

WORLD TRADE ORGANIZATION

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**Council for Trade-Related Aspects
of Intellectual Property Rights**

Original: English

REQUEST FOR INFORMATION PURSUANT TO ARTICLE 63.3 OF THE TRIPS AGREEMENT

Communication from the United States

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

The United States welcomes and appreciates China's ongoing efforts to inform WTO Members about its enforcement of intellectual property rights ("IPR"). In the interest of facilitating further transparency, my authorities have instructed me to request clarifications regarding specific cases of IPR enforcement that China has identified for the years 2001 through 2004, and other relevant cases. We make this request pursuant to Article 63.3 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement").

We recognize China's progress toward greater transparency in this area. In particular, China has identified numbers of specific judicial decisions and administrative rulings ("cases") reflecting the application of criminal, administrative, and civil remedies for IPR infringement in various public statements (such as the April 2005 State Council paper on China's IPR protection). We consider that these cases identified by China and other specific IPR enforcement cases affect rights of the United States and other Members under the TRIPS Agreement.

The goal of this request is to further enhance our understanding of IPR enforcement in China by clarifying and building upon information that China provided in the April 2005 paper and in other contexts, including TRIPS Council reviews. While this information has been helpful, it has come largely in the form of aggregate numbers that do not disclose the disposition of cases by legal basis, region, industry sector, or right holder nationality. Through this request, we hope to encourage the sharing of such information and thus gain a better understanding of such key features of IPR cases in China as the legal basis on which they have been decided and the remedies actually imposed on infringers.

With that goal in mind, I am attaching to this letter a list of six clarifications requested by my government concerning the specific cases identified by China for the years 2001 through 2004, as well as any comparable cases that China may have identified for that period or during 2005.

We understand that there may be a need for flexibility in connection with a request of this nature, given the scope of the issue and variations in the ways that governments and agencies collect information. In the event that any of the requested information does not exist or cannot be provided, we would welcome the opportunity to discuss those difficulties and work together to examine

alternatives. In addition, for greater convenience, we invite China to consider providing clarifications in the form of supplemental statistical data covering each of the areas listed in the attachment, rather than on a case-by-case basis.

The United States requests that China provide its written response on or before 23 January 2006. If additional time is needed to provide any requested information, I invite you to contact me so that we may reach some understanding. We look forward to receiving your reply.

Clarifications requested by the United States
concerning IPR Enforcement in specific cases in China

We would appreciate clarification of the following details with respect to the identified cases:¹

1. Legal Basis: To enhance our understanding of the various cases that China has identified as reflecting the application of remedies for IPR infringement, please identify the precise legal basis for any finding of IPR infringement(s) in the identified cases.² Please clarify how many of the identified matters were resolved on a basis other than IPR infringement (e.g., violation of a licensing measure, illegal business operations, fake and shoddy goods, pornography, or other basis).
2. Remedies, Provisional Measures, and Repeat Infringers: To our knowledge, China has not previously provided comprehensive information about remedies (e.g., criminal penalties, civil damages, injunctions ordering parties to desist from infringements) and provisional measures (e.g., to prevent an infringement or preserve relevant evidence) that its authorities have imposed in judicial and administrative IPR infringement cases. Please clarify the precise nature and amount of all the remedies and provisional measures imposed, if any, in the identified cases.³ In addition, please provide any information that would assist in identifying matters that involved one or more repeat infringers.

¹ By "the identified cases," we mean the specific cases that China itself has previously identified through statistics as reflecting its application of criminal, administrative, and civil remedies for IPR infringement in China for the years 2001 through 2004. See, e.g., State Council Information Office, New Progress in China's Protection of Intellectual Property Rights, 25 April, 2005, available at <http://www.china-un.ch/eng/bjzl/t193102.htm> (referring to, among others, (a) administrative cases of copyright infringement; (b) administrative cases of trademark infringement and counterfeiting; (c) IPR-related civil cases of first instance and criminal cases of first instance involving IPR infringement; and (d) cases of IPR infringement in import and export handled by Chinese customs); Transitional Review under Section 18 of the Protocol on the Accession of the People's Republic of China, IP/C/34, paras. 6, 52-55, 62, and 75-76 (9 December, 2004) (also identifying cases); Transitional Review under Section 18 of the Protocol on the Accession of the People's Republic of China, IP/C/31, paras. 49, 54, 56 (10 December, 2003) (same); Review of Legislation, IP/Q/CHN/1, section I.C (10 December, 2002) (same).

