United States General Accounting Office

GAO

Report to Congressional Committees

October 1992

NONIMMIGRANT VISAS

Requirements Affecting Artists, Entertainers, and Athletes

GAO/NSIAD-93-6

GAO

United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-250554

October 26, 1992

The Honorable Joseph R. Biden, Jr.
Chairman, Committee on the Judiciary
United States Senate

The Honorable Edward M. Kennedy
Chairman, Subcommittee on Immigration
and Refugee Affairs
Committee on the Judiciary
United States Senate

The Honorable Jack Brooks
Chairman, Committee on the Judiciary
House of Representatives

The Honorable Romano L. Mazzoli
Chairman, Subcommittee on International
Law, Immigration, and Refugees
Committee on the Judiciary
House of Representatives

Public Law 102-232, December 12, 1991,[1] requires us to submit a report no later than October 1, 1994, containing information on

> "the admission of artists, entertainers, athletes, and related support personnel as nonimmigrants under subparagraphs (O) and (P) of section 101(a)(15) of the Immigration and Nationality Act, and information on the laws, regulations, and practices in effect in other countries that affect United States citizens and permanent resident aliens in the arts, entertainment, and athletics, in order to evaluate the impact of such admissions, laws, regulations, and practices on such citizens and aliens."

The Chairman, Subcommittee on Immigration and Refugee Affairs, Senate Committee on the Judiciary, stated in the Congressional Record that our study should also address

- other countries' barriers to employment of U.S. artists, entertainers, and athletes and
- other countries' barriers to having U.S. artists, entertainers, and athletes' arts and skills embodied in products disseminated in those countries.

[1]Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, title II—O and P Nonimmigrant Amendments, section 202 (b)(1).

Data on the use of O and P visas for the first full fiscal year will not be available until after September 1993 because, with certain exceptions, the effective date for their use was delayed from October 1, 1991, to April 1, 1992. We therefore are unable to fully discharge our responsibilities under the act until that data becomes available. However, the Chairman, Subcommittee on Immigration and Refugee Affairs, Senate Committee on the Judiciary, requested that we prepare an interim report based on available information.

This report provides the information that is available from the Department of State, the U.S. Information Agency, the Immigration and Naturalization Service (INS), the Office of the U.S. Trade Representative, and the Department of Commerce's U.S. and Foreign Commercial Service. We also contacted representatives of the motion picture industry, the recording industry, the arts industry, the AFL-CIO, and about 20 arts organizations and talent agencies, as well as several immigration lawyers.

Background

Before April 1, 1992, foreign artists, entertainers, and athletes entered the United States with the H-1B work visa for people with "distinguished merit and ability." The Immigration Act of 1990 (P.L. 101-649, Nov. 29, 1990), generally effective October 1, 1991, as it relates to nonimmigrants, redefined the H-1B visa to cover persons with skills in a "specialty occupation." It also established new classes of O and P temporary worker visas for those people previously qualifying for the H-1B on the basis of distinguished merit and ability.[2] The subclasses of these new visas are defined as follows.

O-1 visas are for people with extraordinary ability in the arts (including films or television),[3] sciences, education, business, or athletics, and O-2 visas are for their essential support personnel. P-1 visas are for internationally recognized athletes or entertainers and their essential support personnel; P-2 visas are for artists or entertainers performing as part of a reciprocal exchange program; and P-3 visas are for artists or entertainers specializing in culturally unique performances.

[2]See Immigration and the Labor Market: Nonimmigrant Alien Workers in the United States (GAO/PEMD-92-17, Apr. 28, 1992) for a discussion of temporary worker visas and the changes made by the Immigration Act of 1990.

[3]Arts, as defined by INS in its interim regulations, include any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts.

