

美国产业动态

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中国电子信息产业发展研究院（赛迪研究院）

美国将知识产权作为打压中国的核心战场

2019年2月21日，美国亚洲研究局知识产权委员会发布了《知识产权委员会2019审查报告：进展与最新建议》，赞扬美国政府抓住中美贸易争端的独特契机，应对中国侵犯知识产权的结构性挑战。美国将保护知识产权列为中美贸易谈判的最高目标，企图利用贸易谈判的契机，加强对中国投资交易的审查和监管，维护其全球霸主地位并重塑国际秩序。

一、报告指出知识产权是中美贸易谈判最高目标

报告认为应将知识产权保护提升为美国外交政策首要任务之一，应列为中美经济谈判的最高目标，“知识产权保护提升到最高优先级”。建议扩大美国外国投资委员会的权限、设立关键技术和安全办公室、加强军事供应链的监管。

二、报告提出 8 份中国侵犯美国知识产权的最新研究成果

一是美国白宫贸易和制造业政策办公室《中国的经济侵略如何威胁美国和世界的技术和知识产权》，指责中国系统性开展经济间谍活动；**二是**美国贸易代表办公室《中国关于技术转让、知识产权和创新的法律、政策和做法》，认为中国不公平地获取美国关键技术；**三是**美国贸易代表办公室《关于中国在世界贸易组织的合规性报告》，认为中国知识产权保护不力；**四是**美国国防部《评估与加强美国制造业及国防工业基础与供应链弹性》，认为国防工业供应链安全面临挑战；**五是**美中经济与安全审查委员会《2018 年国会年度报告》，认为美企在华面临保护知识产权的多重挑战；**六是**美国国防创新试验小组《中国的技术转移策略》，认为中国政府深入参与公私投资活动，以获取技术；**七是**美国贸易代表办公室《301 报告》，认为中国存在严重的知识产权问题，一直未能履行加强知识产权的承诺，并将中国列入“重点关注名单”；**八是**非盈利组织 MITRE 公司《应对战争性质变化的供应链安全与弹性策略》，关注国防工业供应链安全，认为保护知识产权是关键因素。（八份报告均已翻译）

三、挥舞大棒，提出 11 项政策建议

一是建立知识产权“评分”系统，对外国机构进行评级。报告建议，首先对中国机构和个人进行评分；二是利用总统的紧急经济权力进行制裁。对涉及知识产权盗窃的外国实体，禁止其进行外汇等交易；三是禁止部分外国机构使用美国银行系统；四是对美国政府实施严格的供应链问责制；五是对寻求在美国上市的外国企业加强问责制；六是由联邦贸易委员会严厉制裁盗用知识产权的外国企业；七是协调和加强出口管制；八是在港口快速识别和拦截假货；九是简化盗用知识产权报告响应流程；十是针对中国，美国与多国搞政策对话并协调政策；十一是支持各国利用多边对华施压。

附：《知识产权委员会 2019 审查报告：进展与最新建议》

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知识产权委员 2019

审查报告

——进展与最新建议

IP Commission 2019 Review:

Progress and Updated Recommendations

作者：美国知识产权委员会（IP Commission）

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引言

2018年12月，在布宜诺斯艾利斯举行的20国集团领导人峰会上，特朗普总统和习近平主席一致同意研究解决贸易争端，并宣布暂停提高关税90天。两位领导人表示，他们将“立即开始就强制技术转让、知识产权保护、非关税壁垒、网络入侵、网络盗窃、服务和农业等方面的结构性变化进行谈判”。

知识产权委员会赞扬政府抓住美中贸易关系关注度日益提高的独特机会，应对中国助长窃取知识产权带来的结构性挑战。这件事需要一代人去解决，知识产权委员会敦促美国领导人认清形势。

过去18个月里，在提高美国保护知识产权能力的政策方面尽管有所进展，但很多方面仍待进一步改进。知识产权委员会关注三部分内容：（1）最新进展情况（2）最新研究成果，表明知识产权保护对美国竞争力的持续重要性（3）最新的政策建议，该部分在第6页提出。

