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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 25 and 26 October 2006, the Council undertook the fifth 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 European Communities, and the United States. These submissions were circulated in documents IP/C/W/479, 481 and 482, respectively.

3. In a communication dated 20 October 2006, China provided information as specified in Annex 1A to the Protocol. This submission was circulated as document IP/C/W/483.

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

[1] To be circulated as IP/C/M/52.

ANNEX

ITEM C OF THE MINUTES OF THE COUNCIL'S MEETING OF 25-26 OCTOBER 2006 TO BE CIRCULATED AS IP/C/M/52[2]

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

5. 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 pursuant to the requirement, dated 23 October 2006, had been circulated as document IP/C/W/483. Questions and comments in connection with the transitional review had been submitted by the European Communities, Japan and the United States (documents IP/C/W/481, 479 and 482, respectively).

6. The representative of China, briefing the Council on China's progress in the implementation of its TRIPS-related commitments since the last transitional review, said that as regards legislation, a number of new regulations and judicial interpretations relating to IPRs had been issued or were being drafted. Among these were the Interim Regulation concerning *Intensified Interlinking and Coordination in the Combat against Copyright Infringing Criminal Offences* which had been brought into effect on 13 January 2006, the *Measures on Protecting the IPR of Exhibition* which had been brought into effect on 1 March 2006, and the *Regulations on the Protection of the Right of Communication through Information Network* which had entered into force on 1 July 2006. By the end of 2005, the process for obtaining public comments through the Internet for four further draft judicial interpretations had been completed. These were: one on *Civil Dispute Concerning Unfair Competition*, one on *Infringement Disputes Regarding New Plant Varieties*, one on *Conflicts of Intellectual Property Rights*, and the last one on *Dispute of MTV Copyright*. More information was contained in the document submitted pursuant to Annex 1A.

7. Regarding enforcement, he said that China had already stated previously that it regarded a good system of enforcement and transparency as essential to bring into full play its excellently constructed legal system of IPR protection. In this regard, the national working group for IPR protection that had been set up in 2005 and comprised all relevant judicial and administrative agencies had taken new important steps this year to strengthen law enforcement. At the heart of this effort was the creation of service centres all over China in order to facilitate the reception of complaints on IPR infringement. So far, the Ministry of Commerce had set up 50 such centres in large- and medium-sized cities across China and these centres were functioning well. In order to bring a complaint or to report an IPR infringement case to China's enforcement agencies, one could simply dial 12312 or log on to the website www.ipr.gov.cn and a quick response would be assured. Another important step was the issuance of the Circular on the *Transfer of Suspectable Criminal Offences by Administrative Organs for Law Enforcement* and the subsequent release of three further Circulars by the Ministry of Public Security in conjunction with other competent authorities, concerning accelerated transfer of IPR infringement cases by customs authorities from administrative to criminal enforcement.

8. With regard to transparency, he said that in March 2006 the Supreme People's Court had set up a website through which judicial decisions on IPR infringement cases were accessible to the general public free of charge. The Supreme People's Court and local high courts had begun to

[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.

establish a spokesman system, through which important IPR issues were publicized regularly. Comprehensive up-to-date information on the protection of IPRs in China was also available from the website www.ipr.gov.cn. One very important development in China's protection of IPRs in the year 2006 was the adoption of the *National Action Programme on the Protection of IPR (2006-2007)*, which specified guidelines, objectives, priorities and the main measures regarding the strengthening of IPR protection in China. *China's Action Plan on IPR Protection (2006)*, which had been adopted at the same time, promoted the protection of IPRs through the improvement of legislation and enforcement, institutional development, education and training, international exchange, and cooperation. The protection of intellectual property rights was also regarded as an important strategy to transform China into a nation with strong innovative capabilities.

