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**RECENT WTO DISPUTES INVOLVING THE PROTECTION AND
ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN
CHINA: LEGAL AND POLITICAL ANALYSIS**

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Summary

In April 2007, the United States launched two WTO complaints against China regarding inadequacies in China's enforcement of intellectual property rights. These disputes, which continue, are arguably the result of years of IP-related trade tension between the US and China, and were triggered by the significant imbalance in Sino-US trade. China, like the US, has committed to conduct its dialogues with trade partners in accordance with the rules laid down by the WTO after it joined in 2001. Taking into consideration the importance of the Sino-US trade relationship to the domestic politics of both countries, and the significance of the outcome of the WTO proceedings for the international trade regime, these disputes merit both legal and political analysis.

There is a long history of IP-related trade tension between the US and China. Threats by the US to use sanctions under the so-called "Super 301 Provision", and even review of China's "Most Favoured Nation" status, made headlines throughout the 1990s.

While US policy in this area has been heavily criticized, it did have a positive impact on China's domestic legal reform in the area of intellectual property law. However, the cycle of threatened sanctions and negotiated agreements also led to hostility from the Chinese people and a loss of credibility for the US.

China's accession to the WTO and its TRIPS (Trade-Related Intellectual Property Rights) Agreement in 2001 brought a welcome period of calm. At the same time, the WTO dispute settlement mechanism offers a more credible way for China to implement intellectual property law reforms without creating too much domestic resentment. In effect, this created a new game in the Sino-US trade dialogue with new rules and a new forum in which to try to solve irreconcilable differences.

However, China's widespread problems with the enforcement of its IP protection legislation remain a cause of serious concern among its overseas trading partners, and are frequently the focus of international media attention. . It was just a matter of time before the issue became a matter for the WTO.

From a legal point of view, although WTO proceedings have been initiated, it is possible that the assessment of China's compliance with the TRIPS Agreement will be difficult both at the consultation stage and for the subsequent WTO panel. This is due to the nature of the TRIPS Agreement and the lack of precision in the substantive provisions of TRIPS. However the US complaint refers not only to general deficiencies in the system but also to particular inconsistencies in the current applicable laws and administrative regulations in China.

From a political point of view, the timing of the US complaint is closely linked with its domestic political agenda to deal with China's huge trade surplus. The WTO intellectual property disputes can be viewed as another episode in the Sino-US trade conflict alongside other WTO complaints by the US against Chinese government subsidies and domestic measures against Chinese imports failing health and safety standards tests abroad

Unsurprisingly, the Chinese response has been one of dismay. In a desperate attempt to avoid a WTO challenge, China modified the main regulations challenged on criminal penalties and the disposal of seized pirated goods on the eve of the filing of the complaint. The fact that the US then disregarded China's "good will" gesture further reinforces the argument that the US complaint is motivated by political instead of legal considerations.

Nevertheless, since the US has followed the processes set down by the WTO dispute resolution body in raising concerns about China's intellectual property system, the filing of the complaint in April 2007 can also be seen as a positive step. It shows that the multilateral dispute resolution mechanism provided by the WTO is diverting disputes which would previously have led to bilateral tensions and possible sanctions. This might be good news for the IP right holders and the TRIPS after all.

Recent WTO Disputes Involving the Protection and Enforcement of Intellectual Property Rights in China: Legal and Political Analysis

Kristie Thomas, Ping Wang and Fanshu Yang*

1. Intellectual Property Protection in Sino-US Trade Relations and the Launch of the WTO Disputes

- 1.1 In April 2007, the United States launched two World Trade Organisation (WTO) complaints (request for consultations) against China involving intellectual property (IP) protection. The first of these concerned trading rights and the distribution services of audiovisual entertainment products such as DVDs.¹ The second concerned inadequacies in China's enforcement of intellectual property rights.² The formal launching of the WTO dispute resolution process brings to a head several years of IP-related trade tensions between the US and China.
- 1.2 IP-related trade tensions between China and the US were persistent prior to China's accession to the WTO in 2001. During the 1990s tensions between the US and China ran high, as the US grew increasingly impatient at the slow pace of IP reforms, despite China's efforts during the 1980s and early 1990s to establish a legal framework for the protection of intellectual property. As their impatience reached breaking point, the US took drastic action. The US threatened massive trade sanctions under section 301 of the US Trade Act, 1974, which empowers the United States Trade Representative (USTR) to identify countries with inadequate intellectual property protection and impose sanctions if necessary. Section 301 action is so serious that it has even been described as the "H-bomb of trade policy."³ In November 1991, the United States threatened China "with reciprocal sanctions in the form of 100% tariffs imposed upon a list of \$1.5 billion worth of goods", later scaled down to \$750 million.⁴
- 1.3 Under this threat based on section 301, China narrowly averted an outright trade war by agreeing to a Memorandum of Understanding (MOU) on the Protection of Intellectual Property in January 1992.⁵ To comply with this MOU, China amended the Patent Law, the Trademark Law and passed the Unfair Competition Law to protect business secrets. China also agreed to join the Berne Convention and the Geneva Convention, which it did