To the extent that China has also identified comparable cases in 2005, or any additional concluded or pending IPR cases that reflect the application of criminal, administrative, and civil remedies during 2001-2004, we would also appreciate clarification of the details of those cases. For purposes of this request, please treat any such cases as part of "the identified cases."

² For criminal cases, please clarify the specific article(s) of the Criminal Law that the defendant was charged with violating, and whether the defendant was convicted of that charge. For civil or administrative matters, please clarify the infringement(s) found according to the relevant specific provisions of law. (For example, in copyright matters, please refer if possible to the specific sub-paragraph(s) of Article 46 the Copyright Law, Article 47 the Copyright Law, or both.) The goal of this request is to understand the correspondence, if any, between the categories of cases that China has previously identified (for example, the category of cases "involving" trademark or copyright infringement) and the relevant provisions of China's law.

³ Please refer to the following categories as relevant: (a) the amount and value of infringing product confiscated and the disposition of confiscated products (e.g., amounts destroyed, resold, turned over to the right holder, given to charitable organizations etc.); (b) the amount of materials and implements confiscated (e.g., because of their use in the creation of infringing goods) and the disposition of those materials and implements (e.g., amounts destroyed, resold, given to charitable organizations, etc.); (c) the amount of monetary fine, restitution, and/or damages imposed; (d) the term of imprisonment imposed; (e) any other remedy imposed (e.g., closure of business, including length of closure; public apologies); (f) the amount of any enhancement of remedies imposed on repeat infringers; and (g) any injunction ordering the infringer or others to desist from an infringement or related activity, whether imposed under Article 49 of the Copyright Law, Article 57 of the Trademark Law, or any other relevant provision of law. Please also clarify whether the remedy was actually imposed or was suspended, reversed, modified, or for other reasons not fully executed.

3. Location, Year, and Competent Authority: China has sometimes provided information on IPR enforcement matters broken down by location, year, and competent authority. (Examples include the 2004 statistics published by the National Copyright Administration and the annual report on China's trademarks by the State Administration for Industry and Commerce.) We find this helpful, and request similar clarification for each of the identified cases. In particular, we request the name of the authorities responsible for handling and resolving the matter;⁴ the year in which the matter was commenced and resolved; and the province, municipality, region, or other subdivision in which the matter was handled.⁵
4. Transfer of Cases to Criminal Authorities: China has previously informed the TRIPS Council of the aggregate numbers of trademark and copyright cases transferred to criminal authorities for certain years. Please provide the details of these and any other identified cases that involved transfers to criminal authorities. In particular, please identify the transferring authority (e.g., Copyright Administration, Ministry of Culture, Administration for Industry and Commerce, customs), the amount of illegal business volume and illegal gains, and whether criminal authorities in fact investigated and prosecuted.⁶
5. Nationals of Other Members/Countries: We note that China has provided some statistics that separately identify cases involving foreigners.⁷ For all of the identified cases where such information exists, please clarify whether the right holders are nationals of other WTO Members or other countries, and if possible identify the Member/country.⁸
6. Product: We would appreciate clarification of the specific type(s) of product(s) and operations (retail/manufacturing/distribution) involved in all of the identified cases where such information exists.⁹

⁴ Wherever possible, please refer to the specific authority involved (e.g., the Beijing Municipal People's Procuratorate). For matters resolved by courts, please refer to the court and division.

⁵ If such information exists, please provide, or explain how one can obtain from public records, a list of the identified cases for each authority and jurisdiction.

⁶ By "details", we also mean to include the various information requested in items 1-3 and 5-6. In particular, please provide information on the offence charged and convicted; the scope of operations (retail/manufacturing/distribution); involvement of foreign right holders (and if so whose); whether right holders were informed of these criminal cases, and penalties imposed (including any civil compensation).

⁷ For example, this was true of recently published statistics on administrative copyright infringement cases and civil IPR infringement cases.

⁸ In matters involving multiple right holders, please clarify the numbers of US, other foreign, and domestic right holders, and if possible the amount of infringing product attributable to each.

