



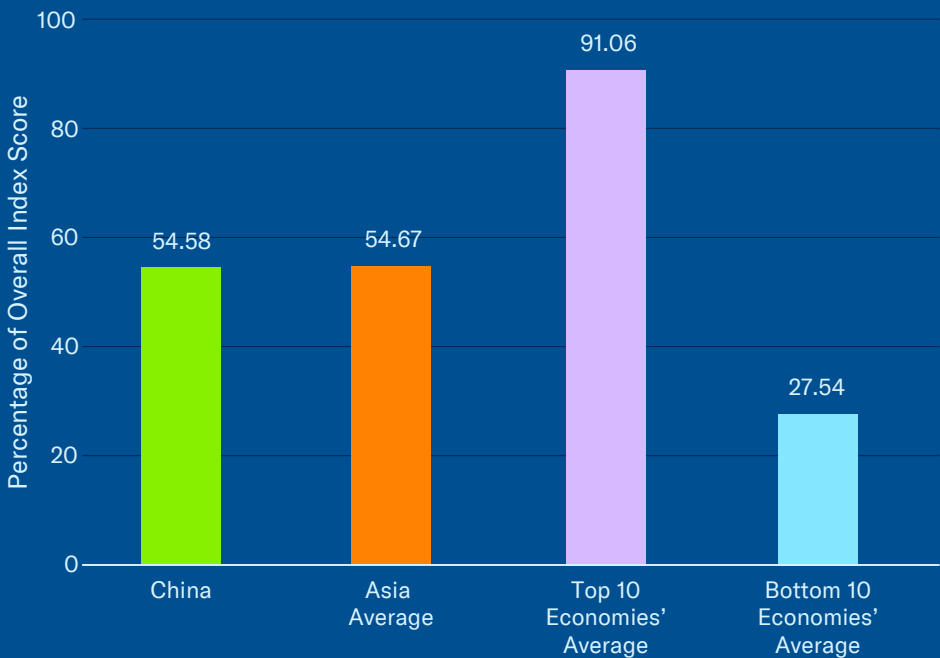
China

Rank  
24/55

Category Scores



Overall Score in Comparison





## Key Areas of Strength

- Reform of IP laws after Phase One Agreement with the United States
- 2020 Patent Law amendment aims to improve the environment for biopharma and other patent-dependent industries and to extend the term of protection for design patents
- 2020 Copyright Law amendments improve the copyright environment
- Positive changes in 2019–2020 on tech transfer and licensing through amendments to Foreign Investment Law and Technology Import and Export Regulations
- 2019 Trademark Law amendment seeks to address issue of bad faith filings
- 2019 Anti-Unfair Competition Law amendment seeks to strengthen protection of trade secrets
- Strong efforts to raise awareness and leverage value of IP rights in academic and private spheres

## Key Areas of Weakness

- New Implementing Regulations and Patent Examination Guidelines make pharmaceutical patent term restoration contingent on the first global launch taking place in China; all but negates the practical availability of term restoration to most innovators
- No special IP incentives for orphan medicinal product development
- Despite 2019–2020 positive changes on tech transfer and licensing, continued challenges exist with respect to technology transfer and licensing environment for SEPs; growing trend of rightsholders facing global anti-suit injunctions and restrictions on their ability to assert infringement claims in legal jurisdictions outside China
- 2022 Anti-Monopoly Law greatly expands the government's basis for action against anti-competitive behavior and substantially increases fines and penalties. Finalized 2023 rules contain not only broad and vague language on what constitutes anti-competitive behavior within an IP rights context but also vest considerable discretion with the anti-competition authorities in identifying and defining such behavior
- Uncertainty over implementing rules for the biopharmaceutical linkage mechanism and patent term restoration
- Despite improved enforcement efforts, levels of IP infringement remain high
- Interpretation of IP laws can be fragmented and out of sync with international standards
- Broader industrial and investment policies continue to undermine the investment and business environment

