



CHINA – ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

REQUEST TO JOIN CONSULTATIONS

Communication from Canada

The following communication, dated 4 March 2022, from the delegation of Canada to the delegation of China, and the delegation of the European Union, is circulated to the Dispute Settlement Body in accordance with Article 4.11 of the DSU.

Pursuant to Article 4.11 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), the Government of Canada hereby notifies its request to join the consultations requested by the European Union in relation to China's measures affecting enforcement of intellectual property rights.¹ The European Union's request for consultations (WT/DS611/1) was circulated to Members on February 22, 2022.

Canada has serious concerns with the transparency of China's measures given their potential to negatively impact and undermine rules-based trade with respect to the protection and enforcement of intellectual property rights. As identified in the European Union's request for consultations, China has adopted and maintains a policy on issuing "anti-suit injunctions" (ASIs), which impedes patent holders that are subject to an ASI in China from enforcing their rights in other jurisdictions by imposing significant monetary penalties if they seek to enforce their rights in another jurisdiction. China's measures interfere with the exercise of rights guaranteed under the TRIPS Agreement and therefore threaten to disrupt trade in a manner affecting Canada's economy, particularly given the lack of transparency and available information on these measures. For instance, on July 6, 2021, the European Union made an official request pursuant to Article 63.3 of the TRIPS Agreement for further information on China's recent court decisions and policy related to ASIs. However, on September 7, 2021, China answered that there is no obligation under the TRIPS Agreement to respond to that request.

Canada has a substantial trade interest in these consultations. Canadian companies are affected both directly and indirectly by the ASI policy developed through China's court decisions, with the lack of transparency having the potential to create a chilling effect on the market by increasing the risk and trade costs associated with weaker regulatory predictability. While the European Union made a formal request in July 2021 for information on recent decisions by China's courts involving the issuance of an ASI, as well as for further clarification on China's recent policy developments in this area, China has not provided any of the requested information in the context of formal discussions at the WTO.

Canada remains committed to the principle of transparency at the WTO, including with a view to ensuring that businesses continue to thrive in a predictable rules-based multilateral trading system. Particularly as China's policy on ASIs involves standard-essential patents in telecommunications and

¹ Communication from the European Union, "China – Enforcement of Intellectual Property Rights: Request for Consultations by the European Union," dated February 18, 2022 (WT/DS611/1, IP/D/43, G/L/1427) (circulated February 22, 2022) ("EU Request for Consultations") (requesting consultations pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, in conjunction with Article 64.1 of the Agreement on Trade Related Aspects of Intellectual Property ("TRIPS Agreement"), and XXII:1 of the General Agreement on Tariffs and Trade 1994.

other emerging high-tech sectors of the global economy, court decisions in this area can have significant implications for intellectual property rights holders and investors, as well as users of mobile products and other emerging technologies worldwide. It is therefore important to ensure that WTO Members make publicly available laws and regulations, and final judicial decisions and administrative rulings of general application, pertaining to the subject matter of the TRIPS Agreement. Canada continues to engage with other WTO Members in supporting rules-based trade, towards a transparent and predictable multilateral framework with the WTO at its core.

The European Union alleges in its request that China's failure to publish final decisions pertaining to the subject matter of the TRIPS Agreement and failure to respond to requests for information violates China's obligations under Articles 63.1 and 63.3 of the TRIPS Agreement because China has failed to comply with the transparency obligations set out in those provisions. Canada considers that a violation of these obligations has the potential to seriously affect trade by preventing WTO Members and rights holders from being aware of the measures that impact their economic interests. The European Union also alleges that China's measures are inconsistent with certain obligations under Articles 1.1, 28.1, 28.2, 41.1 and 44.1 of the TRIPS Agreement. Canada considers that these provisions pertain to fundamental issues of WTO law. Canada has a vested interest in how these provisions are being implemented by China. Finally, the European Union alleges that China has acted inconsistently with Section 2(A)(2) of the Protocol of Accession of the People's Republic of China because it does not apply its laws in a uniform, impartial and reasonable manner. Canada is concerned that global trade has been negatively affected by China's deviation from the balance of rights and obligations it negotiated with the EU and the other WTO Members when it acceded to the WTO.

Based on the foregoing, Canada has a substantial trade interest in participating in these consultations, and an interest in assuring that China's measures are applied in accordance with the WTO Agreements and China's Protocol of Accession to the WTO.

Canada therefore respectfully requests that it be permitted to join the consultations in this dispute.

A copy of this letter is being sent to the European Union and to the Chairperson of the Dispute Settlement Body, with a request that the letter be circulated to Members.
