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### **USTR ANNOUNCES RESULTS OF SPECIAL 301 ANNUAL REVIEW**

United States Trade Representative Charlene Barshefsky today announced the results of the 1998 "Special 301" annual review which examined in detail the adequacy and effectiveness of intellectual property protection in over 70 countries. Ambassador Barshefsky also announced that she will, as a result of this year's Special 301 review, initiate WTO dispute settlement consultations with Greece and the European Union, though she took note of recent developments in Greece. This brings to 10 the number of IPR-related WTO complaints filed by the United States. The report also addressed developments in Taiwan and Mexico.

"The progress we have achieved as a direct result of this year's Special 301 annual review underscores the fact that Special 301 is one of the most effective instruments in our trade policy arsenal," stated Ambassador Barshefsky.

In addition, Ambassador Barshefsky announced placement of 15 trading partners on the "Priority Watch List," including Israel, Macao, Argentina, Ecuador, Egypt, the European Union, Greece, India, Indonesia, Russia, Turkey, Bulgaria, Italy, Dominican Republic, and Kuwait. She also placed 31 trading partners on the "Watch List."

#### Actions Previously Announced in 1998

Earlier this year, on January 16, Ambassador Barshefsky announced out-of-cycle review decisions with respect to Paraguay and Bulgaria.

At that time Paraguay was identified as a Priority Foreign Country because of its failure to take effective action against alarming levels of piracy and counterfeiting and failure to implement adequate and effective intellectual property laws. In announcing this decision, Ambassador Barshefsky noted that a section 301 investigation would be initiated within 30 days and failure by the Government of Paraguay to address U.S. concerns prior to the close of the investigation could lead to the imposition of bilateral trade sanctions. With respect to the situation in Bulgaria, Ambassador Barshefsky stated that, "should Bulgaria fail to make substantial progress toward

combating the piracy of CDs and software compilations on CD-ROMs, it will be identified as a priority foreign country as early as April 1998.”

Today, Ambassador Barshefsky stated, “We have actively engaged both Paraguay and Bulgaria in negotiations to address our concerns. We are pleased that both governments have begun to recognize their responsibilities and have made some limited progress toward resolving our concerns this year. However, to avoid further action by the Administration, it is essential that both governments, over the next several months, take significant, effective, and sustained enforcement actions to substantially reduce piracy and provide adequate and effective intellectual property protection.”

Also this year, on March 30, Ambassador Barshefsky announced that the Administration suspended a portion of Honduras’ benefits under the Generalized system of Preferences (GSP) and Caribbean Basin Initiative (CBI) because of its failure to control piracy of TV satellite signals. Today, Ambassador Barshefsky noted that, “On April 23, the Government of Honduras took its first steps toward resolving this dispute by taking action against two pirate stations. We are encouraged by this action, and look forward to additional actions to fully resolve our concerns.”

### Accomplishments Over The Past Year

Ambassador Barshefsky noted the substantial progress made during this past year in improving intellectual property protection, including progress in countries whose practices have been major IPR concerns in the past.

Progress has occurred throughout the world, much of it the direct result of U.S. Government pressure. While more needs to be done in many of these countries, progress has occurred in such countries as China, Brazil, Russia, Turkey, Bolivia, Korea, Ireland, Sweden, Panama, Cyprus, San Marino, and Luxembourg, and most recently in Bulgaria and Singapore. An attachment to this release, entitled Developments in Intellectual Property Rights, identifies the specific progress made with these and other countries.

China: There has been continued progress in China. Through 1995, China was the world’s leading exporter of pirated optical media products --compact discs (CDs), video discs (VCDs), software CD-ROMs (containing software and video games) --where illegal exports of optical media products cost U.S. industry over a billion dollars. In contrast, losses from optical media exports in 1997 were down very significantly according to industry estimates. Since the 1996 agreement, China has shut down 64 CD production lines and largely reduced exports of pirated IPR products. According to Chinese Government statistics, more than 800 individuals have been imprisoned in China as a result of illegal IPR piracy activities.

Ambassador Barshefsky stated, “We have seen continued progress in reducing illicit IPR

production, and are beginning to see the legitimate licensing of film and music production in China. But, China must demonstrate a greater resolve to address illegal importation of CD and VCD products, as well as other IPR violations including the illegal reproduction of software products, retail piracy, and trademark counterfeiting. Consistent with our approach of enforcing all of our trade agreements, we will continue to work to ensure that China strengthens its enforcement against illegal importation, distribution, reproduction and sale of all illegitimate IPR products.”

Bulgaria: Progress has also occurred in Bulgaria since the January announcement that Bulgaria would be identified as a priority foreign country as early as April 1998. Today Ambassador Barshefsky said, “Bulgaria’s stated commitment and the recent steps it has taken toward addressing piracy are a welcome indication of the Government’s resolve to enforce its intellectual property laws. While initial reports of Bulgaria’s efforts to address pirate CD production are encouraging, given the magnitude of the problem, Bulgaria must demonstrate its ability to substantially eliminate copyright piracy over the long term. We will closely monitor the level of piracy in Bulgaria and review the situation in September 1998. Should Bulgaria fail to maintain significant enforcement efforts against pirate production of CDs and software compilations on CD-ROMs, it will be identified as a priority foreign country as early as September.”

On January 28, Bulgaria announced a CD manufacturing plant licensing decree which aims to address the alarming increase in pirate CD production. Under this decree plants are not allowed to operate without a manufacturing license or without a specific license for titles that are being produced. As a result, Bulgarian officials reported that all CD production facilities were closed pending the issuance of manufacturing licenses. Some plants have since been issued licenses and resumed production under this decree. This production must be closely monitored as there have been unconfirmed reports of additional piracy. Bulgaria has also committed to place CD plants under 24 hour surveillance and immediately address any evidence of illegal production, establish a specialized enforcement unit to deal with CD piracy, and introduce regulations on the importation of CD manufacturing equipment and raw materials. Bulgarian officials report that the Ministry of Interior has carried out 174 operations resulting in the seizure of 120,000 pirate CDs thus far in 1998.

Brazil: Over the past year, the Government of Brazil has enacted modern laws to protect computer software and copyrights. This complements Brazil's May 1997 implementation of modern patent legislation. In recognition of these significant developments, Brazil is removed from the Watch List. However, Brazil must take further significant steps to combat piracy. We look forward to issuance of a significant number of pharmaceutical “pipeline” patents in the very near future.

Taiwan: Taiwan authorities have worked diligently over the last five years to improve intellectual property laws and regulations; however, more work needs to be done in the implementation and enforcement of these laws and regulations. Taiwan-origin pirate and counterfeit products --CDS, CD-ROMs, and video games -- are being seized in the United States and Latin America,

specifically in Paraguay and Brazil. The effectiveness of the patent enforcement system in Taiwan is of concern. The United States is also concerned that judicial procedures dealing with powers of attorney are preventing effective prosecution of copyright violations. Nevertheless, the United States believes that the Taiwan authorities, at the highest levels, are dedicated to implementing specific new measures that will prove successful in rapidly increasing the level of IPR protection. Ambassador Barshefsky stated, "We welcome Taiwan authorities' recent assurances and we will closely monitor implementation of the specific measures over the next several months."

### WTO Dispute Settlement

As in previous years, Ambassador Barshefsky once again is using the occasion of the annual Special 301 announcement to announce the initiation of WTO dispute settlement proceedings against countries not meeting their obligations under the TRIPS Agreement. The TRIPS Agreement obligates WTO members to provide minimum standards in their domestic law for protecting intellectual property and to enforce those standards.

#### *Greece and the European Union*

Ambassador Barshefsky today announced the initiation of WTO dispute settlement proceedings against Greece and the European Union regarding the high rate of television piracy in Greece. The United States is concerned that the failure to take action against TV stations that routinely broadcast U.S. movies and other programming without authorization represents a violation of the enforcement obligations of the TRIPS Agreement. This brings to 10 the number of IPR-related WTO complaints -- out of a total of 36 -- initiated by the United States.

"Approximately 150 Greek TV stations continue to broadcast U.S.-owned motion pictures and television programming without authorization and without any payment of compensation to U.S. copyright holders," said Ambassador Barshefsky. "We look to Greece and the European Union to recognize their obligations and to move quickly to end piracy of U.S. copyrighted works."

In 1996 the Government of Greece made a commitment to the United States to implement an "action plan" to address the problem of television piracy. As part of this "action plan," the Government of Greece committed, by April 30, 1997, to license Greek television stations, to deny licenses to stations that engaged in piracy, and to force unlicensed stations to stop broadcasting. Although the licensing process has been plagued by repeated delays, the Government of Greece finally completed the first stage of the process on March 23, 1998. The Government of Greece has stated in recent days that it has begun the process of closing down stations that have failed to submit applications for a license.

