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

United States Trade Representative Charlene Barshefsky today announced the results of the 1999 "Special 301" annual review which examines 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 consultations with Argentina, Canada and the European Union. This brings to 13 the number of intellectual property-related WTO complaints filed by the United States since 1996. The Special 301 report also addresses developments, and concerns in such countries as Israel, Malaysia, South Africa, Ukraine, India, Hong Kong, Brazil, Mexico, Korea and Bulgaria.

"This year's review emphasized three critically important issues: proper and timely implementation of the WTO TRIPS Agreement, cracking down on pirated production of "optical media" such as CDs, VCDs, DVDs, and CD-ROMs, and ensuring that government ministries only use authorized software," stated Ambassador Barshefsky. "We have made significant progress on each of these issues over the past year, but the unacceptably high rate of piracy around the world of U.S. intellectual property requires on-going vigilance."

**1999 Special 301 Decisions**

Under the Special 301 provisions of the Trade Act of 1974, as amended, Ambassador Barshefsky today identified 57 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon intellectual property protection.

In today's action, the United States Trade Representative designated Paraguay and China for "Section 306 monitoring" to ensure both countries comply with the commitments made to the United States under bilateral intellectual property agreements.

Ambassador Barshefsky also announced placement of 16 trading partners on the "Priority Watch List": Israel, Ukraine, Macau, Argentina, Peru, Egypt, the European Union, Greece, India, Indonesia, Russia, Turkey, Italy, Dominican Republic, Guatemala, and Kuwait. She also placed 37 trading partners on the "Watch List." In addition, out-of-cycle reviews will be conducted of Malaysia, Hong Kong, Israel, Kuwait, South Africa, Colombia, Poland, the Czech Republic, and Korea.

In addition, Ambassador Barshefsky today announced that an out-of-cycle review will be conducted in September 1999 to assess Malaysia's progress toward substantially reducing pirated optical media production and export.

Reports indicate that approximately 90 optical media (CD, CD-ROM, VCD, and DVD) production lines are operating in Malaysia. The combined production capacity of these lines far exceeds local demand plus legitimate exports. Pirate products believed to have originated in Malaysia have been identified throughout the Asia-Pacific region, North America, South America, and Europe, and pirate products are sold openly in public markets in Malaysia.

Malaysia has recently undertaken a series of constructive steps including the creation of an interagency task force to develop and implement a regulatory regime for optical media production, development of manufacturing and retail level enforcement efforts, and revised affidavit requirements. Malaysia has also prioritized efforts to deter unlicensed use of software by end-users. The United States will monitor progress to ensure that Malaysia's efforts produce a concrete reduction in piracy rates.

As a result of the decisive steps taken by Hong Kong in 1998, we removed Hong Kong from the Watch List during a February 1999 out-of-cycle review. However, piracy rates, which are some of the highest in the world, have not been significantly reduced. Hong Kong has only just begun to address the situation since that review. The U.S. remains deeply concerned that Hong Kong has not devoted adequate resources to address the piracy problem. We note that just today Hong Kong announced that some additional resources are being temporarily dedicated to its anti-piracy effort and that they will launch a public campaign to convince corporations to buy legitimate software. We urge Hong Kong to demonstrate its commitment to intellectual property protection by dedicating additional manpower to the effort on a permanent basis and to substantially reduce piracy rates in the near term. We are encouraged by the promulgation of a concept paper to solicit public support for new efforts to fight copyright piracy, and look forward to seeing additional reforms implemented swiftly. We will assess Hong Kong's progress on these issues in an out-of-cycle review in September.

While on-going piracy and counterfeiting problems persist in many countries, progress has occurred in such countries as India, Bulgaria, Jordan, Mexico, China, Sweden, Korea, and

Ireland. An attachment to this release, entitled Developments in Intellectual Property Rights, identifies the specific gains in these countries and others.

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

### **Implementation of the WTO TRIPS Agreement**

One of the most significant achievements of the Uruguay Round was negotiation of the Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS), which requires all WTO Members to provide certain standards of protection for patents, copyrights, trademarks, trade secrets, and other forms of intellectual property. The Agreement also requires countries to provide effective enforcement of these rights. In addition, the TRIPS Agreement is the first multilateral intellectual property agreement that is enforceable between governments, allowing them to resolve disputes through the WTO's dispute settlement provisions.

While developed countries are already required to fully implement TRIPS, developing countries were given a five year transition period -- until January 2000 -- to implement most of the Agreement's provisions. With respect to the protection of pharmaceuticals and agriculture chemicals, an even longer transition was provided. Ensuring that developing countries come into full compliance with the Agreement before the end of these transition periods is one of this Administration's highest priorities with respect to intellectual property rights.

