WORLD TRADE ORGANIZATION

IP/C/50
18 November 2008

(08-5593)

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 28 October 2008, the Council undertook the seventh 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 and Canada. These submissions were circulated in documents IP/C/W/518, IP/C/W/520, IP/C/W/521 and IP/C/W/524.

3. In a communication dated 21 October 2008, China provided information as specified in Annex 1A to the Protocol. This submission was circulated as document IP/C/W/525.

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/58.

ANNEX

Item D of the minutes of the Council's meeting of 27 October 2008
to be circulated as IP/C/M/58[1]

1. The Chairman recalled that section 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 section 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 21 October 2008, had been circulated as document IP/C/W/525. Questions and comments in connection with the transitional review had been submitted by Japan, the United States, the European Communities and Canada (documents IP/C/W/518, 520, 521 and 524, respectively).

2. The representative of the United States said that his delegation believed that the transitional review mechanism continued to be a useful mechanism that helped to provide needed additional transparency for China's trade regime and allowed Members to better understand and assess China's progress in implementing and complying with its WTO obligations. Turning to his delegation's submission before the Council, he noted that the United States appreciated the importance China attached to the protection of intellectual property rights and the active steps that it had taken to improve IPR enforcement and protection. It was his understanding that China had developed and released a detailed national IPR strategy reflecting a commitment to address IPR related issues at the highest levels of China's Government.

3. At the same time, the United States remained concerned about several aspects of China's regime for the protection and enforcement of intellectual property rights. It was critically important that China and other WTO Members maintained regimes that respected all intellectual property rights regardless of national origin. While he understood the importance that China placed on promoting its domestic industries through indigenous innovation polices, his delegation encouraged China to ensure that these polices did not undermine the rights of non-Chinese owners of intellectual property rights or otherwise ran afoul of WTO rules. The United States also continued to see evidence of unacceptable levels of IPR infringement, particularly in the numbers of Chinese goods seized at US borders. Mid-year statistics for 2008 showed that China remained the source of the vast majority of infringing goods seized at US borders, accounting for 85% of seizures by value, and it was troubling that the seizure of Chinese goods had been increasing, not decreasing, each year since China had joined the WTO in 2001.

4. Exports of counterfeit and pirated goods, however, were only part of the problem. United States industries continued to report high rates of infringement within China. More work was needed to address growing challenges involving internet counterfeiting and piracy in China, such as offering infringing products for sale to businesses and consumers or deep linking to infringing files. At the same time, the problem of physical counterfeiting and piracy in China continued and was widespread as illustrated by the continuing operation of large wholesale and retail markets for counterfeit and pirated goods in a number of jurisdictions in China. The range of industry sectors affected by infringement within China was quite broad, including, among many others, pharmaceuticals, electronics, batteries, auto parts, industrial equipment and toys. The United States was further concerned because many of the counterfeit products made in China continued to pose a direct threat to the health and safety of consumers not only in China, but in the United States and elsewhere around

[1] 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.

the world. For reasons similar to those indicated in its questions, the United States also remained concerned by Chinese rules that appeared to exempt so-called Chinese famous brand products from quality inspection. His delegation wished to learn more about the scope of this exemption and about the trademark-based criteria that made products eligible for this exemption.

5. In conclusion, his delegation looked forward to receiving China's responses to its questions, and to continuing to engage bilaterally with China on a wide range of IPR issues. The United States appreciated the cooperative spirit in which the two countries had intensified IPR discussions under the Joint Commission on Commerce and Trade and other bilateral mechanisms, and continued to believe that deeper multilateral and bilateral dialogue and cooperation would provide an important path to progress.

6. The representative of the European Communities said that his delegation took note with satisfaction of the progress that had been made so far in China on IPRs and of positive ongoing initiatives such as the action plan for IPR protection for 2008, the National Intellectual Property Strategy, the ongoing revision of patent law, the ongoing revision of trademark law and the announced revision of copyright law. However, despite these developments and China's efforts to address problems in its IP system, his delegation remained concerned at the high level of counterfeiting and piracy in China. Although the customs seizures of counterfeit products coming from China at the EU border had decreased in 2007, China remained the main source of infringing goods with over 60% of all articles seized at the border coming from there.

