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국제학석사학위논문

U.S. Hegemonic Pressure of IPR on Japan and China

**: A Comparative Analysis in Response to the Shift in
Technology Paradigm**

일본과 중국의 지식재산권에 대한 미국의 패권 압력
: 기술 패러다임 전환에 따른 비교 연구

2020년 2월

서울대학교 국제대학원

국제학과 국제통상전공

강 혜 인

**U.S. Hegemonic Pressure of IPR on
Japan and China:**

**A Comparative Analysis in Response to the Shift in
Technology Paradigm**

by

Hyein Kang

**A thesis submitted in conformity with the requirements for the
degree of Master of International Studies (M.I.S.)**

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February 2020

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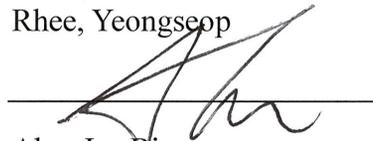
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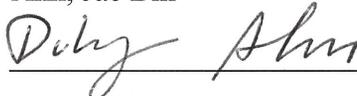
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Abstract

Taking the upper hand of high-technology is a major factor in determining hegemony. Many countries have continued to compete for technology supremacy. Since the 1970s, Asian countries have begun to grow rapidly based on technology advances. In addition, products and services that embody intellectual property rights began to be produced, complaints about the infringement of intellectual property rights continued to rise in the U.S., and the need for countermeasures emerged. Accordingly, the U.S. government implemented a policy to strengthen intellectual property rights. From 1989, the U.S. analyzed cases of foreign IPR infringement through Special 301 reports, and in particular, in the event of a trade deficit problem, the customs of the trading partners were considered as unfair trade practices, U.S. used Section 301 of the 1974 Trade Act to restrict imports of other countries or to exert pressure for the purpose of market opening. As a representative case, when Japanese semi-conductor industry outperformed the United States, it used the aforementioned Section 301 to put pressure on Japan and as a result signed three agreements until the U.S. trade balance improved.

Such U.S. trade sanctions through Section 301 were rarely used since the signing of the TRIPS Agreement, which resumed its investigation into China after the inauguration of the Trump Administration which is based on a paradigm shift in the fourth industrial revolution. The scope of intellectual property rights also begins to expand, with the existing norms failing to keep up with the pace of technological development. Under the circumstances, China develops at a frightening pace, and the U.S. wages a trade war with China to prevent the exploitation of its high-tech technologies and the forced technology transfer. As such, the U.S. has put forward the same strategy for

the two countries, Japan and China, citing infringement of intellectual property rights, but has implemented a policy of trade pressure with different motivations, means and targets. However, such a bilateral pressure policy eventually brings a greater butterfly effect. Thus, to establish a solid intellectual property standard, multilateral negotiation has to be carried out. Therefore, the paper analyze the Special 301 reports that the U.S. investigated on the two countries from 1989 to 2019, while also analyzing the trends of the U.S.–Japan and U.S.–China disputes in detail and look at the hegemonic competition as the global technology paradigm shifts. It also compares similarities and differences between the two cases and presents prospects for the U.S. policy stance and the direction for the establishment of future intellectual property rules.

Keyword : Intellectual Property Rights, US–Japan, US–China, Section 301, Technology Paradigm

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I. Introduction

1 Background and History of Section 301

1-1. Background and Research Purpose

Since the 1970s, the rise of Asia's emerging industrial countries has made U.S. manufacturing less competitive on the global stage and changed the U.S. industrial structure to the service sector. With a more profound understanding of the importance of new technologies and taking a gradual shift towards a service-oriented economy, the United States began to depend heavily on intellectual property rights. The issue of intellectual property rights was more pronounced in the public sector during the mid-1980s, linking the growing U.S. trade deficit with the issue of intellectual property rights. In other words, preventing other countries from illegally using U.S. intellectual property rights, a major factor in reducing the trade deficit, was the biggest change in the late 1970s and 1980s of US.

However, when it comes to multilateral negotiations, the Paris Agreement and the Berne Convention, which are operated under the auspices of the WIPO, have no effective means of sanctions because they do not have a dispute settlement mechanism for violations. Thus, the U.S. dealt with the issue of intellectual property rights as an agenda item in the GATT's Uruguay Round in order to increase the international

competitiveness of U.S. goods by actively linking intellectual property rights with trade (Park, 2007).

Especially, as Japan's semi-conductor industry began to surpass the U.S.', the issue of intellectual property rights for the semi-conductor industry and supercomputers began to emerge. In response, the U.S. has put pressure on trade with Japan through a direct investigation. In the end, Japan signed a semi-conductor treaty under such pressure from the United States and strengthened the degree of intellectual property laws. This pressure on Japan and the U.S. need for effective intellectual property rights resulted in the TRIPs Agreement. The TRIPs agreement, adopted by the absolute efforts of U.S., requires all WTO members to have a minimum level in protecting intellectual property rights, a reflection of much of the U.S.' demand.

Since the WTO's TRIPs Agreement was established, the U.S. has rarely used Section 301 measures until the Trump administration has taken office in 2017. The U.S. has applied Section 301 to launch an investigation into China's intellectual property policies with the ultimate goal to pressure China. This policy is based on the fact that the Internet service-based industry of China is growing exponentially. In fact, the commercial exploitation of intellectual property has also increased at an equally brisk pace as well. The trend of progressively integrating the global economy has provided further impetus to cross-border commercial exploitation of intellectual assets. With varied views of the extent to which protection and enforcement of the inventors and creators' rights should be given, and the increased importance of utilizing intellectual

assets such as FDI and technology transfer when trading have caused tension in international trades and economic relations between countries. Having the upper hand in these data-driven services is the most important point at this moment. Hence, the United States began to impose stronger pressure sanctions on China's IPR than on Japan's in 1980s. With the limitations of WTO TRIPs, negotiations for high level protection of intellectual property rights have been proceeded at the Doha Round but hasn't worked out yet.

The United States is pushing for the plurilateral enactment of new digital trade norms including 75 countries. The USMCA (United States–Mexico–Canada Agreement) has strengthened the protection of intellectual property rights and stipulated that some regulations even than the TPP (Trans-Pacific Partnership). In addition, the USMCA has formed a Digital Trade Chapter, which reflects an important pillar of standardizing its contents. Since the Intellectual property rights intertwine closely with the digital trade, research about the expanded Intellectual Property Rights has become more significant over time. Most recently, the U.S.-Japan Digital Trade Agreement has been settled, thus it also brings a significant impacts on both world and China.

1-2. Research Question and Method

The use of section 301 by the U.S. has frequently appeared nowadays towards China just as how the U.S. acted it upon Japan in the 1980s. Since both issues are based on the intellectual property rights, it is important to analyze Special 301 reports investigated by the USTR since it shows the general point of view of the States towards intellectual property rights in each country. However, there have been relatively few studies analyzing the disputes in this point of view. Therefore, the purpose of the study is to look into the U.S. hegemonic pressure upon Japan and China as reflected in the USTR Special 301 reports from 1989 to 2019, which particularly target Japan and China. Evaluating the reports would provide meaningful implications by investigating the differences and similarities of the U.S.' sanction in different eras. Three questions are discussed and analyzed in this paper. First of all, what methods would the U.S. use to investigate and exert pressure on the IPR policies of Japan and China by applying section 301 based on special 301 reports? Second, what similarities and differences exist in each case and what are the implications? Lastly, how will the last stage of the current U.S.-China negotiation on the IPR section finalize and ultimately affect the U.S. pressure policies on intellectual property in the future?

In order to provide a better understanding and provide implications, the paper consists of three main parts. Chapter II reviews how the U.S. put pressure on Japan under Section 301 and Special 301 reports in 1985 – 1996 and how it leads to the development of TRIPs. Chapter III examines how the U.S. put pressure on China under

Special 301 reports in 1997 – 2019 and how it affects to TPP, USMCA, and U.S.-Japan Agreement. Most importantly, Chapter IV conducts a comparative analysis of U.S. trade policy on technology protection towards Japan and China and lastly draws implications.

1-3. History of Section 301: A Series of Amendments

The legislative path of section 301 launched with the Trade Expansion Act of 1962. Most experts perceived it as the ‘immediate predecessor’¹ since it provided the president the authority of imposing tariff or import restrictions upon those nations violating an international agreement and also obstructing U.S. trade (Silverman, 1996). The 1962 Act mainly targeted ‘unjustifiable’ agricultural barriers of foreign countries (Bayard and Elliot, 1994). In 1974, the Congress amended the Act with section 301 of the Trade Act of 1974. Disturbed by the “time-consuming and politically oriented GATT decision-making process,” Congress authorized the President in section 301 to institute retaliatory action against foreign practices that are “unjustifiable or unreasonable and which burden or restrict U.S. commerce.” Through the amended section 301, Congress “initiated the trend toward unilateral action in disregard of international rules” (Silverman et al., 1996).

The next amended agreement, Trade Agreements Act of 1979 modified 4

¹ Thatcher, *supra* note 29, at 495.

pillars of section 301. First of all, it specifically clarified the President's authority to enforce U.S. rights under any applicable trade agreement. Second, it imposed time limits on section 301 investigations. Third, it required the Special Trade Representative, the predecessor of the USTR, to consult immediately with any foreign government accused of unfair trade practices. Lastly, 1979 Act authorized the private petitions acceptance (Silverman et al., 1996).

The Trade and Tariff Act of 1984 amended section 301 in multiple ways too. Not only did it define the previously ambiguous terms 'unjustifiable,' 'unreasonable,' and 'discriminatory,' but also mandated the showing of an injury in conjunction with the unfair trade practice. Moreover, it was able to loosen the deadline of consultations, initiated by the USTR with a foreign government accused of an unfair trade practice. Authorization of the USTR to initiate investigations without waiting for a private petition or a presidential order was also granted. The USTR also needed to prepare an annual National Trade Estimate (NTE) report emphasizing consequential barriers to the U.S. trade and investment under the 1984 Act.

The Last amendment until today is the Omnibus Trade and Competitiveness Act of 1988. Unlike previous amendments of section 301 where existing practices were slightly modified, the 1988 Act was altered in several respects. It created two outgrowths of section 301- Special 301² and Super 301³, officially transferred

² Special 301 provides additional protection for intellectual property rights.

³ Super 301 requires the USTR to identify and publish the most egregious trade offenders and

authority to enforce U.S. rights to the USTR, specifically defined “unreasonable” practices, imposed rigid time constraints on the section 301 process, and established two distinct categories of unfair trade practices. The categories divide between those prompting “mandatory” retaliation (section 301(a)) and those giving rise to “discretionary” retaliation (section 301(b)). “With the engenderment of these rigid categories, the implementation of section 301 became a more elaborate process with substantially restricted governmental discretion (Silverman et al., 1996).”

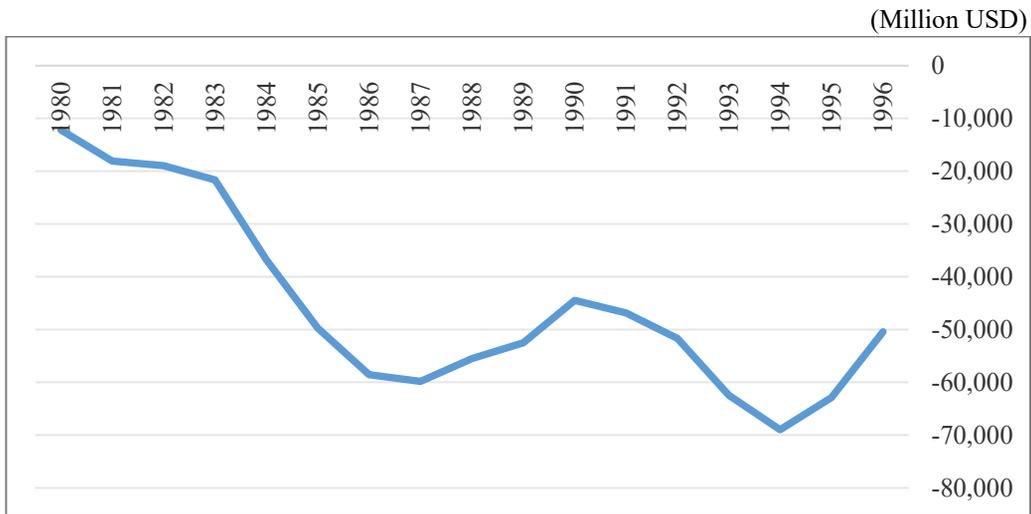
practices.

