

2021 Special 301 Report



Office of the United States Trade Representative

CHINA

China remains on the Priority Watch List in 2021 and is subject to continuing Section 306 monitoring.

Ongoing Challenges and Concerns

China needs to deepen reforms strengthening intellectual property (IP) protection and enforcement, fully implement recent revisions to its IP measures, refrain from requiring or pressuring technology transfer to Chinese companies, open China's market to foreign investment, and allow the market a decisive role in allocating resources. For U.S. persons who rely on IP protection in what is already a very difficult business environment, severe challenges persist because of excessive regulatory requirements and informal pressure and coercion to transfer technology to Chinese companies, continued gaps in the scope of IP protection, incomplete legal reforms, weak enforcement channels, and lack of administrative and judicial transparency and independence.

Under Section 301 of the Trade Act of 1974, the Office of the United States Trade Representative (USTR) has been taking action to address a range of unfair and harmful Chinese acts, policies, and practices related to technology transfer, IP, and innovation. USTR has also successfully pursued dispute settlement proceedings at the World Trade Organization (WTO) to address discriminatory licensing practices. In addition, the United States' engagement with China has been demonstrating progress since the signing of the United States-China Economic and Trade Agreement (Phase One Agreement) in January 2020.

The Phase One Agreement contains separate chapters on IP and technology transfer. The chapters address numerous long-standing concerns of a wide range of U.S. industries, including in the areas of trade secrets, patents, pharmaceutical-related IP, trademarks, copyrights, and geographical indications. The United States has been closely monitoring China's progress in implementing its commitments.

In 2020, China published a large number of draft IP-related legal and regulatory measures and finalized over a dozen measures. Notably, China amended the Patent Law, Copyright Law, and Criminal Law in the past year. However, these steps toward reform require effective implementation and also fall short of the full range of fundamental changes needed to improve the IP landscape in China. As discussed further below, right holders report some improvements to IP enforcement but uncertainty about the effectiveness of certain law changes. Furthermore, long-standing problems such as bad faith trademarks and counterfeiting persist, and worrying developments such as broad anti-suit injunctions issued by Chinese courts have emerged.

Moreover, Chinese officials have made high-level statements suggesting that IP rights should be linked to national security and the "external transfer" of IP rights in certain technologies should be prevented and emphasizing the need to develop "indigenous" innovation. Chinese agencies have also proposed incentive measures for semiconductors and software that condition eligibility on "indigenous" IP. Other official statements indicate that the judiciary must uphold the absolute leadership of the Chinese Communist Party and do its part to ensure Chinese ownership of

technologies critical to China's development. Such statements and measures raise concerns about requiring and pressuring technology transfer and about whether IP protection and enforcement will apply fairly to foreign right holders in China.

Developments, Including Progress and Actions Taken

In 2018, USTR reported that its investigation under Section 301 of the Trade Act of 1974 found that China pursues a range of unfair and harmful acts, policies, and practices related to technology transfer, IP, and innovation. These include investment and other regulatory requirements that require or pressure technology transfer, substantial restrictions on technology licensing terms, direction or facilitation of the acquisition of foreign companies and assets by domestic firms to obtain cutting-edge technologies, and conducting and supporting unauthorized intrusions into and theft from computer networks of U.S. companies to obtain unauthorized access to IP.

In March 2018, the United States initiated a WTO case challenging Chinese measures that deny foreign patent holders the ability to enforce their patent rights against a Chinese joint-venture partner after a technology transfer contract ends and that impose mandatory adverse contract terms that discriminate against and are less favorable for imported foreign technology as compared to Chinese technology. Consultations took place in August 2018, and a panel was established to hear the case at the United States' request in November 2018. In March 2019, China announced the withdrawal of certain measures that the United States had challenged in its panel request. After China's announcement, the WTO panel suspended its work in light of ongoing consultations between the United States and China to resolve their dispute.

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. USTR is working with stakeholders to evaluate whether these commitments have resulted in changes in China's ongoing conduct at the national, provincial, and local levels.

