

**2007 SPECIAL 301 REPORT**

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

## EXECUTIVE SUMMARY

### **Introduction**

The “Special 301” Report is an annual review of the global state of intellectual property rights (IPR) protection and enforcement, conducted by the Office of the United States Trade Representative (USTR) pursuant to Special 301 provisions of the Trade Act of 1974 (Trade Act). The 2007 Special 301 review process examines IPR protection and enforcement in 79 countries. Following extensive research and analysis, USTR designates 43 countries in this year’s Special 301 Report in the categories of Priority Watch List, Watch List, and/or Section 306 Monitoring status. This report reflects the Administration’s resolve to encourage and maintain effective IPR protection and enforcement worldwide.

The Special 301 designations and actions announced in this report are the result of close consultations with affected industry groups and other private sector representatives, foreign governments, Congressional leaders, and interagency coordination within the United States Government. This Administration is committed to using all available methods to resolve IPR-related issues and ensure that market access is fair and equitable for U.S. products.

The Administration’s top priorities this year continue to be addressing weak IPR protection and enforcement, particularly in China and Russia. Although this year’s Special 301 Report shows positive progress in many countries, rampant counterfeiting and piracy problems have continued to plague China and Russia, indicating a need for stronger IPR regimes.

With respect to Russia, the Special 301 Report describes the Bilateral Market Access Agreement between the United States and Russia, concluded in November 2006, which includes a letter setting out important commitments that will strengthen IPR protection and enforcement in Russia. Under the terms of the agreement, Russia will take action to address piracy and counterfeiting and further improve its laws on IPR protection and enforcement. The agreement sets the stage for further progress on IPR issues in ongoing multilateral negotiations concerning Russia’s bid to enter the WTO. This year’s Special 301 Report also continues heightened scrutiny of Russia by maintaining Russia on the Priority Watch List and announcing plans for an Out-of-Cycle Review.

With respect to China, this year’s Special 301 Report describes the United States’ plan to maintain China on the Priority Watch List and to continue Section 306 monitoring, as well as to pursue World Trade Organization (WTO) dispute settlement with China on a number of IPR protection and enforcement issues. In addition, the United States is reporting on IPR protection and enforcement in China in the section entitled “Special Provincial Review of China,” following an unprecedented special provincial review conducted over the past year. The United States will be monitoring closely China’s and Russia’s IPR activities throughout the coming year.

In addition to China and Russia, the Special 301 Report sets out significant concerns with respect to such trading partners as Argentina, Chile, Egypt, India, Israel, Lebanon, Thailand, Turkey,

Ukraine, and Venezuela. In addition, the report notes that the United States will consider all options, including, but not limited to, initiation of dispute settlement consultations in cases where countries do not appear to have implemented fully their obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

In this year's review, USTR devotes special attention to the need for significantly improved enforcement against counterfeiting and piracy. In addition, USTR continues to focus on other critically important issues, including Internet piracy, counterfeit pharmaceuticals, transshipment of pirated and counterfeit goods, requiring authorized use of legal software by government ministries, proper implementation of the TRIPS Agreement by developed and developing country WTO members, and full implementation of TRIPS Agreement standards by new WTO members at the time of their accession.

### **USTR Focus on Intellectual Property and Innovation**

In June 2006, USTR created a new Office of Intellectual Property and Innovation. Intellectual property issues were previously covered at USTR in the Office of Services, Investment and Intellectual Property. USTR also appointed a Chief Negotiator for Intellectual Property Enforcement. The creation of this new office and additional staff dedicated to intellectual property at USTR enhances our focus on protecting and enforcing IPR.

### **Positive Developments**

Several countries made significant positive progress on IPR protection and enforcement in 2006. For example, Vietnam joined the WTO in January 2007. As part of its accession efforts, Vietnam enacted a comprehensive intellectual property law and implementing regulations to create a modern legal framework for IPR protection and enforcement. Taiwan also made significant strides in its IPR enforcement efforts and passed legislation to create a specialized IPR court. China recently joined the two key World Intellectual Property Organization (WIPO) treaties for copyright protection, and Russia has made strong commitments to improve intellectual property protection and enforcement as part of the path towards WTO accession.

In addition, USTR is pleased to announce that the following countries are having their status improved or are being removed entirely from the Watch List because of progress on IPR issues this past year:

- Bahamas has been removed from the Watch List due to improvements in IPR enforcement efforts. The United States continues to urge the Government of the Bahamas to implement the amendments to its copyright law.
- Belize has been moved from the Priority Watch List to the Watch List due to improvements in IPR enforcement efforts in response to heightened engagement with the United States.
- Brazil has been moved from the Priority Watch List to the Watch List due to improvements in IPR enforcement efforts and the United States will conduct an Out-of-Cycle Review.

- Bulgaria has been removed from the Watch List due to improvements in IPR enforcement efforts and passage of IPR legislation in response to heightened engagement with the United States.
- Croatia has been removed from the Watch List due to improvements in IPR enforcement and passage of IPR legislation in response to heightened engagement with the United States.
- The European Union (EU) has been removed from the Watch List, principally as a result of the EU's adoption of new regulations concerning geographical indications (GIs) following an adverse ruling by the WTO Dispute Settlement Body in April 2005. While the United States maintains certain concerns with respect to the EU's implementation of the revised GI rules, these will continue to be addressed outside the Special 301 context. The United States looks forward to continued cooperation with the EU on this and other intellectual property matters, including EU border enforcement and other IP initiatives.
- Latvia has been removed from the Watch List at the conclusion of an Out-of-Cycle Review in recognition of Latvia's improvements in IPR enforcement.

The United States commends this positive progress by our trading partners. The United States will continue to work with these and other countries to achieve further improvements in IPR protection and enforcement during the coming year.

### **Free Trade Agreements and Implementation**

The United States is committed to promoting strong intellectual property rights through a variety of mechanisms, including the negotiation of free trade agreements (FTAs), which contain intellectual property chapters that establish strong protections for copyrights, patents, and trademarks, as well as rules for enforcement.

The United States is pleased to have worked together with many countries to strengthen IPR protection and enforcement through bilateral and multilateral FTAs. Agreements concluded in recent years include the Republic of Korea FTA (KORUS FTA), Panama Trade Promotion Agreement, Bahrain FTA, Oman FTA, Morocco FTA, the Peru Trade Promotion Agreement, the Colombia Trade Promotion Agreement, and the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) which covers Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic. In regions such as the Middle East and Asia, the United States has used an increasing number of trade and investment framework agreement (TIFA) negotiations to enhance intellectual property protection and enforcement.

Following the conclusion of these agreements, the United States continues to work closely with our trading partners to implement FTA obligations under domestic law. Over the past year, the United States has engaged in this process with Australia, Singapore, Morocco, Bahrain, Oman, Jordan, and parties to CAFTA-DR.

## **Generalized System of Preferences (GSP) Reviews**

As another mechanism for promoting strong intellectual property regimes around the world, USTR reviews IPR practices in connection with the implementation of trade preference programs such as the Generalized System of Preferences (GSP). USTR will continue to review IPR practices in Russia, Lebanon, and Uzbekistan under ongoing GSP reviews.

## **STOP! Initiative**

USTR is actively engaged in implementing the Administration's Strategy Targeting Organized Piracy (STOP!) initiative. Announced in October 2004, STOP! brings together all the major players – the federal government, private sector and trade partners – to take concerted action in cracking down on piracy and counterfeiting. The initiative is part of an effort to enhance coordination among all relevant U.S. Government agencies and U.S. trading partners to tackle this global problem. As part of STOP!, USTR continues to advocate the adoption of best practices guidelines for IPR enforcement. This year, USTR will continue its efforts to explore ways of strengthening IPR laws and enforcement and further solidifying international alliances against counterfeiting and piracy.

As part of this effort, USTR, in coordination with other agencies, is introducing new initiatives in multilateral fora to improve the global intellectual property environment that will aid in disrupting the operations of pirates and counterfeiters. Key initiatives have gained endorsement and are undergoing implementation in the G-8, the U.S.-EU Summit, the Security and Prosperity Partnership (SPP) with Canada and Mexico, the Organization for Economic Cooperation and Development (OECD), and the Asia-Pacific Economic Cooperation (APEC) forum.

Implementation of the U.S.-EU Action Strategy for IPR Enforcement has focused on addressing concerns in key countries such as China and Russia through closer coordination and information exchange, in addition to increasing customs cooperation and providing technical assistance to third countries. Through a bilateral working group, the two sides have established regular information exchanges on efforts to improve China's intellectual property climate, and have deepened their IPR-related cooperation in the context of Russia's WTO accession. The Parties will endeavor to increase and expand these cooperative efforts.

Building on the 2005 APEC Anti-Counterfeiting and Piracy Initiative, APEC economies endorsed two new IPR guidelines in 2006: one, to better inform citizens about the importance of IPR protection and enforcement, and another to help secure business supply chains against counterfeit and pirated goods. These two new guidelines add to three guidelines endorsed in 2005 that are designed to reduce trade in counterfeit and pirated goods, reduce on-line piracy and protect against unauthorized copying in digital form, and prevent the sale of counterfeit and pirated products over the Internet. All five guidelines set high standards for IPR protection and enforcement in the APEC region.

## **Global Scope of Counterfeiting and Piracy**

The continuing growth of IPR theft and trade in fakes and pirated materials threatens innovative and creative economies worldwide. Counterfeiting has evolved in recent years from a localized industry concentrated on copying high-end designer goods to a sophisticated global business involving the mass production and sale of a vast array of fake goods, including items such as soaps, shampoos, razors, electronics, batteries, cigarettes, alcoholic beverages, sporting goods, automobile parts, motorcycles, medicines, and health care products, among others.

Counterfeiting not only affects the profits of legitimate producers, but also impacts consumers who waste money and sometimes risk their safety by purchasing fake goods. It also damages the economies of the countries in which it occurs by decreasing tax revenue and deterring investment. Counterfeiters generally pay no taxes or duties, and they often disregard basic standards for worker health, safety, and product quality and performance. Piracy of copyrighted products in virtually all formats, as well as counterfeiting of trademarked goods, has grown rapidly because these criminal enterprises offer enormous profits and little risk. Counterfeiters require little up-front capital investment, and even if caught and charged with a crime, the penalties imposed on convictions in many countries are so low that they offer little or no deterrent.

Stronger and more effective criminal and border enforcement is required to stop the manufacture, import, export, transit, and distribution of pirated and counterfeit goods. Through bilateral consultations, FTAs, and international organizations, USTR is working to maximize the deterrent effects of remedies, including stronger penalties, requirements for the seizure and destruction of pirated and counterfeit goods, and the equipment used in their production.

### *Counterfeit Pharmaceuticals*

The manufacture and distribution of counterfeit pharmaceuticals is a growing problem that poses special concerns for consumer health and safety. The United States notes its concern with the proliferation of the manufacture of counterfeit pharmaceuticals in China, India, and Russia, and the sale and distribution of counterfeit pharmaceuticals in many countries. A significant contributing factor in this problem is the unauthorized use of bulk active pharmaceutical ingredients (APIs) to manufacture counterfeit pharmaceuticals. Countries must do more to provide its relevant agencies with the authority to regulate and enforce against the unauthorized use of APIs domestically and to ensure that they are not exported for unauthorized use abroad. Also, countries must do more to enforce vigilantly against the manufacture and distribution of counterfeit pharmaceuticals.

### **Notorious Markets**

Global piracy and counterfeiting continue to thrive, in part due to large marketplaces that deal in infringing goods. This year's Special 301 Report notes the following virtual and physical markets as examples of marketplaces that have been the subject of enforcement action, or may merit further investigation for possible IPR infringements, or both. The list represents a selective summary of information reviewed during the Special 301 process; it is not a finding of violations of law.

### *Virtual Markets*

**www.allofmp3.com (Russia).** Industry reports that allofmp3.com is the world's largest server-based pirate music website. Allofmp3.com is currently under criminal investigation by Russian authorities. To date, efforts to shut down the site have been unsuccessful.

**Baidu (China).** Industry has identified Baidu as the largest of an estimated seven or more China-based "MP3 search engines" offering deep links to song files for downloads or streaming. Baidu has been the target of infringement actions. The Beijing Intermediate Court sided with Baidu in a 2006 court decision; more recently, however, rights holders have prevailed in a similar case involving a different defendant.

### *Physical Markets*

**Silk Street Market (Beijing, China).** Industry has cited Beijing's Silk Street Market as "perhaps the single biggest symbol of China's IP enforcement problems." In 2005, authorities began to pressure the landlords of Silk Street Market and other major retail and wholesale markets in Beijing to improve compliance with IPR laws. In 2006, right holders prevailed in several court actions related to the market, and executed a Memorandum of Understanding with the landlords in June 2006. Industry reports that similar memoranda have been successfully relied upon in the 3.3 and Hongqiao markets in Beijing, but implementation has not been successful in Silk Market. A January 2007 industry survey of the market reportedly showed that counterfeiting has worsened, with apparent violations in 65 percent of all outlets in the market, and the proportion of apparent counterfeit goods in certain categories (eyewear, leather goods, footwear, watches) ranging from 80 to 100 percent.

**China Small Commodities Market (Yiwu, China).** The China Small Commodities Market in Yiwu reportedly sells approximately 410,000 different items, mostly small consumer goods. Industry has cited the market as a center for wholesaling of infringing goods. Officials in Yiwu have met repeatedly with U.S. Government officials and stressed their work to improve IPR enforcement. Industry confirms that enforcement in Yiwu has improved. Continued improvement is needed, particularly in the area of criminal enforcement.

**Gorbushka, Rubin Trade Center, Tsaritsino, and Mitino (Moscow, Russia).** Industry representatives report that piracy problems persist in these markets, though the situation has improved at the Rubin Trade Center.

**Tri-Border Region (Paraguay, Argentina, and Brazil).** The Tri-Border Region of Paraguay, Argentina, and Brazil has a longstanding reputation as a hotbed of piracy and counterfeiting of many products. The U.S. Government is funding a training project through which U.S. Department of Justice and U.S. Department of Homeland Security officials will train prosecutors, police, and customs officials from the Tri-Border Region to combat intellectual property crime.

**Tepito, Plaza Meave, Eje Central, Lomas Verdes, and Pericoapa Bazaar (Mexico City); Simitrio-La Cuchilla, San Martin Texmelucan, Emiliano Zapata, and Independence (Puebla, Mexico); San Juan de Dios (Guadalajara, Mexico); and Pulgas Mitras and La Ranita (Monterrey).** An estimated 50,000 vendors sell IPR products in Mexico's ubiquitous, unregulated street markets. Past police raids on such markets have sometimes been met with violent resistance, requiring large contingents of security personnel. In early 2007, Mexico won praise from industry groups for carrying out multiple major raids in Tepito, as well as major raids in La Cuchilla and San Juan de Dios.

**Czech Border Markets (Czech Republic).** Hundreds of open air market stalls sell pirated and counterfeit products on the Czech border, including at the notorious Asia Dragon Bazaar in Cheb City. Czech Republic authorities are focused on IPR enforcement actions, and the United States encourages the Czech Republic to step up its efforts to combat piracy and counterfeiting in the markets. The United States will conduct an Out-of-Cycle Review to monitor progress in the Czech Republic.

