

# Outcome of the Third Meeting of the EU-China IP Dialogue

**Brussels, 15-16 March 2007**

On 15-16 March 2007 EU and China held the 3<sup>rd</sup> meeting of their Dialogue on Intellectual Property in Brussels. The meeting was co-chaired by Mr. Luc Devigne, Head of the IP Unit in DG Trade (Commission), and Mr. Shang Ming, Director General, Department of Treaties & Law (Ministry of Commerce - MOFCOM). China was represented by officials from various departments (MOFCOM, State Office of Intellectual Property Protection, Supreme People's Court, Ministry of Public Security, Customs, State Administration of Industry and Commerce, State Intellectual Property Right Office, National Copyright Administration) while EU side was represented by COM and EPO officials. The Dialogue enabled both sides to exchange information on multilateral and bilateral IP-related issues, on national IP legislation and practices, and to identify shortcomings and proposals for improvement.

EU introduced its **list of priorities for this meeting**, namely the issue of licensing agreements in the ICT sector, the removal of thresholds for criminal prosecution, the creation of a supplementary protection certificate for pharmaceuticals, the adoption of guidelines and tariff rates for broadcasting of EU works and action against internet piracy. These issues are a major source of concern and therefore an urgent solution is of utmost importance for the EU.

The Dialogue covered two days of discussion and was divided into three parts: The First Plenary Session was dedicated to **IPR policy and enforcement** where the issues of customs, criminal, civil and administrative sanctions of IP infringements were discussed. During the second day, two parallel Working Groups had been set up. The first one was devoted to **copyright and related rights, trademarks and geographical indications**, while the second one dealt with **patents and designs, and protection of innovation**. The Second Plenary Session allowed both sides to exchange views on the new technical assistance programme "IPR II" and to report on and further discuss the outcome of the Working Groups.

## **A. First Plenary session – IPR Policy and Enforcement**

### ***1. IPR Policy***

Both parties exchanged views on recent developments in the EU and China regarding IPR policy. Chinese side confirmed its determination to make a progress on IP protection and enforcement and mentioned a number of initiatives already undertaken in this field. IPR protection, announced as a **National Strategy**, was recognized as indispensable to build a country of innovative model. EU confirmed that it was working on an **IPR Strategy for Europe**.

### ***2. Enforcement***

**2.1.** Both sides discussed recent developments related to IPR enforcement. EU presented the results of its survey on **IPR enforcement in third countries** (published in 2006) as a tool to define priorities for action, including technical assistance. Chinese side expressed strong interest to obtain more information on the survey. Both sides reiterated the importance and usefulness of the China's Action Plan on IPR Protection issued in 2006. EU mentioned its question list regarding the Action Plan.

**2.2.** In the area of **customs**, EU and China are bound by an agreement on co-operation and mutual administrative assistance in customs matters. Both sides affirmed that further co-

operation, especially on technical assistance, would be highly desirable. In order to assure practical co-operation the exchange of officials, statistics and information are needed.

**2.3.** Both sides discussed also **criminal sanctions of IPR infringement**. EU introduced the proposal for a Directive to combat IPR offences within the EU. Both sides exchanged views on the issue of thresholds and on the concept of "commercial scale". China presented the two-track enforcement system and gave reasons for keeping threshold system, which was not convincing for EU. Both sides also discussed the recently-adopted Opinion of the Supreme People's Court *on the Comprehensive Strengthening of Intellectual Property Trials Work*. EU reiterated its concerns concerning notarization and legalization of overseas evidence and power of attorney.

**2.4.** Concerning **civil and administrative sanctions**, EU introduced its enforcement Directive. Both sides discussed the issues of transfer of cases, preliminary injunctions and Power of Attorney. EU resubmitted its questionnaire to the SPC on preliminary injunctions. China introduced the state of play on the revision of Trademark Law and invited EU to actively participate in the consultation process.

## **B. Working Group I – Trademarks, Copyright and Geographical Indications**

### ***1. Copyright issues***

Both sides exchanged views on **internet piracy** and discussed the international dimension of the issue. EU urged China to intensify its efforts against copyright infringements on the internet. Chinese side informed of measures taken against illegal sites and gave clarifications on the recently adopted Opinion of the Ministry of Culture *on the Development and Regulation of Internet Music* which is not a binding regulation. EU expressed its concerns about the ban on foreign ownership of digital music services and censorship requirements. EU proposed a follow-up meeting.

Both sides exchanged information on **plants manufacturing pirated optical discs**. China informed on the measures already taken and requested more precise information on plants suspected to manufacture illegal discs. Both sides agreed to a follow-up meeting in Beijing. Both sides also discussed the **broadcasting and public performance rights for producers** of sound recordings and audiovisual works. Chinese side indicated that the adoption of tariffs for **broadcasting of EU copyright works** would be adopted by the end of 2007. Both sides exchanged views on the ongoing work on the WIPO Treaty on the Protection of Broadcasting Organizations. EU introduced its Recommendation No 2005/737/EC on collective cross-border management of copyright and related rights for legitimate online music services. Furthermore Chinese side informed of last developments regarding **collective management societies** in China, including for karaoke. Both sides exchanged information on their respective accession to the WIPO Internet Treaties (WCT and WPPT). China mentioned the problem of the **availability of pirate copies of Chinese movies and music** in retail outlets in Europe and EU explained possible actions against piracy.

