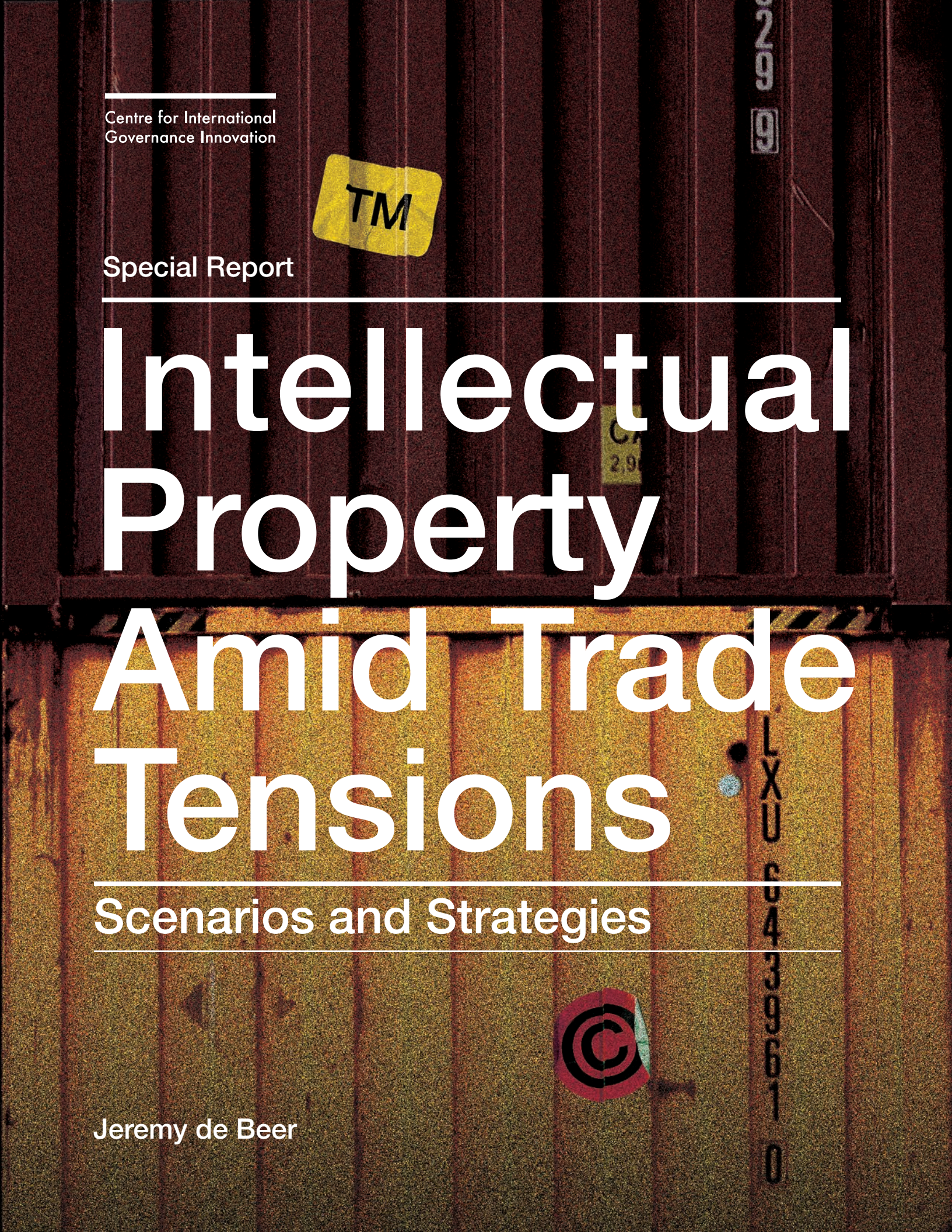

Centre for International
Governance Innovation

Special Report

Intellectual Property Amid Trade Tensions

Scenarios and Strategies

Jeremy de Beer

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67 Erb Street West
Waterloo, ON, Canada N2L 6C2
www.cigionline.org

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About the Author

Jeremy de Beer is a CIGI senior fellow, a full professor in the Faculty of Law at the University of Ottawa and a faculty member at the Centre for Law, Technology and Society. He holds the Tier 1 Canada Research Chair in Innovation and Intellectual Property Law, where he leads research on improving intellectual property frameworks both nationally and internationally.

Jeremy is also a senior research associate at the University of Cape Town and a visiting professor at the University of Johannesburg. His interdisciplinary scholarship spans law, political science, international relations, public policy and technology, and has shaped legal and policy debates in Canada and around the world.

A practising lawyer and expert adviser, Jeremy has argued numerous cases before the Supreme Court of Canada, testified to parliamentary committees, and guided Canadian departments and agencies on technology, trade and innovation policy. He is recognized worldwide for his law and policy contributions across Africa, Southeast Asia, Latin America and the Caribbean. Globally, he has advised governments, international organizations and multilateral bodies, including the African Union, the Association of Southeast Asian Nations, the European Commission and multiple agencies of the United Nations.

Jeremy is the co-founder and co-lead of an award-winning research partnership that connects scholars across Canada and multiple African countries to support high-impact interdisciplinary and international research, the Open African Innovation Research (Open AIR) network. His contributions have earned national and global recognition, including a 2023 Social Sciences and Humanities Research Council Impact Award and election as a Fellow of the Royal Society of Canada in 2024.

Jeremy holds a B.A. and an LL.B. from the University of Saskatchewan and a B.C.L. from the University of Oxford. He has authored and edited multiple books, including *Innovation and Intellectual Property: Collaborative Dynamics in Africa*, and has published more than 50 peer-reviewed articles and book chapters.

Acronyms and Abbreviations

AI	artificial intelligence
BRICS	Brazil, Russia, India, China and South Africa
CETA	Canada-European Union Comprehensive Economic and Trade Agreement
CFTA	Canadian Free Trade Agreement
CIPO	Canadian Intellectual Property Office
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
CUIP	charges for the use of intellectual property
CUSMA	Canada-United States-Mexico Agreement
DSU	Dispute Settlement Understanding
GIs	geographical indications
IEEPA	International Emergency Economic Powers Act
IP	intellectual property
ISED	Innovation, Science and Economic Development Canada
NAFTA	North American Free Trade Agreement
OECD	Organisation for Economic Co-operation and Development
R&D	research and development
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property
USTR	United States Trade Representative
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Executive Summary

This special report explores how intellectual property (IP) is implicated in the dynamics of trade tensions, even a trade war, and how trade conflict, in turn, reshapes the policy and institutional landscape for IP. The analysis is organized around three scenarios: rebalancing, renegotiation and restructuring. It identifies four strategic priorities emerging from that analysis: strengthening Canada's statistical evidence base for IP policy making; using domestic and international legal flexibilities responsibly and in coordination with allies; reclaiming policy space in trade negotiations; and recalibrating innovation and industrial policy at home.

The special report begins by grounding the analysis in historical and new baseline economic data. Canada's IP trade deficit is often mentioned but seldom documented statistically. This report begins to build a stronger evidence base for IP-related trade policy making by quantifying economic impacts using balance-of-payments data. While such data provides only a partial picture of challenges and opportunities, it is directionally indicative, provokes critical questions and reveals the kind of information policy makers need more of. The best available data shows that in 2024, Canada ran an IP services deficit of $16.8 billion.[1] Since the signing of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS),[2] Canada's deficit has steadily widened, accumulating to nearly $200 billion and raising questions about how Canada has truly benefited from the international IP system it has supported abroad. The analysis concludes that investment is urgently needed in Canada's institutional capacity to monitor, model and interpret the economic impacts of IP policy. Without reliable data and benchmarks, we cannot know, for example, how IP policy may support Canada's goal of doubling non-US exports of goods and services over the next decade. Strengthening the IP-related data collection and analytical capacity of Statistics Canada, Innovation, Science and Economic Development Canada (ISED), the Canadian Intellectual Property Office (CIPO) and related agencies is essential to producing the evidence-based strategy Canada requires to navigate rapidly shifting global and geopolitical conditions.

A first scenario covered in this special report involves IP-related rebalancing. IP becomes implicated in a trade war when it is treated as

1 All dollar figures in Canadian dollars unless otherwise indicated.

2 *Agreement on Trade-Related Aspects of Intellectual Property Rights*, 15 April 1994, 1869 UNTS 299 [*TRIPS Agreement*], online: <www.wto.org/english/docs_e/legal_e/27-trips_01_e.htm>.

a site of countermeasures. Canadian law contains tools that could be mobilized in this context, including compulsory licensing under the Patent Act and copyright flexibilities, for example. There is also a seldom discussed but potent power to suspend foreign IP rights to protect Canada's interests under trade agreements: subsection 53(2) of the Customs Tariff.[3] At the multilateral level, World Trade Organization (WTO) rules permit the suspension of TRIPS obligations as a form of cross-retaliation, though only with authorization and within the constraints of a dispute settlement system that is itself under strain. These measures are legally possible but politically fraught, and their practical value relative to tariffs or export restrictions is uncertain. In sum, the special report highlights that Canada already possesses both domestic and international legal tools to defend its interests, but that their most effective use depends on principled coordination with allies. Upholding lawful conduct, even amid rule breaking by others, is both a principled and strategic necessity for maintaining Canada's credibility and long-term leverage.

A second scenario relates to renegotiation of IP commitments to other countries via trade agreements. The IP chapter of the Canada-United States-Mexico Agreement (CUSMA)[4] represented a recent peak in US negotiating ambition. The 2026 review will likely be more adversarial than the original talks. Anticipated areas of contention include digital regulation, platform governance, trade secrets and geographical indications (GIs). Canada faces the added challenge of balancing American and European demands, particularly as Canada-European Union Comprehensive Economic and Trade Agreement (CETA) commitments on GIs and EU positions on data governance and digital regulation intersect with US priorities. How Canada manages these overlapping pressures will shape both its trade relationships and its domestic approach to IP. The special report cautions that Canada's past trade deals have often locked in commitments that outpaced national interests and restricted domestic policy flexibility. A CUSMA review offers an opportunity to correct course. Canada must approach future negotiations with discipline — rejecting the simplistic assumption that "stronger" IP rights are automatically better for Canada — and resist measures that primarily benefit foreign rights holders. The prime directive should be to preserve the flexibility

3 *Customs Tariff*, SC 1997, c 36, s 53(2), online: <https://laws-lois.justice.gc.ca/eng/acts/c-54.011/page-14.html>.

4 *Canada-United States-Mexico Agreement as amended by Protocol of Amendment to the Agreement between Canada, the United States of America, and the United Mexican States*, 10 December 2019, Can TS 2020 No 6 [*CUSMA*]. The United States-Mexico-Canada Agreement is called "CUSMA" in Canada and "T-Mex" in Mexico (see https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement; www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/index.aspx?lang=eng; and www.gob.mx/t-mec).

to implement IP and related policies tailored to a uniquely Canadian innovation system.

A third theme of the special report explores how IP is implicated in domestic economic restructuring. Federal jurisdiction dominates the design of IP statutes, but provinces play a central role in commercialization policy, institutional incentives and funding frameworks. The creation of agencies such as IP Ontario illustrates how provincial initiatives may interact with federal funders' and researchers' priorities. Internal trade policy work has so far neglected IP, leaving gaps in coordination. Overall, the report identifies that Canada's problem is not a lack of IP creation opportunities but weak absorptive capacity and poor translation of public research into competitive advantage. Building a nationwide innovation strategy requires better coordination between levels of government, stronger translational infrastructure and policies that preserve openness rather than prioritizing IP accumulation for its own sake. The special report emphasizes that subsidizing IP asset portfolio building is not a substitute for innovation, especially because those Canadian portfolios are so often acquired by foreign actors. The challenge is to strengthen Canada's absorptive capacity — the ability of firms to use and build on existing IP — through coherent policy coordination and investments linking research and industry. Rather than competing in a system structurally tilted against it, Canada should capitalize on its comparative advantages: world-class research institutions, open scientific networks and public-private collaboration.

Taken together, these three themes demonstrate how IP is not peripheral to trade wars but deeply entangled in them. IP can become a locus of rebalancing, a recurring focal point in renegotiations and a lever in restructuring domestic innovation systems. The statistical evidence makes clear the costs of Canada's current position and the new data gathering needed for the future. The analysis points to the institutional questions and policy choices that must be confronted if Canada is to navigate a world where IP and trade conflict are increasingly intertwined.

Introduction: A Fluid and Fragmented Geopolitical Landscape

Relations between the United States and its trading partners have entered a period of unprecedented economic conflict. Protectionist attitudes and policies have been seen before, but never has an established economic order been so quickly and chaotically altered. The situation is evolving rapidly, with policy shifts, new tariffs or other measures emerging almost weekly.

It remains unclear whether this trade war will be a contained dispute driven by one country or whether it will escalate into a broader, long-term and more systemic global economic realignment. Even the question of who the combatants will be is uncertain. Initial rounds of US trade action primarily targeted Canada, Mexico, China and the European Union. Next were blanket tariffs on imports from every country and individual "reciprocal" tariffs on many countries (The White House 2025b). The BRICS economies of Brazil, Russia, India, China and South Africa have also been singled out as direct or indirect targets. Yet the legal foundations,[5] as well as long-term alliances and fractures, that will define this trade war are yet to solidify. It is evident, however, that the landscape is shifting in fundamental ways, and trade relations that once seemed stable are now at risk of collapse or transformation.

In this conflict, IP law and policy have so far been peripheral issues. Much of the discussion has focused on tariffs imposed on physical goods. IP, however, is arguably as relevant to international trade as raw materials, manufactured products and agricultural commodities. IP is one of the most valuable assets in the twenty-first-century global economy. Box 1 shows how IP offers economic value in three primary ways: as asset stocks, monopoly value-add and licence fees. These value-generating features of IP often overlap. Systems and data to track flows of value across borders are described in more detail in the section on "IP Flows, Trade Balances and Economic Impacts."

5 See *Learning Resources, Inc, et al, Petitioners v Donald J Trump, President of the United States, et al*, No 24-1287 (US Sup Ct, 20 February 2026); *International Emergency Economic Powers Act (IEEPA)*, Title II, Pub L No 95–223, 91 Stat 1626 (codified at 50 USC §§ 1701–1707 (1977)). The Supreme Court of the United States decided that the IEEPA does not authorize the president to impose tariffs.

The rules governing patents, copyrights, trademarks, trade secrets and other IP rights have long been a source of international tension, even in times of relative stability. In a trade war, IP takes on even greater importance as a potential target for economic retaliation, a strategic bargaining chip and a key determinant of national prosperity. These financial stocks and flows, which underpin the business models of some of the world's largest firms, represent a significant share of international trade and investment. Both the ownership of IP and the regulation of these financial flows become potential sites of conflict as the data-driven economy grows in importance.

Box 1: Three Forms of Value from IP Asset Stocks and Financial Flows

- **Asset stocks:** IP exists as an asset stock, with firms accumulating portfolios of rights that serve as intangible capital. These asset stocks, among other things, can facilitate secured financing, signal value to investors and be quantified via market capitalization or other firm valuations. IP assets or entire portfolios may be bought and sold in ways similar to other assets, either individually or in groups of assets. IP assets may also be acquired through investments, mergers or acquisitions of IP-owning firms.
- **Monopoly value-add:** The rights represented by IP asset stocks confer limited monopoly powers or freedom to operate, allowing firms to capture rents in the form of higher prices or profit margins for goods and services incorporating IP-protected elements. With goods, for example, IP could protect manufacturing or other business processes, product functionality or design, packaging or other branding elements — any of which could contribute to a portion of prices or margins.
- **Licence fees:** IP generates revenue streams through licensing agreements and cross-border royalty payments, which are formally categorized as part of trade in services. These royalties may be attributable specifically to patents, design, trademark or copyright licensing. Royalty-related or IP-based fees might also be embedded in charges for the use of cloud software, audiovisual services or franchise fees, for instance.