To obtain an O or P visa, an applicant submits to INS a completed form I-129, Petition for a Nonimmigrant Worker. In addition to such information as name and date of birth, the applicant must describe the nature of the work to be performed. INS requires evidence of the applicant's abilities in the form of critical acclaim, list of awards received, or other recognition. It also requires submission of a consultation—a written advisory opinion, with certain exceptions—on the nature of the work and the qualifications of the applicant from the appropriate U.S. peer group or labor union. Finally, a U.S. consular officer issues the O or P visa upon presentation of the approved petition. At the U.S. port of entry, the visa holder presents the O or P visa to an INS inspector who grants the visa holder entry into the United States for a specified time. No additional permits are required.

The 1990 act limited the number of P-1 and P-3 visas to 25,000 annually. Subsequently, a law enacted on October 1, 1991, delayed the effective date of the O and P visas for artists, entertainers, and athletes until April 1, 1992. People in these occupations continued to apply as H-1B nonimmigrants until then.[4] Then in December 1991, the Congress removed the annual limit on the number of P visas and established our reporting requirement.

Results in Brief

INS is collecting data on the number of people included in petitions for visas and of entries by visa holders into the United States. The State Department is collecting data on the number of visas issued. INS has a legislative mandate to report, by occupation, on the number of people included in petitions.[5] However, even though INS' current petition form for O and P visas asks for the petition beneficiaries' occupations, INS is not entering that information into the automated data system. For example, no petition data is being entered to distinguish among the various occupations under the O-1 visa, such as arts, sciences, education, business, or athletics. INS personnel considered information beyond that provided by the narrowly defined visa classes to be unnecessary.

The U.S. Information Agency and INS have collected information on other countries' work requirements pertaining to artists, entertainers, and

[4]Armed Forces Immigration Adjustment Act of 1991 (P.L. 102-110, Oct. 1, 1991). The P-2 visa, and the O-1 visa as it relates to persons of extraordinary ability in the fields of science, education, or business, became effective on October 1, 1991.

[5]Section 207 (c), Public Law 102-232, Dec. 12, 1991, provides that the Attorney General shall report annually with respect to O and P petitions and other matters. Authority to administer immigration laws has been delegated to the Commissioner of INS.

athletes. Entertainment industry representatives indicated that European Community countries, Australia, Canada, and New Zealand were of the most interest to them. One-half of the European Community countries do not require visas specifically for U.S. artists, entertainers, and athletes for stays up to 90 days, but they generally do require a visa and/or work or residence permit after a specified time in the country. Foreign employers of U.S. workers usually handle the visa and other foreign requirements.

The entertainment industry is concerned about other countries' barriers to the export of U.S. entertainment industry products and the lack of protection granted to U.S. intellectual property rights. For example, the International Intellectual Property Alliance estimates that the United States economy lost more than $3.9 billion in 1991 through piracy of U.S. copyright materials. The motion picture and recording industries have reported extensively on these matters, and they have been included in the U.S. Trade Representative's annual report. Some of the concerns also have been considered during consultations under the General Agreement on Tariffs and Trade (GATT).

Use of O and P Visas

Information on the use of O and P visas for a full fiscal year will be available after September 1993. Information will be available on the number of people included in petitions for each class of visa, number of visas issued, and number of entries by O and P visa holders into the United States. In fiscal year 1991, before the O and P visas were established, artists, entertainers, and athletes received an indeterminable portion of the 51,882 H-1B visas issued by the State Department.

State Department Visa Information

After the end of each fiscal year, the State Department reports on the number of visas it issued by class. Although State does not prepare formal reports, the information is available after the end of the first 6 months of the fiscal year. For example, from October 1991 through March 1992, State issued 24,552 H-1B visas, 4 O visas, and 3 P visas.[6] Information for the last 6 months of fiscal year 1992 will be available several months after the end of the fiscal year.

[6]Because of technical problems, two consulates were not included in these numbers.

INS Petition and Entry Information

Under Public Law 102-232, INS must report by April 1, 1993, and annually thereafter on the number of workers by occupation covered by petitions under each subclass of H, O, and P visas. O and P visas cover several occupations, such as arts, athletics, business, education, entertainment, and sciences. However, INS is not collecting data by occupation for the O and P petition beneficiaries in its automated data system. Thus, unless INS revises its data collection system, occupational data for O and P petition beneficiaries will not be available except through a detailed analysis of the individual petitions. INS officials told us that the visa classes provide the information that is normally needed. They said that it would be costly to routinely enter detailed occupational data into the system.

