



China's JCCT Commitments, 2004-08

(As of January 24, 2008)

A glossary of all abbreviations appearing in the chart can be found at the end of the document.

Intellectual Property

2007 (as reported by the USTR/DOC Fact Sheet)

Status

China agreed to:

1. Exchange information on customs seizures of counterfeit goods in order to further focus China's enforcement resources on companies exporting such goods.
2. Strengthen enforcement of laws against company name misuse and cooperate on case-by-case enforcement against such company name misuse.
3. Address specific loopholes in its regulation of bulk chemicals used as active pharmaceutical ingredients (APIs); bulk chemicals are used as the underlying source of many counterfeit drugs.

HHS and SFDA signed an agreement as part of SED III designed to allow China to combat counterfeits and to strengthen the quality and safety of finished drugs, active pharmaceutical ingredients, and excipients exported to the United States.

2006

Status

China agreed to or has proceeded to:

1. Take action against 14 factories producing illegal optical disks; to step up enforcement in this area to combat piracy of films, music, and software; and to explore new ways to strengthen cooperation with the United States in this area.
2. Issue a notice requiring the pre-loading of legal operating system software on all computers produced in or imported into China and a notice requiring government agencies to purchase computers with legitimate pre-loaded software.
3. Launch efforts to ensure that legal software is used in PRC government agencies and enterprises and discuss US proposals regarding government and enterprise software asset management in the JCCT IPR Working Group (i.e. budgeting and auditing to produce a paper trail to prove that government bodies are buying legitimate software).

China took action against 14 factories before the April 2006 JCCT meeting.

Regulation issued April 2006. At least four Chinese manufacturers have signed agreements to purchase and pre-load US operating system software.

Policy reiterated in China's 2007 IPR Action Plan.

See also 2006 #2 and 2005 #5.

Intellectual Property

4. Intensify efforts to ensure that public markets are free of infringing products and announce enforcement actions in several major cities.

Some progress. Press reports of heightened enforcement as part of 2006 "Summer Campaign."

NCA and MOE launched campaign in late 2006 against pirated textbooks on university campuses.

PRC ministries of Culture and Public Security led a 100-day campaign against piracy from July through November 2007.

5. Help ensure that individual IPR cases raised by the US government against China will be vigorously pursued.

Cases raised by the US government are being addressed. Other steps to address specific cases include:

China opened 50 IPR complaint service centers in early 2007.

6. Announce a broad action plan to improve enforcement of IPR, including steps in the areas of enforcement, legislation, and education.

China's 2007 IPR Action Plan was released on April 2, 2007.

China's 2006 IPR Action Plan was released on March 14, 2006.

2005

Status

China agreed to:

1. Increase the number of criminal prosecutions for IPR violations relative to the total number of IPR administrative cases.

Final Opinion on Promptly Transferring Suspected Criminal Cases during Administrative Investigation, released in March 2006, is directed at increasing criminal prosecutions. See also 2005 #2.

2. Have MPS and PRC Customs issue regulations to ensure the timely transfer of cases for criminal investigation.

Completed. Final opinion released in March 2006 includes provisions on the transfer of cases for criminal investigation.

3. Establish a joint US-PRC bilateral IPR law-enforcement working group whose members would cooperate on enforcement activities to reduce cross-border infringement activities.

Formal cooperation established in the US-China Joint Liaison Group.

China's 2007 IPR Action Plan noted the creation of the US-China IPR Criminal Enforcement Working Group under the Joint Liaison Group.

See also 2004 #10 and 2007 #1.

4. Aggressively counter movie piracy by dedicating teams to pursue enforcement actions against pirates and regularly instruct enforcement authorities nationwide that copies of films and audiovisual products still under censorship or import review, or otherwise not yet authorized for distribution, are deemed pirated and subject to stricter enforcement.

July 2005 MOU with MPPA commits China to crack down on pirated copies of the 20 foreign films that are distributed legally in China each year.

March 2006 MOU between MPPA and CFCA created framework for increased cooperation on IPR enforcement and joint antipiracy efforts.