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¹ World Trade Organisation, "China- Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products", Document WT/DS363/1, 2007.

² World Trade Organisation, "China- Measures Affecting the Protection and Enforcement of Intellectual Property Rights: Request for Consultations by the United States", Document WT/DS362/1, 2007

³ Peter K. Yu, "From Pirates to Partners: Protecting Intellectual Property in China in the Twenty-First Century" . American University Law Review, Vol. 50 Available at SSRN: <http://ssrn.com/abstract=245548> or DOI: [10.2139/ssrn.245548](https://doi.org/10.2139/ssrn.245548), 138.

⁴ Gregory S. Feder, "Enforcement of Intellectual Property Rights in China: You Can Lead a Horse to Water But You Can't Make it Drink", (1996) 37 (1) *Virginia Journal of International Law* 240.

⁵ Assafa Endeshaw, *Intellectual Property in China: The Roots of the Problem of Enforcement*, (Singapore: Acumen Publishing, 1996): 36.

on October 15th, 1992, and September 1993 respectively.

- 1.4 Although the 1992 MOU was successful at establishing a comprehensive framework for intellectual property protection, tensions with the US escalated again in 1994 and both sides threatened major trade sanctions. This was contrary to Chinese expectations: "[t]he Chinese expected that the constant stream of laws would ... stop or, at least, minimise any criticism from foreign investors, particularly the United States ... Yet, rather than subsiding, United States critiques only changed direction."⁶
- 1.5 On June 30th, 1994, the USTR cited China as a Priority Foreign Country and again threatened that if an acceptable agreement could not be reached by December 31st, then 100% tariffs would be imposed on a broad selection of Chinese exports. As negotiations failed to reach a swift conclusion, this deadline was extended to February 26th, 1995.⁷ As a consequence, China and the US reached a second agreement in late February 1995, just hours before the deadline, which specifically dealt with "improving the enforcement structure,"⁸ through an agreement letter and a detailed action plan.
- 1.6 Despite noted improvements in IP protection following the 1995 Agreement, by April 1996, China was once again designated a Priority Foreign Country by the USTR, which again triggered the investigation process and the associated threat of sanctions. Subsequently, a new accord was also reached in 1996, just before the deadline of June 18th, which reaffirmed China's commitment to protecting intellectual property. Specifically, the 1996 Agreement dealt with the implementation of the 1995 Action Plan, rather than including new substantive requirements.⁹
- 1.7 China's accession to the WTO in December 2001 also resulted in further legislative revisions in order to conform to the requirements of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS). For example, the revised Copyright Law (as amended in October 2001) enlarged the scope of protection, clarified the rights of performers and producers, added the interim measures of seizing property and evidence preservation, and stipulated the amount of statutory damages; the revised Patent Law (as amended in 2000) extended the duration of patent protection and extended patentable subject matter to chemical and pharmaceutical products, as well as food, beverages, and flavorings; the revised Trademark Law (as amended in 2001) broadened the range of symbols that may be used as a distinctive mark, extended protection of well-known trademarks to cover unauthorized use on different products and established protection for geographical indications in accordance with TRIPS.
- 1.8 It is clear that in comparison with the IP-related tension of the 1990s, China has not experienced much pressure from the US since its WTO entry in 2001. However, the tension

⁶ Ibid.37.

⁷ Feder, "Enforcement of Intellectual Property Rights in China: You Can Lead a Horse to Water But You Can't Make it Drink", 242.

⁸P. K. Yu, "From Pirates To Partners: Protecting Intellectual Property In China In The Twenty-First Century", *American University Law Review*, 50 (1), 146.

