

TRANSITIONAL REVIEW MECHANISM OF CHINA

Communication from the European Communities and their member States

By means of a communication from the Permanent Delegation of the European Commission dated 2 August 2002, the Secretariat has received the following contribution.

The Transitional Review Mechanism (TRM) for China is provided by paragraph 18 of China's Accession Protocol. The European Communities and their member States have identified the following overall themes which are submitted to the TRIPS Council.

I. TRANSPARENCY

1. The European Communities and their Member States (hereinafter referred to as the "EC") take the view that the protection of intellectual property is one of highest priorities for the European Union in its trade relations with the People's Republic of China (hereinafter referred to as "China"). China therefore is encouraged to report in a transparent way on all progress made towards implementing WTO obligations.

2. China recently notified its main dedicated intellectual property laws and regulations (Copyright Law, Patent Law, Trademark Law, Regulation on Computer Software protection, Regulation on protection of Layout-Designs and Regulation on Protection of New Plant Varieties) as well as responses to the "checklist of issues on enforcement". The EC have posed questions in the light of China's review of legislation and look forward to receiving a reply.

3. The EC looks forward to receiving supplementary notifications of relevant intellectual property laws and regulations as soon as they become available. In particular, the EC would be interested in viewing China's Implementing Regulations of the Copyright Law and of the Trademark Law. In addition, the EC would be most interested to learn how China provides for protection of undisclosed information (Article 39.3 of the TRIPS Agreement) and how China intends to comply with the provisions regarding the protection of geographical indications (Articles 22-24 of the TRIPS Agreement).

II. TRANSPOSITION

4. Over recent years, China has carried out considerable work to revise its intellectual property rights laws and administrative regulations to bring these into line with the TRIPS Agreement. The EC welcomes the efforts made by the Government of China.

5. While the framework of legislation protecting intellectual property is now - generally speaking - in line with international standards, the EC expresses its concern that there is a continued need for additional enforcement efforts by the Government of China. China needs to further strengthen its legislative framework for the enforcement of intellectual property rights and ensure the vigorous application of its enforcement legislation in order to reduce the existing high levels of piracy and counterfeiting.

6. The appropriate enforcement of the law remains erratic for several reasons: corruption of local authorities, high burden of proof for the plaintiff, low compensation in situations of proved infringement, rarely imposed prison terms and judges who tend to use minimum fines for cases relating to intellectual property rights infringement. The EU industry repeatedly complains about the fact that the damages and remedies are not a strong enough deterrent to efficiently combat the problem of counterfeiting and piracy.

7. The EC's technical co-operation and assistance programmes with the Chinese authorities on intellectual property matters will heavily be focussed on the issue of enforcement in the coming years.

III. UNEXPECTED DIFFICULTIES

8. Counterfeiting and piracy are well-established and hugely profitable industries in China. Both local and foreign intellectual property owners continue to suffer from widespread IPR violations. The EC is particularly worried by a relatively new trend of counterfeited pharmaceutical drugs. In addition to lost revenue for genuine industry, this issue has very serious implications in the area of public health and safety.

9. The EU industry encounters numerous difficulties in dealing with the problem of counterfeiting and piracy. And yet, no real curb on the problem is expected in the short term. This is due to two main reasons. First, the scale, capability and techniques of the counterfeiting industry have almost outstripped any official punitive action. Indeed, they are sometimes even better made than the originals and therefore harder to detect. Second, the piracy industry in China has grown into a vital shadow economy. By some estimates, piracy directly or indirectly employs between 3-5 million people, and brings in between \$40 and \$80 billion. At a time when unemployment is rising, experts say it is simply impossible to put a quick end to the piracy industry for reasons of social stability.

10. The EC believes that the importance is to progress to public awareness of the counterfeiting and piracy problem in China and to provide adequate training for police, customs and judges on enforcement of IPRs. The EC contends that the Chinese Government should strive for the elaboration of a comprehensive strategy for the enforcement of intellectual property rights, including but perhaps not limited to:

- increase resources for training of police and local officials;
- set up better co-ordination between the police and administrative enforcers;
- establish clear guidelines on sentencing, including compulsory jail terms for repeat offenders;
- order the destruction of discovered hauls of counterfeit products and the closure of manufacturing facilities that produce them;
- organise wider media campaigns to raise public awareness of IPR issues.

IV. SUCCESS STORIES

11. The fact that China has succeeded in such a relatively short term to align its intellectual property legislation with the minimum standards of protection of the TRIPS Agreement is already remarkable on its own. In some instances the newly promulgated intellectual property laws even go beyond WTO commitments. Two examples of this are: (i) the possibility by Chinese customs authorities to enforce anti-counterfeiting measures upon import and export whereas Article 51 of the TRIPS Agreement only provides in the obligation to adopt procedures for suspension of imported goods, and (ii) despite Article 41.5 of the TRIPS Agreement, China chooses to create specific intellectual property courts with specialised judges.

12. Moreover, China is undeniably making enormous efforts to raise awareness of WTO principles amongst Chinese officials, business and the legal profession and to encourage Chinese local authorities to adapt to the new environment. In the field of intellectual property, for instance, the Beijing and Shanghai city governments' attempts to make sure that their staff use only legal software products is certainly a step forward.

13. Newspaper reports regularly inform us of significant seizures of counterfeit or pirated goods. Recently we learnt - and it would appear that this is not an isolated event - that some 150 individual booksellers in the Shandong province organised an anti-piracy union to fight copyright infringement activities. Such initiatives clearly demonstrate awareness of the problem within the Chinese population.

14. The EC recognises China's legislative achievements over the last decade in promulgating numerous intellectual property laws and regulations and welcomes the recent creation of the National Anti-Counterfeiting Office. Furthermore, as Chinese industry is developing its own basis of intellectual property and, with greater attention being devoted to this issue in the mass media, there is growing recognition amongst Chinese companies of the importance of strong intellectual property rights enforcement. Taken as a whole, China clearly is making progress.