9. He said that it was clear that China had made tremendous efforts to promote better protection of IPRs in line with its economic development level and had made remarkable achievements, namely that five years after joining the WTO, China's IPR system was fully consistent with the TRIPS Agreement and China had fully implemented its accession commitments. When talking about IPR issues in the WTO, it had to be kept in mind that firstly, one was talking about trade-related aspects of IPRs, and secondly, that the objective of the TRIPS Agreement was to promote the development of trade and technology transfer through appropriate rules on protection and use of IPRs.

10. Before responding to the specific issues and questions raised by Members, he said his delegation would want to make a number of comments. Firstly, his delegation had made available several documents for this meeting. One was the document containing the information requested in Annex 1A, which had been circulated as document IP/C/W/483 and which provided information on the development of legislation and enforcement, as well as some detailed statistics and data on enforcement. Furthermore, the following room documents had been made available for Members: the White Paper on *China's Intellectual Property Rights Protection for 2005*, *China's Action Plan for the Protection of Intellectual Property Rights for 2006*, and a book of approximately 200 pages on how to protect intellectual property rights in China.

11. Secondly, he said that his delegation had summarized Members' questions and divided them into six parts which would be addressed by the answers, namely Part 1 on general issues; Part 2 on copyright; Part 3 on trademarks and geographical indications; Part 4 on patents; Part 5 on enforcement; and Part 6 on other issues.

12. Thirdly, he pointed out that, although the time available to translate the questions into Chinese, obtain answers from the numerous competent authorities in China and translate the replies back into English was very short, his delegation was still making every effort to answer as many questions as possible. However, if a delegation felt that an issue had not been sufficiently addressed, this could be dealt with after the TRM meeting, but would not merit an extension of the TRM process.

13. Fourthly, he said that Members, in their questions, had requested very detailed figures concerning China's enforcement data, organized, for example, by subject matter, by country, by different authorities or even by different local courts or local administrative agencies. The document provided pursuant to Annex 1A had basically provided this information, but further accessible sources for detailed information would be indicated in answers to specific questions. As the time in TRIPS Council meetings was very limited, no-one could expect to resolve all issues under the TRM process in just one meeting.

14. He said that the importance the Chinese Government attached to the TRM process was reflected in the size of the delegation at the present meeting, which included members from the WTO mission based in Geneva; from the Supreme People's Court; from the copyright bureaux; from the Legislative Affairs Office of the State Council, and also from the State Intellectual Property Offices and Trademark Offices, as well as representatives from the Ministry of Commerce.

15. In responding to the specific questions by Members, the representative of China turned to his delegation's answers concerning **general issues (Part 1)**. He said that with regard to the drafting of new or revised judicial interpretations, new laws, regulations or judicial interpretations relating to IPRs since the last review, his delegation had already mentioned the preparation of the four draft judicial interpretations on *Civil Disputes concerning Unfair Competition*, on *Infringement Disputes regarding New Plant Varieties*, on *Conflicts of Intellectual Property Rights*, and on *Dispute of MTV Copyright*, which were in preparation. Furthermore, the following regulations had come into effect since the last review: *Interim Regulation concerning Intensified Interlinking and Coordination in the Combat against Copyright Infringing Criminal Offences*, *Measures on Protecting the IPR of Exhibition*, and the *Regulations on the Protection of the Right of Communication through Information Network*. The document submitted pursuant to Annex 1A provided more information on these instruments.

16. Regarding the number of administrative cases in the areas of trademarks, copyright and IP-related customs matters undertaken on an ex officio basis and on the basis of right holders' complaints, he informed the Council that the industry and commerce administrative authorities had investigated and dealt with 39,107 trademark infringement cases in 2005 and 15,493 cases during the first six months of 2006. In 2005, China customs had dealt with 1,210 IPR infringement cases involving the import or export of goods. No separate statistics were available on the number of cases dealt with on the basis of right holders' complaints.

17. No data was yet available on the number and percentage of cases referred from administrative enforcement to criminal enforcement under the revised transfer mechanisms that had been developed by the Supreme People's Court, Supreme People's Procuratorate, Ministry of Public Security (MPS), and General Administration of Customs.