II. U.S. Pressure on Japan under Section 301 in 1985 – 1996

As previously mentioned, due to the rapid growth of Asian countries, the U.S. reorganized the internal and external environment related to intellectual property rights in a relatively short period of time during the 1980s. This was accomplished by integrating the protection of intellectual property rights into the means of trade policies through the revision of domestic regulations (Kim, 2002).

Tracing back to World War II, Japan and the United States forged a cooperation relationship in order to achieve domestic economic reform and boost their economic growth with the support of the U.S. Since then, the U.S. trade balance with Japan continued to decline and the figure dropped noticeably in the 1980s as seen in Figure 1. Even, Japan's structural changes of industry of labor-intensive goods to manufacturing goods such as automobiles, steels, semi-conductors, telecommunications, and supercomputers led to Japan's rapid economic growth and threaten American industries (Kim, 2019).

Figure 1. U.S. Trade Balance with Japan



Source: K-Stat

With the large trade deficit and losing competitiveness of American industries, a protectionist sentiment arose and therefore pressure from the public and the Congress increased in the United States. In terms of deficit problems, there was a widespread perception that foreign countries' unfair practices and trade barriers were a major cause of the problem (Kim, 2019). Subsequently, after sophisticated technological knowledge and expertise were developed in the U.S., Japan learned from the U.S. Utilizing those knowledge for Japan to produce products with superior product technology was a grand win as they re-exported better products to the U.S. market. This supports that the majority of Japan's trade surplus comes from the United States, which eventually sparked a dispute between the two countries. Specifically, in 1984, Japan posted a trade surplus of \$36.8 billion, 30 percent of the U.S. total trade deficit of \$123.3 billion (National Assembly, 1985). Thus, the U.S. government took an approach to address the

issue of intellectual property rights as the subject of bilateral trade negotiations in order to effectively impose the needs of such intellectual property rights since the international rules of intellectual property rights were non-existent.

1 Semi-conductor (1985 – 1996)

1-1. Background

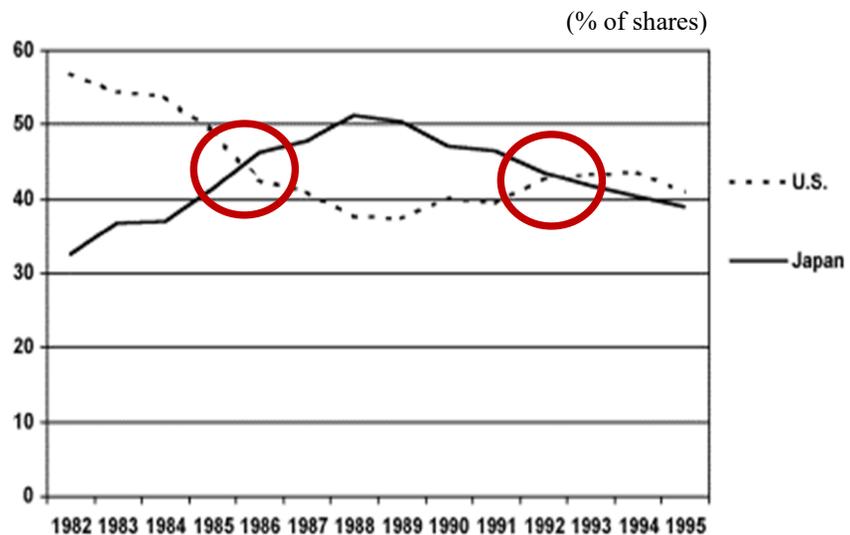
Until 1984, the U.S. was leading the global semi-conductor industry along with Motorola, Intel and Micron. The Reagan administration's (1981-1989) economic performance was also in the right track. Thus, compared to the real GDP growth rate 2.9%, during the preceding eight years, Reagan administration growth rate averaged 3.5%.⁴ Some economists have stated that the Reagan administration was the third longest peacetime economic expansion in U.S. history (Roberts, 1992). However, from the late 1970s, Japan started to emerge as a major producer of semi-conductors, the most important cutting-edge technology in the early years.

A spectacular prosperity of Japanese semi-conductors was especially achieved in the memory parts, 'DRAMs', as the U.S. market share plummeted from 70 to 20 percent between 1978 and 1986 while Japanese shares jumped from below 30 to approximately 75% (Tyson, 1992). In addition, Japan's share of total U.S. semi-

⁴ "Gross Domestic Product" (Microsoft Excel spreadsheet). Bureau of Economic Analysis. July 27, 2012. Retrieved August 15, 2012.

conductor consumption rose from 7.5% in 1982 to 12.3% in 1984. As the figure 2 shows, eventually Japan's semi-conductor share surpassed the U.S.' from 1985 in the world market. Increasing exports of Japanese semi-conductors around the world and even soaring the use of Japanese-made memory in U.S. electronic devices dealt a fatal blow to the U.S. semi-conductor industry. During the same period, the offensive tactic of Japan having a low-cost proved to be more advantageous as prices plummeted with the world's semi-conductor supply exceeding demand. In addition, even the quality of products of major U.S. semi-conductor companies declined to those of lower-tier Japanese semi-conductor firms. For all the above reasons, the U.S. semi-conductor industry began to demonstrate.

Figure. 2 World semi-conductor market, 1982 - 1995

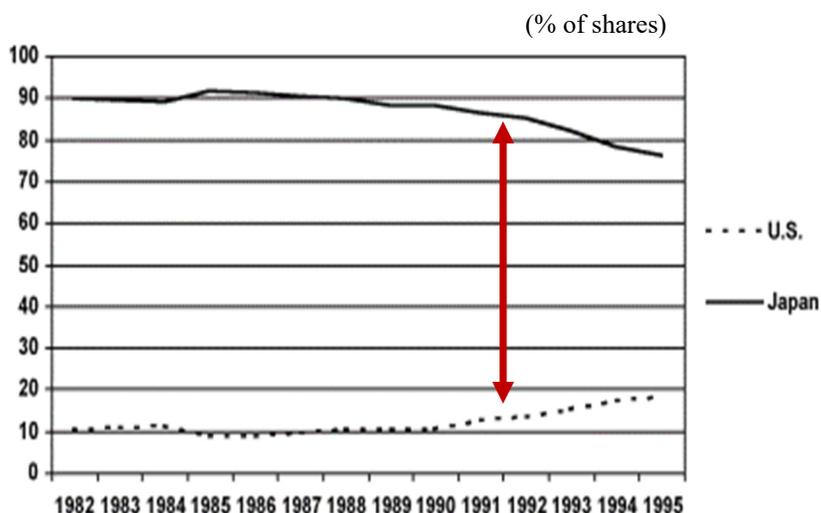


Source: (Zeng, 2004)

Moreover, the following figure clearly depicts to what extent the semi-

conductor market access was closed in Japan. The U.S. semi-conductor industry claimed that the U.S. semi-conductor industry involved most of the global market share (83% in the U.S., 55% in Europe, and 47% in Asia) while taking only 11% in Japanese market due to the discrimination of National Treatment and the market entry barriers.

Figure. 3 Japanese semi-conductor market, 1982 – 1995



Source: (Zeng, 2004)

The huge success of Japanese semi-conductor was mostly from the role of the Ministry of International Trade and Industry (MITI) and its' industrial policy. Japanese firms could have easier access to capital due to the affiliation with a large bank that plays a role in corporate governance through equity ownership (Irwin, 1996). For instance, the Japanese government provided about \$200 million to some Japanese semi-conductor firms, including Fujitsu, Hitachi, Mitsubishi, NBC and Toshiba, for

research and development of very-large-scale integration (VLS). Also, both direct and indirect financial support to the semi-conductor industry from 1976 to 1982 was estimated to be around \$0.5 billion to \$2 billion (Park, 2019). Eventually, the Japanese semi-conductor industry took the lead in the global semi-conductor market in 1985. With the Japanese government's aggressive development policy, Japan recorded a steep growth rate, outpacing the American semi-conductor industry.

In response, the Reagan administration ordered the U.S. Commerce Department to investigate the Japanese dumping issue. In October 1985, the Commerce Department began investigating charges on anti-dumping against Japanese semi-conductors. In January 1986, the U.S. International Trade Commission (ITC) announced that the U.S. industry was damaged by Japanese memory imports. In March, the Commerce Department confirmed dumping margins on Japanese semi-conductors, and the margin ratio reached from 21.7% to 188%.

On August 1986, the Japanese government agreed to provide quarterly semi-conductor export price data and semi-conductor production cost data at the request of the U.S. Department of Commerce through the so-called "Suspension Agreement," the first U.S.-Japan 1986 semi-conductor agreement⁵ in April 1987, and agreed to increase

⁵ The United States and Japan negotiated as a result of a Section 301 investigation of Japanese practices that restricted market access for U.S. semi-conductors. Both of them eventually made the 1986 semi-conductor agreement as mentioned earlier in this paper. Especially, "Japan agreed to end the dumping of semi-conductors at prices below cost in the U.S and third country markets. Also, they promised to provide increased market access for foreign semi-conductors in the Japanese market. Hence, the U.S. acceded to suspend the Section 301 investigation and antidumping cases against Japanese manufacturers of EPROMs and 256K and DRAMs (1987

its market share in Japan by 20%. However, in spite of the agreement, U.S. semi-conductor share in Japan did not reach to 20%, thus the U.S. again announced additional retaliatory measures on June 16, 1987, citing Japan's dumping in third-country market. Eventually, the U.S. trade pressure on Japan ended with the recovery of the U.S. semi-conductor industry in the early 1990s. The U.S. was able to realize 20.2% share in the Japanese market after a long negotiation that finalized in 1996 with two revisions made in 1986 and 1991.

Table 1. U.S. – Japan Semi-conductor Conflict

Year	Date	Contents
1970s	-	Japanese semi-conductor industry developed due to the protection and development policies of Japanese government and the United States' technology
1985	-	Japanese semi-conductor industry surpassed the United States semi-conductor industry in the global market share
	6.14	Petition was filed by Semi-conductor Industry Association
	10	The U.S. Commerce Department investigated the Japanese dumping issue
1986	1	The U.S. International Trade Commission (ITC) announced that the U.S. industry was damaged by Japanese memory imports
	3	The U.S. Commerce Department confirmed dumping margins on Japanese semi-conductors, and the margin ratio reached from 21.7% to 188%
	8	The 1986 U.S.-Japan Semi-conductor Agreement
1987	6.16	Additional retaliation, with the reason of dumping occurred in third-country markets
1991	-	The 1991 U.S.-Japan Semi-conductor Agreement
1996	-	The 1996 U.S.-Japan Semi-conductor Agreement

Source: filed by the author.

NTE Report, supra note 176, at 190).”

1-2. Use of Section 301 on Semi-conductor

“Under Section 301 of the 1974 Trade Act, a U.S. export industry can petition the U.S. government to take up its concern that it has disadvantages in foreign market (Bhagwati and Patrick, 1990).” Therefore, semi-conductor industry filed the investigation on Semi-conductor industry in Japan in 1985. The semi-conductor industry investigation under Section 301 was first conducted in 1985, and since Special 301 was first created under 1988 Omnibus Act, there is nothing about semi-conductors in the Special 301 report.

