UNITED STATES MISSION
TO THE WORLD TRADE ORGANIZATION
GENEVA, SWITZERLAND

OFFICE OF THE
AMBASSADOR

January 20, 2006

H.E. Mr. Sun Zhenyu
Ambassador
Permanent Mission of the People's Republic of China
to the World Trade Organization
Route de Lausanne 228
1292 Chambésy
Switzerland

Dear Mr. Ambassador:

Thank you for your letter of December 22, 2005, concerning the U.S. request of October 25, 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:

First, we are pleased to confirm that the U.S. 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 U.S. request also falls within the scope of requests permitted by the first sentence of Article 63.3.

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."

As explained in our letter of October 25, 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]

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.

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.

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 October 25 details the six clarifications we are requesting regarding the disposition of these cases.

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.

Finally, we renew the invitation in our letter of October 25 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

---

[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 (December 9, 2004) (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 (December 10, 2003) (same); Review of Legislation, IP/Q/CHN/1, section I.C (Dec. 10, 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.")

cooperatively with yours to enhance mutual understanding of these issues, and we hope that you will take advantage of the opportunity to do so.

Sincerely,

Peter F. Allgeier
Ambassador

cc: H.E. Mr. Choi Hyuck, Chairman, Council for TRIPS