⁹ If copyright and/or related rights are involved, please clarify as far as possible whether the products involved were sound recordings, motion pictures, business software, entertainment software, books, journals, databases or other types of products, and the number of copies of each involved. If possible, please identify these by nationality of the right holder. In other matters, please clarify as far as possible the specific type(s) of goods involved in the infringement (e.g., items of apparel, pharmaceuticals, toys, sporting goods, consumer electronic devices, cigarettes).

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

Communication from China

The following communication addressed to the Delegation of the United States, dated 22 December 2005, is being circulated at the request of the Delegation of China. It contains a response to a request from the United States for information pursuant to Article 63.3 of the TRIPS Agreement, circulated in document IP/C/W/461.

1. I have the honour to acknowledge the receipt of your letter dated 25 October 2005 and have taken note of the request from the United States as contained therein for information on cases of intellectual property rights (IPR) enforcement of China for the years 2001 through to 2004 and other relevant cases. In pursuance to the provisions on the rights and obligations under Article 63.3 of the TRIPS Agreement, I am authorized by the Government of China to provide the following response to you with regard the above-mentioned request.
2. The Government of China has always attached great importance to the protection of IPRs. On the issue of transparency, China believes that this is essential to ensure the predictability, credibility and due functionality of the IPR protection system. China has strictly fulfilled all its WTO obligations under Article 63 of the TRIPS Agreement. China's competent domestic IPR authorities have also made relevant information publicly available through their official websites, newspapers, magazines and other proper channels. In addition, China has provided much information concerning IPR legislations and their enforcement through its bilateral exchange and cooperation activities with WTO Members.
3. Regarding the request by the Government of the United States as contained in your letter, China would like to make the following comments and seek relevant clarifications from the United States.
4. Firstly, Article 63.3 of the TRIPS Agreement contains two sentences. China is always ready to provide, in response to a written request from any WTO Member, information referred to in Article 63.1 and the first sentence of Article 63.3. However, it is necessary to put it clearly that since China does not follow the common law system, it is not in a position to provide any such "*judicial decisions and administrative rulings of general application*" as requested by the United States and within the meaning of Article 63.1 of the Agreement. China would therefore like to ask the United States to clarify the legal basis of such a request, i.e., to explain explicitly on which sentence of Article 63.3 of the TRIPS Agreement the request is based, the first or the second.

5. Secondly, as it is required under the second sentence of Article 63.3 of the Agreement, a WTO Member shall have "*reason to believe that ... affects its rights under this Agreement*". There are no reasons and facts mentioned in your letter that could prove that any rights of the United States under the Agreement have been affected. In this regard, China needs to know the reason why the United States so believes and how the cases which would probably be mentioned in your letter would affect its rights under the Agreement.

6. Thirdly, the second sentence of Article 63.3 also provides that a Member could only request information on "*a specific judicial decision or administrative ruling or bilateral agreement*." China believes that those "cases of intellectual property rights enforcement identified by China for the years 2001 through to 2004 and other relevant cases" referred to in your letter are not "*a specific case*". China therefore invites the United States to identify those specific cases within the meaning of the second sentence of Article 63.3 of the Agreement.

7. China holds that any WTO Member should interpret and apply international conventions, including the TRIPS Agreement, in good faith. China recognizes WTO Members' rights under Article 63.3 of the TRIPS Agreement. However, China believes that any request under Article 63.3 should be consistent with the requirements as contained in that provision.

8. Furthermore, China has noted that Article 63.3 of the TRIPS Agreement only refers to a Member's right to request information, but there is no mention of a corresponding obligation of the requested Member to actually follow the request. Nor does it provide any formality and time requirement for any possible response. Based upon this understanding, China would naturally believe that any possible response from China to the request, if applicable and necessary, will not affect any rights of China under the Agreement.

9. China is willing to enhance cooperation with all WTO Members, including the United States, with respect to the protection of IPRs. It is China's belief that sufficient clarification to be provided by the United States to China on the above-mentioned points in writing will be helpful for the latter to offer its cooperation for the benefit of the former in the implementation of Article 63.3 of the TRIPS Agreement. China is looking forward to receiving an early response from the United States.