最新进展

知识产权保护提升到最高优先级。特朗普政府已经把消除中国（通过网络窃取、强制技术转让、窃取商业机密、伪造产品或其他手段）窃取美国知识产权的行为，提升为外交政策首要任务之一，列入美中经济谈判的最高目标。

扩大美国外国投资委员会权限，加强出口管制。2019财

年的《国防授权法》纳入了《外国投资风险与评估现代化法案》（防止通过外国投资获得美国关键技术）和《2018年出口管制法》（通过加大向外国人转让新兴技术和基础技术的限制，堵塞出口管制流程中的漏洞）。这些新法规将大大加强对知识产权的保护，但还远远不够。

通过立法更好地应对美国技术面临的威胁。参议员卢比奥和瓦纳在2019年1月提出一项跨党派法案，设立一个关键技术和安全办公室，负责理顺各项工作，确保政府作为一个整体参与保护美国技术。知识产权委员会认为，国家安全顾问负责领导保护知识产权的政策工作，这是朝着正确方向迈出的第一步。

加强对军事供应链的监管。五角大楼发现，“外国竞争对手对国家的依赖程度令人吃惊”。虽然最近对国防供应链的研究评估不仅限于知识产权风险，但是在评估中确实是把知识产权作为关键因素。

最新研究

在过去18个月里，审查中国窃取美国知识产权的研究激增，为知识产权委员会的调查结果提供了佐证：

- 1、白宫贸易和制造业政策办公室的报告《中国的经济侵略如何威胁美国和世界的技术和知识产权》指出，中国的经济间谍活动持续增加，中国是经济间谍活动最活跃、最顽固的肇事者。该报告调查了中国经济侵略的两种主要形式：从其他国家获取关键技术和知识产权；夺取推动未来经济增

长和国防工业进步的新兴高科技产业。报告认为，中国通过网络间谍、规避出口管制法、仿冒、盗版、逆向工程、强制技术转让、投资和许可限制、数据本地化要求、歧视性知识产权保护、收集科技信息（通过高校、实验室和企业里的中国公民）、对私营企业和高校研发项目进行投资等多种手段，系统性地开展经济间谍活动。

2、美国贸易代表办公室根据 1974 年《贸易法》第 301 条得出的调查报告《中国关于技术转让、知识产权和创新的法律、政策和做法》，审查了中国的产业政策——中国的产业政策要求“对外国知识产权进行吸收、消化和再创新”，以实现《中国制造 2025》自给率到 2020 年达到 40%，到 2025 年达到 70% 的目标需要。中国获取知识产权的许多手段并没有正式写入法律，而是以间接和非正式的方式进行，所以很难起诉。通过投资和网络入侵等手段，中国政府引导和不公平地促进获取美国尖端技术（国家产业计划中认为重要的产业）。报告认为，中国的法律、政策和做法不合理，因为它们不公平地以美国关键技术为目标，旨在实现战略领域的主导地位。这些做法损害了美国的创新和经济竞争力。

3、美国贸易代表办公室 2018 年提交国会的《关于中国在世界贸易组织的合规性报告》发现，尽管中国一再承诺不强迫美国企业转让技术，但是中国仍然通过限制市场准入、滥用行政程序、许可证管理、购买资产、网络窃取和盗窃实物等方式获取技术。权利保护的不完善、民事追索机制和行政追索机制并不能阻止普遍的知识产权侵权、执法不力，阻碍了

知识产权的总体执法情况。知识产权执法要取得实际进展，仍然缺乏必要的资源、培训、计划、协调和透明度。

4 由（国防部牵头）的跨机构特别工作组关于“评估和加强美国制造业基地和国防工业基地以及供应链弹性”的报告发现，保护美国工业基地面临一系列前所未有的挑战，特别是竞争对手对国家供给的依赖程度令人吃惊。例如报告中指出，“用于弹药和导弹的许多特殊化学品只有中国是单一供应国或唯一供应国。”[关键生产材料对国外严重依赖]

5、美中经济与安全审查委员会“2018 年国会年度报告”指出，美国企业在华运营时，面临保护知识产权的多重挑战。报告引用了知识产权委员会对该问题规模和范围的调查结果，讲解了美国应对知识产权被窃的政策工具。委员会特别强调，2015 年《国防授权法》第 1637 条赋予总统“禁止与被认定在网络空间进行经济间谍活动或工业间谍活动的任何人进行任何财产交易”的权力，从来没有用过。

