

# **U.S. Trade Representative Releases 2025 Special 301 Report – China Failed to Implement or Only Partially Implemented IP Commitments Under the Phase One Agreement**

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On April 29, 2025, the [United States Trade Representative](#) (USTR) released the [2025 Special 301 Report on Intellectual Property Protection and Enforcement](#), of which 10 pages focus on China. The USTR stated, “serious concerns remain regarding long-standing issues like technology transfer, trade secrets, counterfeiting, online piracy, copyright law, patent and related policies, bad faith trademarks, and geographical indications. China has failed to implement or only partially implemented a number of its commitments on intellectual property under the United States-China Economic and Trade Agreement (Phase One Agreement), and the United States will continue to monitor closely China’s implementation.” Accordingly, China remains on the priority watchlist alongside Argentina, Chile, India, Indonesia, Mexico, Russia and Venezuela.

Excerpts from the Report follow. The full Report is available [here](#) (English only).

## **Technology Transfer**

As part of the Phase One Agreement, China agreed to provide effective access to Chinese markets without requiring or pressuring U.S. persons to transfer their technology to Chinese persons. China also agreed that any transfer or licensing of technology by U.S. persons to Chinese persons must be based on market terms that are voluntary and mutually agreed, and that China would not support or direct the outbound foreign direct investment activities of its persons aimed at acquiring foreign technology with respect to sectors and industries targeted by its industrial plans that create distortion. In addition, China committed to ensuring that any enforcement of laws and regulations with respect to U.S. persons is impartial, fair, transparent, and non-discriminatory. USTR continues to work with stakeholders to evaluate whether these commitments have resulted in changes in China’s ongoing conduct at the national, provincial, and local levels.

## **Trade Secrets**

Stakeholders report that the Chinese judicial system’s enforcement of trade secret

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protections continues to be weak, and implementation of the amended Criminal Law remains incomplete. In January 2023, the Supreme People's Court (SPC) and Supreme People's Procuratorate (SPP) issued for public comment a draft Interpretation of Several Issues Concerning the Application of Laws for Handling Criminal Cases of Infringement upon Intellectual Property Rights, which would define key terms in the amended Criminal Law. However, further changes are needed to implement a new threshold for triggering criminal investigations and prosecutions in the draft Interpretation and to update a related standard issued by the SPC and Ministry of Public Security. Although China proposed a new amendment to the Anti-Unfair Competition Law in December 2024 that would increase the minimum administrative fine for trade secret misappropriation under "serious circumstances," such a change is no substitute for strengthening criminal enforcement of trade secrets. Moreover, stakeholders continue to identify significant enforcement challenges, including high evidentiary burdens, limited discovery, difficulties meeting stringent conditions to enforce agreements related to protection of trade secrets and confidential business information against theft, and difficulties in obtaining deterrent-level damages awards.

China needs to address concerns regarding the risk of unauthorized disclosures of trade secrets and confidential business information by government personnel and third-party experts, which continue to be a serious concern for the United States and U.S. stakeholders in industries such as software, manufacturing, and cosmetics. The draft Guiding Opinions on Strengthening the Protection of Trade Secrets and Confidential Business Information in Administrative Licensing was published for public comment in August 2020 by the Ministry of Justice but has not been finalized. U.S. stakeholders continue to express concerns about the potential for discriminatory treatment and unauthorized disclosure of their information by local authorities under the proposed expansion of administrative trade secret enforcement, for which the State Administration of Market Regulation (SAMR) issued draft rules in 2020 that have not been finalized.

## Counterfeiting

China continues to be the world's leading source of counterfeit and pirated goods. For example, a 2022 report identified China and Hong Kong as the largest exporters of counterfeit foodstuffs and cosmetics, accounting for approximately 60% of counterfeit foodstuffs customs seizures and 83% of counterfeit cosmetics customs seizures. China and Hong Kong, together, accounted for over 93% of the value measured by manufacturers' suggested retail price of counterfeit and pirated goods seized by U.S. Customs and Border Protection in Fiscal Year 2024. Counterfeiting activities have increased as economic conditions have declined within China. The failure to curb the widespread manufacture, domestic sale, and export of counterfeit goods affects not only right holders but also the health and safety of consumers. The production, distribution, and sale of counterfeit medicines, fertilizers, and pesticides, as well as under-regulated pharmaceutical ingredients, remain widespread in China.

