The Football Association Premier League Limited et al v. Youtube, Inc. et al Doc. 313 Att.

Schapiro Exhibit 110 continued

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it removes from the "encouraged" category projects of foreign-invested enterprises that export all of their production.

Beginning in 2006, the United States and U.S. industry became particularly concerned about new restrictions on investment being proposed and implemented by China. Often, these restrictions are accompanied by other problematic industrial policies, such as the increased use of subsidies, preferences for using domestic rather than imported goods, and the development of China-specific standards.

One example can be found in the *State Council Opinions on the Revitalization of the Industrial Machinery Manufacturing Industries*, issued in June 2006. This measure identifies 16 types of equipment manufacturing as the focus of a new initiative, including large equipment for clean and efficient power generation, critical semiconductor manufacturing equipment, civilian aircraft and aircraft engines, pollution control equipment, textiles machinery and large excavators. The new initiative calls for a variety of policy supports designed to promote, develop and expand the market share of domestic companies in these sectors, including preferential import duties on parts and material needed for research and development, encouragement for procuring domestically manufactured new major technical equipment, a dedicated fund to facilitate capital market financing for domestic firms, and strict review of imports. At the same time, the measure indicates that new controls on foreign investment are being contemplated for these sectors, including new approval requirements when foreign entities seek majority ownership or control and the strengthening of the management of equipment and machinery imports.

In August 2006, China made a further move toward a more restrictive investment regime when it issued – without advance notice or an opportunity for public comment – new regulations on mergers and acquisitions (M&A regulations) involving foreign investors. These regulations were the joint effort of MOFCOM, SAT, SAIC, the State-owned Assets Supervision and Administration Commission, the China Securities Regulatory Commission and the State Administration of Foreign Exchange. The regulations strengthen MOFCOM's supervisory role over foreign investment, in part by requiring MOFCOM's approval of M&A transactions that it believes impact "national economic security" or involve famous Chinese brands. The regulations also place MOFCOM in the role of determining if the domestic acquisition target has been appropriately valued.

In November 2006, the NDRC released a five-year plan on foreign investment, which promised greater scrutiny over foreign capital utilization. This plan calls for the realization of a "fundamental shift" from "quantity" to "quality" in foreign investment from 2006 to 2010, with the state's focus changing from shoring up domestic capital and foreign exchange shortfalls to introducing advanced technology, management expertise and talent. The plan also directs that more attention be paid to ecology, the environment and energy efficiency and demands tighter tax supervision of foreign enterprises. The new policy is intended to restrict foreign enterprises' acquisition of "dragon head" enterprises, prevent the "emergence or expansion of foreign capital monopolies," protect national economic security, particularly "industry security," and prevent "abuse of intellectual property."

VIA01918145

In December 2006, the State Assets and Supervision and Administration Commission (SASAC), charged with overseeing China's interests in state owned enterprises, published an expansive list of sectors that it deemed critical to the national economy, including "pillar" industries such as equipment manufacturing, automotive, electronic information, construction, iron and steel, non-ferrous metal, chemical, survey and design, and science and technology industries. SASAC committed to restrict foreign participation in these sectors by preventing further foreign investment state-owned enterprises operating in these sectors.

In August 2007, as discussed above, China issued its *Anti-Monopoly Law*. Among other things, this law indicates that China will establish a review process to screen inward investment for national economic security implications.

U.S. industry has expressed tremendous concern about China's increasing use of these and other investment restrictions, which are often seen as protectionist tools used by China's state planners to shield inefficient or monopolistic enterprises from competition. Even recognizing that certain sectors may have particular sensitivity in China due to security or other concerns, U.S. industry views China's investment restrictions – including the increasing restrictions on foreign acquisitions of Chinese companies – as deeply worrisome and counter to the market-oriented principles that have been the basis for much of China's economic success over the past few decades. According to U.S. industry, these investment restrictions are more likely to retard the growth and development of the Chinese economy than to accomplish the state planners' ultimate objective of creating internationally competitive domestic enterprises.

The United States has raised its concerns about China's investment restrictions, both bilaterally with China during the run-up to the JCCT meeting scheduled for December 2007 and at the WTO during the transitional reviews before the TRIMS Committee and the Council for Trade in Goods, held in 2006 and 2007. The United States will continue to monitor developments in this area closely in 2008.

Agriculture

Upon its accession to the WTO, China assumed the obligations of the WTO Agreement on Agriculture, which contains commitments in three main policy areas for agricultural products: market access, domestic support and export subsidies. In some instances, China also made further commitments, as specified in its accession agreement.

In the area of market access, WTO members committed to the establishment of a tariff-only regime, tariff reduction and the binding of all tariffs. As a result of its accession negotiations, China agreed to significant reductions in tariff rates on a wide range of agricultural products. China also agreed to eliminate quotas and implement a system of TRQs designed to provide significant market access for certain bulk commodities upon accession. This TRQ system is very similar to the one governing fertilizers (discussed above in the Import Regulation section). China's goods schedule sets forth detailed rules intended to limit the discretion of the agriculture TRQ administrator – originally the State Development and Planning Commission (SDPC), which

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is now called the NDRC – and to require it to operate with transparency and according to precise procedures for accepting quota applications, allocating quotas and reallocating unused quotas.

In the area of domestic support, the basic objective is to encourage a shift in policy to the use of measures that minimize the distortion of production and trade. Essentially, WTO members committed to reduce over time the types of domestic subsidies and other support measures that distort production and trade, while WTO members remain free to maintain or even increase support measures that have little or no distorting effect, such as agricultural research or training by the government. China committed to a cap for trade- and production-distorting domestic subsidies that is lower than the cap permitted for developing countries and that includes the same elements that developed countries use in determining whether the cap has been reached.

In the area of export subsidies, WTO members committed to ban the use of these subsidies unless they fall within one of four categories of exceptions, the principal one of which allows export subsidies subject to certain reduction commitments. However, like many other WTO members, China agreed to eliminate all export subsidies upon its accession to the WTO and did not take any exceptions.

Another important agricultural area is covered by the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), under which China also became obligated. The SPS Agreement establishes rules and procedures regarding the formulation, adoption and application of sanitary and phytosanitary measures, i.e., measures taken to protect against risks associated with plant or animal borne pests and diseases, additives, contaminants, toxins and disease-causing organisms in foods, beverages or feedstuffs. The rules and procedures in the SPS Agreement require that sanitary and phytosanitary measures address legitimate human, animal and plant health concerns, do not arbitrarily or unjustifiably discriminate between WTO members' agricultural and food products, and are not disguised restrictions on international trade. The SPS Agreement requires that the measures in question be based on scientific grounds, developed through risk assessment procedures and adopted with transparency, while at the same time it preserves each member's right to choose the level of protection it considers appropriate with regard to sanitary and phytosanitary risks.

