



EUROPEAN UNION
Permanent Mission
to the World Trade Organization
The Chargé d'affaires a.i.

Geneva, 18 February 2022

Subject: Request for Consultations by the European Union

Dear Ambassador,

My authorities have instructed me to request consultations with the Government of the People's Republic of China ("China") pursuant to Article 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 64.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), and Article XXII:1 of the General Agreement on Tariffs and Trade 1994 ("GATT") with regard to certain measures adversely affecting the protection and enforcement of intellectual property rights and with regard to China's failure to carry out its obligations under Articles 63.1 and 63.3 of the TRIPS Agreement.

1. THE MEASURES AT ISSUE ADVERSELY AFFECTING THE PROTECTION AND ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

1.1. Description of the measures

China has introduced and maintains a policy which in the context of judicial procedures concerning the enforcement of intellectual property rights in China prohibits patent holders from asserting their rights in other jurisdictions by commencing, continuing or enforcing the results of legal proceedings before a non-Chinese court. This prohibition materialises through Chinese courts issuing so called "anti-suit injunctions" enforced through daily penalties in case of infringement, which are typically set at the maximum level allowed for under Chinese Civil Procedure Law, and accumulate daily. This policy has been introduced by means of a decision by China's Supreme People's Court ("SPC"), which has been further elaborated and promoted by the SPC in a number of official and public documents. This policy has been endorsed by the National People's Congress Standing Committee, and applied by Chinese courts in at least four cases.

The policy has been applied by Chinese courts since the date of that first SPC decision and, according to official statements, it will be applied in the future.

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In its decision of 28 August 2020 in the case of *Huawei v Conversant*¹ the SPC decided (“SPC decision of 28 August 2020”) that Article 100² of the Civil Procedure Law of the People’s Republic of China (“Civil Procedure Law”) allows a Chinese court to put in place a provisional measure³ prohibiting a party from applying for enforcement of judgments of a non-Chinese court or from seeking judicial relief outwith the jurisdiction of China. Furthermore, it decided that in case of violation of that “anti-suit injunction”, a Chinese court can impose the maximum fine provided for under Article 115 (1)⁴ of the Civil Procedure Law of 1 million RMB (138,983 EUR / 156,845 USD per day and order that it accumulate on a daily basis. The SPC decision of 28 August 2020 gave a further interpretation of the relevant provisions of the Civil Procedure Law, building on a previous judicial interpretation provided in "*Supreme People's Court's Provisions on Several Issues Concerning the Application of Law in Examining Act Preservation Cases in Intellectual Property Disputes*".⁵

The SPC decision of 28 August 2020 was taken in the context of an appeal by Conversant against a decision of 16 September 2019 by the Nanjing Intermediate People’s Court of Jiangsu Province, which had determined the license rate for a 4G standard essential patent owned by Conversant and implemented by Huawei in 4G mobile terminal products.⁶ On 27 August 2020, Huawei applied for act preservation ordering Conversant not to apply for enforcement of an injunction granted by the District Court of Düsseldorf, Germany on 27 August 2020. On 28 August 2020, the SPC issued the anti-suit injunction order, prohibiting Conversant, under the sanction of daily penalties, from applying for the enforcement of the first-instance injunction judgment issued by the District Court of Düsseldorf before the SPC final judgment becomes effective.

The European Union understands that anti-suit injunctions generally remain valid until the final judgment in the case before the Chinese judgement becomes effective. In reply to the European Union question during China’s Trade Policy Review on the duration of anti-suit injunctions, China referred to Article 13 of the Provisions of the Supreme People's Court on Issues Regarding the Application of Law in Examining Cases of Act Preservation in Intellectual Property Disputes, which notes that these types of rulings shall generally be valid until the judgment in the case becomes effective.⁷

1.1.1 Four anti-suit injunctions issued by Intermediate People's Courts

After the SPC decision of 28 August 2020, two lower Chinese courts (Intermediate People's Courts), issued anti-suit injunctions in four cases.

1. *Xiaomi v InterDigital* - Wuhan Intermediate People's Court

On 9 June 2020, Wuhan Intermediate People’s Court accepted a case filed by a number of companies of the Xiaomi group against Inter Digital, Inc. in relation to a licence fee rate for standard essential patents.⁸ On 4 August 2020, Xiaomi filed an application for act preservation in the form of an anti-suit injunction. On 23 September 2020, the Wuhan Intermediate People's Court

1 The Supreme People’s Court of the People’s Republic of China, Civil Ruling, of 28 August 2020 in Cases No. 732, No. 733 and No. 734, between Huawei Technology Co. LTD and Conversant Wireless Licensing S. à r. l.