Governments have a variety of tools at their disposal to shape IP policy in response to trade pressures. Some of these involve altering enforcement

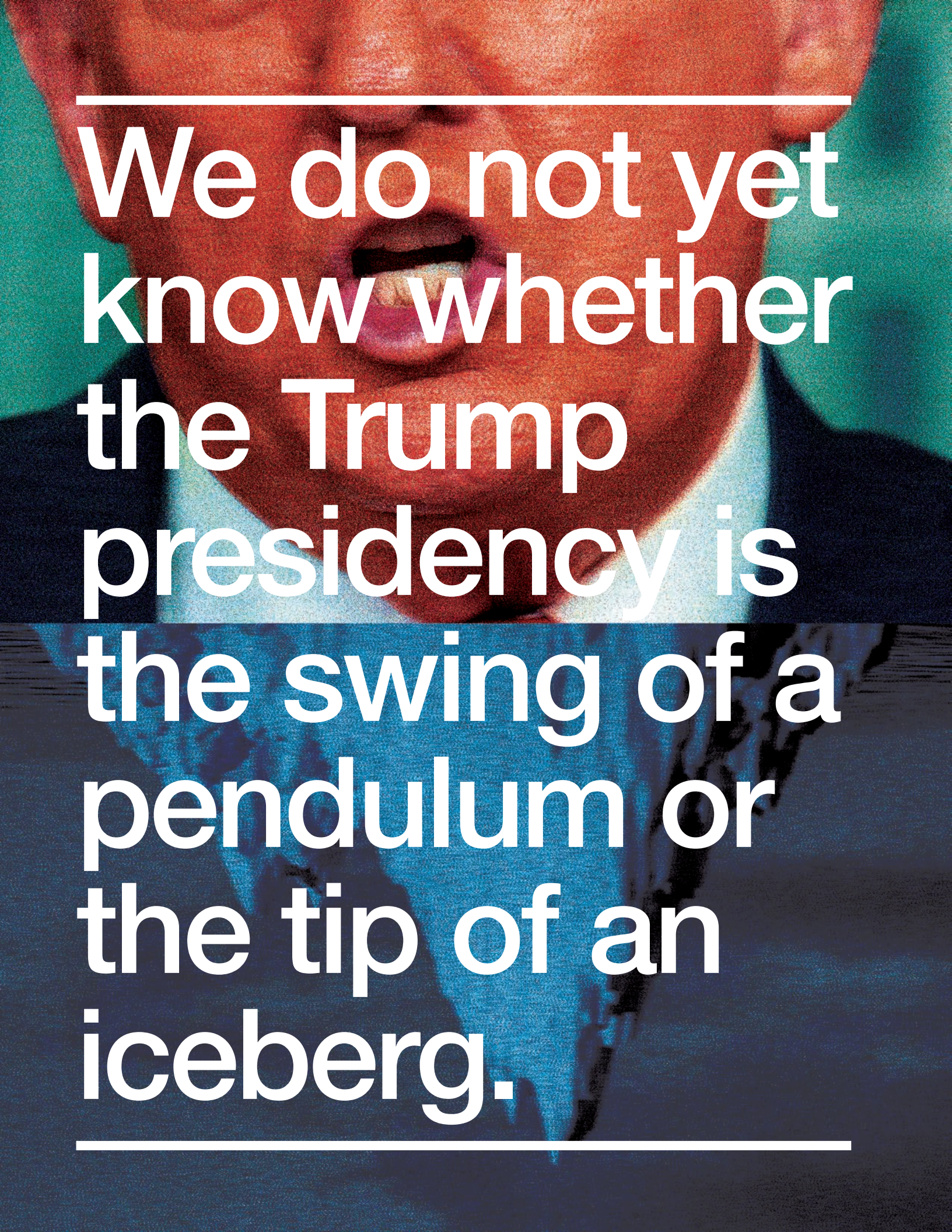
mechanisms, such as tightening or loosening patent protections, adjusting compulsory licensing rules or changing the way courts handle IP disputes. Others take the form of economic measures, such as imposing taxes on royalty payments, restricting foreign ownership of patents or establishing new barriers to technology transfer. Historically, IP has not been deployed as an explicit trade weapon in most disputes. But, as a trade war escalates, it is worth asking how IP might be drawn into and impacted by broader conflicts.

The Canada-US dimension of this trade war is particularly significant because of the close integration of the two economies and the deep legal and institutional ties that have historically governed their trade relationship. The current disruptions to this relationship are still in the early stages. Although pundits may have opinions or predictions, the chaos suggests it is impossible to know whether measures that have been introduced so far are part of a short-term negotiating strategy, or whether they signal a more permanent departure from past trade norms that could transcend any one presidential term. We do not yet know whether the Trump presidency is the swing of a pendulum or the tip of an iceberg.

What already seems clear is that the imposition of tariffs on goods is only one aspect of a much larger transformation in US trade policy. The shift reflects a growing disregard for the rules-based international system that has governed global trade for decades. The second Trump administration's willingness to impose tariffs unilaterally, in defiance of trade agreements and established dispute resolution mechanisms, is not an isolated act but part of a larger pattern of economic nationalism and unilateralism. This pattern extends beyond trade to include broader foreign policy and security decisions that challenge the stability of international alliances and institutions.

The centrality of IP in a broader conflict stems from the structure of the US knowledge economy. The strategic decisions made in the 1980s and 1990s to reorient the US economy away from manufacturing and toward knowledge-intensive sectors established the foundation for US economic dominance in the decades that followed. But the same shift also created a critical vulnerability. The value generated depends on legal rights, and the key to preventing other countries from exploiting US-owned knowledge assets is respect for international rules.

Of course, other countries cannot simply replicate the US innovation ecosystem by appropriating patents, trade secrets or copyrighted material.


We do not yet know whether the Trump presidency is the swing of a pendulum or the tip of an iceberg.

The dominance of the US technology sector reflects not just its IP portfolio but also a complex infrastructure of capital, talent and institutions. However, if respect for US IP rights begins to erode — because other countries and their citizens no longer feel bound to enforce those rights in a global system that the United States itself has undermined — then the very foundations of US strength in the knowledge economy will begin to erode, and potentially quickly. In this sense, the United States faces a paradox: the greater its dependence on IP for economic power, the more it stands to lose if global respect for IP norms declines.

Thus, as a trade war continues to unfold, it will be necessary to consider not only the immediate effects of tariffs but also the broader legal and economic changes that may result from this period of disruption. The next section of this special report examines the rules-based IP order, tracing the historical trade-offs that led to the negotiation of the WTO TRIPS Agreement and its subsequent entrenchment through regional and bilateral trade agreements containing IP provisions. It also provides an overview of the economic impact of IP rights in international trade, analyzing the balances of trade in IP between Canada and the United States, between Canada and the rest of the world, and between the United States and its global trading partners. This foundational discussion will set the stage for an exploration of how IP functions within the broader context of a trade war.

The following section analyzes three major ways in which IP interacts with international trade during or after a trade war. First, IP rights may serve as a tool for economic rebalancing, particularly through the suspension or limitation of foreign IP protections in response to other trade measures such as tariffs on goods. Such measures have been recognized in past trade disputes and present the potential for cross-retaliation in the current or future trade wars.

Second, IP is relevant to the negotiation or renegotiation of trade agreements to settle trade battles or perhaps an entire trade war. This may be achieved through adjustments to CUSMA or new frameworks that emerge to address escalating trade grievances at and about the WTO. IP has historically been a contested issue in trade negotiations, and any resolution to the current trade war may involve amendments to existing agreements or the establishment of new IP norms.

Third, IP plays a central role in the broader restructuring of an economy in response to trade war pressures. As Canada navigates the challenges of economic uncertainty and shifting trade relations, it will need to develop policies that ensure the retention and strategic deployment of IP

rights within the country. This includes fostering domestic innovation, preventing the loss of valuable IP to foreign ownership, and leveraging IP policy to advance broader national economic and innovation objectives.

The final section of this special report synthesizes these insights, drawing conclusions about the strategic role of IP in trade war dynamics and outlining potential pathways for Canada to strengthen its position in an increasingly unstable environment.

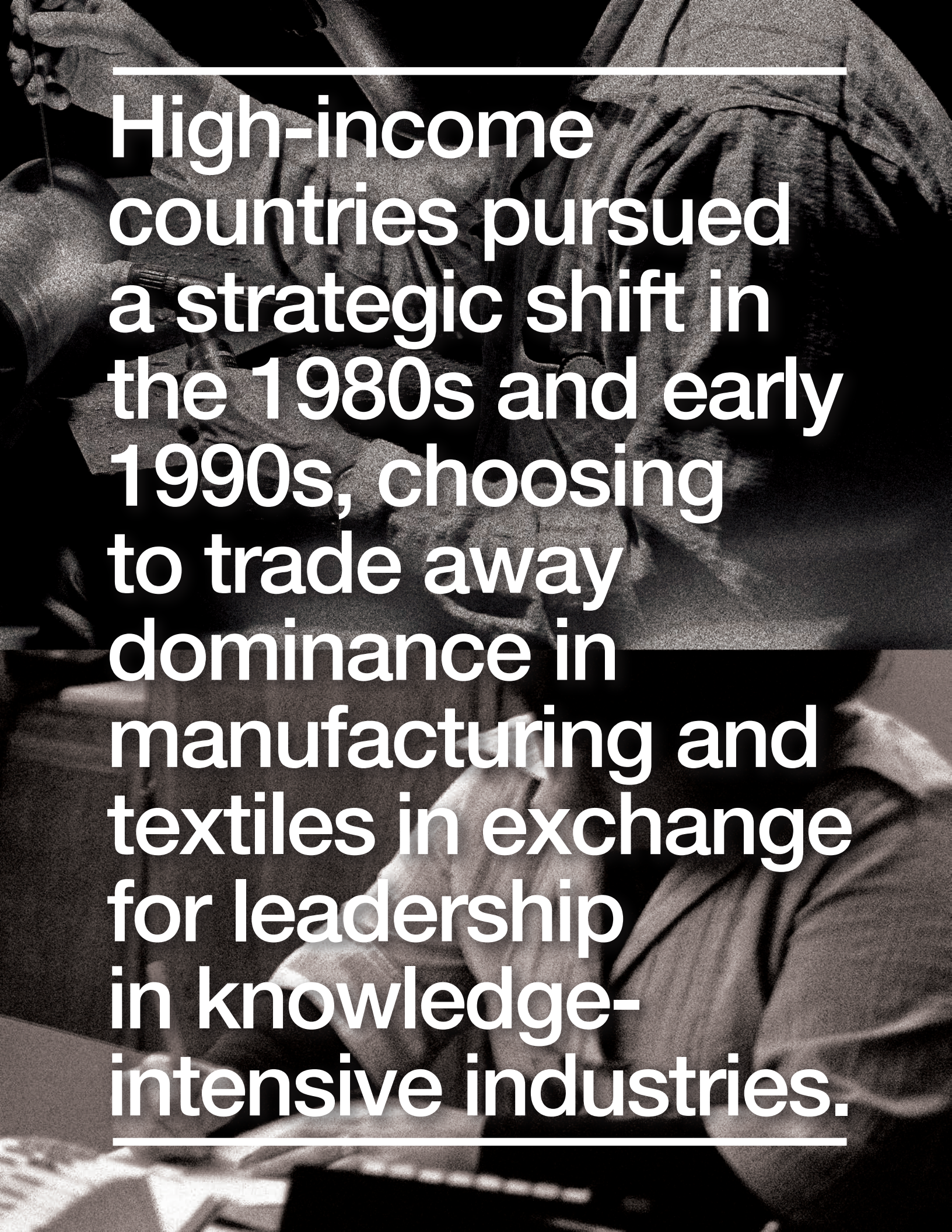
The IP Rules-Based Order and Its Economic Impacts

Trading Manufacturing and Textiles for a Knowledge-Based Economy

The predominant framework governing IP rights was solidified with the adoption of the TRIPS Agreement in 1994. The TRIPS framework marked a fundamental shift in global trade priorities, embedding IP within the broader architecture of international commerce. The academic literature has extensively documented this transition. Peter Drahos and John Braithwaite (2002), in their book *Information Feudalism: Who Owns the Knowledge Economy?*, described how the TRIPS Agreement was the product of intentional strategic decision making and intense lobbying efforts. Books by other scholars, including Susan K. Sell (2003), Christopher May and Susan K. Sell (2006), Carolyn Deere (2008), Jayashree Watal and Anthony Taubman (2015), and Daniel J. Gervais (2021), have further explored geopolitical, economic and legal dimensions of the TRIPS negotiations, particularly how they shaped the development of IP norms in emerging economies.

The agreement was a deliberate restructuring of the global economy that prioritized IP as a key driver of economic growth.[6] High-income countries, particularly the United States, members of the European Community, Japan and Canada (a group known as "the Quad"), pursued a strategic shift in the 1980s and early 1990s, choosing to trade away dominance in

6 The types of substantive IP rights covered by the WTO TRIPS Agreement include copyright and related rights; trademarks; GIs; industrial designs; patents; layout designs (topographies) of integrated circuits; and protection of undisclosed information (trade secrets).



High-income countries pursued a strategic shift in the 1980s and early 1990s, choosing to trade away dominance in manufacturing and textiles in exchange for leadership in knowledge-intensive industries.

manufacturing and textiles in exchange for leadership in knowledge-intensive industries. This transition was particularly pronounced in pharmaceuticals, biotechnology and information technology, where IP rights became the foundation for market control. Initially, business leaders from corporations such as IBM and Pfizer were the chief proponents of this shift, and their companies and entire industry sectors the beneficiaries. In the United States especially, this strategy facilitated the rise of the technology industry, from semiconductors to the internet economy, ultimately leading to the dominance of so-called digital giants such as Amazon, Apple, Google, Meta and Microsoft.

The restructuring of global trade around IP had far-reaching consequences. An objective of the TRIPS Agreement, stated in article 7, is to promote technological innovation and the transfer and dissemination of technology. Scholars such as Keith E. Maskus (2000) foreshadowed impacts on foreign direct investment, technology transfer and pricing under enhanced market power. Yet one of the most significant impacts was the offshoring of manufacturing. While the widespread relocation of industrial production to countries such as China and India was, perhaps, not high-income countries' intended consequence of the negotiations, it was not an unanticipated outcome. By prioritizing IP and the knowledge economy to move up the global value chain, promote knowledge-intensive activity and improve earnings for capitalists and workers, US and aligned policy makers accepted that low-value-added manufacturing activity could and likely would shift overseas. That was the deal that US officials now seem intent on unilaterally undoing.

The shift toward an IP-based trade regime also required profound changes in how IP was perceived and enforced in countries that had historically taken different approaches to innovation and technology sharing. Before the TRIPS Agreement, countries such as Brazil and India had relatively weak patent protections, particularly in pharmaceuticals and other high-value industries, allowing them to produce generic versions of essential medicines and technology products at low cost. The TRIPS Agreement imposed a new set of global norms that required these countries to strengthen IP protections, often in ways that benefited multinational firms headquartered in the United States and Europe.

As the global trade environment enters a new period of instability, the future of the TRIPS system is uncertain. If America's new approach continues, one of the key questions will be whether IP remains protected under the existing legal frameworks or whether countries begin to use IP as a tool of economic retaliation. If the rules-based order weakens further, will governments continue to respect rights and royalty flows, or

will they take unilateral actions to access and exploit foreign knowledge assets? Canada and like-minded countries must consider strategic options in a world where foreign enforcement of IP rights may no longer be guaranteed.

IP Flows, Trade Balances and Economic Impacts

A major challenge facing IP and trade policy makers is the dearth of data to underpin strategic decisions. Few experts even — academics, lawyers, economists and other advisers in the fields of either trade or IP — have a solid grasp on how trade in knowledge can be measured to inform policy. Yet such data and understanding are crucial if policy makers are to act strategically vis-à-vis IP issues triggered by intensifying trade conflicts. The WTO's recent volume, *Trade in Knowledge: Intellectual Property, Trade and Development in a Transformed Global Economy*, edited by Taubman and Watal (2022), synthesizes contemporary research on how cross-border knowledge flows operate, how they are measured, and how they shape trade and global value chains.

As mentioned above in this special report (see Box 1), IP moves across borders through several distinct but interconnected channels. IP can add value embedded in traded goods and services, be licensed through royalty payments, or be transferred through changes in ownership of the underlying rights (Magdeleine and Maurer 2022, 172). As Taubman (2022, 32–33) observes, the digital transformation of global commerce has dematerialized these exchanges, shifting the focus of trade analysis from the physical goods that once embodied intellectual value to the intangible rights now circulating independently through digital and contractual transactions.

When the TRIPS Agreement was negotiated, "trade-related" aspects of IP meant copyrighted materials on compact discs, software shipped in boxes, patented machine parts or medicines, and trademarks on branded merchandise. Now, IP-related trade involves streaming digital content, cloud-based data services, complex supply chains and franchise fees. In such an environment, the flows associated with licensing generate the most consistent, reportable monetary transactions. This data set of "charges for the use of intellectual property," or CUIP (covering royalties, licences

and similar payments),[7] remains the most comparable and systematically available evidence of cross-border knowledge trade, though still capturing only part of the overall picture (Magdeleine and Maurer 2022, 178–81).

Even these recorded flows must be interpreted with caution. Joscelyn Magdeleine and Andreas Maurer (ibid., 186–87) note that intra-firm transactions are frequently shaped by transfer pricing, tax planning and the use of special-purpose entities designed to optimize corporate tax outcomes, obscuring the true economic ownership and location of IP. For example, Thomas Neubig and Sacha Wunsch-Vincent (2022, 205) found that a one-percentage-point reduction in the effective tax rate on IP income increases the ratio of IP receipts to prior-year R&D expenditures by roughly five–seven percent. Further, they estimate that such tax-induced distortions could collectively misstate global trade in CUIP by more than one-third, with the biggest impact in high-tax jurisdictions (ibid., 210).

