

Oral Statement of
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Before the
United States Senate Committee on the Judiciary

Hearing on

“Stealth Stealing: China’s Ongoing Theft of U.S. Innovation”

On

“Practical Proposals to Address Intellectual Property Misappropriation from China”

April 22, 2026

Chairman Grassley, Ranking Member Durbin, and Members of the Committee, thank you for this opportunity to testify again before this Committee and its IP Subcommittee.

My name is Mark Cohen. The following comments are my own personal opinions and are not those of any institution, client, etc.

I have worked on U.S.–China intellectual property issues for forty years in government, academia, and private practice, including serving as the pioneer USPTO Intellectual Property Attaché, based in Beijing. I am a recipient of the Meritorious Service Award from Presidents Obama and Trump for my work on Chinese IP matters.

In my written testimony, I propose some priority policy recommendations. Today, I offer three observations regarding intellectual property and our technological competition with China. These observations may also be contrary to common understanding.

First, the “IP theft” narrative—while grounded in real concerns—has also led us in unhelpful directions.

I say this from personal experience. I served as an advisor to the Commission on the Theft of American Intellectual Property (<https://www.nbr.org/program/commission-on-the-theft-of-intellectual-property/>), which estimated losses of 300 or more billion dollars due to IP Theft from China, and from which I ultimately resigned. I did so because I believed the data

was overstated, many complaints did not involve IP, and the impact would be too diffuse on the U.S. government.

Take patents, for example. Patent infringement does not directly fall within the IP theft narrative unless it is related to other actions such as trade secret theft which leads to a patent disclosure. There is no criminal remedy for patent infringement, and intellectual property is fundamentally a private right enforceable by civil courts. The FBI has no significant role to play in patent protection.

As a trade-related issue, the criminalization or IP Theft narrative has resulted in the significant minimization of civil remedies and an overemphasis on criminal and administrative enforcement. In recent years, China has not resisted public remedies such as criminal enforcement in part because it enhances the power of the state. China now brings approximately 19,000 criminal IP cases annually, while civil IP cases number approximately 500,000. By comparison, federal criminal IP cases in the United States typically number fewer than fifty per year, or a small fraction of China's criminal docket. This comparison does not include consideration of the tens of thousands of China's quasi-criminal administrative cases.

China has long relied on public enforcement, often to the disadvantage of the civil system. The United States has also frequently demanded enhanced public enforcement measures, such as special campaigns, including in the Phase One Trade Agreement. These campaigns typically have limited sustainability or deterrence. They can, however, generate impressive enforcement statistics. Foreigners rarely use the administrative system, except to deal with local trademark infringements. Moreover, no civil compensation is given in this administrative system.

The IP Theft narrative also overlooks China's emergence as an innovation powerhouse with a global influence. China's leadership intends to turn China from a "big IP country" to a "strong IP country." As one example, China today files about 50% of all international (PCT) patent applications—demonstrating the scale and growing sophistication of its innovation system. China is also increasingly licensing its technology to other foreign countries, including the United States. In addition, Chinese courts have increasingly begun to exercise extraterritorial jurisdiction, particularly in high value standard-essential patent disputes.

The IP Theft narrative and our trade agenda also generally overlook actual utilization by our companies. Utilization tells a more complex story than theft. Often foreign countries report successful outcomes in using the civil system in China. One early example is Eli Lilly, which obtained a trade secret preliminary injunction in China in 2013. Academic research also demonstrates that foreigners do well in China's civil system when they use it.

The various avenues for enforcement also provide differing choices to rights holders, and statistical data suggests that weak enforcement in one area may be "compensated" by strong enforcement in another. The availability of different IP and non-IP remedies also makes it important to consider the overall impact of strengthening one aspect of China's

enforcement system, or an IP remedy in lieu of a non-IP remedy. As an example of the latter, trade secret litigation can be more expensive and less likely to succeed against a former employee, compared to a lawsuit involving a non-compete agreement.

Due to a lack of transparency and few demands placed on disclosing utilization of the system, our trade agenda is also largely unverifiable. We use anecdotes and various surrogate data (such as U.S. Customs seizures) to measure losses, but we cannot measure if our outcomes have helped our companies.

