

UNITED STATES OF AMERICA  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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SPECIAL 301 REVIEW PUBLIC HEARING

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February 24, 2015  
10:30 a.m.

Office of the U.S. Trade Representative  
1724 F Street, NW  
Washington, D.C. 20508

COMMITTEE MEMBERS:

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OMAR KARAWA	U.S. Department of Agriculture
STEVAN MITCHELL	U.S. Department of Commerce
EMILY BLEIMUND	U.S. Department of Health and Human Services
MATTHEW LAMBERTI	U.S. Department of Justice
MAUREEN M. PETTIS	U.S. Department of Labor
JEAN BONILLA	U.S. Department of State
WON CHANG	U.S. Department of the Treasury
MARIA STRONG	U.S. Copyright Office
JO ELLEN URBAN	U.S. Patent and Trademark Office

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P R O C E E D I N G S

(10:30 a.m.)

1  
2  
3 CHAIR WILSON: Good morning. I'd like to  
4 welcome everyone to USTR for the 2015 Special 301  
5 Hearing. Thank you very much for braving the cold  
6 and the ice and the traffic, and whatever personal  
7 challenges you may have faced this morning. It's  
8 good to see such a nice group. We are very much  
9 looking forward to the testimony today.

10 We are hearing from several of our  
11 government colleagues, as well as a nice  
12 representation of the non-governmental respondents  
13 to the 2015 Special 301 *Federal Register* notice.

14 For the record, today's proceedings are  
15 being taped, videotaped, although we don't use tape  
16 anymore, so I guess recorded with video. And we'll  
17 also be producing a transcript of today's hearing.  
18 Both of those will be available at [USTR.gov](http://USTR.gov) and at  
19 [STOPfakes.gov](http://STOPfakes.gov) within 2 weeks of today's proceedings.

20 Today is Tuesday, February 24, 2015. The  
21 hearing is scheduled to go to about 1:50. We are  
22 going to do our very best to stay on that schedule.

1 Obviously, we'll lose some time as speakers change  
2 places at the table, but we're going to do our best  
3 to stick to the schedule that we have set out.

4           The hearing is taking place -- and some of  
5 the things I'm about to say are both for the  
6 audience here, but also for anyone who will be  
7 watching the tape -- the video, excuse me, after the  
8 fact. So today's hearing is taking place at the  
9 Offices of the United States Trade Representative,  
10 and we would like to welcome you.

11           Before we get started with the lay of the  
12 land and how the hearing will progress and the  
13 format, I would like to introduce myself, which I  
14 should have done when I started talking. My name is  
15 Susan Wilson. I'm Director for Intellectual  
16 Property and Innovation here at USTR. I am also the  
17 Special 301 coordinator. I chair the Special 301  
18 Committee, which is a committee of the Trade Policy  
19 Staff Committee, Subcommittee of that, and it is an  
20 interagency endeavor.

21           And now I'd like to basically ask my  
22 colleagues on the Committee to introduce themselves,

1 starting, please, with Jean.

2 MS. BONILLA: I am Jean Bonilla. I am the  
3 Director of the State Department's Office of  
4 Intellectual Property Enforcement. We collaborate,  
5 of course, with many of you during the course of the  
6 year and always look forward to the Special 301  
7 process.

8 MR. LAMBERTI: Good morning, everybody. My  
9 name is Matt Lamberti, and I am a Senior Counsel  
10 with the U.S. Department of Justice. I'm a federal  
11 prosecutor and work a lot on international  
12 intellectual property rights enforcement issues.

13 MS. PETTIS: Hi, I'm Maureen Pettis. I'm  
14 an international economist at the U.S. Department of  
15 Labor and the Bureau of International Labor Affairs,  
16 in the Office of Trade and Labor Affairs.

17 MR. MITCHELL: I'm Stevan Mitchell. I am  
18 Director of the Office of Intellectual Property  
19 Rights in the International Trade Administration,  
20 Department of Commerce.

21 MS. URBAN: Good morning. I am JoEllen  
22 Urban with the Patent and Trademark Office, and

1 Special 301 Coordinator and a Senior Trade Advisor.

2 MR. CHANG: I am Won Chang, Department of  
3 Treasury. I am in the Trade Office. I am an  
4 economist working on Special 301.

5 MS. STRONG: Good morning. My name is  
6 Maria Strong. I am Deputy Director for Policy and  
7 International Affairs at the U.S. Copyright Office.

8 MS. BLEIMUND: Good morning. Emily  
9 Bleimund, Senior Policy Advisor in the Office of  
10 Global Affairs at the Department of Health and Human  
11 Services. I cover trade policy issues for the  
12 Department.

13 MR. KARAWA: Good morning. My name is Omar  
14 Karawa from the Department of Agriculture. I am an  
15 international economist and a member of this  
16 Subcommittee. Thank you.

17 CHAIR WILSON: Thank you very much. At  
18 today's hearing we'll hear from interested parties -  
19 - foreign government officials, private sector  
20 interests, as well as civil society. All of the  
21 people that you will hear from today responded to  
22 USTR's 2015 Special 301 *Federal Register* notice that



1 was published in late December.

2           The purpose of the hearing today is to  
3 provide the Committee with additional information  
4 that we can use in our deliberations that will lead  
5 to the publication of the 2015 Special 301 Report to  
6 Congress on or about April 30th of this year.

7           This year, in response to the *Federal*  
8 *Register* notice, we received nominations for over 75  
9 countries and information related to dozens of  
10 discrete market access, substantive IP, and IP  
11 enforcement issues. All of those filings are  
12 available to the public free of charge at  
13 [regulations.gov](http://www.regulations.gov). The docket number for this year's  
14 review is USTR-2014-0025.

15           The Special 301 Report is the result of a  
16 congressionally-mandated annual review of the state  
17 of intellectual property protection and enforcement  
18 in trading partner markets around the world. The  
19 United States Trade Representative conducts the  
20 review pursuant to Section 182 of the Trade Act of  
21 1974, as amended by the Omnibus Trade and  
22 Competitiveness Act of 1988 and the Uruguay Round

1 Agreements Act. Had to read that; got through it.

2 Last year, I think I stumbled on Omnibus.

3           The provisions of Section 182 are commonly  
4 referred to as the Special 301 Provisions of the  
5 Act, hence, the Special 301 Report. We explain that  
6 because I think a lot of people who observe the  
7 process don't understand that this is, in fact, a  
8 congressionally-mandated review. This is not  
9 something that USTR decided to do. This was  
10 actually something that Congress asked us to do on  
11 behalf of American authors, inventors, and brand  
12 owners.

13           Specifically, the statute requires us to  
14 identify countries that either deny adequate and  
15 effective protection of intellectual property rights  
16 or deny fair and equitable market access to U.S.  
17 persons who rely on intellectual property  
18 protection.

19           The statute requires that USTR determine,  
20 with the input of the agencies at this table, if any  
21 countries should be identified as Priority Foreign  
22 Countries. The Act's policy or practices that are

1 the basis of a country's identification as a  
2 Priority Foreign Country can be subject to the  
3 procedures set out in Sections 301 to 308 of the  
4 Trade Act, what's commonly referred to as the  
5 sanctions part of the Special 301 process.

6 In addition to the statutorily defined PFC  
7 designation, USTR created two administrative  
8 categories, Priority Watch List and Watch List.

9 The USTR-chaired interagency committee,  
10 which you are looking at here, conducts the review.  
11 The review is driven by stakeholder contributions  
12 and the contributions of all of these  
13 Washington-based agencies, as well as other agencies  
14 in U.S. government and input from our embassies  
15 overseas. All of the embassies file cables that  
16 respond to both stakeholder nominations as well as  
17 serve as a general report on the state of IPR  
18 protection and enforcement in their host countries.

19 If you would like to read more about this,  
20 I can hand you my paper, or you can visit [USTR.gov](https://ustr.gov)  
21 for more on Special 301, the companion Notorious  
22 Markets Report, which should be released in the next

1 2 weeks, or any trade issue, IPR and non-IPR.

2           The format of today's hearing will be as  
3 follows: Each party has been allotted 10 minutes.  
4 We have requested that parties limit their prepared  
5 statements to 7 minutes to allow for the Committee  
6 to ask about 3 minutes of questions. Steve will be  
7 watching the clock, and he'll have these handy  
8 little markers here that he'll display. We're going  
9 really high tech. Or he'll turn his iPad around,  
10 and we'll pretend it's not 1984 anymore.

11           The panel will hold all questions until the  
12 witness has finished with their testimony. In some  
13 cases, the questions are prepared based on the  
14 written filings. In other cases, they will be in  
15 response to the testimony that we actually hear  
16 today. Again, we ask that the witnesses keep in  
17 mind the purpose of the hearing, and that is to  
18 provide information that the Committee can use in  
19 determining the designations for this year's report.

20           We will have a 20 minute break at 12:00  
21 noon and then recommence promptly at 12:20. And I  
22 think that does it for the logistics. Facilities

1 are obviously out this door and directly across the  
2 hall. If you need to leave the room for any reason,  
3 please use the back door rather than this door. And  
4 I think that completes our introductory remarks.

5           So, without further ado, I would like to  
6 invite our first witness, representing the  
7 Government of Bulgaria. Good morning, sir. Please  
8 state and spell your name for the transcription  
9 service, and welcome to the hearing.

10           MR. KONSTANTINOV: Thank you, Madam  
11 Chairman, and ladies and gentlemen here, Committee  
12 members. My name is Ivo Konstantinov, first name  
13 I-v-o, last name K-o-n-s-t-a-n-t-i-n-o-v, Commercial  
14 and Economic Counselor, 1st Secretary, Embassy of  
15 the Republic of Bulgaria to the United States of  
16 America, and reporting directly to the Ministry of  
17 Economy, Republic of Bulgaria, which is the chief  
18 coordinating government body for intellectual  
19 property rights and measures in enforcement.

20           I thank you for this opportunity to present  
21 our case and just some of the essentials, highlights  
22 of written submission of the Bulgarian government,

1 and its achievements and activities in the field of  
2 IPR protection in 2014. Our authorities are, I have  
3 to say, seriously concerned about the inclusion back  
4 2 years ago of Bulgaria in the Watch List. And they  
5 have made -- we have made further efforts in 2014 to  
6 improve the intellectual property protection in  
7 various areas.

8           The point I am trying to make today to the  
9 distinct Committee members is that significant  
10 achievements have been made in the field of IPR  
11 protection in our country. A very proactive policy  
12 of intellectual property legal framework enhancement  
13 has been pursued last year.

14           Key areas of the action plan of the Council  
15 for Intellectual Property Protection have been as  
16 follows. In regards to EU legislation, Bulgaria is  
17 a European Union member, has conveyed further  
18 harmonization of the Copyright and Neighbouring  
19 Rights Act with the international treaties and EU  
20 directives. The latest amendments and supplements  
21 to the IPR Act did have a positive impact, and the  
22 difficulties with collecting royalties have been

1 significantly reduced.

2           A law was drafted with industrial property  
3 representatives aiming at the prevention of false  
4 trademark registration in Bulgaria and other markets  
5 for the purpose of subsequent extortion of the true  
6 holder of the trade market. Enhanced provisions on  
7 the copyright and industry property protection were  
8 included in the new penal code draft that's in the  
9 pipeline, with separate sections on the crimes  
10 against the IPRs and stronger provisions in the  
11 cases of provoking and supporting exchange of  
12 illegal online content in particular.

13           Number 2, copyright piracy over the in  
14 Bulgaria has significantly limited in 2014, a number  
15 of measures and police operations were undertaken.  
16 Unlicensed content was confiscated from Internet  
17 providers that owned file servers within their  
18 internal networks. Onsite checks for violation of  
19 copyrights by torrent trackers, in particular, were  
20 performed. Ninety-five computers with unlicensed  
21 software were forfeited, and the estimated potential  
22 injury to the right holders was over a quarter

1 million U.S. dollars. And 15 illegal websites have  
2 been seized last year.

3           The Ministry of Culture, a government  
4 institution, pursued unprecedented activity last  
5 year on intellectual property rights protection  
6 across the country; 743 inspections on compliance  
7 with the Copyright and Neighbouring Rights Act were  
8 held among cable and TV operators, radio  
9 broadcasters, TV and radio programmers, retailers  
10 and users and distributors of business software.

11           Number 3, the collecting societies did not  
12 report any serious challenges in collecting  
13 royalties and enforcing their rights through  
14 administrative or judicial actions in 2014.

15 Meetings with the stakeholders association of the  
16 providers of TV programmers were held, and a number  
17 of administrative inspections were performed in  
18 hotels, hospitals to prevent illegal broadcasting of  
19 TV programs by corporate users. The Council for  
20 Electronic Media has now new IPR competencies under  
21 the Radio and Television Act. They have the right  
22 to decline contracts for broadcasting and



1 transmission of programs to enterprises broadcasting  
2 without the consent of the rights holder.

3           Number 4, the distribution of trademark  
4 counterfeiting was significantly diminished last  
5 year. Enforcement was made by means of inspections,  
6 issuance of fines, and sentencing in cases taken to  
7 the criminal courts by customs agents, the Ministry  
8 of Interior, and the State Agency of National  
9 Security in Bulgaria.

10           In 2014, the competent authorities made  
11 routine inspections and conducted adequate  
12 enforcement of the IP laws and regulations related  
13 to the trademark counterfeiting. Bad faith  
14 trademark applications have been reduced, and checks  
15 for infringement of legal entities was supported by  
16 the Ministry of Interior and the State Agency for  
17 National Security.

18           The Specialized Directorate for Combating  
19 Organized Crime performed 20 actions and operations  
20 on the spot, during which 18,580 counterfeit goods  
21 were forfeited, mainly at sports and perfumes, and  
22 the estimated injury to the right holders was about

1 \$1,300,000 and approximately \$250,000 of injuries to  
2 Bulgarian state.

3           The patent office of our country and the  
4 economic police in 2014 performed 200 checks. And  
5 the intervention of customs agency has been  
6 requested by 747 applications for implementation of  
7 measures for protection of IPRs in particular, of  
8 which 654 were European Union applications submitted  
9 through the customs administrations of other EU  
10 member states; 93 were national applications.

11           Number 5, the connection between  
12 investigation and prosecution authorities was  
13 significantly improved in the effective enforcement  
14 of IP cases. As a whole, the right holders did not  
15 report many delays in adjudication of IPR disputes  
16 in 2014. Nine administrative acts and 138 warning  
17 and order records were issued by the competent  
18 authorities, 33 files on pre-trial proceedings were  
19 submitted in accordance, and 29 files were sent to  
20 the prosecution with opinion in favor of opening a  
21 pre-trial proceeding; 106 other checks were  
22 performed following claims and signals.

1           The Supreme Prosecutor's Office of  
2 Cessation in 2014 worked actively in the area of  
3 intellectual property rights protection and issued  
4 141 prosecuted acts against 146 accused persons.

5           Number 6, Bulgaria's government coordinated  
6 its activities with the rights holders and other  
7 interested parties, such as the Internet service  
8 providers. The information campaigns in the public  
9 sector on increasing the recognition of intellectual  
10 property rights continued, creating a negative  
11 public attitude to infringements of intellectual  
12 property.

13           Number 7, Bulgarian authorities engaged  
14 actively in a meaningful follow-up in the months  
15 after a compliance campaign initiated in 2013 by the  
16 Ministry of Culture and the Ministry of Interior.  
17 In 2014, many successful operations against software  
18 piracy on new computers intended for sale and use of  
19 illegal applications software by small and medium  
20 sized companies have been conveyed; 36 cases were  
21 initiated last year for checks of unauthorized  
22 storage of computer programs, 25 administrative

1 statements, and 30 computer systems. And finally  
2 Bulgaria's participation in international operations  
3 in IPR enforcement, like Pangaea VII, ERMIS,  
4 REPLICA, and White Mercury II.

5           So the Bulgarian authorities have followed  
6 the recommendations of the U.S. Government, focused  
7 on the witnessed highlighted in last year's Special  
8 301 Report. Better protection of intellectual  
9 property rights, we believe, will result in more  
10 foreign direct investment. Higher economic growth  
11 in our country, itself, is already significant,  
12 software and entertainment content producer itself,  
13 and we have a stake in this as well.

14           So, we plead, having been concerned in last  
15 year's and being on the list, we plead for our  
16 country being removed from it on the basis of  
17 significant achievements for part of which were  
18 reported now. Thank you for your attention.

19           CHAIR WILSON: Mr. Konstantinov, thank you  
20 very much for that extremely detailed testimony. It  
21 is extremely encouraging to hear about all of the  
22 efforts that are underway, both legislative as well

1 as administrative and enforcement related. It is  
2 particularly encouraging to hear that the government  
3 appreciates intellectual property rights can be a  
4 key to future economic success for Bulgaria. I  
5 think that self-interest is something that many  
6 governments come late to understand. And so I think  
7 that's a real highlight of your statement.

8           You anticipated several of our questions,  
9 but I think I am going to let some of my colleagues  
10 ask a few nonetheless. In particular, I think we  
11 are very interested in the online piracy situation.  
12 So you did mention quite a bit of activity in that  
13 space. First, I am going to turn to my colleague  
14 from DOJ and see if he wants to drill down into some  
15 more detail there.

16           MR. LAMBERTI: Thank you, Susan. Dobar  
17 den.

18           MR. KONSTANTINOV: Good day.

19           MR. LAMBERTI: In your testimony, you  
20 mentioned that the Specialized Directorate for  
21 Combating Organized Crime and SANS last year had  
22 closed 15 illegal websites. Could you give us some

1 more details about how big those sites were, if they  
2 had infringing copyrighted material, and just some  
3 more information about those?

4 MR. KONSTANTINOV: The overwhelming  
5 majority of those have been torrent tracker sites  
6 over which we could have control because they were  
7 in Bulgarian territory. So as soon as they have  
8 been tracked, they have been closed.

9 Some of the major ones, however, are  
10 outside of the country, and it has been an issue  
11 closing. But there has been a lot of migration of  
12 torrent tracker sites and a lot of confusion in the  
13 consumers, which led to a significant decrease in  
14 the usage of illegal online content.

15 CHAIR WILSON: One question that I have --  
16 we're out of time. We've reached our 10 minutes,  
17 but we are particularly interested in knowing the  
18 current status of two sites that have been listed  
19 repeatedly in our Notorious Markets List, arena.bg  
20 and zamunda.net. If I could ask you to please in  
21 the post-hearing phase, between now and midnight on  
22 Friday, to please submit some information regarding

1 those two sites to the *Federal Register* site,  
2 [regulations.gov](http://www.regulations.gov), under the docket, so that we can  
3 have the benefit of that.

4 Thank you again for appearing today. Thank  
5 you for the work that you have done. You have, in  
6 fact, addressed many of the past complaints through  
7 legislation and other means. So we look forward to  
8 deliberating in the review. Thank you very much.

9 MR. KONSTANTINOV: Thank you, Madam  
10 Chairman. Thank you, Committee members.

11 CHAIR WILSON: Next I would like to invite  
12 to the witness table, would the representative of  
13 the Hellenic Republic -- welcome, sir. Please state  
14 and spell your name, and please begin.

15 MR. VALLAS: Good morning, everybody. My  
16 name is Theodosios Vallas. I am the First Counselor  
17 of Economic and Commercial Affairs in the Embassy of  
18 Washington. I am not a specialized officer in these  
19 things. I have the report which has been drafted by  
20 the competent Greek authorities. I made a summary  
21 which I am going to read to you. I hope it will  
22 satisfy you. And I will be answering all the

1 questions to the best of my capacity.

2           So despite several budget cuts in the  
3 public sector, the Greek authorities have managed  
4 not only to maintain high level of IPR protection  
5 but also to enhance considerably the efficiency and  
6 the effectiveness of combating counterfeit goods  
7 trade over the past year. The Greek government  
8 remains committed to the battle against IPR  
9 violations, as shown in the data collected and  
10 presented in this updated report.

11           Furthermore, Greece has fully fulfilled the  
12 requirements of the comprehensive action plan of  
13 IPR, taking steps toward significant improvement of  
14 the legislation of IPR and law enforcement and  
15 raising public awareness. Significant progress has  
16 been made in the improvement of the Greek legal  
17 framework concerning the IPR. It is noteworthy that  
18 all international conventions and EU legislations  
19 have been incorporated from the Greek legislation.  
20 All market regulations have been codified and  
21 amendments, which trademark law have been adopted.