Information on petitions on behalf of artists, entertainers, or athletes for the new O and P visas covers only a limited time because they were included in petitions for the H-1B visa until April 1, 1992. For April through July 1992, INS approved petitions on behalf of artists, entertainers, or athletes for 203 visas: 1 O-1, 47 P-1s, and 155 P-3s.

INS also reports annually on the number of times people with the various classes of visas enter the United States. The data made available to us for October 1991 through June 1992 (the last month available at the time of our review) showed that no one entered the United States with O or P visas, although the State Department reported issuing a few such visas.

Since there were no entries with O and P visas, we obtained entry data for the H-1B visa, which showed 83,841 entries during this period. During fiscal year 1991, people with H-1B visas entered the United States 116,729 times, which likely includes multiple entries by the same people.

INS inspectors at U.S. ports of entry, depending largely upon their work load, record occupational data on some workers entering the United States. During fiscal year 1991, the inspectors recorded occupational data for 23,393 of the 116,729 H-1B visa-holder entries into the United States. Of these 23,393 entries, 4,142, or about 18 percent, involved artists, entertainers, athletes, and related support personnel. This percentage applied to the total entries yields about 21,000 entries during fiscal year 1991.

Other Countries' Employment Requirements

The U.S. Information Agency, in response to an August 1991 request to U.S. embassies, obtained information on 47 countries' requirements relating to entry and employment of U.S. artists, entertainers, and athletes.

Many countries, according to this information, have no requirements specifically for artists, entertainers, and athletes. One-half of the European Community countries have no requirements for visits of up to 90 days, but they do require visas and/or work or residence permits for stays beyond the specified time in the country. The other countries require visas and/or work permits for stays of any length (no information was available for one country).

In June and July 1992, INS obtained information from seven European Community countries, which reflected requirements similar to those provided to the U.S. Information Agency by U.S. embassies and consulates overseas.

Appendix II contains a summary of the requirements of selected European Community countries, Australia, Canada, and New Zealand for employment of U.S. artists, entertainers, and athletes.

To identify and document problems encountered in working in other countries, such as in obtaining work permits and the burden of discriminatory government subsidies and taxes, we contacted about 20 arts organizations, including major talent agencies such as International Creative Management and Columbia Artist Management. We also contacted motion picture and recording industry representatives and a law firm representing the National Hockey League, among others. We found no documents that identified any problems encountered. Most of these contacts had little direct information regarding working in other countries, and the few that had some experience said that they had not had any problems.

Entertainment industry representatives told us that foreign promoters of U.S. workers usually handle the foreign visa process, along with any other foreign requirements. Such foreign employers would know best about any problems encountered by U.S. citizens working abroad. For each country, we would need to identify, locate, and contact various foreign employers of U.S. artists, entertainers, or athletes, or their agents, to inquire about any such problems. We would also need to contact a number of the involved U.S. workers for their views and the responsible government agencies and officials. We believe that it would be very labor-intensive, time-consuming, and costly to do this.

Barriers to Export of U.S. Entertainment Industry Products

While barriers to export of U.S. entertainment products are not directly related to visa matters, according to industry and labor representatives, they do adversely affect the employment of Americans in the United States. For example, motion picture and recording industry officials have expressed major concerns about other countries' barriers to U.S. export of entertainment products, such as movies and television programs, and the piracy of intellectual property. The motion picture association produces a report annually on these matters.[7] In a February 25, 1992, report to the U.S. Trade Representative, the International Intellectual Property Alliance estimates that the United States economy lost more than $3.9 billion in 1991 through piracy of U.S. copyright materials in 23 countries. Appendixes III and IV contain summaries of these reports.