Nonetheless, I personally welcomed the Phase One Trade Agreement. It addressed several discriminatory issues that I had raised as early as when China joined the WTO in late 2001. For example, after China joined the WTO, I proposed WTO cases on trade secrets and discriminatory licensing. There was, however, no interest from our trade agencies. I raised similar issues with our bilateral science agreement. Back in 2016, the USPTO in fact dissented from a GAO report because I had observed that U.S.-China Science collaboration was inconsistent with the same troublesome Chinese law I identified as problematic 14 years prior. I believe in “smart” collaboration with China. Our bilateral agreement did not satisfy that threshold issue. These problems should have been addressed much earlier but were not.

So we have several paradoxes involving the IP Theft narrative: very large claimed losses with limited empirical support; a focus on criminal remedies rather than civil remedies; a complex system that is often quite different from what we might expect; long delays in recognizing problems and addressing them; low utilization by Americans of the system; limited substantiation of the impact of bilateral outcomes; poorly drafted agreements affecting IP-related outcomes, and an overriding lack of transparency. The issues are more complex than the phrase “IP theft” suggests. In many instances, the problem lies in our own policy choices.

We need a government that plans and prioritizes strategically—not one that simply reacts.

Second, there is both good news and bad news about intellectual property in China.

The good news: China cares deeply about intellectual property.

The bad news: China cares deeply about intellectual property.

You can decide which is good or bad.

China has built the largest patent office, the largest trademark office, and the largest IP court system in the world. It has a specialized IP judiciary and strong political engagement at the highest levels. It has a vast administrative system that operates to enforce, manage and educate on IP at local levels. IP is part of five-year plans. Xi Jinping and other leaders give speeches and write articles on IP policy. China’s college entrance exams test on intellectual property issues. China uses intellectual property as a tool of industrial policy which is incorporated in five-year plans. China also leverages other measures in coordination with IP policy to enhance its innovation and industrial strengths, such as long-

term investment, large market diffusion, a large talent pool, and regulatory support. China also has several dynamic innovation clusters which can incubate additional, new technologies.

China's IP system has its own advantages. Cases are resolved quickly—often within six months. Costs are relatively low. Injunctive relief is widely available. Courts have extended extraterritorial reach. China has expanded patent eligibility in emerging technologies. China recalibrates its IP system frequently based on its industrial needs. In some of these areas, the U.S. has become demonstrably weaker in the past several decades, and legislative fixes are under consideration here in Congress. I support these changes.

State involvement in China's IP regime also raises concerns. One significant concern is the lack of a truly independent judiciary. During the last decade China also produced low-quality patents and trademarks, including in overseas filings such as at the USPTO. Bureaucratism also encouraged incremental, not disruptive, innovation. State planned innovation has often led to waste. State involvement also often incubates industrial champions at a cost to small innovators. Foreign companies involved in sensitive sectors may find themselves discriminated against in a range of ways which may involve IP.

My third observation is that we should not be surprised by China's advances. What is surprising is that we are surprised.

We have often assumed that China is primarily engaged in theft. In fact, the data shows a system that is also increasingly innovative—sometimes incrementally, sometimes rapidly.

We need to improve our own system and, in some areas, learn from China, where appropriate, either as a competitor or as an alternative model that may be adopted by others and that challenge global IP norms.

Decades ago, the Congressional Office of Technology Assessment ("OTA") analyzed China's trajectory in innovation. Chairman Grassley, you may recall OTA's work during that period.

I have brought with me a copy of OTA's July 1987 report, *Technology Transfer to China*. That report warned that China could significantly narrow the technological gap with the United States within the following thirty years of its writing and highlighted the likelihood that dual-use technology transfers could contribute to improvements in China's military capabilities. Considering that this was written nearly forty years ago, it stands as a prescient technological forecast.

OTA is long gone. We did not maintain the institutional capacity in Congress or the executive branch to anticipate and respond to those changes, nor did we focus on how the Chinese system operates.

Until recently, our trade focus remained on counterfeiting and piracy—important issues, but not those most relevant to long-term technological competition. We have also discounted China's legal measures and looked-for short-term relief or criminal measures in

lieu of understanding how intellectual property currently functions within Chinese society, and how we think it should function in the future.

We need to rebuild that OTA capacity. My written testimony also discusses proposals to strengthen that capacity outside of Congress, including a greater role for the USPTO, which has one of the largest technically trained workforces in the federal government.

In conclusion:

The issue is not simply whether intellectual property theft occurs. It does.