**La Salada (Buenos Aires, Argentina).** This is the largest of more than 40 large, well-established markets in Buenos Aires that are almost completely dedicated to the sale of counterfeit goods. An estimated 6,000 vendors sell fake goods to 20,000 customers daily. The market is reputed to be a haven for organized criminal gangs that operate from within it, resulting in little to no IPR enforcement.

**Neighborhood of Quiapo (Manila, Philippines).** Street stalls in this neighborhood are notorious for selling counterfeit and pirated merchandise. These stalls were targeted for multiple raids in 2006.

**Harco Glodok (Jakarta, Indonesia).** This is one of the largest markets for counterfeit and pirated goods, particularly well-known for pirated optical discs. Enforcement officials are reportedly reluctant to conduct regular enforcement actions because of the presence of organized criminal gangs.

**Panthip Plaza (Bangkok, Thailand).** This location is notorious for pirated optical discs, primarily pirated movies. There were signs of improvement when closed circuit cameras with videotaping capabilities were installed, but recently, the trade in pirated goods has reasserted itself.

### **Transshipped and In Transit Goods**

“Transshipped” and “in transit goods” pose continuing IPR problems. Transshipped and in transit goods, which are goods that enter one customs territory but are intended for another destination, pose a high risk for counterfeiting and piracy because customs procedures may be used to disguise the true country of origin of the goods or to enter goods into customs territories where border enforcement is known to be weak. Transshipped or in transit goods are significant problems in Hong Kong, Paraguay, the Philippines, Ukraine, and Thailand, among others. In addition, U.S. industries report significant problems in free trade zones in Belize, Chile,



Paraguay, the Philippines, and United Arab Emirates, among others. The United States urges these countries to improve their IPR border enforcement systems.

### **Controlling Optical Media Production**

In recent years, some countries, such as Brazil, Indonesia, Malaysia, Nigeria, Pakistan, the Philippines, and Ukraine, have made progress toward implementing controls on optical media production. Other countries still need to adopt and implement legislation or improve existing measures to combat pirate optical disc production, including Bangladesh, India, Russia, and Thailand, which have not made sufficient progress in this area. The United States continues to urge its trading partners who face pirate optical media production within their borders to pass effective legislation and aggressively enforce existing laws and regulations.

### **Internet Piracy and the WIPO Internet Treaties**

The increased availability of broadband Internet connections around the world has made the Internet an extremely efficient vehicle for disseminating pirated products. The United States is continuing to work with other governments, in consultation with U.S. copyright industries and other affected sectors, to develop strategies to address this global problem. An important first step was achieved in 1996 when WIPO concluded two copyright treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the “WIPO Internet Treaties”). Following their entry into force in 2002, these treaties have raised minimum standards of intellectual property protection around the world, particularly with regard to Internet-based delivery of copyrighted works. The WIPO Internet Treaties have clarified exclusive rights and prohibit the circumvention of certain technological measures that protect copyrighted works in online environments.

A growing number of countries are implementing the WIPO Internet Treaties to create a legal environment conducive to investment and growth in Internet-related businesses and technologies. As of April 2007, there are 63 members of the WCT and 61 members of the WPPT. China deposited its instruments of accession to the treaties on March 9, 2007. Membership will rise significantly when the various EU member States join. Other countries have implemented key provisions of the treaties in their national laws without formally ratifying them. As a new part of the international IPR legal regime, the WIPO Internet Treaties represent a majority world community view that the vital framework of protection under existing agreements, including the TRIPS Agreement, should be supplemented to eliminate any remaining gaps in copyright protection on the Internet that could impede the development of electronic commerce. The United States urges other governments to ratify and implement the WIPO Internet Treaties.

#### *Other Initiatives Regarding Internet Piracy*

The United States is committed to a policy of promoting higher standards of intellectual property protection by incorporating standards from the WIPO Internet Treaties as substantive obligations in our bilateral and regional trade agreements, and by seeking accession to those treaties as a substantive obligation under these agreements. Proposals by the United States within ongoing

FTA negotiations will continue to include up-to-date copyright and enforcement obligations that reflect contemporary technological challenges.

### *Piracy Using New Technologies*

Piracy using new technologies is an emerging problem internationally. For example, the U.S. copyright industries report growing problems with piracy not only on the Internet, but also using cellular telephones, palm devices, flash drives, and other mobile technologies. In some countries these devices are being pre-loaded with illegal content before they are sold. In addition to piracy of music and films using these new technologies, piracy of ring tones, games, and scanned books also occurs. Countries with significant problems of piracy using new technologies include India, Indonesia, Japan, and Malaysia, among others. The United States will work with these governments to combat this increasing problem.

### *IPR and Interoperability*

During the past year, a number of countries, mostly in Western Europe, have devoted increasing attention to the relationship between intellectual property rights, digital rights management technologies, and interoperability of consumer products and other devices. This emerging set of issues represents potential new challenges in the area of effective protection of IPR. In France, for example, copyright legislation enacted in August 2006 contains provisions enabling a government entity to mandate the disclosure of IP-protected digital rights management information in the interest of promoting interoperability. The United States has expressed concern that this legislation may, depending on its implementation, impinge upon IPR of both the creators of the digital rights management technologies and of creative works protected by those technologies. Similar approaches reportedly are being considered in other European countries, including Belgium, Sweden, Norway, and Germany. In some cases, consumer protection laws and regulatory authorities have been engaged to pursue interoperability at the potential expense of IP right holders. This complex intersection of issues will continue to receive U.S. policy attention in the coming year.

### **Government Use of Software**

Under an Executive Order issued in October 1998, United States Government agencies maintain appropriate and effective procedures to ensure the use of authorized and legitimate use of business software. Pursuant to the same directive, USTR has undertaken an initiative to work with other governments, particularly in countries that are modernizing their software management systems or where concerns have been raised, to stop governmental use of unauthorized or illegal software.

Considerable progress has been made under this initiative. In 2006, APEC economies agreed that central government agencies should use only legal software and other copyrighted materials and should implement effective policies intended to prevent copyright infringement on their computer systems and via the Internet. Numerous countries and territories have mandated that only authorized, legitimate software may be used by government ministries. Some countries that have enacted such decrees or are in the process of implementing them include Bolivia, Chile,

China, Colombia, Costa Rica, the Czech Republic, France, Greece, Hong Kong, Hungary, Ireland, Israel, Jordan, Korea, Lebanon, Macau, Paraguay, Peru, the Philippines, Spain, Taiwan, Thailand, Turkey, the United Kingdom, and Vietnam, among others. The United States commends these governments for setting a positive example and expects these measures to be fully implemented. The United States looks forward to the adoption by other governments of effective and transparent procedures to ensure legitimate use of software.

### **Implementation of the WTO TRIPS Agreement**

The TRIPS Agreement, which requires all WTO members to provide certain minimum standards of IPR protection and enforcement, was one of the most significant achievements of the Uruguay Round. The TRIPS Agreement is the first broadly-subscribed multilateral intellectual property agreement that is subject to mandatory dispute settlement provisions.

Developed country members were required to implement the TRIPS Agreement fully as of January 1, 1996. Developing countries were given a transition period for many obligations until January 1, 2000. Recognizing the particular challenges faced by least-developed countries, in 2005 the United States worked closely with them and other WTO members to extend the implementation date for these countries from January 2006 to July 2013. The least developed country members in turn pledged to preserve the progress that some have already made toward TRIPS compliance. In addition, the least developed country members have until 2016 to implement their TRIPS obligations for patent and data protection for pharmaceutical products, as proposed by the United States at the Doha Ministerial conference of the WTO. The United States looks forward to the successful completion of this transition.

Developing country members continue to make progress toward full implementation of their TRIPS obligations. Nevertheless, certain members are still in the process of finalizing implementing legislation and many are still engaged in establishing adequate IPR enforcement mechanisms. Every year, the U.S. Government provides extensive technical assistance and training on the implementation of the TRIPS Agreement to a large number of U.S. trading partners. Such assistance is provided by a number of U.S. Government agencies, including the U.S. Patent and Trademark Office, the U.S. Copyright Office, the Department of State, the U.S. Agency for International Development, U.S. Customs and Border Protection, the Department of Justice, and the Department of Commerce. In addition, U.S. industry is actively involved in providing specific enforcement-oriented training in key markets around the world. The United States will continue to work with WTO members and expects further progress in the near term to complete the TRIPS implementation process. However, in those instances in which additional progress is not achieved, the United States will consider other means of encouraging implementation, including the possibility of recourse to dispute settlement consultations.

During 2006, the United States joined with the European Communities, Japan, and Switzerland to encourage a discussion within the WTO TRIPS Council of implementation of the enforcement-related provisions of the TRIPS Agreement. The United States hopes that the TRIPS Council can generate a useful sharing of experiences related to IPR enforcement, in the interest of ensuring effective implementation of enforcement obligations.

## **Intellectual Property and Health Policy**

The Administration is dedicated to addressing the serious health problems, such as HIV/AIDS, afflicting developing and least-developed countries in Africa and elsewhere. The United States believes firmly that intellectual property protection, including for pharmaceutical patents, is critical to the long term viability of a health care system capable of developing new and innovative lifesaving medicines. Intellectual property rights are necessary to encourage rapid innovation, development, and commercialization of effective and safe drug therapies. Financial incentives are needed to develop new medications; no one benefits if research on such products is discouraged.

At the same time, the United States is also firmly of the view that international obligations such as those in the TRIPS Agreement have sufficient flexibility to allow countries, particularly developing and least-developed countries, to address the serious public health problems that they face. In this context, the United States strongly supports the 2001 Doha Declaration on the TRIPS Agreement and Public Health. The Declaration acknowledged the serious public health problems afflicting African and other developing and least-developed country members, especially those relating to HIV/AIDS, malaria, tuberculosis, and other epidemics. Ministers agreed that WTO intellectual property rules contain flexibilities to meet the dual objectives of, on the one hand, meeting the needs of poor countries without the resources to pay for cutting edge pharmaceuticals and, on the other hand, ensuring that the patent system continues to promote the development and creation of new lifesaving drugs.

In addition, in paragraph 6 of the Declaration, Ministers recognized that WTO Members with “insufficient or no manufacturing capacities in the pharmaceutical sector” could have difficulty using the compulsory licensing provisions of the TRIPS Agreement and directed the TRIPS Council to find an expeditious solution to this problem. On August 30, 2003, the WTO General Council adopted the “TRIPS/health solution,” which is comprised of a Decision and an accompanying Chairman’s Statement that sets out the shared understandings of WTO members on how the Decision should be interpreted and applied. Under the TRIPS/health solution, Members are permitted, in accordance with specified procedures, to issue compulsory licenses to export pharmaceutical products to countries that cannot produce drugs for themselves. This solution was subsequently converted into an amendment to the TRIPS Agreement in December 2005, and later that month the United States became the first WTO Member to formally accept this amendment.

Other WTO Members now have until December 1, 2007 to accept the amendment. It will go into effect, for those Members that accept it, once two-thirds of the membership has accepted it. The August 2003 waiver will remain in place and available until the amendment is in force. The United States strongly supports effective and appropriate use of the TRIPS/health solution to facilitate access to life-saving medicines by countries in need.

In recent free trade agreements with the parties to CAFTA-DR, Morocco, Bahrain, Oman, Peru, Colombia, and Panama, the United States has clarified that the intellectual property provisions in the agreements do not impede the taking of measures necessary to protect public health.

Specifically, the United States has confirmed that the intellectual property chapters of the FTAs do not affect the ability of the United States or our FTA partners to take necessary measures to protect public health by promoting access to medicines for all, in particularly concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme urgency or national emergency. The United States has also made clear that the intellectual property chapter of the FTAs will not prevent effective utilization of the TRIPS/health solution.

### **Supporting Pharmaceutical Innovation**

USTR has sought to eliminate market access barriers faced by U.S. pharmaceutical companies in many countries and to both provide for affordable health care today and support the innovation that assures improved health care tomorrow. In addition to direct and indirect government funding, a strong and effective intellectual property system is crucial to achieving these goals as are other policies that encourage innovation in the health technology sector.

In the United States, government action has focused on creating an environment that encourages innovation and yields a constant flow of new and innovative medicines to the market. The goal has been to ensure that consumers benefit from both technological breakthroughs as well as the competition that further innovation generates. The United States also relies on a strong generic pharmaceutical industry to increase competitive pressure to lower drug prices.

Historically, the Special 301 process has focused on the strength of intellectual property protection and enforcement by our trading partners. However, even where a country's IPR regime is adequate, price controls and regulatory and other market access barriers can discourage the development of new drugs. These barriers may include unreasonable regulatory approval delays, linkages between dispensing and prescribing, and reference pricing and other potentially unfair reimbursement policies. The criteria, rationale, and operation of such measures are often nontransparent, not fully disclosed to patients or the pharmaceutical companies seeking to market their drugs. A 2004 U.S. Government study, led by the Department of Commerce, found that price controls and regulatory and other barriers diminish returns on pharmaceutical products, and reduce the amount of global pharmaceutical research and development below what it would otherwise be under market conditions, inhibiting the development of the next generation of life-saving drugs.

To address these issues, USTR and the Departments of Health and Human Services, Commerce, and State, formed a task force that is working to engage our OECD trading partners on the most effective way to promote continued innovation in the pharmaceutical sector and enhanced access to innovative pharmaceuticals now and in the future. This task force is working to achieve these goals through FTA negotiations and the establishment of bilateral dialogues with key countries.

The United States addressed transparency and accountability of the Australian pharmaceutical reimbursement system in the United States-Australia FTA, which went into effect in 2005. The FTA also created a United States-Australia Medicines Working Group for continued discussion of emerging bilateral concerns and health policy issues. The United States and Australia will

hold the second meeting of this Working Group in May to review implementation of the pharmaceutical provisions of the FTA and to discuss ongoing issues of mutual concern

On April 1, 2007, the United States concluded negotiations on the United States-Korea Free Trade Agreement (KORUS FTA). The KORUS FTA includes provisions on market access for pharmaceutical and medical devices that go beyond those in any other U.S. FTA. Specifically, the FTA includes commitments to improve access to innovative products and to ensure the transparent, predictable, and non-discriminatory pricing and reimbursement of innovative and generic pharmaceutical products, medical devices, and biologics. In addition, the Agreement contains provisions to promote ethical business practices, establish a Medicines and Medical Devices Committee to monitor implementation of commitments in this area, and create an independent mechanism to review pricing and reimbursement decisions.

The United States also is seeking to establish or continue dialogues with OECD and other countries to address concerns and encourage a common understanding between developed countries on questions related to innovation in the pharmaceutical sector. The United States already has had such dialogues with Japan and Germany, and is seeking to establish ones with other countries. It also has established a dialogue on pharmaceutical issues with China. With respect to Japan, pharmaceutical and medical device issues are an integral part of the Administration's regulatory reform work. The United States has made steady progress in helping to improve transparency in this sector, ensuring that foreign pharmaceutical and medical device manufacturers have meaningful opportunities to provide input into important regulatory, reimbursement, and pricing matters, facilitating the introduction of innovative new pharmaceuticals and medical devices into Japan's market.

