

IV. ASIA/APEC

FY 1999

Annual Performance Goals

- a. Reduce trade and investment barriers by means of bilateral negotiations, U.S. trade law and WTO dispute settlement proceedings in the following areas:
 - Vietnam: normalize trade relations through negotiation of a comprehensive trade agreement;
 - Indonesia: auto policies;
 - Malaysia: national automobile program;
 - Korea: market access for telecom goods and services, automotive parts, food and agricultural products (including rice and meat), distilled spirits, cosmetics and pharmaceuticals;
 - India: balance of payments import restrictions.
- b. Enhance IPR protection for U.S. rights holders by means of bilateral negotiations, U.S. trade law and WTO dispute settlement proceedings in the following areas:
 - Indonesia: IPR action plan negotiated in FY 1998;
 - Korea: oversight of implementation of IPR action plan negotiated in the 1997 Special 301 review; and
 - India: compliance with TRIPs mailbox/exclusive marketing rights obligations.
- c. Conclude negotiations of APEC sectoral liberalization agreements, if not concluded in FY 1998, in two or more key sectors among the following: environmental goods and services; energy sector; forest products; toys; telecommunications mutual recognition agreement; chemicals; medical equipment; fish and fish products; and gems and jewelry.

Performance Indicator

- a. It is difficult to predict with accuracy whether or not a negotiation will be completed in any one year. We will indicate in our annual report the number of negotiations and trade problems resolved and the number pending.

Performance Verification

- a. Vietnam: There is an agreement in principle with Vietnam to grant NTR.
- b. The U.S. won a WTO dispute settlement case on Indonesian auto policies; we are now in the implementation phase.
- c. Malaysia: Pursuant to WTO rules, Malaysia has requested an extension of TRIMS in the automobile sector. The U.S. is evaluating the request and consulting with U.S. industry on Malaysia's request. The U.S. will continue to work through WTO procedures to advance U.S. interests in this matter.
- d. USTR also won a WTO dispute settlement case on Korean distilled spirits.

- e. The U.S. negotiated an agreement with Korea in automotive products.
- f. Korea market access negotiations continued into FY 2000.
- g. The U.S. brought a WTO dispute settlement case against India's balance-of-payments import restrictions.
- h. USTR is working to implement the Indonesia IPR Action Plan and the Korean IPR Action Plan is almost completely implemented.
- i. India's compliance with TRIPS mailbox/exclusive marketing rights obligations is in litigation in the WTO.
- j. APEC: Succeeded in getting APEC agreement to support early conclusion of agreements in the following sectors– environmental goods and services; energy sector; forest products; toys; telecommunications mutual recognition; chemicals; medical equipment; fish and fish products; gems and jewelry- in the WTO, i.e. by 2000. Further progress depends in part on the status of the WTO agenda.

FY 2000

Performance Goals

- a. Reduce three or more priority trade and investment barriers by means of bilateral negotiations, U.S. trade law and WTO dispute settlement proceedings in the following areas:
 - Vietnam: normalization of trade relations as required, including seeking passage of necessary legislation;
 - Indonesia: reduction or elimination of auto TRIMs, improvement of worker rights, goods and services market access conditioned in IMF packages, and resolution of legitimate Indonesian concerns regarding changes in U.S. rules of origin for textiles;
 - Malaysia: substantially reduce restrictive policies on construction equipment, financial and direct marketing service companies and aspects of the national automobile program by 2000 consistent with WTO TRIMs obligations;
 - Korea: improve market access for a broad range of industrial and agricultural products, including telecom goods and services, automotive products, rice, meat, distilled spirits, cosmetics and pharmaceuticals; secure effective implementation of Korean plans to reduce investment barriers;
 - India: substantially reduce import restrictions ruled against by the WTO dispute settlement panel, elimination of WTO-inconsistent auto TRIMs and an opening of the domestic insurance market;
 - Philippines: ensure compliance with WTO agriculture commitments and implementation of customs modernization and reform measures;
 - Thailand: ensure compliance with TRIMs Agreement obligations falling due by 2000, enactment of ILO-consistent worker rights legislation, and implementation of customs modernization and reform measures;
 - Australia: ensure compliance with WTO SPS Agreement and Subsidies and