The requests for WTO consultations with Greece and the European Union were made yesterday and consultations are expected to be held within 30 days.

### *On-going WTO TRIPS Cases*

Over the past year, significant results have been achieved in several of the dispute settlement cases previously announced by Ambassador Barshefsky. In 1997, Ambassador Barshefsky announced cases against Sweden, Ireland and Denmark. Sweden has now committed to amend its law to provide provisional relief in civil enforcement proceedings, and Ireland has committed to accelerate its work on a new copyright law and to pass expedited legislation addressing two pressing enforcement issues. The United States welcomes these actions by our trading partners to move toward compliance with their TRIPS obligations.

By contrast, the United States' case against Denmark has not moved quickly toward settlement. Ambassador Barshefsky stated, "We are concerned that the Government of Denmark does not appear to appreciate the importance of the availability of effective provisional measures in protecting intellectual property rights."

### *Other Developments in the Past Year*

Ambassador Barshefsky expressed satisfaction with the recent conclusion of the United States' case against India. In December 1997, the WTO Appellate Body upheld a panel ruling in favor of the United States in this case involving patent protection for pharmaceuticals and agricultural chemicals and India's failure to provide a patent "mailbox" system. On February 13, 1998, India committed to implement the results of the dispute settlement proceedings. On April 22, 1998, India pledged to amend its law to comply with its TRIPS obligations as soon as possible, and no later than April 19, 1999.

The United States' WTO case against Turkey was also successfully resolved during the past year. In December 1997, the Government of Turkey issued regulations equalizing its tax on box office revenues for foreign and domestic films. This action could save the U.S. film industry millions of dollars in the coming year.

### 1998 Special 301 Decisions

Under the Special 301 provisions of the Trade Act of 1974, as amended, Ambassador Barshefsky today identified 47 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States persons that rely upon intellectual property protection. She noted IPR developments or growing concerns among an additional 17 trading partners.

In doing so, Ambassador Barshefsky noted the identification earlier this year of Paraguay as a Priority Foreign Country and again designated China for "Section 306 monitoring" to ensure that China complies with the commitments it has made to the United States in bilateral intellectual property agreements. Section 306 of the Trade Act of 1974, as amended, authorizes the USTR to

impose trade sanctions if the commitments of a bilateral agreement are not met. As noted above, significant progress on IPR enforcement is now beginning to occur in China.

Ambassador Barshefsky announced placement of 15 trading partners on the Special 301 Priority Watch List. One of these trading partners -- Bulgaria -- will be subject to review during the course of the year to evaluate progress made in the next several months. Other trading partners on the Priority Watch List include Israel, Macao, Argentina, Ecuador, Egypt, the European Union, Greece, India, Indonesia, Russia, Turkey, Italy, Dominican Republic, and Kuwait.

The USTR also announced placement of 32 trading partners on the Watch List, and that "out-of-cycle" reviews would be conducted with four of these trading partners -- Hong Kong, Colombia, Jordan, and Vietnam

Other out-of-cycle reviews may be conducted as necessary.

Details of Ambassador Barshefsky's Special 301 decisions are provided in the attached Fact Sheet.

FACT SHEET"SPECIAL 301" ON INTELLECTUAL PROPERTY RIGHTSACTIONS TAKEN

United States Trade Representative Charlene Barshefsky today announced the Administration's decision with respect to this year's review under the so-called "Special 301" provisions of the Trade Act of 1974, as amended (Trade Act).

This decision reflects the Administration's continued commitment to aggressive enforcement of protection for intellectual property. Intellectual property protection has been improving in part as a result of the implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). The decision also reflects progress made over the course of 1997 in resolving many longstanding problems.

The decision announced by Ambassador Barshefsky includes the following specific actions:

- continuing the section 301 investigation of Paraguay following on its identification as a Priority Foreign Country on January 16, 1998.
- initiating WTO dispute settlement procedures against **Greece and the EU**.
- monitoring **China** under Section 306 of the Trade Act of 1974, as amended. This means that USTR will be in a position to move directly to trade sanctions if there is slippage in China's enforcement of the bilateral IPR agreements.
- placing 15 trading partners on the Special 301 Priority Watch List including **Israel, Macao, Argentina, Ecuador, Egypt, the European Union, Greece, India, Indonesia, Russia, Turkey, Bulgaria, Italy, Dominican Republic, and Kuwait** and conducting an "out-of-cycle" review of **Bulgaria**.
- placing 31 trading partners on the Watch List, and conducting out-of-cycle reviews of **Hong Kong, Colombia, Jordan, and Vietnam**.
- In addition, the Administration noted growing concerns or highlighted developments and expectations for progress in 17 trading partners.

Other WTO dispute settlement proceedings and out-of-cycle reviews will be initiated if necessary.

## STATUTORY AUTHORITY

The "Special 301" provisions of the Trade Act of 1974, as amended, require the USTR to determine whether the acts, policies and practices of foreign countries deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection. Special 301 was amended in the Uruguay Round Agreements Act to clarify that a country can be found to deny adequate and effective intellectual property protection even if it is in compliance with its obligations under the TRIPS Agreement. It was also amended to direct the USTR to take into account a country's prior status and behavior under "Special 301."

Once this pool of countries has been determined, the USTR is required to decide which, if any, of these countries should be designated Priority Foreign Countries. Priority Foreign Countries are those countries that:

- (1) have the most onerous and egregious acts, policies and practices which have the greatest adverse impact (actual or potential) on the relevant U.S. products; and,
- (2) are not engaged in good faith negotiations or making significant progress in negotiations to address these problems.

If a trading partner is identified as a Priority Foreign Country, the USTR must decide within 30 days whether to initiate an investigation of those acts, policies and practices that were the basis for identifying the country as a Priority Foreign Country. A Special 301 investigation is similar to an investigation initiated in response to an industry Section 301 petition, except that the maximum time for an investigation under Special 301 is shorter in some circumstances.

Today's Special 301 announcement follows a lengthy information gathering and negotiation process. The interagency Trade Policy Staff Committee that advises the USTR on implementation of Special 301, obtains information from the private sector, American embassies, the United States' trading partners, and the National Trade Estimates report.

This Administration is determined to ensure the adequate and effective protection of intellectual property rights and fair and equitable market access for U.S. products. The measures announced today result from close consultations with affected industry groups and Congressional leaders, and demonstrate the Administration's commitment to utilize all available avenues to pursue resolution of intellectual property rights issues. In issuing the announcement, Ambassador Barshefsky is expressing the Administration's resolve to take consistently strong actions under the Special 301 provisions of the Trade Act.



## DESCRIPTION BY COUNTRY OF EXISTING SITUATION AND MEASURES TAKEN

### **PRIORITY FOREIGN COUNTRY**

Paraguay: Paraguay was identified a Priority Foreign Country on January 16, 1998, as a result of an out-of-cycle review called for in the 1997 Special 301 announcement. In making this decision, Ambassador Barshefsky noted that in the absence of effective enforcement actions by the Government, piracy and counterfeiting have reached alarming levels in Paraguay. The United States has persistently urged the Government of Paraguay to take effective action to crack down against piracy and counterfeiting internally and especially at its borders with Argentina and Brazil. We have also urged the Government to enact adequate and effective intellectual property legislation, covering patents, copyrights and trademarks. Despite the efforts of some concerned Government officials, the enforcement actions taken to date have been insufficient to halt rampant production and export of pirate and counterfeit goods. Paraguay also remains a major transshipment point for such products to the rest of the region. Since the initiation of the section 301 investigation on February 17, Paraguay has made limited progress toward addressing U.S. concerns. Bilateral consultations in March identified some immediate actions that the Government of Paraguay needed to take and other longer-term measures that are necessary to address U.S. concerns. The GOP has made some progress toward meeting these immediate action items and we look to the government to increase its efforts in the near future. Of note, we understand that the trademark and copyright laws are now nearing passage. We also look to the Government of Paraguay to take significant and effective enforcement action, internally and at the border, toward substantially eliminating piracy and counterfeiting and to enact adequate and effective intellectual property legislation without further delay.

### **SECTION 306 MONITORING**

China: Based on the 1995 and 1996 Bilateral IPR Agreements and extensive follow-up work with Chinese officials, China now has a functioning system to protect intellectual property rights (IPR). As an integral part of this national effort, numerous laws, regulations and circulars were issued during 1997. However, we are concerned with end-user piracy of business software, continuing retail piracy, growing trademark counterfeiting and problems in obtaining administrative protection for pharmaceuticals. In addition, the trademark registration process is inconsistent, a problem exacerbated by the lack of judicial review of decisions made by the trademark office. U.S. officials will continue to work to ensure that China strengthens its enforcement against illegal importation, distribution, reproduction and sale of all illegitimate IPR products.