The United States also has established a constructive dialogue with Germany on policy goals and concerns related to health care. During these discussions, the two sides have exchanged views on how best to deal with challenges of balancing health care spending with other priorities and of providing affordable health care today with supporting the innovation that assures improved health care is available in the future. The United States also raised specific concerns related to Germany's reference pricing system for determining product reimbursement and the transparency of the German Government's decision-making process regarding pharmaceutical pricing. The two governments plan to continue this dialogue as the German Government implements recent healthcare reform legislation.

The United States is concerned about Poland's enactment in 2006 of a regulation establishing wholesale and retail processes for drugs, which appears to reduce the official maximum wholesale and retail prices for imported drugs by 13 percent while generally leaving unchanged the prices for drugs of Polish origin. The U.S. pharmaceutical industry reports that this regulation has had a significant impact by causing reduced prices for numerous products manufactured outside Poland. The European Commission is currently conducting an investigation which may lead to an infringement action against Poland based on this 13 percent price cut. The United States shares the European Commission's concerns over this regulation, and will continue to monitor closely the situation in Poland throughout the coming year.

The United States continues to urge China to price drugs in a manner that appropriately values innovations and to add new drugs to its national formulary, which controls access to medicines for China. The United States also urges China to adopt regulatory and reimbursement policies for medical devices that support innovation and increase the transparency and predictability in that market.

During the coming year, the U.S. Government will continue to promote expanded dialogues with Poland, Italy, France, Canada, and other countries. The United States shares policy goals and concerns related to health care with these countries, including aging populations and rising health care costs. The United States also shares the objective of continued improvement in the health and quality of life of its citizens and delivering care in the most efficient and responsive way possible. The United States hopes these dialogues will help to address specific concerns related to price controls and regulatory and transparency issues, as well as to develop a constructive dialogue with these countries on health policy issues of mutual concern.

### **WTO Dispute Settlement**

The United States will continue pursuing the resolution of WTO-related disputes announced in previous Special 301 reviews and determinations. The most efficient and therefore preferred manner of dispute resolution is through informal consultation and settlement, but where this is unsuccessful, the United States will consider fully utilizing the dispute settlement process.

On April 10, 2007, the United States requested WTO dispute settlement consultations with China over deficiencies in China's legal regime for protecting and enforcing copyrights and trademarks on a wide range of products. The consultation request expressed the U.S. concern that certain Chinese measures are inconsistent with China's obligations under the TRIPS Agreement. The consultation request focused on three main issues: quantitative thresholds in Chinese law that must be met in order to start criminal prosecutions of copyright piracy and trademark counterfeiting and that appear to create a substantial safe harbor for those who manufacture, distribute, or sell pirated and counterfeit products in China; rules for disposal of IPR infringing goods seized by Chinese customs authorities; and the apparent denial of copyright protection to works poised to enter the Chinese market but awaiting Chinese censorship approval. The consultation request also identifies provisions of Chinese law that appear to provide that someone is not subject to criminal liability unless he both reproduces a copyrighted work without the owner's permission and distributes the pirated work; the United States wishes to confirm through consultations that China has just reformed this measure. In addition, on the same day, the United States requested WTO dispute settlement consultations with China concerning certain other Chinese measures that appear to be inconsistent with various WTO obligations of China. This consultation request focuses on a Chinese legal structure that denies foreign companies the right to import publications, movies, music, and videos, as well as on Chinese rules that severely impede the efficient and effective distribution of publications and videos within China.

Following the 1999 Special 301 review, the United States initiated dispute settlement consultations concerning the European Union's (EU) regulation on food-related geographical indications (GIs), based on concerns that the regulation was inconsistent with the EU's TRIPS Agreement obligations. These consultations resulted from the United States' long-standing

complaint that the EU GI system discriminates against foreign products and persons – notably by requiring that EU trading partners adopt an “EU-style” system of GI protection – and provides insufficient protections to trademark owners. After those consultations failed to resolve the matter, on August 18, 2003, the United States requested the establishment of a panel, and panelists were appointed on February 23, 2004.

On April 20, 2005, the WTO Dispute Settlement Body (“DSB”) adopted a panel report ruling in favor of the United States that the EU GI regulation is inconsistent with the EU’s obligations under the TRIPS Agreement and the General Agreement on Tariffs and Trade 1994. In the panel report adopted by the DSB, the panel agreed that the EU’s GI regulation impermissibly discriminates against non-EU products and persons. The panel also agreed with the United States that Europe could not, consistent with WTO rules, deny U.S. trademark owners their rights; it found that, under the regulation, any exceptions to trademark rights for the use of registered GIs were narrow, and limited to the actual GI name as registered. The DSB recommended that the EU amend its GI regulation to come into compliance with its WTO obligations, and the EC was given until April 3, 2006 to do so. On March 31, 2006, the EC published a revised GI Regulation that is intended to comply with the DSB recommendations and rulings. There remain some concerns, however, with respect to this revised GI Regulation, which the United States has asked the EC to address, and the United States intends to continue monitoring this situation.



## **BACKGROUND ON SPECIAL 301**

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994) (“Special 301”), under Special 301 provisions, USTR must identify those countries that deny adequate and effective protection for IPR or deny fair and equitable market access for persons that rely on intellectual property protection. Countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products must be designated as “Priority Foreign Countries.”

Priority Foreign Countries are potentially subject to an investigation under the Section 301 provisions of the Trade Act of 1974. USTR may not designate a country as a Priority Foreign Country if it is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IPR.

USTR must decide whether to identify countries within 30 days after issuance of the annual National Trade Estimate Report. In addition, USTR may identify a trading partner as a Priority Foreign Country or remove such identification whenever warranted.

USTR has created a “Priority Watch List” and “Watch List” under Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

Additionally, under Section 306, USTR monitors a country’s compliance with bilateral intellectual property agreements that are the basis for resolving an investigation under Section 301. USTR may apply sanctions if a country fails to satisfactorily implement an agreement.

The interagency Trade Policy Staff Committee, in advising USTR on the implementation of Special 301, obtains information from and holds consultations with the private sector, U.S. embassies, foreign governments, and the U.S. Congress, among other sources.

## **PRIORITY WATCH LIST**

### **CHINA**

China remains a top intellectual property enforcement and TRIPS compliance priority for the United States. China will remain on the Priority Watch List, and remain subject to Section 306 monitoring. The United States has also requested WTO dispute settlement consultations with China on a number of IPR protection and enforcement issues. (See the “Dispute Settlement” section above).

In addition, the United States conducted a special provincial review over the past year to examine the adequacy and effectiveness of IPR protection and enforcement at the provincial level. The resulting report (see the “Special Provincial Review of China” section below) spotlights strengths, weaknesses, and inconsistencies in and among specific jurisdictions, and has informed this year’s Special 301 review of China as a whole.

The United States recognizes and appreciates the efforts of the many officials in China who continue to give voice to China’s commitment to protecting intellectual property rights and are working hard to make it a reality. In spite of these efforts, the shared goal of significantly reducing IPR infringement throughout China has not yet been achieved.

China has made welcome progress in some areas. Notable IPR improvements included completion of China’s accession to the WIPO Internet Treaties, and its ongoing implementation of new rules that require computers to be pre-installed with licensed operating system software. The United States believes that continued bilateral dialogue and cooperation can lead to further progress in these and other areas, and the United States will continue to put serious efforts into its joint work with China on innovation policy, intellectual property protection strategies, and the range of other important matters in our bilateral economic relationship through the U.S. – China Strategic Economic Dialogue and the Joint Commission on Commerce and Trade (JCCT). At the same time, the United States looks forward to continuing an active dialogue with China in an effort to resolve certain other issues with the help of the WTO dispute settlement mechanism.

Despite anti-piracy campaigns in China and an increasing number of IPR cases in Chinese courts, overall piracy and counterfeiting levels in China remained unacceptably high in 2006. The U.S. copyright industries estimate that 85 percent to 93 percent of all copyrighted material sold in China were pirated, indicating little or no improvement over 2005. Trade in pirated optical discs continues to thrive, supplied by both licensed and unlicensed factories and by smugglers. Small retail shops continue to be the major commercial outlets for pirated movies and music and a wide variety of counterfeit goods, and roaming vendors offering cheap pirated discs continue to be visible in major cities across China. Piracy of books and journals and end-user piracy of business software also remain key concerns. In addition, Internet piracy is increasing, as is piracy over closed networks such as those of universities. The share of IPR infringing product seizures of Chinese origin at the U.S. border increased to 81 percent in 2006 from 69 percent in 2005. Chinese counterfeits include many products, such as pharmaceuticals, electronics, batteries, auto parts, industrial equipment, toys, and many other products, that pose a direct threat to the health and safety of consumers in the United States, China and elsewhere.

Inadequate IPR enforcement is a key factor contributing to these shortcomings. Rights holders report that enforcement efforts, particularly at the local level, are hampered by poor coordination among Chinese Government ministries and agencies, local protectionism and corruption, high thresholds for initiating investigations and prosecuting criminal cases, lack of training, and inadequate and non-transparent processes.

Several factors contribute to China's poor IPR enforcement record. One major factor is China's chronic underutilization of deterrent criminal remedies. China channels the vast majority of enforcement to administrative authorities. The trademark and copyright industries continue to point out that administrative fines are too low to provide a deterrent, and as a result, infringers continue to consider administrative seizures and fines as a cost of doing business. Rules designed to promote transfer of cases to criminal authorities do not appear to have solved the problem. For example, China's 2006 data reportedly showed that the main administrative trademark enforcement body transferred 50 percent fewer cases to police in 2006 than in 2005.

At the 2005 JCCT, China agreed to increase the number of criminal prosecutions for IPR violations relative to the total number of IPR administrative cases. Unfortunately, there has been no sign yet of a significant shift in emphasis toward criminal enforcement. The safe harbors from criminal liability created by China's high thresholds for criminal liability (*i.e.*, minimum values or volumes required to initiate criminal prosecution, normally calculated on the basis of the infringer's actual or marked price) continue to be a major reason for the lack of an effective criminal deterrent. These safe harbors are among the matters on which the United States has requested WTO consultations.

Other legal obstacles in the area of criminal enforcement include, for example, the lack of criminal liability for certain acts of copyright infringement, the profit motive requirement in copyright cases, the requirement of identical trademarks in counterfeiting cases, and the absence of minimum, proportionate sentences and clear standards for initiation of police investigations in cases where there is a reasonable suspicion of criminal activity. At the same time, the United States has also been pressing China for a variety of changes to its administrative and civil enforcement regimes, such as the restoration of minimum (and deterrent) fines in administrative trademark enforcement cases, increased referral of administrative enforcement actions for criminal prosecution, elimination of the need for legalization and consularization of foreign evidence, implementation of a discovery process with compulsory measures for evidence protection, provision of meaningful injunctive relief, and enforcement of judicial orders.

In addition to urging China to address legal obstacles to criminal enforcement, the United States calls upon China to take more aggressive action to prosecute manufacturers of counterfeit goods, producers of pirated optical discs, and entities engaged in commercial reproduction of pirated books, journals, and periodicals. Authorities should investigate when right holders present evidence supporting a reasonable suspicion of illegal production, and should permanently close down, revoke the business licenses, and confiscate and destroy the machinery and materials of commercial pirates and counterfeiters, as well as criminally prosecute the persons responsible. Specific locations and products of concern are highlighted in the Special Provincial Review of China below.

Trade in pirated optical discs continues to thrive, supplied by smugglers and by both licensed and unlicensed factories. China prosecuted a significant optical disc smuggling case in 2006 and raided a large packaging facility in 2007. However, China needs to do more to criminally prosecute the manufacturers of pirated optical discs. China's actions against 14 plants in early 2006 appear to have so far resulted in only administrative penalties. The United States also encourages China to facilitate cooperation in fighting optical disc piracy by sharing exemplar discs from Chinese factories with the international library and forensic facility maintained by right holder organizations.

Right holders report only moderate success in reducing piracy of pre-release titles. Lack of copyright protection for pre-release titles is another area in which the United States has requested WTO consultations. The United States urges China to adopt and apply deterrent penalties for piracy of any title not yet authorized for distribution.

Strong action to curb counterfeiting and piracy on the Internet is critical to the future of IPR protection in China. Authorities in some areas have taken notable enforcement actions (see Special Provincial Review of China). Building on that foundation, China should significantly increase criminal prosecutions and other enforcement actions against Internet-based piracy and counterfeiting operations through a coordinated, national effort backed by appropriate resources.

The United States welcomes China's recent accession to the WIPO Internet Treaties. A number of gaps remain to be filled for China to meet the challenges of Internet piracy and fully implement the WIPO Internet Treaties. In May 2006, the State Council adopted an important Internet-related measure, the Regulations on the Protection of Copyright Over Information Networks, which went into effect in July 2006. Although it does not appear to fully implement the WIPO Internet Treaties, this measure represents a welcome step, demonstrating China's determination to improve protection of the Internet-based right of communication to the public. Several aspects still require further clarification. For example, China could benefit from further clarification that certain Internet "deep linking" and other services that effectively encourage or induce infringement are unlawful.

China should also provide strong administrative supervision, backed by penalties, to ensure that Internet service providers take down infringing content and/or links immediately upon receipt of a notice from internationally recognized rights holders' representatives; take steps to suspend or terminate the accounts of serious or repeat infringers when they become aware of such infringers; and provide information about the identity of direct infringers to rights holders (or to groups representing rights holders) when requested.

China also maintains market access barriers, such as import restrictions and restrictions on wholesale and retail distribution, which discourage and delay the introduction of a number of legitimate foreign products into China's market. These barriers create additional incentives for infringement of products like movies, video games, and books, and inevitably lead consumers to the black market, again compounding the severe problems already faced by China's enforcement authorities. The United States has requested WTO consultations on several market access barriers affecting U.S. copyright industries.

Retail and wholesale counterfeiting in China is a major source of frustration for international brand owners. In spite of significant attention and resources from brand owners, administrative supervision, civil lawsuits, agreements with landlords, and attention from China's central government and foreign governments, counterfeiting remains pervasive in many retail and wholesale markets. It appears that further measures, including criminal sanctions, will be necessary to bring this problem under control.

The United States recognizes that China recently announced a 2007 Action Plan laying out detailed strategies for improving IPR protection. China has the opportunity to achieve real and transparent results for U.S. rights holders through implementation of the Action Plan. In addition to stepping up administrative and criminal action against trademark counterfeiting at the manufacturing, wholesale, and retail levels, the United States calls on China to launch and publicize significant administrative and criminal enforcement actions against optical media piracy, Internet piracy, software end-user piracy, and other forms of piracy affecting U.S. copyright owners.

The United States also looks forward to working with China to examine a variety of reforms that would contribute to improving IPR enforcement. In addition to reforming China's criminal laws as discussed above, other areas that China should explore include the positive results that could be achieved through specialized national IPR courts and prosecutors (expanding a practice that already exists in some areas); reducing pendency and backlog in trademark opposition and cancellation proceedings; introducing regulatory mechanisms to ensure that active pharmaceutical ingredients produced in China are not used in counterfeit medicines; implementing effective, detailed plans and strategies for reducing the use of infringing materials by students, staff, and lecturers on school and university campuses; and ensuring that the resources available to local administrative, police, and judicial authorities charged with protecting and enforcing IPR are adequate to the task.