Legislative and Judicial Reforms

Recent amendments to IP-related laws, discussed further below, introduced several changes. These amendments increased the minimum and maximum levels of statutory damages in the Patent Law and Copyright Law, as well as the minimum and maximum criminal penalties for IP-related crimes under the Criminal Law. In addition, the Patent Law and Copyright Law amendments provided for punitive damages for "intentional infringement" that were "under serious circumstances." The Patent Law and Copyright Law also provided a burden-shifting provision similar to that in the amended Trademark Law, where a court has the discretion to order a defendant to produce accounting records and other evidence relating to illegal sales and to rely on the plaintiff's evidence of damages if the defendant fails to produce evidence or produces false evidence.

In addition, the Supreme People's Court (SPC) issued several new judicial interpretations on the treatment of evidence in IP trials, the handling of civil disputes on trade secret misappropriation, the handling of criminal cases for IP infringement, administrative cases involving the granting of patent rights, IP disputes that are Internet-related or involve e-commerce platforms, increasing punishment for IP infringement, and protection for copyright and related rights. The SPC also issued an implementation plan and guidelines for the enforcement of IP judgments. Also, the State Council issued a new regulation on the transfer of cases from administrative to criminal authorities when there is a reasonable suspicion of a criminal violation. The Supreme People's Procuratorate (SPP) and the Ministry of Public Security (MPS) issued new regulations revising the criminal prosecution standards for trade secret misappropriation cases.

However, it remains to be seen whether these measures sufficiently address existing challenges to right holders, such as obstacles to obtaining preliminary injunctive relief, a lack of means to require evidence production, onerous authentication and other evidentiary requirements, difficulties in establishing actual damages, insufficient damage awards based on low-level statutory minimums, burdensome thresholds for criminal enforcement, and lack of deterrent-level statutory damages and criminal penalties. At the early stages of implementation for all these changes, reports have been mixed. For example, the introduction of statutory minimums for copyright infringement and the reported increase in overall damage awards for civil IP cases have been positive developments. However, the minimum amount for statutory copyright damages (approximately \$75) and failure to raise minimum terms of imprisonment in criminal copyright cases may be insufficient to deter future infringement. As another example, while foreign right holders have been able to submit documentary evidence in some courts without any consularization or notarization of the documents, the Beijing IP Court reportedly continues to reject even consularized and notarized documentation on various dubious grounds.

Furthermore, Chinese judicial authorities continue to demonstrate a lack of transparency, such as by publishing only selected decisions rather than all preliminary injunctions and final decisions. U.S. right holders report that procedural obstacles to appealing decisions to the Beijing IP Court are sometimes insurmountable and may frustrate appeals altogether. Administrative enforcement authorities fail to provide right holders with information regarding the process or results of enforcement actions. Broader concerns include the continuing emphasis on administrative enforcement, as well as interventions by local government officials, party officials, and powerful local interests that undermine China's judicial system and rule of law. A truly independent judiciary is critical to promote rule of law in China and to protect IP rights.

Trade Secrets

The SPC's recent judicial interpretation on the handling of civil disputes on trade secret misappropriation includes provisions relating to the scope of civil liability for misappropriation beyond business operators, prohibited acts of trade secret theft, burden-shifting, and the availability of preliminary injunctive relief. In addition, the amended Criminal Law, the recent judicial interpretation on the handling of criminal cases of IP infringement, and the revised prosecution standards include changes to the thresholds for criminal investigation and prosecution and the scope of criminal acts of trade secret theft. Along with the April 2019 amendments to the Anti-Unfair Competition Law and Administrative Licensing Law, these changes represent positive

developments in China's trade secret regime. However, concerns remain about the implementation of these new measures and gaps persisting in the scope of protections. Right holders continue to face challenges such as the lack of means to require evidence production, as highlighted by a recent study suggesting that Chinese courts have not widely adopted the burden-shifting mechanism provided by the amended Anti-Unfair Competition Law.

Also, the recent judicial interpretation on criminal cases introduces new methods for calculating remedial costs and other losses to meet the criminal threshold for trade secret crimes, but right holders may encounter obstacles in demonstrating the extent of their losses under the definitions in the new interpretation.

In addition, reforms should provide procedural safeguards to prevent the unauthorized disclosure of trade secrets and other confidential information submitted to government regulators, courts, and other authorities, including related disclosures to third-party experts and advisors, an issue of serious concern to the United States as well as to U.S. stakeholders in industries such as software and cosmetics. Also, China should further address obstacles to criminal enforcement.

