

Comparing IP Commitments and Implementation: 2016 JCCT, Phase One Agreement, and NTE Observations

Issue	NTE Observation	Phase One commitment	2016 JCCT commitment	Chinese measure / development	Type of implementing measure	Type of implementation (explained)	Foreign utilization	Transparency
Trade secrets (civil; incl. Preliminary Injunctions (PI))	Improvements noted; concerns remain	Burden shifting; availability of preliminary injunctions; strengthen protection	Strengthen protection and enforcement	AUCL 2019; SPC 2020	Statute + Judicial Interpretation	Regifting; preliminary injunctions existed pre-Phase One (e.g., Eli Lilly v. Huang Mengwei); Phase One formalized practice; partial evidentiary reform	Limited	Limited
Administrative confidentiality	Not addressed	Protect confidential regulatory submissions	Discussed generally	Anti-Unfair Competition Law (AUCL); Administrative Licensing Law; Government Information Disclosure Regulations	Statutes + Regulations	Implemented; protection established across AUCL, Administrative Licensing Law, and Government Information Disclosure Regulations	Unclear	Low
SAMR trade secret enforcement	Not central	General strengthening	Administrative enforcement encouraged	2026: SAMR Trade Secret Rules enacted	Departmental Rules	Wait-it-out; departmental Rules with limited authority and uncertain coordination	Limited	Low
Criminal trade secrets	Threshold and enforcement concerns	Lower thresholds; increase enforcement	General commitment to strengthen trade secret protection, including criminal enforcement and coordination	Criminal Law amendment; SPC/SPP judicial interpretation; revised prosecution standards; administrative-criminal referral mechanisms (两法)	Statute + Judicial Interpretation + prosecution standards + referral mechanisms	Implemented; builds on earlier JCCT commitments and advances them to a more formal legal benchmark; transparency and utilization remain limited	Not discussed	Partial to Low; higher with respect to some civil cases

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Bad faith trademarks	Continued problems	Address bad faith filings and abuse	Address bad faith filings	Trademark Law amendments; Implementing Regulations; CNIPA examination guidelines; administrative campaigns; civil actions	Statute + Regulations + Administrative Rules + Campaigns + Civil enforcement	Regifting/acceleration; builds on pre-existing reforms but expands through legislative changes, regulations, campaigns, and civil enforcement	Widely used	Partial
Campaign enforcement/reporting	No evidence of Phase One-style reporting	Campaigns; quarterly publication; customs training; software audits	No structured commitments	Recurring enforcement actions	Campaigns + Administrative Measures	Wait-it-out; signaling; non-durable	Not discussed	Low
Post-filing data supplementation (pharma)	Uneven progress	Allow reliance on supplemental data	None	Examination Guidelines + cases	Guidelines	Strategic signaling followed by partial implementation, including recent SPC IP Court decision (Dec. 31, 2025)	Not discussed	Limited
Patent term restoration (pharma)	Implemented; scope concerns	Provide patent term extension	None	Patent Law (2020)	Statute + Regulations + CNIPA guidance	Short-circuiting; partial implementation	Not discussed	Partial
Regulatory data protection (pharma)	Not fully implemented	Provide effective protection against unfair commercial use of data	None	Implementing Regulations of the Drug Administration Law (effective May 15, 2026), including data exclusivity provisions;	Regulations (State Council); implementing rules anticipated	Wait-it-out; framework regulation adopted; operational details deferred	Not discussed	None/unclear

				further detailed implementing rules anticipated				
Patent linkage (pharma)	System exists; effectiveness unclear	Early resolution mechanism; stay of approval	None	Patent Law (2020); NMPA-CNIPA Measures (2021); patent information platform; CNIPA adjudication; limited judicial cases	Statute + Administrative Measures (NMPA/CNIPA) + Administrative adjudication + Civil litigation	Mixed; functioning system (9-month stay; administrative pathway more used) but partial institutionalization and limited jurisprudence	Unclear	Partial