China's e-commerce markets, the largest in the world, remain a source of widespread counterfeits as infringing sales have migrated from physical to online markets. Right holders also raise concerns about the proliferation of counterfeit sales facilitated by the confluence of e-commerce platforms and social media in China. This trend is now well-established as the popularity of ecommerce has led many sellers to maintain both a physical and online presence, or to shift to online platforms entirely, which offer short-form video, live stream, and e-commerce functionalities that allow sellers of counterfeit goods to evade detection. Right

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holders continue to report difficulties in receiving information and support from platforms in investigations to uncover the manufacturing and distribution channels of counterfeit goods and sellers, as well as onerous evidentiary requirements and excessive delays in takedowns. Counterfeiters continue to exploit the use of small parcels and minimal warehouse inventories, the separation of counterfeit labels and packaging from products prior to the final sale, and the high volume of packages shipped to the United States to escape enforcement and to minimize the deterrent effect of enforcement activities.

Widespread online piracy also remains a major concern, including in the form of “mini Video on Demand (VOD)” facilities that screen unauthorized audiovisual content, illicit streaming devices (ISDs), and unauthorized copies of or access codes to scientific journal articles and academic texts. As a leading source and exporter of systems that facilitate copyright piracy, China should take sustained action against websites and online platforms containing or facilitating access to unlicensed content, ISDs, and piracy apps that facilitate access to such websites.

There was no progress in 2024 on finalizing amendments to the E-Commerce Law, which were issued by SAMR for public comment in August 2021. The draft amendments to the E-Commerce Law include changes that would extend the deadline for right holders to respond to a counternotification of non-infringement, and impose penalties for fraudulent counter-notifications and penalties that restrict the business activities of platforms for serious circumstances of infringement. Although noting improvements under the draft amendments, right holders have raised concerns about the failure to codify the elimination of liability for erroneous notices submitted in good faith, as well as proposed changes that would allow reinstatement of listings upon posting a guarantee.

## Copyright

Right holders continue to highlight the need for effective implementation and clarification of criminal liability for the manufacture, distribution, and exportation of circumvention devices, as well as new measures to address online piracy. Right holders also report continuing uncertainty about whether amendments to the Copyright Law in 2021 protect sports and other live broadcasts, and recommend clarification in the copyright regulations. While right holders welcomed some effective, but limited, enforcement actions, such as the annual Sword-Net Special Campaign that targeted online piracy of copyrighted content, they encourage China to develop these periodic campaigns into sustained, long-term enforcement measures.

## Patents

Right holders raised concerns that, although the Patent Law allows the filing of supplemental data to support disclosure and patentability requirements, the rules for accepting post-filing data are opaque and patent examiners have applied an overly stringent standard to reject such data. In addition, the China National Intellectual Property Administration’s (CNIPA) administrative Patent Reexamination and Invalidation Department and Chinese courts reportedly reject supplemental data based on unduly stringent requirements for acceptance of such data, resulting in potentially improper invalidity decisions. Such decisions can also lead to automatic dismissal of parallel patent infringement proceedings in China’s courts.

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Following the implementation of a mechanism for the early resolution of potential pharmaceutical patent disputes in 2021, right holders have expressed concerns about the lack of transparency in decisions issued by CNIPA, the cumbersome registration system, and the lack of any penalties for erroneous patent statements. Right holders continue to raise concerns that they had identified prior to implementation, such as regarding the scope of patents and pharmaceuticals covered by the mechanism, the lack of clarity about what could trigger a dispute under the mechanism, potential difficulties in obtaining preliminary injunctions, the length of the stay period, and the possibility of bias in favor of Chinese companies.

The issuance of anti-suit injunctions by Chinese courts in standard essential patent (SEP) disputes has not occurred in recent years, but the issue continues to raise due process and transparency concerns for right holders, including regarding how such rulings may favor domestic companies over foreign patent holders. High-level political and judicial authorities in China have called for extending the jurisdiction of China's courts over global IP litigation and have cited the issuance of an anti-suit injunction as an example of the court "serving" the "overall work" of the Chinese Communist Party and the Chinese State. Moreover, Chinese courts appear increasingly interested in exercising jurisdiction in cases involving SEPs, raising concerns that China seeks to establish itself as the forum for SEP litigation in order to favor domestic companies.

The National People's Congress passed amendments to the Anti-Monopoly Law (AML), which entered into effect in August 2022. Right holders have raised concerns about the implementation of the amended AML, particularly regarding the draft implementing rules that define anticompetitive behavior in the development of standards and the licensing and implementation of SEPs. Right holders stated concerns that AML enforcement can be misused for the purpose of depressing the value of foreign-owned IP in key technologies, including by finding violations of the law with respect to the licensing of patents without actual harm to competition or the competitive process.