Bad Faith Trademarks and Other Trademark Examination Issues

Bad faith trademarks remain one of the most significant challenges for U.S. brand owners in China, despite Trademark Law amendments that allow trademark examiners to refuse bad faith trademark applications and invalidate existing bad faith registrations. Right holders report some improvements in the China National Intellectual Property Administration's (CNIPA) rejection at the examination stage of bad faith trademarks that lack an intention to use in commerce as well as reduced examination times. However, problems persist with the large number of inconsistent decisions and low rate of success for oppositions. With the elimination of appeals for opposition procedures, bad faith trademarks are immediately registered after a failed opposition, and bad actors have longer windows to use their marks or extort from the legitimate brand owner, before a decision is made in a cancellation proceeding. Furthermore, the bad actors behind knockoffs and "parasite brands," which make products similar enough to the genuine product to cause consumer confusion about the source, have shifted tactics to filing a small number of marks or filing marks for only one brand at a time, to avoid the examiners' focus on trademark "hoarding" through a large number of contemporaneous filings from an applicant. Such third parties have been able to obtain trademarks in China in bad faith even when the U.S. trademark is famous or well known, and the resulting registrations damage the goodwill and interests of U.S. right holders.

Stakeholders continue to express concerns relating to trademark examination, such as unnecessary constraints on examiners' ability to consider applications and marks across classes of goods and services, as well as the lack of consideration of co-existence agreements and letters of consent in the registration processes. Trademark applicants also complain of onerous documentation requirements, the lack of transparency in opposition proceedings, and the unavailability of default judgments against applicants who fail to appear in opposition, cancellation, and invalidation proceedings. In addition, stakeholders urge the adoption of reforms to address legitimate right holders' difficulty in obtaining well-known trademark status.

Manufacturing, Domestic Sale, and Export of Counterfeit Goods

China continues to be the world's leading source of counterfeit and pirated goods, reflecting its failure to take decisive action to curb the widespread manufacture, domestic sale, and export of counterfeit goods.³⁰ As in prior years, China and Hong Kong account for over 80% of U.S. IP seizures.³¹ The massive problem affects not only interests of IP right holders, but also poses health and safety risks. Right holders report that the production, distribution, and sale of counterfeit medicines, fertilizers, pesticides, and under-regulated pharmaceutical ingredients remain widespread in China.

In 2020, the Office of the National Leading Group on Fight Against IP Rights Infringement and Counterfeiting, the SPC, and several other agencies jointly issued detailed regulations for the destruction of counterfeit goods, as well as materials and tools mainly used for the manufacture and production of such goods. The SPC also issued two judicial interpretations relating to the destruction of counterfeit goods in civil and criminal proceedings. China has reported enforcement actions at the border and in physical markets, and right holders have indicated more proactive efforts by administrative and criminal authorities to conduct investigations.

The newly amended Criminal Law introduces criminal penalties for selling medicine without regulatory approval, providing false materials for regulatory applications, or falsifying production or testing records. Also, China amended its Drug Administration Law in 2019 to require that active pharmaceutical ingredients (APIs) used in drug production must comply with good manufacturing practice regulations but did not provide definitions under the amended law that would encompass all APIs. As the top manufacturer and a leading exporter of pharmaceutical ingredients, China still has not closed the gaps in regulatory oversight. In particular, China does not regulate manufacturers that do not declare an intent to manufacture APIs for medicinal use. It also does not subject exports to regulatory review, enabling many bulk chemical manufacturers to produce and export active pharmaceutical ingredients outside of regulatory controls. Furthermore, China lacks central coordination of enforcement against counterfeit pharmaceutical products or ingredients, resulting in ineffective enforcement at the provincial level and with respect to online sales.

Availability of Counterfeit Goods Online, Online Piracy, and Other Issues

Widespread counterfeiting in China's e-commerce markets, the largest in the world, has been exacerbated by the migration of infringing sales from physical to online markets, which accelerated during the COVID-19 pandemic. Counterfeiters have become adept at evading enforcement efforts, such as through the use of small parcels and minimal warehouse inventories, separating counterfeit labels and packaging from products prior to the final sale, and exploiting the high volume of packages to the United States to escape enforcement. Furthermore, although some leading online sales platforms have reportedly streamlined procedures to remove offerings of infringing articles and enhanced cooperation with stakeholders to improve criminal and civil

³⁰ OECD/EUIPO, *Trends in Trade in Counterfeit and Pirated Goods* at 27-28 (Mar. 18, 2019), <https://www.oecd-ilibrary.org/docserver/g2g9f533-en.pdf>.