*Customs Enforcement:* The export of infringing products from China is of grave concern worldwide. Right holders have praised the achievements of China Customs over the past year in increasing seizures, starting to refer criminal cases to police and prosecutors, and cooperating with U.S. right holders. Nonetheless, the statistics on seizures of Chinese-origin goods at the U.S. border, cited above, indicate that additional efforts are needed to stop outbound infringing products at China's borders. The United States calls on China to begin an aggressive campaign to prosecute exporters of infringing products and to expand enforcement cooperation as agreed at the 2004 and 2005 JCCT meetings. Also, the United States remains concerned about China's rules for disposal of confiscated goods, which appear generally to require that such goods enter the channels of commerce following removal of infringing features, rather than to require the destruction of the infringing goods. The United States has requested WTO consultations on this issue.

*Civil Enforcement:* U.S. right holders won several victories in civil IPR litigation in China in 2006. However, the United States continues to hear complaints of a lack of consistent, uniform, and fair enforcement of China's IPR laws and regulations in the civil courts. Litigants have found that most judges lack necessary technical training; that court rules regarding evidence, expert witnesses, and protection of confidential information are vague or ineffective; and that

costs of investigation and bringing cases are prohibitively high. In the patent area, where civil enforcement is of particular importance, the process is inefficient and unpredictable.

*Patents and Data Protection:* While China's patent laws are largely compliant with the TRIPS Agreement, rights holders have noted that the narrow scope of patentable subject matter under Chinese law makes patents for transgenic plants and animals and methods of treatment or diagnosis virtually unobtainable. Concerns have been raised that draft amendments to the Patent Law that were recently made available for public comment will require disclosure of origins of genetic resources used in the completion of an invention, and that claims in a patent application may be rejected on the basis that this disclosure requirement is not met. Also, U.S. industry has expressed frustration over the quality of design patents being issued, due in part to the lack of a better system of examining design patent applications. A lack of clarity in laws involving generic drug patent infringement is contributing to the continued growth of drug counterfeiting, with corresponding health and safety problems. In addition, the United States has concerns about the extent to which China provides adequate protection against unfair commercial use for data generated to obtain marketing approval.

*Emerging Developments:* Apart from longstanding concerns over IPR enforcement, the United States is alert to U.S. industry concerns about the possibility that laws or policies in a variety of fields might be used or misused to favor domestic over foreign IPR. Such concerns are especially acute in light of Chinese government policies establishing a procurement preference for domestically innovated products, statements and consideration of legal changes regarding such areas as compulsory licensing and the use of IPR in setting standards, and other emerging legal and policy developments that have the potential to affect IPR protection and market access for IPR-bearing goods and services. The United States will monitor these developments closely to ensure fair treatment for U.S. rights holders.

The treatment of intellectual property in standards-setting processes has garnered recent attention in China and elsewhere. In China, standards for third generation (3G) wireless technology are an example. At the April 11, 2006 JCCT, China renewed the commitment made to the United States in 2004 to accord technology-neutral treatment to different 3G standards. To date, China has not licensed any 3G wireless technology. However, in the past year, Chinese operators have taken steps to procure equipment and services for the installation of a network that appears will be dedicated to support wireless communications based on the TD-SCDMA standard. Such steps to advance the standard containing Chinese technology raise questions about China's commitment to accord technology neutrality to the different 3G standards.

More generally, the Chinese Electronics Standardization Institute (CESI) is in the process of drafting IPR rules for standards-setting organizations (SSOs). These draft rules provide for SSOs to report to government authorities on the possible relevance of patent claims in draft standards submitted for examination and approval by the authorities. It is unclear what purpose is envisaged for this governmental review, including whether such a review of the possible relevance of patent claims could involve governmental authorities in the determination of the terms and conditions for licensing essential patents.

## **RUSSIA**

Russia will remain on the Priority Watch List in 2007 and the United States will conduct an Out-of-Cycle Review to monitor progress on IPR issues.

The U.S. copyright industries estimate that they lost in excess of \$2.1 billion in 2006 due to copyright piracy in Russia. The U.S. copyright industries also reported that in 2006 Russia's optical disc production capacity continued to be far in excess of domestic demand, with pirated products apparently intended not only for domestic consumption, but also for export. Internet piracy continues to be a serious concern. The United States notes that criminal investigations are ongoing in Russia and other countries against operators of the Russia-based download website [allofmp3.com](http://allofmp3.com), which offers global distribution of pirated music and is the most notorious of several problem websites operating from within Russia.

Poor enforcement of IPR in Russia is a pervasive problem. The United States notes that prosecution and adjudication of IP cases remains sporadic and inadequate in Russia; there is a lack of transparency and a failure to impose deterrent penalties. Russia's customs administration also needs to significantly strengthen its enforcement efforts. Russian authorities initiated some enforcement actions in 2006, which included raids on some optical disc production facilities and investigation of Internet sites.

The United States worked with Russia throughout 2006 to encourage appropriate actions to protect and enforce IPR. On November 19, 2006, the U.S. Government and the Government of Russia entered into a Bilateral Market Access Agreement on Intellectual Property Rights ("IPR bilateral agreement") on actions that Russia will start taking immediately to address piracy and counterfeiting and improve protection and enforcement of intellectual property rights. As part of the IPR bilateral agreement, the Government of Russia has committed to fight optical disc and Internet piracy, protect against unfair commercial use for pharmaceutical test data, deter piracy and counterfeiting through criminal penalties, strengthen border enforcement, and bring Russian laws into compliance with WTO and international IPR norms. Russia's implementation of commitments on IPR will be essential to completing the final multilateral negotiations on the overall WTO accession package.

The most significant legislative development in 2006 was the Duma's adoption of Part IV of the Civil Code, which replaces most of Russia's IPR legislation with a single law. Part IV and implementing regulations to be developed over the next year will go into effect on January 1, 2008. While Russian government ministries and the Duma took steps to address some concerns of certain rights holders and the U.S. Government regarding the new legislation, Part IV still contains provisions that raise serious concerns regarding consistency with WTO and other international agreements. The Government of Russia has pledged in the IPR bilateral agreement to ensure that Part IV and its other IPR measures will be fully consistent with the TRIPS Agreement upon Russia's accession to the WTO. The United States and other WTO Members are discussing Part IV and its compliance with the TRIPS Agreement in the Working Party on Russia's accession to the WTO.

Russia continues to deny national treatment for the protection of geographical indications. Although Russia has committed in the IPR bilateral agreement to implement Article 39.3 of the

TRIPS Agreement to protect against unfair commercial use for data generated to obtain marketing approval, Russia currently does not provide such protection for pharmaceutical products.

In addition to the multilateral work to ensure Russia's compliance with the TRIPS Agreement and Russia's other international IPR obligations, the United States will continue to work with Russia on the enforcement of IPR and Russia's compliance with its bilateral obligations through the United States – Russia Bilateral Working Group on Intellectual Property Rights and the Out-of-Cycle Review. In addition, the United States is reviewing Russia's status as a beneficiary country under the U.S. Generalized System of Preferences (GSP) Program.



## **ARGENTINA**

Argentina will remain on the Priority Watch List in 2007. The United States notes that Argentina made progress in decreasing its backlog of patent applications, due in part to hiring additional patent examiners, changing filing procedures, and reducing the number of patents waiting to be examined. However, Argentina still does not provide adequate protection against unfair commercial use for data generated to obtain marketing approval. The United States urges Argentina to implement an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for patent-infringing pharmaceutical products, as well as to address problems that rights holders encounter in attempting to obtain timely and effective injunctions to stop such unfair commercial use. Copyright piracy also remains a significant problem in Argentina. Although cooperation has improved between Argentina's enforcement authorities and the U.S. copyright industry, and the Argentine Customs authority has taken steps to improve enforcement, the United States encourages stronger IPR enforcement actions to combat the widespread availability of pirated and counterfeit products. The United States will continue to monitor Argentina's efforts to address these concerns.

## **CHILE**

Chile will remain on the Priority Watch List in 2007. Chile was elevated from the Watch List to the Priority Watch List at the conclusion of an Out-of-Cycle Review in January 2007. The United States remains concerned about inadequate protection against unfair commercial use for data generated to obtain marketing approval; insufficient coordination between Chile's health and patent authorities to prevent the issuance of marketing approvals for patent-infringing pharmaceutical products; continuing copyright piracy and trademark counterfeiting; and the need for greater efforts to meet standards set out in the TRIPS Agreement, the United States – Chile FTA, and other international agreements. The United States notes in particular that Chile apparently has not fully implemented legislation to comply with FTA obligations where the transition periods expired as of January 1, 2006. Copyright piracy in Chile remains high and digital piracy continues to grow. In addition, copyright and trademark enforcement must be significantly improved, including the imposition of deterrent penalties in criminal IPR cases. Significant amendments to Chile's IPR legislation are needed to bring Chile's IPR regime into line with its multilateral and bilateral commitments. The United States will continue to work with Chile, with the expectation of imminent progress through the implementation of its IPR commitments in the FTA.

## **EGYPT**

Egypt will remain on the Priority Watch List in 2007. The United States remains concerned about continuing deficiencies in Egypt's IPR enforcement regime, problems with its judicial system, a backlog of pending patent applications, the lack of protection against unfair commercial use for data generated to obtain marketing approval, and the lack of an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for patent-infringing pharmaceutical products. The United States recognizes Egypt's efforts to improve IP protection and enforcement in 2006, especially in modernizing its infrastructure and training key personnel such as judges and civil inspectors, and encourages Egypt to continue to make institutional IP reforms, strengthen its IPR legislation on copyrights, patents, and enforcement, as well as ratify and implement the WIPO Internet Treaties. The United States urges Egypt to improve its court system by increasing its efficiency

and transparency, as well as ensuring that courts impose deterrent sentences in copyright and trademark cases. The United States is concerned with the transshipment of counterfeit and pirated goods through Egypt, including in the Damietta Port and Port Said Free Trade Zones. The United States will continue to work with Egypt on improving its IPR regime and IPR enforcement efforts.

## **INDIA**

India will remain on the Priority Watch List in 2007. The United States remains concerned about inadequate IPR protection and enforcement in India. The United States continues to urge India to improve its IPR regime by providing stronger protection for copyrights, trademarks, and patents, as well as protection against unfair commercial use for data generated to obtain marketing approval. The United States encourages India to implement the WIPO Internet Treaties, strengthen its copyright laws, and improve its IPR enforcement system, including by enacting and implementing an effective optical disc licensing scheme to combat optical disc piracy. Piracy of copyrighted works remains rampant in India. India's criminal IPR enforcement regime remains weak, with improvements needed in the areas of expeditious judicial dispositions for copyright and trademark infringement, border enforcement against counterfeit and pirated goods, police action against pirates and counterfeiters, and imposition of deterrent sentences for IPR infringers. The United States urges India to strengthen its IPR regime, and stands ready to work with India on these issues during the coming year.

## **ISRAEL**

Israel will remain on the Priority Watch List in 2007. Israel appears to have left unchanged its intellectual property regime that results in inadequate protection against unfair commercial use of data generated to obtain marketing approval. Israel also left unchanged aspects of its 2005 law that significantly reduced the term of pharmaceutical patent protection by reducing the time granted to compensate for delays in obtaining regulatory approval of a drug. Information provided by Israel regarding steps it has taken to preclude reliance on data generated to obtain marketing approval for exports is a positive step towards addressing the United States' concerns on this issue. However, the United States remains concerned by the weak protections offered by Israel to pharmaceutical innovators. The United States looks to Israel to provide a higher level of protection that reflects its status as a partner in the U.S. – Israel FTA and its objective of becoming a member of the OECD. The United States is also monitoring proposed amendments to Israel's copyright regime to ensure that there is no weakening of national treatment for U.S. rights holders in accordance with the 1950 agreement between the United States and Israel. The United States urges Israel to strengthen its IPR protection and enforcement regimes and hopes to expand its engagement with Israel on these issues during the coming year.

## **LEBANON**

Lebanon will remain on the Priority Watch List in 2007, despite some positive movement in 2006 by a Lebanese Government IPR task force against copyright piracy. Lebanon's protection of IPR is inadequate, and particular areas of concern include rampant cable piracy, inadequate protection against unfair commercial use for data generated to obtain marketing approval, retail piracy of copyrighted works, and IPR enforcement. The United States recognizes that many of the positive initiatives started by the Lebanese Government in early 2006 (including the formation of a High Tech Crime Unit within the police) were interrupted by significant political

unrest during the year. The United States reiterates its concerns regarding IPR protection and enforcement in Lebanon and hopes to see renewed attention to IPR by Lebanon in the coming year, particularly in light of Lebanon's bid for accession to the WTO.

### **THAILAND**

Thailand will be elevated to the Priority Watch List in 2007, reflecting a concern that the past year has been characterized by an overall deterioration in the protection and enforcement of IPR in Thailand. The United States appreciates that many Thai law enforcement officials continue to work, amid challenging circumstances, to conduct actions against infringing activity. However, these efforts appear not to have had a measurable effect on piracy and counterfeiting rates, which remain unacceptably high. The weak nature of Thailand's legislation governing optical disc media constitutes a particular challenge in addressing the large scale of pirated disc production. Book piracy, cable and signal theft, and entertainment and business software piracy have likewise not been addressed in a meaningful way. Production and distribution of infringing copies of trademarked products, such as apparel and footwear, also remain widespread. With respect to all of these areas, insufficiently deterrent legal penalties contribute to ongoing infringement problems. In addition to these longstanding concerns with deficient IPR protection in Thailand, in late 2006 and early 2007, there were further indications of a weakening of respect for patents, as the Thai Government announced decisions to issue compulsory licenses for several patented pharmaceutical products. While the United States acknowledges a country's ability to issue such licenses in accordance with WTO rules, the lack of transparency and due process exhibited in Thailand represents a serious concern. These actions have compounded previously expressed concerns such as delay in the granting of patents and weak protection against unfair commercial use for data generated to obtain marketing approval.

### **TURKEY**

Turkey will remain on the Priority Watch List in 2007. Turkey made some progress on copyright enforcement during 2006, including an increased number of raids against copyright pirates and seizures of pirated goods, impositions of stronger penalties by the courts, and cooperation between law enforcement authorities and the private industry. The United States encourages Turkey to build upon this progress and to take at least the following steps: continue to address copyright piracy, including book piracy, business software piracy in the private sector, and government use of legal software, as well as increase judicial efficiency and reduce backlogs of court cases by allocating sufficient resources to the judiciary. The United States also encourages Turkey to further strengthen protection against unfair commercial use for pharmaceutical data generated to obtain marketing approval, particularly with respect to the start date of the period of protection and the inappropriate linkage of the term of data protection to the remaining term of the patent. The United States hopes to see Turkey's continued progress on these issues during the coming year, and will continue to monitor Turkey's progress in strengthening its IPR regime.