Other WTO agreements also place significant obligations on China in the area of agriculture. Three of the most important ones are GATT 1994, the Import Licensing Agreement and the TBT Agreement, which are discussed above (in the sections on Import Regulation and Internal Policies Affecting Trade).

China also made several additional commitments intended to rectify other problematic agricultural policies, either upon accession or after limited transition periods. For example, China agreed to permit non-state trading enterprises to import specified TRQ shares of wheat, corn, rice, cotton, wool and vegetable oil, although these products had been subject to import monopolies by state trading enterprises.

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While tariff reductions have certainly encouraged U.S. exports to China, which reached record highs for many agricultural products in 2007, the increases continued to be largely the result of greater demand. At the same time, a variety of non-tariff barriers continued to impede U.S. agricultural trade with China, particularly in the area of sanitary and phytosanitary measures, where China's actions often have not appeared to be guided by scientific principles. As in prior years, the United States and China have been able to resolve some of these issues through protracted negotiations, but others appear to have reached an impasse.

On the positive side, U.S. agricultural products continued to experience strong sales to China. China is now the United States' fourth largest agricultural export market, as U.S. exports to China totaled $6.0 billion from January through September 2007, an increase (8.3 percent) over the same period in 2006, which was a record year for U.S. agricultural exports to China. In fact, in 2006, U.S. agricultural exports exceeded $7.6 billion, more than three times the level in 2002.

Meanwhile, commitments announced at the April 2004, July 2005 and April 2006 JCCT meetings on the issue of U.S. beef market access to China following the discovery of bovine spongiform encephalopathy (BSE) in the United States resulted only in limited and sporadic progress. This issue is emblematic of the continuing problems U.S. exporters face with non-transparent application of sanitary and phytosanitary measures, many of which have appeared to lack scientific bases and have impeded market access for many U.S. agricultural products.

China's unnecessary and seemingly arbitrary inspection-related import requirements also continued to impose burdens and regulatory uncertainty on U.S. agricultural producers exporting to China in 2007. Products most affected in 2007 included poultry, pork and soybeans. In addition, registration requirements for animal feeds were unnecessarily burdensome and limited the ability of U.S. exporters to access China's market, while China's administration of TRQs on bulk agricultural commodities was still not functioning entirely as envisioned in China's WTO accession agreement, as it continued to be impaired by inadequate transparency.

In 2008, as in prior years, the United States will continue to pursue vigorous engagement with China in order to obtain progress on outstanding concerns. As part of this effort, the United States will continue to use the high-level U.S.-China agricultural working group, created at the April 2004 JCCT meeting, as well as the JCCT process itself to make progress on the range of issues in the agriculture area. In addition, the United States will take further actions seeking to address its concerns, including WTO dispute settlement, where appropriate.

Tariffs

Tariffs on agricultural goods of greatest importance to U.S. farmers and ranchers are being lowered from a 1997 average of 31 percent to 14 percent, in almost all cases over a period of five years running from January 1, 2002, or by January 1, 2006. China implemented the few required tariff reductions on agricultural goods for 2007 on schedule on January 1, 2007, just as it did for industrial goods.

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The accumulated tariff reductions made by China, coupled with increased demand, contributed to a marked increase in certain U.S. exports to China. Exports of some bulk agricultural commodities have increased dramatically in recent years, and continue to perform strongly, including soybeans and cotton. Exports of forest products such as lumber continued to perform strongly, increasing by 7.7 percent for the first nine months of 2007. Fish and seafood exports, after having increased from $119 million in 2001 to $135 million in 2002, and then to $176 million in 2003, $258 million in 2004, $351 million in 2005 and $440 million in 2006, increased again in 2007, exceeding the total for 2006 in the first nine months of 2007 ($470 million). Meanwhile, exports of consumer-oriented agricultural products increased by 46 percent from January through September 2007, when compared to the same period in 2006.

However, the full market access potential of China's tariff cuts was not realized for some products. As discussed below, a variety of non-tariff barriers continue to impede market access for U.S. agricultural exports to China, particularly exports of consumer-ready and value-added products.

China's Biotechnology Regulations

As previously reported, one of the most contentious agriculture trade issues that arose during China's first year of WTO membership involved new rules implementing June 2001 regulations relating to biotechnology safety, testing and labeling. The implementing rules, issued by China's Ministry of Agriculture (MOA) shortly before China's WTO accession, did not provide adequate time for scientific assessment and the issuance of formal safety certificates for biotechnology products. As the March 2002 effective date for these implementing rules approached, trade in biotechnology products began to be disrupted. The U.S. products most affected were soybeans, which had seen exports to China grow to more than $1 billion in 2001, while corn and other products, such as consumer products made from biotech commodities, remained at risk. Following concerted, high-level pressure from the United States, China agreed to a temporary solution in March 2002, which provided for a nine-month delay, effected through the issuance of temporary safety certificates, good through December 20, 2002. When it became apparent that this extension would not be sufficient, further high-level engagement produced another agreed extension until September 2003 and later an extension until April 2004. China finally issued a formal safety certificate for a U.S. biotechnology soybean variety known as Roundup Ready soybeans in February 2004. In addition, by the time of the April 2004 JCCT meeting, China had also issued formal safety certificates for six corn events, seven canola events and two cotton events. China issued a formal safety certificate for another corn event a few months later, leaving only one corn event still awaiting formal approval. China issued a formal safety certificate for this last corn event at the time of the July 2005 JCCT meeting.

With some stability added to the China soybean market through the extensions in 2003 and the issuance of the formal safety certificate for Roundup Ready soybeans in February 2004, U.S. exports of soybeans performed strongly. In 2003, U.S. soybean exports reached a record level of $2.9 billion, representing an increase of 190 percent over 2002. In 2004, U.S. soybean exports declined to $2.3 billion, although this figure was still twice the level of any year prior to 2003.

In 2005, U.S. soybean exports remained approximately steady at $2.2 billion before rising to $2.5 billion in 2006. In the first nine months of 2007, U.S. soybean exports totaled $1.8 billion, an increase of 42 percent over the same period in 2006, and China remained the leading export destination for U.S. soybeans.

Other U.S. concerns with China's biotechnology regulations and implementing rules remain. For example, China requires a product to be approved in the United States before it can be submitted in China for approval, and China's National Biosafety Committee normally reviews new product applications only during two meetings each year. Both of these practices present significant and unnecessary delays for bringing U.S. goods into the China market. China's lack of clarity on the requirements applicable to products stacked with multiple traits is a cause for additional concern, as are China's sometimes duplicative and unprecedented testing requirements.