7. European companies continued to face serious IPR problems in China, in particular, the lack of proper access to the legal system and of effective IPR enforcement. Criminal prosecution remained ineffective, sanctions against IPR infringement were insufficient to deter infringers, administrative enforcement procedures were still subject to discretion in many areas, and administrative infringing activities remained difficult to obtain, expensive and in comparison to domestic cases, more time consuming.

8. His delegation encouraged China to actively pursue its efforts towards an effective IPR enforcement system and was committed to continue working bilaterally with Chinese authorities to improve the situation, in particular through the joint technical cooperation programme IPR 2. The European Communities had also established a structured dialogue on intellectual property and had set up a joint EC/China IP Working Group in the framework of this dialogue, in order to exchange information and address IPR issues. The fifth session of this IP Working Group had taken place in Beijing on 23 September 2008. He expressed his hope that this cooperative approach with China on IPR issues would be instrumental in improving the IPR situation in this country and lead to concrete and tangible results.

9. He said that his delegation had submitted 43 questions covering a wide range of issues including patents, technology transfer, protection of confidential data, trademarks, copyright, and plant variety protection. With regard to enforcement, the questions included issues such as customs measures, civil enforcement, criminal prosecution and on-line piracy, and his delegation was looking forward to receiving responses from China.

10. The representative of Canada said that his delegation was appreciative of China's continued engagement in a dialogue on IP issues at the WTO and in other international fora such as the Heiligendamm Process. Canada also appreciated the opportunities to share best practices and other experiences through the two countries' respective intellectual property agencies and IP experts. For example, the Commissioner of the Canadian Intellectual Property Office would travel to China next month for an annual meeting with her counterpart and to speak at the 6th Shanghai International Intellectual Property Forum.

11. Canada had recently submitted document IP/C/W/524 in relation to the China TRM, containing questions related to China's action plan on IPR protection and recent revisions to China's Patent Law. His delegation would understand if China required additional time to study the questions before providing responses, and would therefore be happy to accept China's written responses in due course.

12. Canada had also included a few specific inquiries, including one question relating to China's Olympic experience. Specifically, in view of the fact that the 2010 Winter Olympics would be held in the Canadian province of British Columbia, Canada would be grateful to learn about China's experiences with respect to the registration and use of the Beijing Olympic trademarks.

13. The representative of Japan said that his delegation appreciated the recent Chinese efforts to strengthen the protection of intellectual property rights. It was his understanding that the Chinese Government had enhanced the civil as well as the criminal measures to protect intellectual property rights and Japan welcomed this improvement of IPR legislation in China.

14. Having said that, his delegation wished to point out three issues: First, Japan still had serious concerns about infringement in China. The types of infringement were getting more or more complicated, the number of infringements using the Internet was increasing and serious problems remained with regard to enforcement of IPR issues in local Chinese government. His delegation expected that the Chinese Government would take appropriate measures with regard to these issues in due course.

15. Second, his delegation wished to raise a new issue regarding compulsory certification in China, which was also mentioned in paragraph 10 of the EC document. Private enterprises were requested to provide highly confidential information to get technical regulatory approval in the Chinese territory. It was his understanding that from May 2009, 13 types of information security products would be required to pass a certification. His delegation had serious concerns on this matter from the point of view of IT protection. His delegation expected the Chinese Government to review these measures which were exceptional in the international community.

16. Third, his delegation welcomed the Chinese action plan on IPR 2008, which had been announced in June 2008. In this action plan, the Chinese Government had committed to protect IPRs at a higher standard by 2020, reducing IPR infringement. His delegation expected further efforts by the Chinese government based on such action plans.

17. Lastly, his delegation was looking forward to China's responses and hoped for further dialogue and cooperation with the Chinese Government in the TRIPS Council, as well as in bilateral cooperation.