6 国防部创新实验小组报告《中国的技术转让战略：中国对新兴技术的投资如何使战略竞争对手获得美国创新的王冠上的宝石》发现，从 2015 年到 2017 年，中国对风险投资创业公司的参与达到创纪录的 10%到 16%（目前超过 1000 亿美元），高于 2010 年到 2015 年的 6%。中国特别重视基础技术的投资，包括人工智能、自动驾驶汽车、增强/虚拟现实、机器人、基因编辑和区块链技术。2016 年，对这些技术的投资占其投资总量的 40%。其中许多技术是军民两用技术，将是超越美军优势的关键。中国在努力实现《中国制造 2025》

目标，将研发支出提高到 GDP 的 2.5%，投资于核心电子元器件、芯片、软件、卫星、下一代宽带无线通信、量子通信和机密国防项目等核心领域的大型项目。中国共产党为了实现经济目标和战略目标，深入参与协调公私投资及其他技术转让工具。该报告建议美国实施防御性政策，如美国外国投资委员会和出口管制的改革等（已在进行中）；对外国学生推出移民政策和签证政策改革，让他们能够带着在美国研究生院学到的知识留在美国；提高反间谍资源的水平。报告推荐的积极政策包括增加研究经费；激励美国学生学习科学、技术、工程和数学；用经济政策促进发展，提高生产力；采取跨政府多个机构和部门的整体协调战略。

7 美国贸易代表办公室 2018 年的《301 报告》将中国列入“重点关注名单”，理由是存在严重的知识产权问题，包括窃取商业秘密、网络盗版和仿冒、大量制造和出口假冒产品、要求进行技术转让、对外国知识产权许可人强行施加不利条款、要求本地化、执法不力。报告指出，中国一直未能履行加强知识产权保护的承诺。不过中国的司法改革也有向好的势头，包括设立专门的知识产权法院和法庭——它们的能力、专业性和透明度比中国其他法院强。尽管有积极的一面，但是地方政府官员、强大的地方利益和中国共产党的干预，仍然是法院独立性和法治的障碍。

8 MITRE 的《交付不受损害：应对战争性质变化的供应链安全和弹性战略》报告提出一个复杂的论点，认为在一个不断变化和日益不对称的威胁时代和环境中，理解国防工业

基地供应链安全（其中保护知识产权是关键因素）的重要性，是国家安全的重要组成部分。

其他方法：知识产权委员会的最新建议

美国在研究、立法和行政行动方面已经取得很大进展，但是在解决窃取知识产权问题方面，还可以采取许多更有效的方法，其中包括：

1. 建设独立的国际数据库，对造成知识产权风险的外国实体进行评分

鉴于美国市场和供应链中有大量存在知识产权风险的外国主体和产品，任何官方机制都无法全面覆盖所有问题，并有效防止知识产权遭窃。因此，知识产权委员会建议开发一个基于市场的“评分”系统，对外国实体（来自于已知存在知识产权风险的国家，寻求与美国企业或政府机构开展业务）进行评级。这种方法将激励所有主体遵守自由市场经济的国际法和价值观，市场会给得分高的实体更多的商业机会和投资机会。

利用全球现有数据资源进行评分，必须客观，不受操控。这类可信的评分与FICO信用评分类似，将使所有守法的企业、组织、政府机构和个人在与外国实体开展业务之前，能够对其风险水平做出更明智的决策。

目前还没有任何机制可以帮助美国企业了解自己接触的外国企业的风险水平，也没有任何机制可以帮助美国政府确定不该允许哪些企业在美国投资或开展业务。虽然商务部

的工业安全局有一份人员和实体的黑名单，但是仅用于出口管制。出口管制无法有效防止知识产权损失。例如，即使是在冷战高峰期，全球经济背景比较简单的情况下，苏联也成功地规避了美国的出口管制。美国外国投资委员会的法律更新后虽然有所改进，但仍然侧重于投资，不能防止不良主体通过其他方式获取知识产权。

