



LES-SV IP Year in Review 2018

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China - What's Better and Worse?

Increasing liberalization of the economy overall

More mature domestic industries = better partnerships

Better IP protection



China has gotten better at focusing on key strategic areas that it really wants to control, while liberalizing the rest

Active controls over data security and other key technologies

Increasing restriction over social and political sphere



Better IP protection

Favorable Litigation Factors:

- *Win rates (> 80%)*
- *Speed (< 12 mths)*
- *Injunction rates (>80%)*

EU and US business surveys show more satisfaction with IP protection, and it is lower on the list of concerns

Increased confidence and competence of the courts, 16,000 patent litigations in 2017

A lot of new legislative activity – amendment to patent law, Supreme Court interpretations on interim injunctions, Supreme Court IP appellate court, increased penalties.

And...availability of interim injunctions (thank you Qualcomm)

More Control Over Key Technologies

“Made in China 2025”, “New Generation AI Development Plan” assertive industrial policy, promotion of national standards

Real mechanisms coming into place for tightening of key technology ownership and control:

Cybersecurity Law (2017) – comprehensive law imposing significant requirements for network security, data localisation

Measures on Transfer of Intellectual Property to Overseas Parties (2018) – new review and approval of technology export (including licensing or assignment) by relevant ministry

Regulations on Foreign Acquisitions (2018) – while generally liberalizing foreign company acquisitions of Chinese companies, it has reinstated a review where the target company has key technology.

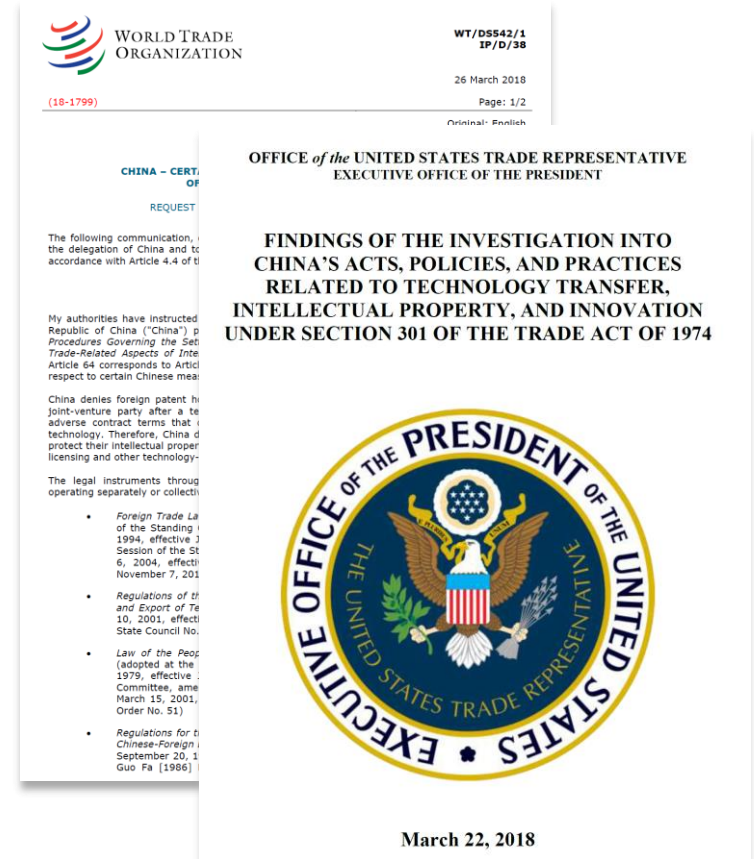
Draft Measures on Scientific Data (2018) – mechanism for greater control over govt scientific and technical data

The US allegations – Hit & Miss

China uses state-sponsored espionage to steal technology - This is credible and certainly a serious allegation.

China forces foreign companies to form JVs, and uses this to extract technology - JV's not the norm, and technology transfer is not a legal requirement.

