

**TRANSITIONAL REVIEW MECHANISM OF CHINA**

Communication from the European Communities

By means of a communication from the Delegation of the European Commission dated 7 November 2003, the Secretariat has received the following questions that the European Communities has posed to China in the context of the transitional review mechanism under Section 18 of its Protocol on Accession.

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The European Communities (hereinafter referred to as "EC") have identified the following statements which are submitted to the TRIPS Council:

1. China's membership of the World Trade Organization and its commitment to comply with the TRIPS Agreement have undoubtedly resulted in fundamental changes in the area of intellectual property.
2. Whilst a few years ago, intellectual property was only an abstract concept in China, the Chinese Government has now, in accordance with its international commitments, significantly strengthened the legal framework of intellectual property protection.
3. However, the EC consider that in the field of enforcement of intellectual property rights, the situation has not substantially improved in comparison with last year.
4. Hence, the EC reiterate their previous concerns that there is a marked need for additional efforts in the field of enforcement of intellectual property rights. The lack of an effective and deterrent system for combating infringement of intellectual property rights is still a major source of contention between China and foreign investors.
5. China's share of the world's trade of counterfeit and pirated goods continues to increase annually. The high rates of counterfeiting and piracy not only destroy the creative initiative of Chinese inventors and creators, they also hurt the bilateral relations with many trading partners, including the European Union. This situation is detrimental to investment and development, it leads to the loss of revenue for both Chinese and foreign right holders.
6. In addition to its economic impact, piracy and counterfeiting may have a damaging effect upon public health (particularly in the field of pharmaceuticals) and consumer protection (e.g. spare parts for motor vehicles). Earlier this year China's authorities successfully raided several distributors of a fake medicine for Hepatitis B. The fake drug did not contain any active substance and thus the

health of consumers of the medicine was seriously at stake. The case though is not resolved in the absence of appropriate criminal prosecution.

7. Needless to mention that counterfeiting and piracy may also affect public security and that the profits of such trade are often appropriated by organised crime. It is even said that trade in counterfeit and pirated goods has become more attractive nowadays than drug trafficking, as indeed high potential profits can be obtained without the risk of major legal penalties.

8. Whilst the Chinese government has been increasingly receptive to calls for reforms in criminal enforcement against piracy and counterfeiting and Chinese police and prosecutors have become markedly more willing to accept complaints from foreign right holders, China still needs to further strengthen its legislative framework for the enforcement of intellectual property rights and ensure the vigorous application of its enforcement legislation in order to reduce the existing high levels of piracy and counterfeiting.

9. While certain actions against counterfeiting are effective when working with the responsible State Administration for Industry and Commerce (SAIC), at lower levels the situation appears substantially different. There is almost unanimity in stating that local authorities (provincial and municipal), courts and the police enforce intellectual property protection in an unsatisfactory manner, rendering the task in *the field* difficult, time consuming and expensive for the right-holders.

10. Improvement to the current enforcement system should be sought in a number of areas, in particular: (i) the co-ordination and co-operation between the various Ministries and agencies in charge of enforcement of intellectual property rights should be enhanced, (ii) more deterrent penalties should be enacted, (iii) the transfer of cases for criminal investigation to the Public Security Bureaux should be encouraged, (iv) the criminal liability standards should be unambiguous (contradictory interpretations persist despite the, in 2001 issued Prosecution Guidelines and Judicial Interpretations issued by the Supreme People's Court, the Supreme People's Procuratorate and the Ministry of Public Security), and (v) resources for the training of police and local officials should increase and wider media campaigns to raise public awareness of intellectual property issues should be organised.

11. The EC would like to suggest again to the Chinese authorities to strive towards the adoption of a comprehensive long term strategy for the enforcement of intellectual property rights which will involve all relevant agencies, the judiciary, the customs and police officials at national, provincial and municipal level.

12. Therefore, the EC:

- Call on the Chinese Government to take tougher measures to protect intellectual property rights in line with its international commitments;
- Ask the Chinese Government to establish a forward looking enforcement strategy for intellectual property which will suit both the domestic and international markets;
- Encourage the Chinese Government to set up an efficient and deterrent system for the enforcement of intellectual property rights which will ultimately attract a high level of foreign investment and strengthen competitiveness in the world market;
- Recommend the Chinese Government to reflect on the creation of a high level Coordination Working Office that could promote further development of the intellectual property protection system of China, strengthen the enforcement of intellectual property rights, and give directions to fulfil international obligations of China.

13. The EC is prepared to enhance its co-operation with China in order to achieve a sustainable intellectual property protection system. Not only will the EC continue to monitor the situation in China and to ensure that its economic interests are appropriately safeguarded, it is also committed to

working together with the Chinese Government to improve the situation, thereby creating a win-win situation for all parties.

14. The EC welcome the recently launched EU/China Structured Dialogue on Intellectual Property. Such a constructive undertaking is important to achieve mutual understanding of each other's system of intellectual property protection and will definitely assist EU/China joint efforts to combat piracy and counterfeiting in China.

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