Many countries have taken significant steps toward implementation of their TRIPS obligations over the past year. However, highlighting the importance of the obligation on developing countries to implement TRIPS by January 1, 2000, Ambassador Barshefsky made the following announcement:

"The United States Government expects these countries to meet their obligations. In December 1999, USTR will conduct a special out-of-cycle review to assess the progress made by developing countries toward full implementation of their TRIPS obligations. The United States will announce at the conclusion of this review in early January the actions it will take to address situations where WTO Members have failed to implement their obligations on January 1, 2000, including the possible initiation of additional dispute settlement cases."

In the interim, the United States will continue to consult with developing countries and to provide technical assistance bilaterally and in conjunction with multilateral organizations to assist members in meeting their obligations, as it had done since the Uruguay Round was concluded.

### **Controlling Optical Media Production**

Several countries have implemented new measures, have taken important steps toward adopting, or have committed to adopt much needed controls on optical media production over the past year, including Hong Kong, Macau, Bulgaria, and Malaysia. However, other countries that are in

need of such controls, including Israel, Taiwan and Ukraine, have made insufficient progress. In contrast, the Government of Bulgaria has made dramatic progress in virtually eliminating the production of pirated optical media within its borders. Ambassador Barshefsky took special note of Bulgaria's progress by stating,

"The Government of Bulgaria has demonstrated its firm commitment to effective enforcement of its intellectual property laws and serves as a model for other economies which are at risk of developing unwanted production capacity of pirated optical media. In recognition of these efforts I am announcing today that Bulgaria is hereby removed from all Special 301 lists. In contrast, I look to Israel, Malaysia, Taiwan, and the Ukraine, among others, to implement and enforce similar controls without further delay. I also look to Hong Kong and Macau to step up significantly enforcement of their existing regimes."

### **Government Use of Software**

In October 1998, Vice President Al Gore announced a new Executive Order directing U.S. Government agencies to maintain appropriate, effective procedures to ensure legitimate use of software. The President also directed USTR to undertake an initiative over the following 12 months to work with other governments, particularly those in need of modernizing their software management systems or about which concerns have been expressed regarding inappropriate government use.

USTR has achieved considerable progress under this initiative since October. China, Paraguay, Colombia, the Philippines and Jordan have all issued decrees mandating the use of only authorized software by government ministries. Ambassador Barshefsky noted, "I am pleased that these governments have recognized the importance of setting an example in this area. We look forward to the establishment of effective and transparent procedures to implement these decisions and call upon other governments to take this very important step prior to the conclusion of the Special 301 review in April 2000.

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

### **WTO Dispute Settlement**

As in previous years, Ambassador Barshefsky 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. Ambassador Barshefsky today announced the initiation of WTO dispute settlement proceedings against Argentina, Canada and the EU.

#### ***Argentina***

Argentina does not currently provide patent protection for pharmaceuticals, and is therefore required under Article 70.9 of TRIPS to provide exclusive marketing rights to pharmaceutical

products as a transitional form of protection for products that meet certain conditions. While Argentina has in place a system for granting exclusive marketing rights, recent court decisions in Argentina make clear that those rights are subject to a severe limitation that is not consistent with Argentina's international obligations. Argentina also appears to be in violation of the TRIPS Agreement for revoking regulations in 1998 that had provided 10 years of protection for confidential test data for agricultural chemical products. TRIPS requires WTO Members to provide data protection for such products, and further requires that Members enjoying a transition period ensure that any changes in their laws regulations, and practice during that transition period do not result in a lesser degree of consistency with the provisions of the Agreement.

### *Canada*

The TRIPS Agreement requires that WTO members provide a patent term of 20 years from the date that the patent application was filed. This term must apply to all patents in force on January 1, 1996. Canadian law provides a 20-year patent term only for those patents filed on or after October 1, 1989; earlier patents receive only 17 years of protection from the date that the patent was granted. Canada therefore fails to provide a full 20-year patent term to a significant number of patents in violation of Articles 33 and 70.2 of the TRIPS Agreement.

### *The European Union*

The EU regulation governing the protection of geographical indications for agricultural products and foodstuffs denies national treatment with respect to certain procedures concerning the registration of geographical indications. Furthermore, the regulation does not provide appropriate protection for trademarks. USTR is concerned that U.S. companies' trademarks thus are not properly protected.

The initiation of these three cases will bring to 13 the number of IPR-related WTO complaints initiated by the United States.

In addition, Ambassador Barshefsky announced her concern regarding Egypt and Uruguay's compliance with Article 70.9 of the TRIPS Agreement, and her intention to initiate dispute settlement proceedings against these countries should they fail to swiftly establish a transparent regulatory system for granting exclusive marketing rights in a manner consistent with TRIPS requirements.