Intellectual Property

5. Complete, by the end of 2005, a legalization program to ensure that all central-, provincial-, and local-government offices are using only licensed software and to extend the program to all enterprises, including SOEs, in 2006.

In November 2005 IPR Working Group meetings, PRC government reported that recent audit of PRC government offices found no pirated software on office computers.

2006 IPR Protection Action Plan includes plans to promote the use of legal software by companies and for SOEs to purchase computers only with pre-installed legal software.

2007 IPR Action Plan reiterates policy to promote the use of legal software in business enterprises.

6. Appoint an IPR ombudsman at the PRC Embassy in Washington, DC, to serve as the point of contact for US companies.

Completed. Ombudsman in place at PRC Embassy in January 2006.

7. Ensure that the relevant PRC agencies, including MOFCOM, China Trademark Office, SIPO, and NCA, strengthen their efforts to improve IPR enforcement at trade shows and issue new regulations to achieve this goal.

Completed. Regulations, released in January 2006, took effect in March 2006. The 2006 and 2007 IPR Protection Action Plans include nationwide campaign for compliance with the regulations.

8. Submit, by June 30, 2006, to the NPC the legislative package needed for China to accede to the WIPO Internet Treaties.

Completed. NPC approved accession to treaties in December 2006; the treaties entered into force in China on June 9, 2007.

9. Immediately begin a nationwide crackdown on Internet piracy, including enforcement at Internet cafés.

NCA launched a three-month campaign from August to October 2007 to fight online and Internet piracy, following a similar campaign in 2006.

A July 2006 regulation granted authorities the power to levy administrative fines of up to RMB 100,000 (\$13,333) for copyright infringement of works that are transmitted via networks.

May 2005 online copyright measures allow for administrative fines against Internet service providers that refuse to remove copyright-infringing material. See also 2004 #4.

2004

Status

China agreed to:

1. Significantly reduce IPR infringement levels.

Incomplete.

Intellectual Property

2. Subject a greater range of IPR violations to criminal investigations and criminal penalties.

December 2004 PRC judicial interpretation lowered thresholds to apply criminal sanctions. Final opinion released in March 2006 includes provisions on the transfer of cases for criminal investigation. Thresholds were lowered again in April 2007 by a judicial interpretation.

Despite these actions, the application of criminal penalties appears to be insufficient. The United States challenged China's IPR laws at the WTO in April 2007.

See also 2005 #1.

3. Apply criminal sanctions on the import, export, storage, and distribution of pirated and counterfeit products.

Some progress. See 2005 #1 and #2.

4. Apply criminal sanctions on online piracy.

Some progress. February 2006 draft regulation applies criminal statutes in some circumstances. See also 2005 #9.

5. Conduct nationwide enforcement actions against piracy and counterfeiting; stop the production, sale, and trade of infringing products; and punish violators.

Ongoing. China's 2007 Action Plan for IPR Protection mentioned the future creation of the "Eagle Eye Taskforce" for combating Internet violations of IPR.

6. Increase customs enforcement actions against the import and export of infringing products and make it easier for rights-holders to secure effective enforcement at the border.

The 2006 IPR Protection Action Plan indicates regulations will be issued on cross-provincial enforcement. See 2006 #14.

In 2006, Customs launched two campaigns dealing with imports and exports of fake goods, concentrating on those shipped through mail and express delivery channels and in the Yangzi River Delta region.

MPS and Customs jointly issued rules in March 2006 to boost coordination in IPR cases. See also 2005 #2.

7. Ratify and implement the WIPO Internet Treaties as soon as possible.

Completed. See 2005 #8.

8. Extend an existing ban on the use of pirated software in PRC central- and provincial-government agencies to include local governments.

Pending. See 2005 #5.

9. Launch a national campaign to educate PRC citizens about the importance of IPR protection.

Ongoing since 2004.

10. Establish an IPR working group under the JCCT. Under this working group, US and PRC trade, judicial, and law enforcement authorities will consult and cooperate on the full range of issues described in China's IPR action plan.

Completed. Meetings have stalled since the US initiation of a WTO case on IPR enforcement against China in April 2007. See also 2005 #3.