The more concerning issue is how to enhance the United States' institutional capacity to compete effectively. Many of these matters are directly under our control.

That is where I hope your attention will now be directed.

Thank you.

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April 22, 2026

Chairman Grassley, Ranking Member Durbin, thank you for the opportunity to testify today on intellectual property misappropriation involving China.

My name is Mark A. Cohen. I am currently a Senior Technology Fellow at the Asia Society, a Senior Fellow at the University of Akron’s IP Policy Institute, and a Distinguished Senior Fellow at UC Berkeley’s Haas School of Business.

I have worked for forty years on U.S.-China intellectual property issues in government, academia, law firms, and in-house, including numerous publications and research projects.

I served for over 15 years in various positions in the U.S. government, all of which focused on intellectual property issues in China. For example, I served as the first United States Patent and Trademark Office IP Attaché (2004-2008), and as the head of the USPTO’s China Team in Alexandria, Virginia (2012-2018). I helped establish a China Resource Center at the USPTO to help provide analytical support for USPTO policies in China. I also helped establish the bilateral US-China IP Working Group, under the former Joint Commission on Commerce and Trade. I launched an unsuccessful experiment 20 years ago with the International Trade Administration

while I was stationed at the U.S. Embassy to engage ITA officials in promoting technology licensing. After I left the government, I also established the Track II U.S.-China intellectual property dialogue which was housed at the U.S. Chamber of Commerce. The members of this Track II dialogue continue to work together in preparing amicus-type briefs before Chinese courts and publishing op-eds and articles.

For several years, I taught US government agencies how to better understand the workings of the Chinese political and legal system. A lack of Chinese legal sophistication in the US government has also meant that many “asks” of the Chinese side did not insist on durable legal commitments from China. For many years, I also taught the only comprehensive class on Chinese IP in a U.S. law school when I was at Fordham Law School and Berkeley Law School. I have maintained a blog www.chinaipr.com for over a decade. Among my many projects at the Asia Society, I have launched a series of programs in its “Seek Truth Through Facts” program to showcase empirical approaches to China’s rise as an innovative economy.

I was tested by the State Department’s Foreign Service Institute as fluent to near fluent in my speaking and reading ability in Chinese.

In 2018, I received the Presidential Rank Award for Meritorious Service, the highest honor for career members of the Senior Executive Service. The award was made by President Trump during his first term of office upon the recommendation of President Obama.

As is evident, my career has focused on building practical institutional tools to help our government, companies and lawyers better understand and manage intellectual property challenges they have faced in China, including challenges that they now face considering China’s increasingly complex environment. I have often identified these issues well in advance of my government colleagues. For example, I first identified discriminatory Chinese trade secret legislation as a concern to the U.S. in 2002 when I was at USPTO. I also identified discriminatory technology licensing policies at that time. Despite repeated efforts, it took 15 years for other U.S. government agencies to elevate these issues to trade priorities. Trade secret issues were incorporated into the Phase One Trade Agreement. The licensing issue was resolved when the U.S. brought a WTO case on China’s discriminatory technology licensing practices. The U.S., under President Trump, promptly won that dispute.

I present below what I believe are five practical proposals for the Senate to consider to better advance U.S. IP interests in China. Each of my proposals is followed by citations which discuss this proposal in further detail. These proposals involve strengthening the role of the USPTO in technology assessment; strategically

managing scientific collaboration; addressing vulnerabilities arising from state-level bans on non-compete rules; restoring congressional and U.S. government technology assessment capacity; and prioritizing transparency to advance analytical capacity in international IP policy.

Introduction: “IP Theft” is not the only issue

The phrase “IP Theft” is widely used in policy discussions, particularly with respect to China. Intellectual property misappropriation is real and often serious; however, the term “IP theft” is frequently used to describe a broader range of conduct including lawful competition, regulatory asymmetries, and forced technology transfer. It typically means something different from classic IP protection but instead relates to the control and acquisition of technology by legal or illegal means for political and/or economic and/or national security advantage.

