September 17, 2026

2026 China WTO Compliance Report
Council for Innovation Promotion (C4IP)
Written Comment
Docket Number USTR-2026-0496

The Honorable Jamieson Greer
United States Trade Representative
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments (Docket No. USTR-2026-0496)

The Council for Innovation Promotion (C4IP) urges the Office of the United States Trade Representative (USTR) to identify China's persistent shortcomings in intellectual property protection and enforcement as priority issues in its 2026 report to Congress on China's World Trade Organization (WTO) compliance. In that report, USTR should emphasize the need to press China to end practices that impair American innovators, ensure meaningful access to remedies, and demonstrate compliance through verifiable changes in how its courts and agencies treat U.S. innovators.

C4IP is a bipartisan coalition dedicated to promoting strong and effective intellectual property rights that drive innovation, boost economic competitiveness, and improve lives everywhere. C4IP is chaired by two former directors of the U.S. Patent and Trademark Office, Andrei Iancu and David Kappos, who served under Presidents Trump and Obama, respectively. Our board further includes two retired judges from the Court of Appeals for the Federal Circuit, former Chief Judge Paul Michel and Judge Kathleen O'Malley. It also features two distinguished public servants: Lamar Smith, former U.S. Representative for Texas's 21st congressional district and Chairman of the House Judiciary Committee, and Gary Locke, former Governor of Washington, U.S. Secretary of Commerce, and U.S. Ambassador to China under President Obama.

China's growing investment in innovation makes effective enforcement of its international commitments more important. China increasingly uses regulatory and judicial mechanisms that disadvantage foreign innovators even as it strengthens aspects of its own patent system. U.S. trade policy should insist that American innovators receive fair treatment and can enforce the rights on which their investments depend.

I. Protect SEP licensing from extraterritorial interference

Standard-essential patents (SEPs) protect inventions needed to implement a technical standard, such as those that allow wireless devices to communicate. SEP owners typically commit to license on fair, reasonable, and non-discriminatory (FRAND) terms. Market-driven licensing gives innovators and implementers the flexibility to negotiate terms reflecting the value of the technology and their commercial needs. Fair compensation helps innovators recover research and development costs and invest in future standards. C4IP believes voluntary negotiations, including through patent pools, best support both access to standardized technologies and adequate rewards for their inventors.

Chinese courts have recently asserted the authority to set worldwide licensing terms for SEPs, threatening market-based licensing and the value of American inventions. In *OPPO v. Nokia*, China's Supreme People's Court upheld jurisdiction over an implementer-initiated global licensing dispute; the Chongqing First Intermediate People's Court subsequently set global FRAND rates over Nokia's objection in late 2023. This assertion of jurisdiction over foreign patent rights remains a concern.[1] The Supreme People's Court's reported 2024 decision in *TCL v. Access Advance* extended that approach to an implementer's request for global licensing terms for a foreign patent pool. The concern is especially acute where the pool administrator does not own the underlying patents and individual patent owners have not consented to adjudication of their worldwide rights.[2]

A foreign court's imposition of worldwide terms can deprive U.S. patent owners of the ability to negotiate compensation for technologies developed through years of investment. It can also interfere with remedies available under U.S. law. Enforcing a valid patent through an appropriate territorial injunction is fundamentally different from imposing global licensing

[1] Nicole-Anne Lagrimas, *China's FRAND Rate-Setting Regime Being Tested by Implementers and Licensors Alike*, IAM (Aug. 7, 2026), https://www.iam-media.com/article/chinas-frand-rate-setting-regime-being-tested-implementers-and-licensors-alike; CMS, *Chinese Court Issues Landmark Judgment in OPPO v. Nokia Global FRAND Rate Case* (Dec. 15, 2023), https://cms.law/en/chn/legal-updates/chinese-court-issues-landmark-judgment-in-oppo-v.-nokia-global-frand-rate-case.

