

**OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

[Docket No. WTO/DS-362]

**WTO Dispute Settlement Proceeding
Regarding China—Measures Affecting
the Protection and Enforcement of
Intellectual Property Rights**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that in accordance with the *Marrakesh Agreement Establishing the World Trade Organization* (“WTO Agreement”), at the request of the United States the WTO Dispute Settlement Body has established a dispute settlement panel to review the U.S. claims concerning certain measures pertaining to the protection and enforcement of intellectual property rights in China. The panel request may be found at <http://www.wto.org> contained in a document designated as WT/DS362/7. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute, comments should be submitted on or before November 16, 2007, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) Electronically, to FR0707@ustr.eop.gov, with “China IPR Protection and Enforcement (DS362)” in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: Steven F. Fabry, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395-3150.

SUPPLEMENTARY INFORMATION: Pursuant to section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)), USTR is providing notice that at the request of the United States the WTO Dispute Settlement Body on September 25, 2007, established a dispute settlement panel pursuant to the *WTO Understanding on Rules and Procedures Governing the Settlement of Disputes* (“DSU”). Such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and

recommendations within approximately nine months after it is established.

Major Issues Raised by the United States

The first matter on which the United States has requested the establishment of a WTO dispute settlement panel concerns the thresholds that must be met in order for certain acts of trademark counterfeiting and copyright piracy to be subject to criminal procedures and penalties. China has established these thresholds through the following measures, as well as any amendments and related or implementing measures: the Criminal Law of the People’s Republic of China, in particular Articles 213, 214, 215, 217, 218, and 220; and two interpretations by the Supreme People’s Court and the Supreme People’s Procuratorate on several issues of concrete application of law in handling criminal cases of infringing intellectual property (one adopted on November 2, 2004, and the other adopted on April 4, 2007). It appears that certain acts of trademark counterfeiting and copyright piracy occurring on a commercial scale in China are not subject to criminal procedures and penalties in China. China’s measures appear to be inconsistent with China’s obligations under Articles 41.1 and 61 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* (“TRIPS Agreement”).

The second matter on which the United States has requested the establishment of a WTO dispute settlement panel concerns goods that infringe intellectual property rights that are confiscated by Chinese customs authorities, in particular the disposal of such goods following removal of their infringing features. In this regard, the measures at issue include the following, as well as any amendments and related or implementing measures: the Regulations of the People’s Republic of China for Customs Protection of Intellectual Property Rights, in particular Chapter 4 thereof, the Implementing Measures of Customs of the People’s Republic of China for the Regulations of the People’s Republic of China on Customs Protection of Intellectual Property Rights, in particular Chapter 5 thereof, and the General Administration of Customs Announcement No. 16 (April 2, 2007). It appears that, because of these measures, the customs authorities appear to be required to give priority to options for disposal of goods that infringe intellectual property rights that would allow such goods to enter the channels of commerce (for instance,

through auctioning the goods after removing their infringing features). The requirement that infringing goods be released into the channels of commerce under the circumstances set forth in the measures at issue appears to be inconsistent with China’s obligations under Article 59 of the TRIPS Agreement.

The third matter on which the United States has requested the establishment of a WTO dispute settlement panel concerns China’s denial of the protection of its Copyright Law to creative works of authorship (and, to the extent Article 4 of the Copyright Law applies to them, sound recordings and performances) that have not been authorized for, or are otherwise prohibited from, publication or distribution within China. For example, it appears that works that are required to undergo censorship review (or other forms of pre-publication or pre-distribution review) before entering the Chinese market are not protected by copyright before the review is complete and publication and distribution within China has been authorized. In this regard, the measures at issue include the following, as well as any amendments and related or implementing measures:

