is constituted as strong pressure is the utilization of WTO Dispute Settlement Understanding.

1.3.2. Research Contribution

This thesis may serve to be a point of view for others who study United States foreign policy decision making and how changes in administration especially the presidency influenced measures employed by states. This thesis may also be a starting point for further research towards how different leadership style contributes to different measures in foreign policy.

1.4. Literature Review

There are literatures already written that focused on the Republican Perception in the US and the dispute between the US and China in the WTO regarding Intellectual Property Rights. This section of the introduction will summarize the main points of three different literatures and then it will end with how these literatures may contribute towards this research. There will be three literatures summarized in this section.

Firstly a journal written by Christine Degregorio published in 2001 that focuses on the policy making activities of the Republican House from their early transition of power (104th US congress) to them settling in (105th US Congress). Christine argues that there are a few differences that distinguished the republican house from the democrats. Leaders build support early for preferred policy positions, advocation groups are major in communication strategy such as the unfiltered use of C-Span and internet, these practices are distinctly republican. Benefits of having George W. Bush is immense considering the ability to profit

from the president's bully pulpit. Bush is also a president who will sign majority-inspired initiatives may prod republicans to produce more ambitious and conservative agenda.⁶

The second literature titled *The U.S.-China Trade Friction: Causes and Proposed Solutions*, while not focusing on Chinese IPR and the US measures to counteract it does elaborate on how IPR dispute between the two states deteriorates the trade relations between them and how this might be resolved. The journal explains that China has failed to combat widespread IPR piracy despite its repeated promises to the US and other countries. The US has pressed China to improve its IPR protection efforts since the late 1980s especially after China became a member of the WTO in 2001. Many US products are pirated in China, causing US companies to lose billions of dollars every year. Even though the Chinese government has pledged many times to take immediate action on IPR piracy, many business groups assert that it is urgent to establish effective mechanism to ensure long term enforcement of IPR laws due to the poor IPR protection in China being a significant obstacle in doing business with the country. The journal then elaborates on the obvious solutions to eliminate the problems that hinders trade between US and China, among these are that China should be urged to enforce its IPR laws more effectively and that China should comply more

⁶ Christine Degregorio, 2001, "Party Leadership in the U.S. House of Representatives: Making Theoretical Sense of Ambition and Context." *Congress & the Presidency* 28 (1): 19-44. <https://search.proquest.com/docview/205921218?accountid=31495>.

effectively with WTO commitments. However, these solutions have had virtually no impact on the bilateral trade imbalance between these two countries.⁷

Finally, a journal written by Mark Liang, published in 2010, titled, "A Three-Pronged Approach: How the United States Can Use WTO Disclosure Requirements to Curb Intellectual Property Infringement in China". This journal went into detail on the causes of IPR Infringement in China and the measures the US took involving WTO to counteract it. In Chapter III, Mark elaborates on proposed measures that the US has done and why they are unlikely to improve China's IPR enforcement and on chapter IV suggest alternatives that are more likely to improve said IPR enforcement.⁸ However, this thesis will only summarize the chapter III of Mark's journal, due to the relevance of information the chapter contains and the elaboration on how the US measures are likely not going to improve China's IPR enforcement might contribute to this thesis.

The Chapter III of Mark's Journal contains five measures, namely; filing a WTO complaint alleging China's violation of TRIPS article 61, forcing WTO members to pay dues to the IPR enforcement fund, amend TRIPS to clarify enforcement standards, filing a WTO complaint alleging China's violation of TRIPS article 3.1, and providing IPR education and training programs. The first measure regarding the allegation of China's violation of TRIPS article 61 was not

⁷ Suk Hi Kim, Mario Martin-Hermosillo, and Junhua Jia, 2014, "The U.S.-China Trade Friction: Causes and Proposed Solutions." *The Journal of Applied Business and Economics* 16 (5): 63-73. <https://search.proquest.com/docview/1647789171?accountid=31495>.

