

**RESPONSE TO A REQUEST FOR INFORMATION PURSUANT TO
ARTICLE 63.3 OF THE TRIPS AGREEMENT**

Communication from China

The following communication addressed to the Delegation of the United States, dated 22 December 2005, is being circulated at the request of the Delegation of China. It contains a response to a request from the United States for information pursuant to Article 63.3 of the TRIPS Agreement, circulated in document IP/C/W/461.

1. I have the honour to acknowledge the receipt of your letter dated 25 October 2005 and have taken note of the request from the United States as contained therein for information on cases of intellectual property rights (IPR) enforcement of China for the years 2001 through to 2004 and other relevant cases. In pursuance to the provisions on the rights and obligations under Article 63.3 of the TRIPS Agreement, I am authorized by the Government of China to provide the following response to you with regard the above-mentioned request.

2. The Government of China has always attached great importance to the protection of IPRs. On the issue of transparency, China believes that this is essential to ensure the predictability, credibility and due functionality of the IPR protection system. China has strictly fulfilled all its WTO obligations under Article 63 of the TRIPS Agreement. China's competent domestic IPR authorities have also made relevant information publicly available through their official websites, newspapers, magazines and other proper channels. In addition, China has provided much information concerning IPR legislations and their enforcement through its bilateral exchange and cooperation activities with WTO Members.

3. Regarding the request by the Government of the United States as contained in your letter, China would like to make the following comments and seek relevant clarifications from the United States.

4. Firstly, Article 63.3 of the TRIPS Agreement contains two sentences. China is always ready to provide, in response to a written request from any WTO Member, information referred to in Article 63.1 and the first sentence of Article 63.3. However, it is necessary to put it clearly that since China does not follow the common law system, it is not in a position to provide any such "*judicial decisions and administrative rulings of general application*" as requested by the United States and within the meaning of Article 63.1 of the Agreement. China would therefore like to ask the United States to clarify the legal basis of such a request, i.e., to explain explicitly on which sentence of Article 63.3 of the TRIPS Agreement the request is based, the first or the second.

5. Secondly, as it is required under the second sentence of Article 63.3 of the Agreement, a WTO Member shall have "*reason to believe that affects its rights under this Agreement*". There are no reasons and facts mentioned in your letter that could prove that any rights of the United States under the Agreement have been affected. In this regard, China needs to know the reason why the United States so believes and how the cases which would probably be mentioned in your letter would affect its rights under the Agreement.

6. Thirdly, the second sentence of Article 63.3 also provides that a Member could only request information on "*a specific judicial decision or administrative ruling or bilateral agreement*." China believes that those "cases of intellectual property rights enforcement identified by China for the years 2001 through to 2004 and other relevant cases" referred to in your letter are not "*a specific case*". China therefore invites the United States to identify those specific cases within the meaning of the second sentence of Article 63.3 of the Agreement.

7. China holds that any WTO Member should interpret and apply international conventions, including the TRIPS Agreement, in good faith. China recognizes WTO Members' rights under Article 63.3 of the TRIPS Agreement. However, China believes that any request under Article 63.3 should be consistent with the requirements as contained in that provision.

8. Furthermore, China has noted that Article 63.3 of the TRIPS Agreement only refers to a Member's right to request information, but there is no mention of a corresponding obligation of the requested Member to actually follow the request. Nor does it provide any formality and time requirement for any possible response. Based upon this understanding, China would naturally believe that any possible response from China to the request, if applicable and necessary, will not affect any rights of China under the Agreement.

9. China is willing to enhance cooperation with all WTO Members, including the United States, with respect to the protection of IPRs. It is China's belief that sufficient clarification to be provided by the United States to China on the above-mentioned points in writing will be helpful for the latter to offer its cooperation for the benefit of the former in the implementation of Article 63.3 of the TRIPS Agreement. China is looking forward to receiving an early response from the United States.