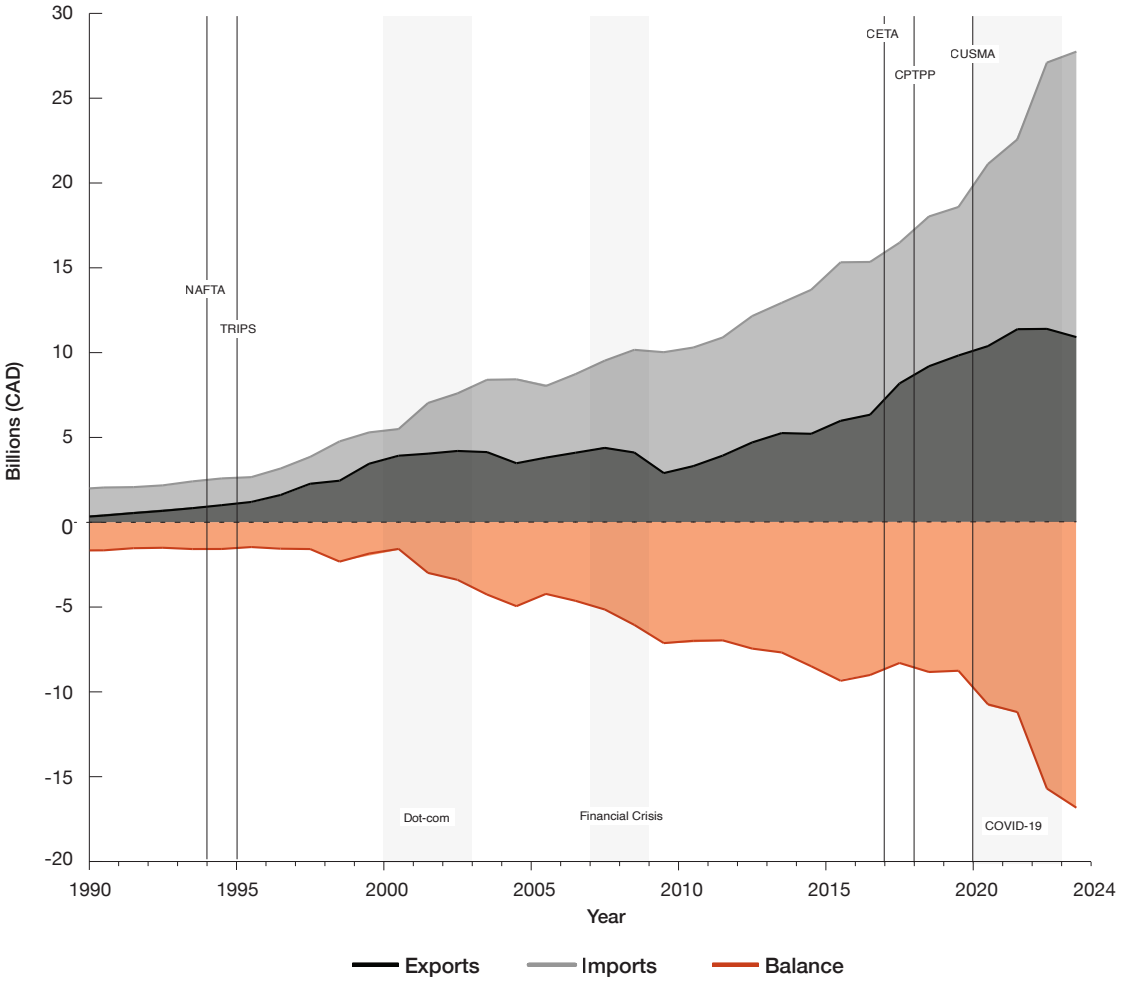
Notwithstanding the data caveats, Canada has long operated as a net importer of IP, paying more in royalty and licensing fees to foreign rights holders than it receives from foreign users of Canadian-owned IP. Canada's deficit in charges for the use of IP has grown substantially over recent decades, as demonstrated by Figure 1 showing IP exports, imports and balances since the signing of the TRIPS Agreement.

Canada's negative IP trade balance was $16.8 billion in 2024, the latest full year for which data has been released (Statistics Canada 2025a). This deficit was larger than any other negative balance related to international commercial services. For comparison, in the same year, Canada ran positive balances of $6.3 billion in financial services; $18.3 billion in computer and information services; and $11.8 billion in R&D; and negative balances of $4.9 billion in insurance services; $6.5 billion in management services; and $6.1 billion in advertising and related services (ibid.).

To give context to these figures, Canada's total trade deficit for all goods and services in 2024 was $5.7 billion (Statistics Canada 2025b, 2025c, 2025d). That is, Canada's IP trade deficit is nearly triple its total trade deficit. Excluding energy, Canada's total trade deficit was $140 billion in 2024, of which the IP trade deficit was about 12 percent (ibid.).

7 The *Balance of Payments Manual* (International Monetary Fund 2009) and the *Manual on Statistics of International Trade in Services 2010* (UN Department of Economic and Social Affairs 2012) are both used to develop and consolidate guidelines for the compilation of consistent, sound and timely balance of payments statistics. Together, they are the standard frameworks for developing statistics of transactions and positions between economies. These are useful not only for statistical compilers but also for international negotiations on trade in services. This data matters to ensure informed decisions are made in creating legal provisions for trade deals. IP-related licensing includes the categories of computer and informational services, audio-visual services and CUIP.

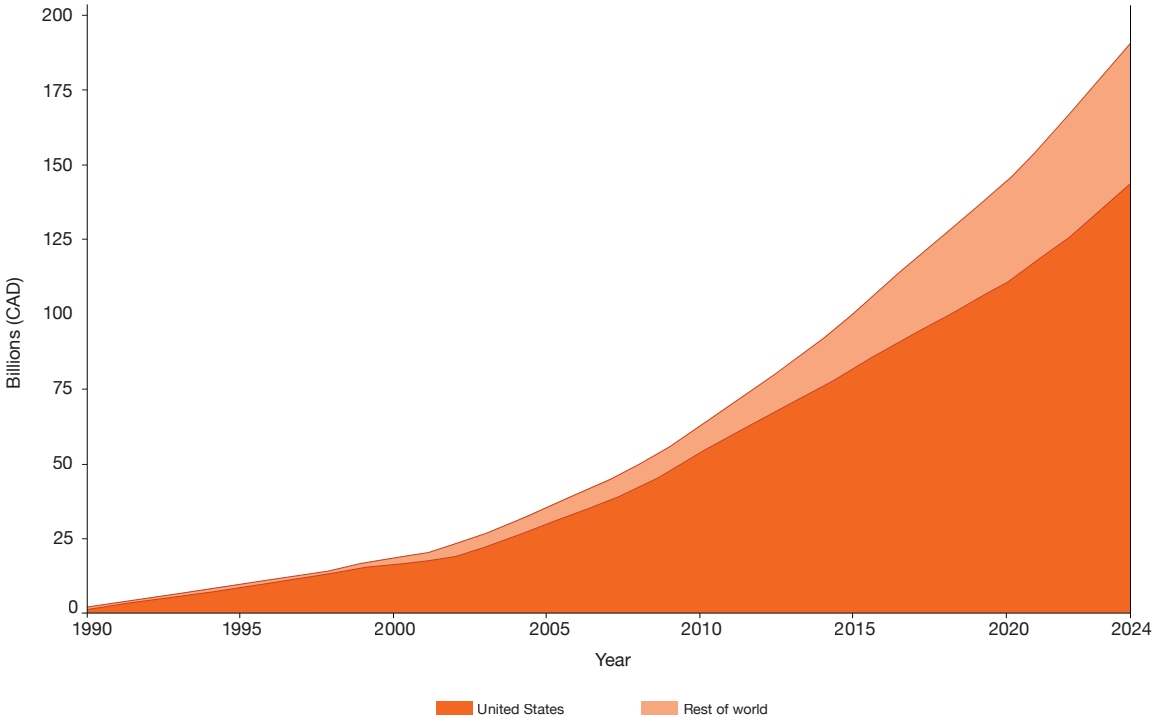
Figure 1: Charges for the Use of IP, Exports, Imports and Balances



Source: Author, based on Statistics Canada (2025a).

Canada's cumulative deficit of CUIP totals $198.9 billion since 1990, 75 percent of which ($148.2 billion) flowed from Canada to the United States (Figure 2). As the global knowledge economy grew, Canadians paid about $200 billion more than they received in IP licensing charges. Yet Canada's persistent and cumulative deficits in payments for the use of IP are not necessarily a straightforward economic loss. Part of what these outflows represent is the purchase of access to knowledge, content and technologies that benefit Canadian firms and the country. Classical technology transfer hypotheses, reflected in some Organisation for Economic Co-operation and Development (OECD) work (for example, Park and Lippoldt [2008, 28]), would suggest that developing and least developed countries' protection of foreigners' IP rights can stimulate the cross-border movement of technology-intensive goods, services and

Figure 2: Cumulative Trade Deficit in CUIP, 1990–2024, United States and Rest of World



Source: Author, based on Statistics Canada (2025a).

capital, and can promote local innovation by facilitating the inflow of technologies that build domestic capabilities. Better understanding the implications of IP-related trade-in-services deficits for Canada, a high-income and technologically advanced economy, requires addressing what Walter G. Park and Douglas C. Lippoldt (2008, 5) call "complex interactions" between IP systems and innovative or absorptive capacities, influenced by infrastructure, policies and regulations, research institutions and collaborative networks.

For instance, Canada's trade surplus in R&D services is roughly equal to its deficit in IP payments (see Figure 3). That could perhaps support the popular narrative that Canada is good at doing (and selling) research services but does not own ensuing IP assets. However, it is not necessarily true that the IP charges Canadians are paying relate to the same sectors — let alone technologies — Canadians are researching; these might be unrelated. Inbound licensing of IP — such as for equipment, software or other platform technologies — could, in fact, be supporting Canada's R&D capacity. It is also plausible that Canada's rising exports of IP-related

As the global knowledge economy grew, Canadians paid about $200 billion more than they received in IP licensing charges.

Figure 3: Surpluses or Deficits by Category of Service

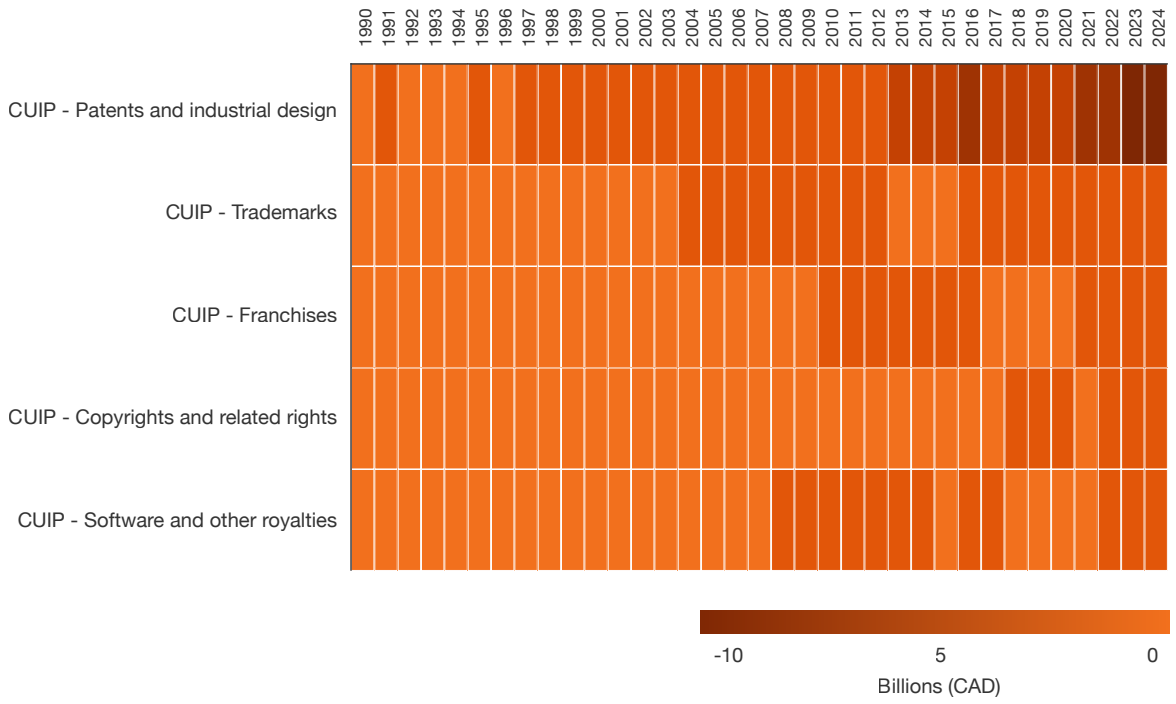
Source: Author, based on Statistics Canada (2025a).

services in recent years (rising to $11.40 billion in 2023 before falling back to $10.91 billion in 2024; see Figure 1) are correlated with, perhaps even caused by, the apparent increase in exports of R&D services over a similar period (rising to $15.25 billion in 2023 and $15.64 billion in 2024). In other words, perhaps Canada is earning more lately from IP licensing because of increased R&D, not just doing R&D instead of IP licensing. While Canadians are clearly paying an increasing amount for IP charges from abroad, whether that is a real problem and, if so, to what extent and what to do about it during or after a trade war, are topics addressed in later sections of this special report.

With those big caveats in mind, getting more granular about the latest IP data (see Table 1), the bulk of Canada's deficit consists of charges for the use of patents and designs ($10.54 billion) followed by software and "other" royalties ($2.59 billion); trademarks ($0.85 billion); and copyrights and related rights ($1.66 billion). Figure 4 visualizes the size of these category deficits.

The Canada-US IP trade balance is particularly significant in this regard (see Table 2). Canadians sent $11.71 billion more to Americans for IP

Figure 4: Intensity of IP-Related Trade-in-Services Deficits by Category of IP, 1990–2024



Source: Statistics Canada (2025a).

Table 1: International Transactions in Services, Commercial Services in Total and Charges for Types of IP, Annual (x 1,000,000)

All Countries, All Transactions Countries, All Transactions						
	Category	2020	2021	2022	2023	2024
	Millions (CAD)					
Balances	Commercial services, total	-752	2,363	5,360	9,723	7,369
	CUIP, total	-8,755	-10,735	-11,193	-15,700	-16,830
	Patents and industrial design	-5,078	-6,917	-5,920	-10,009	-10,534
	Trademarks	-1,711	-1,882	-1,504	-803	-845
	Franchises	-305	-788	-950	-1,144	-1,196
	Copyrights and related rights	-1,146	-670	-1,054	-1,590	-1,666
	Software and other royalties	-515	-478	-1,765	-2,154	-2,589

Source: Statistics Canada (2025a).

Table 2: International Transactions in Services, IP Exports, Imports and Balances with the United States, Annual (x 1,000,000)

United States, All Transactions						
	Category	2020	2021	2022	2023	2024
	Canadian Dollars, Millions					
Exports	Commercial services, total	62,683	76,141	79,402	90,112	91,740
	CUIP	5,762	6,113	6,777	6,609	6,328
Imports	Commercial services, total	66,104	77,747	79,723	84,950	89,126
	CUIP	11,563	13,500	14,252	17,596	18,042
Balances	Commercial services, total	-3,422	-1,606	-322	5,162	2,614
	CUIP	-5,800	-7,387	-7,475	-10,987	-11,714

Source: Statistics Canada (2025a).

payments than went the other way, up from $10.98 billion just a year earlier (Statistics Canada 2025a). US firms are the largest recipient of royalty and licensing payments from Canadian entities. The consistent deficit in IP services trade between Canada and the United States illustrates how Canada remains structurally dependent on access to US-owned IP, especially patented technologies. (Again, the possibility that US ownership of these assets derives partly from Canadian-funded and Canadian-executed R&D is addressed later in this special report.)

By contrast, the United States is a net exporter of IP services globally, consistently generating a trade surplus in royalties and licensing revenues. US firms hold dominant positions in key IP-intensive industries, particularly in digital technology, life sciences and entertainment, which results in steady inflows of royalty payments from foreign markets. According to WTO data as analyzed by the World Intellectual Property Organization (WIPO), US IP exports to the rest of the world were valued at US$127.4 billion (CAD$165.8 billion) in 2022[8] (Rousseau, Bonaglia and Wunsch-Vincent 2025). The latest figure from the US Bureau of Economic Analysis (2025) puts America's IP exports at US$169.5 billion (CAD$220.6 billion) for 2024, which suggests US economic dominance in the knowledge economy is growing even stronger.

The strength of US IP exports has historically been prioritized in the country's trade negotiations, encouraging it to shape international IP

8 Currency converted at an exchange rate of US$1.3013 to CAD, based on the 2022 annual average rate from the Bank of Canada.

policies in ways that protect its interests. However, in a period of escalating trade conflict, the United States' reliance on foreign royalty revenues also presents vulnerabilities, as other nations may consider retaliatory measures that restrict US firms' ability to enforce IP rights or collect licensing fees abroad. Moreover, the magnitude of this exposure is likely understated by looking at balance-of-payments data alone, since many of the royalty and licensing flows at issue are tied to much larger outward investments by US firms (from automotive and pharmaceutical production to branded service industries, for example) whose global operations depend on the continued recognition and enforcement of American IP (de Beer 2025c).

US firms are disproportionately dependent on IP to protect corporate intangible value. The United States "leads as the most intangible asset-intensive economy," according to WIPO (Table 3), "with its top 15 firms' intangible assets making up 90% of the total enterprise value" (Brown et al. 2025). Canada's top 15 firms' intangible assets, in comparison, make up just under 70 percent of enterprise value.

Table 3 : Ranking of the World's Top IP Exporters

Ranking	Economy	IP Exports in 2022 (USD, Billions)
1	United States	127.39
2	Germany	52.97
3	Japan	46.46
4	Netherlands	40.41
5	Switzerland	30.73
6	United Kingdom	28.28
7	Ireland	14.88
8	France	14.14
9	China	13.54
10	Singapore	13.22
11	Sweden	8.30
12	Republic of Korea	7.93
13	Canada	7.74
14	Denmark	6.40
15	Italy	5.29

Source: Rousseau, Bonaglia and Wunsch-Vincent (2025) based on Trade in Services by Mode of Supply data set from the WTO.

For Canada, dependence on US IP means that any disruption in trade relations could have consequences for businesses that rely on access to foreign patents, software and technology platforms. At the same time, Canada's role as an IP importer could create leverage if policy makers choose to explore alternative strategies to mitigate IP dependencies and enhance domestic innovation capacity. For the United States, the risk is that growing hostility from trade partners could lead to fragmentation in the enforcement of IP rights, weakening the global framework that has traditionally ensured the profitability of US IP exports.

If a trade war persists, IP trade balances could play a role in shaping economic vulnerabilities and policy responses. Whether through tariffs on IP services, restrictions on licensing agreements or broader regulatory changes, governments may seek to use IP as both a defensive measure and a tool of economic retaliation. Understanding these trade balances and their broader implications is therefore essential for assessing risks and opportunities.