Many of the identified trade barriers are discussed in the U.S. Trade Representative's March 31, 1992, 267-page report, 1992 National Trade Estimate Report on Foreign Trade Barriers. According to the report, for example, the European Community's 1989 Broadcast Directive requires that a majority of European Community entertainment broadcast time be reserved for programs of European origin. The United States, which has no comparable requirements, has held consultations with the European Community on this matter under article XXII of GATT, and has reserved all GATT rights to take further action on it. Appendix V contains a summary of the U.S. Trade Representative's report.

We conducted our work from May to September 1992 in accordance with generally accepted government auditing standards. Our scope and methodology are described in appendix I.

We did not obtain official agency comments on this report. However, we discussed a draft of this report with officials of the State Department, INS, and the U.S. Information Agency and incorporated their comments where appropriate.

We are sending copies to the respective Ranking Minority Members. We are also sending copies to the Secretary of State, the Director of the U.S. Information Agency, the Director of the Immigration and Naturalization Service, the Director of the Office of Management and Budget, and other interested parties. We will make copies available to others on request.

[7]The Motion Picture Export Association of America's February 1992, 150-page report, entitled Trade Barriers to Exports of U.S. Filmed Entertainment, is its eighth annual report covering problem countries.

Please contact me on (202) 275-4128 if you or your staffs have any questions concerning this report. We plan to meet with committee staff to discuss what additional study may be needed. For example, we could study INS and State Department actions and reports under Public Law 102-232, if requested by your committees.

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Joseph E. Kelley
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Abbreviations

GATT	General Agreement on Tariffs and Trade
INS	Immigration and Naturalization Service

Scope and Methodology

We contacted the Majority and Minority Staffs of the Subcommittee on Immigration and Refugee Affairs, Senate Committee on the Judiciary, and the Subcommittee on International Law, Immigration, and Refugees, House Committee on the Judiciary, to discuss the issues they believed should be included in our study and to obtain information on the history of the O and P visa legislation.

We obtained information from the State Department, INS, and U.S. Information Agency on the use of the O and P visas and the laws and practices in other countries affecting U.S. citizens working in those countries. We also obtained information on other countries' barriers to U.S. export of entertainment industry products from the Office of the U.S. Trade Representative and contacted the Department of Commerce's U.S. and Foreign Commercial Service.

In the private sector, we contacted the following trade, labor, and industry organizations to obtain information and views on other countries' visa requirements and problems that U.S. citizens have experienced in working in other countries: the AFL-CIO; Alliance of Motion Picture and T.V. Producers' Association; American Arts Alliance; American Guild of Variety Arts; American Symphony Orchestra League; Arts Publishing Limited in London; Association of Performing Arts; Center for Immigration Studies; Columbia Artist Management, Inc.; Concert Productions International in Canada; Dance USA; Fast Lane Productions; IMG Artists; Immigration Services Associates; International Creative Management; International Society of Performing Arts Administrators; International Talent Group; Kennedy Center; League of American Theaters and Producers; Motion Picture Association of America; National Association of Performing Arts, Managers, and Agents; North American Concert Promoters' Association; North American Folk Music and Dance Alliance; OPERA America; Premier Talent; Recording Industry Association of America; Walt Disney Company; and Western Alliance of Arts Administrators. We also obtained information from the law firms of Fried, Frank, Harris, Shriver, and Jacobson; Fragoman, Del Ray, and Bernsen; and Ginsburg, Feldman, and Bress, which deal with immigration issues.

Selected Countries' Requirements for Employment of U.S. Artists, Entertainers, and Athletes

INS and the State Department do not have comprehensive information on other countries' visa and employment requirements for U.S. artists, entertainers, and athletes. Certain information is available from various sources. Forty-seven U.S. embassies provided information to the U.S. Information Agency in response to an August 1991 request. Also, some European Community countries provided information directly to INS in June and July 1992. We have summarized available information for selected English speaking and European Community countries because various government officials and representatives of labor and the entertainment industry indicated that these countries were of the most interest to them. We supplemented the information to the extent possible with information obtained from State Department records and our other contacts. However, we did not independently verify the accuracy of the information. Countries' visa and work requirements are highly legalistic and technical. Therefore, this summary is intended to capture the essence of the information available to us.