[2] *See, e.g.*, Florian Mueller, *Chinese Courts Will Now Set Global FRAND Rates for Patent Pools at Implementers' Requests: Supreme People's Court Ruling*, IP Fray (June 27, 2024), https://ipfray.com/chinese-courts-will-now-set-global-frand-rates-for-patent-pools-at-implementers-requests-supreme-peoples-court-ruling/.

conditions without the patent owner's consent. The report should affirm U.S. support for both territorial enforcement and voluntary licensing.

Recent WTO proceedings make this a concrete compliance issue. In July 2025, the arbitrators in *China—Enforcement of Intellectual Property Rights* (DS611) found China's anti-suit injunction policy inconsistent with certain articles of the TRIPS Agreement. The arbitrators reasoned that Members must give effect to TRIPS without frustrating the functioning of other Members' systems for protecting and enforcing IP rights—a principle equally relevant to global rate-setting. China has since stated at the WTO that its Supreme People's Court withdrew the policy through a September 2025 notice.[3] USTR's 2026 Special 301 Report notes that Chinese courts have not issued SEP anti-suit injunctions in recent years, but it also observes that Chinese courts appear increasingly interested in exercising jurisdiction in SEP cases.[4] Neither the announced withdrawal nor the absence of new orders establishes that the underlying concerns have been fully resolved. USTR's report to Congress should assess China's implementation of these findings, including whether the withdrawal notice is publicly accessible, binds lower courts, and is reflected in practice.

A separate dispute concerning China's worldwide SEP licensing terms, DS632, is pending.[5] In it, the European Union challenges China's measures authorizing its courts to set worldwide SEP licensing terms without the consent of both parties, alleging interference with patent rights granted by other WTO Members. A panel was established in March 2026 and composed in July 2026.[6] C4IP urges USTR to report to Congress on the status of this dispute and its implications for U.S. innovators, including the practical effects of China's global rate-setting practices.

C4IP appreciates USTR's recognition in the 2026 Special 301 Report that foreign courts' assertion of authority to set worldwide SEP licensing rates without the consent of both parties "may interfere" with U.S. patent holders' right to seek damages for infringement of their U.S. patents in U.S. courts.[7] C4IP urges USTR to carry that recognition into its report

[3] Award of the Arbitrators, *China—Enforcement of Intellectual Property Rights* (July 21, 2025); European Commission, *Following WTO Ruling Favourable to EU, China Announces Withdrawal of Its Anti-Suit Injunction Policy* (Apr. 1, 2026), https://policy.trade.ec.europa.eu/news/following-wto-ruling-favourable-eu-china-announces-withdrawal-its-anti-suit-injunction-policy-2026-04-01_en.

[4] USTR, *2026 Special 301 Report* 56 (Apr. 2026), https://ustr.gov/sites/default/files/files/Press/Releases/2026/2026%20Special%20301%20Report.pdf [hereinafter *2026 Special 301 Report*].

[5] WTO, *DS632: China—Worldwide Licensing Terms for Standard Essential Patents*, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds632_e.htm.

[6] *Id.*; Request for Consultations by the European Union, *China—Measures Concerning Patent Licensing Terms*, WTO Doc. WT/DS632/1 (Jan. 22, 2025).

[7] *2026 Special 301 Report*, *supra* note 4, at 39–40.

to Congress by identifying China's global rate-setting practices as a priority concern and describing the steps USTR, in coordination with other relevant U.S. agencies, is taking to address them.

II. Ensure effective pharmaceutical patent protection

China's patent linkage system continues to require scrutiny. C4IP is concerned that the nine-month regulatory stay, which applies only to chemical generic drugs and is far shorter than the 30-month stay available in the United States, may expire before a patent dispute is meaningfully resolved.[8] Where a follow-on product enters the market before a rights holder can obtain effective relief, subsequent litigation may not prevent substantial commercial harm. The report should evaluate the adequacy of notice, time to seek relief, availability of preliminary injunctions, and coverage of pharmaceutical products, including biologics. The relevant measure of success is whether innovators can obtain timely remedies before allegedly infringing products are marketed.