IP as a Retaliatory or Rebalancing Tool

IP can serve as a tool for economic retaliation — or, alternatively and less aggressively framed, rebalancing — in a trade war through two distinct legal and policy frameworks. The first approach leverages existing policy space within domestic law while operating within the flexibilities permitted under international treaties. This includes measures such as adjusting patent enforcement, compulsory licensing or modifying domestic IP regulations in ways that remain compliant with Canada's obligations under international agreements. The second approach involves IP-related cross-retaliation under international trade law, particularly within the framework of the WTO and regional trade agreements such as CUSMA. In this scenario, Canada could seek authorization to suspend or weaken IP protections for rights holders from a country imposing unlawful trade barriers, using WTO-sanctioned mechanisms for trade enforcement.

This subsection will examine both strategies in turn, assessing their legal feasibility, economic impact and strategic potential in response to escalating trade tensions. Implicitly, issue linkage and US-centric

rebalancing are already taking place, but by the United States to Canada's and other countries' disadvantage. That is, supposedly, what the US administration's notion of "reciprocal" tariffs is all about. This framing could be turned on its head, however, imposing IP restrictions not to retaliate, per se, but to rebalance losses of market access. That is the principle underlying the domestic and international legal frameworks discussed below.

Room to Manoeuvre National Law Within International IP Frameworks

The first approach to using IP in response to trade pressures involves leveraging existing policy space within national IP law while remaining within the flexibilities permitted under international trade law. The idea that Canada should make full use of its manoeuvrability within international IP treaties is not new. This author and others have long advocated for Canada to adopt a more strategic approach to domestic IP policy, using its "room to manoeuvre" within flexible international regulatory frameworks (de Beer and Geist 2008). More recently, the issue of using domestic IP flexibilities in the context of a trade war — either as negotiating leverage or as retaliatory measures against tariffs on goods — has gained renewed attention among policy commentators and legal experts.

One example comes from Cory Doctorow (2025a; 2025b), who has highlighted how copyright flexibilities could serve as a tool for mitigating the monopolistic power of large, primarily US-based technology firms (Brown 2025). A concrete illustration of this strategy would be the application of right-to-repair principles to counteract restrictive technological protection measures imposed by major US firms in sectors such as agriculture and automotive repair. In practical terms, this could mean ensuring that Canadian auto mechanics and farmers have the legal right to circumvent digital locks and repair their own vehicles, rather than being forced to rely exclusively on manufacturer-authorized services.

Such a policy would directly challenge anti-competitive restrictions embedded in proprietary software and digital rights management systems. Canada and other US trading partners already have the ability to implement these flexibilities under international treaties. Compliance with obligations under the 1996 WIPO Internet Treaties does not preclude regulatory or legislative measures that soften copyright protections in ways that benefit consumers and local industries. Some adjustments to Canada's

domestic legal framework may be necessary, but these could be pursued in a manner that aligns with global norms while still advancing Canadian economic interests.

A similar approach has been suggested in the patent context by Richard Gold (2025), who has proposed that Canada could invoke its compulsory licensing powers under section 19 of the Patent Act[9] to provide greater freedom to operate for Canadian firms in key industries (Geist 2025). This strategy would be consistent with the WTO TRIPS Agreement provisions on compulsory licensing,[10] which allow for such measures in cases of national emergency. Gold suggests that Canada could extend compulsory licensing beyond the health sector (where it has traditionally been considered for access to medicines) to address economic emergencies arising from trade disruptions. In particular, he argues that Canadian generic pharmaceutical producers and firms in the artificial intelligence (AI) sector face constraints due to US-held patents that limit their ability to operate freely. A time-limited compulsory licensing program, framed as a response to the economic crisis caused by trade measures, could arguably serve as a proportionate and justified response.

While compulsory licensing has historically been used to address public health emergencies, Gold rightly points out that the same legal basis could be invoked for economic emergencies. Notably, the US government itself has tried to justify its tariffs under a range of emergency rationales, including immigration, fentanyl trafficking and national security concerns over steel and aluminum imports. In comparison, Canada's argument that its own trade measures address an actual economic emergency would be far more credible.

Some skepticism of Gold's proposal, doubting either its legal viability or practical impact, has been reported (Freeman 2025). It may be that using section 19 of the Patent Act requires reasonable compensation be paid to patent holders whose rights are interfered with. However, the extent to which similar ideas have been extensively studied, economically modelled and strategically tested in international trade law may not be fully appreciated by critics.

There is also another option in domestic law: Customs Tariff subsection 53(2). This law allows Cabinet to suspend or withdraw foreign IP rights for the purpose of enforcing Canada's own rights under a trade

9 *Patent Act*, RSC 1985, c P-4, s 19.

10 See *TRIPS Agreement, supra* note 2, arts 31(b), 31bis; WTO, *Declaration on the TRIPS Agreement and Public Health* (adopted on 14 November 2001), 4th Sess, WTO Doc WT/MIN(01)/DEC/2, online: <www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm>.

agreement:

> 53(2) Notwithstanding this Act or any other Act of Parliament, the Governor in Council may, on the recommendation of the Minister and of the Minister of Foreign Affairs, by order, for the purpose of enforcing Canada's rights under a trade agreement in relation to a country or of responding to acts, policies or practices of the government of a country that adversely affect, or lead directly or indirectly to adverse effects on, trade in goods or services of Canada, do any one or more of the following:
> (a) suspend or withdraw rights or privileges granted by Canada to any country under a trade agreement or Act of Parliament.[11]

In a call for more surgical use of existing trade laws, Lawrence Herman (2020) explains how this section is analogous to the US provisions that President Donald Trump is using to legally justify his trade war: section 232 of the Trade Expansion Act[12] and section 301 of the Trade Act.[13] "All it takes," Herman explains, to exercise "virtually unlimited executive authority" is "political will" (ibid., 2). This provision is the Canadian equivalent of the European Union's anti-coercion instrument, nicknamed Europe's "trade bazooka."

Before turning to potentially coordinated actions by Canada, the European Union or others against the United States, the next subsection of this special report addresses international trade law. The strategic wisdom of either form of retaliatory action is explored thereafter. But note, when it comes to strategy, the question is not whether IP-related retaliatory measures are, on balance, *good or bad* for Canada. The question is whether such measures are *better or worse* than other options — such as countermeasure tariffs on imported goods or services, surtaxes or even restrictions on exported goods or resources — or no retaliation at all. IP lawyers and their clients may prefer leaving IP issues out of a trade war, but the strategic options look different through a broader lens.

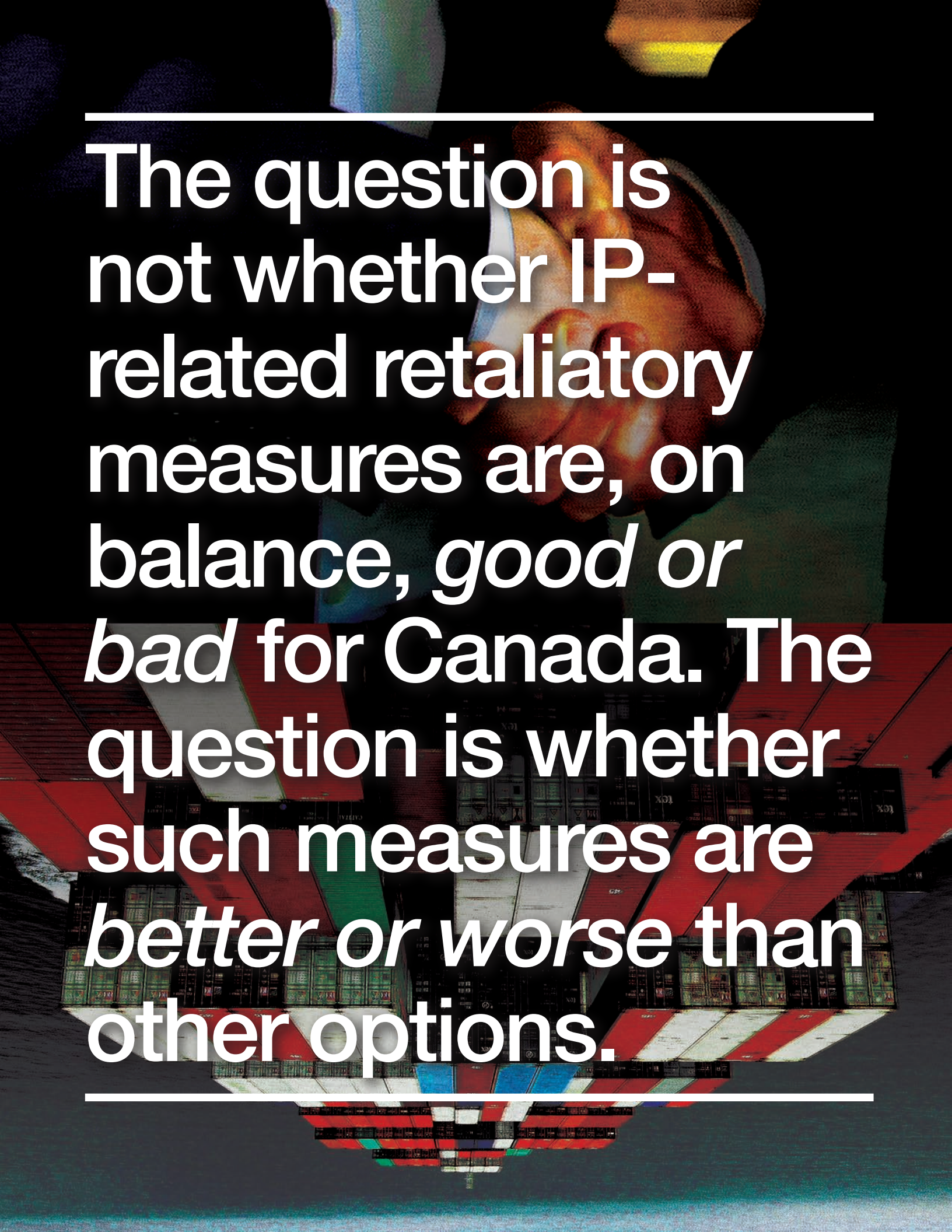
Cross-Retaliation Under International Trade Law

The second approach to using IP in a trade war involves cross-retaliation under international trade law, particularly within the framework of the WTO and regional agreements such as CUSMA. Cross-retaliation refers to the suspension of concessions or obligations in one sector in response

11 *Customs Tariff*, SC 1997, c 36 at subsection 53(2).

12 *Trade Expansion Act of 1962*, Pub L No 87-794, 76 Stat 872, § 232 (codified at 19 USC c 7).

13 *Trade Act of 1974*, Pub L No 93-618, 88 Stat 1978, § 301 (codified at 19 USC c 12 (1975)).



The question is not whether IP-related retaliatory measures are, on balance, *good or bad* for Canada. The question is whether such measures are *better or worse* than other options.

to violations in another (Palmeter, Mavroidis and Meagher 2022b). Under WTO rules, this means that a country harmed by trade violations could, in certain circumstances, seek authorization to suspend IP protections for firms from the violating country (Van den Bossche 2021; Zdouc 2010). While this approach has been rarely used, it has been explicitly recognized in past WTO disputes[14] and remains — in theory, at least — a legally viable mechanism for Canada in response to economic aggression from the United States.

The WTO's rules on cross-retaliation are set out in article 22.3 of the Dispute Settlement Understanding (DSU).[15] That provision allows a complainant country to seek authorization to suspend obligations in a sector different from the one in which the original violation occurred if traditional, same-sector retaliation is either impracticable or ineffective. This means that if an aggrieved trading partner were unable to secure meaningful relief by imposing counter-tariffs or other measures in response to US tariffs, it could, in theory, turn to the suspension of IP protections as an alternative enforcement mechanism.

Historically, cross-retaliation has been authorized in a handful of WTO cases, most notably Ecuador's retaliation against the European Union in the *EC–Bananas III* dispute,[16] Antigua and Barbuda's threats to US IP rights in the *US–Gambling* case,[17] and Brazil's authorized retaliation against US subsidies in *US–Cotton*.[18] In each of these cases, the complainant country successfully argued that direct, same-sector retaliation was insufficient and that cross-sector retaliation, including the suspension of TRIPS obligations, was necessary to achieve compliance.

While cross-retaliation has the potential to serve as a powerful enforcement tool, its effectiveness depends on both legal and strategic considerations. On the legal side, if challenged, the complainant would need to demonstrate to a WTO panel that imposing tariffs on US goods alone is insufficient to remedy the harm caused by US trade measures

14 See www.wto.org/english/tratop_e/dispu_e/repertory_e/s9_e.htm#S.9.

15 *Understanding on Rules and Procedures Governing the Settlement of Disputes*, 15 April 1994, 1869 UNTS 401 (entered into force 1 January 1995).

16 Decision by the Arbitrator, *European Communities – Regime for the Importation, Sale and Distribution of Bananas – Recourse to Arbitration by the European Communities under Article 22.6 of the DSU*, WT/DS27/ARB/ECU, 24 March 2000.

17 Decision by the Arbitrator, United States — *Measures Affecting the Cross-Border Supply of Gambling and Betting Services — Recourse to Arbitration by the United States under Article 22.6 of the DSU*, WT/DS285/ARB, 21 December 2007.

18 Decision by the Arbitrator, *United States — Subsidies on Upland Cotton — Recourse to Arbitration by the United States under Article 22.6 of the DSU and Article 7.10 of the SCM Agreement*, WT/DS267/ARB/2/Corr.1*, 31 September 2009.

(perhaps, for example, because there are no punitive damages under the WTO system). It would also need to show that suspending TRIPS obligations — such as by limiting patent enforcement or copyright protections for US firms — would serve as an effective countermeasure. On the strategic side, targeting US IP rights could pressure key US industries, particularly in pharmaceuticals, digital technology and entertainment, where American firms derive significant revenues from IP licensing and enforcement. At the same time, any Canadian move to suspend IP protections for US firms would have to be carefully calibrated to avoid unintended consequences, such as disruptions to investment or supply chains involving non-US partners.

In the context of Canada-US trade relations, the legal and political viability of cross-retaliation remains uncertain. Nonetheless, a strategic deployment of cross-retaliation, particularly targeting US IP rights in a measured and legally justified manner, could provide Canada (or other countries confronting tariff threats or actions) with meaningful leverage in future trade negotiations.

Strategic and Practical Aspects of Potential Retaliation

One of the notable advantages of IP-related cross-retaliation is that it can provide net benefits to the retaliating country, making it an especially attractive mechanism in trade disputes. Counter-tariffs raise costs for domestic consumers and businesses by making imports more expensive and are therefore inflationary. Export taxes or restrictions harm the retaliator because they raise prices and/or reduce demand for the retaliator's exports. Suspending the benefits of foreign IP protection can yield welfare-enhancing outcomes (that is, more benefits than costs). It can create new freedom to operate for domestic firms, allowing them to use patented technologies or copyrighted works with no or fewer restrictions imposed by foreign rights holders.

Frederick M. Abbott's work on cross-retaliation under the TRIPS Agreement is foundational, explaining how WTO members can suspend IP rights in retaliation for trade violations (Abbott 2009, 2010). Shamnad Basheer (2010) builds on Abbott's arguments, proposing a structured model for developing countries to leverage IP as a retaliatory tool. And Susy Frankel (2013) examines how TRIPS retaliation could reshape IP norms globally.

This form of retaliation is particularly useful for countries facing power imbalances in the trading system, as has been observed in past WTO disputes where cross-retaliation was authorized. This is why Abbott, Basheer and others have noted that cross-retaliation is most strategically effective in precisely these contexts, offering smaller economies a means of exerting pressure on more powerful trading partners. Bryan Mercurio (2009a, 2009b) adds that trade retaliation may be necessary because the remedy of financial compensation is often unsuitable, despite concerns about retaliation such as economic inefficiency, inconsistency with WTO goals, harm to innocent industries and insufficient incentives for compliance. It has, however, also been argued that taking IP rights "hostage" may not be as effective as proponents suggest (Wasserman Rajec 2016).

Strategic cross-retaliation involving IP rights has not before been scrutinized in the context of trade disputes between two high-income countries, let alone any of the world's closest trading partners and co-proponents of the current global IP rules-based order. Yet Richard Chisik and Chuyi Fang's recent economic analysis in the *Canadian Journal of Economics* models the impact (Chisik and Fang 2024). They conclude that cross-retaliation generally provides higher welfare and more robust self-enforcement capacity than same-sector retaliation, but issue caution about the economic and political complexities involved (ibid.).

If IP-related retaliation were considered, the strategic and practical aspects of leveraging national flexibilities within international IP frameworks or deploying subsection 53(2) of the Customs Tariff, rather than cross-retaliation under WTO law, make that approach particularly attractive. Unlike other forms of trade retaliation that require extensive bureaucratic processes or international adjudication, manoeuvring domestic IP law is relatively easy to implement.

Beyond the practical feasibility of these measures, the mere threat of invoking national IP flexibilities could serve as an effective, albeit risky, economic tool. Gold's suggestion that Canada use compulsory licensing in response to US trade aggression does not necessarily require the issuance of licences. Simply notifying US rights holders that such licences could be granted in sectors such as pharmaceuticals and AI might be sufficient to generate pressure. This worked for Brazil in 2014 (United States Trade Representative [USTR] 2014), though, of course, both the US administration and the trade war were much different than now. Still, if major US IP stakeholders anticipate that Canadian firms will be able to

legally operate without paying licensing fees or royalties, they may, in turn, exert influence on the US government to reconsider its trade policies.

A key question, however, is whether such a strategy would have any real effect. A recent example of this dynamic was seen in the immediate reaction to the Ontario premier's early proposal to impose a surcharge on electricity exports to the United States. The US response was swift and included the threat of further escalation. Dan Ciuriak (2025) describes this dynamic as "escalation dominance" — the idea that the United States, as the larger economic power, has greater capacity to escalate a trade dispute, thereby making retaliatory measures risky.

