



Draft Orgalime demands for upcoming EU-US summit: “No recognition of market economy status until IPR is fully respected in China” v.2

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Executive summary:

In view of the forthcoming EU-US summit Orgalime urges the EU and US authorities to address a common message to the Chinese Authorities calling on them to markedly improve the protection of Intellectual Property Rights (IPR) in China. Until now discussions on this issue regrettably seem to have little impact on the Chinese government’s attitude in this respect. At the same time we note that China is pressuring the US and the EU to grant it market economy status in advance of the latest date foreseen in the WTO accession agreement (i.e. 2016).

Orgalime is concerned that the EU and US should be considering granting this until such times as the serious IPR issues which our industries are facing and which we detail hereafter, are resolved. We therefore call upon EU Trade Commissioner Peter Mandelson and designated US Trade Representative Susan Schwab to state clearly at the forthcoming EU-US summit that China is still far away from being granted market economy status and that this will only be considered as and when the Chinese authorities ensure that their economy respects all market economy criteria, including at the level of effective protection of IPR.

Introduction

The competitiveness of EU and US engineering industries are highly dependent on the innovative technologies that our companies develop and market worldwide. In order to ensure that such innovation provides the expected returns in terms of growth and employment and the capacity to invest in future R&D, it is essential that our companies’ IPR be protected both in our internal markets and more importantly in our export markets. The effective protection of IPR is also, in our view, a cornerstone of the regulatory framework in a market economy: manufacturers need a legal framework that enables them to compete in a globalised world under fair conditions.

China is today one of the fastest developing manufacturing economies in the world, as well as one of the more important markets for our manufacturing companies, both for the sourcing of components and assemblies and for the export of finished products. It is also one of the markets where our companies face consistently serious problems of infringement of IPR, including both piracy and counterfeiting.

While Orgalime respects and acknowledges China’s efforts in pursuing economic reforms and its drive towards becoming a fully fledged market economy, including through streamlining its IPR legislation, we nevertheless, believe that much more needs to be done to effectively implement the commitments that China has undertaken in the area of IPR protection as part of its commitments to WTO accession before it can be acknowledged as a market economy.

IPR protection is a global issue and calls for a coordinated international response and should in our view be pursued as an area for transatlantic regulatory cooperation with a view that all countries respect their obligations under the WTO TRIPS agreement. Orgalime

therefore welcomes the EU-US cooperation and the envisaged joint strategy on the enforcement of Intellectual Property Rights as a valuable contribution of regulators in this area and we believe that our authorities should systematically take IPR enforcement problems in third countries on board as part of their diplomatic agenda.

The present position has been developed with a view to underpinning the commitments taken at the 2005 EU-US Summit to strengthen their cooperation in order to reduce piracy and counterfeiting worldwide.

China's accession to the WTO – IPR issues

When China became a member of the WTO in 2001 it promised to ensure full consistency of its IPR legislation with its obligations under the TRIPS Agreement. China also committed itself to improve the *enforcement* of IPR.

Prior to China's WTO accession many members of the relevant WTO working party expressed concern that there was a continued need for additional enforcement efforts from the Chinese government: among other things it was suggested that actions should include the shutdown of manufacturing facilities, as well as markets and shops that had been the object of administrative convictions for infringement activities, that certain practices relating to the filing of civil judicial actions should be reviewed, that the damages paid by the infringer should be adequate to compensate for the injury suffered, that prompt and effective provisional measures should be introduced and that the level of administrative sanctions in China should be improved.

In spite of certain notable achievements, the problem of infringement of IPR does not seem to have changed substantially since China joined the WTO in 2001 and much more needs to be done in China in respect of its commitments upon WTO accession. There still appears to be a huge gap in China between the IPR legislation stipulated "on paper" on the one hand and its enforcement on the other. Our industries' experience in China was recently confirmed at the occasion of the first Trade Policy Review of China in April this year, where the WTO-Secretariat summarises in its report that "relatively low fines and other penalties that appear insufficient to deter IPR violations remain among the significant problems to be addressed".

Since China has clearly been identified as one of the most sensitive countries in terms of IPR violations, Orgalime therefore suggests paying special attention to this problem in view of the forthcoming EU-US summit meeting on 21 June this year.

EU – US coordination towards China's WTO commitments

The WTO accession agreement for China stipulates that for up to 15 years after WTO accession the EU and US have the right to treat China as a non-market economy for antidumping proceedings. We understand that China is keen to achieve market economy status as soon as possible and is continuously pressuring its trade partners to grant market it this status. A number of South-East Asian and Latin American countries have already given in to these demands.

It is with some concern that we see authorities in various EU countries discussing the granting of market economy status to China. In our view China will remain a non-market economy until market forces and competition are introduced and backed by an appropriate legislative framework and enforcement structures – including and especially in the field of the protection of Intellectual Property Rights. We therefore urge the Commission to under

no circumstances give any positive signs to the Chinese Administration in this respect and to closely consult with industry and its trade partners, such as the US, when deciding upon the next steps on this matter. We fully believe that an unconditional granting of market economy status would not encourage China to improving its implementation of the TRIPS Agreement.

More specifically, Orgalime calls for

- an EU-US coordination of the political decisions when to grant market economy status to China,
- a joint statement by the EU Trade Commissioner Mandelson and designated US Trade Representative Susan Schwab which is oriented towards the Chinese administration and states in clear terms that China is still far from being granted market economy status and that it will only achieve this if the IPR situation improves significantly,
- further work between the EU and US on specific problems affecting the engineering industries in China (see Annex).

It is self-evident that that individual Chinese companies can apply for market economy status treatment if they can demonstrate that they are operating under market economy conditions and if they fulfil the criteria stipulated in the European Community basic antidumping regulation.

Conclusion

The fight against piracy and counterfeiting is an ever-increasing problem which is faced by all manufacturing sectors including our own. For engineering products piracy and counterfeiting gives rise to both issues of IPR infringement, but also has an impact on the safety of consumers and workers. At a time when our institutions are at last acknowledging the essential role that manufacturing plays for providing jobs and growth in our economies, it is essential that they act to defend the IPR of our companies, which underpins their competitiveness on their home and on international markets. In view of the forthcoming EU-US summit Orgalime therefore calls on the EU and US authorities to address a common message to China and to insist that the protection of IPR in China should be an essential precondition for any consideration of improvements in China's trading status.

Annex: IPR-specific problems of the EU and US engineering industries

In China the engineering industry is confronted with two specific problems, which is the Chinese certification scheme and the dissemination of counterfeits at trade fairs.

Both EU and US engineering companies are facing serious problems in IPR theft through the Chinese Compulsory Certification scheme (CCC). The CCC scheme has not only imposed extra costs and administrative burden on the engineering industries for many years, it is increasingly problematic from an IPR protection angle: engineering companies are often surprised and worried by the technical questions they are asked in application documents and questionnaires, which are much more detailed than in similar procedures in the EU or the US. This is naturally a very sensitive area for the engineering industry that produces innovative high tech products. In order to avoid technology theft through the Chinese CCC scheme, Orgalime therefore asks for European testing laboratories to be accredited by Chinese authorities.

A further source of problems lies in the dissemination of counterfeits at trade fairs in China (and in the rest of the world), where counterfeited products are exhibited and first introduced into the market. Unfortunately the penalties for displaying counterfeits are not sufficiently high to deter offenders in China and it is common practice that companies banned from a fair for repeated offences soon return under another name.