

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
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FACT SHEET

"SPECIAL 301" ON INTELLECTUAL PROPERTY

Ambassador Carla A. Hills, the United States Trade Representative (USTR), announced today the Administration's decisions with respect to this year's annual review under the so-called "Special 301" intellectual property provisions of the Omnibus Trade and Competitiveness Act of 1988. These provisions provide a statutory framework to assess the adequacy and effectiveness of protection of intellectual property rights and market access provided by our trading partners.

THE SPECIAL 301 PROVISIONS

The objective of Special 301 is to enhance the Administration's ability to negotiate improvements in foreign intellectual property regimes through bilateral and/or multilateral initiatives. Specifically, the statute requires the USTR to identify those foreign countries that deny adequate and effective protection of intellectual property rights, or deny fair and equitable market access for U.S. persons relying on intellectual property protection, and to determine which of those countries are priority foreign countries. Priority foreign countries are those countries whose practices are the most egregious and have the greatest adverse impact, actual or potential, on U.S. products, and who are not making significant progress in bilateral or multilateral intellectual property negotiations.

Under the Special 301 provisions, if a country is identified as a priority foreign country, the USTR must, within 30 days of identification, initiate a section 301 investigation of the policies and practices that were the basis of the identification and are not already the subject of a 301 investigation. If an investigation is initiated, it must be concluded within six months. This period may be extended to nine months, if certain statutory criteria are met. At the end of the investigation period, the USTR must decide whether the measures under investigation are actionable, and if so, decide what response is appropriate, including possible retaliation.

USTR may identify a country as a priority foreign country at any time that the facts warrant or may remove a country's identification at any time.

PRIORITY FOREIGN COUNTRIES

Despite substantial progress by the Administration in negotiating mutually acceptable solutions to our intellectual property problems in many countries around the world, the lack of adequate and effective intellectual property protection has remained particularly acute in some countries. As a result, the Administration has identified the following three countries as priority foreign countries:

China
India
Thailand

All three of these countries have been on the Administration's Special 301 "Priority Watch List" since the first annual review in 1989. In each case, the practices of these countries have been found to be egregious, resulting in an adverse impact on U.S. industry. No significant progress has been made, either bilaterally or multilaterally, to address these practices.

China is our only major trading partner to offer neither product patent protection for pharmaceuticals and other chemicals, nor copyright protection for U.S. works. In addition, trademarks are granted to the first registrant in China, regardless of the original owner. Trade secrets are not adequately protected in China. As a result, piracy of all forms of intellectual property is widespread in China, accounting for significant losses to U.S. industries.

India has been identified as a Priority Foreign Country because it provides an inadequate level of patent protection, including too short a term of protection and overly broad compulsory licensing provisions. As a result of the total lack of protection for certain classes of inventions, particularly pharmaceuticals, many U.S. patented products are widely pirated. Copyrighted materials including books, videos, sound recordings, and computer software, are also pirated. Finally, market access for motion pictures is severely restrained through quotas, fees, and other barriers.

Thailand has been identified as a Priority Foreign Country because of failure to enforce copyrights and deficient patent protection, especially in the area of pharmaceuticals. In the area of copyright, ineffective enforcement has led to significant losses for the U.S. motion picture, sound recording and computer software industries. In the area of patents, lack of patent protection for pharmaceuticals, along with overly broad compulsory licensing provisions and an insufficient term of protection have caused hardship for U.S. companies. Since these

deficiencies are already the subject of section 301 investigations, the USTR will not initiate new investigations under Special 301.

PRIORITY WATCH LIST

Countries whose acts, policies and practices meet some, but not all, of the criteria for priority foreign country identification have been placed on the Priority Watch List. Their lack of adequate and effective intellectual property protection and/or their denial of market access for U.S. goods relying on this protection are of great concern to the Administration. Accordingly, the Administration will continue to work actively to resolve these problems and will monitor closely the situations in these countries to determine if any further action under Special 301 is warranted.