18. The representative of China said that his delegation wished to pursue a dialogue in a constructive and transparent way with all Members. China had received over 80 questions from several Members and, while he did not agree with all of these questions, his delegation appreciated the continued interest in the Chinese IPR mechanisms and listened very carefully to the comments made by these Members.

19. With regard to the questions received he said that his delegation had had enough time to prepare responses to the questions from the European Communities and Japan as they had been received by e-mail at the same time that they had been transmitted to the WTO Secretariat. The questions from the United States, however, had only been received by China one week before the meeting. Although, after reporting back, this had left his delegation only three days to prepare responses, it had done its best to respond to as many of these questions as possible. Nevertheless, there was one question that could not be answered at this stage and his delegation remained available

to follow up with the United States through bilateral channels. With respect to the questions from Canada, he regretted that his delegation had only been informed about them at the present meeting. For future transitional reviews, he encouraged Members to follow past practice and transmit their questions or communications to China at the same time that they send them to the Secretariat.

20. Briefing the Council on China's implementation of the TRIPS Agreement and relevant commitments since the last review, another representative of China said that China had always attached great importance to the protection of intellectual property rights, and fulfilled its international commitments in a serious and positive manner. In recent years, China had further intensified the protection of IPRs. Since 2004, a nationwide campaign for IPR protection had been carried out each year to end trademark, patent and copyright infringements, particularly in imports and exports, wholesale markets, trade fairs, original-equipment manufacturers, printing and reproduction. Very recently, China had unveiled the Outline of National Intellectual Property Rights, a new strategy to tackle the many issues surrounding IPRs in a broader, deeper and more forceful manner which would further improve IPR protection in China.

21. Turning to questions from Members, she said that, including the Canadian submission received on that day, China had received over 90 questions. Her delegation thanked Members for their appreciation of China's achievements in IPR protection, such as Japan's comment in its communication that the implementation of China's IP commitments had evolved to a cruising phase. This was quite objective. However, other Members' communications contained comments that were not based on facts and statistics that were not credible. She hoped Members would adopt a more serious, practical and realistic attitude towards the TRM.

22. With respect to the questions from Canada, she said that most of the information regarding China's action plans regarding IPR protection could be found online on the State Intellectual Property Offices's (SIPO) website (www.sipo.gov.cn) and on the website of the central government. The rest of the Canadian questions were very similar to questions raised by the United States, the European Communities and Japan.

23. She said that some of the questions, including those on internet piracy (EC questions 40-43, US questions 21-23), on customs enforcement in relation to the outbound flow of goods (EC question 31, US question 19) and some other questions including those from Japan regarding general government policies and research went beyond the scope of the TRM. As this was not the appropriate forum for these questions, her delegation suggested to discuss them on other appropriate occasions such as in World Intellectual Property Organization (WIPO), the World Customs Organization (WCO) or through bilateral channels. She said that some questions were closely related to the ongoing US-China WTO dispute (DS362) in which the United States was the complainant, and the European Communities and Japan were both joined as third parties. Such questions included Japan's questions 12 and 19(d); EC questions 18, 20, 23-25, 36 and 37; and US questions 13-18, 20, and 24-26. The parties involved could discuss the relevant issues in the context of this case. Furthermore, regarding the laws and revisions mentioned in Japan's questions 1, 2 and 18(a); EC questions 5-9 and 17; and US question 27, she said that the laws including the *Trademark Law*, the *Copyright Law*, the *Law Against Unfair Competition, the Rules for Implementation of Patent Law* and *the Rules for Implementation of the Regulations on Customs IPR Protection*, were currently under revision or review, and no specific schedules were available at this time. Members should refer to Annex 1A for progress.

24. For convenience, her delegation had grouped the responses to questions from Members into five major subjects. The first subject related to **copyright,** and specifically the royalty distribution issue which included responses to Japan's question 3, and EC question 26. In this regard, the *Regulation on Royalty Distribution for Broadcasting and Television Organizations* was one of the key legislative programmes of the State Council this year. The Legislative Affairs Office had submitted a

draft to the State Council for review. According to Article 43 of the *Copyright Law*, the Regulation (Draft) provided on radio and TV stations' royalty distribution for right holders for broadcasting published audio recordings without the latter's consent.

