

Techno Party: The Science and Technological Progress Law

By Joseph Cash, China Policy Analyst

- 🇨🇳 The Chinese government is pinning the country's development on science and technology and ensuring that the Party can innovate its way out of any problems the future may hold
- 🇨🇳 As such, the Chinese Communist Party will be firmly in the driving seat as the country sets to becoming more innovative
- 🇨🇳 British businesses could find themselves at a disadvantage as a new 'techno-nationalism' grips China's industrial markets and results in the adoption of a 'China first' principal in government procurement

Summary

"Mr Science" has made many cameo appearances in the Party's presentation of the birth of modern China. Now he is set to get his own show. First recruited by the May Fourth students of the early 20th century, "Mr Science" has inspired generations of Chinese scientists to push the boundaries in the pursuit of national greatness. Progress personified, China's President Xi appears keen to resuscitate him—science and technology has become one of his foremost 'national projects.' And President Xi is willing to spend. Forget the multibillion-dollar budget of the Marvel Cinematic Universe, the Chinese Communist Party is about to unleash a super-charged legislative agenda intended to see "Mr Science" turn the stuff of dreams into China's every day.

Enter the Science and Technological Progress Law (SPTL). While not as exciting a title as *Star Wars* perhaps, the government hopes that its impact on society will be the same: to inspire China to look to infinity and beyond (to quote Buzz Lightyear). At 117 articles long, it is a treatise on adopting a top-down approach to fostering individual innovation. Concerningly for British businesses, the SPTL also contains several clauses that could see foreign firms excluded from public procurement programmes or their innovations commandeered by the Chinese Communist Party.

Background

China's leadership has long distinguished itself through its technocratic tendencies, while western cabinets continue to more commonly consist of classicists rather than chemists.¹ That alone goes a long way in explaining why the country is the leader in both the pursuit of a digital currency and the rollout of 5G technologies, and also now ranks first in terms of the number of filed patents. Take President Xi, for example, he is a chemical engineer and a scholar of Marxist theory by formal training—well versed in the affairs of the Soviet Union, whose government came to typify technocracy. He is far from alone in the top tiers of the Party in that regard. Now his government wants to "promote science and technology as the primary productive force... to support and lead economic and social development and build a modern socialist country in an all-around way."²

¹ <https://supchina.com/2018/03/05/kuora-why-do-technocrats-dominate-chinas-political-elite/>.

² [Chinese] Article 1, Science and Technological Progress Law, <https://zh.wikisource.org/wiki/中华人民共和国科学技术进步法>.

CHINA POLICY UPDATE


11 February 2022

The STPL is not a new law; the Standing Committee of the National People's Congress has passed revisions to legislation that came into force in 1993 before being revised once prior in 2007.³ That's a point for the pedants, though, as CBBC has already heard from members that these changes have turned what used to be a benign piece of legislation that went largely unnoticed – given that the previous version existed as a piece of legislative advocacy rather than enforceable law – into a new non-market access barrier. Indeed, some provinces have reportedly interpreted the STPL as a new requirement to take a 'China first' approach to R&D funding and government procurement.

HIGHLIGHTS

The first thing to note is that the Chinese government has designed these amendments to emphasise the state's role in innovation. President Xi's approval of certain aspects of the Soviet Union's approach to governance is well documented (as are his views on why it collapsed), and that the Party should be the determiner of technological progress and regulation falls firmly on the list of things to emulate.⁴ While the 2007 amendments emphasised more corporate engagement, this time out, lawmakers are putting in place a legal framework to boost state spending on “frontier technologies,” such as artificial intelligence and semiconductors.

To that end, the NPC has written in **Article 32** to the STPL:

 *“For projects funded by the PRC government, the PRC government could use the resulting achievements with no compensation to the owner”*

PRC legal pundits writing on the STPL have jumped on Article 32, chiefly because the “no compensation” clause can be triggered in the interests of “national security, national interest, and major social public unrest.” Everything under the sun can be linked to national security in China, from soil samples to basic chemicals that a quick Google search reveals can be bought on Amazon in the UK, and the prevalence with which officials will cite national security in China is only growing.⁵ As a result, going forward British companies collaborating with Chinese partners on R&D may have to be careful about whether the project in question is PRC-funded, should they not wish their output to be used by the government for free.⁶

³ <https://npcobserver.com/legislation/scientific-and-technological-progress-law/>.