Australia

Artists or athletes must obtain visas and have a sponsor. About 1,594 entertainer visas (30 percent of total) and 2,411 sport visas (20 percent of total) were issued to Americans during the year ending June 30, 1991. Amateurs are not charged a fee for one event; artists, entertainers, and athletes are charged visa fees of $105; sponsors are charged a fee of $115 when stays will exceed 4 months. For athletes, the sport's governing body determines how many foreign athletes are needed in Australia, and the athlete's entry cannot cause loss of local jobs. For entertainers, the application must include a consultation with the relevant union. In addition, entertainers' applications must include a "net employment benefit," showing how many local jobs their tour might provide.

Belgium

Belgium has no special requirements. Any holder of a valid U.S. passport can enter Belgium for up to 3 months without a visa. After 3 months, a work permit and an "authorization for provisional sojourn" is to be obtained through the district in which a person lives. Actual practice may vary. An "authorization for provisional sojourn" costs $51; work permits cost less than $50; and professional cards cost $170 for 5 years. To apply for a professional card costs $85.

Canada

An employment authorization is required, although some groups may be admitted at the border without previously obtaining one. If an athlete or performing artist is working for an educational institution, then a medical clearance from Health and Welfare Canada is required. According to an article written by two Canadian entertainment lawyers, the main criterion for the work permit is that no Canadian with the required expertise is available. In the case of film making, the Canadian Department of Employment and Immigration consults with unions before making any final decisions. If a non-Canadian production company is filming, the union will grant approvals fairly liberally. If the production is Canadian or is receiving Canadian subsidies, however, the main guild representing Canadian writers and performers will usually endorse work permits for only one non-Canadian performer.[1]

Denmark

With the exception of the four other Scandinavian countries, visas and labor certifications are required for non-European Community artists, entertainers, and athletes who intend to stay longer than 90 days. The employer must show that such people possess either unique skills or those not found in Denmark.

England

Persons from non-European Community and certain nationals from Commonwealth countries must obtain a work permit, with five main exceptions: (1) amateur or professional athletes coming for competition, if they do not compete for a fee; (2) athletes coming for a specific event, provided that they receive payment only for expenses; (3) producers, actors, directors, or technicians from a foreign film company coming to shoot on location; (4) entertainers participating either in any of 17 major arts festivals or in a nonprofit international cultural event; and (5) professional musicians coming to participate in music competitions. Amateur entertainers (such as school choirs) may also be admitted without a work permit. All entertainers admitted without a permit (1) must pose no threat to the domestic labor force, (2) cannot establish themselves in the United Kingdom, and (3) must establish that they are bona fide performers with genuine invitations to relevant events. Work permits are required for those staying longer than 6 months and may be obtained for up to 12 months. The U.S. Embassy believes that about 9,000 work permits were

[1]David B. Zitzerman and Michael A. Levine, "Producing a Film in Canada: The Legal and Regulatory Framework," The Entertainment and Sports Lawyer (Winter 1991) vol. 8, No. 4, pp. 15-28.

issued to American performers and athletes in 1990 and that fewer than 5 percent of applicants were denied permits.

France

For a stay of less than 3 months, France does not require U.S. artists or athletes to apply for a visa. However, once in France, performers should request a temporary employment authorization. For a stay in excess of 3 months, U.S. artists and athletes are required to petition for a long stay visa, showing that they meet certain specified conditions. The application procedure requires 8 to 10 weeks and costs $120.

Germany

U.S. nationals do not require visas. In general, no work or residence permit is required if the performer is staying for less than 3 months. If artists and support personnel intend to stay longer, they must obtain residence and work permits. Athletes spending over 3 months in Germany must obtain a residence permit. No work permit is required for them unless they intend to work in a German sports club.

