

**THE WOLF HAD COME: ARE CHINA'S INTELLECTUAL
PROPERTY INDUSTRIES PREPARED FOR THE WTO?**

**A THESIS
SUBMITTED TO THE
STANFORD PROGRAM IN INTERNATIONAL LEGAL STUDIES
AT THE STANFORD LAW SCHOOL,
STANFORD UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
MASTER OF THE SCIENCE OF LAW**

By

Yahong Li

May 2002

Abstract

The WTO entry brought victory as well as challenges to China. Challenges are particularly concerned among China's intellectual property industries because intellectual property has become a main battlefield of fierce international competition and because Chinese IP industries are still in their infant and vulnerable stage. This paper examine whether the Chinese IP industries are prepared for the challenges posed by the WTO, or in other words, whether these industries can compete with information rich and technology powerful nations under the uniformed standards of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Many studies concerning China's IP protection in international dimension have concentrated on the aspects of legislative reform and judicial enforcement of IPRs. While my study briefly addresses these important issues, the focus nevertheless is on empirical investigation of Chinese IP industries to see what are the problems plaguing the industries, what are perceived by the industries to be their greatest challenges, and what are the strategies the industries are contemplating to cope with these challenges. I place my study in the WTO context and try to sort out whether a stronger or weaker IPRs protection is more beneficial to the growth of indigenous IP industries of a developing country like China. Therefore, the requirements and exceptions of TRIPS are examined, and the practical implications of these requirements and exceptions for China's IP industries are discussed. At the end of this thesis I also make predictions on how WTO and China will be mutually affected in terms of the IPRs protection, and what role China will play in the WTO in shaping TRIPS and relevant IP policies.

Table of Contents

Introduction	1
I. TRIPS' Expectations and China's Choices	2
1.1 Strong v. Weak Protection	3
1.2 Challenges v. Opportunities	6
II. China's Legislative Responses to the TRIPS Requirements	8
2.1 Substantive Changes	9
2.2 Procedural Changes	12
2.3 Non-complying Aspects	13
III. The Preparations of China's IP Industries for the WTO	15
3.1 Industries Relating to Copyright	15
3.2 Industries Relating to Trademarks	22
3.3 Industries Relating to Patent	28
IV. WTO and China: Future Interaction On IP Protection	39
4.1 The Impact of the WTO on China's IP industries	40
4.2 The Role of China in the WTO	42
Bibliography	45