

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

Communication from Switzerland

Addendum

The following communication addressed to the Delegation of China, dated 24 January 2006, is being circulated at the request of the Delegation of Switzerland. It follows up the response from China (IP/C/W/466) to a request from Switzerland for information pursuant to Article 63.3 of the TRIPS Agreement (IP/C/W/462).

1. I have the honour to acknowledge receipt of your letter dated 22 December 2005 concerning Switzerland's request of 25 October 2005 (IP/C/W/462) under Art. 63.3 of the WTO/TRIPS Agreement submitted to China to receive specific additional information regarding enforcement of intellectual property rights in China. We have taken note of your comments and questions concerning Switzerland's request and I am pleased to provide in the following the clarifications sought.
2. Switzerland's request to China under the Transparency provisions of the TRIPS Agreement is based on the entire paragraph 3 of Article 63 and thus not necessarily limited to either of its sentences.
3. Sentence 1 of Article 63.3, in conjunction with Article 63.1, enables WTO Members to request information from another Member regarding final judicial decisions or administrative rulings of general application. Similarly to China, Switzerland is not a common law country, but is following the civil law tradition. Article 63 of the TRIPS Agreement being applicable to all WTO Members, we interpret Article 63.1 and 3 as referring to final judicial decisions in the sense of decisions which have become legally binding because they have either not been appealed or were rendered by the court of final instance.
4. Sentence 2 of Article 63.3, for its part, enables a WTO Member to request from another Member detailed information on, among others, specific judicial decisions in the area of intellectual property rights which affect its rights under the TRIPS Agreement.
5. The decisions referred to by Switzerland in its request to China were reported by China on its own accord in its transitional review documents¹ (pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China to the WTO) as evidence of its fight against domestic IP infringement and more specifically of its enforcement efforts in accordance with its obligations under Part III of the TRIPS Agreement.

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

6. Articles 41 to 61 of the TRIPS Agreement contain detailed rights and obligations of WTO Members with respect to an efficient enforcement regime. Switzerland feels, therefore, that it has good reason to believe that the implementation and application of the relevant TRIPS enforcement provisions in the cases and decisions reported by China in the context of its transitional review mechanism concern and affect its rights under the TRIPS Agreement as a WTO Member. It is on this background that Switzerland submitted its Article 63.3 request to receive more specific information from China regarding the cases and judicial decisions in which Chinese intellectual property legislation was applied in practice.

7. The Swiss request specifies particular points of interest and what information it requests China to provide in regard to Chinese IPR enforcement and the cases reported. We would like to recall that the Swiss request does not require this information for each and every case reported in the transitional review process but that the answers and information requested from China be illustrated with examples from specific cases as identified in that process.

8. Finally, in your letter, you raise the question as to whether Article 63.3 contains only the right of Members to request such information or also the respective obligation of the Member to which the request is addressed to provide this information. Switzerland has always held the view that WTO Agreements are a set of rules which establish mutual rights *and* obligations for their Members.

9. Considering the key importance of effective enforcement for adequate intellectual property protection, my Government hopes that we can work in good faith and in a cooperative spirit with China to help us gain a better understanding of these issues, especially of how China addresses them not only in its implementing legislation but also in everyday practice. Switzerland is convinced that such better understanding will contribute to further enhancing our bilateral trade relations with China.

10. It is my sincere hope that this letter provides the clarifications necessary for China to respond to the questions raised in our request and would like to reassure you once more of our full collaboration and assistance if any further questions should arise. My Government is looking forward to receiving the response of China at its earliest convenience.