Countervailing Measures Agreement

- New Zealand: Enhance U.S. pharmaceutical firms' market access as affected by the trade-related aspects of New Zealand's pharmaceutical reimbursement scheme.
- b. Enhance IPR protection for U.S. rights holders by means of bilateral negotiations, U.S. trade law and WTO dispute settlement proceedings in the following areas, including required TRIPS consistency by 2000:
- Indonesia: enhance IPR protection, enforcement, TRIPS consistency of statutes, legal acquisition and use of software, and implementation of other WTO TRIPS commitments;
 - Korea: implementation of WTO TRIPS commitments and IPR action plan negotiated in the 1997 Special 301 review;
 - India: statutory implementation of commitments under TRIPS mailbox/exclusive marketing rights obligations, implementation of other WTO TRIPS commitments;
 - Philippines, Malaysia, Singapore, and Thailand: Implementation of WTO TRIPS commitments;
 - Thailand: implementation of the June 1998 IPR Action Plan;
 - Australia, New Zealand: halt and reverse erosion of intellectual property protection for copyright holders.
- c. Effective implementation of APEC sectoral liberalization agreements or Early Voluntary Sectoral Liberalization programs in selected sectors. Complete implementation of APEC Mutual Recognition Agreements for telecommunications equipment.

Performance Indicator

- a. It is difficult to predict with accuracy whether or not a negotiation will be completed in any one year. We will indicate in our annual report the number of negotiations and trade problems resolved and the number pending.

Performance Verification

- a. Vietnam: A bilateral trade agreement in principle has been completed; it is awaiting final approval of the Vietnamese government to be followed by U.S. Congressional approval. Bilateral copyright agreement was fully in force by December 1999.
- b. Indonesia: As a result of successful WTO dispute settlement initiated by the U.S. and other WTO members, Indonesia has modified its national auto policies. Indonesia continues to make progress in the worker rights area and services market access under IMF stabilization programs.
- c. Malaysia: U.S. has made some progress in advancing investor and exporter interests in Malaysia. U.S. financial service and direct marketing service providers are generally pleased with current levels of access. Although import penetration of Malaysia's auto market has not improved, the U.S. is working with Malaysia regarding their auto TRIMs extension request in the WTO.
- d. Korea:
- The U.S. is continuing to monitor and enforce (1) the provisions in the U.S.-Korea 1998 Memorandum of Understanding on market access for foreign motor vehicles; (2) Korea's

commitments on ensuring that the Korean steel sector operates according to market cues and without interference or support from the government.

- Eliminated some of the discriminatory and non-science-based aspects of Korean rules on foreign, research-based pharmaceuticals; continuing exchanges with Korea to ensure that Korea's pricing, IPR, and regulatory policies do not discriminate against/impede access for foreign drugs.
 - U.S. induced Korea to lower its applied tariffs on several agricultural products to WTO bound rates.
- e. India:
- India's insurance market has been opened for limited foreign participation. Auto TRIMs are still under negotiation.
 - USTR successfully negotiated the removal of all quantitative restrictions over a two year period resolving the WTO Balance of Payments dispute.
 - USTR negotiated tariff reductions granting market access for a variety of agricultural products under WTO Article 28.
- f. Australia: The WTO found in favor of the United States with respect to dispute settlement on Australia's export subsidies on automotive leather. On SPS, the WTO found Australia to be in violation of SPS commitments in salmon, consistent with the U.S. position.
- g. New Zealand: The U.S. has begun a dialogue with New Zealand to improve U.S. pharmaceutical firms' market access.
- h. Thailand: Thailand successfully eliminated notified TRIMs by the January 2000 WTO deadline. In February 2000, Thailand enacted long- pending worker rights legislation, and the U.S. will work with Thailand to review its ILO consistency. The U.S. continues to raise customs-related concerns.
- i. Philippines: Ongoing monitoring and analysis of Philippine agriculture imports show significant progress in implementing WTO commitments in key sectors. Philippines appears to have implemented WTO customs obligations by the January 2000 deadline, and preshipment-related complaints continue to decline.
- j. Indonesia: For Indonesia, USTR continues to monitor implementation of an IPR action plan and TRIPs obligations, with a view to agreement on future priority reforms.
- k. Korea: U.S. induced Korea to improve IPR protection, including by implementing provisions in the 1997 Action plan; continuing to advance progress on Korean compliance with TRIPS and other international IPR obligations, including on data, patent, and copyright protection. Seeking greater protections and market access for U.S. investors in Korea in ongoing negotiations on a BIT.
- l. Thailand: Due to U.S. efforts, Thailand is implementing the June 1998 IPR action plan. The U.S. is consulting with the private sector on future action items.
- m. India: India passed legislation to meet TRIPs mailbox commitments, but has missed the January

2000 deadline for other TRIPs commitments.

