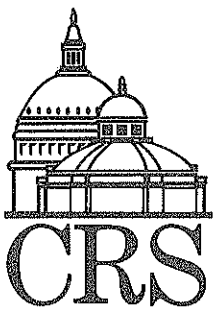
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CRS Report for Congress

Intellectual Property Rights and U.S. Foreign Trade

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INTELLECTUAL PROPERTY RIGHTS AND U.S. FOREIGN TRADE

SUMMARY

Intellectual property is a source of comparative advantage and a wellspring of exports of goods and services by many of America's most creative and innovative companies. Theft of intellectual property causes significant losses to U.S. intellectual property industries and to the U.S. economy. Protection of intellectual property rights is an important element of U.S. international trade policy. This report discusses the importance of intellectual property rights (IPR) to U.S. industry and the steps taken by the United States to protect intellectual property abroad, including multilateral and bilateral agreements and negotiations, and U.S. trade laws.

The conclusion of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) led to the creation of the World Trade Organization (WTO) and an Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS Agreement established clearer, more comprehensive standards for the protection of IPR, provided for strengthened enforcement, and applied the dispute settlement procedures of the WTO to IPR disputes. U.S. trade law also provides U.S. companies with remedies against imports of pirated goods (section 337 of the Trade Act of 1930) or against countries that "deny adequate and effective protection of U.S. intellectual property rights" or "deny fair and equitable market access to United States persons that rely upon intellectual property protection" ("special 301" -- section 182 of the Trade Act of 1974). While the TRIPS Agreement has leveled the playing field for U.S. intellectual property owners, the United States continues to use special 301 in situations where protection continues to be inadequate or ineffectual.

In December 1996, the inaugural ministerial meeting of the World Trade Organization took place in Singapore. With respect to the TRIPS Agreement, the United States pressed for higher standards and earlier implementation by developing countries. These goals had previously been identified in the President's 1996 Trade Policy Agenda and are strongly supported by U.S. groups such as the International Intellectual Property Alliance (IIPA). The IIPA has also called for the United States to push for WTO enforcement against countries that are not in compliance with TRIPS obligations. The Congress has an active role to play in monitoring the implementation of the TRIPS Agreement and through oversight of Administration activities in the intellectual property rights area. Finally, two new World Intellectual Property Organization (WIPO) treaties were signed in Geneva in December 1996. These treaties will require ratification by a two-thirds vote of the Senate. It is very likely that there will have to be changes in U.S. domestic law, and therefore, there will have to be implementing legislation that will have to be passed by both houses by ordinary majorities. The Congress may pass implementing legislation before the Senate ratifies the treaties so that U.S. laws are in conformity with the treaties.

CONTENTS

INTELLECTUAL PROPERTY RIGHTS: SOME DEFINITIONS 1

INTELLECTUAL PROPERTY RIGHTS AND PIRACY 3
PIRACY AND OTHER INFRINGEMENTS: WHAT ARE THE COSTS? 3
INTELLECTUAL PROPERTY RIGHTS AND DEVELOPING COUNTRIES: STILL CONTROVERSIAL? 5
IPR PROTECTION AND CYBERSPACE: A DIGITAL CHALLENGE? 6

U.S. TRADE POLICY AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS 7
THE WTO AGREEMENT/NATIONAL LAWS 8
TRIPS in 1996 9
TRIPS and the Singapore Ministerial 11
U.S. TRADE STATUTES AND BILATERAL AGREEMENTS 11
Section 337: Unfair Practices in Import Trade 12
Special 301: Opening Foreign Markets 12
"Special 301" in 1996 14
Generalized System of Preferences (GSP) and the Caribbean Basin Economic Recovery Act (CBERA) 14

CONCLUSION 15

APPENDIX 17
EXCERPTS FROM THE USTR *FACTSHEET ON "SPECIAL 301"* . 17
Priority Foreign Country 17
Priority Watch List 17
Watch List 19

INTELLECTUAL PROPERTY RIGHTS AND U.S. FOREIGN TRADE

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The conclusion of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) led to the creation of the World Trade Organization (WTO) and an Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The TRIPS Agreement established clearer, more comprehensive standards for the protection of IPR, provided for strengthened enforcement, and applied the dispute settlement procedures of the WTO to IPR disputes. U.S. trade law also provides U.S. companies with remedies against imports of pirated goods (section 337 of the Trade Act of 1930) or against countries that "deny adequate and effective protection of U.S. intellectual property rights" or "deny fair and equitable market access to United States persons that rely upon intellectual property protection" ("special 301" of the Trade Act of 1974). While the TRIPS Agreement has leveled the playing field for U.S. intellectual property owners, the United States continues to use special 301 in situations where protection continues to be inadequate or ineffectual. The Congress has an active role to play in monitoring the implementation of the TRIPS Agreement and through oversight of Administration activities in the intellectual property rights area.

INTELLECTUAL PROPERTY RIGHTS: SOME DEFINITIONS

Intellectual property rights are legal rights granted by governments to encourage creative output. IPR ensure that creators reap the benefits of their inventions or works. They may take the form of copyrights, patents, trademarks, mask works, or trade secrets. Through IPR, governments grant a temporary legal monopoly to innovators. IPR give creators the right to limit or control the use of their creations by others. IPR may be traded or licensed to others, usually in return for fees and/or royalty payments. IPR are granted on a country-by-country basis and are, in general, enforceable only in the country in which they are granted.

Copyrights protect literary and artistic expression. Examples of such expression include novels, poems, plays, music, paintings, maps, architectural works, movies, sound recordings, and computer software. Under U.S. law, a copyright covers the term of the author's life plus 50 years for personal works, or the shorter of 100 years from creation or 75 years from publication in the case of impersonal works (e.g., corporate works).

Patents protect industrial and other technical inventions. Patents are available for inventions in all fields of technology, provided that the inventions are new, involve an inventive step (i.e., are not obvious) and are capable of industrial application (i.e., are useful). Inventions protected by patents include machines, manufactured articles, compositions of matter (e.g., plastics), or processes. There are three major categories of patents: utility patents, design patents, and plant patents. Patents are granted for a term of 20 years from the filing date of the patent application. Patents reward inventors by providing incentives to engage and invest in research and development. Patents also compensate inventors for disclosing technological secrets. The governmental grant of a **temporary** monopoly to exploit an invention can be viewed as government intervention in the economy to promote "efficiency in the production of technological advance," or *dynamic efficiency*.[1] Monopoly is promoted in this instance to improve market performance. And while inventors may exploit this legal monopoly, they may not use it to conspire or interfere with the ability of other firms to compete.[2] While the patent system aims to improve dynamic efficiency, *static efficiency* (or efficiency in the production and allocation of resources using existing technology) is a goal of antitrust laws. Although seemingly at odds with the patent system, antitrust laws also aim to improve market performance, in this case by curtailing monopoly power.[3]

Trademarks are signs (words, names, or symbols) that are used to distinguish the goods or services of one firm from the products or services of other firms. Trademark laws are used to prevent infringement (unauthorized use of the same or similar mark on the same or similar goods), counterfeiting, or unfair competition (using the same or a similar mark in any manner that falsely suggests a connection with the legitimate trademark owner). A trademark may include, among other elements, words, designs, symbols, colors, letters, and numerals. Types of trademarks include brand names (Xerox, Kleenex), service marks (FedEx, TWA), and certification marks (UL). In the United States, rights to trademarks are acquired through use or prior registration with the Patent and Trademark Office.

Mask works contain layout designs for semiconductor integrated circuits; are used in the production of semiconductors. In the United States, mask works

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[1] Martin, Stephen. *Industrial Economics*. Second Edition. New York: Macmillan, 1994. pp. 371, 373.

[2] Ibid., p. 373.

[3] Ibid.

are registered with the Copyright Office and exclusive rights to such works are granted for a term of 10 years.

