

2006 SPECIAL 301 REPORT

EXECUTIVE SUMMARY

The 2006 “Special 301” annual review examines in detail the adequacy and effectiveness of intellectual property rights (IPR) protection in 87 countries. Based on a lengthy process of information gathering and analysis, the United States Trade Representative (USTR) has identified 48 countries that are designated in the categories of Priority Watch List, Watch List, or Section 306 Monitoring. The Special 301 Report reflects the Administration’s resolve to take consistently strong actions under the Special 301 provisions of the Trade Act of 1974 (Trade Act).

This Administration is determined to ensure the adequate and effective protection of intellectual property and fair and equitable market access for U.S. products. The designations and corresponding requisite actions announced today result from close consultations with affected industry groups, other private sector representatives, Congressional leaders, foreign governments, and numerous agencies within the United States Government, and demonstrate the Administration's commitment to use all available methods to resolve IPR issues.

Addressing weak IPR protection and enforcement, particularly in China and Russia, continues to be one of the Administration’s top priorities. Although this year’s Special 301 Report shows positive progress in many countries, rampant counterfeiting and piracy problems continue to plague both China and Russia, indicating a critical need for stronger intellectual property protection in China and Russia.

With respect to China, this year’s Special 301 Report describes the United States’ plan to continue heightened scrutiny of China by maintaining China on the Priority Watch List and continuing Section 306 monitoring, as well as stepping up consideration of World Trade Organization (WTO) dispute settlement options. In addition, the United States will scrutinize IPR protection and enforcement at China’s provincial level through an unprecedented special provincial review to be conducted in the coming year.

With respect to Russia, the Special 301 Report describes the United States’ on-going IPR discussions with Russia, outlines the United States’ efforts to bring Russia’s IPR regime in line with international standards, notes some progress in Russia’s recent efforts to combat IPR piracy and counterfeiting, and announces continued heightened scrutiny of Russia by maintaining Russia on the Priority Watch List. The United States will be monitoring closely China’s and Russia’s IPR activities throughout the coming year.

In addition to China and Russia, the Special 301 Report sets out significant concerns with respect to such trading partners as Argentina, Belize, Brazil, Egypt, India, Indonesia, Israel, Lebanon, Paraguay, Turkey, Ukraine, and Venezuela. In addition, the report notes that the United States will consider all options, including, but not limited to, initiation of dispute settlement consultations in cases where countries do not appear to have implemented fully their obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

In this year's review, USTR devotes special attention to the need for significantly improved enforcement against counterfeiting and piracy. The United States places particular emphasis on the ongoing campaign to reduce production of unauthorized copies of optical media products such as compact discs (CDs), video compact discs (VCDs), digital versatile discs (DVDs), and compact disc read-only memory (CD-ROMs), as well as reducing the counterfeiting of trademarked goods. There are high rates of piracy and counterfeiting in many countries, including in China, India, and Russia. In addition, USTR continues to focus on other critically important issues, including Internet piracy, counterfeit pharmaceuticals, transshipment of pirated and counterfeit goods, requiring authorized use of legal software by government ministries, proper implementation of the TRIPS Agreement by developed and developing country WTO members, and full implementation of TRIPS Agreement standards by new WTO members at the time of their accession.

Over the past year, many developing countries and newly acceding WTO members have made progress toward implementing their TRIPS Agreement obligations. Nevertheless, full implementation of TRIPS Agreement obligations has yet to be achieved in certain countries, particularly with respect to the TRIPS Agreement's enforcement provisions. Levels of piracy and counterfeiting remain unacceptably high in these countries. The annual Special 301 review provides an opportunity to assess these issues, and the Special 301 Report sends a necessary message to the governments of countries where serious IPR-related problems exist.

Positive Progress

There has been significant positive progress on IPR protection and enforcement in several countries this past year. For example, Ukraine passed and implemented legislation to combat pirate production in optical media factories. Brazil made significant progress during the past year on copyright enforcement, specifically by adopting a National Action Plan to enforce copyrights and reduce piracy, drafting IPR legislation, increasing seizures and prosecutions, and developing strong public awareness campaigns to fight piracy. Pakistan also made significant progress by closing down numerous pirate optical disc production plants, establishing a Pakistan Intellectual Property Organization to centralize enforcement, and increasing border enforcement efforts, as well as increasing the number of raids, seizures, and arrests of IPR infringers.

Several other countries in Asia also have made significant progress on IPR issues in the past year. For example,

- Taiwan issued the first conviction to a defendant for copyright infringement over the Internet through a peer-to-peer file sharing service.
- Indonesia has made progress in combating optical disc piracy in retail shops, and has begun to increase the numbers of raids against pirate optical media production plants, seizures of pirated goods and manufacturing equipment, and arrests of IPR infringers.
- Malaysia took steps to combat pirate optical disc production by increasing the numbers of raids against illegal factories, seizing pirated goods and manufacturing equipment, and increasing arrests of copyright pirates.

- The Philippines made progress by taking steps to combat pirate production in plants, including increasing the number of raids and enforcement actions.
- The Republic of Korea established a Copyright Protection Center and increased enforcement against institutions using illegal software.

In addition, USTR is pleased to announce that the following countries are being removed from the Watch List because of progress on IPR issues this past year:

- Azerbaijan was removed from the Watch List due to IPR enforcement progress.
- Kazakhstan was removed from the Watch List due to progress on copyright enforcement.
- The Slovak Republic was removed from the Watch List due to progress on protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products.
- Uruguay was removed from the Watch List due to progress on copyright enforcement.

The United States commends this positive progress by our trading partners, and urges each one to set a positive example by continuing to take strong IPR enforcement actions to combat piracy and counterfeiting. The United States will continue to work with these and other countries to achieve further improvements in IPR enforcement during the coming year.

Free Trade Agreements and Implementation

The United States is committed to a policy of promoting stronger protection of intellectual property rights. In this regard, the United States is advancing the protection of these rights through a variety of mechanisms, including the negotiation of free trade agreements (FTAs). The intellectual property chapters of U.S. FTAs establish high standards for intellectual property protection for copyright works, trademarks, and patents, and additionally provide strong rules for enforcement.

The United States is pleased that recently concluded FTAs, including the Bahrain FTA, Oman FTA, the Peru Trade Promotion Agreement, the Colombia Trade Promotion Agreement, and the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR) (with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic), will strengthen the protection of IPR in those countries. The United States also is seeking high levels of IPR protection and enforcement in the FTAs that are currently under negotiation with Panama, Thailand, the Southern Africa Customs Union, Ecuador, the United Arab Emirates, and in the ongoing negotiation of a Free Trade Area of the Americas. The United States will also seek strong IPR protection and enforcement in the recently announced FTA negotiations with the Republic of Korea and Malaysia. Another opportunity the United States uses to strengthen the protection and enforcement of intellectual property is the increasing number of trade and investment framework agreement (TIFA) negotiations with several countries in regions such as the Middle East and Asia.

In addition, once an FTA is concluded, the United States works closely with our trading partners to achieve appropriate implementation of FTA obligations in domestic law. The United States

engaged in this process over the past year with Australia, Singapore, Morocco, CAFTA-DR parties, Bahrain, and Oman. For example, in 2005 Morocco completed the implementation of its IPR obligations in the United States-Morocco FTA, and as a result, Morocco has comprehensive IPR legislation which provides a high standard of IPR protection.

Generalized System of Preferences (GSP) reviews

USTR will continue to use all statutory tools, as appropriate, to improve intellectual property protection in countries where it is inadequate. For example, USTR examines IPR practices in connection with its implementation of trade preference programs, such as the ongoing Generalized System of Preferences (GSP) reviews of countries. This year, because of significant progress in improving enforcement, USTR was pleased to announce the conclusion of the GSP reviews of Brazil, Kazakhstan and Pakistan. In addition, in January 2006, USTR restored GSP benefits to Ukraine because of progress in combating illegal optical disc production, including the passage of new legislation. USTR will continue to review the IPR practices of Russia, Lebanon and Uzbekistan under the ongoing GSP reviews of those countries.

STOP! Initiative

USTR is actively engaged in implementing the Administration's Strategy Targeting Organized Piracy (STOP!) initiative. Announced in October 2004, STOP! brings together all the major players – the federal government, private sector and trade partners – to take concerted action in cracking down on piracy and counterfeiting. The initiative is part of an effort to enhance coordination among all relevant U.S. Government agencies and U.S. trading partners to tackle this global problem. As part of STOP!, USTR is advocating adoption of best practices guidelines for enforcement. In 2005, USTR led interagency teams to meet with a number of key trading partners, including Japan, Korea, Hong Kong, Singapore, UK, France, Germany, and the European Union, to establish greater cooperation on IPR enforcement. This year, USTR will continue these efforts to strengthen IPR laws and enforcement and create an international alliance against counterfeiting and piracy.

As part of this effort, USTR, in coordination with other agencies, is introducing new initiatives in multilateral fora to improve the global intellectual property environment that will aid in disrupting the operations of pirates and counterfeiters. Key initiatives have gained endorsement and are undergoing implementation in the G-8, the US-EU Summit, the Organization for Economic Cooperation and Development (OECD), and the Asia-Pacific Economic Cooperation (APEC) forum.

At the November APEC Ministerial, APEC Leaders adopted best practices guidelines to improve border enforcement, protect digital copies and combat internet piracy. USTR is spearheading an effort to have APEC leaders endorse additional IPR guidelines that would keep supply chains free of pirated and counterfeit goods and improve IPR public awareness campaigns throughout the Asia-Pacific region.

Global Scope of Counterfeiting and Piracy

Global IPR theft and trade in fakes and pirated materials have continued to grow, threatening innovative and creative economies around the world. Counterfeiting has developed from a localized industry concentrated on the copying of high-end designer goods into a massive, sophisticated global business involving the manufacturing and sale of counterfeit versions of a vast array of products, including soaps, shampoos, razors, batteries, cigarettes, alcoholic beverages, golf clubs, automobile parts, motorcycles, medicines, and health care products, to name a few. Counterfeiting of such a broad range of products on a global scale affects more than just the companies that produce legitimate products. While it has a direct impact on the sales and profits of those companies, counterfeits also hurt the consumers who waste their money and sometimes put themselves at risk by purchasing fake goods. It also hurts the countries concerned by decreasing tax revenues and deterring investments. Counterfeiters generally pay neither taxes nor duties, and counterfeiters often do not comply with basic manufacturing standards for the health and safety of workers or product quality and performance. Piracy of copyright products in digital, print (e.g., books, journals, and other printed materials), and other analog formats (including movies, music, business software, entertainment software, and books), as well as counterfeiting of all types of trademarked products, have grown rapidly because these illegal activities offer enormous profits and little risk for the criminal element of society. Criminals can enter into the counterfeiting and pirating business with little capital investment, and even if caught and charged with a crime, the penalties actually imposed in many countries are so low that they offer no deterrent.

Counterfeit Pharmaceuticals

The manufacture and distribution of counterfeit pharmaceuticals is an increasing problem that poses special concerns because of its health and safety risks. The United States notes its concern with the proliferation of counterfeit pharmaceutical manufacturing in China and Russia, and the sale and distribution of counterfeit pharmaceuticals in many countries.

The global scope of piracy and counterfeiting requires stronger and more effective border enforcement to stop the import, export, and transit of pirated and counterfeit goods. Through bilateral consultations and our FTAs, USTR works to maximize the deterrent effect of remedies, including requirements that pirated and counterfeit products, as well as the equipment used to make them, are seized and destroyed. The economic damage caused by counterfeiting to the legitimate companies whose products are counterfeited is enormous.

Notorious Markets

Global piracy and counterfeiting thrive in part due to large marketplaces that deal in infringing goods. Information reviewed in this year's Special 301 process points to the following virtual and physical markets as examples of marketplaces that have been the subject of enforcement action, or may merit further investigation for possible IPR infringements, or both. The list represents a selective summary of information reviewed during the Special 301 process; it is not a finding of violations of law.

Virtual Markets

www.allofmp3.com (Russia). Industry reports that allofmp3.com is the world's largest server-based pirate music website. Allofmp3.com is currently under criminal investigation by Russian authorities. Efforts to shut down the site have so far been unsuccessful.

Baidu (China). Industry has identified Baidu as the largest of an estimated seven or more China-based "MP3 search engines" offering deep links to song files for downloads or streaming. Baidu has been the target of infringement actions. Notably, in September 2005 the People's Court of Haidian District in Beijing reportedly ordered Baidu to pay RMB 68,000 (\$8,400) to a music company for unauthorized downloads. Baidu has reportedly appealed.

Kuro (Taiwan). In September 2005, managers of Kuro, a peer-to-peer service, were found guilty along with a subscriber of criminal copyright infringement and sentenced to prison terms. In the 2005 Special 301 Report, the United States encouraged Taiwan to improve efforts toward effectively combating increasing levels of Internet piracy.

Physical Markets

Xiangyang Market (Shanghai, China). In early 2006, the Shanghai Municipal Government said it would close this market on grounds of rampant sale of counterfeit fashion and apparel products. More recently, authorities pushed the closure date back to June 30, 2006. The United States welcomes commitments to close Xiangyang Market, and will monitor their implementation. Authorities must remain alert to the possibility that vendors of infringing products may seek to migrate their operations to other Shanghai markets, or to the Internet.

Silk Street Market (Beijing, China). Industry has cited Beijing's Silk Street Market as "perhaps the single biggest symbol of China's IP enforcement problems." In 2005, authorities began to pressure the landlords of Silk Street Market and other major retail and wholesale markets in Beijing to improve IPR compliance. In contrast to Shanghai's Xiangyang Market, however, authorities have not said they would close down the Silk Street Market. Trademark owners filed civil claims in mid-2005 against the landlord, Beijing Xiushui Haosen Clothing Co. Ltd. In December 2005, the Beijing No. 2 Intermediate Court's IP Tribunal decided five cases in favor of the right holders, imposing liability on the landlords for failing to halt infringements; Beijing's High Court recently upheld that decision.