Market Access in Services

2007 (as reported by the USTR/DOC Fact Sheet)

China agreed to:

1. Confirm that it will lower the registered capital requirements for US telecom service providers to operate in China.

2006

China agreed to:

1. Make appropriate adjustments to registered capital requirements for telecom service providers, though the PRC statement said only that “consideration would be given” to such adjustments.
2. Ensure that the issuance of new rules, including the postal law, will not negatively affect the regulatory environment for express delivery services by foreign companies.
3. Launch a new dialogue between PRC government officials and foreign-invested direct selling companies to address market access concerns, with US government participation possible following the initial rounds.

Status

The JCCT Telecommunications Dialogue met in August 2006 to discuss this commitment.

See also 2007 #1.

Unclear. US industry continues to seek improvements to market access for express delivery services.

Two meetings were held in 2006 in China with MOFCOM, SAIC, and industry representatives.

Multiple direct selling companies have been approved to operate in China.

2005

China agreed to:

1. Convene another meeting of the US-China Insurance Dialogue before the end of 2005 to discuss regulatory concerns and barriers to further liberalize the sector.
2. Ensure that the final Regulations on Management of Direct Selling conform to China’s applicable WTO obligations, including requirements concerning distribution of imported goods and fixed locations.
3. A new dialogue under the JCCT Information Technology Working Group to discuss capitalization requirements, resale services, and other issues agreed to by both sides.

Status

Completed. Fourth dialogue in series was held in November 2006 in Beijing.

Completed, but with restrictions that may limit implementation of the international direct sales business model.

Multiple direct selling companies have been approved to operate in China.

Completed. First dialogue held in Beijing in January 2006 and issues discussed regularly in subsequent Information Technology Working Group meetings.

2004

China agreed to:

1. Implement its WTO trading rights obligations by July 1, 2004—six months ahead of the scheduled WTO commitments.
2. Provide distribution rights to US companies in China on schedule by December 2004.
3. Open its market to US shippers through a Bilateral Maritime Agreement signed during the JCCT—allowing US carriers to open full branches in China and to operate without restrictions.

Status

Completed.

Completed late, in 2005.

Ongoing. Licenses have been granted to US shippers and branches opened. Consultations held in March 2006.

Agriculture

2007 (as reported by USTR/DOC Fact Sheet)

Status

China agreed to:

1. Allow six US pork processing facilities to resume exports to China.
2. Remove “contract value” requirements from draft agricultural licensing regulations that would have required US farmers and exporters to disclose confidential business information.
3. Eliminate the requirement to submit viable biotech seeds for testing, which will reduce the possibility of illegal copying of patented agricultural materials.

2006

Status

China agreed to:

1. Reopen its market to US beef exports subject to the completion of a technical protocol.

Incomplete. Two rounds of technical negotiations have been held. China issued regulations on August 30, 2006 that US beef exporters indicated are inadequate in addressing their concerns.

In May 2007, the World Animal Health Organization ruled that the United States is a “controlled risk” for bovine spongiform encephalopathy (BSE), but the PRC has expressed concerns about that ruling and as a result, has not yet allowed imports of US beef.

Negotiations that began as part of SED III between the USDA and AQSIQ to sign an agreement facilitating trade between both countries related to meat, poultry, and egg products continue.

2. Create a structure that allows sanitary and phytosanitary and food safety issues to be addressed before they become barriers to trade.

MOU signed between AQSIQ and USDA at the 2006 JCCT. Discussions are ongoing.

2005

Status

China agreed to:

1. Cooperate via AQSIQ and USDA on animal and plant health and safety issues and improve efforts to expand US access to China’s markets for agricultural commodities.

Negotiations that began as part of SED III between the USDA and AQSIQ to sign an agreement facilitating trade between both countries related to meat, poultry, and egg products continue.

2004

Status

China agreed to:

1. Issue final safety certificates for US biotech soybeans.
2. Announce biotech approvals for seven US canola and four US corn “events” and review the remaining two US corn events submitted for approval when its technical committee meets in May 2004.

Completed.

Completed.

Agriculture

3. Make it easier to export US wheat, cotton, corn, and other products subject to tariff-rate quotas to China by providing the names of its domestic quota holders to US exporters upon request.