18. He confirmed that the treatment of trademark infringement under the current Trademark Law would also be applicable to the unauthorized use of copyright and trademarks on the Internet and the provision of counterfeit/pirated products on Internet sites in the .cn domain. Right holders could complain to the local Industry and Commerce Administrations as well as directly bring a case to the court. The *Regulations on the Protection of the Right of Communication through Information Network*, which had come into effect on 1 July 2006, would further contribute to the regulation of the spread of works on the Internet, to the enhancement of the copyright protection on the Internet, and to further development of the internet industry.

19. The representative then turned to his delegation's answers concerning **copyright (Part 2)**. With respect to the availability of statistical data on prosecutions under Article 225 of the Criminal Law on "illegal business operations" that involved copyright infringement, he said that China did not distinguish cases involving copyright infringement from illegal business operations. With regard to the results of the "Number 2 Sunshine Action to Improve the Operation of Audio and Video Markets" and the "100-day Anti-Piracy Activity" campaign, he said that no data was available yet as these actions had only been staged very recently.

20. Regarding Article 43 of the Copyright Law of China on fees charged for broadcasting of copyrighted works, a separate regulation was being drafted by competent authorities of the State Council, but there was no timetable as to when the regulation would be issued.

21. Regarding the effectiveness of enforcement in the case of infringements of multiple intellectual property rights, he said that the State Office of Intellectual Property Protection, the Ministry of Public Security and the Ministry of Supervision had jointly issued the Provisions on the Transfer of Suspectable Criminal Cases by Administrative Organs for Law Enforcement in 2006, in order to enhance the coordination and cooperation among law enforcement bodies in cracking down on IPR criminal offences.

22. The representative then turned to his delegation's answers concerning **trademarks and geographical indications (Part 3)**. With regard to the information required for a trademark application and the classification system used by the China Trademark Office, he said that if the name of a product or service was identical to the name of a product or service in the Nice Agreement on the International Classification of Goods and Services for the Purpose of Registration of Marks (8th edition), then the applicant was not required to provide additional information. Otherwise, the applicant was required to provide a description of the product or service which would then be classified according to the Nice Classification.

23. He said that the China Trademark Bureau was adopting only the Nice International Classification System, not two different systems. The groups referred to as "sub-groups" were groups of similar goods or services on the basis of the Nice Agreement. Goods included in the same similar group were regarded as similar goods. Therefore, the similar group was the reference standard for the purpose of establishing whether there was confusion between a trademark applied for and a registered trademark or a prior application. More information on this question was provided at www.ctmo.gov.cn. With regard to the specific cases of a glove and a scarf mentioned in Members' questions, he said that the glove fell under the similar group of 2510 and the scarf fell under the similar group of 2511.

24. Regarding a minimum amount of damages stipulated for trademark infringement, he said that neither the Implementing Regulations on trademark law before 2002 nor the Implementing Regulations on trademark law revised in 2002 contained any provisions on minimum amounts of damages.

25. With regard to the issue of local Administrations of Industry and Commerce (AICs) publishing their decisions, he said that local AICs published the penalties for major infringement cases and the transfer of cases to public security bodies, in order to improve transparency and deliver a strong message against counterfeiting.

26. Concerning data on the rate of affirmance or reversal of appeals from the Trademark Review and Adjudication Board (TRAB) to the Beijing High Court of final decisions regarding trademark validity, he said that, in 2005, a total of 128 appeal cases had been decided, of which 105 had been maintained and 23 had been withdrawn. No data was yet available for the first six months of 2006.

27. With regard to the grounds on which the Chinese Trademark Office could refuse protection of a geographical indication and the independent qualification documentation required in an application for GI protection, he said that the registration of a GI needed to pass the material review governed by Articles 10, 11, 12, 28 and 29 of the Trademark Law.

28. With regard to China's measures and procedures for designating so-called "famous brands" and "famous trademarks", he said that the procedures for designating both these items were basically the same. More information could also be found in his delegation's answer to that question during last year's review.