2 http://www.npc.gov.cn/zgrdw/npc/xinwen/2017-06/29/content_2024892.htm

3 China's Civil Procedure Law calls the provisional measure an “act preservation measure.”

4 http://www.npc.gov.cn/zgrdw/npc/xinwen/2017-06/29/content_2024892.htm

5 Approved by the 1755th conference of the judicial committee of the Supreme People's Court on 26 November 2018, to be enacted from January 1, 2019) Fa Shi [2018] No. 21. <http://www.court.gov.cn/zixun-xiangqing-135341.html>

6 Case (2018) Su 01 Min Chu No. 232, 233 and 234

7 China's Reply to European Union Question 78 in the Trade Policy Review.

8 Wuhan Intermediate People's Court of Hubei Province, case (2020) E 01 Zhi Min Chu No.169.

issued an anti-suit injunction in the abovementioned case. That injunction required InterDigital and its affiliates, under the sanction of daily penalties, to withdraw or suspend an injunction it had requested against Xiaomi and its affiliates before the Indian Courts, and prohibited requesting any other court in the world for an injunction or a determination of a royalty fee for the 3G and 4G mobile standard essential patents (“SEPs”) involved in the case. The Wuhan Intermediate People's Court granted the injunction relying upon the provisions of the Civil Procedure Law, and the Supreme People's Court's Provisions on Several Issues Concerning the Application of Law in Examining Act Preservation Cases in Intellectual Property Disputes as interpreted in the SPC decision of 28 August 2020.

2. *ZTE v Conversant* - Shenzhen Intermediate People's Court

On 17 January 2018, the Shenzhen Intermediate People's court accepted a case ZTE filed against Conversant Wireless Licensing Co., Ltd. ("Conversant") requesting the Court to decide the licensing conditions for the patents Conversant claimed to be essential for Chinese standards.⁹ The day of the SPC Decision of 28 August 2020, ZTE applied to the court for act preservation prohibiting enforcement of an injunction by a foreign court.

On 28 September 2020, the Shenzhen Intermediate People's Court issued an anti-suit injunction.¹⁰ The injunction prohibited Conversant, under the sanction of daily penalties, from enforcing an injunction issued by the Düsseldorf Court. The Shenzhen Intermediate People's Court referred to a decision by the Nanjing Intermediate People's Court in a case between Huawei and Conversant¹¹ that concerned the royalty rate for the same patents concerned in the dispute before the Shenzhen Intermediate People's Court. Taking into account that decision the Shenzhen Intermediate People's Court concluded that Conversant was asking too high a rate from ZTE. Therefore it granted an anti-suit injunction because otherwise ZTE would either be forced to withdraw from the German market or be forced to accept the offer of Conversant and reach a settlement with it. The decision by the Nanjing Intermediate People's Court was appealed and was the subject of the SPC decision of 28 August 2020. The Shenzhen Intermediate People's Court also referred to that SPC trial, noting it was in progress. The Shenzhen Intermediate People's Court granted the injunction based on the provisions of the Civil Procedure Law.

3. *OPPO v Sharp* - Shenzhen Intermediate People's Court

On 25 March 2020, the Shenzhen Intermediate People's Court accepted a standard essential patent licensing dispute case filed by OPPO and OPPO Shenzhen (“OPPO”) against Sharp Corporation and Scienbizip Japan Corporation.¹² OPPO requested the court, amongst other things, to determine the global licensing conditions, including but not limited to, the licensing royalty rate, for OPPO's intelligent terminal products, regarding Wi-Fi related SEPs, 3G related SEPs, and 4G related SEPs. In or around October 2020, OPPO applied for act preservation requesting the Court, first, to prohibit Sharp and its affiliates from applying for judicial injunctions (including permanent injunction and temporary injunction) or other similar relief measures in other countries or regions. Secondly, OPPO sought to prohibit Sharp and its affiliates from initiating patent infringement lawsuits or applying for judicial injunctions (including permanent injunction and temporary injunction) or other similar relief measures against OPPO in other countries or regions.