### **UKRAINE**

Ukraine will remain on the Priority Watch List in 2007. After concluding an Out-of-Cycle Review in 2006, the United States lowered Ukraine from the Priority Foreign Country list to the Priority Watch List and reinstated Ukraine's benefits under the GSP program based on Ukraine's passage and implementation of amendments to its Laser-readable Disc Law to combat optical

disc pirate production and improved IPR enforcement efforts. As agreed in the Out-of-Cycle Review, the Government of Ukraine has participated regularly in an Enforcement Cooperation Group with the U.S. Embassy in Ukraine and U.S. industry representatives throughout 2006. Although Ukraine now has a comprehensive optical disc regime and is no longer a major producer of pirated optical discs, it remains a transshipment point and storage location for illegal optical media produced in Russia and elsewhere, and retail piracy remains rampant. The United States encourages Ukraine to continue to improve border enforcement efforts, impose deterrent criminal penalties for unauthorized production and export of pirated and counterfeit products, and work to stem the growth of Internet piracy and the use of pirated business software. The United States also encourages Ukraine to take action against continuing counterfeit production. In 2006, Ukraine amended its Law on Medicines to provide protection against unfair commercial use for pharmaceutical data generated to obtain marketing approval. The United States recognizes Ukraine's improvements in 2006 in IPR protection, and will continue to monitor closely Ukraine's further progress on IPR protection and enforcement in a number of fora, including bilateral engagement, the Enforcement Cooperation Group, and WTO accession negotiations.

## **VENEZUELA**

Venezuela will remain on the Priority Watch List in 2007. Venezuela made minimal progress in strengthening its weak IPR regime in 2006. Already high levels of copyright piracy continue to climb, while proposed copyright legislation, if re-introduced, would severely undercut the existing Venezuelan copyright law, as well as bilateral and international standards of IP protection. The U.S. copyright industries report good cooperation with SENIAT, Venezuela's customs and tax authorities, but note continuing problems with a lack of overall IPR enforcement. The U.S. pharmaceutical industry reports that Venezuela has not issued a patent to a foreign pharmaceutical product since 2003. Venezuela also does not provide protection against unfair commercial use for data generated to obtain marketing approval. In April 2006, Venezuela withdrew from the Andean Community, raising questions about Venezuela's ability to fulfill its international IPR obligations and whether it will provide for the effective administration of its IPR system. The United States urges the Venezuelan government to take immediate action to improve IPR protection, particularly by addressing piracy and counterfeiting, amending inadequate legislative proposals, protecting against unfair commercial use for data generated to obtain marketing approval, and improving IPR enforcement.

## **WATCH LIST**

### **BELARUS**

Belarus will remain on the Watch List in 2007. The United States remains concerned about Belarus' delayed implementation of its intellectual property commitments under the U.S.-Belarus Trade Agreement. Belarus made no significant progress during 2006 to strengthen its IPR laws, reduce piracy levels, or increase IPR enforcement efforts. The Belarus copyright law needs to be amended to provide adequate protection for sound recordings and pre-existing works, as well as to implement the WIPO Internet Treaties, which Belarus joined in 1998. Belarus' law neither provides *ex officio* authority to allow police officials to initiate criminal copyright cases or for customs officials to seize illegal products at the border, nor provides for civil *ex parte* search procedures necessary to protect against end-user software piracy. The United States encourages Belarus to improve its IPR regime and to enforce its IPR laws more aggressively. In addition, the United States urges Belarus to fulfill its obligations under the U.S.-Belarus Trade Agreement and will continue to monitor Belarus' progress in strengthening its IPR regime, especially in the context of Belarus' bid for accession to the WTO.

### **BELIZE**

Belize will be lowered from the Priority Watch List to the Watch List in 2007, due to improvements in IPR enforcement in Belize, including increased cooperation between rights holders and government entities. The United States notes, however, that piracy and counterfeiting still exist in Belize and further improvements are needed to strengthen IPR enforcement. The United States remains concerned about weak IPR enforcement in Belize's Corozal Commercial Free Trade Zone, through which infringing products are transshipped from Mexico to the United States and elsewhere. The United States continues to urge Belize to improve IPR enforcement by: revising necessary laws and regulations to facilitate inspections, seizures, criminal investigations, and destruction of infringing products; increasing resources devoted to border enforcement and the number of investigations of counterfeiting and piracy; implementing strong IPR enforcement actions in the Corozal Commercial Free Trade Zone; and ensuring that prosecutors bring criminal cases against counterfeiters and pirates and that courts issue deterrent sentences for IPR infringers.

### **BOLIVIA**

Bolivia will remain on the Watch List in 2007. Piracy and counterfeiting remain problems in Bolivia, and there were no notable improvements to Bolivia's IPR regime during the past year. As a WTO member and signatory to the WIPO Internet Treaties, Bolivia should have increased its levels of IPR protection years ago. Bolivia has inadequate copyright laws, significant copyright piracy and trademark counterfeiting, and weak overall IPR enforcement. The United States encourages Bolivia to strengthen its copyright laws, ratify and implement the WIPO Internet Treaties, increase its IPR enforcement efforts, provide for civil *ex parte* searches, prevent unwarranted delays in civil enforcement, provide adequate civil and criminal remedies in IPR infringement cases, and strengthen border measures. The United States encourages Bolivia to improve its IPR protection regime in 2007, as well as increase its IPR enforcement efforts to combat piracy and counterfeiting.

## **BRAZIL**

Brazil will be lowered to the Watch List in 2007, following several years on the Priority Watch List. This decision recognizes Brazil's considerable progress in enhancing copyright enforcement. Brazil's National Anti-Piracy Council is increasingly recognized as a model of public-private collaboration in the area of IP enforcement. In addition, the Brazilian Government's national action plan to address piracy and IP crimes has produced continuing positive results, particularly through effective police actions. While piracy and counterfeiting still exist at high levels and criminal prosecutions often lag police actions, Brazil merits recognition for its vigorous efforts. The United States looks forward to a continued healthy dialogue with Brazil on IP issues, including through the U.S. – Brazil Bilateral Consultative Mechanism and the U.S. – Brazil Commercial Dialogue. The United States hopes that these discussions can focus on areas where progress has been less robust than in the copyright field. While Brazil has begun to strengthen capacity for processing patents and reducing a longstanding backlog of patent applications, concrete progress has not yet been seen. The fact that the role of Brazil's health regulatory agency in the patent approval process remains unclear is an important concern. The Brazilian Government has at times indicated consideration of the use of compulsory licensing on patented pharmaceutical products. The United States underscores the importance of Brazil engaging in open and transparent discussions with all relevant stakeholders in such cases, in the interest of reaching mutually satisfactory outcomes. The United States also encourages Brazil to strengthen protection against unfair commercial use for data generated to obtain marketing approval. The United States will conduct an Out-of-Cycle Review to evaluate the sustainability of the progress Brazil has achieved with respect to IPR enforcement, and to encourage additional progress in areas of outstanding concern.

## **CANADA**

Canada is being retained on the Watch List in 2007. The United States commends Canada for issuing regulations correcting deficiencies in its system for protecting against unfair commercial use pharmaceutical data generated to obtain marketing approval. The United States notes our continuing concerns, however, with Canada's failure to ratify and implement the WIPO Internet Treaties and its failure to prohibit the unauthorized camcording of films in movie theaters. The United States also continues to urge Canada to improve its IPR enforcement system to enable authorities to take effective action against the trade in counterfeit and pirated products within Canada, as well as curb the amount of infringing products transshipped and transiting through Canada. Canada's weak border measures continue to be a serious concern for IP owners. The United States hopes that Canada will implement legislative changes to provide a stronger border enforcement system by giving its customs officers the authority to seize products suspected of being pirated or counterfeit without the need for a court order. Greater cooperation between Canadian Customs and the Royal Canadian Mounted Police would enhance IPR enforcement, as would the provision of additional resources and training to customs officers and domestic law enforcement personnel. The United States will continue to monitor Canada's progress in providing an adequate and effective IPR protection regime that is consistent with its international obligations and its advanced level of economic development, including improved border enforcement, near term ratification and implementation of the WIPO Internet Treaties, and efforts to stop unauthorized camcording of films in movie theaters.

## **ECUADOR**

Ecuador will remain on the Watch List in 2007. Despite cooperation between Ecuador's enforcement authorities and the U.S. business software industry, overall IPR enforcement remains problematic, resulting in high piracy levels for the U.S. copyright industries. Ecuador has not established the specialized IPR courts required by its 1998 IPR law. Concerns also remain over Ecuador's lack of effective protection against unfair commercial use for data generated to obtain marketing approval, as well as Ecuador's lack of an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for patent-infringing pharmaceutical products. The U.S. pharmaceutical industry also reports concerns over a growing patent backlog in Ecuador. The United States urges Ecuador to strengthen its IPR regime and to enhance its IPR enforcement efforts, and will monitor Ecuador's efforts to address IPR concerns.

## **HUNGARY**

Hungary will remain on the Watch List in 2007. Although Hungary has improved its IPR regime over the past several years, additional improvements are necessary. The United States commends Hungary for forming an Inter-Ministerial Task Force in 2006 to address IPR issues, comprising representatives from the Hungarian Government and the private sector. Copyright piracy in Hungary continues to grow, especially related to the Internet. Enforcement deficiencies include prosecutorial delays, judicial imposition of non-deterrent sentences, and weak border enforcement. The United States urges Hungary to provide an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for patent-infringing pharmaceutical products. The United States will continue to work with the Hungarian Government to address these IPR concerns.

## **INDONESIA**

Indonesia will remain on the Watch List in 2007. Indonesia was lowered from the Priority Watch List to the Watch List at the conclusion of an Out-of-Cycle Review in November 2006. The United States commends Indonesia for its continued attention to IPR enforcement, including steps taken to fight retail piracy and to implement its optical disc regulations to combat pirate production in optical disc factories. The United States notes that following the announcement of the OCR result, Indonesia established an Information Communication Technology National Team to address legalization of government software and passed customs legislation to provide *ex officio* authority. The National Task Force for IPR Violation Prevention, formed in 2006, has conducted meetings but has not yet taken specific actions to combat IPR violations. The United States urges Indonesia to continue to build on its momentum by enforcing its IPR laws effectively and in a deterrent manner against piracy and counterfeiting, including: raiding pirate optical disc factories; conducting seizures of pirated goods and the machinery and materials used to make them; arresting and prosecuting IPR infringers; and ensuring that courts impose deterrent sentences for IPR crimes, including jail time, and that offenders actually serve such sentences. The U.S. copyright industries report that high piracy rates continue to exist in Indonesia. The U.S. pharmaceutical industries report that Indonesia does not provide effective protection against unfair commercial use for data generated to obtain marketing approval. The United States will continue to use the bilateral Trade and Investment Framework Agreement process to work with Indonesia to improve its IPR enforcement regime.

## **ITALY**

Italy will remain on the Watch List for 2007. The United States notes that Italy increased cooperation between its government agencies and the private sector in 2006, as well as expressed renewed interest in working more closely with the United States to improve IPR protection and enforcement in Italy. However, the U.S. copyright industries report that Italy maintains one of the highest overall piracy rates in Western Europe. Italy made some progress in 2006 through increased raids, seizures, and arrests of IPR infringers, notably through enforcement actions by the Guardia di Finanza, but there continues to be inadequate judicial awareness of IPR infringement as a serious crime and therefore a lack of judicial imposition of deterrent fines and jail sentences for criminal copyright and trademark infringers. The United States continues to observe wide variations in the effectiveness of IPR enforcement activities within Italy, particularly in the courts. The U.S. copyright industries report continuing high rates of copyright piracy in Italy, especially on the Internet. The United States urges Italy to make IPR enforcement a top priority, commit high-level support for IPR enforcement, provide deterrent IPR enforcement through increased convictions and jail sentences, dedicate more resources for law enforcement and the judiciary, and implement a plan to combat Internet piracy. The United States will continue to work with Italy on these issues, with the goal of improving IPR protection and enforcement.

## **JAMAICA**

Jamaica will remain on the Watch List in 2007. The United States remains concerned over Jamaica's continued delay in enacting the Patents and Designs Act, which is intended to implement Jamaica's obligations under the TRIPS Agreement and to comply with the United States-Jamaica bilateral Intellectual Property Agreement. The United States urges the Government of Jamaica to reform its patent law as soon as possible to comply fully with international standards for patent protection.

## **KUWAIT**

Kuwait will remain on the Watch List in 2007. The United States notes that the Kuwaiti government continued to take enforcement actions against IPR piracy and counterfeiting in 2006, including sustained raids on an *ex officio* basis against retail outlets, street vendors, and pirate cable operators, with subsequent referrals of criminal cases for prosecutions. The U.S. copyright industries report that the newly-formed IPR committee, including the Ministries of Justice, Interior, Information, and Commerce and Industry, coordinated its first major raid in 2006. The United States hopes that Kuwait will continue to improve its IPR regime by ensuring, for example, that Kuwait issues sentencing guidelines with strong penalties to encourage judicial authorities to impose deterrent penalties for IPR violations, and that it ratifies and implements the WIPO Internet Treaties. The United States is concerned that several key pieces of IPR legislation have been pending for many years, and hopes that Kuwait will expeditiously enact and implement this legislation in the near term. The United States will continue to work together with Kuwait on the passage of this IPR legislation. The United States hopes that the Kuwaiti Government, particularly those ministries with IPR enforcement responsibilities, will continue to build upon the progress made in 2006 to reduce the high levels of piracy in Kuwait. The United States will continue to address these issues under the United States-Kuwait Trade and Investment Framework Agreement.



## **LITHUANIA**

Lithuania will remain on the Watch List in 2007. Lithuania increased its engagement with the United States during 2006 and made progress by closing down the notorious pirate website [www.piratic.org](http://www.piratic.org). Despite these and other IPR improvements this past year, IPR issues remain, including the need for sustained IPR enforcement actions and improved border enforcement to curb the transshipment of pirated optical media through Lithuania. Because Lithuania serves as a transshipment point in the Baltic region for mostly Russian-produced optical media, the United States urges Lithuanian customs officials to make more frequent use of their *ex officio* authority to inspect and seize infringing goods at the border. The United States encourages Lithuania to continue its cooperative enforcement efforts with the private sector in the monitoring of optical disc production in Lithuania. The United States also encourages Lithuania to increase its efforts to coordinate IPR enforcement actions among relevant government ministries, police, and customs officials. The United States will continue to work with Lithuania to strengthen its IPR regime.

## **MALAYSIA**

Malaysia will remain on the Watch List in 2007. Malaysia showed a solid commitment to strengthening IPR protection and enforcement this past year, but still has some serious deficiencies that need attention. In 2006, Malaysia continued to take IPR enforcement actions, including: conducting raids against pirate optical disc production facilities; seizing pirate goods and machinery used to produce pirate materials; arresting IPR infringers; and revoking or declining to renew licenses for pirate optical disc facilities, resulting in the reported movement or closure of at least eleven optical plants in 2006. In addition, Malaysia's enforcement actions against retail pirate outlets have reportedly driven much retail piracy underground in 2006. The United States appreciates these improvements, as well as the Malaysian Government's statement that it is in the process of establishing a specialized IP court to more effectively handle civil and criminal copyright cases. The United States urges Malaysia to continue its IPR enforcement efforts and to ratify and fully implement the WIPO Internet Treaties. The United States also encourages Malaysia to provide effective protection against unfair commercial use for data generated to obtain marketing approval, and create a coordination mechanism between the health authorities and the patent office to prevent the issuance of marketing approvals for patent-infringing pharmaceutical products. The United States will continue to work with Malaysia to make progress on these pressing IPR issues through the ongoing U.S.-Malaysia Free Trade Agreement negotiations.