### PRIORITY WATCH LIST

The Administration is placing 15 countries on the Priority Watch List because of the lack of adequate and effective intellectual property protection or market access in these countries is particularly troublesome to U.S. interests. The trading partners are:

Argentina: Argentina's patent regime denies adequate and effective protection to U.S. right holders, particularly in the pharmaceutical industry. As a result, in 1997 President Clinton decided to withdraw benefits for approximately fifty percent of Argentina's exports under the Generalized System of Preferences (GSP) program. Argentina's patent law contains onerous compulsory licensing provisions and pharmaceutical patent protection will not become available until November 2000. Its law does not provide TRIPS-consistent protection for exclusive test data. There is no provision for pipeline protection or protection from parallel imports, which are long-sought U.S. objectives. An additional concern is the ruling by an Argentine court that computer software is not protected under the copyright law. This ruling contradicts the TRIPS Agreement which requires computer programs to be protected as literary works under copyright law. We are extremely concerned that a pending bill that would criminalize software piracy was substantially weakened by amendment in a Senate Committee recently and returned to the Chamber of Deputies. The amendment allows for unlimited reproduction of software by public educational entities, a provision that is clearly incompatible with international agreements. We look to the Argentine Government to obtain quick passage of this bill in its original form and to take further action to come into compliance with its international obligations.

Bulgaria: Bulgaria has established a modern legal framework which should enable the Government of Bulgaria to crack down against copyright piracy. However, until recently, Bulgaria failed to take effective enforcement actions to address a rampant pirate CD and CD-ROM export problem. Ambassador Barshefsky announced on January 16 that Bulgaria would be identified as a priority foreign country, as early as April 1998, without substantial progress toward combating piracy. Some important progress has occurred since that announcement. On January 28, Bulgaria announced a CD manufacturing plant licensing decree to address the alarming increase in pirate CD production. Under this decree plants are not allowed to operate without a manufacturing license or without a specific license for titles that are being produced. In Washington, DC, on February 10, 1998, President Clinton and President Stoyanov announced a U.S. - Bulgaria work program. As part of this program, President Stoyanov committed to seek strict enforcement of Bulgarian legislation and strengthen cooperation among relevant Bulgarian institutions in the fight against piracy. While initial reports of Bulgaria's efforts to address pirate CD production under the plant licensing regime are encouraging, Bulgaria must demonstrate its ability to substantially eliminate copyright piracy over the long term. We will closely monitor the level of piracy in Bulgaria and review the situation in September 1998. Should Bulgaria fail to maintain significant enforcement efforts against pirate production of CDs and software compilations on CD-ROMs, it will be identified as a priority foreign country as early as September.

The Dominican Republic is being elevated to the Priority Watch List because it continues to have inadequate enforcement of its existing laws and a legal regime that does not meet international standards. The government's actions to date to enforce the copyright law have not been sufficient to stem widespread piracy of video and audio tapes, compact discs, and software. While larger cable TV systems generally pay royalties to U.S. right holders, smaller ones continue to pirate satellite signals, and the Government has not responded to requests from U.S. industry for more effective enforcement. Trademarks — particularly of apparel and athletic shoes — are commonly counterfeited and sold locally. The patent law still contains broad exceptions from patentability, and provides an inadequate term of protection. In the next year, we look to the Government of the Dominican Republic to enforce its existing laws more aggressively and bring its legal regime into conformity with TRIPS on or before the January 1, 2000 deadline.

Ecuador. For the past several years, the U.S. Government has repeatedly expressed concern regarding Ecuador's failure to comply with its international intellectual property obligations, failure to act on pending pipeline applications, and failure to address continuing U.S. concerns regarding the onerous Dealers' Act. On April 22, the Ecuadoran Congress passed a new comprehensive IPR law. We understand that President Alarcon has not yet signed the legislation. We have not yet received a copy of the final version of the law and will need time to translate and analyze its contents before we can comment on it. We further understand that on April 29 the Government of Ecuador issued the first approvals of pending pipeline applications, but that the great majority remain pending. U.S. companies also continue to face problems caused by the Dealers' Act. We are, therefore, deferring an announcement for 45 days. All of these issues will be factors in the U.S. Government's review of its options.

Egypt lacks adequate patent protection for pharmaceuticals. The current law excludes pharmaceutical products from patentability and contains overly broad compulsory licensing provisions. President Mubarak has indicated his intention to delay pharmaceutical product protection until the year 2005, despite substantial assistance from the U.S. Government to help Egypt prepare modern legislation. The Egyptian trademark law is not enforced strenuously; fines amount to less than \$100 per seizure, not per infringement, although criminal penalties are theoretically available. The resumption of enforcement against software piracy in September 1997 was a significant step forward, and there is reason to hope that Egypt will continue to recognize the importance of good copyright enforcement. In the coming year, we look to Egypt to move toward quick enactment of a patent law and to strengthen the enforcement of the copyright and trademark laws.

The European Union continues to deny national treatment to U.S. intellectual property right holders with respect to the distribution of revenues collected in association with blank tape levies and public performances. Domestic content restrictions in certain member states deny market access opportunities for U.S. right holders. The EU's single trademark system is problematic for the U.S. pharmaceutical industry. The reciprocity requirement in the recently approved data base directive also raises concerns. On the positive side, through the European Patent Office, EU countries are taking steps to reduce the extraordinarily high fees associated with filing, issuance

and maintenance of a patent over its life which far exceed those in the United States and other countries. The decision to reduce filing and issuance fees was made in December 1996 and became effective July 1, 1997.

Greece: Ambassador Barshefsky today announced the initiation of WTO dispute settlement consultations with Greece and the European Union regarding the high rates of television piracy in Greece. In doing so, Ambassador Barshefsky nevertheless applauded the recent steps taken by the Government of Greece toward addressing this problem, including the recent closure of a number of television stations. She noted, however, that approximately 150 Greek TV stations continue to broadcast U.S.-owned motion pictures and television programming without authorization. We look to Greece and the European Union to recognize their obligations and to move quickly to end piracy of U.S. copyrighted works.

India was a Priority Foreign Country from 1991-1993. India has failed to implement its obligations under Articles 70.8 and 70.9 of the TRIPS Agreement. These articles require developing countries not yet providing patent protection for pharmaceutical and agricultural chemical products to provide a "mailbox" in which to file patent applications, and the possibility of up to five years of exclusive marketing rights for these products until patent protection is provided. As a result, the United States initiated WTO dispute settlement procedures with India on this matter. In December 1997, the WTO Appellate Body upheld a panel ruling in favor of the United States in this case. On February 13, 1998, India committed to implement the results of the dispute settlement proceedings. On April 22, 1998, India elaborated on this commitment, and pledged to amend its law to comply with its TRIPS obligations as soon as possible, and no later than April 19, 1999. While this commitment is welcome, India's patent and trademark laws continue to fall well short of providing adequate and effective protection. India has enacted modern copyright legislation, but improvements continue to be necessary in the enforcement area.

Indonesia has a wide range of serious and continuing deficiencies in its intellectual property regime: software, book, video, VCD, drug, and apparel trademark piracy; audiovisual market access barriers; inconsistent enforcement and ineffective legal system; and amendments to the copyright, patent and trademark laws that are not completely TRIPS consistent. There have been some improvements in the past year, however: the easing of distribution restrictions on the recording industry, the elimination of video import quotas, liberalization of the video import license provisions, the creation of a "Team of Control for the Distribution of Video Recordings," progress in updating the copyright law and more-closely adhering to treaty standards; and a number of successful copyright enforcement actions. We are recommending a series of steps the Government of Indonesia could take in the next six months that would materially improve the protection of intellectual property and we will review the situation if the changes warrant. Several of these steps involve progress toward resolving long-standing problems specific U.S. companies have faced in protecting their trademarks.

Israel's copyright law is inadequate and antiquated, enforcement and penalties are ineffective, and there is a rapidly growing problem of pirate audio CD production. We are elevating Israel to the

Priority Watch List because of the Knesset's repeated failure to make good on promised legislative reforms and the absence of serious attempts by Israel to rein in piracy of intellectual property. Much of the 50-60 million unit capacity of Israel's five CD plants is believed to be employed in unauthorized duplication of CD's for export. A new draft copyright law intended to meet international standards has been pending for several years, but has not passed and still falls short of international standards. In February 1998, the Israeli Knesset amended the patent law to allow non-patent holders to manufacture and export patented pharmaceutical products prior to the expiration of the patent to seek foreign and Israeli marketing approval when the patent expires. The law also contains a provision allowing a relatively short term of patent extension. Now pending are draft regulations that would allow parallel importation of pharmaceuticals. We urge the Israeli government to take effective steps to control CD piracy and to reconsider its pending parallel import regulations.