³¹ CBP, *Intellectual Property Rights: Fiscal Year 2019 Seizure Statistics* (Sept. 2020) [https://www.cbp.gov/sites/default/files/assets/documents/2020-Sep/FY 2019 IPR Statistics Book \(Final\).pdf](https://www.cbp.gov/sites/default/files/assets/documents/2020-Sep/FY%2019%20IPR%20Statistics%20Book%20(Final).pdf).

enforcement of IP, right holders continue to express concerns about ineffective takedown procedures, slowness to respond to small- and medium-sized enterprises, and insufficient measures to deter repeat infringers. In addition, right holders report difficulties meeting the threshold for criminal enforcement because of the way online platforms record sales, and law enforcement authorities often demand evidence of the manufacturer or distribution network before initiating investigations. Other right holders report a growing trend of counterfeit products being offered for sale through e-commerce features related to large online platforms, as well as the emergence of infringing sales through live-streaming features of such platforms. Sellers of counterfeit and pirated goods have also recently taken advantage of social media and messaging websites and mobile apps to subvert detection controls and trick consumers.

Widespread online piracy also remains a major concern. Right holders express concern over the growth of online piracy in the form of thousands of “mini Video on Demand (VOD)” locations that show unauthorized audiovisual content and online platforms that disseminate unauthorized copies of scientific, technical, and medical journal articles and academic texts, or codes to access these protected materials. 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, illicit streaming devices (ISDs), and piracy apps that facilitate access to such websites.

The E-Commerce Law and the issuance in 2020 of the Tort Liability Chapter of the Civil Code have increased uncertainty about how online platforms handle counter-notifications submitted by users, including whether to review evidence contained in such counter-notifications. In 2020, the SPC issued two new judicial interpretations relating to liability for erroneous notices filed in good faith, the deadline by which right holders must file an administrative complaint or civil lawsuit after receipt of a counter-notification, and information required for counter-notifications. However, these new measures fall short of providing a predictable legal environment that promotes effective cooperation among interested parties in deterring online infringement.

In 2020, China again failed to reform measures that bar or limit the ability of foreign entities to engage in online publishing, broadcasting, and distribution of creative content, such as prohibitions in the Foreign Investment Catalogue and requirements that state-owned enterprises (SOEs) hold an ownership stake in online platforms for film and television content. Right holders report that growing advance approval requirements and other barriers have severely limited the availability of foreign TV content and prevented the simultaneous release of foreign content in China and other markets. Also, recent reports indicate that China has extended its content review system to cover books printed in China but intended for distribution in other markets, imposing heavy burdens on foreign publishers. Collectively, these measures create conditions that result in greater piracy and a market that is less open than others to foreign content and foreign entity participation. Additionally, it is critical that China fully implement the terms of the 2012 United States-China Memorandum of Understanding (MOU) regarding films and abide by its commitment to negotiate additional meaningful compensation for U.S. content.

Copyright Law Amendments

The amended Copyright Law, which will take effect June 1, 2021, included broader definitions of protected works, new rights of public performance and broadcasting for producers of sound recordings, protections against circumvention of technological protection measures, increased statutory damages, destruction of pirated goods and materials or tools mainly used to produce infringing copies, and legal presumptions of ownership and subsistence. Right holders welcomed these developments but noted the need for effective implementation and new measures to address online piracy. Also, although some Chinese courts have issued decisions recognizing copyright protection against the unauthorized transmission of sports and other live broadcasts, and recent amendments to the Copyright Law may protect sports and other live broadcasts, further implementation and confirmation of these changes is needed.

Patent Examination

Since 2018, China has completed efforts to reorganize and centralize administration and enforcement of IP, through CNIPA under the State Administration for Market Regulation (SAMR). However, these efforts have not reduced the large quantities of poor-quality patents granted to applicants. This situation continues to undermine the integrity of the patent registry. Although CNIPA announced the elimination of patent subsidies by 2025, the actual implementation of that goal remains to be seen.