INTELLECTUAL PROPERTY RIGHTS AND PIRACY

Infringements of intellectual property rights are sometimes referred to as "piracy" or "counterfeiting." Piracy and counterfeiting pose a significant problem both in the United States and abroad for those businesses that are dependent on the sale or licensing of intellectual property. The unauthorized reproduction of sound recordings, music videos, motion pictures and other audiovisual works, computer and game software, or the use of counterfeit labels and marks costs U.S. industry billions of dollars in losses each year.

The computer software, sound recording, and audiovisual industries are in the forefront in the fight to protect intellectual property that is embedded in easily reproducible products. Those products may come in the form of compact discs, floppy diskettes, CD-ROMs, or video cassettes. Each of these is relatively easy to reproduce, at little expense, in a form that is virtually indistinguishable from the original. Software piracy is ubiquitous. Microsoft Corporation published a report in 1995 in which a number of forms of software piracy were identified:

- end-user copying among organizations and individuals;
- counterfeiting (e.g., deceiving end users into believing they are purchasing a legitimate product or selling illegally duplicated software under a completely different name);
- hard-disk loading (the unauthorized loading of software onto a computer's hard disk at the time a computer is purchased);
- downloading of copyright-protected software via electronic bulletin boards; and
- software rental and/or mail order clubs.[4]

PIRACY AND OTHER INFRINGEMENTS: WHAT ARE THE COSTS?

Copyrights, trademarks, patents, and other forms of intellectual property rights provide economic rewards and incentives to inventors, artists, and others who engage in creative activity. The U.S. system of intellectual property protection is usually viewed as being of substantial economic benefit, but data measuring the contribution of intellectual property rights to the U.S. economy are sparse.

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[4] Microsoft Corporation. *Microsoft's International Report on Software Piracy*. 1995. This report may be found on the World Wide Web at http://198.105.232.5/Piracy/

International infringement of intellectual property rights is usually cited as a cause of significant losses to U.S. business. In 1988, the U.S. International Trade Commission (USITC) published the results of a survey of firms that depend on royalties or sales of goods protected by intellectual property.[5] The USITC surveyed 736 U.S. companies, of which 431 responded. Of the 431, 269 firms reported that intellectual property was of more than nominal importance to their business. The USITC reported that aggregate worldwide losses as a result of inadequate intellectual property protection in 1986 were estimated (by survey respondents) at $23.8 billion, or 2.7% of sales affected by intellectual property. Elhanan Helpman, an economist, has suggested that company estimates of losses resulting from foreign infringements may be too high.[6] In the late 1980s, Gene Grossman and Carl Shapiro, also economists, described the trade in counterfeit products as "reaching epidemic proportions," but went on to note that evidence on the extent of counterfeiting and the range of products affected is "anecdotal."[7] Nevertheless, as the USITC makes clear, theft of intellectual property can represent a "difficult competitive problem" for American firms because of the ease with which it can be accomplished and the large profits that can be had.

The International Intellectual Property Alliance (IIPA), a trade group representing firms that depend on copyright protection, claims that losses to U.S. copyright-based industries totaled $15 to $17 billion worldwide (not including the United States) in 1992.[8] The IIPA produces annual estimates of intellectual property losses in countries that fail to provide adequate intellectual property protection to U.S. companies. In February 1995, the IIPA reported that 42 countries plus the Confederation of Independent States (C.I.S.) accounted for nearly $8.6 billion in losses in 1994.[9] One year later, the IIPA reported that 29 countries caused more than $6 billion in trade losses during

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[5] Data collected were for the year 1986. U.S. International Trade Commission. *Foreign Protection of Intellectual Property Rights and the Effect on U.S. Trade and Industry.* USITC Publication 2065. February, 1988. Although the USITC has not published follow-up surveys, the 1986 survey indicates the importance firms place on intellectual property. That importance has, most likely, increased during the last 10 years.

[6] Helpman, Elhanan. *Innovation, Imitation, and Intellectual Property Rights.* Discussion Paper Number 1597. Harvard Institute of Economic Research, Harvard University. May 1992. p. 2.

[7] Grossman, Gene M. and Carl Shapiro. "Counterfeit-Product Trade," *American Economic Review*, March 1988, p. 59.

[8] IIPA. *IIPA Urges Continued Aggressive U.S. Trade Policy to Address Inadequate Provisions on National Treatment and Transition Periods in the GATT TRIPS Agreement.* Press Release. Washington, February 1, 1994. Although these figures are widely cited, their accuracy is unknown. More recent data are not available.

[9] IIPA. *IIPA Identifies 42 Countries Plus the C.I.S. Which Account for over $8.57 Billion in Trade Losses Due to Copyright Piracy in 1994.* Washington, February 13, 1995.

1995.[10] The accuracy of these claims is unknown. Critics have suggested that estimates of lost sales, as opposed to an estimate of the proportion of pirated copies to total sales, are exaggerated because many of those who would purchase or steal a fake product would probably not pay full price anyway. However, the pervasiveness of counterfeiting as a problem for U.S. exporters in some countries is well known. The IIPA estimates that piracy in the People's Republic of China cost U.S. copyright owners $1.8 billion in 1995.[11]

INTELLECTUAL PROPERTY RIGHTS AND DEVELOPING COUNTRIES: STILL CONTROVERSIAL?

While U.S. owners of intellectual property rights claim that piracy is responsible for billions of dollars in lost sales, many developing countries have long maintained that strong IPR protection mainly benefits developed countries. Prior to the conclusion of the TRIPS Agreement, many developing countries took the position that IPR was of little benefit in terms of fostering development. The conventional positions of developing countries was well summarized in a 1991 U.S. Agency for International Development (AID) report:

> 1) No one individual, organization or country can claim an exclusive right to the benefits of intellectual property. Scientific and technological innovations in particular should be shared for the improved well-being of all people;
>
> 2) Developed nations were able to achieve their current levels of development partly because they were unfettered by tight IPR controls; now they are denying to LDCs [less developed countries] the same opportunities to encourage technological imitation and the spread of information and technology that spurred their growth. The end result, LDCs argue, will be ever-widening disparities between the "have" and "have-not" countries; and
>
> 3) Many LDCs fear an international code defining rules governing technology transfer, if based on industrialized country norms and practices, would serve to solidify the dependent asymmetry of the South upon the North. This might confer disproportionate monopoly rights to large foreign corporations, allowing them to raise costs of vital goods (such as pharmaceuticals) beyond the reach of the poor.[12]

In the debate over intellectual property rights, the United States and other developed countries countered that IPR "stimulates economic growth, increases the gains from international trade, promotes private investment and technology

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[10] IIPA. *IIPA Names 29 Countries Causing Over $6 Billion in Trade Losses Due to Copyright Piracy in 1995.* Washington, February 20, 1996.

[11] The IIPA estimates are industry figures that are not subject to verification.

[12] Wichterman, Dana. *Intellectual Property Rights and Economic Development: An Issue Brief.* Agency for International Development. Research and Reference Services. July 1991. pp. 5-6.

transfers, achieves high social returns from innovation, improves the prospects for competition, and positively encourages national creativity."[13]

The TRIPS Agreement resolved many of the issues that had separated developed and developing countries by establishing rules that will, by the year 2005, cover all WTO members. The agreement highlights the extent to which developed and developing countries have come to accept a common approach to intellectual property rights, despite a view among some economists that the majority of developing countries will nevertheless suffer welfare losses as a result of the TRIPS Agreement. According to trade economist Jagdish Bhagwati, where one country is both a producer and consumer of intellectual property (mainly developed countries) while another is merely a consumer (developing countries), intellectual property protection is close to a zero-sum game, "with the majority of developing countries losing and many developed countries gaining."[14] Unlike the GATT (trade in goods) and GATS (General Agreement on Trade in Services) (trade in services), the TRIPS Agreement is less concerned with increasing mutual gains from trade or increasing efficiency than with capturing rents made possible through an enforceable grant of monopoly protection by the state.[15]

A closing of the divisions between developing and developed countries that led to the adoption of the TRIPS Agreement may have been influenced by a recognition among developing countries that multilateral rules are preferable to the use of unilateral measures such as special 301; a recognition that countries that do not protect intellectual property have a harder time attracting foreign investment; and the adoption of a more pragmatic view that their own intellectual property rights would be better protected through uniform IPR rules.