Indicator	Score	Indicator	Score
<b>Category 1: Patents Rights and Limitations</b>		<b>Category 7: Enforcement</b>	
1. Term of protection	1.00	29. Direct government intervention in setting licensing terms	0.25
2. Patentability requirements	0.75	30. IP as an economic asset	0.75
3. Patentability of CII	1.00	31. Tax incentives for the creation of IP assets	0.33
4. Plant variety protection	0.78	<b>Category 8: Systemic Efficiency</b>	
5. Pharmaceutical-related enforcement	0.50	32. Physical counterfeiting rates	0.00
6. Legislative criteria and use of compulsory licensing	1.00	33. Software piracy rates	0.34
7. Pharmaceutical patent term restoration	1.00	34. Civil and precedural remedies	0.50
8. Membership of a Patent Prosecution Highway	1.00	35. Pre-established damages	0.50
9. Patent opposition	0.25	36. Criminal standards	0.25
<b>Category 2: Copyrights and Limitations</b>		37. Effective border measures	0.00
10. Term of protection	0.53	38. Transparency and public reporting by customs	1.00
11. Exclusive rights	0.75	<b>Category 9: Cutting-Edge Innovation</b>	
12. Expeditious legal remedies disabling access to infringing content online	0.00	39. Coordination of IP rights enforcement	1.00
13. Cooperative action against online piracy	0.50	40. Consultation with stakeholders during IP policy formation	0.50
14. Limitations and exceptions	0.25	41. Educational campaigns and awareness raising	1.00
15. TPM and DRM	0.50	42. Targeted incentives for the creation and use of IP assets for SMEs	0.75
16. Government use of licensed software	0.50	43. IP-intensive industries, national economic impact analysis	1.00
<b>Category 3: Trademarks Rights and Limitations</b>		<b>Category 10: Membership and Ratification of International Treaties</b>	
17. Term of protection	1.00	44. IP incentives for orphan medicinal product development	0.00
18. Protection of well-known marks	0.50	45. IP incentives for orphan medicinal product development, term of protection	0.00
19. Exclusive rights, trademarks	0.75	46. Restrictions on the effective use of existing IP incentives for orphan medicinal product development	0.00
20. Frameworks against online sale of counterfeit goods	0.75	<b>Category 5: Trade Secrets and the Protection of Confidential Information</b>	
<b>Category 4: Design Rights and Limitations</b>		23. Protection of trade secrets (civil remedies)	0.50
21. Industrial design term of protection	0.60	24. Protection of trade secrets (criminal sanctions)	0.25
22. Exclusive rights, industrial design rights	0.25	25. Regulatory data protection term	0.60
<b>Category 6: Commercialization of IP Assets</b>		<b>Category 10: Membership and Ratification of International Treaties</b>	
26. Barriers to market access	0.25	47. WIPO Internet Treaties	1.00
27. Barriers to technology transfer	0.75	48. Singapore Treaty on the Law of Trademarks and Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	0.75
28. Registration and disclosure requirements of licensing deals	0.00	49. Patent Law Treaty and Patent Cooperation Treaty	0.50
		50. Membership of the International Convention for the Protection of New Varieties of Plants, act of 1991	0.00
		51. Membership of the Convention on Cybercrime, 2001	0.00
		52. The Hague Agreement Concerning the International Registration of Industrial Designs	1.00
		53. Post-TRIPS FTA	1.00

Percentage of Overall Score: 54.58%

Total Score: 28.93

# Spotlight on the National IP Environment

## Past Editions versus Current Score

China's overall score remains unchanged at 28.93 out of 53 indicators.

## Area of Note

In May 2024, an intragovernmental committee released a “Plan for Promoting the Construction of a Powerful Intellectual Property Country.” The plan consists of 100+ action items including legislative reforms, the incorporation of new technologies (such as AI) in IP registration and operations, and increased public awareness and usage of the IP system. At the time of research, no further details had been published. The Index will monitor these developments in 2025.

## Patent Rights and Limitations; and Trade Secrets and the Protection of Confidential Information

*7. Patent term restoration for pharmaceutical products; and 25. Regulatory data protection (RDP) term:*

As noted over the past two editions of the Index, in 2020, new amendments to the Patent Law were passed. Article 42 of these amendments states that a period of term restoration of up to five years for biopharmaceutical products may be made available by relevant Chinese authorities. In December 2023, Implementing Regulations were released together with updated Patent Examination Guidelines. Unfortunately, these regulations and guidelines make term restoration contingent on the first global launch taking place in China. This stands in stark contrast to international best practices, where “new” biopharmaceutical products are defined as those newly approved for that individual market.