Unclear. According to USTR, the PRC government has provided at least partial lists of its domestic quota holders.

Other JCCT Commitments

2007 (as reported by the USTR/DOC Fact Sheet)

China agreed to or has proceeded to:

1. Confirm that it will submit, by the end of 2007, its initial offer on Chinese government agencies that will be covered by the WTO Government Procurement Agreement.
2. Take action to eliminate remaining redundancies in its testing and certifications requirements for imported medical devices.
3. Implement a "one test, one fee" policy for medical devices, establishing a single conformity assessment system.
4. Suspend implementation of AQSIQ Decree 95, which would have produced additional testing and inspection redundancies targeted exclusively at imported medical devices.
5. Join the Cape Town Convention on International Interests in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment.
6. Reiterate its commitment to open investment and competition policies and to the principle of non-discrimination in investment regulation.

Completed. China submitted its formal offer on December 28 in Geneva and bilateral negotiations are set to commence.

2006

China agreed or has proceeded to:

1. Begin formal negotiations to join the WTO Government Procurement Agreement by no later than the end of 2007, with technical consultations to continue in the interim.
2. Require that all laws and regulations affecting trade in goods, services, intellectual property, or foreign exchange be published in the MOFCOM *Gazette*.
3. Eliminate duplicative testing and certification requirements applicable to imported medical devices by the end of May 2006.
4. Reiterate its commitment to technology neutrality for 3G standards, ensure that telecom service providers will be allowed to make independent decisions regarding which standard they choose to adopt, and issue licenses for all 3G standards in a manner that does not give advantage to one standard over others.

Status

Technical discussions to prepare for accession negotiations continue.

See also 2007 #1

Notice issued by the PRC State Council in March 2006. Some government bodies do not yet notify MOFCOM of their regulations.

Initial regulations were issued on April 30, 2006, but do not appear to fully meet the industry's concerns. New regulations were passed in June 2007 that appeared to again increase the testing requirements for imported medical devices, but implementation of the regulation was postponed in December 2007.

See 2007 #2 and #4.

Commitment reiterated at April 2006 JCCT. No 3G licenses have been issued to date.

Other JCCT Commitments

5. Discuss industry concerns regarding the production of active pharmaceutical ingredients (or bulk chemicals) under the JCCT Medical Devices and Pharmaceutical Subgroup.	Subgroup meeting held in August 2006. See also 2007 IPR #3
6. Hold a follow-up meeting of the JCCT Steel Dialogue with industry participation later this year.	Latest meeting was held in Washington, DC, on August 2–3, 2007. Next meeting is currently being planned for first quarter of 2008 in China.

2005

China agreed to:

1. Delay issuing draft regulations on software procurement, as it further considers public comments and makes revisions in light of WTO rules.

Completed, but status of revisions unclear.

2. Accelerate its efforts to join the WTO Government Procurement Agreement and, toward this end, will initiate technical consultations with other WTO members.

Technical consultations initiated.

See also 2006 #1.

3. Provide a detailed accounting of its subsidies to the WTO by the end of 2005.

Report submitted to the WTO on April 7, 2006, though some WTO member countries have questioned whether the submission includes all covered subsidies.

4. Intensify bilateral discussions on structural issues related to China's status as a nonmarket economy under US antidumping law, including a review of China's subsidy practices.

Ongoing.

2004

China agreed to:

1. Suspend indefinitely its proposed implementation of WAPI as a mandatory wireless encryption standard.

Mandatory standard suspended, but MII and NDRC announced in December 2005 a proposed government procurement policy giving "preference" to equipment using WAPI technology.

2. Work to revise its WAPI standard, taking into account comments received from PRC and foreign firms.

Unclear. ISO rejected WAPI as an international standard in March 2006.

3. Participate in international standards bodies on WAPI and wireless encryption for computer networks.

Ongoing.

4. Allow telecom service providers in China to choose which standard to adopt according to their individual needs.

Unclear. See 2006 #4.

5. Remove PRC regulators from negotiations over royalty payment terms with relevant IPR holders.

Unclear. See 2006 #4.