⁹ QJ Kong, "Intellectual Property Rights protection in post-WTO China: still an incurable blight on Sino-US trade relations?" Ibid. idem38 (3), (September 2002), 63.

has not gone. Although China has made a significant effort to bring its framework of laws and regulations in line with the TRIPS Agreement, problems with a lack of effective enforcement of laws and ambiguity in legal provisions persist. This "truce" period is arguably due to the difficulty of establishing non-compliance under the WTO mechanisms (discussed below in 2.10-2.13) instead of a real improvement in protection and enforcement of intellectual property rights in China.

- 1.9 China's trading partners have grown increasingly frustrated with the inadequate enforcement in China despite substantial legislative amendments. A request was made in October 2005 by the US, Japan and Swiss governments for China to provide enforcement data to help them to assess China's TRIPS compliance.¹⁰ As the tension cumulated and, triggered by the US domestic political agenda to address its huge trade deficit with China (as further analyzed below), the formal launch of a WTO complaint by the US in April 2007 seemed inevitable.

2. The Legal Analysis

- 2.1 On 10th April 2007, the US circulated two requests for consultations with China. The first of these concerned measures affecting trading rights and distribution services for certain publications and audiovisual entertainment products.¹¹ The second dispute concerns measures affecting the protection and enforcement of intellectual property rights, which is directly related to China's commitments made under the TRIPS Agreement.¹² The second dispute will be the focus of the subsequent analysis.
- 2.2 The second dispute involves four separate areas. First, thresholds for criminal procedures and penalties in Chinese law are alleged to be inconsistent with TRIPS Articles 41.1 and 61. This complaint relates specifically to the requirement in TRIPS Article 61 that criminal penalties should be available "at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale." Furthermore, "remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent."
- 2.3 This is a difficult area in which to measure China's compliance. It is undeniable that criminal penalties are available under the Chinese Criminal Law 1997 for *serious* trademark counterfeiting (Article 213) or copyright piracy (Article 217). Furthermore, imprisonment and fines are both available as remedies. However, the relationship

¹⁰ Emma Barraclough, "China Urged to Provide IP Enforcement Data", *Managing Intellectual Property*, (January 30th 2006).

¹¹ World Trade Organisation, "China- Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products", Document WT/DS363/1, 2007. This dispute is not directly connected with China's obligations under the TRIPS Agreement: rather, it concerns commitments made in China's Protocol of Accession, relating to provisions of the General Agreement on Tariffs and Trade (GATT 1994) and the General Agreement on Trade in Services (GATS). The US contends that the relevant Chinese laws and regulations only allow certain Chinese enterprises to import and distribute such products in China. Specifically, it is alleged that foreign suppliers are subject to less favourable treatment than that accorded to Chinese suppliers, thus breaching both market access and national treatment commitments.

¹² World Trade Organisation, "China- Measures Affecting the Protection and Enforcement of Intellectual Property Rights: Request for Consultations by the United States", Document WT/DS362/1, 2007.

between 'serious' in China's Criminal Law on the one hand, and 'wilful' and 'on a commercial scale' in TRIPS is not clear. Despite a Supreme People's Court interpretation issued in December 2004 which lowered the thresholds for criminal liability, it is not certain that all cases of 'wilful' infringement would be classed as 'serious'. The other issue of possible non-compliance under TRIPS Article 61 is whether the penalties provided are sufficient to provide a deterrent.

- 2.4 The second element of the dispute is that the disposal of goods confiscated by the Chinese Customs authorities is alleged to be inconsistent with TRIPS Articles 46 and 59. This is because Article 30 of the relevant Customs Rules would appear to endorse the practice of removing the infringing features of the products and then allowing them to enter channels of commerce instead of destroying them.¹³ TRIPS Article 46 on judicial remedies and Article 59 on Customs authorities' remedies make it clear that goods seized may only be destroyed or disposed of outside of the channels of commerce.
- 2.5 The third element of the complaint is that the existing Chinese laws and regulations deny copyright and related rights protection and enforcement to works that have not been authorised for publication or distribution within China. In essence, the US alleges that works are not protected by copyright legislation until they are authorised for publication or distribution. This would appear to be inconsistent with TRIPS Article 9.1 which obliges Members to comply with Articles 1 to 21 of the Berne Convention (1971): Article 5(1) of the Berne Convention states that copyright granted to foreign authors should not be subject to any formality. Furthermore, if foreign authors are indeed not granted copyright protection prior to approval of their works, this may also be inconsistent with Article 3.1 of the TRIPS Agreement on the national treatment principle.
- 2.6 The fourth element of the complaint concerns the unavailability of criminal procedures and penalties for a person who engages in **either** unauthorised reproduction **or** unauthorised distribution of copyrighted works. The current Chinese Criminal Law and associated regulations appear to subject "unauthorised reproduction **and** distribution" to criminal liability. It is not clear whether only "unauthorised reproduction" without "distribution" will be penalized. This would appear to be inconsistent with TRIPS Articles 41.1 and 61.
- 2.7 It is important to note that assessing compliance with an international instrument is a complex task in general as, "in the end, assessing the extent of compliance is a matter of judgment."¹⁴ With regards to assessing compliance with the TRIPS Agreement specifically, assessment of China's compliance is further complicated by the nature of the TRIPS Agreement as a minimum standards Agreement and the lack of precision in the substantive provisions of TRIPS.