As discussed in my oral comments, experience with “IP Theft” has shown that when issues of technological control and IP have been commingled, they can also bring unfortunate results, including the oversimplification of complex issues, excessive use of criminal procedures due to a focus on “theft”, limited consideration of civil remedies, an enhancement of statist approaches to intellectual property through public law remedies, and even potential politicization of enforcement procedures. Not every intellectual property infringement will fit neatly into the category of “theft.” Patent infringement is generally treated as a civil matter unless it is associated with other misconduct, such as trade secret misappropriation leading to unauthorized patent disclosure by the thief. Most countries, including the U.S., and China, lack a criminal patent infringement law but instead use civil punitive or enhanced damages as well as injunctive relief for effective deterrence. The TRIPS Agreement only requires criminalization of willful commercial scale counterfeiting and piracy. Most IP disputes, in the U.S. and China, are civil disputes, not criminal. In China, civil IP cases number approximately 500,000 in recent years on an annual basis, while criminal IP cases have numbered from 9,000 to 19,000. In the United States, federal criminal IP prosecutions typically number fewer than fifty per year.

The conflicts between the U.S. and China over intellectual property involve two distinct approaches to IP: a private rights orientation which primarily relies on civil remedies in the U.S.; and a public rights approach to IP which is enforced by government agencies, and is subsidized and controlled by state plans of various kinds. The IP Theft narrative inadvertently enhances state control in China, rather than strengthening market-based, private rights enforcement which typically occurs through civil litigation.

This difference between statist and market approaches to IP is not only manifested by enforcement mechanisms. IP has become a key aspect of China's industrial development, with consequences for China and its trading partners. National IP plans and strategies set clear goals for IP-related outputs, such as patents per capita, trademarks per enterprise and commercialization outcomes of IP rights. State planning has fostered China's developing the largest IP system in the world, with the largest patent office in the world, the largest trademark office in the world, the largest plant variety protection office. The tools that China has used to leverage IP rights have included subsidies and other forms of support for IP creation and utilization, IP awareness programs, and other forms of direct and indirect support for the development and utilization of IP rights. Increasingly, the focus in various IP-related plans has shifted from China not only being a "big" IP country to China becoming a "strong" IP country.

The kind of competition emerging from China is increasingly based on an IP system that leverages China's technology strengths, such as its vast pool of scientific talent, its long-range scientific plans, its increasing tolerance of experimental failure, its development of qualitative metrics, the availability of long-term investment capital, regulatory flexibility, the rapid response of its IP system to technological changes, and other factors. Some of the earliest manifestations of these efforts have been in the pharma sector, where China is increasingly securing rights in home-grown innovations and licensing them out to the U.S. and other countries. Much of the innovation from China is also being developed by non-State actors. These developments are also occurring against a background of continued concern about discrimination by China against U.S. companies.

With respect to trade secret and patent litigation, a long-neglected issue by the U.S. government has been low foreign utilization of the legal system, which is not comprehensively tracked by USTR and other agencies. Foreign companies historically have brought only a small share of trade secret and other IP cases in Chinese courts, making it difficult to analyze the adequacies of China's legal system and the way it manages foreign-related disputes. Importantly, a system may perform well or poorly in individual cases while remaining opaque and underutilized by foreign actors.

When I was attached to the U.S. embassy, I often remarked that the Chinese government should thank me for the political pressure coming from Washington, DC as Chinese rightsholders are likely to be the primary beneficiaries of many of our efforts. They are likely to gain the most because foreigners are a minority in China's IP regime. In addition, we have anecdotal and other reasons to suspect discriminatory treatment. However, these observations are hampered by the lack of

complete and reliable data, especially data on foreign utilization and case outcomes. Published studies and reported cases based on available and incomplete data, generally demonstrate that foreign rights holders often obtain favorable results from China's civil legal system, which typically resolves cases in a fast, expert, and inexpensive manner. One early example of a case in an area of importance to the United States was a trade secret case involving Eli Lilly in the Shanghai No. 1 Intermediate Court, which resulted in a preliminary injunction against the alleged infringer in 2013 – long before the Phase 1 Agreement sought to increase the availability of such measures to U.S. companies.

In this rapidly changing environment, there are also lessons that we can learn from China. For example, China has been especially adept at rapidly amending its laws and regulations to address evolving economic and technological issues, including issues involving patent-eligible subject matter. China's experience can afford the U.S. a legislative window into how to best manage newly emerging issues in our own country. In addition, China's experience with injunctive relief in IP nearly all cases, as well as with a faster and less expensive litigation system may also offer useful comparisons for policy makers. I was pleased to have previously testified on China's experience in these areas before the IP Subcommittee of the Senate Judiciary Committee last year.