9 Shenzhen Intermediate People's Court of Guangdong Province case (2018) Yue 03 min Chu No. 335.

10 Civil ruling of Shenzhen Intermediate People's Court of Guangdong Province (2018) Yue 03 min Chu No. 335-1

11 Decision of 16 September 2019 in Case (2018) Su 01 Minchu 232, 233, 234. 2019年9月16日南京中院做出(2018)苏01民初232、233、234号民事判。

12 Shenzhen Intermediate People's Court of Guangdong Province case (2020) Yue 03 Minchu No. 689. 广东省深圳市中级人民法院(2020)粤03民初689号之一民事裁定书

On 16 October 2020, the Shenzhen Intermediate People's Court issued an anti-suit injunction in the abovementioned case.¹³ It prohibited Sharp, under the sanction of daily penalties, from initiating a patent infringement case or requesting an injunction against OPPO and its affiliates based on its WiFi, 3G and 4G standard essential patents involved in that case anywhere in the world. The Shenzhen Intermediate People's Court granted the injunction based on the provisions of the Civil Procedure Law. On 19 August 2021, the Supreme People's Court rejected the appeal by Sharp against the Shenzhen Intermediate People's Court decision in relation to the court's jurisdiction.

4. *Samsung v Ericsson* - Wuhan Intermediate People's Court

On 7 December 2020, the Wuhan Intermediate People's Court accepted a case filed by several Samsung entities against Ericsson in relation to the global licensing terms of 4G and 5G SEPs held or controlled by Ericsson and its subsidiaries for Samsung's communications products, including royalty rates, in accordance with FRAND principles.¹⁴

On 14 December 2020, Samsung filed an application for act preservation in the form of an anti-suit injunction with the Wuhan Intermediate People's Court. The Court issued an anti-suit injunction on 25 December 2020. It prohibited Ericsson, under the sanction of daily penalties, from requesting, before any other courts either in or outwith China, an injunction against Samsung based on its 4G and 5G patents. It also prohibited Ericsson from enforcing existing injunctions or from deciding licence questions anywhere in the world. The anti-suit injunction includes an anti-anti-suit injunction prohibiting Ericsson from requesting any other courts either in or outwith China to order Samsung to withdraw its application for anti-suit injunction in this case. The Wuhan Intermediate People's Court granted the injunction based on the provisions of the Civil Procedure Law, and the Supreme People's Court's Provisions on Several Issues Concerning the Application of Law in Examining Act Preservation Cases in Intellectual Property Disputes as interpreted in the SPC decision of 28 August 2020. Ericsson requested the Wuhan Intermediate People's Court to review the decision. On 10 March 2021, the Wuhan Intermediate People's Court rejected that.

1.1.2 *Worldwide anti-suit injunctions supported by the SPC*

The SPC has confirmed that Chinese courts can put in place worldwide anti-suit injunctions and that this is in line with the SPC interpretation of the Civil Procedure Law. In a report presenting the 10 "big, typical" IP cases of 2020¹⁵, the SPC included the Shenzhen Intermediate People's Court Decision in the case of *OPPO v Sharp*, which put in place a worldwide anti-suit injunction that prohibited a patent holder from initiating patent infringement cases, requesting injunctions or other relief measures for all of its patents, with daily fines of 1 million RMB in case of violation. The SPC noted that this decision was in line with its interpretation of the Civil Procedure Law and policy. The SPC selected these cases in cooperation with the Provincial High Courts, in order to function as an example and guidance for courts.¹⁶

13 Civil ruling of Shenzhen Intermediate People's Court of Guangdong Province, of 16 October 2020, in case (2020) Yue 03 Minchu No. 689. 广东省深圳市中级人民法院 (2020) 粤03民初689号之一民事裁定书

14 Wuhan Intermediate People's Court of Hubei Province case (2020) E 01 Zhi Min Chu No. 743. (2020) 鄂01知民初743号

15 Published on 22 April 2021. <http://www.court.gov.cn/zixun-xiangqing-297991.html#>. Consulted on 11 January 2022. 2020年中国法院10大知识产权案件和50件典型知识产权案例, 来源: 最高人民法院.

16 Published on 22 April 2021. <http://www.court.gov.cn/zixun-xiangqing-297991.html#>. Consulted on 11 January 2022. 2020年中国法院10大知识产权案件和50件典型知识产权案例, 来源: 最高人民法院. Page 1.

