

To: Our Clients and Friends

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WTO Panel Rules Against China on Imports of Film, Recordings and Publications

In a report issued on August 12, 2009, a dispute settlement panel of the World Trade Organization (WTO) found China to be in violation of its free trade commitments with respect to restrictions on importation and distribution of films for both theatrical release and home entertainment, sound recordings, and publications such as books, magazines and newspapers.

The ruling is considered a victory for the United States, who first requested formal consultations with China under the WTO dispute settlement mechanism back in April 2007. Major Hollywood studios, record labels and publishers have long been concerned that China's restrictions prevented the distribution of legitimate products and thus allowed piracy to thrive.

The U.S. Trade Representative Ron Kirk, in a press release, welcomed the report as "an important step toward ensuring market access for legitimate U.S. products in the Chinese market, as well as ensuring market access for U.S. exporters and distributors of these products." Ambassador Kirk further noted that the decision "promises to level the playing field for American companies working to distribute high-quality entertainment products in China, so that legitimate American products can get to market and beat out the pirates."

The decision struck down many of the barriers to market access in China from a number of fronts. First, the panel deemed prohibitions on the rights of foreign companies to import films, recordings and publications to be inconsistent with China's commitments under its Accession Protocol. Second, the panel found China's restrictive operating requirements or prohibitions on foreign-invested distributors of media to violate the General Agreement on Trade in Services (GATS). Third, the panel concluded that China's discriminatory treatment against imported reading materials violated the national treatment obligation in the General Agreement on Tariffs and Trade 1994 (GATT 1994).

The panel did not decide on claims against China's restrictions on imported electronic publications and subscribers of imported publications, because the panel determined that these claims are outside of the panel's scope of review. Furthermore, the panel found that the United States did not provide sufficient evidence to support a showing of discriminatory treatment against imported hard copy CDs resulting from China's internet music transmission restrictions, or against imported films because of fewer distribution opportunities in comparison with distribution opportunities for domestic films.

Both the United States and China may appeal the panel's decision to WTO's Appellate Body within sixty days.

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