Yiwu Wholesale Market (Yiwu, China). Yiwu Wholesale Market reportedly sells approximately 410,000 different items, mostly consisting of bulk sales of small consumer goods. Market officials recently estimated receiving approximately 400 complaints of IPR violations from buyers in 2005. Local officials have acknowledged certain problems and stressed their commitment to IPR enforcement.

Gorbushka, Rubin Trade Center, Tsaritsino, and Mitino (Moscow, Russia). In November 2005, a large Ministry of Interior operation reportedly resulted in police raids at numerous markets, including Gorbushka and Mitino. Industry previously reported that a closure of the

Gorbushka market resulted in migration of vendors to the nearby Rubin Trade Center. Industry reports infringement problems at newer markets on the outskirts of Moscow, including Tsaritsinio and Mitino. A raid against the Tsaritsinio market in January 2005 reportedly resulted in the commencement of five criminal investigations.

Tri-Border Region (Paraguay, Argentina, and Brazil). The Tri-Border Region of Paraguay, Argentina, and Brazil has a longstanding reputation as a hotbed of piracy and counterfeiting of all kinds of products. The U.S. Government is funding a training project through which U.S. Department of Justice and U.S. Department of Homeland Security officials will train prosecutors, police, and customs officials from the Tri-Border Region to combat intellectual property crime.

Stand Center, “25 de Marco” Shopping Center, and Promocenters (Sao Paulo, Brazil). In late 2005, over 1,500 Brazilian police and other law enforcement personnel reportedly raided these huge, well-known markets. Acknowledging that the effect on sales of pirated and counterfeit products from such raids is temporary, local enforcement and fiscal officials have pledged continued actions.

Tepito, Plaza Meave, Eje Central, Lomas Verdes, and Pericoapa Bazaar (Mexico City), CAPFU (Puebla, Mexico), and San Juan de Dios (Guadalajara, Mexico). An estimated 50,000 vendors sell IPR products in Mexico’s ubiquitous, unregulated street markets. Past police raids on such markets have sometimes been met with violent resistance, requiring large contingents of security personnel. Video game right holders reported raids on Pericoapa Bazaar in May and December 2005, as well as a raid at Plaza Meave near Mexico City in December.

Transshipment and Transiting of Goods

“Transshipment” and “in transit goods” pose growing IPR problems. Transshipped goods and in transit goods enter the customs territory of a country intended to be sent to another destination; such goods are sometimes “diverted” for consumption in the customs territory through which they are shipped. Transshipped and in transit goods pose a high risk for counterfeiting and piracy because customs procedures may be used to disguise the true country of origin of the goods or to enter goods into customs territories where border enforcement for transshipped or in transit goods is known to be weak. Transshipment or in transit goods are significant problems in Belize, Canada, Latvia, Lithuania, Paraguay, Ukraine and United Arab Emirates, among others. The United States urges these countries to provide stronger border enforcement of intellectual property rights. The United States pledges to work together with these countries to improve their IPR border enforcement systems.

Controlling Optical Media Production

Over the past year, some trading partners, such as Ukraine, Brazil, Pakistan, and the Philippines have taken important steps toward implementing much-needed controls on optical media production in order to address and prevent future pirate activity. However, other countries urgently need to implement controls or improve existing inadequate measures. Such countries include India, Thailand, and Russia, which have not made sufficient progress in this regard. In

contrast, Indonesia has begun to improve enforcement efforts, and Malaysia steadily continues to improve its enforcement efforts. Vietnam has agreed that optical disc regulation and its enforcement is an important method of attacking the problem there. The United States continues to urge its trading partners facing pirate optical media production within their borders to adopt similar controls or aggressively enforce existing regulations in the coming year.

Internet Piracy and the WIPO Internet Treaties

The Internet has undergone explosive growth and, coupled with the increased availability of broadband connections, serves as an extremely efficient global distribution network for pirated products. The explosive growth of copyright piracy on the Internet is a serious problem. The Administration is continuing to work with other governments, and to consult with U.S. industry, to develop the best strategy to address Internet piracy. An important first step in the fight against Internet piracy was achieved at the World Intellectual Property Organization (WIPO) when it concluded two copyright treaties in 1996: the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the “WIPO Internet Treaties”). The WIPO Internet Treaties help to raise the minimum standards of intellectual property protection around the world, particularly with respect to Internet-based delivery of copyrighted works. They clarify exclusive rights in the on-line environment and specifically prohibit the devices and services intended to circumvent technological protection measures for copyrighted works. Both treaties entered into force in 2002.

In order to realize the enormous potential of the Internet, a growing number of countries are implementing the WIPO Internet Treaties and creating a legal environment conducive to investment and growth in Internet-related businesses and technologies. As of April 28, 2006, there are 58 members of the WCT and 57 members of the WPPT; this number will rise significantly when the EU Member States join. Other countries have implemented key provisions of the treaties in their national laws, without having yet formally ratified them. The WIPO Internet Treaties are now part of the international IPR legal regime and represent a majority world community view that the vital framework of protection under existing agreements, including the TRIPS Agreement, should be supplemented to eliminate any remaining gaps in copyright protection on the Internet that could impede the development of electronic commerce. The United States urges other governments to ratify and implement the two WIPO Internet Treaties.

Other Initiatives Regarding Internet Piracy

The United States is strengthening the standards of protection for intellectual property by incorporating standards of the WIPO Internet Treaties as substantive obligations in the bilateral and regional trade agreements that the United States negotiates, as well as by seeking accession to those treaties as a substantive obligation. Moreover, the United States’ proposals in its FTA negotiations will continue to include up-to-date copyright and enforcement obligations to reflect contemporary technological challenges.

Government Use of Software

In October 1998, the United States announced an Executive Order directing United States Government agencies to maintain appropriate and effective procedures to ensure authorized use of legitimate software. In addition, USTR was directed to undertake an initiative to work with other governments, particularly those in need of modernizing their software management systems or about which concerns have been expressed, regarding unauthorized use of software and use of illegal software.

The United States has achieved considerable progress under this initiative. Most recently, the United States welcomed the April 22, 2006 announcement by China that it will require computers to be pre-installed with licensed operating system software and government agencies to purchase only such computers. A number of countries and territories have issued decrees and other measures mandating the authorized use of only legitimate software by government ministries, some of which have yet to be fully implemented. Such countries include Bolivia, Chile, China, Colombia, Costa Rica, the Czech Republic, France, Greece, Hong Kong, Hungary, Ireland, Israel, Jordan, Korea, Lebanon, Macau, Paraguay, Peru, the Philippines, Spain, Taiwan, Thailand, Turkey, and the United Kingdom. The United States is pleased that these governments have recognized the importance of setting an example in this area and expects that these measures will be fully implemented. The United States looks forward to the adoption of similar decrees, with effective and transparent procedures that ensure legitimate use of software, by additional governments in the coming year.

Implementation of the WTO TRIPS Agreement

The TRIPS Agreement, which requires all WTO members to provide certain minimum standards of intellectual property protection, as well as effective IPR enforcement, was one of the most significant achievements of the Uruguay Round. The TRIPS Agreement is the first broadly-subscribed multilateral intellectual property agreement that is subject to mandatory dispute settlement provisions.

Developed country members were required to implement the TRIPS Agreement fully as of January 1, 1996. Developing countries were given a transition period for many obligations until January 1, 2000. On November 29, 2005, the United States joined other WTO members in deciding to extend the deadline for least developed country members to comply with most remaining TRIPS provisions from January 2006 until July 2013. Recognizing the challenges faced by these countries, the United States worked closely with them and other WTO members to extend this date. The least developed country members in turn pledged to preserve the progress that some have already made toward TRIPS compliance. In addition, the least developed country members have until 2016 to implement their TRIPS obligations for patent and data protection for pharmaceutical products, as proposed by the United States at the Doha Ministerial. The United States looks forward to the successful completion of this transition.

Developing country members continue to make progress toward full implementation of their TRIPS obligations. Nevertheless, certain members are still in the process of finalizing

implementing legislation and many are still engaged in establishing adequate IPR enforcement mechanisms. Every year, the U.S. Government provides extensive technical assistance and training on the implementation of the TRIPS Agreement to a large number of U.S. trading partners. Such assistance is provided by a number of U.S. Government agencies, including the U.S. Patent and Trademark Office, the U.S. Copyright Office, the Department of State, the U.S. Agency for International Development, U.S. Customs and Border Protection, the Department of Justice, and the Department of Commerce. This assistance is provided on a country-by-country basis, as well as in group seminars, including those co-sponsored with the WIPO and the WTO. In addition, U.S. industry is actively involved in providing specific enforcement-oriented training in key markets around the world. Technical assistance involves the review of, and drafting assistance on, laws concerning intellectual property and enforcement. Training programs usually cover the substantive provisions of the TRIPS Agreement as well as the enforcement provisions. The United States will continue to work with WTO members and expects further progress in the near term to complete the TRIPS implementation process. However, in those instances in which additional progress is not achieved, the United States will consider other means of encouraging implementation, including the possibility of dispute settlement consultations.

The United States urges all WTO members to swiftly complete their TRIPS implementation process, as it believes that compliance with the minimum standards set forth in the TRIPS Agreement is important for ensuring social and economic development.

Intellectual Property and Health Policy

The Administration is dedicated to addressing the serious health problems, such as HIV/AIDS, afflicting least-developed countries in Africa and elsewhere. The United States is firmly of the conviction that intellectual property protection, including for pharmaceutical patents, is critical to the long term viability of a health care system capable of developing new and innovative lifesaving medicines. Intellectual property rights are necessary to encourage rapid innovation, development, and commercialization of effective and safe drug therapies. Financial incentives are needed to develop new medications; no one benefits if research on such products is discouraged.

At the same time, the United States is also firmly of the view that international obligations such as those in the TRIPS Agreement have sufficient flexibility to allow countries, particularly developing and least-developed countries, to address the serious public health problems that they face.

At the WTO Doha Ministerial in November 2001, WTO Ministers issued a separate Declaration on the TRIPS Agreement and Public Health, acknowledging the serious public health problems afflicting African and other developing and least-developed country members, especially those resulting from HIV/AIDS, malaria, tuberculosis, and other epidemics. Ministers agreed that intellectual property rules contain flexibilities to meet the dual objectives of, on the one hand, meeting the needs of poor countries without the resources to pay for cutting edge pharmaceuticals and, on the other hand, ensuring that the patent rights system continues to promote the development and creation of new lifesaving drugs.

At Doha, the United States proposed, and all WTO Members agreed, that the Doha Declaration should provide an additional ten-year transition period (until 2016) for least-developed country members to implement the pharmaceutical-related provisions of the TRIPS Agreement. This extended transition period balances the interests of intellectual property rights holders and the needs of the least-developed country members.

In addition, in paragraph 6 of the Declaration, Ministers recognized that WTO Members with “insufficient or no manufacturing capacities in the pharmaceutical sector” could have difficulty using the compulsory licensing provisions of the TRIPS Agreement and directed the TRIPS Council to find an expeditious solution to this problem. In December 2002, the United States announced a framework to ease these WTO rules for countries in need to import life-saving drugs.

On August 30, 2003, the WTO General Council adopted the “TRIPS/health solution,” which is comprised of a Decision and an accompanying Chairman’s Statement that sets out the shared understandings of WTO members on how the Decision should be interpreted and applied. Under the TRIPS/health solution, Members are permitted, in accordance with specified procedures, to issue compulsory licenses to export pharmaceutical products to countries that cannot produce drugs for themselves.

On December 6, 2005, the WTO General Council agreed on an amendment to make the TRIPS/health solution reached in August 2003 a permanent part of the TRIPS Agreement. U.S. efforts in working with African nations and other developing country Members were instrumental to reaching this agreement. On December 16, 2005, the United States became the first WTO Member to formally notify the WTO that it had accepted the amendment. Other WTO Members now have until December 1, 2007 to accept the amendment. It will go into effect, for those Members that accept it, once two-thirds of the membership has accepted it. The August 2003 waiver will remain in place and available until the amendment is in force.

The TRIPS/health solution is a demonstration of how the WTO can work to address the needs of poor countries. The United States strongly supports effective and appropriate use of the TRIPS/health solution to facilitate access to life-saving medicines by countries in need. The United States would be willing to discuss the need to provide technical assistance if some Members encounter difficulties in implementing or utilizing the solution. In fact, the United States has already taken steps to ensure that the solution can be implemented. For example, in July 2004, the United States reached an agreement with Canada to ensure that the provisions of the North American Free Trade Agreement (NAFTA) will not impede implementation of the TRIPS/health solution.

In recent free trade agreements with the parties to CAFTA-DR, Morocco, Bahrain, Oman, Peru and Colombia, the United States has clarified that the intellectual property provisions in the agreements do not stand in the way of measures necessary to protect public health. Specifically, the United States has confirmed that the intellectual property chapters of the FTAs do not affect the ability of the United States or our FTA partners to take necessary measures to protect public health by promoting access to medicines for all, in particular concerning cases such as HIV/AIDS, tuberculosis, malaria, and other epidemics as well as circumstances of extreme

urgency or national emergency. The United States has also made clear that the intellectual property chapter of the FTAs will not prevent effective utilization of the TRIPS/health solution.

Supporting Pharmaceutical Innovation

USTR has sought to eliminate market access barriers faced by U.S. pharmaceutical companies in many countries and to both provide for affordable health care today and support the innovation that assures improved health care tomorrow. In addition to direct and indirect government funding, a strong and effective intellectual property system is crucial to achieving these goals as are other policies that encourage innovation in the health technology sector.