⁴ <https://www.wsj.com/articles/china-spins-new-lesson-from-soviet-union8217s-fall-1386732800>.






⁵ <https://www.economist.com/china/2022/01/08/chinas-online-nationalists-turn-paranoia-into-clickbait>.

⁶ <https://www.mondaq.com/china/media/1146124/china39s-new-science-and-technology-progress-law-2021>.

CHINA POLICY UPDATE

11 February 2022

The revisions to the STPL also include a number of policies to encourage scientific research:


-  **Article 41:** Tax incentives – any R&D expenses incurred can be deducted from the tax bill
-  **Article 46:** SOEs should up their game when it comes to R&D by pursuing more projects and through developing incentive systems and better ways of assessing their innovative capability
-  **Article 86:** The state will increase the overall level of investment in science and technology
-  **Article 91:** Preference to use products developed domestically in government procurement settings
-  **Article 92:** Encourages IP lending (which is when a borrower receives funds secured on the value of their intellectual property)

The remaining 101 Articles of the STPL offer little to write home about— predominantly stressing the need to carry various ‘spirits’ into Chinese R&D.

CAUSES FOR CONCERN

Nevertheless, there remains plenty for companies to be concerned about. **Article 42** is particularly eye-catching for it reads: “*The state encourages enterprises to digest, absorb, re-innovate imported technologies.*” This might be interpreted as a tacit endorsement of a return to the days when Chinese companies – particularly state-owned enterprises - were incentivised to pursue deals with foreign parties where the overseas firms would find themselves under pressure to transfer their technology in order to get the deal over the line. Then again, the STPL also includes several clauses on the need to continue improving China’s IP regime, so foreign firms will have to wait and see how Article 42 is applied in practice.

Then there is **Article 91**, which seems to have PRC lawyers scratching their heads as to whether it is in accordance with World Trade Organisation rules and China’s obligations as a member:


-  “*Products that represent scientific and technological innovations produced by natural persons, legal persons, and unincorporated persons in China shall be purchased through government procurement under the condition that the indicators of function and quality can meet the needs of government procurement; if they are put on the market for the first time, government procurement shall take the lead in purchasing, and shall not be restricted on the grounds of commercial performance*”

With no further implementation guidance available at the time of writing, the best guess is that if the by-products of R&D activities come into being within China – be it as the IP of a Chinese company or a foreign-invested entity – the Chinese government has an interest. Similar in intent to Article 32, this clause provides the government with unfettered access to the innovations that, particularly in the case of SOEs, one assumes the state will begin funding even more proactively than it does now. Expect further market distortions in China’s technology sectors if this is the case—how local governments interpret any subsequent guidance handed down in accompaniment to the STPL will be critical to whether Article 91 has a significant impact on industrial markets or not.

CHINA POLICY UPDATE

11 February 2022

CBBC view

China's scientists are to be put on a pedestal. While the Science and Technological Progress Law contains some worrying clauses for foreign businesses in China's industrial markets, they are not the intended recipient. This legislation is about giving the government a legal basis to go big on tech. It is also about ensuring that the Communist Party of China is the one calling the shots in the country's technological development, after decades of entrepreneurs developing technologies and systems that seriously tested the state regulator's ability to keep up. Then, there are also the Party's aspirations that further investment into the R&D activities of SOEs and universities will create more jobs, which it undoubtedly will - particularly for the hundreds of thousands of STEM graduates that leave university each year to enter an astoundingly competitive labour market. But China's issues with relying on the SOEs to be the main source of the country's ability to be innovative are well documented. Science is being brought to the fore; the Party hopes to engineer the country's achievements in science and technology into a source of national pride. Although China might have jumped the gun in its race to achieve technological supremacy – is the country ready to go it alone, as this legislation strongly suggests? Only time will tell. 

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