Japan failed to consummate its commitments which inquire increased market access and an end to dumping in the third country under the agreement, thus the United States planned to use Section 301 to impose sanctions against Japan. As a result of the Section 301 investigation, the President Reagan invoked its authority to impose unilaterally 100% ad valorem duties on \$300 million of Japanese exports to the United States.⁶ In June 1987, after Japanese dumping in third countries was reduced, the president suspended \$51.6 millions of those sanctions towards Japan. When Japanese dumping in those markets halted, an additional \$84.4 million was lifted in November of that year. However, “penalties of \$165 million for failure to implement the Agreement’s market access provisions were continued until the Agreement expired on July 31, 1991 (1991 NTE report, supra note 109 at 133),” and was replaced by a new

⁶ Id. At 2.

agreement.⁷

The 1986 semi-conductor trade agreement was unprecedented for the U.S. trade policy in some respects. As Tyson (1992) pointed out, not only was it the first time that the U.S. had threatened trade sanctions on Japan for failing to abide by the terms of a trade agreement, market access and regulating trade in both Japan and the world market. Regarding the semi-conductor dispute between Japan and the United States, the U.S. had to use Section 301 and unilaterally put pressure on Japan since the international rule was absent. “The real force behind Section 301 that provides the United States with the leverage to negotiate with other nations is not the actual imposition of sanctions, but rather the threat of such sanctions (Grier, 1992).”

2 Supercomputer (1989 – 1994)

Table 2. Special 301 Classifications for Japan

1989	1990	1991	1992	1993	1994	1995	1996
WL	WL	WL	WL	WL	PWL	PWL	PWL

PWL: Priority Watch List, WL: Watch List, PFC: Priority Foreign Country

⁷ The 1991 Semi-conductor Agreement “reaffirmed the 1986 Japanese commitment to provide increased market access for foreign-made semi-conductors and to deter injurious dumping. It contains a recognition that if ‘strong market efforts’ are made by Japanese semi-conductor users and foreign semi-conductor suppliers, the foreign share of Japan’s semi-conductor market is expected to rise to more than 20% by the end of 1992. However, the agreement explicitly recognizes that this target is not a guarantee, floor or ceiling (Id. At 4, II(10)).”

As mentioned above, since the Special 301 was created under the 1988 Omnibus Act, the special 301 report was first published from 1989. Japan had been included on the ‘watch list’⁸ from 1989 to 1993 because of inadequate intellectual property protection. Despite the considerable efforts made to resolve these issues in the Framework negotiations, the problems remained and Japan was displaced to the ‘priority watch list’⁹ from 1994 to 1996. Among many other problems, the ones associated with the patent area were of particular concern. These applied to the unreasonably long application processing time for technology applications the most, pre-grant oppositions, inadequate grace period, narrow interpretation of claims in post-grant proceedings, and extensive delays in court proceedings. Additionally, there were extensive software piracy issues, lack of adequate enforcement mechanisms for trade secrets, and delays in trademark registration. Moreover, the Japanese Government had convened a panel to consider amending its copyright law to permit de-compilation of computer software. Hence, the U.S. had concerned about any steps taken to enervate the copyright protection of computer software to Japan.

⁸ According to USTR, “‘watch list’ nations have particular problems with respect to IPR protection, enforcement, or market access for U.S. individuals or businesses relying on intellectual property.”

⁹ ‘Priority Watch List’ singles out nations, which have the same problems as those countries on the watch list but focus more on the increased bilateral attention concerning the problem areas. Ibid.

2-1. Background

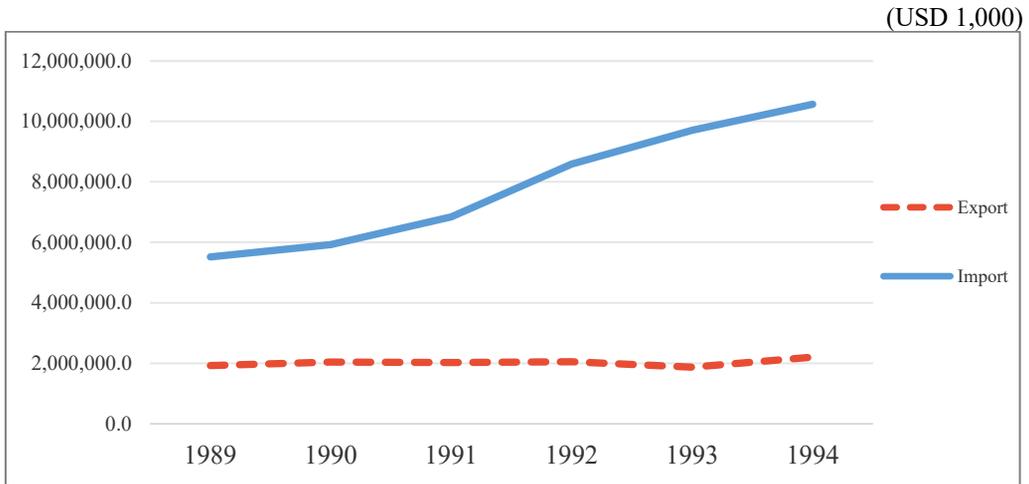
Along with the semi-conductor concern, the U.S. government had also raised the issue of Japan's lack of public procurement of foreign supercomputers since the late 1970s. By late 1985 and early 1986, the United States raised stronger opinions to the Japanese government about its dissatisfaction with the lack of transparency of the Japanese market. There was a lack of public procurement on foreign supercomputers and the Japanese corporate practice of offering discounts up to 80-90% on supercomputers (Anchordoguy, et al., 1994).

It was evident that the Japanese government was not taking the U.S. concerns seriously. In response, acting differently from past semi-conductor disputes, the U.S. government intervened relatively early to limit the damage of domestic industries caused by Japan's strategic trade and industrial policies of supercomputers (Anchordoguy et al., 1994). Since no foreign firms could make any sales of supercomputers in Japan as noted in the 1990 NTE report, the 1987 Supercomputer Agreement objected to opening up the market to foreign-made supercomputers. In addition, according to the USTR, "the Japanese government had engaged in a variety of practices having the effect of thwarting the open procurement process." Since ensuring the purchase of governmental entities of supercomputers made by Japanese producers was essential for their domestic industries development. For instance, when technical specifications favored the supercomputers offered by incumbent Japanese suppliers, the U.S. supercomputer suppliers were excluded from earnest consideration

in government purchases of supercomputers. U.S. supercomputer companies were further disadvantaged by extraordinarily low government supercomputer budgets which required massive discounts of up to 80%. Thus, only domestic firms were able to participate under such conditions. In other words, the Japanese firms participating in supercomputer procurements were much larger than the U.S. supercomputer industry and, therefore, were able to substantially discount the price of their supercomputers. As a consequence of this policy, “U.S. firms were not able to penetrate the Japanese public sector supercomputer market even after holding 80% of the world supercomputer market (Grier, 1992).”

However, the United States realized that the agreement was not having its intended effect by early 1989. As seen in Figure 4, the United States’ import of Japanese supercomputer was far higher than export and it had been continuously increased. Hence, the United States started to consider super 301 of the 1988 Omnibus Trade and Competitiveness Act targeting Japanese supercomputers.

Figure 4. U.S. Supercomputer Trade with Japan



Source: K-Stat.

2-2. Use of Section 301 and Special 301 (1989 – 1996)

In late May 1989, the United States government targeted Japan under Super 301, announcing that supercomputers would be the main focus of the negotiations. But, this time, Japan volunteered to negotiate on a second supercomputer agreement to avoid being targeted under Super 301 for another year. Therefore, on June 15, 1990 supercomputer agreement¹⁰ was replaced from the previous 1987 bilateral agreement on supercomputers. This included detailed procurement procedures that the Japanese

¹⁰ The 1990 Supercomputer Agreement was resulted from a 1989 Super 301 investigation of Japanese Government procurement practices. USTR concluded that Japan discriminated against foreign supercomputer firms. Under the agreement, Japan agreed to undertake unilateral measures to open its supercomputer procurement market to competition (USTR, 1990 Special 301 report).

government agreed upon “all governmental and quasi-governmental entities purchasing supercomputers by ensuring that the procurements are competitive, transparent, and non-discriminatory (Grier, 1992).” However, even the amended agreement did not solve the problems. Thus, the USTR kept investigating Japan’s supercomputers based on Special 301 reports.

Even though the USTR started to publish the Special 301 reports since 1989, the investigation on Supercomputers resumed from 1993 to 1994 special reports. Ambassador Kantor identified Japan pursuant to Title VII provisions¹¹ of the 1988 Omnibus Trade and Competitiveness Act (USTR Special 301 report, 1993, p.1). As previously mentioned, Kantor also stated that “U.S. supercomputer manufactures are the most competitive in the world, yet they continue to be effectively shut out of the Japanese government supercomputer market.” In other words, it means that the U.S. supercomputer manufacturers had never won a head-to-head competition in a Japanese government bid. It was even distressing because there was already a decade worth of negotiation with Japan and no progress with only two agreements on the issue. For instance, in Europe, U.S. supercomputer firms held about 85% of the market while they held only an 11 % share of the public sector market in Japan (USTR Special 301 report, 1993, p.2). In addition, the USTR maintained that despite years of negotiations and twice trade agreements, 1987 and 1990 Supercomputer Agreement, the Japanese

¹¹ The ‘Title VII’ process was initially established under the Omnibus Trade and Competitiveness Act of 1988. As amended, it provides a vehicle for identifying priorities for international negotiations that may address discriminatory foreign government procurement practices and for monitoring and enforcing existing international agreements (USTR).

construction market remained fundamentally closed to foreign firms. Therefore, the USTR undertook a comprehensive review of Japanese Government behavior and gave a warning “if USTR determines Japan is not in compliance of the agreement, it will initiate trade action against Japan under section 301 (USTR Special 301 report, 1993, p.2).”

Based on continuing concerns regarding whether Japan implemented the 1990 U.S.–Japan Supercomputer Agreement, USTR continued the special review of Japanese actions under the Agreement, launched on April 30, 1993. Kantor stated that “the best way to sustain progress in the supercomputer sector was to use the review mechanism to work proximately with the government of Japan to address these concerns and to ensure the truly open, fair, and non-discriminatory government procurement of supercomputers (USTR Special 301 report, 1994, p.2).”

Table 3. U.S. – Japan Supercomputer Conflict

Year	Date	
1970s	-	Since the late 1970s, the U.S. government had raised the issue of Japan’s lack of public procurement of foreign supercomputers
1985 - 1986	-	By late 1985 and early 1986, the United States raised stronger opinions to the Japanese government about its dissatisfaction with the lack of transparency of the Japanese market. There were also a lack of public procurement on foreign supercomputers and the Japanese corporate practice of offering discounts up to 80-90% on supercomputers
1987	-	The 1987 U.S.-Japan Supercomputer Agreement
1989	6.16	USTR initiated the investigation of Section 301
1990	6.15	The 1990 U.S.-Japan Supercomputer Agreement

Source: Anchordoguy (1994) and compiled by the author

Even though Japan was notified as a 'priority watch list' from 1995 to 1996 in Special 301 report, the USTR (1996) concluded that Japan was with respect to public works, supercomputers and computers (p.27). Since the TRIPS Agreement (The Agreement on Trade-Related Aspects of Intellectual Property Rights) has been effective from 1 January 1995, the United States had no longer reasons to use unilateral measures. Thus, the Section 301 measures towards Japan based on Special 301 reports were no longer exist but through WTO dispute settlement system.¹²

As such, the intellectual property rights issue in the context of the U.S.-Japan trade dispute reflected the rivalry between the two countries over cutting-edge technologies in the global economy in the late 20th century. In other words, it can be viewed as a conflict to maintain and become the hegemonic power of the 20th century. Interest in international competitiveness raised in the United States in the 1980s triggered several important changes in policies related to foreign trade and intellectual property rights. In this context, U.S. pressure on Japan's intellectual property rights legacy has meant to be a more general checkup rather than being strict on Japan's unfair trade practices. Through these measures, the U.S. government attempted to provide an effective global market environment for American companies and to secure a structural environment through bilateral negotiations even before international norms were established (Maskus, 2000).