¹³ China Customs Authority, "Rules of the Customs Authority of the People's Republic of China for Implementing the Regulations of the People's Republic of China on the Customs Protection of Intellectual Property Rights", <http://www.customs.gov.cn/YWStaticPage/4712/debb765e.htm>, accessed January 14th 2006.

¹⁴ Harold K. Jacobson and Edith Brown Weiss, "A Framework for Analysis", Brown Weiss and Jacobson, *Engaging Countries: Strengthening Compliance with International Environmental Accords*, (Cambridge, Massachusetts: The MIT Press, 1998): 4.

- 2.8 The TRIPS Agreement does not attempt to harmonise national enforcement procedures, but rather to establish general minimum standards, which can then be implemented by each Member as they see fit.¹⁵ This approach is also laid out in the Preamble to TRIPS which states that the negotiating parties saw “the need for new rules and disciplines concerning ... the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, *taking into account differences in national legal systems.*”¹⁶ This is important to remember when assessing China’s compliance, as differences between national systems do not necessarily equate to inadequate implementation of TRIPS.
- 2.9 Furthermore, in general, the wording of the TRIPS Agreement is “result-oriented” and vague. Many of the provisions require members to give judicial or other authorities the authority to do something, but these authorities are not then obliged to exercise this power.¹⁷ This flexibility within the obligations contained in Part III of TRIPS means that assessing a Member’s compliance can be problematic.
- 2.10 For example, as stated above, TRIPS Article 41 outlines the general obligations regarding enforcement procedures. Article 41 (1) commits Members to ensuring the availability of the specified enforcement procedures “so as to permit effective action against any act of infringement”. “Effective action” is not defined here and, thus, there is considerable room for interpretation. It has even been stated that “any judgment about compliance should be objectively based on whether Members have made or not the required procedures available.”¹⁸ This test seems to be permissive; the mere existence of the procedures seems to satisfy this obligation, regardless of how, or indeed if, the procedures are actually utilised.
- 2.11 The analytical index of the WTO offers interpretation and application for any provisions that have been interpreted in cases brought before the WTO.¹⁹ However, there is little interpretation available concerning the TRIPS provisions on enforcement. To date there have been several disputes involving provisions of the TRIPS Agreement due to the imprecise nature of certain obligations. Therefore, the precision of the obligations in the TRIPS Agreement is in doubt and this lack of precision may also be a factor affecting compliance with the Agreement overall.
- 2.12 These cases demonstrate that it is difficult to establish non-compliance with the TRIPS provisions on enforcement. In all disputes, it is necessary to show clear evidence of systemic failing, not just anecdotal weaknesses. Therefore, it is arguably not surprising that China had not been the respondent in a case involving compliance with TRIPS obligations before April 2007, albeit the publicity surrounding China’s poor intellectual

¹⁵ Article 1 of the TRIPS Agreement.

¹⁶ World Trade Organisation, "Agreement on Trade-Related Aspects of Intellectual Property Rights", http://www.wto.org/english/docs_e/legal_e/27-trips.pdf, accessed May 30th 2004 (emphasis added).

¹⁷ UNCTAD-ICTSD, "Resource Book on TRIPS and Development: An Authoritative and Practical Guide to the TRIPS Agreement", http://www.iprsonline.org/unctadictsd/docs/RB_4.30_update.pdf, accessed October 2005: 576.

¹⁸ Ibid. 580.

¹⁹ World Trade Organisation, "WTO analytic index- Guide to WTO law and practice", http://www.wto.org/english/res_e/booksp_e/analytic_index_e/analytic_index_e.htm, accessed August 2005.

property enforcement has been significant.