In the United States, government action has focused on creating an environment that best encourages further innovation and yields a constant flow of new and innovative medicines to the market. The goal has been to ensure that consumers benefit from both technological breakthroughs as well as the competition that further innovation generates. The United States also relies on a strong generic pharmaceutical industry to increase competitive pressure to lower drug prices.

Historically, the Special 301 process has focused on the strength of intellectual property protection and enforcement by our trading partners. However, even where a country's IPR regime is adequate, price controls and regulatory and other market access barriers can serve to discourage the development of new drugs. These barriers can arise in a variety of contexts, including reference pricing, approval delays and procedural barriers to approvals, restrictions on dispensing and prescribing, and unfair reimbursement policies. Such measures have the potential to be nontransparent, as the criteria and rationale for certain pharmaceutical prices or reimbursement amounts are often not fully disclosed even to the pharmaceutical companies seeking to market their drugs. A 2004 U.S. Government study, led by the Department of Commerce, found that price controls and regulatory and other barriers diminish returns on pharmaceutical products, and reduce the amount of global pharmaceutical research and development below what it would otherwise be under market conditions, inhibiting the development of the next generation of life-saving drugs.

To address these issues, USTR and the Departments of Health and Human Services, Commerce, and State, formed a task force. This task force is working to engage our OECD trading partners on the most effective way to promote continued innovation in the pharmaceutical sector and enhanced access to innovative pharmaceuticals now and in the future. This task force is working to achieve these goals through FTA negotiations and the establishment of bilateral dialogues with key countries.

The United States addressed transparency and accountability of the Australian pharmaceutical reimbursement system in the Australia FTA, which went into effect in 2005. The FTA also created a United States-Australia Medicines Working Group for continued discussion of emerging bilateral concerns and health policy issues. The United States held the first meeting of this Working Group in January to review implementation of the pharmaceutical provisions of the FTA and to discuss ongoing issues of mutual concern

In February 2006, the United States and the Republic of Korea (Korea) announced their intent to launch FTA negotiations. The Administration has had a longstanding dialogue with Korea on pharmaceutical issues and, as a result, has seen considerable improvement over the past decade in U.S. pharmaceutical companies' access to the Korean market. In 2005, for example, Korea's Health Insurance Reimbursement Agency began providing written justifications for new drug pricing and listing decisions. The United States Government will seek additional progress on priority issues, including ensuring competition, supporting innovation, and addressing market access and transparency issues, in the FTA negotiations, which the Administration is seeking to conclude by the end of the year.

The United States also is seeking to establish or continue dialogues with OECD and other countries to address concerns and encourage a common understanding between developed countries on questions related to innovation in the pharmaceutical sector. The United States already has had such dialogues with Japan and Germany, and is seeking to establish ones with other countries. It also has established a dialogue on pharmaceutical issues with China.

With respect to Japan, pharmaceutical and medical device issues are an integral part of the Administration's regulatory reform work. The United States has made steady progress in improving transparency in this sector, ensuring that foreign pharmaceutical and medical device manufacturers have meaningful opportunities to provide input into important regulatory matters, and facilitating the introduction of innovative new pharmaceuticals and medical devices into Japan's market.

The United States also has established a constructive dialogue with Germany on policy goals and concerns related to health care. During these discussions, the two sides have exchanged views on how best to deal with challenges of balancing health care spending with other priorities and of providing affordable health care today with supporting the innovation that assures improved health care is available in the future. The United States also raised specific concerns related to Germany's reference pricing system for determining product reimbursement and the transparency of the German Government's decision-making process regarding pharmaceutical pricing. The two governments plan to continue this dialogue as the German Government considers future healthcare reform.

The United States continues to urge China to price drugs in a manner that appropriately values innovations and to add new drugs to its national formulary, which controls access to medicines for China. The Administration also is pressing China to address the production and export of counterfeit pharmaceuticals, which endanger lives.

During the coming year, the U.S. Government is seeking to establish similar dialogues with Poland, Italy, France, Canada, and other countries. The United States shares policy goals and concerns related to health care with these countries, including aging populations and rising health care costs. The United States also shares the objective of continued improvement in the health and quality of life of its citizens and delivering care in the most efficient and responsive way possible. The United States hopes these dialogues will help address specific concerns related to price controls, and regulatory and transparency issues as well as develop a constructive dialogue with these countries on health policy issues of mutual concern.

WTO Dispute Settlement

Dispute settlement efforts this year continue to focus on resolving disputes that were announced through previous Special 301 reviews and determinations, using the full range of tools available. These tools include informal consultations and settlement, which can be more efficient and are therefore the preferred manner of resolving disputes, or where those are unsuccessful, full utilization of the dispute settlement process.

At the conclusion of the 1999 Special 301 review, the United States initiated dispute settlement consultations concerning the European Union's (EU) regulation on food-related geographical indications (GIs), based on concerns that the regulation was inconsistent with the EU's TRIPS Agreement obligations. These consultations resulted from the United States' long-standing complaint that the EU GI system discriminates against foreign products and persons – notably by requiring that EU trading partners adopt an “EU-style” system of GI protection – and provides insufficient protections to trademark owners. Because those consultations failed to resolve the matter, on August 18, 2003, the United States requested the establishment of a panel, and panelists were appointed on February 23, 2004.

On April 20, 2005, the WTO Dispute Settlement Body (“DSB”) adopted a panel report ruling in favor of the United States that the EU GI regulation is inconsistent with the EU's obligations under the TRIPS Agreement and the General Agreement on Tariffs and Trade 1994. In the panel report adopted by the DSB, the panel agreed that the EU's GI regulation impermissibly discriminates against non-EU products and persons. The panel also agreed with the United States that Europe could not, consistent with WTO rules, deny U.S. trademark owners their rights; it found that, under the regulation, any exceptions to trademark rights for the use of registered GIs were narrow, and limited to the actual GI name as registered. The DSB recommended that the EU amend its GI regulation to come into compliance with its WTO obligations, and the EC was given until April 3, 2006 to do so. On March 31, 2006, the EC published a revised GI Regulation that is intended to comply with the DSB recommendations and rulings. There remain some concerns with respect to this revised GI Regulation, however, which the United States has asked the EC to address, and the United States intends to continue monitoring this situation.

The United States, in cooperation with other WTO members, has also made innovative use of WTO tools other than dispute settlement. For instance, in October 2005, the United States, Japan, and Switzerland made simultaneous transparency requests to China under Article 63.3 of the TRIPS Agreement.

BACKGROUND ON SPECIAL 301

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994) (“Special 301”), under Special 301 provisions, USTR must identify those countries that deny adequate and effective protection for IPR or deny fair and equitable market access for persons that rely on intellectual property protection. 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 an investigation under the Section 301 provisions of the Trade Act of 1974. USTR may not designate a country as a Priority Foreign Country if it is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IPR.

USTR must decide whether to identify countries within 30 days after issuance of the annual National Trade Estimate Report. In addition, USTR may identify a trading partner as a Priority Foreign Country or remove such identification whenever warranted.

USTR has created a “Priority Watch List” and “Watch List” under Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

Additionally, under Section 306, USTR monitors a country’s compliance with bilateral intellectual property agreements that are the basis for resolving an investigation under Section 301. USTR may apply sanctions if a country fails to satisfactorily implement an agreement.

The interagency Trade Policy Staff Committee, in advising USTR on the implementation of Special 301, obtains information from and holds consultations with the private sector, U.S. embassies, the United States’ trading partners, the U.S. Congress, and the National Trade Estimates report, among other sources.

PRIORITY WATCH LIST

CHINA

China does not provide American copyright materials, inventions, brands, and trade secrets the intellectual property protection and enforcement to which they are entitled. China therefore remains a top intellectual property enforcement priority. China will remain on the Priority Watch List, and remain subject to Section 306 monitoring. Faced with only limited progress by China in addressing certain deficiencies in IPR protection and enforcement, the United States will step up consideration of its WTO dispute settlement options.

In addition, the United States will conduct a special provincial review in the coming year to examine the adequacy and effectiveness of IPR protection and enforcement at the provincial level. The goal of this review will be to spotlight strengths, weaknesses, and inconsistencies in and among specific jurisdictions, and to inform next year's Special 301 review of China as a whole. USTR expects to seek public comments in connection with the special provincial review.

The United States is using this year's Special 301 Report to examine four "hot spots" – Guangdong Province, Beijing City, Zhejiang Province, and Fujian Province – where, it appears, there is an acute need for authorities to more effectively establish and sustain proactive, deterrent IPR enforcement.

The United States recognizes and appreciates the efforts of the many officials in China, led by President Hu Jintao and Vice Premier Wu Yi, who continue to give voice to China's commitment to protecting intellectual property rights and work hard to make it a reality. In spite of these efforts, the reality of IPR enforcement in China continues to lag far behind the commitment made by China's government at the Joint Commission on Commerce and Trade in 2004, and renewed in 2005 and 2006, to achieve a significant reduction in IPR infringement throughout China.

China has made welcome progress in some areas. Consistent with the plan laid out in last year's Special 301 Report, the United States has used the JCCT, including the IPR Working Group, to secure new, specific IPR commitments, and in a few instances, specific actions to implement existing commitments. Some of the key IPR results included:

- enforcement actions by China against plants that produce pirated optical discs;
- new rules that require computers to be pre-installed with licensed operating system software;
- an agreement to work on cooperation to combat pirated goods displayed at trade fairs in China;
- a commitment to intensify efforts to eliminate infringing products at major consumer markets in China, such as Silk Street Market in Beijing; and

- a commitment to ensure the legalization of software used in Chinese enterprises and to take up issues of government and enterprise software asset management in the JCCT IPR Working Group.

The two governments also agreed to step up cooperation on IPR law enforcement efforts, increase customs cooperation, and provide China with additional technical assistance to fully implement the WIPO Internet Treaties. Together with Japan and Switzerland, the United States has also used WTO tools in new ways to start an ongoing process of making China's whole IPR regime more transparent.

Apart from longstanding concerns over IPR enforcement, the United States is alert to U.S. industry concerns about the possibility that laws or policies in a variety of fields might be misused to favor domestic over foreign IPR. Such concerns are especially relevant in light of recently issued Chinese government policies establishing a procurement preference for domestically innovated products, statements and consideration of legal changes regarding such areas as compulsory licensing and the use of IPR in setting standards, and other emerging legal and policy developments that have the potential to affect IPR protection and market access for IPR-bearing goods and services. The United States will monitor these developments closely to ensure fair treatment for U.S. rights holders.

Infringement Levels Remain Unacceptably High

Despite anti-piracy campaigns in China and an increasing number of IPR cases in Chinese courts, overall piracy and counterfeiting levels in China remained unacceptably high in 2005. IPR infringement continued to affect products, brands and technologies from a wide range of industries, including films, music and sound recordings, publishing, business and entertainment software, pharmaceuticals, chemicals, information technology, apparel, athletic footwear, textile fabrics and floor coverings, consumer goods, electrical equipment, automotive parts and industrial products, among many others.

Industry sources in 2005 continued to estimate that levels of piracy in China across all lines of copyright business are 85 to 93 percent, indicating little to no improvement. For example, estimated business software losses fell to \$1.27 billion in 2005 from \$1.48 billion in 2004. However, the software industry reports that the level of government purchases does not support the conclusion that all software in government offices has been legalized, and notes that software end-user piracy outside the government remains rampant. Internet piracy is increasing and end-user piracy of business software and other copyright materials, such as books and journals, remains a key concern. The share of IPR infringing product seizures of Chinese origin at the U.S. border increased to 69 percent in 2005 from 63 percent in 2004, while the total value of the IPR infringing goods from China decreased to \$63.9 million in 2005 from \$87.2 million in 2004. China's share of infringing goods seized at the border is more than ten times greater than that of any other U.S. trading partner.

China's counterfeits include many products that pose a direct threat to the health and safety of consumers in the United States, China and elsewhere, such as pharmaceuticals, batteries, auto parts, industrial equipment, toys, and many other products. The harm from counterfeiting is not

limited to consumers and right holders; China has estimated its own tax losses due to counterfeiting at \$3.2-4 billion in 2002.

Some Progress, but Overall Enforcement Remains Inadequate

Inadequate IPR enforcement is one of China's greatest shortcomings as a trading partner. Rights holders report that enforcement efforts, particularly at the local level, are hampered by poor coordination among Chinese Government ministries and agencies, local protectionism and corruption, high thresholds for initiating investigations and prosecuting criminal cases, lack of training, and inadequate and non-transparent processes.

Most of all, China suffers from chronic over-reliance on toothless administrative enforcement and underutilization of criminal remedies. China's own 2004 data showed that it channeled more than 99 percent of copyright and trademark cases into its administrative systems and turned less than one percent of cases over to the police. The trademark and copyright industries continue to point out that administrative fines are too low to provide a deterrent, and as a result, infringers continue to consider administrative seizures and fines as a cost of doing business.

In 2005, the United States pressed China to address its over-reliance on administrative enforcement. At the 2005 JCCT, China agreed to increase the number of criminal prosecutions for IPR violations relative to the total number of IPR administrative cases.

Unfortunately, there has been no sign yet of a significant shift in emphasis toward criminal enforcement. China's reported absolute numbers of criminal cases have risen,¹ but China has not publicized corresponding administrative statistics that would reveal a shift. On the contrary, according to a trademark industry submission, officials of China's State Administration for Industry and Commerce recently indicated that the number of trademark cases transferred to the police during 2005 was expected to be less than 0.3% of the total. Right holders continued to express dissatisfaction with the number and substance of investigations, prosecutions, and convictions last year by local police.