IPR PROTECTION AND CYBERSPACE: A DIGITAL CHALLENGE?

The Internet and the spread of global communications networks poses a challenge for owners of intellectual property in digital form (including virtually all copyrighted materials, including software and music). Perfect copies, as well as digitally altered copies, can easily be distributed over the Internet at little or no cost. Unlike trade in hard goods (diskettes, CD-ROMS, video cassettes, books, etc.), intellectual property in digital form can instantaneously be sent across international borders to potentially very large audiences. New technology, better enforcement, and public education have all been identified as

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[13] Ibid., p. 5.

[14] Bhagwati, Jagdish. "Comment," in *The New GATT*. Washington, The Brookings Institution, 1994. pp. 112-114.

[15] Richard Porter writes ironically: "When an LDC [less-developed country] wishes to 'signal' its commitment to 'fostering greater market competition and reduced government direction', it does this by having the government grant monopoly protection to owners of intellectual property!" Porter, Richard C. in Deardorff and Stern, *Analytical and Negotiating Issues in the Global Trading System*, Ann Arbor, MI, University of Michigan Press, 1994. pp. 451-452.

important in curbing the mass piracy made possible by increasingly common digital technology. Technology has, to a degree, outstripped the protection afforded by copyright laws.[16]

During the 104th Congress, the Commissioner of Patents and Trademarks Bruce Lehman headed a panel that examined issues relating to intellectual property and national and international information infrastructures. Chief among those issues was protection of intellectual content in cyberspace. The panel proposed legislative changes, but the 104th Congress did not act on the proposal. The 105th Congress may also face the issue of how and whether to address the challenges posed by global networks. The Clinton Administration is circulating a draft report entitled *A Framework for Global Electronic Commerce* that outlines key issues related to electronic commerce. Protection of intellectual property on-line is one major goal of the initiative.[17]

In December 1996, the World Intellectual Property Organization (WIPO) Diplomatic Conference in Geneva concluded negotiations on two international treaties that strengthen minimum copyright standards in cyberspace and close a loophole in international law concerning duplication of sound recordings. A third treaty that would have created a property right in databases was rejected by the delegates to the WIPO Conference. These treaties will require ratification by a two-thirds vote of the Senate. It is very likely that there will have to be changes in U.S. domestic law, and therefore, there will have to be implementing legislation that will have to be passed by both houses by ordinary majorities. The Congress may pass implementing legislation before the Senate ratifies the treaties so that U.S. laws are in conformity with the treaties.

U.S. TRADE POLICY AND PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

Protection of intellectual property rights is an important element of U.S. trade policy. For many years, the United States has pursued stronger protection of intellectual property abroad through international agreements and organizations, through bilateral negotiations with trading partners to provide improved protection and enforcement of intellectual property rights, and by linking eligibility for U.S. tariff benefits under the Generalized System of Preferences (GSP) and the Caribbean Basin Economic Recovery Act (CBERA)

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[16] United States. Information Infrastructure Task Force. *Intellectual Property and the National Information Infrastructure: The Report of the Working Group on Intellectual Property Rights*. September 1995. pp. 211-212; Corcoran, Elizabeth. "A Digital Duel: Whose Property is This? Business and the 'Net Cruisers Debate How -- and Whether -- Copyright Applies in Cyberspace," *Washington Post*. September 3, 1995; Reid, T.R. "Copyright Protections Needed in Cyberspace," *Washington Post*. September 11, 1995.

[17] Executive Office of the President. *A Framework for Global Electronic Commerce*. December 11, 1996.

to provision of adequate IPR protection.[18] The United States has made enforcement of international agreements and national laws a priority.

THE WTO AGREEMENT/NATIONAL LAWS

Intellectual property rights are national in scope. Each country has its own intellectual property laws, and these can differ from each other significantly. The rights granted by a U.S. patent or copyright do not extend into foreign countries and the United States does not enforce intellectual property rights granted solely under foreign laws. International patents, trademarks, or copyrights do not exist. The patchwork of national laws recognizing intellectual property rights are woven together by international conventions and treaties that establish a minimum standards of protection, including national treatment (or equal treatment for foreign and domestic businesses and products) and most-favored-nation treatment (nondiscrimination among foreign businesses). The Berne international copyright convention does, however, establish specific rights that member states must grant foreign authors, even if those rights exceed the rights granted to nationals.[19]

The Uruguay Round Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which took effect on January 1, 1996, established multilateral obligations for the protection and enforcement of intellectual property rights and provides that the dispute settlement procedure of the World Trade Organization (WTO) will apply to intellectual property disputes among parties to the agreement.[20] Developing countries and countries in transition to market economies have until January 1, 2000 to implement the agreement. The least developed countries are to implement the agreement by January 1, 2006. According to Acting U.S. Trade Representative (USTR) Charlene Barshefsky, a number of trading partners, including Japan, Italy, Spain,

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[18] USITC. *Operation of the Trade Agreements Program*. 1989, 1992, 1994, 1995; Congressional Research Service. *Generalized System of Preferences*. CRS Report 96-200 E, by George D. Holliday. Updated August 22, 1996. 10 p.

[19] The Berne Convention is an international copyright convention negotiated in 1886 and revised in 1991. The Berne Convention is administered by the World Intellectual Property Organization (WIPO -- a specialized United Nations agency that also administers the Paris Convention), and is based on national treatment for works created by nationals of other states.

[20] A detailed analysis of GATT agreement on intellectual property rights may be found in the following reports: U.S. Library of Congress. Congressional Research Service. *Intellectual Property Provisions of the GATT 1994: "The TRIPS Agreement."* CRS Report 94-302 A, by Dorothy Schrader. March 16, 1994. 38 p. and *Enforcement of Intellectual Property Rights Under the GATT 1994 TRIPS Agreement*. CRS Report 94-228 A, by Dorothy Schrader. March 3, 1994. 20 p. For an analysis of the economic policy implications of the IPR provisions of the Uruguay Round agreement, see Congressional Research Service. *Intellectual Property Rights and the Uruguay Round of Multilateral Trade Talks: Economic Effects*. CRS Report 94-722 E, by Lenore Sek. August 30, 1994. 10 p.

Portugal, Sweden, Finland, Greece, and Austria have amended their intellectual property laws to meet TRIPS obligations.[21]

The private sector largely approved of the agreement on intellectual property rights. Nevertheless, the TRIPS agreement did not resolve all of the intellectual property rights issues that are of importance to U.S. business. For example, developing countries and countries in transition from centrally planned economies will not have to implement the new standards and enforcement measures for many years, while industrial countries must implement the agreement immediately. Pharmaceutical companies note that their patents may not be recognized for as many as 10 years, with a consequent loss of billions in revenues. The United States would like to see developing countries accelerate implementation of the TRIPS Agreement. The United States also takes the position that Chinese entry into the WTO must be accompanied by full implementation of the TRIPS Agreement. Despite its shortcomings, the new intellectual property rights regime establishes a recognized set of rules and procedures that will cover all WTO signatories. The IPR provisions of the North American Free Trade Agreement (NAFTA)[22] are even stronger than the standards embodied in the TRIPS agreement.[23]

TRIPS in 1996[24]

In February 1996, the USTR initiated WTO dispute settlement proceedings against Japan for allowing pirating of works recorded by U.S. performing artists and producers between 1946 and 1971. The USTR maintains that the lack of protection accorded by Japan for these works is a clear violation of the TRIPS Agreement. Ambassador Kantor said,

> Over the last several months, we have expressed our serious concerns about this problem to the Japanese government, to no avail. We expect the Japanese to fulfill their obligations. Because Japan is not living up to its TRIPS obligations, the entire body of American

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[21] Office of the U.S. Trade Representative. USTR Announces Two Decisions: Title VII and Special 301. April 30, 1996.