## **MEXICO**

Mexico will remain on the Watch List in 2007. Mexico made some improvements in IPR enforcement during the past year, including increased raids, arrests, and seizures of counterfeit and pirated goods by federal enforcement authorities, as well as increased cooperation between federal enforcement authorities and the private sector. Despite these improvements, however, courts have not imposed convictions and deterrent sentences for pirates and counterfeiters. The United States encourages Mexico to follow its commendable raids with aggressive prosecutions and deterrent penalties, including prison terms, improve domestic cooperation efforts between federal, state, and local enforcement authorities, and increase IPR enforcement efforts by

customs authorities. The United States urges Mexico to pass IPR legislation to give *ex officio* authority to law enforcement and customs authorities, criminalize camcording in theaters, and implement fully the WIPO Internet Treaties. The United States also encourages Mexico to make further efforts to provide adequate protection against unfair commercial use for data generated to obtain marketing approval, and improve coordination between its health and patent authorities to prevent the issuance of marketing approvals for patent-infringing pharmaceutical products. The U.S. pharmaceutical industry reports an increase in the number of marketing approvals issued in 2006 for patent-infringing pharmaceutical products. The United States also notes its concern over reports of increases in counterfeit pharmaceuticals in Mexico. The United States will continue to work with Mexico to address and resolve these IPR concerns in an effective manner.

## **PAKISTAN**

Pakistan will remain on the Watch List in 2007 and the United States will conduct an Out-of-Cycle Review to monitor Pakistan's progress. In 2006, Pakistan was lowered from the Priority Watch List to the Watch List in recognition of Pakistan's progress on IPR enforcement. However, the United States remains concerned about the lack of effective protection against unfair commercial use for data generated to obtain marketing approval, as well as the failure to codify the existing system of coordination between its health and patent authorities to prevent the issuance of marketing approvals for patent-infringing pharmaceutical products. Due to a lack of progress this year in either of these areas, the United States will conduct an Out-of-Cycle Review. The United States and Pakistan will remain closely engaged on these issues during the coming year. The United States commends Pakistan for continuing to take enforcement actions against large-scale illegal optical disc production and retail sales of pirated and counterfeit products. The United States encourages Pakistan to ensure that its authorities aggressively prosecute IPR crimes and that its courts issue deterrent sentences for pirates and counterfeiters. The United States will continue to monitor closely the IPR situation during the OCR, and will work together with Pakistan to achieve further improvements in its IPR protection and enforcement regimes.

## **PHILIPPINES**

The Philippines will remain on the Watch List in 2007. Throughout 2006, the Philippines continued to implement its Optical Media Act, including regulating the licensing of optical disc plants and coordinating raids against pirate optical disc production factories and retail establishments. The Philippines' Intellectual Property Office continued to coordinate among IPR enforcement agencies. While recognizing these continued IPR enforcement actions, the United States urges the Philippines to continue strengthening its enforcement regime against piracy and counterfeiting. Specifically, the United States encourages the Philippines to increase the numbers of arrests, prosecutions, and convictions of pirates arising out of the optical disc plant inspections; ensure that courts impose deterrent sentences against criminal IPR infringers (i.e. significant fines or prison sentences that are actually served); destroy pirated and counterfeit goods and the equipment used to make them; take steps to combat the problem of illegal textbook copying; further improve customs enforcement; take actions against television signal theft by pirate cable TV operators; and fully implement the WIPO Internet Treaties, including addressing Internet piracy. The United States urges the Philippines to maintain a patent regime that is fully consistent with its WTO obligations. The United States will continue to use the

bilateral Trade and Investment Framework Agreement to engage the Government of Philippines on strengthening its IPR regime.

### **POLAND**

Poland will remain on the Watch List in 2007. Despite improvements in cooperation between the Polish Government and the private sector on IPR issues, the United States is concerned that Poland did not make significant progress on IPR protection or enforcement efforts this past year. For example, Poland drastically cut its support for the National Police Intellectual Property and Computer Crime Unit, which had previously been responsible for an increase in the numbers of raids, seizures, and prosecutions against IPR infringers. Due to a reported shift in priorities, IPR enforcement efforts remained weak in Poland during the past year. The United States urges Poland to give increased attention to IPR protection and enforcement, including by strengthening border enforcement, eliminating delays in bringing prosecutions, addressing piracy on the Internet, and ensuring that courts impose deterrent sentences for IPR infringement. The United States also encourages Poland to strengthen enforcement legislation to combat piracy and counterfeiting. The United States is also concerned by Poland's inadequate protection against unfair commercial use for pharmaceutical data generated to obtain marketing approval. The United States encourages Poland to commit its resources and attention to increasing IPR protection and enforcement over the next year.

### **ROMANIA**

Romania will remain on the Watch List in 2007. Romania improved coordination between law enforcement authorities and the private sector this past year. The U.S. copyright industries report that optical disc piracy decreased in Romania in 2006, but Internet piracy in the country increased, spurred by peer-to-peer networks and weak IPR enforcement. The United States encourages Romania to improve its IPR enforcement efforts, including ensuring that prosecutions are completed in a timely manner and that courts impose deterrent sentences against IPR infringers.

### **SAUDI ARABIA**

Saudi Arabia will remain on the Watch List in 2007. The United States has been monitoring Saudi Arabia's progress on IPR issues since its accession to the WTO in 2005. While progress has been notable in several areas, including an increased number of IPR raids and a strengthening of Saudi Arabia's IPR legal regime through IPR amendments in connection with its WTO accession, Saudi Arabia should complete several IPR actions that it has initiated. For example, Saudi Arabia should increase transparency of its IPR enforcement regime, including in its judicial system; continue sustained raids and inspections to combat piracy and counterfeiting; ensure that courts impose deterrent sentences (including jail terms for serious offenses) against criminal IPR infringers; and improve border enforcement measures, among other IPR issues. Saudi Arabia has indicated that it continues to take steps to implement these measures and the United States urges Saudi Arabia to complete that process in the near term. The United States will work closely with Saudi Arabia to address the numerous outstanding IPR issues during the coming year.

## **TAIWAN**

Taiwan will remain on the Watch List in 2007. The United States notes Taiwan's strong efforts and significant strides in improving its IPR regime this past year, including the passage of legislation to create a specialized IPR court, the creation of an IP section at the Special Prosecutor's Office, increased numbers of raids and seizures of pirated optical media, counterfeit pharmaceuticals, and counterfeit luxury goods, and increased arrests of IPR infringers. The United States urges Taiwan to continue its efforts to combat counterfeiting and Internet piracy and to pass pending IPR legislation, in particular legislation to provide liability for Internet service providers and to address copyright piracy on peer-to-peer networks. The United States also asks that Taiwan take steps to improve IPR enforcement, including: dedicate more resources (including training and additional personnel) to improve enforcement against piracy on the Internet, especially on TANet, the Internet Service Provider administered by Taiwan's Ministry of Education; take enforcement actions against the unauthorized use of copyrighted material on or near universities; and consider stronger criminal penalties for IPR infringement. The United States looks to Taiwan to continue its good efforts to address these remaining IPR concerns and will work closely with Taiwan to achieve further progress.

## **TAJIKISTAN**

Tajikistan will remain on the Watch List in 2007. Tajikistan made progress passing IPR legislation this past year. The United States remains concerned, however, that Tajikistan has not yet fulfilled its IPR obligations under the U.S.-Tajikistan Bilateral Agreement, and encourages Tajikistan to take the necessary steps to bring its IPR regime into conformity with the TRIPS Agreement as part of its ongoing efforts to join the WTO. In addition, Tajikistan continues to have a weak enforcement regime that lacks criminal penalties for IPR violations, *ex officio* authority to commence criminal cases, and civil *ex parte* search procedures necessary for effective enforcement against end-user pirates, among other important enforcement measures. The Tajik Customs Code also fails to provide customs officials with *ex officio* authority to suspend the release of suspected infringing materials at the border. Legal reforms are also needed, for example, in Tajikistan's copyright law, which does not provide protection for sound recordings or pre-existing works. The United States also encourages Tajikistan to ratify and implement the WIPO Internet Treaties. The United States will continue to work with Tajikistan through the Trade and Investment Framework Agreement signed in 2004 and the ongoing WTO accession negotiations to address deficiencies in its IPR laws and strengthen IPR protection and enforcement.

## **TURKMENISTAN**

Turkmenistan will remain on the Watch List in 2007. The United States remains concerned about Turkmenistan's lack of progress on IPR issues and its lack of fulfillment of its IPR obligations under the United States-Turkmenistan Trade Agreement. For example, Turkmenistan has neither become a member of nor implemented the Berne Convention, the Geneva Phonograms Convention, or the WIPO Internet Treaties. Turkmenistan does not have a separate copyright law and does not provide clear criminal procedures or penalties for IPR infringement as required by the U.S.-Turkmenistan Trade Agreement. Its Customs Code does not provide *ex officio* authority to seize suspected infringing material at the border, and there are no known civil *ex parte* search procedures. The United States urges Turkmenistan to adopt the legal reforms that will bring Turkmenistan into compliance with its obligations under the

bilateral United States-Turkmenistan Trade Agreement and to undertake enforcement activities that will help to strengthen its IPR regime.

## **UZBEKISTAN**

Uzbekistan will remain on the Watch List in 2007. The United States is concerned about Uzbekistan's lack of significant progress on IPR issues. For example, although Uzbekistan moved forward with copyright reform in 2006, Uzbekistan should pass several other pending IPR-related amendments to strengthen IPR protection and enforcement. While Uzbekistan has joined the Berne Convention, the United States notes with concern Uzbekistan's continuing reservation to Article 18, which requires that signatory countries provide copyright protection to pre-existing works. Furthermore, the United States has concerns with Uzbekistan's compliance with its intellectual property commitments under the United States-Uzbekistan Trade Agreement, particularly with respect to copyright protection and enforcement. Uzbekistan does not provide protection for sound recordings or pre-existing works, and is not a member of the Geneva Phonograms Convention or the WIPO Internet Treaties. In addition, IPR enforcement in Uzbekistan remains weak due to a lack of *ex officio* authority that would allow customs officials to seize infringing goods at the border, a lack of civil *ex parte* search procedures, and inadequate criminal penalties for IPR violations. The United States urges Uzbekistan to address these deficiencies in its IPR legal regime and to take immediate and effective measures to improve IPR enforcement. The United States will continue to work together with Uzbekistan on these outstanding IPR issues through discussions related to Uzbekistan's bid for WTO accession and in the on-going review of Uzbekistan's status as a beneficiary country under the U.S. Generalized System of Preferences (GSP) Program.

## **VIETNAM**

Vietnam will remain on the Watch List in 2007. Vietnam made significant improvements to its IPR legal and enforcement regimes in 2006, culminating in Vietnam's accession to the WTO in January 2007. In 2006, Vietnam also took steps to ensure that government agencies use only legitimate software and put in place implementing regulations to provide protection against unfair commercial use for data generated to obtain marketing approval. Despite these improvements, however, the U.S. copyright and trademark industries report that IPR infringement rates remain high in Vietnam. The United States encourages further progress on IPR enforcement initiatives and continued implementation of Vietnam's new IPR laws, through which Vietnam has said it will provide high standards of IPR protection. Satellite signal piracy also remains an area of concern. The United States looks to Vietnam to continue to build upon its public commitment to strong IPR protection by successful implementation of all its IPR laws, including measures that result in the imposition of deterrent penalties for criminal IPR infringement and the seizure and destruction of infringing goods and the equipment and materials used to make them. The United States and Vietnam will work together to ensure that Vietnam continues to strengthen its IPR regime.

## **WATCH LIST – RECENTLY COMPLETED FREE TRADE AGREEMENTS**

### **COLOMBIA**

Colombia will remain on the Watch List in 2007. The United States commends Colombia for its actions to combat IPR violations and for amending its Criminal Code in 2006 to increase sentences for copyright infringement. Copyright piracy remains high, and efforts to combat piracy through raids and other enforcement measures are hampered by a judicial system that fails to prosecute cases actively or to issue deterrent criminal sentences. Border enforcement needs improvement as well. The United States will work with Colombia to ensure that Colombia makes progress on these pressing IPR issues through the implementation of its IPR commitments in the United States – Colombia Trade Promotion Agreement (CTPA), in which Colombia has committed to implement high standards of IPR protection through its legal structures and enforcement practices.

### **COSTA RICA**

Costa Rica will remain on the Watch List in 2007. The United States remains concerned about weak IPR enforcement in Costa Rica, particularly with respect to copyright piracy and trademark counterfeiting. The United States encourages the Government of Costa Rica to address the shortcomings in its IPR enforcement system by assigning high priority and resources to combating piracy and counterfeiting. Additional IPR areas of concern include inadequate protection against unfair commercial use for data generated to obtain marketing approval, and inadequate protection for patents, copyrights, and trademarks. In 2004, Costa Rica signed the United States – Central America – Dominican Republic Free Trade Agreement (CAFTA–DR), which it has not yet ratified. The United States urges Costa Rica to ratify and implement CAFTA–DR in the near term.

### **DOMINICAN REPUBLIC**

The Dominican Republic will remain on the Watch List in 2007. The Dominican Republic passed IPR laws in 2006 to implement its commitments under CAFTA–DR, which entered into force on March 1, 2007. These legislative reforms enhance the Dominican Republic’s protections for patents, copyrights, and trademarks, as well as strengthen its IPR enforcement regime. The United States encourages the Dominican Republic to enforce these new IPR laws and hopes to see a resulting decline in the high levels of piracy and counterfeiting in the Dominican Republic.

### **GUATEMALA**

Guatemala will remain on the Watch List in 2007. Through the implementation of Guatemala’s IPR obligations under the CAFTA–DR, Guatemala’s laws provide for stronger IPR protection and enforcement. Nevertheless, IPR enforcement remains a problem. The United States hopes to see a significant reduction of piracy and counterfeiting in Guatemala. The United States is also concerned that Guatemala’s health authorities have issued procedures that may undermine some of the protections against unfair commercial use for pharmaceutical data generated to obtain marketing approval under the CAFTA–DR; Guatemala needs to address this issue to ensure that it meets its obligations. The United States will continue to monitor Guatemala’s compliance with its IPR obligations under CAFTA–DR.