In the 2005 Special 301 Report, the United States pledged to examine closely whether China's implementation of a December 2004 Judicial Interpretation on thresholds for criminal liability would address underlying deficiencies and actually deter counterfeiting and piracy. Following careful examination of available information, the United States has concluded that China's high thresholds for criminal liability (*i.e.*, the minimum values or volumes required to initiate criminal prosecution) continue to be a major reason for the lack of an effective criminal deterrent. The partial reforms reflected in the December 2004 measure did not go far enough; the mandated thresholds remain so high that they make it impossible as a matter of law to prosecute many commercial infringers, especially at the retail level. The problem is made worse by China's

¹ According to Chinese data provided in response to U.S. requests, China initiated no copyright retail cases under Article 218 of its Criminal Law in 2004 and six cases in 2005. Under Article 217 of the same law, covering copyright reproduction and distribution, the number of cases initiated rose from 13 to 28. China's self-reported numbers of trademark counterfeiting cases initiated also rose from 53 to 98 under Article 215 (sale of counterfeit trademark goods); from 163 to 221 under Article 213 (manufacture of counterfeit trademark goods), and from 100 to 134 under Article 215 (manufacture of counterfeit trademark labels).

reliance on values of infringing products, rather than genuine products, as the default rule for determining whether threshold values are met. China has thus maintained a legal “safe harbor” that protects a large group of commercial infringers and operates to deprive the criminal enforcement authorities of needed information regarding the sources of counterfeit and pirated goods.

Right holders have pointed to a number of other deficiencies that collectively highlight the need for China to reform its criminal IPR laws, which were not revised at the time of WTO accession. In addition to the thresholds, notable problems include the profit motive requirement in copyright cases; the requirement of identical trademarks in counterfeiting cases; the lack of criminal liability for certain acts of copyright infringement; and the need to establish minimum, proportional sentences and clear standards for initiation of police investigations in cases where there is a reasonable suspicion of criminal activity. The United States calls on China to address these issues by announcing an initiative to reform its criminal IPR laws and related criminal measures.

Trade in pirated optical discs continues to thrive, supplied by smugglers and by both licensed and unlicensed factories. Small retail shops continue to be the major commercial outlets for pirated movies and music, and roaming vendors offering cheap pirated discs continue to be very visible in major cities across China. China made a 2005 JCCT commitment to take aggressive action against movie piracy, including enhanced enforcement for titles not yet authorized for distribution. Right holders have monitored China’s efforts and report little meaningful improvement in piracy of pre-release titles. Right holder surveys showed progress in a limited number of retail outlets in Shanghai, one of four selected cities, but right holders reported that surveys of the three other major cities yielded disappointing results.

Piracy and counterfeiting are partly products of China’s market access restrictions, which artificially limit the availability of foreign content and thus lead consumers to the black market. Various U.S. right holders continue to be adversely impacted by restrictions on imports, including having to go through import monopolies, restrictions on foreign investment in distribution, and delays in regulatory approval. Examples include restrictions on the import and distribution of legitimate foreign movies and delays created by the censorship process. Efforts to speed up content review for entertainment software have also been unavailing.

There have been a few bright spots in the areas of enforcement. Industry has confirmed that some of China’s special campaigns, such as the continuing “Mountain Eagle” campaign against trademark infringement crimes, have in fact resulted in increased arrests and seizures of infringing materials, although the disposition of seized goods and the outcomes of cases remain largely obscured by lack of transparency.

China has announced a 2006 Action Plan on IPR Protection, including “special crackdown efforts” with respect to various IPR infringement problems. The United States looks to China to achieve real and transparent results for U.S. right holders through implementation of the Action Plan. In addition to stepping up action against trademark counterfeiting, the United States calls on China to launch and publicize significant criminal enforcement actions against optical media piracy, Internet piracy, and other forms of piracy afflicting U.S. copyright owners.

The United States is encouraged by China's recent adoption of amended rules governing transfer of administrative and customs cases to criminal authorities. These rules are not a complete solution and do not address the problem of thresholds, but they show a desire to address the issue and could help to overcome a certain amount of bureaucratic inertia and other institutional barriers to increasing criminal enforcement. The United States is also encouraged that administrative authorities in a few parts of China, notably Shanghai, appeared to show greater willingness to take *ex officio* enforcement action on behalf of U.S. right holders without the need for a complaint. The United States would welcome more such action, combined with higher, deterrent fines.

The United States is also encouraged that authorities in China started to take enforcement actions against Internet piracy in 2005, following China's 2005 JCCT commitment to carry out a "nationwide crack-down on Internet piracy, including through enforcement at Internet cafes." This included a temporary campaign from October 2005 through February 2006, the concrete results of which remain unclear. So far, enforcement against Internet piracy has largely been a localized, administrative enforcement effort in a few cities. The problems of Internet piracy call for a coordinated, national effort backed by appropriate resources.

The United States also hopes that China will use its implementation of the 2006 Action Plan as an opportunity to examine a variety of structural reforms that would contribute to improving IPR enforcement. In addition to reforming China's criminal laws as discussed above, other areas that China should explore include the positive results that could be achieved through specialized national IPR courts and prosecutors, providing faster trademark examination, and ensuring that the resources available to local administrative, police, and judicial authorities charged with protecting and enforcing IPR are adequate to the task.

Customs Enforcement: The export of infringing products from China is of grave concern worldwide. The statistics on seizures of Chinese-origin goods at the U.S. border, cited above, speak for themselves. China's infringing products dominate the black markets of the world, and the reputation of China's industry has suffered as a result. China is not doing enough to stop the outbound infringing products at its borders. Now that China has put rules in place for transfer of customs cases to criminal authorities, the United States calls on China to begin an aggressive campaign to prosecute exporters of infringing products.

The United States also remains concerned about various aspects of China's 2004 customs regulations and implementing rules, which were intended to strengthen border enforcement and to make it easier for rights holders to secure effective enforcement at the border. For example, these rules impose a deadline of only three days for a right holder to apply for seizure of suspected infringing goods held by Chinese customs. In addition, disposal of confiscated goods remains a problem under the implementing rules, which appear to mandate auction, rather than destruction, of infringing goods not purchased by the right holder or used for public welfare.

Civil Enforcement: In part because of the ineffectiveness of the administrative and criminal enforcement systems in China, there has been an increase in the number of civil actions seeking monetary damages or injunctive relief. Most of these actions have been brought by Chinese

rights holders, although foreign rights holders are increasingly turning to the civil system for redress. While seeing some success, the United States continues to hear complaints of a lack of consistent, uniform and fair enforcement of China's IPR laws and regulations in the civil courts. Litigants have found that most judges lack necessary technical training, court rules regarding evidence, expert witnesses, and protection of confidential information are vague or ineffective, and the costs of investigation and bringing cases are prohibitively high. In the patent area, where civil enforcement is of particular importance, the process is inefficient and unpredictable. A single case can take four to seven years to complete.

Key “Hot Spots” Require Increased Attention and Resources

Enforcement of intellectual property rights is inconsistent across China. Many locations in China require increased attention and resources to improve weak criminal, administrative, and/or civil enforcement for various forms of IPR. Some areas appear to have become focal points for IPR problems with respect to particular products. The recently increased attention to “hot spots” by national and local authorities in China is a welcome development if such efforts are sustained over time to deter infringing activity.

Based on information reviewed for this year's Special 301 Report, the U.S. government looks to China to take action in the following national “hot spots” where there appears to be an acute need to more effectively establish and sustain proactive, deterrent IPR enforcement:

Guangdong Province is the center of large-scale counterfeit and pirate manufacturing in China for a variety of goods, ranging from low-cost consumer goods, such as household items, clothing and optical media, to high-technology products, such as computer equipment, video game consoles (and game discs/cartridges), and other electronics. Guangdong's role as an export engine creates a need for more deterrent customs remedies. Availability of criminal remedies is also a problem; a notable example is the need for prosecutions to address optical media piracy. Localities and markets identified as problem areas by IPR owners include Guangzhou, Shenzhen, Shantou, Chaoyang, and Jieyang, as well as several markets in Baiyun District, Luowu Market at the border between Shenzhen and Hong Kong, and numerous other markets.

Beijing City is both the nation's capital and one of its most visible centers for retail counterfeiting and piracy. Rights holders report that protection varies in different parts of the city. Problem areas include major markets, such as the infamous Silk Street Market located near the U.S. Embassy; numerous CD/DVD shops operating with official permission in the Chaoyang District and elsewhere in the city (some of which have been the subject of raids); and several markets that reportedly permit consumers to order infringing software loaded onto computers. Efforts by copyright authorities to crack down on retail outlets have to date had very limited success. Beijing trademark officials have become increasingly active in addressing retail counterfeiting issues, but these efforts have been incomplete. For example, Beijing has a special list of protected brands that appears to include primarily European brands. Beijing's university campuses have also been cited by right holders as magnets for textbook piracy, and they offer a broadband environment that can support copyright infringement.

Zhejiang Province in eastern China has been identified over the years by right holders as a major distribution center for infringing goods. Right holders have repeatedly drawn attention to the City of Yiwu as an important distribution center for small commercial goods, including, for example, suspected counterfeit lighter fluid and yellow wristbands suspected of infringing the LIVESTRONG trademark of the Lance Armstrong Foundation. Many shipments of counterfeit goods to the developing world are suspected of having originated in Yiwu. Recent visits by U.S. officials indicated that enforcement efforts there have increased in recent years. For example, criminal trademark enforcement increased during the Mountain Eagle campaign. Other localities identified as problem areas by IPR owners include Ningbo, Cixi, Taizhou and Wenzhou.

Fujian Province is home to large-scale manufacturing, including athletic footwear companies in Jinjiang and Putian that have been the target of infringement allegations in long-running legal actions by U.S. trademark owners New Balance, Reebok, and Nike. The lack of prompt and complete action in these cases has allowed uninterrupted, long-term manufacturing of the subject goods. Other localities identified as problem areas by U.S. IPR owners include Quanzhou.

Progress Made – More Needed

Joint Commission on Commerce and Trade

On April 11, 2006, the third “elevated” meeting of the Joint Commission on Commerce and Trade (JCCT) was held in Washington, D.C. between U.S. Trade Representative Rob Portman, Secretary of Commerce Carlos Gutierrez and Chinese Vice Premier Wu Yi. Measured progress was made toward stepping up IPR enforcement efforts in China. The United States made clear that while China has made progress, the United States does not consider that China has met its 2004 JCCT commitment to significantly reduce IPR infringement levels.

Some of the key 2006 JCCT IPR results include actions by China against plants that produce pirated optical discs (however no plant operators have so far been criminally prosecuted); agreement to consider law enforcement cooperation to combat optical disc piracy; new rules issued by the Chinese government requiring computers to be pre-installed with licensed operating system software and government agencies to purchase only such computers; efforts to combat counterfeit and pirated goods displayed at trade fairs in China; ensure vigorous pursuit of individual IPR cases raised by the United States Government through the formal bilateral referral mechanism; and a commitment to intensify efforts to eliminate infringing products at major consumer markets in China, such as Silk Street Market in Beijing. The Chinese government further agreed to discuss Chinese production of active pharmaceutical ingredients (also known as bulk chemicals). U.S. industry is concerned that the uneven application of Chinese regulatory requirements can facilitate the production of counterfeit pharmaceutical products.

China has also made progress in implementing a number of IPR-related commitments made at the 2004 and 2005 JCCT meetings. At the 2006 JCCT China reaffirmed its commitment, made at previous JCCT meetings, to continue efforts to ensure use of legalized software at all levels of government, and to adopt procedures to ensure that enterprises use legal software, beginning with large enterprises and state-owned enterprises. As noted above, China recently fulfilled a 2005 JCCT commitment by adopting amended rules governing the transfer of administrative and

customs cases to criminal authorities, and has taken some steps to pursue administrative actions against end-user software piracy. China recently posted an IPR ombudsman to its Embassy in Washington, who has facilitated contacts between U.S. government officials and their counterparts in Beijing, and been a source of information for U.S. businesses, including small and medium-size companies.

China has also sought to expand enforcement cooperation as agreed at the 2004 and 2005 JCCT meetings. In response to a proposal from China's General Administration of Customs (GAC), U.S. Customs and Border Protection (CBP) is developing a plan under which CBP will cooperate with GAC to affect a four-part customs cooperation program aimed at improving administrative IPR border enforcement in both countries. A key element of the proposal is a possible data exchange process through which, on an initial trial basis, CBP and GAC will share information permissible by law, e.g., names of manufacturers, addresses, and descriptions of the goods relating to suspected violators. In addition, CBP and GAC plan to exchange statistical information on IPR border seizures within each country. Each country will appoint a contact to receive and act on information provided regarding IPR-infringing goods. CBP and GAC will also work to conduct technical exchanges on topics such as legislative/regulatory improvements, risk modeling and IPR recordation administration. U.S. Immigration and Customs Enforcement is also working to increase cooperation with China's Ministry of Public Security through the Joint Liaison Group.

China is also taking steps to meet its 2005 JCCT commitment to submit a legislative package to the National People's Congress in June 2006 for China to join the WIPO Internet Treaties. However, the U.S. government has numerous, serious concerns regarding the current draft regulations which would govern aspects of copyright protection over the Internet. For example:

- The draft only provides legal protections and remedies relating to technological protection measures (TPMs) that prevent or restrict the making available to the public of a work (e.g., passwords). It provides neither legal protections nor remedies to prevent circumvention of copy-control TPMs. Its exception to protection against circumvention remains overbroad. Without such protections and remedies, the United States is concerned that China will not provide effective protection against copyright infringement on the Internet.
- The United States has concerns about several broad limitations on rights. These provisions should be reconsidered in the light of the tests for limitations and exceptions to copyright prescribed by the WIPO Internet Treaties and TRIPS.
- The notice and take down measures for a copyright holder appear overly burdensome and rigid. As the Internet becomes a more popular means for distributing copyrighted material such as music, it is critical that these regulations include effective and efficient means of notifying Internet service providers and taking down infringing material.

China needs to address these concerns before finalizing its implementing measures. The United States is pleased that at the 2006 JCCT, China requested a strengthening of communication and cooperation on domestic measures that will enable China to join the WIPO Internet Treaties.