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

Communication from the United States

Addendum

The following communication addressed to the Delegation of China, dated 20 January 2006, is being circulated at the request of the Delegation of the United States. It follows up the response from China (IP/C/W/465) to a request from the United States for information pursuant to Article 63.3 of the TRIPS Agreement (IP/C/W/461).

1. Thank you for your letter of 22 December 2005, concerning the US request of 25 October 2005 (document IP/C/W/461) for clarifications regarding specific cases of IPR enforcement that China has identified for the years 2001 through 2004, and other relevant cases. In the spirit of cooperation and mutual understanding, my Government is pleased to respond to your requests for clarification as follows.

2. First, we are pleased to confirm that the US request falls within the scope of requests permitted by the second sentence of Article 63.3 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"). To the extent that the cases identified by China include final judicial decisions and administrative rulings of general application, the US request also falls within the scope of requests permitted by the first sentence of Article 63.3.

3. Second, we are pleased to further elaborate on why the identified cases affect our rights under the TRIPS Agreement. The rights of WTO Members with respect to enforcement of intellectual property rights are set out in Part III of the TRIPS Agreement. They include, among others, a right under Article 41.1 to the availability in China of enforcement procedures that "permit effective action against any act of infringement" and "remedies which constitute a deterrent to further infringement".

4. As explained in our letter of 25 October, China itself has identified the cases in question as being related to the question of its compliance with the TRIPS Agreement. In successive TRIPS Council reviews, China cited these same cases to other WTO Members in response to questions regarding China's implementation of enforcement provisions of the TRIPS Agreement.¹

¹ See Transitional Review under Section 18 of the Protocol on the Accession of the People's Republic of China, IP/C/34, paras. 6, 52-55, 62, and 75-76 (9 December 2004) (identifying cases); Transitional Review

5. Your Government further confirmed the relevance of this body of cases just prior to our request, when it distributed a white paper referencing them to the TRIPS Council.² At that time, China strongly urged Members who had criticized China's IPR enforcement to study the white paper for evidence of China's enforcement efforts.³ Following that encouragement, our request reflects our strong desire to cooperatively examine and better understand the facts that your Government has presented to the TRIPS Council.

6. In short, my Government has ample reason to believe that these cases affect rights of the United States and other WTO Members under the TRIPS Agreement because your Government has told Members as much, and even urged Members to study them. We believe that our Governments can and should work to enhance mutual understanding of the true significance of these cases in light of the requirements of Part III of the TRIPS Agreement.

7. Third, we are perplexed by your request that the United States identify "a specific judicial decision or administrative ruling." China, not the United States, identified this set of specific cases to the TRIPS Council. Since your Government has already confirmed the existence of these cases, there can be no doubt that each involves "a specific judicial decision or administrative ruling" by which it was judicially or administratively disposed of, in conformity with China's applicable laws. My Government simply requests that China reveal precisely what those dispositions were. Consistent with the terms of Article 63.3, we would thus appreciate being informed in sufficient detail of "such specific judicial decisions or administrative rulings". To facilitate this, our letter of 25 October details the six clarifications we are requesting regarding the disposition of these cases.

8. We have noted with concern your statement that "Article 63.3 of the TRIPS Agreement only refers to a Member's request for information, but there is no mentioning of a corresponding obligation of the requested Member to actually follow the request". As you state, Members should interpret and apply Article 63 in good faith. We assure you that our request was made in good faith and a spirit of cooperation, and we look forward to China's full response in the same spirit.

9. Finally, we renew the invitation in our letter of 25 October to discuss difficulties that may arise in the event that any of the requested information does not exist or cannot be provided, and, if necessary, to work together to examine alternatives. My Government wishes to work cooperatively with yours to enhance mutual understanding of these issues, and we hope that you will take advantage of the opportunity to do so.

under Section 18 of the Protocol on the Accession of the People's Republic of China, IP/C/31, paras. 49, 54, 56 (10 December 2003) (same); Review of Legislation, IP/Q/CHN/1, section I.C (10 December 2002) (same).

² State Council Information Office, New Progress in China's Protection of Intellectual Property Rights (referring to, among others, (a) administrative cases of copyright infringement; (b) administrative cases of trademark infringement and counterfeiting; (c) IPR-related civil cases of first instance and criminal cases of first instance involving IPR infringement; and (d) cases of IPR infringement in import and export handled by Chinese customs).

