

**CHINA – MEASURES AFFECTING TRADING RIGHTS AND
DISTRIBUTION SERVICES FOR CERTAIN PUBLICATIONS
AND AUDIOVISUAL ENTERTAINMENT PRODUCTS**

Request for Consultations by the United States

The following communication, dated 10 April 2007, from the delegation of the United States to the delegation of China and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the People's Republic of China ("China") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Article XXII of the *General Agreement on Trade in Services* ("GATS") with respect to (1) certain measures that restrict trading rights with respect to imported films for theatrical release, audiovisual home entertainment products (*e.g.*, video cassettes and DVDs), sound recordings, and publications (*e.g.*, books, magazines, newspapers, and electronic publications), and (2) certain measures that restrict market access for, or discriminate against, foreign suppliers of distribution services for publications and foreign suppliers of audiovisual services (including distribution services) for audiovisual home entertainment products.

I. Trading rights

In its protocol of accession to the World Trade Organization ("WTO"),¹ China committed to fully open the right to trade (*i.e.*, the right to import goods into China and to export goods from China), with some limited exceptions not applicable here, within three years after accession. Despite this, various measures of China reserve to certain Chinese state-designated and wholly or partially state-owned enterprises the right to import films for theatrical release, audiovisual home entertainment products (*e.g.*, video cassettes and DVDs), sound recordings, and publications (*e.g.*, books, magazines, newspapers, and electronic publications) (collectively, the "Products").

In this connection, the measures at issue include the following:

- (1) the Regulations on Administration of the Films Industry²;

¹ *Protocol on the Accession of the People's Republic of China*, WT/L/432, 23 November 2001 (the "Accession Protocol").

² State Council Order No. 342, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

- (2) the Provisional Rules on the Entry Criteria for Operating Film Enterprises³;
- (3) the Administrative Regulation on Publishing⁴;
- (4) the Administrative Regulations on Audiovisual Products⁵;
- (5) the Catalogue for Guidance of Foreign Investment Industries⁶;
- (6) the Several Opinions of the Ministry of Culture, State Administration of Radio, Film and Television, General Administration of Press and Publication, National Development and Reform Commission and the Ministry of Commerce on Introducing Foreign Investment into the Cultural Sector⁷;
- (7) the Measures for the Administration of Import of Audio and Video Products⁸;
- (8) the Measures for Administration of Chinese Foreign Contractual Distribution Ventures of Audiovisual Products⁹;
- (9) the Administrative Regulations on Electronic Publications¹⁰; and
- (10) the Procedure for Examination and Approval of Establishment of Publication Importation Entities¹¹;

as well as any amendments, related measures, or implementing measures.

The measures at issue appear not to allow all Chinese enterprises and all foreign enterprises and individuals to have the right to import the Products into the customs territory of China. It also appears that foreign individuals and enterprises, including those not invested or registered in China, are accorded treatment less favourable than that accorded to enterprises in China with respect to the right to trade. Accordingly, the measures at issue appear to be inconsistent with China's obligations under the provisions of paragraphs 5.1 and 5.2 of Part I of the Accession Protocol,¹² as well as China's obligations under the provisions of paragraph 1.2 of Part I of the Accession Protocol (to the extent that it incorporates commitments in paragraphs 83 and 84 of the Report of the Working Party on the

³ Decree No. 43 of the State Administration of Radio, Film and Television and the Ministry of Commerce (10 October 2004).

⁴ State Council Order No. 343, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

⁵ State Council Order No. 341, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

⁶ Order [2004] No. 24 of the State Development and Reform Commission, the Ministry of Commerce of the People's Republic of China (30 November 2004).

⁷ Order [2005] No. 19 of the Ministry of Culture (6 July 2005).

⁸ Decree No. 23 of the Ministry of Culture and the General Administration of Customs (17 April 2002).

⁹ Promulgated by the Ministry of Culture and Ministry of Commerce on 9 February 2004 (superseding the measures notified by China in S/C/N/219).

¹⁰ Order No. 11 of the General Administration of Press and Publication (30 December 1997).

¹¹ **General Administration of Press and Publication** (27 December 2005) (available at: www.gapp.gov.cn/GalaxyPortal/inner/zsww/zongsu3.jsp?articleid=4923&boardpid=1450&boardid1=1150101011150c) (visited on 9 April 2007).

¹² The Products are not listed in Annex 2A or Annex 2B of the Accession Protocol.

Accession of China¹³). The Accession Protocol forms part of the terms of accession agreed between China and the WTO and is an integral part of the *Marrakesh Agreement Establishing the World Trade Organization*.

Furthermore, to the extent that the measures at issue impose prohibitions or restrictions other than duties, taxes or other charges, on the importation into China of the Products, these measures appear to be inconsistent with China's obligations under Article XI:1 of the GATT 1994.

II. Distribution services

In the Accession Protocol, China made market access and national treatment commitments in the distribution services and audiovisual services sectors of its Schedule of Specific Commitments on Services (the "Schedule").¹⁴ Despite those commitments, various measures of China impose market access restrictions or discriminatory limitations on foreign service providers seeking to engage in the distribution of publications and certain audiovisual home entertainment products.