The U.S. government looks forward to providing further assistance to China, and believes that such cooperation is critical for China's full implementation of the treaties.

JCCT IPR Working Group

The JCCT IPR Working Group is an important vice-ministerial level vehicle to discuss IPR issues and problems, including those that are discussed at the JCCT. Since its creation in 2004, the group has met three times, and the United States is working toward holding a fourth meeting in upcoming months. In addition to vice-ministerial discussions, the group devotes a great deal of time to detailed expert-to-expert discussion of issues that impact IPR enforcement efforts within China, such as the clarifying the meaning and reviewing the application of China's various measures governing its administrative, criminal, and customs enforcement actions. Expert discussions have produced concrete outcomes. For example, after such expert discussions, China agreed at the 2005 JCCT – and the Supreme People's Court subsequently confirmed – that China would apply its 2004 judicial interpretation on criminal IPR infringements to sound recordings.

Transparency

Article 63 of the WTO TRIPS Agreement requires laws, regulations and final judicial decisions and administrative rulings of general application pertaining to IPR infringement be made publicly available to rights holders. Despite this requirement, lack of transparent information on IPR infringement levels and enforcement activities in China continues to be a problem.

In October 2005, the United States, along with Japan and Switzerland, requested that China provide additional IPR enforcement data pursuant to Article 63.3 of the TRIPS Agreement. After initial resistance, China invited the United States to Beijing in March 2006 for a full day of constructive discussions on improving transparency in the field of IPR enforcement. China provided previously unavailable IPR criminal prosecution data, and the two governments identified specific areas in which China will work toward greater transparency on IPR enforcement matters. China also stated that it would make a database of IPR enforcement statistics available to the public on the Internet in both Chinese and English to consolidate diverse IPR statistics and provide a consistent view for both governments and right holders. On the whole the two governments achieved progress, and the United States hopes to achieve further progress in obtaining information in such areas as criminal copyright cases, cases involving U.S. right holders, and cases involving exports. The United States does not consider, however, that China has provided a full response to the October 2005 Article 63.3 request. The United States continues to look forward to China's full response. The United States also continues to welcome and encourage increased efforts by U.S. industry to enhance transparency through monitoring of IPR enforcement in China and its results in the Chinese market.

Transparency in rulemaking is also a continuing problem. Government entities responsible for drafting rules often refuse to make drafts widely available for public comment, and instead limit their "consultations" to pre-selected industry and trade associations. The United States welcomed opportunities to comment on some administrative rules adopted by China in 2005 and 2006. For example, the United States provided comments to China on its draft measures on IPR

protection at trade fairs, and its draft rules to transfer cases from administrative to criminal authorities. U.S. industry commented extensively on China's draft regulations for the protection of copyrights on information networks. However, the United States also notes that China provided no opportunity to comment on, e.g., the customs transfer rules or the rules to strengthen crackdowns on trademark infringement crimes.

The United States has been urging China to adopt and regularize transparency requirements across all government agencies, including a mandatory public notice and comment requirement and a requirement that all trade-related measures be published in a single official journal. At the April 11, 2006 JCCT meeting, China announced that the General Office of the State Council had issued a notice requiring that all laws, regulations and other measures of all government ministries and agencies at all levels pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange shall be published in a single official journal, *i.e.*, the China Foreign Trade and Economic Cooperation Gazette, issued by the Ministry of Commerce. The United States welcomes this announcement and looks forward to its strict implementation. In light of its WTO obligations, it is still important for China to allow public notice and a reasonable opportunity for comment before implementing any trade-related measure.

Patent and Data Protection Developments

While China's patent laws are largely compliant with the TRIPS Agreement, right holders have noted that the narrow scope of patentable subject matter under Chinese law makes patents for transgenic plants and animals virtually unobtainable. A lack of clarity in laws involving generic drug patent infringement is contributing to the continued growth of counterfeit drugs, with corresponding health and safety problems.

In addition, the United States has concerns about the extent to which China provides meaningful protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products.

RUSSIA

Russia will remain on the Priority Watch List in 2006. Despite some improvements in IPR enforcement this year, the United States continues to have serious concerns about the continued increase in optical disc pirate production in Russian plants and the growth of Internet piracy on Russian websites such as www.allofmp3.com. The United States is particularly concerned about piracy in optical disc factories located on government-owned facilities. In addition, the current draft of the proposed Part IV of the Civil Code, which would replace existing IPR laws, raises questions about its compliance with international norms and the possible adverse effect it could have, if passed, on IPR protection and enforcement in Russia. The Administration, U.S. industry, and the U.S. Congress share these concerns. The United States urges Russia to address these issues and to provide stronger IPR protection and enforcement—objectives which Russia's top leaders have identified as a priority.

Russia has made progress in some areas during the past year, such as increasing the number of raids on pirate optical disc facilities, including those located in government-controlled areas. Seizures of pirated goods and the equipment used to manufacture them have increased. Russia has also taken some steps, although unsuccessfully so far, to shut down the pirate website www.allofmp3.com. In addition, in the context of WTO accession negotiations, the United States expects Russia to commit to provide protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical and agricultural chemical companies seeking marketing approval for their products. The United States and Russia are consulting on other changes to Russia's laws and regulations that are necessary for purposes of TRIPS compliance, concerning, for example, well-known marks, geographical indications, and other issues.

The United States urges Russia to take immediate and effective steps to properly inspect all optical media plants, to shut down illegal plants and counterfeit product manufacturers; seize and destroy equipment used to make pirate and counterfeit goods; close illicit Internet sites; prosecute those responsible for piracy and counterfeiting, impose deterrent penalties on convicted infringers; strengthen border enforcement; ensure that any additions to the current Civil Code reinforce Russia's existing IPR regime and are TRIPS consistent; and address deficiencies in its IPR laws. The United States will continue to monitor closely Russia's progress in bringing its IPR regime in line with international standards through the ongoing review of whether to remove Russia's benefits under the Generalized System of Preferences (GSP) due to inadequate copyright enforcement, WTO accession discussions, and the United States-Russia Bilateral IPR Working Group.

ARGENTINA

Argentina will remain on the Priority Watch List in 2006. The United States notes that Argentina made some improvements in intellectual property protection throughout the past year, including recently implemented fast-track procedures for consideration of patent applications and the hiring of a significant number of patent examiners. However, despite these improvements, relatively few patents were granted in 2005 for commercially significant inventions. Further, Argentina still does not provide adequate protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. This important issue was not fully resolved in 2005. The United

States urges Argentina to implement an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products, as well as to address problems that rights holders encounter in attempting to obtain effective injunctions to stop such unfair commercial use. Copyright piracy also remains a significant problem in Argentina, with the U.S. copyright industry reporting that music piracy worsened in 2005, mainly in the areas of physical piracy (burned CD-Rs) and Internet piracy. Copyright piracy also continues in the areas of entertainment and business software and book publishing. Although the Argentine Government took some IPR enforcement actions during 2005, the United States encourages stronger IPR enforcement actions to combat the widespread availability of pirated and counterfeit products. The United States will continue to monitor Argentina's efforts to address these concerns.

BELIZE

Belize will be elevated from the Watch List to the Priority Watch List in 2006. Piracy and counterfeiting are widespread in Belize, and improvements need to be made by Belize's Government to strengthen IPR enforcement. Although cooperation between rights holders and government entities has improved in the past year, concerns remain about the ability and willingness of authorities to conduct inspections, seize counterfeit and pirated goods, complete prosecutions, and issue deterrent sentences. A continuing concern is the lack of IPR enforcement in Belize's Corozal Commercial Free Trade Zone, through which infringing products are transshipped from Mexico to the United States and elsewhere. The United States urges Belize to improve IPR enforcement efforts by: revising necessary laws and regulations to facilitate inspections, seizures, criminal investigations, and destruction of infringing products; increasing resources devoted to border enforcement and the number of investigations of counterfeiting and piracy; prosecuting and issuing deterrent sentences to counterfeiters and pirates; and implementing strong IPR enforcement actions in the Corozal Commercial Free Trade Zone.

BRAZIL

Brazil will remain on the Priority Watch List in 2006. The United States commends Brazil's progress on copyright enforcement this past year, including the formation of a public-private National Anti-Piracy Council, development of a national action plan by Brazil's National Council to combat piracy and IP crimes, and increased police actions. In January 2006, in recognition of these improvements, USTR terminated a review of whether to remove Brazil's benefits under GSP because of inadequate enforcement of copyright. Despite these improvements, however, high levels of piracy and counterfeiting still exist and criminal prosecutions remain minimal. The United States will continue to engage with Brazil on improving copyright enforcement. Unfortunately, commensurate progress has not been made in other areas. The United States is concerned about Brazil's lack of protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. In addition, concerns remain that Brazil has not significantly reduced its backlog of pending patent applications, due in part to a requirement that the health regulatory agency issue its approval before pharmaceutical patents are granted by the Brazilian patent office. The United States will continue to work with Brazil to address these important IPR issues.

EGYPT

Egypt will remain on the Priority Watch List in 2006. The United States is concerned about continuing deficiencies in Egypt's IPR enforcement regime, problems with its judicial system, the lack of protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, and Egypt's lack of an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products. Further, although in 2005 Egypt introduced implementing regulations for its copyright law and a customs regulation, deficiencies remain that need to be addressed. The United States encourages Egypt to accede to and implement the WIPO Internet Treaties. Improvements in IPR enforcement are needed, particularly in the areas of fighting copyright piracy for book publishing, entertainment software, and business software. In addition, the Egyptian court system continues to operate inefficiently, resulting in a lack of satisfactory resolutions of copyright and trademark cases, difficulty obtaining deterrent sentences, and a lack of transparency. The United States hopes to see improvements in Egypt's IPR regime that will significantly strengthen trade and investment ties between the two countries.

INDIA

India will remain on the Priority Watch List in 2006. India made some improvements to its IPR regime during the past year, but IPR protection concerns remain due to inadequate laws and ineffective enforcement. The United States urges India to improve its IPR regime by providing stronger protection for copyrights, trademarks, and patents, as well as protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. The United States also encourages India to join and implement the WIPO Internet Treaties. India improved its patent protection regime when it passed legislation in early 2005 to provide for product patents for pharmaceuticals and agricultural chemicals. While this was a positive step, the new legislation has important omissions that detract from India's patent regime. Additionally, India's copyright laws and enforcement system are weak. Piracy of copyrighted works remains rampant, particularly for software, films, popular fiction works, textbooks, and cable signals. Although the Government of India has pledged to improve its trademark regime, foreign trademark owners experience difficulties due to procedural barriers and delays. India's criminal IPR enforcement regime remains weak, with improvements most needed in the areas of border enforcement against counterfeit and pirated goods, police action against pirates and counterfeiters, judicial dispositions resulting in convictions for copyright and trademark infringement, and imposition of deterrent sentences. The United States urges India to address these issues during the coming year and thereby strengthen its IPR regime. To that end, the United States welcomes deeper cooperation with India, as envisioned in statements issued by our leaders to "work together to promote innovation, creativity and technological advancement by providing a vibrant intellectual property rights regime, and to cooperate in the field of intellectual property rights to include capacity building activities, human resource development and public awareness programs."

INDONESIA

Indonesia will remain on the Priority Watch List in 2006, but the United States will conduct an Out-of-Cycle Review to monitor Indonesia's progress on IPR issues. The United States commends Indonesia for its progress in strengthening its IPR enforcement regime in 2005,

particularly with respect to fighting retail piracy and taking steps to implement its optical disc regulations to combat pirate production in optical disc factories. The United States also commends Indonesia for the re-establishment earlier this year of a Ministerial-level National IP Task Force as a focal point for future work to coordinate protection and enforcement of IPR. The United States urges Indonesia to build on this momentum by enforcing its IPR laws effectively and in a deterrent manner against piracy and counterfeiting, including through raids on pirate optical disc factories; by conducting seizures of pirated goods and the machinery used to make them; by arresting and prosecuting IPR infringers; and by ensuring that courts impose jail sentences for IPR crimes and that offenders actually serve such sentences. The United States will assess Indonesia's progress on these issues during the Out-of-Cycle Review. In addition, the United States will continue to use the bilateral Trade and Investment Framework Agreement process to work with Indonesia to improve its IPR enforcement regime.

ISRAEL

Israel will remain on the Priority Watch List in 2006. In March 2005, Israel passed legislation that weakened protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, despite extensive efforts between the United States Government and the Israeli Government to bridge differences on this issue. Intensifying concerns of the United States, the Israeli Government passed legislation in December 2005 that significantly reduced the term of pharmaceutical patent extension granted to compensate for delays in obtaining regulatory approval of a drug. The United States is also monitoring the status of copyright legislation that would weaken protections for U.S. rights holders of sound recordings; the United States urges Israel to provide national treatment for U.S. rights holders in accordance with its international obligations, including those under the 1950 United States-Israel Bilateral Copyright Agreement. In addition, the United States continues to urge Israel to strengthen its data protection regime in order to promote increased bilateral trade and investment in the field of pharmaceuticals and other knowledge-based sectors.

LEBANON

Lebanon will remain on the Priority Watch List in 2006. Although the Lebanese Government issued some high-level statements in 2005 reflecting its commitment to fighting piracy and protecting IPR, there have been few concrete improvements in IPR protection and enforcement. Particular concern remains in the area of cable piracy, because according to the U.S. copyright industry, well over 80 percent of Lebanon's cable subscribers view pirated content, one of the highest rates in the world. Additional concerns exist with respect to copyright piracy, particularly on the Internet. The United States urges the Lebanese Government to continue its efforts to address these problems and to ratify and implement the WIPO Internet Treaties. With respect to enforcement activities, the United States recognizes Lebanon's establishment of a specialized IPR police unit which is authorized to take *ex officio* action against piracy and counterfeiting, and encourages further development of this new initiative. The United States also urges Lebanon to ensure that prosecutors and judges issue convictions and impose deterrent sentences for criminal IPR infringers, as well as strengthen its patent laws, provide protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, and provide an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals

for unauthorized patent-infringing copies of pharmaceutical products. The United States will monitor the IPR situation in Lebanon closely, particularly under the GSP petition for inadequate copyright protection.

