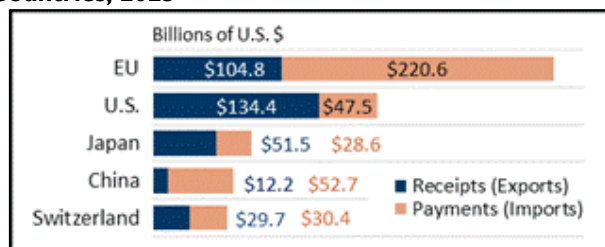


Updated January 17, 2025

Intellectual Property Rights (IPR) and U.S. Trade Policy

Intellectual property rights (IPR) protection and enforcement are key components of U.S. trade policy, and the United States plays a leading role in global IPR trade (**Figure 1**). Congress has a constitutional responsibility to legislate and oversee IPR matters in U.S. trade policy. Since 1988, Congress has included IPR protection as a principal objective in trade promotion authority (TPA) for U.S. free trade agreement (FTA) negotiations (P.L. 100-418). Debates over how to protect IPR while incentivizing innovation and advancing other policy aims, such as ensuring access to medicines and technologies based on IPR, have grown with the incorporation of IPR in U.S. trade policy. Several issues have complicated these debates, including the growing role of China and other emerging markets in the global economy, the proliferation of new technologies and digital trade, and impacts of pandemics, like COVID-19, on global medical supply chains.

Figure 1. Trade in Charges for IPR Use: Selected Countries, 2023



Source: WTO, *World Trade Statistics 2023*, Table 42. Figure, CRS.
Notes: Preliminary estimates for 2023. Charges for IP use include use of proprietary rights and licenses to reproduce or distribute IP; licensee payments include royalties and fees. EU = Extra-EU trade.

Background

IPR are legal rights governments grant entities to prevent others from making, copying, selling, or otherwise using their creations, typically for a limited time. IPR include patents, copyrights, trademarks, undisclosed data (trade secrets), and geographical indications (GIs, i.e., names of products tied to a geographic place). IPR holders may recoup associated expenses (e.g., research and development) by benefiting exclusively from their creations for some time and negotiating payment for others' use of the intellectual property (IP) (e.g., royalties). After the IPR expire, others can use and build on the innovations. The exclusivity granted to IPR holders may raise prices or limit access to protected goods. Some Members of Congress and stakeholders assert that IPR foster innovation and creative output. Others debate the validity of these arguments.

IP and Economic Impact. The U.S. government and some domestic companies generally assess IP to be important for advancing U.S. innovation and economic growth, while protecting U.S. comparative advantage internationally.

Limitations to IPR are also applied (e.g., “fair use” copyright exceptions for media, research, and teaching) to support innovation and add value.

Per a U.S. Patent and Trademark Office report, industries assessed to rely most heavily on IP comprised an estimated 41% of U.S. gross domestic product (GDP) and 44% of U.S. jobs (directly and via supply chains) in 2019 (latest data available). IP licensing and use fees comprised 13% of U.S. services exports and 6% of U.S. services imports in 2023, based on U.S. Bureau of Economic Analysis data.

IPR Infringement. Growth in digital trade and use of complex supply chains heighten IPR infringement risks and enforcement challenges. In the early years of the COVID-19 pandemic, for example, trade in counterfeit COVID-19 test kits, medicines, and other products posed enforcement and business challenges. Given its illicit nature, IPR infringement can be difficult to quantify. Global trade in counterfeit and pirated goods reached an estimated \$464 billion, or 2.5% of global trade in 2019 (latest data available). U.S. trade law prohibits the import of IPR-infringing goods. In FY2023, U.S. Customs and Border Protection (CBP) reported seizing \$2.8 billion worth of IPR-infringing goods at U.S. borders, most of which were low-value shipments exempted from duties under Section 321 of the Tariff Act of 1930 (i.e., *de minimis*). China was the largest source of seizures by quantity and value, followed by Hong Kong and India.

U.S. Trading Partners' IPR Regimes. While some U.S. trading partners have strengthened IPR laws and enforcement, aspects of their regimes continue to pose trade and investment barriers for U.S. firms. The Office of the U.S. Trade Representative (USTR) has highlighted concerns raised by stakeholders about some trading partners' lax border and criminal enforcement against counterfeits, including in the digital environment; high levels of digital piracy; and gaps in trade secret protection and enforcement. Examples are stakeholder concerns that China's technology transfer and other industrial policies may disadvantage U.S. IP holders in these markets; and the EU's approach to GIs may limit market access for U.S. exporters of products that use terms treated in other markets as “common names.” Some issues are evolving. For instance, stakeholders continue to debate the impact of EU regulation of the digital economy and artificial intelligence (AI) on U.S. IP and innovation (e.g., copyright implications of data used for AI model training).