- 2.13 This implies that despite the failings in the intellectual property enforcement system in China, it has been difficult to compile clear evidence of systemic non-compliance with the TRIPS provisions. Furthermore, the request for consultations of April 2007 makes it clear that the complaint refers to specific failings in the system, rather than mere inconsistencies in enforcement.
- 2.14 Overall, the focus of the United States' submission is on fairly minor procedural aspects of the intellectual property system in China. Several of the grounds for complaint may simply have arisen from imprecise language in the primary legislation, such as the doubt over whether prohibiting illegal reproduction *and* distribution includes illegal reproduction *or* distribution only. However, the complaint does confirm the need to identify specific failings in the system rather than merely complain about inadequate or inconsistent enforcement. Moreover, if China does change the IP system in response to this complaint, these changes may certainly make a significant difference to outstanding areas of non-compliance, particularly with regard to the thresholds for criminal liability.

3. The Political Analysis

- 3.1 As revealed above in section 1, the IP-related tension has always been a blight on Sino-US trade relations. The United States' coercive unilateral policy was heavily criticized in the late 1990s.²⁰ The cycle of threatened sanctions and negotiated agreements led to hostility from the Chinese people and lost credibility for the US. Therefore, an alternative mechanism for initiating and nurturing intellectual property law reform became necessary. The alternative that emerged is the framework offered by the WTO, which, as a multilateral trading body, can offer a more credible and sustained alternative, without creating such resentment.²¹
- 3.2 As stated above, it is clear that in comparison with the IP-related tension of the 1990s, China has not experienced such intense pressure from the US since its WTO entry in 2001. Furthermore, the US has followed the processes set down by the WTO dispute resolution body to raise concerns about China's intellectual property system. Thus, the filing of the complaint to the WTO in April 2007 could actually be seen as a positive step as it shows that the multilateral dispute resolution mechanism provided by the WTO is diverting disputes which would previously have led to bilateral tensions and possible sanctions.
- 3.3 However, it is suggested that the filing of the complaint by the US in April 2007, is, disappointingly, a political movement for the domestic policy agenda. It was pointed out

²⁰ For an overview of Sino-US relations with regards to intellectual property see: S. J. La Croix and D. E. Konan, "Intellectual property rights in China: The changing political economy of Chinese-American interests", *World Economy*, 25 (6), (Jun), 759-788.

²¹ M. N. Schlesinger, "China - Intellectual property law in China: Part I - Complying with TRIPs requirements", *East Asian Executive Reports*, 19 (1), (January 15th 1997), 19.

that the timing of the complaints had less to do with IP enforcement in China and more to do with domestic political concerns on the part of the US. It is clear that, "the dispute has added to tensions at a time when Washington is under pressure to take action on mounting Chinese trade surpluses."²² The WTO actions "should also be considered against the backdrop of ballooning US trade deficit with China, which set a record for the fifth year in 2006 at US\$765.3 billion, and the growing protectionist sentiment and China-bashing cries on Capitol Hill."²³ Democratic senators welcomed the move in particular, citing concerns about seeking to protect American business interests.

- 3.4 This argument is supported by the fact that China has offered to amend the legislation in question. In an attempt to avoid the formal launch of the WTO Dispute Settlement procedure, China issued two documents in early April 2007.²⁴ The first, issued on April 4th and effective from April 5th, is a Supreme Court interpretation regarding criminal penalties for IP infringements. The main aim of the interpretation was to lower the threshold for criminal liability from 1000 units to 500 units and clarify that "reproduction and distribution" means reproduction and/or distribution. The second document was issued by the General Administration of Customs on April 2nd, 2007 and seeks to clarify the procedure for disposal of infringing goods. However, the provisions contained within these documents were insufficient to prevent the formal launch of the WTO dispute resolution process by the US.
- 3.5 This dispute must also be considered in the context of other complaints that the US has made against China this year. In February, the US launched a WTO case concerning illegal subsidies and in March, the US announced the imposition of tariffs on imports of glossy paper from China, again in response to alleged government subsidies. These complaints together can be seen as attempts to pacify China-bashers in Washington rather than evidence of problems emerging in China's trading system.
- 3.6 Finally, according to one IP practitioner, "this is something that has been boiling for a long time," but "only the US could have done this. Other countries are also hurt by Chinese piracy, but for political reasons, only the US had the guts to go to the WTO."²⁵
- 3.7 It is interesting to note that following the circulation of the request for consultations by the United States, several other Members also requested to join the consultations, including Japan, Mexico, Canada and the European Communities.²⁶ This demonstrates that although the issue of protection and enforcement of intellectual property rights in China is clearly of concern to many WTO Members, only strong Members can face up to China.