TURKEY

Turkey will remain on the Priority Watch List in 2006. Turkey made some progress on copyright enforcement during 2005, including an increased number of raids against copyright pirates and seizures of pirated goods, as well as increased impositions of deterrent penalties by the courts. The United States encourages Turkey to build upon this progress and to address the following IPR concerns: continuing enforcement against book, retail, and optical disc piracy; increasing judicial efficiency and reducing backlogs of court cases; addressing the growing problem of Internet piracy; increasing customs' *ex officio* inspections and seizures of pirated and counterfeit goods; and ensuring the seizure and destruction at pirate optical disc plants of pirated goods and the equipment used to produce them. The United States also encourages Turkey to further strengthen data protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, particularly with respect to the start date of the period of protection and the inappropriate linkage of the term of data protection to the length of the patent term. The United States encourages Turkey to implement a system of coordination between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products. The United States hopes to see Turkey's continued progress on these issues during the coming year, and will continue to monitor Turkey's progress in strengthening its IPR regime.

UKRAINE

Ukraine will remain on the Priority Watch List. At the conclusion of an Out-of-Cycle Review in January 2006, the United States lowered Ukraine from the Priority Foreign Country list to the Priority Watch List and reinstated Ukraine's benefits under the GSP program based on Ukraine's implementation of its new OD amendments and improved enforcement efforts. The Government of Ukraine also agreed to establish a bi-monthly Enforcement Cooperation Group with the U.S. Embassy in Ukraine and U.S. industry representatives.

In March 2001, the United States designated Ukraine as a Priority Foreign Country and initiated a Section 301 investigation. The United States withdrew Ukraine's GSP benefits in August 2001 and imposed sanctions on Ukrainian imports worth \$75 million in January 2002. In August 2005, in response to Ukraine's passage of important amendments to its Laser-readable Disc Law ("OD amendments") to combat optical disc pirate production, the United States terminated the \$75 million trade sanctions.

The United States will continue to monitor Ukraine's progress on IPR enforcement through the Enforcement Cooperation Group and the Section 306 monitoring process. Although Ukraine is no longer a major producer of pirated optical discs, it remains a transshipment point and storage location for illegal optical media produced in Russia and elsewhere. The United States encourages Ukraine to further improve border enforcement efforts and to impose deterrent criminal penalties for unauthorized production and export of pirated products. In addition, as part of its bilateral negotiations with the United States for membership in the WTO, Ukraine has

agreed to provide protection from unfair commercial use for undisclosed test data submitted to obtain marketing approval for pharmaceutical and agricultural chemical products. Although the United States recognizes Ukraine's marked improvements in IPR protection, it will continue to monitor closely Ukraine's further progress on IPR protection and enforcement.

VENEZUELA

Venezuela will remain on the Priority Watch List in 2006. Venezuela made minimal progress in strengthening its weak IPR regime this past year. High levels of copyright piracy continue to rise, while proposed copyright legislation under consideration would severely undercut the existing Venezuelan copyright law, as well as bilateral and international standards of IP protection. Venezuela does not provide protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. Furthermore, Venezuela lacks a coordinated system between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products. The only progress on IPR issues came from the Customs and Tax Agency, which enacted a regulation to allow *ex officio* seizures of pirated and counterfeit goods. The United States urges the Venezuelan government to take immediate action to improve IPR protection, particularly by protecting undisclosed test data against unfair commercial use, addressing copyright piracy, amending inadequate legislative proposals, fighting trademark counterfeiting, and improving IPR enforcement.

WATCH LIST

BAHAMAS

The Bahamas will remain on the Watch List in 2006. The United States remains concerned over the Bahamas' failure to implement an amendment to the Copyright Act enacted by the Bahamian Government in 2004. The amendment narrowed the scope of the compulsory licensing regime for the reception and transmission of copyright works broadcast free over the air. Although last year's Special 301 Report noted that the copyright amendment reflected a positive step towards compliance with commitments under an agreement reached between the Bahamas and the United States in 2000, the amendment has not yet been implemented. In the absence of such implementation, the compulsory licensing plan contains provisions that allow Bahamian cable operators to retransmit any copyrighted television programming, including for-pay programming, whether or not transmitted from the Bahamas or outside of the Bahamas and whether or not encrypted. Moreover, until existing regulations are changed, the remuneration system for copyrighted works under the compulsory licensing program includes less than fair market value rates for hotels and other commercial enterprises. The United States also urges all interested parties, including U.S. cable operators and copyrights holders, to seek commercial solutions that would facilitate the legal transmission of cable programming by cable operators in the Bahamas.

BELARUS

Belarus will remain on the Watch List in 2006. Concerns continue about overdue implementation of Belarus' intellectual property regime, including adherence to commitments under the U.S.-Belarus Trade Agreement. Belarus made no significant progress during 2005 on needed legislative reforms or enforcement efforts. The United States is concerned that IPR enforcement in Belarus remains weak, that piracy levels remain high, and that Belarus needs to take strong enforcement action against optical media plants that are producing pirated goods. The Belarus copyright law needs to be amended to provide adequate protection for sound recordings and pre-existing works, as well as to implement the WIPO Internet Treaties, which Belarus joined in 1998. Despite amendments to its Criminal Code to adopt deterrent penalties for IPR violations, the Criminal Code still does not provide *ex officio* authority to allow police officials to initiate criminal copyright cases or for customs officials to seize illegal products at the border. Furthermore, Belarus' law does not provide for civil *ex parte* search procedures necessary to protect against end-user software piracy. The United States encourages Belarus to improve its IPR regime and to enforce its IPR laws more aggressively. In addition, the United States urges Belarus to fulfill its obligations under the United States-Belarus Trade Agreement and will continue to monitor its progress in strengthening its IPR regime, especially in the context of Belarus' bid for accession to the WTO.

BOLIVIA

Bolivia will remain on the Watch List in 2006. Despite an increase in public education on IPR and ongoing efforts to institutionalize the National Intellectual Property Rights Service, there were no notable improvements to Bolivia's IPR regime. Under the TRIPS Agreement and the WIPO Internet Treaties, the latter of which were signed but have not yet been ratified, Bolivia should have increased its level of IPR protection years ago. Bolivia has inadequate copyright laws, significant copyright piracy and trademark counterfeiting, and weak overall IPR

enforcement. The United States encourages Bolivia to strengthen its copyright laws and ratify and implement the WIPO Internet Treaties. The United States also urges Bolivia to increase its IPR enforcement efforts, including providing for civil *ex parte* searches, preventing unwarranted delays in civil enforcement, providing adequate civil and criminal damages in copyright cases, and strengthening border measures. The U.S. copyright industry continues to report that music piracy in Bolivia is so rampant that all international recording companies have closed their offices in Bolivia. Other copyright problems include commercial photocopying of books, unauthorized translations of books, video piracy, and entertainment software piracy. The United States encourages Bolivia to improve its IPR legislative regime in 2006, as well as increase its IPR enforcement efforts to combat piracy and counterfeiting.

BULGARIA

Bulgaria will remain on the Watch List in 2006. The United States notes that Bulgaria has made some improvements this past year in improving IPR legislation, coordinating among intergovernmental agencies, strengthening enforcement measures against optical disc piracy, and raising public awareness of IPR. For example, in February 2006, the newly formed interagency Council of Intellectual Property Protection approved amendments to the penal code criminalizing the possession of counterfeit products. The United States encourages Bulgaria's Government to make further IPR improvements by engaging in sustained and consistent enforcement activities, devoting sufficient resources to combat piracy and counterfeiting, improving IPR legislation, and attacking the growing problem of Internet piracy. In particular, Bulgaria's Government should make judicial enforcement in the courts a priority, including providing IPR training to prosecutors and judges, urging courts and prosecutors to make IPR infringement a priority, encouraging the completion of prosecutions and civil court cases on a timely basis, and seeking deterrent penalties for IPR violations. The United States also remains concerned with patent issues, namely the apparent lack of injunctive relief in patent infringement cases, and the requirement of a valid patent as a prerequisite for receiving protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. There also remain trademark infringement problems in Bulgaria, including continuing problems with counterfeit distilled spirits. The United States hopes that Bulgaria will continue its efforts to combat piracy and counterfeiting and to improve its overall IPR regime.

CANADA

Canada is being retained on the Watch List in 2006, and the United States will conduct an Out-of-Cycle Review to monitor Canada's progress on IPR issues under the leadership of its new government. Due to the dissolution of Canada's Parliament in late 2005 and elections in early 2006, Canada's legislative progress on IP issues in 2005 was interrupted. The United States looks to the new government to make progress on IPR issues a priority in the coming year. Key areas for action include the ratification and implementation of the WIPO Internet Treaties, amendment of the copyright law to provide adequate and effective protection of copyrighted works in the digital environment, and the enactment of legislation to protect against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. The United States also calls on Canada to improve its IPR enforcement system so that it can take effective action against the trade in counterfeit and pirated products within Canada, as well as curb the amount of infringing products

transshipped and transiting through Canada. Canada's weak border measures continue to be a serious concern for IP owners. The United States notes the progress made by Canadian authorities this past year in IPR enforcement, particularly with respect to engaging with the United States and its industry on several IPR initiatives, including active participation in Operation Site Down, an international cooperative law enforcement effort to suppress online piracy. Canada needs to implement legislative changes to provide a stronger border enforcement system by giving its customs officers the authority to seize products suspected of being pirated or counterfeit without the need of a court order. Greater cooperation between Canadian Customs and the Royal Canadian Mounted Police would enhance enforcement, as would the provision of additional resources and training to its customs officers and domestic law enforcement personnel. The United States will use the Out-of-Cycle review to monitor Canada's progress in providing an adequate and effective IPR protection regime that is consistent with its international obligations and its advanced level of economic development, including improved border enforcement, ratification and implementation of the WIPO Internet Treaties, and strong data protection.

CHILE

Chile will remain on the Watch List, and the United States will conduct an Out-of-Cycle Review to monitor progress on IPR issues. Issues of substantial concern include the inadequate protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, insufficient coordination between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products, continuing copyright piracy and trademark counterfeiting, and the need for greater efforts to meet standards set in the TRIPS Agreement, the United States-Chile Free Trade Agreement (FTA) and other international agreements. The United States notes in particular that Chile has not fully implemented legislation to comply with FTA obligations where the transition periods expired as of January 1, 2006, such as patent term adjustment. The United States is very concerned that Chile continues to grant marketing approval via sanitary approvals to unauthorized copies of patent-infringing pharmaceutical products. In addition, copyright and trademark enforcement must be improved, including the imposition of deterrent penalties in criminal IPR cases. The copyright piracy situation in Chile has not improved since last year, and digital piracy is a growing problem. Significant amendments to Chile's IPR legislation are needed to bring Chile's IPR regime in line with its international and bilateral commitments. The United States will continue to work with Chile, with the expectation of rapid progress on these pressing IPR issues through the implementation of its IPR commitments in the FTA, and will monitor Chile's progress in meeting its commitments through the Out-of-Cycle Review.

COLOMBIA

Colombia will remain on the Watch List in 2006. The United States notes some progress made by Colombia toward strengthening its IPR regime, but Colombia still needs to make further improvements by addressing copyright piracy, conducting effective prosecutions, imposing deterrent sentences by courts, and completing other IPR enforcement initiatives. Copyright piracy remains high, with problems reported by the U.S. copyright industry in the areas of optical disc piracy (both CD-R and DVD-R), illegal photocopying of academic textbooks, business software piracy, and entertainment software piracy. Efforts to combat piracy through raids and

other enforcement measures are hampered by a judicial system that fails to prosecute cases actively or to issue deterrent criminal sentences. Border enforcement continues to be weak, and administrative enforcement against signal theft piracy needs improvement. The United States will work with Colombia to make progress on these pressing IPR issues through the implementation of its IPR commitments in the United States-Colombia Trade Promotion Agreement, which was concluded in February 2006, and the United States expects to see continued progress from Colombia in the near term.

COSTA RICA

Costa Rica will remain on the Watch List in 2006. Concerns include problems with its IPR legislation and enforcement, particularly with respect to copyright piracy and trademark counterfeiting. The United States encourages the Government of Costa Rica to take immediate action in 2006 to improve the shortcomings in its IPR enforcement system by assigning high priority and resources to enforcement efforts against piracy and counterfeiting. Costa Rica signed the United States-Dominican Republic-Central American Free Trade Agreement (CAFTA-DR) in 2004, and is the only partner which has not yet ratified it. The United States urges Costa Rica to ratify CAFTA-DR – and to do so in the near term. Areas of concern include the inadequate protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, patents, copyrights, trademarks, criminal and civil enforcement; and border enforcement. The United States will work with Costa Rica to make progress on these pressing IPR issues through the implementation of its IPR obligations under CAFTA-DR, and the United States hopes to see continued progress from the Government of Costa Rica in the near term.

CROATIA

Croatia will remain on the Watch List in 2006 due to limited progress on IPR issues. The United States is concerned about difficulties with obtaining injunctive relief and expeditious resolutions in patent cases. As reported in the 2005 Special 301 Report, Croatia passed legislation in December 2004 that provided protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, but Croatia fails to provide coordination between its national patent authority and its central health regulatory authority to prevent marketing registrations for patent-infringing pharmaceutical products. As a result, the U.S. pharmaceutical industry reports that companies are easily able to register patent-infringing pharmaceuticals in Croatia. Inadequate border enforcement also contributes to the growing importation of pirated goods into Croatia. The United States will continue to monitor Croatia's progress on these issues in 2006.