22           Greece has taken steps to ensure that it



1 has effective legal mechanics to address piracy over  
2 the Internet. Implementing existing measures that  
3 allow civil actions by right holders for piracy over  
4 the Internet is one of the various means to combat  
5 this type of crime. For example, regarding the  
6 disclosure of the identity of the IPR offenders, the  
7 relevant Greek authorities have prepared an  
8 amendment to the existing legislation on  
9 communications for privacy.

10 More specifically, the amendment provides  
11 for the lifting of the communication of privacy in  
12 cases of copyright and/or related right  
13 infringements in cases of felonies, as well as a  
14 notice and takedown procedure that will contribute  
15 to removing or filtering the infringing content from  
16 the sites.

17 Although the Greek judicial system still  
18 suffers from delays, an effort to speed up  
19 procedures is under way, and at the same time, there  
20 has been an increase in imposing heavier sentences  
21 and fines than before.

22 All legislation and regulations that

1 provide for administrative fines for software  
2 infringements have been applied in all cases. The  
3 Hellenic Copyright Organization intervened in favor  
4 of right holders in judicial proceedings concerning  
5 online piracy in an effort to buck their case before  
6 the court of law and, at the same time, to highlight  
7 the detrimental effects of online piracy.

8 Greece proceeded to the reorganization of  
9 the Hellenic Police directorates in order to address  
10 the new challenges of IPR arising from the rapid  
11 growth and developments of the digital economy. To  
12 this end, the Cyber Crime Department acts as an  
13 independent central division of the Hellenic Police  
14 and in terms of competent cases of computer systems  
15 hacking, theft, distraction, or unauthorized trading  
16 of software, digital data, and audiovisual  
17 materials.

18 The Cyber Crime Department of the Hellenic  
19 Police has conducted preliminary examinations of  
20 various websites hosted by the Greek Internet  
21 service providers for movie streams. It is worth  
22 noting that, in most cases, the websites are hosted

1 in countries which are reluctant to collaborate with  
2 the Greek authorities, making thus more difficult  
3 the tracking of the perpetrators.

4 In addition, several Facebook group pages  
5 administrated by the Greek users were offering to  
6 use movie streaming through Facebook, thus violating  
7 the IPR legislation. However, Facebook has denied  
8 several times disclosing account record details, and  
9 thus, the perpetrators leave no distinct footprint.  
10 It is almost impossible for the Greek law  
11 enforcement authorities to investigate and prosecute  
12 the individuals responsible for the IPR  
13 infringements.

14 The Illegal Trade Coordination Center was  
15 established in order to cooperate with competent  
16 authorities to address instances of illicit and  
17 counterfeit trade. For this reason, the Illegal  
18 Trade Coordination Center constantly strives to  
19 strengthen initiatives for the protection of IPR  
20 both at national and European levels. Particularly,  
21 in cooperation with the Office of Harmonization in  
22 the Internal Market, over the past years, Greek

1 agencies have carried intensive campaigns to raise  
2 public awareness in the fight of intellectual  
3 industrial property rights.

4           Data in this report covered the ability of  
5 Greek authorities and agencies to deliver tangible  
6 results. The Greek government looks forward to  
7 continuing working closely with the United States in  
8 a joint effort to address these issues, building  
9 upon the already existing excellent cooperation  
10 between the two countries.

11           And thus I have read the report; the  
12 numbers speak for themselves. I was very impressed  
13 by the cases in page number 5. I will submit the  
14 report. But in 2012, we had all together 2 million  
15 goods confiscated and destroyed; and in 2013,  
16 10 million; in 2014, 13,000,630.

17           Also, the report states that all the  
18 records from EU legislation have been incorporated  
19 in the Greek legal system except one, which is  
20 Directive 26, but it has a deadline of  
21 implementation April 2016. Thank you very much.

22           CHAIR WILSON: Sir, thank you very much for

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1 joining us today --

2 MR. VALLAS: Thank you.

3 CHAIR WILSON: -- and for the statement.

4 That was really, again, quite a remarkable  
5 performance in terms of enforcement activity and  
6 legislative activity. It's really encouraging to  
7 hear that so many positive things are taking place,  
8 particularly with all of the challenges that you've  
9 been facing, etc.

10 I think today we're very interested again,  
11 as with Bulgaria, learning some more about the  
12 situation with the online piracy. Thank you for the  
13 legislative amendments that were passed that make it  
14 easier to do enforcement against online piracy. But  
15 let's lead off with DOJ again to try to drill down  
16 on some specifics. Again, if we ask a question that  
17 you can't answer now --

18 MR. VALLAS: Yeah, yeah, I will take it  
19 down.

20 CHAIR WILSON: -- you have until Friday,  
21 absolutely, please.

22 MR. LAMBERTI: Thank you very much for your

1 testimony. The Department of Justice, we work very  
2 closely with Greece in terms of obtaining evidence  
3 from Greece and also vice versa. You had mentioned  
4 in your testimony that there were some individuals  
5 in Greece who were using Facebook group pages to  
6 distribute pirate copies of movies and that the  
7 Hellenic Police were unable to obtain account record  
8 details directly from Facebook.

9           As you know, there is a mutual legal  
10 assistance treaty. We've had one for the past  
11 decade between the U.S. and Greece. And there is  
12 also a mutual legal assistance treaty between the  
13 European Union and the United States. The normal  
14 procedure would be for Greece to make a request  
15 under the treaty and for the U.S. Department of  
16 Justice to obtain a court order to obtain that  
17 information from Facebook.

18           Do you know whether or not the Hellenic  
19 Police in this instance that you talked about in  
20 terms of Facebook used that procedure, that legal  
21 procedure under the mutual legal assistance treaty  
22 to obtain that information from Facebook?

1           MR. VALLAS:  If they had, it would be on  
2 the report.  Since it is not on the report, I think  
3 they haven't.  So it is my job to address that  
4 question and to ask them to cooperate with you.

5           CHAIR WILSON:  Thank you for that.  If I  
6 can add, since you are going to be asking questions  
7 of them anyway, you mentioned that they have  
8 attempted to do enforcement with other authorities  
9 and have been unable to.  If we could understand who  
10 some of the authorities in other governments that  
11 they were trying to work with are, we may be able to  
12 work through the European Union or through our legal  
13 attachés in Europe to try to render some assistance  
14 in that regard.  So that offer is open to you, if we  
15 have more information.

16           MR. VALLAS:  To my knowledge, the  
17 authorities that implicate themselves in this matter  
18 in Greece, it is the Ministry of Development; it is  
19 the Ministry of Finance, which has the customs; and  
20 it is the Ministry of Civil Protection, which has  
21 the police.  The cyber protection is a special unit  
22 within the police.  For the others that you said

1 collaborating with other countries, in the report it  
2 is mentioned that some countries are reluctant to  
3 collaborate. So your question was that?

4 CHAIR WILSON: Specifically, and perhaps  
5 this lends itself more to a discussion with our  
6 embassy representatives --

7 MR. VALLAS: Yes.

8 CHAIR WILSON: -- and the organizations  
9 that you have just named, to identify whether there  
10 is some way that we may be able to render assistance  
11 in the communications with those other governments.  
12 We do have regional attachés, law enforcement  
13 attachés who can facilitate those communications if,  
14 in fact, you are having difficulty. We also  
15 frequently sponsor training and technical  
16 assistance.

17 MR. VALLAS: Okay, yes.

18 CHAIR WILSON: And can seek to include  
19 Greek officials in those programs.

20 MR. VALLAS: It does mention some countries  
21 in the report, which I wouldn't like to --

22 CHAIR WILSON: To call here publicly, got



1 you.

2 MR. VALLAS: -- to call, yeah.

3 CHAIR WILSON: Thank you very much, sir.

4 MR. VALLAS: Thank you very much. The  
5 report, I will submit it.

6 CHAIR WILSON: Yes, please. Thank you so  
7 much.

8 I'd like to call our final government  
9 witness representing the Government of Ukraine to  
10 the table, please. Welcome, sir.

11 MR. TARASIUK: Hello. It is a great  
12 pleasure for me to be here and to address this  
13 distinguished audience, Chairwoman Wilson, Committee  
14 members, honorable government representatives. My  
15 name is Vitalii Tarasiuk, and I am Minister  
16 Counselor, Head of Economic and Trade Office of the  
17 Embassy of Ukraine here in Washington, D.C.

18 First of all, I would like to thank you for  
19 this opportunity to testify today about the current  
20 situation in Ukraine with IPR enforcement and  
21 reforms. Ukraine considers IPR protection as one of  
22 the key priorities and a significant part of

1 economic reforms and improvement of business climate  
2 in our country. We do understand that IPR  
3 enforcement in Ukraine is not an artificial  
4 requirement of the USTR, but an obligatory condition  
5 for the creation of favorable conditions for FDI  
6 attraction and successful business development in  
7 our country.

8           In this regard, we appreciate and support  
9 professional guidance of the USTR, other official  
10 U.S. bodies, as well as some reasonable comments  
11 from the expert community and NGOs, including IIPA,  
12 BSA, and the U.S. Chamber of Commerce.

13           This hearing comes at a difficult time of  
14 political changes and historical events happening in  
15 Ukraine. Democratic choice and my people's decision  
16 to share western values and to integrate into the  
17 European Union has faced unprecedented aggression  
18 and violent pressure from neighboring country. It  
19 is hard to believe that this can happen in the 21st  
20 century. In this regard, we greatly appreciate all  
21 the support Ukraine has received from the United  
22 States in this difficult time.

1           Today, Ukraine is undergoing the  
2 complicated process of quite ambitious reforms.  
3 Preserving national economy is, therefore, a matter  
4 of national survival for Ukraine. As we seek to  
5 stabilize our economy and engage more fully with the  
6 west, the financial support and efforts to maintain  
7 open trade that we have received from both the  
8 United States and the European Union have been  
9 particularly important.

10           I understand that, as a legal matter, USTR  
11 will proceed to a final determination of Ukraine's  
12 progress, legal efforts, and feasible results in IPR  
13 sphere during the last year. With that in mind, I  
14 would like to call to your attention some facts that  
15 may be relevant to your consideration.

16           With regards to improvement of collective  
17 management system, there are 18 collective societies  
18 currently operating in Ukraine. In this regard, we  
19 plan to make assessment of the effectiveness and  
20 transparency. The State Intellectual Property  
21 Service of Ukraine, SIPSU, has developed the  
22 government's draft resolution. On approval of the

1 conception of the draft law on collective management  
2 of economic rights, of copyright, and related rights  
3 subjects, it is expected that the conception will be  
4 approved in the nearest future.

5           At the same time, the draft law on  
6 regulation of collective management societies based  
7 on the U.S. and EU experts' comments was submitted  
8 on February 6, 2015, for approval to the Ministry of  
9 Economic Development and Trade of Ukraine. In  
10 addition, the SIPSU, in cooperation with the  
11 Commercial Law Development Program, CLDP, and the  
12 U.S. Department of Commerce, organized a workshop on  
13 collective management, held in Kiev, on  
14 February 17-19th, this year, with the aim to improve  
15 the draft law. Other government efforts include  
16 information promotion campaign in mass media to  
17 attract attention to IPR enforcement and  
18 intellectual property protection.

19           SIPSU, together with American Chamber of  
20 Commerce in Ukraine, have created an IPR Working  
21 Group to mediate disputes between collecting  
22 societies and other IPR stakeholders, as well as to

1 facilitate IPR enforcement in Ukraine.

2           With regards to enforcement of intellectual  
3 property rights in Internet, during 2014 SIPSU was  
4 working on the draft law "On Amendments to Certain  
5 Legislative Acts on Copyright and Related Rights  
6 Enforcement in Internet." The following steps were  
7 taken.

8           First, in the framework of the EU Twinning  
9 Project and with the support of CLDP, SIPSU held a  
10 series of meetings with international experts to  
11 discuss international experience of fighting  
12 Internet piracy and analyze the draft law.

13           Second, on December 12, 2014, the SIPSU  
14 submitted the draft law for the approval of the  
15 Ministry of Economic Development in Ukraine. In  
16 summer 2013, Ukraine's anti-piracy initiative, Clear  
17 Sky, was launched in cooperation with four major  
18 Ukrainian media groups, StarLightMedia, Inter Media  
19 Group, 1+1 Media, and Media Group Ukraine.

20           This initiative covers the most popular  
21 national and regional television channels, including  
22 1+1, Inter Ukraine, STB, and many others. The main

1 purpose of this initiative is to develop the legal  
2 Internet market on the video content and to oppose  
3 the illegal distribution of video on the web. The  
4 initiative includes certain spheres.

5           Communication. Opportunity to use the  
6 legal content for the partner websites of the Clear  
7 Sky initiative. In 2014, 33 websites stopped  
8 placing illegal content.

9           Lobbying. The Clear Sky initiative lawyers  
10 consult how to fight sites with infringed  
11 intellectual property rights.

12           Education. In 2015, an advertising  
13 campaign, "Ignore Pirates, Don't Break Intellectual  
14 Property Law," was launched. Five videos are  
15 constantly distributed on all major TV channels in  
16 Ukraine. It is happening as we speak.

17           Work with advertising companies. The  
18 initiative monitors and tries to dismiss financing  
19 of websites that infringe intellectual property  
20 rights via advertisers.

21           Special anti-piracy hub.  
22 Legalcontentua.com shows updated list of websites

1 with illegal content.

2           The SIPSU has finalized the Internet piracy  
3 draft law and submitted it for approval in terms of  
4 legalization of the software used by government  
5 agencies. The SIPSU has summarized information of  
6 computer programs used at the government  
7 institutions.

8           As of July 25, 2014, the executive board  
9 has used more than 600,000 licensed computer  
10 programs. The executive authorities purchased  
11 12,000 exemplars of operating systems. Within 15  
12 government agencies, software does not require  
13 legalization at all, including such majors as  
14 Ministry of Finance of Ukraine, State Registration  
15 Service, State Service of Expert Control of Ukraine,  
16 State Intellectual Property Service, and many, many  
17 others.

18           Level of the use of unlicensed software at  
19 the executive board has decreased from 33 percent in  
20 2013 to 30 percent last year. You can compare then  
21 in 2008, the figure was above 50 percent. The  
22 majority of executive budgets have established

1 specialized IT divisions responsible for  
2 legalization observance while purchasing,  
3 installing, use, accounting, and inventory of the  
4 software.

5           In 2015, the SIPSU continues implementation  
6 of the EU-Ukraine Association Agreement on the part  
7 of intellectual property. This is Chapter 9 of the  
8 agreement, and we pay very huge attention to the  
9 implementation of the EU Association Agreement right  
10 now in Ukraine.

11           In 2014, there was an agreement  
12 preliminarily reached with the Microsoft Ukraine  
13 Company about the memorandum of understanding which  
14 foresees establishment of cooperation on  
15 introduction of the state audit of software,  
16 government software asset management, and  
17 improvement of the process of the state procurement  
18 of IP law objects.

19           The SIPSU submitted the draft resolution  
20 "On Amendments to General Requirements to Software  
21 that is Purchased or is Created on the Order of the  
22 State Bodies." It is also expected that this year



1 the Cabinet of Ministers of Ukraine will submit a  
2 draft law "On Amendments to Certain Legislative Acts  
3 on Copyright and Related Rights Enforcement in  
4 Internet," and some other laws related to this  
5 sphere will also be introduced shortly.

6 Ladies and gentlemen, the State  
7 Intellectual Property Service of Ukraine, together  
8 with administration of the President of Ukraine and  
9 the Ministry of Economic Development of Ukraine, as  
10 well as other relevant bodies in the Government of  
11 Ukraine, are ready to continue its mutually  
12 beneficial cooperation with American side and make  
13 every possible contribution to the IPR enforcement  
14 and protection improvement in Ukraine.

15 We do hope that Ukraine will move in the  
16 USTR list. And in order to achieve this, we are  
17 doing our best to enforce the protection  
18 particularly in such spheres as improvement of  
19 administration system of collecting societies,  
20 minimization of use of illegal software by Ukraine  
21 government agencies, combating online piracy and  
22 infringement of copyrights and related rights.

1           Let me thank you again for this opportunity  
2 to appear before you, and I thank you for your hard  
3 work on this important matter. We'll look forward  
4 to continued cooperation with the U.S. government in  
5 stabilizing the Ukraine's economy and IPR  
6 protection. Thank you so much.

7           CHAIR WILSON: Thank you so much for your  
8 testimony today, and we very much appreciate that  
9 Ukraine could join us. Obviously, we were  
10 disappointed to hear that Ms. Zharinova could not  
11 make the trip, but you carried a very important  
12 message I think today. Obviously, we continue to be  
13 extremely interested in the three issues that were  
14 identified as the basis for designating Ukraine as a  
15 Priority Foreign Country in 2013. I believe you  
16 touched on all three of those issues in your  
17 testimony, the need to have measures for online  
18 piracy, the issues with collective management  
19 organizations, and the software legalization issue.

20           We are out of time in this segment. Let me  
21 just say that the U.S. government remains extremely  
22 interested in and focused on the situation in

1 Ukraine. We understand that there are significant  
2 challenges that you are facing. But in such a time,  
3 showing the world that Ukraine is open for business,  
4 showing the world that Ukraine is a market that is  
5 available for investment, and to nurture creativity  
6 and artists and inventors and all of the things that  
7 come with a fully functioning IP system, this is a  
8 particularly important time. There is tremendous  
9 self-interest in these things, I mean obviously the  
10 U.S. has interest, but there is tremendous self-  
11 interest in the issues that we have flagged for you.

12 We are very encouraged by your  
13 participation in the training programs that have  
14 been offered. We are very encouraged by the  
15 legislative initiatives that you are undertaking.  
16 We have received some recent reports with respect to  
17 collective management organizations that we would  
18 like further information on.

19 We would like to identify an opportunity in  
20 addition to this hearing to engage with you. I  
21 believe an invitation has been sent to capital to  
22 have a continued discussion with the Committee later

1 this week, even as early as Friday. So to stay on  
2 schedule, we won't ask any questions now. Just know  
3 that the U.S. government remains very focused on the  
4 situation in Ukraine, and we will look to engage at  
5 every opportunity.

6 Thank you again for joining us today.

7 MR. TARASIUK: Thank you so much.

8 CHAIR WILSON: Thank you again to the  
9 governments for joining us this morning. I think  
10 that concludes our government testimony.

11 We will move on now to the private sector  
12 and civil society witnesses, beginning with the  
13 Alliance for Fair Trade in India. Welcome, sir.  
14 Please state your name.

15 MR. POMPER: Thank you, good morning. I am  
16 Brian Pomper, B-r-i-a-n P-o-m-p-e-r. I am here  
17 today as the Executive Director of the Alliance for  
18 Fair Trade with India, or AFTI. Madam Chairwoman,  
19 members of the Committee, thank you for providing me  
20 with the opportunity to testify on behalf of the  
21 Alliance for Fair Trade with India today.

22 AFTI was launched in June of 2013, in

1 support of increased action to address the barriers  
2 to trade and investment U.S. companies are facing in  
3 India, including the erosion of intellectual  
4 property rights, and to serve as a mechanism for  
5 engaging with U.S. policymakers on these issues.

6           AFTI's diverse membership is comprised of  
7 organizations representing a range of U.S.  
8 industries adversely impacted by India's IPR  
9 policies and practices. In light of this mandate, I  
10 am here to call on USTR to again place India on its  
11 Priority Watch List and to conduct another Out-of-  
12 Cycle Review of India's IPR regime.

13           AFTI and its members have been encouraged  
14 by recent episodes of government-to-government  
15 engagement between the United States and India,  
16 including the restarting of the U.S.-India Trade  
17 Policy Forum after a four-year hiatus.

18           To be meaningful, however, such engagement  
19 and the associated bilateral dialogues must result  
20 in substantive progress on issues that continue to  
21 disadvantage U.S. industry in India. The reality is  
22 that our members continue to encounter a range of

1 policies and practices in India that serve to deny  
2 them adequate and effective protection of their  
3 intellectual property rights.

4           These include India's failure to provide an  
5 adequate structure to protect confidential test and  
6 other data; burdensome testing and safety  
7 requirements on information and communication  
8 technology products; the use and threatened use of  
9 compulsory licensing on biopharmaceutical and other  
10 products as a tool of industrial policy; measures in  
11 Indian law that add an onerous and unnecessary  
12 additional criterion for the patentability of  
13 medicines; and weaknesses in the Indian copyright  
14 system that harm U.S. and Indian creators alike.

15           When he took office, Prime Minister Modi  
16 promisingly declared India open for business and  
17 committed to incentivize investment and give the  
18 world a favorable opportunity to trade with India.  
19 While our membership has been encouraged by this  
20 rhetoric and by the warming in relations between the  
21 United States and India, we still believe that these  
22 developments must translate into concrete action on

1 the sorts of concerns I have just enumerated.