With respect to patent prosecution, reports indicate that patent applicants do not receive notice of third-party submissions or the opportunity to respond, despite the reliance of examiners on arguments from such submissions. Right holders express strong concerns about the lack of transparency and fairness in patent prosecution.

Patent and Related Policies

The amended Patent Law includes provisions relating to protections for partial designs, patent term extensions for patent office and marketing approval delays, and the statutory basis for a mechanism for early resolution of pharmaceutical patent disputes. A new judicial interpretation and the first set of amended Patent Examination Guidelines address circumstances that allow for the filing of supplemental data to support disclosure and patentability requirements. Right holders welcome these developments, while noting the need to monitor issues such as the examination of supplemental data. However, strong concerns remain about the implementation of these changes, obstacles to patent enforcement, the presence of competition law concepts in the Patent Law and related measures, an undue emphasis on administrative enforcement, and the absence of additional critical reforms.

China has issued draft measures in an effort to implement an effective mechanism for early resolution of potential patent disputes, but right holders express strong concerns about notice to the patent owners, the scope of patents and pharmaceuticals covered by the proposed mechanism, the length of the stay period, the availability of injunctive relief, and other uncertainties in the proposed system, which allows parallel civil judicial and administrative proceedings. Regarding administrative proceedings, the lack of technical expertise to make technical determinations of

patent infringement is also a concern, as is the lack of transparency and possibility of local bias toward Chinese companies. Right holders also express concern about the implementation of patent term extensions, including the definition of “new” drugs covered by the system, scope of patents eligible for extension of the patent term, the type of protection provided, and method of calculation for the extensions. Furthermore, existing obstacles to patent enforcement include lengthy delays in the court system, the reported unwillingness of courts to issue preliminary injunctions, and burdensome hurdles created by parallel administrative invalidity proceedings.

China continues to impose unfair and discriminatory conditions on the effective protection against unfair commercial use, as well as unauthorized disclosure, of test or other data generated to obtain marketing approval for pharmaceutical products. The United States and China agreed to address this issue in future negotiations.

The Human Genetic Resources Administrative Regulation, which went into effect in July 2019, mandated collaboration with a Chinese partner for any research generated by using human genetic resource materials in China, sharing of all records and data, and joint ownership of any patent rights resulting from the collaboration. In 2020, China enacted a Biosecurity Law that similarly required partnership with Chinese entities throughout the course of research. These and other requirements, such as the requirement to sign an undertaking letter to certify compliance with China’s regulations and to seek government approval before any transfer of research data outside of China, create significant hurdles for pharmaceutical innovators seeking to bring products to market in China, including by conducting research and clinical trials in China. China should also address delays, a lack of transparency, and inadequate engagement with pharmaceutical suppliers in government pricing and reimbursement processes.

China must address each of these concerns to better promote pharmaceutical innovation and bring China into closer alignment with the practices of other major patenting jurisdictions. In addition, China should address continuing problems with the difficulty in obtaining evidence of infringement, disclosure obligations in standards-setting processes, the failure to clarify that a patentee’s right to exclude extends to manufacturing for export, and the need to harmonize China’s patent grace period and statute of limitations with international practices.

Implementation of the Standardization Law failed to require the use of international standards except when they would be ineffective or inappropriate or establish that standards-setting processes are open to domestic and foreign participants on a non-discriminatory basis and to provide sufficient protections for standards-related copyright and patent rights and protections from public disclosure for enterprise standards. Right holders have also expressed strong concerns about the emerging practice in Chinese courts of issuing anti-suit injunctions in standards essential patents (SEP) disputes, reportedly without notice or opportunity to participate in the injunction proceedings for all parties. Since the first issuance of such an anti-suit injunction in August 2020, Chinese courts have swiftly issued additional anti-suit injunctions in other SEP cases. Several of these anti-suit injunctions are not limited to enjoining enforcement of an order from a specific foreign proceeding but broadly prohibit right holders from asserting their patents anywhere else in the world. These anti-suit injunctions have imposed penalties for violation as high as 1 million RMB (approximately \$155,000 USD) per day. Recent high-level statements have raised concerns about whether the proliferation of such anti-suit injunctions has been purposeful, including

statements from President Xi about promoting the extraterritorial application of China's IP law and from China's IP appellate court about how issuance of China's first SEP-related anti-suit injunction accelerated global settlement in a SEP dispute and was an example of the court "serving" the "overall work" of the Chinese Communist Party and the Chinese state.

