

# CHINA – PUBLICATIONS AND AUDIOVISUAL PRODUCTS<sup>1</sup>

## (DS363)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	United States	GATT Arts. III:4 and XX(a) GATS Arts. XVI and XVII	Establishment of Panel	27 November 2007
			Circulation of Panel Report	12 August 2009
Respondent	China	China's Accession Protocol and Working Party Report	Circulation of AB Report	21 December 2009
			Adoption	19 January 2010

### 1. MEASURE AND PRODUCT/SERVICE AT ISSUE

- **Measure at issue:** A series of Chinese measures regulating activities relating to the importation and distribution of certain publications and audiovisual entertainment products.
- **Product and service at issue:** Trading and distribution of reading materials (e.g. books, newspapers, periodicals, electronic publications), audiovisual home entertainment (AVHE) products (e.g. videocassettes, video compact discs, digital video discs), sound recordings (e.g. recorded audio tapes), and films for theatrical release.

### 2. SUMMARY OF KEY PANEL/AB FINDINGS

- **China's Accession Protocol (China's trading rights commitments):** The Panel found that provisions in China's measures that either limit to wholly State-owned enterprises importation rights regarding, or prohibit foreign-invested enterprises in China from importing, reading materials, AVHE products, sound recordings, and films, were inconsistent with China's obligation, under paras. 1.2 and 5.1 of China's Accession Protocol and paras. 83(d) and 84(a) of China's Accession Working Party Report, to grant the right to trade. The Panel also concluded that several provisions of the Chinese measures at issue breached China's obligation, under para. 1.2 of China's Accession Protocol and para. 84(b) of China's Accession Working Party Report, to grant in a non-discretionary manner the right to trade. Certain of these findings, relating to films for theatrical release and unfinished audiovisual products, were appealed. The Appellate Body upheld the Panel's findings that the relevant provisions of the measures were subject to, and inconsistent with, China's trading rights commitments under its Accession Protocol and Working Party Report.
- **GATT Art. XX(a) (exceptions – necessary to protect public morals):** The Appellate Body found that, by virtue of the introductory clause of para. 5.1 of China's Accession Protocol, China could, in this dispute, invoke Art. XX(a) to justify provisions found to be inconsistent with China's trading rights commitments under its Accession Protocol and Working Party Report. Apart from a finding that the Panel erred in making an intermediate finding that a requirement in one of China's measures can be characterized as "necessary" to protect public morals, within the meaning of Art. XX(a), the Appellate Body found that the Panel did not err in respect of the other challenged elements of its analysis under Art. XX(a). The Appellate Body accordingly upheld the Panel's conclusion that China had not demonstrated that the relevant provisions were "necessary" to protect public morals, and that, as a result, China had not established that these provisions were justified under Art. XX(a).
- **GATS Arts. XVI (market access) and XVII (national treatment):** The Panel concluded that China's measures regarding distribution services for reading materials and AVHE products, as well as electronic sound recordings, were inconsistent with China's market access or national treatment commitments in respect of Arts. XVI and XVII, respectively. The Appellate Body found that the Panel had not erred in interpreting the entry "Sound recording distribution services" in sector 2.D of China's GATS Schedule as extending to the distribution of sound recordings in electronic form, and thus upheld the Panel's finding that China's measures prohibiting foreign-invested entities from engaging in the distribution of sound recordings in electronic form were inconsistent with the national treatment obligation in Art. XVII. The findings of the Panel that certain of China's measures relating to the distribution of reading materials and AVHE products were inconsistent with Arts. XVI and XVII were not appealed.
- **GATT Art. III:4 (national treatment – domestic laws and regulations):** The Panel found that certain Chinese measures affecting the distribution of imported reading materials were inconsistent with Art. III:4. These findings were not appealed.

<sup>1</sup> China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products