

## **Canada Elevated, Korea Removed From 'Special 301' Report Lists**

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In its twentieth annual "Special 301" Report on Intellectual Property Rights (IPR) protection issues with 77 U.S. trading partners, the Office of the U.S. Trade Representative yesterday (April 30) elevated Canada to the priority watch list for the first time and removed Korea from the watch list for the first time.

Canada was elevated from the watch list, where the country has been for 14 years, for failing to implement copyright reforms it committed to undertake in 2007 and 2008.

The report claims that Canada has yet to implement the commitments of the World Intellectual Property Organization Internet Treaties it signed in 1997 and continues to have "weak border measures" in which customs officers do not have the authority to seize suspected counterfeit or pirated products without a court order.

"As this situation has continued and the problems have not been addressed, the level of concern has increased over the need to address those challenges," said Stan McCoy, assistant USTR for intellectual property and innovation, at a press conference releasing the Special 301 report.

McCoy said that Kirk raised these IPR issues in an April 27 meeting with Canadian Trade Minister Stockwell Day, but described the discussion as little more than an exchange of views on the overall importance of IPR protection. He said there were "no particular commitments" from Canada that he could report.

However, McCoy said that USTR had no plans for engagement with Canada beyond what is already taking place between the two countries.

"We have a very close trade relationship with Canada and were engaged with them on a constant basis on a whole range of issues including IPR issues, so I would expect that will continue," McCoy said.

**In an April 30 statement, Rep. Howard Berman (D-CA), chairman of the House Foreign Affairs Committee, said he has contacted the office of Michael Wilson, Canadian ambassador to the U.S., regarding Canadian IPR enforcement. He also announced he is working on a list of IPR concerns to be raised at the Canada-U.S. Inter-Parliamentary Group meeting from May 15-18.**

**Berman said he also is preparing legislation "to provide additional resources to combat intellectual property theft."**

McCoy said Korea was removed from the watch list for the first time due to "significant improvements" it has made on IPR enforcement over the past year, including pending legislation that will strengthen IPR protection. Additionally, Korean President Lee Myung-bak has made protection of IPR a top priority of the Korean government, McCoy said.

This marks the first time in the history of the report that Korea was not on the priority watch or watch lists. McCoy denied that Korea's pending free trade agreement with the U.S. had anything to do with its removal from the list, but said that IPR requirements within that FTA "will help address some of the challenges they still face."

USTR again did not designate any U.S. trading partners as a priority foreign country, a designation that would require the U.S. to initiate a formal investigation under Section 301. After a maximum of nine months, the U.S. would be obligated to take action if the problems identified

involved violations of trade agreements. In the case of most WTO members, this would mean launching a WTO legal challenge.

The last country to be named a priority foreign country was Ukraine in 2001, but the U.S. unilaterally imposed punitive tariffs against Ukraine to get it to strengthen IPR enforcement since it was not a WTO member.

While USTR elevated Canada from the watch list to the priority watch list in the report, other countries that USTR has long flagged as not doing enough to address IPR problems kept the same designation they have had in past reports.

Russia, for example, which has been on the priority watch list since 1997, stayed on the list in this year's report. China, which has been on the priority watch list since 2005, also stayed on the list this year.

In an April 30 statement, U.S. Trade Representative Ron Kirk said he was "particularly troubled by reports that Chinese officials are urging more lenient enforcement of IPR laws, motivated by the financial crisis and the need to maintain jobs."

"China needs to strengthen its approach to IPR protection and enforcement, not weaken it," Kirk said.

McCoy said "there are no priority foreign country designations this year, but that's not to say that it won't happen in the future."

"There's no shyness about using the full range of tools that are out there to emphasize our IP concerns and make progress on those concerns," McCoy said.

McCoy said that Kirk has placed a priority on IPR but denied that this was a shift in priorities from the Bush administration.

In his April 30 statement, Kirk reaffirmed his commitment to IPR protection and enforcement.

"In this time of economic uncertainty, we need to redouble our efforts to work with all of our trading partners -- even our closest allies and neighbors such as Canada -- to enhance protection and enforcement of intellectual property rights in the context of a rules-based trading system," Kirk said.

In all, the report listed 12 countries on the priority watch list this year: China, Russia, Algeria, Argentina, Canada, Chile, India, Indonesia, Israel, Pakistan, Thailand, and Venezuela. Canada, Algeria and Indonesia were elevated to the priority watch list in this year's report.

According to USTR, this designation merits that these 12 countries "will be the subject of particularly intense engagement through bilateral discussion during the coming year" to address IPR issues.

The report also designated 33 total trading partner of the watch list: Belarus, Bolivia, Brazil, Brunei, Colombia, Costa Rica, Czech Republic, Dominican Republic, Ecuador, Egypt, Finland, Greece, Guatemala, Hungary, Italy, Jamaica, Kuwait, Lebanon, Malaysia, Mexico, Norway, Peru, Philippines, Poland, Romania, Saudi Arabia, Spain, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan, and Vietnam.

According to USTR, this designation merits "bilateral attention" between the U.S. and these 33 countries to address these IPR issues.