

**REQUEST FOR INFORMATION PURSUANT TO ARTICLE 63.3
OF THE TRIPS AGREEMENT**

Communication from Switzerland

The following communication addressed to the Delegation of China, dated 25 October 2005, is being circulated at the request of the Delegation of Switzerland. It was circulated as an advance copy for the Council's October 2005 meeting.

Switzerland welcomes the strong efforts made by the government of the People's Republic of China to bring its legislation on intellectual property rights and in particular its legislation on enforcement of these rights in line with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"). Switzerland took note of the different reports and other documents produced and disseminated during the Transitional Review under Section 18 of the Protocol on the Accession of the People's Republic of China to the WTO so far and appreciates China's ongoing efforts to inform WTO Members about its enforcement of intellectual property rights ("IPR").

In order to further enhance understanding of IPR enforcement in the People's Republic of China, by clarifying and building upon information that has been provided to WTO Members at earlier instances, Switzerland herewith would like to request from the Chinese authorities specific additional information regarding Chinese IPR enforcement. This request is based on Articles 63.3 of the TRIPS Agreement.

Switzerland would like in particular to better understand how the legal provisions on enforcement have been implemented in practice and what remedies are usually imposed on infringers in such cases. In addition, clarification of some institutional aspects of the Chinese enforcement system is sought. A list of clarifications requested by Switzerland is attached to this letter.

Switzerland expects that China would provide its written responses by end of January 2006. If additional time is needed to provide the requested information, we invite you to contact us so that we may reach some understanding. We look forward to receiving your reply.

Clarifications requested by Switzerland
concerning enforcement of intellectual property rights in the People's Republic of China

The Swiss authorities welcome and support the efforts made by the Government of the People's Republic of China in order to adapt the Chinese intellectual property system to international standards, particularly to bring it in consistency with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter "TRIPS Agreement"). In addition, Switzerland would like to thank the Chinese authorities for their efforts to respond to the issues raised in the Transitional Review pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China to the WTO.

Based on the provision as contained in Article 63.3 of the TRIPS Agreement, we would like to ask the Chinese Government for further clarification of the following issues:

Implementation of Legal Provisions

How have the Chinese legal provisions of enforcement been applied in practice? Please elaborate on the following questions by referring to examples of the cases reported during the Transitional Review pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China to the WTO¹ (hereinafter "reported cases"):

- Indicate the legal basis for findings of intellectual property right infringements. Which provisions have been infringed the most?
- Explain in which kind of cases administrative law is applied. What is the role of administrative procedures as compared to civil and criminal law procedures?
- Indicate the average duration of the enforcement procedure.
- Explain the different procedural steps and how long they approximately take until a final decision is issued.
- Identify, as far as possible, typical reasons why right holders lost their cases (substantive and/or procedural reasons).

Remedies and Provisional Measures

It seems that the Chinese authorities have not previously provided comprehensive information about remedies (e.g., criminal penalties, civil damages, injunctions ordering parties to desist from infringements) and provisional measures (e.g., to prevent an infringement or preserve relevant evidence) that its authorities have imposed in judicial and administrative cases of intellectual property rights infringement. Please clarify the precise nature of all remedies and provisional measures available to right holders when wanting to enforce their intellectual property rights against infringement as well as the minimal and maximal amount of fines and imprisonment imposed under Chinese enforcement practice and refer to examples of the reported cases.

¹ WTO Documents: IP/C/34, paras. 6, 52-55, 62 and 75-76 (9 December 2004); IP/C/31, paras. 49, 54, 56 (10 December 2003); IP/Q/CHN/1, section I.C (10 December 2002).

Institutional aspects

Please respond to the following questions in general, while illustrating responses with practical examples from the reported cases:

- What are the stages of appeal in the civil, criminal and administrative procedures? How are they organized and structured?
 - Please provide an organizational chart of the Chinese enforcement authorities (civil, criminal and administrative).
 - What is the relationship of the civil, criminal and administrative procedures in the enforcement of intellectual property rights? Can they be initiated by right holders in parallel or alternatively only? Is it possible to initiate a procedure on another legal basis if a first petition or action has been dismissed (e.g., civil procedure after criminal procedure was without success)?
 - How do the civil, criminal and administrative enforcement bodies on different levels and/or competent for different geographic areas collaborate? Please explain by referring to examples from the reported cases.
 - How do the civil, criminal and administrative enforcement bodies interact/collaborate? Please explain by referring to examples from the reported cases.
 - What is the standing of right holders in the different stages of appeal in administrative, civil and criminal procedures? Do they have to trigger the different steps of enforcement on their own, or is ex officio action foreseen after the procedure has been initiated?
 - Please explain by what means transparency is ensured in Chinese enforcement procedures.
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