The following three countries have been placed or retained on the Priority Watch List:

Brazil
European Community
Australia

Brazil was placed on the Priority Watch List in 1989 for serious deficiencies in its patent law, including failure to provide process or product patent protection for chemicals, foodstuffs, and pharmaceuticals. A new law providing this protection is scheduled to be introduced in the Brazilian Parliament shortly and the U.S. Government will be reviewing this proposed legislation carefully. In addition, losses from piracy in the video and computer software areas are significant. Although market access restrictions on computer software continue in place, there has been improvement. Furthermore, the Brazilian Government has introduced legislation that will remedy some of the problems.

The European Community was placed on the Priority Watch List for market access restrictions that limit U.S. audiovisual exports. The EC Broadcast Directive, adopted in October 1989, directs EC member states to ensure "where practicable" that TV broadcasters reserve a majority of broadcast time for European works. The Directive takes effect on October 3, 1991. Various member states have already begun enacting broadcast quotas (France -- 60% of programming must be European, and after January 1, 1992, 60% of prime-time programming must be European; Italy -- 40% of televised feature films on independent channels must be European, rising to 51% by 1994; UK -- a majority of programming time on independent channels must be European - informal BBC guidelines are even stricter; Spain -- 40% of programming must be produced in the EC; Portugal -- majority of broadcast time must be European;).

Australia was also placed on the Priority Watch List under the market access provisions of the statute for limiting U.S. audiovisual exports. Australia maintains a quota of 40% Australian origin on television transmissions from 6 a.m. to midnight; this quota will rise to 50 percent in 1993. In addition, the Australian Broadcast Tribunal requires that dramatic programming meet "Australian look" standards, discouraging foreign television programs. Finally, with the exception of 20 percent of the pictorial matter, all television advertisements must be produced in Australia or New Zealand.

WATCH LIST

In reviewing the practices of all of our trading partners, the USTR has decided that 23 of those trading partners should be placed or retained on the Watch List for special attention (rather than be otherwise identified) because they maintain intellectual property practices or barriers to market access that are of particular concern.

Over the next year, the United States will step up its efforts with these trading partners to resolve problems associated with protection of intellectual property or market access.

Those placed or retained on the Watch List are:

Argentina	Italy	Taiwan
Canada	Hungary	Turkey
Chile	Japan	Saudi Arabia
Colombia	Korea	United Arab Emirates
Cyprus	New Zealand	Venezuela
Egypt	Pakistan	Yugoslavia
Germany	Philippines	
Greece	Spain	
Indonesia		

OTHER ACTIONS

Malaysia has been removed from the Watch List because of its adherence to the Berne Convention and improved enforcement efforts in the area of copyright.

Although not placed on any lists, problems in three countries have raised specific concerns. In the case of Poland and the U.S.S.R., as a result of bilateral negotiations with the United States that took place last year, both countries are undertaking significant reforms in their intellectual property regimes. Rapid passage and implementation of this legislation is extremely important since piracy of intellectual property, particularly of copyrights, appears to have increased dramatically, particularly in Poland. In the case of Ecuador and the other countries of the

Andean Pact, lack of adequate patent protection is of great concern to our industries. It is our hope that these countries will introduce this protection in the near future.

USE OF SPECIAL 301 TO DATE

In its first annual review, on May 25, 1989, the USTR singled out 25 trading partners whose practices warranted special attention. Of these, 17 were placed on the Watch List, while the remaining eight were placed on a Priority Watch List.

The status of the eight trading partners placed on the Priority Watch List was reviewed on November 1, 1989. Saudi Arabia, Korea and Taiwan were moved from the Priority Watch List to the Watch List at that time because of significant progress in the protection of intellectual property rights.

In January 1990, Mexico was removed from all lists after it published its "Industry and Trade Sectoral Plan" outlining the Mexican Government's intention to improve process and product patent protection, in addition to improving the enforcement of trademarks and providing enhanced protection for trade secrets.

In the second annual review, announced on April 27, 1990, the USTR placed 23 trading partners, whose practices were of special concern, on one or the other of the two lists. Four countries were retained on the Priority Watch List: Brazil, India, PRC, and Thailand. Nineteen trading partners were retained on the Watch List. Portugal was removed from all lists.