Italy is being elevated to the Priority Watch List because the Government of Italy has failed to enact effective anti-piracy legislation that includes TRIPS-consistent penalties sufficient to provide a deterrent to piracy and counterfeiting. In announcing the results of an out-of-cycle review of Italy in October 1997, Ambassador Barshefsky noted that the U.S. looked to the GOI to pass such legislation prior to this year's annual review. We are extremely concerned that Italy has failed to pass such legislation especially because Italy currently has some of the lowest criminal penalties in Europe and one of the highest rates of piracy. Piracy and counterfeiting of American intellectual property in Italy continue to be major problems, particularly with regard to piracy of video, sound recordings and books. While noting that Italy has stepped-up enforcement actions, we are concerned with recent indications that TRIPS-consistent remedies against end-user software piracy may not be available in Italy. We are also alarmed by recent passage of a new television law that increases restrictions on U.S. television programming.

Kuwait has been formulating copyright legislation since 1989, but has not yet enacted it. Elevation to the Priority Watch List is the result of our heightened concern at the tardiness of Kuwait's action. A new draft law has been circulating since October 1997; the U.S. government provided comments to make this draft TRIPS compatible — particularly with regard to rental rights, protection of sound recordings, and protection of computer programs and databases. There has been little tangible progress made on implementing adequate and effective patent protection. Kuwait has claimed the developing-country transition period to bring its intellectual property regime into compliance with its TRIPS obligations, but the pace of work thus far has not been sufficient to complete the needed steps by January 1, 2000. We will develop an Action Plan with Kuwaiti authorities to make it possible to meet those obligations in a timely manner.

Macao is being elevated to the Priority Watch List because of an explosion of illegal CD, CD-ROM and VCD manufacturing in Macao which causes economic losses to U.S. business. Macao has taken initial enforcement actions, including the seizure of production lines. We look to the Government of Macao to intensify cooperation with the representatives of the legitimate copyright holders, prosecute vigorously copyright violators, and enact a strong new copyright law. We also look to Macao to reinforce its system for the regulation and monitoring of

production equipment. We welcome recent assurances from the Government of Macao to address these issues, as well as new legislation to take effect May 1 that will license the import and export of compact discs and CD production equipment. We look forward to the implementation of an anti-piracy program that will quickly yield tangible results.

Russia remains one of the largest pirate markets. As required by our bilateral trade agreement, Russia has adopted a legal framework that with some exceptions meets international standards. However, enforcement of those laws has been limited. Russia strengthened enforcement efforts somewhat in 1997, particularly around Moscow. In July 1997, a Russian Anti-Piracy Organization was established by the Russian film industry with the cooperation of U.S. industry to press for increased enforcement and to assist in enforcement training. Seizures of pirated products have increased, but few prosecutions have ensued and fines levied are too low to be effective deterrents. We have proposed a program of comprehensive enforcement assistance to further this effort in which U.S. industry is prepared to take an active part, and are now moving forward with it. Russia still does not provide retroactive copyright protection for U.S. works and sound recordings, but has acknowledged that it must do so. We will look for Russia to take the steps necessary to bring its intellectual property laws into full compliance with TRIPS no later than its accession to the World Trade Organization, without transition.

Turkey: On January 16, as a result of an out-of-cycle review, Ambassador Barshefsky announced that Turkey would be maintained on the Priority Watch List but that the United States would not consider requests to augment Turkey's benefits under the U.S. Generalized System of Preferences (GSP) until long-sought improvements were made in Turkey's intellectual property regime. Since that announcement, Turkey made progress on several of the six benchmarks identified in last year's Special 301 announcement, but much remains to be done. Taxes on the showing of foreign and domestic films have been equalized; the Prime Minister issued a directive to all government agencies to legalize the software used in their offices; and a public anti-piracy campaign was begun. However, amendments to the copyright and patent laws have not yet been passed and, therefore, these laws remain deficient and TRIPS inconsistent in a number of respects. Penalties for copyright piracy need to be increased, and effective enforcement actions must be taken to address widespread piracy. Turkey's future benefits under the Generalized System of Preferences (GSP) will depend on progress on the remaining benchmarks. The Administration intends to closely monitor Turkey's progress toward resolving remaining U.S. concerns and is hopeful that recent progress is an indication of Turkey's commitment to provide improved intellectual property protection.

## WATCH LIST

Australia: The Australian Government has introduced legislation to allow the parallel importation of sound recordings. Australia has also introduced legislation that would remove protection from parallel imports for copyrighted labeling and packaging materials associated with other goods. The United States is seriously concerned by efforts to weaken intellectual property protection in Australia and has made these concerns clear to the Government on several occasions. In 1997, the Australian government also announced a new regime governing the protection of test data for pharmaceuticals and agricultural chemicals to come into effect on January 1, 1998. However, legislation setting out these changes has not been passed by Parliament. The United States is concerned that in the case of marketing approval for new uses of existing products or new formulations, Australia continues to allow later applicants to free ride on the data developed and submitted by the first applicant at great expense, putting the first applicant at a competitive disadvantage. The Australian Copyright Act and its interpretation by Australian courts in certain instances has created costly and burdensome obstacles to the enforcement of intellectual property rights against piracy. The U.S. Government is pleased that efforts are being made to address these burdens and that the Government of Australia is considering the grant of patent term extension to account for delays in the regulatory approval process for pharmaceuticals.

Although Bahrain is a member of the WTO, it has not brought its copyright law into compliance with TRIPS and Berne Convention standards. The patent law does provide for pharmaceutical product protection, but only through re-registration of patents filed in the UK. There has been a notable decline in video piracy, but end-user piracy of business software is still almost 90%, according to U.S. industry estimates. The Government announced January 1 that dealers had until the end of February to clear their shelves of pirated product, but the results of that announcement are still unclear. We urge Bahrain to update its intellectual property laws and increase enforcement of them, and to bring them into conformance with its TRIPS obligations by January 1, 2000.

Canada: The Government of Canada has adopted amendments to its copyright law that discriminate against the interests of some U.S. copyright holders. Canada has established a public performance right for record producers and performers. It also has established a levy on blank audio recording media, the revenues from which are intended to compensate performers and producers for the performance and unauthorized home-taping of their works in Canada. The United States remains extremely concerned that U.S. performers and producers are denied national treatment with respect to these provisions and will closely monitor any future reform of Canada's copyright laws.

Chile: While generally strong, Chile's IP laws are not fully consistent with international standards in a number of respects. For example, the term of protection in Chile's patent law is not consistent with TRIPS. In addition, Chile's copyright law does not protect computer software as a literary work and the trademark law is deficient in a number of areas. Enforcement, particularly against counterfeit products remains ineffective. A copyright reform bill to address some of these

deficiencies has been pending since 1996. However, we note that operation of Chile's Department of Industrial Property has improved and look forward to progress in 1998 on processing patent applications regarding pharmaceutical products.

Colombia needs to take an active role in the Andean Community to bring Decisions 344, 345 and 351 into conformity with TRIPS before the January 1, 2000 deadline. The lack of adequate pharmaceutical patent protection costs the U.S. industry substantial sums each year. The Government of Colombia also needs to license cable TV operators. It currently prohibits U.S. program owners from selling to unlicensed stations, but has not approved the licenses needed to meet demand. The Colombian Government has increased copyright enforcement in recent years, but more stringent border controls are needed to bring importation of pirate CD's under control. We will conduct an out-of-cycle review of Colombia's progress toward addressing these problems in December 1998.

Costa Rica improved its copyright laws in 1994, but enforcement is inconsistent. While piracy of satellite transmissions by the domestic cable television industry had been somewhat curtailed, hotels continue to pirate signals. Piracy of video recordings and software is also widespread, although some limited progress has been made in reducing such practices. Patent protection does not comply with a number of Paris Convention and TRIPS requirements. Costa Rica must offer full protection for all products, including pharmaceuticals, chemicals, and agricultural chemicals, by January 1, 2000. We encourage Costa Rica to continue efforts to improve enforcement, and to bring its laws into conformity with TRIPS. As part of those efforts, the government needs to take measures to ensure that its own ministries use only legitimate software.