China's regulations such as TIER, licensing or certification processes are all orchestrated to acquire technology – No wholesale regime of tech transfer, its about how you negotiate



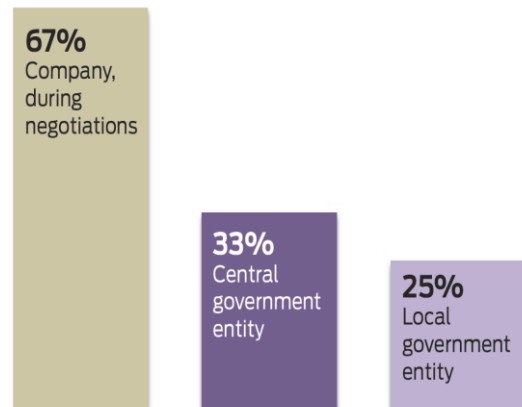
“Forced Technology Transfer” or poor negotiation?

US Companies

19%

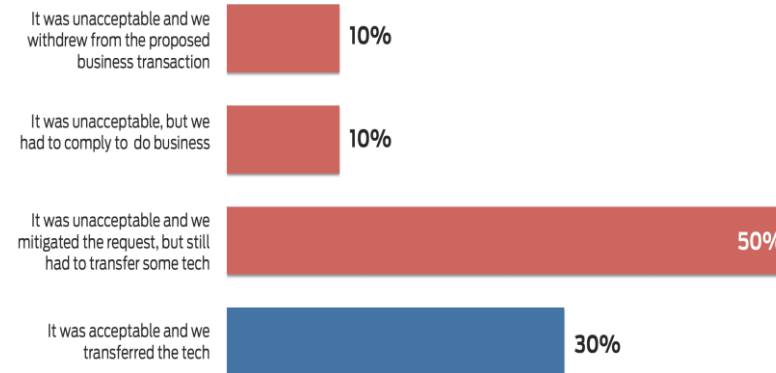
said they have been directly asked to transfer technology to China

Who asked for your technology to be transferred?



Source: USCBC Member Survey 2017

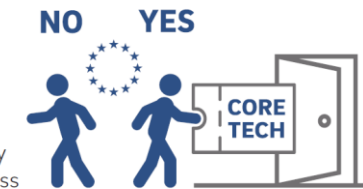
How did your company respond?



EU Companies

19%

of respondents have felt compelled to transfer technology in order to maintain market access



Source: EUCCC Business Confidence Survey 2018

It is implicit in some deals, but not the norm.

Negotiating ability is a much bigger factor.

Licensing & JV 2.0

JV's making a comeback because of commercial logic, not mandatory rules.

No requirement for technology assignment, more freedom around cash & IP license contributions.

Licensing discussions often turn into a JV discussion:

- Concerns about technology deployment risk
- Monetization through cash or long term equity growth

Wholly owned operation is preferred for control, or to localize a licensing operation

“China’s policy of requiring..local joint ventures is like opium for Chinese firms and is failing to foster world-class indigenous automakers” He Guangyan, former Minister of Machinery & Industry, 2012.

Trade Tiff or Technology Cold War?

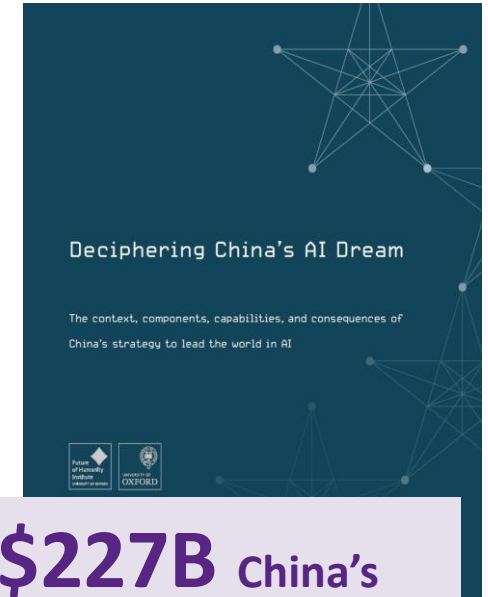
China has a weaker hand in trade war - will have to make improvements on market access and IP

But there is a bigger war for supremacy - cyber espionage, military tensions, “Belt & Road” geopolitics.

CN govt major programs for semi-conductors, supercomputing, AI: foreign players in competition or “co-opetition”

US govt – FIRRMA will have a chilling effect on bi-lateral investment

BUT – outside of sensitive industries, IP deals will grow – licensing, JVs, R&D, corporate venturing. The rationale for deals on both sides is pervasive.



\$227B China's
imports of chips, 2016

VS

\$140B US
imports of oil, 2016