29. On the issue of counterfeiting in retail markets, he said that the Administrations of Industry and Commerce (AICs) encouraged the inclusion of anti-counterfeiting provisions in lease contracts between market operators and market sponsors. Under the provisions of the trademark law, the AICs were able to investigate and deal with action infringing exclusive rights to registered trademarks, both on an ex officio basis and in response to a complaint or report.

30. Concerning the length of the time period currently necessary for the review of trademark applications, he said that the number of applications had been increasing at an annual rate of 100,000 in recent years. The current time span from the submission of an application to the first action by the

trademark administration office was approximately 24 months, or more in cases of disagreement or dispute. China was taking proactive measures to try to shorten the time length of the registration cycle.

31. On the issue of opposition without substantive reasons, he said that any opposition document had to be accompanied by clear claims and factual evidence. China would consider the issue of "vicious opposition" during the future revision of the trademark law.

32. With regard to the treatment of foreign and domestic applications for well-known trademarks, he said that there was no discrimination at all.

33. The representative then turned to his delegation's answers concerning **patents (Part 4)**. With regard to the question on the future revision of the Patent Law, he said his delegation regarded this question as being outside the scope of the transitional review mechanism.

34. Regarding the issue of linkage between patent approval and drug approval processes, he reported that the ongoing study by the State Food and Drug Administration was not yet completed.

35. Regarding approval procedures for patent or technology transfer, he said that the main provisions relating to this issue were in the Regulation on the Administration of Technology Import and Export. According to that Regulation, patent applications for transfer that involved a restricted technology were prohibited from being transferred, while technology that fell within the free category only had to go through an export approval procedure. This procedure was already quite simplified.

36. Regarding the protection of test data for pharmaceutical products, Article 35 of the Implementation Regulations of the Pharmaceutical Administration Law provided that the non-disclosure test data or other data required for an application on distribution permission using new chemical components would be protected. The Measures on Pharmaceutical Registration Administration provided further that, during the six years since the State Food and Drug Administration had approved a pharmaceutical product containing new chemical components, other applicants could not use the exclusive data and materials of the original applicant without the permission of the original applicant.

37. On the question of additional protection for products that are subject to marketing authorization, he said that Article 42 of China's Patent Law concerning the time-period for patent protection was already consistent with the TRIPS Agreement and China had no plans to grant any additional protection at present.

38. He clarified that "business talks" at exhibitions about products that exploit a design for which a patent right had been granted did not constitute a "sale" under Article 11 of China's Patent Law.

39. The representative then turned to his delegation's answers concerning **enforcement (Part 5)**. With regard to the procedures for the destruction of goods and materials used in producing counterfeit, pirated and other infringing goods, he said that according to Article 53 of the Trademark Law the objects to be detained or confiscated were the infringing products and instruments specially used for the manufacturing of infringing products and did not include products and materials not involved in infringing activities. All infringing goods that had been confiscated were being destroyed and not put up for auction. In 2005, the AICs had seized and destroyed more than 18,400 pieces of infringing goods, amounting to 7000 metric tonnes.

40. Regarding the procedures for obtaining a preliminary injunction, especially procedures to "establish" a case before the request for a preliminary injunction was considered, he said that the right holders or interested parties who required the court to place the case on the docket had to submit a

written application to the court that had jurisdiction over the case. The court then had to decide within 48 hours whether the application met the relevant requirements, in which case its execution would begin immediately. The court had to inform the person against whom the application was made within five days. Parties not satisfied with the court's verdict could apply for review within ten days of issuance, but execution or implementation would not be stopped during such a review. Regarding statistical data on preliminary injunction requests and evidence preservation order requests, and the rate of their grant of denial, he said that since the inception of the three major laws until October 2005, local courts across the country had accepted 301 preliminary injunction cases and had closed 299, of which 177 had been sustained and 24 had been withdrawn.

41. Concerning the results of the 50 new IPR Service Centres established as part of the 2006 IPR Action Plan, he said that, by September 2006, the 50 centres had accepted about 15,600 reports, complaints and enquiries, among which had been 198 reports; 15,000 enquiries, and 307 complaints. Many of the 500 cases reported had gone through to judicial procedures, but no specific data was available on how many had triggered criminal proceedings.