⁸ M. Liang, 2010, "A three-pronged approach: How the united states can use WTO disclosure requirements to curb intellectual property infringement in china." *Chicago Journal of International Law*, 11(1), 285-319. Retrieved from <https://search.proquest.com/docview/747485339?accountid=31495>

effective due to the lack of evidence the US had in order to support the claim that China was failing to remedy and address IPR infringement on a commercial scale, and thus the WTO rejected this allegation. The second measure to force member states to pay into an “IPR Enforcement Fund” is unlikely to work due to 3 reasons, the requirement of WTO to decide which member states deserve the fund and monitoring recipient nations, the acknowledgement of China’s TRIPS violation if the WTO decide to pay China using the fund, and finally the lack of financial resource is not the cause of China’s IPR problem. The third measure of amending TRIPS also has three reasons on why it unlikely won’t work, namely; US amending TRIPS means that China will be in clear violation and may disrupt the relation between the two nations, the amendment must be a multilateral consensus, and quantitative metrics in the amendment may be arbitrary and prone to circumvention. The fourth measure on filing a WTO complaint alleging China’s violation of TRIPS article 3.1 is problematic due to the allegation regarding tariffs and import restriction is not within the purview of TRIPS and the lack of proof. Finally, the fifth measure of providing IPR education and training programs, while should be implemented, is unlikely to succeed in bringing about significant short term improvement in China’s IPR enforcement.⁹

The first literature is a study on the Republican house policy making activities when the transition of power occurs. This study distinguished the difference between the republican and the democrats, thus serving as a baseline for examining on how the Republican perception dominates and influence

⁹ *Ibid*

decision making. The second literature explains the trade friction between China and the US which also includes a section that examines China's obligation in the WTO. This literature will serve well in examining another point of interest in this thesis, the utilization of the WTO DSU. The third literature explores the US proposed measures to curb IPR infringement in China. This third literature correlates with the first literature. The first literature explores republican decision making and the measure by the US to counteract Chinese IPR infringement using the WTO is one of the implementation of said republican decision making. These three literature will thus facilitate further research in this thesis.

1.5. Theoretical Framework

This thesis will conduct research using the basic assumptions of realism, mercantilism, and neo mercantilism. This study is deeply rooted to international relations, due to the research issue being a dispute between two states and how the basis of the realism assumption is taken from an IR literature. It should also be noted that the focus of this thesis is the analysis of foreign policy decision making by a state actor, particularly by their bureaucrats. Thus, this section of the thesis will summarize literatures that form the basis of the neo mercantilist theories and then elaborate on the basis of bureaucratic politics. As such, this section shall start with a summary of the realism grand theory, into the idea of mercantilism/ realism economy, into the thought of neo-mercantilism and finally concepts related to IPR and the theory of bureaucratic politics will be elaborated.

Mercantilism/Realism Economy

Firstly, the idea of mercantilism derives from the grand theory of realism. Jack Donnelly in “Theories of International Relations” summarizes Hobbes classical realism on three basic assumptions namely; men are equal, they interact in anarchy, and they are driven by competition, diffidence and glory. The conjunction of these traits creates a war of all against all. Men are equal in a sense that the weakest have the power to kill the strongest, anarchy due to absence of government, and enmity is exacerbated by competition, diffidence, and glory. The only way to prevent conflict in context of classical realism is when one of the assumptions of the model does not hold up, or if it is counter-balanced by other forces.¹⁰ In terms of economy, the idea of this zero sum conflict can be found in the ideology of mercantilism.

In his book, “The Political Economy of International Relation,” Robert Gilpin stated that nationalist economy or mercantilism central idea is that economic activities should be the subordinate to the goal of state and the interests of state. Gilpin elaborated the thinking behind economic nationalists by citing the works of various writers, such as Jacob Viner on the prepositions of a mercantilist. However the part that is essential to highlight is Gilpin’s elaboration on the foremost objective of economic nationalists, which is Industrialization.¹¹

¹⁰ Scott Burchill, Andrew Linklater, Richard Devetak, Jack Donnelly, Terry Nardin, Matthew Paterson, Christian Reus-Smit, and Jacqui True. *Theories of international relations*. 32-33. (Basingstoke: Palgrave Macmillan, 2013)

¹¹ Robert Gilpin and Jean M. Gilpin. "The Politics of International Trade." In *The Political Economy of International Relations*, 180-183. (Princeton University Press, 1987)

Gilpin stated that there are three reasons why economic nationalists pursue industrialization. The first being that industry has spillover effects throughout the economy, meaning the more industrialized a state is, the more developed its economy. Secondly, the possession of industry is associated to economic self-sufficiency and especially, political autonomy. Third and the most important, industry is essential because it is the basis of military power and central to a state's security. This objective of industrialization by nationalists is itself a major source of economic conflict. Gilpin then elaborate the relationship between an economic nationalist state and the rest of the world, stating that there are defensive and malevolent nationalists, the former who pursue protectionist policies to protect themselves from external economic and political power, while the latter conducts economic warfare.¹²

Finally, the last point that the writer will cite from Gilpin is indeed quite interesting. He stated that nationalists consider relative gain to be more important than mutual gain. This led nationalists to change the rules or regimes governing international economic relations to their favor. He then mentions a statement by Adam Smith; everyone wants to be a monopolist and will attempt to be one unless prevented by their competitors. The takeaway from this is that liberal international economy cannot develop without the dominant economic states whose interests are consistent with its preservation.