³ See Transitional Review under Section 18 of the Protocol on the Accession of the People's Republic of China, IP/C/39, para. 65 (recounting that the representative of China "urged those Members who had submitted questions to study the responses in detail and to read the 'White Paper' his delegation had submitted" and stated that "[h]is Government had been breaking its back fighting against domestic IP infringement".)

WORLD TRADE ORGANIZATION

IP/C/W/502
11 October 2007

(07-4367)

Council for Trade-Related Aspects
of Intellectual Property Rights

Original: English

TRANSITIONAL REVIEW MECHANISM OF CHINA

Communication from the United States

By means of a communication from the delegation of the United States, dated 7 October 2007, the Secretariat has received the following contribution in the context of the transitional review mechanism under Section 18 of China's Protocol on Accession.

I. GENERAL

1. The United States appreciates China's efforts to improve the transparency of its legislative and rule making process. Please explain how China implements its system for "ensuring the participation of the people in lawmaking" under the Law on Legislation in the intellectual property (IP) context. The United States would particularly be interested in an explanation as to whether China requires that the public be formally provided with draft IP-related laws and regulations for comment, and how China takes comments from the public into account before it finalizes and implements those laws and regulations.
2. Please provide details about the notice and comment periods used by the Legislative Affairs Office of the State Council and other Chinese agencies during the past year as they relate to draft IP-related laws and regulations.
3. Please explain how China seeks to avoid inconsistencies among the different IP-related agencies as to when and from whom they solicit comments, and how they take into account comments, when more than one agency is drafting and issuing a particular measure.
4. Please explain whether the public will have the opportunity to comment on IP-related laws such as the recent draft amendments to the patent and trademark laws.

II. LEGISLATION

5. We appreciate that China has provided a summary of legislative priorities in China's 2007 Action Strategy on intellectual property rights (IPR) protection. Could China provide an update on the progress of its legislative initiatives, particularly with regard to reform of patent, trademark and copyright measures? Is China considering any further new IPR measures not mentioned in the Action Strategy?

III. ENFORCEMENT

6. With regard to case initiation standards for criminal IP investigations, are there uniform guidelines/procedures applicable to Public Security Bureaus (PSB) throughout the whole country? If so, please identify them.

7. We understand that in certain jurisdictions the PSB and the Procuratorates have adopted case initiation standards that allow for a certain latitude in investigating potential crimes, such as by investigating on suspicion or on the basis of statistical sampling. One such example is Jiangsu province. Is China considering making these pilot programs more comprehensive? If so, please explain.

8. Has there been any further discussion of clarifying the role of private investigators in obtaining evidence to be used in civil court proceedings? We note that there has been a trial effort in Shenzhen to compel exchange of evidentiary material in intellectual property cases and we are interested in knowing of further efforts in that area.

9. Are there any legislative proposals under discussion that would enhance the power of Chinese judges to enforce judicial orders?

10. The United States appreciates that China has provided a summary of enforcement priorities in China's 2007 Action Strategy on IPR protection. Could China provide further information on specific enforcement initiatives that are under way or under development regarding (a) counterfeit products that pose health and safety threats, such as fake pharmaceuticals, agricultural chemicals, electronics, etc., (b) piracy and counterfeiting on the Internet, (c) commercial production and sale of pirated optical disks, and (d) acts of unfair competition involving the intentional registration of infringing company names and the misuse of such registrations in China?

11. US customs data shows that China is by far the largest source of counterfeit goods seized at US borders. The United States is pleased to have reached a bilateral customs agreement with China to enhance cooperation in this area. Could China identify any new efforts that it is undertaking to reduce the outbound flow of counterfeit goods across China's borders?

12. On 1 March 2006, China provided the following data on criminal cases in 2005, broken down by article of the Criminal Law. Please fill in the missing information and provide the corresponding data for 2006 and, to the extent available, for 2007.