[22] For a detailed analysis of the IPR provisions of the NAFTA, see Congressional Research Service. *Intellectual Property Provisions of the NAFTA.* CRS Report 94-59 A, by Dorothy Schrader. January 21, 1994. 34 p. and *Enforcement of Intellectual Property Rights Under the NAFTA.* CRS Report 94-72 A. 14 p.

[23] For a brief discussion of the differences between the TRIPS and NAFTA agreements, see U.S. Library of Congress. Congressional Research Service. *Intellectual Property Provisions of the GATT 1994: "The TRIPS Agreement,"* CRS Report 94-302 A, by Dorothy Schrader. March 16, 1994. p. 1, footnote 2.

[24] This section is drawn from information contained in Office of the United States Trade Representative. *"Special 301" on Intellectual; Property Rights Fact Sheet.* April 30, 1996. This Fact Sheet may be found at the following URL: http://www.ustr.gov/reports/special/factsheets.html

music produced from 1946, the date to which the WTO rules extends, to 1971 is vulnerable to piracy.[25]

In April 1996, the USTR announced that WTO dispute settlement procedures would be invoked with respect to practices in Portugal, India, Pakistan and Turkey.

In October 1996, the USTR announced that the WTO dispute settlement proceedings with Portugal had been successfully concluded. Portuguese patent law failed to meet TRIPS requirement that the term of a patent be 20 years from filing and that this term apply to new patents granted as well as to those that are still in effect. The Clinton Administration viewed the resolution of the dispute as a demonstration of the effectiveness the WTO dispute resolution process.[26]

India was cited for failure to implement its obligations under the TRIPS Agreement requiring developing countries not yet providing patent protection for pharmaceutical and agricultural chemical products to provide a "mailbox" in which to file patent applications, and the possibility of up to 5 years of exclusive marketing rights for these products until patent protection is provided. India, which has affirmed its intention to pass legislation implementing its TRIPS obligations, established TRIPS provisions administratively (these have subsequently lapsed) and has introduced legislation but has not provided a legal basis for the filing of such patent applications for these products. As a result, the Administration announced that it will initiate formal consultations with India under WTO dispute settlement procedures in the near future.

Like India, Pakistan has failed to meet obligations under the TRIPS Agreement that require developing countries not yet providing patent protection for pharmaceutical and agricultural chemical products to provide a "mailbox" in which to file patent applications, and the possibility of up to 5 years of exclusive marketing rights for these products until patent protection is provided. Pakistan's cabinet on April 8 approved an amendment to its patent law that includes a "mailbox" provision to take effect upon passage and other broadened patent protections to take effect in 2005. The amendment must now go to the National Assembly before becoming law. To encourage quick passage, the Administration will initiate formal consultations with Pakistan under WTO dispute settlement procedures.

Turkey maintains a discriminatory 25% municipality tax only on receipts from the showing of foreign films in a manner inconsistent with the national treatment obligations of Article III of the GATT 1994. The USTR has announced that the Administration will invoke formal consultations with

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[25] Office of the USTR. *USTR Kantor Initiates WTO Dispute Settlement Proceedings against Japan for its Sound Recording Copyright Practices.* Press Release 96-15. February 9, 1996.

[26] Office of the USTR. *U.S. Gains IPR Compliance in Portugal Through WTO Case.* Press Release 96-80. October 3, 1996.

Turkey under WTO's dispute settlement procedures in the near future with respect to this matter.

TRIPS and the Singapore Ministerial

In December 1996, the inaugural ministerial meeting of the World Trade Organization took place in Singapore.[27] With respect to the TRIPS Agreement, the United States pressed for higher standards and for earlier implementation by developing countries. These goals had been identified in the President's 1996 Trade Policy Agenda and are strongly supported by U.S. groups such as the International Intellectual Property Alliance (IIPA).[28] The IIPA has also called for the United States to push for WTO enforcement against countries that are not in compliance with TRIPS obligations.

U.S. TRADE STATUTES AND BILATERAL AGREEMENTS

In addition to promoting the TRIPS agreement to increase intellectual property protection, the United States has also negotiated a number of bilateral agreements with trading partners. Many of these bilateral agreements have come about as a result of the increased leverage provided by U.S. laws against unfair trade practices. In terms of intellectual property rights, the two principal laws are section 337 of the Tariff Act of 1930 and section 301 of the Trade Act of 1974. The Congress enacted, and the President signed, the Omnibus Trade and Competitiveness Act of 1988, which substantially amended the intellectual property provisions of the Tariff Act of 1930 and the Trade Act of 1974.

Another law that has contributed to the conclusion of a number of IPR agreements is Title IV of the Trade Act of 1974 (the Jackson-Vanik amendment). In order to receive most-favored-nation (MFN) status, Jackson-Vanik requires that China and a number of former Soviet-bloc countries have a trade agreement with the United States.[29] Protection of intellectual property rights is a requirement for such a trade agreement.

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[27] World Trade Organization. *Singapore Ministerial Declaration*. WT/MIN(96)/DEC. December 18, 1996.

[28] U.S. Congress. House. Committee on Ways and Means. *Testimony of Eric H. Smith, President, International Intellectual Property Alliance*. September 11, 1996. Mr. Smith testified that "U.S. objectives for TRIPS implementation generally and in Singapore must be based on four interrelated elements: commencing WTO dispute settlement actions; insisting on immediate adherence to TRIPS by newly industrializing countries that do not qualify for transition periods until 2000 and beyond; pressing for acceleration of compliance by developing countries that do qualify for transition; and insuring that non-WTO members seeking accession are required to fully implement TRIPS, without transition, by no later than their accession date." p. 2.

[29] Another condition for granting a Jackson-Vanik waiver required that countries subject to Title IV permit freedom of emigration.

Section 337: Unfair Practices in Import Trade

Section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), makes unlawful the importation of articles into the United States which infringe valid intellectual property rights.[30] The 1988 Trade Act made it easier for firms to obtain remedies, under section 337, against pirated products imported into the United States. The International Trade Commission (USITC), on the basis of a complaint or on its own initiative, conducts investigations. If the USITC determines that a violation exists, it can issue an order excluding the subject articles or it may issue a cease and desist order. The President may disapprove an USITC order within 60 days of its issuance for "policy reasons."[31]

In 1995 (the most recent year for which data are available), the USITC completed 12 investigations, compared with 14 in 1994. Most investigations involved complaints alleging infringement of a U.S. patent by imported merchandise. General exclusion orders were issued in two cases, and one temporary limited exclusion order was also issued. Several investigations were terminated, generally on the basis of settlement agreements or consent orders. At the end of 1994, 9 section 337 investigations were pending, compared with 10 the previous year.[32] At the end of 1995, 49 outstanding exclusion orders were in effect. Thirty of these involved unexpired patents.[33]

Special 301: Opening Foreign Markets

Section 301 of the Trade Act of 1974, as amended, identified the denial of intellectual property rights protection as unfair trade practice subject to the imposition of retaliatory measures by the President.[34] The Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418) amended section 301 by creating "special 301," a procedure that requires the U.S. Trade Representative (USTR)

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[30] Section 337 covers **all** unfair trade actions involving imports.