42. He said that the combat against text book piracy on university campuses was already part of the 100-day anti-piracy activity.

43. Regarding the question of which other localities, apart from Beijing, had initiated "trademark authorization systems", he said that to his knowledge these were in Zhejiang Province and in some parts of Guangdong Province.

44. Regarding the question of legalization of powers of attorneys and documentary evidence, his delegation believed that the current procedures were normal procedures to ensure the legality of important documents.

45. He said that the question regarding the difference in criminal prosecution between individual and unit crime had already been answered during the April trade policy review process.

46. With regard to criminal thresholds for the prosecution of manufacturing and/or supply of dangerous counterfeit goods, he said that China had no plans to abolish the criminal threshold.

47. On the question of the participation by right holders in enforcement, he said that under Chinese laws, right holders were granted the right to complain to the IPR administrative agencies, provide evidence, participate in hearings, and request administrative review proceedings. They therefore enjoyed a high level of participation in IPR enforcement activities.

48. He said that statistics concerning administrative penalties in 2005 were contained in the document provided pursuant to Annex 1A.

49. Regarding the proportion of IPR infringement cases in the criminal cases, in respect of the crime of production, sale of counterfeit and inferior products and illegal business operations, he said that this data could not be singled out under the current statistical method.

50. Regarding data on trademark infringements in alcoholic beverages, he said that no separate statistics for alcoholic beverage trademark infringement were available.

51. With respect to the understanding that, in China, criminal penalties were not imposed on an infringement by "similar" trademarks, he said that this understanding was incorrect and referred Members to Article 8 of the Interpretation of the Supreme People’s Court and the Supreme People’s Procuratorate Concerning Some Issues on the Specific Application of Law for Handling Criminal Cases of Infringement upon Intellectual Property Rights.

52. He confirmed that administrative as well as criminal penalties were imposed on services mark infringement and said that the same law applied to goods trademarks and services marks.

53. He confirmed that, in trademark infringement, heavier administrative penalties were imposed on repeat offenders.

54. With respect to the development of clearer or up-to-date judicial interpretations regarding the calculation of illegal business operation and unit crime, stated in the "2006 Action Plan for the Protection of IPR", he said that this was subject to further study in light of results of the application of relevant judicial interpretations.

55. With regard to whether China was planning to reduce the burden of right holders in customs actions against alleged infringement, he said that the implementation measures of the Regulations of the General Customs Administration on Customs Protection of IPRs had already helped alleviate this burden in that they obliged all customs offices to conclude an investigation within 30 working days from the date of detaining the goods. This shortened case-handling time at the customs offices and consequently reduced storage time and costs. Furthermore, right holders did not bear storage costs of confiscated goods beyond three months from the date of confiscation. Regarding data on the number of customs seizures, he said that the number of cases investigated and dealt with by customs was 700 in 2003, 1,000 in 2004, and 1,100 in 2005. This data was not broken down by country.

56. With respect to measures to enhance the protection of IPRs at the local level, he said that some provinces had promulgated local administrative regulations to strengthen IPR protection, encourage innovation and counter IPR infringement activities. A regional cooperative mechanism had been established amongst some provinces and cities, for example the inter-provincial agreement for administrative protection of patents among six provinces and cities, including Beijing, Shanghai and Guangzhou. The Action Programme for IPR Protection 2006-2007 by the State Council specifically required local governments of all levels to include IPR protection as an important agenda in their work and to incorporate it in their respective overall socio-economic development programmes. The Action Programme also included a training programme for local officials and managerial personnel at the enterprise level.

57. The representative then turned to his delegation's answers concerning **other issues (Part 6)**. Regarding the issue of the protection of trade names in the revision of the "Law to Counter Unfair Competition", he said that the relevant authorities in China were looking into the issue of conflict between trade names and trademarks. As the law was still in the process of being revised, his delegation was not in a position to prejudge the results.

