

U.S. Justice Department Touts Success, Continued Need for China Initiative on Trade Secrets

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In November 2018, former Attorney General Jeff Sessions announced that the Justice Department (DOJ) was creating a “[China Initiative](#)” (Initiative) to combat the systematic theft of U.S. intellectual property by the Chinese government and Chinese companies. According to the DOJ, the Initiative seeks to protect American interests in all sectors—including IP theft from academic institutions and the improper accessing of Americans’ personally identifiable information (PII) via cyber hacking—but focuses on defending trade private companies’ trade secrets. Heightening private-sector awareness and suppling U.S. Attorneys with the requisite tools to identify and prosecute cases of trade secret theft by entities connected to China were identified as the central means of accomplishing the Initiative’s end goals. According to recent statements released by the DOJ around the Initiative’s two-year anniversary, the Initiative has been successful, though there is a continued need for prosecutions and for institutions to be cognizant of the risks China poses to trade secrets held by U.S. entities.

According to the DOJ, 80 percent of the economic espionage cases and more than half of all trade secret cases it brings “allege conduct that would benefit the Chinese state.” In fact, FBI Director Christopher Wray has said that “[t]he FBI opens a new China-related counterintelligence case nearly every 10 hours.” The DOJ has described the Chinese government’s strategy as “rob, replicate and replace,” where technology is stolen, recreated in China, and then used to undercut and ultimately replace American business in the global marketplace. Prosecutions by the DOJ against Chinese nationals or companies under the Initiative have included:

- Multi-count indictments against [Huawei Technologies](#) where the massive Chinese communications equipment manufacturer was accused of stealing trade secrets from its American counterparts. This was followed by a [superseding indictment](#) supplementing the trade secret theft allegations against Huawei.
- [Indictment](#) of a Chinese national and former Philips 66 employee who eventually [pled guilty](#) to stealing battery technology trade secrets from Philips worth \$1.8 billion.
- Arrest earlier this year of a Chinese national who attempted to [smuggle cancer-related biological material](#) back to China as part of an alleged broader conspiracy.
- Trade secret theft [conviction for American citizen](#) who attempted to misappropriate Dura-Bar cast-iron manufacturing trade secrets for the benefit of a Chinese rival.

- Guilty plea from married Chinese nationals who were caught trying to steal trade secrets related to exosome isolation and the treatment of pediatric medical conditions from the National Children’s Hospital’s Research Institute.

While it remains to be seen if and how the China Initiative will change once President-elect Biden takes office, the head of the Initiative, John Demers, believes that the U.S. will stay the course: “There is no turning back the clock to an era when free market liberal democracies turned a blind eye to the PRC’s theft of intellectual property...”

TIP: Companies should be aware of both the risks posed by trade secret theft—and create a plan to protect against it—and the government’s willingness to assist companies that fear its trade secrets have been stolen.

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