

WTO win could open China's door to US companies

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The United States has won a wide-ranging ruling against Chinese trade practices that could provide massive market opportunities for American makers of everything from CDs and DVDs to music downloads and books.

The verdict released Wednesday at the World Trade Organization in Geneva finds definitively against China for forcing American media producers to route their business in China through Chinese state-owned companies.

The WTO victory comes as President Barack Obama is being pressed to be tough on trade rules with China, which many Democrats in the U.S. Congress blame for America's soaring trade deficits and lost manufacturing jobs. The case is sensitive also for the Chinese government, which asserts the right to keep out content it finds objectionable.

The case goes to the heart of the larger dispute over China and its rapid rise as a trade power and exporter, with some of its economic partners believing it has achieved its position in part by protecting its own market.

The Associated Press reported the main findings of the then-confidential ruling last month, but the public release of the 464-page document on Wednesday revealed dozens of smaller decisions that support the complaints of trade associations representing record labels such as EMI and Sony BMG; publishers including McGraw Hill and Simon & Schuster; and, to a lesser extent, the major Hollywood studios of Warner Bros., Disney, Paramount, Universal and 20th Century Fox.

It also offers hopes of greater business for Apple Inc.'s iTunes store, finding that China was breaking trade rules by preventing companies offering music downloads to computers and mobile phones from offering their services directly to Chinese customers.

The ruling stopped short of a complete U.S. victory as the three-member panel delivered mixed findings on Chinese censorship rules that apply to American-made goods, but not to Chinese products. It also permitted China to make U.S. films go through one of two designated distributors to be shown in Chinese cinemas, a requirement not required of Chinese movies.

The Chinese Commerce Ministry could not immediately be reached, but U.S. Trade Representative Ron Kirk called the ruling a "significant victory to America's creative industries."

"These findings are an important step toward ensuring market access for legitimate U.S. products in the Chinese market, as well as ensuring market access for U.S. exporters and distributors of those products," Kirk said in a statement. "We will work tirelessly so that American companies and workers can fully realize the market opening benefits that this decision signals."

The panel found that "China has acted inconsistently with provisions" of the agreement it made with all WTO members when it joined the global trade body in 2001, as well as the General Agreement on Trade in Services and General Agreement on Tariffs and Trade that governs trade between all WTO members.

It instructed Beijing to "bring the relevant measures into conformity with its obligations under those agreements."

Despite the looming WTO decision, there has been no indications in China of an internal debate on the issue of relaxing restrictions on imports. This is an extremely sensitive issue for the ruling Communist Party, which seeks to keep out content deemed politically or socially objectionable, as well as to protect Chinese filmmakers and other content producers from foreign competition.

However, China has committed itself to the WTO process, so there's little chance that a verdict can be completely ignored. One possible outcome is that the government will come up with a compromise, perhaps setting up new regulations and procedures for vetting and approving cultural imports that would allow a marginally wider opening of the market.

That may not be enough for American record labels, film studios and publishers, who could ask the Office of the U.S. Trade Representative to pressure China into full compliance by threatening retaliatory trade sanctions. The WTO can authorize higher tariffs and other measures against countries failing to adhere to the rules, but generally only after years of litigation.

China can appeal the ruling, but officials at the country's WTO mission in Geneva declined to comment.

Tom Allen, CEO of the Association of American Publishers, called it a "landmark ruling."

"It protects legitimate creators of valuable content and offers them fair access to this extremely important market," Allen said. "Both these long-standing market-access barriers and widespread piracy and counterfeiting in China cause serious economic damage to publishers, who make substantial investments in developing and promoting creative content."

Dan Glickman, chairman of the Motion Picture Association of America, called China's rules for distributing American films "among the most restrictive and burdensome in the world," but said he hoped the ruling would provide a "pathway" for U.S. films to be treated more fairly.

"The fact that the United States has prevailed does not mean that China has lost," added Neil Turkewitz, vice president of the Recording Industry Association of America. He said the ruling could also greatly benefit Chinese society.

When the WTO launched the investigation in November 2007, it marked the fourth official U.S.-China dispute in little over a year as then-President George W. Bush's administration stepped up pressure on Beijing.

That role has now passed to the Obama administration, which will have to decide by next month whether to restrict imports of Chinese tires in the United States, at the risk of further upsetting the Chinese government.

In a speech Wednesday in Geneva, Foreign Minister Yang Jiechi pledged that China would adhere to international trade rules.

"We support efforts to improve the international trade and financial systems, and resolve frictions and differences through consultation and collaboration," Yang said. "China will never seek to advance its interests at the expense of others."

When China joined the WTO in 2001, it agreed to grant equal trading rights to foreign and domestic companies operating in China. China responded by saying its measures were necessary for protecting public morals, and that distribution rules were designed to ensure removal of offensive content.

The panel made no finding that implies it is illegal for China to review foreign goods for objectionable content. But it said China's methods were invariably breaking the rules, with the WTO backing the U.S. on almost every key argument over restrictions on companies that are foreign-owned or joint ventures.

These firms should be allowed to distribute master copies of books, magazines and newspapers to customers in China; wholesale electronic publications; and receive the same conditions and charges as Chinese companies for distributing reading materials, according to the ruling.

The three-member panel rejected, however, a U.S. argument that burdensome censorship of American music was hampering sales in China. Washington also suffered a setback on cinema rights as it failed to prove that China was illegally restricting the distribution of films in movie theaters to two state-owned companies.

American media companies say discriminatory Chinese rules are costing them millions each year in lost business opportunities, but the value is difficult to quantify.

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