知识产权委员会建议的数据库，应首先对中国主体（包括公司及其子公司、国有企业和个人）进行评分，然后扩展到对国家安全造成挑战的其他国家。数据库中的信息应与盟友协调开发，从而可以迅速协调，快速反应。评分系统的应用，必须尽量减少对业务正常开展的干扰。

2 利用已经授予总统的紧急经济权力，拒绝被发现直接受益于美国知识产权盗窃的外国实体进入美国市场和银行系统

根据 1977 年《国际紧急经济权力法》，允许总统制裁个人和组织，“禁止（其进行）任何外汇交易”。2015 年《国防授权法》第 1637 条将这项权限扩大到总统认定的“故意在网络空间开展经济间谍或工业间谍活动”的任何人的“所有财产交易”。我们需要确保总统在使用他能用的所有工具。

3 禁止利用窃取的美知识产权谋利的外国实体使用银行系统

任何窃取知识产权的外国实体，都不能使用美国银行系统。财政部长应有权拒绝恶意主体使用美国银行系统。这是建立在总统现有的法定权力基础上的，如上所述，是在前一

届政府中提出的，但没有被采纳。知识产权委员会强烈鼓励通过这项建议，以确保美国有能力持续应对新出现的威胁。

4 对美国政府实施严格的供应链问责制

五角大楼宣布将对美国军事供应链进行审计，以确定美国军事准备的薄弱环节；前国务卿马蒂斯宣布成立“保护关键技术工作组”，找出军事供应链中的漏洞。知识产权委员会支持此举，并建议把对供应链的监督扩大到整个美国政府。

5 要求证券交易委员会裁定企业盗用知识产权是否属于应当公开报告的重大情况

这项建议源于对寻求在美国交易所上市的外国企业加强问责制的规定。知识产权委员会的原始报告中有这条内容，值得进一步研究。

6 指示联邦贸易委员会严厉制裁盗用知识产权的外国企业

这项建议旨在通过严厉措施，惩罚蓄意侵犯知识产权的实体。如何有效实现制裁，也值得更深入地进行研究和政策分析。

7 协调投资和出口管制

最近的《国防授权法》通过了对外国投资委员会和出口管制程序的改革，限制对国家安全至关重要的新兴技术的投资和潜在出口，取得了巨大进展。现在迫切需要财政部（负责管理美国外国投资委员会）和商务部（负责管理出口管制）密切合作、消除漏洞，共享构成风险的外国主体的有关信息。

8 快速拦截假货

必须加强工作，快速识别和拦截进入美国港口的假货。

开发和部署新技术，提高检测假货的能力，为这个过程的执法提供支持。委员会还建议加强国际贸易委员会的 337 程序，扣押盗用知识产权的货物。

9 简化盗用知识产权报告响应流程

禁止销售盗用知识产权（尤其是盗用商业秘密）产品的流程，成本高昂，而且很费时间。等到执法和法院采取措施时，创新者的整个产业链可能已被破坏。例如，美国商务部于 2018 年 9 月，采取措施针对利用盗取技术制造得到不公平补贴的进口石英台面时，中国进口产品已经挤掉了美国市场每年 12 亿美元的销售额。对企业来说，需要有一种更简单的方法来报告知识产权盗窃案件，而执法部门需要迅速采取行动禁止非法产品销售，调查也需要快速并得出结论。当局必须迅速采取行动——几小时或几天，而不是几周或几个月。

10 建立多边政策对话

知识产权委员会建议美国与志同道合的伙伴开展多边政策对话，针对中国的外商投资和知识产权执法，加强并协调各国的政策，分享盗窃知识产权的外国主体的相关信息，相互借鉴最佳实践经验。知识产权委员会建议先从日本开始，然后是欧盟（特别是德国和法国）、澳大利亚，也许还有韩国、台湾和新加坡。

11 利用多边机构协调国内国际的法律和监管框架

虽然世界贸易组织和世界知识产权组织等多边机构在保护知识产权免受中国等侵权者侵害方面，并不总是最有效

的，效率也不是最高的，但是可以为致力于法治和公平市场的盟国提供一个重要论坛，指明前进的道路，鼓励其他国家采用必要的规范和做法。委员会赞成美国、日本和欧盟在世贸组织场外进行对话，讨论中国的强制技术转让、中国的工业补贴和改革世贸组织等，以更好地解决侵犯知识产权的问题。知识产权委员会鼓励继续进行这类多边对话，建议让拥护自由贸易和高标准知识产权保护的其他国家加入对话。