25. The second subject related to **trademarks and geographical indications** issues, including responses to Japan's questions 4-5, and EC questions 21-22. The current duration of the examination period for trademarks was about 28 months. In recent years, China had witnessed an annual increase in trademark registration applications and had ranked first in the world for six years until this year in terms of application volume. In 2007, the figure had risen to 708,000 which constituted a big challenge for China. The competent authorities worked hard and attached great importance to achieving an expedited examination of trademarks. A series of measures had been implemented, including setting up additional divisions, increasing staff, strengthening operation security for the automatic system, stepping up management and enhancing efficiency at every stage of the trademark registration process. These measures had yielded initial results. In 2007, 405,000 applications had been examined, which constituted a year-on-year increase of 29.3%. An examiner's average workload per year was much more than in other countries. The Trademark Review and Adjudication Board had ruled on 12,799 cases, a year-on-year increase of 200%. In 2008, the Chinese Trademark Office (CTMO) had recruited 300 trademark examination auxiliary staff and 100 trademark adjudication auxiliary staff who had begun work on 1 September. With the joint forces of new staff and the comprehensive implementation of the above measures, the registration duration was expected to be further shortened in the coming years.

26. With regard to the examination guidelines of trademarks mentioned in Japan's questions 6 and 7, according to Article 10(2) of the *Trademark Law*, if a trademark consisted of or contained foreign geographical names known to the public, it would be regarded as identical to foreign geographical names and the CTMO would reject the application. However, this did not apply to trademarks composed of foreign geographical names and other words, if the combination acquired a new meaning and did not lead to confusion of the public when applied to designated commodities. "LONDON FOG" (for briefcases) was one example in this regard.

27. According to Article 9 of the *Trademark Law*, a trademark should have distinctive characteristics easy to identify, and may not conflict with legal rights acquired by others in priority. The prior rights included the names designated to new varieties of plants by the *Regulations on the Protection of New Varieties of Plants*. Accordingly, trademark applications using the names of plants should be rejected. The parties involved could also assert their legitimate rights and interests through trademark oppositions and dispute procedures. Regarding Japan's question 8, if the trademark's word formation was different from a foreign geographical name known by the public but its look and pronunciation were nevertheless likely to cause confusion with regard to that geographical name and the origin of the product, that trademark would be rejected according to Article 10(1) of the *Trademark Law*. If such a trademark was registered, an application for cancellation could be filed to the CTMO.

28. Japan's question 9 related to a complicated technical issue. For detailed information, Members should refer to the *Trademark Examination and Adjudication Standard* (2005) and the *Regulations on the Protection of New Varieties of Plants.* According to Article 11(2) of the *Trademark Law*, the following aspects should be considered with regard to marks obtaining distinctive characteristics through usage: first, public recognition of the mark; second, the application of the mark to designated commodities and services in terms of duration, the method and the industry. With regard to the Guidelines for the Fair Use Thereof by Another Person raised in Japan's question 10, references could be found in Article 26 and Article 27 of the *Answers of the High People's Court of Beijing on Some Issues Concerning the Handling of Trademark Dispute Cases* issued by the High People's Courts of Beijing in March 2006.

29. With regard to EC question 19, she said that Chinese authorities had always been working hard to protect the exclusive right to use registered trademarks and had cracked down on fake goods, both during the Olympic Games and on average working days. At the same time, it should also be recognized that strengthening the protection of exclusive trademark rights and clamping down on trademark right violations was a difficult long-term task that could not be achieved overnight.

30. With regard to GIs, she said that the Chinese Government attached great importance to GI protection and firmly believed that GI protection would effectively promote economic development, especially the development of agriculture and the rural areas. The TRIPS Agreement established specific rules in this area and Members had set up their respective GI protection regimes under this framework. China had also established its own GI protection system based on its national conditions and was constantly improving its effectiveness. Competent authorities were actively advancing the work in this area within their respective competences. Her delegation was willing to share experiences and actively cooperate with members in this regard.