Given that most innovative medicines are first launched outside of China, this requirement all but negates the practical availability of term restoration to most innovators. At the time of research, no revisions or updates to the published regulations had been proposed. Should the Chinese authorities take no action and the regulations remain unchanged, the score for indicator 7 will be reduced to 0. Similarly, should this definition of “new” become the norm and apply to other biopharmaceutical IP rights, including RDP, this will also result in a score reduction for indicator 25. The Index will continue to monitor these developments in 2025.

## Commercialization of IP Assets and Market Access

*27. Barriers to technology transfer; and 29. Direct Government intervention in setting licensing terms:* In 2024, several judicial and legal developments took place in China's technology transfer and licensing environment. As detailed across several editions of the Index, rightsholders have historically faced a growing number of regulatory and procedural barriers that impede technology flows, R&D cooperation, and digital trade. This changed in 2019–2020 as a direct result of the negotiations and conclusion of the “Economic and Trade Agreement Between the Government of the United States and the Government of the People's Republic of China” with several significant and positive changes to China's technology transfer and licensing environment. Most importantly, both the Foreign Investment Law and the Technology Import and Export Regulations and Regulations for the Implementation of the Law of the People's Republic of China on Chinese-Foreign Equity Joint Ventures were changed, with many of the most onerous provisions removed.

In 2021, a new Civil Code came into effect, which also included specific provisions related to technology transfer and contract law in a dedicated chapter, Chapter 20. As noted at the time in the Index, these changes held the promise of fundamentally remodeling the nature in which licenses can be drafted and executed between foreign and Chinese entities. As a result, China's score increased for indicators 26, 27, and 29 in the eighth edition of the Index. However, since then and despite this legislative progress, licensors and rightsholders have continued to face substantive challenges to doing business in China on fair, nondiscriminatory, and equal terms. To begin with, the past few years have seen a growing trend of rightsholders facing global anti-suit injunctions and restrictions on their ability to assert infringement claims in legal jurisdictions outside China. Chinese courts have increasingly claimed global jurisdiction to set global licensing rates for technologies protected by Standard and Essential Patents (SEPs), threatening exorbitant fines and withholding access to the Chinese market to prevent foreign patentholders from asserting their rights (in both China and global jurisdictions). The outcomes of these cases have also been cited and referred to as "model" IP rights cases by government authorities. Such actions violate the spirit of China's commitment to refrain from forcing—whether directly or indirectly—technology transfers under Chapter 2 of the January 2020 Agreement, as well as TRIPS Article 28, which guarantees patent protection rights. In 2022, the European Union filed a request for consultations with China on this issue at the WTO. This was followed by requests from Japan, Canada, and the United States to join these consultations. In January 2025, the EU filed an additional request for consultations again highlighting Chinese courts' practice of setting globally binding licensing terms, including royalty rates. The request rightly emphasizes how such practices are inconsistent with China's obligations under the TRIPS Agreement. At the time of research, a WTO dispute panel had been established and was reviewing the case.

In 2023 and 2024, there were further important judicial developments relating to SEPs and the setting of royalty rates. In late 2023, the First Intermediate People's Court of Chongqing Municipality, in an unprecedented judgment, set global rates for the licensing of SEPs in the case of *Oppo v. Nokia*. Separately, in early 2024, the Supreme People's Court in *ACT v. Oppo* did not seek to set a global licensing rate but instead confined its judgment to the Chinese market. On the legislative side, in the past few years, several major developments have also occurred related to technology transfer. Most importantly in 2022, China enacted a new Anti-Monopoly Law (AML). The AML greatly expands the government's basis for action against anti-competitive behavior and substantially increases fines and penalties. With respect to IP rights, Article 68 states that the "Law applies to undertakings' abuse of intellectual property rights to eliminate or restrict competition." The new law was accompanied by several new draft rules, including "Provisions on Prohibiting Abuse of Intellectual Property Rights to Exclude and Restrict Competition." As detailed over the past two years in the Index, just like the underlying legislation, this rule considerably expanded the powers of investigation, punishment, and meaning of what constitutes anti-competitive behavior within the context of the exercise of IP rights. This rule came into effect in 2023. Unfortunately, although maintaining some moderate safeguards against potential overreach, the finalized version of the rule did not materially improve the preceding draft. It, too, contains the same broad and vague language on what constitutes anti-competitive behavior within an IP rights context and vests considerable discretion with the anti-competition authorities in identifying and defining such behavior.