Ireland

A visa is not required, but a valid passport is required. If workers receive remuneration, then they must have a work permit. Permits are issued to one performer, but include authorization for support staff. A work permit for a 1-month stay with unlimited performances costs $30. However, people seeking to work as artists, athletes, or entertainers must prove that they are bona fide professionals. An applicant's agent applies to Ireland's Department of Labor 6 weeks before the first performance date; issuance time depends on office work load. Government of Ireland officials estimate that 70 percent of 130 permits issued in 1990 were issued to Americans.

The Netherlands

Except for cultural festivals, or exhibitions, and sports tournaments, a work permit and a residence permit are required after 3 months (permits are valid for 6 months.) Athletes must have a sponsor and cannot participate in any event other than a specific sports event. Arts festival organizers may obtain a collective permit for all artists performing at the festival. Requirements do not apply to European Community nationals and to classical orchestras, theater groups, and ballet companies that come to the Netherlands to give one or more single performances.

New Zealand

A person must apply to the New Zealand Department of Labor for a work permit. The Department passes the name of the person to the appropriate union for approval. The union will grant approval only if the person joins the union, generally at minimal cost, and if the foreign person includes local artists in all performances. If the union finds that the foreign person is taking work that a New Zealander could perform, then it will oppose the permit. The Department allows the matter to be settled by the union and the foreign person's New Zealand promoter. While union approval is not a legal requirement, the Department generally acts based on union recommendations.

Spain

Three types of visas are available for artists, athletes, technicians, and organizers: (1) a 30-day visa for individuals, (2) a 30-day collective visa for groups, and (3) a 90-day visa for individuals. A 90-day residence visa is available to certain people meeting specified conditions. A 25-percent Spanish federal tax is levied on money earned, but under a special agreement with the United States, Americans may receive credit for the tax from the U.S. Internal Revenue Service. The U.S. Embassy believes that over 5,000 U.S. artists, entertainers, and athletes came to Spain in 1990.

Summary of February 1992 Report, Trade Barriers to Exports of U.S. Filmed Entertainment, by the Motion Picture Export Association of America

For the past 8 years, the Motion Picture Export Association of America has issued an annual report on trade barriers. The Association is a nonprofit trade organization representing nine of the largest producers and distributors of filmed entertainment. Its corporate members include Buena Vista International, Inc. (Disney); Carolco Service, Inc.; Columbia Pictures Industries, Inc.; MGM/Pathe Communications Co.; Orion Pictures International; Paramount Pictures Corporation; Twentieth Century Fox International Corp.; Universal International Films, Inc.; and Warner Brothers International. Collectively, these companies distribute filmed entertainment in over 100 countries. (The Association is a member of the International Intellectual Property Alliance, whose report is described in appendix IV).

The Association's February 1992, 150-page report, Trade Barriers to Exports of U.S. Filmed Entertainment, notes that about 40 percent of all U.S. film/TV/home video/pay TV revenues are derived from international markets and that these markets are vital to the health of the U.S. filmed entertainment industry. Further, the report notes that the U.S. entertainment industry returns over $3 billion in trade surplus to the United States each year and that the United States must protect this profitable trade asset.

The Association's report identifies 12 types of trade barriers to export of filmed products. It includes country-specific entries on 69 countries and 1 regional entry on the European Community. The industry's aim is that any final GATT agreement must include a phase-out of European Community television quotas on locally produced programming.

Identified barriers to export of U.S. filmed entertainment products are as follows:

1. Tariff and other import charges (e.g., extremely high official or unofficial taxes, duties, or fees that prevent successful free trade).

2. Quantitative restrictions (e.g., a broadcast quota restricting a specified percent of air time to domestic programs).

3. Import licensing (e.g., a monopoly on the licensing of video imports).

4. Customs barriers (e.g., unreasonably high customs duties and taxes).

5. Standards testing, labeling, and certification (e.g., the practice of labeling foreign videos as "printed matter," which in turn subjects them to severe restrictions on promotion, advertising, and distribution).

