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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-121]

Modification of Action Under Section 301(b); Out-of-Cycle Review Under Section 182; and Request for Public Comment: Intellectual Property Laws and Practices of the Government of Ukraine

AGENCY: Office of the United States Trade Representative.

ACTION: Modification of action under Section 301(b); out-of-cycle review under Section 182; and request for public comment.

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SUMMARY: The United States Trade Representative ("Trade Representative") has determined that an appropriate response to the Government of Ukraine's adoption of important improvements to its legislation protecting intellectual property rights ("IPR") is to terminate the 100% ad valorem duties currently in place on Ukrainian exports. In addition, the Office of the United States Trade Representative ("USTR") is conducting an out-of-cycle review ("OCR") under Section 182 (commonly referred to as the "Special 301" provision) of the Trade Act of 1974, as amended ("Trade Act") focused on whether Ukraine has implemented fully the legislative improvements and has otherwise strengthened IPR enforcement. At the conclusion of the OCR, the Trade Representative will determine whether to revoke the identification of Ukraine as a priority foreign country ("PFC") and accordingly to change Ukraine's status on the Special 301 list, and whether to restore Ukraine's benefits under the Generalized System of Preferences ("GSP"). USTR requests written comments from the public concerning these matters.

DATES: The termination of increased duties is effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after August 30, 2005. Comments should be submitted by 5 p.m. on

October 14, 2005.

ADDRESSES: Comments should be addressed to Sybia Harrison, Special Assistant to the Section 301 Committee, and sent (i) electronically, to [FR0524@ustr.eop.gov](mailto:FR0524@ustr.eop.gov), with "Ukraine-IPR" in the subject line, or (ii)

by fax, to (202) 395-9458, with a confirmation copy sent electronically to the email address above.

FOR FURTHER INFORMATION CONTACT: For questions concerning procedures for filing comments in response to this notice: Sybia Harrison, Staff Assistant to the Section 301 Committee, USTR, (202) 395-3419; for questions concerning the Special 301 out-of-cycle review: Jennifer Choe Groves, Director for Intellectual Property and Chair of the Special 301 Committee, USTR, (202) 395-4510, Laurie Molnar, Director for European and Mediterranean Trade Affairs, USTR, (202) 395-4620, or Stephen Kho, Associate General Counsel, USTR, (202) 395-3150; for questions concerning procedures under Section 301: William Busis, Associate General Counsel and Chairman of the Section 301 Committee, USTR, (202) 395-3150; and for questions concerning entries: Teiko Campbell, Program Officer, Office of Trade Compliance and Facilitation, U.S. Customs and Border Protection, Department of Homeland Security, (202) 344-2698.

#### SUPPLEMENTARY INFORMATION:

##### History of the 301 Investigation

On March 12, 2001, the Trade Representative identified Ukraine as a PFC under Special 301. The PFC identification was based on deficiencies in Ukraine's acts, policies and practices regarding IPR protection, including weak enforcement, as evidenced by alarming levels of piracy of optical media products (such as CDs and DVDs), and the failure of the Government of Ukraine to enact adequate and effective IPR legislation to address optical media piracy. The Trade Representative simultaneously initiated an investigation (Docket 301-121) under Section 301(b) of the Trade Act in order to investigate these IPR protection issues. See 66 FR 18,346 (April 6, 2001).

In August 2001, the Trade Representative determined that the acts, policies, and practices of Ukraine with respect to IPR protection were unreasonable and burdened or restricted United States commerce, and were thus actionable under section 301(b) of the Trade Act. As an initial action in response, the Trade Representative suspended GSP treatment accorded to products of Ukraine, effective August 24, 2001. See 66 FR 42,246 (Aug. 10, 2001).

In December 2001, the Trade Representative took the additional action of imposing 100% ad valorem tariffs on certain Ukrainian exports

with an annual trade value of approximately \$75 million, effective January 23, 2002. The trade value of the action was based on the level of the burden on U.S. commerce resulting from Ukraine's inadequate protection of U.S. IPR. See 67 FR 120 (Jan. 2, 2002).

In July 2005, USTR notified in writing representatives of U.S. copyright industries that, pursuant to Section 307(c) of the Trade Act, the suspension of Ukraine's GSP benefits would terminate unless USTR received a written request for a continuation from one or more representatives of U.S. copyright industries prior to the four-year anniversary of the GSP suspension (i.e., prior to August 24, 2005). U.S. copyright industry representatives responded in writing prior to August 24, 2005 by requesting that the GSP suspension remain in place until USTR determines that Ukraine has adequately improved IPR enforcement. Accordingly, the suspension of GSP benefits continued under Section 307(c) of the Trade Act.

Since 2001, the Government of the United States has been working with the Government of Ukraine to address the IPR protection issues that are the subject of this investigation. In particular, the United States has been encouraging Ukraine (i) to improve its IPR legislation, and (ii) to enhance enforcement of existing IPR laws by, for example, shutting down pirate optical disc factories.

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#### Ukraine's July 2005 Legislation and Termination of 100% ad valorem Duties

On July 6, 2005, the Ukrainian parliament approved a package of important amendments to its Laser-readable Disc Law (the "optical media amendments") that strengthen Ukraine's licensing regime and enforcement capabilities to stem the illegal production and trade of optical media products. President Yushchenko signed the amendments into law on July 26, 2005, and they were formally promulgated on August 2, 2005.