In the Czech Republic, laws have been brought substantially in line with U.S.-Czech bilateral obligations and with the Czech Republic's TRIPS obligations (the Czech Republic waived the developing country transition for implementation of TRIPS). Enforcement, while improving, remains weak. Czech enforcement efforts through 1997 lagged, with a notable lack of success in securing effective deterrent penalties from the judiciary. The Czech authorities undertook structural reforms that had some effect against "retail" pirates, but were much less effective in combating more sophisticated forms of piracy. Unauthorized retransmission of encrypted satellite and broadcast signals by Czech cable companies are significant problems. The three CD plants in the Czech Republic reportedly produce far more than could be required to meet domestic demand. Much of the excess output allegedly is exported to the EU and former Soviet Union. Industry in 1997 noted the alarming spread of unauthorized "smart cards" and other anti-piracy technology-defeating devices. We urge the Czech Republic to explore, in cooperation with industry as appropriate, regulatory methods to stop production of pirate optical media, and to work with police, customs, and judicial authorities to improve the effectiveness of the enforcement system.

Denmark: In 1997, the United States initiated WTO dispute settlement proceedings against Denmark because of concern that Denmark had not implemented the TRIPS obligation requiring provisional remedies, including ex parte procedures in civil enforcement proceedings. Courts



must be granted the ability to order unannounced raids in appropriate cases to determine whether infringement is taking place and to preserve evidence of infringements as well as the ability to order that allegedly infringing activities be stopped pending the outcome of a civil infringement case. The availability of provisional relief in the context of civil proceedings is of particular importance to the software industry, as well as other industries dependent upon intellectual property protection. We are concerned that Denmark has made little progress toward resolving this issue over the past year.

Guatemala's Congress passed a new copyright law on April 28. This law, which the Government of Guatemala strongly supported, facilitating its passage so that it could be considered during this year's Special 301 review, represents an important step forward in Guatemala's efforts to provide improved protection to intellectual property, and we look forward to reviewing this important piece of legislation. The United States encourages President Arzu to sign this bill into law shortly and the Government of Guatemala to vigorously pursue effective enforcement of the new law. However, we note that many changes are still needed to bring Guatemala's intellectual property laws into compliance with TRIPS by January 1, 2000. For example, a 1992 law authorized regulation of cable television operators to protect international right holders, but no implementing action has been taken and the regulatory entity has not been established; a 1995 agreement between cable TV operators and the U.S. Motion Picture Association failed because the cable operators continued to pirate the U.S. signals. We understand that a bill being developed by the Guatemalan Government would address some of the deficiencies of the 1992 law. Also, the patent law does not meet international standards, and Guatemala has not yet met even the minimal TRIPS requirements that already apply in this regard. We hope that the copyright bill's passage is indicative of the Guatemalan Government's commitment to improving intellectual property rights protection and that we will see further evidence of the government's dedication to addressing its IPR obligations.

Honduras saw a portion of its trade preferences under the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI) suspended on April 20 because of its failure to control broadcast piracy. In the past week, Conatel — Honduras' telecommunications regulatory agency — has ordered the shutdown of the two television stations that had been broadcasting pirated programming. While this represents a positive first step, much remains to be done before the United States can restore trade preferences. Honduras will remain, for the present, on the Watch List as we look for indications it has taken adequate measures to prevent the resumption of broadcast piracy. In addition to broadcast piracy, there is widespread piracy of many forms of copyrighted works — movies, sound recordings, software — and illegitimate registration of well-known marks is a persistent problem. The term of protection in the patent law does not meet international standards, it contains overly broad compulsory licensing provisions, and no protection for products in the pipeline. The Government of Honduras needs to address these shortcomings in legal structure and in enforcement before the TRIPS deadline of January 1, 2000. We hope the recent efforts on the part of the Government of Honduras to address broadcast piracy indicate a willingness to move forward on other areas of inadequate IPR protection.

Hong Kong: The United States is encouraged by the progress Hong Kong has made in the few months since the results of the out-of-cycle review were announced in January. However, despite significant steps forward, the piracy situation has continued to worsen. Retail distribution of pirated products continues to flourish, and illegal production of optical media is increasing rapidly. The United States is pleased that new anti-piracy legislation requiring licensing and inspection of CD production sites passed earlier this year and that a licensing requirement for the import and export of machinery and equipment used for production of compact discs, video compact discs, or CD-ROMs was implemented in late 1997. Hong Kong officials also improved cooperation with the copyright industries, leading to the initiation of a reward system for information concerning commercial pirate operations, and are taking increasingly significant enforcement actions. We look forward to full implementation of the anti-piracy legislation later this year, effective enforcement actions, and to a significant reduction in piracy rates in 1998. We will review Hong Kong's progress toward these goals in an out-of-cycle review in September.

Ireland: In 1997, the United States initiated dispute settlement proceedings against Ireland because Ireland has not yet amended its copyright law to comply with its TRIPS obligations. Developed country obligations under the TRIPS Agreement came into effect in January 1996. Examples of TRIPS inconsistencies include the absence of a rental right for sound recordings, no "anti-bootlegging" provision, and very low criminal penalties which fail to deter piracy, all of which have contributed to high levels of piracy in Ireland. We are pleased that Ireland recently committed to accelerate its work on a new copyright law, to pass expedited legislation addressing two pressing enforcement issues, and has increased enforcement actions against piracy. We look forward to enactment of a TRIPS-consistent copyright law and additional progress on enforcement in 1998.

Jamaica is three years late in passing legislation it committed to enact in our bilateral intellectual property agreement in 1994. Pending legislation, while not halted, has been moving very slowly through the legislature. The Bilateral Investment Treaty that accompanied the IPR agreement is already in force, so Jamaica enjoys the benefit of the BIT while failing to meet its commitments. We understand that the Jamaican Government has developed a time line for the progression of the IPR bills through the Congress, and look to the Jamaican Government to move quickly to move the pending IPR legislation in order to meet Jamaica's obligations.

Japan continues to present a number of concerns in its protection of software and trade secrets, and in the operation of its patent system. U.S. computer software groups remain concerned about end-user piracy in Japan. The Japanese Government should strengthen its enforcement of anti-piracy laws. The amendment of Japan's Civil Procedures Act to award punitive damages rather than actual damages would be an important step toward increasing the deterrent the deterrent against software piracy. Japanese law limits the ability of judges to seal court records or otherwise protect proceedings from disclosure. This puts owners of trade secrets, in cases involving misappropriation, in the untenable position of being unable to protect a trade secret without disclosing it. We encourage the Government of Japan to amend the civil procedure act to correct this anomaly. Over the years, Japan has been receptive to U.S. concerns regarding narrow

claim interpretation before the Japanese Patent Office and narrow patent claim interpretation in the courts. The February 1998 decision of the Japanese Supreme Court to permit an infringement finding under the "doctrine of equivalents" represented a positive step toward broadening Japanese courts' generally narrow interpretation of patent claims. Intellectual property rights issues continue to be the focus of U.S.-Japan discussions in a number of multilateral, regional and bilateral fora.

Jordan provides no patent protection for pharmaceutical products and copyright piracy is estimated at 100 percent. Jordanian companies market more than 50 pirated U.S. pharmaceuticals in Jordan and export approximately \$35 million of pirated pharmaceutical products to other countries in the region. Jordan's 1992 copyright law falls short of internationally accepted norms. In 1997, the Jordanian Parliament failed to pass proposed amendments which would have addressed some of the law's inadequacies. In April, Jordan presented an Action Plan designed to bring it into conformity with TRIPS within two years. We will conduct an out-of-cycle review in December to examine the progress made on the Action Plan and the prospects for speedy action on the remaining steps.

Korea: The Government of Korea has taken a number of steps to enhance the protection and enforcement of intellectual property rights and to reduce piracy in the past year. These include increasing budget allocations for IPR protection efforts, opening a Patent Court on March 1, 1998, and introducing legislation to extend the term of protection for patents. In addition, revised trademark law and industrial design laws went into effect on March 1, 1998. The United States applauds these steps and will continue to work with the Government of Korea to address other IPR issues, including full retroactive protection for copyrighted works and other aspects of TRIPS compliance, market access restrictions for motion pictures and cable TV programming, and the need for adequate protection of well-known trademarks and trade secrets and patents.

A 1996 Royal Decree enacted Oman's first copyright law, but it has major shortcomings, has not yet been implemented, and, in its current form, does not protect U.S. works. The U.S. has proposed a bilateral copyright agreement to protect U.S. works in Oman. Oman also does not provide patent protection for pharmaceutical products. Because its intellectual property protection remains minimal, while neighbors strengthen their regimes, Oman increasingly appears to be attracting pirates, who reportedly are smuggling significant amounts of pirated product across the border with the U.A.E. The U.S. Government has made clear to Oman as part of its WTO accession process that it must become TRIPS-consistent by the time it becomes a member of the WTO.

