

Special 301 Q & A - 2003

Q: In the past, USTR has used the Special 301 report to announce new WTO dispute settlement cases. You didn't do so this year. Has USTR changed its policy regarding dispute settlement? Are you turning your back on that mechanism?

A: Not at all. We will use the WTO dispute settlement mechanism to resolve differences whenever it is appropriate to do so. Our preference is always to obtain benefits for American companies as quickly as possible, and we will use the tool that we believe is most effective to do that. In most cases, we attempt to resolve disputes "out of court," either through consultations with countries or by using Special 301. In this year's Special 301 report, you will see that we have done just that with many countries. A full-blown WTO case is simply one of many ways to resolve disputes, and we view it as a tool of "last resort."

Q: What are some ways you've settled disputes without going to a WTO panel?

A: Argentina is a prime example of how we are trying to settle disputes without going to a panel. In that case, there were ten complicated claims. Through consultations, we were able to amicably resolve eight of these claims by getting Argentina to clarify how certain aspects of its law operate in conformity with its international obligations. In those instances where clarifications would not be sufficient, Argentina has agreed to amend its law. All of this was done without presenting the dispute to a WTO panel.

[If asked] There are two unresolved issues in this dispute, but we have agreed with Argentina to continue consultations on these. If we can't resolve these two issues, we will request a WTO panel. As I said, the panel would be a tool of "last resort."

[If asked] We also resolved our dispute with Brazil through consultations. Because Brazil has never used the compulsory licensing authority that we were concerned about, we agreed to transfer our dispute to a bilateral consultation mechanism so that, should Brazil decide to use this authority, we would receive advance notice, and consultations can be reinitiated. Of course, if we cannot resolve our differences then, we have reserved our rights to request a panel.

Q: By not announcing the initiation of disputes in this year's report, does that mean that you will not initiate disputes at all this year?

A: No. We don't only initiate disputes in the Special 301 process. We will initiate whenever it is appropriate to do so.

Q: What is the status of the US dispute with the EC with respect to geographical indications?

A:

- On April 4 we announced that we had requested new consultations with the EU to add a new claim to this dispute.
- The purpose of the new consultation request is to add an additional claim to the existing WTO case asserting that the EU regulation violates national treatment and most favored nation treatment trade rules contained in another agreement, the General Agreement on Tariffs and Trade (GATT).
- The United States originally requested consultations regarding the EU's denial of national treatment and denial of appropriate protection for trademarks under trade rules contained in the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS).
- Now that a new consultation request has been filed, under the dispute rules of the WTO, if a settlement is not reached within 60 days after the EU receives the request, the United States can ask that a formal WTO dispute settlement panel be established to review the dispute.

Q: China has a very poor record of protecting intellectual property. The size of its economy means that this failure is particularly costly for U.S. industry. Has there been any progress?

A. There has been some progress. For example, China strengthened its legal framework considerably, amending its patent law in 2000 and its trademark and copyright laws in 2001 to make them more consistent with the TRIPS Agreement obligations and international standards. In addition, China has increased its enforcement efforts, and American industries report improved cooperation from administrative enforcement agencies in regard to raids and the imposition of fines.

Of course, this is not enough. China's leadership understands that the continuing unacceptably high levels of piracy and counterfeiting need to be addressed. Trademark counterfeiting, optical media piracy (CDS, VCDs, and DVDs), and business and entertainment software piracy remain persistent problems. U.S. trademark and copyright holders continue to have difficulty enforcing their intellectual property rights in Chinese courts, and we remain concerned over certain aspects of China's patent regime, such as the difficulties encountered by U.S. pharmaceutical companies in obtaining administrative protection for their products. We intend to continue to use our all available mechanisms to press for further improvement in China's IPR regime.

Q: In total, how many countries did you review? How many are on each list?

A: We reviewed about **74** countries; of those **50** were put on one of the lists; of those, **1** was designated a **Priority Foreign Country** (Ukraine); **2** are under **§306** monitoring (China and Paraguay); **11** are on the **PWL**; and **36** are on the **WL**.

Q: How does this compare with last year's report?

