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(25-3004)

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## CHINA – ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

### NOTIFICATION OF AN OTHER APPEAL BY CHINA UNDER ARTICLE 25 OF THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES ("DSU"), PARAGRAPH 5 OF THE AGREED PROCEDURES FOR ARBITRATION UNDER ARTICLE 25 OF THE DSU (THE "AGREED PROCEDURES") AND RULE 23 OF THE WORKING PROCEDURES FOR APPELLATE REVIEW

The following communication, dated 28 April 2025, from the delegation of China, is being circulated to Members.

1. Pursuant to paragraph 5 of the Agreed Procedures<sup>1</sup> and Rule 23 of the Working Procedures for Appellate Review, China hereby notifies the Dispute Settlement Body of its decision to file an Other Appeal with regard to certain issues of law and legal interpretation contained in the Panel Report in *China – Enforcement of Intellectual Property Rights* (WT/DS611/FR) ("Panel Report").

2. In accordance with paragraph 5 of the Agreed Procedures and Rules 23(1) and 23(3) of the Working Procedures for Appellate Review, China is simultaneously filing this Notice of Other Appeal and its Other Appellant's Submission and providing these submissions to the European Union and to the third parties in the underlying panel proceedings, as well as to the WTO Secretariat.

3. For the reasons set forth in the accompanying Other Appellant's submission, China appeals the following errors of law and legal interpretation contained in the Panel Report:

- (i) The Panel erred in its application of the DSU, including Articles 3.3, 7.1, and 19.1, when it concluded that the European Union had proven the existence and precise content of an alleged unwritten "anti-suit injunction policy" in the absence of a finding by the Panel that this alleged "policy" has normative content distinct from the written Chinese laws and judicial decisions that the European Union challenged separately and identified as evidence of the existence and content of the "policy".<sup>2</sup> In the absence of a finding that the so-called "ASI policy" has distinct normative content, the "policy" cannot constitute a "measure" within the meaning of the DSU. The Panel committed legal error in concluding that the European Union had proven the existence and precise content of the alleged "ASI policy" measure in the absence of such a finding. Accordingly, China requests the Arbitrators to reverse the Panel's conclusion and related findings at paragraphs 7.197, 7.205, 7.206, and 8.1 that the European Union had established the existence and precise content of the alleged "ASI policy" measure.
- (ii) The Panel erred in its interpretation and application of Article 63.1 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement") as it pertains to what constitutes a "final judicial decision ... of general application" within the meaning of that provision.<sup>3</sup> As a result of the Panel's errors of legal interpretation, the Panel

<sup>1</sup> WT/DS611/7 (7 July 2023).

<sup>2</sup> Panel Report, paragraphs 8.1, 7.197, 7.205-7.206. Pursuant to Rule 23(2)(c)(ii)(C) of the Working Procedures for Appellate Review, China provides in this Notice of Other Appeal an indicative list of paragraphs in the Panel Report containing the identified errors, without prejudice to its ability to refer to other paragraphs of the Panel Report during the course of the arbitration proceedings.

<sup>3</sup> Panel Report, para. 7.383.

erroneously concluded that the decision of the Wuhan Intermediate People's Court in *Xiaomi v. InterDigital*, including its decision on reconsideration, constituted a "final judicial decision ... of general application" subject to the obligation of publication or public availability under Article 63.1.<sup>4</sup> Accordingly, China requests the Arbitrators to reverse the Panel's conclusions and related findings at paras. 7.383, 7.388-7.391, 7.394(b), 7.412(b)(i) and 8.4(a) of the Panel Report.

4. Should the Arbitrators agree with China that the Panel erred in its interpretation and application of the phrase "final judicial decision ... of general application", China further requests that the Arbitrators declare as moot and of no legal effect the Panel's conclusions and related findings in Part 7.5.1.2.5 of the Panel Report, paragraph 7.412(b)(ii) of the Panel Report, and paragraph 8.4(a) of the Panel Report. These concern the Panel's assessment of whether China made the decision in *Xiaomi v. InterDigital* publicly available in such a manner as to enable governments and right holders to become acquainted with it, as required by Article 63.1 of the TRIPS Agreement. Because the judicial decision in *Xiaomi v. InterDigital* is not one "of general application" on the premise of this request, and therefore not subject to the obligation of publication or public availability under Article 63.1, the Arbitrators should declare these findings and conclusions moot and of no legal effect.

5. Pursuant to Rule 23(2)(c) of the Working Procedures for Appellate Review, the service address, telephone, and facsimile numbers of China are:

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<sup>4</sup> Panel Report, paras. 7.388-7.391, 7.394(b), 8.4(a).