Pakistan took the steps necessary in 1997 to implement its patent mailbox obligations under the TRIPS Agreement; however, other problems remain. Intellectual property piracy in Pakistan remains widespread. Piracy of copyrighted textile designs and reprinting of books (especially computer books, business titles and medical texts) without authorization continue to be significant problems. There are reports that virtually all of Pakistan's demand for software is being supplied by pirated products. The Government has taken steps to strengthen enforcement efforts regarding

copyrighted works, but the fines applied to infringers have been too low to provide a credible deterrent. Pakistan lacks patent protection for pharmaceutical products and, the term of protection under its patent law for processes is not consistent with TRIPS. Finally, instances of trademark infringement which need to be remedied. We look to Pakistan to move quickly to improve protection for intellectual property.

Peru: Although Peru has relatively strong IPR legislation in place, it is not yet TRIPS-consistent in a number of respects, due to reliance on the Andean Pact Decisions on Intellectual Property which fall short of TRIPS standards. While enforcement actions have been brought, the INDECOPI Appellate Tribunal's pattern of reducing fines it initially assesses seriously hinders enforcement efforts against piracy and counterfeiting. Piracy also continues due to problems with lax border enforcement and a cumbersome and slow judicial process. We will continue to monitor progress in these areas. Finally, we look to Peru, and other members of the Andean Community to complete the important work of modifying Andean Pact decisions to make them consistent with the requirements of TRIPS and also look to Peru to take a leadership role in meeting TRIPS obligations in a timely manner.

In June 1997, the Philippines enacted a comprehensive IPR Code which represents a major step toward TRIPS compliance for copyrights, patents, and trademarks, and created a new Intellectual Property Office within the Department of Trade and Industry. Unfortunately, the law contains a number of ambiguous or problematic provisions, principally an exception for the decompilation of computer programs and overly broad restrictions on technology licensing. Enforcement remains weak, due to court backlogs that pose a particular problem. A Presidential Directive requiring all government agencies to use only legitimate software has had some effect. In January 1998, the Government of the Philippines issued organizational and procedural regulations to implement the IPR Code, but the troublesome substantive issues remain unaddressed. We look to the Government of the Philippines to address these shortcomings quickly.

In Poland, while enforcement has continued to improve for most copyright industries, the Government does not provide adequate protection for U.S. sound recordings. Industry estimates that losses to piracy fell by \$80 million between 1996 and 1997, principally due to a reduction in software piracy. It appears that Poland is not providing national treatment for protection of foreign sound recordings, which would violate its TRIPS obligations. With respect to enforcement, although raids occur in Poland, prosecution usually fails. We look to Poland to provide retroactive protection of sound recordings expeditiously and to increase enforcement generally.

Qatar is being raised to the Watch List because it has not enacted a patent law and therefore does not protect pharmaceutical products. In addition, its copyright law is not TRIPS-consistent, and is inadequately enforced. Pirated motion pictures crowd virtually all legitimate product from the market, and most end users of business software do not buy legitimate software. As a WTO member, Qatar's TRIPS obligations will come into effect on January 1, 2000; we have not seen significant movement toward implementing those obligations. In the coming year, we will look to

Qatar to legalize the software used in government offices, improve copyright enforcement, implement its TRIPS obligations, and move rapidly toward providing product patent protection for pharmaceuticals.

Saudi Arabia's existing laws, regulations, and procedures fall short of international standards in several key areas. While the Saudi Government needs to make its laws consistent with TRIPS to gain WTO membership, the most pressing need is for better enforcement of existing laws. There was, however, some improvement in enforcement in 1997. Industry noted a significant drop in the use of illegal software and in video piracy. However, business software is still widely pirated and the Government needs to control the use of illegal software in its own offices. We urge the Saudi Government to move quickly to bring its laws into conformity with TRIPS as part of its WTO accession process, to increase effective IPR enforcement, and to adopt an effective management plan to eliminate illegal software from government offices.

Levels of IPR protection in Singapore exceed those of other countries in the Asia-Pacific region. However, recent trends indicate that piracy (particularly CD-based copyright infringement) and transshipment are growing. A notable deficiency is Singapore's "self-policing" copyright enforcement policy, which is outdated and ineffective. The Government has shown a willingness in recent months to enforce the copyright laws itself rather than leave the responsibility to right holders. We will closely monitor developments to determine whether this trend continues and whether a proposed new voluntary industry code of conduct for CD producers reduces piracy. In February 1998 the Singaporean Parliament amended the copyright law to eliminate some TRIPS inconsistencies. The Government of Singapore is drafting legislation to implement its TRIPS obligations to protect trade secrets.

South Africa amended its Medicines Act in December 1997. The new law appears to empower the Minister of Health to abrogate patent rights for pharmaceuticals. It also would permit parallel imports. Implementation of the law has been suspended pending the resolution of a constitutional challenge in the South African courts. Undisclosed data also is not adequately protected under South African Law. The need to provide such protection quickly is demonstrated by the approval in South Africa of a generic copy of a medicine which still has undisclosed data protected from competitors' use in many countries. South Africa took the welcome step of amending its intellectual property laws in 1997 to criminalize trading in counterfeit goods, though TRIPS deficiencies remain. South Africa should strengthen enforcement of intellectual property laws. U.S. industry estimates that losses to copyright piracy increased by 26% between 1996 and 1997. During the coming year, we look to the Government of South Africa to enact TRIPS-consistent legislation protecting undisclosed information, to make clear in regulations or legislation that the powers granted in the Medicines Act are consistent with its international obligations and to clarify what actions may be taken pursuant to that Act and under what circumstances. We are committed to working with the South African Government to achieve these ends while addressing serious health care concerns in South Africa.

Sweden: Swedish law permits official institutions such as Government Ministries and the Parliament to provide copies to the public of documents that are filed with them, even though such documents may be unpublished and protected by copyright law. Despite the leadership demonstrated by certain concerned government officials who have attempted to address the situation in a mutually satisfactory manner, ultimate resolution of U.S. concerns continues to be frustrated. We look to the Government of Sweden to take the steps necessary resolve this bilateral irritant without further delay. In contrast, significant progress has been made toward resolving the WTO dispute settlement case initiated by the United States in 1997 regarding provisional relief in civil enforcement proceedings. The Government of Sweden recently published amendments to the copyright law which may address U.S. concerns. The United States looks to Sweden to make substantial progress in the near term toward resolving both of these issues and will review Sweden's Special 301 status in that context.

Thailand: Thailand has taken a number of positive actions over the past year -- in particular, establishment of a IP court and strengthening of their enforcement system. Nonetheless, significant deficiencies remain in Thailand's intellectual property regime. Piracy rates — particularly for videos and software — remain unacceptably high. We will monitor the decisions of the newly-established intellectual property court to see if sentences are sufficient to reduce piracy rates. Thailand also needs to pass a TRIPS-consistent patent law (including abolition of the Patent Review Board), and to take steps to ensure that all Government offices use only legitimate software.

Ukraine needs to strengthen its IPR regime and enforcement. Copyright piracy is extensive and enforcement against pirates of U.S. copyrighted works is minimal. Piracy of audiovisual, broadcast, software and music and sound recordings are causing substantial losses to U.S. industry. Ukraine does not grant protection to U.S. works created prior to 1973, and it does not provide retroactive protection for sound recordings, both of which are required by our 1992 bilateral trade agreement. Ukraine does not provide adequate criminal penalties, including prison terms, for piracy, and apparently no criminal penalties for copyright infringements involving sound recordings, performers or broadcasters. We will look for Ukraine to take the steps necessary to bring its intellectual property laws into full compliance with TRIPS no later than the date of its accession to the World Trade Organization.

The United Arab Emirates has made significant strides in reducing copyright piracy and some progress toward tightening trademark protection. However, there is still little progress toward enacting a new patent law, and the need for "pipeline protection" of new products in the research and development cycle is critical. An adverse court ruling in Dubai in October 1997 leaves in doubt the applicability of the copyright protection for foreign works. We urge the United Arab Emirates to move quickly to enact TRIPS-consistent copyright and patent laws, to clarify that U.S. copyrighted works are protected, and to provide patent protection for pharmaceutical products. We also urge the U.A.E. to ensure that its entire intellectual property regime is TRIPS-consistent before the end of the transition period for developing countries.

Venezuela has played a constructive role in moving the Andean Community toward making the changes needed to bring Community Decisions relating to intellectual property into conformity with TRIPS before the January 1, 2000 deadline. The government created a new intellectual property office (SAPI) in March 1997, which is expected to focus and improve enforcement efforts. It is slated to become operational in May 1998. The decisions under review are not fully TRIPS-consistent with respect to patents, trademarks, copyright, plant varieties, and enforcement of rights. Despite significant improvements — especially in the enforcement of its copyright law — Venezuela does not yet provide adequate and effective protection of intellectual property rights. There is still widespread infringement of well-known trademarks, videos, satellite signals, and other protected works. We look to Venezuela to move quickly to bring its laws into conformity with TRIPS before January 1, 2000 and to continue to increase the effectiveness of the enforcement of its laws.