DOMINICAN REPUBLIC

The Dominican Republic will remain on the Watch List in 2006, due to slow progress on a range of IPR issues. The United States encourages the Dominican Republic to focus its efforts on combating broadcast piracy, deterring copyright and trademark infringement, and ensuring an expeditious resolution of pending civil and criminal IPR cases. The United States also is concerned about reported deficiencies in the protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. On the positive side, the Dominican Republic took steps in January 2006 to ratify the WIPO Internet Treaties and has taken some IPR enforcement actions,

including the confiscation and destruction of pirated goods. In September 2005, the Dominican Republic ratified the U.S.-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), which requires the Dominican Republic to strengthen IPR protection, including enforcement. The United States will continue to work with the Dominican Republic on the implementation of its IPR obligations to ensure that it meets its international and CAFTA-DR commitments.

ECUADOR

Ecuador will remain on the Watch List in 2006. Despite some enforcement activities to seize pirated CDs and DVDs, overall enforcement of IPR remains problematic, resulting in high piracy levels for the business software and recording industries. Music piracy has become so severe in Ecuador that the majority of international record companies have closed their local offices. Ecuador has not yet established a specialized IP court, as it was required to do under its 1998 intellectual property law, and many Ecuadorian courts appear unwilling to enforce the IP law. Concerns also remain over Ecuador's lack of effective protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, as well as reports that Ecuador lacks an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products. The United States urges Ecuador to strengthen IPR enforcement and will closely monitor Ecuador's efforts to address IPR concerns, particularly through the U.S.-Andean Trade Promotion Agreement negotiations.

EUROPEAN UNION

The European Union (EU) will remain on the Watch List in 2006 because of concerns over EU rules concerning geographical indications (GIs). For instance, following an adverse ruling by the WTO Dispute Settlement Body in April 2005, the EU published a new regulation concerning GIs on March 31, 2006, and claimed full compliance with the WTO recommendations and rulings. But concerns remain with respect to this new regulation's impact on the rights of trademark owners, which the United States continues to analyze; the United States looks forward to continued cooperation with the EU on this and other intellectual property matters.

GUATEMALA

Guatemala will remain on the Watch List in 2006, although the United States notes that Guatemala has been working closely together with it to implement the IPR obligations under the U.S.-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), which requires Guatemala to strengthen IPR protection. The United States hopes that the continuing implementation of CAFTA-DR will result in a stronger IPR legislative regime in Guatemala, an effective enforcement system, and a significant reduction of piracy and counterfeiting. In addition, the United States hopes to see increased protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical and agricultural chemical companies seeking marketing approval for their products. The United States will continue to work with Guatemala to ensure that its IPR legal regime implements the TRIPS Agreement and CAFTA-DR.

HUNGARY

Hungary will remain on the Watch List in 2006. Hungary has improved its IPR regime over the past several years, including the recent passage of IPR enforcement legislation, but additional improvements are necessary. The United States notes, however, that copyright piracy in Hungary continues to grow, due in large part to copyright piracy on the Internet. Enforcement deficiencies include prosecutorial delays, judicial imposition of low fines or weak sentences, and weak border enforcement. Hungary does not provide an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products. The United States urges the Hungarian Government to address these issues and to continue to improve its IPR enforcement efforts.

ITALY

Italy will remain on the Watch List for 2006. Despite Italy's passage of strong copyright laws, increased enforcement actions, and the decline of piracy rates in the sectors of business software, music, and entertainment software, U.S. industry reports that Italy continues to possess one of the highest overall piracy rates in Western Europe and chronic problems with copyright piracy on the Internet. Although Italy has made some progress through increased raids, seizures, and arrests of IPR infringers, there is inadequate judicial enforcement and a lack of judicial imposition of deterrent fines and jail sentences for criminal copyright and trademark infringers. The United States continues to observe wide variations in the effectiveness of IPR enforcement activities within Italy. The United States will continue to work with Italy to improve its IPR awareness and to improve IPR protection and enforcement.

JAMAICA

Jamaica will remain on the Watch List in 2006. The United States remains concerned over Jamaica's continued delay in enacting the Patents and Designs Act, which is intended to implement Jamaica's obligations under the TRIPS Agreement and to comply with the United States-Jamaica bilateral Intellectual Property Agreement. The United States urges the Government of Jamaica to reform its patent law as soon as possible to comply fully with international standards for patent protection.

KUWAIT

Kuwait will be downgraded from the Priority Watch List to the Watch List due to significant improvements in its IPR regime this past year, particularly in the area of IPR enforcement actions. This year, Kuwaiti Customs and the Ministry of Commerce and Industry improved their IPR enforcement efforts. A new IPR committee was formed that includes the Ministries of Justice, Interior, Information, and Commerce and Industry, and Kuwait is in the process of establishing a new IPR court. The Ministry of Education initiated a program to combat book piracy, and the Ministry of Information conducted numerous raids on pirates and counterfeiters. The United States hopes that Kuwait will continue to improve its IPR regime by ensuring, for example, that law enforcement officials are engaged in combating piracy and counterfeiting, that judicial authorities impose deterrent penalties for IPR violations, and that necessary legislation is passed to strengthen its IPR regime. The United States is concerned that several key pieces of IPR legislation (including amendments in the areas of copyrights, trademarks, geographical indications, patents, data protection, and enforcement) have been pending for many years, and hopes that Kuwait will expeditiously enact and implement such legislation in the near term. The

U.S. copyright industry reports that Kuwait continues to have high levels of retail optical disc piracy, as well as problems with business software piracy, cable piracy, and Internet piracy. The United States hopes that key ministries with IPR enforcement responsibilities will continue to build upon the progress of 2005, in order to reduce piracy and counterfeiting rates. The United States will continue to address these issues under the United States-Kuwait Trade and Investment Framework Agreement signed in February 2004.

LATVIA

Latvia will remain on the Watch List in 2006, and the United States will conduct an Out-of-Cycle Review to monitor further progress on Latvia's enforcement activities. Latvia has improved IPR enforcement during the past year by promoting coordination among ministries responsible for IPR enforcement, increasing resources to combat IPR piracy and counterfeiting, forming a high-level IPR working groups to focus on enforcement, and adopting a new criminal procedure code on IPR enforcement issues, among other initiatives. In addition, the Ministry of Interior established an IPR crime unit that has conducted numerous raids, seized infringing products, and referred cases for prosecution. There has been an increase in the number of IPR infringers who have been prosecuted and sentenced, although the United States encourages Latvia to ensure that its courts issue stronger penalties for IPR infringers that include deterrent fines and jail sentences. However, some key IPR issues remain in need of attention, including copyright piracy, especially on the Internet, and the lack of effective border enforcement. The United States encourages Latvian customs officials to take increased action to inspect and seize transshipped pirated and counterfeit goods coming into Latvia from Russia and exported to Lithuania, Poland, and other EU countries. The United States notes that Latvian Customs officials have increasingly used their *ex officio* authority this past year to combat the flow of pirated and counterfeit goods into Latvia. Through the Out-of-Cycle Review, the United States will work together with Latvia to build upon its recent progress to improve its IPR regime.

LITHUANIA

Lithuania will remain on the Watch List in 2006. Despite some IPR improvements this past year, numerous IPR issues remain, including copyright piracy on the Internet and transshipment of pirated optical media through Lithuania. The United States encourages Lithuania to implement optical media rules that effectively regulate the production, distribution, and export of optical media, particularly as border enforcement remains a serious problem, with Lithuania serving as a central transshipment point in the Baltic region for mostly Russian-produced optical media to the rest of Europe. The United States urges Lithuanian customs officials to make more frequent use of their *ex officio* authority to inspect and seize infringing goods at the border. The United States also encourages Lithuania to direct its attention and resources to increasing its anti-piracy and anti-counterfeiting efforts by coordinating IPR enforcement efforts among relevant government ministries, police, and customs officials.

MALAYSIA

Malaysia will remain on the Watch List in 2006 to monitor its efforts to improve its IPR regime. Malaysia made some significant improvements in IPR protection and enforcement this past year, but still has some serious deficiencies. IPR enforcement improvements during the past year have included: conducting raids against pirate optical disc production facilities; seizing pirate goods and machinery used to produce pirate materials; arresting IPR infringers; and revoking or

declining to renew licenses for pirate optical disc facilities. The United States appreciates these steps as well as the Government's statements that it is in the process of establishing a specialized IP court to more effectively handle civil and criminal copyright cases. The United States urges Malaysia to continue its enforcement efforts, particularly with respect to closing licensed and unlicensed optical disc plants that are producing pirated products, stopping the export of pirated goods, and combating the growing problem of piracy and counterfeiting on the Internet. In addition, the United States notes that Malaysia should address several deficiencies in its copyright law to fully implement the WIPO Internet Treaties, and should join the WCT and WPPT. Trademark counterfeiting, including of pharmaceuticals that pose a health and safety risk to the public, is rampant in Malaysia due to poor enforcement. The United States is also concerned that Malaysia has enacted neither protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, nor a coordination mechanism between the health authorities and patent office to prevent the registration of unauthorized copies of patent-infringing products. The United States will work with Malaysia to make progress on these pressing IPR issues through the upcoming U.S.-Malaysia Free Trade Agreement negotiations.

MEXICO

Mexico will remain on the Watch List in 2006. The last year has seen some improvements in IPR enforcement, including the formation of a specialized IPR customs unit, as well as increased raids and seizures of counterfeit and pirated goods. However, significant problems remain. Although the IP unit of the Prosecutor General's Office (PGR) has again increased the number and scope of raids against sellers of counterfeit and pirate goods, convictions and terms of incarceration for the pirates and counterfeiters have not kept pace. The United States encourages Mexico to follow its commendable raids with aggressive prosecutions and deterrent penalties, to improve domestic cooperation efforts on enforcement, and also to encourage cooperation between Mexican Customs and the PGR to stem the flow of infringing items before they reach the markets. The United States notes that Mexico made progress by drafting IPR legislation this past year, including efforts to criminalize the circumvention of technological protection measures, to give *ex officio* authority to the police, and to subject businesses engaged in counterfeiting to administrative sanctions and to closure. The United States encourages Mexico to enact and implement these laws, as well as strengthen other IPR laws, including amending the copyright law to implement fully the WIPO Internet Treaties. The United States encourages Mexico to make further efforts to provide protections for patents and against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, and notes concern over the lack of an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for patent-infringing copies of pharmaceutical products. The United States will continue to work with Mexico to address and resolve these IPR concerns in an effective manner.

PAKISTAN

Pakistan will be lowered to the Watch List in 2006. Pakistan made notable progress on IPR issues during the past year, particularly with respect to the closure of numerous pirate optical disc factories and improved enforcement efforts, including the establishment of the Intellectual Property Organization of Pakistan (IPOP) to centralize and coordinate IPR enforcement. In January 2006, in recognition of these improvements, USTR terminated a review in which the

United States Government was considering whether to remove Pakistan's benefits under the Generalized System of Preferences because of inadequate enforcement of copyright laws. Despite improvements, piracy rates remain a concern. The United States is encouraged that Pakistan has established in practice a system to avoid granting marketing approvals to unauthorized copies of drugs protected by a patent. The United States is also encouraged that Pakistan has committed to move forward with implementing protection to effectively protect test and other data submitted by pharmaceutical companies seeking marketing approval for their products against unfair commercial use. The United States will monitor the situation closely as it develops, and will work together with Pakistan to achieve further improvements in its IPR protection and enforcement regimes.

PERU

Peru will remain on the Watch List in 2006. Despite high-profile raids and a public anti-piracy campaign, Peru still has numerous IPR problems. Peru's Government took some steps toward improving copyright enforcement through its "Anti-Piracy Crusade" initiated in 2002. The U.S. industry reports that copyright piracy remains high in the sectors of sound recordings and business software. The United States encourages the Government of Peru to continue its efforts to combat IPR piracy by coordinating with the private sector, conducting an increased number of raids and seizures, ensuring that arrests of IPR infringers result in convictions and the imposition of deterrent sentences that include imprisonment, and giving increasing attention to IPR enforcement measures at its borders. The United States is pleased at the signing on April 12, 2006 of the United States-Peru Trade Promotion Agreement (PTPA) and looks forward to stronger IPR protection and enforcement in Peru. Under the PTPA, Peru has committed itself to effective protection of copyrights, trademarks, and patents; enforcement against piracy and counterfeiting; and effective protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical and agricultural chemical companies seeking marketing approval for their products, among other obligations. The United States also is concerned over reports that Peru lacks an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products. The United States will continue to work with Peru to strengthen IPR protection and enforcement and to ensure that Peru implements its IPR obligations to meet its international and PTPA commitments.

PHILIPPINES

The Philippines was lowered from the Priority Watch List to the Watch List at the conclusion of an Out-of-Cycle review in February 2006, due to substantial improvements in IPR protection. The Philippines remains on the Watch List in this Report. Throughout 2005, the Philippines took steps to bolster implementation of its Optical Media Act, including increasing the number of raids against pirate optical disc production facilities and retail establishments. The Philippines' Intellectual Property Office coordinated among IPR enforcement agencies, which resulted in an increased number of raids and enforcement actions. While recognizing these improvements, the United States strongly urges the Philippines to sustain and broaden progress on IPR issues in order to avoid a potential return to the Priority Watch List in the future. Remaining IPR issues include: enforcing the Optical Media Act through continued inspections and raids of optical disc plants; increasing the number of seizures of pirate and counterfeit products and the machinery used to produce such infringing products; increasing the numbers of

arrests and convictions of pirates and counterfeiters arising out of the optical disc plant inspections, to achieve deterrence and avoid recidivism; imposing deterrent sentences against criminal IPR infringers (i.e. significant fines or prison sentences that are actually served); ensuring destruction of pirate and counterfeit goods and equipment used to make them; addressing the problem of illegal copying of textbooks; improving customs enforcement; taking actions against television signal theft by pirate cable TV operators; addressing the growing problem of counterfeit pharmaceuticals; bringing domestic IPR laws in line with the Philippines' commitment to implement the WIPO Internet Treaties, including addressing Internet piracy; and increasing the capacity of courts to address IPR cases effectively. The United States will use the bilateral Trade and Investment Framework Agreement to engage the Government of Philippines on strengthening its IPR regime. The United States commends the Philippines for its progress to date and hopes to see continued improvement on these important IPR issues in the future.