Due to its complexity, rapid changes, lack of transparency and other factors, addressing Chinese intellectual property misappropriation effectively requires strong domestic institutions, better information, and thoughtful U.S. policy design. We urgently need to develop our own domestic institutions to assess China's innovation and reinitiate dialogues with China to better understand China's innovation trajectories. The proposals outlined below are a small portion of the numerous practical steps that can be taken toward strengthening the ability of the United States to compete and protect its innovators with China's evolving environment.

References: Mark Cohen, "The \$600 Billion China IP Echo Chamber", <https://chinaipr.com/2019/05/12/the-600-billion-dollar-china-ip-echo-chamber/>; Mark A. Cohen, "The Criminal Bias in U.S. Intellectual Property Diplomacy", <https://www.nbr.org/publication/the-criminal-bias-in-u-s-intellectual-property-diplomacy/>; Mark A. Cohen, "Written Submission before the Senate Judiciary Committee, IP Subcommittee, on The Patent Eligibility Restoration Act – Restoring Clarity, Certainty, and Predictability to the U.S. Patent System" (Oct. 8, 2025), https://www.judiciary.senate.gov/imo/media/doc/2025-05-14_testimony_cohen.pdf; Mark A. Cohen Written Submission before the Senate Judiciary Committee, IP Subcommittee on Foreign Threats to American Innovation

and Economic Leadership (May 14, 2025), https://www.judiciary.senate.gov/download/2025-05-14_testimony_cohen; Mark A. Cohen, “IPR Model Cases: Part of the Long Journey Towards IPR Case Law with ‘Chinese Characteristics” (2013) (discussing the Eli Lilly trade secret case), <https://chinaipr.com/2013/11/10/ipr-model-cases-part-of-the-long-journey-towards-ipr-case-law-with-chinese-characteristics/>

First, the United States already possesses a powerful but underutilized resource for understanding technological competition: the U.S. Patent and Trademark Office.

With thousands of scientists and engineers serving as patent examiners (many of whom are bilingual) and patent policy advisors in highly diverse technological disciplines and different regional expertise, and with access to one of the world’s richest databases of technological information, the USPTO is uniquely positioned to help identify emerging threats, including the implications of civil technologies that may have significant economic competitiveness or dual use technologies that have national security implications.

Congress could strengthen the USPTO’s role in technology intelligence and strategic analysis by enabling it to provide more systematic support to interagency partners and industry on emerging technological trends reflected in patent filings and related data.

Such analysis could help identify areas where sensitive technologies may be vulnerable to misappropriation, where U.S. firms face intensified foreign competition, or where government coordination may be needed. One first step might be to commission the USPTO to conduct a study to look at the amount and type of Chinese IP infringement particularly in areas which involve national security, including the mechanisms of misappropriation, and steps that might be taken to strengthen the U.S. position, as well as the current overall strengths and weaknesses of the U.S. IP system.

I also believe it may be time for Congress to consider reorganizing the approach of the executive branch to intellectual property and trade in light of our failures to anticipate China’s technological rise. During much of this decade, USTR has been remiss in raising many issues in technology-oriented IP or addressing China’s statist approach to intellectual property. Reforms might include creating a leaner and more innovation-focused trade agenda. Reforms might include elevating the role of USPTO in coordinating international IP issues and/or USTR deferring some of its authority in technology-oriented IP to other agencies.

New institutions do not necessarily need to be created. Rather authority to negotiate and coordinate the interagency should be roughly aligned with technical competence and resources. When I was at USPTO, for example, we had, among our resources, approximately 200 man years of China-related IP experience with offices in three cities in China, as well as Chinese lawyers on our staff, and delegated authority from the U.S. Ambassador to coordinate all of the China mission’s IP efforts.

References: Jeanne Suchodolski, Suzanne Harrison & Bowman Heiden, “Innovation Warfare,” 22 N.C. J.L. & Tech. 175 (2021). On the pressing need of governmental reorganization, see also my work with the Day One Project, which is discussed in my prior testimony before the U.S. Economic and Security Review Commission, hearing on “Rule of Law: China’s Increasingly Global Reach” (May 2023), https://www.uscc.gov/sites/default/files/2023-05/Mark_Cohen_Testimony.pdf.

Second, the United States should adopt a more strategic and differentiated approach to international scientific collaboration.