[31] For more information about the use of section 337 against unfair trade practices related to IPR infringements, see: Krupka, Robert G., Philip C. Swain, and Russell E. Levine, "Section 337 and the GATT: The Problem or the Solution?" *American University Law Review*, Vol. 42 (Spring 1993), pp. 779-867; and Sadler, Brent W, "Intellectual Property Protection through International Trade,: *Houston Journal of International Law*. Vol. 14, No. 2 (Winter 1992), pp. 393-423.

[32] U.S. International Trade Commission. *The Year in Trade, 1994: Operation of the Trade Agreements Program*. USITC Publication 2894. July 1995. p. 125.

[33] USITC. *The Year in Trade, 1995*. USITC Publication 2971. August 1996. p. 77.

[34] Sections 301 through 309 of the Trade Act of 1974 (as amended) is a principal means for addressing "unfair" foreign barriers to U.S. exports of goods or services. It is also used for enforcing U.S. rights under bilateral or multilateral trade agreements and may also be used to respond to unreasonable, unjustifiable, and discriminatory foreign government practices that burden or restrict U.S. commerce. See Office of the USTR. *1996 Trade Policy Agenda and 1995 Annual Report*. 1996. pp. 121-122; Congressional Research Service. *Section 301: Its Operation and Prospects for Future Use by the United States*. CRS Report 95-360 E, by Wayne M. Morrison. March 9, 1995. 6 p.

first to identify countries that "deny adequate and effective protection of U.S. intellectual property rights" or "deny fair and equitable market access to United States persons that rely upon intellectual property protection," and then determine, within 30 days after submitting the annual trade barriers report, which of the identified countries are "priority foreign countries." "Special 301" was amended in the Uruguay Round Agreements Act (P.L. 103-465) to clarify that a country can be found to deny adequate and effective intellectual property protection even if it is in compliance with its obligations under the TRIPS Agreement. It was also amended to direct the USTR to take into account a country's prior status and behavior under "special 301."

Priority foreign countries are defined in the statute as those countries that: (1) have the most onerous or egregious acts, policies, or practices that deny adequate and effective intellectual property rights; (2) have the greatest adverse impact (actual or potential) on U.S. products; and (3) have not entered into good faith negotiations or are not making significant progress in bilateral or multilateral IPR negotiations. Additionally, the USTR must consult with other agencies of the federal government in compiling the list of priority foreign countries. The USTR may also make additions to, or deletions from, the list of priority foreign countries at any time.

USTR identification of priority countries is based on the USTR's annual report on trade barriers, on section 301 petitions, or on other information. The USTR is required to initiate, within 30 days, an investigation of the priority countries' acts, policies, and practices that were the basis for their identification.[35] A "special 301" investigation is similar to an investigation initiated in response to an industry section 301 petition, except that the maximum time for an investigation under section 301 is shorter in some circumstances (i.e., where the issues do not involve a violation of the Agreement on TRIPS) than are other section 301 investigations. The USTR has from 6 to 9 months to complete the investigation and make a determination as to whether action must be taken. If an affirmative determination is made, the USTR may (1) suspend trade concessions and impose import restrictions or duties,[36] *or* (2) enter into a binding agreement with the priority country that would eliminate the act, policy, or practice that is the subject of the action to be taken.

In addition to "priority foreign countries," the USTR maintains, as a matter of administrative practice, a "Priority Watch List" of countries whose acts, policies, and practices meet some, but not all, of the criteria for priority foreign country identification. The USTR places trading partners on the priority watch list when the lack of adequate and effective intellectual property protection or market access in these countries is especially significant for U.S. interests. The

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[35] The USTR is not required to initiate an investigation if the USTR determines that the initiation of an investigation would be detrimental to U.S. economic interests. 19 U.S.C. 2412(b)(2)(B).

[36] The USTR has considerable discretion in choosing the form of retaliation. 19 U.S.C. 2411(a)(1), (b)(2), and (c)(5).

USTR also maintains a "Watch List" of countries that warrant special attention because of intellectual property practices or market access barriers that are a cause of concern. The watch list provides a means for monitoring progress in implementing commitments for improving intellectual property rights and market access for U.S. products. Finally, the USTR has also created a "special Mention" category.

"Special 301" in 1996

In April 1996, Ambassador Barshefsky identified China as a priority foreign country.[37] Additionally, 8 trading partners were placed on the "priority watch list" including Argentina, the European Union, Greece, India, Indonesia, Japan, Korea, and Turkey. Another 26 countries were placed on the "watch list." In addition, the Administration noted growing concerns in 4 trading partners (Dominican Republic, Lebanon, Nicaragua, and Qatar) and highlighted developments in and expectations for progress in 15 trading partners.

Developments in 5 of these trading partners -- Bolivia, Bulgaria, Hong Kong, South Africa and Taiwan -- were evaluated during the course of the year in out-of-cycle reviews.[38] Ambassador Barshefsky also announced that the United States would conduct a number of so-called "out-of-cycle" reviews of countries with apparent problems. In October 1996, the USTR announced the conclusion of out-of-cycle reviews of 5 countries: Bulgaria, Paraguay, Bolivia, South Africa, and Greece. As a result of the review, Bulgaria and Bolivia were placed on the watch list; Paraguay will be maintained on the watch list; South Africa will remain unlisted; and the out-of-cycle review of Greece will be deferred until mid-December 1996. During that time, Greece will remain on the priority watch list. El Salvador was removed from the watch list as a result of improvements in enforcement capability.[39]

Generalized System of Preferences (GSP) and the Caribbean Basin Economic Recovery Act (CBERA)

GSP. Under Title V of the Trade Act of 1974, as amended (P.L. 93-618; 19 U.S.C. 2461-2465), the President is given authority to grant duty-free treatment on eligible articles from beneficiary developing countries (BDCs). In designating BDCs, the President, among other considerations, must take into account the extent to which the country is providing adequate and effective means for

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[37] For additional information on U.S.-China IPR issues, see Congressional Research Service. *China-U.S. Trade Issues*. CRS Issue Brief 91121, by Wayne M. Morrison. Updated regularly.

[38] The USTR Fact Sheet on "Special 301" (Intellectual Property Rights) can be found at http://www.ustr.gov/reports/special/factsheets.html. See Appendix for the text of the USTR factsheet relating to the lists describing the shortcomings of IPR regimes in other countries.

[39] USTR. Second Report to Congress on the Operation of the Caribbean Basin Economic Recovery Act. October 1996. This report may be viewed on the world wide web at: http://www.ustr.gov/reports/cbera/ chapter3.html

foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property.

In 1989, following a request by the Pharmaceutical Manufacturers Association and the IIPA, the USTR suspended certain benefits for Thailand for lack of adequate and effective intellectual property rights protection. This suspension was partially lifted in 1994 after a review determined that Thailand had made some progress in protecting intellectual property rights. In 1992, India's GSP benefits were partially suspended following a determination by the USTR, under the "special 301" provisions of the Trade Act of 1974, that India denies adequate and effective patent protection.

CBERA. The Caribbean Basin tariff preference was proposed by President Reagan in 1982 as the centerpiece of the Caribbean Basin Initiative (CBI). The preference was enacted in 1983, and substantively amended and made permanent in 1990.[40] Under the CBERA program, eligible imports from 24 Caribbean Basin countries entered the United States duty-free or at reduced duties during 1995. As with GSP eligibility, the President is required to give consideration to intellectual property issues. He must take into account the extent to which the country prohibits its nationals from broadcasting copyrighted materials without permission. The President also must consider the extent to which the country provides adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property.