Although TRIPS requires protection of patent rights and effective enforcement, it does not directly prescribe the U.S. patent linkage model or a particular regulatory stay. China's separate Phase One commitments provide more specific obligations.[9] The report should nonetheless evaluate whether China's system provides the effective enforcement TRIPS requires and should separately address China's implementation of these bilateral obligations.

C4IP welcomes China's May 2026 Implementing Measures for Drug Trial Data Protection. The measures provide six years of protection, running from marketing approval in China, for qualifying undisclosed data supporting eligible innovative drugs and imported originator drugs not previously marketed in China. Unlike the March 2025 draft, the final measures do not shorten that period by the time between a medicine's first approval abroad and the acceptance of its Chinese application.[10] The report should recognize this progress. It should also assess whether eligible foreign innovators receive the full protection the measures provide, particularly in how regulators apply the measures' public-interest exception and the shorter three-year term for foreign-originated biologics filed for manufacture in China.

[8] Chia-Feng Lu et al., *China on the Move: China Reprices Clinical Data (Part One)—A New Exclusivity Architecture Takes Effect*, Nat'l L. Rev. (Sept. 16, 2026), https://natlawreview.com/article/china-move-china-reprices-clinical-data-part-one-new-exclusivity-architecture-takes (noting that the stay applies only to chemical generics); *2026 Special 301 Report*, *supra* note 4, at 55.

[9] Economic and Trade Agreement Between the Government of the United States of America and the Government of the People's Republic of China, U.S.-China, Jan. 15, 2020 [hereinafter Phase One Agreement].

[10] Lu et al., *supra* note 8; *2026 Special 301 Report*, *supra* note 4, at 55 (identifying continuing concerns about patent term extension, including the definition of "new" drugs); *see also* C4IP, *Comment on the 2026 Special 301 Review* 2, 12 (Jan. 28, 2026), https://c4ip.org/wp-content/uploads/2026/01/Council-for-Innovation-Promotion_2026-Special-301_Review_Comment.pdf.

China has not made comparable progress on patent term extension (PTE), where a similar restriction remains. China limits PTE to patents on "new" drugs, which it defines as drugs not previously marketed anywhere in the world. As a result, a medicine first approved in the United States or another market cannot receive PTE on its Chinese patents, no matter how long China's own regulatory review takes.[11] U.S. law, by contrast, bases PTE on a product's first approval in the United States, without regard to earlier approvals abroad. The report should identify this restriction as an unresolved concern and describe USTR's efforts to persuade China to make PTE available for medicines first approved abroad, as China has now done for regulatory data protection.[12]

III. Make judicial protection accessible and transparent

Rights that cannot be enforced on workable terms provide little security for investment. Burdensome evidentiary requirements at the outset of Chinese patent litigation can impede enforcement when critical evidence is controlled by the alleged infringer. The report should examine whether these requirements prevent U.S. rights holders from bringing viable claims or obtaining timely relief, particularly smaller innovators with limited litigation resources.[13]

TRIPS Articles 41 through 43 provide a basis for this assessment: enforcement procedures must be fair and equitable, parties must be able to substantiate their claims, and courts must have authority to order production of specified relevant evidence held by an opposing party when the applicable conditions are met.[14] C4IP urges USTR to identify practical improvements in access to evidence as a priority in its report. China need not replicate U.S. discovery procedures to meet these obligations, but procedural rules must not make enforcement illusory.

Judicial transparency is equally important. Chinese courts publish only selected decisions, and USTR reports that the number of decisions uploaded online has consistently decreased over the past five years, making it harder to assess how foreign rights holders are treated.[15]

[11] Audrey Cheung et al., *A More Detailed Overview of China's Patent Term Extension (PTE) System*, China Patent Strategy (Nov. 20, 2025), https://chinapatentstrategy.com/a-more-detailed-overview-of-chinas-patent-term-extension-pte-system/.