This last point by Gilpin is relevant to a passage in a book written by David N. Balaam and Bradford Dillman, titled "Introduction to Political

¹² *Ibid*

Economy". In a chapter discussing Mercantilism, the book provides some contemporary cases that led states to turn to neo-mercantilism. While the basic philosophy is still the same with the traditional mercantilism, where states' interests drive the economy and independence from external economic and political forces is essential, neo-mercantilist policies are more subtle and more craftily designed. Neo-mercantilist policies aimed on reducing the vulnerability from international competition, while at the same time not violating the commitment towards freer trade under the GATT.¹³

The basis of mercantilism stated by Gilpin has many forms; one of it is the malevolent protectionists who conduct economic conquest. This is an unregulated form of protectionism which in the book written by David and Bradford is actually proving to produce negative effects and has been proven to be too costly. Erecting high tariff barriers, boycotting exports, such malevolent policies are not viable anymore in contemporary IR, where interdependence between military, economic, and national interests between states creates an environment where being overtly protectionist or isolationist is not ideal.

However, as stated by Gilpin, liberal international economy cannot develop without dominant economic forces. Monopoly will still won't happen due to the idea of mercantilism still exists in contemporary international economy. These idea manifests in subtler policies, under a thought of neo-mercantilism. To sum up, mercantilism has two forms, the defensive and the malevolent. The malevolent mercantilists are those driven by the basic assumption of Hobbesian

¹³ *Ibid*, David

realism. Neo-Mercantilism however is the counterbalance of this malevolent idea. Neo-mercantilism in the end is a form of subtle policy making with a deeply rooted idea of mercantilism. Simply put, neo-mercantilism is a soft mercantilism in order for preservation of states' interests.

Concepts of IPR Infringement

Concepts that are also relevant and essential in guiding the research behind this paper is of course the essence of Intellectual Property Rights itself. Gordon C.K. Cheung in his book, "Intellectual property Rights in China, Politics of piracy, trade and protection," stated that the gist of IPR is the reward to human achievement. In essence IPR encourage human innovation by giving protection to innovators.¹⁴ In a legal sense Gordon Cited *McCarthy's Desk Encyclopedia of Intellectual Property*, in which "intellectual property" is an all-encompassing term now widely used to designate as a group all of the following fields of law: patent, trademark, unfair competition, copyright, trade secret, moral rights, and the right of publicity.¹⁵

Gordon elaborated two of these legal branches of IPR namely trade secret and unfair competition. Gordon cited Gamal Atallah, where he stated that patents are not very effective in protecting innovations and that secrecy increases the return on innovation until the introduction of new technology and that innovation

¹⁴ Gordon C. K. Cheung, *Intellectual property rights in China: politics of piracy, trade and protection* (London: Routledge, 2011), 9.

¹⁵ J. Thomas McCarthy, Schecher, Roger E. and Franklyn, David J, *McCarthy's Desk Encyclopedia of Intellectual Property, 3rd edition* (Washington, DC: BNA Books, 2004), 308.

and secrecy are strategic complements.¹⁶ Unfair competition defined by the article 10 of the Paris Convention is “any act of competition contrary to honest practices in industrial or commercial matters. Specifically there are three types of unfair competition; acts that create confusion with the company, goods or activities of a competitor, false allegations that discredit a competitor, and indications that are liable to mislead the public as to things such as the nature or qualities of the goods.”¹⁷

Bureaucratic Politics

The Bureaucratic Model/Theory of foreign policy decision making main assumption is that decision emerged from political struggle and bargaining between groups. These groups or actors are the key individuals sitting in key organizations, each trying to maximize their own agendas and interests. Foreign policy decisions emerged from an abstract political space, an outcome of a political struggle that does not get any influence from the formal chain of command.¹⁸ Bureaucracies are hierarchical organization that controls their turf by controlling policy in their area of expertise. Decision makers even have the incentive to negotiate internally before presenting their alternatives to the

¹⁶Gamal Atallah, “The protection of innovations”, CIRANO Scientific Series, Montréal (January): 1–23.

