

TRANSITIONAL REVIEW MECHANISM OF CHINA

Communication from the European Communities

By means of a communication from the delegation of the European Commission, dated 25 November 2004, the Secretariat has received the following contribution in the context of the transitional review mechanism under Section 18 of China's Protocol on Accession.

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

1. The EC take the view that the protection of intellectual property (IP) is one of highest priorities for the European Union in its trade relations with the People's Republic of China (hereinafter referred to as "China"). Experience has proven that an effective system of IP protection plays an important role in promoting scientific and technological innovation, cultural prosperity and economic growth. An effective IPR protection system is also an important contributing factor for the inflow of foreign investment.
2. Over recent years, China has carried out considerable work to revise its IP laws and administrative regulations to bring these into line with the TRIPS Agreement. The EC encourage the Chinese Government to persist in its efforts with respect to IP legislation and firmly urge China to prioritise the strengthening of the enforcement of IPR laws and regulations so as to ensure a comprehensive IPR legal system.
3. The scope of production of counterfeits and pirated goods inside China are extremely high and the export of counterfeits and pirated goods continues to inflict severe damage to the markets throughout the world. The European Union is an important destination of pirated and counterfeit goods. According to the most recent statistics, it appears that 60% of all fake goods seized at the borders of the European Union are of Chinese origin.
4. The recently announced "Action Plans" of the Ministry of Foreign Trade (MOFCOM) and of the State Intellectual Property Office (SIPO) constitute encouraging efforts in the right direction, but the details have not yet been made public and the outcome remains uncertain.
5. The EC welcome the Chinese leadership's dedication to consider IPR infringement a priority issue. China's commitment to step up protection of intellectual property was underscored by Prime Minister Mr. Wen Jiabao at the China-EU Investment and Trade Forum which took place in Brussels on 6 May 2004. The Chinese Premier has also stressed that intellectual property rights must

be protected more effectively and that piracy and infringements must be punished according to the law.¹

6. The EC are aware of the particularity of the Chinese IP enforcement system: IP right holders may either bring a lawsuit to the court or file a complaint to the administrative agencies. The sanctions which can be taken by administrative agencies are sometimes important. However, they do not constitute a sufficient deterrent to curb down the very high rates of counterfeiting and piracy.

7. The EC advocate that criminal penalties should be made available whatever the seriousness of the infringement. Only a system where infringers at all levels of the consumption chain (manufacturer, shipper, distributor, seller) could be subject to criminal prosecution, has a true deterrent impact.

8. The EC concern of ineffective IP enforcement in China has been raised for several years and was again brought forward during the first EU-China IPR Dialogue which took place in Beijing on 21-22 October 2004. In particular, the EC called for a more comprehensive approach to IP enforcement and contended that awareness raising was a key issue. The Dialogue was constructive and useful, both parties exchanged information on multilateral and bilateral issues and on national legislation and practices. Weaknesses were identified and proposals for improvement suggested.

9. The EC will continue to monitor the situation in China and to ensure that its economic interests are appropriately safeguarded. The EC are also committed working together with the Chinese Government to improve the situation, thereby creating a favourable situation for all parties. Support to China in the area of legislative and administrative reform and in the area of IP enforcement, was provided by the "EU-China Intellectual Property Rights Co-operation Programme" launched in 1996 and recently terminated. The EC are about to launch a new IP cooperation programme. This new programme will focus on legislative aspects, judicial, public and administrative enforcement, co-ordination between agencies, and public awareness-building.

10. At the EU-China IPR Dialogue, and in addition to an enhanced technical cooperation, parties agreed to encourage the private sector to work together with the public authorities, such as through public-private partnerships. In this respect, the EC proposed the creation of an "EU-China Working Group on IP Enforcement" which would formulate objectives and benchmarks with a view to regularly assessing progress achieved. The EC deem that such public-private partnership is essential for identifying the priorities of the future technical cooperation as well as effectively combating piracy and counterfeiting. The EC are looking forward to a positive response from China in this respect.

11. On enforcement, the EC would appreciate receiving China's reply to the following enquiries:

- (i) Vice Premier Wu Yi has announced that China would undertake a series of near-term actions with the objective of significantly reducing IP infringement levels. The recently created "State Intellectual Property Working Group" is to play a strong coordinating role for this "Action Plan". The EC would appreciate receiving full details of the actions that China foresees to undertake to curb down the current levels of counterfeiting and piracy in China. The EC would also like to learn more about the precise task and purpose, as well as structure, composition, human and financial resources of the recently created "State Intellectual Property Working Group".

¹ Report on the Work of the Government delivered by Premier Wen Jiabao at the Second Session of the Tenth National People's Congress on 5 March, 2004.

- (ii) In April 2004 the State Intellectual Property Office (SIPO) announced a "National Strategy on IPR". This new Strategy would shortly be launched and would have as its main objective the enhancement of competitiveness of Chinese businesses in the global economy. The EC would appreciate to obtain more detailed information regarding this strategy plan. Does the National Strategy on IPR foresee more transparency in the decision making process and to accelerate procedures for the registration of patents and trade marks? Does the National Strategy on IPR also include specific measures to reinforce the combat against counterfeiting and piracy? Will the National Strategy on IPR also include an educational programme to deepen IPR knowledge among officials at ministerial and provincial levels?
 - (iii) In 2001, the State Council issued regulations aiming at promoting the transfer of infringement cases from administrative bodies to Public Securities Bureaus (PSB). Because there is a lack of clear understanding by local authorities of the relevant criminal liability standards, new Judicial Interpretations are expected to be issued soon. The EC would value the opportunity to comment on the Judicial Interpretations before their adoption. The EC would also like to know whether China envisages reviewing the criminal liability standards. Finally, the EC would appreciate receiving the most recent statistics of cases that were transferred for criminal prosecution and which have led to effective criminal sentencing.
12. On copyright, the EC would appreciate receiving China's reply to the following enquiries:
- (i) China recently indicated that it intends to join the 1996 WIPO Internet treaties (WCT and WPPT), before the end of 2005. According to the EC understanding, China is in the process of drafting Internet-related Implementing Rules by the end of 2004. The EC would welcome additional information regarding these implementing rules.
 - (ii) The current Chinese legislation appears to provide broadcasting or public performance rights only to video producers. The EC would like the Chinese authorities to explain whether it is foreseen that similar rights would also be introduced for sound recordings.
 - (iii) According to the EC understanding, China intends to enact, before the end 2004, new rules on Collecting Societies. The EC would appreciate receiving further information and an advance copy of such new rules.
-