On appeal on a question of jurisdiction, the SPC also confirmed that the Shenzhen Intermediate Court has jurisdiction to set global rates for the standard essential patents at issue in the case.¹⁷ Several court decisions state that the anti-suit injunctions issued aim to avoid that the applicant is forced to sign a licence for the patents it implements, which includes a rate for Chinese patents that the court considers too high.

Having regard to the above, the measures at issue in this consultation request are the following:

First, the anti-suit injunction policy maintained by China as a measure of general and prospective application prohibiting a party in patent enforcement cases in China from applying for enforcement of judgments of a non-Chinese court in the territories of other Members or from seeking judicial relief outwith the jurisdiction of Chinese courts.

Second, the continued issuance by Chinese courts of anti-suit injunctions in successive patent enforcement cases prohibiting a party from applying for enforcement of judgments of a non-Chinese court in the territories of other Members or from seeking judicial relief outwith the jurisdiction of Chinese courts.

Third, the abovementioned specific instances of application by Chinese courts of anti-suit injunctions in patent enforcement cases prohibiting a party from applying for enforcement of judgments of a non-Chinese court in the territories of other Members or from seeking judicial relief outwith the jurisdiction of Chinese courts.

1.2. Legal instruments constituting these measures

The legal instruments through which China imposes and administers these measures, include, *inter alia*, the following, operating separately or collectively:

- Civil Procedure Law of the People's Republic of China.
- National People's Congress Standing Committee Opinions and Suggestions on People's Courts' IP trial work Report, of 21 October 2021, published 18 November 2021.¹⁸
- Provisions of the Supreme People's Court on Several Issues Concerning the Application of Law in the Review of Act Preservation in Intellectual Property Disputes (approved by the 1755th conference of the judicial committee of the Supreme People's Court on 26 November 2018, to be enacted from January 1, 2019) Fa Shi [2018] No. 21.
- Decision by the Supreme People's Court of the People's Republic of China, Civil Ruling, of August 28, 2020 in Cases No. 732, No. 733 and No. 734, between Huawei Technology Co. LTD and Conversant Wireless Licensing.
- Decision by the Supreme People's Court of the People's Republic of China, Civil Ruling, of 19 August 2021, in the case of OPPO and SHARP, (2020) Zui Gao Fa Zhi Min Xia Zhong No. 517.
- Summary of the Annual Report of the Supreme People's Court on Intellectual Property Cases (2020).¹⁹

17 Supreme People's Court of the People's Republic of China, Civil Ruling, of 19 August 2021, in the case of OPPO and SHARP, (2020) Zui Gao Fa Zhi Min Xia Zhong No. 517.

18 www.npc.gov.cn/npc/c30834/202111/f139a85daf0a4f5da34104bd8cc08643.shtml.

- Intellectual Property Tribunal of the Supreme People's Court Report 10 typical cases of technical intellectual property in 2020.²⁰
- Supreme People's Court, 10 “big, typical” intellectual property cases and 50 “typical” intellectual property cases in Chinese courts in 2020.²¹
- Adjudication guidelines as contained in the document summarizing the gist of the decisions of the intellectual property court of the Supreme People's Court (2020).²²
- Supreme People's Court 'Report on People's Courts' IP trial work' of 21 October 2021.²³
- Decision by Wuhan Intermediate People's Court in case of Xiaomi v InterDigital putting in place an anti-suit injunction.²⁴
- Decision by Shenzhen Intermediate People's Court in case of ZTE v Conversant -putting in place an anti-suit injunction.²⁵
- Decision by Shenzhen Intermediate People's Court OPPO v Sharp - putting in place an anti-suit injunction.²⁶
- Decision by Wuhan Intermediate People's Court in case of Samsung v Ericsson - putting in place an anti-suit injunction.²⁷
- Guangdong High Court annual report.²⁸
- Guangdong China Communist Party Political and legal committee.²⁹
- Hubei High Court's annual report.³⁰

This request also covers other court decisions with a similar content based on these documents or any other related measures and includes any annexes or schedules to these measures and amendments, supplements, replacements, renewals, extensions or implementing measures.