In November 2006, MOA finally issued an announcement about the renewal requirements for safety certificates covering imported biotechnology crops. Because safety certificates for cotton, soybeans, corn and canola expired beginning in February 2007, it was possible that trade in these products would be disrupted. However, U.S. intervention secured an extension of these approvals for another five years.

In 2007, meanwhile, MOA developed, issued and implemented some troubling new regulations without circulating them for public comment in advance or even consulting with relevant stakeholders such as the United States and U.S. industry. For example, in January 2007, MOA added a new requirement that biotechnology seed companies turn over key intellectual property as part of the application process when seeking safety certificates. In March 2007, MOA halted a pilot program, which had been developed over two years of bilateral discussions, aimed at allowing the review of products under development in the United States prior to completion of the U.S. approval process. As a result, the MOA approval process can still only begin after the completion of the U.S. approval process. Even if the MOA approval process proceeds quickly, trade may still be disrupted, as importers need time to apply for vessel based safety certificates and Quarantine Inspection Permits, both of which require valid safety certificates for biotechnology products and can take up to 30 working days. The United States has raised its concerns about these developments in several bilateral meetings, including JCCT working group meetings and other meetings during the run-up to the JCCT meeting scheduled for December 2007.

Tariff-rate Quotas on Bulk Agricultural Commodities

Another issue of particular concern involves China's commitments relating to TRQs on bulk agricultural commodities, which include several commodities of particular importance to U.S. farmers, such as wheat, corn, cotton and vegetable oils. Since SDPC (and later NDRC) began implementing these commitments following China's accession, a series of problems have undermined the market access envisioned by WTO members. Although progress has been made on some of these issues, NDRC's lack of transparency continues to create significant concern.

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As previously reported, in 2002, the first year of this TRQ system, it appeared that SDPC had decided to allocate TRQs in a manner that would protect domestic farm interests and maintain the monopoly enjoyed by state trading enterprises. SDPC operated with only limited transparency, refusing to provide specific details on the amounts and the recipients of the allocations. At the same time, SDPC reserved a significant portion of the TRQs for the processing and re-export trade, despite China's commitment to provide market access and national treatment for imported products. SDPC also allocated a portion of the TRQs for some commodities in smaller than commercially viable quantities, and it employed burdensome licensing requirements. As these problems became apparent, the United States repeatedly engaged China bilaterally, at all levels of government, and it also raised its concerns at the WTO during meetings of the Committee on Agriculture. In July 2002, the United States requested formal consultations with China under the headnotes contained in China's WTO goods schedule, and those consultations took place in September 2002 in Geneva.

Following the 2003 TRQ allocations, it became clear that the most serious first-year problems – lack of transparency, sub-division of the TRQ, small allocation sizes and burdensome licensing – persisted. The United States again engaged China bilaterally on several occasions, culminating with high-level meetings in Beijing in June 2003. At these meetings, China agreed to take steps to address most of the United States' concerns. China followed through on its June 2003 commitments in part in October 2003, when NDRC issued new regulations for shipments beginning January 1, 2004. Key changes made by these regulations include the elimination of separate allocations for general trade and processing trade, the elimination of certain unnecessary licensing requirements, and the creation of a new mechanism for identifying allocation recipients.

In 2004, as the United States focused on how NDRC was enforcing its new regulations in a series of bilateral meetings during the run-up to the April 2004 JCCT meeting, improvements in NDRC's TRQ administration became evident. NDRC implemented the regulatory provision calling for the elimination of separate allocations for general trade and processing trade, increased the size of quota allocations, and improved its handling of reallocations. At the same time, transparency continues to be problematic, although some improvement did take place for some of the commodities subject to TRQs.

While these systemic changes were taking place, exports of some bulk agricultural commodities from the United States continued to show substantial increases, largely due to market conditions. In particular, despite some continuing problems with NDRC's handling of the cotton TRQs, U.S. cotton exports totaled a record $1.4 billion in 2004, which was reached again in 2005, followed by a new record of $2.1 billion in 2006. U.S. wheat exports totaled an unusually high amount of $495 million in 2004, as the TRQ allocations for wheat did not appear to act as a limiting factor, followed by $80 million for 2005, still substantially above the years prior to 2004, and then $23 million in 2006.

Throughout 2007, the United States continued to raise transparency and other concerns, both in bilateral meetings and during the transitional review before the WTO's Committee on

VIA01918151

Agriculture in October 2006. In 2008, the United States will continue to work to ensure that NDRC administers TRQs transparently and in a manner that is consistent with China's commitments and that does not impede market access or commercial decisions.

Sanitary and Phytosanitary Issues

In 2007, China's SPS measures posed increasingly serious problems for U.S. agricultural producers exporting to China. As in prior years, the United States repeatedly engaged China on a number of SPS issues, in high-level bilateral meetings and technical discussions as well as during meetings of the WTO's SPS Committee, including the transitional review held in October 2007. The United States also continued to provide extensive training to China's regulatory authorities and to urge them to adhere more consistently to China's transparency obligations under the SPS Agreement. While market access for U.S. soybeans and grain has been maintained, little progress was made in 2007 in addressing SPS barriers for raw meat, poultry and pork products, while market entry requirements for processed foods and horticultural products remain burdensome. In 2007, China's market continued to be closed to U.S. beef and beef products because of China's BSE-related ban, and China continued to maintain several state-level Avian Influenza (AI) bans. In many instances, progress was made difficult by China's inability to provide relevant risk assessments or the science-based rationale for maintaining its import restrictions against U.S.-origin products. For example, in 2007, China was unable to provide a science-based rationale for maintaining import restrictions on U.S. beef products and some U.S. poultry and pork products, as described below. In addition, China's regulatory authorities continued to issue significant new SPS measures without complying with the notice-and-comment requirements of the SPS Agreement. The United States will continue to press for resolution of these and other outstanding issues in 2008.

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BSE-Related Bans on Beef and Low-Risk Bovine Products

In December 2003, China and other countries imposed a ban on imports of U.S. cattle, beef and processed beef products in response to a case of BSE found in the United States. Since that time, the United States has repeatedly provided China with extensive technical information on all aspects of its BSE-related surveillance and mitigation measures, internationally recognized by the Office International des Epizooties (OIE) as effective and appropriate, for both food safety and animal health. After four years, China still has not provided any scientific justification for continuing to maintain its ban.

At the April 2006 JCCT meeting, China agreed to conditionally reopen the Chinese market to U.S. beef, subject to the negotiation and finalization of a protocol by technical experts on an expedited basis. Jointly negotiated protocols, and accompanying export certificates, are normal measures necessary for the export of any livestock products from the United States to China or other trading partners. However, subsequent protocol negotiations made it clear that China was only contemplating a limited market opening, still without any science-based support. In July 2006, China's food safety regulators unilaterally announced a limited market opening, restricted to the entry of U.S. boneless beef thirty months of age or less, accompanied by 22 onerous entry conditions. Several of these conditions were not capable of being fulfilled, and others did not even relate to BSE.

