

# China's Emerging "Section 337 Investigation": Implications for Multinational Companies

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Intellectual Property

## Introduction

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On March 19, 2025, the State Council of China published the **Regulations on the Handling of Foreign-Related Intellectual Property Disputes** ("Regulations"), which were promulgated on March 13, 2025, and will take effect on May 1, 2025. While the Regulations address various aspects of foreign-related intellectual property (IP) disputes in China, **Article 14** of the Regulations highlights the government's focus on investigating IP violations in imported goods.

Although the Regulations do not introduce new rules, they reference existing provisions in China's **Foreign Trade Law**, which was promulgated in 1994 and lastly modified in 2022. However, Article 14 suggests the potential emergence of a system similar to U.S. Section 337 investigations, which target unfair trade practices involving IP-infringing imports. This client alert examines how such a system could impact multinational companies (MNCs) involved in IP disputes in China.

## I. Multinational Companies and China's Potential "Section 337-Style" IP Investigations

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### Respondents

MNCs that import goods into China may find themselves as respondents in these investigations. Many rely on imports to serve the Chinese market, particularly those without local manufacturing. In addition, companies with production facilities in China that import key components—whether for domestic sales or re-export—could experience supply chain disruptions due to these IP probes. Given China's significant imports of industrial goods, including electronics, chemicals, pharmaceuticals, and mechanical parts, the potential impact could be significant.

### Complainants

Conversely, MNCs with strong IP portfolios might use these investigations as a powerful enforcement tool. Many of these companies frequently litigate IP disputes in China to protect their patents, trademarks, copyrights, and trade secrets. A Section 337-style mechanism could provide them a new forum for securing import injunctions, similar to the U.S. International Trade Commission (ITC) exclusion orders.

Whether an MNC is a respondent or a complainant, this development is highly relevant for companies engaged in global IP disputes, and similar to Section 337 cases, could play a

significant role in resolving global IP disputes in U.S., EU, China, and other key jurisdictions, especially in those complex and high-stake cases. Key considerations include:

- Procedural requirements for initiating investigations.
- The role of non-practicing entities (NPEs) in filing complaints.
- Potential domestic investment requirements for complainants.
- Interplay with other legal proceedings, including proceedings in U.S. and EU.

MNCs should assess how this evolving framework fits into their broader IP litigation strategies.

## II. China's Current IP Import Investigation Framework: Need for Detailed Rules

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Currently, China's **Foreign Trade Law** lacks a well-defined framework for IP-related import investigations. Although Article 28 of China's Foreign Trade Law allows trade regulators to block imports from IP violators, formal rules on investigations, appeals, and enforcement remain underdeveloped.

If China formalizes this system, several notable challenges will likely arise, drawing parallels with U.S. Section 337 investigations:

- **Complex IP Issues:** Integrating patents and trade secrets into import investigations requires expertise in patent validity, claim construction, and defenses. While the Ministry of Commerce (MOFCOM) appears to oversee the process, China's State Intellectual Property Office (SIPO) has the necessary technical expertise. It remains to be seen whether a new MOFCOM bureau will be established and how it will coordinate with SIPO.
- **Coordination of Parallel Proceedings:** It is unclear how Chinese authorities will handle concurrent litigation involving the same patents across different forums.
- **Investigation Timelines:** U.S. Section 337 investigations are known for their speed. Given that Chinese courts generally operate faster than their U.S. counterparts, it is uncertain whether China's version of Section 337 investigations will impose even shorter deadlines while still ensuring procedural fairness.

China may introduce this system gradually through pilot programs. MNCs should consult legal counsel with expertise in both U.S. Section 337 investigations and Chinese domestic proceedings to navigate this evolving landscape.

## III. Potential Impact on China's IP Litigation Landscape

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A Chinese Section 337-style system could significantly enhance IP enforcement. Chinese courts have traditionally awarded lower damages for IP infringement than U.S. courts, making import bans a powerful deterrent. Chinese customs authorities, much like U.S. Customs and Border Protection, could play a crucial role in enforcing these injunctions—adding an additional layer of protection beyond court-ordered relief.

The introduction of these investigations would also add new complexities to China's IP litigation system. For example, at present, multiple proceedings could be involved in patent disputes in China, including:

- Infringement lawsuits in Chinese courts.
- Invalidity challenges before the China National Intellectual Property Administration (CNIPA).
- Administrative enforcement actions.

If China formalizes a Section 337-style system, MNCs will need to carefully assess and strategically coordinate the use of these different legal mechanisms.

## IV. Conclusion

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Article 14 signals China's increased focus on IP enforcement in import trade, suggesting a potential Section 337-style system. International companies should closely monitor these developments, prepare for potential challenges involving imported products, and explore how this new mechanism might be leveraged to protect their own IP interests and resolve their global IP disputes.

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