

Intellectual Property Rights

CAN THE WTO BE EFFECTIVE?

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Background

- China agreed when it entered the World Trade Organization (WTO) to adhere to international norms to protect and enforce minimum standards of protection for copyrights, trademarks, and patents. Although China has established an intellectual property rights (IPR) legal regime that largely meets WTO standards, enforcement remains inadequate. Copyright piracy of software and recorded entertainment products, trademark counterfeiting, patent infringement, and unauthorized use of trade secrets are widespread.
- China's failure to protect intellectual property is a major source of friction in the U.S.-China economic relationship. The economic burden of piracy and counterfeiting falls heavily on U.S. firms, which clearly have a comparative advantage in research-based pharmaceuticals, software, movies, music, and video games.

Current Situation

Some developments bode well for increased IPR protection in China in the long run:

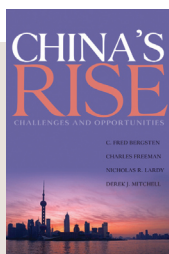
- The number of patents filed in China continues to grow. According to the World Intellectual Property Organization (WIPO), China's share of total global patent filing grew from 1.8 percent in 2000 to 7.3 percent in 2006, mainly because of increases in its domestic filing.
- The long-term rise in trademark registrations also continued: in 1983, fewer than 20,000 trademarks were registered with China's State Administration of Industry and Commerce (SAIC), but by 2006, there were more than 766,000 applications, and the cumulative number of registered trademarks reached 2.8 million.
- More than 80 percent of registered trademarks, and most trademark and patent investigations and litigation, involve domestic firms. In 2006, for example, SAIC investigated more than 41,200 trademark infringement cases, of which only about one-fifth involved trademarks registered by foreign parties. Similarly, more than 90 percent of all of the cases in China's IPR courts involve Chinese parties suing other Chinese companies. This increasing domestic desire for IPR protection suggests that China's IPR regime will improve in the years ahead.
- China has been increasing its efforts to protect IPR in recent years and has made progress in some areas. The notable example is its entry to two Internet-related treaties of the WIPO—the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty—in 2007. However, the enforcement of these treaties will remain a paramount challenge for the Chinese government considering the growing number of Internet users in China.
- Although Beijing has stepped up efforts to combat IPR violations through campaigns and legislation, local and provincial authorities have much at stake in preserving IPR-infringing enterprises and have become a significant obstacle in the crackdown on piracy and counterfeiting. The United States should respond by building coalitions in China that are not just top down and that encourage support for U.S. positions at the local level.
- The United States and China have experienced frictions in discussing IPR cases, and future negotiations may be difficult. In 2007, the U.S. government filed two complaints through dispute mechanisms at the WTO. One challenged China's enforcement regime against perpetrators of counterfeit and pirated movies, music, software, and trademark products. The other sought to lift Chinese curbs on internal distribution of foreign books, movies, and music. The Chinese reacted negatively to these steps, cutting off negotiations for several months. Talks on possible future moves by China resumed in the spring of 2008. Rulings on the WTO cases were expected at the end of 2008.

Implications

- The United States should keep pressing China to fulfill its WTO IPR commitments. Many IPR violations arise or persist with collusion from provincial and local leaders, who generally value the jobs and tax revenues that factories producing pirated intellectual property provide. All too frequently, these IPR violations appear to be concealed from the central authorities, who are more committed to enforcement of IPR laws. Thus, at a minimum, high-level dialogue on IPR violations can help keep the central government well informed.
- More important, the United States has an interest in ensuring that pending and potential rules, regulatory standards, and laws are consistent with or stronger than China's WTO commitments.
- More generally, the United States should seek to persuade China to adopt market-friendly regulatory standards that provide equal market access for all firms.

CAN THE UNITED STATES WIN THE IPR CASE AGAINST CHINA AT WTO?

- In April 2007, the United States filed a formal case with the WTO Dispute Settlement Body (DSB), charging that China failed to adequately enforce the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). As the consultations between the two countries did not solve the issue, a panel was established in September 2007, and composed in December 2007.
- Three issues are the main focus of the US panel request; the thresholds for criminal procedures and penalties for trademark counterfeiting and copyright piracy, the disposal of IPR infringing goods confiscated by Chinese customs authorities, and the denial of copyright protection to creative works that are awaiting an approval for publication or distribution within China.
- The panel failed to submit its report within six months and requested an extension. The panel is expected to release its final report in 2009.
- This case may be hard to win, however. The TRIPS agreement neither defines what constitutes effective enforcement, nor requires a member state to devote more resources to IPR protection than to other areas of law enforcement.



FOR FURTHER INFORMATION:

SEE CHAPTER 4: "CENTER-LOCAL RELATIONS: HU'S IN CHARGE HERE?" IN *CHINA'S RISE: CHALLENGES AND OPPORTUNITIES*

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