58. Concerning the licensing regulations contained in the Regulations on the Administration of Import and Export Technology, he said that the provision "where the exploitation of a technology given by a transferee in accordance with the terms of the contract infringes upon the legitimate right and interests of others, the transferor shall be held liable" was compulsory, not discretional. China had no plans to revise the provision on liability of third parties' infringement.

59. The representative of Japan thanked China for its comprehensive responses. He said that question 26 of his delegation's document, regarding the statement by Prime Minister Wen on the lowering of prosecution thresholds, had not been directly addressed and he requested China to address this question. His delegation had continuously raised the issue of "further improvement of criminal enforcement" at the TRMs from 2002 to 2005. He appreciated that the Chinese Government had recognized the importance of IPR protection and had made considerable efforts to improve enforcement including, for example, the new judicial interpretation in December 2004 and "The China Action Plan on the Protection of Intellectual Property Rights" which stated that "clearer or

more advanced interpretations will be presented on the problem recognized through treatment of concrete cases" based on an assessment of the situation after the new interpretation had been enacted.

60. Despite these efforts, however, a survey conducted by the Japanese Government in 2006 had illustrated Japanese industry's concerns that the actual administrative sanctions applied to IPR infringement in China were still insufficient and that enforcement by Chinese governmental authorities was not satisfactory. About 30% of Japanese companies that had used the remedial procedures in China had continued to suffer repeated infringement. Therefore, his delegation had to conclude that IPR enforcement in China was insufficient to deter further infringements, which continued to cause serious damage to the Japanese industry. He emphasized that it was important to improve the deterrent effect by strengthening administrative punishment and criminal prosecution, and improving sanctions against repeat offenders. Japan was looking forward to China enhancing IPR protection and taking further steps to provide effective enforcement against any act of infringement of IPRs, including through the lowering of the criminal thresholds for prosecuting IPR-related offences.

61. The representative of the United States said that his delegation appreciated China's efforts to improve its IPR enforcement and protection environment, and had welcomed that China's leadership at the highest levels, including President Hu, Premier Wen, and Vice Premier Wu Yi, had continued to publicly recognize the importance of IPR protection and enforcement over the past year. China also deserved credit for a number of concrete, positive developments: China had conducted several special enforcement campaigns, such as the "Mountain Eagle" campaign. It had issued a 2006 Action Plan on IPR Protection, which among other things called for "special crackdown efforts" with respect to various IPR infringement problems. It had adopted revised rules governing transfer of administrative and customs cases to criminal authorities. Although these rules were not a complete solution and did not address the problem of thresholds, they were nonetheless a welcome step. Authorities in a few parts of China, notably Shanghai, appeared to show greater willingness to take ex officio enforcement action on behalf of US right holders. And, notably, authorities in some parts of China had started to take enforcement actions against Internet piracy.

62. Unfortunately, however, the IPR situation in China remained critical. Infringement levels remained unacceptably high and continued to affect products, brands and technologies from a wide range of industries, including films, music and sound recordings, publishing, business and entertainment software, pharmaceuticals, chemicals, information technology, apparel, athletic footwear, textile fabrics and floor coverings, consumer goods, electrical equipment, automotive parts and industrial products, among many others. China's share of infringing goods seized at the US border in 2005 had been more than ten times greater than that of any other US trading partner.

63. He said that the key problems were well known and had been repeated many times in this forum: China suffered from chronic over-reliance on toothless administrative enforcement and underutilization of criminal remedies. Its own 2004 data showed that it channelled more than 99 per cent of copyright and trademark cases into its administrative systems, rather than its criminal system. China's high thresholds for criminal liability, i.e. the minimum values or volumes required to initiate criminal prosecution, continued to be a major reason for the lack of an effective criminal deterrent. Right holders had pointed to a number of other deficiencies that highlighted the need for reform of criminal IPR laws. For instance, Article 217 of the Criminal Law provided for prosecution of the unauthorized "reproducing and distributing" of certain copyrighted works. Thus, it appeared that unauthorized reproduction was subject to prosecution only when accompanied by unauthorized distribution, and vice versa. Enforcement efforts, particularly at the local level, were hampered by poor coordination, local protectionism and corruption, high thresholds for initiating investigations and prosecuting criminal cases, lack of training, and inadequate and non-transparent processes. In the copyright area, trade in pirated optical discs continued to thrive, and China continued to maintain market access restrictions that artificially limited the availability of foreign content and thus led consumers to the black market.