2           The simple reality is that while India's  
3 failure to provide adequate and effective  
4 intellectual property rights disadvantages U.S.  
5 industry, it also harms India by stifling its own  
6 economic development and advancement. As  
7 highlighted by the International Trade Commission in  
8 its recent report on Trade, Investment, and  
9 Industrial Policies in India, the resolution of the  
10 issues AFTI has prioritized would serve to bolster  
11 U.S. investment into India to the benefit of the  
12 Indian economy. Moreover, it would allow for trade  
13 and investment to become a key pillar within the  
14 revitalized bilateral relationship.

15           The Out-of-Cycle Review in 2014 focused  
16 exclusively on the quality of engagement with the  
17 Indian government. AFTI believes strongly that an  
18 Out-of-Cycle Review in 2015, focused on substance  
19 and the steps that have been taken or that have not  
20 been taken to address existing problems, is not only  
21 warranted but necessary.

22           Now that a stronger foundation has been

1 laid in the U.S.-India relationship and the Modi  
2 government will soon enter its second year, we  
3 believe that the coming months offer an opportune  
4 time for progress on the crucial issues I have  
5 highlighted here today. Thank you for your time.

6 CHAIR WILSON: Thank you very much for your  
7 testimony and for leaving time for questions.  
8 That's very exciting.

9 MR. POMPER: Perhaps that was foolish on my  
10 part.

11 CHAIR WILSON: Well, we'll see. The OCR,  
12 you are correct in saying that the 2014 Out-of-Cycle  
13 Review was designed to create space for the U.S. and  
14 the Indian government -- with the new Indian  
15 government to engage, and that in 2015 obviously we  
16 are all looking for some improvements in the issues  
17 that have been identified as problematic. So your  
18 organization is one of several that has asked for an  
19 Out-of-Cycle Review again, and obviously, you wish  
20 to focus on substantive issues. We would be  
21 interested in hearing what your thoughts are and  
22 what kind of benchmarks could be included in the



1 OCR.

2 MR. POMPER: Well, I think you would have  
3 to look by reference to the draft national IPR  
4 policy that India produced, which I think in many  
5 ways is a tremendously ambitious document. There is  
6 a lot in that document that I think would, when it's  
7 adopted, would provide useful benchmarking. And  
8 there is a lot that I think many of the members in  
9 AFTI support.

10 I would just, as long as I have mentioned  
11 that document, there are just a few points I'd love  
12 to make about some of the concerns we continue to  
13 have with that particular document. First is the  
14 specific exclusion of data protection for  
15 development in India. That really stood out to us  
16 as something that was a real negative in the report,  
17 and something I think we have consistently said and  
18 I believe the USTR in previous 301 reports have said  
19 is likely inconsistent with India's WTO obligations.

20 Also, interesting for me, the policy, and I  
21 can quote from here, it says, "The policy will aim  
22 to foster predictability, clarity, and transparency

1 in the entire IP regime in order to provide a secure  
2 and stable climate for stimulating inventions and  
3 creations, and augmenting research, trade,  
4 technology transfer, and investment."

5 I think foremost among the things that  
6 India can do to create an environment of clarity and  
7 predictability and certainty would be to repeal  
8 Section 3(d). I think that was really -- the  
9 unpredictability of it, I think, was really  
10 highlighted most recently with the Sovaldi case in  
11 January where the court denied the patent under 3(d)  
12 and then just 2 weeks later the high court reversed  
13 that and allowed the patent to be issued. That, to  
14 me, indicates not a predictable, stable, and secure  
15 environment in the IPR policy.

16 But not to belabor the point, there  
17 certainly are negatives you can point to. I think  
18 the AFTI membership would like to think that this  
19 relationship is on a more positive incline. Last  
20 year, of course, AFTI asked for Priority Foreign  
21 Country designation, and there was quite a debate  
22 truthfully this year about whether to renew that

1 request.

2           I think where the membership came out was  
3 while there have been no substantive improvements  
4 over the course of the last year, there have been  
5 quite -- there has been quite a lot more of  
6 engagement and a lot more optimism, perhaps, that  
7 India maybe is starting on the right path. And  
8 that's why we decided this year we wouldn't renew  
9 our request for Priority Foreign Country, but we  
10 would ask that India remain on the Priority Watch  
11 List but have an Out-of-Cycle Review to see what  
12 sort of progress India makes on the kinds of ideas  
13 and commitments and things that it said it would  
14 focus on in the IPR policy.

15           CHAIR WILSON: Thank you for that. I think  
16 we have time for one more question maybe to drill  
17 down a little bit on the subject matter of last  
18 year's OCR and something that's certainly of ongoing  
19 interest.

20           MS. BLEIMUND: Thank you very much. We  
21 were just curious, since the new Modi government  
22 came on board, how have your constituent businesses

1 found their ability to engage with the Indian  
2 government on the concerns you cited in your  
3 submission and to what result?

4 MR. POMPER: I think there has certainly  
5 been better engagement than in the past, and there  
6 was a lot of optimism when the prime minister took  
7 office. But I think there is a lot of dialogue and  
8 discussion and talk. I think the membership really  
9 would like to see concrete, substantive steps taken.

10 While I said I think there is a hope that  
11 the relationship and these issues are on a positive  
12 trajectory, I do have to note very recently there  
13 were quite a few revocations and patent denials  
14 under 3(d) just in December, which is of great  
15 concern to the membership.

16 You also, of course, have the ICT testing  
17 requirements that are supposed to come into effect  
18 in mid-April. Membership remains very concerned  
19 about that. It has been delayed, of course, several  
20 times in the past. We've seen a few press reports  
21 it may once again be delayed.

22 So there is all the same substantive

1 concerns that motivated the membership last year to  
2 ask for PFC designation remain. But we decided not  
3 to renew that request out of deference to the  
4 increased steps the government seems to be taking to  
5 improve its dialogue with the United States in order  
6 to try to address some of these concerns.

7           Again, just the last word I'd say is the  
8 membership is very interested in concrete,  
9 substantive progress, and that's why we ask for the  
10 Out-of-Cycle Review focused on substance.

11           CHAIR WILSON: Okay, thank you very much.  
12 We are out of time.

13           MR. POMPER: Thank you.

14           CHAIR WILSON: And very much appreciate  
15 your joining us here today.

16           I'd like to invite our next witness  
17 representing Bridgestone Americas, Incorporated.  
18 Welcome, sir. Please state your name whenever you  
19 are ready

20           MR. KINGSBURY: Hi, my name is Tom  
21 Kingsbury, K-i-n-g-s-b-u-r-y. And I am Associate  
22 Chief Counsel for Intellectual Property for

1 Bridgestone Americas, Inc. I'd like to thank you  
2 for the opportunity to speak on behalf of the  
3 Bridgestone group of companies today.

4           Most of you are probably familiar with  
5 Bridgestone and Firestone names and marks. These  
6 trademarks are owned by the Bridgestone family of  
7 companies located both in the United States and  
8 Japan, which I will collectively refer to as  
9 Bridgestone.

10           We hope that, like millions of Americans,  
11 you associate our brands with high quality and  
12 reliability. Through years of hard work, we have  
13 built the Bridgestone and Firestone brands into  
14 iconic trademarks that are recognized throughout the  
15 world.

16           I'd like to speak to you today about  
17 Bridgestone's recent experiences with the judicial  
18 system in Panama. Bridgestone's issues in Panama  
19 began when it filed a trademark opposition against  
20 the mark Riverstone for use with tires. While we  
21 were ultimately unsuccessful in opposing this  
22 trademark, that is not why we are here. Bridgestone

1 has filed over 500 similar "stone" trademark  
2 oppositions around the world. And although we have  
3 won many, we have also lost some, so we recognize  
4 each jurisdiction's authority to make its decisions  
5 based on its own assessment of the facts.

6 I would, however, like to bring to the  
7 Subcommittee's attention the subsequent actions by  
8 the Panamanian Supreme Court which have severely  
9 impaired Bridgestone's ability to protect its  
10 intellectual property rights in Panama. And we are  
11 not alone. This draconian and punitive ruling  
12 impacts all brand owners who seek to protect their  
13 trademark rights by availing themselves to the  
14 Panamanian trademark opposition process.

15 After the first judicial circuit's ruling  
16 on Bridgestone's motion, the trademark applicant, a  
17 Panamanian company called Muresa, and one of its  
18 tire distributors filed a lawsuit against  
19 Bridgestone alleging that Bridgestone's actions had  
20 caused Muresa to stop selling Riverstone tires by  
21 both sending a standard reservation of rights letter  
22 to Muresa's distributor, who was not part of either

1 of these two proceedings, following the opposition  
2 of the Riverstone mark in the United States and by  
3 filing the opposition motion in Panama.

4           Bridgestone prevailed before the Panamanian  
5 civil court, and we won before the appellate court.  
6 Both of these courts specifically found that  
7 Bridgestone's motion in the opposition was  
8 legitimate and that the reservations of rights  
9 letter did not cause Muresa to stop selling  
10 Riverstone tires.

11           However, in an abrupt about face, the  
12 Panamanian Supreme Court reversed these two lower  
13 court decisions, found that Bridgestone had acted  
14 negligently and in bad faith and awarded the  
15 plaintiffs \$5 million in damages and \$431,000 in  
16 attorney's fees.

17           We would also like to stress that we are  
18 not here just because we lost a lawsuit in Panama.  
19 We are here because there is absolutely no legal  
20 basis in trademark law for this decision and because  
21 this decision has a devastating impact to all  
22 foreign trademark owners in Panama.



1           The message of the Panamanian Supreme Court  
2 is clear: If you attempt to enforce your  
3 intellectual property rights in Panama, you can be  
4 sued and forced to pay massive damages if you lose.  
5 This will encourage pirates to seek to register  
6 copycat trademarks, and it will discourage trademark  
7 owners from trying to stop them.

8           This decision violates a number of  
9 international and bilateral treaties and agreements,  
10 as noted in our written comments. Specifically, the  
11 decision violates various sections of the WTO's  
12 Agreement on Trade-Related Aspects of Intellectual  
13 Property Rights, the U.S.-Panama Trade Promotion  
14 Agreement, and the U.S.-Panama Bilateral Investment  
15 Treaty.

16           With my remaining time, I want to describe  
17 some of the inconsistent and factually inaccurate  
18 statements and outright misapplication of trademark  
19 law that the supreme court used to reach its  
20 decision. The most egregious part of the supreme  
21 court's decision is that the claim for damages  
22 originated from Bridgestone's filing of a trademark

1 opposition. Even if Bridgestone had successfully  
2 opposed the Riverstone application, the only relief  
3 that would have been granted is a refusal to the  
4 challenged application at the trademark office. No  
5 injunctive relief was available. No damages were  
6 available. Nothing else.

7           The circuit court acknowledged this in its  
8 hold by stating, "The fear of a seizure action  
9 prompted plaintiff to decide to cease the  
10 manufacturing and commercialization of the  
11 Riverstone trademark. Nevertheless, this decision  
12 was not made to comply with any court order.  
13 Moreover, such action was not viable or feasible  
14 within a trademark opposition proceeding, as  
15 provided for Law 35 of 1996."

16           Second, the supreme court found Bridgestone  
17 liable of acting in bad faith by filing the  
18 opposition. It held Bridgestone committed a  
19 negligent action by using a legitimate initiative  
20 without legal basis, which it said irreversibly  
21 damages Muresa's business.

22           This argument has two fatal flaws. First,

1 the circuit court in the opposition actually  
2 acknowledged the similarities between the  
3 Bridgestone, Firestone, and Riverstone trademarks,  
4 and it exonerated Bridgestone from paying Muresa's  
5 court costs. The circuit court held that  
6 Bridgestone acted in good faith, maintained and  
7 defended its position, and provided relevant  
8 evidentiary material to demonstrate the legitimacy  
9 of its cause without abusing the exercise of the  
10 right to litigation.

11 This is significant because in Panama it is  
12 standard for the losing party to pay the other  
13 party's costs even without a finding of bad faith.  
14 In fact, decisions like the circuit court's are,  
15 according to our Panamanian counsel, very rare.

16 Second, before the supreme court issues its  
17 decision, Bridgestone had successfully opposed four  
18 other stone suffix marks, including Megastone,  
19 Transtone, and Austone, in Panama. Yet, the supreme  
20 court completely ignored this fact and failed to  
21 provide any explanation to why the Riverstone  
22 trademark was less confusingly similar to any of

1 these other marks.

2           The arbitrariness of the supreme court's  
3 decision is further underscored by the fact that we  
4 recently won oppositions against Rixtone and Fastone  
5 after the supreme court's decision. Again, it is  
6 difficult to see what would set the Riverstone mark  
7 apart from any of these other marks, other than the  
8 fact that Riverstone was owned by a Panamanian  
9 company.

10           This is perplexing given then, in the  
11 Riverstone case, the supreme court determined that  
12 filing an opposition motion in itself constituted a  
13 bad faith effort to take advantage of the Panamanian  
14 legal system.

15           Finally, the damages award was based on  
16 Muresa's lost sales from having stopped selling the  
17 Riverstone tires. But, incredibly, the evidence  
18 shows that Muresa never stopped selling tires. This  
19 was recognized by both of the lower courts and by  
20 the dissent in the supreme court decision.

21           In conclusion, this unprecedented decision  
22 violates due process and creates a chilling effect

1 on an intellectual property owner's ability to  
2 enforce their trademark laws in Panama -- trademark  
3 rights in Panama and in any other country that might  
4 seek to decide to follow Panama's lead in protecting  
5 national corporations.

6           Bridgestone believes its own experience is  
7 but an example of the lack of adequate and effective  
8 protection Panama affords to intellectual property  
9 rights holders, especially those who are foreign  
10 investors. Given the magnitude of the potential  
11 repercussions of the supreme court's decision, we  
12 respectfully request that the USTR place Panama on  
13 the Priority Watch List for serious intellectual  
14 property rights violations that require increased  
15 bilateral attention by the USTR.

16           I thank this Subcommittee again for the  
17 opportunity to share Bridgestone's experiences and  
18 for its efforts in enforcing intellectual property  
19 rights protections around the world. Thank you.

20           CHAIR WILSON: Thank you very much for your  
21 testimony. Clearly, the situation that you  
22 described is a complicated and difficult one. And

1 from what we understand from your filing and other  
2 conversations around this issue, not a desirable  
3 outcome by any means.

4 I think some of my colleagues have some  
5 questions not only related to this case, but also  
6 asking for your views on the more systemic --

7 MR. KINGSBURY: Sure.

8 CHAIR WILSON: -- nature of what you're  
9 seeing both in Panama and abroad. So I'd like to  
10 turn the microphone over to Steve Mitchell.

11 MR. MITCHELL: Yes, sir, thank you.  
12 Particularly in light of Bridgestone's other  
13 successes in Panama, is it the company's sense that  
14 this case is an example of a systemic problem in  
15 that country or is more of an isolated case?

16 MR. KINGSBURY: You know, that's a  
17 difficult question because I don't know that we've  
18 had any other decisions that reached the supreme  
19 court level. This seems fairly isolated to the  
20 supreme court. The lower courts across the board  
21 have ruled in our favor. Again, we lost the  
22 Riverstone opposition, but we win some of these, we

1 lose some of these. That's not really the issue.  
2 It is sort of the consequences of the loss which  
3 were completely unexpected and really without basis  
4 in trademark law. So it seems as if it is the  
5 supreme court providing a ruling for the benefit of  
6 a Panamanian corporation.

7 MR. MITCHELL: Thank you. My follow-up is  
8 whether your sense is that this is indicative of a  
9 trend in the region or perhaps globally?

10 MR. KINGSBURY: Well, we are concerned that  
11 that will be, a lot of the smaller countries who may  
12 take the lead and take this type of initiative and  
13 action because it is the supreme court. We filed  
14 several different motions. But it is the supreme  
15 court, and there is really no appeal process  
16 available to us.

17 That's the fear is that if this is allowed  
18 to stand and this ruling is not at least  
19 acknowledged by some, the U.S. government, and we're  
20 actually trying to get some support from the  
21 Japanese government, if something is not done about  
22 it, we're afraid that it will become a systemic

1 problem particularly in Latin America.

2 MR. MITCHELL: Thank you.

3 CHAIR WILSON: Thank you for that. To  
4 others who are in the room and who will be  
5 testifying today, we are also very interested in  
6 this question of situations not only in Panama and  
7 with the region but globally in which brand owners  
8 are finding these sorts of challenges to actually  
9 defending their rights in markets.

10 I believe we have time for one more  
11 question.

12 MS. URBAN: Yes. We would be interested in  
13 some of your thoughts on your trademark portfolio in  
14 Panama and the extent to which you undertake other  
15 enforcement efforts in those areas with regard to  
16 those interests.

17 MR. KINGSBURY: We are extremely aggressive  
18 with stone suffix marks just because that is our  
19 corporate identity between the Bridgestone and the  
20 Firestone trademarks. So we don't have a very large  
21 portfolio in Panama, but we have the Bridgestone and  
22 the Firestone marks registered worldwide, and we are



1 fairly aggressive in pursuing people who try to file  
2 similar stone suffix marks, as we call them.

3 MS. URBAN: You mentioned the previous  
4 court actions. Are there any additional ones  
5 pending that you can speak about?

6 MR. KINGSBURY: No. The two Megastone  
7 cases were actually won up through an appellate  
8 level, and we don't believe that they have been  
9 appealed any further. The other four that we won  
10 were decided by the circuit court, and I don't  
11 believe there has been an appeal filed on any of  
12 them. Two of them were just recently in 2014, so  
13 hopefully they go away.

14 MS. URBAN: All right, thank you.

15 MR. LAMBERTI: Were the other marks  
16 registered by Panamanian companies or not?

17 MR. KINGSBURY: No, they were not. They  
18 were other Latin American companies and several  
19 Chinese companies that filed the applications.

20 MS. URBAN: Okay. So this is the only --

21 MR. LAMBERTI: This was the only Panamanian  
22 company.

1 MR. KINGSBURY: Yeah, this was the only  
2 one. This is the only one of the six that was filed  
3 by a Panamanian company.

4 MS. URBAN: Okay.

5 CHAIR WILSON: Okay, thank you again. Our  
6 time is up, so thank you again for appearing today.

7 MR. KINGSBURY: Thank you very much for  
8 your time. I appreciate it.

9 CHAIR WILSON: Now I'd like to invite to  
10 the table our next witness representing BSA/The  
11 Software Alliance. Welcome, please state your name.

12 MR. RAGLAND: Thank you. My name is Jared  
13 Ragland, R-a-g-l-a-n-d. Good morning. Thank you,  
14 Madam Chairwoman and the members of the Committee.  
15 I very much appreciate this opportunity to testify  
16 today on behalf of BSA/The Software Alliance.

17 BSA is the leading advocate for the global  
18 software industry, and our members include companies  
19 like Oracle and Apple, IBM and Autodesk, Microsoft  
20 and Adobe, Dell, Salesforce, Intuit, and many  
21 others. Our members generate nearly \$600 billion in  
22 global revenue annually, while employing more than

1 3.2 million people, in jobs that pay on average 2½  
2 times the national median wage.

3           To emphasize the importance of what this  
4 Committee is all about, every BSA member company  
5 relies heavily on trade. As much as 60 percent of  
6 our members' revenues come from overseas markets,  
7 making us one of the top American export-intensive  
8 industries.

9           BSA member companies are developing the  
10 software, hardware, and service solutions that are  
11 powering the 21st century economy. Indeed, we are  
12 undergoing our own dramatic transformation as  
13 members increasingly provide a wide array of data  
14 services, analytics, security solutions,  
15 connectivity, and much more. This, of course, is in  
16 addition to the full array of software solutions  
17 that are increasingly offered online using  
18 subscription base models, allowing customers to  
19 tailor and adjust their software needs and usage in  
20 real time.

21           Unfortunately, as the promise of economic  
22 growth and job creation is unleashed by the

1 productivity gains of software-enabled data  
2 services, many countries are responding with new  
3 forms of digital protectionism. I was just on a  
4 panel this morning where we were talking about the  
5 importance of cross-border data flows for  
6 traditional industries like energy, health, autos,  
7 retail, etc.