关于知识产权委员会

知识产权委员会由美国私营部门、国家安全和外交事务公共服务部门、学术界和政界的领导人发起的、独立的跨党派组织。知识产权委员会 2013 年和 2017 年发布了报告，记录和评估国际知识产权盗窃的原因、规模和影响美国的其他主要方面。报告还提出了适当的美国政策应对举措，减轻中国及其他侵权者目前和未来对知识产权的损害。

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联合主席：

海军上将丹尼斯·C·布莱尔，知识产权委员会联合主席；美国笹川和平基金会主席，杰出高级研究员；前美国太平洋司令部司令；前美国国家情报总监

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THE IP COMMISSION

THE COMMISSION ON THE THEFT OF
AMERICAN INTELLECTUAL PROPERTY

The Commission on the Theft of American Intellectual Property is an independent and bipartisan initiative of leading Americans from the private sector, public service in national security and foreign affairs, academia, and politics.

IP COMMISSION 2019 REVIEW

Progress and Updated Recommendations

February 2019

Introduction

At the G-20 Summit in Buenos Aires in December 2018, President Trump and President Xi agreed to work toward a pathway for resolving trade disputes and announced a 90-day truce on raising tariffs. The two leaders stated they would “immediately begin negotiations on structural changes with respect to forced technology transfer, intellectual property (IP) protection, non-tariff barriers, cyber intrusions and cyber theft, services, and agriculture.”

The IP Commission applauds the administration for seizing the unique opportunity afforded by increased attention on U.S.-China trade relations to address China’s structural challenges that promote the theft of IP. This is the work of a generation, and the Commission urges our leaders to see it through.

While there have been many policy developments in the last 18 months related to strengthening the United States’ ability to protect IP, there are still a number of ways we could improve those efforts. Below the IP Commission (1) highlights recent developments, (2) reviews new research that demonstrates the continued salience of IP protection to U.S. competitiveness, and (3) offers updated policy recommendations on page 4.

Recent Developments

IP raised to top-tier priority. The Trump Administration has elevated the elimination of China's theft of American IP, whether through cyber-theft, forced technology transfers, stolen trade secrets, counterfeiting of products, or other means, to one of the leading foreign policy priorities and a top goal of the U.S.-China economic negotiations.

Expanded Committee on Foreign Investment in the US (CFIUS) and export controls. The National Defense Authorization Act for Fiscal Year 2019 included the Foreign Investment Risk and Review Modernization Act (FIRRMA) to prevent acquisition of critical U.S. technologies through foreign investment and the Export Controls Act of 2018, which seeks to close loopholes in the export controls process by increasing restrictions on the transfer of emerging and foundational technologies to foreign persons. These new laws will significantly increase protection of IP, but more needs to be done.

Bill introduced to better combat threats to U.S. technology. Senators Rubio and Warner introduced a bipartisan bill in January of 2019 to establish an Office of Critical Technologies and Security to streamline efforts and ensure a whole-of-government approach to protecting U.S. technology. The IP Commission has argued that policy leadership for the protection of IP needs to be a responsibility of the National Security Advisor; this is a step in the right direction.

Increased oversight of military supply chains. The Pentagon has found a “surprising level of foreign dependence on competitor nations.” While recent studies of the defense supply chain evaluate more than IP risks, they do include IP as a key factor in their assessments.

New Research

Over the last 18 months there has been a surge in research examining Chinese theft of U.S. IP that supports the IP Commission's findings:

The White House Office of Trade and Manufacturing Policy report on “How China's Economic Aggression Threatens the Technologies and Intellectual Property of the United States and the World” noted that Chinese economic espionage continues to increase and that China is the most active and persistent perpetrator of economic espionage. The report investigates the two primary forms of Chinese economic aggression: acquiring key technologies and IP from other countries, and capturing the emerging high-technology industries that will drive future economic growth and advancements in the defense industry. The report concludes that China engages in systematic economic espionage through a variety of means including cyber-espionage, evasion of export control laws, counterfeiting and piracy, reverse engineering, forced tech transfers, investment and licensing restrictions, data localization requirements, discriminatory IP protections, collection of science and technology information by Chinese nationals at universities, labs, and companies, and investments in private companies and university R&D programs.

