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Council for Trade-Related Aspects of Intellectual Property Rights

TRANSITIONAL REVIEW UNDER SECTION 18 OF THE PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

Report to the General Council by the Chair

1. At its meeting of 1-2 December 2004, the Council undertook the third annual transitional review of the implementation by China of its WTO commitments pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432), and agreed that the Chair, acting on his own responsibility, would prepare a brief, factual report on the review to the General Council.

2. Written comments and questions in connection with the review were submitted in advance of the meeting by Japan, the United States, the European Communities. These submissions were circulated in documents IP/C/W/430, 432 and 435, respectively.

3. In a communication, dated 26 November 2004, China provided information as specified in Annex 1A to the Protocol. This submission was circulated as document IP/C/W/436.

4. An annex to this document contains the relevant part of the minutes of the Council's December meeting[1] that reflects the statements made under the review.

[1] To be circulated as IP/C/M/46.

ANNEX

Item P of the minutes of the Council's meeting of 1-2 December 2004
to be circulated as IP/C/M/46[2]

P. TRANSITIONAL REVIEW UNDER SECTION 18 OF THE PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA

1. The Chairman recalled that paragraph 18 of China's Protocol on Accession required the TRIPS Council to review the implementation by China of the TRIPS Agreement each year for eight years and report the results of such review promptly to the General Council. He further recalled that paragraph 18 required China to provide relevant information, including information specified in Annex 1A, to the TRIPS Council in advance of the review. He informed the Council that the information submitted by China to it as required under Annex 1A of the Protocol of Accession, dated 26 November 2004, had been circulated in document IP/C/W/436. In addition, the Chinese Delegation had made available two room documents entitled "White Paper on Intellectual Property Rights Protection in China in 2003" and "Status of China's Intellectual Property Rights Protection". Questions and comments in connection with the transitional review had been submitted by Japan, the United States and the European Communities, which had been circulated in documents IP/W/430, 432 and 435, respectively.

2. The representative of China, briefing the Council on China's implementation of the TRIPS Agreement and the relevant commitments since the last review, said that the Chinese Government had always attached much importance to the protection of intellectual property rights and would fulfil its international commitments in a serious and positive manner. Since the introduction of opening up and reform polices in the late 1970s, China had established an advanced legislation framework, an administrative network and enforcement mechanism, which were sophisticatedly structured and were consistent with international rules. Moreover, China had participated in and ratified major international treaties and conventions on IPR protection. This remarkable process, which had taken developed economies over 100 years, had been completed by China in around two decades. She said that the Chinese Government was fully aware that resolute and effective enforcement was the essential link for the legislation to exert its protective functions.

3. With respect to law enforcement, she said that China's IPR protection featured both administrative and judicial channels which operated in a complementary way simultaneously. China had investigated and dealt with infringement cases, combated offences and protected interests of right holders through administrative enforcement, criminal proceedings as well as closer cooperation between administrative departments, public security authorities and people's procuratorates.

4. To further step up IPR protection, China's Government had set up, at a national level, an IPR protection working group consisting of all judicial and administrative enforcement authorities involved in IPR protection. This working group was mandated to coordinate national IPR protection work and supervise the handling of major violation cases. The State Council had also laid out a year-long special campaign across the country for strengthening IPR protection commencing from September this year.

5. Recognizing the legitimate concerns and interests in IPR protection of foreign companies and entities operating in China, the Chinese Government had institutionalized a coordinating mechanism for regular communication and exchange with foreign enterprises and trade associations. This mechanism had recently been expanded to include representatives of foreign commercial chambers in

[2] The paragraph numbering of this excerpt will not correspond with that of the minutes of the TRIPS Council meeting but has been included for the convenience of users.

China to better attune to comments and opinions from representatives of a broader range of interests in a timely manner. These concerned foreign parties had played a positive role in cooperating with enforcing authorities by reporting infringing acts and making suggestions and also by jointly promoting the protection of IPR. These policies and measures were in line with the specific situation of China and had achieved concrete results.

6. During a special IPR protection campaign in the first half of this year, which mobilized several authorities concerned, industrial and commercial authorities had investigated and dealt with 4,036 trademark infringement cases with a total fine of nearly 30 million RMB. 12,000 copyright enforcement personnel had inspected over 8,000 software and audiovisual product dealers and had confiscated over 1.5 million pirated discs. In this respect, she referred to the Xiushui market in the city of Beijing, as an example. This market had been a place renowned for fake goods, especially clothes, and had almost became a sign of Beijing. In the transitional review of last year, some Members had raised questions concerning this particular market. Nevertheless, if one went to that market now, one would find that things had changed dramatically. On 20 July 2004, the Beijing Administration of Industry and Commerce had published a decree banning all clothes and accessory markets from selling commodities bearing 25 trademarks such as Prada, Burberry etc. Vendors continuing to sell such commodities would be investigated as suspected trademark infringers. Vendors with repeated offences would be evicted from the market and vendors suspected of criminal activities would be transferred to the judicial authorities for investigation. This measure indicated China's strong commitment to combating IPR offences and a serious regard to Members' concerns and at the same time served as a testimony to enhanced competence and accumulated experience.

7. China's IPR protection was getting more systematic in terms of organization, more extensive in terms of territory, more regular in terms of time and more institutionalized in terns of enforcement. She pointed out that IPR protection was not a passive response to fulfil China's accession commitments, but that it responded to an increasing need to build a sound trade and investment environment, promote scientific and technical innovation and to speed up economical development of China. She said that China's Government spared no effort in establishing a strong and effective IPR protection system, which was in the interest of both China and other Members. However, the Chinese Government hoped that Members could understand that, given that China had started building its IPR protection only 20 years ago, it still had a long way to go before it could have a highly advanced protection system. Lastly, she said, Members should view the IPR situation of China from a developmental perspective and should continue to provide support and assistance for China's painstaking efforts to improve IPR protection.

8. She said that China had prepared two documents for this meeting, namely: "White Paper on Intellectual Property Rights Protection in China in 2003" and "Status of China's Intellectual Property Rights Protection" which had been made available as informal room documents. She expressed her hope that these documents could put together the big picture for Members and help them better understand the measures and achievements of China on IPR protection. Although the communication from the European Communities had reached the Chinese delegation only three working days before the review, as a cooperative gesture, China had provided answers to the European Communities' questions.