Trade Policy Tools for IPR

The use of trade policy to advance IPR internationally emerged prominently with the former 1994 North American Free Trade Agreement (NAFTA) and World Trade

Organization (WTO) 1995 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Multilateral IP Rules. TRIPS established minimum standards of IP protection that most WTO members must provide, based on core WTO nondiscrimination principles. TRIPS requires countries to provide civil, administrative, and criminal enforcement procedures and other IPR remedies, including border measures. TRIPS obligations are subject to WTO enforcement. TRIPS has some exceptions and flexibilities. It allows compulsory licensing for patents in certain circumstances, and exempts least-developed countries from most obligations until July 1, 2034, and pharmaceutical-related obligations until January 1, 2033. In the 2001 WTO “Doha Declaration,” members agreed to interpret TRIPS to support members’ right to protect public health, particularly to promote access to medicines.

IPR issues have been contested in the WTO. For example, WTO members have not agreed on whether to extend a 2022 “TRIPS waiver” of patent-related obligations for COVID-19 vaccines to COVID-19 diagnostics and therapeutics. WTO members are also deliberating on “non-violation and situation complaints” (i.e., one member’s action depriving another member of TRIPS benefits, despite no violation of TRIPS), and currently have a moratorium on initiating such complaints amid debate.

The World Intellectual Property Organization (WIPO), a specialized U.N. agency, also administers IPR treaties on which TRIPS builds. Newer WIPO treaties, notably the “Internet Treaties,” address digital IPR issues not in TRIPS.

IPR in U.S. Trade Agreements. IPR protection has been a key part of U.S. FTA negotiations. For example, the 2015 TPA (P.L. 114-26), which expired in 2021, directed the executive to ensure that U.S. FTAs “reflect a standard of protection similar to that found in U.S. law,” and apply existing IPR protection to digital media through the WIPO “Internet Treaties.” The 2015 TPA added new objectives to address cyber theft, protect trade secrets and proprietary information, and “foster innovation and access to medicines.”

Since NAFTA, comprehensive U.S. FTAs have had IPR obligations that build on TRIPS. The United States-Mexico-Canada Agreement (USMCA), the most recent U.S. FTA, has new or updated IPR commitments not seen in other U.S. FTAs on criminal penalties for trade secret theft, IPR enforcement in the digital environment, and enhanced due process and transparency for GIs.

Some limited trade deals also have IPR commitments. For example, under a 2020 U.S.-China trade deal (“Phase One” agreement), China committed to not require technology transfer and to strengthen IP enforcement, but most U.S. concerns about technology transfer and IP theft remain unresolved. The Biden Administration did not make IPR a prominent part of its trade initiatives, such as in the Indo-Pacific or with the EU, but used U.S. trade and investment framework agreements (TIFAs) and dialogues to discuss IPR protection and enforcement with partners.

Other Tools. U.S. IPR-related trade tools also include

- **“Special 301” of the amended Trade Act of 1974:** USTR investigates and enforces U.S. IPR through Section 301 of the Trade Act of 1974 (e.g., Section 301 investigation of China that led to tariff action in 2018). In its annual statutorily required “Special 301” report, USTR identifies countries with inadequate IPR regimes and in a separate report, online and physical “notorious” markets involved in IPR infringement.
- **Section 337 of the amended Tariff Act of 1930:** This law empowers the U.S. International Trade Commission (ITC) to ban U.S. imports that infringe on U.S. IPR. If the ITC finds a violation, it may issue an exclusion order and/or cease and desist order. Section 337 cases have been largely patent-focused, though the number of trade secrets-related cases have been growing.
- **Seizures:** CBP enforces IPR at U.S. borders by seizing goods that infringe on U.S. copyrights and trademarks, as well as goods subject to Section 337 exclusion orders.
- **U.S. Generalized System of Preferences (GSP):** Under this program, the President considers a developing country’s IPR policies and practices when extending duty-free treatment to certain U.S. imports from such country. Congress continues to deliberate whether or not to reauthorize GSP, which expired at the end of 2020.

Issues for Congress

IPR Priorities. Congress may use potential TPA renewal to reaffirm or modify U.S. trade negotiating objectives on IPR. Congress also may weigh in on IPR approaches in the anticipated 2026 joint review of USMCA. Congress may examine the balance to protect and enforce IPR to promote innovation with other policy aims, such as supporting access to medicines in U.S. trade policy. It also may consider possible IPR protection and enforcement issues posed by digital trade, AI, and global supply chains.

Remedies for U.S. IP Holders. Congress may evaluate the timeliness of U.S. IPR trade remedies. The ITC takes an average of 18 months to reach a final determination in Section 337 investigations. Congress may consider amending Section 321 to prevent low-value shipments with counterfeit goods from being eligible for de minimis treatment (e.g., 118th Congress, S. 5329). Congress also may monitor the implementation of IPR remedies (e.g., P.L. 117-336, which authorizes sanctions for theft of U.S. trade secrets by certain foreign actors).

Trading Partners’ IPR Commitments. Congress may consider whether: enhanced monitoring and enforcement of trading partners’ IPR obligations is needed; existing agreements to address IPR concerns are sufficient; executive branch trade initiatives should include IPR provisions; and new FTAs that prioritize IPR or digital trade-specific negotiations are needed. Congress also may consider the use of tariffs to address IPR concerns with trading partners. Additionally, Congress may continue to oversee and shape multilateral U.S. engagement on IPR.

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