The United States Trade Representative (USTR)'s “Findings of the Investigation into China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation under Section 301 of the Trade Act of 1974” examined China's industrial policies that call for the “absorption, digestion, and re-innovation of foreign intellectual property” to meet the Made in China 2025 goal of 40% self-sufficiency by 2020 and 70% by 2025. Many of China's means of acquiring IP are not officially written into law but are done in indirect and informal ways that make it difficult to prosecute. Through means such as investments and cyber intrusion, the Chinese government directs and unfairly facilitates the systematic acquisition of cutting-edge

U.S. technologies in industries deemed important by state industrial plans. The report concludes that China's acts, policies, and practices are unreasonable because they unfairly target critical U.S. technology with the goal of achieving dominance in strategic sectors. These practices harm U.S. innovation and economic competitiveness.

USTR's "2018 Report to Congress on China's WTO Compliance" found that despite repeated commitments to refrain from forcing U.S. companies to transfer technology, China continues to do so through market access restrictions, abuse of administrative processes, licensing regulations, asset purchases, and cyber and physical theft. Overall IP enforcement is hampered by gaps in rights protection, civil and administrative recourse mechanisms that fail to deter widespread IP infringement, and insufficient enforcement commitment. The resources, training, initiative, coordination, and transparency required to make real progress in IP enforcement remains lacking.

The Interagency Taskforce (led by Department of Defense) report on "Assessing and Strengthening the Manufacturing and Defense Industrial Base and Supply Chain Resiliency of the United States" found that protection of the U.S. industrial base faces an unprecedented set of challenges, not least from the surprising level of dependence on suppliers in competitor nations. For instance, the report notes, "China is the single or sole supplier for a number of specialty chemicals used in munitions and missiles."

The U.S.-China Economic and Security Review Commission's "2018 Annual Report to Congress" noted the multiple challenges to protecting IP that U.S. firms face when operating in China. The report quotes the IP Commission's findings on the scale and scope of the problem and then delineates the policy tools that the United States has to respond to the theft of American IP. Of note, the Commission highlighted that Section 1637 of the 2015 National Defense Authorization Act gives the president authority—which has never been used—to "prohibit all transaction in property" of any person determined to have conducted "economic or industrial espionage in cyberspace."

The Department of Defense Defense Innovation Unit Experimental's report, "China's Technology Transfer Strategy: How Chinese Investments in Emerging Technology Enable a Strategic Competitor to Access the Crown Jewels of U.S. Innovation" found that from 2015 to 2017, Chinese participation in venture-backed startups was at a record level of 10-16% of all venture deals (currently exceeds \$100 billion), up from 6% from 2010 to 2015. China is especially investing in foundational technologies including artificial intelligence, autonomous vehicles, augmented/virtual reality, robotics, gene editing, and blockchain technology. Investments in these technologies represented 40% of their investments in 2016. Many of these are dual-use technologies that will be key to the superiority of the U.S. military. As China seeks to meet its Made in China 2025 goals, it is ramping up its R&D spending to 2.5% of GDP and investing in mega projects in core electronics, chips, software, satellites, the next generation of broadband wireless communications, quantum communications, and classified defense projects. The Chinese Communist Party is highly involved in coordinating public and private investment and other vehicles of technology transfer to accomplish its economic and strategic goals. The report recommends the United States implement defensive policies such as CFIUS and export controls reforms (already in progress), introduce immigration and visa policy reforms for foreign students so they can stay in the United States with the knowledge they have attained at U.S. graduate schools, and increase the level of counterintelligence resources. Recommended proactive policies include increased funding for research, incentives for U.S. students to study STEM fields, pro-growth and productivity-enhancing economic policies, and finally, a whole-of-government approach with a coordinated strategy across multiple agencies and departments.