9. In answering the specific questions from Members, the representative of China first took up the general issues. With regard to on-line application and information disclosure, he said that the office of the national working group on intellectual property protection was set up in the Ministry of Commerce, namely MOFCOM. Its website at ipr.mofcom.gov.cn provided a great deal of information on IPR protection in China.

10. He said that the e-filing of patent applications was in a trial operation phase. Patent examination deadlines and public information such as published patent applications, patent rights and

the register on layout-designs were available on the website of the State Intellectual Property Office ("SIPO") at www.sipo.gov.cn.

11. The Trademark Office had already realized on-line trademark publication and had publicized all the opposition decisions on the website of the State Administration for Industry and Commerce ("SAIC"). At present, China was making efforts to speed up the automation process of trademark registration. In China, the acquisition of patent and trademark rights was subject to a registration procedure, while the copyright subsisted when a work was created, without prior examination by a governmental agency. Accordingly there was no plan concerning on-line applications for or examination deadlines on copyright protection. He said that the on-line application and search system for registration of IPR protection of the General Administration of Customs of China ("GCA"), had come into use in September 2004. Anyone could browse information on all registered IPRs in the GCA website at www.customs.gov.cn/ipr/ipr2001c/default.asp. The detailed information of a registered IPR contained the name of the registered holder, name of the product, type and the content of the right etc., by the registration system. The right holder could submit his application for a registration on-line, find out the process of verification for IPR in the GCA and managing or maintaining its registration information.

12. According to China's Copyright Law, works by a foreigner may be protected under an agreement concluded between China and the country or Member to which he belonged or under an international treaty, to which both Members were parties, even if they had not obtained marketing approval. For instance, in 2004, the National Copyright Administration of the People's Republic of China ("NCAC"), at the right owners' request, had undertaken special measures to confiscate pirated audio-visual products of the US film "Shrek 2", which had not yet gained access to China's market at that time. The relevant Articles stipulating punishment were Articles 5, 10, 21 and 25 in the Law on Unfair Competition.

13. Regarding changes in polices or restrictions on representation of intellectual property rights, he said that there had been no change in the rules on the qualification of patent agents. Pursuant to the regulations on patent representations issued by the State Council in 1991, law firms seeking to practise patent representation were required to have at least three attorneys at law with patent agent qualifications and approved by SIPO. China had not so far established any special requirement in respect of copyright representation. The representative also suggested that the legal consultant firms should be asked for help regarding useful information for foreign right holders to lodge complaints directly to Chinese officials.

14. Regarding legislation and the judicial interpretation, he said that the enactment of a systematic and universal civil code had always been an important legislative task for China. In the ninth National People's Congress ("NPC"), a draft civil code had been filed and reviewed while in the tenth NPC the enactment of a civil code had been deemed an extremely important task. However, the universality and complexity of issues concerning civil codes made it difficult to tell the exact time for promulgation. Moreover, as China's economy and society developed, some detailed articles of the draft civil code would need further rectification and modification. More research ought to be done to find out how and what to do with the modification.

15. As to judicial interpretation regarding IP that were currently planned for enactment or revision, the Supreme People's Court and the Supreme People's Procuratorate had discussed the "Judicial Interpretation and Application of the Laws dealing with Criminal Offences of IPR" (hereinafter the "Interpretation"), which would be promulgated soon. In drafting the Criminal Interpretation to IPR, the Supreme Court and the Supreme Procuratorate had solicited the comments and questions from the standing committee of the NPC, public securities court, procuratorates, administrative bodies for enforcement and the academy. Moreover, comments and the recommendations from enterprises, chambers and associations of the US, EU and Japan had been duly considered. After the comments and questions had been summarized, the Interpretation would

carry out clearer and more definite standards for verdicts and lower the threshold for criminal acquisition. When the new Interpretation took effect, the provisions of the relevant judicial documents that were inconsistent with the new Interpretation would automatically be nullified.

16. The Anti-Monopoly Law was on the legislative agenda of the tenth NPC. Since the organization of the State Council in 2003, the Ministry of Commerce was responsible for checking monopolies. Therefore, it had the mission of drafting Anti-Monopoly Law, which had been the mission of the former state economy and the trade committee.

17. Based on the legislative research and sufficient discussion, MOFCOM had completed the draft of the Anti-Monopoly Law and had submitted it to the State Council in March 2004. The draft contained articles regulating monopoly agreements, abuse of dominant market status, large scale concentration of enterprises, authority and legal duties. Due to China's situation, the draft also included the articles regulating administrative monopolies and abuse of intellectual property. After the deliberation of the State Council's legislative affairs office, the draft of Anti-Monopoly Law would be submitted to the State Council. If the State Council approved, the draft would be submitted to the standing committee of the NPC for further deliberations.

18. Regarding the amendment of the Law to Counter Unfair Competition, since 1998 SAIC had already done a lot of research about the amendment of the law to counter unfair competition and was now starting to draft the amendment.

19. The regulations on the protection of the right of communication through information network, mentioned in Article 58 of China's Copyright Law, had been brought into the 2005 legislative agenda of the State Council. Currently, this task was carried out in an orderly way.

20. He said that China consistently attached great importance to public participation in legislation. Article 5 of the Law on Legislation, which had come into effect on 1 January 2000, stipulated that legislation should embody people's will, develop socialist democracy and protect the people's right to participate in legislation through various ways.

21. On 22 March 2004, the State Council had published the guidelines for implementation of the promotion of legitimate administrative activities, among which paragraph 16 had stipulated that "the present way of legislation by the government should be changed and the government should extend public participation into governmental legislation. Legislators, juristic enforcers and law professionals should communicate with each other and thus a professional consultation and a reasoning system should be established. In drafting laws, regulations, rules and documents as a basis for administrative management, the government should solicit comments through various channels, such as hearing, documentation, symposium, discussion or publishing the draft. The will of the majority was to be respected and people's own good should be embodied. After drafts of laws, regulations, rules and documents as a basis for administrative management are passed, they should be published in a governmental gazette, popular newspapers and governmental websites. Citizens, cooperations and the corporate body should have easy access to the governmental gazette".

22. Regarding questions on patents, in 2003, the number of patent applications filed by US applicants had been 12,221, while the number of Chinese applicants had been 251,238, among which 56,769 had been for inventions, 127,842 for utility models, while 86,627 had been for industrial designs. The statistics relevant to foreign applications in China was available in SIPO's annual report. The report could be browsed on the SIPO website. SIPO did not collect and compile data on foreign patent applications by types. No work was done on examination duration of foreign applications alone.