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- 19 Published on 26 February 2021 on <http://www.court.gov.cn/zixun-xiangqing-298771.html#>. Consulted on 11 January 2022. 最高人民法院知识产权案件年度报告（2020）来源：人民法院报
- 20 Published on 26 February 2021. <http://www.court.gov.cn/zixun-xiangqing-288071.html>. Consulted on 11 January 2022. 最高人民法院知识产权法庭2020年技术类知识产权典型案例的通报-最高人民法院知识产权法庭副院长
- 21 Published on 22 April 2021. <http://www.court.gov.cn/zixun-xiangqing-297991.html#>. Consulted on 11 January 2022. 2020年中国法院10大知识产权案件和50件典型知识产权案例, 来源：最高人民法院. Published by notice of 22 April 2021. 法办〔2021〕146号, 最高人民法院办公厅, 关于印发2020年中国法院10大知识产权案件和50件典型知识产权案例的通知
- 22 Published on 26 February 2021 on <http://www.court.gov.cn/zixun-xiangqing-288131.html>. Consulted on 11 January 2022. 最高人民法院知识产权法庭裁判要旨（2020）.
- 23 www.npc.gov.cn/npc/c30834/202110/2adb18d160c945e989bc20df3641cffc.shtml.
- 24 Civil ruling of Wuhan Intermediate People's Court, of 23 September 2020, in case of Xiaomi v InterDigital, (2020) E 01 Zhi Min Chu No.169.
- 25 Civil ruling of Shenzhen Intermediate People's Court of Guangdong Province (2018) Yue 03 min Chu No. 335-1
- 26 Civil ruling of Shenzhen Intermediate People's Court of Guangdong Province, of 16 October 2020, (2020) Yue 03 Minchu No.689 Case reference: 广东省深圳市中级人民法院（2020）粤03民初689号之一民事裁定书
- 27 Civil ruling of Wuhan Intermediate People's Court, of 25 December 2020, in case of Samsung v Ericsson, (2020) E 01 Zhi Min Chu No. 743. (2020) 鄂01 知民初743 号
- 28 Consulted on 11 January 2022. <http://www.gdcourts.gov.cn/index.php?v=show&cid=170&id=56124>.
- 29 Consulted on 11 January 2022. http://www.gdzf.org.cn/zwgd/202104/t20210422_1073020.htm
- 30 Consulted on 27 October 2021 <https://hubeigy.chinacourt.gov.cn/article/detail/r2021/04/id/5981790.shtml>

1.3. Legal basis for the complaint in respect of China's measures

The measures described above appear to be inconsistent with China's obligations under the covered agreements, in particular:

- Article 1.1, first sentence, of the TRIPS Agreement, in conjunction with Article 28.1 of the TRIPS Agreement, because China's measures restrict, or seek to restrict, the exercise by patent owners of their exclusive rights to prevent third parties not having the owner's consent from making, using, offering for sale, selling, or importing the product that is the subject matter of a patent or that is obtained directly by a patented process.
- Article 1.1, first sentence, of the TRIPS Agreement, in conjunction with Article 28.2 of the TRIPS Agreement, because China's measures, by prohibiting access to non-Chinese courts for the owners, of the type of patents at issue, restrict, or seek to restrict, the exercise by patent owners of their right to conclude licensing contracts.
- Article 41.1, second sentence, of the TRIPS Agreement, because China's measures create barriers to legitimate trade and fail to provide for safeguards against the abuse of enforcement procedures. China's measures create barriers to legitimate trade because they prevent, or seek to prevent, patent owners in other Members from availing themselves of enforcement procedures that permit effective action against any act of infringement of intellectual property rights covered by the TRIPS Agreement, including expeditious remedies to prevent infringements and remedies, which constitute a deterrent to further infringements. Moreover, by granting worldwide anti-suit injunctions with little consideration of their impact on the enforcement procedures in other Members, China fails to provide for safeguards against the abuse of litigation procedures.
- Article 1.1, first sentence, of the TRIPS Agreement, in conjunction with Article 44.1 of the TRIPS Agreement, because China's measures prevent, or seek to prevent, the judicial authorities of the other Members from ordering a party to desist from an infringement at the request of patent owners involved in patent litigation in China.
- Section 2(A)(2) of the Protocol on the Accession of the People's Republic of China, as China, by issuing worldwide anti-suit injunctions for act preservation in patent litigation and imposing maximum penalties on a daily basis, has not applied and administered its laws, such as, *inter alia*, the Civil Procedure Law of the People's Republic of China, in a uniform, impartial and reasonable manner.