In the Second Report on the Operation of the Caribbean Basin Economic Recovery Act, President Clinton expressed concerns about protection of intellectual property rights in several (unidentified) countries in the region. But he noted that those countries have agreed to, or are negotiating, IPR agreement. Many CBERA countries have enacted new laws protecting intellectual property rights, but enforcement remains an issue. The possibility that CBERA benefits might be lost has provided an incentive to encourage better enforcement of intellectual property rights.[41]

CONCLUSION

The United States has made protection of intellectual property rights a cornerstone of U.S. trade policy. U.S. companies, which continue to lose billions of dollars in international sales to pirates and counterfeiters, depend on strong rules and effective enforcement to protect their rights. The issue of intellectual property rights will continue to attract interest because of continuing differences among countries in standards, protection, and enforcement. These differences tend to be greatest between the developed and the developing countries, but

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[40] Congressional Research Service. *Caribbean Basin Interim Trade Program (NAFTA/CBI Parity).* CRS Issue Brief 95050, by Vladimir N. Pregelj. Updated regularly. 10 p.

[41] Office of the U.S. Trade Representative. President Clinton Sends Report on the Operation of the Caribbean Economic Recovery Act to the Congress. October 9, 1996.

many industrial countries also take differing approaches to protection and enforcement of intellectual property rights as well.

The TRIPS Agreement highlights the extent to which developed and developing countries have come to accept a common approach to intellectual property rights, despite a view among some economists that the majority of developing countries will nevertheless suffer welfare losses as a result of the TRIPS Agreement. In the 1990s, developing countries have been pragmatic in their approach to IPR, preferring multilateral rules to special 301 and other unilateral measures adopted by the United States. For its part, the United States has not abandoned its aggressive approach to intellectual property protection and enforcement. But like developing countries, it too benefits from a multilateral agreement.

The TRIPS Agreement established clearer, more comprehensive standards for the protection of IPR, provided for strengthened enforcement, and applied the dispute settlement procedures of the WTO to IPR disputes. U.S. trade law also provides U.S. companies with remedies against imports of pirated goods (section 337 of the Trade Act of 1930) or against countries that "deny adequate and effective protection of U.S. intellectual property rights" or "deny fair and equitable market access to United States persons that rely upon intellectual property protection" ("special 301" of the Trade Act of 1974). While the TRIPS Agreement has leveled the playing field for U.S. intellectual property owners, the United States continues to use special 301 in situations where protection continues to be inadequate or ineffectual. The Congress has an active role to play in monitoring the implementation of the TRIPS Agreement and through oversight of Administration activities in the intellectual property rights area.

APPENDIX

EXCERPTS FROM THE USTR *FACTSHEET ON "SPECIAL 301"*[42]

Priority Foreign Country

China remains the site of extensive piracy of intellectual property, particularly copyrighted sound recordings, music, videos and business and entertainment software. Despite signing a bilateral IPR Enforcement Agreement with the United States in February 1995, in which China promised to substantially improve enforcement efforts and grant market access for legitimate audiovisual and computer software products, piracy remains rampant, and economic damage to U.S. industries continues to rise. Overall, China has made some progress in halting the retail trade in infringing goods, but has failed to stop illegal CD, video and CD-ROM production at some 31 plants operating in China to prevent the export of infringing goods, or to honor its promise to grant market access for legitimate audiovisual products. No new investigation will be initiated following this designation; rather, the focus of further efforts will be on China's compliance with the current Agreement. Trade sanctions for noncompliance could be imposed at any time pursuant to a decision by the USTR that China is not satisfactorily implementing the Agreement.

Priority Watch List

Argentina recently enacted new patent legislation and an implementing decree that fall far short of adequate and effective protection and fail to achieve earlier Argentine assurances. As a result, Argentina is being placed back on the priority watch list. This regressive movement on Argentina's part is particularly striking in comparison to the positive direction of patent protection in its MERCOSUR partner Brazil. The United States will continue to seek further improvements, monitor this situation and review Argentina's status as appropriate. The United States will continue to seek further improvements, monitor this situation and review Argentina's status through an out-of-cycle review no later than December 1.

The **European Union**'s patent fees and those of its member-states are extraordinarily expensive; fees associated with filing, issuance and maintenance of a patent over its life far exceed those in the United States and other countries. The EU's new single trademark system raises concerns as does the reciprocity requirement in the recently approved data base directive. The availability of ex parte relief in civil cases remains uncertain in some member-states. Denial of national treatment with respect to audio and video levies remains a problem in certain member-states. Certain provisions in the patent laws of some member-states appear to be inconsistent with the provisions of the WTO's TRIPS Agreement. In this context, the United States is invoking

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[42] USTR, April 30, 1996. For the full text of this factsheet, see http://www.ustr.gov/reports/special/factsheets.html

WTO dispute settlement procedures against Portugal with respect to its patent law.

Greece has not yet acted to stop motion picture, software and sound recording piracy, including widespread unauthorized broadcasts of protected films and T.V. programs by unlicensed television stations. The USTR moved Greece to the priority watch list in November, 1994 and maintained this designation in 1995. In August 1995, Greece took the potentially significant step of enacting a new broadcast law -- apparently with strong enforcement provisions -- which could have addressed been used to address the unauthorized broadcasting and re-transmission of U.S. programming on Greek television. However, the Greek government has chosen not to use the new law to move against T.V. piracy. The United States will press Greece to honor its TRIPS obligation to provide for the effective enforcement of intellectual property rights and will consider available remedies if conditions warrant. An out-of-cycle review will be conducted in September.

[In October 1996, the USTR announced that the out-of-cycle review for Greece would be deferred until mid-November. In announcing the deferral, the USTR noted: "Greece will remain on the priority watch list because of motion picture, software and sound recording piracy, including the widespread unauthorized broadcasts of protected films and programs by unlicensed television stations. While very serious problems remain, Greece has initiated some actions to countermand broadcast piracy and Greece has just conducted a national election. In light of these developments, Ambassador Barshefsky will defer the out-of-cycle review until mid-December. In the interim, the Greek government, *inter alia*, is expected to implement fully and vigorously the mass media law and to act against those TV stations broadcasting unauthorized motion pictures and other programming."]

India was a "priority foreign country" from 1991-1993. India has failed to implement its obligations under Articles 70.8 and 70.9 of TRIPS Agreement. These articles require developing countries not yet providing patent protection for pharmaceutical and agricultural chemical products to provide a "mailbox" in which to file patent applications, and the possibility of up to 5 years of exclusive marketing rights for these products until patent protection is provided. India has affirmed its intention to pass legislation implementing its TRIPS obligations. India established TRIPS provisions administratively (which have subsequently lapsed) and has introduced legislation but has not provided a legal basis for the filing of such patent applications for these products. As a result, the Administration will initiate formal consultations with India under WTO dispute settlement procedures in the near future. Moreover, India's industrial property laws continue to fall well short of providing adequate and effective protection. In particular, the Administration looks to India to enact and enforce modern patent and trademark legislation. India has modern copyright legislation but improvements continue to be necessary in the enforcement area.

Indonesia: Enforcement, including the imposition of deterrent penalties for computer software and book piracy, needs to be improved. In April 1995 the

Indonesian government announced an action plan to intensify its enforcement efforts against copyright piracy and to require government ministries to purchase only licensed software. This plan needs to be implemented fully and aggressively. U.S. owners of well-known marks encounter serious problems with trademark infringement, which also must be addressed. Although Indonesia has taken some steps this year to improve IPR protection, the efforts have not been adequate given the magnitude of the problems. Consequently, Indonesia is being elevated to the priority watch list.

Japan: Despite conclusion of two patent-related agreements in 1994, patent-related problems continue, particularly with respect to the uneven and overly narrow interpretation of patent claims in Japanese courts and concerns among American industry about patent "flooding" practices in Japan. These practices have limited the ability of U.S. patent holders in a range of industries to acquire exclusive rights comparable to those available to Japanese patent holders in the United States. Concerns also remain about the inadequate protection of trademarks and trade secrets, as well as end-user software piracy. The United States continues to pursue a WTO dispute settlement proceeding regarding Japan's failure to provide an adequate term of protection for pre-existing sound recordings.