23. Pursuant to Article 23 and 45 of the Patent Law, any entities or individuals, including foreign nationals, could request a patent right to be declared invalid on the grounds that the patent for design

was identical or similar to any design before the date of filing. In addition, pursuant to rule 79 and rule 86 of the implementing regulations of the Chinese Patent Law, where there was a dispute over the ownership of patent rights, the parties concerned could request administrative authority for patent affairs to mediate or institute legal proceedings with a People's Court. Where a People's Court or an administrative authority held that the ownership of the patent right should belong to the plaintiff, the plaintiff could request SIPO to make a registration of change in ownership of the patent right by producing an effective judgement or decision.

24. As for legal protection for layout-designs of integrated circuits, the regulations on protection of layout-designs of integrated circuits and its implementing rules had been promulgated and had come into effect a long time ago. The Supreme People's Court had also formulated a notice on trial of cases concerning layout-designs of integrated circuits, which provided the legal basis on the way of relief to protect the layout-designs of integrated circuits. Up to the present, there had not been any lawsuit on layout-designs of integrated circuits and SIPO had not received any request for settlement on disputes relating to them.

25. A State Food and Drug Administration (SFDA) was now conducting an investigation into the linkage between patent approval and drug approval processes. As for measures taken to protect undisclosed data, pursuant to paragraph 2 of Article 35 of the Implementation Rules on the Drug Law, the SFDA would not approve an application that was based on other applications' undisclosed experimental data. Pursuant to Article 14 of the Methods on Administration of Registration for Drugs, applicants should make a commitment that all the data to be provided had been obtained by themselves, when an application for drugs registration was submitted. Pursuant to Article 21 of the Method on Administration of Registration for Drugs, proof of legitimacy of source would be needed for submission of application for drugs registration if the data had been obtained abroad. Pursuant to Article 22 of the Method on Administration of Registration for Drugs, the SFDA had reserved the right to request the applicant to re-experiment, to prove that the data had been obtained by himself. Pursuant to Article 52, during the verifying period of approval for new drugs, technical requirements for new drugs would not be lowered even if the drug had already entered into the foreign market. That was to say there would be no dependence on data. The SFDA was obliged to keep secret only the experimental data which had been obtained by the applicant alone. Punishment would be exercised pursuant to Article 72 for the leakage of unreleased experimental data. Pursuant to paragraph 3 of Article 35 of the Implementation Rules on the Drug Law, the SFDA would accept applications concerned when public interests were involved or measures had been taken to ensure that the data would not be used for unjustified commercial purpose.

26. One of SIPO's key tasks was to tackle examination backlogs. After adoption of measures such as recruiting a large number of examiners on a continuous basis, updating the automation system and optimising the examination process etc., the average period of examination for patent applications for inventions by SIPO in 2003 had been 30 months., while from January to July in 2004, the average period had been further reduced to 28 months. Otherwise, SIPO had no statistics on the average period of examination in specific technical fields.

27. Regarding the protection of plant varieties, there was no specific plan to implement the UPOV 1991 Act. China had always been increasing the number of new varieties of plants under protection and expanding the scope of new varieties of plants under protection. This list of newly added varieties was available to the public on the website of the Ministry of Agricultural and the State Forestry Administration.

28. Regarding the prevention of misappropriated applications, pursuant to Article 23 and 45 of the Patent Law, any entity or individual including foreign nationals, could request a patent right to be declared invalid. In addition, pursuant to rule 79 and rule 86 of the implementing regulations of the Chinese Patent Law, where there had been a dispute over the ownership of patent rights, the parties

concerned could request the administrative authority for patent affairs to mediate or institute legal proceedings with the People's Court.

29. Regarding the improvement of licensing regulations, Articles 24 and 25 of the Regulation on the Administration of Import and Export Technology were reasonable and did not contradict the TRIPS Agreement. Article 28.2 of the TRIPS Agreement provided that patent owners should also have the right to assign or transfer by succession a patent and to conclude licensing contracts. This provision granted the right of licensing patents to the patent owner. However, it did not mean that the licensor did not need to undertake any obligation and that he could license the patent without any restriction. As the transferor held the technology and should know the ownership and the capacity of the technology, it conformed to the principle of equity that the transferor was required to guarantee his legitimate ownership over the technology provided and to guarantee that the technology provided was capable of obtaining the contracted goal. It was also consistent with the principle of tort law that the transferor should bear tort liability if the transferee infringed legitimate rights and interests of others due to use of technology according to the contract. The laws on transfer of technology in many countries had similar provisions, so the said provisions conformed to the international usage and did not impose unreasonable restriction to the honest and bona fide transferor.

30. Turning to protection of trademarks and enterprise names, he first took up the issue of pending opposition and cancellation proceedings at the Trademark Office and their respective pendency. Currently, the Trademark Office of China had over 2,100 pending cancellation proceedings involving registered trademarks that had not been used for over three years and that the pendency was about one year. The office had 29,000 pending opposition proceedings and, in 2002-2003, the average pendency had been about two years. China was now revising its examination guidelines and would publish them after the revision.

31. Regarding the related goods and services in trademarks examination, the Office had adopted the concept of similar goods and services in this process. When examiners made a substantive examination on prior trademark rights, they made cross examination on similar goods or services in different classes. In determining whether they were similar goods or services, factors as the purpose, function and sales channel of the goods or services would be taken into consideration.

32. Turning to the determination of well-known marks, he said that, for the People's Court, the recognition of well-known trademarks was essentially the determination of the facts of the case which was a constituent part of jurisdiction exercised by the People's Court. The decisions made by the People's Court to determine a well-known trademark was in conformity with the international conventions. The Interpretation by the Supreme People's Court of the Application of Laws Dealing with Cases Concerning Dissension on Internet Domain Name and the Interpretation by the Supreme People's Court to the Application of Laws Dealing with Civil Cases Concerning Dissension on Trademark Rights made clear regulations on the issues above. According to statistics, since the amendment of the Trademark Law, Chinese courts had determined 17 well-known cases, three of which concerned foreign brands. According to Article 22 of the Interpretation by the Supreme People's Court on the Application of Laws Dealing with Civil Cases Concerning Dissension on Trademark Rights, the recognition of well-known trademarks should be based on the rules made in Article 14 of the Trademark Law. The People's Court would not verify the trademark when one party of the previous applied to protect a well-known trademark that had been determined by the concerned administrative authorities or by the People's Court, if the other party had no dissension on the well-known trademark concerned. If the other party submitted its dissension, the People's Court would make a re-verification according to Article 14 of the Trademark Law.