### ***2. Trademark Issues***

EU introduced the latest developments with regard to the **Community Trademark** system. Chinese side explained the measures planned to solve the problem of increasing applications and related litigations the **Chinese Trademark Office (TMO)** is facing in particular through computerization of the processing of trademark applications. Both sides discussed the issue of **cleaning out retail and wholesale markets** selling counterfeits and pirated goods in China,

including the state of play on implementation of the 2006 Memorandum of Understanding between landlords of some retail markets in Beijing and right holders. EU urged China to commit to solving the problems encountered in implementing the MoU. Both sides agreed to hold a technical follow-up meeting in Beijing. The meeting gave the opportunity to exchange views on outstanding **trademarks cases**, including case of "Not made in China". China expressed satisfaction with the information provided.

### ***3. Geographical indications***

China and EU exchanged views on the ongoing negotiations on geographical indications in the DDA. China confirmed that it was working on a comprehensive system for GI protection.

## **C. Working Group II – Patents, Designs and Protection of Innovation**

### ***1. Patents***

EU introduced the state of play on the **future EU patent policy** in Europe, including the Community patent. Both sides discussed the state of play on the **Third Revision of Chinese Patent Law**. EU took note of some positive changes but expressed concerns regarding several provisions such as those related to: 1) the obligation to obtain approval from the Patent Office before filing an application in foreign country; 2) the inventions which are completed under scientific research project founded mainly with government investment; 3) the regulation of compulsory licensing; 4) the requirement concerning the indication of the source of genetic resources in patent applications; 5) the limits to the rights of the patent owner, and 6) the absence of supplementary protection certificate for pharmaceuticals.

### ***2. Designs***

EU introduced the latest developments with regard to **Community Design** system and informed of its accession to the Geneva Act of the Hague Agreement concerning the International Registration of Industrial Designs. EU encouraged China to introduce protection of **unregistered designs** which would be especially attractive for Chinese fashion industry. Chinese side expressed an interest in further information on this matter and it was agreed to follow this up.

### ***3. Trade fairs***

Both sides discussed the implementation of the Chinese **Regulation on IP infringements at Trade Fairs** as well as new measures in **Canton Trade Fairs**. Chinese side also introduced the **Blue Sky Operation** as a successful initiative. Nonetheless EU was concerned about the lack of effective enforcement and inquired about the envisaged solutions in case of change of company name. EU introduced measures on IPR protection in trade fairs. Both sides agreed to follow-up with a workshop on concrete case examples of IP protection on trade fairs in EU and China.

### ***4. Protection of Innovation***

**4.1.** EU raised the problem of lack of **royalties' payments** for the use of European technologies in ICT sector which needs to be urgently solved. Although European companies are the main holders of essential patents for many specific technologies, only a few licence agreements had been concluded with Chinese companies. EU strongly recommended China to take a straightforward commitment to publicly encourage Chinese companies to enter into negotiations for licensing agreements with European companies. China suggested that companies should try to solve the problem themselves and gave the example of a European company that had recently concluded an agreement with a Chinese company. China again

requested EU to provide precise information on the names of the companies concerned. Both parties agreed that a meeting with MII in Beijing prior to the next Working Group in June would be a positive step forward to make progress on this issue. The EU underlined the importance of having concrete progress to report in time for the EU-China Summit scheduled for November 2007.

**4.2.** EU expressed also serious concerns about disclosure of confidential information (**trade secrets**) and abuses in the context of certification and authorisation process. EU encouraged China to issue a Regulation specifying the documents requested for authorisation/certification and setting out clear procedural rules. China invited EU to provide more detailed information on concerned industry sectors and specific institutes to be provided by EU industry in order to identify and address concerns raised by EU.

**4.3.** Both sides discussed the issue of protection against unfair use of **undisclosed data** submitted to public authorities for the purpose of obtaining marketing authorisation, including the issue of non-reliance. EU suggested changes in Chinese law in order to meet the needs of data exclusivity. China was also encouraged to introduce the mechanism of patent linkage which would be helpful to prevent infringement of new drugs before they were released on the market. China invited EU to submit a written statement on the issue of data exclusivity to relay to the competent agency SFDA for further discussions and future meetings. EU and China will jointly further follow-up on concrete cases raised at previous Working Groups at technical level.

### ***5. IP and Competition***

EU presented EC Competition rules on IPR and measures helping to avoid **abuse of IPR**. The regulation of block exemption for technology transfer agreements and notion of abuse of dominant position were discussed. China pointed out that avoiding abuse in IPR was an important issue. EU stressed that the mere existence of IPR as such was not a problem from a competition point of view.

### **D. Second Plenary Session – Technical assistance**

EU introduced the technical assistance programme "IPR II" aiming to improve the effectiveness of IPR enforcement in China through the provision of assistance to Chinese legislative, judicial, administrative and enforcement agencies and institutions. Chinese side welcomed this programme as an important tool to make IPR better used and better understood at the service of business development by both Chinese and European right holders. Both sides expressed the wish that this programme is implemented as soon as possible.

Both sides reported on the results on the discussion in the Working Groups and made concluding remarks. They stressed the necessity of further co-operation and emphasized the need of improvements in IPR protection in China. EU recalled the list of the five priorities identified for this meeting and noted that **insufficient progress had been made**. China noted that this meeting had allowed both sides to address various issues, many of them in depth, and disagreements were inevitable given the different perspectives. China confirmed its commitment to the Dialogue and stressed that communication and co-operation were the only way to go ahead.

Both sides expressed high expectations for the next EU-China IP Working Group session scheduled for **June 2007**. The next session of EU-China IP Dialogue should take place in **early 2008**.