- n. Australia, New Zealand: The New Zealand government has stated it will restore the prohibition of parallel importing of CDs, videos, films, books, and software. Despite U.S. efforts, Australia continues to present problems in this area.
- o. APEC: EVSL implementation on trade facilitation elements begun in toy, medical equipment, and forest product sectors. Agreement reached to pursue further facilitation and nontariff measure activities in 2000.

FY 2001

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 - Indonesia: reduction or elimination of auto TRIMs, improvement of worker rights, goods and services market access conditioned in IMF packages, resolution of legitimate Indonesian concerns regarding changes in U.S. rules of origin for textiles;
 - Malaysia: substantially reduce restrictive policies on construction equipment, financial and direct marketing service companies and aspects of the national automobile program by 2001 consistent with WTO TRIMs obligations;
 - Korea: improve market access for a broad range of industrial and agricultural products, including pharmaceuticals, citrus, processed food products and beef, motor vehicles, distilled spirits, telecom goods and services, cosmetics; ensure implementation of steel-related commitments concerning market-based operation of Korea's steel production.
 - India: substantially reduce import restrictions ruled against by the WTO dispute settlement panel, elimination of WTO-inconsistent auto TRIMs and an opening of the domestic insurance market;
 - Philippines: ensure compliance with WTO agriculture commitments and implementation of customs modernization and reform measures;
 - Thailand: enactment of ILO-consistent worker rights legislation, and implementation of customs modernization and reform measures;
 - Australia: ensure compliance with WTO SPS Agreement and Subsidies and Countervailing Measures Agreement;
 - New Zealand: Enhance U.S. pharmaceutical firms' market access as affected by the trade-related aspects of New Zealand's pharmaceutical reimbursement scheme;
 - Laos: normalization of trade relations as required, including seeking passage of necessary legislation.
- b. Enhance IPR protection for U.S. rights holders by means of bilateral negotiations, U.S. trade law and WTO dispute settlement proceedings in the following areas:
 - Indonesia: enhance IPR protection, enforcement, TRIPs consistency of statutes, legal acquisition and use of software, implementation of other WTO TRIPs commitments;

- Korea: implementation of WTO TRIPS commitments;
 - India: implementation of other WTO TRIPS commitments;
 - Philippines, Malaysia, Singapore, and Thailand: Implementation of WTO TRIPS commitments;
 - Thailand: implementation of the June 1998 IPR Action Plan;
 - Australia, New Zealand: halt and reverse erosion of intellectual property protection for copyright holders;
 - Malaysia: Reduce copyright piracy.
- c. Effective implementation of APEC sectoral liberalization agreements or Early Voluntary Sectoral Liberalization programs in selected sectors. Complete implementation of APEC Mutual Recognition Agreements for telecommunications equipment.

Performance Indicator

- a. It is difficult to predict with accuracy whether or not a negotiation will be completed in any one year. We will indicate in our annual report the number of negotiations and trade problems resolved and the number pending.

Performance Verification

- a. Initiation and completion of negotiations are announced in press releases, notifications to Congress and in the *President's Trade Policy Agenda*. We reported fully on negotiations in the FY 2001 annual performance report.
- b. Vietnam: Bilateral trade agreement implementing legislation was passed by the Congress and signed by the President on October 16, 2001. After ratification by the National Assembly of Vietnam, the bilateral trade agreement entered into effect on December 10, 2001.
- c. India: On March 31, 2001, India removed the last of its remaining quantitative restrictions taken for balance of payments purposes. India removed these measures as a result of the panel's decision in the WTO dispute settlement case taken by the United States.
- d. India: On December 21, 2001, a WTO dispute settlement panel ruled in favor of the United States in its case against India's auto TRIMS regime. India appealed the ruling; a decision from the Appellate Body is expected in spring 2002.
- e. Australia: Table grapes issue resolved bilaterally in FY 2002 due to consultations and negotiations with Australian government and U.S. industry during FY 2001.
- f. Australia: New process for resolving outstanding SPS issues and managing new ones in development stage.
- g. Australia: USTR won WTO case on Automotive Leather and reached settlement agreement with the Australian government.
- h. New Zealand (Pharmaceuticals Issue):
- Continued to cite this issue in National Trade Estimates Report.