¹² The first case of TRIPS Agreement is *Japan – Measures Concerning Sound Recording* (DS28). The United States requested consultation for the first time in 1996 February 9th, the case was mutually agreed and terminated in 1997 January 24th.

3 U.S. – Japan Conflict and the Reach of TRIPs

The international discussion on intellectual property rights was originally handled exclusively by the WIPO, which was established in 1967. However, when it comes to multilateral negotiations, the U.S. has suggested that the ‘Paris Convention for the Protection of Industrial Property’ and the ‘Berne Convention for the Protection of the Protection of Literacy and Artistic Works’, which are under the auspices of WIPO, do not act as effective sanctions because they do not possess a mechanism to resolve disputes over compliance violations. In particular, as mentioned previously, during the late 20th century, the trade of goods embodied in intellectual property significantly increased internationally. Among them, however, the protection of intellectual property rights was not fully implemented in the high-tech industries such as semi-conductors. This caused frequent violations of the interests of American industries. U.S.’ priorities in the Uruguay Round were shaped by dissatisfaction arising from U.S. exporters’ inability over several years apropos of Intellectual Property Rights, especially that of Japan. This is clearly reflected in previous conflicts with Japan (Brown and McCulloch, 2009).

Thus, intellectual property rights and service trades became important topics in the Uruguay Round. In particular, believing that multilateral intellectual property agreements were necessary to maintain America's hegemony, the U.S. actively led the

negotiations as they viewed that the establishment of intellectual property rights as the basis for future advanced technology and economic growth would aid their hegemonic status. In fact, the TRIPS Agreement took effect upon the establishment of the WTO after concluding that the existing goods or services were embodied in intellectual property rights, which includes patents, trademarks, designs and copyrights. Without protection of the intellectual property rights, it would be difficult to establish a current international trade order.

After the system settled, the United States urged Japan to implement rules based on WTO regime. For instance, there is a 1995 WTO dispute (DS28) under the new TRIPs Agreement, in which the U.S. alleged that Japan was not sufficiently protecting the copyrights of sound recordings, inconsistent with the TRIPS Agreement Article 14 (protection of performers, producers of phonograms and broadcasting organizations).¹³ As such, the U.S. has used the WTO dispute settlement system ever since the international norms were settled. In other words, the U.S. no longer involved in the bilateral sanctions of Section 301 in the disputes over intellectual property rights in Japan.

Thusly, the TRIPS Agreement laid a new foundation for the protection and enforcement of intellectual property rights in multilateral disciplines. New

¹³ Case: DS28: Japan — Measures Concerning Sound Recordings (Wto.org)

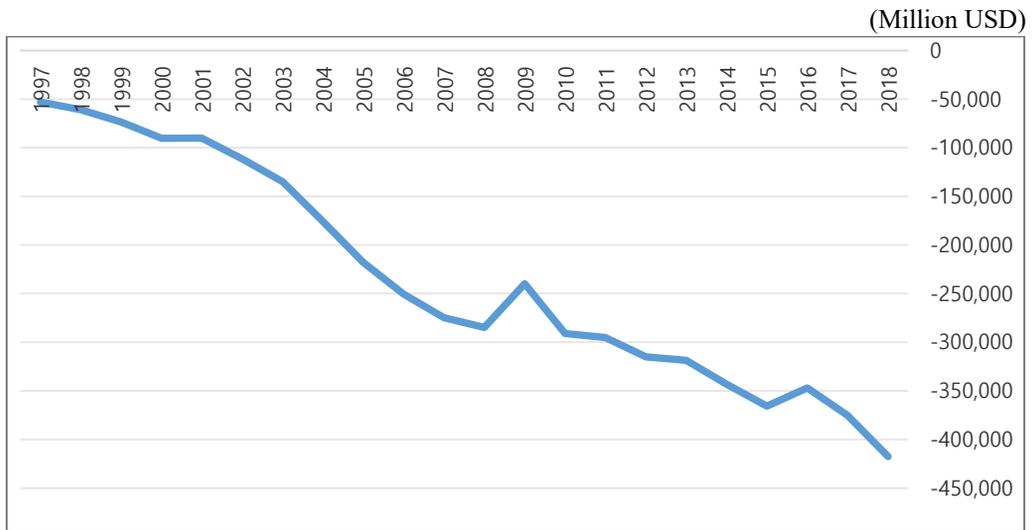
technologies and products have continued to develop based on the protection of intellectual property rights. However, the protection of intellectual property rights for rapid technological development has raised questions about the TRIPS agreement (Watal and Taubman, 2015). The advent of these new technologies and the doubt of effectiveness of the TRIPS agreement can also be seen in the U.S.-China intellectual property dispute in the following chapter.

III. US Pressure on China under Special 301 in 1997 – 2019

Since 1979 when the U.S. and China officially established diplomatic relations as U.S. announced to recognize People's Republic of China, China opened up its economy to the world and thus trade volume and economic activities between two countries increased significantly in the 1980s. At the same time, major progress has been made in intellectual property rights protection since the late 1970s in China by initiating the reform and opening-up policies. Although the IPR system was established relatively late in China, it was able to develop rapidly. The United States also requested China to improve their IPR to access the international IPR regime. Since China was not a WTO member of the early WTO system, not being subject to TRIPS, the United States needed to keep an eye on China regarding the IPR issues with special 301 reports. Hence, USTR self-initiated two Section 301 investigations on China before its' accession of WTO in 2001. Despite the shortage, China enacted and developed domestic intellectual property laws at the request of the U.S.

As a consequence, the U.S. granted China permanent normal trading relations (PNTR) by “welcoming China into a global, rule-based trading system,” as China became a member of the WTO in 2001. However, things did not go the way as the U.S. wanted them to. The trade balance with China dramatically decreased as China accessed in the WTO system.

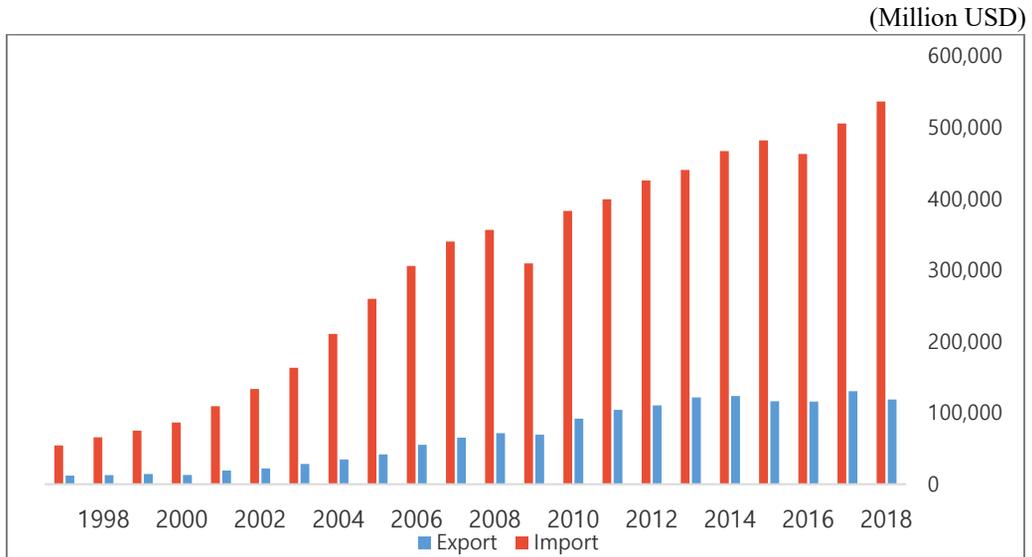
Figure 5. U.S. Trade Balance with China



Source: International Monetary Fund (IMF) Data

Additionally, as seen in the figure 6, the United States' total imports to China has been drastically increased while the export rate with China has not much difference for a decade. Therefore, the U.S. has refused to grant China the market economy status and encouraged China to expand their perspective to the world.

Figure 6. U.S. Exports and Imports with China



Source: International Monetary Fund (IMF) Data

The situation between the U.S. and China has continued and even worsened these days. The U.S. is imposing a massive tariff on China to help ease this foreign trade deficit, indicating that the U.S. intends to correct China's misguided intellectual property rights policy if it views the items that impose high-rate tariffs on China and their grounds too. The rationale seems that the U.S. intends to rectify China's intellectual property rights policy. China has been classified, investigated, and on the USTR Priority Foreign Country list for more than a decade. As can be seen from Table 2, China has been put on the 'priority watch list', 'section 306 monitoring¹⁴', and WTO Dispute Settlement pursuit from 1997 to 2019.

¹⁴ 'Section 306 monitoring' means that if there is slippage in China's enforcement of the bilateral IPR agreements, USTR be in a position to move directly to trade sanctions (USTR).

Table 4. Special 301 Classifications for China

1997	1998	1999	2000	2001	2002	2003
Section 306						
2004	2005	2006	2007	2008	2009	2010
Section 306	PWL	PWL	PWL	PWL	PWL	PWL
2011	2012	2013	2014	2015	2016	2017
PWL						
2018	2019					
PWL	PWL					

PWL: Priority Watch List

Since the current main issues of China are based on the fact that the overall infringement of U.S. high technology and forced technology transfer, not an infringement of the IPR of certain products as Japan did, the following part is what points of view each government in the United States had in Chinese IPR policies and acts.

1 Pre-Obama Trade Policy (1997 - 2008)

1-1. 1997 - 2004

As mentioned earlier, China had been improved their IPR regulations in some extent as Ambassador Barshefsky stated, “we have seen continued progress in reducing illicit IPR production (USTR Special 301 report 1998, p.2).” However, the USTR still concerned with end-user piracy of business software, perpetuating retail piracy, continuously growing trademark counterfeiting and difficulties in obtaining

administrative protection for pharmaceuticals. Additionally, the trademark registration process was absurd (USTR Special 301 report 1998, p.9). This stance was extended until 2004. Accordingly, even though the Chinese IPR administration structure and its enforcement remained opaque (USTR Special 301 report 1999, p.9), plus market access for products, needed to be protected by IPR, needed improvement (USTR Special 301 report 2000, p.13), China agreed to make improvement in market access for various industries in the context of the WTO accession negotiations in 2000. The USTR (2001) stated that “China undertook a comprehensive review and revision of its intellectual property rights laws in preparation for accession to WTO. In that connection, China has agreed to implement its obligations under the TRIPS Agreement as of the date of its accession to the WTO.” Following in 2002, “in connection with China’s accession to the WTO, China strengthened its legal framework issuing judicial interpretations and other administrative regulations to make them more compliant with the TRIPS Agreement and international standards (USTR Special 301 report 2002, p.16).” while there was significant concerns remained, particularly with respect to enforcement of IPR in China (USTR Special 301 report 2003, pp.10-11). Overall, as can be seen in the Special 301 reports from 1997 to 2004, the United States welcomed China's entry into the WTO and recognized China's efforts to strengthen intellectual property rights, although implementation issues remained.