2. **CHINA'S FAILURE TO PUBLISH FINAL DECISIONS PERTAINING TO THE SUBJECT MATTER OF THE TRIPS AGREEMENT**

2.1. Description of the measures

China has failed to publish at least three decisions that were mentioned in official Chinese government publications and referenced as guiding materials.

In a report presenting the ten big, typical IP cases of 2020³¹ the SPC included the Shenzhen Intermediate People's Court Decision in the case of *OPPO v Sharp*. The Guangdong High Court in its annual report included the Shenzhen *ZTE v Conversant* decision as a “*typical case*.”³² The Guangdong China Communist Party Political and Legal Committee also published the above Guangdong High Court annual report remarking that this showed Guangdong's leading role in building intellectual property protection.³³ The Hubei High Court's annual report included the Wuhan Intermediate People's Court *Xiaomi v InterDigital* decision as a “*typical case*.”³⁴ China's reply to the European Union TRIPS information request³⁵ also notes these cases “*provide references for judicial practices*.” The decisions in these three cases appear not to have been published. For example, they cannot be found online on China's official website for judgements, which the European Union understands to be the official medium for publication.³⁶

2.2. Legal basis for the claim

The elements described above appear to be inconsistent with China's obligations under the TRIPS agreements, in particular Article 63.1 of the TRIPS Agreement, because China has not published, or made publicly available, in such a manner as to enable governments and right holders to become acquainted with them, final judicial decisions of general application, made effective by China pertaining to the subject matter of the TRIPS Agreement.

3. **CHINA'S FAILURE TO SUPPLY INFORMATION ON FINAL JUDICIAL DECISIONS OF GENERAL APPLICATION PERTAINING TO THE SUBJECT MATTER OF THE TRIPS AGREEMENT**

3.1. Description of the measures

On 6 July 2021, the European Union sent an official request for information pursuant to Article 63.3 of the TRIPS Agreement requesting further information on a number of recent judicial decisions and regulations relating to patents.³⁷ The request concerned in particular court cases where decisions were taken in court procedures related to patent licensing and royalty rates, and enforcement of injunctions. These decisions were mentioned in official Chinese government publications and referenced as guiding materials. The European Union explicitly requested China to provide the text of three judicial decisions. On 7 September 2021, China answered that there is no obligation under the TRIPS Agreement to respond to that request and provided only two paragraphs with little detail.³⁸

3.2. Legal basis for the claim

The elements described above appear to be inconsistent with China's obligations under the TRIPS agreements, in particular Article 63.3 of the TRIPS Agreement, because China, in response to the European Union's written request, failed to provide a complete description of the measures that it applies.

31 Published on 22 April 2021. <http://www.court.gov.cn/zixun-xiangqing-297991.html#>. Consulted on 11 January 2022. 2020年中国法院10大知识产权案件和50件典型知识产权案例, 来源: 最高人民法院.

32 Consulted on 11 January 2022. <http://www.gdcourts.gov.cn/index.php?v=show&cid=170&id=56124>.

33 Consulted on 11 January 2022. http://www.gdzf.org.cn/zwgd/202104/t20210422_1073020.htm

34 Consulted on 27 October 2021. <https://hubeigy.chinacourt.gov.cn/article/detail/r2021/04/id/5981790.shtml>

35 Communication IP/C/W/683.

36 <https://wenshu.court.gov.cn/>

37 Communication IP/C/W/682.

38 Communication IP/C/W/683.

The measures maintained by China relating to the protection and enforcement of intellectual property rights, China's failure to publish final decisions pertaining to the subject matter of the TRIPS Agreement, and China's failure to supply information on final judicial decisions of general application pertaining to the subject matter of the TRIPS Agreement, appear to nullify or impair the benefits accruing to the European Union directly or indirectly under the covered agreements.

The European Union reserves the right to raise additional measures and claims, including under other provisions of the covered agreements, regarding the above matters during the course of the consultations and in any future request for panel proceedings.

The European Union looks forward to receiving China's reply to this request and to finding a mutually convenient date for the consultations.

Yours sincerely,

Christophe Rames
Chargé d'affaires a.i.

cc.: H.E. Mr. Didier CHAMBOVEY, Chairperson of the Dispute Settlement Body
H.E. Mr. Dagfinn SØRLI, Chairman of the Council for Trade-Related Aspects of
Intellectual Property Rights
Mr. John ADANK, Director, Legal Affairs