¹⁷ United International Bureaux for the Protection of Intellectual Property (BIRPI). 1968. *Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at the Hague on November 6, 1925, at London on June 2, 1934, at Lisbon on October 31, 1958, and at Stockholm on July 14, 1967*. Geneva: United International Bureaux for the Protection of Intellectual Property (BIRPI)

¹⁸ Alex Mintz and Karl Derouen, *Understanding Foreign Policy Decision Making* (Cambridge: Cambridge University Press, 2010), 71

executive. This process effects the information that is presented to the leader or even restricts the alternatives that are available to the leader.¹⁹

Bureaucrats usually are part of political parties, due to how this research will examine a state with a two party system; the two party approaches must be elaborated as well. The two party approach used in this research will be the approach elaborated in a book by Alan Ware, which stated that two partism is identified with single party, majority governments, where, over an extended period, two parties (but no more than two parties) have controlled the government in different times. Different criteria of control applied for parliamentary and presidential system. While in parliamentary system there are little confusion on which of the two parties currently controls the government, a presidential system is more complicated due to how other factors, such as political pressures, may lead to members of the cabinet came from other parties.²⁰ Thus, this links to how bureaucrats tend to restricts alternatives towards leaders.

While bureaucrats may show disobedience and restricts leaders' access on information, leaders may still hold control in the decision making and action implementation of a policy. For example, President most important asset is to be able to persuade their associates that the policy he wishes to implement or create is in line with the national interest. President of a democratic state such as a the United States is the only government official chosen in national election, thus giving him a much more stronger mandate in defining the national interest. A

¹⁹ *Ibid*

²⁰ Alan Ware, *The Dynamics of Two-party Politics: Party Structures and the Management of Competition* (Oxford: Oxford University Press, 2009), 8

president is most persuasive when he engage with direct conversation with anyone involved in decision making and if he is not able to persuade his principal associates to do as his wishes, his decisions may not turn to effective actions. Other than persuasion there are many ways a president can exert control upon the decision making process of a policy, such as holding negotiations, turn to abusive behavior and bullying, taking charge of as much as the execution of the policy as possible, replacing disobedient personnel, appointing agents, or creating institutions that fulfill his wish. The degree of presidential control is thus determined by how much involvement he has on decision making, how complicated the action that must be carried out, and whether or not the implementation of the policy can be done by whether the action can be carried by different organizations.²¹

Policymaking Theories/Models involving Leaders

Several theories or models are constructed in order to assess the role of leaders in policymaking. Three models will be referenced in this section; Fred I. Greenstein's *qualities that shape presidential performance*;²² James David Barber's *Presidential Character*;²³ Leader's Characteristics in Martha Cottam's *Introduction to Political Psychology*;²⁴ and a typology by Thomas Preston.²⁵

²¹ Morton H. Halperin, Priscilla Clapp, and Arnold Kanter, *Bureaucratic Politics and Foreign Policy* (Washington, D.C.: Brookings Institution Press, 2006), 295-306.

²² Fred I. Greenstein, "The Qualities of Effective Presidents: An Overview from FDR to Bill Clinton," *Presidential Studies Quarterly* 30, no. 1 (2000): , doi:10.1111/j.0000-0000.2000.00104.x.

²³ James David Barber, *The Presidential Character Predicting Performance in the White House* (Milton: Taylor and Francis, 2017).

²⁴ Martha Cottam et al., *Introduction to Political Psychology* (Mahwah, United States of America: Lawrence Erlbaum Associates, 2004).

Greenstein's approach was highlighted in his journal, "The Qualities of Effective Presidents: An Overview from FDR to Bill Clinton." In the journal, Greenstein elaborates qualities that have contributed to the effectiveness of modern American Presidents. He would later use these qualities to evaluate the US Presidents from the early years of George Washington²⁶ to the early 2000s George W. Bush.²⁷ Greenstein based his evaluation under six qualities; *Effectiveness as a Public Communicator; Organizational Capacity; Political Skill; Policy Vision; Cognitive Style; and Emotional Intelligence.*²⁸

Effectiveness as a Public Communicator is needed in the presidential office. To elaborate on this quality, Greenstein used several examples. Firstly he referenced Roosevelt, Kennedy, and Reagan, those who had eloquence in public speaking which were granted through experience. Second, he referenced George Bush, who sees himself to not being able to compete with Reagan as a communicator and instead minimize the role of rhetoric in his presidency. Bush instead chose to rarely address the nation through the oval office and instead use the White House briefing room for his public communications. But his lack of attention towards the teaching and preaching side of the presidential leadership led him to lose the 1992 reelection.²⁹

²⁵ Thomas Preston, *The President and His Inner Circle* (New York, United States: Columbia University Press, 2001).