China 2005 Criminal Enforcement Data

Article of Criminal Law	Court cases initiated	Court cases resolved	Persons convicted or acquitted	Persons receiving suspended sentences	Persons receiving imprisonment less than 5-yr	Persons receiving imprisonment more than 5 yr
213 (manufacture of counterfeit TM goods)	221	213	324	*	149	9
214 (sale of counterfeit TM goods)	93	94	124	*	54	3

Article of Criminal Law	Court cases initiated	Court cases resolved	Persons convicted or acquitted	Persons receiving suspended sentences	Persons receiving imprisonment less than 5 yr	Persons receiving imprisonment more than 5 yr
215 (manufacture of counterfeit TM labels)	134	128	214	*	110	1
217 (reproduction and distribution of pirated copyright works)	28	25	29	*	8	1
218 (distribution of pirated copyright works)	6	6	8	6	2	0
219 (violation of trade secrets)	41	38	41	*	28	0
142-149 (offenses relating to fake and shoddy goods)	1117	1121	1942	*	1074	174

* data to be provided by China

13. On 25 October 2005, in document IP/C/W/461, the United States requested certain information regarding specific cases that China has identified through statistics as reflecting its application of criminal, administrative, and civil remedies for IPR infringement in China for the years 2001 through 2004. On 22 December 2005, we received a letter from China (IP/C/W/465) concerning our request. On 20 January 2006, in document IP/C/W/461/Add.1, the United States replied to China's letter and indicated that the United States looked forward to China's full response to our request for information. To date, the United States has received no further response from China. The United States takes this opportunity to reiterate the US request for information contained in document IP/C/W/461, and requests that China also provide information for the years 2005, 2006 and, to the extent available, for 2007.

IV. PATENTS

14. Because the State Intellectual Property Office (SIPO) does not provide for the substantive examination of utility model and design patent applications, many companies have complained that their utility model or designs have been misappropriated by unscrupulous entities that take the models and designs, file for and obtain patent rights, and then use these rights to bring infringement actions against them. Please explain how the recently issued administrative rule on the Standardization of Patent Applications and other actions undertaken by SIPO and other relevant IP agencies will alleviate these concerns.

15. With regard to Article 48(2) of the draft third amendments to the Patent Law of the People's Republic of China, what will be the standards used to determine when the exercise of a patent is conduct that "eliminates [or] restricts competition" that would justify the issuance of a compulsory license?

16. Is consideration being given to any changes to the scope of patentability of software inventions? Please explain.

V. COPYRIGHT

17. Have there been any court decisions, judicial interpretations, judicial notices or guidance, law enforcement guidance, State Council regulations, administrative rules, including local legislative enactments or regulations, or other legal documents interpreting Article 4 of the Copyright Law of the People's Republic of China, which was adopted at the 15th Session of the Standing Committee of the Seventh National People's Congress on 7 September 1990, and amended according to the Decision on the Revision of the Copyright Law of the People's Republic of China, adopted at the 24th Session of the Standing Committee of the Ninth National People's Congress on 27 October 2001? If so, please identify them, and indicate whether China has made translations of them available to WTO Members in accordance with China's commitment in paragraph 334 of the Working Party Report accompanying China's Protocol of Accession.

18. With regard to copyright piracy on the Internet, please provide a detailed description of:

- (a) the legal steps necessary to expeditiously take down infringing content and/or links after receiving proper notice from recognized right holders' representatives;
- (b) all remedies available to suspend or terminate the accounts of repeat infringers and the consequences of recidivism; and
- (c) the remedies available to provide identifying information about direct infringers to right holders or their representatives.

19. Please provide examples of cases where copyright piracy on the Internet has been addressed using the above-referenced legal procedures, including specific efforts taken to protect foreign right holders and the results of those efforts.

20. With regard to internet piracy, please clarify how, if at all, the criminal prosecution/conviction thresholds established in the judicial interpretations issued in 2004 and 2007 apply to copyright infringements committed or taking place in the Internet environment.

21. Right holders have noted that recent guidance from the National Copyright Administration of China (NCAC) suggests that notices of claimed infringing material on the Internet be sent in hard copy rather than electronic form. Right holders are concerned that this procedure is less timely and efficient than electronic notices. Could China clarify the acceptability of electronic notices of claimed infringement under Chinese law?

22. Please describe any campaigns currently under way or planned to combat textbook piracy on university campuses that might augment actions by NCAC, the General Administration of Press and Publication and the Ministry of Education in Shanghai and Wuhan. Will responsible authorities undertake other enforcement efforts timed to coincide with the start of university terms? Please provide concrete examples of these campaigns and other enforcement efforts, including specific steps taken to protect foreign right holders against textbook piracy.