1-2. 2005 - 2008

In early 2005, USTR conducted an out-of-cycle review (OCR) to evaluate China's implementation of its commitments made at the 15th annual meeting of the Joint Commission on Commerce and Trade (JCCT) in April 2004.¹⁵ The USTR concluded that "China has not resolved critical deficiencies in IPR protection and enforcement and, as a result, infringements remain at epidemic levels. Accordingly, there has not been a significant reduction in IPR infringements throughout China, as it committed to do at the April 2004 JCCT" (USTR Special 301 report, 2005, p.15).

As this concern had been continued in the United States, in 2006, with respect to China, the U.S.' plan to continue heightened scrutiny of China by maintaining China on the PWL and continuing section 306 monitoring, as well as stepping up consideration of WTO dispute settlement options (USTR Special 301 report, 2006, p.1). IPR infringement in China continued to severely affect U.S. products, brand and technologies from a wide range of U.S. industries, thus the violation level remained unacceptably high (Ibid., p.17). Also, overall enforcement remained inadequate level although some progress had made (Ibid., p.18).

¹⁵ At the 2004 JCCT meeting, China made following commitments: "1) promulgate a judicial interpretation before the end of the; 2) sustain and intensify a national campaign against IPR infringing activities; 3) implement new customs regulations such as increasing customs authorities' criminal enforcement actions against IPR-infringing imports and exports; 4) accelerate efforts to ratify and join the WIPO Internet treaties; 5) continue audits to implement the use of legitimate software, including extension of such efforts in local urban governments; 6) conduct public education campaigns of the importance of IPR (USTR Special 301 report, 2004, pp.11-13)."

In 2007, the U.S. maintained China on the PWL and to continue section 306 monitoring. Furthermore, the U.S. eventually requested WTO dispute settlement consultations (DS 362) with China regarding IPR protection and enforcement issues (USTR Special 301 report, 2007, p.2). In addition, piracy and counterfeiting issues were still the main concern of the United States.

China still remained on a top intellectual property enforcement and TRIPs compliance priority concern nation for the U.S in 2008, thus China subsisted on the PWL. The U.S. sought to resolve its concerns related to three kinds of IPR protection and enforcement issues through WTO dispute settlement (USTR Special 301 report, 2008, p.19). Since China announced a 2008 Action Plan laying out detailed strategies for improving IPR protection, the USTR referred that the U.S. also looked forward to working with China to examine a variety of other reforms that could contribute to enhance IPR enforcement (Ibid., p.23).

By analyzing the Special 301 reports during the 2005-2008 period, mainly the areas discussed and raised issues were counterfeiting problems. The U.S. tried to solve the issues within the framework of TRIPs norms through a WTO dispute settlement procedure, and showed positive responses and expectations for China's efforts to revise their domestic IPR related policies.

2 Obama Trade Policy (2009 – 2017)

2-1. First Term (2009 – 2012)

China remained on the Priority Watch List in 2009 and also subject to section 306 monitoring. China's enforcement of IPR and compliance with its TRIPS agreement obligations still had stood top priorities for the U.S. Thus, the United States counted on cooperating with China to implement the WTO Dispute Settlement Body's recommendations and rulings in the '*China – Measures Related to the Protection and Enforcement of Intellectual Property rights disputes*' (USTR Special 301 report, 2009, p.13). As one of the leading nations, Internet piracy issues have started to rise since 2009 due to the emergence of increased numbers of the Internet, broadband, and mobile device users. Despite the crackdowns during the 2008 Beijing Olympics and an increasing number of IPR cases in Chinese courts, overall piracy and counterfeiting levels were still remained unacceptably high. The USTR (2009) concluded that "inadequate IPR enforcement was a key factor contributing to these shortcomings. Besides, there were a number of legal obstacles to effectively enforced which resulted in limited deterrence provided by Chinese law. The U.S. also raised some issues of market access barriers in China such as import restrictions, since it discouraged and delayed the introduction of a number of legitimate foreign products (Ibid., pp.13-15)."

Fortunately, even though China remained on the Priority Watch List in 2010 and 2011, "the U.S. was heartened by many positive steps the Chinese government

took in 2009 with respect to the issues, including the largest software piracy prosecution in Chinese history, and an increase in the numbers of civil IP cases in the courts” (USTR Special report, 2010, p.19). China’s global manufacturing capacity has also extended to every phase of the production and global distribution of counterfeit goods. Documents related to rules and regulations were frequently released by the Chinese government agencies, which includes the national, provincial and local levels. This sought out to promote China’s development into an innovative, IP-intensive economy (USTR Special 301 report, 2011, pp.21-23) Hence, the United States unquestionably believed that continued bilateral dialogue and cooperation could lead to further progress of IPR in China although enforcement issues were still remained (Ibid., p.25).

From the 2012 Special 301 report, each section was subdivided and thoroughly investigated. In 2012, the severe concern of Chinese IPR raised again thus China remained again on the PWL and subject to section 306 monitoring. The United States filled with apprehension about a growing number of cases in which important trade secrets of U.S. firms has been stolen by Chinese companies for their benefit. In the report, “Chinese regulations, rules, and regulatory documents frequently called for technology transfer and, in certain cases, require, or propose to require, that eligibility for government benefits or preferences was contingent upon IPR being developed in China, or being owned by or licensed, in some cases exclusively, to a Chinese party (USTR Special 301 report, 2012, pp. 26–27).” Technology transfer issues were mentioned for the first time with China in 2012. Since then, the U.S. has continuously

complained about China's technology transfer issues.

2-2. Second Term (2013 – 2017)

In 2013 Special 301 report, obtaining efficacious enforcement of IPR in China still remained a central challenge, as it has been for many years. As information suggests that actors located in China have been engaged in sophisticated, targeted efforts to steal IP from U.S. corporate systems, frequently so called as ‘cyber theft’, the situation has been made worse. The theft of trade secrets was an escalating main concern. According to a 2013 study conducted by the Commission on the Theft of American Intellectual Property, it is estimated that the annual losses to the U.S. economy due to IP theft is to be around \$300 billion. For which China accounts for 50% to 80% of those total losses (IP Commission, 2013). On the other hand, Chinese authorities viewed trade secrets cases as routine commercial disputes, rather than as serious violations of law. Hence, the U.S. strongly urged the Chinese government “to investigate and prosecuting thefts of trade secrets by both cyber and conventional means. A further significant concern was that central, provincial and local, all level of Chinese agencies inappropriately require and pressure rights holders to transfer IPR from foreign to domestic entities (USTR Special 301 report, 2013, pp.31-32).” Thus, President Obama brought up IP theft issues with new Chinese leader, President Xi Jinping. In a conversation with President Xi on March 14, 2013, President Obama raised serious concerns about cyber security. Also, he requested President Xi to take

serious steps forward to halt cyber-intrusions emanating from China that have resulted in the theft of intellectual property from American firms (Chabrow, 2013).

The USTR (2014) still raised issues, mainly in China's protection and enforcement of intellectual property rights, particularly in the area of trade secrets. Intellectual property rights holders faced not only a complex and uncertain enforcement environment, but also pressured to forced transfer IPR to enterprise in China through a number of government policies and practices. The U.S. concluded that "reforms are needed in key areas, such as updating China's laws and regulations in the area of trade secrets, further improvement of China's measure for copyright protection on the Internet following China's accession to the WIPO Internet treaties, addressing deficiencies in China's criminal IPR enforcement measures and revising measures conditioning government procurement, financial benefits and preferences on intellectual property developed by, owned by or licensed to a Chinese party (USTR Special report, 2014, pp.111-112)."

In 2015, recent measures regarding to ICT products, services, and technologies, have caused sharply adverse impacts on U.S. industries and raised severe worries. More importantly, industries, which have gotten immediate serious impact, were financial institutions. The ICT rules for financial institutions and banks in China were not published in advance for public comments and were not published in their entirety in final form. Even the existing rules regulated the use of ICT products, services, and technologies by financial institutions operating in China. It also required

an increasing percentage of these products, services and technologies be purchased from suppliers whose IPR was indigenously Chinese. To be specific, the rules demanded foreign firms “to conduct ICT-related R&D internal China and to divulge proprietary intellectual property as a condition for the sale of ICT products in China (USTR Special 301 report, 2015, p.36).” Thus, the USTR urged that foreign and domestic IPR related to ICT area “treated the same and to ensure that product choice decided by businesses independently, not as a pre-condition for market access (Ibid.).” In addition, the theft of trade secrets remained a particular concern. Under Chinese law, given that civil, administrative, and criminal enforcement against misappropriation of trade secrets remained severely constrained, available remedies were difficult to obtain. Hence, the U.S. strongly required “the Chinese government to look for permanent solution to put an end to these activities and to deter any recurrence by rigorously investigating and prosecuting theft of trade secrets undertaken by cyber and conventional means (Ibid., pp.32-33).” As a consequence, during President Xi’s visit to the U.S., China committed that “generally applicable measures to enhance ICT cybersecurity in commercial sectors should be consistent with WTO agreements, be narrowly tailored, take into account international norms, be nondiscriminatory, and not impose nationality-based conditions or restrictions, on the purchase, sale, or use of ICT products by commercial enterprises unnecessarily” (USTR Special 301 report, 2016, pp.30-31).¹⁶

¹⁶ President Xi and Obama reached a 2015 Cyber Agreement. According to the agreement,

Even though the U.S. and China took further step by agreeing on Cyber Agreement in 2015, China continued to present a involute and contradictory environment for protection and enforcement of IPR. The USTR (2016) mentioned that “progress toward effective protection and enforcement of IPR in China was undermined by unchecked trade secret theft, market access obstacles to ICT products raised in the name of security, measures favoring domestically owned intellectual property in the name of promoting innovation in China, rampant piracy and counterfeiting in China’s massive online and physical markets, extensive use of unlicensed software, and the supply of counterfeit goods to foreign markets (Ibid., p.29).” Even the counterfeiting issues were widely moved onto E-commerce markets. The issue resulted in great losses for U.S. right holders involved in the distribution of a wide array of trademarked products, as well as all over industries including legitimate music, motion pictures, books and journals, video games, and software. Thus, the USTR (2016) urged China to expedite the development of its E-commerce Law and to ensure that it addresses online piracy and counterfeiting, while also providing congruous safeguards to Internet service providers (Ibid., p.32). In spite of this demand from the United States, Most important point was that in contrast to President Xi Jinping’s September 2015 commitment that China would enhance ICT cybersecurity

China would not conduct economic espionage that would pass along IPR or trade secrets to Chines firms any longer. To be specific, “firstly, provide timely responses to requests for information and assistance concerning malicious cyber activities; secondly, refrain from conducting or knowingly support cyber-enabled theft of intellectual property; thirdly, pursue efforts to further identify and promote appropriate norms of state behavior in cyberspace within the international community; and lastly, establish a high-level joint dialogue mechanism on battling cybercrime and related issues (Rollins, 2015).”

consistent with WTO agreements, President Xi confirmed again in October 2016 that “China is accelerating the pursuit of a foreign technology substitution program based on indigenous innovation (USTR Special 301 report, 2017, pp.34-35).” With this shift in President Xi’s attitude, the situation began to escalate.

In conclusion, observed from the Obama Administration, counterfeiting and piracy problems were generated from E-commerce markets while ICT measures were frequently mentioned and thus became a concern for the government. However, the Obama Administration was able to adhere to the international norms and provide warnings through the WTO dispute settlement system.

3 Trump Trade Policy (2017 – 2019)

3-1. 2017 – 2019

After President Trump has been inaugurated in 2017, ‘secure and controllable ICT policies’ and ‘technology transfer’ issues were still the main concern. As previously mentioned, the trend regarding to ‘secure and controllable’ measures began to accelerate with regulations on ICT purchases by the banking sector in late 2014 and has continued to expand through both widely applicable and sector-specific measures. The measures of China invoked “security as a putative justification for mounting barriers to foreign products, services, and technologies (USTR Special 301 report,

2017, pp.34-35).” In addition, even the Cybersecurity Law that was adopted in 2016 either curtailed or prohibited cross border data flows. The law definitely harm IP-intensive U.S. industries whose global service delivery models heavily rely on cloud computing platforms. The IPR issues based on cutting-edge industries were started moved onto cross-border data related. Moreover, President Trump showed hostility in earnest toward China’s ‘Made in China 2025’ policy as noted “China’s ‘Made in China 2025 Plan’ may run counter to commitments that China has made to the U.S. and be in tension with basic market economy principles” in 2017 Special 301 report.¹⁷ Thus, unlike previous U.S. presidents, Trump sought to take stronger and more effective measures.