33. The Customs of China had no right to determine a well-known trademark if Courts or authorities of the SAIC had already determined a well-known trademark. On a request to the Customs to help enforcement, the Customs would assist in enforcement.

34. There had not been a commonly accepted practice in the recognition of well-known trademarks. However, the revised Trademark Law and its subsequent regulations made clear and detailed prescriptions on this matter, which were completely in conformity with the requirement of the TRIPS Agreement. Therefore, pursuant to these regulations, two factors would be taken as the standard for recognition of well-known trademarks when authorities of public security were dealing with the concerning criminal cases. First, pursuant to the provisions on the determination and protection for well-known marks by the SAIC and the Interpretation by the Supreme People's Court to the Application for Laws Dealing with Civil Cases Concerning Dissensions on Trademark Rights, the status of well-known trademarks should have been granted by the authorities of the SAIC or determined by the People's Court. Second, pursuant to Article 213-215 of the Criminal Law, a well-known trademark in the sense of the Criminal Law should be registered in the Trademark Bureau in China.

35. Turning to the protection of geographical indications ("GIs"), he said that the AQSIQ System of GI protection and the system of GI protection established by the China's Trademark Office in the form of collective and certification trademark were different intellectual property rights protection measures and that applicants could chose either of the two systems voluntarily for GI protection.

36. The State Council had endowed AQSIQ with both the function of general administration and law enforcement. AQSIQ had enforced GI protection for registered GIs (PDOs) in the light of the Law on the Quality of Products, the Law on Standardisation, the Regulations on the Product of Destination of Origin and a compulsory national standard entitled "The General Specifications on Product of Destination of Origin". Supervision and spot checks as well as other law enforcement measures had been taken against counterfeiting of such domestic GIs as Chinese Longjing tea, Shaoxing wine and Longkou Vermicelli. Sanctions were taken against the counterfeiting of Cognac wine in China.

37. In the light of the Law on the Quality of Products, quality and a technical supervision agencies could impose punishment on counterfeiting GI products, while consumers could impose civil liabilities on the misfeasor only in the light of the Law on the Quality of Products, and the Law on the Protection of Consumers' Rights.

38. The application for protection under the GI system of AQSIQ had been carried out on a voluntary basis. Applicants already possessing a trademark, certification or collective mark could also apply for GI protection under the GI system of AQSIQ voluntarily.

39. AQSIQ would follow an active and pragmatic approach to strengthen the communication and the cooperation on GI protection with other countries. Based on consensus between the two parties, AQSIQ and the Ministry of Productive Activities of Italy had signed a memorandum on bilateral cooperation regarding GI protection with a view to enhanced information exchanges and technical cooperation between the two parties.

40. The representative of China said that, since last year's transitional review, there had been no new rules on the protection of enterprise names. Ever since joining the Paris Convention, China had been strictly observing the principle of national treatment providing equal protection for domestic companies' trademarks and marks registered in China by foreign companies. He said that the saying that "foreign enterprises in China did not enjoy the same protection for their well-known marks as domestic enterprises in China" did not have any factual grounds. Since the implementation of provisions on determination and the protection of well-known marks on 1 June 2003, the Trademark Office and the Trademark Review and Adjudication Board had totally determined the status of 153 well-known marks, among which 24 were from abroad, 12 from the US, 12 from other Members. He said that if the registrant of a well-known mark needed a competent authority to determine his mark as well-known based upon the provision of Article 13 of the Trademark Law, he or she should, in line with Article 14 of the Trademark Law and the relevant provisions on the determination and the

protection for well-known marks, submit written evidence which he or she believed could prove that his or her mark was well-known. Moreover, there was no uniform requirement for the content or formats of written documents. He said that recently a court in Tianjin had determined the Japanese mark YAMAHA as a well-known mark in a civil case ruling.

41. Turning to copyright issues, the representative of China said that, according to China's Copyright Law, copyright protection was the same even for works appearing in different media. Thus, whether distributed as hard publications or communicated as soft Internet content, all of them could be protected under the Copyright Law. At present, China was actively working on increasing the personnel involved in copyright enforcement.

42. In the Notice on 2004 Special Control Action of fighting against software piracy, the NCAC had explicitly demanded that the administration of enterprises' commercial use of software should be strengthened and that the enterprises which installed, or used pirated software in their computer system or which installed software beyond the scope prescribed in the purchaser's sale contract, should mend their act within a specific time. Otherwise they would be severely punished by the operation of law. Consequently, in case of using pirated software by a commercial institute, the copyright administrative department may impose penalty without a prior judgement of whether the act impaired public rights and interests or not. According to China's Copyright Law the use of pirated software in a Internet cafe was an infringing act, which was also prohibited by law. The "temporary reproduction" issue was being studied by the Chinese Government at present and would be properly dealt with in the Measures for the Protection for the Right of Communication through Information Network, which had been brought into the 2005 legislative agenda of the State Council.

43. Where an ISP did not remove the relevant content regardless of a copyright owner's notice or knowing that the Internet content provider infringed another copyright through network and where this omission impaired public rights or interests, the ISP should be liable for administrative infringement. The National Copyright Administration NCAC and the Ministry of Information Industries were drafting the Administrative Measures on the Protection of the Rights to Communication through Information Network, in which the administrative procedure of notice-and-take-down would probably be included to reduce network piracy. It was expected that these departmental rules would be issued by the end of 2004. According to China's laws and regulations, as well as future Administrative Measures on the Protection of the Right of Communication through Information Network, which was still in draft, the Ministry of Information Industries had the authority to revoke ISPs' business licences.

44. He said that, undoubtedly, China was cautious as well as active about the accession to the two new treaties, the WIPO Copyright Treaty ("WCT") and WIPO Performances and Phonograms Treaty ("WPPT") and China had made great efforts for this goal. The Administrative Measures on the Protection of the Right of Communication through Information Network was being drafted by the NCA and the Ministry of Information Industries and would be issued by the end of this year. In addition to effectively implementing the two new treaties to which China would accede, the State Council had brought these measures into its 2005 legislative agenda.

45. It was known that the obligation regarding the removal and alteration of electronic rights' management information ("RMI") stemmed not from the TRIPS Agreement but from the WCT and WPPT. Nevertheless, this problem was being actively taken into account. Currently, the State Council was doing the legislation planning on these matters so that the protection of RMI would be properly dealt with.