8           The digital economy benefits not just IT  
9 companies, like BSA members who underpin it, but the  
10 entire economy as a whole. So when countries like  
11 China and Indonesia, Brazil, India, Germany, Korea,  
12 Nigeria, and Vietnam, among others, erect barriers  
13 that make it difficult for BSA members and others to  
14 offer their productivity-enhancing services and  
15 technologies, they are not just harming the  
16 commercial interests of the leading technology  
17 companies in the world, but they are putting brakes  
18 on their own economic growth and development.

19           I am here to argue that the Special 301  
20 statute was designed to address these kinds of  
21 market access barriers, in addition to promoting IP  
22 protection. As you know, the statute instructs USTR

1 to identify both countries that fail to provide  
2 adequate and effective IPR protection and those that  
3 deny fair and equitable market access to those that  
4 rely on IPR protection.

5           So it is for this reason that BSA, for the  
6 first time in our 27-year history, filed our own  
7 Special 301 submission. In the past, we've filed  
8 with the coalition of other copyright-intensive  
9 industries. You'll be hearing from a representative  
10 of that organization later today. And these  
11 submissions tended to focus on the IPR protection  
12 prong and specifically on copyright protection and  
13 enforcement, not exclusively but that was the focus.

14           Don't get me wrong, IP protection and  
15 enforcement remains a critically important issue for  
16 BSA and our members. Our primary enforcement  
17 challenge internationally and the main intellectual  
18 property reason for us to participate effectively in  
19 overseas markets continues to be the unlicensed use  
20 of software by government agencies, businesses, and  
21 state-owned enterprises. According to the latest  
22 information, the commercial value of unlicensed

1 software globally was over \$60 billion.

2 We also need effective protections against  
3 the unauthorized circumvention of technological  
4 protection measures, and we need adequate  
5 protections for temporary copies, especially since  
6 our members' products and services are moving to a  
7 subscription-based model rather than a model that is  
8 installed wholesale onto customers' devices.

9 Our members are also heavily reliant on  
10 patent protection. And we are very concerned about  
11 some countries who seem to deny effective patent  
12 protection for legitimate and eligible  
13 computer-enabled inventions. We also are very  
14 concerned about the protection of trade secrets,  
15 including source code and other proprietary  
16 information.

17 A number of many countries do not have  
18 effective judicial remedies to address or deter  
19 trade secret misappropriation. We also face a  
20 number of countries who seek to require the  
21 disclosure of such sensitive information in order to  
22 gain market access.

1           But the protection and enforcement of  
2 intellectual property is of little value if we are  
3 restricted from the market in the first place. As I  
4 mentioned before, we are seeing a troubling trend  
5 among a wide variety of countries that are adopting  
6 various barriers to digital trade. Some policies  
7 act as restrictions on cross-border data flows,  
8 prohibiting or significantly restricting the ability  
9 of companies to provide data services from outside  
10 their national territory.

11           Cross-border data flows are the lifeblood  
12 of the modern economy, and policies that restrict it  
13 will hurt not only the IT industry, but they will  
14 harm the global economy as a whole. We also have a  
15 lot of countries adopting discriminatory government  
16 procurement policies for the ICT sector in an effort  
17 to protect and promote its own domestic industry.

18           Many countries manipulate standards  
19 development, forcing IT providers to make costly and  
20 unnecessary adjustments to comply with national  
21 standards that diverge from widely adopted  
22 international standards.

1 All of these policies are often justified  
2 as necessary measures to protect national security,  
3 the cyber security of critical infrastructure, or  
4 consumer privacy. These are all very legitimate  
5 goals. However, most of these policies at the end  
6 of the day are simply disguised barriers to trade,  
7 designed to protect domestic IT firms at the expense  
8 of BSA members and other foreign competition.  
9 Ironically, such measures raise the costs, reduce  
10 market choices for government agencies and  
11 enterprises, and effectively undermine the security  
12 or privacy rationales upon which they are often  
13 based.

14 So addressing these digital trade barriers  
15 both by improving protection of intellectual  
16 property and by removing unjustified market access  
17 barriers is going to be a key component for driving  
18 economic growth in the 21st century. Our submission  
19 includes 24 individual country reports that lay out  
20 BSA's specific concerns related to market access  
21 barriers and intellectual property protections.

22 We have kept our reports brief and focused.

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1 And although I do not have the time to go into the  
2 many particular issues in the specific countries, I  
3 hope that you all take the time to read through the  
4 reports and let us know if you have any questions or  
5 additional information that's required.

6 I want to thank USTR and all the agencies of the  
7 Special 301 Subcommittee for your tireless work to  
8 address inadequate and ineffective IP protection in  
9 U.S. trading partners, and I hope that this  
10 Committee will also drive the U.S. government's  
11 engagement on the variety of other policies that  
12 deny fair and equitable market access for BSA  
13 members and others who rely on intellectual  
14 property. Thank you.

15 CHAIR WILSON: Thank you very much for your  
16 testimony. Thank you also for highlighting the  
17 second prong of the Special 301 statute, the market  
18 access prong. I think for a long time the public  
19 submissions to our *Federal Register* notices have  
20 focused on the first prong. And I know that the  
21 Committee, beginning in the last couple of years and  
22 definitely this year, would like to enhance our

1 focus on that second market access prong. So we  
2 look forward to reviewing your materials and having  
3 those discussions.

4 We have about a minute and a half left. We  
5 had several questions here related to your  
6 submission, including your selection of countries  
7 and how you prioritized those. But I think we may  
8 have time for one. I'd like to ask the Copyright  
9 Office, please, to ask the question on the  
10 government software use.

11 MS. STRONG: Thank you so much. In your  
12 testimony, you stated that the unlicensed use by  
13 governments of software is particularly challenging  
14 to BSA members. And in your testimony and your  
15 written comments, you noted some of the larger  
16 markets such as Korea, Taiwan, and China, and you  
17 also noted the continuing engagement in Ukraine.

18 We see that BSA has recommended that Korea  
19 be added to the list this year. But since you  
20 mentioned Taiwan in your comments, we are curious to  
21 know why you have not made a recommendation for  
22 placement with Taiwan.

1           MR. RAGLAND: As an industry association,  
2 the selection of which markets to sort of focus our  
3 attention and to ask you to focus your attention on  
4 is a little bit of art as much as science.

5           Certainly, we had some members raising  
6 concerns about Taiwan's use of unlicensed software,  
7 but it hasn't, within our organization, percolated  
8 to the level of concern that we had heard in other  
9 markets, including for example Korea. I think also  
10 if you look at the Korea submission, it is more than  
11 just the government use of unlicensed software.  
12 There has been a decline in the enforcement, ex  
13 officio enforcement over the last several years,  
14 which is somewhat alarming, and we hope that we can  
15 find ways of stemming that decline.

16           And then, of course, there are a number of  
17 potentially concerning market access issues that  
18 we're dealing with in Korea with respect to testing,  
19 product testing requirements, and Korea-specific  
20 cloud standards, and things of that sort.

21           CHAIR WILSON: I think our time is up, so  
22 thank you very much for joining us today. We look

1 forward to continuing that discussion in the future.

2 Now I'd like to invite our next witness  
3 representing the Intellectual Property Owners  
4 Association. Good morning, sir. Welcome.

5 MR. WAMSLEY: Good morning.

6 CHAIR WILSON: Please state your name and  
7 begin.

8 MR. WAMSLEY: Do I need to press the  
9 button?

10 CHAIR WILSON: Yes.

11 MR. WAMSLEY: Chairwoman Wilson and members  
12 of the Subcommittee, my name is Herb Wamsley. I am  
13 the Executive Director of the Intellectual Property  
14 Owners Association or IPO. IPO is a diverse trade  
15 association representing companies and individuals  
16 in all industries and fields of technology who own  
17 or are interested in intellectual property rights,  
18 ranging from pharmaceuticals and biotechnology to  
19 electronics and information technology.

20 The members of our association make vital  
21 contributions to America's economic success by  
22 developing advances that drive exports and create

1 jobs. We rely on our IP assets worldwide to protect  
2 our investments in new technology. Our 22-page  
3 written submission outlines a number of existing and  
4 emerging threats to IP rights.

5 Today, I want to highlight a few trends  
6 that if left unchecked we believe will erode U.S.  
7 competitiveness, and I will highlight a few signs of  
8 possible improvements.

9 First, we are witnessing efforts to weaken  
10 IP rights originating from a growing number of  
11 sources both within international bodies and from  
12 some of our trading partners. While these policies  
13 are purportedly designed to increase access to  
14 technology, in reality they create significant  
15 uncertainty for investors. Robust IP rights provide  
16 support to bear the risks associated with  
17 innovation, enabling the commercial partnerships and  
18 global value change necessary to spread technology  
19 results around the world.

20 At WIPO, an organization whose very mission  
21 is to enable innovation, pressure continues to  
22 intensify to create work programs focused on

1 exceptions and limitations to patents. Demands to  
2 erode or even extinguish IP rights are commonplace  
3 at the World Health Organization, to the U.N.  
4 Framework Convention on Climate Change, the World  
5 Trade Organization, and the Post-2015 Development  
6 Agenda.

7           Proposals range from explicit exclusions  
8 from patentability and widespread compulsory  
9 licensing to more subtle but also dangerous appeals  
10 for the removal of so-called IP barriers and  
11 concessional licensing. A push for so-called  
12 rebalancing of IP systems is unfolding at the  
13 national level.

14           Some countries are actively encouraging  
15 more compulsory licensing, a tool that should be  
16 used sparingly. Other efforts to erode rights  
17 include unconditional requirements to license IP  
18 relating to essential facilities, interference with  
19 technology transfer agreements, and obligations to  
20 license patents that relate to standards without  
21 participating in the process.

22           Some pathways to protect incremental

1 innovation are being blocked. Heightened utility  
2 standards for patents, requirements to demonstrate  
3 enhanced efficacy, dual patent examination, and a  
4 ban on patents on second uses are examples.

5 Proponents of such policies underestimate the  
6 commitment it takes to translate technical  
7 breakthroughs into commercially viable offerings.

8           My second point is that IPO members are  
9 increasingly finding themselves targets of  
10 sophisticated efforts to steal their trade secrets.  
11 We are encouraged by recent developments with the  
12 potential to improve this underdeveloped area of the  
13 law. China plans to conduct a legislative study of  
14 a revised law on trade secrets. And India  
15 identified a need to fill gaps in its protective  
16 regime.

17           Here in the U.S. and in the European Union,  
18 legislative efforts are underway to modernize  
19 existing protection. Trade secret protection is  
20 also being seriously discussed as part of trade  
21 agreements. In the meantime, IPO members continue  
22 to struggle with fragmented and frequently

1 ineffective trade secret protection.

2           Once a breach is discovered, there may be  
3 little or no recourse. This leaves our members with  
4 a difficult choice, keep confidential details close  
5 to the vests, slowing down open innovation, or  
6 collaborate and risk destroying the competitive  
7 edge. We also have to contend with government-  
8 sanctioned efforts to strip away trade secrets.  
9 Disclosure of confidential information is often a  
10 condition for market access.

11           Localization and cross-border collaboration  
12 often make good sense, but these decisions should be  
13 made freely on the basis of mutual agreement and  
14 trust between private parties. Collaboration should  
15 be encouraged.

16           My third and final point is that in many  
17 jurisdictions, IPO members face patent and trademark  
18 application backlogs and other impediments to  
19 securing the IP protection. Delays caused by  
20 backlogs complicate investment decisions and make it  
21 harder to enter the local markets. This adds  
22 uncertainty in the market and encourages --



1 increases development costs.

2           The U.S. PTO is to be commended for making  
3 inroads in its backlogs and for working to improve  
4 quality. Our trading partners should reduce their  
5 backlogs while maintaining quality, for example,  
6 through improving digital infrastructure, engaging  
7 in work sharing, and streamlining examination.

8           IPO members encounter other impediments for  
9 securing IP protection. Examples include complex  
10 and costly proposed inventor remuneration schemes,  
11 antiquated requirements for providing notification  
12 of counterpart and related patent applications,  
13 mandatory hiring of local patent agents, and  
14 procedures that make it difficult to challenge bad  
15 faith trademark registrations or registrants.

16           So our economic future relies on robust IP  
17 systems that sustain innovation. IP protection  
18 enables innovators to turn ideas into products and  
19 services that generate exports and create jobs.

20           We appreciate the opportunity to testify,  
21 and we thank the Subcommittee for its efforts to  
22 preserve the IP tools that allow us to capitalize on

1 ingenuity which sustains and grows America's  
2 economy. Thank you.

3 CHAIR WILSON: Thank you, sir, for yet  
4 another detail-rich testimony. Unfortunately, we  
5 don't have time to touch on all of the issues that  
6 you identified for us. There are a couple of things  
7 I think that we might have some time to address.  
8 The first is the issue of mandatory disclosure of  
9 confidential information. In your submission, you  
10 specifically mention that this is ongoing in China,  
11 that there is mandatory disclosure of confidential  
12 information, and that information is subsequently  
13 disclosed to unauthorized parties.

14 We are very interested in any details that  
15 you might have on this issue, including the impact  
16 on U.S. businesses of such disclosure.  
17 Understanding that you may not have those details  
18 today, we would like to offer you the opportunity to  
19 provide the information post-hearing until midnight  
20 on Friday, if you think that you might have access  
21 to that information. But we would certainly love to  
22 hear anything that you have to say right now on the

1 issue.

2 MR. WAMSLEY: We will see if we could put  
3 some additional information in the record. As you  
4 say, in our detailed statement, it recounts that in  
5 China our members have encountered the mandatory  
6 disclosure and the information becomes confidential  
7 -- or the confidential information becomes public or  
8 widespread or in the hands of other parties. Once  
9 that happens, it is very difficult to get the genie  
10 back in the bottle, if you will. So we'll see if we  
11 can supplement the record on that one.

12 CHAIR WILSON: Terrific, thank you. I  
13 think I'd like to take the time to ask one more  
14 question. PTO?

15 MS. URBAN: Thank you. You mentioned in  
16 your submission the concern with the administrative  
17 enforcement of patents in China and urged giving  
18 parties in such proceedings recourse through the  
19 courts. Do you see a particular subset of patents  
20 where these reforms are most needed, utility models  
21 or invention patents?

22 MR. WAMSLEY: We have sent a fact-finding

1 mission to China every year for the last 11 years,  
2 and we have visited with the courts, with SIPO, and  
3 a number of other groups. I think there is a  
4 general feeling across the board that more  
5 satisfactory results will be obtained through the  
6 courts than through administrative enforcement.

7           And what was your other point besides  
8 administrative enforcement?

9           CHAIR WILSON: I think what we were trying  
10 to understand with that question is, are you seeing  
11 success in the court system on patent cases? Are  
12 there any reforms that you would recommend? And, of  
13 course, you are welcome to provide that information  
14 in addition to the other information between now and  
15 Friday.

16           MS. URBAN: And complemented by your  
17 comment about that you expect better results through  
18 the courts than administrative enforcement.

19           MR. WAMSLEY: Well, as you know, they have  
20 started some specialized courts in China now. On a  
21 positive note, our visits with the courts in Beijing  
22 and Shanghai have caused us to believe that the

1 judicial processes are pretty good and the judges  
2 are well informed on patent law. We feel that the  
3 administrative procedures, the people working on  
4 those don't have the same understanding.

5 MS. URBAN: Thank you.

6 CHAIR WILSON: Okay, thank you very much  
7 for your testimony. Thank you for joining us today.

8 MR. WAMSLEY: Thank you.

9 CHAIR WILSON: I'd now like to invite our  
10 last witness before the break, the representative of  
11 the International Intellectual Property Alliance,  
12 please. Welcome.

13 MR. SCHLESINGER: Thank you.

14 CHAIR WILSON: Begin when you are ready.

15 MR. SCHLESINGER: Good afternoon. I am  
16 Michael Schlesinger, S-c-h-l-e-s-i-n-g-e-r. Thank  
17 you for this opportunity to present the views of the  
18 IIPA, a coalition of copyright-based trade  
19 associations representing roughly 3,200 companies in  
20 the motion picture, music and sound recording,  
21 videogame, and book and journal publishing  
22 industries. We appreciate the work of this

1 Subcommittee and the TPSC to open markets and  
2 protect U.S. authors and right holders and their  
3 intellectual property.

4           Creativity and the IP that protects it is a  
5 key driver of the U.S. economy. In December 2014,  
6 IIPA released the latest update of its economic  
7 report, *Copyright Industries in the U.S. Economy*,  
8 showing that in 2013 the core copyright industries  
9 in the U.S. generated over \$1.1 trillion of economic  
10 output and accounted for 6.7 percent of the entire  
11 economy.

12           They employed nearly 5.5 million workers.  
13 That's nearly 5 percent of total private employment  
14 in the U.S. These workers earned 34 percent higher  
15 wages compared with other U.S. employees. The  
16 copyright sector has outpaced the entire economy,  
17 growing at 3.9 percent over the past 5 years. That  
18 is 73 percent faster than the rest of the economy  
19 during that same time. Selected copyright sectors  
20 contributed \$156 billion in foreign sales and  
21 exports, exceeding that of many other major industry  
22 sectors.

1           Studies such as this highlight what is at  
2 stake if creators who rely on high standards of  
3 copyright protection and open markets have to face  
4 additional hurdles and costs associated with  
5 obstacles such as copyright piracy and market access  
6 or discriminatory trade barriers.

7           With the Oscars just finished, we know the  
8 detrimental effects of this are real and palpable  
9 with Oscar-nominated films illegally downloaded at a  
10 rate of 378 percent higher than before they were  
11 nominated, according to a recent report by Irdeto.  
12 This harm translates into lost opportunities, lost  
13 jobs, and lost contribution to GDP.

14           Thus, the ultimate goal of Special 301 is  
15 not just to catalog trade barriers, but rather to  
16 enhance the ability of U.S. creators to reach  
17 foreign markets through legitimate channels, both  
18 physical and online, in competitive and growing  
19 marketplaces. Many of the changes sought in foreign  
20 markets, higher standards of copyright protection,  
21 more efficient copyright enforcement, sound legal  
22 structures for licensing, and elimination of market

1 access barriers also help our trading partners to  
2 develop, nurture, and enjoy the benefits of their  
3 own local, cultural, and creative output.

4           Consumers are important beneficiaries here  
5 as they can enjoy greater access through more  
6 avenues than ever before, to increasingly diverse  
7 creativity, the literary works, music, movies and TV  
8 programming, videogames, software, and other  
9 products and services that depend on or are  
10 protected by copyright.

11           With this broad vision in mind, this year's  
12 IIPA submission focuses on markets where IIPA  
13 members are actively engaged and/or where we believe  
14 active engagement by the U.S. government will reap  
15 positive results for creators and the industries  
16 that support them. IIPA identifies opportunities  
17 and challenges facing creating industries in these  
18 key foreign markets, which if met and addressed will  
19 promote job creation and economic growth, increase  
20 foreign direct investment, increase exports, and  
21 other benefits flowing from adequate intellectual  
22 property protecting and effective enforcement



1 systems.

2           We applaud USTR for making the Special 301  
3 process a positive catalyst for change to address  
4 our creative industries' challenges in key markets  
5 around the world. The Special 301 process has  
6 yielded progress in a number of countries, which is  
7 clearly documented by the Special 301 historical  
8 record and which we discuss in this year's  
9 submission.

10           For example, Korea, which appeared on the  
11 Priority Watch List in the original 1989 USTR Fact  
12 Sheet and which figured in USTR lists for the next  
13 19 years, no longer appears on any Special 301 list.  
14 This is because Korea has transformed its copyright  
15 law and enforcement regime into one which now serves  
16 as a model for Asia. There are many other countries  
17 in which there have been similar improvements so  
18 they no longer appear on the Special 301 list.

19           In this year's IIPA submission, IIPA  
20 recommends that Chile, China, India, Indonesia,  
21 Russia, Thailand, and Vietnam appear on the Special  
22 301 Priority Watch List. IIPA recommends that

1 Brazil, Canada, Columbia, Mexico, Switzerland,  
2 Taiwan, and the United Arab Emirates appear on the  
3 Special 301 Watch List. IIPA also recommends that  
4 USTR conduct Out-of-Cycle Reviews for Hong Kong and  
5 Indonesia. IIPA recommends that the U.S. commit to  
6 special engagement bilaterally with both Italy and  
7 Spain.

8           Finally, IIPA recommends that the U.S.  
9 government continue to identify Ukraine as a  
10 priority. We appreciate the Government of Ukraine  
11 appearing this morning and note the presence of  
12 officials from other countries that IIPA filed on  
13 this year.