31. With regard to the trademark related issues raised in US questions 1-4, she said that the *2005-2006 List of Leading Export Brands Nurtured and Developed by the Ministry of Commerce* had expired and such a list no longer existed. Also, the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) had abolished the *Measures for Administration of Exempting Products from Quality Supervision and Examination* on 18 September 2008. Therefore, famous brand products were no longer exempted. With regard to well-known trademarks, the CTMO and the Trademark Review and Adjudication Board identified and protected well-known trademarks in the procedures of trademark oppositions, administration and disputes according to the *Trademark Law*, the *Rules for the Implementation of Trademark Law*, the *Provisions for Identification and Protection of Well-Known Trademarks*. In the identification procedure of well-known trademarks, domestic and overseas trademark holders were treated equally without discrimination.

32. With regard to well-known trademarks at sub-national levels, provisions should be developed by provincial government according to local conditions. Provincial industry and commerce authorities were responsible for identifying well-known trademarks according to local regulations, rules and normative documents. Provincial local regulations, rules and normative documents should be referred to when deciding whether "foreign" trademarks of foreign companies or users could be identified as "well-known trademarks". Regarding US question 5, China's Table of Classification of Similar Commodities and Services had been formulated on the basis of WIPO's International Classification of Goods and Services for the Purposes of the Registration of Marks and according to China's practical experience over the years in classifying similar commodities and services. It was referred to by the CTMO and the Trademark Review and Adjudication Board in their reviews and examination of trademarks. However, due to constant upgrading and developing of commodities and services and fluctuation in market trading, the assessment of similar commodities and services could change in certain cases, and it was therefore still necessary to make judgments in terms of similar commodities and services when examining such cases.

33. The third subject related to **patents, technology transfer and confidential information protection** and responded to EC questions 10-11 and 12-14, and US question 12. In this regard, Chinese laws strictly prohibited the infringement of trade secrets and the information required for that purpose in the applications was necessary and within the scope of reasonable disclosure. With regard to the trial data protection, the *Drug Registration Regulation* provided for this issue, including provisions that literary and data shall not be used without the owner's consent and that on-the-spot verification must be carried out for the authenticity of each document. These measures ensured that all the application documents were authentic, reliable and had been independently acquired by the applicant himself/herself, so that applications could not be based on information submitted in earlier applications. She said that data used without the owner's consent was considered invalid and the corresponding application would be rejected.

34. The State Food and Drug Administration, when deciding whether to give marketing approval or not, could only rely on clinical trial data independently acquired by the applicant. Published data could only serve as a reference. According to Article 35 of the *Implementing Regulation for the Drug Administration Law*, the *Drug Registration Regulation* provided that within six years from the date a drug manufacturer or seller had obtained approval to produce or market a drug containing new chemical entities, if any other applicant used the aforementioned data to apply for approval for production or marketing of the drug in question without permission by the original applicant who had obtained the approval, no approval may be given to any other applicant by the drug regulatory department. In this regard, domestic and overseas companies were given equal treatment.

35. The fourth subject related to **IPR enforcement.** By virtue of his exclusive right to use a trademark the right holder could demand a hearing in trademark administrative enforcement procedures according to the *Administrative Punishment Law*. With regard to rulings on trademark violations, the relevant right holder could inquire with industry and commerce administrative agencies at all levels and follow the development and result of the case. China was still studying how the right holder could take part in the trademark administrative enforcement procedure and what rights he should enjoy in the process.

36. Under the Copyright Law, copyright infringement was divided into two categories. One category included 11 torts described in Article 46 of the Copyright Law, which could only be resolved by civil litigation procedures. With regard to these torts the victim could file civil lawsuits directly with the People's Courts after collecting relevant evidence. The other category consisted of eight torts described in Article 47 of the Copyright Law, which could be addressed through civil litigation, administrative punishment and criminal litigation according to different degrees of injury. In other words, the victim could file lawsuits directly with the People's Courts after collecting relevant evidence, apply for administrative protection from copyright authorities or trigger criminal procedures in case of a crime. In brief, with regard to any tort, the copyright holder could take part in launching civil, administrative or criminal procedures and attain sufficient information in the proceedings.