46. Regarding the payment of royalties for copyright the NCAC and the State Administration of Radio, Film and Television were working on broadcasting payment measures. At present, the task was in the process of investigation, study and drafting.

47. In respect of retroaction, he said that Article 9 of the Implementing Measures on Copyright Administrative Penalty entirely conformed with the Article 29 of the Law on Administrative Penalty, which prescribed "Where an illegal act is not discovered within two years of its commission, administrative penalty shall no longer be imposed, except as otherwise prescribed by law. The period of time prescribed in the preceding paragraph shall be counted from the date the illegal act is committed; if the act is of continuing or continuous nature, it shall be counted from the date the act is terminated". Therefore, the prescription of administrative penalty was different from that of civil procedure. The latter was counted from the date on which the injured party had known or should have known the infringement of its rights, while the former was counted from the date on which the illegal act had been committed or terminated.

48. Regarding some further copyright questions, he said that China had recently indicated that it would join the 1996 WIPO Internet treaties, the WCT and WPPT, but neither had it indicated joining before 2005, nor had it intended to complete a draft for the Internet-related implementing rules before the end of 2004. According to the Copyright Law of China, the measures on the protection of the right of communication through information network had been brought into its 2005 legislative agenda. He said that currently this task was being carried out in an orderly way.

49. Regarding the protection of sound record producers' rights, he said that the Chinese copyright legislation was totally consistent with the TRIPS Agreement and that China would provide the rules on collecting societies to Members concerned once these were ratified.

50. Turning to the issue of enforcement, he said that the State Council had promulgated a special action plan for the protection of IPRs this year and SAIC had issued its action plan for the campaign of exclusive trademark rights protection in June. All these plans were being made available on the website of the state office of the IPR working group at ipr.movcom.gov.cn or on the website of SAIC. One may also refer to the NCAC's Implementing Plan on Special Action for the Protection of IPRs of September 2004, which would be available at www.ncac.gov.cn.

51. Regarding the case numbers of administrative enforcement, according to statistics, in 2003 and in the first half of 2004, the people's courts at various levels throughout China had completed trials of 220 cases of fake registered trademarks, 85 cases of selling commodities with fake registered trademarks, 167 cases of illegal production and sale of registered trademarks, 22 of copyright infringement, 4 cases of selling copyright infringing duplicates and 69 cases of commercial secret infringement.

52. The statistics in 2003 showed that 37,489 law-breaking cases of various kinds had been handled by Administrations for Industry and Commerce ("AICs") at all levels throughout the country, among which there had been 11,001 general trademark offences and 26,488 trademark infringement and counterfeiting cases. Besides, 84,755,000 pieces or sets of illegal representations of trademarks had been seized and/or removed. 15,597 mould plates and other tools directly used for the infringements had been confiscated and 5,754.92 tons of infringing goods had been destroyed. The fine had totalled 242m RMB and 52 persons involved in 45 cases had been transferred to judicial organs for criminal liability.

53. In the first three quarters of 2004, 13,922 law-breaking cases of various kinds had been dealt with, among which there had been 3,407 general trademark offences and 10,515 trademark infringement and counterfeiting cases. In addition, 12,232,900 pieces and sets of illegal representations of trademarks had been seized and/or removed. 16,894 mould plates and other tools directly used for the infringements had been confiscated and 10,952 tons of infringing goods had been destroyed. The total value involved had reached 452m RMB, the fine had amounted to 99m RMB and 16 persons involved in 14 cases had been transferred to judicial organs for criminal liability. In 2003, SIPO at various levels throughout China had accepted 1,527 patent dispute cases among which 1,237 cases had been completed.

54. Further, in the enforcement against producing and selling fake commodities and infringing IPRs, the Supreme People's Procuratorate this year had required a particular supervision by the People's Procuratorate at various levels over criminal cases of this kind. From January to October 2004, the People's Procuratorate at various levels had approved the arrest of 2,118 criminal suspects involved in the production and sale of fake commodities and prosecuted 1,522 of them. There had also been approval of the arrest of 483 criminal suspects and the prosecution of 488 involved in other IPR infringements. 70 more cases had been marked as priority cases by the Supreme People's Procuratorate, either monitored directly by itself or required to be monitored by the High People's Procuratorate at the provincial level. In the first three quarters of 2004, 6,275 unfair competition cases on the infringement of IPR had been investigated into and dealt with by AICs at all levels throughout the country. The total value involved had been 385.61m RMB, among which 6.94m had been confiscated and 35.58m had been the fine.

55. In 2003 the copyright administrative departments at all levels had accepted 23,013 cases and had settled 22,429 of them. 21,032 cases had resulted in penalty. 1,173 cases had led to mediation and 224 had been removed to judicial departments. In the same year, the local copyright administrative department had captured 67.97m of various kinds of pirated products, including 24.75m pirated books, 1.78m pirated periodicals, 26.45m pirated audiovisual products, 6.62m pirated electronic publications, 7.22m pirated software and 1.14m other pirated products.

56. He said that China had always attached great importance to IPR protection and fighting IPR infringement and that China was also prepared to cooperate with other Members, either in the bilateral or the multilateral legal framework. He said that for criminal actions, the foreign affairs bureau of the Supreme People's Court coordinated the contacts with foreign members and the hearing of the IPR-related cases was undertaken by the third civil court of the Supreme People's Court. At present, the National Copyright Administration (NCAC) had established a good relationship of interactive cooperation with BSA, MPA, IFPI, Customs of Hong Kong SAR and MPIA. As China believed that striking piracy was an unshirkable international duty for the governments of all Members, including developed Members, China was ready to continuously consult and cooperate with the relevant departments of other governments in this respect, so as to jointly crack down on piracy.

57. With respect to patents according to Article 57 and 68 of the Patent Law, he said that administrative enforcement was to be carried out by the administration responsible for patent-related work. Therefore, there was no mechanism for coordinated action with foreign governments.

58. On the customs enforcement front, the Chinese Customs authorities and the Customs authorities in Hong Kong, China had established an excellent cooperation relationship, which included joint enforcement action, information exchange, investigation assistance, personnel training etc. The Chinese customs authorities enjoyed good cooperation with the Asean-Pacific Regional Intelligence Liason Offices ("RILOs") of the World Customs Organization ("WCO") in respect of information exchange. In recent years, quite a number of cases had been disclosed with the information provided by the Asean-Pacific RILOs of the WCO. An agreement between China and the EU on customs administrative mutual assistance would also be signed at the end of 2004, which would initiate the cooperation between the Customs authorities of the two sides with respect to IPR protection.