23. Please describe what remedies, if any, are available, or will be available, for unauthorized internet retransmissions and/or transmissions of coverage of 2008 Summer Olympic events in Beijing?

VI. TRADEMARKS/GEOGRAPHICAL INDICATIONS

24. The United States notes that China has not yet fully responded to questions posed by the United States in connection with last year's transitional review before this Council regarding programs of SAIC, AQSIQ, and MOFCOM that appear to provide certain benefits to designated Chinese trademarks, which are variously termed "famous trademarks," "famous brands," "renowned brands," "export brands," etc. The United States would appreciate full responses to these questions, including China's position regarding their compliance with China's TRIPS Agreement national treatment obligations.

25. There have been reports of an increasingly large number of abusive trademark applications filed by unauthorized entities for other companies' recognized brands, particularly in the case of well-known brands and up-and-coming brands. Please describe the steps the State Administration for Industry and Commerce is taking to address this issue at the examination and opposition and cancellation stages.

26. The United States appreciates China's response to question 18 of document IP/C/W/482. The United States would like to clarify that response. Would a trademark for "gloves" (in group 2510) be cited against an application for the identical trademark for "scarves" (in group 2511)? If not, is it because "gloves" and "scarves" fall into two separate groups? Please explain.

27. In accordance with China's Trademark Law, a geographical indication (GI) can be protected as a certification trademark or collective trademark. The China Trademark Office (CTMO) therefore is the regulatory agency in charge of registration and management of GIs. However, according to the Regulations on the Protection of Geographical Indication Products, issued by the State Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) effective 15 July 2005, AQSIQ is the government agency in charge of GIs, which should examine and confirm the registrations of GIs. With regard to this type of situation, Article 87 of the Law on Legislation of the People's Republic of China prescribes in relevant parts that:

If any of the following circumstances occurs concerning a law, administrative regulation, local regulation, autonomous regulation, special rule, administrative rule or local rule, the relevant body shall amend or repeal it in accordance with the authority specified in Article 88 of This Law: ...

(ii) *A law on a lower level contravenes the law on a higher level;*

(iii) *Discrepancies exist between different rules concerning a similar matter, and one of the rules should be amended or withdrawn pursuant to a ruling made by the relevant body; . . .*

As an administrative rule, it would appear that AQSIQ's Regulations on the Protection of Geographical Indication Products conflict with the higher level law, the Trademark Law. When will this administrative rule be amended or repealed to conform with the higher level Trademark Law, or will appropriate harmonizing legislation be adopted to reflect AQSIQ's concerns and interests in this area?

28. What exactly are the GIs that should be registered? Is it a certification/collective trademark at the CTMO or other distinguishing indication of source at the AQSIQ? What are the differences

between these two types of registrations, especially in respect of enforcement, i.e., administrative (including Customs) enforcement, civil enforcement and criminal enforcement?

29. Due to the different administrative management procedures between the CTMO and AQSIQ, there exist conflicting GIs at CTMO and AQSIQ because they were registered by different registrants. Under the co-existence of China's Trademark Law and the AQSIQ Regulations on the Protection of Geographical Indication Products, how can the problem of conflicting registrants be solved? Which right takes priority and under what circumstance?

30. Is it necessary for a registered GI (certification trademark or collective trademark) to be registered at the AQSIQ?

31. Is it necessary for a licensed GI (certification trademark or collective trademark) user to register the license with the AQSIQ?

32. Please explain whether national treatment is applied for foreign GI's?

33. Is there a public database for GIs at the AQSIQ, such as the one that exists for trademarks?

VII. DATA EXCLUSIVITY

34. Please advise how China's drug registration regulation is administered and what are the requirements of SFDA for clinical test data to be afforded data exclusivity.

35. Please advise the manner in which data exclusivity is granted including if there are forms to complete, and if there is a record of an administrative decision where data exclusivity has been granted. Please provide copies of any such forms or approvals.

36. Please advise of the total number of data exclusivity grants provided by SFDA including the numbers of data exclusivity grants provided to foreign and domestic companies.