64. His delegation also remained concerned about various aspects of China's 2004 customs regulations and implementing rules. One example was that these rules established a hierarchy of requirements for the disposal of infringing goods that had been confiscated by Chinese customs authorities, following the removal of their infringing features. This hierarchy required such goods to re-enter channels of commerce unless the right owner paid for these goods.

65. He said that many Members, including the US, had worked hard to address these concerns through a constructive bilateral dialogue with China, which had often yielded positive results. One example was the bilateral discussions on the issue of software infringement in 2006 that had led to China's decision to require computers to be pre-installed with licensed operating system software. His delegation believed such bilateral discussions to be indispensable to a healthy trade relationship, and intended to continue these on a wide range of IPR issues. At the same time, the multilateral WTO forum and its tools, such as the TRM and the transparency provisions under Article 63.3 of the TRIPS Agreement, were equally indispensable to a healthy international trade environment.

66. Unfortunately, China had shown a disappointing reluctance to use these tools to clarify issues and explore possible solutions. While the United States appreciated China's responses today, it also noted that once again this year, as in the past, not all questions had been fully answered. These unanswered questions fell in three categories: The questions to which no answers had been provided at all included question 5, paragraphs (b), (c) and (d); question 19, paragraphs (b) and (c); question 22 paragraph (b); question 23; and question 28. Questions that China had regarded as lying outside the scope of this Council included questions 24, 25 and 26 concerning the Patent Law. It was his delegation's view that, as this review was a transparency exercise, taking a broad rather than a narrow perspective would help to avoid the use of other mechanisms to resolve disputes in the future. The third category of unanswered questions included questions 2, 4, 11, 15, 16, 17 and 27, and concerned various requests for data, which China had said were not yet available. His delegation would appreciate receiving that data once they were available.

67. He noted China's response that no new or revised judicial interpretations were contemplated regarding the possibility of lowering thresholds for criminal liability. The United States and other Members had repeatedly raised serious concerns about these thresholds in the past, and would continue to explore every possible avenue for resolving this issue. He also expressed his delegation's disappointment that China had not provided substantive responses to the questions posed a year ago by the United States and other Members under the provisions of Article 63.3, and thereby had not seized the opportunity to enhance mutual understanding and work towards concrete solutions. He said that the TRM process and transparency requests under Article 63.3 were valuable tools, as they could help Members solve particular problems without resorting to other mechanisms, such as the WTO dispute settlement process, and he urged China to take fuller advantage of such opportunities in the future.

68. The problem of IPR infringement in China was multifaceted and complex and required broad engagement and cooperation. Addressing these concerns might require bilateral discussions, multilateral tools like today's TRM, or the use of other avenues, and his delegation hoped to engage fully and constructively with China in all these efforts.

69. The representative of the European Communities thanked China for its responses to the questions posed by the European Communities in document IP/C/W/481. As it was not clear whether China had addressed the issue of legalization of powers of attorneys and documentary evidence referred to in paragraphs 13 and 14 of the EC communication, he said that his delegation would appreciate it if China could explain how it intended to solve this issue. He also enquired whether the information on service centres, judicial decisions and spokesman system, provided on the numerous websites mentioned in China's presentation, was available in languages other than Chinese.

70. He said that, while his delegation noted with satisfaction China's progress so far and the ongoing initiatives to tackle the remaining problems, his delegation remained concerned by the high level of counterfeiting and piracy and urged China to actively pursue its efforts towards an effective IP enforcement system. His delegation's continuing commitment to bilateral efforts to improve the situation was illustrated by the establishment of the joint IP Working Group under the EC-China Structured Dialogue on Intellectual Property, which would hold its third meeting in November 2006 in Beijing. He expressed his hope that this Dialogue, which had the purpose of solving IP problems that European companies were facing in China, would lead to concrete and tangible results.