- The Copyright Law, in particular Article 4;
- the Criminal Law, the Regulations on the Administration of Publishing Industry, the Regulations on the Administration of Broadcasting, the Regulations on the Administration of Audiovisual Products, the Regulations on the Administration of Films, and the Regulations on the Administration of Telecommunication;
- the Regulations on Administration of the Films Industry
- the Administrative Regulations on Audiovisual Products;
- the Administrative Regulation on Publishing;
- the Administrative Regulations on Electronic Publications;
- the Measures for the Administration of Import of Audio and Video Products;
- the Procedures for Examination and Approval for Publishing Finished Electronic Publication Items Licensed by a Foreign Copyright Owner;
- the Procedures for Examination and Approval of Importation of Finished Electronic Publication Items by Electronic Publication Importation Entities;
- the Procedures for Recording of Imported Publications;
- the Interim Regulations on Internet Culture Administration; and
- the Several Opinions on the Development and Regulation of Network Music.

It appears that, because of the Copyright Law, authors of works whose publication or distribution has not been authorized or is otherwise prohibited

appear not to enjoy the minimum standards of protection specially granted by the *Berne Convention for the Protection of Literary and Artistic Works (1971)* (the "Berne Convention") in respect of those works (and may never enjoy such protection if the work is not authorized, or is not authorized for distribution or publication in the form as submitted for review). In addition, the rights of authors of works whose publication or distribution is required to undergo pre-publication or pre-distribution review appear to be subject to the formality of successful conclusion of such review. The foregoing appears to be inconsistent with China's obligations under Articles 9.1, 41.1 and 61 of the TRIPS Agreement. Furthermore, to the extent that the Copyright Law also denies the protection of certain rights to performers and producers of sound recordings during the period of any pre-publication or pre-distribution prohibition, the Copyright Law appears to be inconsistent with China's obligations under Articles 14, 41.1 and 61 of the TRIPS Agreement.

In addition, it appears that the measures at issue provide different pre-distribution and pre-authorization review processes for Chinese nationals' works, performances (or their fixations) and sound recordings than for foreign nationals' works, performances (or their fixations) and sound recordings. To the extent that these different processes, taken together with Article 4 of the Copyright Law, result in earlier or otherwise more favorable protection or enforcement of copyright or related rights for Chinese authors' works, Chinese performers' performances (or their fixations) and Chinese producers' sound recordings than for foreign authors' works, foreign performers' performances (or their fixations) and foreign producers' sound recordings, the measures at issue appear to be inconsistent with China's obligations under TRIPS Agreement Articles 3.1, 9.1, 41.1 and 61.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) Electronically, to FR0707@ustr.eop.gov, with "China IPR Protection and Enforcement (DS362)" in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395-3640, with a confirmation copy sent electronically to the electronic mail address above.

USTR encourages the submission of documents in Adobe PDF format as attachments to an electronic mail.

Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and "BUSINESS CONFIDENTIAL" must be marked at the top and bottom of the cover page and each succeeding page. Persons who submit confidential business information are encouraged also to provide a non-confidential summary of the information.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

- (1) Must clearly so designate the information or advice;
- (2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and
- (3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions; the submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the public file (Docket WTO/DS-362, China

IPR Protection and Enforcement Dispute) may be made by calling the USTR Reading Room at (202) 395-6186.

Daniel Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 204-3, SEC File No. 270-42, OMB Control No. 3235-0047.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The title for the collection of information is "Rule 204-3 (17 CFR 275.204-3) under the Investment Advisers Act of 1940" (15 U.S.C. 80b). Rule 204-3, the "brochure rule," requires an investment adviser to deliver their brochure to their new clients or prospective clients before or at the start of the advisory relationship. The brochure assists the client in determining whether to retain, or continue employing, the adviser. Rule 204-3 also requires that an investment adviser deliver, or offer in writing to deliver upon written request, the brochure to their existing clients annually in order to provide them with current information about the adviser. Under rule 204-3, the investment adviser must furnish the required information to clients and prospective clients by providing either a copy of Part II of Form ADV, the investment adviser registration form, or a written document containing at least the information required by Part II of Form ADV. This collection of information is found at 17 CFR 275.204-3 and is mandatory.

The respondents to this information collection are investment advisers registered with the Commission. Our latest data indicate that there were