59. According to China's laws, regulations and departmental rules, copyright owners could seek relief at the enforcement department of the place where the infringer had its seat of business or its principal operative office, or where the infringement was committed or the infringing result took place. The People's Procuratorate, at its four levels from supreme down to the local county, internally had all special bodies or relatively fixed personnel to deal with IPR-related criminal cases. He said that, in the Supreme People's Procuratorate, the examination, prosecution and appearing in court of IPR cases was undertaken by the prosecution office. The prosecution office was also responsible for providing coordination, guidance and personnel training for the prosecution offices at various levels of the

People's Procuratorate when dealing with cases of this kind. The prosecution office also had an inter-agency meeting mechanism with the investigating authorities dealing with cases of this kind to exchange information, start crime prevention measures and also comment on the evidence establishing work of the investigating authorities. In the People's Procuratorate at all local levels it was also the prosecution offices that were responsible for the examination, prosecution and appearing in court for cases of this kind. They accepted guidance from the higher level, the People's Procuratorate, on application of law and criminal penalty criteria etc. in cases of this kind and also had inter-agency coordinating mechanisms with the investigating authorities at the same level.

60. With regard to the issue of private investigating firms, he said that the Ministry of Public Security of China was taking active steps to consider it. However, there was still no new regulation being issued.

61. Regarding the elimination of localism, he said that in order to fight against and eliminate local protectionism, the State Council had issued, on 21 April 2001, stipulations on the prevention of local blockades in market economy activities. This was a special regulation fighting against local protectionism. On IPR protection specifically, a special action programme on IPR protection had been issued by the State Council on 26 August 2004, in which the elimination of local protectionism was also an important content.

62. Turning to administrative enforcement, he said that the NCAC was the government body responsible for copyright administrative protection in the Internet environment. Data on the administrative enforcement showed that, in the first three quarters of 2004, 20,371 unfair competition cases of various kinds had been investigated and dealt with by AICs at all levels throughout the country.

63. According to the Law on Administrative Procedure, if an administrative punishment decided by the enforcement department was obviously unreasonable, the People's Court could modify it by verdict. According to the Law on Administrative Procedure and Articles 44 and 56 of the Interpretation on Issues Concerning the Implementation of the Law on Administrative Procedure by the Supreme People's Court, the People's Court could make an order or a verdict to reject the lawsuit or the claims of the lawsuit.

64. According to the aforesaid law and interpretation, all the parties of a law suit had an equal right to entrust a lawyer and all the evidence needed to be shown and enquired in the court hearing. Evidence which had not been enquired by the opposing party in a court hearing was never adopted for the grounds of deciding the case, except if the evidence involved confidential information of the country, commercial secrets, individual privacy or was to be kept secret based on definite provisions of laws. He said that the People's Court had to deliver the judicial documents including the verdict, order and decision to the relevant parties of the lawsuit, otherwise these judicial documents would not go into effect.

65. Regarding obligations of administrative agencies to provide written decisions with interpretations for their enforcement decisions, he said that his delegation believed that this question was not relevant to the IPR system and that his delegation was not obliged to answer it here.

66. Regarding the degree of deference extended to administrative case decisions, he said that his delegation believed this question to be about how the court made its judgement upon facts recognized and laws applicable in administrative enforcement. He said that in the administrative lawsuit system of China, the principle of validity review of specific administrative behaviour was applied. In case administrative behaviour needed to be carried out upon case notes pursuant to the relevant law, the court practised the principle of "records exclusivity", that was to say that the court would not introduce or accept evidence beyond the record. In other cases, the court would conduct an overall

review on the recognition of the facts and laws applicable in administrative enforcement. Under special circumstances, the court could collect evidence by authority.

67. According to the Law on Administrative Punishment of China, the amount of fines of administrative punishment was prescribed by laws or administrative regulations. Competent authorities of copyright administration on various levels were obliged to conduct their administration legally and were not allowed to lower or raise the amount of the fine.

68. Turning to civil enforcement, he said that pursuant to the Law on Civil Procedure, the period of first instance of civil law cases was six months, while the period of second instance of civil law cases was three months. The period could be extended and the procedure for extension would have to be followed. In practice, most IPR cases could be finished within the trial period, though some complicated cases could take longer time. When circumstances appeared for lawsuits to be suspended according to the law, the court would suspend the lawsuit. The compensation amount was determined by the court on the basis of the principle of complete compensation prescribed in laws and judicial interpretations and of the specific case including the reasonable amount of money paid to stop the infringement. The retaining fee for lawyers, which was consistent with the relevant regulations, could be calculated in the compensation on the basis of the request of the plaintiff and the specific case. If one party had dissensions on the compensation amount, he or she could appeal to a court of a higher level. The court of the second instance would verify all the requests, but in practice, hardly any changes were made to a compensation amount determined by the court of the first instance.

69. The present Patent Law, Trademark Law and Copyright Law and corresponding judicial interpretations all contained regulations concerning judicial injunctions before the lawsuit. The concerned right holder could file to the court. After the court had accepted the application, it would actively and with caution determine whether judicial injunctions would be implemented. Actually, statistics showed that the Chinese courts had awarded injunctive relief to right holders in several hundred cases. Courts that awarded injunctive relief before lawsuits were mainly those situated where the defendant was or where the infringement had occurred. Even if some injunctions had to be enforced in places other than where the court was situated, the concerned court would assist in the enforcement. Meanwhile, China's courts were trying hard to ensure the enforcement of verdicts.

70. Turning to criminal enforcement, he said that in legal terms, it was possible that both civil and criminal IPR cases were heard by courts of the same level, but this was really rare. According to Article 20 of the Law on Criminal Procedure of China, criminal cases by foreigners were heard by the middle level People's Court. Pursuant to Article 23 of the Law on Criminal Lawsuits of China, the upper level People's Court could, if necessary, hear the case which should be heard by a court on a lower level; if the court on the lower level regarded the case as extremely serious, it could request to transfer the case to an upper level People's Court.

71. Article 7 of the General Administration of Customs Notice No. 742 of 1998 had stipulated that, once the People's Procuratorate thought that there was enough evidence for a suspicion of smuggling and cases should be heard by the lowest level People's Court, the People's Porcuratorate could sue the case at the local intermediate People's Court according to Article 23 of the Law of Criminal Procedure. This meant that it was the intermediate People's Court that would hear part of the IPR criminal cases concerning accusations of smuggling. Investigations conducted last year by the concerned bodies of the Supreme People's Court had shed some light on this issue. However, given the complexity of responsibilities within different authorities, the issue whether the hearing level of IPR criminal cases should be adjusted, required more research.