Separately, in 2023, the Chinese anti-competition authority (the State Administration for Market Regulation) released draft guidance on antitrust and competition policy within the field of SEPs.

This guidance document largely follows in the negative, interventionist footsteps of both the AML and the “Provisions on Prohibiting Abuse of Intellectual Property Rights to Exclude and Restrict Competition.” In late 2024, SAMR published a finalized document. Although different in important respects from the preceding draft guidance, overall, this document preserves the growing interventionism of Chinese antitrust policy. SEP-based technologies are central to future innovation and economic growth, both in China and globally. Many of the cutting-edge industries that are loosely labeled as making up the “Fourth Industrial Revolution”—the Internet of Things, AI, robotics, and 3-D printing—will rely on SEPs to function. Indeed, the emergence and broader use of these new technologies are likely to result in an even greater use of SEPs as well as a concomitant increase in the number of potential legal disputes that could hold up the development and use of these new technologies and industries. However, disputes between licensors and licensees on what constitutes fair, reasonable, and non-discriminatory licensing terms are not new or unique to China. This is an evolving field of IP policy and jurisprudence for a subject matter that is deeply complex. Each licensing negotiation is unique and should not be subject to prescriptive government action or intervention, whether through direct or indirect pressure. Unfortunately, neither the AML, the finalized “Provisions on Prohibiting Abuse of Intellectual Property Rights to Exclude and Restrict Competition,” nor the latest draft guidance document related to SEPs recognize this basic fact. Subsequent government actions have not fundamentally changed this approach. For example, as a follow-up to the AML, in June 2024, the State Council issued National Decree 793, the Fair Competition Review Regulations. These regulations set out the way all levels of government in China should promote and actively encourage fair competition across the entire economy.

On a positive note, Articles 8 and 9 limit localization efforts and explicitly eliminate the discrimination of foreign or imported goods. However, Article 12 all but nullifies the preceding provisions by allowing competition to be restricted or eliminated “to promote scientific and technological progress and enhance the country’s independent innovation capabilities.”

In the same month, the Supreme People’s Court released its view of the AML through the “Interpretation of the Supreme People’s Court on Several Issues Concerning the Application of Law in the Trial of Civil Disputes over Monopoly.” The interpretation provides some specific references to the handling of IP rights and related disputes, including in relation to the analysis of a dominant position, unfair competition practices, and potential abuse of IP rights. Should rightsholders continue to face challenges in asserting their rights on fair, nondiscriminatory, and equal terms—whether through the Chinese judiciary or administratively through the expanded powers given the anti-competition authorities in the AML and accompanying rules—this will result in a sharp score decrease in relevant Index indicators and will negate the positive impact of the Phase I Agreement with the United States. The Index will continue to monitor these developments in 2025.

## Incentives for Cutting-Edge Innovation

*44. Special market exclusivity incentives for orphan medicinal product development; 45. Special market exclusivity incentives for orphan medicinal product development, term of protection; and 46. Restrictions on the effective use of existing market exclusivity incentives for orphan medicinal product development:*

Since 2012, a range of laws, policies, and initiatives have been launched by the central government to improve patient access to care and treatment.

This includes policies accelerating the sanitary registration for qualifying products, protocol assistance, and clinical trial exemptions. With respect to incentives to R&D and the development of new treatments and technologies, the 2022 draft Implementing Regulations of the Drug Administration Law (published by Chinese drug regulatory authority National Medical Products Administration) included a designated market exclusivity period for orphan drugs. Specifically, Article 29 of the draft regulations provided a seven-year period of orphan drug market exclusivity. At the time of research, the regulations were still in draft form and had not taken effect.