²⁶ Fred I. Greenstein, *Inventing the Job of President* (Princeton University Press, 2009).

²⁷ Fred I. Greenstein, *The George W. Bush Presidency: An Early Assessment* (Baltimore: Johns Hopkins University Press, 2003).

²⁸ *Ibid.* Fred I. Greenstein, "The Qualities of Effective Presidents: An Overview from FDR to Bill Clinton"

²⁹ *Ibid.*

Organizational Capacity refers to a president's ability to forge a team and get the most out of it. It also includes the president's ability to create effective institutional arrangements. Greenstein elaborates with examples, firstly referenced presidents who encouraged diversity in recommendations that reach him such as Kennedy and Eisenhower. Secondly he referenced presidents that are not willing to expose themselves to face-to-face disagreement such as Nixon and Reagan. Greenstein stated that a president who wants to establish an effectively operating White House is advised to examine Eisenhower's organizational innovation through his administration's national security deliberations. Eisenhower's NSC essentially gives opportunities each week to its agencies to state policy recommendations and when disagreements occur, it will be an object of a sharp, focused debate.³⁰

On the quality of *Political Skill*, Greenstein cited Richard E. Neustadt's *Presidential Power*. Neustadt address the question of how the chief executive can put his stamp on public policy in the easily stalemated American political system. His answer is that a president must use the powers of his office assertively, building and maintaining public support, and establish reputation as a skilled and determined political operator among fellow policy makers. Greenstein use the example of Jimmy Carter who had political adeptness in catapulting himself to the presidency but lack in competence when he is there. This is in contrast to Lyndon Johnson who seems to take a page from Neustadt in his performance after

³⁰ *Ibid.*

Kennedy's assassination. However Greenstein also cited Johnson's failure in Vietnam despite him being a "domestic political virtuoso".³¹

On *Policy Vision* Greenstein starts by one of the qualities the term *vision* refers to is a capacity to inspire. He uses the example of rhetorically-gifted presidents that excels on this, such as Kennedy, Reagan, and FDR. Secondly, vision also encompasses consistency of viewpoint. Presidents who stand firm are able to set the terms of policy discourse. Greenstein stated that a vision-free leadership will cause inconsistent policies that cancel each other and programs that have undesired effects.³²

While his journal did not elaborate concretely on what the term *Cognitive Style* refers to, his book *Inventing the Job of President*, do so. In the book, Greenstein stated that *Cognitive Style* refers to the ability of a president to process the flood of advice and information directed to him, his overall intelligence, and his ability to avoid becoming mired in details.³³

Finally, *Emotional Intelligence* is the ability to control one's emotions and turn them to constructive uses.³⁴ Greenstein stated that great political ability does sometimes derive from troubled emotions, but this does not mean that troubled

³¹ *Ibid.*

³² *Ibid.*

³³ *Ibid.* Fred I. Greenstein, *Inventing the Job of President*, 3.

³⁴ *Ibid.*

emotions is justified to achieve political ability in the context of the state who owned the most destructive military arsenal in world history.³⁵

The second approach is Barber's *presidential character*. It is centered on two baselines. The first is the *activity-passivity*, encompassed in a question of "How much energy does the man invest in his presidency?" The second is *positive-negative affect* toward one's activity. In other words how he feels about what he does. Barber cited Roosevelt's Secretary of War, Henry L. Stimson, who wrote that the Roosevelts "not only understood the use of power, they knew the enjoyment of power, too Whether a man is burdened by power or enjoys power; whether he is trapped by responsibility or made free by it; whether he is moved by other people and outer forces or moves them-that is the essence of leadership." Thus, there are four main configurations of presidential character; Active-Positive; Active-Negative; Passive-Positive; and Passive-Negative.³⁶

Active-Positive indicates high self-esteem and relative success in relating to the environment. Active-positive presidents may fail to take account of the irrational in politics thus not everyone sees things his way and he may find it hard to understand why. Their aim is to achieve results³⁷

Active-Negative is a contradiction of intense effort and low emotional reward, as if to make up for something or escape from anxiety into hard-work. Active-

³⁵ *Ibid.* Fred I. Greenstein, "The Qualities of Effective Presidents: An Overview from FDR to Bill Clinton", 3.