- Raised the issue at every bilateral opportunity.
- USTR succeeded in facilitating a dialogue between the U.S. pharmaceutical industry and the New Zealand government. Previously, the two sides were completely alienated.

i. Australia and New Zealand (IPR Issue):

- USTR constantly reminds the Australian government of our concerns regarding Australia's IPR regime. We succeeded in holding off further erosion while at the same time witnessing attempts by Australian officials to reverse deleterious policies as demonstrated by the following:

Australia has allowed the parallel importation of sound recordings since 1998, and of branded goods (clothing, footwear, toys, and packaged food) since 2000. During July 2000, the Federal Cabinet approved a proposal to remove the restriction on parallel imports for books and computer software, although legislation to enact this decision was blocked in the Australian Senate.

During December 2000, the Australian House of Representatives' Standing Committee on Legal and Constitutional Affairs released its report entitled "Cracking Down on Copycats: Enforcement of Copyright in Australia". The Committee concluded that even though the level of copyright infringement in Australia is low by international standards, it does impose a significant and costly burden to many Australian industries that rely on creative endeavor. The Committee recommended amendments be made to the Copyright Act to make it easier for copyright holders to defend their rights in civil actions and to increase the criminal penalties for commercial infringement. The Australian government did not propose any legislation to implement these recommendations during 2001.

In December 2001, the New Zealand Government announced it would introduce legislation in the first six months of 2002 to ban parallel imports of films, videos and DVDs for nine months from a title's first international release.

At the same time, the New Zealand Government noted it would keep the impact of parallel importing on music recording, book publishing and software industries under review for three years.

The New Zealand Government also stated in its December announcement its intention to introduce legislation in early 2002 to shift the burden of proof in copyright infringement cases to the defendant, helping to toughen the penalties for copyright and trademark violations.

- j. Korea: U.S. brought Korea to WTO on its import and distribution regime for beef and prevailed in panel and appellate body. On September 10, 2001, Korea brought the measures in question related to its retail beef distribution system into compliance with its WTO obligations. Korea also resolved a number of other beef-related issues. On processed foods, the Korean Government is working with the U.S. Government to ensure that its new biotech labeling requirements do not serve to impede U.S. access to the Korean market. On motor vehicles, U.S. and Korea resolved a range of standards issues and Korea took some steps to improve Korean perceptions of foreign autos in its market. On pharmaceuticals, the Korean Government agreed not to implement a reference pricing system and to establish a working group for exchanging views on health care

reform and pharmaceutical pricing and regulatory issues early in the Korean Government policymaking process.

- k. Indonesia: US Government submitted IPR Action Plan to Indonesia Government in January 2001 and is consulting with Indonesia on ways to strengthen its IPR enforcement.
- l. Korea: U.S. officials met on numerous occasions with Korea to raise specific concerns about shortcomings in Korea's amendments to the Copyright Act and the Computer Program Protection Act, and its inadequate IPR enforcement. Korea strengthened many provisions of these laws and took some steps to strengthen IPR enforcement.
- m. Philippines, Malaysia, Singapore, and Thailand: US Government has strongly urged these countries to implement measures to bring them fully into compliance with their TRIPS obligations. The Philippine Government has passed rules establishing ex parte authority in civil cases of IPR infringement and legislation is pending to provide IPR protection to plant varieties and layout designs of integrated circuits. In 2001, Malaysia implemented a landmark Optical Media piracy act that may prove to be a model for the region. US Government is working with Malaysia to ensure full enforcement of the act. Singapore has strengthened many areas of its IPR regime, including enforcement against retail sales of illicit goods.
- n. Thailand: implementation of June 1998 IPR Action Plan: In 2001, Thailand developed two laws that promise to bring the country into compliance with the TRIPS agreement once these laws are adopted. A draft Trade Secrets Act passed the Thai Senate on March 1, 2002, and awaits royal approval. The US Government is working with Thailand to amend the act to ensure full compliance with TRIPS article 39.3 regarding unfair commercial usage of trade secrets. A draft Optical Media Act awaits parliamentary action; delays in its passage have prompted rapid growth in pirate production of optical media. In 2001, Thailand stepped up enforcement efforts and continued to develop a specialized court for IPR crimes - the only one of its kind in the region.
- o. APEC launched a Chemical Dialogue, with agreement to Terms of Reference and identification of a trade facilitation deliverable for FY 2002. APEC secured \$95,500 in funding for an ecotech workshop (being held in FY 2002) to help APEC economies bring their regulatory regimes for medical devices into alignment with international standards and procedures. APEC held the third Automotive Dialogue, and reached agreement on "Principles of Automotive Technical Regulations Harmonization" and an Information Technology Manifesto. APEC completed a typology of non-tariff measures in all EVSL sectors.

Most APEC members, including the United States, have implemented the arrangement on the exchange of test data. APEC members are still working to implement the certification arrangements.