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China, Peoples Republic of

Agricultural Situation

Protecting U.S. Food and Ag. Intellectual Property Rights in China

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Report Highlights:

Though China has strengthened its legal framework and enforcement of intellectual property rights (IPR), serious infringements continue to occur on U.S. food and agricultural products. This report provides information and suggestions on IPR protection for U.S. food and agricultural exporters and trade associations.

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Executive Summary

Though China strengthened its legal framework and amended its intellectual property rights (IPR) laws and regulations to comply with its WTO Agreements, IPR infringements of U.S. agriculture and food products remain a serious problem. In this report FAS China offers ways to strengthen protection of U.S. patents, trademarks, copyrights, plant varieties, geographical indicators, food labels, and other IPR in China and third-country markets. Additionally, interested parties are strongly encouraged to review the U.S. Embassy's "China IPR toolkit," mentioned below, and FAS Beijing's on-line reports (<http://www.fas.usda.gov/scripts/AttacheRep/default.asp>) CH2049, containing information on China's patent, trademark, and copyright legislation and enforcement and CH4059, on plant variety protection.

Numerous IPR Problems for U.S. Food and Agricultural Products

According to trade contacts, USDA agricultural Cooperator organizations, and private food companies, IPR problems remain a serious problem in China. Examples include:

- "Stickering" and labeling domestic and third-country product with U.S. identifications such as Washington Apples, California Table Grapes, California Pistachios, U.S. Wheat Flour, etc.
- False branding and packaging of domestic and third-country product with U.S. identification such as Sunkist citrus, Sunmaid raisins, U.S. wines, and even U.S. grass seed brands
- Counterfeiting or mixing of domestic or third country product together with U.S. food and beverages including poultry, beef, pork, mohair or wool
- Unauthorized sale and use of U.S. PVP protected plant materials and germplasm

China's State Council IPR White Paper—Efforts to Improve the System

The State Council, the highest level of government power and administrative office in China, recently published "New Progress in China's Protection of Intellectual Property Rights," a white paper on China's efforts at protecting IPR, on April 21, 2005. The entire report is available on the Embassy of the People's Republic of China in Washington, D.C. web page:

<http://www.china-embassy.org/eng/gyzg/t192663.htm>

This white paper summarizes the current status of China's IPR legislation, filings, and enforcement. Various IPR agencies, including provincial or local authorities also publish reports, many of which are only available in the Chinese language.

U.S. Embassy China's "IPR Toolkit" and Initiatives

Recognizing the large number of complaints from U.S. manufacturers and traders regarding IPR protection in China, and with the aim of helping China develop an IPR system more similar to the United States, the U.S. Embassy in Beijing developed a website-based "IPR Toolkit". The website is located at the following address and provides volumes of information on Chinese laws and regulations along with steps and suggestions on how to protect American IPR, find agents and lawyers to help in IPR safeguarding, and courses of action to pursue when IPR infringement occurs:

<http://www.usembassy-china.org.cn/ipr/>

The U.S. Embassy also sponsors an annual Ambassador's IPR roundtable in which representatives of all key industrial sectors, including the agricultural sector, attend to discuss problems and strategies, frequently with high level Chinese officials in attendance. In addition, the Embassy has an IPR "action plan" affecting all sectors of the Embassy and has two full time officials stationed at the Embassy, an IPR Attaché on detail from the U.S. Patent and Trademark Office and a Foreign Service officer from the State Department. IPR issues are also raised through a joint IPR Working Group under the U.S. China Joint Commission on Commerce and Trade, while specific IPR business complaints may also be raised bilaterally through the International Trade Administration of the U.S. Department of Commerce, Office of China Economic Area.

FAS China Suggestions

The U.S. industry needs to play an active role to protect food product IPR's—initially identifying that problems exist in the first place. Ideally, IPR protection should begin prior to when companies or trade associations begin exploring the China market for their food or beverage goods. Interested parties should also recognize the importance of registering and protecting trademarks in both English and Chinese languages, including obtaining collective marks for U.S. collective organizations and USDA Cooperators or certification marks. China's State Administration for Industry and Commerce, which is involved in enforcing trademarks, has announced that it will be conducting a special campaign to improve enforcement of agricultural related trademarks in the autumn of 2005.

Furthermore, it is essential to recognize that even if U.S. goods are not being sold in China, IPR protection could be helpful to prevent infringed-upon goods produced in China from being exported to third country markets. Chinese Customs provides an on-line recordal service that is usually a prerequisite for Customs detention of infringing goods bound for export.

Thirdly, joint processing agreements need to be evaluated for risks of loss of intellectual property protection, including ownership of marks, patent rights, and trade secrets. Introducing high-end processing techniques without considering the threat or risk to intellectual property is not recommended.

(End of report)