In May 2007, the United States received a risk classification as a "controlled risk" country by the OIE, indicating that all U.S. beef and beef products are safe to trade, provided that certain risky materials are removed during processing. Later that month, while in Washington for the May 2007 SED meeting, Vice Premier Wu offered to open China's market to both boneless and bone-in beef, although still with the age restriction of 30 months or less. The United States rejected this offer because the applicable OIE classification has no age restrictions. Since then, U.S. and Chinese officials have met repeatedly, but to date China has not indicated any willingness to begin accepting U.S. beef and beef products into its market in a manner consistent wth the OIE's classification. The United States will continue to press China to re-open its market in 2008.

At the same time that it banned U.S. cattle, beef and processed beef products, China also banned bovine-origin products (i.e., bovine semen, bovine embryos, and protein-free tallow) that are listed in OIE guidelines as safe to trade regardless of a country's BSE status. Additionally, China banned imports of U.S.-origin non-ruminant feeds and fats (such as pet food, rendered products and porcine proteins) even though these products were of non-bovine-origin and presented absolutely no BSE-related risk. After numerous bilateral meetings and technical discussions in 2004, including a visit to U.S. bovine facilities by Chinese food safety officials, China announced a lifting of its BSE-related ban for these "low-risk" products in late September 2004. However, China conditioned the lifting of the ban on the negotiation of protocol agreements setting technical and certification parameters for incoming low-risk products. In November 2004, U.S. and Chinese officials finalized and signed amended protocols that would enable the resumption of exports of U.S.-origin bovine semen and bovine embryos, contingent on facility-by-facility certification by China's regulatory authorities in accordance with the

VIA01918153

original protocols that were signed more than 10 years prior. Additionally, U.S. and Chinese authorities signed a new protocol which authorized a resumption of exports of U.S.-origin non-ruminant feeds and fats. In July 2005, during the run-up to the JCCT meeting, China finally announced the resumption of trade in bovine semen and bovine embryos, following facility certifications completed in June 2005. However, it was not until early 2006 that imports of U.S.-origin bovine semen and bovine embryos actually resumed. Additionally, in June 2005, China agreed to accept a systems approach audit (as opposed to facility-by-facility certification) to approve U.S. facilities to export U.S.-origin non-ruminant feeds and fats (pet food, rendered products, porcine proteins, etc.) to China. The initial shipment of U.S.-origin non-ruminant pet food occurred in September 2005. By January 2006, trade in the full range U.S.-origin non-ruminant feed and fat products had also resumed, after negotiation and resolution of a series of onerous, detailed and unnecessary non-BSE related information requirements proposed by China that are not consistent with OIE guidelines and contrast sharply with U.S. requirements. To date, trade in protein-free tallow (a product listed by the OIE as safe to trade regardless of a country's BSE status) has still not resumed, as U.S. and Chinese officials continue to be unable to reach agreement on provisions of a protocol.

Pathogen Standards and Residue Standards for Raw Meat and Poultry Products

Since 2002, as previously reported, China has applied SPS-related requirements on imported raw meat and poultry that do not appear to be consistent with Codex Alimentarius (Codex) guidelines or current scientific testing practices. One requirement establishes a zero tolerance limit for the presence of Salmonella bacteria. Similar zero tolerance standards exist for Listeria and other pathogens. Meanwhile, the complete elimination of these enteropathogenic bacteria is generally considered unachievable without first subjecting raw meat and poultry to a process of irradiation. Moreover, China apparently does not apply this same standard to domestic raw poultry and meat, raising national treatment concerns.

In 2007, this issue took on added significance, as China de-listed several U.S. plants, hindering trade in pork and poultry. To date, 11 U.S. pork and 4 poultry plants have been de-listed by China for alleged violations of zero tolerance standards for pathogens or detection of certain chemical residues. Despite positive results from USDA Food Safety and Inspection Service investigations of the plants, and extensive follow-up efforts by U.S. regulatory officials, these plants have not been re-listed as approved to ship product to China. In 2008, the United States will continue to press China to re-list the plants.

Meanwhile, China continues to maintain maximum residue levels (MRLs) for certain heavy metals, veterinary drugs and other residues that are inconsistent with Codex and other international standards. China also enforces a "zero tolerance" for some residues, even where Codex has adopted guidelines that many of China's major trading partners have adopted. U.S. regulatory officials have encouraged their Chinese counterparts to adopt MRLs that are scientifically based, safe and minimally trade-disrupting. This effort will continue in 2008.

Avian Influenza

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In February 2004, as previously reported, China imposed a nationwide ban on U.S. poultry in response to cases of low-pathogenic AI found in Delaware. Throughout 2004, the U.S. provided technical information to China on the U.S. AI situation, and in August a high-level Chinese delegation conducted a review of the status of AI eradication efforts in the United States. In December 2004, China lifted its nationwide ban on U.S. poultry, leaving in place a ban only for the states of Connecticut and Rhode Island.

In early 2005, following the announcement of low-pathogenic AI found in the state of New York, China did not impose a nationwide ban. Instead, demonstrating progress in following OIE guidelines, China imposed a ban limited to poultry from the state of New York.

In 2006, China imposed an import ban for poultry and poultry products originating from the state of Pennsylvania, based on incidents of low-pathogenic AI. China also suspended the importation of heat-treated and cooked poultry and poultry products at the same time, even though the OIE's AI chapter makes clear that products that have been heat-treated in a manner to inactivate the virus should not be subject to an AI-related import ban. In 2007, China also banned poultry and poultry products from West Virginia, Virginia and Nebraska because of low-pathogenic AI.

Following the eradication of AI in Connecticut, Rhode Island, New York, Pennsylvania, West Virginia, Virginia and Nebraska, the United States asked China to re-open trade in poultry and poultry products from these states, consistent with OIE guidelines. To date, however, China has not done so. The United States is continuing to raise this issue during the run-up to the JCCT meeting scheduled for December 2007 and will continue to pursue the re-opening of China's market in 2008 as necessary.

Transparency

As in the TBT context, some of China's SPS measures continue to enter into force without having first been notified to the SPS Committee, and without other WTO members having had the opportunity to comment on them, contrary to the requirements of the SPS Agreement. Many of these unnotified measures are of key concern to foreign traders. Indeed, over the past two years, the United States has identified 22 SPS measures implementing important new registration requirements, residue standards, inspection requirements and quarantine requirements – none of which China notified to the SPS Committee, even though these measures constrain U.S. exports of frozen meat, dairy products, grain, poultry, feed, horticultural products, a variety of processed products and alcoholic beverages.