14           The 2015 Special 301 submission by IIPA  
15 provides information intended to assist the U.S.  
16 government in defining plans of action for the year  
17 ahead to improve copyright protection in open  
18 markets to U.S. materials protected by copyright in  
19 key countries. Several themes are discussed  
20 throughout this submission and country surveys,  
21 which we call our key challenges for copyright  
22 industries.

1           They include the need for deterrent  
2 enforcement responses to copyright piracy, Internet  
3 and mobile network piracy, media boxes, set top  
4 boxes or STBs, illegal camcording of theatrical  
5 motion pictures, piracy of books and journals,  
6 circumvention of technological protection measures  
7 or TPMs, pay TV piracy and signal theft, hard goods  
8 piracy including pirate optical disks, mobile device  
9 piracy or hard disk loading, implementation of  
10 treaties and trade agreements, and last but not  
11 least, as was mentioned earlier by one of my  
12 colleagues, market access barriers.

13           Our written submission and testimony  
14 discuss each of these issues in far greater detail,  
15 but the one constant being that addressing these  
16 issues requires cooperation among all those who play  
17 a role in the copyright ecosystem. We must work  
18 together, with governments, with industry, and with  
19 other stakeholders to preserve creativity and the  
20 enormous social, cultural, and economic benefits it  
21 brings.

22           The stakes could not be higher. The health

1 and competitiveness of the U.S. economy depends on a  
2 thriving copyright sector that creates revenues,  
3 jobs, and exports. Likewise, the health and  
4 competitiveness of our trading partners also depends  
5 on promoting and respecting intellectual property  
6 rights and opening markets to products and services  
7 that depend on copyright.

8           Open markets foster local jobs and creative  
9 industries, increase cultural diversity, promote  
10 international trade and exports, increase tax  
11 revenues from legitimate cultural industries, and  
12 attract more foreign direct investment. It is  
13 essential to the continued growth and future  
14 competitiveness of creative industries around the  
15 world that our trading partners provide modern  
16 levels of protection for copyright, more effective  
17 policies and tools to enforce that protection, and  
18 freer, more open markets.

19           Our country must remain committed to be  
20 flexible and to have innovative responses to the  
21 constantly evolving threats to copyright worldwide.  
22 Special 301 remains one cornerstone of the U.S.

1 response. We urge USTR and the Administration to  
2 use the Special 301 Review and other trade tools to  
3 encourage the countries and territories identified  
4 in our submission to make the political commitments,  
5 followed by the necessary actions to bring real  
6 commercial gains to the U.S. creative industries  
7 through strengthened copyright and enforcement  
8 regimes worldwide.

9 We look forward to our continued work with  
10 USTR and other U.S. agencies on meeting the goals  
11 identified in this submission. I would be pleased  
12 to answer any questions. Thank you.

13 CHAIR WILSON: Thank you very much for the  
14 testimony. We have about a minute left. We do have  
15 questions that we would like to ask with respect to  
16 three specific markets, and then we have other  
17 general questions: Indonesia, Switzerland, and  
18 China's new registration requirements for foreign  
19 films and television dramas.

20 So first with Indonesia, you are  
21 recommending an Out-of-Cycle Review, and Indonesia  
22 is currently on the Priority Watch List. You are

1 recommending an Out-of-Cycle Review on the basis of  
2 the copyright law draft that has recently been  
3 published. But your submission also highlights some  
4 deficiencies in that. Can you help us understand  
5 where you see the line, if some of these  
6 deficiencies can be cured through legislation or  
7 through other measures, and how would you advise  
8 that we look at this law in making an assessment?

9 MR. SCHLESINGER: Thank you very much for  
10 that question. I think in Indonesia, to be brief on  
11 it, it's true the copyright law has been enacted.  
12 What we are looking for is swift implementation of  
13 that law. The enforcement and judicial deficiencies  
14 that we see in the Indonesian market, many of them  
15 can be improved or partially addressed at least  
16 through swift and good implementation of the law  
17 that was just passed.

18 Granted, there are some problems in that  
19 legislation, which we have pointed out in our  
20 filing. But I mean I think we're kidding ourselves;  
21 perfect is the enemy of the good here. We are  
22 trying to get a result that has meaningful

1 commercial outcome. So we believe that the swift  
2 implementation of the law particularly with respect  
3 to Internet infringements and the provisions dealing  
4 with Internet infringements can go to address some  
5 of the enforcement and judicial deficiencies in the  
6 country.

7           Lastly, there are a number of severe market  
8 access barriers. Indonesia has long been a great  
9 example of how market access barriers can lead to  
10 the inability of right holders to sufficiently or  
11 fairly partake in the marketplace. Those definitely  
12 need to be addressed. A couple of minor positive  
13 changes were made to the Negative Investment List in  
14 2014, but we still need much more to be done.

15           So we are hopeful that swift implementation  
16 of the law is accompanied by some sufficient  
17 progress on market access, and we plainly make that  
18 part of the OCR process.

19           CHAIR WILSON: Jean, why don't you read for  
20 the record --

21           MS. BONILLA: Right. Let me just say that  
22 one of the things that we would very much like to

1 pursue with you is an assessment of the loss or  
2 decline of revenue for U.S. content producers due to  
3 the new market access restrictions in China. That  
4 is something that we are pretty concerned about.

5           And then, of course, oddly matching  
6 Switzerland with China, we want to follow up on to  
7 what extent illicit Internet services have moved to  
8 Switzerland, mostly because of the delay that has  
9 taken place in adopting the concrete measures to  
10 adopt -- excuse me, to address copyright piracy  
11 there. So I don't know if you want to say something  
12 now. I think perhaps we could just have you submit  
13 some of that information for your statement for the  
14 record.

15           MR. SCHLESINGER: That would be fine.  
16 Thank you.

17           CHAIR WILSON: Thank you. Thank you for  
18 joining us today. We are scheduled for a break  
19 until 12:20. Since we used up a good amount of the  
20 20 minutes, let's go ahead and reconvene at 12:25,  
21 so it will be a 10-minute break. Reconvene at  
22 12:25. And thank you, to those of you who are



1 leaving, thank you for joining us this morning.

2 (Off the record at 12:16 p.m.)

3 (On the record.)

4 CHAIR WILSON: Thank you. Please begin.

5 MR. GOLDMAN: My name is Andrew Spencer  
6 Goldman, G-o-l-d-m-a-n, and I am Counsel for Policy  
7 and Legal Affairs for Knowledge Ecology  
8 International, KEI, a nonprofit organization based  
9 in Washington, D.C.

10 KEI primarily focuses on issues pertaining  
11 to the creation, use, and management of knowledge  
12 goods. KEI has long questioned the assumptions,  
13 methodology, and objectives of the Special 301  
14 Review. One almost unquestioned assumption is that  
15 copyright and pharmaceutical companies are essential  
16 U.S. assets that deserve our protection.

17 A March 2013 report by Jonathan Band and  
18 Jonathan Gerafi, titled *Foreign Ownership of Firms*  
19 *in IP Intensive Industries*, should be required  
20 reading for this Committee. Among the findings of  
21 their report, four of the Big Six English language  
22 trade publishers were foreign owned. These foreign-

1 owned companies published more than two-thirds of  
2 the trade books in the U.S. Four of the five  
3 largest STM, science, technical, and medical,  
4 professional publishers were foreign owned. More  
5 than 90 percent of the revenue of the five largest  
6 STM professional publishers was generated by  
7 foreign-owned firms. The Band study also looks at  
8 the foreign ownership of the recording, music, film,  
9 and other intellectual property intensive  
10 industries.

11           The KEI written submission in this  
12 proceeding noted that even for firms like Pfizer and  
13 Johnson & Johnson, the majority of employees work  
14 outside of the United States. For Pfizer, two of  
15 three jobs are in foreign countries.

16           KEI is particularly concerned about cancer  
17 drugs, and so, too, it seems is PhRMA and USTR given  
18 the extraordinary trade pressures on India. As our  
19 submission notes, two Swiss firms, Roche and  
20 Novartis, had more than 45 percent of the global  
21 oncology market in 2013. Bayer, the firm at the  
22 center of the Nexavar compulsory licensing dispute,

1 is a German firm. Over the past 5 years, a majority  
2 of new cancer drugs approved by the FDA were  
3 registered by foreign-owned firms.

4           Many of the comments from the  
5 pharmaceutical lobby focus on a set of policies that  
6 lead to higher drug prices. These include, among  
7 others, demands that countries grant multiple  
8 patents on new uses, formulations, combinations, and  
9 doses of older drugs; demands that governments  
10 extend patent terms beyond 20 years; complaints  
11 about the use of compulsory licenses to curb  
12 excessive prices for drugs; and demands that  
13 governments provide exclusive rights to test data  
14 used to review the efficacy and safety of drugs.

15           PhRMA's 208-page submission also makes  
16 extensive complaints about government efforts to  
17 exercise cost controls. The word price appears 359  
18 times in the submission, and the context is always  
19 that PhRMA wants the United States to use its power  
20 to promote higher drug prices.

21           Before turning to the impact of these trade  
22 policy enforced norms on the United States, consider

1 for a moment the impact on people living in  
2 developing countries. In 2013 the United States had  
3 per capita income of \$53,470. For last year's  
4 Special 301 List, the median per capita income of  
5 the countries on the Watch List was \$7,120, just  
6 13.3 percent of incomes in the United States. For  
7 the Priority Watch List, the median per capita  
8 income was just \$5,340, less than 1/10th the per  
9 capita income in the United States. A person  
10 earning three times that much would qualify for  
11 Medicaid in the United States.

12 For many of the people living in developing  
13 countries on the 301 List, health insurance is quite  
14 limited or nonexistent. The Doha Declaration on the  
15 TRIPS Agreement and Public Health, adopted in 2001  
16 and agreed to by the United States under the Bush  
17 Administration, states in paragraph 4 that the TRIPS  
18 Agreement does not and should not prevent members  
19 from taking measures to protect public health and  
20 that the agreement can and should be interpreted and  
21 implemented in a manner supportive of WTO members'  
22 right to protect public health and in particular to

1 promote access to medicines for all. During the  
2 December WTO Trade Policy Review of the United  
3 States, USTR officials reiterated the Obama  
4 Administration's full support of the Doha  
5 Declaration.

6           The policies that make access to medicines  
7 for all impossible are clearly, obviously, and  
8 without any room for doubt contrary to the plain  
9 language and the intent of the Doha Declaration.  
10 This is most visibly true for the new high-priced  
11 cancer drugs, most of which have prices in excess of  
12 \$100,000 per year.

13           When the Government of India considered a  
14 compulsory license for dasatinib, a drug for  
15 leukemia that Bristol-Myers Squibb priced at \$108  
16 per day, in a country with GNI per capita of \$1,570,  
17 USTR was widely reported to have pressured India and  
18 the license was blocked. So how does this play out?  
19 BMS sales in India, at a price of \$108 per day, will  
20 be very limited. But cancer patients will suffer  
21 the consequences of having no access. This policy  
22 is wrong and tarnishes our reputation around the

1 world.

2           With respect to the United States, the  
3 policies that PhRMA wants, the norms that PhRMA is  
4 promoting through trade policy are designed to raise  
5 prices. And while the impact of high prices is  
6 harsh in developing countries, it also creates  
7 problems in the United States.

8           Many developing countries have higher birth  
9 rates and shorter life expectancy than does the  
10 United States. About 14 percent of the U.S.  
11 population is now 65 or older. For the entire  
12 world, the figure is 8 percent; for Latin America  
13 and the Caribbean, 7 percent; for South Asia, 5  
14 percent.

15           Because cancer has higher incidence in  
16 older populations, we will bear a disproportionate  
17 burden of high cancer drug prices. And things will  
18 get worse. In 5 years, more than 16 percent of the  
19 U.S. population will be 65 or older. In 15 years,  
20 it will be 19.3 percent. U.S. employers are already  
21 struggling with the taxes and insurance premiums to  
22 pay for expensive drugs. Things are getting worse,

1 not better, and USTR is part of the problem.

2           Instead of supporting policies that are  
3 both harmful and wasteful, that place strains on us  
4 at home and have such harmful effects on poor people  
5 living in the developing world, USTR should be  
6 pursuing new trade policies. The funding of R&D  
7 should be the focus of trade policy, not the  
8 promotion of stronger IPR or higher drug prices.

9           Trade policy can be reformed to reconcile  
10 both innovation and access and lower barriers to  
11 reforms that improve the value for money spent on  
12 R&D. This includes, most importantly, for the  
13 longer run evaluation of strategies to delink R&D  
14 costs from product prices.

15           We would like to supplement the written  
16 record with suggestions for how this can be done.  
17 Thank you very much for the opportunity to appear  
18 today.

19           CHAIR WILSON: Thank you very much for your  
20 testimony, and we will absolutely accept the  
21 invitation to receive more information on the R&D  
22 issue. We know that the Director of KEI has spent a

1 great deal of time and energy developing some  
2 proposals on R&D, so we would absolutely like to  
3 receive those.

4           So we don't have much time left, and we do  
5 have some questions, but let me just say a couple of  
6 things. One, obviously, much of your testimony was  
7 not directed specifically at the 301 statute, but  
8 let me just say that we always, I think, welcome  
9 facts, and there were some facts in the testimony,  
10 and certainly are open to competing views.

11           I think all of us here on the Committee and  
12 all of us in the U.S. government do our best to get  
13 to the right answer. Sometimes we are constrained  
14 by laws and regulations, and sometimes we have to  
15 engage in processes that may not make sense to some  
16 people. But I think we all do our very best.

17           I think we also fundamentally disagree with  
18 some of the things that you said. This isn't a  
19 debate, so I am not going to take you on point by  
20 point. But I think suffice it to say that we all  
21 believe in trade and investment and see no problem  
22 with foreign ownership of firms and think that any



1 U.S. job regardless of who creates that job is worth  
2 protecting. So we'll just say that, I think, for  
3 the record.

4 We did have a couple of questions. We're  
5 almost out of time, but I would like to ask at least  
6 the first one that we had planned to ask, because I  
7 think it is very important because this country is  
8 the subject of review this year.

9 MS. BLEIMUND: I have a question with  
10 regard to the issuance of compulsory licenses in  
11 Ecuador, which we have seen over the last year. On  
12 page 109 of its submission, PhRMA notes the  
13 following: "The compulsory licenses that have been  
14 granted to date have not been based on a clear  
15 demonstration of an urgent public health emergency  
16 or due process provided to the patent owners  
17 consistent with Ecuador's international obligation."  
18 I was just wondering if you have a response to that  
19 concern.

20 MR. GOLDMAN: Thank you very much. That's  
21 a great question. And I would, if it's okay with  
22 you, since I am brand new to KEI as of 2 weeks ago,

1 I would appreciate the opportunity to respond in  
2 writing, if that's okay, and to supplement the  
3 record.

4 CHAIR WILSON: Absolutely. And then one  
5 more, I'd like to add another question to that, and  
6 please do take the extra time to respond.

7 Professor Attaran, Amir Attaran, submitted a filing  
8 for this year's review that talked about online  
9 pharmacies and the dangers of online pharmacies.  
10 That is also something I think that we have  
11 highlighted in the past, in reports and in other  
12 USTR products.

13 One question that comes up frequently is  
14 what role are the health NGOs, the NGOs that deal  
15 with health-related issues, access to medicines,  
16 etc., what role is that community playing in trying  
17 to address dangers that are presented to consumers  
18 as they seek low-cost alternatives. Have you given  
19 thought to that? Have you partnered with companies  
20 or associations that are looking at this issue, and  
21 do you have any plans to?

22 MR. GOLDMAN: Again, that's another great

1 question. If it's okay with you and not to be  
2 difficult, but I'd appreciate the opportunity to  
3 respond in writing.

4 CHAIR WILSON: Absolutely, look forward to  
5 both of those responses. And thank you for joining  
6 us today.

7 MR. GOLDMAN: Thank you.

8 CHAIR WILSON: I'd like to call the next  
9 witness, please, representing the National  
10 Association of Manufacturers --

11 UNIDENTIFIED SPEAKER: The mike's not on.

12 CHAIR WILSON: The next witness  
13 representing the the National Association of  
14 Manufacturers. Welcome, sir.

15 MR. MOORE: Thank you.

16 CHAIR WILSON: Please introduce yourself  
17 and begin when you are ready.

18 MR. MOORE: Thank you. My name is Chris  
19 Moore, and I am Senior Director for International  
20 Business Policy at the National Association of  
21 Manufacturers. I appreciate the opportunity to  
22 testify today on behalf of the NAM and its more than

1 14,000 member companies.

2           Innovation drives and supports U.S.  
3 leadership in manufacturing. The value of  
4 intangible assets to the U.S. economy topped  
5 \$9 trillion in 2011 and accounts for at least 90  
6 percent of the total market value of a wide array of  
7 industries.

8           As explained further in our written  
9 comments, manufacturers in the United States face  
10 serious obstacles to adequate and effective  
11 intellectual property protection and enforcement in  
12 India, China, Canada, and other large and emerging  
13 markets. These obstacles are harming or threatening  
14 to harm a wide array of manufacturers across the  
15 country and their ability to create and sustain  
16 jobs.

17           At last year's Special 301 hearing, the NAM  
18 raised a number of pressing challenges manufacturers  
19 are facing in India. All of these challenges  
20 continue. They include among other things  
21 widespread piracy of software, films, and other  
22 creations; a competition policy that requires IP

1 owners to license essential facilities; a  
2 manufacturing policy that encourages the compulsory  
3 licensing of green technology; and a patent law that  
4 creates an additional hurdle for the protection of  
5 innovations that is out of step with global norms.

6           The NAM appreciates recent U.S. government  
7 efforts to improve engagement with India on  
8 intellectual property and other matters, including  
9 through a high level working group on IPR under the  
10 U.S.-India Trade Policy Forum. But to be credible,  
11 such engagement must deliver concrete progress and  
12 real results on these and other outstanding  
13 intellectual property concerns.

14           Progress and results are in India's  
15 interest too. The ITC recently found that more than  
16 60 percent of firms affected by regulatory and IP  
17 barriers in India have responded by directing fewer  
18 resources to that market. However, eliminating  
19 trade and investment restrictions and raising IP  
20 protection standards in India would increase U.S.  
21 exports to that country by two-thirds and more than  
22 double U.S. investment.

1           The NAM urges the Special 301 Committee to  
2 maintain India on the Priority Watch List for 2015  
3 and to conduct a rigorous and thorough Out-of-Cycle  
4 Review later this year to evaluate the results of  
5 engagement, actual progress and actual solutions.

6           Manufacturers welcomed developments over  
7 the last year on intellectual property concerns in  
8 China, including commitments on trade secrets made  
9 during the Strategic and Economic Dialogue. We urge  
10 continued vigilance to further strengthen  
11 enforcement of trade secrets in China and to ensure  
12 these commitments are put in place as intended.

13           However, manufacturers continue to face  
14 other significant challenges in China, including  
15 with respect to counterfeiting and piracy, standard  
16 setting practices, service inventions, and trademark  
17 enforcement. For these reasons, the NAM urges the  
18 Special 301 Committee to maintain China on the  
19 Priority Watch List for 2015 and to continue to  
20 pursue progress on outstanding concerns through  
21 bilateral dialogues and other appropriate forums.

22           Canada's intellectual property protection

1 and enforcement regime has fallen behind the  
2 standards maintained in the rest of the developed  
3 world, and manufacturers are very concerned about  
4 recent developments in that market. Among other  
5 things, Canadian courts have redefined patent  
6 utility to create an additional hurdle for the  
7 protection of innovation medicines through a promise  
8 doctrine that is inconsistent with global rules and  
9 out of step with global norms.

10           This promise doctrine wrongly conflates  
11 patent utility with effectiveness for regulatory  
12 approval, requiring evidence well beyond usefulness  
13 be shown in a patent application and long before  
14 that information can be demonstrated. Application  
15 of this doctrine confounds the very systems and  
16 processes Canada and other countries have  
17 established to bring medical innovations to market  
18 and already has been used to invalidate 20 patents.

19           The NAM urges federal agencies to continue  
20 to engage Canadian authorities in the coming months  
21 on this and other IP concerns and to consider all  
22 tools at its disposal to secure results.

1           Finally, the NAM urges further work to  
2 better enable small- and medium-sized businesses,  
3 which account for the vast majority of NAM members,  
4 to secure and enforce their intellectual property  
5 rights overseas. For small businesses, the cost and  
6 complexity of securing and enforcing their rights  
7 around the world can be very high relative to their  
8 annual sales. International agreements like the  
9 Patent Cooperation Treaty have helped, but there is  
10 a long way to go.