The best hope may be to enlist others in retaliatory or rebalancing efforts. The European Union, for example, has the power to do so under the relatively new Anti-Coercion Instrument.[19] The regulation allows a wide range of countermeasures to combat economic coercion, including restrictions on IP. As with Canada's tool kit, one question is whether the European Union is bold enough to use it. Acting alone, perhaps not. But in concert with others, it could be less risky and more effective. At the moment, however, what seems to be playing out is a classic prisoner's dilemma. So far, most political leaders seem more eager to cut a so-called deal — which is actually more like a handshake, at risk of a renege at any moment, than the congressionally approved agreement Canada operates under — than to confront the real problem together with allies. The unfortunately perplexing questions are why countries have so far not worked together to create a coalition against US tariffs, and whether they would ever cooperate on IP restrictions.

Whether Canada's invocation of IP flexibilities, alone or with allies, would influence a policy change or simply provoke further US aggression remains uncertain and unpredictable, as with much else about US policy in this new era. While some commentators on Canadian technology policy have suggested that Canada should not retaliate but rather grovel "hat in hand" (Atkinson 2025), the "don't fight back, or else" threat holds far less sway with this author. That said, some self-restraint is required to avoid knee-jerk reactions based more on pride than planning. However, if China, the European Union and other US trading partners were to engage in cross-retaliation by suspending US IP rights, it is conceivable that US firms could perceive Canada as a reliable jurisdiction — a safe harbour — where they could protect and anchor their IP rights from the effects of cross-retaliation.

19 EU, *Regulation (EU) 2023/2675 of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries*, [2023] OJ, L 2675/1.

That leads to a more fundamental question: Does adherence to WTO rules matter if a major economy is openly disregarding them?

From a legal perspective, cross-retaliation is not an allowable self-help measure under WTO law. A country cannot unilaterally suspend IP protections for firms from another member state without first obtaining authorization through WTO dispute settlement. There are limited circumstances where retaliation may be justified under specific trade law doctrines, such as when a trading partner imposes safeguard measures to protect domestic industries from economic threats. WTO rules do not permit cross-retaliation in response to national security measures. Although an argument can be made that Canada should be more concerned about effectiveness than legality, trade experts including Wolfgang Alschner have pointed out Canada's responsibility to at least argue that immediate retaliation is compliant with applicable law (Moss 2025).

The United States has long maintained that trade actions taken for national security reasons are entirely non-reviewable by the WTO. This position has been a major source of US frustration with the WTO system and has contributed to its decision to block appointments to the WTO Appellate Body, effectively paralyzing the organization's dispute settlement mechanism (Lighthizer 2020). Legal academic work on the WTO dispute settlement further outlines the weaknesses of enforcement (Palmeter, Mavroidis and Meagher 2022a), which directly affects Canada's legal recourse. Even if Canada follows up with WTO proceedings it commenced[20] and receives a favourable ruling authorizing cross-retaliation, the United States would almost certainly "appeal into the void" — a tactic used to prevent panel decisions from taking effect by appealing them to a non-functioning Appellate Body. In practical terms, this means that even if the WTO found US tariffs to be unlawful and authorized Canada to suspend IP protections, the United States could simply prevent the ruling from being enforced.

Turning from the practicalities of cross-retaliation under international trade law, the most fundamental issue is that this is not simply a dispute over the interpretation or application of WTO law. What is happening in the United States is a wholesale repudiation of the rules-based international order that has governed global trade since the Second World War. That leads to a more fundamental question: Does adherence to WTO rules matter if a major economy is openly disregarding them? If the United States is no longer respecting the dispute settlement system, should Canada and other trading partners still abide by the rules, even if doing so places them at a strategic disadvantage? This raises a difficult

20 WTO, *United States — Additional Import Duties on Goods from Canada*, WTO Doc WT/DS634/1 (5 March 2025), online: <www.wto.org/english/news_e/news25_e/dsrfc_05mar25_e.htm>.

ethical and strategic dilemma, which is whether to maintain commitment to the rules-based system in the hope that it will eventually be restored, or to engage in self-help measures that might themselves be violations of international law. In other words, do two wrongs make a right? Or is there a principled obligation for Canada to uphold the rules, even when others do not? These are complex questions with no easy answers.[21]

IP in Renegotiations or the Resolution of a Trade War

In this or future trade wars, IP will likely be central to any review or renegotiation of trade agreements aimed at settling specific disputes or broader confrontations. This section examines how IP provisions have played a role in past trade agreements, especially CUSMA, and considers how they might shape future negotiations. It explores the rising stakes and emerging frictions related to digital regulation and algorithmic governance. Finally, it outlines strategic options for Canada in anticipating or responding to renewed demands from the United States, and in asserting its own IP and innovation policy priorities in the context of trade renegotiation.

The Legacy of CUSMA and the Locking-In of IP Commitments

CUSMA, concluded in 2018 and brought into force in 2020, stands as the most expansive IP agreement Canada has ever signed (de Beer 2020b, 2025d). Chapter 20 of CUSMA set a global new high-water mark for TRIPS-plus obligations by extending copyright terms, enhancing the exclusivity periods for pharmaceutical data, mandating stricter border enforcement measures and imposing more rigid digital governance rules.

21 Even peer reviewers of this special report hold different views. On this passage, one comments, "Canada's responses to the US challenge can be grounded in legal justifications, but, regardless, and I think that point is important, WTO rules should still be respected in relation to the rest of the world. Now the US is still pretty isolated and it holds a minority view. If other countries go rogue, too, we are in a mess." Another writes, "In my view, Canada's government first duty is to protect its own citizen's welfare, not to act as the custodian of WTO rules, even less when the US its main architect is breaching them so bluntly."

Canada's ability to resist US demands was limited by the geopolitical dynamics of the negotiation process, especially after the United States and Mexico announced a bilateral agreement that threatened to exclude Canada. Canada entered the final phase of negotiations under strategic duress and accepted a package of IP commitments that went well beyond existing international standards. Some policy space was preserved — for example, Canada retained its notice-and-notice regime for online copyright enforcement — but, overall, the agreement forecloses the possibility of domestic reform in several critical domains.

IP commitments made in trade agreements are seldom reversed, even when political or economic conditions shift. In practice, this means that future negotiations are unlikely to produce meaningful reversals of CUSMA's IP provisions. Instead, Canada must now focus on mitigating the most problematic effects of those commitments. It can do this through targeted implementation strategies, selective regulatory interventions or incremental institutional reform. Canada cannot reasonably expect that the underlying terms of the last agreement will be reopened or rolled back.

Escalating Pressures and Emerging IP Fault Lines

The 2026 review of CUSMA takes place in an even more adversarial environment than the original negotiations. Also, while Canada has long been listed in the USTR's *Special 301 Report* for perceived deficiencies in IP protection and enforcement, and appears again on the report's 2024 and 2025 Watch Lists (USTR 2024, 2025b), the stakes in this cycle are considerably higher (de Beer 2025b). The current US administration has signalled a renewed willingness to link trade enforcement measures to persistent trade deficits and to treat IP-related policies as legitimate targets for retaliatory action. A presidential memorandum on trade policy directs US officials to investigate the causes of annual trade deficits and consider their national security implications (The White House 2025a). The 2025 edition of a US report in an annual series highlighting significant foreign trade barriers also reports on US complaints about Canadian IP and other policies (USTR 2025a, 40–45). Framing negotiations in this way could easily be weaponized against Canadian measures viewed as undermining US commercial interests.

The US *Special 301 Report* and *National Trade Estimate Report* are helpful to appreciate IP-related issues arising in a CUSMA review. Recent 301 reports vaguely reference the low number of counterfeit goods seized at the

border, enforcement officials' lack of training, Canadian courts' failure to deter infringement and high levels of online piracy (USTR 2024, 70; USTR 2025b, 72). The trade estimate report mentions, oddly, a specific mall in Toronto as a "notorious" market for counterfeits (USTR 2025b, 44). Other issues mentioned in the 301 reports foreshadow renewal of long-standing US demands for more, longer and stronger IP protections. These demands typically include expanded pharmaceutical patent protection, although Canada seems to have capitulated on everything the United States asked for lately, such as a patent-term adjustment to offset "unreasonable" administrative delays in the patent application process.[22] Nonetheless, the United States has expressed concern about the scope of protection in Canada's system for delays in obtaining marketing approval (USTR 2024, 70; USTR 2025, 72).

Canada's copyright term extensions and enhanced enforcement mechanisms, especially in the digital environment, have not apparently satiated the United States on that topic either. The United States is "deeply concerned" about fair dealing for the purpose of education in Canada, which scholastic publishers have complained about for years (ibid.).

Other concerns the United States reports about Canada's IP environment include inadequate transparency and due process regarding GIs protected through free trade agreements (ibid.). This is a direct response to Canada's tightrope walking between the European Union and the United States. In CETA, Canada agreed to protect a long list of European GIs, to America's disappointment. The United States, a long-time opponent of EU GI policy, pushed back through CUSMA (de Beer 2020b, 9–10). The US trade estimate report is more specific: the United States is "highly concerned about countries' negotiating product-specific IP outcomes as a condition of market access from the European Union and reiterates the importance of each individual IP right being independently evaluated on its individual merits" (USTR 2025, 44). The next round of CUSMA negotiations may further pressure Canada to pick sides on the GI issue.

Plant breeders' rights may also emerge as a point in the CUSMA review. Canada's current approach risks undermining its own position by pre-emptively expanding these rights without any external pressure to do so. Regulatory reforms[23] to give away longer, stronger protection for new plant

22 *Budget Implementation Act, 2023, No 1*, SC 2023, c 26, division 26, part 4; *Regulations Amending the Patent Rules and Certain Regulations Made Under the Patent Act*, SOR/2024-241.

23 *Regulations Amending the Plant Breeders' Rights Regulations*, (2025) C Gaz I, vol 159, no 32 (*Plant Breeders' Rights Act*, SC 1990, c 20).

varieties were proposed as though they were routine regulatory updates, rather than policy decisions with strategic trade implications. Plant breeders' rights determine ownership and control over key agricultural inputs, shaping what farmers can grow, what consumers can buy and who profits along the value chain. Government data already shows that most rights granted in Canada belong to foreign applicants, meaning that unilateral reform would primarily reinforce existing dependencies. Advancing such measures outside the framework of trade negotiations weakens Canada's leverage and signals a willingness to concede IP ground before being asked.

The United States will surely push back on Canadian efforts to regulate online platforms and has already flagged several areas of concern around audiovisual services and online streaming (ibid., 44–45). The Canadian federal government's attempt to compel digital intermediaries to pay for news content under the Online News Act[24] drew strong opposition from major US firms. It is unlikely that the United States would tolerate analogous regulatory measures aimed at content used for training AI systems. Cultural policy carve-outs, which Canadian negotiators have historically defended, may also be under renewed threat. The United States has already raised objections to the Online Streaming Act,[25] which imposes requirements on platforms such as Netflix and Spotify to contribute to Canadian content (Chase 2024; USTR 2022). These objections could escalate into a formal dispute, the outcome of which is uncertain (Stephens 2023), or, more realistically, be focal points in a CUSMA review and potential renegotiation.

In addition to these more familiar areas of conflict, new fault lines are emerging in the treatment of data governance, AI and platform regulation. Trade secrets, increasingly framed by the United States as a matter of national security, may be invoked to oppose Canadian efforts to regulate algorithmic systems. Canadian proposals requiring transparency around automated decision making, access to AI training data or audits of platform algorithms could be challenged under the guise of protecting confidential business information. Yet such proposals are central to Canada's innovation policy in the digital economy. In sectors such as AI, biotechnology and clean technology, Canadian firms must be able to operate with a degree of regulatory clarity and freedom from overbroad IP constraints imposed through external trade pressure.

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24 *Online News Act*, SC 2023, c 23.

25 *Online Streaming Act*, SC 2023, c 8.

Lessons for the Next Round

With pressure building for the review, and potentially renegotiations, Canada must enter the process with a clearer strategic posture and a more proactive agenda. This is not a new observation. For many years, this author and others have argued that Canada requires a more coherent and forward-looking approach to international IP and trade policy. For example, that argument was made at the time of the Canada-EU CETA, where Canada entered negotiations without a clear strategy for innovation, IP or digital policy, and was left to negotiate defensively within the parameters set by its trading partners (de Beer 2017). Canada's early engagement with mega-regionalism — through the North American Free Trade Agreement (NAFTA), CETA and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) — offered important lessons that have not always been internalized with policy or process changes. While Canada has gained experience from these negotiations, it has too often failed to systematically anticipate issues (de Beer 2018a, 2018b, 2018c). The same pattern was repeated in the CUSMA process, where Canada accepted far-reaching IP commitments under pressure, with limited ability to shape outcomes in its own interest.

The problem has never been a lack of technical expertise. Canadian negotiators have often performed admirably given the constraints they face. Rather, there have been in the past structural and process impediments to effectively executing a strategic vision (de Beer 2020a). For example, Barry Appleton (2025) points out that Canada's ad hoc consultation process, rather than its institutionalized advisory system, put the country at a disadvantage relative to its peers. Until now, complacency may have enabled this gap to persist. But the current convergence of trade pressure, legal uncertainty and technological disruption has made continued improvisation untenable. What was previously a policy vulnerability has become an urgent matter of national economic interest.

In strategizing how IP may play a role in a renegotiated resolution of a trade war, it is of course necessary to consider the US perspective. The original NAFTA and the WTO's TRIPS Agreement emerged in close temporal proximity and were shaped by many of the same actors (Papovich 1997, 254). NAFTA was part of a broader strategic campaign by the United States to embed its preferred model of IP protection into international trade law. Canada, far from a passive participant, was a key collaborator in

this effort. By endorsing the IP provisions in NAFTA and aligning with the United States in global trade fora, the Canadian government lent legitimacy to a global agenda of expanded IP protection.

A similar dynamic re-emerged decades later with CUSMA, which reintroduced provisions from the Trans-Pacific Partnership following the United States' withdrawal. In both cases, the United States advanced its global IP objectives through trilateral negotiations anchored in its North American alliance. In that context, the review and potential renegotiation of CUSMA have the potential to once again establish precedents that shape US trade policy and IP norm-setting for years, if not decades, to come.

An overarching risk in this process is that Canadian measures designed to foster domestic innovation, promote platform accountability or protect consumer rights will be recast as barriers to trade or breaches of CUSMA's IP chapter. That likelihood underscores the importance of preserving Canada's regulatory sovereignty while managing its trade obligations, particularly in fast-evolving sectors where international norms remain unsettled. Issues will be linked, with IP part of a much broader package of priority topics.

IP in Economic Restructuring and Innovation Policy Shifts

The preceding discussion of a CUSMA review and related trade renegotiations highlight the extent to which Canadian IP law is shaped by its integration into a North American legal and economic framework. This final section turns to the implications of those constraints for domestic policy choices and considers opportunities for recalibrating Canada's broader approach to IP and innovation. This is crucial if Canada is to achieve a longer-term goal of economically decoupling from, or at least diversifying trade and reducing dependency on, the United States.

Trade Diversification and Strategic Realignment

Trade diversification has long been bandied about by Canadians as an aspiration, but concrete outcomes had been limited by Canadian complacency. In the area of IP, policy has frequently followed the priorities of dominant trading partners, leaving relatively little room for differentiated approaches.

Given the economic promise of improved access to the large EU market and the similar trade policy orientations, Canada did well to identify the need to pivot to Europe as a first step in trade diversification. The negotiation of CETA was no easy feat, especially because it involved negotiation with a supranational entity comprised of multiple sovereign nation-states. CETA was in many ways a pilot project for what Canada has done since and needs to do more of in the future (de Beer 2012). The major compromise for Canada on IP policy was acceding to the European Union's demands on GI protection, a form of protection linked to products from specific places that consequently have distinctive characteristics (for example, champagne, feta cheese and Parma hams). GIs may seem a somewhat esoteric topic for those interested in Canadian innovation policy, but, in fact, they are among the most crucial forms of IP in the agricultural sector, especially in terms of exports.

Europe has been a long-time global champion of special rules around GIs, whereas Canada and the United States use ordinary trademarks law to protect place-based brands. The interests of Canada and the United States diverge from Europe's because of their historical position as former colonies and because of the settlement of Europeans who often, for generations, have used European terms to describe certain products regardless of where they were actually produced. While Canada compromised on a long list of labels that Canadian firms would no longer be able to use, in addition to several other IP-related matters, CETA was a step in the right direction to wean Canada off its dependence on US trade.

CETA demonstrated Canada's capacity to pursue comprehensive trade arrangements, including on IP, outside the North American context and laid the groundwork for more independent global engagement. Canada and partners such as New Zealand also took advantage of the United States' withdrawal from what became the CPTPP to suspend certain IP provisions that were not in Canada's best interest. However, since then, momentum has stalled. Canada was excluded from the Indo-Pacific Economic Framework for Prosperity, and free trade negotiations with the Association of Southeast Asian Nations had — until recently — progressed slowly.

A Canada-India agreement was derailed by chilled political relations for years. A potential agreement with Mercosur[26] now faces new challenges. While the European Union's deal with the bloc was done before Canada could complete its own agreement, political winds have shifted in some key South American countries, such as Argentina, where there are growing economic and ideological ties between US President Trump and Argentinian President Javier Milei.