72. Turning to customs border enforcement, he said that at present, measures taken by the General Administration of Customs to protect IPR included establishing more laws and regulations on IPR protection, training more enforcers of GCA, strengthening cooperation with right holders, participating more in cooperation and communication with foreign counterparts, and employing more

advanced technology to find more pirated products. All these measures had proven effective to prohibit exportation and importation of pirated goods.

73. According to old regulations, once the consigner or the consignee of the goods apply to the Customs for dissension on their goods that are suspected of piracy, the Customs could no longer conduct an investigation on whether the product was pirated or not. However, a new regulation stipulated that, in response to an application from right holders, once the Customs had found products suspected of piracy, the goods would be detained by the Customs, no matter whether the consigner or the consignee filed to the Customs for dissension. The Customs could conduct investigations on whether the goods were pirated or not. Therefore, the enforcement by the Customs was strengthened while efficiency of enforcement was improved.

74. In a passive protection mode, right holders would have to pay a deposit equivalent to the worth of the products, but in an initiative protection mode by the Customs of China, the Implementing Rules of GCA stipulated, firstly, that deposit equivalent to the worth of the goods had to be paid if the goods were worth less then 20,000 RMB; secondly, that a deposit equivalent to half of the worth of the goods had to be paid if the goods were worth between 20,000 and 200,000 RMB, with the deposit being no less then 20,000 RMB; thirdly, that a deposit of 100,000 RMB had to be paid if the goods were worth more then 200,000 RMB. In either mode, right holders could choose to pay the deposit in cash or to show the Customs the insurance letter provided by a bank or a financial organization other than a bank.

75. According to the law, only the consigner or the consignee of the imported or the exported goods were subject to Customs administration. Therefore, the Customs could not extend its jurisdiction to other companies involved in piracy. However, in real practice, Customs would provide the information on the detained goods to the right holder and concerned authorities of the administrative enforcement. The right holder and the concerned authorities of the administrative enforcement could exercise punishment on the companies involved in piracy on the basis of the information provided by the Customs. From 2001 to 2003, there had been altogether 5,000 cases where the Chinese Customs had exercised protection measures, while in 1,700 of these cases pirated products had been found. The value of the confiscated products had been 198m RMB.

76. Customs enforcement was categorized as administrative enforcement. The products had already been deemed by the Customs as pirated and the Customs would exercise administrative punishment to the violator, including confiscating goods and forfeiture. Since 1996, there had been 5,800 cases where the Customs had exercised administrative punishment to violators. Therefore, it was unnecessary for the Customs to file an administrative lawsuit in IPR cases. As for civil lawsuits, it had to be filed by the right holder to the court. In criminal lawsuits, as there had not been clear prescriptions on criminal obligations for piracy in exportation and importation, neither were there any judicial interpretations, the Customs so far had not transferred the cases for criminal obligations.

77. In recent years, cooperation in IPR enforcement between the Chinese Customs and the international community had been strengthened. Statistics showed that, since 2000, by joint enforcement with the Customs of Hong Kong, China, the Chinese Customs had dealt with more than 200 IPR cases where the information had been provided by the Asean-Pacific RILO of the WCO.

78. Regarding the cost burden for right holders for infringing products that had been stopped at the border, he said that it was in conformity with the present situation in China to let the right holder pay the storage fee and the Chinese Customs had realized that this practice was impeding IPR protection. However, it had to be admitted that it was unaffordable for the government to solve this problem. Therefore, with the right holder undertaking part of the financial burden of the counterfeiting actions, the enforcement by competent authorities was facilitated in a sense. The new regulation and its implementation stipulated clearly the investigating period and the period to deal with examining the product. According to this regulation, the pendency of customs clearance would

not be long. Therefore, the storage fee for products would be reduced shortly and finally right holders would undertake the charges concerned. Pursuant to the new regulation, once the suspected goods were determined as piracy, IPR right holders could take the storage fee and concerned charges as part of the fees to stop piracy which the right holder could request the violator to compensate for. Therefore, the right holder only paid the deposit temporarily and could be compensated by way of repayment from the violator.

79. Regarding confiscated goods, he said that if these were all to be destroyed, it would cause not only waste of natural resources but also environmental pollution. Therefore, the Customs would sell such products that could be reutilized at auction to make full use them. Meanwhile, pirated indicators on a product would be erased to protect the interests of the right holder. So far, the implementation of the regulation was satisfactory so that no revision to the regulation would be made.

80. The representative of Japan thanked the Chinese delegation for its comprehensive statement. He said that, at the transitional review in 2002 and 2003, his delegation had raised questions regarding the "further improvement of enforcement in judicial procedures", "patent examination procedures", and other issues. He said that his delegation appreciated the fact that the Chinese Government had made considerable efforts to improve its intellectual property protection in response to these questions by, for example, drafting new judicial interpretation on criminal thresholds, and launching a nationwide campaign to step up its protection of intellectual property rights.

81. He said that, in spite of such efforts, it appeared that China's intellectual property protection and enforcement was still insufficient in the light of the high level of counterfeiting and piracy that continued to exist in China. In document IP/C/W/430 submitted by the Japanese delegation, the following four issues had been recognized as highly important: "active pursuit of criminal prosecutions", "strengthening of sanctions through alteration of criminal prosecution standards", "pendency of patent examinations", and "prevention of misappropriated applications", about all of which the Japanese industry had serious concerns. He said that due to time constraints, China might not be able to prepare detailed responses to all the questions immediately, but his delegation would greatly appreciate China's providing such responses through future discussion.

82. The representative of the United States expressed her appreciation of China's answers to Members' questions. China deserved recognition for the extensive IPR-related legislative changes it had made at the time of accession. The United States also appreciated China's efforts to improve its IPR enforcement and protection environment, including the growth of China's Trademark Office and Patent Office and the increasing dockets of the Chinese courts and enforcement agencies. Under the leadership of Vice Premier Wu Yi, China had committed to address a number of problems in its IPR regime and to significantly reduce IPR infringement levels. She said that China had announced various action plans in this regard, only some of which had been made publicly available to date. The United States was watching China's follow-through on these commitments closely.