Korea: While progress has been made over the past year, major problems from last year's review remain, including lack of adequate protection for trade secrets, software, textile designs and trade dress. Administrative measures were taken in early 1996 to enhance the protection of well-known U.S. trademarks, but the effectiveness of that system is uncertain at this time and we will continue to monitor it closely. Large end-user piracy of software continues to be a problem. A particularly serious problem with Korea's legal system is its failure to provide full retroactive copyright protection for pre-1957 works as required under the TRIPS Agreement.

Turkey has been on the priority watch list since 1992 largely because it has had inadequate intellectual property laws and its enforcement efforts have been ineffective. Copyright and patent piracy are widespread. As part of Turkey's entry into a customs union with the EU, Turkey has agreed to continue to improve its intellectual property protection. Turkey also maintains a discriminatory 25% municipality tax only on receipts from the showing of foreign films in a manner inconsistent with the national treatment obligations of Article III of the GATT 1994. The Administration will invoke formal consultations with Turkey under WTO's dispute settlement procedures in the near future with respect to this matter.

Watch List

Australia: The government of Australia does not provide adequate protection for test data submitted to regulatory authorities for the marketing approval of pharmaceuticals and agricultural chemicals. Such data are developed at great expense to the originating company. Australia allows competing companies to rely indirectly on such data to support their own later-filed applications. In

addition to concerns about WTO consistency, permitting this to occur unfairly allows later applicants to free-ride on the first applicant's significant investment in developing the data and puts the first applicant at a competitive disadvantage. Australia very recently has taken some steps to address our concerns. The Administration would be prepared to reconsider this listing when Australia provides adequate and effective protection for test data.

Bahrain expressed its intent to join international intellectual property conventions in February 1995. The United States urges Bahrain to bring its copyright regime into line with its obligations under the Berne Convention and the WTO, and to begin to take effective enforcement action against widespread piracy of copyrighted works of all types.

[**Bolivia**[43] will be placed on the watch list. Bolivia is being placed on the watch list because it has not yet taken adequate steps to combat copyright piracy, particularly in the area of illegal computer software production; to adequately implement the Andean Pact Decision 351 on copyright requirements; or to revise its copyright law to conform with international standards. Though Bolivia has established a special police unit to target intellectual property, at a minimum Ambassador Barshefsky indicated that Bolivia must immediately implement its long-delayed regulations clarifying that computer software is protected under copyright and to formally put anti-piracy laws in place.]

Brazil has recently taken the admirable step of enacting a modern patent law that comes into effect one year after its publication. Among other things, the new law will provide pharmaceutical patent protection and pipeline protection. As a result, the Administration is moving Brazil from the priority watch list to the watch list. Beyond the above-mentioned patent legislation, the U.S. Administration looks to Brazil to fulfill its longstanding commitments to enact outstanding legislation on computer software and semi-conductor layout designs, and to introduce much-needed amendments to its copyright law.

[**Bulgaria**[44] will be placed on the watch list. Though the government of Bulgaria has taken several steps to provide a modern legal structure for the protection of intellectual property rights, those measures have not adequately addressed the existence of significant CD and CD-ROM production capacity in Bulgaria which far exceeds domestic demand or the legitimate export market. Industry sources report that unauthorized pirate production activities occur at numerous plants and that counterfeit IPR products including CD's and CD-ROM which are routinely exported throughout Europe. Ambassador Barshefsky has specifically sought cooperation from the government of Bulgaria

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[43] Bolivia was not on the April 30, 1996 Special 301 list. It was added as a result of an out-of-cycle review. See: USTR. USTR Announced Results of Special 301 "Out-of-Cycle Reviews ib Intellectual Property Rights Compliance. October 2, 1996. URL: http://www.ustr.gov/releases/1996/10/96-78.html

[44] Bulgaria was not on the April 30, 1996 Special 301 list. It was added as a result of an out-of-cycle review. Ibid.

to work with the U.S. government and industry groups to ensure that CD and CD-ROM production in Bulgaria is legitimate.]

Canada: In 1995, the government of Canada implemented the proposed 80% tax on split-run editions of U.S. magazines, specifically Sports Illustrated Canada. The Administration has initiated WTO dispute settlement procedures on this matter. Because this issue is already subject to action under the section 301 provisions of our Trade Act, initiation of an additional section 301 investigation is not warranted. See 19 U.S.C. 2242(f) and 19 U.S.C. 2412(b)(2)(A)(ii). In December 1995 the Canadian Radio-television Telecommunications Commission announced discriminatory direct-to-home satellite television licensing conditions of serious concern to U.S. industry. The USTR is continuing to collect information on the new licensing system with the goal of determining whether it is actionable under article 2106 of the NAFTA and Canada's WTO obligations. On April 25, 1996, Canada introduced copyright law amendments that could discriminate against U.S. right holders. A stated objective of the reforms is to help strengthen Canadian identity and contribute to the cultural sector. The Administration wants to ensure that these amendments are not at the expense of U.S. copyright interests.

Chile: Chile's patent term is TRIPS-inconsistent, pipeline protection remains unavailable, and there is inadequate protection for plant varieties and animal breeds. Additional problems are computer software piracy and the absence of protection for semi-conductor mask works and encrypted satellite signals. Copyright protection for computer software and the existence of rental and importation rights remain unclear.

Colombia: Enforcement efforts against copyright piracy have increased; however, piracy continues to be a significant problem. Colombia joined the Paris Convention and has not yet fully implemented the WTO TRIPS Agreement. Deficiencies in its patent and trademark regime include insufficiently restrictive compulsory licensing provisions, working requirements, inadequate protection of pharmaceutical patents, and lack of protection against parallel imports. Also, in the copyright area, a 1994 broadcast law increased restrictions on foreign content, including imposition of a complicated, burdensome system of subquotas for different hours of the day.

Costa Rica: Costa Rica's patent law is deficient in several key areas. The term of patent coverage is a non-extendable 12-year term from the date of grant. In the case of products deemed to be in the "public interest", such as pharmaceuticals, chemicals and agro-chemicals, fertilizers, and beverage/food products, the term of protection is only one year from date of grant. The United States looks to the government of Costa Rica, as it implements its WTO obligations, to adopt a term of patent protection of 20 years from filing as required by TRIPS.

Ecuador has not yet ratified and implemented the 1993 U.S.-Ecuador Intellectual Property Rights Agreement. Furthermore, Ecuador has not yet repealed a GATT-inconsistent law, the Dealers' Act, which denies national

treatment and protection to U.S. investment and U.S. trademarks. In the context of WTO accession, the GOE has committed to fully implement TRIPS by July 1996. The United States looks to the GOE to implement fully our bilateral IPR Agreement and its TRIPS commitments, and to repeal the Dealers' Act.

Egypt has taken significant steps in improving the legal framework for protection of copyright works and has devoted resources to enforcing its copyright law. The United States remains seriously concerned, however, about the lack of effective patent protection in Egypt. The United States urges Egypt to enact promptly a modern patent law that provides immediate patent protection for all types of products, including pharmaceuticals, agricultural chemicals and foodstuffs.

[**El Salvador**. El Salvador was included in the April 1996 report on special 301 but was removed from the list as a result of improvements in the protection of intellectual property and improved enforcement of national laws.]

Guatemala does not adequately protect pharmaceuticals and its copyright law is deficient. The United States urges Guatemala to give priority to moving copyright law reform through its legislature and to offer better patent and trademark protection. The United States remains concerned about the interception and unauthorized retransmission of U.S. satellite-carried programming by cable and multichannel microwave distribution systems.