²² Associated Press, "U.S. business groups say Chinese product piracy rising despite enforcement", *International Herald Tribune*, April 26th 2007.

²³ Leon Hader, "US versus China: Is it trade or is it politics?", *The Business Times Singapore*, April 12th 2007.

²⁴ Discussed in: Peter Ollier, "The end of the beginning", *Managing Intellectual Property*, May 2007, available at: <http://www.managingip.com/default.asp?Page=10&PUBID=34&SID=684273&ISS=23780>

²⁵ Jonathan Salvadoray, Chief Representative of CMS Bureau Francis Lefebvre in Shanghai, quoted in: "US Files Intellectual Property Case with the WTO", *China Law & Practice*, April 2007.

²⁶ Japan submitted a request on 24th April (Document WT/DS362/2), the European Communities, Canada and Mexico all submitted requests on 27th April (Documents WT/DS362/3, WT/DS362/4 and WT/DS362/5).

- 3.8 Unsurprisingly, the Chinese reaction to the launch of the WTO actions was dismay. According to a Ministry of Commerce statement²⁷: "This decision runs contrary to the consensus between the leaders of the two nations about strengthening bilateral economic and trade ties and properly solving trade disputes ... It will seriously undermine the cooperative relations the two nations have established in the field and will adversely affect bilateral economic and trade ties." Wang Xinpei, the Ministry of Commerce spokesman, also "expressed great regret and strong dissatisfaction at the decision of the United States to file WTO cases against China over intellectual property rights."
- 3.9 These sentiments were echoed by Tian Lipu, commissioner of the State Intellectual Property Office (SIPO) of China, who claimed that: "It's not a sensible nor a rational move for the US governments to file such a complaint. By doing so the United States has ignored the Chinese government's immense efforts and great achievements in strengthening IPR protection and tightening enforcement of its copyright laws." Thus, the reaction from China shows dismay over the use of WTO process and a sense of betrayal at abandoning bilateral attempts to resolve the dispute.

4. Implications for IP Rights-Holders

- 4.1 In addition to political and legal implications of the WTO action, the formal launch of the WTO dispute resolution process may also have implications for holders of intellectual property rights in China. Overall, the repercussions for rights-holders could be said to be overwhelmingly positive.
- 4.2 The enforcement of IPR in China is widely acknowledged to be inconsistent, with stronger enforcement often taking place within an announced campaign or 'crackdown'. Symbolic crackdowns are also highlighted in the media when intellectual property protection is under international scrutiny, as was the case in the first quarter of 1995, before the Memorandum of Understanding with the United States was signed in March 1995.²⁸ Although this lack of consistency may frustrate rights-holders, as the IP system is currently under close scrutiny as a result of the WTO action, IP enforcement may be temporarily strengthened.
- 4.3 Secondly, it was widely reported in state media in the week prior to the launching of the WTO action that foreigners involved in infringement disputes would be allowed to observe IP cases in court. IP rights-holders should thus be able to benefit from this improved attitude towards transparency in China. Finally, the issuing of the new judicial interpretation and customs regulations in early April prior to the launch of the WTO complaint also illustrates the conciliatory attitude of the Chinese government. The issuing of these amendments would appear to suggest that the government is willing to

²⁷ http://www.chinadaily.com.cn/china/2007-04/10/content_847045.htm, "US Move to file trade cases against China 'not wise'" China Daily, April 10th 2007.

²⁸ Endeshaw, *Intellectual Property in China: The Roots of the Problem of Enforcement*, 44-5.

compromise to resolve the dispute with the US.

- 4.4 Consequently, regardless of whether the dispute is resolved within the initial consultation period or whether it goes all the way to a panel ruling, amendments made to the IP enforcement system should directly benefit rights-holders in China.
- 4.5 Furthermore, China's compliance with the TRIPS Agreement is sought-after not only to contend with the problem of intellectual property infringements, but also to protect the TRIPS Agreement and the entire WTO system. As a result, China's compliance with the TRIPS Agreement is worthy of evaluation for various reasons: to analyse the effectiveness of China's intellectual property system, but also to judge the effectiveness of imposing international IP standards through the framework of the WTO.