37. In case of violations of copyright and exclusive trademark rights, be it infringement via Internet or traditional means, the Copyright Law and the Trademark Law applied**.** Apart from active investigations conducted by competent authorities according to their duties, the right holder could also complain to local competent authorities or file lawsuits with local courts. China had cracked down on IPR violations, and relevant individuals and units were held criminally responsible according to law. Regarding detailed information on enforcement at different levels requested by Japan and others she referred Members to Annex 1A submitted prior to the meeting.

38. The fifth subject related to **Other Issues** that had been raised in Japan's questions 13 and 14 and EC question 29. In this regard, there were currently no criteria for intellectual property rights abuse under the framework of the *Antimonopoly Law* and formulation of guidelines for that law was still underway. With regard to the conflict between trade names and trademarks raised in Japan's question 15, the Supreme People's Court had issued a judicial interpretation in February 2008 regarding the *Regulations on the Trial of the conflicts between Registered Trademark Enterprise Name and the Prior Right*, which provided fully for that issue.

39. With regard to licensing regulations raised in Japan's questions 16 and 17, she said that the provision in Article 25 that "the licensor must ensure that the technology provided is complete, correct and effective and may fulfil the agreed technological goal" only referred to the technology *per se*. In other words, under agreed implementation conditions, the technology provided by the licensor should meet the agreed technological objective. However, if the agreed technological objective was not achieved due to reasons on the licensee's part such as substandard environmental and technical conditions, improper operation, etc., the licensor should not be held responsible.

40. Regarding EC questions 27-28, since China's accession to the 1978 International Union for Protection of Varieties (UPOV) in 1999, a legal system for protecting new varieties of plants had been established. It had played an active role in protecting the legitimate rights and interests of breeders, encouraging innovation in breeding technology, promoting reasonable allocation of breeding resources and establishing a fair competition order in the seed market that was in line with China's national conditions. The Chinese Government had issued and implemented seven batches of catalogues for the protection of new plant varieties in agriculture and four batches of catalogues for the protection of new plant varieties in forestry including 152 species and genera of plants, which far exceeded the minimum requirements of UPOV 1978. At present, the Chinese Government was still actively expanding the catalogues to protect as many plants as possible. Since 2004, China had been ranking fourth among UPOV Members. By 30 September 2008, the Ministry of Agriculture had accepted 5192 applications for plant variety rights. After examination and testing, 1844 applications had been approved.

41. In conclusion, the representative reaffirmed that China continued to attach great importance to IPR protection which had already been elevated to a national strategy of China. She also pointed out that IPR protection was not merely a means to fulfil China's accession commitments or to attract foreign investment and technology, but also responded to China's own intrinsic need to promote scientific and technical innovation, and to speed up its economic development. China spared no effort to establish a strong and effective IPR protection system which was in the interest of both China and other Members. However, as a developing Member, China had only started building its IPR protection system less than 30 years ago and would need continued efforts before its IPR protection system could be as sophisticated and mature as that of some developed country Members which had been developed for over 100 years. In order to catch up, China needed time, understanding and support. She hoped that Members, especially developed country Members, would be able to view the IPR situation of China from a historical and developmental perspective, recognize the efforts China had made, and continue the support and cooperation in this area.

42. The representative of the United States said that, with regard to China's comment about their late receipt of the US submission, his delegation had submitted the document to the Secretariat on 9 October and had transmitted it to the Chinese Mission via e-mail on the same day. The Secretariat had then circulated the submission on 14 October which was still two weeks ahead of the meeting.