³⁶ *Ibid.* James David Barber, *The Presidential Character Predicting Performance in the White House*, 8-10.

³⁷ *Ibid.*

negative types pour energy into the political system but it is an energy distorted from within. They aim to get and keep power.³⁸

Passive-Positive is a character in search for affection as a reward through being agreeable and cooperative. It is a contradiction between low self-esteem and superficial optimism. They help soften the harsh edges of politics but disappointments are likely due to their dependence and fragility of their hope. Their motivation is love.³⁹

Passive-negative types are in politics because they think they ought to be. They lack experience and flexibility, thus they tend to withdraw from conflict and uncertainty of politics by emphasizing vague principles. They emphasize their civic virtue.⁴⁰

Another approach is description of a leader's style of decision making was affected by several individual characteristics. Martha Cottam et al highlight eight of these individual characteristics; Need for Power; Locus of Control; Ethnocentrism; Need for Affiliation; Cognitive Complexity; Distrust of Others; Self Confidence; and Task Interpersonal Emphasis.⁴¹

Need for Power is the concern with establishing, maintaining, and restoring one's power. Locus of Control is whether or not government can influence what happens in or to a nation. Ethnocentrism is the view of the world which one's own nation holds center stage. Need for Affiliation is the concern with establishing,

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.* Martha Cottam et al., *Introduction to Political Psychology*, 29.

maintaining, or restoring friendly relationships with others. Cognitive Complexity is the degree of differentiation person shows in describing or discussing other people, places, policies, ideas, or things. Distrust of others is the General feeling of doubt, uneasiness, and misgiving about others. Self-Confidence is the person's sense of self-importance. And finally, Task-interpersonal emphasis is getting the task done vs. focusing on feelings and needs of others.⁴²

The final approach is a typology by Thomas Preston. In his book *Presidential Personality and Leadership Style*, Preston formulates typology on leadership style based on *static leader characteristics* (which are need for power and cognitive complexity) and *nonstatic, changeable leader characteristics* (such as policy experience or expertise). As such, there are eight types of leadership style formulated by Preston, split into two dimensions; Leader Control and Involvement and Leader Sensitivity to Context.⁴³

The first dimension is the leader's desire to personally involve themselves in policymaking. In the dimension of *Leader control and involvement*, there are four types of leadership style;⁴⁴

The Director are leaders with extensive policy experience and high need for power. This type prefers to have personal control over decision making, thus keeping him with a tight inner circle of advisors. They advocate strongly on their policy views with confidence on their own policy judgement.

⁴² *Ibid.*

⁴³ *Ibid.* Thomas Preston, *The President and His Inner Circle*. 14-27

⁴⁴ *Ibid.* 15-19

The Administrator similar with *The Director* are leaders who advocate for their policy views and rely on their own policy judgement. However, they differ with *The Director* in the sense that their decision making are less centralized and leaders that falls to this type also requires less direct personal control on policymaking and prefer to enhanced participation by their subordinates. They are however confident in their own policy judgement but willing to compromise to gain majority consensus.

The Magistrate are leaders who have high need for power but have limited experience in policy making. They are similar to *The Director* in terms of need for power and personal control on policymaking with a tight inner circle, however because of their limited experience; they tend to rely heavily on the view of their expert advisers. Thus, *The Magistrate* adjudicates between policy options presented by their advisors before making the final decision.

Finally, *The Delegator* are leaders with both low need for power and limited policy experience. They are uninterested in policy making and require little direct involvement in the policy process. They tend to enhance subordinate participation and rely on views of their advisors. Thus, the decision rule and policy recommendations in the inner circle would rely extensively upon the views of expert advisors.