6. Government procurement (e.g., "buy national" policies and closed bidding).

7. Export subsidies (e.g., export financing on preferential terms and other export subsidies that displace U.S. exports in third country markets).

8. Lack of intellectual property protection (e.g., inadequate copyright laws or unauthorized broadcasts that often result in piracy).

9. Countertrade/offsets (not defined and no examples were identified in report).

10. Service barriers (e.g., restrictions requiring use of local companies for entertainment-related services such as film printing).

11. Investment barriers (e.g., a law prohibiting foreign companies from trading in the country).

12. Other (e.g., barriers not included here, such as an import monopoly on films or censorship restrictions).

Country-specific reports include all of the European Community countries, Canada, Australia, and many countries in Latin America, Africa, the Middle East, and the Far East. The only major English-speaking country not included is New Zealand.

The Association notes that its member companies derive almost 55 percent of their worldwide earnings from the 12 European Community countries. The Association is very concerned about the European Community Directive on Broadcasting adopted in 1989, which states that the European Community countries shall ensure that broadcasters reserve a majority of their broadcast time for European programming. No similar requirement exists in the United States. The Association views the directive as a restrictive measure, which is contrary to European Community member country obligations under the Treaty of Rome, GATT, and the Organization for Economic Cooperation and Development.

In November 1990, the Association filed a section 301 trade complaint with the U.S. Trade Representative against Thailand to counteract piracy in that country. In addition, the Chief Executive Officer of the Association traveled to Greece in 1991 as part of a delegation of business representatives headed by the U.S. Secretary of Commerce. The delegation's mission was to raise intellectual property concerns at the highest levels of the Greek government, including the Prime Minister. During the visit, the Association's Chief Executive Officer received commitments from the Greek government to (1) pass a new broadcast law by the end of 1991, (2) take action against pirate TV stations within 2 weeks following the delegation's visit, (3) present a new copyright law to the Greek parliament by January 1992, and (4) pass a new copyright law by February 1992. However, the Greek government has not taken action on the broadcast law, and the Association claims the draft copyright law is deficient in a number of areas.

Summary of February 1992 "Written Submission," by the International Intellectual Property Alliance to the U.S. Trade Representative

Pursuant to the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, the U.S. Trade Representative is to identify countries that deny adequate and effective protection for U.S. intellectual property or deny fair and equitable market access for U.S. persons who rely on intellectual property protection. The 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 initiation of an investigation under section 301 conducted on an accelerated time frame. The Trade Representative also places countries on a "priority watch list" and a "watch list." Placement of a country on these lists indicates that particular problems exist with respect to the protection or enforcement of intellectual property rights or market access for persons relying on intellectual property. Countries placed on the "priority watch list" are the focus of increased bilateral attention on the problem areas.[1]

In February 1992, the International Intellectual Property Alliance submitted a 76-page document to the Office of the U.S. Trade Representative detailing copyright violations of U.S. intellectual property in 23 countries. The document responds to the Trade Representative's "Request for Written Submissions" on policies and practices that should be considered when designating countries for the Trade Representative's priority foreign countries list.

The Alliance estimates that U.S.-based companies lost more than $3.9 billion in 1991 due to the lack of copyright protection, often resulting in piracy, in these 23 countries. The $3.9 billion breaks down by industry losses into about $2 billion for the computer software industry, $1 billion for the motion picture industry, $679 million for the recording and music industry, and $276 million for the book publishing industry. The Alliance notes that of the three countries it recommended in 1991 as Priority Foreign Countries—China, India, and Thailand—the U.S. Trade Representative is taking action under section 301 against India and Thailand, while China agreed in 1992 to establish sufficient copyright protection for U.S. intellectual property. For 1992, the Alliance recommends the countries identified in table IV.1.

[1] 1992 Trade Policy Agenda and 1991 Annual Report of the President of the United States on the Trade Agreements Program, pp. 75 and 76.

