

The U.S. – China
Joint Commission on Commerce and Trade (JCCT)
Outcomes on Major U.S. Trade Concerns
July 11, 2005

Improving Enforcement of Intellectual Property Rights

In support of its commitment to significantly reduce intellectual property rights (IPR) infringement levels, China agreed to the following specific actions:

- Increased Criminal Prosecutions. China has agreed to increase the number of criminal prosecutions for IPR violations relative to the total number of IPR administrative cases. The Supreme People's Court, Supreme People's Procuratorate, and Ministry of Public Security have issued draft guidelines for public comment to ensure the timely referral of IPR violations from administrative bodies to criminal prosecution.
- Reducing Exports of Infringing Goods. The Chinese Ministry of Public Security and the General Administration of Customs will issue regulations to ensure the timely transfer of cases for criminal investigation. The goal of the regulations is to reduce exports of infringing goods by increasing criminal prosecution.
- Improving National Police Coordination. The Chinese Ministry of Public Security has established a leading group responsible for overall research, planning and coordination of all IPR criminal enforcement to ensure a focused and coordinated nationwide enforcement effort.
- Enhancing Cooperation Between Law Enforcement Authorities. The United States and China will immediately establish a bilateral IPR law enforcement working group whose members will cooperate on enforcement activities to reduce cross-border infringing activities. This group will comprise officials on the U.S. side including from the U.S. Department of Homeland Security (Customs and Border Protection and Immigration and Customs Enforcement), the U.S. Department of Justice and Federal Bureau of Investigation, and on China's side from the Ministry of Public Security. In addition, U.S. and Chinese customs authorities will cooperate on the exchange of infringement data, information on significant seizures, and law enforcement to enhance the ability of Chinese authorities to identify and deter exports of infringing products from China.
- Expanded Initiative to Address Piracy of Movies and Audio-Visual Products. The Chinese government agrees to aggressively counter movie piracy by dedicating enforcement teams to pursue enforcement actions against pirates and regularly instruct enforcement authorities nationwide that copies of films and audio-visual products still in censorship or import review or otherwise not yet authorized for distribution are deemed pirated and subject to enhanced enforcement.

- Ensuring Use of Legal Software in the State-Owned Sector. By the end of 2005, the Chinese government will complete its legalization program to ensure that all central, provincial and local government offices are using only licensed software, and will extend the program to enterprises (including state-owned enterprises) in 2006.
- Fighting Software End-User Piracy. The Chinese government has now declared that software end-user piracy is considered to constitute “harm to the public interest” and as such will be subject to administrative penalties nationwide. Furthermore, software end-user piracy is subject to criminal penalties in appropriate circumstances.
- Establishment of Chinese Embassy IPR Ombudsman. The Chinese government will appoint an Intellectual Property Rights Ombudsman at the Chinese Embassy in Washington to serve as the point of contact for U.S. companies, particularly small- and medium-sized businesses, seeking to secure and enforce their IPR in China or experiencing IPR problems in China.
- Ridding Trade Fairs of Fake Goods. The relevant Chinese agencies, including the Ministry of Commerce, the China Trademark Office, the State Intellectual Property Office, and the National Copyright Administration of China will strengthen their efforts to improve IPR enforcement at trade shows and will soon issue new regulations to achieve this goal. This effort will include strict enforcement at all economic trade-related and international trade shows in China.
- Promise to Join Global Internet Treaties Next Year. By June 30, 2006, the State Council intends to submit to the National People’s Congress the legislative package needed for China to accede to the WIPO Internet Treaties. China will also begin immediately a nationwide crack-down on Internet piracy, including through enforcement at Internet cafes.
- Clarification of Criminal Judicial Interpretation. The Chinese government confirms that the criminal thresholds in the 2004 Judicial Interpretation (JI) are applicable to sound recordings and that the JI makes exporters subject to independent criminal liability.

Facilitating Increased U.S. Exports to China

- Government Purchases of U.S. Software and Other U.S. Goods and Services. China will delay issuing draft regulations on software procurement, as it further considers public comments and makes revisions in light of WTO rules. The draft software regulations threatened to close off a market with a potential value of over \$8 billion to U.S. firms. China announced that it will accelerate its efforts to join the WTO Government Procurement Agreement (GPA) and towards this end will initiate technical consultations with other WTO Members.
- Distribution Rights. Fulfilling WTO and prior JCCT commitments, China took steps to ensure that U.S. products can be freely distributed in China, clearing a large backlog of distribution license applications and preparing a “How to” guide for businesses seeking to acquire distribution rights, expanding on the guidelines announced in April 2005. Finally, China confirmed that all enterprises in China, including those located in bonded zones, can acquire licenses to distribute goods throughout China.
- Direct Sales. The Regulations on Management of Direct Selling have been submitted to the State Council for review, which will provide a legal basis for U.S. direct sales firms that wish to sell U.S. goods door-to-door in China. China committed to ensure that the final regulations conform to applicable China’s WTO obligations, including with respect to distribution of imported goods and fixed location requirements.

Addressing Barriers to U.S. Services Exports

- Insurance Market Access. China agreed to convene another meeting of the U.S.-China Insurance Dialogue before the end of 2005 to discuss regulatory concerns and barriers to further liberalization of the sector.
- Telecom Market Access. Building on the successful insurance dialogue that has helped U.S. insurers to expand market access in China, China agreed to a new dialogue under the JCCT Information Technology Working Group to discuss capitalization requirements, resale services, and other issues agreed to by the two sides.

Opening Markets for U.S. Agriculture

- China completed the regulatory approval process for a corn biotech variety, the final of a series of approvals for U.S. biotech varieties.
- The U.S. Department of Agriculture and China’s Administration of Quality Supervision, Inspection and Quarantine reached agreement on a Memorandum of Understanding designed to facilitate cooperation on animal and plant health safety issues and improve efforts to expand U.S. access to China’s markets for agricultural Commodities.

Ensuring that Trade Is Fair and Non-Disruptive

- China will provide a detailed accounting of its subsidies to the WTO by the end of 2005.
- China and the United States will intensify discussions on structural issues related to China's status as a non-market economy under U.S. anti-dumping law, including a review of China's subsidy practices.