

New PAIP Act Requires U.S. President to Annually Report to Congress on Foreign Nationals Involved in the Theft of Trade Secrets from the United States, with Mandatory Sanctions to Follow

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The [Protecting American Intellectual Property Act of 2022 \(“PAIP”\)](#) became law on January 5, 2023, establishing a new enforcement procedure to deter the theft of trade secrets from the United States by foreign actors. PAIP aims to enhance the protection of U.S. trade secrets and prevent the unauthorized flow of trade secrets from the U.S. to foreign countries by requiring the President to sanction foreign bad actors, in addition to the civil and criminal liability that they may also face.

PAIP’s key focus is to prevent trade secret theft by foreign actors. Under the law, the President must annually provide Congress with a list of foreign entities and individuals who:

Have knowingly engaged in, or benefitted from, significant theft of trade secrets of a U.S. person that “is reasonably likely to result in, or has materially contributed to, a significant threat to the national security, foreign policy, or economic health or financial stability of the United States”; Have provided significant financial, material, or technological support for, or goods or services in support of, such trade secrets theft; Are owned or controlled by a foreign entity identified under the first two clauses; or Are the CEO or a board member of any foreign entity identified under the first two clauses.

Unlike charges brought by a government agency, the determination of whether a foreign entity or individual is subject to reporting is determined solely by the President. In the coming months, U.S. businesses should stay informed on how the President determines the list as there are currently no details provided in PAIP. It appears that no more specific or additional predicate findings are required under PAIP for the President to add a party to the list.

If a foreign **entity** is identified in the PAIP report to Congress “the President shall impose 5 or more”

of the 12 sanctions listed in the law on the foreign entity. These sanctions include *inter alia*: blocking and prohibiting the foreign entity's transactions and interests in property; prohibiting U.S. financial institutions from making loans or providing credit to the entity; opposing loans from international financial institutions that would benefit the entity; designating the entity on the Commerce Department's Entity List; prohibiting the U.S. government from procuring goods or services from the entity; prohibiting investments in the entity; and denying entry visas to corporate officers or principals or shareholders of the entity. (Notably, PAIP states that it does not authorize or require sanctions on the importation of goods.)

If a foreign **individual** is identified in the PAIP report, unless a national interest waiver applies, the President is required to impose sanctions blocking and prohibiting the individual's transactions and interests in property and barring the individual from entry into the United States.

While there is no defined process for U.S. businesses to participate in the identification of foreign actors that violate PAIP, there are likely to be communication channels available to facilitate the business community's input (including through members of Congress). How much PAIP will aid in protecting the trade secrets of U.S. businesses is yet to be seen, but at the very least, consulting the PAIP list regarding potential business partners should be included in the due diligence process of any U.S. business.

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