There is also scope to strengthen engagement with jurisdictions where legal and policy frameworks are evolving in ways that complement Canadian interests. In particular, developments associated with the African Continental Free Trade Area have renewed attention to regionally grounded innovation systems and IP frameworks. Canadian institutions, including university-based research networks, have been active in these spaces. A more coherent foreign policy orientation could reinforce Canada's contributions to cross-regional IP governance. Furthermore, there are topic-specific agreements in which Canada could participate. One timely example is the Digital Economy Partnership Agreement, which Canada has been advised to join, partly because early entry could give Canada a chance to link digital trade and IP issues through such frameworks (Ciuriak and Fay 2022).

Soft Law, Fragmentation and Institutional Coordination

Global IP governance increasingly involves mechanisms outside traditional treaty frameworks, including soft law instruments, private standards, cross-border licensing and transnational enforcement. Canada's engagement in these areas has tended to be reactive and limited in scope, in part, due to fragmented domestic responsibilities across levels of government. Abroad and at home, the current context has made inter-provincial trade and cooperation imperative.

IP laws and policies in Canada are made primarily at the national level. Federal representatives handle the negotiation of international IP and digital trade agreements. Representatives of federal departments as well as CIPO serve as Canada's primary points of contact abroad. Most public funding for research that leads to IP creation comes through federal

26 Also known as the South American Common Market, this trading bloc and customs union consists of Argentina, Bolivia, Brazil, Paraguay and Uruguay.

policies. The most prominent mechanism is the Scientific Research and Experimental Development tax credit. Many other parts of innovation policy, discussed in the next subsection, are also federal responsibilities.

In the past, provincial officials have played a limited, if any, role in IP. And even lately, provincial leaders have been far less vocal about the IP and innovation implications of the recent trade conflicts with the United States, compared to their stances on issues impacting manufactured goods and natural resources. In a protracted international trade conflict over intangibles, this may change.

Mechanisms could be found to better coordinate among provincial stakeholders. An extreme example was the CETA process, where provincial representatives participated directly in the negotiations. That happened at the European Union's insistence because many beyond-the-border regulatory issues were clearly within provincial justification (de Beer 2012). Such integration is not likely necessary or feasible in the current context, but Canada's provinces would benefit from deeper engagement with the domestic implications of cross-border IP policies.

An illustrative overlapping area of outward-facing policy concern is trade secrets. This is the key area of IP that straddles federal and provincial jurisdictions (Malone 2023, 41). As noted in the preceding section of this special report, trade secrecy was among the major IP issues addressed in CUSMA. Given the relationships with research security and innovation policy, trade secrets are likely to remain at the forefront of normative IP developments for the foreseeable future. That makes provincial engagement with trade secrets law and policy important.

Domestically, several provinces are increasingly seeking ways to engage in IP policy and strategy. One recent initiative is IP Ontario. This new agency was created by regulation in 2022 to:

- increase public access to IP services and resources;
- support the development and protection of IP to improve commercialization of research;
- advance knowledge about IP;
- establish partnerships in and outside of Canada; and
- provide advice to the Ontario government about IP.[27]

The initiative stems from an expert panel report delivered in 2020

27 *Intellectual Property Ontario*, O Reg 4/22, s 5.

(Expert Panel on Intellectual Property 2020), which led to Ontario's first "Intellectual Property Action Plan" that same year (Government of Ontario 2020). Ontario is not alone, with Innovate BC also taking a more proactive role on IP issues. A measure in the 2021 federal budget provided $90 million over four years to support ElevateIP,[28] funding five regional programs in Atlantic Canada, Quebec, Central Canada and the Prairies, the West Coast, and the North (ISED 2025).

A challenge is that provincial governments have limited or no constitutional authority to make laws in respect of copyrights, patents and most other areas of IP.[29] The provinces also do not control the administration of IP rights, including services such as registration or search functions. Provincial jurisdiction in the field of IP law mainly involves matters of property and civil rights, such as consumer protection or licensing contracts (de Beer 2005, 2006; de Beer et al. 2020).

Yet a lack of legislative authority over core IP lawmaking does not preclude provinces from improving IP-related services, raising awareness or providing policy advice. As provincial activity in these spheres ramps up, it becomes important to consider how efforts align with federal IP laws and policies. There are questions about how best to coordinate across levels of government. One area where federal and provincial roles intersect is in the management of IP created by universities and colleges.

Ontario's "Commercialization Mandate Policy Framework," established in 2022, provides an example of coordination questions (Government of Ontario 2022). It requires each publicly assisted university and college to create and publicly post a commercialization policy by a set deadline. The policies must include "commitment to the management and protection of IP in a manner that maximizes commercialization opportunities, protects Ontario interests and strengthens the Ontario economy" (ibid., 3). Each institution must also develop and publicly post an annual commercialization plan to show progressing capacity "to prioritize the protection and commercialization of IP" (ibid., 5). Expected metrics focused on commercialization include the number of patents filed and granted, the number of copyrights, the number of licences and revenue from licensing, the number of start-ups and partnerships created and so forth (ibid., 6).

28 See https://elevate-ip.ca/.

29 *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 91–92, reprinted in RSC 1985, Appendix II, No 5.

While provinces do govern universities and colleges, the fact is most of the research at these institutions is federally supported. Canada's research granting councils have their own IP policies, reflecting a broader conceptualization of net benefits than Ontario's commercialization mandate. The Natural Sciences and Engineering Research Council of Canada policy on IP, for instance, "promotes the use and/or exploitation of knowledge and open access to results of research."[30] At the same time, the federal government is working on issues related to research security. Tri-agency guidance tries to balance security with the Government of Canada's broader commitment to open science and access to research, which it explains as "the practice of making scientific inputs, outputs and processes freely available to all with minimal restrictions."[31]

Federal and provincial policies on IP from publicly funded research are not necessarily incompatible, as *appropriate* IP management strategies can be leveraged for open science (de Beer, Gold and Guaranga 2011). Without nuanced understanding, however, metrics that reward restrictive IP practices risk raising barriers and costs while undermining the potential of more sophisticated commercialization models, such as open-science partnerships (Gold 2021, 2019).

As Canada works to improve internal trade and reduce regulatory conflicts among provinces, greater coordination is needed. That includes more consistent handling of IP matters across jurisdictions. Improving institutional IP coordination may require structured mechanisms for intergovernmental collaboration, as well as more consistent inclusion of non-state actors in policy development. Perhaps unsurprisingly, there is zero mention of IP in or around the Canadian Free Trade Agreement (CFTA), an intergovernmental trade agreement that entered into force in 2017. None of the text of the Agreement on Internal Trade,[32] the Internal Trade Action Plan,[33] work on regulatory barriers[34] and the CFTA website[35] grapple with regulatory or soft law measures that may affect IP.

Toward a Nationwide Innovation Strategy

30 See www.nserc-crsng.gc.ca/nserc-crsng/policies-politiques/ip-pi_eng.asp.

31 See www.nserc-crsng.gc.ca/InterAgency-Interorganismes/RS-SR/index_eng.asp; https://science.gc.ca/site/science/en/office-chief-science-advisor/open-science.

32 *Agreement on Internal Trade*, 1 July 1995 (entered into force 18 February 2015), online: <www.cfta-alec.ca/agreement/agreement-on-internal-trade>.

33 See www.cfta-alec.ca/itap.

34 See https://rct-tccr.ca/.

35 See www.cfta-alec.ca/.

Canada's moribund productivity and poor record of innovation[36] have been discussed repeatedly by expert panels over the years (Council of Canadian Academies 2009, 2013, 2018a, 2018b; Expert Panel Review of Federal Support to Research and Development 2011), with yet another report published in 2025 (Council of Canadian Academies 2025). Meanwhile, entities such as the OECD (2025) have their own surveys, analyses and recommendations.

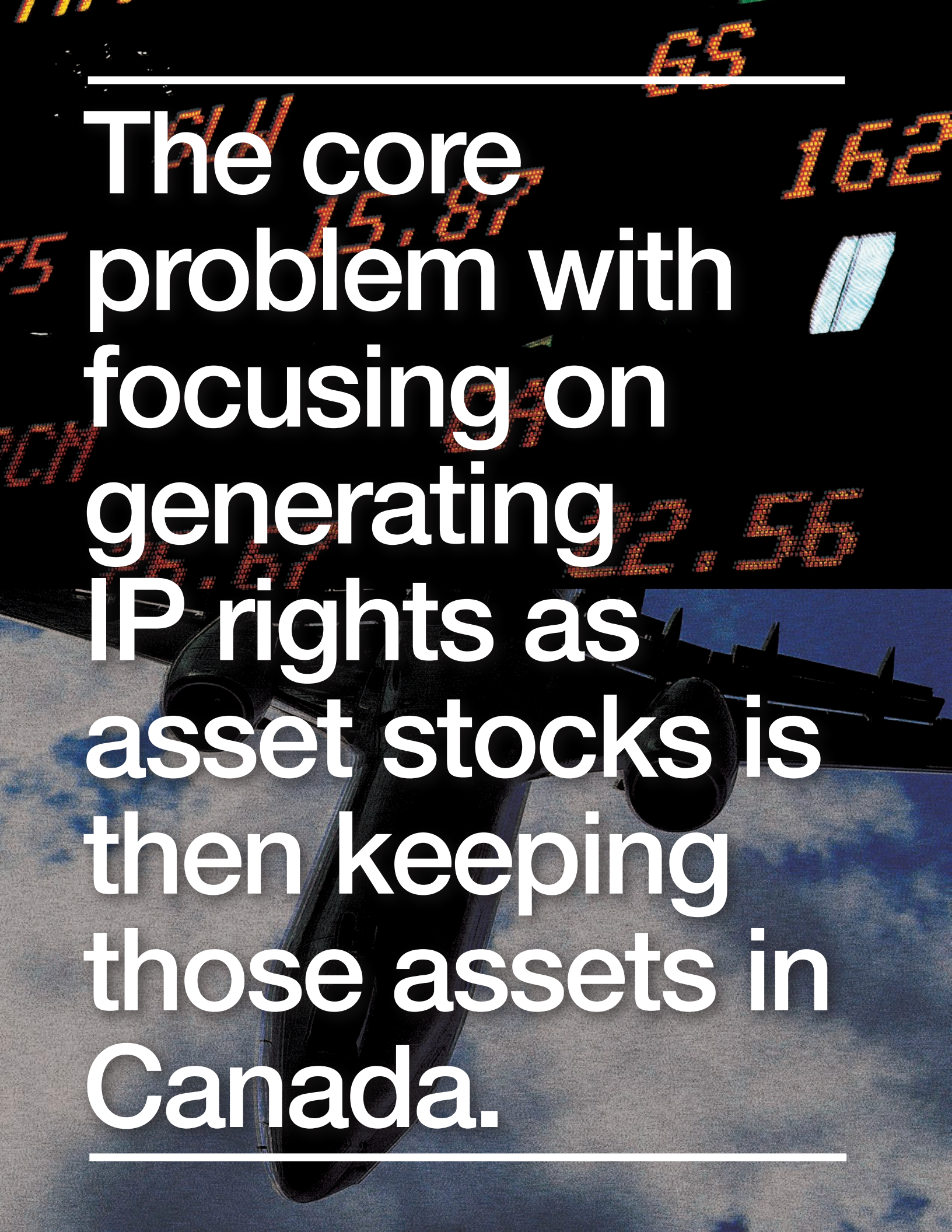
IP issues are mentioned, though not fully analyzed, in such reports. Some of the most insightful work points out why IP is a symptom, not a cause, of Canadian businesses' failure to scale (McKenna 2021). The current international trade context, especially Canada-US relations, heightens the urgency of addressing this perennial problem. In scoping out the core issues, this section builds on the analytical framework developed by this author in earlier work for ISED, which traces Canada's weak IP retention to firm-level limitations in absorptive capacity and to the policy tendency to conflate IP accumulation with innovation performance (de Beer 2023).

A widely acknowledged fundamental problem is that Canadian public investment in research does not produce easily measurable domestic commercial outcomes. This is not mainly because Canada lacks capacity to generate IP, but because Canadian firms are not positioned to take up and use the results of publicly funded research. They lack "absorptive capacity" — the ability to recognize the value of new information, assimilate it and apply it commercially (Cohen and Levinthal 1990; Li and Vanhaverbeke 2009). As a result, IP generated in Canada often flows abroad. Most frequently, it ends up in the United States (Gallini and Hollis 2019).

This helps explain the patterns discussed earlier in this special report. Canada earns billions in revenue from exporting R&D services, but those earnings are offset by an equally large deficit in payments for the use of IP. Canada's overall IP trade deficit was $16.83 billion in 2024. Well over two-thirds of that gap, $11.71 billion, is with the United States. Some of the IP generating those payments was created with Canadian labour and Canadian tax dollars. Now it generates value in a different jurisdiction, under rules shaped to benefit US firms.

In response to this problem, some propose a more aggressive effort to retain IP in Canada (see, for example, Hinton 2025). Stopping the "leak"

36 Parts of this section were adapted and pre-published in an editorial in *The Hill Times* (de Beer 2025a).



The core problem with focusing on generating IP rights as asset stocks is then keeping those assets in Canada.

of IP and associated profits away from Canada is not a new goal (Halliday 2017), but it seems more important now than ever. The Ontario expert panel on IP suggested to focus on "generating intangible stock assets that can be commercialized" (Expert Panel on Intellectual Property 2020, 27). Other suggestions include, for example, raising IP awareness among Canadians; investing in Canadian firms that own IP; helping Canadian firms by pooling patents; and pushing Canadian universities to prioritize IP acquisition (Hinton 2025).

In this author's view, training and education to enhance Canadians' sophistication around IP is an excellent strategy to address weaknesses in firms' absorptive capacity (de Beer 2023). Mechanisms to promote collaboration among Canadian firms, such as patent pooling, can also be an effective part of open innovation policy frameworks (de Beer 2015). Proposals for Canadian firms, universities and other actors to acquire more IP rights are not without merit, but there are risks.

The core problem with focusing on generating IP rights as asset stocks is then keeping those assets in Canada. Subsidizing the accumulation of IP rights with tax credits, public services or other incentives can be self-defeating when we know those assets are very likely to be sold abroad as Canadian entrepreneurs exit their businesses, typically through US-led investment, mergers or acquisitions. Given this dynamic and the current trade context, just pushing IP acquisition on Canadian businesses is like arming soldiers on the brink of capture: It effectively hands over economic ammunition to be later used against other Canadians. Yet restricting the sale of IP assets abroad handicaps Canadian firms by making them less attractive to investors, less able to enter global markets and more dependent on government programs to stay competitive. Unless deeper structural problems with financing, infrastructure and procurement in Canada's innovation economy are addressed at the same time, restrictions on IP flows are unlikely to help and may do harm.

Similarly, if policies steer universities to chase IP licensing revenue, there is a good chance that doing so will make Canada's research ecosystem less open, more fragmented and harder to navigate. It would be a mistake to sabotage Canada's greatest strength — its publicly funded, high-performing research institutions — in the process of trying to fix a known weakness. One of the most credible sources, published recently by WIPO, on harnessing public research for innovation notes the now-clichéd notion that university research remains uncommercialized in ivory towers, but suggests best practice is not mainly IP acquisition but rather flexibility, negotiation and outreach (Arundel, Athreye and Wunsch-Vincent 2021,

381, 393). Meanwhile, like other countries competing with the United States to attract and retain talent, Canada must continue to emphasize career pathways bridging research and business in areas such as AI (Lippoldt 2025).

Beating the United States at its own IP game is a totally unrealistic objective. It will never happen because of fundamental differences not just in the size but also the structural characteristics of Canada's knowledge economy. Similarly, it would be naive to believe that just pushing Canadian firms or post-secondary institutions to acquire more IP assets will even put a dent in Canada's long-standing IP trade deficit. Canada must instead be clever, tailoring rules and strategies to exploit our distinct strategic advantages, which centre on the openness and interconnectedness of our research ecosystems. There is no easy solution to this dilemma. The asymmetry in Canada's innovation system is not the result of a single policy failure. It reflects deeper features of the Canadian political economy. Fixing it requires rethinking the role of IP in relation to other policy tools.

A national innovation strategy should not default to more IP rights or stronger protection. Instead, it should focus on building systems that make Canadian firms better able to use IP, not just hold it. That means improving absorptive capacity, not hoarding formal titles. It means investing in translational institutions, not just filing more patents. And it means staying attentive to the risk that policies aimed at closing the IP trade gap could end up making Canada's research system weaker, not stronger.

Conclusion: Canada's Strategic Priorities

This special report has examined how IP becomes implicated in the dynamics of a trade war. It has shown that IP can serve as a target of retaliatory action to rebalance trade relations, an issue for review and a bargaining chip in renegotiations, and a tool for internal legal restructuring and broader strategic realignment. Rather than offering a prescriptive policy agenda in each subsection, the special report has sought to clarify the legal and institutional questions that arise when IP becomes embedded in trade conflict. These include questions about the enforceability of IP rights under retaliatory regimes; the distributional

consequences of renegotiated rules; the implications of subnational coordination efforts; and the paradoxes involved in building a more nationally focused innovation strategy.

Throughout, the analysis has emphasized the constraints facing Canadian policy makers and the institutional frictions that limit easy responses. In that context, four strategic priorities emerge, corresponding to each of the major sections of this special report.

Evidence and Data for Strategic Decision Making

The special report's economic analysis shows that Canada's knowledge-based economy remains poorly measured and insufficiently understood. Available statistics — particularly those capturing charges for the use of IP — reveal a large and growing trade deficit, with hundreds of billions more flowing out of Canada than into it. Yet these figures tell only part of the story. They do not account for the tax structures and corporate ownership patterns that shape international knowledge flows, nor do they capture the value of IP imports as inputs for Canadian production or the capital value embedded in firms and portfolios acquired abroad.

