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CHINA – WORLDWIDE LICENSING TERMS FOR STANDARD ESSENTIAL PATENTS

REQUEST TO JOIN CONSULTATIONS

Communication from Canada

The following communication, dated 31 January 2025, from the delegation of Canada to the delegation of China, and the delegation of the European Union, is circulated to the Dispute Settlement Body in accordance with Article 4.11 of the DSU.

Pursuant to Article 4.11 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), the Government of Canada hereby notifies its request to join the consultations requested by the European Union in relation to China's measures concerning patent licensing terms.¹ The European Union's request for consultations ([WT/DS632/1](#)) was circulated to Members on January 22, 2025.

Canada has serious concerns with the transparency of China's measures given their potential to negatively impact and undermine rules-based trade with respect to the protection and enforcement of intellectual property rights. As identified in the European Union's request for consultations, the Chinese courts have adopted and maintain a practice of determining, without the consent of both parties, licensing conditions, and in particular royalty rates, for portfolios of standard essential patents (SEPs), which include non-Chinese SEPs. China's measures interfere with the exercise of rights guaranteed under the TRIPS Agreement, and therefore threaten to disrupt trade in a manner affecting Canada's economy, particularly given the lack of transparency and available information on these measures. For example, on December 20, 2023, the European Union made an official request pursuant to Article 63.3 of the TRIPS Agreement for further information on China's court judgements. However, China has not formally responded to this request.

Canada has a substantial trade interest in these consultations. Canadian companies are affected both directly and indirectly by the royalty rate-setting decisions made by China's court decisions, with the lack of transparency having the potential to create a chilling effect on the market by increasing the risk and trade costs associated with weaker regulatory predictability.

Canada remains committed to the principle of transparency at the WTO, including with a view to ensuring that businesses continue to thrive in a predictable rules-based multilateral trading system.

Particularly as the Chinese courts' royalty rate-setting decisions involve SEPs in telecommunications and other emerging high-tech sectors of the global economy, court decisions in this area can have significant implications for intellectual property rights holders and investors, as well as users of mobile products and other emerging technologies worldwide. It is therefore important to ensure that WTO Members make publicly available laws and regulations, and final judicial decisions and

¹ Communication from the European Union, "China – Measures Concerning Patent Licensing Terms: Request for Consultations by the European Union," dated January 20, 2025 (WT/DS632/1, IP/D/45, G/L/1560) (circulated January 22, 2025) ("EU Request for Consultations") (requesting consultations pursuant to Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, in conjunction with Article 64.1 of the Agreement on Trade Related Aspects of Intellectual Property ("TRIPS Agreement"), and XXII:1 of the General Agreement on Tariffs and Trade 1994.

administrative rulings of general application, pertaining to the subject matter of the TRIPS Agreement. Canada continues to engage with other WTO Members in supporting rules-based trade, towards a transparent and predictable multilateral framework with the WTO at its core.

The European Union alleges in its request that China has not complied with its obligations under Article 63.3, second sentence, of the TRIPS Agreement. China's failure to respond to requests for information violates China's obligations under Article 63 of the TRIPS Agreement. Canada considers that a violation of these obligations has the potential to seriously affect trade by preventing WTO Members and rights holders from being aware of the measures that impact their economic interests. The European Union also alleges that China's measures appear to be inconsistent with certain obligations under Articles 1.1, 28.1, and 28.2 of the TRIPS Agreement, as well as Article 4*bis* of the Paris Convention, as incorporated into the TRIPS Agreement by virtue of Article 2.1 of the TRIPS Agreement. Canada considers that these provisions pertain to fundamental issues of WTO law. Canada has a vested interest in how these provisions are being implemented by China.

Based on the foregoing, Canada has a substantial trade interest in participating in these consultations, and an interest in assuring that China's measures are applied in accordance with the WTO Agreements.

Canada therefore respectfully requests that it be permitted to join the consultations in this dispute.

A copy of this letter is being sent to the European Union and to the Chairperson of the Dispute Settlement Body, with a request that the letter be circulated to Members.