83. She said that, as China's own official reports had noted, IPR infringement in China was rampant and the magnitude of IPR infringement in China was harming the interests of right holders not only in China but around the world. China's increasing exports of counterfeit and pirated goods posed dangers to consumers throughout the developed and developing world. In light of China's obligations under the TRIPS Agreement to provide adequate and effective IPR enforcement, the United States noted a number of continuing problems. Administrative enforcement was weak. Administrative enforcement processes typically afforded no meaningful relief to right holders: fines were non-deterrent; the decision-making process was not transparent; and too few administrative cases were referred to criminal prosecution. As an example of this problem, she said that while new border measures implemented earlier this year had provided for some improvements, they had significantly reduced the level of customs penalties from 300% to 30% of value. China's civil, administrative and criminal enforcement systems continued to suffer from local protectionism. She said that structural changes, such as providing an immediate right of appeal to non-local courts or

agencies, requiring mandatory penalties, and instituting mandatory sentencing practices would help address these problems. Institutional challenges remained. Although China had created an expert civil IPR court, its criminal and administrative courts lacked the same level of expertise in IPR matters.

84. In addition, she said, the United States had serious concerns about certain aspects of China's IPR legal framework, although China had done much legislative work at the time of its WTO accession. In particular, China's Criminal Law raised serious TRIPS issues by requiring a showing of profits for certain types of offences; failing to address commercial-scale trafficking of infringing goods; and criminalizing counterfeiting only when the infringing mark was "identical" rather than confusingly similar. She said that the United States appreciated China's commitment to issue a judicial interpretation by the end of this year to immediately address these issues, and was looking forward to its implementation.

85. However, she said that the United States greatly regretted that China had not released a draft of the long-awaited criminal judicial interpretation for widespread public comment. Both the US Government and right holders had waited anxiously for the opportunity to comment on the draft prior to its final promulgation. Last year at the TRIPS Council, China had pledged to increase transparency by making judicial interpretations on IPR matters available for public comment. While the United States was pleased with the positive trend in this regard and noted the release during the present week of three draft civil IPR-related judicial interpretations for public comment, nevertheless the drafting of this critical criminal judicial interpretation had been opaque with the draft being disclosed only to selected entities and industry associations.

86. She said that the United States appreciated that China had committed in the near term to address some of the problems highlighted above and looked forward to real results from China's efforts. The coming months would be a critical period, particularly in the light of the issuance and implementation of the judicial interpretation and implementation of the IPR action plans. The United States looked forward to continuing efforts on issues that remained of concern to both countries as well as to other Members, with a view towards improving the overall IPR enforcement environment in China.

87. With respect to the specific answers provided by the Chinese delegation, she said that the United States appreciated very much the information provided on administrative enforcement cases. As a matter of clarification, she requested the Chinese delegation to confirm that, under Chinese law, there was no obligation requiring administrative decisions in IPR cases to be issued in writing.

88. The representative of the European Communities thanked China for updating the TRIPS Council on its efforts to improve IP protection in China. He said that his delegation was taking note with satisfaction of the progress that had been made so far and of positive on-going initiatives to tackle the problems. However, the European Communities remained concerned by the level of counterfeiting in China and urged China to continue its efforts towards an effective IP enforcement system. In this respect, his delegation was committed to working with the Chinese authorities to improve the situation. With regard to the questions that had been submitted very recently by his delegation, he said that his delegation would appreciate it if China could respond to them as soon as possible.

89. The representative of Australia thanked China for the very comprehensive and informative responses to the many questions posed to them. He said that Australia attached particular importance to its bilateral cooperation with China in intellectual property matters and was looking forward to continuing to work closely with China to the mutual benefit of both countries on intellectual property issues.

90. The representative of Chinese Taipei thanked China for its statement and the information provided by its delegation. Although Chinese Taipei had not submitted questions in writing in advance, his delegation shared some of the views regarding intellectual property issues mentioned by other delegations. His delegation attached great importance to the transparency requirement under Article 63.1 of the TRIPS Agreement. Chinese Taipei was of the belief that transparency of administrative rulings as well as laws and regulations in the national system was of crucial importance both to local and foreign IP owners. In this light, he wished to draw attention to the issue of well-known marks. According to China's recent communication in document IP/Q/CHN/1/Add.1, dated 9 June 2004, the State Administration for Industry and Commerce (SAIC) was revising the "Rules on the Determination and Protection of Well-Know Marks". He said that his delegation would appreciate it if China could advise if there were any developments in this regard. In addition, he was interested in having a list of well-known marks currently applicable in China for reference. He asked if the Chinese delegation could advise where to locate such a list if it was publicly available on the Internet. In conclusion, he said that his delegation had noticed that China had already made good progress in several areas of intellectual property and would like to encourage China to continue in its relentless endeavour in the time ahead.

91. In response to the remarks made by other delegations, the representative of China said that, with regard to the written questions posed by the European Communities on 26 November 2004, most of these concerns had already been covered by China's initial statement. His delegation had given answers regarding the Chinese intention to join the WIPO 1996 Internet Treaties and had pointed out that China had never indicated that it would join these treaties before the end of 2005 and had said nothing about a completion of the draft for the Internet-related implementing rules before the end of 2004. With regard to the Copyright Law of China, the measures on the protection of the right of communication through information networks had already been put onto the 2005 legislative agenda of the State Council and this task was currently being carried out in a smooth and orderly way. Regarding the protection of the rights of producers of sound recordings, he said that the Chinese copyright legislation was totally consistent with the TRIPS Agreement. Regarding the rules on collecting societies, he said that these would be made available by the Chinese delegation to the European Communities and any other Members concerned once the rules had been ratified. In reaction to prevalent interests and requests from industries, local communities and other sectors, SAPO of China was engaging in a preliminary assessment of the national IP strategy. Regarding the follow-up question from the delegation of the United States, he said that his delegation would discuss with experts in the capital and would hopefully be able to come back with further information.

92. Turning to the preparation of the TRIPS Council's report to the General Council, the Chairman suggested that, given that the TRIPS Council would not have another meeting before the General Council's next meeting scheduled for 13 and 14 December 2004, the TRIPS Council agree that that he, acting on his own responsibility, prepare a brief and factual report to the General Council. The content of the cover page to the report would be similar to that submitted by the TRIPS Council in 2003, and the part of the minutes of the meeting reflecting the discussions held under this agenda item would be attached.

93. The Council took note of the statements made and agreed to proceed with the preparation of the report as suggested.