6. Have MOFCOM cooperate with DOC in end-use verification for US exports of controlled dual-use items.

Some progress.

7. Provide logistical support, via the China Council for the Promotion of International Trade, for DOC trade missions.

Completed.

Other JCCT Commitments

8. Have AQSIQ and CPSC exchange information on product safety regulations.

Ongoing. At 2004 JCCT, AQSIQ, and CPSC signed an MOU that covers exchange of regulatory and technical information, joint participation in training laboratory and inspection personnel, and consultation on product safety issues.

A second MOU was signed at the second Biennial Consumer Product Safety Summit in September 2007, covering several key product areas.

9. Allow imports of US cosmetics via AQSIQ and have AQSIQ accept export certificates issued by two US trade associations, documenting that the products do not contain any animal products prohibited in China.

The Cosmetic, Toiletry, and Fragrance Association and the Independent Cosmetic Manufacturers and Distributors Association are authorized to issue export certificates.

Other JCCT Initiatives

2007 (as reported by USTR/DOC Fact Sheet)

- The US Department of Health and Human Services and China's State Food and Drug Administration signed a memorandum of agreement on active pharmaceutical ingredients (APIs; see IPR 2007 #3).
- The United States and China signed an MOU to increase Chinese tourist travel to the United States, and to allow US travel destinations to market themselves freely in China.
- The United States and China agreed to investment-related discussions in the US-China Legal Exchange to address concerns about implementation of China's Antimonopoly Law and mergers and acquisitions regulations.

2006

- The United States and China agreed to establish a US-China High Technology and Strategic Trade Working Group under the JCCT to review export control cooperation and facilitate high technology trade. Established and ongoing. Meeting held in Beijing in January 2007 and in Hangzhou, Zhejiang, in April 2007.
- The JCCT Tourism Working Group agreed to discuss visa issues for Chinese tourist groups to the United States. Ongoing. Officials from US DOT and DOS met with PRC counterparts in Beijing in January 2007 to discuss air travel liberalization, but visas were not an official agenda item.
- The United States and China signed three protocols concerning the export of certain Chinese plants to the United States and the export of US timber to China. Completed.
- The United States agreed to lift a ban on the import of cooked poultry meat from China. Ongoing. USDA approved a program for cooked poultry imports from China in 2006, but US congressional action has prevented implementation. In addition, in July 2006, USDA seized 2,000 pounds of chicken imports from China that did not meet the criteria of the new rule.

Sources: Office of the US Trade Representative, US Department of Commerce, PRC Ministry of Commerce

Abbreviations

3G	Third generation
AQSIQ	Administration of Quality Supervision, Inspection, and Quarantine (PRC)
BWIPS	Broadband Wireless Internet Protocol Standard Group (PRC)
CFCA	Chinese Film Copyright Association
CPSC	Consumer Product Safety Commission (US)
DOC	Department of Commerce (US)
DOJ	Department of Justice (US)
DOS	Department of State (US)
DOT	Department of Transportation (US)
FBI	Federal Bureau of Investigation (US)
HHS	Department of Health and Human Services (US)
IEC	International Electrotechnical Commission
IPR	Intellectual property rights
ISO	International Organization for Standardization
JCCT	Joint Commission on Commerce and Trade
LAN	Local area network
MII	Ministry of Information Industry (PRC)
MOE	Ministry of Education (PRC)
MOFCOM	Ministry of Commerce (PRC)
MOU	Memorandum of understanding
MPPA	Motion Picture Association
MPS	Ministry of Public Security (PRC)
NCA	National Copyright Administration (PRC)
NDRC	National Development and Reform Commission (PRC)
NPC	National People's Congress (PRC)
NTE	National Trade Estimate report (US)
SAC	Standards Administration of China (PRC)
SFDA	State Food and Drug Administration (PRC)
SIPO	State Intellectual Property Office (PRC)
SOE	State-owned enterprise
USDA	Department of Agriculture (US)
WAPI	Wireless Local Area Network Authentication and Privacy Infrastructure
WIPO	World Intellectual Property Organization
WTO	World Trade Organization