

*Committee of 100*

# Issue Brief

*April 2007*

## Intellectual Property Rights and the World Trade Organization

On April 10, 2007, the Office of the United States Trade Representative (“USTR”) filed two requests for World Trade Organization (“WTO”) dispute settlement consultations with the People’s Republic of China (“China”). The first request concerns **Deficiencies in China’s legal regime for protecting and enforcing Copyrights and trademarks.** The second request covers **China’s barriers to trade in copyright and trademark based items such as books, music, videos and movies.** These requests are the second and third requests in 2007 that USTR has made to the WTO concerning China trade issues. **What does this mean for the U.S.-China trade relationship?**

### The Background

These numbers outline the impact of intellectual property piracy and counterfeiting in China:

- The Business Software Alliance estimates that in 2005, 86% of all software used in China was pirated, accounting for a \$3.9 billion dollar sales loss.
- According to one copyright industry association, the piracy rate for printed materials, such as books, remains one of the highest in the world (over 90 percent) and U.S. companies lose over one billion dollars in legitimate business each year to piracy.
- The U.S. music industry estimates the market for sound recordings in China is almost 90 percent pirate, resulting in losses of more than \$200 million per year.
- Nine out of every 10 DVDs sold in China is an illegal copy, according to the Motion Picture Association.
- On average, 20% of all consumer products in the Chinese market are counterfeit, according to the Department of Commerce.
- China was the number one source of counterfeit products that were seized at the United States border last year, according to the Department of Commerce.

Problems with enforcement of intellectual property rights, especially those held by foreign persons and companies, has been a high-profile issue in the U.S.-China trade relationship. The focus has sharpened since China joined the WTO and ratified the Agreement on Trade Related Aspects of Intellectual Property Rights (“TRIPS”).

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Intellectual property rights have been a focus of bilateral engagement for a number of years. The U.S.-China Joint Commission on Commerce and Trade (“JCCT”) and the high-level U.S.-China Strategic Economic Dialogue established in September 2006 are the main vehicles through which USTR has engaged the Chinese government on intellectual property rights issues.

U.S. and Chinese agencies responsible for intellectual property rights protection and enforcement meet regularly in the JCCT’s Intellectual Property Rights Working Group to discuss intellectual property rights issues. The initiation of the Strategic Economic Dialogue (“SED”) provides a broader strategic framework for issues related to innovation and intellectual property rights issues. Bilateral engagement has yielded improvements in China’s intellectual property rights enforcement. And, since joining the WTO, China has improved its legal framework on intellectual property and modified its intellectual property laws and regulations to comply with TRIPS.

### The Controversy

#### *U.S. Government View*

Despite improvements, the U.S. government maintains that enforcement of intellectual property rights by the Chinese government has been ineffective. According to the U.S. Department of Commerce, the reasons are “China’s reliance on administrative instead of criminal measures to combat intellectual infringements, corruption and local protectionism, limited resources and training available to enforcement officials, and lack of public education regarding the economic and social impact of counterfeiting and piracy.”

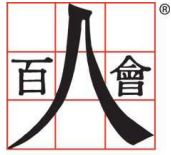
In its first consultation request, USTR maintains that provisions of Chinese law that set quantitative thresholds as a prerequisite to start criminal prosecutions of copyright piracy and trademark counterfeiting are so high, despite being lowered recently, they effectively permit large-scale piracy and counterfeiting.

USTR further argues in its first consultation request that China’s rules for disposal of infringing goods seized by Chinese customs authorities violate relevant WTO rules requiring that infringing goods be kept out of the marketplace altogether and that China permits goods to be released into commerce following the removal of infringing features. USTR also raises concerns about Chinese copyright law’s apparent denial of copyright protection for works poised to enter the market but awaiting Chinese censorship approval.

In addition, USTR states that China’s criminal law, which provides that someone who reproduces a copyrighted work without the owner’s permission is not subject to criminal liability unless he also distributes the pirated work, appears to be inconsistent with China’s obligations under TRIPS.

In its second consultation request on market access issues, USTR argues that Chinese laws and regulations, which require the distribution of all imports of books, journals, movies, music, and videos through specially authorized state-approved or state-run companies, along with other distribution barriers, violate its WTO obligations under its WTO Accession Protocol and under the WTO General Agreement on Trade in Services.

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### *Chinese Government View*

The Chinese government expressed great regret and strong dissatisfaction at USTR's decision to file for WTO consultations, stating that the consultation requests are counter to the consensus reached by leaders of the two countries on developing bilateral trade relations and appropriately handling trade problems. The Chinese government has stated that filing the WTO consultations is an attempt by the Bush administration to deal with rising political anger over soaring U.S. trade deficits.

Government spokespeople have stated that by filing the consultation request, the U.S. government has ignored the Chinese government's efforts and achievements in strengthening intellectual property rights. For example, since WTO accession, the Chinese government says it has improved regulations to enhance protection for copyrighted works on the Internet; strengthened measures to protect intellectual property rights at trade fairs; issued new patent examination guidelines and new standards for the review of trademarks; implemented new requirements that legal operating system software be installed on all computers manufactured in or imported into China; and adopted plans to ensure government agencies use only legal software.

Further, the Chinese government points to the April 2 release of its Action Plan on IPR Protection 2007 formulated by the SIPO and relevant Working Groups. In line with the Plan, Chinese authorities will draft, formulate or revise 14 laws, regulations, rules and administrative measures on trademark, copyright, patent and customs protection as well as judicial interpretations and guidelines. Pursuant to this Plan, the Chinese government will execute a public awareness campaign by 74 measures such as large promotion events, media programming and press conferences.

### The Outlook

These two consultation requests should not come as much of a surprise, since intellectual property rights concerns have been a long-term focal point of the U.S.-China trade relationship. Indeed, some have stated that these consultation requests were long overdue, given China's lax protections for intellectual property rights.

While much progress has been made through bilateral engagement and notwithstanding numerous expressions of concern from the U.S. government, Chinese efforts at improving intellectual property rights protection have not been complete. Although the Chinese government's rhetoric over these consultation requests has been harsh, these requests are a bump in the road of the U.S.-China trade relationship, not a stop sign.

One should not expect a trade war to erupt as a result of these consultation requests. These consultation requests are akin to mediation — an attempt to foster bilateral dialogue, and continued dialogue is important in this relationship. These discussions should result in an improved intellectual property rights regime for China that benefits Chinese and foreign rights holders alike.

### More Reading

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Business Software Alliance, Global Software Piracy Study, <http://www.bsa.org/globalstudy/>

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**About the Committee of 100**

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