It is critical that China's AML enforcement be fair, transparent, and non-discriminatory; afford due process to parties; focus on whether there is harm to competition or the competitive process, consistent with the legitimate goals of competition law; and implement appropriate competition remedies to address the competitive harms. China should not use competition law to advance noncompetition goals.

## **Trademarks**

Stakeholders welcomed the publication of draft amendments to the Trademark Law in January 2023, which contain provisions relating to bad faith trademarks. However, the draft amendments remain pending. The State Council's 2024 Legislative Work Plan included the draft amendments to the Trademark Law, but the release date of an updated draft is still unknown. In 2023 and 2024, China sought to address some concerns regarding bad faith trademark applications, including by issuing a measure intended to provide more consistent and predictable application examination results, by providing a non-use ground for cancellation of a collective or certification mark in another measure, and by establishing goals for combating bad faith trademark registrations.

Despite these developments, bad faith trademarks remain one of the most significant

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challenges for U.S. brand owners in China. The United States continues to urge China to take further steps to address concerns.

In 2024, stakeholders continued to raise concerns regarding reforms that appear primarily focused on increasing the speed rather than quality of trademark examinations. While CNIPA continues to tout downward trends in the average period for obtaining a trademark from the date of application to registration (currently less than 7 months), and the average time for appeals of trademark oppositions and rejections has been cut to 11 months and 5.5 months, respectively, stakeholders continue to indicate that the quality of trademark examination is inconsistent across the board.

## Developments

In 2024, the National People's Congress (NPC) and its Standing Committee issued no new or amended legislation directly addressing IP. Despite some positive reports from right holders of courts issuing higher damage awards for IP infringement, insufficient damage awards are still a concern. China has yet to address right holder concerns with respect to preliminary injunctive relief, evidence production, evidentiary requirements, establishment of actual damages, burdensome thresholds for criminal enforcement, and lack of deterrent-level damages and penalties.

Right holders continue to raise concerns about their ability to meet consularization and notarization requirements for documents submitted to the Beijing Intellectual Property Court and in other IP related proceedings. As a positive step, the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention) entered into force with respect to China in November 2023. However, right holders continue to report inconsistent implementation, including instances where Chinese courts still required burdensome legalization procedures for certain court documents, hampering the efficacy of civil litigation to resolve IP disputes.

The decrease in transparency and the potential for political intervention with the judicial system, as well as the emphasis on administrative enforcement in China, remain as critical concerns. Adding to these concerns, in March 2025, the State Council of China issued the Provisions on the Handling of Foreign-Related Intellectual Property Disputes, a troubling new measure that seemingly legitimizes political intervention in IP disputes. This new measure authorizes Chinese government agencies to take countermeasures against and impose restrictions on foreign entities that “use intellectual property disputes as an excuse to contain and suppress China” and also to “take discriminatory restrictive measures against Chinese citizens or organizations.” The new measure further prohibits any organization or individual from implementing or assisting in implementing foreign IP enforcement actions deemed “discriminatory restrictive measures,” or else be liable for civil damages.

A long-standing concern has been that Chinese courts publish only selected decisions rather than all preliminary injunctions and final decisions. Moreover, the number of verdicts uploaded online has consistently decreased over the past few years, further hampering transparency and making it more difficult for right holders to determine how China protects and enforces foreign IP. In January 2024, the SPC admitted to the decrease in case publications and announced the launch of a National Court Judgments Database. Initial details shared in December 2023 indicated the database would not be available to the public, and the SPC has

yet to clarify the extent to which case decisions will be accessible to the general public or foreign firms. Additional concerns include interventions in judicial proceedings by local government officials, party officials, and powerful local interests that undermine the authority of China's judiciary and rule of law. In January 2024, amendments to the Civil Procedure Law entered into effect that expanded the jurisdiction of Chinese courts in cases involving foreign parties. A judiciary truly independent from the Communist Party of China is critical to promote rule of law in China and to protect and enforce IP rights. Right holders also expressed concerns about the increased emphasis on administrative enforcement, as authorities often fail to provide right holders with information regarding the process or results of enforcement actions. The transfer of administrative IP cases for criminal enforcement remains uneven, as administrative authorities may be reluctant to transfer cases where they can collect large fines and criminal enforcement authorities reportedly lack the budget for warehousing counterfeits and investigations.

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