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Office of the United States Trade Representative
Real Results – April 2007

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WTO Case Challenging Market Access Restrictions in China on Products of Copyright-Intensive Industries

What WTO commitments did China make?

This case focuses on two sets of fundamental commitments that China made in the agreement allowing it to join the World Trade Organization in 2001: (1) trading rights, meaning the rights to import and to export; and (2) distribution services.

- China committed to liberalize trading rights pursuant to an agreed schedule, with full liberalization to occur by December 11, 2004. Until shortly before its WTO accession, China had severely restricted the number and types of enterprises that could import or export, and it had also restricted the products that a particular enterprise could import or export. For the most part, China confined trading rights to certain state-owned manufacturing and trading enterprises, which could import or export goods falling within their approved business scope. Under China's accession protocol, virtually all of these restrictions were supposed to have been removed by no later than December 11, 2004, at which time all foreign enterprises and individuals were to be permitted to trade in all goods (subject to certain exceptions not relevant here).
- China made similar WTO commitments to remove restrictions on the distribution of products within China. Prior to China's WTO accession, China had largely reserved product distribution to Chinese enterprises, although some Chinese-foreign joint ventures were allowed to distribute their products in certain circumstances. In its WTO accession agreement, China committed to progressively phase out restrictions on foreign suppliers seeking to distribute products within China, with virtually all of these restrictions to have been removed by December 11, 2004.

Many in U.S. industry consider trading rights and distribution services to be among the most important of China's WTO commitments. In the global business world, trading rights and distribution services are fundamentally interrelated, and are essential to carrying out companies' business plans.

What Chinese policies are at issue?

While foreign companies and individuals in most sectors are now able to import goods into China without having to use a middleman and are also able to establish their own distribution networks within China, China continues to maintain import and distribution restrictions on U.S. copyright-intensive industries, i.e., publications (such as books, newspapers and periodicals) and audio and video products (such as newly released movies and CDs, DVDs and video games).

- China continues to reserve the right to import publications and audio and video products exclusively to a limited number of state trading enterprises, as reflected in several sector-specific measures.
- China also continues to maintain an array of measures restricting the rights of foreign entities to engage in the distribution of publications and audio and video products. Under these measures, for some of the products at issue, distribution is limited to Chinese state-owned enterprises. For



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others, foreign enterprises are allowed to engage in certain types of distribution but face restrictive requirements not imposed on domestic enterprises. In yet other cases, only Chinese-foreign joint ventures under Chinese control are permitted to engage in distribution.

How do China's market access restrictions harm U.S. copyright-intensive industries?

- China's market access restrictions force U.S. copyright-intensive industries to rely on Chinese middlemen and agents to do business in the China market, resulting in significantly increased costs, poorer product marketing and delivery, and much fewer sales.
- China's market access restrictions also encourage the rampant IPR infringement occurring in China. The restrictions delay the entry of new products into the Chinese market and effectively limit the scope and quantity of established products available in the Chinese market, providing incentives for pirates to fill the void with their illegal copies.

Why pursue WTO dispute settlement?

- Market access is a very important right in the international trading system, and the United States is committed to protecting this right. This includes taking WTO action when it appears that China has not met the market access commitments it made as a condition of joining the WTO.
- The United States sought to engage the Chinese in negotiations to arrive at a resolution. Unfortunately, those negotiations, to date, have failed to resolve our concerns. As a result, the United States today took the first step to bring this case before the WTO.
- Under WTO dispute settlement procedures, the United States and China would normally consult within 30 days. The United States hopes that these consultations will produce a satisfactory result. If they do not, then anytime after 60 days from the request for consultations, the United States will have the right to request that the WTO establish a dispute settlement panel to examine the matter.
- WTO dispute settlement rules have facilitated and are assisting us in the resolution of other trade disputes with China:
 - March 2004 – After the United States filed a WTO dispute against China challenging value-added tax rebates that discriminated against imported semiconductors, the United States and China resolved the matter during the consultation phase, ensuring fair access to a market worth over \$2 billion to U.S. manufacturers and workers in the semiconductor industry.
 - January 2006 – The United States and China resolved a dispute involving China's imposition of antidumping duties on kraft linerboard shortly after the United States informed China that it would soon be filing a request for WTO consultations. China eliminated the antidumping order on kraft linerboard, terminating the unfair barrier to U.S. paper products and benefiting U.S. kraft linerboard mills in 14 states.



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- March 2006 – The United States, the European Communities and Canada began panel proceedings at the WTO challenging Chinese regulations that impose de facto local content requirements in the auto sector through discriminatory charges on imported auto parts.
- February 2007 – The United States and Mexico have held joint WTO dispute settlement consultations regarding several export subsidy programs and import substitution subsidy programs, which appear to be prohibited under WTO rules. These widely available subsidies offer significant benefits, and the export subsidies alone potentially benefit nearly 60 percent of China's exports of manufactured goods.