Vietnam: The Government is still in the formative stages of drafting, enacting and enforcing intellectual property laws. Copyright piracy is the most pressing problem, though there is some record of trademark enforcement. Vietnam's 1996 civil code provides a general framework for an intellectual property system. However, problems persist. Copyright piracy is the most pressing problem, though there is also some unchecked trademark counterfeiting. Vietnam's patent law excludes protection for pharmaceutical and agricultural chemical products, and lacks regulations or additional amendments that would make patent protection fully consistent with international standards. Although U.S. copyrighted works remain unprotected in Vietnam, the Government has begun the process of issuing guidance to enable officials to begin to take actions to protect U.S. works. After our bilateral copyright agreement comes into effect, we look to the Government of Vietnam to enforce its new copyright regime vigorously to reduce piracy levels measurably. We also expect the Government of Vietnam to address intellectual property rights issues in the contexts of negotiations on a bilateral trade agreement and its accession to the WTO, where compliance with TRIPS without transition will be required before the date of accession. We will conduct an out-of-cycle review in December to evaluate progress toward the goals of improving IPR protection and reducing the level of piracy and counterfeiting.

## OTHER OBSERVATIONS

Austria: In 1996, the Government of Austria amended its copyright law. One of these amendments created a compulsory license for the public performance of films in hotels. This compulsory license may violate both the Berne Convention on the Protection of Literary and Artistic Works and TRIPS Agreement. Austria is a member of both these agreements and is obligated to be in full compliance with them both. The U.S. Government will continue to consult with Austria about this matter in the expectation that Austria will amend its copyright law to remove the compulsory license provision.

Copyright piracy in Belarus is extensive and enforcement efforts are insufficient. Piracy of audiovisual, software and recorded works is causing substantial losses to U.S. industry. It is unclear whether Belarus protects pre-1973 works; Belarus does not provide retroactive protection for sound recordings. We look to Belarus to reduce the level of copyright piracy through better enforcement and to take the steps necessary to bring its intellectual property laws into full compliance with TRIPS no later than its accession to the World Trade Organization.

Bolivia signed an Investment Treaty with the U.S. on April 17, 1998. In conjunction with that agreement, the Government of Bolivia committed to become TRIPS-consistent within 12 months, and to notify the WTO of its commitment to implement its obligations within that time. In September 1997, the Government created a single new agency responsible for patent, trademark and copyright issues. Currently, protection of IPR in Bolivia suffers from both inadequate laws and weak enforcement mechanisms. Bolivia needs to work with other members of the Andean Community to address shortcomings in Decisions 344, 345 and 351. Stronger enforcement of existing laws is needed to reduce piracy in Bolivia. We applaud Bolivia's commitment to accelerate its implementation of TRIPS and look forward to seeing the fruits of that commitment.

Estonia provides no protection to foreign sound recordings. Piracy of sound and video recordings destined for both the local market and export is extensive. Software piracy is also a problem. Enforcement has been weak at all levels. Estonia's copyright law is not TRIPS-compatible in several important respects. Because Estonia's application to join the World Trade Organization is at a relatively advanced stage, it is particularly important for the Government to take the steps necessary to bring its intellectual property laws into full compliance with TRIPS quickly and to better enforce those laws before it accedes to the World Trade Organization.

Germany: Concerns remain regarding a major audiovisual piracy problem and the role of German firms in manufacturing and/or exporting throughout Europe of pirated "smart cards" and other "descrambling" devices used to steal encrypted satellite, cable and broadcast transmissions, particularly of U.S. motion pictures. Progress was made with respect to the availability of civil ex parte search orders in 1997 and we look forward to further progress on this issue.

Hungary has made some notable progress in improving legal protection for intellectual property rights in the last year. As a result of effective raids and seizures, the U.S. industry's losses due to



piracy of motion pictures and computer programs have been reduced compared to 1996 and 1995 levels. Nevertheless, piracy rates are still high, and enforcement activity to date has failed to provide sufficient deterrence. The fines imposed are generally too low to be effective. Hungary also needs to comply with its TRIPs obligations by providing full retroactive protection for sound recordings and by providing for civil *ex parte* search procedures. Hungary also needs to refine the law on pipeline protection for patents. In the next year, we look to Hungary to increase the effectiveness of its prosecution of intellectual property offenses, meet the above-noted TRIPs obligations, and address our concerns on pipeline protection.

Kazakhstan has several remaining steps to take to fulfill the IPR commitments under our bilateral trade agreement. It needs to adhere to the Berne Convention for the Protection of Literary and Artistic Works and the Geneva Phonograms Convention, provide full-term retroactive protection for U.S. copyrights, specify protection for sound recordings under the copyright law, license television broadcasting stations, and increase copyright enforcement. Piracy of all copyrighted products is reportedly widespread and there have been no known enforcement measures to date. We look to Kazakhstan to begin significant enforcement measures to reduce piracy rates, to complete its bilateral IPR obligations, and to move toward making its IPR regime consistent with the TRIPs Agreement before it accedes to the WTO.

Lebanon has widespread copyright piracy and an inadequate copyright law. A new law is under consideration, with the Government hoping for passage soon. The Government has actively opposed amendments to allow compulsory licensing of software in educational institutions because they are inconsistent with internationally-accepted standards. Unauthorized use of software is pervasive among private firms and government ministries. There also are concerns that Lebanon is considering allowing the registration of generic copies of drugs still protected by patents. During the next year, we look to the Government of Lebanon to pass a TRIPs-consistent copyright law, to take effective measures to eliminate use of unauthorized copies of software in Government offices, and reduce the rate of video piracy.

Mexico: Mexico has committed to implement and enforce high levels of intellectual property rights protection consistent with its international obligations. Nevertheless, piracy and counterfeiting remain major problems, with U.S. industry losses increasing annually. Only a small percentage of raids and seizures have resulted in court decisions and the levels of penalties assessed when court decisions are made are inadequate to deter future piracy. As a result, manufacturers and distributors of pirated products continue to operate largely unfettered. In 1996, the Government of Mexico passed a new Copyright Law which was a step forward; problems and ambiguities in the law remain to be resolved. To address these concerns in the near term, the United States and Mexico have recently agreed to engage in intensive bilateral consultations which will take place over the next several months.

Netherlands: The United States has repeatedly expressed concern that the Government of the Netherlands fails to provide protection for proprietary data submitted to the Government for gaining marketing approval of pharmaceuticals in a manner consistent with its obligations under

TRIPS Article 39.3. However, we note with satisfaction that a Dutch Court recently reversed an earlier Government decision which was inconsistent with these obligations.

On January 7, Nicaragua signed a bilateral IPR Agreement with the United States — the first such agreement in Central America and the fourth in the hemisphere. The agreement calls for full implementation by mid-1999. Currently, piracy of video recordings, unauthorized video and sound recordings, and U.S. satellite signals by local cable television operators remain widespread. The copyright law does not explicitly protect computer software. The patent law fails to meet international standards for term of protection and for patentable subject matter, and the trademark law is inadequate, particularly for well-known marks. We look to Nicaragua to update its legal structure, to reduce piracy rates affecting all forms of intellectual property, and to bring its IP regime into compliance with the obligations of the IPR agreement quickly.

Recent legislation has strengthened Panama's IPR regime, but inadequate enforcement continues to be a major problem. U.S. companies have complained about the failure of the Government of Panama to seize illegal products in the Colon Free Zone (CFZ). The Government of Panama has only recently begun to organize its IPR enforcement efforts in the CFZ by establishing an intellectual property enforcement unit in the CFZ. As the unit becomes operational, we expect reductions in piracy and counterfeiting in the zone. A new Industrial Property Law should provide better protection for trade secrets. Over the past several months, Panamanian authorities have shown more commitment to enforcing the laws, especially outside the CFZ. We look to them to devote sufficient resources to IP protection and to continue to fulfill their action plan devised last year.

Romania has made some notable progress in improving legal protection for intellectual property rights in the last year. Romania recently enacted a pipeline protection law and the Romanian Parliament has reportedly passed legislation providing for accession to the Berne Convention for the Protection of Literary and Artistic Works and the Geneva Phonograms Convention, which now must be approved by the President. Romania, however, needs to increase the effectiveness of prosecutorial enforcement to ensure that government raids and seizures result in actual prosecutions. It also needs to increase border controls to keep infringing products out of Romania. During the next year, we look to Romania to increase the level of enforcement of its IP laws, allocate adequate resources to the agencies responsible for enforcement measures, increase border enforcement measures, ensure efficient and fair implementation of the pipeline protection legislation, and finalize its accessions to the Berne and Geneva Conventions.