In 2007, as in prior years, the United States urged China's regulatory authorities to improve their adherence to China's SPS Agreement transparency obligations. The United States also highlighted China's shortcomings during regular meetings and the annual transitional reviews before the SPS Committee. The United States will continue to seek improvements from China in this area in 2008.

Inspection-related Requirements

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Through two measures – the *Administrative Measures for the Entry-Exit Inspection and Quarantine for Grains and Feed Stuff*, which became effective on March 1, 2002, and the *Administrative Measures for Entry Animal and Plant Quarantine*, which became effective September 1, 2002 – AQSIQ requires importers to obtain a Quarantine Inspection Permit, or QIP, prior to signing purchase contracts for nearly all traded agricultural commodities. QIPs are one of the most important trade policy issues affecting the United States and China's other agricultural trading partners.

AQSIQ sometimes slows down or even suspends issuance of QIPs at its discretion, without notifying traders in advance or explaining its reasons, resulting in significant commercial uncertainty. Because of the commercial necessity to contract for commodity shipments when prices are low, combined with the inherent delays in having QIPs issued, many cargoes of products such as soybeans, meat and poultry arrive in Chinese ports without QIPs, creating delays in discharge and resulting in demurrage bills for Chinese purchasers. In addition, traders report that shipment quantities are often closely scrutinized and are at risk for disapproval if considered too large.

Some improvements were made to the QIP system in 2004 following repeated engagement bilaterally and through interventions made by the United States and other WTO members during the transitional reviews before the SPS Committee and the Committee on Import Licensing in 2002 and 2003. In June 2004, fulfilling a Chinese commitment made in connection with the April 2004 JCCT meeting, AQSIQ issued Decree 73, the *Items on Handling the Review and Approval for Entry Animal and Plant Quarantine*, which extended the period of validity for QIPs from three months to six months. AQSIQ also began issuing QIPs more frequently within the established time lines. Nevertheless, a great deal of uncertainty remains even with the extended period of validity, because a QIP still locks purchasers into a very narrow period to purchase, transport and discharge cargoes or containers before the QIP's expiration, and because AQSIQ continues to administer the QIP system in a seemingly arbitrary manner.

Traders continue to be hesitant to press AQSIQ for change because they would risk falling out of favor. Many traders would at least like AQSIQ to eliminate the quantity requirements that it unofficially places on QIPs. These quantity requirements have been used often by AQSIQ during peak harvest periods to limit the flow of commodity imports. In 2006, traders reported that MOFCOM not only limited QIP quantities, but also required some companies to use up the majority of a QIP before being issued another one and required other companies to use up their QIPs or risk being "de-listed." Eliminating these requirements would make the QIP system more dependent on market forecast.

Little improvement in the QIP system has taken place over the last three years. AQSIQ officials continue to insist that the QIP system ensures that an adequate number of examiners are on duty at ports when shipments arrive to certify and inspect them for quality and quantity, while the United States and other WTO members argue that there does not appear to be any scientific basis for the QIP system and that it serves as an unjust and overly restrictive barrier to trade. The United States will continue to press China on this important issue in 2008.

VIA01918156

Meanwhile, MOFCOM administers a separate import permit system for commodities such as poultry products. Through its issuance of Automatic Registration Forms (ARFs) to importers, MOFCOM allocates a volume amount to an importer for imports of particular commodities each year. In 2007, U.S, officials urged MOFCOM to eliminate ARFs or issue them in a more transparent, flexible manner so that trade is not disrupted.

Export Subsidies

Since shortly after China's accession to the WTO, U.S. industry has been concerned that China provides export subsidies on corn, despite China's WTO commitment to eliminate all export subsidies upon accession to the WTO. In past years, it appeared that significant quantities of corn had been exported from China, including corn from Chinese government stocks, at prices that may have been 15 to 20 percent below domestic prices in China. As a result, U.S. corn exporters were losing market share for corn in their traditional Asian markets, such as South Korea and Malaysia, while China was exporting record amounts of corn.

Since 2002, the United States has pressed its concerns about possible export subsidies on corn with China bilaterally, including in high-level meetings. The United States has also raised its concerns and has sought additional information about China's corn policies – including the use of potentially excessive VAT rebates – during meetings before the Committee on Agriculture, including the transitional reviews.

In 2004, trade analysts began to conclude that, because of several economic factors, primarily falling stock levels and burgeoning domestic demand, China was trending toward eventually becoming a net importer of corn. One result appears to be that China's exports are largely being made on a commercial basis, although concern remains regarding the operation of China's VAT rebate system for corn.

The United States will continue to investigate China's subsidization practices and VAT rebate system for the agricultural sector in 2008. The United States will make every effort to ensure that any use of export subsidies is eliminated.

Intellectual Property Rights

With its acceptance of the TRIPS Agreement, China took on obligations to adhere to generally accepted international norms to protect and enforce the intellectual property rights held by U.S. and other foreign companies and individuals in China. Specifically, the TRIPS Agreement sets minimum standards of protection for copyrights and neighboring rights, trademarks, geographical indications, industrial designs, patents, integrated circuit layout designs and undisclosed information. Minimum standards are also established by the TRIPS Agreement for IPR enforcement in administrative and civil actions and, in regard to copyright piracy and trademark counterfeiting, in criminal actions and actions at the border. The TRIPS Agreement requires as well that, with very limited exceptions, WTO members provide national and most

VIA01918157

favored nation treatment to the nationals of other WTO members with regard to the protection and enforcement of intellectual property rights.

Since its accession to the WTO, China has overhauled its legal regime and put in place a comprehensive set of laws and regulations aimed at protecting the intellectual property rights of domestic and foreign entities in China. At the same time, some key improvements in China's legal framework are still needed, and China has continued to demonstrate little success in actually enforcing its laws and regulations in the face of the challenges created by widespread counterfeiting, piracy and other forms of infringement. As a result, in 2007, the United States' bilateral engagement with China continued to focus on obtaining improvements to multiple aspects of China's system of IPR protection and enforcement so that significant reductions in IPR infringement in China could be realized and sustained over time.

Several weaknesses in all aspects of China's enforcement system – criminal, civil and administrative – contribute to China's poor IPR enforcement record. For example, one major weakness is China's chronic underutilization of deterrent criminal remedies. In particular, legal measures in China that establish high thresholds for criminal investigation, prosecution and conviction preclude criminal remedies in many instances of commercial-scale counterfeiting and piracy, creating a "safe harbor" for infringers and raising concerns that China may not be complying with its obligations under the TRIPS Agreement. The United States is seeking to resolve this concern, along with concerns regarding border enforcement and the enforceability of copyrights during the period before works obtain censorship approval, in a WTO case that it filed in April 2007 that focuses on deficiencies in China's legal regime for protecting and enforcing copyrights and trademarks on a wide range of products.

