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Injunctions

1. The judicial authorities shall have the authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.

2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

1.2 Article 44.1

1. In *China – IPRs Enforcement (EU)*, the Arbitrator in the *ad hoc* appeal arbitration under Article 25 of the DSU interpreted the obligation under Article 44.1 in light of its earlier interpretation of Article 1.1, first sentence, of the TRIPS Agreement. It then found that the European Union had not demonstrated a violation of this obligation by China:

"In the context of Article 44.1, the above understanding on the meaning of Article 1.1, first sentence requires a Member to not frustrate the implementation by another Member of its obligation to grant to its judicial authorities the authority to order a party to desist from an infringement. When assessing the claim by the European Union that the ASI policy as such infringes Article 44.1, read in conjunction with Article 1.1, first sentence, we find it significant that the subject of Article 44.1 is the judicial authorities of a Member who must have the authority to order a party to desist from infringement. In response to a question at the arbitral hearing, the European Union acknowledged that there is nothing about an *in personam* order on a patent owner facing SEP litigation in China that *directly* affects 'the authority' of the 'judicial authorities' in the territory of other Members. Rather, the European Union contends that the disincentive on SEP holders to approach 'judicial authorities' in other Members to obtain injunctive relief from those authorities is alone sufficient to diminish 'the authority' of those authorities. The European Union therefore contends that ASIs cause an *indirect* violation of Article 44.1.

In our view, the reading proposed by the European Union does not comport with the ordinary meaning of Article 44.1, which provides clearly that the 'judicial authorities' shall have the 'authority to order a party to desist from an infringement, *inter alia* to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods.' Nothing in the ASI policy nor an ASI issued therefrom affects the authority of a judicial authority of another Member. The issuance

of an ASI may restrict SEP holders from requesting 'judicial authorities' in other Members to exercise their 'authority' in this regard, but this in no way has an effect on the 'authority' of the judicial authorities of the WTO Member where the patent is registered.

We therefore find that the European Union has not demonstrated that the ASI policy is inconsistent with Article 44.1 of the TRIPS Agreement, irrespective of whether it is read in conjunction with Article 1.1, first sentence."¹

Current as of: June 2026

¹ Award of the Arbitrators, *China – IPRs Enforcement (EU)*, paras. 4.173-4.175.