71. The representative of Canada thanked China for its responses to Members' questions and the documents it had provided, giving details of some of the measures and legislation that had been implemented by China. Canada and China were engaged in continuous bilateral exchanges of best practices and other experiences by their respective intellectual property agencies and IP experts. In the course of this exchange, Canada was welcoming a Chinese delegation from the Yunnan Intellectual Property Office in the same week and, as part of the Canada-China WTO Capacity Building Project, a study tour the following month of senior officials from the provincial offices of the Chinese Ministry of Commerce.

72. Canada followed China's work on its legal framework for the protection and enforcement of IPRs with great interest and, while recognizing progress in relation to trademark protection in the last couple years, remained concerned by some of the key issues with respect to enforcement. These concerns were confirmed in a recent survey of Canadian businesses, industry groups, right holders and other interested stakeholders, which had been conducted in order to identify the countries where stakeholders were encountering problems with enforcement and how these problems were affecting them commercially. Almost two thirds of the submissions had raised concerns with China, covering equally the infringement of patents, trademarks, copyright, and industrial designs in products ranging from building materials, circuit breakers, electrical devices and electronics to batteries, toys, apparel, luxury goods, Inuit themed gift items, and works of art. Disconcertingly, almost all of the submissions that had raised concerns with China noted that they had not initiated enforcement procedures in China, citing a variety of reasons including the difficulty of pursuing remedies, the unlikelihood of a satisfactory result, extensive bureaucracy, the absence of effective sanctions, high costs with slim chances of success, and difficulties in gaining support and action from the Chinese authorities. In addition, increasing concerns about copyright enforcement in China had been raised by a number of Canadian groups, including recording artists, film companies and video game developers.

73. In this respect, Canada was particularly interested in the indications by China's Premier that China would improve mechanisms for IPR protection and strengthen law enforcement, and shared other Members' concerns regarding the thresholds for criminal prosecution that had been established by China's Supreme People's Court in 2004. Canada was further interested to hear that one of the activities of the State Working Group on IPR Protection established in August 2004 was to conduct public awareness and education campaigns. Canada would be interested in any further examples of recent IP public awareness campaigns that China could provide. Canada also shared the interest of other Members who had raised detailed questions, and was looking forward to continuing this dialogue.

74. The representative of Switzerland thanked China for its responses and efforts in the context of the TRM. He said that Switzerland shared the concerns of other delegations that deficiencies remained in the field of intellectual property and particularly with regard to civil, administrative and criminal enforcement. His delegation was committed to continuing and intensifying the dialogue with China, not only in this multilateral forum where his delegation had last year submitted requests to China under Article 63.3, but also bilaterally, and hoped for a positive response from China in this regard.

75. In responding to Members' comments, the representative of China said that some of the unanswered questions would require detailed studies and breakdowns of data. He confirmed that the websites mentioned in his presentation were also available in English. His delegation had taken note of the other issues mentioned and would study them further in its capital. As Members had mentioned, the bilateral channel of communication was a very effective tool to deal with concerns not only of other Members but also China's concerns. Regarding the Members who had raised the issue of transparency under Article 63.3, he said that China had already clearly expressed its position that it had no obligation to provide specific information under this provision. However, China would discuss this issue with interested Members through bilateral channels.

76. The Chairman thanked China for all the information it had provided, as well as other Members for their contributions. Turning to the Council's reporting obligation to the General Council, he suggested that the Council follow the same procedure as in the past years, namely that the Chairman, acting on his own responsibility, would again prepare a factual report. The content of the cover page to the report would be similar to that of the report submitted by the Council in 2005 and the part of the minutes reflecting the discussions held under this agenda item would be attached.

77. The Council took note of the statements made and agreed to proceed as suggested by the Chair.