Section 307(a) of the Trade Act authorizes the Trade Representative to "modify or terminate any [Section 301] action, subject to the specific direction, if any, of the President \* \* \* if \* \* \* such action is being taken under Section 301(b) and is no longer appropriate." In passing the optical media amendments, the Government of Ukraine has addressed one of the two issues (those being inadequate IPR legislation and inadequate IPR enforcement) that were the basis of the PFC designation and the Trade Representative's finding that Ukraine's inadequate IPR protections were actionable under Section 301(b). The Trade Representative has determined that an appropriate response to Ukraine's adoption of the optical media amendments is to terminate the 100% ad valorem duties that have been in place since January 2002. As

set out in the Annex to this notice, the termination of 100% ad valorem duties is effective with respect to articles entered, or withdrawn from warehouse, for consumption on or after August 30, 2005. Prior to terminating the 100% ad valorem duties, USTR consulted with U.S. copyright industries and at this time is providing an opportunity for public comment.

#### Out-of-Cycle Review and Next Steps

The other action previously taken under Section 301--the August 2001 suspension of Ukraine's GSP benefits--will continue pending the results of the OCR of Ukraine's Special 301 status. The OCR focuses on whether Ukraine has fully implemented the optical media amendments and has otherwise improved its IPR enforcement.

At the conclusion of the OCR, the Trade Representative will consider (1) whether to take action under section 182(c)(1)(A) of the Trade Act, which authorizes the Trade Representative to revoke the identification of any foreign country as a PFC at any time; and (2) whether to terminate the suspension of GSP benefits. As specified below, USTR seeks public comments in relation to the OCR and the possible restoration of Ukraine's GSP benefits.

#### Request for Public Comments

USTR invites public comments on the following matters:

(i) 100% ad valorem duties--Comments on the termination of the 100% ad valorem duties, which (as noted) is effective for entries on or after August 30, 2005;

(ii) GSP benefits--Comments on the suspension of Ukraine's GSP benefits, including the effectiveness of the GSP suspension in achieving the objectives of the 301 investigation; the effects of the GSP suspension on the U.S. economy, including consumers; and the possible restoration of GSP benefits upon conclusion of the OCR; and

(iii) OCR--Comments addressing the Special 301 status of Ukraine in the light of Ukraine's enforcement of its IPR laws, including a description of any problems with and/or improvements in IPR enforcement in Ukraine (including, but not limited to, implementation of the optical media amendments) and the effect of such problems and/or improvements on U.S. commerce.

Submitters should feel free to address any or all of the above matters. Submitters should make their comments as detailed as possible and should provide all necessary information for assessing the assertions made in the comments.

Comments should be submitted by 5 p.m. on October 14, 2005. All comments should be addressed to Sybia Harrison, Special Assistant to the Section 301 Committee, and sent (i) electronically, to

FR0524@ustr.eop.gov, with "Ukraine-IPR" in the subject line, or (ii)

by fax, to (202) 395-9458, with a confirmation copy sent electronically to the email address above. No submissions will be accepted via postal service mail.

Documents should be submitted as either WordPerfect, MS Word, or text (.TXT) files. Supporting documents submitted as spreadsheets are acceptable as Quattro Pro or Excel files. Submissions should not include separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Comments must be in English.

In accordance with 15 CFR 2006.15, a submitter may request that information contained in a comment be treated as confidential business information exempt from public inspection. In such case, the submitter must also provide a non-confidential version of the comment. For any document containing confidential business information, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the character "P-". The "P-" or "BC-" should be followed by the name of the submitter.

#### Public Inspection of Submissions

Within one business day of receipt, non-confidential submissions will be placed in a public file open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling Jacqueline Caldwell at (202) 395-6186. The USTR reading room is open to the public from 10 a.m. to noon and from 1 p.m. to 4 p.m., Monday through Friday.

William Busis,  
Chairman, Section 301 Committee.

#### Annex

I. Effective with respect to merchandise entered, or withdrawn from warehouse, for consumption on or after August 30, 2005, the imposition of 100 percent ad valorem tariffs as provided in subheadings 9903.27.01 (affecting articles in subheading 2710.19.05, 2710.19.10, 2710.99.05 or 2710.99.10); 9903.27.02 (affecting articles in subheading 2804.29.00); 9903.27.03 (affecting articles in subheading 2825.60.00); 9903.27.04 (affecting articles in subheading 2849.20.10 or 2849.20.20); 9903.27.05

(affecting articles in subheading 3105.51.00); 9903.27.06 (affecting articles in subheading 3206.11.00 or 3206.19.00); 9903.27.07 (affecting articles in subheading 4804.51.00); 9903.27.08 (affecting articles in subheading 6403.99.60, 6403.99.75 or 6403.99.90); 9903.27.09 (affecting articles in subheading 6404.19.35); 9903.27.10 (affecting articles in subheading 7102.10.00); 9903.27.11 (affecting articles in subheading 7102.31.00 or 7102.39.00); 9903.27.12 (affecting articles in subheading 7115.10.00); 9903.27.13 (affecting articles in heading 7402.00.00); 9903.27.14 (affecting articles in subheading 7601.20.90); and 9903.27.15 (affecting articles in subheading 8418.69.00) of the Harmonized Tariff Schedule of the United States is terminated.

II. Effective August 30, 2005, the instruction in the notice of January 2, 2002, 67 FR 120, that ``any merchandise

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subject to this determination that is admitted to U.S. foreign-trade zones on or after January 23, 2002 must be admitted as ``privileged foreign status" as defined in 19 CFR 146.41" is terminated.

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