## **PERU**

Peru will remain on the Watch List in 2007. Peru made some IPR improvements this year, including assigning IPR judges to courts and increasing the number of prosecutors' offices with IPR responsibilities. Despite these improvements, however, numerous IPR problems remain. The U.S. copyright industries report that piracy levels remain high. The United States encourages the Government of Peru to continue its efforts to combat IPR piracy by: conducting more raids and seizures; ensuring that arrests of IPR infringers result in convictions and the imposition of deterrent sentences that include imprisonment; and giving increasing attention to IPR enforcement measures at its borders. The United States will work closely with Peru to ensure implementation of Peru's IPR commitments under the United States – Peru Trade Promotion Agreement (PTPA), in which Peru has committed to implement high standards of IPR protection through its legal structures and enforcement practices. The United States urges Peru to strengthen IPR protection and enforcement to ensure that it will meet its international and PTPA commitments.

## **REPUBLIC OF KOREA**

The Republic of Korea (Korea) will remain on the Watch List in 2007. The United States welcomes the strong and far-reaching IPR commitments that Korea agreed to undertake under the U.S. – Korea Free Trade Agreement (KORUS FTA) concluded in April 2007. In the areas of patents, trademarks, copyrights, protection against unfair commercial use for data generated to obtain marketing approval, and enforcement, Korea has agreed to considerably strengthen its IPR protection and enforcement regimes. The United States believes that adherence to these commitments will lead to a significant improvement in IPR protection as well as a reduction in piracy and counterfeiting in the Korean market. The United States looks forward to working closely with Korea as it implements these important provisions in the KORUS FTA.

## **SECTION 306**

### **PARAGUAY**

In 2007 the United States will continue to monitor Paraguay under Section 306. USTR identified Paraguay as a Priority Foreign Country in January 1998 as part of a Special 301 Out-of-Cycle Review. The subsequent Special 301 investigation terminated with the signing of a comprehensive Memorandum of Understanding (MOU) on the protection of intellectual property in 1998. Paraguay has been under Section 306 monitoring since the signing of the MOU, and the current MOU between the United States and Paraguay will expire at the end of 2007. The United States notes that Paraguay has made efforts to improve the protection of intellectual property, particularly by increasing the number of raids and seizures of pirated and counterfeit goods (by the IPR investigative unit in particular). Paraguay continues, however, to have problems providing effective IPR protection due to porous borders, ineffective prosecutions for IPR infringements, and the lack of consistent deterrent sentences, including imprisonment, in court cases. The United States also has concerns about the inadequate protection against unfair commercial use for data generated to obtain marketing approval, as well as the passage in 2005 of a bill that weakens patent protection. The United States will continue to work with Paraguay to address these IPR concerns during the coming year, in particular through the Joint Commission on Trade and Investment. This dialogue will include consideration of mechanisms to ensure continued progress following expiration of the current MOU.



**WIPO Internet Treaties:  
WIPO Performance and Phonograms Treaty (WPPT)  
and the WIPO Copyright Treaty (WCT)**

The following four countries became parties to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaties (WPPT) during May 2006-April 2007. The WPPT entered into force on May 20, 2002, and now has 61 contracting parties.

<b><u>Country</u></b>	<b><u>Date of Entry Into Force</u></b>
Belgium	August 30, 2006
China	June 9, 2007
Liechtenstein	April 30, 2007
Republic of Montenegro	June 3, 2006

The following five countries became parties to the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) during May 2006-April 2007. The WCT entered into effect on March 6, 2002, and now has 63 contracting parties.

<b><u>Country</u></b>	<b><u>Date of Entry Into Force</u></b>
Belgium	August 30, 2006
China	June 9, 2007
Ghana	November 18, 2006
Liechtenstein	April 30, 2007
Republic of Montenegro	June 3, 2006

## SPECIAL PROVINCIAL REVIEW OF CHINA

### Executive Summary

On April 28, 2006, USTR announced in its annual Special 301 report that the United States would conduct a special provincial review (SPR) in the coming year to examine the adequacy and effectiveness of China's IPR protection and enforcement at the provincial level.<sup>1</sup> This review spotlights strengths, as well as weaknesses and inconsistencies, in and among specific jurisdictions, and informs the Special 301 review of China as a whole

*Strengths identified in this review include the following:*

- **Beijing** is showing leadership in the area of Internet piracy. There have also been notable cases against Internet piracy in **Xiamen (Fujian)** and **Guangdong**.
- **Shanghai** closed down a notorious market for infringing goods and has sought to enhance cooperation with rights holders.
- **Jiangsu** has issued rules requiring audiovisual business operators to carry proof of relevant licenses and legality of products sold in their retail outlets.
- **Guangzhou (Guangdong)** and **Beijing** achieved measurable reductions in retail piracy during a 100-day crackdown in 2006, according to an industry survey.
- Customs authorities in **Xiamen (Fujian)** reportedly cooperate well with foreign rights holders.
- **Zhejiang** reportedly transferred 109 administrative trademark cases for criminal prosecution in 2005.
- **Shanghai** authorities have instituted a pilot program to improve administrative-judicial coordination on IPR cases and allow police to conduct raids based on suspicion of criminal activity.
- Public security authorities in **Guangdong** and **Fujian** have taken some notable actions against pharmaceutical counterfeiting and other counterfeiting directed against major U.S. brand owners.
- China's court system is gradually improving, particularly in **Beijing**, which has the largest number of civil IPR cases, and in **Shanghai**.

*Weaknesses and inconsistencies identified in this review include the following:*

- **Guangdong** and **Zhejiang** remained provinces in which rights holders most consistently encountered all types of counterfeiting, according to an industry survey.
- **Guangdong, Zhejiang, and Fujian** are home to major ports of lading for exports of infringing goods to the United States.
- In spite of the efforts of local authorities, **Beijing** and **Shanghai** remain centers for retail trade in pirated goods, and **Yiwu (Zhejiang)** remains a wholesale center, according to an industry survey. An industry group cited the Silk Market, Tianyi Market, and Yaxiu

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<sup>1</sup> For purposes of this review, jurisdictions at the provincial level may include, in addition to China's provinces (sheng), the four municipalities (shi) of Beijing, Chongqing, Shanghai, and Tianjin, as well as China's five autonomous regions (zizhiqu).

Market in **Beijing** and the Ziyuangang Market in **Guangzhou (Guangdong)** as well-known retail and wholesale markets for pirated products.

- **Shenzhen (Guangdong)** and **Shanghai** did not achieve measurable reductions in retail piracy during a 100-day crackdown in 2006, according to an industry survey.
- Transfers of administrative trademark cases for criminal prosecution were especially rare in **Guangdong, Jiangsu, Fujian,** and **Shanghai** in 2005, according to official statistics.
- There were reportedly no transfers of administrative copyright cases for criminal prosecution in **Shanghai, Zhejiang,** and **Fujian** in 2005.

## **Background**

USTR commenced the China SPR in June 2006 by seeking public comments on the locations and issues that should be reviewed. The information received was used to set initial priorities for the review and ensure that the most important locations and issues received appropriate attention. The United States asked commenters to bear in mind that the goals of the SPR include highlighting strengths, as well as weaknesses and inconsistencies, in and among specific jurisdictions. Six provinces emerged as the focus of industry comments and USG discussions: **Beijing, Fujian, Guangdong, Jiangsu, Shanghai,** and **Zhejiang**. In February 2007, USTR received further public comments on these and other locations.

USTR is grateful to provincial officials in the five provinces just mentioned, as well as local officials in Chaoyang (Beijing), Dongguan (Guangdong), Hangzhou (Zhejiang), Nanjing (Jiangsu), Suzhou (Jiangsu), Ningbo (Zhejiang), Putian (Fujian), Shenzhen (Guangdong), Xiamen (Fujian), and Yiwu (Zhejiang) for agreeing to meet with U.S. Government delegations and explaining in detail their efforts to combat counterfeiting and piracy. On all of these visits, provincial and local officials uniformly expressed a commitment to providing strong protection and enforcement of intellectual property rights.

## **Province-By-Province Assessment**

**Beijing City** is both the nation's capital and one of its most visible centers for retail counterfeiting and piracy. IPR enforcement in Beijing varies between different districts and authorities. To promote greater coordination, municipal authorities have established a working group on IPR, headed by a vice mayor, adopted an action plan, and opened an IPR complaint center. Beijing courts enjoy a generally good reputation, which contributes to Beijing having the nation's highest number of civil IPR cases.

*Hot spots.* According to industry reports:

- Retail and wholesale markets such as the Silk Market, Tianyi Market, and Yaxiu Market are associated with trade in counterfeit fashion, jewelry, sports, and apparel products.
- Chaoyang District authorities have agreed to enhance their cooperation with copyright owners.
- Local protectionism remains strong in Chaoyang District.

*Retail and wholesale markets.* Retail piracy and counterfeiting remain widespread in Beijing; progress in getting the problem under control has been very limited.

- In spite of increasing attention from foreign governments, the media, and China’s central and local governments, the Silk Market in Beijing remains possibly the world’s most notorious market for counterfeit goods. Landlords at the market have signed agreements to oust counterfeiters, and Chaoyang District officials believe the situation at the market has improved. However, rights holders’ surveys show no real change in the level of sales of counterfeit goods.
- An industry survey of CD/DVD shops showed that the 2006 “100-day campaign” had an impact in Beijing, reducing the estimated rate of pirated product offered for sale during the campaign to 28 percent, compared to 57 percent in an earlier survey.

*Internet.* Beijing authorities have been among the most proactive in China in recognizing and moving to address the serious challenges of Internet piracy that are emerging throughout China.

- Internet cases have successfully been transferred from the copyright bureau to the PSB, and suspects have been tried and convicted. However, suspects who violate copyrights are often convicted for illegal business operations rather than copyright infringement.
- Beijing authorities have been proactive in looking for ways to make Internet enforcement procedures more effective.

*Universities.* Beijing’s university campuses have also been cited by rights holders as magnets for textbook piracy, and they offer a broadband environment that can support copyright infringement. Beijing authorities state that universities receive no safe harbor from IPR laws. Industry praised authorities for enforcement actions involving a Tsinghua University textbook center, and have called for investigations to be repeated at the beginning of the school term and at other peak copying times.

**Fujian Province** is home to large-scale manufacturing, including athletic footwear companies that have repeatedly been the target of infringement allegations by U.S. rights holders.

Provincial officials in Fujian stated that IPR agencies have improved interagency coordination and are transferring more cases to public security authorities for criminal investigation. As in other areas, provincial officials pointed to IPR complaint centers, specialized IP courts, and use of legitimate software as concrete accomplishments.

*Hot spots.* The government has set up IPR complaint centers in Fujian, Quanzhou, and Xiamen. According to industry reports:

- The cities of Jinjiang, Putian, and Quanzhou are particularly associated with counterfeiting in the footwear sector. Local protectionism appears to be a problem.
- Art printing companies have identified Minhou County as home to a large number of infringing printers.

*Criminal enforcement.* Official statistics for 2005 showed that Fujian referred only five administrative trademark cases for criminal prosecution (however, local officials state that there were 26 such cases). Rights holders in the footwear sector praised the willingness of provincial public security authorities to take the lead in a number of cases where other approaches proved ineffective. However, copyright owners who sought criminal enforcement against large retail

operations in Xiamen were reportedly instructed to take their cases to administrative authorities instead.

*Administrative enforcement.* Fujian was the only province studied that outpaced China as a whole in 2005 in the number of both trademark and copyright administrative cases handled relative to the size of its economy. For example, Fujian handled over 30% more administrative trademark cases than Guangdong, in spite of having an economy roughly one-third the size of Guangdong. Unfortunately, rights holders in both trademark and copyright industries have noted that in Fujian, like other parts of China, low administrative penalties often have little or no deterrent effect.

*Export.* Xiamen is one of China's top five ports of lading for infringing goods seized at U.S. borders. Xiamen Customs has jurisdiction over approximately half of Fujian province, including the port cities of Quanzhou and Zhangzhou, and has a special division that handles IPR enforcement. Xiamen Customs has worked closely with foreign rights holders, and has won praise for its work.

*Internet.* In November 2006, the Xiamen Huli District Court decided what was reportedly the first criminal case involving infringement of the right of communication over information networks. The case involved a pirate music website and resulted in two men being sentenced to one year in prison plus fines.

*Universities.* Fujian authorities said that they planned to conduct special campaigns against textbook infringement to coincide with the beginnings of school terms.

**Guangdong Province** is the center of large-scale counterfeit and pirate manufacturing in China for a variety of goods, ranging from low-cost consumer goods, such as household items, clothing and optical media, to high-technology products, such as computer equipment, video game consoles (and game discs/cartridges), and other electronics. A leading industry group calls Guangdong "the biggest problem spot for counterfeiting in China." Rights holders have also complained of patent infringement by Guangdong-based companies.

Provincial officials in Guangdong acknowledged the need to improve deterrence against IPR violations, and expressed a welcome openness to closer engagement with U.S. and other foreign rights holders. Authorities at the provincial and local levels stated that they had launched specific initiatives to strengthen Guangdong's courts, reduce backlogs of IP cases, facilitate rights holders' complaints, and promote procurement of legitimate software by governments and enterprises. At a local level, Shenzhen officials noted that they budget specifically for legitimate software procurement, and cooperate closely with optical disc industry associations.

*Hot spots.* Provincial officials stated that specific cities targeted for enforcement during the past five years included Guangzhou, Shenzhen, Shantou, Jieyang, and Chaozhou. The government has set up IPR complaint centers in Guangzhou, Shenzhen, Zhanjiang, and Shantou. According to industry reports:

- The cities of Guangzhou and Dongguan are particularly associated with counterfeiting in the fashion and sports equipment sectors.
- Guangzhou and Shantou are associated with counterfeiting of health, beauty, and household care products.
- Shenzhen is associated with counterfeiting in the information technology, fashion, and cosmetics sectors, as well as e-commerce in all products.
- Chaoyang and Jieyang are associated with counterfeiting of pharmaceuticals and cigarettes.
- Local protectionism remains strong in the Baiyun and Huadu Districts of Guangzhou.

*Criminal enforcement.* In 2006, USTR noted that availability of criminal remedies is a problem in Guangdong. Statistics for 2005 showed that Guangdong referred only 17 administrative trademark cases for criminal prosecution. Viewed in light of the size of Guangdong's economy and its role as a center of manufacturing, this number was surprisingly low, lagging behind Beijing and Zhejiang. Industry has called for particular attention to intensifying criminal enforcement in hot spots, such as Shenzhen, Guangzhou, and Dongguan.

Right holders have noted some improvements in availability of criminal remedies, as well as some continuing problems.

- Companies in the pharmaceutical industry have praised public security authorities for investing manpower and resources in attacking counterfeiting networks throughout Guangdong, and achieving notable successes.
- In the sector of health, beauty, and household care products, Guangdong has been identified as a relatively difficult place to criminally prosecute counterfeiters. Guangdong accounted for two-thirds of the raids conducted by one major company in this sector, but only 38 percent of the criminal convictions. (According to this one rights holder, authorities have responded by setting up a special team to address the problem.)
- Criminal fines and prison sentences were criticized as being generally lighter in Guangdong province.

*Administrative enforcement.* In spite of being a manufacturing hub and center for counterfeiting, Guangdong in 2005 had fewer administrative trademark cases, relative to its economic size, than other jurisdictions. Provincial authorities recognize that administrative enforcement at trade fairs is especially important given Guangdong's role as host of the Canton Trade Fair and other major fairs; the U.S. Government looks forward to continuing to work closely with local officials and trade fair organizers to improve enforcement at these fairs.