The strategic conclusion is clear: Canada urgently needs to invest in its capacity to monitor, model and interpret the economic impacts of IP policy. IP-related aspects of any policy goal — such as doubling non-US exports over a decade — are impossible to strategize without baselines and methods of measurement. Statistics Canada, ISED, CIPO and other IP and innovation agencies across jurisdictions must be equipped to generate and communicate objective, evidence-based analyses. Strengthening these institutions is essential to Canada's ability to navigate rapidly shifting global economic and geopolitical conditions.

Strategic Use of Legal Flexibilities and International Coordination

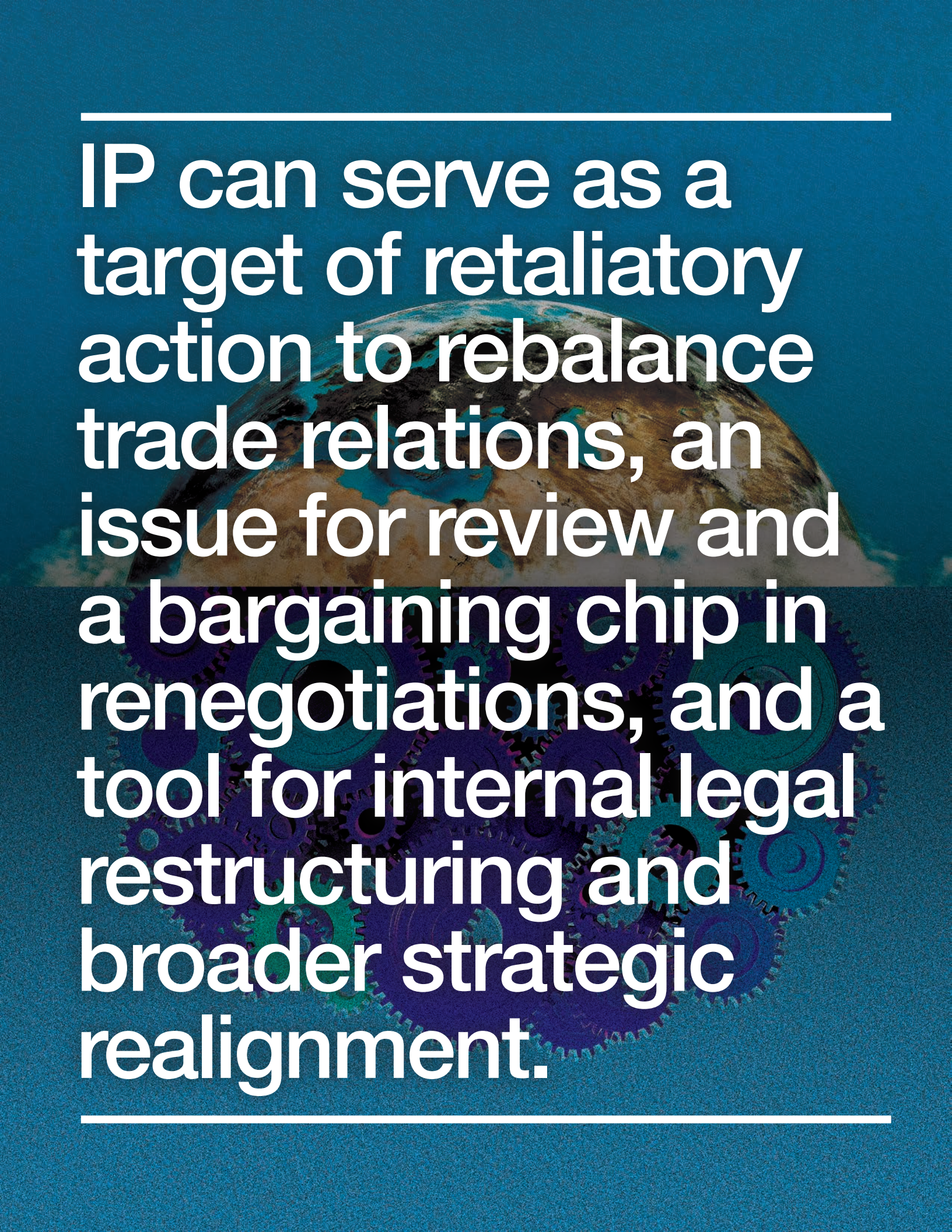
The analysis of IP as a retaliatory or rebalancing tool demonstrates that Canada has both domestic and international legal options available to defend its interests in a trade war. Under Canadian law, measures include targeted actions in specific fields, such as compulsory licensing of patents or adjustments to copyright enforcement, as well as broader authorities such as subsection 53(2) of the Customs Tariff, which empowers the

Cabinet to suspend or withdraw foreign IP rights as a means of enforcing Canada's rights under trade agreements. At the international level, the WTO framework permits the use of cross-retaliation in response to unlawful trade measures — a mechanism that has been studied, sometimes even tested.

In both domains, however, unilateral action would be far less effective than coordinated measures with allies. The reality is that most trading partners, when faced with a classic prisoner's dilemma, appear willing to accommodate US pressure in exchange for bilateral "deals" that are likely to be flimsy and short-lived. The strategic implication for Canada is twofold: to continue cultivating old and new alliances through which IP-related rebalancing measures can be discussed and coordinated; and to ensure that, even in times of economic conflict, Canada's actions remain grounded in the rule of law. Upholding principled and lawful conduct is not only morally sound but also essential to sustaining Canada's credibility and long-term leverage in the international trading system.

Reclaiming Strategic Policy Space in Trade Negotiations

The experience of successive trade agreements has shown that Canada's IP commitments have often outpaced its strategic interests. By locking in TRIPS-plus standards through CETA, CPTPP, CUSMA and other deals, Canada has restricted its own policy flexibility and, in some areas, already ceded aspects of sovereignty over the digital, data-driven and broader knowledge-based economy. The economic evidence confirms that these choices have not produced the expected returns: Canada's IP trade deficit continues to widen, reflecting disproportionate gains for foreign rights holders. The next phase of negotiations with the United States and others offers an opportunity to correct course. Canada must approach the upcoming review with a coherent strategy, learning from past concessions rather than repeating them. That means preserving the limited domestic flexibilities that remain, refusing to surrender additional leverage pre-emptively and resisting proposals that serve primarily foreign interests, such as the expansion of plant breeders' rights protection to predominantly foreign rights holders without reciprocal benefit. At the same time, Canada should reassess recent digital and data policies that may have been ill-conceived or counterproductive to domestic competition. A disciplined, evidence-based approach to future trade negotiations is essential to rebuilding Canada's capacity to govern its knowledge economy in the national interest. Above all, Canada cannot allow its negotiating



IP can serve as a target of retaliatory action to rebalance trade relations, an issue for review and a bargaining chip in renegotiations, and a tool for internal legal restructuring and broader strategic realignment.

position to be skewed by oversimplified theories or by the stereotypical assumption that "stronger" or longer IP rights are as much in Canada's best interest as America's. The prime directive for future trade negotiations should be to resist measures that disproportionately benefit rights holders abroad, while preserving the flexibility to implement IP and related policies designed specifically to advance Canadian companies and Canadian innovators.

Recalibrating Domestic Innovation Policy and Economic Structures

The analysis of IP in Canada's economic restructuring underscores the urgency of trade diversification and strategic realignment. Canada's stated goal of doubling exports beyond the United States must extend beyond resources and manufactured goods to encompass trade in services, including IP and other knowledge-based activities. Building stronger economic ties with partners that share compatible innovation priorities can open space for more balanced collaboration in the global knowledge economy. Yet success abroad depends on policy reform at home. Canada's innovation framework requires far greater coherence between the hard law of IP statutes and jurisprudence and the soft law of service delivery, awareness raising and strategic policy coordination. Federal and provincial initiatives — such as commercialization mandates, IP advisory programs and agency-level supports — should operate in alignment rather than in isolation.

At the same time, Canada must avoid mistaking the accumulation of IP assets for an innovation strategy. The evidence shows that the problem lies not in generating IP but in absorbing and deploying it effectively within Canadian firms. Policies that subsidize IP acquisition without addressing this underlying weakness risk accelerating the outflow of valuable assets abroad. Rather than competing in a game that is structurally tilted against us, Canada should capitalize on its genuine comparative advantages: a world-class research base, open scientific networks and public institutions capable of fostering translational infrastructure between research and industry. Strengthening those linkages through deliberate, coordinated investment offers a far more durable path toward turning knowledge into competitive advantage.

Paying closer attention to all these IP roles in the context of a trade war is not sufficient to resolve the many complex issues. But it is a necessary

step toward understanding the risks Canada faces and the options available in response. Those options extend beyond formal legal mechanisms and touch on the institutional and structural features of Canada's research, innovation and commercial ecosystems. IP is not peripheral to trade strategy; it is increasingly central. A more serious treatment of its role in global economic conflict is long overdue.

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AI Disclosure

AI Tool: ChatGPT (models 4o, 4.5 and 5o as personally trained and customized from March through October 2025, considering research ethics and best practices for the use of AI in scholarly writing, including, for example, Campagnolo [2025]; Hosseini, Resnik and Holmes [2023]; and Khalifa and Albadawy [2024]); *Data Analysis:* To test the author's own literature review and synthesis of materials collected and organized using Zotero reference management software (version 6.0.37); *Writing—Review & Editing:* To obtain feedback on and improve proposed content structuring, and to transcribe, edit and typographically correct content personally dictated and iterated by the author for grammar and clarity.

Works Cited

Abbott, Frederick M. 2009. “Cross-Retaliation in TRIPS: Options for Developing Countries.” Issue Paper No. 8. April. Geneva, Switzerland: International Centre for Trade and Sustainable Development. https://doi.org/10.2139/ssrn.1415802.

———. 2010. “Cross-retaliation in TRIPS: issues of law and practice.” In *The Law, Economics and Politics of Retaliation in WTO Dispute Settlement,* 1st ed., edited by Chad P. Bown and Joost Pauwelyn, 536–88. New York, NY: Cambridge University Press. https://doi.org/10.1017/CBO9780511674594.023.

Appleton, Barry. 2025. “A Sovereign Advisory System for Canada: Rebuilding Strategic Foresight in Trade and Innovation.” Opinion, Centre for International Governance Innovation, October 7. www.cigionline.org/articles/a-sovereign-advisory-system-for-canada-rebuilding-strategic-foresight-in-trade-and-innovation/.

Arundel, Anthony, Suma Athreye and Sacha Wunsch-Vincent, eds. 2021. *Harnessing Public Research for Innovation in the 21st Century: An International Assessment of Knowledge Transfer Policies.* 1st ed. Cambridge, UK: Cambridge University Press. https://doi.org/10.1017/9781108904230.

Atkinson, Robert D. 2025. “Canadian economic nationalism in the Trump era: what could possibly go wrong?” Opinion, *The Hill Times*, February 3. www.hilltimes.com/story/2025/02/03/canadian-economic-nationalism-in-the-trump-era-what-could-possibly-go-wrong/449136/.

Basheer, Shamnad. 2010. “Turning Trips on Its Head: An ‘IP Cross Retaliation’ Model for Developing Countries.” *The Law and Development Review* 3 (2): 141–97. https://doi.org/10.2202/1943-3867.1063.

Bonaglia, Davide and Sacha Wunsch-Vincent. 2024. “Cross-border Payments for the Use of Intellectual Property (IP) surpass 1 trillion US Dollars in 2022, a record high.” *Global Innovation Index* (blog), June 28. www.wipo.int/web/global-innovation-index/w/blogs/2024/cross-border-payments-ip.

Brown, Annie, Annabella Garnham, Anmol Kaur Grewal, Lorena Rivera Leon and Sacha Wunsch-Vincent. 2025. “The Value of Intangible Assets of Corporations Worldwide Rebounds to All-Time High of USD 80 Trillion in 2024.” *Global Innovation Index* (blog), February 28. www.wipo.int/web/global-innovation-index/w/blogs/2025/the-value-of-intangible-assets-of-corporations.

Brown, Jesse. 2025. “A Weird Way to Win the Trade War with Trump,” February 3, in *CANADALAND*, produced by Bruce Thorson, podcast, episode 1100, 31:31. www.canadaland.com/podcast/1100-a-weird-way-to-win-the-trade-war-with-trump/.

Campagnolo, Yan, ed. 2025. *Artificial Intelligence’s Impact on Legal Journals: Challenges and Opportunities for the Ottawa Law Review*. Ottawa, ON: University of Ottawa Press.

Chase, Steven. 2024. “Members of Congress say Canada’s online streaming act discriminates against Americans.” *The Globe and Mail,* May 16. www.theglobeandmail.com/politics/article-members-of-congress-say-canadas-online-streaming-act-discriminates/.

Chisik, Richard and Chuyi Fang. 2024. “Cross-retaliation and international dispute settlement.” *Canadian Journal of Economics/Revue Canadienne d’économique* 57 (4): 1137–81. https://doi.org/10.1111/caje.12740.

Ciuriak, Dan. 2025. “Canada at Trade War.” Discussion Paper. May 7. Ciuriak Consulting Inc. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5162904.

Ciuriak, Dan and Robert Fay. 2022. “The Digital Economy Partnership Agreement: Should Canada Join?” CIGI Policy Brief No. 171. Waterloo, ON: CIGI. www.cigionline.org/publications/digital-economy-partnership-should-canada-join/.

Cohen, Wesley M. and Daniel A. Levinthal. 1990. “Absorptive Capacity: A New Perspective on Learning and Innovation.” *Administrative Science Quarterly* 35 (1): 128–52. www.jstor.org/stable/2393553.

Council of Canadian Academies. 2013. *Innovation Impacts: Measurement and Assessment*. Ottawa, ON: The Expert Panel on the Socioeconomic Impacts of Innovation Investments, Council of Canadian Academies. https://cca-reports.ca/wp-content/uploads/2018/10/Innovation-Impacts-Full-Report-EN.pdf.

———. 2009. *Innovation and Business Strategy: Why Canada Falls Short*. Ottawa, ON: Expert Panel on Business Innovation, Council of Canadian Academies. https://cca-reports.ca/wp-content/uploads/2018/10/2009-06-11-innovation-report-1.pdf.

———. 2018a. *Improving Innovation Through Better Management.* Ottawa, ON: Expert Panel on Innovation Management, Education and Training, Council of Canadian Academies. https://cca-reports.ca/wp-content/uploads/2018/10/Improving_Innovation_Through_Better_Management_FullReport_EN.pdf.

———. 2018b. *Competing in a Global Innovation Economy: The Current State of R&D in Canada*. Ottawa, ON: Expert Panel on the State of Science and Technology and Industrial Research and Development in Canada, Council of Canadian Academies. https://cca-reports.ca/wp-content/uploads/2018/09/Competing_in_a_Global_Innovation_Economy_FullReport_EN.pdf.

———. 2025. *The State of Science, Technology, and Innovation in Canada 2025*. Ottawa, ON: Expert Panel on the State of Science, Technology, and Innovation in Canada, Council of Canadian Academies. https://rapports-cac.ca/wp-content/uploads/2025/11/The-State-of-STI-in-Canada-2025_FINAL.pdf.

de Beer, Jeremy. 2005. "Constitutional Jurisdiction Over Paracopyright Laws." In *In the Public Interest: The Future of Canadian Copyright Law*, edited by Michael Geist, 89–124. Toronto, ON: Irwin Law. https://papers.ssrn.com/abstract=814074.

———. 2006. "Copyrights, Federalism and the Constitutionality of Canada's Private Copying Levy." *McGill Law Journal* 51 (4): 735–62. https://doi.org/10.2139/ssrn.720223.

———. 2012. "Implementing International Trade Agreements in Federal Systems: A Look at the Canada-EU CETA's Intellectual Property Issues." *Legal Issues of Economic Integration* 39 (1): 51–71. https://doi.org/10.54648/leie2012004.

———. 2015. *"Open" Innovation Policy Frameworks: Intellectual Property, Competition, Investment & Other Market Governance Issues.* Ottawa, ON: Industry Canada. https://jeremydebeer.ca/wp-content/uploads/2017/08/Open-Innovation-Policy-Frameworks.pdf.

———. 2017. "Testimony to the Senate Standing Committee on Foreign Affairs and International Trade, 42nd Parliament, 1st Session." Paper presented at Proceedings of the Standing Senate Committee on Foreign Affairs and International Trade, April 13, Ottawa, ON. https://sencanada.ca/en/Content/Sen/Committee/421/AEFA/22ev-53261-e.

———. 2020a. *An International Intellectual Property and Digital Trade Strategy for Canada*. Special Report. Waterloo, ON: CIGI. www.cigionline.org/publications/international-intellectual-property-and-digital-trade-strategy-canada/.

———. 2020b. *International Intellectual Property after the New NAFTA*. CIGI Paper No. 235. Waterloo, ON: CIGI. www.cigionline.org/publications/international-intellectual-property-after-new-nafta/.

———. 2023. *Business Leveraging of Intellectual Property: Final Report*. Prepared for ISED (not available online).

———. 2025a. "Building Canada's capacity to use intellectual property for innovation." Opinion, *The Hill Times*, October 20. www.hilltimes.com/story/2025/10/20/building-canadas-capacity-to-use-intellectual-property-for-innovation/477281/.

———. 2025b. "Here's What a Trade War Will Mean for Canada's Knowledge Economy." Opinion, Centre for International Governance Innovation, February 10. www.cigionline.org/articles/heres-what-a-trade-war-will-mean-for-canadas-knowledge-economy/.

———. 2025c. "The United States' Biggest Vulnerability in the Trade War: Its Knowledge Economy." World Politics Review, August 22. www.worldpoliticsreview.com/us-trade-war-intellectual-property/.