11           Counterfeiting and piracy in global trade  
12 and counterfeit and pirated goods remains a serious  
13 challenge for businesses of all sizes and imposes  
14 particular burdens on smaller firms. A recent  
15 survey of NAM members found that China remains the  
16 largest source of competing counterfeit and pirated  
17 goods.

18           Those products generally are sold through  
19 online marketplaces and shipped via mail and other  
20 carriers. This is not a new concern. We know much  
21 about where and how this is happening. Federal  
22 agencies have taken important and welcomed steps to



1 address the problem. IP attachés are doing critical  
2 work around the world.

3           But counterfeiting and piracy remains an  
4 urgent concern. To turn the tide, much more is  
5 needed both by industry and government. The NAM  
6 would welcome an opportunity to engage you further  
7 in the coming months on additional ways to educate  
8 SMEs on cost-effective strategies and best practices  
9 to secure and enforce their rights, to help SMEs use  
10 available tools to protect their rights and access  
11 enforcement mechanisms abroad, and to better  
12 leverage trade agreements in other forums to  
13 strengthen international cooperation to crack down  
14 on trade in fakes.

15           Thank you for this opportunity to testify  
16 today. I look forward to answering any questions  
17 you may have.

18           CHAIR WILSON: Thank you very much for  
19 joining us today and thank you for the testimony.  
20 And also thank you on behalf of probably Commerce  
21 more than anyone else, but also all of us were  
22 interested in SME issues.

1 MR. MITCHELL: Yes.

2 CHAIR WILSON: There has been a lot of work  
3 under the Obama Administration and other  
4 administrations on behalf of U.S. SMEs, and we are  
5 always looking for opportunities to do more to help  
6 particularly SME exporters who face tremendous  
7 challenges in foreign markets and aren't able to  
8 actually protect themselves in a way that large  
9 corporations are. So thank you for that.

10 We do have time for a few questions. NAM  
11 made three country recommendations this year: China,  
12 PWL, Priority Watch List; India, Priority Watch List  
13 plus OCR, which you have explained; and Russia,  
14 Priority Watch List. You also spent some time in  
15 your submission and today talking about Canada but  
16 didn't make a specific recommendation on Canada.

17 Recognizing that all associations face  
18 internal debate on recommending countries, it would  
19 be interesting to hear from you on where does Canada  
20 fit into your priorities and what would the focus  
21 issues be for Canada as far as the Committee's work  
22 in the coming year?

1           MR. MOORE: Thanks very much for that  
2 question, and I appreciate the interest in the SME  
3 issue, which is very important for our membership.  
4 In terms of Canada, you heard what I said. It is a  
5 very important priority for us. We are very  
6 concerned about where the IP regime in that country  
7 is headed, not only with respect to patent utility  
8 but with respect to some of the other issues raised  
9 in our written submission related to copyrights and  
10 to pirated and counterfeit goods and cooperation and  
11 the ability of Canadian authorities to effectively  
12 enforce in that area.

13           This is something that we are recognizing  
14 as an increasing concern and want to make sure that  
15 we are prioritizing it and hope that you will  
16 prioritize it in terms of looking at solutions to  
17 those challenges.

18           CHAIR WILSON: Thank you for that. I think  
19 we have time for at least one more question. So I'd  
20 like to turn to the Copyright Office.

21           MS. STRONG: Thank you. We'd like to ask  
22 the same question we asked the AFTI earlier today.

1 With respect to an OCR in India, what would be your  
2 specific markers for progress under an OCR? And for  
3 the purpose of this discussion, let's assume the OCR  
4 has to happen in one year.

5 MR. MOORE: Well, we're hoping that the OCR  
6 can happen later this year, so that's good. We  
7 certainly have been here before. We were here last  
8 year raising the same concerns about India. They  
9 have been outlined very clearly in Special 301  
10 Reports. India has been on the Priority Watch List  
11 for decades. And so I think we are all very clear  
12 about what the concerns are.

13 We understand that those are being raised  
14 with the Indian government through the renewed  
15 engagement that's been under way now. There are  
16 opportunities to address some of these things.  
17 India is developing a new intellectual property  
18 rights policy which could be a useful mechanism.

19 But we are looking for concrete progress,  
20 real results on the things that we mentioned. And  
21 we'd expect that those would be prioritized in  
22 looking at an OCR and progress and results that

1 India is making toward addressing those concerns.

2 CHAIR WILSON: I think that brings us to  
3 the end of our time. Thank you again --

4 MR. MOORE: Thank you.

5 CHAIR WILSON: -- for joining us and for  
6 your testimony here.

7 Now I would like to invite the next witness  
8 representing the Pharmaceutical Research and  
9 Manufacturers of America to join us. Welcome.  
10 Please introduce yourself and begin when you are  
11 ready.

12 MR. TAYLOR: Good afternoon. I am Jay  
13 Taylor with PhRMA. Thanks for the opportunity to be  
14 here with you. I represent the Pharmaceutical  
15 Research and Manufacturers of America. PhRMA is a  
16 nonprofit association that represents America's  
17 leading global pharmaceutical research and  
18 biotechnology companies which are devoted to  
19 inventing medicines that allow patients to live  
20 longer, healthier, and more productive lives.

21 PhRMA and our member companies strongly  
22 support the important work of the Special 301

1 Subcommittee of the Trade Policy Staff Committee and  
2 its chair of the United States Representatives  
3 Office are doing to identify countries that deny  
4 adequate and effective intellectual property rights  
5 protection and deny fair and equitable market access  
6 to U.S. companies and individuals who rely on IP  
7 protection.

8           The U.S. innovative biopharmaceutical  
9 industry is proud of the role that we play as one of  
10 the most vibrant sectors of our economy. Our  
11 industry supports 3.4 million jobs, both direct and  
12 indirect, and in 2014 exported more than \$54 billion  
13 in biopharmaceuticals, making the sector one of the  
14 top 5 exporters among IP-intensive industries.

15           However, even more important than our role  
16 in the U.S. economy is the industry's contribution  
17 to patient health. Intellectual property  
18 protections are critically important to support the  
19 cycle of biomedical research and innovation that  
20 leads to new life-saving medicines for the world's  
21 most debilitating diseases. IP protections like  
22 patents and regulatory data protection are necessary

1 to spur the investment required to develop these  
2 medicines and pave the way for the innovative  
3 treatments of the future.

4           The average cost of developing a new  
5 approved medicine is estimated at \$2.6 billion, with  
6 R&D costs more than doubling over the past decade.  
7 These new medicines, in turn, become tomorrow's  
8 generic medicines. This life cycle would not exist  
9 without the IP system's supportive innovators who  
10 develop new treatments and assume all the risks and  
11 costs associated with bringing new medicines to  
12 market.

13           Indeed, the fact that the generics industry  
14 today has 80 percent market share in the United  
15 States is a testament to the groundbreaking research  
16 and development conducted by innovative  
17 biopharmaceutical companies. It is also why, for  
18 the generics industry to continue its growth, strong  
19 IP rights are needed to help spawn the medicines of  
20 tomorrow.

21           The health of patients all over the world  
22 has greatly improved due to advances made by our

1 industry. As an example, life expectancy for cancer  
2 patients is increasing, while cancer deaths have  
3 decreased 20 percent from the 1990s alone, according  
4 to the National Cancer Institute. Moreover, as  
5 America's population ages, our industry is working  
6 to develop new medicines for chronic diseases that  
7 will improve patient outcomes and result in fewer  
8 costly surgeries and hospital stays that put a drain  
9 on our national healthcare system.

10           Yet, for all the promise the innovating  
11 biopharmaceutical industry holds for our trading  
12 partners, many continue to engage in unfair and  
13 illegal practices that deny or restrict access to  
14 markets outside the United States, oftentimes to  
15 create an unfair advantage for their own domestic  
16 industries. As many of these nations comprise some  
17 of the most important markets for U.S. companies,  
18 their practices adversely affect American  
19 competitiveness around the world.

20           With respect to intellectual property  
21 rights and protections, these infringements are not  
22 limited to developing countries. For example,



1 Canada's patent utility or promise doctrine sets  
2 unreasonably stringent standards for patentability  
3 and is almost exclusively applied to innovative  
4 biopharmaceuticals, leading to the invalidation of  
5 more than 20 patents for medicines that were already  
6 in use by Canadian patients.

7           Other countries, like India, have used  
8 tactics like compulsory licensing to force  
9 innovators to allow Indian generic companies to  
10 produce and sell copies of medicines, thereby  
11 violating the letter and spirit of the WTO TRIPS  
12 Agreement. And the use of arbitrary compulsory  
13 licenses that infringe on the TRIPS Agreement seems  
14 to be spreading, with Ecuador granting compulsory  
15 licenses for six innovative medicines in 2014.

16           While PhRMA and its member companies  
17 continue to hold out hope that the new government in  
18 India will reverse its recent course on  
19 biopharmaceutical IP, we respectfully urge the U.S.  
20 Trade Representative to continue its ongoing  
21 dialogue, to encourage India to open its market in a  
22 manner that leads to substantive changes to its

1 policies.

2           PhRMA and its member companies appreciate  
3 the U.S. government's efforts to address industry  
4 concerns regarding intellectual property protections  
5 and market access barriers. We especially value the  
6 Special 301 Review process which enables our regular  
7 engagement on these issues and provides an  
8 opportunity to measure progress each year. Our  
9 industry remains committed to working with the U.S.  
10 Trade Representative and continuing a productive  
11 dialogue with foreign governments in hope of speedy  
12 resolutions to the issues listed in our submission.

13           Now more than ever, governments around the  
14 world must incentivize development of revolutionary  
15 new treatments, not erect barriers that could stifle  
16 R&D investments. Governments that systematically  
17 weaken or deny IP protections for innovative  
18 medicines sacrifice long-term benefits for short-  
19 term results and, in the process, endanger U.S. jobs  
20 and competitiveness, as well as patient health  
21 outcomes in the future.

22           PhRMA's member companies fully support the

1 USTR and the U.S. government's efforts to  
2 strengthen, secure, and enforce U.S. intellectual  
3 property rights abroad and welcome any opportunity  
4 to participate in further discussions to ensure that  
5 the world's patients have access to the newest, most  
6 technologically advanced medicines our industry has  
7 to offer.

8           Thank you very much for your time. I'm  
9 happy to answer any questions you might have.

10           CHAIR WILSON: Thank you very much, and  
11 thank you for leaving some time for questions. We  
12 have a few follow-ups on some of the market access  
13 issues that you raised today and in your written  
14 submission. So I'd like to first invite Commerce to  
15 ask their question, and then HHS to follow up with  
16 theirs, and we also have a question for PhRMA on  
17 Ecuador. So if HHS can please ask that question,  
18 that would be helpful.

19           MR. MITCHELL: Thank you. You have  
20 identified forced localization of manufacturing and  
21 tech transfer requirements as market access  
22 barriers. We're hoping you might be able to give us

1 some examples, whether today or in follow-up, of how  
2 these policies threaten or actually harm your member  
3 companies' export opportunities. Are you being  
4 discouraged from entering the markets, or are they  
5 entering the markets with those hardships?

6 MR. TAYLOR: Thank you very much for your  
7 question. And, absolutely, with all the questions  
8 today, I look forward to following up in more detail  
9 in writing. I think when we look at an issue like  
10 forced localization, it has popped up in a handful  
11 of markets. And the concept is that, in essence,  
12 companies are not able to enter the market unless  
13 they establish a brick and mortar facility in the  
14 market itself; in other words, they are forced to  
15 localize to the market.

16 As such, I think it's the quintessential  
17 market access barrier. You can't export or enter a  
18 market unless you put in the investment to actually  
19 build up a manufacturing facility in the market  
20 itself. And if you carry that to its logical  
21 conclusion, any U.S. company subject to those  
22 requirements would be forced to build brick and

1 mortar facilities in every economy around the world  
2 to be able to export into those markets.

3           So I think it is a very classic and an  
4 extreme market access barrier. And I look forward  
5 to following up on some of the individual country  
6 examples where we've run into that.

7           I think similarly on the tech transfer  
8 front, setting conditions on your ability to sell  
9 products in a market, whether it be tech transfer or  
10 forced localization, these are criteria that in a  
11 free market world, and in global trade, and under  
12 the WTO and other agreements, the basic rules of  
13 nondiscrimination, forcing companies to transfer  
14 technology or establish a local presence in order to  
15 do business in a market is really fundamentally in  
16 opposition to some of the most basic trade tenets.  
17 Thank you.

18           MS. BLEIMUND: Great, thank you. Another  
19 question about market access. You seem to argue in  
20 your submission that you consider price controls on  
21 pharmaceutical products to be market access barriers  
22 that would fall within the scope of the Special 301

1 process. Is it your opinion that all such price  
2 controls and all use of government purchasing and  
3 reimbursement programs to control pharmaceutical  
4 prices constitutes a denial of fair and equitable  
5 market access, or is it just some aspects of those  
6 programs that you find particularly problematic?

7 MR. TAYLOR: I think it's the latter.  
8 Obviously, there are a lot of pricing reimbursement  
9 systems around the globe. I think that to somehow  
10 claim the Special 301 covered all those systems  
11 would be overreaching. But when we run into  
12 problems in markets due to particularly egregious  
13 examples of economies using pricing reimbursement  
14 mechanisms as a means to either deteriorate market  
15 access or to eviscerate intellectual property  
16 protections that our companies have inherent in  
17 their products, that's exactly the sort of measure  
18 that we would raise through the Special 301 process.

19 My understanding is that the statute itself  
20 recognizes these sorts of barriers as part of the  
21 purview of this Committee and of the process itself.

22 MS. BLEIMUND: Okay, thank you. And just

1 another second quick question on Ecuador, you  
2 mentioned in your testimony that Ecuador had issued  
3 six compulsory licenses in 2014. However, we have  
4 other submissions from stakeholders noting only four  
5 compulsory licenses, so we didn't know if you had an  
6 explanation for that discrepancy now or if you can  
7 submit a list of the six to us so that we can just  
8 clear that up, make sure that we're all on the same  
9 page. Thanks.

10 MR. TAYLOR: Happy to do that.

11 CHAIR WILSON: Okay, I think that concludes  
12 our time. Thank you very much --

13 MR. TAYLOR: Thank you very much.

14 CHAIR WILSON: -- for joining us today and  
15 we look forward to the additional information.

16 So now I would like to invite our next  
17 witness representing the Trademark Working Group.  
18 Welcome. Please introduce yourself and begin when  
19 you are ready.

20 MR. KILMER: Thank you. My name is Paul  
21 Kilmer, K-i-l-m-e-r, representing the Trademark  
22 Working Group. I'd like to thank you for the

1 opportunity to again provide our views in relation  
2 to adequate and effective protection of trademark  
3 rights.

4           The group intends that its Special 301  
5 submission will be used for the improvement of  
6 trademark law and practice through education,  
7 technical support and assistance, and diplomacy.  
8 We, therefore, have not requested designation of any  
9 nations as Priority Foreign Countries or Watch List  
10 nations.

11           Our group has provided USTR with a lengthy  
12 written report, what we have dubbed our *Global*  
13 *Trademark Report Card*. However, certain nations,  
14 because of their commercial significance or the  
15 number and nature of trademark issues raised about  
16 them, appear to merit special attention. These  
17 include this year China, India, Canada, Mexico, and  
18 Brazil. I will highlight only a few of the issues  
19 to illustrate some of the problems confronted abroad  
20 by trademark owners.

21           China. It is highly debatable whether  
22 China's new trademark law has produced a net benefit



1 for trademark owners, particularly those outside the  
2 United States -- or outside of China, I'm sorry, as  
3 our *Global Trademark Report Card* makes evident. The  
4 bulk of comments received from our group relate to  
5 issues encountered in China under its new law.

6           These include short deadlines; an increase  
7 in formalities required to bring oppositions and  
8 support TRAB actions; elimination of most TRAB  
9 appeals from unfavorable opposition decisions,  
10 especially for foreign opposers; prohibitions  
11 against appealing most unfavorable TRAB rulings in  
12 cancellation and invalidation actions, again  
13 especially for foreign petitioners; rigid  
14 application of a subclass system; disregard for  
15 witness declarations in oppositions, cancellations,  
16 and invalidation actions; overly high standards for  
17 establishing "well-known" mark status; a glaring  
18 lack of transparency in all phases of trademark  
19 practice; and little deference to co-existence  
20 agreements and letters of consent in the  
21 registration process.

22           Use. Unlike the United States, most

1 nations do not require declarations by trademark  
2 applicants that they have a bona fide intent to use  
3 the mark they seek to register. In addition, most  
4 nations do not require declarations of use after  
5 specified periods of time, such as our Section 8  
6 requirement.

7           In addition, the issue of use has arisen  
8 very recently in the context of Canada's proposed  
9 new trademark law. That statute would eliminate any  
10 requirement for use of a mark prior to registration.  
11 It does not require a declaration by applicants that  
12 they have a bona fide intent to use their marks in  
13 Canada. And it has no later declaration of use  
14 requirement. Canada's new law also eliminates  
15 ex parte examination on relative or likelihood of  
16 confusion grounds.

17           Many trademark owners are concerned that  
18 Canada's proposed new law would allow trademark  
19 pirates to register the marks of others, permit a  
20 vast number of registrations for marks that will not  
21 be used, and otherwise contribute considerable dead  
22 weight to the Canadian registry.

1           There is a growing sentiment that not only  
2 are the provisions of Canada's proposed new law  
3 contrary to the interest of brand owners, but also  
4 that the entire trend away from examination on  
5 relative grounds and the failure of most trademark  
6 laws to require declarations of bona fide intent to  
7 use for the goods and services claimed in  
8 applications are eroding the global trademark system  
9 and should be reversed.

10           Oppositions. The absence of opposition  
11 proceedings allows trademark pirates to steal  
12 valuable brands, especially of foreign trademark  
13 owners. Therefore, nations such as Mexico, Russia,  
14 and Panama that have no opposition proceedings are  
15 fertile ground for illicit registrations.

16           The slows. Nations such as India and  
17 Brazil which fail to adjudicate oppositions and  
18 cancellations within a reasonable period of time  
19 continue to deny trademark owners effective  
20 protection against infringing marks. Such systems  
21 may also be used by infringers to substantially  
22 delay registration of foreign trademarks, not based

1 upon the merits of the actions that they bring but  
2 instead simply due to the inefficiency of the  
3 administrative processes. Unfortunately, the  
4 formulation of various action plans and similar  
5 efforts by many of these governments has failed to  
6 alleviate the problem.

7           Certification marks. Despite USTR's  
8 highlighting of this area in its 2014 Special 301  
9 Report, many nations ranging from Afghanistan to  
10 Uzbekistan still do not protect certification marks.  
11 And standards for approving certification marks in  
12 other nations vary to such a degree that owners of  
13 many of those designations cannot maintain  
14 consistent certification standards in regimes around  
15 the globe.

16           It has been suggested that this situation  
17 may require multinational action to implement  
18 harmonized worldwide certification mark laws and  
19 regulations such that certification mark owners may  
20 ensure that their marks symbolize the same standards  
21 no matter where or in relation to what products or  
22 services they are encountered by consumers.

1           Formalities and recordations. Like China,  
2 there are many nations that continue to require a  
3 host of formalities or are overly burdensome on  
4 trademark owners. These include legalizations  
5 required by nations such as Argentina, Chile,  
6 Ecuador, Egypt, the Philippines, Saudi Arabia, and  
7 Venezuela.

8           Similarly, a number of nations continue to  
9 require recordation of license agreements to ensure  
10 the validity of those contracts. Those nations and  
11 regional groups include Argentina, Brazil, Ecuador,  
12 Indonesia, OAPI, Pakistan, Russia, Thailand, the  
13 UAE, and Venezuela. Such requirements are unduly  
14 burdensome and set a trap for the unwary. They both  
15 are unnecessary and inappropriate in the context of  
16 trademark registration systems.

17           Stealth Paris Convention. There remain a  
18 number of Paris Convention nations in which newly  
19 filed applications may not be effectively located  
20 for more than 6 months. These stealth Paris  
21 Convention nations include Brazil, China, Indonesia,  
22 and the UAE.

1           Other issues. There remain a number of  
2 nations that give no weight to consents to  
3 registration. These include Brazil, China,  
4 Columbia, Japan, and Thailand.

5           A number of nations have not yet joined the  
6 Madrid Protocol, including Argentina, Brazil, Hong  
7 Kong, Indonesia, Malaysia, Saudi Arabia, South  
8 Africa, and the UAE.