Rather than relying solely on blunt restrictions in scientific collaboration, policymakers should promote a framework of “smart openness” that distinguishes among fields, institutions, and forms of collaboration while strengthening research security and disclosure.

As Profs. Denis Simon and Caroline Wagner have noted (see below), U.S. openness has long been a strategic advantage. As the central hub of global research, the U.S. has attracted the world’s most talented students and scientists and maintained intellectual leadership. The challenge today is not whether to collaborate internationally but how to do so in ways that protect U.S. interests while preserving the scientific networks that drive high quality innovation.

A smarter collaboration framework would reduce unnecessary exposure to intellectual property leakage while avoiding self-inflicted damage to American research leadership. My own experience at the USPTO, which is alluded to in a GAO report (referenced below), was that US-China scientific collaboration was poorly monitored. In that GAO report, I also noted that scientific collaboration needed to address certain legal risks regarding ownership of improvements to U.S. technology.

References: Denis Simon and Caroline Wagner, “U.S.–China Scientific Collaboration at a Crossroads: Navigating Strategic Engagement in the Era of Scientific Nationalism” (Quincy Institute for Responsible Statecraft, 2025); <https://quincyinst.org/research/u-s-china-scientific-collaboration-at-a-crossroads-navigating-strategic-engagement-in-the-era-of-scientific-nationalism/#h->

[introduction-the-transformation-of-global-scientific-cooperation](#); GAO, “Bilateral Clean Energy Programs Show Results but Enhance Their Performance Monitoring” (2016) at p. 27 <https://www.gao.gov/assets/gao-16-669.pdf>.

Third, policymakers should examine how current non-compete rules may create vulnerabilities in international technology competition.

Recent policy debates initiated by the Federal Trade Commission during the Biden Administration focused on restricting or eliminating non-compete agreements to promote labor mobility and innovation. While these goals are important, policymakers should also consider the international technology security implications of weakening contractual protections for trade secrets and confidential business information through abrogating non-compete agreements. The reasons for this are quite simple: trade secrets are difficult to protect, trade secret cases are difficult to win, trade secret cases risk additional disclosure of confidential information, and trade secrets are of critical importance in process technologies as well as many emerging technologies such as semiconductor fabrication. *Non-compete agreements do not impose similar enforcement risks.* Properly designed non-compete agreements are also enforceable in China without the burdens of trade secret litigation.

China’s Supreme People’s Court has similarly noted that non-compete agreements have a “utility when compared to other common measures of protecting trade secrets that is especially strong” (referenced below). Non-compete agreements are an effective tool for preventing secret trade losses in China with higher success rates than trade secret cases.

However, under current law, states such as California broadly prohibit enforcement of noncompete agreements domestically and internationally. Moreover, an employee of a U.S. company bound by a non-compete agreement can terminate that obligation by relocating to a California company and being bound by California laws. He may thereafter join a foreign competitor free of the original non-compete obligation. As discussed in my testimony before the FTC (referenced below), this non-compete “bath” of another state’s valid non-compete agreement by California has already occurred in several published cases.

Congress and the states should consider limiting the invalidation of non-compete agreements when technically skilled employees of U.S. companies move overseas. The solution is not to ban these non-compete agreements in their entirety. States should remain free to ban them when the employee departs for a job in their state or another state. Conversely, companies should remain free to adopt appropriate

non-compete agreements in accordance with foreign law when their employees relocate overseas.

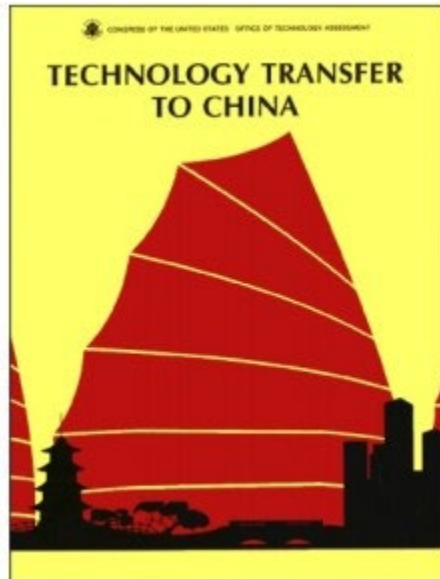
References: Mark A. Cohen, “China’s Judiciary Publishes Its Views on Trade Secret Protection” (2013), <https://chinaipr.com/2013/07/05/chinas-judiciary-publishes-its-views-on-trade-secret-protection/>; Mark A. Cohen, “The Proposed FTC Rule on Non-Compete Agreements and China” (2019), <https://chinaipr.com/2023/03/19/the-proposed-ftc-rule-on-non-compete-agreements-and-china/>.