———. 2025d. “United States–Mexico–Canada Agreement (Intellectual Property).” In *Elgar Encyclopedia of Intellectual Property Law*, edited by Paul Torremans, Irini Stamatoudi, Peter K. Yu and Bernd Justin Jütte. Cheltenham, UK: Edward Elgar. https://doi.org/10.4337/9781800886933.united.states.mexico.

de Beer, Jeremy, Jules Belanger and Mohit Sethi. 2020. “Consumer Contracts, Copyright Licensing, and Control over Data on the Internet of Things.” *Canadian Journal of Law and Technology* 18 (2): 161–211. https://digitalcommons.schulichlaw.dal.ca/cjlt/vol18/iss2/1/.

de Beer, Jeremy and Michael Geist. 2008. “Developing Canada’s Intellectual Property Agenda.” In *Canada Among Nations 2007: What Room for Manoeuvre?*, edited by Jean Daudelin and Daniel Schwanen. Montreal, QC: McGill-Queen’s University Press.

de Beer, Jeremy, E. Richard Gold and Mauricio Guaranga. 2011. “Intellectual Property Management: Policy Issues and Options.” Policy Brief No. 4. Genome Canada. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2660983.

Deere, Carolyn. 2008. *The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries*. Oxford, UK: Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199550616.001.0001.

Doctorow, Cory. 2025a. “Canada shouldn’t retaliate with US Tariffs.” *Medium*, January 15. https://doctorow.medium.com/canada-shouldnt-retaliate-with-us-tariffs-a0e32042fec8.

———. 2025b. “Pluralistic: Ideas Lying Around (03 Mar 2025).” *Pluralistic* (blog), March 3. https://pluralistic.net/2025/03/03/friedmanite/.

Drahos, Peter and John Braithwaite. 2002. *Information Feudalism: Who Owns the Knowledge Economy?* New York, NY: Earthscan. http://johnbraithwaite.com/wp-content/uploads/2016/06/Information-Feudalism-Who-Own.pdf.

Expert Panel on Intellectual Property. 2020. *Intellectual Property in Ontario’s Innovation Ecosystem*. Report to the Government of Ontario. February. https://files.ontario.ca/books/expert-panel-report-intellectual-property-2020-02-20_0.pdf.

Expert Panel Review of Federal Support to Research and Development. 2011. *Innovation Canada: A Call to Action*. Ottawa, ON: Industry Canada. https://publications.gc.ca/collections/collection_2011/ic/lu4-149-2011-eng.pdf.

Frankel, Susy. 2013. “The TRIPS Agreement and cross-retaliation.” In *Trade Agreements at the Crossroads*, edited by Susy Frankel and Meredith Lewis, 208–25. London, UK: Routledge. https://doi.org/10.4324/9781315867724.

Freeman, Alan. 2025. “Inflicting pain with patents.” *National Magazine*, March 6. https://nationalmagazine.ca/en-ca/articles/law/hot-topics-in-law/2025/inflicting-pain-with-patents.

Gallini, Nancy and Aidan Hollis. 2019. *To Sell or Scale Up: Canada’s Patent Strategy in a Knowledge Economy*. Institute for Research on Public Policy Study No. 72. August. https://irpp.org/wp-content/uploads/2019/08/To-Sell-Or-Scale-Up-Canadas-Patent-Strategy-in-a-Knowledge-Economy.pdf.

Geist, Michael. 2025. “Richard Gold on Why Canada Should Target U.S. Patents To Help Counter Tariff Trade Pressure,” February 10, in *Law Bytes*, podcast, 25:43. www.michaelgeist.ca/2025/02/law-bytes-podcast-episode-226/.

Gervais, Daniel J. 2021. *The TRIPS Agreement: Drafting History and Analysis.* 5th ed. London, UK: Sweet & Maxwell.

Gold, E. Richard. 2019. “Should Universities Get Out of the Patent Business?” Opinion, Centre for International Governance Innovation, April 3. www.cigionline.org/articles/should-universities-get-out-patent-business/.

———. 2021. “The fall of the innovation empire and its possible rise through open science.” *Research Policy* 50 (5): 104226. https://doi.org/10.1016/j.respol.2021.104226.

———. 2025. “Opinion: Canada must hit the U.S. where it hurts most: its lucrative patents.” *The Globe and Mail,* January 22. www.theglobeandmail.com/business/commentary/article-canada-must-hit-the-us-where-it-hurts-most-its-lucrative-patents/.

Government of Ontario. 2020. “Province Launches Intellectual Property Action Plan.” Backgrounder, July 17. https://news.ontario.ca/en/backgrounder/57658/province-launches-intellectual-property-action-plan#.

———. 2022. “Commercialization Mandate Policy Framework.” Toronto, ON: Government of Ontario. https://cdn-ca.agilitycms.com/conestoga-applied-research/commercialization-mandate-policy-framework.pdf.

Halliday, Matthew. 2017. “Are Canadian profits leaking out of Canada?” *The Globe and Mail,* June 9. www.theglobeandmail.com/report-on-business/a-step-toward-preventing-ip-leakage/article35268211/.

Herman, Lawrence. 2020. “A Call for More Surgical Use of Existing Trade Laws.” November. Calgary, AB: Canadian Global Affairs Institute. https://hermancorp.net/wp-content/uploads/2020/11/Surgical-Use-of-Cdn-TradeLaws-CGAI-Nov-2020.pdf.

Hinton, Jim. 2025. “Keep Canada’s IP in Canada.” *Maclean’s*, June 11. https://macleans.ca/society/keep-canadas-ip-in-canada/.

Hosseini, Mohammad, David B. Resnik and Kristi Holmes. 2023. “The ethics of disclosing the use of artificial intelligence tools in writing scholarly manuscripts.” *Research Ethics* 19 (4): 449–65. https://doi.org/10.1177/17470161231180449.

International Monetary Fund. 2009. *Balance of Payments Manual.* 6th edition. Washington, DC: International Monetary Fund.

Khalifa, Mohamed and Mona Albadawy. 2024. “Using artificial intelligence in academic writing and research: An essential productivity tool.” *Computer Methods and Programs in Biomedicine Update* 5: 100145. https://doi.org/10.1016/j.cmpbup.2024.100145.

Li, Ying and Wim Vanhaverbeke. 2009. “The Relationships between Foreign Competition, Absorptive Capacity and Pioneering Innovation: An Empirical Investigation in Canada.” *International Journal of Innovation Management* 13 (01): 105–37. https://doi.org/10.1142/S1363919609002212.

Lighthizer, Robert E. 2020. *Report on the Appellate Body of the World Trade Organization*. February. Washington, DC: Office of the USTR. https://ustr.gov/sites/default/files/Report_on_the_Appellate_Body_of_the_World_Trade_Organization.pdf.

Lippoldt, Douglas. 2025. *Developing Countries’ Business Participation in the AI Economy*. CIGI Paper No. 323. Waterloo, ON: CIGI. www.cigionline.org/static/documents/Ai-economy-Lippoldt_5FAG0m5.pdf.

Magdeleine, Joscelyn and Andreas Maurer. 2022. “Measuring International Intellectual Property Transactions in a Globalized World: Current Challenges and Possible Improvements.” In *Trade in Knowledge: Intellectual Property, Trade and Development in a Transformed Global Economy*, edited by Antony Taubman and Jayashree Watal, 171–93. 1st ed. Cambridge, UK: Cambridge University Press. https://doi.org/10.1017/9781108780919.008.

Malone, Matt. 2023. *The Law of Trade Secrets and Confidential Information in Canada*. Toronto, ON: LexisNexis Canada. https://store.lexisnexis.com/en-ca/products/the-law-of-trade-secrets-and-confidential-information-in-canada.html.

Maskus, Keith E. 2000. *Intellectual Property Rights in the Global Economy.* Washington, DC: Peterson Institute for International Economics.

May, Christopher and Susan K. Sell. 2006. *Intellectual Property Rights: A Critical History.* iPolitics: Global Challenges in the Information Age Series. Boulder, CO: Lynne Rienner.

McKenna, Barrie. 2021. *Ideas for Sale: Why IP Is a Symptom, Not a Cause, of Canada’s Failure to Scale*. June 21. Ottawa, ON: The Conference Board of Canada. www.conferenceboard.ca/insights/ideas-for-sale-why-ip-is-a-symptom-not-a-cause-of-canadas-failure-to-scale/.

McNally, John. 2025. “Canada-US Trade: Getting Up To Speed.” Scotiabank, January 31. www.scotiabank.com/ca/en/about/economics/economics-publications/post.other-publications.canada-and-us-economics-.canada-and-us-decks.trade-stats--january-31--2025-.html.

Mercurio, Bryan. 2009a. “Retaliatory Trade Measures in the WTO Dispute Settlement Understanding: Are There Really Alternatives?” In *Trade Disputes and the Dispute Settlement Understanding of the WTO: An Interdisciplinary Assessment*, edited by James C. Hartigan, 397–442. Frontiers of Economics and Globalization, vol. 6. Bingley, UK: Emerald Group. https://doi.org/10.1108/S1574-8715(2009)0000006019.

———. 2009b. “Why compensation cannot replace trade retaliation in the WTO Dispute Settlement Understanding.” *World Trade Review* 8 (2): 315–38. https://doi.org/10.1017/S1474745609004273.

Moss, Neil. 2025. “Tariff dispute process would only offer symbolic win for Canada, but should still be used: trade observers.” *The Hill Times*, February 26. www.hilltimes.com/story/2025/02/26/tariff-dispute-process-would-only-offer-symbolic-win-for-canada-but-should-still-be-used-trade-observers/452155/.

Neubig, Thomas and Sacha Wunsch-Vincent. 2022. “A Missing Link in the Analysis of Global Value Chains: Cross-Border Flows of Intangible Assets, Taxation and Related Measurement Implications.” In *Trade in Knowledge: Intellectual Property, Trade and Development in a Transformed Global Economy*, 1st ed., edited by Antony Taubman and Jayashree Watal, 194–217. Cambridge, UK: Cambridge University Press.

OECD. 2025. *OECD Economic Surveys: Canada 2025*. Paris, France: OECD. https://doi.org/10.1787/28f9e02c-en.

Palmeter, David, Petros C. Mavroidis and Niall Meagher. 2022a. *Dispute Settlement in the World Trade Organization: Practice and Procedure*. 3rd ed. Cambridge, UK: Cambridge University Press.

———. 2022b. “Remedies.” In *Dispute Settlement in the World Trade Organization: Practice and Procedure*, 3rd ed., edited by David Palmeter, Petros C. Mavroidis and Niall Meagher, 457–517. Cambridge, UK: Cambridge University Press.

Papovich, Joseph S. 1997. “NAFTA’s Provisions Regarding Intellectual Property — Are They Working as Intended — A U.S. Perspective.” *Canada-United States Law Journal* 23: 253–60. https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1862&context=cuslj.

Park, Walter G. and Douglas C. Lippoldt. 2008. “Technology Transfer and the Economic Implications of the Strengthening of Intellectual Property Rights in Developing Countries.” OECD Trade Policy Papers No. 62. Paris, France: OECD. https://doi.org/10.1787/244764462745.

Rousseau, Claire, Davide Bonaglia and Sacha Wunsch-Vincent. 2025. “International Trade in Ideas, Know-how and Intellectual Property Surpasses 1 trillion in 2023; the US and Japan, as Well as Ireland and China Lead.” *Global Innovation Index* (blog), June 26. www.wipo.int/en/web/global-innovation-index/w/blogs/2025/international-trade.

Sell, Susan K. 2003. *Private Power, Public Law: The Globalization of Intellectual Property Rights.* Cambridge, UK: Cambridge University Press.

Statistics Canada. 2025a. “Table 36-10-0006–01 International transactions in services, commercial services by category, annual (x 1,000,000).” https://doi.org/10.25318/3610000601-eng.

———. 2025b. “Table 12-10-0011-01 International merchandise trade for all countries and by Principal Trading Partners, monthly (x 1,000,000).” https://doi.org/10.25318/1210001101-eng.

———. 2025c. “Table 12-10-0144-01 International trade in services, monthly (x 1,000,000).” https://doi.org/10.25318/1210014401-eng.

———. 2025d. “Table 12-10-0163-01 International merchandise trade by commodity, monthly (x 1,000,000).” https://doi.org/10.25318/1210016301-eng.

Stephens, Hugh. 2023. “Could or Would the U.S. Retaliate Against the Online Streaming Act (C-11) Now That it is Law?” May. *Communiqué* vol. 15:49. Calgary, AB: The School of Public Policy, University of Calgary. https://doi.org/10.55016/ojs/sppp.v16i1.77312.

Taubman, Antony. 2022. “The Shifting Contours of Trade in Knowledge: The New ‘Trade-Related Aspects’ of Intellectual Property.” In *Trade in Knowledge: Intellectual Property, Trade and Development in a Transformed Global Economy*, 1st ed., edited by Antony Taubman and Jayashree Watal, 27–83. Cambridge, UK: Cambridge University Press. https://doi.org/10.1017/9781108780919.004.

Taubman, Antony and Jayashree Watal, eds. 2022. *Trade in Knowledge: Intellectual Property, Trade and Development in a Transformed Global Economy*. 1st ed. Cambridge, UK: Cambridge University Press. https://doi.org/10.1017/9781108780919.

The White House. 2025a. “America First Trade Policy.” Memorandum, January 20. www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/.

———. 2025b. “Fact Sheet: President Donald J. Trump Declares National Emergency to Increase our Competitive Edge, Protect our Sovereignty, and Strengthen our National and Economic Security.” Fact Sheet, April 2. www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-declares-national-emergency-to-increase-our-competitive-edge-protect-our-sovereignty-and-strengthen-our-national-and-economic-security/.

UN Department of Economic and Social Affairs. 2012. *Manual on Statistics of International Trade in Services 2010 (MSITS 2010)*. New York, NY: United Nations. https://unstats.un.org/unsd/tradeserv/tfsits/msits2010/docs/MSITS%202010%20M86%20(E)%20web.pdf.

US Bureau of Economic Analysis. 2025. “Table 2.1. U.S. Trade in Services, by Type of Service.” July 3. https://apps.bea.gov/itable/?reqid=62&step=1&_gl=1*1io1x9v*_ga*MTI2MzkzNjEyOC4xNzQxMDMyNDMw*_gJ4698JNNFT*MTc0MzE5Njk5Mi41LjEuMTc0MzE5Nzg5OS4yMi4wLjA.#eyJhcHBpZCI6NjIsInN0ZXBzIjpbMSw5LDYsNl0sImRhdGEiOltbIlByb2R1Y3QiLCI0Il0sWyJUYWJsZUxpc3QiLCIyNDUiXSxbIkZpbHRlcl8jMSIsWyIxIl1dLFsiRmlsdGVyXyMyIixbIjM5IiwiNDAiLCI0MSIsIjQyIiwiNDMiLCI0NCIsIjQ1IiwiNDYiLCI0NyIsIjQ4IiwiNDkiLCI1NyIsIjU4IiwiOTIiLCI5NCIsIjk3Il1dLFsiRmlsdGVyXyMzIixbIjAiXV0sWyJGaWx0ZXJfIzQiLFsiMCJdXSxbIkZpbHRlcl8jNSIsWyIwIl1dXX0=.

USTR. 2014. “United States and Brazil Reach Agreement to End WTO Cotton Dispute.” Press release, October 1. https://ustr.gov/about-us/policy-offices/press-office/press-releases/2014/October/United-States-and-Brazil-Reach-Agreement-to-End-WTO-Cotton-Dispute.

———. 2022. “Readout of Ambassador Katherine Tai’s Meeting with Canada’s Minister of International Trade, Export Promotion, Small Business, and Economic Development, Mary Ng.” Press release, July 8. https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/july/readout-ambassador-katherine-tais-meeting-canadas-minister-international-trade-export-promotion.

———. 2024. *2024 Special 301 Report*. Washington, DC: Office of the USTR. https://ustr.gov/sites/default/files/2024%20Special%20301%20Report.pdf.

———. 2025a. *2025 National Trade Estimate Report on Foreign Trade Barriers.* Washington, DC: Office of the USTR. https://ustr.gov/sites/default/files/files/Press/Reports/2025NTE.pdf.

-- -- --. 2025b. *2025 Special 301 Report*. Washington, DC: Office of the USTR. https://ustr.gov/sites/default/files/files/Issue_Areas/Enforcement/2025%20Special%20301%20Report%20(final).pdf.

Van den Bossche, Peter. 2021. “The TRIPS Agreement and WTO Dispute Settlement: Past, Present and Future.” In *25 Years of the TRIPS Agreement: Past, Present, Future*, edited by Christopher Heath and Anselm Kamperman Sanders, 257–75. Alphen aan den Rijn, the Netherlands: Kluwer Law International.

Wasserman Rajec, Sarah R. 2016. “The Intellectual Property Hostage in Trade Retaliation.” *Maryland Law Review* 76 (1): 169–219. https://scholarship.law.wm.edu/facpubs/1831/.

Watal, Jayashree and Antony Taubman, eds. 2015. *The Making of the TRIPS Agreement: Personal insights from the Uruguay Round negotiations*. Geneva, Switzerland: WTO. www.wto.org/english/res_e/booksp_e/trips_agree_e/history_of_trips_nego_e.pdf.

Zdouc, Werner. 2010. “Cross-retaliation and suspension under the GATS and TRIPS agreements.” In *The Law, Economics and Politics of Retaliation in WTO Dispute Settlement,* 1st ed., edited by Chad P. Bown and Joost Pauwelyn, 515–35. Cambridge, UK: Cambridge University Press. https://doi.org/10.1017/CBO9780511674594.022.

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67 Erb Street West
Waterloo, ON, Canada N2L 6C2
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