9           Some nations continue to require foreign  
10 registrations as a basis for a domestic trademark  
11 filing. These include Ethiopia, Libya, Nepal, and  
12 Syria.

13           These and other practices noted in our  
14 *Global Trademark Report Card* pose obstacles to  
15 adequate and effective protection of trademark  
16 rights abroad. Thank you.

17           CHAIR WILSON: Thank you for joining us  
18 today, and thank you again for a unique and  
19 interesting filing that really creates a menu of  
20 engagement options, I think, for the U.S. government  
21 and for others. We have some questions about that.

22           It is interesting to see through those

1 barriers to actually doing business that are so  
2 fundamental as securing your brand name highlighted  
3 in a submission such as yours, and also to hear and  
4 see, as we did last year in your submission and will  
5 again this year, how some countries actually have  
6 rules in place that are self-defeating from the  
7 perspective of their own businesses. You've  
8 highlighted some of those in your testimony.

9 I did want to ask for one factual  
10 clarification before I ask my colleagues to ask -- I  
11 think we have time for maybe one or two questions.  
12 You mentioned a lack of opposition proceedings. And  
13 in your list you named Panama. Are you referring to  
14 a complete lack of opposition proceedings, or are  
15 you referring to the problems such as those that  
16 were highlighted by Bridgestone that make the  
17 opposition proceedings high risk --

18 MR. KILMER: Right.

19 CHAIR WILSON: -- to take advantage of.

20 MR. KILMER: Right. I mean no effective  
21 opposition proceedings for foreign companies in  
22 particular.

1           CHAIR WILSON: Great, thank you. So I  
2 guess I'll ask my Commerce colleague to go ahead and  
3 ask his question.

4           MR. MITCHELL: I wanted to join Susan and  
5 thank you for the clarity and specificity with which  
6 you articulated a number of your country issues. My  
7 question is really a process question as to whether  
8 the Trademark Working Group or any of its members  
9 engage directly with foreign governments to work  
10 through some of those issues. If so, what has the  
11 reception been, what have the results been? Or, in  
12 the alternative, would you want to increase your own  
13 involvement with our embassies, our foreign  
14 commercial service, to take on some more of that  
15 work with them?

16           MR. KILMER: Our membership has, as you  
17 know, chosen to remain anonymous because they do  
18 have matters pending before virtually every  
19 trademark office that was mentioned in my report.  
20 They are somewhat reluctant as a result to engage in  
21 direct dialogue with those governments. I think  
22 they would be very happy if our group, through me,



1 was engaged in some of these issues with the panel  
2 and USTR, and we would certainly enjoy the  
3 opportunity to do that.

4 I have introduced a few companies as a  
5 result of this submission last year to the Commerce  
6 Department at certain levels, and we have had some  
7 internal meetings. Those were, in particular,  
8 regarding issues that had arisen in China but also  
9 elsewhere, including our out-of-cycle report on  
10 counterfeit markets in Nigeria, which I think you'll  
11 find excerpts of in the *Trademark Report Card*, and  
12 as well in relation to India.

13 We would welcome the opportunity to  
14 participate more fully and certainly would accept  
15 and welcome your guidance in that regard.

16 CHAIR WILSON: Thank you. I think we are  
17 out of time. Let me just acknowledge also your  
18 submission to the Notorious Markets process. This  
19 is a list that is published annually that focuses on  
20 online and physical markets around the world  
21 contributing to counterfeiting and piracy. We  
22 expect to release the review of 2014 activities in

1 this space within the next 2 weeks, so please  
2 everyone watch for that. So thank you very much.

3 I'd like to --

4 MR. LAMBERTI: Susan, I'm sorry. Could I  
5 just ask if you could provide a follow-up submission  
6 with regard to your members' views about Canadian  
7 Bill C-8, which received royal assent last year? We  
8 would be interested in whether or not your members  
9 believe this new law in Canada, which provides among  
10 other things Canadian Customs with ex officio  
11 authority to detain and seize goods, will make a  
12 difference.

13 MR. KILMER: Right. That will be a helpful  
14 element. The ex officio authority is something  
15 lacking in other customs regimes as well, and I  
16 think Canada is at least a step forward on that,  
17 although as I highlighted in my presentation, there  
18 are a few other areas we feel like it's slipping in  
19 the wrong direction.

20 MR. LAMBERTI: Okay, thank you.

21 MR. KILMER: Thank you.

22 CHAIR WILSON: No, thank you. Thank you

1 for that question. I think having an understanding  
2 of that will be very helpful.

3 So I'd like to invite our next witness, a  
4 representative of the Union for Affordable Cancer  
5 Treatments. Welcome. Please introduce yourself and  
6 begin when you are ready.

7 MS. RESS: Good afternoon. My name is  
8 Manon Anne Ress, R-e-s-s, and I am here for the  
9 Union for Affordable Cancer Treatment, UACT, which  
10 is an international network of people affected by  
11 cancer who share the conviction that the most  
12 efficient existing cancer treatments and care should  
13 be available everywhere, for everyone, regardless of  
14 gender, age, or nationality.

15 Our membership includes cancer patients,  
16 doctors, and some lawyers, of course, they do get  
17 cancer, too, and all their families and people who  
18 care for them.

19 As stated in UACT's submission to the 2015  
20 Special 301 Review, we object to the United States  
21 Trade Representative pressure on foreign governments  
22 to reject measures such as compulsory licenses,

1 limits on the granting of patents, cost containment  
2 and price controls, and other mechanisms to provide  
3 the population with affordable cancer drugs.

4           As a recent report by Oxfam indicated,  
5 according to the WHO, the World Health Organization,  
6 cancer is one of the leading causes of death around  
7 the world, with 8.2 million deaths in 2012. More  
8 than 60 percent of the world's new cases of cancer  
9 occur in Africa, Asia, and Central and South  
10 America. These regions account for 70 percent of  
11 the world cancer's deaths.

12           According to the report, "In low- and  
13 middle-income countries, expensive treatments for  
14 cancer are not widely available, of course.  
15 Unsustainable cancer medication pricing has  
16 increasingly become a global issue, creating access  
17 challenge in low- and middle-income, and also, of  
18 course, high-income countries." End of quote.

19           So, today, we know we have a handful of  
20 game changer drugs in the cancer treatment field.  
21 By game changers, we mean -- I mean drugs that add  
22 time and quality to the lives of cancer patients.

1 For example, and we heard quite a bit about this  
2 example, today, let us look at dasatinib -- I don't  
3 know how to pronounce it -- a drug for a rare form  
4 of leukemia. For UACT, the dasatinib dispute  
5 between the U.S. and India illustrated the failing  
6 of U.S. trade policy and its impact on cancer  
7 patients.

8           In a previous submission to USTR during the  
9 2014 Out-of-Cycle Review of India, on October 29,  
10 2014, UACT reported on the impact on cancer patients  
11 of those pressures on access to treatment for this  
12 very rare form of leukemia. The Bristol-Myers  
13 Squibb price for dasatinib is more than \$100 per day  
14 in a country with a per capita income of \$4.30 per  
15 day. This, of course, makes it unreachable for the  
16 majority of leukemia patients in India.

17           Therefore, the U.S. government opposition  
18 to compulsory license on dasatinib is de facto an  
19 endorsement of an excessive price and will have  
20 predictably harsh consequences for leukemia patients  
21 who have developed resistance to the older drug.

22           As a side note, since the question came up

1 several times, I would like to remind people here  
2 that there is a very good WTO website that explains  
3 quite well, if you go to WTO.org, and then TRIPS and  
4 then Public Health, that compulsory licensing do not  
5 need to be a response to an emergency. It is  
6 actually a website that explains this. It says that  
7 they have to be an emergency. "Not necessarily,"  
8 that's the answer by the WTO.

9           This is a common misunderstanding. The  
10 TRIPS Agreement does not specifically list a reason  
11 that might be used to justify compulsory license.  
12 However, the Doha Declaration on TRIPS and Public  
13 Health confirmed that countries are free to  
14 determine the grounds for granting compulsory  
15 licenses. I think this website is very useful for  
16 all of us.

17           But let's go back to the other game changer  
18 drugs, such as Herceptin or Kadcylla, formerly known  
19 as TDM-1, for advanced breast cancer, for the 20  
20 percent that are HER2-positive, which is rare, 20  
21 percent, form of aggressive breast cancer.

22           Most recently, maybe ironically, this

1 month, on Cancer Day, the FDA also approved the  
2 Pfizer drug Ibrance -- again, I don't know how to  
3 pronounce this -- which is a lifesaver for patients  
4 with the most common estrogen-positive but HER2-  
5 negative advanced breast cancer.

6 All these drugs that I mentioned are nearly  
7 over \$100,000 a year. These treatments are not  
8 accessible to most women on earth, of course, and  
9 even hardly available in Europe. The UK NICE, which  
10 is like the NIH, has rejected actually Kadcylla as  
11 too expensive. And in some European countries such  
12 as Ireland, of course, patients are not even tested  
13 for the aggressive HER2-positive type of breast  
14 cancer because they will not get Herceptin or  
15 Kadcylla no matter what; why test them.

16 In the U.S., to access treatment, patients  
17 have to rely on the employers, including Medicare  
18 and other government programs, or agencies, who have  
19 to pay higher and higher premiums and, of course,  
20 the health insurance. Indeed, very few individuals  
21 in the U.S. could afford to pay out of pocket these  
22 kinds of treatments. But without these drugs, most

1 women with advanced breast cancer die a premature  
2 and painful death.

3           I, myself, have lived the last 4 years and  
4 8 months and a half of my life thanks to access to  
5 these game changer drugs, first Herceptin and now,  
6 after developing a resistance to Herceptin and  
7 having tried four other chemotherapy drugs, Kadcylla,  
8 my own, my very own game changer hopefully.  
9 However, it remains heartbreaking for me and for my  
10 family to know that only a few breast cancer  
11 patients have access to the same treatments that are  
12 keeping me alive and well today.

13           But even if you, in fact, do not want to  
14 think about what is happening to cancer patients in  
15 other countries, UACT is challenging the idea that  
16 USTR is advancing U.S. interest by promoting  
17 stronger monopolies of medicine and preventing  
18 access to these treatments.

19           The UACT argument is based upon the  
20 following:

21           One, while we recognize, of course, that  
22 developing new drugs is expensive and risky, we know



1 that BMS, Roche, or Pfizer in fact benefited  
2 extensively from U.S. government research subsidies,  
3 including NIH-funded research and clinical trials;  
4 universities, public and private; and 50 percent tax  
5 credit to fund trials.

6 Two, the price of these cancer drugs is  
7 excessive everywhere, for everyone, especially for  
8 drugs that worked with extensive U.S. government  
9 subsidies.

10 Three, UACT believes that such trade  
11 pressures to prevent other countries from using  
12 legal mechanisms such as compulsory licensing to  
13 manufacture, generate, and provide access to cancer  
14 drugs in other resource-poor setting is immoral and  
15 bad foreign policy.

16 Four, U.S. citizens are especially harmed  
17 by the high prices on cancer drugs in part because  
18 of an aging population that is more likely to  
19 require cancer-related chemotherapy. By 2020, more  
20 than 16 percent of the U.S. population will be 65.  
21 And by 2030, the percentage will be 19.3 percent.  
22 For more detail, I will refer you to a previous

1 submission letter to Ambassador Froman that we sent  
2 October 29.

3           Five, finally, USTR, this Committee, you,  
4 must recognize that for most cancer patients, there  
5 is no alternative to these lifesaving drugs. And  
6 cancer patients cannot continue to be held hostage  
7 in a system of threats to ration drugs.

8           In conclusion, UACT reaffirms its  
9 opposition to USTR policy to prevent access to  
10 treatment to the majority of cancer patients on this  
11 planet and create an unnecessary and harmful  
12 scarcity of drugs that can save, extend, and improve  
13 the lives of cancer patients everywhere. Reducing  
14 the number of compulsory licenses, preventing  
15 developing countries from sourcing generic cancer  
16 drugs from the few countries that could actually  
17 manufacture them, is in fact systematically ending  
18 any hope for cancer patients to live longer and  
19 better lives. Thank you.

20           CHAIR WILSON: Thank you very much for your  
21 testimony, and thank you for appearing here today.  
22 Even in the context of the Special 301 hearing,

1 listening to testimony such as yours is, of course,  
2 difficult to hear and very emotional. We appreciate  
3 that and appreciate your courage in being here.

4           As I said earlier, this hearing has a very  
5 specific purpose, and that is for us to assess the  
6 intellectual property and market access issues with  
7 respect to trading partner markets, and use the  
8 information that we get today to conduct the review  
9 and determine which countries to identify in the  
10 report. However, we are definitely open to  
11 competing points of view and to additional  
12 information and facts and always welcome that.

13           This isn't a debate, so I don't want to go  
14 point by point in addressing some of the things that  
15 you said. But I think some of the statements that  
16 you made about U.S. policy, I feel that I need to  
17 clarify and perhaps shed some light on very quickly  
18 before we turn to the questions.

19           First, obviously, I think it is said any  
20 time that IPR and pharmaceuticals are mentioned, the  
21 U.S. government reiterates its commitment to the  
22 Doha Declaration and Public Health and the resulting

1 amendment of the TRIPS Agreement, which we have  
2 accepted and encourage other countries to also  
3 accept and bring into force so that we are not  
4 operating under the waiver that we have been  
5 operating under now for over 10 years.

6 I would invite you to please review last  
7 year's report, Special 301 Report, and identify for  
8 us instances in the report in which we addressed  
9 compulsory licenses in a way that is inconsistent  
10 with the Doha Declaration. I think as a Committee  
11 we try very hard to stay within the boundaries, if  
12 we address compulsory licensing at all. But I am  
13 interested to know specific examples of where we may  
14 not have done that so that we can redouble our  
15 efforts this year.

16 Third, I think from our perspective, as  
17 people who work in the agencies on intellectual  
18 property, we believe that innovation is key to  
19 public health. We heard earlier a figure of  
20 \$2.6 billion to bring new drugs to market. Many  
21 people are alive today because of those drugs. We  
22 appreciate that not everyone has access to the

1 drugs, and that as a society, both protecting the  
2 innovation piece of this but also ensuring that  
3 patients get the care that they need is very  
4 important. There are many choices to be made along  
5 the spectrum. They are not mutually exclusive.  
6 There are a lot of things, factors that contribute  
7 to a lack of access beyond price, and we try to deal  
8 with those as well. We don't have the time today.  
9 This is not the format for that.

10           And then, finally, it has been mentioned  
11 now a couple of times about Americans bearing the  
12 cost of pharmaceutical products. And, obviously, as  
13 the U.S. government takes on an increasing role in  
14 that in the coming years, cost is important to us as  
15 it is to governments around the world. But I think  
16 there are those that feel that one of the reasons  
17 why Americans bear the cost is because companies  
18 aren't able to access foreign markets in an  
19 effective way.

20           And, again, I am just highlighting the  
21 issue. I am not taking a position on it today. But  
22 know that I think we try to consider a lot, all of

1 these factors when we determine what to highlight in  
2 the report.

3           So I'd like to ask HHS to lead off with our  
4 questions. But please do review last year's report  
5 and please do tell us if, in your opinion, and this  
6 goes for everyone in the room, if you see something  
7 in the report that you think we need to do a better  
8 job of, if there is something that is factually  
9 incorrect, or something that should be handled  
10 differently. We are open to the public's  
11 suggestions and recommendations with regard to the  
12 report itself, not only the process.

13           So I'd like to invite my colleague from  
14 HHS...

15           MS. BLEIMUND: Thank you so much for coming  
16 today. Recognizing that in the title of the  
17 organization is the word "affordable," does your  
18 organization do any analysis or examination of  
19 non-price barriers to access?

20           MS. RESS: Right now, the Union for  
21 Affordable Care Treatment is in the beginning of its  
22 creation. We started in October. And we have

1 decided to focus on the price of medicine because  
2 many public health groups worry about other things,  
3 and it seems almost like a taboo to talk about the  
4 price of life. We decided to look at it. No, at  
5 this point, we're just focusing on how much does it  
6 cost to get treatment and why. Of course, other  
7 people will come up with suggestions and  
8 recommendations on maybe how to fix this.

9 I will refer to my colleague from KEI and  
10 my husband, Jamie Love, because of course he has  
11 written extensively on prices and R&D. I don't know  
12 if you saw the *New York Times* article today about  
13 the prices by Ezekiel Emanuel, but it is quite an  
14 interesting piece about linking R&D and prices.  
15 Unfortunately, he said something stupid about  
16 cancer, but that's nothing is perfect.

17 CHAIR WILSON: I'd like to maybe ask one  
18 more question. Commerce, if you could? Actually, I  
19 think HHS wrapped that into their question. I think  
20 that was covered. I think the way that you asked  
21 your question, Emily, covered both of those.

22 Okay, so let me just add one last thing,

1 the same question that we posted to KEI. And,  
2 again, you said your focus has been on cost. But in  
3 our view, it's important if civil society can join  
4 in this issue of online pharmacies and the wide  
5 availability of counterfeit drugs and the harms that  
6 those do.

7 Of course, we would like your reflections  
8 on that, if you would kindly provide them before  
9 Friday, perhaps a joint filing with KEI or  
10 separately, on the issue of the online pharmacies  
11 and trying to address that question.

12 MS. RESS: Thank you.

13 CHAIR WILSON: Thank you very much.

14 Now I'd like to invite our next witness  
15 representing the U.S. Chamber of Commerce, Global  
16 Intellectual Property Center. Welcome. Please  
17 introduce yourself and begin when you are ready.

18 MR. KILBRIDE: Hi, good afternoon. I'm  
19 Patrick Kilbride. I am the Executive Director for  
20 International Intellectual Property at the U.S.  
21 Chamber of Commerce's Global Intellectual Property  
22 Center. I'll try to be brief.



1           I wanted to first of all thank you as  
2 representatives of the U.S. government for your  
3 efforts through the Special 301 process and other  
4 mechanisms to advance intellectual property law  
5 globally. At the GIPC, we believe that intellectual  
6 property is an indispensable catalyst to innovation,  
7 that it is a legal mechanism that creates an  
8 opportunity to attach value to an idea, thereby  
9 helping the innovator take an intangible and turn it  
10 into a product that can be successfully brought to  
11 market.

12           Without that legal certainty, it has been  
13 our observation that there is a critical step  
14 missing, that innovators aren't able on a large  
15 scale, whether they're small businesses or  
16 multinational companies, to take that leap from  
17 really an idea to workable product that can be  
18 enjoyed by consumers globally.

19           In fact, we think that really if there is a  
20 secret sauce in innovation, it's the intellectual  
21 property system of legal rights that's been  
22 developed and that is really limited unfortunately,

1 I think, to a handful of countries at this point  
2 that allows innovation on a large scale.

3           One need only to look at the success of the  
4 Silicon Valley, for instance, to recognize that  
5 dynamic, which interestingly nearly half of all  
6 patents granted to entrepreneurs in Silicon Valley  
7 are to immigrant inventors, I think underlying the  
8 notion that entrepreneurs globally come to where  
9 strong intellectual property laws exist so that they  
10 can successfully turn their ideas into products.

11           With that in mind, GIPC approached its  
12 submission for the 301 Review this year in the  
13 spirit of offering observations about both systemic  
14 and country-specific challenges. So we included a  
15 number of countries in our submission, countries  
16 like Australia and Canada, that might not normally  
17 land on a list of the worst performers for  
18 intellectual property.

19           In fact, in our own GIPC International IP  
20 Index, which ranks 30 key markets, those countries  
21 have scored among the top intellectual property  
22 environments in the world. However, there are

1 specific issues in each of the countries we've  
2 mentioned in our report that we think bear  
3 mentioning. And so I do want to ask that the GIPC  
4 Index, which informs our submission, be incorporated  
5 by reference. We included it in our formal  
6 submission to the system.

7           A couple of specific countries and specific  
8 issues. First, China. I think it has been our  
9 observation that in China there has been an emerging  
10 domestic constituency of innovators that has driven  
11 greater and greater Chinese government attention to  
12 the importance of intellectual property. As a  
13 result we have started to see some incremental but  
14 important steps towards building out a stronger  
15 system, including recently the establishment of some  
16 specialized IP courts.

17           Our big concern -- a big concern is that as  
18 China's intellectual property helps to create a more  
19 stable environment, that it is applied in a  
20 nondiscriminatory fashion. Several of the measures  
21 that have been put in place could be applied in ways  
22 that are favorable to domestic innovators but not to

1 foreign investors. And U.S. government attention to  
2 that dynamic is going to continue to be important.