POLAND

Poland will remain on the Watch List in 2006. Despite some progress on IPR protection this past year, including an increased number of raids and seizures of pirated goods at retail establishments and improved coordination with private industry, IPR enforcement problems still exist. For example, concerns exist regarding a lack of judicially imposed deterrent sentences for criminal IPR infringers that include imprisonment, continued sale and distribution of pirated products in and around the Warsaw Stadium, and weak border enforcement, among other IPR issues. The United States encourages Poland to strengthen enforcement measures to combat IPR piracy and counterfeiting. In addition, Internet piracy presents a growing problem in Poland. There also remain deficiencies in the protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. The United States commends Poland for its heightened efforts over the past year to improve its IPR regime, and the United States encourages Poland to continue this progress by committing its resources and attention to IPR enforcement, combating piracy and counterfeiting, and issues related to pharmaceuticals as outlined above.

REPUBLIC OF KOREA

The Republic of Korea (Korea) will remain on the Watch List in 2006. The United States is pleased that Korea established the Copyright Protection Center and increased enforcement against institutions using illegal software by establishing a Standing Inspection Team. The United States hopes to see further efforts to update Korea's IPR regime to keep pace with the digitization of Korea's economy and prevent the proliferation of unauthorized copying of copyrighted material, especially on the Internet. The United States looks to Korea to extend the exclusive reproduction right to cover temporary copies, such as those made in the temporary memory of a computer. Korea's National Assembly is considering legislation that would enhance protection for sound recordings transmitted over the Internet. The United States calls on Korea to further strengthen the relevant provisions of its Copyright Act and Computer Programs Protection Act related to technological protection measures and Internet Service Provider liability, to clarify the scope of the private copy exception and of the rights of sound recording producers over digital dissemination of recordings, and to extend the term of copyright protection for works and sound recordings. Although there has been some progress on IPR enforcement, including a series of court decisions against businesses that facilitate illegal file-sharing, the United States urges Korea to accelerate its efforts to combat piracy of DVDs,

computer software, and books, as well as to decrease street vendor sales of pirated and counterfeit goods and infringing activities on university campuses. The United States encourages Korea to address its lack of an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products. The United States will work with Korea to make progress on these and other IPR issues through the upcoming Free Trade Agreement negotiations.

ROMANIA

Romania will remain on the Watch List in 2006. The United States will continue to monitor further progress on IPR enforcement, including high piracy rates in the sectors of business software, music, and entertainment software, due to weak enforcement and deficiencies in the judicial system. Some IPR improvements were made by Romania this year, including the designation of the General Prosecutor's Office of the Supreme Court as the national coordinator for IPR enforcement, the provision of *ex officio* authority to law enforcement authorities, the requirement of Source Identification Codes for optical disc manufacturing, and increased dedication of resources for IPR enforcement. Despite these positive steps, however, copyright piracy continues to thrive, including on the Internet. In addition, law enforcement agencies and the judiciary continue to place a low priority on IPR enforcement. For example, prosecutors are reluctant to prosecute criminal IPR cases, courts are reluctant to convict and issue deterrent sentences against IPR infringers, and the Romanian judiciary has dismissed a large number of cases on the grounds that there is a "lack of social harm." The United States urges Romania to improve its IPR enforcement activities in order to combat piracy effectively.

SAUDI ARABIA

Saudi Arabia will remain on the Watch List in 2006, and the United States will conduct an Out-of-Cycle review to monitor Saudi Arabia's continued progress on IPR issues. The United States recognizes that Saudi Arabia has improved its IPR regime as part of its becoming a WTO member in 2005. Progress has been notable in several areas, including an increased number of raids and seizures of pirated and counterfeit goods, positive legislative amendments to strengthen IPR protection, and increased cooperation with private industry. The United States commends Saudi Arabia for these improvements and encourages further progress on a number of IPR issues. To build on the positive cooperation established between Saudi Arabia and the U.S. copyright industry, the United States looks to Saudi Arabia to complete recent IPR actions that it has initiated. For example, the United States looks to Saudi Arabia to increase transparency of its IPR enforcement regime, continue sustained raids and inspections to combat piracy and counterfeiting, ensure transparency in the judicial system and imposition of deterrent sentences (including jail terms for serious offenses) against criminal IPR infringers, and improve border enforcement measures, among other IPR issues. The United States will work together with Saudi Arabia on a specific plan of action, and the United States encourages Saudi Arabia to continue with its already strong efforts to improve its IPR regime. The United States will continue our IPR discussions with Saudi Arabia through the Trade and Investment Agreement and the Out-of-Cycle review.

TAIWAN

Taiwan will remain on the Watch List in 2006. The United States recognizes Taiwan's efforts to improve its IPR regime, including increasing the number of raids and seizures of pirated optical media, counterfeit pharmaceuticals, and counterfeit luxury goods. The United States notes the successful prosecution of the peer-to-peer Internet service Kuro and commends Taiwan for its passage in 2005 of amendments to its pharmaceutical law to provide a five-year term of protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. The United States recognizes the efforts of Taiwan's Department of Health to consult with private industry concerning draft data protection implementing regulations, which are expected to be finalized by June 2006. The United States looks to Taiwan to sustain the current level of commitment to making progress on IPR issues, and will continue to monitor further improvements, including Taiwan's efforts to combat the production of pirated optical media and proliferation of Internet piracy, to deal more effectively with unauthorized use of copyright materials on government and university computer networks, strengthen IPR enforcement actions against piracy and counterfeiting, to establish a specialized IP court, and to devote more resources and coordinated high-level government attention to combating IPR infringement. The United States also calls on Taiwan to strengthen border enforcement against transshipment of pirated and counterfeit goods, consider legislative amendments to address ISP liability, implement stronger criminal penalties for IPR infringement, and extend the term of copyright protection for works and sound recordings. The United States continues to look to Taiwan to address these remaining IPR concerns and the United States will work together with Taiwan to achieve further progress.

TAJIKISTAN

Tajikistan will remain on the Watch List in 2006. The United States remains concerned that Tajikistan has not yet fulfilled its IPR obligations under the U.S.-Tajikistan Bilateral Agreement, and encourages Tajikistan to take necessary steps to bring its IPR regime into conformity with the TRIPS Agreement as part of its ongoing efforts to join the WTO. In addition, Tajikistan has a weak enforcement regime that lacks criminal penalties for IPR violations, *ex officio* authority to commence criminal cases, and civil *ex parte* search procedures necessary for effective enforcement against end-user pirates, among other important enforcement measures. The Tajik Customs Code also fails to provide customs officials with *ex officio* authority to suspend the release of suspected infringing materials at the border. Legal reforms are needed, for example, in Tajikistan's copyright law, which does not provide protection for sound recordings or pre-existing works, despite its obligation to do so under the Berne Convention. The United States also encourages Tajikistan to join and implement the WIPO Internet Treaties. The United States will work with Tajikistan through the Trade and Investment Framework Agreement signed in 2004 and the ongoing WTO accession negotiations to address deficiencies in its IPR laws and strengthen IPR protection and enforcement.

THAILAND

Thailand will remain on the Watch List in 2006. Thailand made some progress in strengthening its IPR regime during 2005, including some enforcement efforts to combat piracy and counterfeiting. Despite these encouraging signs, however, piracy and counterfeiting rates remain high and enforcement actions need to be further strengthened and sustained. The U.S. Government remains concerned about the proliferation of optical disc pirate production at plants

in Thailand, especially in light of comparatively weak optical disc legislation that Thailand passed in 2005. Piracy is also widespread in the areas of photocopying of books, cable signals, entertainment and business software, and music on the Internet. The production, distribution, sale, and export or transshipment of pirated and counterfeit products continues to be a serious concern. The United States also is concerned about the weak protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical and agricultural chemical companies seeking marketing approval for their products, as well as delays in pharmaceutical patent approvals by the Thai Department of Intellectual Property. The United States will continue to work with Thailand to address these significant concerns regarding its intellectual property laws and enforcement.

TURKMENISTAN

Turkmenistan will remain on the Watch List in 2006. The United States is concerned about Turkmenistan's lack of progress on IPR issues during the past year and its lack of fulfillment of its IPR obligations under the United States-Turkmenistan Trade Agreement. For example, Turkmenistan has not joined the Berne Convention, the Geneva Phonograms Convention, or the WIPO Internet Treaties. Turkmenistan does not have a separate copyright law and does not provide clear criminal procedures or penalties for IPR infringement as required by the U.S.-Turkmenistan Trade Agreement. Its Customs Code does not provide *ex officio* authority to seize suspected infringing material at the border, and there are no known civil *ex parte* search procedures. The United States urges Turkmenistan to adopt the legal reforms that will bring Turkmenistan into compliance with its obligations under the bilateral United States-Turkmenistan Trade Agreement and to undertake enforcement activities that will help to strengthen its IPR regime.

UZBEKISTAN

Uzbekistan will remain on the Watch List in 2006. The United States is concerned about the lack of significant progress on IPR issues this past year. For example, Uzbekistan did not move forward with several IPR-related amendments that had been contemplated. While Uzbekistan recently joined the Berne Convention, the United States notes with concern Uzbekistan's reservation to Article 18, which provides protection for pre-existing works. Furthermore, Uzbekistan appears to be out of compliance with its intellectual property commitments under the United States-Uzbekistan Trade Agreement, particularly with respect to copyright protection and enforcement. Uzbekistan does not provide protection for sound recordings or pre-existing works, and is not a member of the Geneva Phonograms Convention or the WIPO Internet Treaties. In addition, IPR enforcement in Uzbekistan remains weak due to a lack of *ex officio* authority that would allow customs officials to seize infringing materials at the border, a lack of civil *ex parte* search procedures, and inadequate criminal penalties for IPR violations. The United States urges Uzbekistan to address these deficiencies in its IPR laws and to take immediate and effective measures to improve IPR enforcement. The United States will continue to work together with Uzbekistan on these outstanding IPR issues through discussions related to Uzbekistan's bid for WTO accession.

VIETNAM

Vietnam will remain on the Watch List in 2006. The United States commends Vietnam for its improvements in IPR protection, including Vietnam's passage of a comprehensive IPR law in

November 2005, but notes some remaining deficiencies and ambiguities. The United States looks forward to seeing regulations that provide clear, strong guidance for implementation in accordance with the United States-Vietnam Bilateral Trade Agreement (BTA) and the TRIPS Agreement. The United States encourages further progress on IPR enforcement initiatives and continued implementation of the intellectual property provisions of the BTA, under which Vietnam agreed to provide high standards of IPR protection. Despite these improvements, however, IPR infringement remains rampant in Vietnam, with reports from the U.S. copyright industry that in some cities, 100 percent of the CDs, VCDs, and DVDs sold are pirated. Responsible authorities have considerable work to do with respect to IPR enforcement. The United States looks to Vietnam to continue to build upon its public commitment to IPR protection by successful implementation of the new IPR law, including measures that result in the imposition of deterrent penalties for criminal IPR infringement and the seizure and destruction of infringing goods and the equipment and materials used to make them. Vietnam also passed new legislation to provide protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, and the United States looks forward to seeing this new law implemented successfully. The United States and Vietnam have been working together to address IPR issues during WTO accession discussions, and continued progress is anticipated this year.

SECTION 306

PARAGUAY

In 2006 the United States will continue to monitor Paraguay under Section 306. USTR identified Paraguay as a Priority Foreign Country in January 1998 as part of a Special 301 Out-of-Cycle Review. The subsequent Special 301 investigation terminated with the signing of a comprehensive Memorandum of Understanding (MOU) on the protection of intellectual property in 1998. Paraguay has been under Section 306 monitoring since the signing of the MOU, and the United States and Paraguay currently are negotiating an extension of the MOU. The United States notes that Paraguay has made efforts to improve the protection of intellectual property, particularly by increasing the number of raids and seizures of pirated and counterfeit goods. Paraguay continues, however, to have problems providing effective IPR protection due to porous borders, ineffective prosecutions for IPR infringements, and the lack of consistent deterrent sentences, including imprisonment, in court cases. The United States also has concerns about the inadequate protection against unfair commercial use of undisclosed pharmaceutical test and other data submitted by pharmaceutical companies seeking marketing approval for their products, as well as the passage in 2005 of a bill that weakens the patent law. The United States will continue to work with Paraguay to address these IPR concerns during the coming year.

**WIPO Internet Treaties:
WIPO Performance and Phonograms Treaty (WPPT)
and the WIPO Copyright Treaty (WCT)**

The following eight countries became parties to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaties (WPPT) during May 2005-April 2006. The WPPT entered into force on May 20, 2002, and now has 57 contracting parties.

<u>Country</u>	<u>Date of Entry Into Force</u>
Azerbaijan	April 11, 2006
Bahrain	December 15, 2005
Benin	April 16, 2006
Cyprus	December 2, 2005
Dominican Republic	January 10, 2006
Oman	September 20, 2005
Qatar	October 28, 2005
United Arab Emirates	June 9, 2005

The following seven countries became parties to the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) during May 2005-April 2006. The WCT entered into effect on March 6, 2002, and now has 58 contracting parties.

<u>Country</u>	<u>Date of Entry Into Force</u>
Albania	August 6, 2005
Azerbaijan	April 11, 2006
Bahrain	December 15, 2005
Benin	April 16, 2006
Dominican Republic	January 10, 2006
Oman	September 20, 2005
Qatar	October 28, 2005