The second dimension is *Leader's general sensitivity to context* or general cognitive need for information, their sensitivity to the characteristics surrounding

policy environment and views of others. There are also four types of leadership style in this dimension;⁴⁵

The Navigator are leaders with high cognitive complexity and extensive policy experience. They are active collectors of information and sensitive towards outside constraints with enhanced search for information and advice from outside policy actors. They are “inductive experts”, seeing the world in less absolute terms, thus rely less on simple stereotypes to understand policy environment. As such, their complex perception towards the world led to an emphasis on broad information search and gathering of competing policy views. At the same time, their policy experience led them to trust their own instincts in face of opposition. However, *inductive experts* are less decisive due to their emphasis on gathering immense amount of information. Thus they tend to respond slowly to policy problems, make fewer absolute policy decisions and more willing to reconsider their views in face of new evidence.

The Sentinel shares the extensive policy experience of *The Navigator*, however their low cognitive complexity led them to avoid broad searches for policy information beyond what is relevant given their own past experience. They are sensitive towards outside policy constraints and is a “deductive expert” in information processing. They view the world in black and white due to their low cognitive complexity, relying more on stereotypes and analogies. This simple view towards the world led them to put less emphasis on broad information gathering. They believe on their instincts rather than the opposition inside their

⁴⁵ *Ibid.* 19-27

own inner circle; however as a *deductive expert* they are decisive, react quickly to policy problems, and reluctant to reconsider their views once action has been taken.

The Observer are less sensitive towards outside constraints on policy due to their limited policy experience, however they are interested and seek to be informed by relevant outside actors. They are still heavily dependent on expert's advice in their decision making due to their limited experience and tend to limit their personal role in analysis of data. They are "inductive novices" in information processing. Like *The Navigator* they have complex perception towards the world and interested in broad information search and gathering competing policy views reported by their subordinates. However their limited policy expertise, their expert advisors play a more significant role in shaping policy. Also similar to *The Navigator*, *The Observer* also responds slowly to policy problems due to their preference on immense information gathering.

Finally *The Maverick* are leaders with low cognitive complexity and limited prior policy experience. They tend to avoid broad gathering of information and their decisions are driven by their own personal, idiosyncratic policy views. Their policy views are also influenced by simple heuristics such as analogies due to their black-white view towards the world. They are "deductive novices" with their low complexity and absolute black and white views of the world. They are receptive and often dependent upon advice of expert advisors while also being decisive and respond quickly towards policy problems.

It must be noted that assessing leadership style using Preston's approach will produce a typology that combines the two dimensions elaborated below. Thus there are 16 possible combinations based on the policy domain (foreign or domestic).⁴⁶

1.6. Research Method and Data Collecting

1.6.1. Research Method

Research in this thesis will be done using the qualitative approach, one where the inquirer often makes knowledge claims based on primarily constructivist perspectives, or in the case of this thesis, advocacy/participatory perspectives (political, issue oriented).⁴⁷ The qualitative strategy used will be case studies, in which the researchers explore in depth a program or events, which are bounded by time and activity. Researchers then collect detailed information using various data collecting procedures over a period of time.⁴⁸

1.6.2. Data Collecting

Case study data collection involves a few types of data. Creswell gives four kinds of data in a case study, interviews, observation, documents, and audiovisual materials.⁴⁹ This thesis will focus on documents, particularly included in this thesis are but not limited to literatures in the form of journals, government

⁴⁶ *Ibid.* 27

⁴⁷ John W. Creswell, *Research design: Qualitative, quantitative, and mixed methods approaches* (London: Sage, 2003). 18

⁴⁸ *Ibid.*, 15

⁴⁹ John W. Creswell, *Qualitative inquiry and research design: choosing among five approaches* (Los Angeles: SAGE Publications, 2013).

documents or publications, and books. These sources will all be summarized and used to aid the author to then formulate the answer towards the research question.

1.7. Research Structure

This thesis will consist of five chapters, including the introduction. The remaining 4 chapters are:

Chapter 2 will describe IPR related cases in China. These cases will be split into the cases deemed problematic during the Bush administration and cases deemed problematic during the Obama administration. The data for this chapter will rely heavily on the documentation in the US annual Special 301 Report.

Chapter 3 will explore the difference between Bush and Obama. This chapter will be split in two. The first part would be the composition of Democrats and Republicans in the congress. The second part would be the leadership style of George W. Bush and Barack Obama.

Chapter 4 will provide an analysis on the measures employed by each administration towards cases that has been described in chapter 2. This chapter will take a look further into each administration's approach and may provide further insight on whether or not a weakening pressure occurs.

Chapter 5 will finally provide conclusive remarks and the final answer of the research question.