An exacerbating factor is China's continued maintenance of import and distribution restrictions for certain types of legitimate copyright-intensive products, such as theatrical films, DVDs, music, books and journals, which inadvertently helps to ensure that infringing products continue to dominate those sectors within China. As discussed above in the sections on Trading Rights and Distribution Services, the United States is addressing these restrictions in another WTO case filed in April 2007.

China's leaders began to demonstrate a willingness to address U.S. concerns in October 2003, when a new IPR Leading Group was formed, signaling a more focused and sustained effort by China to tackle the IPR enforcement problem. Many officials in China, led by President Hu Jintao, Premier Wen Jiabao and Vice Premier Wu Yi, continued to give voice to China's commitment to protecting intellectual property rights in subsequent years and worked hard to make it a reality, as they allocated substantial resources to the effort and attempted to improve not only public awareness but also training and coordination among the numerous Chinese government entities involved in IPR enforcement while simultaneously fighting local protectionism and corruption. Sustained involvement by China's leaders is critical if China is to deliver on the IPR commitments that it made at the April 2004, July 2005 and April 2006 JCCT meetings, including China's core commitment to significantly reduce IPR infringement levels across the country.

VIA01918158

As previously reported, building on earlier engagement with China, the United States conducted an out-of-cycle review under the Special 301 provisions of U.S. trade law in 2004 and 2005. This review involved a systematic evaluation of China's entire IPR enforcement regime and concluded in April 2005 with the Administration's elevation of China to the Special 301 "Priority Watch" list and the creation of a comprehensive strategy for addressing China's ineffective IPR enforcement regime, which included the possible use of WTO mechanisms, as appropriate.

Pursuing this new strategy at the July 2005 JCCT meeting, the United States sought and obtained China's agreement to take a series of specific actions designed to (1) increase prosecutions of IPR violators, (2) improve enforcement at the border, (3) counter piracy of movies, audio visual products and software, (4) address Internet-related piracy and (5) assist small and medium sized U.S. companies experiencing China-related IPR problems, among other things. To date, China has taken steps to fulfill many of these commitments. It adopted amended rules governing the transfer of administrative and customs cases to criminal authorities, and it took some steps to pursue administrative actions against end user software piracy. China posted an IPR Ombudsman to its Embassy in Washington, who has facilitated contacts between U.S. government officials and their counterparts in Beijing, and has been a source of information for U.S. businesses, including small and medium size companies. China has also sought to expand enforcement cooperation.

Meanwhile, in October 2005, the United States submitted a request to China under Article 63.3 of the TRIPS Agreement, as did both Japan and Switzerland, seeking more transparency on IPR infringement levels and enforcement activities in China, with the objective of obtaining a better basis for assessing the effectiveness of China's efforts to improve IPR enforcement since China's accession to the WTO. However, despite the United States' extensive efforts to follow up on its Article 63.3 request bilaterally, China provided only limited information in response, hampering the United States' ability to evaluate whether China is taking all necessary steps to address the rampant IPR infringement found throughout China.

In 2006, the United States again used the JCCT process, including the IPR Working Group created at the April 2004 JCCT meeting, to secure new IPR commitments and, in a few instances, specific actions to implement past commitments. During the run-up to the April 2006 JCCT meeting, China took enforcement actions against plants that produce pirated optical discs, and it also issued new rules that require computers to be pre installed with licensed operating system software. At the meeting itself, China further committed to ensure the legalization of software used in Chinese enterprises and to take up issues of government and enterprise software asset management in the JCCT IPR Working Group. China also agreed to work on cooperation to combat infringing goods displayed at trade fairs in China and to intensify efforts to eliminate infringing products at major consumer markets in China, such as the Silk Street Market in Beijing. The two sides further agreed that they would increase cooperation between their respective law enforcement authorities and customs authorities and that the United States would provide China with additional technical assistance to aid China in fully implementing the World Intellectual Property Organization (WIPO) Internet treaties, i.e., the WIPO Copyright Treaty and

VIA01918159

the WIPO Performance and Phonograms Treaty. In addition, China reaffirmed its prior commitments to continue efforts to ensure use of legalized software at all levels of government and to adopt procedures to ensure that enterprises use legal software, beginning with state owned enterprises and other large enterprises.

Since the April 2006 JCCT meeting, China has made some progress in implementing its commitments, but it has been slower than in the past. One bright spot appears to be China's implementation of the new rules requiring computers to be pre installed with licensed operating system software, as U.S. industry continues to be pleased with the results of that effort.

In 2007, the United States continued to use bilateral discussions to encourage China to improve its IPR enforcement regime. Until April 2007, these discussions focused on concrete steps that China could take to improve its legal protections and enforcement efforts. It was when it was clear that these efforts at dialogue would yield no progress that the United States filed the two IPR-related WTO cases in April 2007. Later that month, USTR issued its Special 301 report, which continued to place China on the Priority Watch List and make China subject to Section 306 monitoring. USTR's report was informed by a special review conducted in 2006 and 2007 to examine the adequacy and effectiveness of IPR protection and enforcement at the provincial government level. As the special 301 report explains, the provincial review revealed strengths, weaknesses and inconsistencies in and among China's provinces. After the filing of the two WTO cases and the issuance of the Special 301 report, the United States continued to seek ways in which to work together with China to improve China's IPR enforcement regime. These efforts yielded some results, such as the signing of a Memorandum on Cooperation in IPR Enforcement between the two countries' customs authorities. However, China also decided in other ways to limit its cooperation because of dissatisfaction with the United States' decision to use the WTO dispute settlement mechanism, despite the fact that the issues in dispute involved narrowly drawn legal issues and had not been able to be resolved through dialogue.

Legal Framework

In most respects, China's framework of laws, regulations and implementing rules remains largely satisfactory. However, reforms are needed in a few key areas, such as further improvement of China's measures for copyright protection on the Internet following the notable achievement of China's accession to the WIPO Internet treaties. In particular, more work is needed at both the national level and the provincial level to meet the challenges of Internet piracy and fully implement the WIPO Internet treaties. Right holders have also pointed to a number of continuing deficiencies in China's criminal measures. Most notably, as discussed above, it appears that China needs to eliminate thresholds for criminal prosecution that provide a legal "safe harbor" for many commercial infringers if it is to bring its legal framework into compliance with its TRIPS Agreement obligations.