43. He thanked the Chinese delegation for its responses and said that his delegation had a few follow-up questions and comments. With regard to US question 3, China had indicated that the 2005/2006 list of leading export brands nurtured and developed by the Ministry of Commerce had expired. His follow-up question, which was also contained in the US submission, was whether there had been any updates or subsequent lists issued for 2006/2007 and 2007/2008.

44. With regard to US question 4 on more information about sub-national measures relating to famous trademarks, China had simply indicated that sub-national measures were handled by sub-national governments, but it had not provided any responses to the question. Among other things, the United States was looking for a list of those sub-national measures. He noted that, as had been seen in the area of subsidies where sub-national governments were very active, measures issued by sub-national governments were particularly important under China's system and he expressed his hope that China would respond to that question.

45. Turning to US questions 6-11 on geographical indications, China's response had simply been that China had established a geographical indications system within its government. This had been known to the United States and had been the premise of the several detailed questions it had posed about various aspects of China's regime. None of these questions had been answered and his delegation requested China to respond to those questions.

46. With regard to several questions that had been posed about enforcement, China had referred to the on-going WTO case, and concluded that it would not be appropriate to answer any of these questions. He said that these questions dealt with the role of private investigators in China, with legislative proposals that might enhance the power of Chinese judges to enforce judicial orders and with specific enforcement initiatives relating to health and safety threats and other matters. None of these issues were part of the WTO case and his delegation therefore requested China to respond to those questions.

47. Finally, in response to the comment that China was a developing country Member and needed more time to implement and adhere to its TRIPS obligations, he said that China, in its protocol of accession, had committed to adhere to the TRIPS Agreement immediately upon accession. There were no transition periods for adherence to those disciplines.

48. The representative of the European Communities thanked China for its comprehensive statement on its efforts to improve the protection and enforcement of intellectual property rights and for its detailed answers to questions.

49. While trying to follow the answers given by China, it was his impression that some of his delegations' questions had not been answered. For example, EC questions 32, 33 and 34 on the legalisation and notarization requirements for power of attorney and evidence from abroad covered a very important issue for his delegation, and he would be grateful if China could answer those questions. He encouraged China to intensify its efforts to combat counterfeiting and piracy and improve the enforcement system in China, which was a priority for the European Communities.

50. The representative of Japan thanked the Chinese delegation for its very informative explanation covering all 80 questions, considering that it was certainly difficult to give out good signals while cruising on the sea. His delegation wanted to raise two points regarding its questions: First, regarding geographical names used as trademarks mentioned in Japan's question 5, China's delegation had indicated that Chinese trademark law prohibited the use of well-known geographical names from foreign countries, such as Tokyo and Osaka. However, it was his delegation's understanding that there were certain cases in which Chinese private enterprises used Japanese geographical names. This was a question related to the enforcement of Chinese national law and his delegation would expect the Chinese Government to make further efforts to strengthen the enforcement of their proper Chinese trademark law in this regard.

51. Second, in its explanation concerning the issue of protection of confidential information, the Chinese delegation had mentioned a medical law and other related laws. Japan's specific concern was whether China was going to extend these compulsory measures to oblige private companies to disclose or provide highly confidential information, as a lot of information security products would be included in such an extension. His delegation reiterated its expectation that the Chinese Government review this exceptional system in due course.

52. The representative of China said that, with regard to the US comments, her delegation had explained that the 2005/2006 list by the Ministry of Commerce had expired and there was no longer such a list. This meant that there was no such list for 2007/2008 or 2008/2009 and that this was the end of such a list.

53. With regard to famous trademarks at sub-national level, she invited the United States to check the website of each province as China had very transparent websites in this respect, which would answer some of its concerns and questions. While she was not in a position to provide a full list of these measures at this point, she said that the measures at the sub-national level should comply with the basic principles at the national level.

54. Regarding EC questions 32-34, these were questions already received last year which implied a certain presumption by the European Communities. While welcoming the suggestions, China did not agree with the presumptions raised by the European Communities but was prepared to discuss any specific cases through other channels.

55. As regards the comments from Japan, her delegation would report these back to its capital if Japan could provide more detailed information.

