



**ECONOMIC AND TRADE AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND
THE PEOPLE'S REPUBLIC OF CHINA
FACT SHEET
TECHNOLOGY TRANSFER**

The U.S.-China Economic and Trade Agreement signed by the United States and China on January 15, 2020 (the “Phase One agreement”) creates novel, binding commitments to address China’s technology transfer regime. The Technology Transfer chapter prohibits China from employing a range of acts, policies, and practices to extract technology and intellectual property from U.S. companies.

In its Section 301 investigation related to technology transfer, intellectual property, and innovation, the Office of the U.S. Trade Representative (USTR) identified several elements of China’s technology transfer program and their impact on U.S. commerce. As USTR found, these acts, policies, and practices distort markets and threaten the global competitiveness of U.S. firms.

Through the Technology Transfer chapter, China has agreed not to engage in many of these harmful acts, policies, and practices. China’s obligations under this chapter apply to both written measures and informal acts and practices of agencies and officials that are not written into official policy. In addition, these obligations apply not only to the central government, but also to sub-central governments, where problems have frequently arisen in the past. Key obligations found in the Technology Transfer chapter include:

- **No technology transfer requirements as a condition for obtaining market access, administrative approvals, licenses, or subsidies:** China has agreed not to require or pressure U.S. companies to transfer their technology to Chinese persons as a condition of:
 - Entering or operating in the Chinese market;
 - Obtaining licenses or other administrative approvals; or

- Receiving any benefits or advantages, such as subsidies, tax credits, or reduced administrative burden.
- **No investment-related technology transfer requirements:** China has agreed not to require or pressure U.S. companies to transfer technology to Chinese companies or individuals in connection with acquisitions, joint ventures, or other investment transactions.
- **No indigenous technology requirements:** China has agreed not to require or pressure U.S. companies to use or favor Chinese technology as a condition for granting market access, licenses, administrative approvals, or any other advantage, which includes subsidies. These practices can be significant drivers of technology transfer concerns, as U.S. companies have been forced or pressured to transfer their technology to Chinese joint venture partners so that the technology can qualify as “local” or “indigenous.”
- **Technology licensing must be voluntary, mutually agreed, and market-based:** China has agreed that any transfer or licensing of technology between U.S. and Chinese companies must be based on market terms that are voluntary and reflect mutual agreement. Among other things, this obligation means that China cannot force or pressure U.S. companies to accept adverse, non-market licensing terms based on rules governing imported technology transfers (i.e., technology transfers originating outside China) that are less favorable than the rules that apply to transfers occurring between Chinese companies.
- **No support or direction to Chinese companies to make outbound foreign direct investment to acquire foreign technology:** China has agreed not to support or direct Chinese companies or individuals in making investments to acquire foreign technology in support of China’s distortive industrial plans.
- **No discriminatory enforcement of laws and regulations:** China has agreed to ensure that any enforcement of laws and regulations with respect to U.S. companies or individuals is impartial, fair, transparent, and non-discriminatory. For instance, discriminatory enforcement of laws and regulations is a tool that may be used to force or pressure U.S. companies to transfer their technology to Chinese companies.

- **No forced disclosure of unnecessary technical information:** China has agreed that it will not require or pressure U.S. companies to disclose sensitive technical information – including trade secrets and other confidential business information – if the information is not necessary to show conformity with administrative or regulatory requirements.
- **Ensuring confidentiality:** China has agreed to protect the confidentiality of any sensitive technical information disclosed by foreign persons during any administrative, regulatory, or other review process.
- **Transparency and due process in administrative proceedings:** China has agreed to implement significant transparency and due process improvements with respect to administrative proceedings. Specifically, China has agreed to:
 - Make its administrative and licensing requirements and processes transparent;
 - Ensure that rules of procedure for administrative proceedings related to the subject matter of the Phase One agreement are published and provide meaningful notice regarding, at a minimum, the subject matter of the proceeding, applicable laws and regulations, rules of evidence, and relevant remedies and sanctions; and
 - Ensure that, in any administrative proceeding, U.S. persons have the right to review evidence and have a meaningful opportunity to respond and that they have the right to be represented by legal counsel.