Table IV.1: "Problem" Countries Identified by the Alliance for 1992

Priority foreign countries	Priority watch list	Watch list
Philippines	Australia	Brazil
Taiwan	Egypt	Cyprus
Poland	Germany	El Salvador
	Greece	Guatemala
	Italy	Mexico
	Korea	China
	Paraguay	Russia and the former republics
	Turkey	
	United Arab Emirates	Saudi Arabia
		Venezuela

The Alliance report also includes two appendixes. The first appendix details estimated trade losses in each country by industry in 1991. The second appendix contains 23 country-specific reports identifying those laws and practices causing such trade losses. These reports also present evidence for the Alliance's recommendations to the Trade Representative.

Established in 1984, the Alliance consists of eight trade organizations representing over 1,500 companies producing computers and computer software, motion pictures, television programs and home video cassettes, sound recordings and music, and books and professional publications. The eight organizations are the following: the American Film Marketing Association, the Association of American Publishers, the Business Software Alliance, the Computer and Business Equipment Manufacturers Association, the Information Technology Association of America, the Motion Picture Association of America, the National Music Publishers' Association, and the Recording Industry Association of America. Collectively, the companies represented by these associations received $173 billion in revenue in 1989 from activities related to copyright alone. These companies also accounted for $22 billion in U.S. export earnings in 1989.

Summary of Report, 1992 National Trade Estimate Report on Foreign Trade Barriers, by the Office of the U.S. Trade Representative

The Office of the U.S. Trade Representative is required by law to submit an annual report identifying the most important foreign barriers to U.S. exports of goods and services and barriers affecting U.S. investment and intellectual property rights. In addition, the report is required to provide, "if feasible," quantitative estimates of the impact of these foreign barriers on U.S. exports. Information is also included in the report on actions being taken to eliminate any act, policy, or practice identified in the report.

The report is based upon information compiled within the U.S. Trade Representative, the U.S. Departments of Commerce, Agriculture, and other U.S. government agencies, and supplemented with information provided by members of the private sector trade advisory committees and U.S. embassies abroad. This 1992, 267-page report is the seventh annual report.

The report broadly defines trade barriers as "government laws, regulations, policies, or practices that either protect domestic products from foreign competition or artificially stimulate exports of particular domestic products." This definition excludes restrictive business practices and government-imposed measures to protect public health and national security.

The report identifies the following eight types of trade barriers:

1. Import policies (e.g., tariffs and other import charges, quantitative restrictions, import licensing, and customs barriers).

2. Standards, testing, labeling, and certification (e.g., refusal to accept U.S. manufacturers' self-certification of conformance to foreign product standards).

3. Government procurement (e.g., "buy national" policies and closed bidding).

4. Export subsidies (e.g., export financing on preferential terms and agricultural export subsidies that displace U.S. exports in third country markets).

5. Lack of intellectual property protection (e.g., inadequate patent, copyright, and trademark restrictions).

6. Service barriers (e.g., regulations on international data flows and restrictions on the use of foreign data processing).

7. Investment barriers (e.g., limitations on foreign equity participation, local content and export performance requirements, and restrictions on transferring earnings and capital).

8. Other barriers (e.g., barriers that encompass more than one category listed above or affect a single sector).

The report discusses the largest export markets, including 43 countries and two regional trading bodies—the European Community and the Gulf Cooperation Council. The European Community countries not included separately in the report are Belgium, Denmark, Germany, Ireland, Luxembourg, and the Netherlands. These and other countries were excluded primarily due to their relatively small market size or the absence of major U.S. industry and agriculture complaints. However, their exclusion should not be interpreted to imply that they are no longer of concern to the United States.

The report includes an appendix on market access barriers in the financial services sector. In addition, the report includes an index that categorizes nations by type of trade barrier. For example, the European Community is listed under import policies; standards, testing, labeling, and certification; government procurement; export subsidies; lack of intellectual property protection; and other barriers. This means that the U.S. Trade Representative has identified these types of barriers existing within the European Community as a whole.

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