USTR’s 2018 Special 301 Report placed China on the Priority Watch List due to critical IP concerns, including trade secret theft, online piracy and counterfeiting, a high volume of manufacturing and exporting counterfeit goods, technology transfer requirements, mandatory application of adverse terms to foreign IP licensors, localization requirements, and weak enforcement. The report points out that China has continuously failed to implement its promises to strengthen IP protection. However, there is positive momentum in China’s judicial reforms that include its specialized IP courts and tribunals, which demonstrate competence, expertise, and transparency to a greater degree than other Chinese courts. Notwithstanding these positive developments, interventions by local government officials, powerful local interests, and the Chinese Communist Party remain obstacles to the independence of the courts and rule of law.

MITRE’s **“Deliver Uncompromised: A Strategy for Supply Chain Security and Resilience in Response to the Changing Character of War”** report made a sophisticated argument for the importance of understanding supply chain security of the defense industrial base—of which the protection of IP is a critical element—as a fundamental component of national security in an era and environment of changing and increasingly asymmetric threat.

What Remains: IP Commission Updated Recommendations

There has been much progress in research and legislative and administrative action, but there are a number of ways the United States could be more effective in addressing IP theft. Some of these approaches include:

Build independent international database for scoring of entities from foreign countries that pose IP risk

Given the vast number of foreign actors and products in the U.S. marketplace and supply chains that present IP risks, no bureaucratic mechanism can cover the breadth of the problem and effectively prevent the theft of IP. For this reason, the IP Commission proposes to develop a market-based “scoring” system to rate foreign entities from countries known to pose IP risks that seek to do business with U.S. companies or government agencies. Such an approach would incentivize all actors to comply with international laws and values of liberal market economies, as the market would reward entities that score highly with more business and investment opportunities.

The score would draw upon globally sourced, existing data and must be objective and not subject to manipulation. A trusted score of this type, similar to a FICO credit score, will empower all law-abiding companies, organizations, government agencies, and individuals to make more educated decisions about the level of risk they are incurring before doing business with a foreign entity.

There is currently no mechanism that helps U.S. businesses understand the level of risk they face when engaging with a foreign company or that helps the U.S. government identify which companies should not be allowed to invest or do business in the United States. While the Bureau of Industry and Security in the Department of Commerce maintains a denied persons and entity list, this is solely for export controls. Export controls are not effective in preventing the loss of IP. For example, even at the height of the Cold War in the context of a much simpler global economy, the Soviet Union successfully evaded U.S. export controls. The updated CFIUS law, while an improvement, focuses on investment and thus misses the variety of other ways that bad actors siphon off IP.

The recommended database should begin with scoring Chinese actors (including companies and their subsidiaries, state-owned enterprises, and individuals) and then could expand to other countries that pose a national security challenge. The information in this database should be developed in coordination with U.S. allies to enable swift and harmonized responses. Adoption of the scoring system must cause the least possible disruption to the normal course of business.

Use the emergency economic powers already granted to the president to deny access to the U.S. market and banking system to foreign entities found to be directly benefitting from the theft of American IP

Under the International Emergency Economic Powers Act of 1977, the president is allowed to sanction individuals and organizations and to “prohibit any transaction in foreign exchange.” Section 1637 of the 2015 National Defense Authorization Act expands this authority to cover “all transactions in property” of any person the president determines “knowingly engages in economic or industrial espionage in cyberspace.” We need to make sure the president is using all of these tools that are at his disposal.

Deny access to banking system to foreign entities that use or benefit from the theft of American IP

No foreign entity that steals IP should be able to access the U.S. banking system. The secretary of the treasury should have the authority to deny access to the U.S. banking system to malicious actors. This builds on the existing statutory authority of the president as outlined above and was proposed but not adopted during the prior administration. The IP Commission strongly encourages the adoption of this recommendation to ensure that the United States is well placed to address new and emerging threats on an ongoing basis.

Enforce strict supply-chain accountability for the U.S. government

The IP Commission applauds the Pentagon’s announcement that it will audit the U.S. military supply chain to identify weaknesses in the nation’s military readiness, as well as former Secretary Mattis’s announcement of the Protecting Critical Technology Task Force (PCTTF) to spot leaks in the military supply chain. The Commission recommends increased oversight of supply chains be expanded to the entire U.S. government.