Spain has growing piracy of business software. Despite having low levels of copyright piracy generally, Spain has some of the highest levels of business software piracy in the European Union. The United States is concerned that judicial proceedings are frequently delayed and that penalties assessed against infringers are inadequate to serve as a deterrent against piracy.

In Tunisia, the lack of patent protection for pharmaceutical products means that dozens of unauthorized copies of top-selling medicines are in the market. Once a medicine is manufactured

in Tunisia, its importation is restricted, hindering access to the market for U.S. firms. Trademarks such as those associated with apparel, and copyrighted works such as software, recordings, and movies, suffer from infringement. We look to Tunisia to improve enforcement of its copyright and trademark laws, and to move toward providing patent protection for pharmaceutical products.

Uruguay: Revision of Uruguay's copyright and industrial property legislation has been underway for years. The United States is encouraged that the Government has introduced updated copyright and patent legislation. These revisions are needed to bring Uruguay into compliance with international obligations. The United States encourages Uruguay to accelerate its efforts to enact TRIPS-consistent legislation and to continue its IPR enforcement efforts.

In Yemen, U.S. industry has raised serious concerns over ongoing trademark violations. Local producers, particularly in the household goods sector, appear to be intentionally designing their products to be confusingly similar to well-known U.S. brands. The court system can be slow in addressing intellectual property cases, although U.S. firms have prevailed in the past. We look to Yemen to address these serious trademark concerns quickly.

## Developments in Intellectual Property Rights

1997

### May

- Indonesia approved amendments aimed at bringing the country's copyright law into compliance with the standards of TRIPs. The amendments include the establishment of exclusive rental rights for computer programs and sound recordings and the extension of the term of protection of computer programs to 50 years.
- The Government of Indonesia ratified the Paris text of the Berne Convention (Decree No. 18 of 1997) on May 7.
- Indonesia ratified the new WIPO Copyright Treaty (Decree No. 19 of 1997) on May 7.

### June

- The Government of the Philippines enacted a comprehensive IPR Code (Republic Act 8293) on June 8.
- The Hong Kong Special Administrative Region (HKSAR) passed a new copyright law addressing software decompilation and parallel imports, and also granted customs enhanced authority to seize suspected pirated goods.
- On June 24, the San Marino Parliament approved a new law concerning bootlegging and other IPR issues, such as the mark of origin system on molds for locally manufactured CDs.

### July

- Hungarian law on trademarks and geographic indications became effective July 1st. This law greatly enhances the possibility of obtaining injunctions for trademark infringement.
- A Russian Anti-Piracy Organization was established by the U.S. and Russian film industries to assist in enforcement training.

### September

- WTO Panel ruled in favor of the United States in our case against India regarding India's failure to establish a "mailbox" system for filing patent applications for pharmaceuticals

and agricultural chemicals, and failure to establish a system of exclusive marketing rights for these products.

- Indonesia became a party to the Berne Convention.
- The Government of Luxembourg implemented amendments to the copyright law that brought it into compliance with TRIPs and substantially increased penalties.
- Bolivia created a National Service of Intellectual Property. This new agency is responsible for protecting all IPR -- the first time patents, trademarks and copyright issues will be the responsibility of one agency.
- Egypt resumed enforcement efforts against software piracy.

#### **October**

- The People's Republic of China's criminal law codifying the nature of copyright infringement took effect on October 1.
- The Government of Bulgaria established an Intellectual Property Council.
- Panama's Supreme Court restored the Copyright Office's power to conduct *ex officio* seizures of counterfeit foreign works.

#### **November**

- In Uruguay, a judge issued an eight-month prison sentence to a notorious local software pirate; this is the first time that a judge used the sentencing provisions of the 1937 copyright law.

#### **December**

- The Government of Hong Kong imposed a licensing requirement for the import and export of machinery and equipment used for production of compact discs, video compact discs, or CD-ROMs. The HKSAR also proposed legislation calling for registration and licensing for current and future optical media production facilities, with tough penalties for non-compliance.
- The WTO Appellate Body ruled in favor of the United States on India's appeal of the Panel's decision in *India - Patent Protection for Pharmaceuticals and Agricultural Chemicals Products*.

- Trinidad and Tobago proclaimed IPR legislation to finish implementing our bilateral IPR agreement.
- The Government of Taiwan passed amendments to the copyright law on December 30.
- Thailand opened an Intellectual Property and International Trade Court.
- Vietnam ratified the Bilateral Copyright Agreement negotiated with the United States.
- Poland's Central Board of Customs announced that customs authorities will enforce copyright laws utilizing a new customs code (in force in 1998). According to Customs officials, the new code will simplify customs procedures and make it easier for authorities to seize infringing goods.
- On December 26, Mexico passed an amendment to its 1994 Industrial Property Law, adding a chapter protecting the layout design of integrated circuits.
- Belarus became a member of the Berne Convention on December 12.
- The Dominican Republic became a member of the Berne Convention on December 24.
- The Government of Turkey issued regulations equalizing taxes on domestic and foreign films.

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### **January**

- Philippine's new IPR Code took effect on January 1.
- Two laws came into effect in South Africa on January 1: the Intellectual Property Laws Amendment Act - which amended several acts, including the Patent Act, the Copyright Act, and the Trademarks Act - and the Counterfeit Goods Act.
- The Government of Bulgaria adopted a CD plant licensing scheme.
- Government of Romania passed the Pipeline Protection Ordinance on January 30.
- Romania acceded to the agreements establishing international classifications in the industrial property field and the Trademark Treaty Law on January 8. The Romanian Parliament also ratified the Madrid Agreement.

- Nicaragua signed a Bilateral Intellectual Property Rights Agreement with the United States on January 7 -- the first such agreement in Central America and the fourth in the hemisphere.
- Kazakhstan's new Criminal Code entered into force January 1.

## **February**

- On February 24, the Japanese Supreme Court issued its first infringement finding under the "doctrine of equivalents," thereby broadening its interpretation of patent claims.
- Singapore enacted a copyright amendment bill.
- The San Marino Parliament approved a comprehensive update of San Marino IPR laws on February 25.
- Brazilian President Cardoso, signed into law both the Software Bill and amendments to the 1973 Copyright Law on February 19.
- The Guatemalan Congress approved ratification of the Paris Convention on February 18.
- In Turkey, Prime Minister Yilmaz issued a detailed directive to government agencies, requiring the use of licensed software.
- Ireland committed to expedite drafting of a comprehensive new copyright law, and also committed to draft and pass separate expedited legislation raising criminal penalties for copyright infringement.

## **March**

- The Hong Kong legislature approved the "Prevention of Copyright Piracy" bill on March 25. The bill provides Hong Kong customs with the power to take stronger enforcement action against violators.
- Macao announced that it would establish a license regime on all imports and exports of compact disc production equipment and actual compact discs.
- The Bulgarian Minister of Interior announced on March 19 the formation of a new specialized anti-piracy unit within the National Service for combating organized crime in illicit CD production.

- The Criminal Circuit court for Panama City issued a finding of “criminally responsible” against a video store owner for violations of the copyright law on March 10; this represents the first criminal conviction in Panama for copyright infringement.
- The Colon Free Zone (CFZ) in Panama inaugurated its department of intellectual property to coordinate IPR enforcement actions in the CFZ on March 25.
- The Korean Government opened a Patent Court on March 1.
- The Korean Government adopted the International Classification System and the amended Trademark and Industrial Design Laws went into effect on March 1.
- On March 30th, United States Trade Representative Charlene Barshefsky announced that the United States partially suspended trade benefits that Honduras receives under the Generalized System of Preferences and Caribbean Basin Initiative programs as a result of Honduras’ continued failure to provide adequate and effective IP protection.
- In Australia, legislation to extend patent protection for pharmaceuticals passed the House and was introduced into the Senate.

#### **April**

- Cyprus’ Parliament passed a new patent law that is reportedly one of the strongest in the region.
- Bolivia signed an IP side letter to our bilateral investment treaty committing to bring its law into compliance with TRIPS within twelve months.
- Guatemala’s Congress passed new copyright legislation.
- Ecuador’s Congress passed new intellectual property rights legislation on April 22.
- Ecuador’s Constitutional Tribunal upheld the legality of pipeline patents on April 23.
- The Government of Sweden published amendments to its copyright law which provide for provisional ex parte relief in civil cases.
- On April 28, the Government of Greece closed 20 television stations that did not submit license applications by the March 23 deadline.
- On April 24, a Dutch court upheld the confidentiality of pharmaceutical test data submitted to regulatory authorities.



- Honduras took its first significant enforcement actions against two major television stations engaged in piracy.