56. Another representative of China said that regarding the US comment on the receipt of their submission, e-mails concerning this issue should be addressed to the desk officer responsible for TRIPS issues. This would give the delegation more time to respond to such queries.

57. Furthermore, in its intervention, the United States had misquoted the statement made by China by saying that "China needs more time to implement the TRIPS Agreement". In fact, his delegation had said that "we need to catch up yet we need time, understanding and support". With regard to the implementation of the TRIPS Agreement, China had honoured its commitments from day one of its accession to the WTO. China had revised thousands of laws and regulations. It had intensified its efforts to protect intellectual property rights. The comment regarding the need for more time related to the fact that China needed more time to correct the imperfection of the enforcement measures. It needed more time because China was a developing country and because, as China had always believed, IP protection was an issue very much related to development.

58. Before explaining why IP protection was development-related, he wanted to share with the Council one story. In recent days, a famous Chinese film star named LU Yi, which is pronounced like "Louis", had had a daughter and his fans had begun to discuss how to name this pretty girl on a website. Some suggested LU Tiantian or other pretty Chinese names for girls. One suggestion which attracted his attention was pronounced very much like the Chinese translation of "Louis Vuitton". He said that he had immediately written on the website: "Mr. LU, please refrain from considering this suggestion to name your girl 'Louis Vuitton' because it could entail a misunderstanding by EU officials and cause potential trouble for you in Europe. If you travel next time to Paris airport of Charles de Gaulle, you might face two options: either to change the name of your girl immediately or to have her confiscated by French Customs."

59. The purpose of sharing the above story was to tell Members how sensitive personnel like him, dealing with IP-related affairs in China, were to any issue that could give rise to potential problems. However, he would be ready to admit that, although a lot had been done on education, some people in China, like some living in the countryside, might not be aware of such problems. The reason was simple: IP was not a concept in a vacuum. It was a concept related to development. It was a concept related to particular development stages. It was a concept related to per capita GDP.

60. Just on the previous day, the Chinese National Bureau of Statistics had proudly declared that China's per capita GDP had now reached US$2,360. That was a great achievement and he felt very much encouraged. However, US$2,360 was less than 6% of the per capita GDP of the United States, less than 7% of Japan, less than 3% of Luxembourg, which enjoyed the highest level of per capita GDP among the EC Members, and less than 70% of Bulgaria, which had the lowest per capita GDP in the European Communities. He therefore urged the delegations who had taken the floor to compare the situation of IP protection in their countries when their per capita GDP had been US$2,360, with that in China now. He urged them to compare what they had been doing at that time on IP protection with what China was doing now, and more importantly, what China had done. Then, he said, they would have a better understanding of the situation China faced with regard to IP protection.

61. Having said that IP protection was development-related, he pointed out that piracy was not a problem existing only in developing countries including China. Piracy was a sin in human nature and common to all countries, both developed and developing. He referred Members to the International Herald Tribune report of 3 June 2008, in which Sir Hugh Laddie, a leading lawyer and former High Court judge of the United Kingdom, had said that China had become a "scapegoat" for the intellectual property problems in western countries. What he had meant by using the word "scapegoat" was that China was not "the largest source of pirated goods", as declared by some Members, but some other countries were, including some Members who had just made their comments. This involved some industries just mentioned by those Members, like computer software and films. For that, he would also refer Members to the survey by the Motion Picture Association of America (MPAA) just a few years ago, which demonstrated that their films were most seriously pirated not in countries of Asia, but in another country.

62. He said that he did not like the word "scapegoat" because his delegation knew better than anyone that China did have certain problems. He knew that China needed to do more to improve the situation, although it had already done a lot. So if Members asked whether China admitted that there were problems, yes it did. If Members asked whether China had done something to resolve those problems, yes it had. If Members asked whether China needed to do more to improve the situation, yes it did. However, if Members asked whether China could build Rome in one day, he would have to say "sorry we can't".

63. 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 2007 and the part of the minutes reflecting the discussions held under this agenda item would be attached.

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