At the time of its accession to the WTO, China was in the process of modifying the full range of IPR laws, regulations and implementing rules, including those relating to patents, trademarks and copyrights. China had completed amendments to its *Patent Law*, *Trademark Law* and *Copyright*

VIA01918160

Law, along with regulations for the *Patent Law*. Within several months after its accession, China issued regulations for the *Trademark Law* and the *Copyright Law*, followed by implementing rules. China also issued regulations and implementing rules covering specific subject areas, such as integrated circuits, computer software and pharmaceuticals. U.S. experts carefully reviewed these measures after their issuance and, together with other WTO members, participated in a comprehensive review of them as part of the first transitional review of China before the TRIPS Council in 2002.

Since 2003, China has periodically issued new IPR measures. The U.S. Government has reviewed these measures through bilateral discussions and subsequent TRIPS Council reviews. Encouragingly, China has also become more willing to circulate proposed measures for public comment and to discuss proposed measures with interested trading partners and stakeholders. For example, the United States and U.S. right holders provided written comments to China on several drafts of regulations for the protection of copyrights on information networks.

In 2007, China announced a new Action Plan for revising its legal regime in order to better protect intellectual property rights. Among other things, this Action Plan sets out China's intentions for revising various laws and other measures, including the *Patent Law*, the *Trademark Law* and related measures. These efforts are ongoing, and the United States has been assessing the potential ramifications of the contemplated revisions for U.S. right holders. The United States and U.S. industry groups have also submitted written comments, along with invitations to continue dialogue on these important pieces of legislation.

China has also been working on other proposed legal measures that could have significant implications for the intellectual property rights of foreign right holders. In particular, China issued an *Anti-Monopoly Law* in August 2007 and is considering rules relating to the treatment of IPR by standards setting organizations. The United States has been carefully monitoring these efforts and raised concerns with particular aspects of these proposals, both in bilateral meetings and at the WTO during the annual transitional reviews before the TRIPS Council and the TBT Committee.

The United States, meanwhile, has repeatedly urged China to pursue additional legislative and regulatory changes, using both bilateral meetings and the annual transitional reviews before the WTO's TRIPS Council. The focus of the United States' efforts is to persuade China to improve its legal regime in certain critical areas, such as criminal, civil and administrative IPR enforcement and legislative and regulatory reform. For example, obstacles that have been noted in the area of criminal enforcement include China's high criminal thresholds, the lack of criminal liability for certain acts of copyright infringement, the profit motive requirement in copyright cases, the requirement of identical trademarks in counterfeiting cases, and the absence of minimum, proportional sentences and clear standards for initiation of police investigations in cases where there is a reasonable suspicion of criminal activity. At the same time, the United States has also been pressing China to consider a variety of improvements to its administrative and civil enforcement regimes. While some of these issues do not raise specific WTO concerns, all of them will continue to detract from China's enforcement efforts until addressed.

VIA01918161

In an Action Plan issued in April 2007, China undertook to "study and further improve" its December 2004 judicial interpretation on the handling of criminal IPR cases and to consider a variety of other steps that could potentially improve the legal framework for criminal, civil and administrative IPR enforcement. China also issued a new judicial interpretation that appeared to resolve one issue related to China's problematic thresholds, namely, the problem that China's *Criminal Law* provided for the prosecution of unauthorized reproduction of certain copyrighted works only when accompanied by unauthorized distribution. At the same time, however, Chinese government officials have given no indication whether the study and improvement foreseen in the 2007 Action Plan will lead to the reduction or elimination of China's thresholds – a key concern in light of China's obligations under Article 61 of the TRIPS Agreement. The United States included this issue in its April 2007 WTO case challenging deficiencies in China's IPR enforcement regime.

The United States has also sought improvements in China's copyright protection in the context of electronic information networks since the April 2004 JCCT meeting. China took an important step at the time of that meeting when the National Copyright Administration (NCA) issued the *Measures for Administrative Protection of Copyright on the Internet.* That measure requires Internet service providers to take remedial actions to delete contents that infringe on copyrights upon receipt of a complaint from the right holder, or face administrative penalties ranging from confiscation of illegal gains to fines of up to RMB 100,000 ($13,500).

During the run-up to the July 2005 JCCT meeting, the United States also urged China to accede to the WIPO Internet treaties and to fully harmonize its regulations and implementing rules with them. Compliance with these treaties is not required under WTO rules, but they still reflect important international norms for providing copyright protection over the Internet. These treaties have been ratified by many developed and developing countries since they entered into force in 2002. In the case of China, this type of copyright protection is especially important in light of its rapidly increasing number of Internet users, many of whom have broadband access. At the July 2005 JCCT meeting, the United States obtained China's commitment to submit the legislative package necessary for China's accession to the WIPO Internet treaties to the National People's Congress by June 2006. Although China's fulfillment of this commitment has been delayed for technical reasons relating to coordination with Hong Kong and Macau, China did move forward with the harmonization of some of its regulations and implementing rules in 2005 and 2006. In May 2006, for example, the State Council adopted an important Internet-related measure, the *Regulations on the Protection of Copyright Over Information Networks*, which went into effect in July 2006. Overall, this measure represents a welcome step, demonstrating China's determination to improve protection of electronic data while China continues its preparations for accession to the WIPO Internet treaties. This measure is not comprehensive, however. A number of gaps remain to be filled for China to meet the challenges of Internet piracy and fully implement the WIPO Internet treaties.

With respect to software piracy, China issued new rules during the run-up to the 2006 JCCT meeting that require computers to be pre installed with licensed operating system software and government agencies to purchase only computers satisfying this requirement. Combined with

VIA01918162

ongoing implementation of previous JCCT commitments on software piracy, it is hoped that these rules will contribute to significant further reductions in industry losses due to software piracy. According to the U.S. software industry, China's software piracy rate has dropped ten percentage points in the last three years, and the legitimate software market grew to nearly $1.2 billion in 2006 – an increase of over 350% since 2003. Achieving sustained reductions in end user software piracy, however, will require more enforcement by China's authorities, followed by high profile publicity of fines and other remedies imposed.

In the customs area, the United States is encouraged by the Customs Administration's increased efforts to provide effective enforcement against counterfeit and pirated goods destined for export and the Customs Administration's agreement in 2007 to cooperate with U.S. customs authorities to fight exports of counterfeit and pirated goods. Nevertheless, the United States remains concerned about various aspects of the *Regulations on the Customs Protection of Intellectual Property Rights*, issued by the State Council in December 2003, and the Customs Administration's May 2004 implementing rules, which were intended to improve border enforcement, make it easier for right holders to secure effective enforcement at the border and strengthen fines and punishments. Disposal of confiscated goods remains a problem under the implementing rules, which appear to mandate auction following removal of infringing features, rather than destruction of infringing goods not purchased by the right holder or used for public welfare. The United States raised this issue as well in its April 2007 WTO case challenging deficiencies in China's IPR enforcement regime.