PROGRESS ON INTELLECTUAL PROPERTY ISSUES

January - April 1991

- o Chile enacted a revised patent law, including product patent protection for pharmaceuticals but implementing regulations have not yet been issued. (January).
- o The United States and The People's Republic of Mongolia signed a trade agreement including strong protection for intellectual property rights (January).
- o Japan sent a revised copyright law to the Diet for consideration which would extend the term of protection from 30 to 50 years, and provide better protection for foreign phonograms (March).
- o Japan introduced a bill in the Diet amending the Trademark Law to provide protection for service marks (March).
- o Venezuela has decided to modernize its industrial property

legislation and intends to submit legislation to Congress by mid-1991.

- o The United States and Bulgaria signed a trade agreement including strong protection for intellectual property rights (April).
- o Egypt forwarded a new audio-visual law to its Parliament (April), and long-awaited copyright amendments are expected shortly.
- o Greece is near completion of draft copyright amendments to extend protection to sound recordings and computer software.
- o Indonesia agreed to improve conditions of market access for motion pictures, take additional steps to curtail copyright piracy, and continue discussion of further market-opening measures. (April)

1990

- o Mexico published its "Industry and Trade Sectoral Plan" outlining the government's program to modernize protection and enforcement of patents, trademarks and trade secrets (January).
- o The Federal Republic of Germany increased penalties for infringement of intellectual property rights (January).
- o Yugoslavia amended its patent law to extend the term of protection to 20 years from filing, among other improvements (March).
- o The United States signed a trade agreement with Poland which includes strong terms of protection for intellectual property rights (March).
- o The European Community, Japan, Switzerland, and fourteen LDC's tabled legal texts in the Uruguay Round negotiations on the Trade Related Aspects of Intellectual Property Rights (April).
- o The United States signed a trade agreement with Czechoslovakia which includes strong terms of protection for intellectual property rights (April).
- o In Spain, several defendants were found guilty of computer software piracy by a district court judge in the first case to test the 1987 intellectual property law (May).

- o The United States and the Union of Soviet Socialist Republics signed a trade agreement which includes Soviet commitments to pursue strengthened IPR protection (June).
- o Chile clarified its copyright protection for computer software, thus ensuring that it is a literary work (June).
- o The People's Republic of China passed a copyright law with protection effective in June, 1991. However, the law does not protect foreign authors' works first published outside of China. (September).
- o Malaysia amended its copyright law and acceded to the Berne Convention for the Protection of Literary and Artistic Works (October).
- o Japan enacted a law protecting trade secrets (October).
- o The European Community took a "common position" on protection for computer software, including a 50-year term of copyright protection (December).

1989

- o Agreement was reached to establish bilateral copyright relations with Taiwan (January).
- o Korea created a task force to coordinate intellectual property responsibilities between ministries and designated enforcement teams (January).
- o A Bilateral Agreement on Copyright was signed with Indonesia (March).
- o A Uruguay Round mid-term review decision on intellectual property was reached (April).
- o The People's Republic of China committed to provide copyright protection for computer software (May).
- o Colombia resolved royalty remission problem concerning motion pictures (May).
- o Taiwan agreed to expeditiously resolve copyright problems concerning motion pictures (May).
- o Saudi Arabia adopted a patent law (May).
- o Colombia passed a law defining computer software as copyrightable material (June).

- o Spain extended patent protection to U.S. plant varieties on a reciprocal basis (June).
- o Taiwan initialled a bilateral copyright agreement, and submitted legislation which better protects films from unauthorized public performance (July).
- o Argentina agreed to modify its pharmaceutical product registration procedures, and to address the issue of patent protection for pharmaceutical products (September).
- o Indonesia enacted its first patent law including product protection for pharmaceuticals, effective August 1991 (October).
- o Portugal increased penalties for audio piracy (November).
- o Italy introduced legislation to prevent computer software piracy (November).
- o Saudi Arabia enacted a new copyright law (December).