

CHINA BALANCE SHEET

INTELLECTUAL PROPERTY RIGHTS

The direction that China and U.S.-China relations take will define the world's future. For the United States, a rising China increasingly affects American prosperity and security, calling for some clear-eyed thinking and tough economic, political, and security choices. As the twenty-first century unfurls, the stakes have never been higher for getting U.S. policy toward China right. By untangling the complex, sometimes contradictory, strands of this vast and dynamic country, *China: The Balance Sheet* lays the foundation for informed and effective U.S. policy toward China, the world's emerging superpower.

BACKGROUND

- China agreed when it entered the WTO to adhere to international norms to protect and enforce minimum standards of protection for copyrights, trademarks, and patents. **Although China has established an intellectual property rights (IPR) legal regime that largely meets WTO standards, enforcement is inadequate.** Copyright piracy of software and recorded entertainment products, trademark counterfeiting, patent infringement, and unauthorized use of trade secrets remain widespread.
- **China's failure to protect intellectual property is a major source of friction in the U.S.-China economic relationship.** The economic burden of piracy and counterfeiting falls heavily on U.S. firms, which clearly have a comparative advantage in research-based pharmaceuticals, software, movies, music, and video games.

CURRENT SITUATION

Some developments bode well for increased IPR protection in China in the long run:

- **The number of patents filed and trademarks registered in China continues to grow:** In 2005, China's patent applications with the World Intellectual Property Organization (WIPO) soared 44 percent—making China, for the first time, one of the top 10 patent filing countries.
- The long-term rise in trademark registrations also continued: In 1983, fewer than 20,000 trademarks were registered with China's State Administration of Industry and Commerce (SAIC), but by 2005, there were 664,000 applications, and **by 2005, the cumulative number of registered trademarks reached 2.5 million.**

For further information, see Chapter 4:

“China in the World Economy: Opportunity or Threat?”

China: The Balance Sheet: What the World Needs to Know Now about the Emerging Superpower

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- **More than 80 percent of registered trademarks, and most trademark and patent investigations and litigation, involve domestic firms.** In 2005, for example, SAIC investigated more than 39,100 trademark infringement cases, of which only about one-fifth involved trademarks registered by foreign parties. Similarly, more than 90 percent of all the cases in China's IPR courts involve Chinese parties suing other Chinese companies. **This increasing domestic desire for IPR protection suggests China's IPR regime will improve in the years ahead.**

IMPLICATIONS

- **The United States should keep pressing China to fulfill its WTO IPR commitments.** Many IPR violations arise or persist with collusion from provincial and local leaders, who generally value the jobs and tax revenues that factories producing pirated intellectual property provide. **All too frequently these IPR violations appear to be concealed from the central authorities, who are more committed to enforcement of IPR laws.** Thus, at a minimum, high-level dialogue on IPR violations can help keep the central government well informed.
- More important, **the United States has an interest in ensuring that pending and potential rules, regulatory standards, and laws are consistent with or stronger than China's WTO commitments.** For example, the United States should continue to encourage China to sign the Government Procurement Agreement and to accede to certain Internet protocols of the WIPO. In the realm of pending laws and regulations, the United States should seek modifications of certain provisions of a proposed anti-monopoly law, which has been in the drafting process since 1994, and a proposed regulation for national standards involving patents; otherwise, these might be used to undermine foreign companies' intellectual property rights - for example, by forcing them to license their technology at a government-determined price.
- More generally, **the United States should seek to persuade China to adopt market-friendly regulatory standards that provide equal market access for all firms.**

Should the United States Bring a WTO Case against China on IPR?

Some experts believe the United States should file a formal case with the WTO Dispute Settlement Body, charging that China has failed to adequately enforce the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

Such a case would be hard to win, however. First, the TRIPS agreement neither defines what constitutes effective enforcement nor requires a member state to devote more resources to IPR protection than to other areas of law enforcement. Second, the U.S. Trade Representative's ability to file a case based on inadequate enforcement in general is severely handicapped by U.S. companies' unwillingness to provide concrete evidence of intellectual property violations by Chinese firms. Meanwhile, losing such a case would enable China to claim endorsement of the status quo.