The United States also remains concerned about a variety of weaknesses in China's legal framework that do not effectively deter, and may even encourage, certain types of infringing activity, such as the "squatting" of foreign company names, designs and trademarks, the theft of trade secrets, the registration of other companies' trademarks as design patents and vice versa, the use of falsified or misleading license documents or company documentation to create the appearance of legitimacy in counterfeiting operations, and false indications of geographic origin of products. In 2007, the United States continued to discuss these and other problems with China and seek solutions for them. In a positive development, SAIC announced in August 2007 that it was launching a 6-month campaign targeting the unauthorized use of well-known trademarks and company names in the enterprise registration process.

In the pharmaceuticals sector, the United States continues to have a range of concerns. The United States has urged China to provide greater protection against unfair commercial use of undisclosed test and other data submitted by foreign pharmaceuticals companies seeking marketing approval for their products. The United States has also encouraged China to undertake a more robust system of patent linkage and to consider the adoption of a system of patent term restoration. In addition, built-in delays in China's marketing approval system for pharmaceuticals continue to create incentives for counterfeiting, as does China's inadequate regulatory oversight of the production of active pharmaceutical ingredients by domestic chemical manufacturers. In 2007, as in prior years, the United States sought to address all of these issues as part of its broader effort to work with China to improve China's regulatory regime for the pharmaceuticals sector.

VIA01918163

Enforcement

The TRIPS Agreement requires China to ensure that enforcement procedures are available so as to permit effective action against any act of infringement of intellectual property rights covered by the TRIPS Agreement, including expeditious remedies to prevent infringement and remedies that constitute a deterrent to further infringement. Although the central government displayed strong leadership in modifying the full range of China's IPR laws and regulations in an effort to bring them into line with China's WTO commitments, effective IPR enforcement has not been achieved, and IPR infringement remains a serious problem throughout China. IPR enforcement is hampered by lack of coordination among Chinese government ministries and agencies, lack of training, resource constraints, lack of transparency in the enforcement process and its outcomes, and local protectionism and corruption.

Despite repeated anti piracy campaigns in China and an increasing number of civil IPR cases in Chinese courts, overall piracy and counterfeiting levels in China remained unacceptably high in 2007. IPR infringement continued to affect products, brands and technologies from a wide range of industries, including films, music and sound recordings, publishing, business and entertainment software, pharmaceuticals, chemicals, information technology, apparel, athletic footwear, textile fabrics and floor coverings, consumer goods, food and beverages, electrical equipment, automotive parts and industrial products, among many others.

U.S. industry estimates that levels of piracy in China across all lines of copyright business ranged between 85 and 93 percent based on data for 2006, which indicates little or no overall improvement over 2005. Trade in pirated optical discs continues to thrive, supplied by both licensed and unlicensed factories and by smugglers. Small retail shops continue to be the major commercial outlets for pirated movies and music (and a variety of counterfeit goods), and roaming vendors offering cheap pirated discs continue to be visible in major cities across China. Piracy of books and journals and end user piracy of business software also remain key concerns, although improvements have been seen in business software piracy rates, as discussed above. In addition, Internet piracy is increasing, as is piracy over enclosed networks such as universities. However, China's regulatory authorities did take initial steps to address text book piracy on university campuses in late 2006 and 2007. NCA also began to undertake campaigns to combat Internet piracy.

Although China made a commitment at the July 2005 JCCT meeting to take aggressive action against movie piracy, including enhanced enforcement for titles not yet authorized for distribution, right holders have monitored China's efforts and report little meaningful improvement in piracy of pre release titles in several major cities. For that reason, lack of copyright protection for works that have not yet been approved for release in China is one of the issues raised in the April 2007 WTO case challenging deficiencies in China's IPR enforcement regime.

China's widespread counterfeiting not only harms the business interests of foreign right holders, but also includes many products that pose a direct threat to the health and safety of consumers in

VIA01918164

the United States, China and elsewhere, such as pharmaceuticals, food and beverages, batteries, auto parts, industrial equipment and toys, among many other products. At the same time, the harm from counterfeiting is not limited to right holders and consumers. China estimated its own annual tax losses due to counterfeiting at more than $3.2 billion back in 2002, and this figure could only have grown in the ensuing years.

The United States places the highest priority on addressing the IPR protection and enforcement problems in China, and since 2004 it has devoted significant additional staff and resources, both in Washington and in Beijing, to address these problems. A domestic Chinese business constituency is also increasingly active in promoting IPR protection and enforcement. In fact, Chinese right holders own the vast majority of design patents, utility models, trademarks and plant varieties in China and have become the principal filers of invention patents. In addition, most of the IPR enforcement efforts in China are now undertaken at the behest of Chinese right holders seeking to protect their interests. Nevertheless, it is clear that there will continue to be a need for sustained efforts from the United States and other WTO members and their industries, along with the devotion of considerable resources and political will to IPR protection and enforcement by the Chinese government, if significant improvements are to be achieved.

As in prior years, the United States worked with central, provincial and local government officials in China in 2007 in a determined and sustained effort to improve China's IPR enforcement, with a particular emphasis on the need for dramatically increased utilization of criminal remedies as well as the need to improve the effectiveness of civil and administrative enforcement mechanisms. A variety of U.S. agencies held regular bilateral discussions with their Chinese counterparts and have conducted numerous technical assistance programs for central, provincial and local government officials on TRIPS Agreement rules, enforcement methods and rule of law issues. USTR also completed its special provincial government-level review in 2007, and the results revealed IPR enforcement strengths and weaknesses in key locations. In addition, the United States organized another annual roundtable meeting in China designed to bring together U.S. and Chinese government and industry officials. The United States also continued to urge China to use the IPR Working Group created at the April 2004 JCCT meeting and the JCCT process itself to press China for needed changes, although China demonstrated reluctance to pursue this avenue of cooperation after the United States filed two IPR-related WTO cases in April 2007.

The United States' efforts have also benefited from cooperation with other WTO members in seeking improvements in China's IPR enforcement, both on the ground in China and at the WTO during meetings of the TRIPS Council. For example, several WTO members have requested third-party status in one or both of the United States' April 2007 IPR-related WTO cases against China. Previously, the United States, Japan and Switzerland made coordinated requests under Article 63.3 of the TRIPS Agreement in order to obtain more information about IPR infringement levels and enforcement activities in China and provide a better basis for assessing the effectiveness of China's efforts to improve IPR enforcement since China's accession to the WTO. In addition, the United States and the EC have increased coordination and information sharing on a range of China IPR issues over the last year. China's membership in the Asia

VIA01918165