Require the Securities and Exchange Commission to judge whether companies’ use of stolen IP is a material condition that ought to be publicly reported

This recommendation is derived from strengthened accountability requirements on foreign firms that seek to be listed on U.S. exchanges. It was included in the original IP Commission report and merits further study.

Instruct the Federal Trade Commission to obtain meaningful sanctions against foreign companies using stolen IP

This recommendation seeks to find meaningful ways to punish willful IP-thieving entities. The modalities of how to do this in effective ways also merit deeper research and policy analysis.

Coordinate investment and export controls

The reforms passed on the CFIUS and the export controls processes in the recent National Defense Authorization Act made enormous strides forward by restricting investment in and potential exports of emerging technologies critical for national security. Now it is urgent that both the Department of the Treasury (which manages CFIUS) and the Department of Commerce (which manages export controls) work closely together to close loopholes and share information on foreign actors that pose risks.

Quickly intercept counterfeit goods

More must be done to quickly identify and intercept counterfeit goods coming into our ports. Development and deployment of new technologies to improve the ability to detect counterfeit goods can support law enforcement in this process. The Commission also recommends strengthening the International Trade Commission's 337 process to sequester goods containing stolen IP.

Streamline the process for reporting and responding to IP theft

The process to stop the sale of products made with stolen IP, especially stolen trade secrets, is costly and time-consuming, and by the time law enforcement and the courts take action the innovator's entire business might have been decimated. For example, by the time that the U.S. Department of Commerce in September 2018 took action against the imports of unfairly subsidized quartz countertops made with stolen technology, Chinese imports were supplanting \$1.2 billion of sales per year of U.S.-produced quartz countertops for the American market. There needs to be a simpler way for businesses to report cases of IP theft, for law enforcement to take swift action to bar the sale of the illicit product, and for investigations to quickly proceed and come to conclusion. Authorities must act with haste—within hours or days, not weeks or months.

Establish multilateral policy dialogues

The Commission recommends the United States initiate multilateral policy dialogues with like-minded partners to strengthen and coordinate national policies on Chinese foreign investment and enforcement of IP laws, share information on foreign actors engaging in IP theft, and learn from each other's best practices. The Commission recommends starting with Japan, then including the European Union (especially Germany and France), Australia, and perhaps the Republic of Korea, Taiwan, and Singapore.

Utilize multilateral institutions to harmonize national and international legal and regulatory frameworks

While multilateral institutions like the World Trade Organization (WTO) and World Intellectual Property Organization (WIPO) are not always the most efficient and effective at providing protection of IP from an infringer like China, they can provide an important forum for allies committed to the rule of law and fair markets to chart a path forward, and to incentivize others to adopt the requisite norms and practices. The Commission applauds the United States, Japan, and the EU for their conversations on the sidelines of the WTO on forced technology transfers in China, Chinese industrial subsidies, and reforms to the WTO to better deal with IP violations. The Commission encourages these side dialogues to continue, and recommends bringing in other champions of free trade and high standards for IP protection.

— ABOUT THE IP COMMISSION —

The IP Commission is an independent and bipartisan initiative of American leaders from the private sector, public service in national security and foreign affairs, academia, and politics. The IP Commission published **reports** in 2013 and 2017 documenting and assessing the causes, scale, and other major dimensions of international intellectual property theft as they affect the United States. The reports also proposed appropriate U.S. policy responses that would mitigate ongoing and future damage of intellectual property rights by China and other infringers.

— ABOUT THE COMMISSIONERS —

Co-chairs:

- Admiral Dennis C. Blair, Co-chair of the IP Commission; Chairman of the board and Distinguished Senior Fellow at the Sasakawa Peace Foundation USA; former commander of the U.S. Pacific Command; and former U.S. director of national intelligence
- Craig Barrett, former chairman and CEO of Intel Corporation

Other Commissioners:

- Dr. Charles W. Boustany Jr., Chair of the Center for Innovation, Trade, and Strategy at the National Bureau of Asian Research; former six-term U.S. representative from Louisiana
- Slade Gorton, former U.S. senator from Washington State; member of the 9/11 Commission
- William J. Lynn III, CEO of Leonardo North America and DRS Technologies
- Deborah Wince-Smith, President and CEO of the Council on Competitiveness
- Michael K. Young, President of Texas A&M University