[12] China's restriction appears to be in clear tension with its Phase One commitment to adjust patent terms for new pharmaceutical products "approved for marketing in China" to compensate for delays in "the marketing approval process related to the first commercial use of that product in China." Phase One Agreement, *supra* note 9.

[13] Lionel M. Lavenue et al., *Comparing Patent Infringement Litigation: China vs. United States—Pleading Standards and Discovery in Patent Cases*, Finnegan (Nov. 25, 2025), https://www.finnegan.com/en/insights/articles/Comparing-patent-infringement-litigation-china-vs-united-states-pleading-standards-and-discovery-in-patent-cases.html; *2026 Special 301 Report*, *supra* note 4, at 55, 58.

[14] Agreement on Trade-Related Aspects of Intellectual Property Rights arts. 41–43, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS Agreement].

[15] *2026 Special 301 Report*, *supra* note 4, at 57.

Article 63.1 of TRIPS requires publication or public availability of final judicial decisions and administrative rulings of general application.[16] The report should identify China's compliance with its TRIPS transparency obligations as an unresolved issue and call for broader access to reasoned IP decisions as a policy objective. It should also assess whether available information is sufficient to evaluate consistency of treatment across courts and between domestic and foreign parties.

IV. Address trade secret theft and persistent counterfeiting

IP theft remains a serious problem alongside China's newer regulatory and judicial practices.[17] The report should examine whether American firms can obtain effective relief for misappropriation of confidential technology, including through electronic intrusion, and whether regulatory submissions are protected from unauthorized use or disclosure, as required by TRIPS.[18] The report should evaluate the operation of those protections and address China's implementation of its additional Phase One commitments on trade secrets and confidential business information.[19]

Persistent counterfeiting also demands sustained enforcement. China remains the world's leading source of counterfeit and pirated goods; together with Hong Kong, it accounted for more than 87 percent of the value of counterfeit and pirated goods seized by U.S. Customs and Border Protection in fiscal year 2025.[20] The report should assess whether civil remedies and criminal enforcement deter commercial-scale infringement, including repeat offenses facilitated through online sales. TRIPS Article 61 requires criminal procedures and penalties at least for willful trademark counterfeiting and copyright piracy on a commercial scale.[21] C4IP urges USTR to base the report's conclusions on evidence of sustained enforcement against producers and distribution networks, including penalties imposed and enforced, rather than treating isolated raids or announced campaigns as proof of durable progress.

[16] TRIPS Agreement, supra note 14, art. 63.1.

[17] *Id.* at 51–52.

[18] TRIPS Agreement, *supra* note 14, art. 39.

[19] Phase One Agreement, *supra* note 9.

[20] *2026 Special 301 Report*, *supra* note 4, at 52–53.

[21] TRIPS Agreement, *supra* note 14, art. 61.

V. Require measurable progress and sustained accountability

The 2026 report should identify the specific measures and practices requiring correction, the applicable commitments, and the evidence needed to demonstrate compliance. Priorities should include ending interference with foreign rights holders' ability to enforce and license their patents, ensuring timely pharmaceutical patent remedies, improving access to evidence and judicial decisions, and deterring trade secret theft and counterfeiting.

In sum, C4IP urges USTR to present these issues to Congress as unresolved compliance concerns. C4IP also supports USTR's retention of China on the Priority Watch List in the 2026 Special 301 Report, subject to Section 306 monitoring, and urges continued designation until sustained improvements warrant a change.[22] The report should explain how WTO review, Special 301, and enforcement of the Phase One Agreement, including through USTR's pending Section 301 investigation of China's Phase One implementation, can reinforce one another while preserving their distinct legal bases. C4IP appreciates the opportunity to assist USTR and urges sustained attention to these unresolved concerns.

Sincerely,

Coke Morgan Stewart
President and CEO
Council for Innovation Promotion (C4IP)

[22] *2026 Special 301 Report*, *supra* note 4, at 50–51.