Italy: The Italian government stepped-up enforcement efforts over the past year, including several large well-publicized raids, particularly against copyright piracy. Nevertheless, losses due to piracy remain high. A major impediment to reducing video piracy has been the inadequacy of criminal penalties. Italy's failure to enact pending anti-piracy legislation that would significantly increase criminal penalties is a significant problem. Counterfeiting of trademark products is also a major concern for U.S. industry. The degree to which Italy provides TRIPS-mandated protection against "bootleg" sound recordings (i.e., protection of live performances) is unclear. An "out-of-cycle" review will be conducted to evaluate Italy's progress in addressing these issues. The United States will press Italy to honor its TRIPS obligation to provide for the effective enforcement of intellectual property rights.

Kuwait: Enforcement efforts by the government of Kuwait to combat piracy of software and audiovisual products have improved following an April 1995 decree issued by the Ministry of Information. However, unauthorized duplication of software, especially in government agencies continues to be a major problem. Kuwait has been slow to move ahead on adopting copyright legislation. Pharmaceutical patents are not protected under the existing 1962 law, which is deficient in numerous other regards as well.

Oman: Modernization of Oman's intellectual property regime is lagging with review of draft patent and copyright legislation extending to over a year. Legal protection for pharmaceutical product patents is also absent. Because its

protection of intellectual property remains minimal and stagnant, while neighbors strengthen their regimes, Oman increasingly appears to be a haven for pirates. The United States will continue to monitor levels of piracy in Oman and efforts to improve intellectual property protection, including the status of draft legislation to update copyright and patent regimes.

Pakistan: Pakistan's patent law provides process but not product protection for pharmaceutical and agricultural chemicals. Proving infringement of a process patent is difficult and such patents are easily circumvented. The United States seeks the prompt revision of this law. Of a more immediate nature, Pakistan has failed to implement its obligations under Articles 70.8 and 70.9 of TRIPS Agreement. These articles require developing countries not yet providing patent protection for pharmaceutical and agricultural chemical products to provide a "mailbox" in which to file patent applications, and the possibility of up to 5 years of exclusive marketing rights for these products until patent protection is provided. Pakistan's cabinet on April 8 approved an amendment to its patent law that includes a "mailbox" provision to take effect upon passage and other broadened patent protections to take effect in 2005. The amendment must now go to the National Assembly before becoming law. To encourage quick passage, the Administration will initiate formal consultations with Pakistan under WTO dispute settlement procedures.

Paraguay increasingly has become a piracy center in South America, particularly in production of sound recordings and entertainment software. Pirate production centers have been built on the Brazilian and Argentine borders. Paraguay also has become a transshipment center for pirate goods originating in China bound for larger South American markets. Enforcement actions against these activities are urgently needed in Paraguay. In addition, Paraguay's patent, trademark and copyright laws are in need of significant revision to bring them into conformity with international obligations. An out-of-cycle review will be conducted in September to evaluate whether sufficient progress toward addressing these problems has occurred.[45]

Peru: INDECOPI's actions and decisions over the last year have demonstrated progress in the protection of intellectual property rights in Peru. However, while enforcement efforts against copyright piracy have increased, piracy continues to be a significant problem. The Peruvian government needs to intensify its anti-piracy efforts, particularly to combat sound recording and book piracy. Deficiencies in its patent and trademark regime include compulsory

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[45] After the out-of-cycle review, the USTR concluded: "Paraguay will be maintained on the watch list. Piracy and counterfeiting of American intellectual property in Paraguay continues to be major problem. While Paraguay has taken some steps such as the introduction of new copyright and trademark laws to counter illicit IPR production, Ambassador Barshefsky expressed specific concerns about the illegal transhipment of IPR products from Asian countries through Paraguay to other Latin American countries. Equally important, the government of Paraguay must take strong, coordinated, government-wide action to institute effective enforcement systems. Ambassador Barshefsky said, 'Though I have decided to not elevate Paraguay to the priority watch list at this time, we expect significant, meaningful progress in combating piracy and counterfeiting before next April's annual review.'" Ibid.

licensing provisions, working requirements, inadequate protection of pharmaceutical patents, and lack of protection from parallel imports.

Philippines: The Philippines has made progress improving its enforcement efforts against intellectual property piracy, as promised in our 1993 bilateral IPR agreement. While the legislative commitments of that agreement have not yet been fulfilled, the Philippines Congress is currently considering legislation that would go beyond the 1993 commitments and make its major IPR laws TRIPS consistent. The Administration looks to the government of the Philippines to 1) enact this legislation quickly and 2) continue progress in eliminating the use of pirated software in government agencies. In anticipation of progress in both of these areas, an out-of-cycle review will occur in October.

Poland: The United States continues to monitor implementation and enforcement of rights provided under the copyright law enacted in February 1994. The United States notes that the national treatment obligations of the TRIPS Agreement now obligate Poland to provide full protection for foreign sound recordings. The Administration will monitor carefully to ensure that such protection is now provided.

The **Russian Federation** has fulfilled some of its obligations under the 1992 U.S.-Russia Trade Agreement, namely passage of intellectual property protection laws and adherence to the Berne and Geneva Conventions. However, extensive piracy of U.S. video cassettes, films, music, recordings, books, and computer software considerably overshadows these legislative developments. Initial real enforcement efforts have begun only recently. Russia's failure to combat aggressively the rampant and increasing piracy of U.S. intellectual property must be remedied immediately. An "out-of-cycle" review in December will monitor Russia's effort to (1) put in place meaningful criminal penalties and (2) provide retroactive protection for artistic and literary works and sound recordings. Other issues to be reviewed for progress include improved trademark protection for well-known marks. Finally, a side letter to our bilateral trade agreement on compulsory licensing of patents is long overdue for signature.

Saudi Arabia has made progress in improving its enforcement activities against copyright piracy, particularly for motion pictures and sound recordings. However, serious copyright problems remain particularly regarding computer software piracy, including end-user piracy. Saudi Arabia's copyright law contains deficiencies making it incompatible with international standards, including an inadequate term of protection. It is important that existing efforts be maintained and that further improvements occur, particularly in terms of software enforcement. To ensure that such progress is maintained, an out-of-cycle review will occur in September.

Singapore: Although Singapore has a good record of protecting intellectual property, its copyright law is not TRIPS consistent. Outstanding issues include lack of rental rights for sound recordings and software, inadequate protection against making bootleg copies of musical performances, the scope of copyright

protection for cinematographic works, and overly broad exceptions from copyright protection. Singapore's level of economic development is sufficiently advanced to expect TRIPS implementation as a developed country.

Thailand: Despite progress in providing more effective intellectual property protection, including the entry into force of a modern copyright law in March 1995, certain concerns remain. These include: a falling off of enforcement activity in 1995; the lack of a TRIPS-consistent patent law; and the need to ensure that deterrent penalties are imposed on convicted pirates. To better monitor this situation, an out-of-cycle review will occur in October.

UAE (**United Arab Emirates**): Piracy of motion pictures and sound recordings has been largely eliminated in the UAE. However, a 1995 "out-of-cycle" review confirmed that software piracy remains a serious problem. While the pace of enforcement activity against business software piracy picked up in 1995, efforts have not been sufficiently aggressive or penalties severe enough to significantly reduce the level of illegal activity. The UAE's copyright law omits specific protection for sound recordings and is deficient in a number of other areas. UAE patent law exempts medicines and pharmaceutical compounds from protection and contains onerous compulsory licensing provisions. Concerns remain about reports of the unauthorized production of pharmaceutical products.

Venezuela: While Venezuela's copyright law establishes a generally effective and Berne-consistent system, the GOV's enforcement efforts against copyright piracy continue to be modest. Piracy and lack of border enforcement continue to be a significant problem. Deficiencies in its patent and trademark regime include compulsory licensing provisions, working requirements, inadequate protection of pharmaceutical patents, and lack of protection against parallel imports. The United States will continue to monitor the implementation and enforcement of IPR laws, as well as proceedings for patent and trademark applications. Venezuela has not yet fully implemented the WTO TRIPS Agreement.