3 In India, and I would mention that I had  
4 the opportunity to visit India last week and sit  
5 down with a number of stakeholders in and out of  
6 government there, and would note that the U.S.  
7 government engagement in the last month with the  
8 Government of India has been important and it has  
9 been substantive, and we believe it has been  
10 productive.

11 One of the ways that we have seen that  
12 illustrated was in the de-emphasis on compulsory  
13 licenses by the Government of India. In fact, there  
14 were reports that a cabinet level committee that had  
15 been established to review compulsory license  
16 petitions had been disbanded. We think that's an  
17 important step. The rhetoric coming out of the  
18 government about the importance of intellectual  
19 property to India's economic competitiveness has  
20 been very welcome.

21 I do think it is important to note,  
22 however, that we have not yet seen substantive

1 policy changes that would lead to or would validate  
2 a change in India's designation in the Special 301.

3           Finally, I want to mention Canada, because  
4 as a relatively strong performer in intellectual  
5 property, some of the exceptions are glaring. In  
6 particular, I want to mention the promise doctrine,  
7 which we believe is an added step discriminating  
8 against the rights of U.S. patent holders, in  
9 particular, because of the way it has been applied.

10           With that, just to mention two specific  
11 issues very quickly, one going back to compulsory  
12 licenses. The challenge here is that when a  
13 compulsory license is issued and especially if it's  
14 issued for reasons that are ambiguous, they don't  
15 point to a clear motivation like a national  
16 emergency, then it doesn't just affect the product  
17 that's licensed; it affects every participant in the  
18 industry space because it undermines the legal  
19 certainty that they can attach to their rights. So  
20 it has a chilling effect for the country itself on  
21 foreign direct investment, but then also more  
22 broadly on investment in innovative industries and

1 really threatens the pipeline of innovative  
2 products.

3           The second, which we have seen in several  
4 countries, I'll mention India in particular because  
5 its Section 3(d) has been so infamous, is this  
6 application of additional patentability requirements  
7 to what is envisioned in TRIPS. The problem here is  
8 that when you've got a product that goes off patent  
9 and becomes available to whether it is generic  
10 companies in the case of the pharmaceutical  
11 industry, or to other innovators to build and  
12 develop off that platform, if you put additional  
13 steps in place, then you have basically prevented  
14 innovators from taking that further on. You've said  
15 this is as far as we're going to go and no further.  
16 So it's an anticompetitive position that benefits  
17 the generics to the detriment of further innovation.

18           So with those few specific comments, I'd  
19 like to leave the rest of the time for your  
20 questions.

21           CHAIR WILSON: Thank you for your testimony  
22 and for introducing the report into the discussion.

1 You have the ability to do much greater detailed  
2 analysis than we are able to do, so it's always  
3 helpful to have that from all parties that  
4 participate in this process.

5           For many of you who may not know, the ITC  
6 is actually an observer on the Committee, so we  
7 actually can draw from their expertise and the  
8 results of their work as well when we are doing our  
9 deliberations.

10           Because you represent such a wide range of  
11 companies and interests, we have several different  
12 categories of questions. But considering the time,  
13 I think I'd like to focus on the questions that we  
14 have scheduled for the online issues and for this  
15 kind of emerging area of piracy. So if the  
16 Copyright Office can lead off? And then the DOJ can  
17 follow with the third question.

18           MS. STRONG: Thank you. As you know,  
19 Internet pirate sites around the world often profit  
20 from U.S.-based ad networks advertising payment  
21 processors. And so we're curious to know what is  
22 the Chamber doing to encourage your 3 million member

1 businesses to monitor major pirate sites around the  
2 world and to ensure that they are not unknowingly  
3 advertising on and/or providing services to pirates.

4           And as a follow-up, is this message getting  
5 through to all the local chambers that you are  
6 affiliated with in other countries?

7           MR. KILBRIDE: Thanks very much. I think  
8 intellectual property is very much a local level.  
9 Our state and local chambers work with the local  
10 broadcast networks, the innovative companies, the  
11 Internet service providers around the country who  
12 actually are the implementers of intellectual  
13 property, and in the online space the channels for  
14 distribution of that content.

15           And so our efforts have been together with  
16 the relevant industry associations to really inform  
17 government of the policy challenges. I think we  
18 certainly envision as part of our mission and  
19 mandate to be a source of information more broadly  
20 to the public. It's not something we have been  
21 resourced to do in the online content space.

22           Unfortunately, in recent years -- I will



1 mention a specific effort, though. Leading into the  
2 holidays, we did public service announcements that  
3 aired on television and radio around the country in  
4 December talking about the dangers of counterfeit  
5 goods and urging shoppers to be aware of and how to  
6 look for pirate sites.

7 CHAIR WILSON: Actually, if we can just ask  
8 -- if I can ask my colleagues from DOJ and the  
9 Copyright Office to just basically read off the  
10 other two questions, and ask if you could please  
11 submit information post-hearing in response to  
12 those, that would be much appreciated.

13 MR. KILBRIDE: Of course.

14 MR. LAMBERTI: Thank you very much for your  
15 testimony. You stated in your written testimony  
16 that there are signs that things are changing very  
17 rapidly in China, in particular in the online space.  
18 Are you suggesting by that statement that there has  
19 been significant improvement in online  
20 counterfeiting and piracy? If so, what are those  
21 signs, and why do you believe this is happening?

22 Also, do you believe that things are

1 improving more with regard to B2B platforms, such as  
2 Alibaba and HC, online sharing sites such as Sudelay  
3 (ph.) or both?

4 MR. KILBRIDE: Thank you. I'll be happy to  
5 respond.

6 MS. STRONG: Thank you for the record. We  
7 know that GIPC is one of several submitters that has  
8 identified a sort of new type of piracy in Asia, the  
9 media box piracy or set top piracy it's called, and  
10 these devices are generally manufactured in China  
11 and exported to overseas markets, many in Asia.  
12 Your comments and testimony said that you are  
13 hopeful that China will take a "firm stand" against  
14 this type of infringing activity and take  
15 enforcement efforts to eradicate this problem.

16 What we are looking to hear from you is  
17 what specific actions do you think that China, as  
18 well as its neighbors, should take to address this  
19 media box problem? Also, is there a customs element  
20 involved?

21 MR. KILBRIDE: Thank you very much.

22 CHAIR WILSON: Thank you very much for

1 joining us today.

2 I'd like to invite our final witness of the  
3 day, the representative of the U.S.-China Business  
4 Council. Welcome. Please introduce yourself and  
5 begin when you are ready.

6 MR. ONG: Absolutely. Thank you for the  
7 pleasure of going last. My name is Ryan Ong, and I  
8 am the Director of Business Advisory Services for  
9 the U.S.-China Business Council here in Washington.  
10 On behalf of the U.S.-China Business Council, I  
11 would like to thank you for this opportunity to  
12 speak with you about intellectual property rights in  
13 China, one of the U.S.'s most important commercial  
14 markets and generally a highlight of the Special 301  
15 Report.

16 USCBC represents approximately 210 U.S.  
17 companies doing business in the China market,  
18 including manufacturers, service providers, and  
19 agricultural and resources companies, so we have a  
20 broad industry mix.

21 Over its history of more than 40 years,  
22 USCBC has worked to raise and address operational

1 issues and market barriers that U.S. companies face  
2 in China so that American businesses and workers can  
3 prosper from that company's tremendous economic  
4 growth. IP enforcement has long been one of those  
5 top challenges.

6 In a most recent annual member company  
7 survey, IP protection ranked as our number two issue  
8 behind only competition with Chinese companies.  
9 Ninety-one percent of those responding across  
10 industries and geographies said that they were  
11 concerned about IP protection in China. Nearly half  
12 of those said that they were very concerned.

13 So, first, the positive. U.S. companies  
14 believe and see that the IP landscape in China has  
15 seen steady progress, even if that progress has been  
16 slow. We see that progress in a number of very  
17 different areas. On the regulatory side, China is  
18 actively working to update all of its major IP laws  
19 and regulations. The first of these, the trademark  
20 law, went into effect last May with positive and  
21 negative elements that you already heard a great  
22 deal about today. Others, including the patent law

1 and the copyright law, and importantly for us the  
2 trade secrets related Anti-Unfair Competition Law,  
3 are all in the process of being revised.

4           During these revisions, regardless of  
5 whether or not U.S. history has always liked the  
6 results, Chinese regulators have sought to actively  
7 engage with U.S. stakeholders, including U.S.  
8 government and industry to consider questions,  
9 comments, concerns, and recommendations.

10           In addition, and several panelists have  
11 mentioned this already, Chinese stakeholders,  
12 including policy makers, enforcement officials,  
13 companies, and the general public are more aware  
14 than ever before of the benefits of promoting IP  
15 protection in China and the real cost of IP  
16 infringement for both the Chinese and the global  
17 economy.

18           Such growing awareness has led to new  
19 policies to address emerging IP issues, expanded or  
20 extended enforcement campaigns, more government  
21 resources dedicated to combating IP infringement,  
22 and greater engagement with U.S. counterparts, as

1 many of you know. Hard-won outcomes, and emphasis  
2 on hard-won outcomes, at the 2014 Joint Commission  
3 on Commerce and Trade, and the Strategic and  
4 Economic Dialogue on equal treatment for foreign and  
5 domestic IP, inventor remuneration, online piracy,  
6 trade secret legislation, and other priority topics  
7 are but one indication of this progress, as well as  
8 the work that remains.

9           However, and that's a big however, U.S.  
10 companies still face significant and rapidly  
11 evolving issues protecting their IP in China.  
12 Though there is no one-size-fits-all solution to  
13 these problems, there is a common message:  
14 Inadequate protection has a clear negative  
15 operational impact on U.S. companies in China.

16           Nearly half of companies in our 2014 member  
17 company survey indicated that China's level of IP  
18 protection limits their R&D activities in China.  
19 And at least 30 percent indicated that it limits the  
20 types of products they are willing to manufacture,  
21 license, or sell in that market. These issues limit  
22 a company's ability to grow in China, hindering and,

1 more importantly, its overall success in ways that  
2 impact its growth in other markets, including here  
3 in the United States.

4           So where do we need progress? U.S.  
5 companies regularly cite the need for further  
6 improvements to key laws and regulations, including  
7 those I have mentioned already, better access to  
8 China's existing IP enforcement channels, greater  
9 government resources to tackle infringement, and  
10 stronger and more consistent political will to  
11 enforce China's IP laws and regulations at all  
12 levels of government.

13           I'd like to highlight a few specific areas  
14 here, and I'm happy to provide greater detail in our  
15 follow-up discussion and/or in our written  
16 submission.

17           First, despite efforts by Chinese lawmakers  
18 to build a comprehensive IP and legal framework, and  
19 those efforts have been significant, that work  
20 remains incomplete. Revisions to existing IP laws  
21 have yet to address a number of key structural  
22 barriers to IP enforcement, such as value thresholds

1 that effectively prevent companies from pursuing  
2 criminal enforcement, caps on administrative fines  
3 and civil damages for IP infringement, patent  
4 examination processes that promote the proliferation  
5 of low quality design and utility model patents,  
6 inappropriate invalidations of pharmaceutical  
7 patents, limited authority for trademark enforcement  
8 officials to seize and destroy counterfeit goods,  
9 and inadequate scope for copyright protection.

10           In addition, there is a growing body of  
11 laws and regulations that touch on IP in ways that  
12 raise concerns for U.S. companies. These laws and  
13 regulations include policies focused on innovation  
14 incentives, investor compensation standards,  
15 government procurement, anti-trust, standard  
16 setting, and increasingly national security. Many  
17 of these policies appear to be based on local  
18 ownership of IP, require companies to provide IP to  
19 government entities as part of approval processes,  
20 or a pure design to ensure greater access to IP by  
21 Chinese companies at below-market cost.

22           We strongly encourage the U.S. government



1 to continue its efforts to monitor and engage the  
2 Chinese on each of these areas of policy as they  
3 arise.

4           Second, enforcement remains insufficient  
5 and inconsistent. Companies' experience with IP  
6 enforcement varies considerably from jurisdiction to  
7 jurisdiction. Local protectionism is an important  
8 factor in many of these cases, yet there are also  
9 structural barriers. Even proactive government  
10 officials must deal with inadequate resources,  
11 limited capacity, caps on fines, and competing  
12 regulatory priorities that prevent them from seeking  
13 robust IP engagement.

14           On the judicial side, companies often  
15 cannot make full use of the courts due to formal and  
16 informal barriers, such as limited use of judicial  
17 procedures, such as preliminary injunctions, heavy  
18 administrative burdens for companies to gather,  
19 document, and legalize evidence, and difficulties in  
20 enforcing court judgments. All of these factors  
21 cause many companies to doubt their ability to use  
22 China's enforcement channels effectively.

1           Some companies do importantly report  
2 successful cases, particularly civil and  
3 administrative cases. Yet the numbers of cases that  
4 doubt the viability of each of these channels is  
5 significant, and further detail on that is provided  
6 in our written submission.

7           China's recent launch of specialized IP  
8 courts in Beijing, Shanghai, and Guangzhou has  
9 generated some hope for improvements, but it is not  
10 yet clear at this point how much these courts may  
11 impact a company's ability to enforce their IP.  
12 This presents a potential area for significant  
13 engagement at the local level.

14           One priority area within the enforcement  
15 space is the online space, online counterfeiting and  
16 piracy. Companies have long dealt with these  
17 issues, online piracy from sharing sites, as well as  
18 online counterfeiting issues with B2B platforms.  
19 But the number and the nature of the issues the  
20 companies are facing are evolving rapidly and  
21 include everything from -- hold on just one second  
22 -- include everything from domain name squatting to

1 search engine results that prioritize counterfeit  
2 versions of their products.

3 We encourage you to continue to push the  
4 Chinese to improve both regulation and enforcement  
5 in the online space in ways that promote  
6 accountability and cooperation for legitimate IP  
7 rights holders and Internet intermediaries.

8 In sum, we recognize the progress that  
9 China is making on these issues, as well as the  
10 significant issues, and encourage you as you are  
11 drafting this year's Special 301 Report to recognize  
12 both of those areas. Given our members' continued  
13 level of concern, however, we continue to recommend  
14 that China remains on the Priority Watch List for  
15 2015.

16 We strongly encourage the U.S. government  
17 to pursue the IP challenges facing U.S. companies in  
18 China through all existing bilateral dialogues and  
19 cooperative channels, including the JCCT, S&ED, the  
20 U.S.-China IP Cooperation Framework, as well as  
21 other formal and informal opportunities for  
22 dialogue. And we stand ready at any point in time

1 to be able to assist in these efforts or provide  
2 further information on our members companies'  
3 perspective and experience with IP in China.

4 Thank you for your time. I'll be more than  
5 happy to answer any questions you may have.

6 CHAIR WILSON: Thank you very much for that  
7 sweeping portrait of one of our most important  
8 trading partners. I think we have time for one  
9 question, and then perhaps I can take you up on your  
10 offer of following up and highlight a couple of  
11 other issues --

12 MR. ONG: Absolutely.

13 CHAIR WILSON: -- for a post-hearing  
14 submission. So, State, why don't you ask our one  
15 formal question?

16 MS. BONILLA: Thanks very much, Susan.  
17 Yes, I want to focus in on your submission where you  
18 highlighted growing concerns from the business  
19 community that China is using national security as a  
20 justification for limiting U.S. firms from selling  
21 technology products, specifically to the banking and  
22 telecom sectors. So what type of actions has the

1 Chinese government taken that give preference to  
2 China's indigenous IP over foreign IP, and what are  
3 the financial ramifications for U.S. firms?

4 MR. ONG: Sure. We'll start just by taking  
5 a look at these policies that you mentioned. So the  
6 China Banking Regulatory Commission and the Ministry  
7 of Industry and Information Technology, two of the  
8 industry regulators that govern respectively banking  
9 and telecommunications, released new regulations  
10 late last year that seem to require companies  
11 seeking to participate in procurement activities  
12 with those respective industries to require them to  
13 provide -- to ensure that their products have safe  
14 and controllable technology without necessarily  
15 within the scope of those regulations a clear  
16 understanding of what that actually means.

17 We have heard, in working actively with  
18 others across the industry space on this issue,  
19 solid indications that that definition may include  
20 problematic areas for U.S. companies such as  
21 requiring them to turn over their source code to  
22 Chinese government entities, requiring domestic

1 ownership of IP, those types of issues. It's a  
2 little bit unclear because this issue is rapidly  
3 evolving.

4           The ramifications here, you know, there is  
5 obviously a direct set of ramifications for  
6 companies whose products may potentially be involved  
7 in or boxed out of these types of procurement  
8 activities. But there are also potential  
9 ramifications for other companies in those sectors  
10 as well as outside of those sectors. For example,  
11 the CBRC regulations are not limited purely to  
12 state-owned or domestic banks. The way the  
13 regulations are addressed would appear to also apply  
14 to foreign banks that are operating in the China  
15 market.

16           And so I think we've been in active  
17 conversation with not only our companies in the IT  
18 space but also in the banking space to help them  
19 understand and get a sense how they are looking at  
20 this issue and what the ramifications may be for  
21 them.

22           The other concern that we and I think

1 others have had here is the possibility of spread to  
2 other areas of procurement or to other sectors, and  
3 concern that companies, even companies whose  
4 products do not necessarily have clear national  
5 security implications or clear IP implications,  
6 could find themselves boxed out of potential  
7 procurement and a potential part of their market  
8 because procurement officials may cite national  
9 security because of their foreign nature.

10           And so we are monitoring very closely to  
11 understand how this issue may play out.

12           MS. BONILLA: Thank you, very helpful.

13           CHAIR WILSON: And very quickly to flag for  
14 follow-up, I think we would like to hear your  
15 insights with regard to the same question that we  
16 asked of the Chamber of Commerce on the online  
17 situation, that the situation may be changing, that  
18 there may be some significant improvement, basically  
19 some more details on your assessment of that  
20 situation, are there particularly problematic  
21 platforms that are resisting change, are there  
22 others that are showing more improvement.

1           And then, finally, in the context of  
2 developing the 2014 Notorious Markets Report, which  
3 I have mentioned a few times, which is an Out-of-  
4 Cycle Review of Special 301 and some issues that  
5 we'll be reviewing this year with respect to China,  
6 export controls and China as an origin of a lot of  
7 the product that ends up in some of the markets  
8 overseas that were nominated for inclusion in the  
9 Notorious Markets, just your view on sort of the  
10 current state of export controls against counterfeit  
11 and pirated products in the physical space, and what  
12 opportunities you might see for engagement both by  
13 the private sector and by the government on that  
14 issue, I think would be helpful.

15           MR. ONG: Great. I'm more than happy to do  
16 it.

17           CHAIR WILSON: Great. Okay, with that  
18 testimony, I think that concludes our list of  
19 witnesses for today. I have just a couple of  
20 closing remarks that are mostly logistical.  
21 Obviously, we have mentioned a few times today that  
22 there is an opportunity for witnesses to submit



1 post-hearing comments or responses to the questions  
2 that they were asked today.

3           The Special 301 docket on [regulations.gov](http://regulations.gov)  
4 will remain open until midnight on Friday, the 27th.  
5 We ask that any follow-up documents be filed through  
6 [regulations.gov](http://regulations.gov). Obviously, today we had a video of  
7 the testimony, as well as a transcript of the entire  
8 proceeding. Both of those we hope to post to  
9 [USTR.gov](http://USTR.gov) and [STOPfakes.gov](http://STOPfakes.gov) within 2 weeks. It may  
10 take us a little bit longer to get that together,  
11 but definitely our target is 2 weeks from today.

12           Thank you to everyone, to all of our  
13 witnesses, to my colleagues in the Special 301  
14 Committee, those who sat up here and those who have  
15 joined us in the audience. And thank you to  
16 everyone for your interest in this process, your  
17 input into this process, and we are looking forward  
18 to a robust 2015 review.

19           So be safe out there, and let's hope for  
20 spring, which is too far delayed. But thank you  
21 again.

22           So the 2015 Special 301 hearing is now

1 adjourned. Thank you very much.

2 (Whereupon, at 2:01 p.m., the meeting was  
3 adjourned.)

4

5 C E R T I F I C A T E

6 This is to certify that the attached  
7 proceedings in the matter of:

8 SPECIAL 301 REVIEW PUBLIC HEARING

9 February 24, 2015

10 Washington, D.C.

11 were held as herein appears, and that this is the  
12 original transcription thereof for the files of the  
13 Office of the United States Trade Representative.

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TOM BOWMAN

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Official Reporter

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