On August 14, 2017, President Trump instructed the USTR to consider “whether to investigate any Chinese acts, policies, or practices that may be unreasonable or discriminatory and that may be harming American intellectual property rights, innovation, or technology development under Section 301 of the 1974 Trade Act.” Eventually, on August 18, 2017, the USTR initiated a Section 301 investigation. Together with, the USTR also initiated dispute settlement proceedings at the WTO¹⁸ to address China’s discriminatory measures and practices, a concern

¹⁷ The USTR (2017) stated as following: “China issued the Made in 2025 Plan which aims to turn China into an indigenously self-sufficient advanced manufacturing superpower, in many of which U.S. IP right holders have sizeable market shares globally.”

¹⁸ DS542: *China — Certain Measures Concerning the Protection of Intellectual Property Rights*. On March 23, 2018, the U.S. requested consultations with China concerning IPR and on October 18, 2018, the U.S. requested the establishment of a panel. However, the panel informed

highlighted repeatedly in past Special 301 reports (USTR Special 301 report, 2018, pp.44-45).

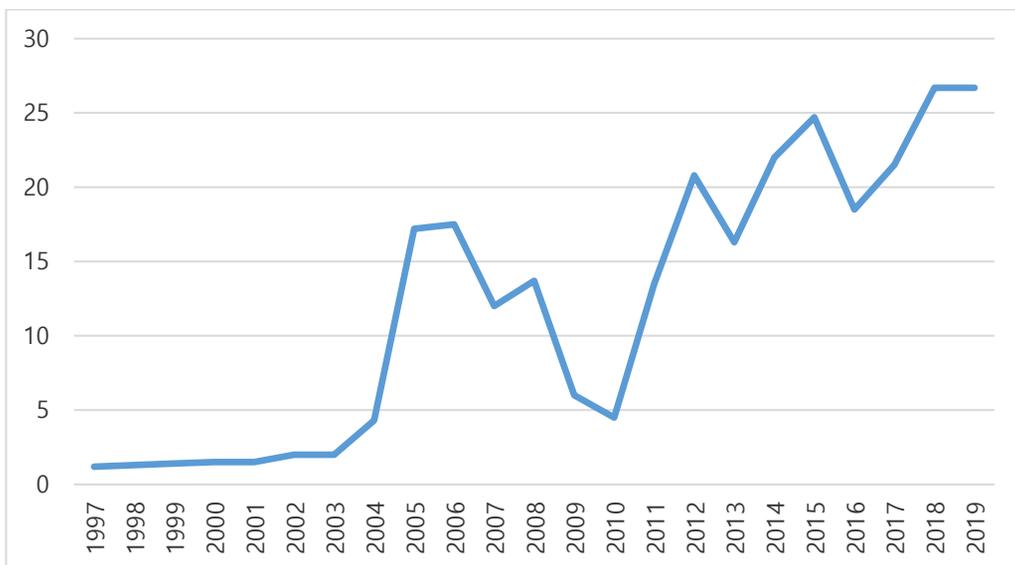
On March 22, 2018, the USTR issued a detailed report that supports a finding that “China’s acts, policies, and practices that force or pressure U.S. right holders to transfer technology and IP are unreasonable or discriminatory and burden or restrict U.S. commerce, and are thus actionable under 301(b) of the 1974 Trade Act based on an investigation in response to a Presidential memorandum (USTR Special 301 report, 2019, pp.46-47).” The four main charges, contained in the USTR’s Section 301 report and reinforced in the following report in November 2018, are that China did the following (Griswold and Boudreaux, 2019): Firstly, China required Western companies investing in China to engage in joint ventures with Chinese firms and to transfer key technology to domestic partners as a condition for doing business in China. Secondly, China imposed regulations that force US firms to license technology on non-market based terms. Additionally, China even acquired controlling interest in U.S. companies to obtain cutting-edge technologies and IP. Lastly, China engaged in or tolerated unauthorized cyber intrusions to steal U.S. technology for both military and commercial purposes. In addition, the USTR (2018) concluded that “China enacts measures that fail to reflect priority recommendations of the U.S. and others. Therefore, China remains a hazardous and uncertain environment for U.S. right holders hoping to protect and enforce their IP rights (USTR Special 301 report, 2018, p.38).” Even

the DSB that it grant the U.S.’ request and suspend its work on June 12 2019.

nowadays, the same concerns are mentioned in the 2019 Special 301 report. Accordingly, the U.S. decided on April 3, 2018 to impose tariffs worth about \$50 billion on China's forced technology transfer and intellectual property rights under Section 301. Such an attack on China is not just about improving the trade deficit but can be seen as a strong will not to lose economic and military hegemony to China through the protection of high-tech industries (Yoon, 2018).

To see at a glance U.S.' change of attitude toward Chinese intellectual property rights, the author that represents the intensity of investigation and the level of warning towards China in Special 301 report from 1997 to 2019 discretionally evaluates in figure 7. From 1997 to 2004, even though the USTR has monitored China under section 306, China was not a big concern and the U.S. government welcomed China to access the world trade regime of WTO. From 2006 to 2009, the United States went through the WTO dispute settlement system in regarding the inconsistency of China's TRIPS of copyright law and the customs measures. In the first term of President Obama, 2009 to 2013, the USTR evaluated that China's IPR had made some progress. However, from the second term, the concern of technology transfer and ICT measures was escalating. Since the inauguration of President Trump, the warning of China's inappropriate IPR system has been soaring.

Figure 7. Special 301 Investigation Intensity Trends towards China since 1997¹⁹



3-2. The proceeding of retaliation under Section 301

Although the case was proceeded under the WTO dispute settlement system, the U.S. government started the U.S.-China Tariff War in earnest by pressuring China to reduce their trade surplus with the U.S. by \$200 billion. This was succeeded by imposing high-rate tariff bombs on 1,300 Chinese high-tech products worth about \$50 billion in early April 2018. On the other hand, China retaliated back against the U.S. by imposing high-rate tariffs on 106 items, including agricultural products and automobiles whereas Japan came to an agreement with the U.S in the early disputes. The specific proceeding of the Section

¹⁹ Average of Degree of Warning = # of divided section of issues + # of pages + Level of Warning*

*Level of Warning: Simple Caution = 1, Mention WTO = 2, WTO Procedure = 3, Section 301 = 4

301 investigation is listed on Table 3 and Table 4.

Table 5. Section 301 Investigation of China’s IP and Innovation Policies

Year	Date	
2017	8.14	President Trump directed USTR to consider investigation on “China’s laws, policies, practices, or actions affecting U.S. intellectual property and forced technology transfers”
2018	3.22	USTR released Section 301 report and figured out that China’s policies were “unreasonable or discriminatory, and burden or restrict U.S. commerce.”
	7.6	United States imposed stage 1 tariffs (25% tariff on \$34 billion of U.S. imports)
	8.23	United States imposed stage 2 tariffs (25% tariff on \$16 billion of U.S. imports)
	9.24	In response to Chinese retaliatory tariffs, United States imposed stage 3 tariffs(10% tariffs on \$200 billion of U.S. imports initially set to increase to 25% on January 1, 2019)
2019	5.10	United States imposed stage 3 tariff increase to 25%
	8.23	In response to Chinese retaliatory tariffs, President Trump directed USTR to further increase tariffs on approximately \$550 billion worth of U.S. imports from China by 5%, raising stage 1-3 tariffs to 30% on October 1, 2019, and stage 4 tariffs to 15% on their effective dates (September 1, 2019 – 4A, December 15, 2019 – 4B)
	9.1	United States imposed stage 4A tariffs of 15%
	10.11	U.S. announced “Phase 1” deal, suspended tariff increase for Chinese goods and China agreed on purchasing about \$40-50 billion of U.S. agricultural products annually
	12.13	U.S.-China Announced First-phase of Trade Agreement

Source: CRS Insight (2019), Wong and Koty (2019) and compiled by the author

Table 6. Section 301 China Tariff Lists

	List 1	List 2	List 3	List 4A	List 4B
Value	\$34B	\$16B	\$200B	\$300B	
Key Categories	Machinery, Electrical Goods, Vehicles	Polymers, Plastics, Generators	Chemicals, Metal Products, Food	Food, Metal Products, Clothing	Domestic Goods, Personal Electronics
Tariff Rate	25%	25%	10% 25%	10%	10%
Effective Date	7/6/2018	8/23/2018	9/24/2018 5/10/2019	9/1/2019	Suspended

Source: Office of the U.S. Trade Representative

Regarding to the U.S. measures, on June 21, 2018, the Chinese Ministry of Commerce stated that the recent U.S. decision to impose tariffs on Chinese imports was a serious distortion of China's forced intellectual property rights and technology transfer, and that the U.S. abused its means of levying tariffs and started trade wars around the world, disrupting the global trade order and causing damage to the interests of its trading partners. On August 3, 2018, China announced that it would impose tariffs of up to 25% on 5,207 items (worth about U.S. \$60 billion) imported from the U.S. and imposed additional tariffs of 25% on U.S. automobiles and motorcycles from August 23.

After all, the purpose of such a U.S. trade conflicts with China is not just to improve its trade deficit by improving its intellectual property rights, but also as previously mentioned to protect its cutting-edge industries from losing its economic hegemony (Kang, 2018).

4 The Development of TPP, USMCA and U.S.-Japan Trade Agreement

As explained earlier, the transformation of the technology paradigm by the 4th Industrial Revolution has brought about a new issue of intellectual property rights. In particular, the U.S. has continuously complained about China's technology transfer, ICT-related policies and implementation issues, as evidenced by its recent five-year

special 301 reports. However, the U.S. reckoned that it could not respond effectively to recent issues engendering from China through the WTO regime since it was established in 1995. To make matters worse, when the WTO failed to negotiate the Doha Development Agenda due to the lack of cooperation from countries such as China and India, the U.S. wanted to approach the bilateral negotiations as an alternative, and to create intellectual property rules that reflect their taste and spread to the world, keeping China in check. Therefore, the following examine three recent representative negotiations of the U.S., the TPP, the USMCA and the U.S.-Japan agreements, and how they strengthened and developed the existing intellectual property laws.

4-1. TPP and USMCA

The genuine start of the strengthening intellectual property rights regulations of the United States is from TPP. Although the CPTPP, which took effect in place of the TPP at the moment, is come into effect without the U.S., the existed TPP contain of intellectual property laws that the U.S. strongly argued because negotiations were conducted under the U.S. leadership. The provisions of the TPP's intellectual property rights are sometimes referred to as the 'TRIPS-plus (+) Agreement' by setting a higher level of protection than the protection stipulated by the TRIPS Agreement, or by more clearly defining the enforcement provisions of intellectual property that the TRIPS

Agreement provides (Park, p.47). It went even further from the KORUS FTA, which was also called as the TRIPS-plus Agreement, by protecting 'bio-pharmaceuticals data', expanding the scope of 'enforcement', and most importantly establishing a clause on 'trade secrets' to strengthen the provisions of intellectual property rights. In addition, it appears to have checked China's behavior by enacting a prohibition on data and server localization, ensuring reasonable access and use of Internet services, and a prohibition the forced disclosure of source code.