After various ministries issued a November 2018 MOU imposing "social credit system" penalties for certain categories of patent-related conduct, CNIPA issued in October 2019 the Trial Measures for Administering the List of Targets for Joint Punishment Due to Serious Dishonesty in the Patent Field. These measures lack critical procedural safeguards, such as notice to the targeted entity, clear factors for determinations, or opportunities for appeal. The United States objects to any attempt to expand the "social credit system" in the field of IP.

The pending draft of the Anti-Monopoly Law (AML) and the 2015 IP abuse rules raise concerns that China's competition authorities may continue to target foreign patent holders for AML enforcement and use the threat of enforcement to pressure U.S. patent holders to license to Chinese parties at lower rates, despite the United States repeatedly expressing strong concerns regarding this practice. Also concerning are high level statements indicating that the AML should be used to address national security concerns and that CNIPA may develop a system to prevent IP rights "abuse" via a mechanism that is outside of existing AML enforcement mechanisms. It is critical that China's AML enforcement be fair, transparent, and non-discriminatory, afford due process to parties, focus only on the legitimate goals of competition law, and not be used to achieve industrial policy or other goals.

China's "Secure and Controllable" Policies

Since enacting its Cybersecurity Law in 2017, China has continued to build on its policies for "secure and controllable" Information Communications Technology (ICT) products, such as the issuance of the Cybersecurity Classified Protection Scheme in May 2020. Along with the adoption of the Cryptography Law in 2019 and the Cybersecurity Review Measures in 2020, these developments represent multiple steps backward through China's efforts to invoke cybersecurity as a pretext to force U.S. IP-intensive industries to disclose sensitive IP to the government, transfer it to a Chinese entity, or restrict market access. Through draft and final measures, China has often applied the poorly defined concept of "secure and controllable" ICT products and services and associated "risk" factors as a putative justification for erecting barriers to sale and use in China.

Right holders continue to report strong concerns about other draft and final measures, particularly cybersecurity reviews by the Cyberspace Administration of China (CAC) and other measures that may require disclosure of source code, which risk disclosure of valuable trade secrets and other proprietary information and may be used to unfairly target foreign companies. Concerns also persist about the public disclosure of enterprise standards under the amended Standardization Law and the draft standards published by the National Information Security Standardization Technical Committee (TC-260).

U.S. right holders should not be forced to choose between protecting their IP against unwarranted disclosure and competing for sales in China. Going forward, China must not invoke security

concerns in order to erect market access barriers, require the disclosure of critical IP, or discriminate against foreign-owned or -developed IP.

Other Concerns

Following the agreement between China and the European Union on geographical indications (GIs) in November 2019, CNIPA published a gazette of almost one hundred approved GIs under the agreement. The gazette specified which individual components of multi-component terms were not protected and identified transitional periods for several GIs, but with limited eligibility for the transitional periods. A number of these GIs had been unsuccessfully opposed by stakeholders, who report considerable concern that China's rules and procedures limit parties' abilities to challenge GIs via opposition, cancellation, invalidation, and other processes that would ensure GIs do not impose market access barriers to U.S. exports. It is critical that China ensure full transparency and procedural fairness with respect to the protection of GIs, including safeguards for generic terms, respect for prior trademark rights, clear procedures to allow for opposition and cancellation, and fair market access for U.S. exports to China relying on trademarks or the use of generic terms.

Right holders have raised concerns about plant protection in China, including about the definition of novelty, exemptions from protection, and gaps in protection that exclude species outside a limited number of taxa. Certain plant-based inventions are excluded from protection under the patent law and under China's plant variety protection system.

The United States continues to urge all levels of the Chinese government, as well as SOEs, to use only legitimate, licensed copies of software. Right holders report that government and SOE software legalization programs are still not implemented comprehensively. The United States urges the use of third-party audits to ensure accountability, which China has committed to provide under the Phase One Agreement.