Fourth, Congress should consider restoring modern version(s) of the Office of Technology Assessment dedicated to independent analysis of emerging technologies and their economic and national security implications.

During the Cold War and the initial period of U.S.-China economic engagement, the Congressional Office of Technology Assessment (“OTA”) played a key role in helping Congress understand complex issues involving technology transfer and intellectual property. OTA became a model for other countries such as Japan and Korea. OTA pioneered the use of future-oriented technology assessments to anticipate technological and/or security challenges to the U.S.

As an example of the significance of organizations such as OTA, its July 1987 report “Technology Transfer to China” highlighted the risks that China would narrow the technological gap. OTA concluded in 1987 that China could not become a military superpower by 2000 and stood little chance of catching up with the United States and the Soviet Union by approximately 2017, even as dual-use transfers could contribute to noticeable improvements in China’s military production by 2000. Although I am not aware of subsequent updates to these projections by OTA, they approximate China’s subsequent rise in technological capacity and were prescient.

Below is a copy of the cover of the book.



As a specialized agency within Congress, OTA also incubated an alumni group that would go on to distinguished careers in diplomacy and technology, including individuals such as Rob Atkinson at ITIF, Amb. Craig Allen (ret.), Prof. Denis Simon, and Prof. Pete Suttmeier. Senator Grassley also previously served on its board.

Congress and the administration today face an even more complex environment involving dual use and fast emerging technologies. Some private sector institutions, such as Georgetown’s Center for Security and Emerging Technology, can serve as important partners with the government. However, Congress needs an institution comparable to the OTA to provide independent technical analysis of these issues.

Reviving an OTA-like organization would strengthen Congress’s ability to evaluate technology licensing practices, assess technology transfer risks, and oversee the growing intersection of innovation policy, trade policy, and national security. Similar steps should also be considered by the executive branch.

References: Jeanne Suchodolski, Suzanne Harrison & Bowman Heiden, *Innovation Warfare*, 22 N.C. J.L. & Tech. 175 (2021); Office of Technology Assessment, “Technology Transfer to China” (1987).

Fifth, effective responses to international intellectual property misappropriation require increased transparency as the highest IP-related trade priority.

Policymakers today face increasing difficulty assessing developments in the Chinese intellectual property systems due to declining transparency and limited access to underlying data. This challenge was evident in the U.S.-China Phase One Trade

Agreement, which included numerous commitments relating to intellectual property protection that were often based on an outdated understanding of how the Chinese legal system functions, and did not address declining transparency of the judicial system. One study that I participated in several years ago estimated a 50% publication rate for patent decisions before the current reduction in case publication (referenced below). Such studies as mine are typically conducted by comparing cases published in the official China Judgments Online database or similar sources with official statistics on the dockets of China's courts. Transparency has since further declined. In one recent submission to USTR (referenced below), the Intellectual Property Owners Association noted that only 31 of 4,213 Supreme People's Court IP cases were published in 2024.

This had made the enforcement provisions of the IP chapter of the Phase One Agreement, including its trade secret commitments, largely unverifiable. Transparency is a precondition for determining the success of U.S. negotiations, the utilization of necessary reforms, a determination of bias or a lack thereof, and ensuring that there is continuing pressure for legal reforms in China's system. Greater transparency would also enable the private sector to develop more effective IP strategies in China.

References: Chris Bailey, Douglas Clarke, Mark Cohen and Aria Tian, "Chinese Patent Litigation Data: What it Tells Us and What it Doesn't", IAM (Nov. 2021), <https://www.iam-media.com/article/chinese-patent-litigation-data-what-it-tells-us-and-what-it-doesnt>; Mark A. Cohen, "The Phase 1 IP Agreement, Its Fans and Discontents" (2020), <https://chinaipr.com/2020/01/21/the-phase-1-ip-agreement-its-fans-and-discontents/>; Letter of Intellectual Property Owners Association to USTR dated January 28, 2026 in USTR 2026 Special 301 Review (available at www.IPO.org).

Thank you for your consideration of these additional comments.