In this connection, the measures at issue include:

- (1) the Administrative Regulation on Publishing¹⁵;
- (2) the Administrative Regulations on Audiovisual Products¹⁶;
- (3) the Provisions on Guiding the Orientation of Foreign Investment¹⁷;
- (4) the Catalogue for Guidance of Foreign Investment Industries¹⁸;
- (5) the Several Opinions of the Ministry of Culture, State Administration of Radio, Film and Television, General Administration of Press and Publication, National Development and Reform Commission and the Ministry of Commerce on Introducing Foreign Investment into the Cultural Sector¹⁹;
- (6) the Administrative Regulations on Management of Foreign-Invested Book, Magazine and Newspaper Distribution Enterprises²⁰;
- (7) the Administrative Regulations on the Publication Market (revised)²¹;

¹³ WT/MIN(01)/3.

¹⁴ WT/L/432, Annex 9, and WT/MIN(01)/3/Add.2.

¹⁵ State Council Order No. 343, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

¹⁶ State Council Order No. 341, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

¹⁷ Decree [2002] No. 346 of the State Council (11 February 2002).

¹⁸ Order [2004] No. 24 of the State Development and Reform Commission, the Ministry of Commerce of the People's Republic of China (30 November 2004).

¹⁹ Order [2005] No. 19 of the Ministry of Culture (6 July 2005).

²⁰ The General Administration of Press and Publication and the Ministry of Foreign Trade and Economic Cooperation (17 March 2003).

²¹ Promulgated by the General Administration of Press and Publication on 16 July 2003, revised on 16 June 2004.

- (8) the Administrative Regulations on Electronic Publications²²;
- (9) the Administrative Measures on Subscription of Imported Publications²³;
- (10) the Procedure for Examination and Approval of Establishment of Chinese-Foreign Entities, Cooperative Joint Ventures, and Wholly Foreign Owned Publication Distribution Enterprises²⁴; and
- (11) the Measures for Administration of Chinese Foreign Contractual Distribution Ventures of Audiovisual Products²⁵;

as well as any amendments, related measures, or implementing measures.

A. Publications (e.g., books, newspapers, periodicals, and electronic publications)

The measures at issue appear to prohibit foreign service suppliers (including wholly or partially foreign-owned or foreign-invested enterprises) from engaging at least in a type of distribution described in these measures as the "master distribution" of publications. The measures at issue also appear to prohibit foreign service suppliers (including wholly or partially foreign-owned or foreign-invested enterprises) from engaging at least in the wholesaling of "electronic publications" (a term that refers to a subset of publications). Moreover, the measures at issue may extend this prohibition more broadly to all distribution of all publications (whether at the "master distribution" level or otherwise). Furthermore, to the extent that some foreign service suppliers are allowed to engage in some aspects of the distribution of publications, there appear to be discriminatory requirements concerning such suppliers' registered capital, such suppliers' operating term, and the particular publications that such suppliers may distribute.

The measures at issue therefore appear to accord treatment to foreign suppliers of distribution services for publications treatment less favourable than that accorded to Chinese suppliers of distribution services for publications. In Sectors 4A-4E of its Schedule, China undertook market access and national treatment commitments with respect to the supply through commercial presence in China by service suppliers of other Members of, *inter alia*, distribution services for publications. Moreover, the measures at issue do not appear to fall within the terms, limitations, conditions, or qualifications on market access or national treatment that China has specified in its Schedule for the distribution of publications through commercial presence in China by service suppliers of other Members. Accordingly, the measures at issue appear to be inconsistent with China's obligations under Articles XVI and XVII of the GATS.

B. Audiovisual home entertainment products

The measures at issue appear to prohibit foreign service suppliers (including wholly or partially foreign-owned or foreign-invested enterprises) from engaging at least in a type of distribution described in these measures as the "master distribution" of audiovisual home

²² Order No. 11 of the General Administration of Press and Publication (30 December 1997).

²³ Order No. 27 of the General Administration of Press and Publication (adopted at the fourth conference of the General Administration of Press and Publication on 9 September 2004 and published on 31 December 2004).

²⁴ General Administration of Press and Publication (27 December 2005).

²⁵ Promulgated by the Ministry of Culture and Ministry of Commerce on 9 February 2004 (superseding the measures notified by China in S/C/N/219).

entertainment products such as video cassettes and DVDs ("audiovisual home entertainment products"). Moreover, to the extent that foreign services suppliers are permitted to engage in any distribution of those products (whether at the "master distribution" level or otherwise), the measures at issue appear to impose requirements that the service be supplied through a form of entity that Chinese persons control, or in which Chinese persons have a dominant position, or for which there is a limitation on the participation of foreign capital.

The measures at issue therefore appear to accord treatment to foreign suppliers of audiovisual distribution services for audiovisual home entertainment products treatment less favourable than that accorded to Chinese suppliers of audiovisual distribution services for audiovisual home entertainment products, and to impose restrictions on market access on foreign service suppliers of audiovisual distribution services for audiovisual home entertainment products. In Sector 2D of its Schedule, China undertook market access and national treatment commitments with respect to the supply through commercial presence in China by service suppliers of other Members of distribution services for a range of products including, *inter alia*, audiovisual home entertainment products. Moreover, the measures at issue do not appear to fall within the terms, limitations, conditions, or qualifications on market access or national treatment that China has specified in its Schedule for the distribution of such products through commercial presence in China by service suppliers of other Members. The measures at issue therefore appear to be inconsistent with China's obligations under Articles XVI and XVII of the GATS.

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The measures cited in this request for consultations also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.