The Obama Administration has ambitiously pushed for the TPP to check on China, which indirectly expands its influence to the Asia-Pacific region. Ironically, however, Trump declared his withdrawal from the TPP as well as proclaimed to earnestly renegotiate the NAFTA (The North American Free Trade Agreement) shortly after his inauguration. The chapter of the USMCA intellectual property rights strengthened the level of protection compared to CPTPP in that the structure and wording of the U.S.-led TPP intellectual property chapter are quite similar, but the provisions of intellectual property rights that were suspended after the U.S. withdrawal from TPP were reflected. The provisions for the protection of trade secrets and materials that were not in the KORUS FTA and the Korea-EU FTA were further enforced.

To be specific, while the chapter 17 of NAFTA dealt with intellectual property rights in a relatively brief manner, the USMCA strengthened the protection of intellectual property rights and stipulated that some regulations even than the TPP, such

as copyright protection and the monopoly of bio-pharmaceuticals data, required stronger protection and enforcement of intellectual property rights. In particular, related to 'trade secret theft' issues, the rules were strengthened its ability to protect and enforce intellectual property rights by preparing relief procedures under the Civil Penalty Act, protecting business secrets during litigation procedures, and punishing government officials who illegally disclosed business secrets (Cho, 2018).

Furthermore, since NAFTA was established in 1992 and did not address any digital-related norms, thus USMCA newly created a digital trade chapter which has not been covered in any of previous FTAs. Basically, USMCA Chapter 19 'Digital Trade' was created on the basis of the TPP Chapter 14 'Electronic commerce'. Existing 'e-commerce' can be limited to those physical goods sold online as well as pure digital products, resulting in frequent instances of non-compliance recently. However, the 'digital trade' covers a wide range of economic activities ranging from services such as *Baidu* and *Google* to medical and other professional services using the Internet (Cho et al., 2018). Hence, the USMCA is considered to have further strengthened its norms in the digital sector.

In particular, USMCA Article 19.17 (Interactive Computer Service) ensures that the Internet platform does not take civil responsibility of the behavior of Internet platform users, and Article 19.18 (Open Government Data) includes a requirement to make efforts to expand access and use of government information in relation to public data. In addition, a separate regulation was set up in the digital chapter to regulate the

frequently occurring intellectual property rights issues related to China's digital trade. Both the TPP and the USMCA stipulate that a covered person should not be required to use or install computing facilities within the territory on the condition that the parties engage in business activities in their territory, but while the TPP stipulates that exceptions to policy needs are allowed to achieve legitimate public purposes, the USMCA does not even set up this exception in Article 19.12. In relation to the disclosure of the source code, the USMCA further prohibited the government from requiring disclosure of the algorithms expressed in that source code. As such, the USMCA shows that the U.S.' attempt to transfer its domestic laws of intellectual property rights to other countries are intensifying through the trade pact. The USMCA has even strengthened its trade confidentiality clause far more than the CPTPP, which is expected to continue to stress future trade agreements. Subsequently, the U.S. is apparently intent on setting the new rules in the face of issues such as China's technological encroachment amid the acceleration of the fourth industrial revolution.

4-2. U.S.-Japan Trade Agreement

The U.S.-Japan Agreement is the first Agreement that has a separate Digital Trade Agreement. According to the USTR, the Agreement establish enforceable rules that support digitally-enabled suppliers from all kinds of industries to innovate and thrive, and in setting proper standards for other economies to emulate. The Agreement is significant to the U.S. that it is currently being negotiated for the E-commerce sector

with China and the EU at the WTO; thus, the U.S. government is able to enhance its negotiating power by strengthening the cooperative ties with Japan in the digital trade. This is plausible since the Agreement not only contains a similar level of USMCA, but it is also considered to be CPTPP-Plus level (Kim and Kwak, 2019).

The U.S. and China have been arguing in areas such as cross-border data transfer, data localization, cybersecurity, encryption technology, and source code. In such manner, the United States wanted the U.S.-Japan agreement as leverage to address broader norms in preparation for such issues with China. For instance, the Agreement allows cross-border information and data transfers free of electronic means, except in the case of achieving legitimate public policy objectives with respect to cross-border information transfers. In addition, localization of data is prohibited by banning forcing the use of local computing facilities or forcing them to install computing facilities for their operations. Disclosure of and compulsory transfer of the source code of the software is also prohibited under the condition that the software is imported, distributed, sold or used. Moreover, it includes trade norms on algorithms, financial data, taxation, encryption technology, online platforms and public data which are not covered in CPTPP, and thus achieves the highest level of digital trade liberalization among existing trade agreements (Kim and Kwak, 2019). As such, the U.S. has begun enacting digital norms more specifically than before through the U.S.-Japan digital trade agreement. The agreement can be seen as a step toward from keeping China in check and creating international digital norms as mentioned earlier. Overall, while the agreement may reflect in the direction of the liberalization of digital

trading, it is also focused on benefiting the U.S. IT industries, which can be seen as an effort to maintain America's digital hegemony over China and other emerging countries.

Based on the updated intellectual property articles and the digital trade agreements signed in the TPP, USMCA, and the latest U.S.-Japan Digital trade agreement, it is interpreted as the U.S.' move to secure its leadership in future negotiations between multiple countries of the WTO and China, trying to control data under state initiative (Kim J. K. 2019).

IV. Comparative Analysis of U.S. Trade Policy on Technology Protection

1 Similarities and Differences between Japan and China cases

By analyzing the United States' pressure of IPR on Japan and China through Special 301 reports, there are 4 significant implications that are shown on Table 7. Earlier, the paper analyzes how the United States has exerted hegemonic pressure on each Japan and China for intellectual property rights at different eras. The following is a comparative analysis of the two national cases. In particular, interesting facts could be found in four aspects: motivation, means, targeting, and reaction.

Table 7. Comparative Analysis of U.S. Trade Policy on Japan and China

		JAPAN	CHINA
MOTIVATION	Technology Hegemony	- Product - Surpassing	- Technology - Following
MEANS	Special 301	△	○
	Rule of International Trade	X	○
	Section 301	○	○
TARGETING	Sanction Target	- Semi-conductor and Supercomputer	- Huawei and products related to 'Chinese Manufacturing 2025' etc.
	Ultimate Target	- Semi-conductor and supercomputer - 3 rd industrial revolution	- ICT, digital and data based technology - 4 th industrial revolution
REACTION	Global Supply Chain	- Unilateral Dependence	- Interdependence

	Agreement	<ul style="list-style-type: none"> - Semi-conductor Agreement (1986) - Supercomputer Procure Agreement (1990) 	<ul style="list-style-type: none"> - Retaliation - still no final agreement has been settled
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The biggest difference in the comparison of the U.S. intellectual property pressure policy on Japan and China is in ‘motivation’. In case of a conflict between the U.S. and Japan, the infringement of intellectual property rights for a ‘particular product’ is the beginning of a problem, on the other hand, in the case of China, the infraction of intellectual property rights for the ‘technology’ itself, not for a particular product, is the beginning of a U.S.-China dispute. Furthermore, in the case of Japan, conflicts between the U.S. and Japan were outbreak after Japan’s semi-conductor and supercomputer industries had already surpassed the U.S. Although China has developed excessively, they still need to catch up to the level of technology development as the U.S. Then why the U.S. put pressure on China in advance? It can be seen as a preemptive response from the U.S., which has seen its position as a hegemonic power, to China, which has emerged as a new rising power.

The second different aspect is ‘means’. The United States has used three different types of means, which are ‘special 301’, ‘rule of international trade’, and ‘section 301’, to take control of the intellectual property rights issues of Japan and China. First of all, while there were disputes between the U.S. and Japan predominantly in the 1980s, the Special 301 system did not exist nor was it well organized since it was established under the Omnibus Trade and Competitiveness Act

of 1988. Therefore, Section 301 investigation on semi-conductors was not based on the Special 301 reports but initiated by the semi-conductor industries. Although the investigation on supercomputers was conducted pursuant to the Title VII provisions of the 1988 Omnibus Trade and Competitiveness Act, it barely touched upon the case. On the other hand, the U.S. has been thoroughly investigating China through the Special 301 Reports for nearly a decade, and even the Section 301 investigation, conducted in 2018, was also based on the Special 301 Reports. The second difference is the existence of the 'Rule of International Trade'. The U.S.-Japan Semi-conductor disputes first happened when the section 301 investigation was conducted in 1985. At that time, no international norms regulating the intellectual property rights were settled. Consequently, the U.S. attempted to regulate the trade deficit and Japan's infringement of intellectual property rights unilaterally through Section 301 of the 1974 U.S. Trade Act. In response to this situation, TRIPS along with WTO was established in 1995 and the U.S. has implemented regulations for strengthening Japan's intellectual property rights through the WTO dispute settlement system since then. In the case of China, even though the current international intellectual property regime exists, the Trump Administration did not hesitate to pull out the Section 301 measures again. The primary reason behind this would be that so the U.S. government conclude that the current WTO system cannot regulate China any longer.

Moreover, there are differences in the 'targets' of the two cases. Targets can be divided into 'sanction target' and 'ultimate target'. In the case of Japan, the U.S. has imposed direct sanctions on semi-conductors and supercomputers to improve each of

their trade deficits. In China, on the other hand, sanctions were imposed on overall products related to ‘China-manufactured 2025’ that included Huawei, rather than imposing sanctions on certain products. The rationale behind this decision is closely linked to the following target, ‘ultimate target’. Both disputes respectively with Japan and China are related to cutting-edge technologies. But, in the case of Japan, main technologies were traditional and physical products such as semi-conductor and supercomputer, the 3rd industrial revolution by-product, while in the case of China, it is rather untouchable technologies, ICT, digital, and data based technologies, which has been the key factors in the 4th industrial revolution. The shift and development of cutting-edge technologies is also connected to the reason of using Section 301 measure as previously mentioned. Since the TRIPS was established in 1995, the rule cannot regulate the current digital based technologies because of non-existence of the new technologies’ definition or any other norms. In other words, the rule failed to keep up with the pace of technological advancement. For instance, the cases of Uber-Didi chuxing and Wechat, Alipay represent the lack of TRIPS.

Last different aspect is the ‘reaction’. At the time of Japan and China, there are huge differences of ‘global supply chain (GSC)’. In the case of Japan, it was simply a battle between Japanese and American semi-conductors, a dispute over certain products. Furthermore, because Japan was unilaterally dependent on the U.S., it was able to impose sanctions by simply isolating Japan in the global supply chain. Thus, Japan had to sign on both Semi-conductor Agreement (1986) and Supercomputer Procurement Agreement (1990) to escape the U.S.’ sanction and isolation from the

global market. There are some reasons intertwined together such as the dependence of Japan to the U.S. in security and trade matters. However, with the diversification of the current global value chain, the global supply chain has also become more complex and sanctions have become more difficult due to its unique nature of being interdependent between the Chinese and U.S. technologies. For instance, the U.S. currently imposes direct sanctions on Huawei's products, but in fact, parts of the U.S. IT industry are also included within Huawei's products, which is also affected by sanctions and its following damages. Within this situation, China retaliates back to the U.S.' measures, which could eventually lead to a world trade war. Amidst the potential harms, there is no final agreement between the U.S. and China. Not only are sanctions amplifying this issue but the differences of the political systems as well. China is a one-party system, while the U.S. can change its president every four years. Thus, some scholars have argued that Xi Jinping may be on the run to hold on until Trump loses the election. That's why, unlike Japan, it's not about striking a deal, but it's about continuing to be retaliation, and Trump was forced to sign a small deal to show some positive results as re-election approached.