*Export.* Guangdong's role as an export engine creates a need for more deterrent customs remedies. Yantian and Shekou, both located in Guangdong, are two of China's top five ports of lading for infringing goods seized at U.S. borders.

*Optical disc production.* The 2006 Special 301 Report highlighted the need for criminal prosecutions to address optical media piracy in Guangdong. In March 2007, according to official Chinese media, 13 people were arrested, thirty machines were seized, and more than 1.81 million pirated CDs and DVDs were seized in a raid in Guangzhou. China's official media called this "the largest single crackdown on CD and DVD piracy in China's history." According to

industry, the site raided was a packing center and the 30 machines seized were for erasing embossed SID codes from optical discs. The U.S. Government applauds this action and encourages authorities to pursue criminal actions against unauthorized optical disc manufacturing, and to follow through with convictions and deterrent penalties. Industry reports that it has been actively seeking criminal prosecutions in connection with at least seven optical disc factories in Guangdong, so far without success.

*Retail and wholesale markets.* Local authorities in Guangdong have achieved mixed results in their efforts to address piracy and counterfeiting in retail and wholesale markets.

- Among other problem areas, rights holders cited Ziyuangang Market in Guangzhou and Lowu market in Shenzhen.
- An industry survey of CD/DVD shops showed that the 2006 “100-day campaign” had a significant impact in the city of Guangzhou, reducing the estimated rate of pirated product offered for sale from 48 percent to 18 percent.
- Conversely, in the city of Shenzhen the same survey found no positive effect of the 100-day campaign on the amount of pirated product offered for sale (82 percent before the campaign, 88 percent during the campaign).
- Guangdong administrative authorities have indicated that they will begin to pay more attention to the responsibility of landlords to self-police infringing markets. This is a welcome development.

*Internet.* Guangdong is increasingly a center for Internet piracy. It has taken some positive actions in this area, but, like the rest of China, faces serious challenges.

- Guangdong is in the top five in China in number of notices for alleged Internet infringement sent by a recording industry group.
- Industry commended Guangdong authorities for taking action against a family of sites offering free downloads of books and other materials, while awaiting action on other sites that had been the subject of complaints.
- Trademark owners are increasingly concerned about use of the Internet, in connection with express delivery services, for direct marketing of counterfeit products to foreign consumers.

*Universities.* Industry praised a decision by Guangdong authorities to time inspections of university textbook centers to coincide with the beginning of school terms. However, rights holders remain concerned by the lack of transparency in the process of inspection and punishment decisions.

**Jiangsu Province** is another large-scale manufacturing center in China. Jiangsu has been recognized for its innovative and proactive IPR protection and enforcement efforts, including promulgation of local regulations and policies, and engagement with domestic and foreign institutions on IPR training and cooperation. For example, in 2006 Jiangsu IPR authorities published a guide for investors on IPR protection in Jiangsu. In early 2007, Jiangsu officially entered into a cooperative IPR program with the U.S. Chamber of Commerce.

Despite high-level attention to IPR issues, industry reports local level discrepancies in IPR enforcement efforts with respect to case transfer practices, trade secret protection, and seized good valuations. As in many other Chinese provinces, Jiangsu IPR enforcement efforts continue to focus on administrative remedies, resulting in fewer criminal referrals.

*Hot spots.* According to industry reports:

- IP infringers are moving their operations to the less-developed northern part of Jiangsu province to enjoy a “holiday” from raids and other IPR enforcement activities that are increasing in southern Jiangsu and northern Zhejiang.
- The southern Jiangsu city of Wuxi is particularly associated with the manufacture of counterfeit auto parts.
- In 2006, Jiangsu was home to the largest share of China’s Internet Service Providers (ISPs) receiving cease and desist notices for alleged Internet infringement by a recording industry group. The northern city of Yancheng has been referred to as the “home of pirate servers.”
- Jiangsu opened three IPR Complaint Centers in the past year, in Nanjing, Suzhou, and Lianyungang.

*Administrative enforcement.* Since 2005, Jiangsu authorities have issued several IPR-related regulations to enhance enforcement efforts. In 2005, Jiangsu Administration of Industry and Commerce (AIC) handled 2009 trademark cases, among the highest number in China, and 314 patent cases.

- Nanjing has created a publicly-available database of registered trademarks to increase brand awareness.
- On copyright protection, while the 2005 number of copyright cases was relatively low (at 1094), Jiangsu has subsequently initiated a number of unique approaches to combat copyright piracy.
- Nanjing issued a rule that reverts the burden of proof in administrative copyright cases to the suspect to prove that the source of seized goods is legitimate.
- The Nanjing Copyright Bureau has also enlisted local computer repair shops to refuse to service computers that contain pirated software.

The U.S. Government commends the Suzhou Intermediate Court for recognizing the Kodak well-known trademark status in a court case involving the Kodak name.

*Criminal enforcement.* Increasing criminal prosecutions and case transfers should remain a priority for Jiangsu authorities.

- The U.S. Government commends the notable 2006 Nanjing Xuanwu District court decision that convicted two suspects to prison and fines for selling pirated AV products.
- The U.S. Government has offered to co-host a public awareness program with Nanjing authorities, modeled after successful programs held with Beijing and Shenzhen municipal authorities, on how to file criminal copyright cases.
- Distinctions in methodologies for valuation of infringing goods continue to impede criminal prosecutions for trademark and copyright infringement in Jiangsu. The courts



should accept criminal cases based on thresholds met by combined sales volume and seized inventory.

- Despite positive steps, criminal fines and prison sentences in Jiangsu remain relatively light, as in many other Chinese localities.

*Retail and wholesale markets.* Local authorities in Jiangsu continue to expand efforts to prevent the sale of infringing goods in retail and wholesale markets:

- Local Nanjing officials reported that, after recognizing Nanjing was becoming a transit center for retailers and wholesalers of counterfeit optical discs, they formed an interagency anti-piracy task force to better monitor areas known for selling pirated AV products. The local Copyright Bureau reported that it is also cooperating with Nanjing Public Security Bureau to ensure landlords are held liable for tenants' activities.
- Jiangsu promulgated Provincial Rules on AV Market Management, which require that AV business operators carry proof of relevant licenses of the publishers and distributors of the AV product and proof of the legality of the AV product.
- Jiangsu Province also launched a province-wide campaign in 2006 to take action against fake products in retail markets and increase cooperation with landlords.

*Internet.* Piracy on the Internet remains a problem for Jiangsu province, along with many other localities around China. Officials in Jiangsu and elsewhere noted the difficulty for enforcement officials to collect evidence and establish a profit motive, in accordance with Chinese law.

- A recording industry survey found Jiangsu as the top Chinese location of ISPs allegedly hosting infringing products in March 2007.
- A number of pioneering criminal copyright cases involving Internet piracy have been brought in the northern Jiangsu city of Yancheng.
- Jiangsu officials reported that they continue to engage in foreign industry and WIPO training on Internet issues.

*Universities.* In both Suzhou and Nanjing, the Copyright Bureaus reported continued coordination with local universities following Ministry of Education circulars to eradicate textbook piracy on campuses. Suzhou and Nanjing officials have also coordinated with universities to train students on IPR awareness.

**Shanghai City** has been praised by industry observers as a relatively bright spot in China's IPR protection environment. Shanghai IPR officials are generally well-trained and responsive to industry requests for IPR actions, welcome cooperation with foreign industry and governments, and have instituted creative programs to improve coordination among relevant IPR agencies. However, the continued widespread availability of counterfeit and pirated products through retail venues in Shanghai demonstrates the limited effectiveness of administrative remedies and need for Shanghai to pursue more deterrent criminal enforcement.

*Hot spots.* According to industry reports:

- Despite the welcome July 1, 2006 closing of the notorious Xiangyang Market, infringing products in retail markets and through mobile vendors remain widely available in Shanghai.

- Industry reported that as many as 200 vendors from Xiangyang have relocated to nearby Yatai and Qipu Road markets.

*Retail and wholesale markets.* Government officials have responded to concerns over widespread retail piracy and counterfeiting rates through increased actions:

- In addition to closing Xiangyang Market, police worked with Shanghai AIC to raid residences around the former market where infringing products were being sold.
- Shanghai administrative authorities have devised a strategy to proactively visit retail outlets (conducting 20,000 visits in the first half of 2006).
- Throughout anti-piracy and anti-counterfeiting campaigns, industry surveys show that infringing goods remain widely available in Shanghai.

*Administrative Enforcement:*

- In 2005, according to Chinese statistics, Shanghai handled 1227 trademark cases, 57 patent cases, and 188 piracy cases. In 2006, Shanghai also established an IPR Complaint Center.
- The Shanghai IP Coordinating Office created the Yangtze River Delta Protection Network, which includes 24 cities in the area, to facilitate communication among administrative and enforcement officials on cases where rights holders and infringers are located in different provinces.

*Internet.*

- There has not been any reported instance of an Internet piracy case transferred for criminal prosecution in Shanghai.
- Local authorities have worked closely with the telecommunications industry to close down over 1,000 Internet sites to date that facilitated illegal downloads.
- A recording industry association reports that in 2006 Shanghai was among the top three hosts of ISPs that were sent notices for alleged hosting of infringing materials.

*Criminal Enforcement:* Although the number of IPR criminal case transfers in Shanghai continues to rise, this number remains much too low relative to the size of the local economy. Shanghai government should be commended for initiating a number of pilot programs to assist in better administrative-criminal coordination on IPR:

- Shanghai PSB launched a pilot program whereby it initiates criminal investigations based on “suspicious leads” rather than evidence of illegal activity. Industry commended the recently concluded successful case involving counterfeit pharmaceuticals in Shanghai that was initiated by Shanghai PSC based on a suspicious lead.
- Shanghai has also instituted a cross-agency, horizontal Case Monitoring System digital database that tracks IPR cases from initial raids to the transfer of information to the police and prosecutors, to judicial adjudication of a case.

*Courts:* According to Chinese statistics, Shanghai courts heard more IPR cases than either Zhejiang or Jiangsu counterparts in 2005.

- Industry commends the efficiency of many Shanghai courts. Cases there typically move quickly, with the courts awarding statutory damages if they find infringement.
- In 2006, Shanghai launched an IPR Judicial Certification Center to provide expert certification on technical IPR issues related to litigation and disputes.

*Universities:* Shanghai authorities recognize that illegal copying of textbooks is an issue at Shanghai universities, particularly in small-scale student-run facilities.

- In 2006, after being alerted of systematic infringement of textbooks at the textbook center at Fudan University, Shanghai Copyright Bureau authorities took enforcement action.
- Industry applauded the swift response by Shanghai authorities, with the expectation that follow-on activities would continue at Fudan and other universities in Shanghai.
- Other well-known Shanghai universities have also allowed wholesale book copying in on-campus textbook centers. Shanghai authorities should proactively continue to monitor campuses to prevent continuation of this illegal activity.

**Zhejiang Province**, a manufacturing hub in eastern China with a large proportion of privately owned production facilities and the major Ningbo port, has been identified over the years as a major distribution center for infringing goods to overseas markets. Rights holders have repeatedly drawn attention to the city of Yiwu as an important distribution center for small commercial goods.

Zhejiang authorities reported on proactive efforts they have undertaken to combat IPR infringement.

- In 2004, Zhejiang established an IPR task force to facilitate interagency cooperation. Its work has included clarifying rules regarding trade fair and publishing house IPR protection, improving legislation and implementing special programs with manufacturers and retailers.
- More recently, Zhejiang's enforcement efforts have increased in the area of wholesale markets and trade fairs.
- In 2006, the government established IPR Complaint Centers in Hangzhou, Ningbo, Yiwu and Wenzhou, and Zhejiang authorities confirmed their continued increased attention to registration and protection of geographical indications.
- In late 2006, Zhejiang province co-hosted an IPR enforcement seminar with the U.S. Chamber of Commerce on global trends and best practices.

*Hot Spots*, according to industry:

- The cities of Ningbo, Cixi, Yiwu and Wenzhou have been particularly associated with counterfeiting manufacturing and distribution (including export).
- Industry representatives have noted that counterfeiters have been moving to the smaller cities of Yuhuan and Taizhou in response to increased enforcement efforts in Yiwu, Cixi and Ningbo.
- While Operation Mountain Eagle initially reduced the amount of foreign distribution and sales activity in Zhejiang, there are signs that Chinese business representatives are seeking to displace foreigners in distributing counterfeit goods abroad.

*Retail and Wholesale Markets:* Zhejiang is home of the China Small Commodities Market in Yiwu, reportedly the world's largest wholesale market. Yiwu municipal officials welcomed a U.S. Government delegation to discuss local IPR issues.

- Recognizing its reputation as a major distribution point for wholesale goods, officials in Yiwu outlined efforts undertaken to improve IPR enforcement in its market.
- Yiwu officials have set up a coordination body to improve enforcement. They are pursuing closer coordination between industry and the Yiwu government, training for officials on IPR issues, a policy of revoking business licenses for repeat IPR offenders, and employment of undercover Consumer Protection Office investigators to root out underground sales of pirated and counterfeit goods.
- Industry reports that local enforcement authorities are increasingly responsive to rights holders' complaints.

*Administrative Enforcement:*

- The Zhejiang AIC handled 4702 trademark cases in 2005, leading the country in number of cases reported and number of cases involving foreign rights holders.
- In comparison to trademark issues, there were only 16 copyright cases prosecuted by the Copyright Bureau in 2005, placing Zhejiang well below Shanghai and Jiangsu rates. To improve coordination and oversight of cultural product markets, Zhejiang State Administration of Radio Film and Television, Culture and Copyright Bureau offices are now co-located.
- Ningbo courts reported that they have stepped up public awareness on IPR issues, and that since 2005, civil decisions have been available online, a transparency and public awareness trend that is taking hold in many localities around China.

*Criminal Enforcement:*

- Zhejiang led the country in terms of trademark cases transferred for criminal prosecution in 2005 (with 109 cases), although remedies continue to be largely non-deterrent, as in other parts of China. There were no reported transfers of copyright cases.
- Zhejiang authorities have confirmed that facilitating more criminal transfers of copyright, patent and trademark cases remains a top priority.
- Local court officials in Yiwu and Ningbo described efforts to increase IPR training for judges and expedite the handling of IPR cases, and industry sources have reported that, in recent years, it has become easier to file criminal IPR complaints in Yiwu.
- In February 2005, Zhejiang authorities established local standards for referral of administrative IPR cases to the PSB for criminal prosecution, including a "three strike" provision to automatically have police investigate repeat offenders.
- Valuation of seized goods remains a key problem. For example, the value of a seizure of counterfeit auto parts in a recent Zhejiang case was assessed based on the packaging of the seized goods rather than the goods themselves, impeding criminal prosecution of the case.
- Industry reports continued resistance by local administrative officials to transfer cases for criminal investigation and prosecution, a problem in many localities around China.

*Exports:* The Ningbo port is one of China's top five ports of lading for infringing goods seized at U.S. borders. According to the Zhejiang White Paper, Zhejiang Customs handled 30 IPR-related cases in 2005, valued at RMB 1.25 million.