A: Last year, we reviewed 72 countries, and this year, we reviewed 74. The total number of countries on the **PWL** has decreased from 15 to 11, and the total number of countries on the **WL** has increased from 33 to 36. The number of countries designated as **PFC** has remained constant, as has the number of nations subject to Section 306 monitoring.

Q: *Are there any countries where intellectual property protection has worsened over the past year?*

- Regrettably, deteriorating intellectual property protection in a number of our trading partners has forced us to move them to the Priority Watch List or place them on the Watch List. An example of this is Poland.
- Despite intensified USG engagement with the Polish government, the IPR situation in Poland has not improved since the 2002 review.
- Our main concern with Poland is the lack of political will by the Polish Government to shut down the open air market inside the Government owned Warsaw Stadium, which is awash in pirated optical media products.
- In addition to the Stadium problem, optical disc piracy in Poland is becoming a major problem, even faster than the industries anticipated.
 - While Poland has 9 operating optical disc plants that produce legitimate products, we understand that piratical product is being produced at some of these plants as well.
- For these reasons, and others, Poland is being elevated to the PWL.

Q: *What is the difference between last year's lists and this year's (i.e., who moved?)*

A: This year, we took 4 countries off the Watch List entirely (Armenia, Greece, New Zealand, and Qatar) and brought Colombia, Egypt, Hungary and Israel off the PWL (onto the WL). In addition, we raised 2 countries (The Bahamas and Poland) from the WL to the PWL, and we put Ecuador and Mexico on the WL.

Q: What are some examples of progress in the past year?

A: Egypt and Israel are some examples of progress in the last year

- Egypt made significant progress in strengthening its IPR protections through improvements in its domestic legal and enforcement regimes in 2002.
- The major development in 2002 was Egypt's passage of a new comprehensive IPR law which represents an improvement in all major facets of Egypt's IPR
- The Egyptian Government continues to advance its effort to ensure the use of legitimate software in all government offices.
- In addition, Egypt's parliament ratified the WIPO Patent Cooperation Treaty, a step that the Egyptian Government intends to follow up with changes in its domestic regulations necessary to come into compliance with the treaty.
- For these reasons we brought Egypt down from the PWL to the WL
- Israel is another country that made progress.
- In 2002 Israel maintained the momentum it began to build in 2001 in the enforcement of copyrights and trademarks.
- For instance, Israel has increased its budgetary, educational, police and judicial resources devoted to these enforcement efforts yielding concrete results in terms of raids, prosecutions and convictions, and contributing to a drop in the piracy level with regard to U.S. rightholders.
- Israel took an additional important step in protecting intellectual property in 2002 with its passage of the Amendment to the Copyright Ordinance, which increased criminal penalties for piracy in general and strengthened the ability of Israeli authorities and courts to prosecute and punish copyright crimes.

Q: Why is Ukraine still listed as a Priority Foreign Country? What are your concerns in the Ukraine?

A: We have been expressing concerns about the growth of copyright piracy and the lack of enforcement in Ukraine for some time now. As a result of these concerns, the United States withdrew benefits from Ukraine under the Generalized System of Preferences in August 2001, and imposed \$75 million worth of sanctions on Ukrainian imports on January 23, 2002, based on the repeated failure of Ukraine to comply with the June 2000 Joint Action Plan. We are currently working with Ukraine and industry officials to develop a set of 10 regulations that will address many, but not all, of the U.S. Government's concerns regarding copyright protection in Ukraine for optical disk media.

Q: What are you saying about your "health policy"? Has it changed from the last

administration?

A: USTR has not changed its present flexible approach to health-related intellectual property issues. That is to say, consistent with America's protection of intellectual property, we remain committed to working with countries to develop serious programs to prevent and treat HIV/AIDS.

We have informed countries that, as they take steps to address a major health crisis, like the HIV/AIDS crisis in sub-Saharan Africa, they should be able to avail themselves of the flexibilities afforded by the TRIPS Agreement, provided that any steps they take comply with the provisions of the Agreement. The Declaration on the TRIPS Agreement and Public Health agreed upon at the WTO Doha Ministerial in November 2001 is a reflection on this commitment.

***Q:* Is South Africa being listed on the Watch List?**

A: No.