As such, there is a huge difference between the U.S.-Japan and U.S.-China disputes. What is interesting, however, is that despite the changing times, there has been no change in the U.S. pressure policy towards Japan and China. First, the U.S. is trying to maintain its hegemonic power in the high-tech industry in an attempt to keep Japan and China's corresponding high-tech industry in check. In other words, both trade pressures were based on fear of giving the upper hand in the high-tech industry

and eventually leading to weaken the U.S.' hegemony status in the global economy. To accomplish that, the U.S. takes the same retaliatory measures against Japan and China. The USTR conducted investigations under Section 301 and imposed anti-dumping duties on multiple goods for the reason of dumping on both countries, Japan and China.

U.S. pressure policies and the resulting reactions of Japan and China are visible in the following two figures. In Figure 8, in particular, the U.S. trade deficit has become an inflection point where Japan and China cross each other as of 2000.

Figure 8. U.S. Trade Deficit with Japan and China

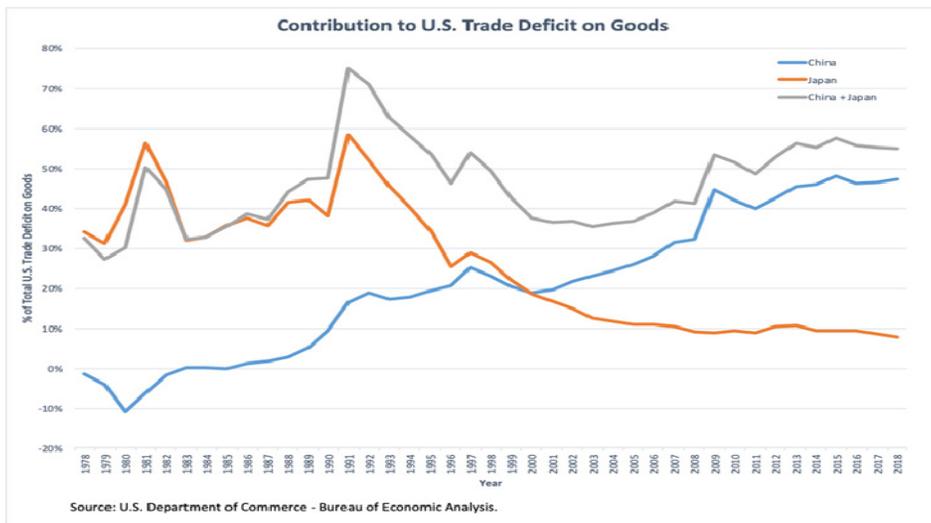
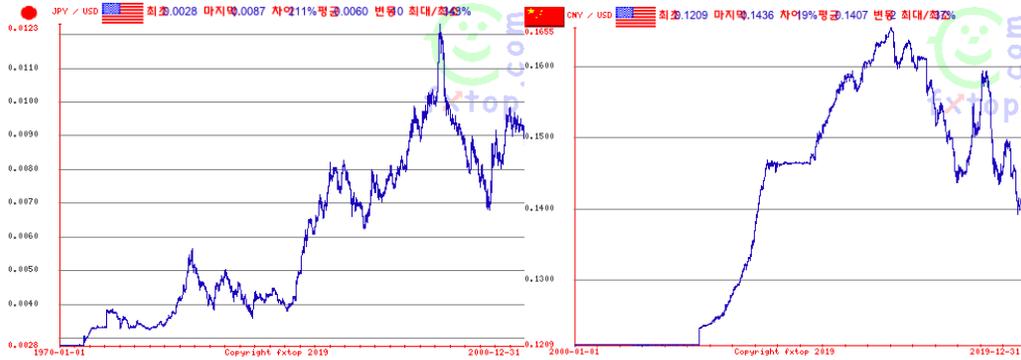


Figure 9 shows that the Japanese exchange rate fluctuated from 1970 to 2000 but continued to rise, while China's exchange rate also continues to rise in the early 2000s, but recently drops. As such, it is visible that the U.S. policy actually has a significant impact on the U.S. trade deficit and exchange rate, and why the U.S. has

exercised pressure policy.

Figure 9. JPY/USD and CNY/USD

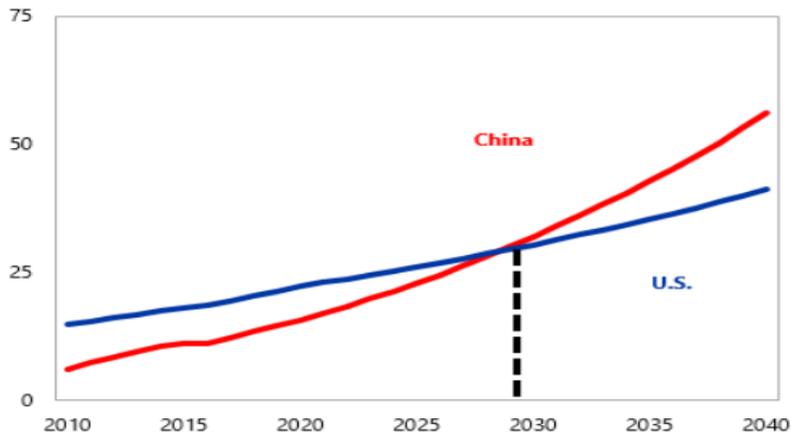


Source: Fxtop

2 US – China IPR Conflicts (US – China Small Deal)

Figure 10. GDP of China and the U.S.

(nominal GDP in USD trillions, assuming market exchange rate of 2017)



Source: International Monetary Fund (IMF)

According to the International Monetary Fund, after decades of high-speed growth, the Chinese government is now focusing on high-quality growth. The authorities now need to construct on the existing reform agenda and take advantage of the current growth momentum to “fix the roof while the sun is shining.” Currently, the Chinese government is focusing to predominate in credit growth, accelerate rebalancing efforts, increase the role of market forces, foster openness, and modernize policy frameworks. Thus, even with a gradual slowdown in growth, China could become the world’s largest economy by 2030, surpassing the United States that has been the hegemonic power for the past century (IMF, 2018).

The United States announced a so-called "first-phase agreement" days before the deadline for additional tariffs on December 15, 2019. China promised to increase imports of the U.S.’ agricultural products, expand the opening of financial markets, strengthen the protection of intellectual property rights, and improve foreign investment policies. As a result, the U.S. reached a first-phase agreement in return for a delay in imposing additional tariffs on Chinese goods and reducing some previously imposed tariffs. Against this backdrop, it was perceived as a domestic political burden as the mutual tariff retaliation between the U.S. and China has escalated the economic damage towards the two countries to an intolerable level. Another element of this issue is that President Trump needed a U.S. victory when concluding the U.S.-China trade dispute to take advantage of the coming presidential election on November 3, 2020. With China’s expected 5% reduction in its economic growth rate for 2020 due to delayed investments, it provides enough incentive for both sides to solve the conflict.

China has no other way but to solve the conflict with the U.S. to not experience more harmful effects. The USTR's representative Lighthizer, however, noted that the first phase of the agreement was complete but that the second phase of the negotiations would depend on China's implementation of the first phase, thus the uncertainty and the variable still exist.

V. Conclusion

A detailed comparative analysis of the U.S. hegemonic pressure of IPR on Japan and China between 1983 and 2019 shows that even though there are significant differences in terms of motivation, means, targeting, and the reaction of each cases, the strategy of U.S. remains the same. These U.S. policies give remarkable implications. As explained earlier, the current first phase of the U.S.-China agreement has been partially concluded where the issue arises from China taking a step back from the trade agreement. In particular, China has promised to establish norms and increase its protection strength in areas such as trade secrets, physically relieved IPR, and the enforcement of counterfeit goods, which have been continuously mentioned in special 301 reports. Hoping to remedy the technology transfer issue in the U.S.-China intellectual property dispute, the United States has urged the binding with China to enforce a deal with their unfair technology transfer practices. At the end, Beijing agreed to not impose any further pressure on foreign companies seeking to enter the Chinese market and be grant business licenses. They also promised to refrain from directing or supporting outbound investments aimed to acquire foreign technology by implementing a transparent, fair, and legitimate administrative procedure.

Interestingly, the first phase of the U.S.-China agreement is reminiscent of the U.S.-Japan semi-conductor and supercomputer agreements. The U.S. demand for the protection of its legitimate and strong intellectual property rights may seem natural in some ways, but it cannot be dismissed as such a simple matter, given that intellectual property rights are ultimately the legislative policy product of each country, and therefore depend on the country's historical background and technological development level. In the end, efforts should be made to find the common standards, while acknowledging the specific nature of the other country to some extent. However, the U.S. is now using Section 301 as a unilateral retaliatory measures, just like when there were no international norms. Out of all the reasons, the most rational reason may be the lack of international norms due to the rapidly changing development of high-tech industries.

Therefore, it seems advisable to coordinate these issues in the form of international treaties, such as WTO/TRIPS, or FTAs, rather than in the form of trade friction, such as the current attitude of the United States. In other words, international treaties and agreements between countries should set common standards and resolve disputes over violations of treaties (Kang, 2018).

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국문 초록

첨단기술의 우위는 헤게모니를 결정하는 주요 요인이다. 이에 여러 국가들은 기술 패권을 둘러싼 경쟁을 지속해왔다. 1970년대 이후, 기술의 발전을 토대로 아시아 국가는 급격히 성장하기 시작했다. 더불어 지식재산권을 체화한 상품 및 서비스가 등장함에 따라 미국 내에서는 지식재산권 침해에 대한 불만이 지속적으로 제기되고 그 대응전략의 필요성이 대두되기 시작했다. 이에 따라, 미국 정부는 지식재산권 강화정책을 펼치기 시작했다. 1989년부터는 Special 301조 리포트를 통해 외국의 지식재산권 침해 사례를 철저히 분석했고, 특히나, 지식재산권 침해에 따른 무역수지 악화 문제가 발생한 경우에는 교역 상대국의 해당 관행을 불공정 무역 행위로 간주하고, 1974년 무역법 301조를 사용하여 상대국의 수입을 제한하거나 시장개방을 압박했다. 대표적인 사례로, 일본 반도체 산업이 미국을 추월하자 앞서 언급한 301조를 사용하여 일본에 압력을 가했고 그 결과 세번의 협정을 체결했다. 하지만 분쟁해결제도를 포함해 지식재산권 분야 국제규범의 필요성을 절감하고, 적극적으로 WTO TRIPS 협정을 체결했다.

2017년 트럼프 행정부 출범 이후 미국은 중국에 대한 301조 조사를 재개시 하였는데 그 바탕에는 4차 산업혁명 첨단기술의 패러다임 변화가 있다. 지식재산권의 범위 또한 확장되기 시작하며 기존의 규범이 기술 발전 속도를 따라가지 못하면서 규제에 한계가 생겼고 그사이 중국이 무서운 속도로 발전하며 미국은 자국 첨단기술 탈취와 강제기술이전 방지를 위해 중국과 무역전쟁을 벌이고 있다. 이처럼, 미

국은 두 국가, 일본과 중국에 대해 지식재산권 침해를 이유로 동일하게 301조 전략을 내세웠지만, 각기 다른 동기, 수단, 목표를 가지고 통상 압박 정책을 펼쳤다. 하지만, 이러한 양자 압박 정책은 결국 더 큰 나비효과를 불러올 것이고 견고한 지식재산권 규범을 세우기 위해서는 복수국 혹은 다자간의 협상을 추진해야 할 것이다. 따라서, 본 논문에서는 1989년부터 2019년까지 미국이 두 국가에 대해 조사한 Special 301조 리포트를 분석하여 미-일과 미-중 분쟁의 추이를 자세히 분석하고 글로벌 기술 패러다임 변화에 따른 패권경쟁을 살펴볼 것이다. 또한, 두 사례 간 유사점과 상이점을 비교하고 미국의 정책 기조에 대한 전망과 향후 지식재산권 규범 성립의 방향성을 제시한다.

주제어 : 지식재산권, 미-일, 미-중, 301조, 기술 패러다임

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