### *Previously-filed 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 initiation of WTO dispute settlement proceedings against Sweden, Ireland and Denmark. In 1998, Ambassador Barshefsky initiated dispute settlement proceedings against Greece and the European Union concerning rampant television piracy in Greece and their failure to comply with the enforcement provisions of the TRIPS Agreement.

On November 25, 1999, Sweden passed legislation amending its intellectual property laws to provide provisional remedies in civil enforcement proceedings. This type of remedy is particularly important for enforcement efforts in the software industry. On December 2, 1998, the United States and Sweden formally notified the WTO that they had reached a mutually satisfactory resolution to the U.S. complaint.

The cases against Ireland, Denmark, Greece and the EU are still pending, although progress has been achieved over the past year. In February 1998, Ireland committed to accelerate its work on a new comprehensive copyright law, and in July 1998 passed expedited legislation addressing two pressing enforcement issues. Denmark is presently considering options for amending its law to strengthen provisional remedies available to intellectual property right holders. In Greece, the rate of television piracy declined in 1998, and in September, Greece enacted legislation that provides an additional administrative enforcement procedure against copyright infringement by television stations. Ambassador Barshefsky stated, "We urge the Government of Greece to implement its new enforcement procedure in a strong and consistent manner, and to take steps to improve the handling of intellectual property cases in the court system in order to resolve this dispute."

Ambassador Barshefsky also expressed satisfaction today with the recent conclusion of the United States' dispute settlement proceedings 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. India's deadline for compliance was April 19, 1999. Earlier this year, the Government of India promulgated a temporary ordinance to meet its obligations, and then last month, it enacted permanent legislation entitled the Patents (Amendment) Act 1999. Through these mechanisms, the Government of India has established a mechanism for the filing of so-called "mailbox" patent applications, and a system for granting exclusive marketing rights for pharmaceutical and agricultural chemical products. The United States has expressed serious concerns regarding certain features of the new Indian law regarding exclusive marketing rights; however, in light of the discretionary nature of some of the problematic provisions of the new law, as well as the significant steps that India has taken or pledged to take to mitigate the impact of others, the USTR has concluded that no further action is appropriate at this time. Should any of the problematic provisions in the Indian law be invoked to the detriment of U.S. right holders in the future, the United States retains its rights to take further action.

## "SPECIAL 301" ON INTELLECTUAL PROPERTY RIGHTS

### ACTIONS 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.

This decision reflects the Administration's continued commitment to aggressive enforcement of intellectual property rights. Intellectual property protection standards and enforcement have improved in part as a result of implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). In addition, actions announced today reflect progress made over the course of 1999 in resolving many long-standing problems.

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

- initiating WTO dispute settlement procedures against **Argentina, Canada and the EU**.
- scheduling a special **out-of-cycle review of all developing countries' TRIPS implementation** in December 1999.
- monitoring **China and Paraguay** 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 either country's enforcement of bilateral IPR agreements.
- placing 16 trading partners on the Special 301 Priority Watch List including **Israel, Ukraine, Macau, Peru, Argentina, Egypt, the European Union, Greece, India, Indonesia, Russia, Turkey, Italy, Dominican Republic, Guatemala and Kuwait**.
- scheduling "out-of-cycle" reviews of **Israel and Kuwait** in December.
- placing 37 trading partners on the Watch List, and scheduling out-of-cycle reviews of **South Africa, Colombia, Poland, the Czech Republic, and Korea**.
- scheduling an out-of-cycle review of **Malaysia and Hong Kong** in September 1999.

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 identify foreign countries that 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 under "Special 301," the history of U.S. efforts to achieve stronger intellectual property protection, and the country's response to such efforts.

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

## SECTION 306 MONITORING

Paraguay: Paraguay and the United States signed a comprehensive Memorandum of Understanding (MOU) and Enforcement Action Plan on November 17, 1998. Ambassador Barshefsky successfully conclude the section 301 investigation of Paraguay's intellectual property practices on the basis of this agreement, in conjunction with the passage of trademark and copyright laws and Paraguayan efforts to improve enforcement. The U.S. Government will continue to monitor Paraguay's compliance with the MOU under section 306 of the Trade Act. We are seriously concerned that limited progress has been made on implementation of the MOU despite the efforts of certain Government officials. As a result, we agreed it was necessary to extend the MOU's "Special Enforcement Period" by six months to September 15, 1999, during bilateral consultations on March 11. Some steps to improve Paraguay's intellectual property regime have been taken, but much remains to be done. We look to the newly-installed Paraguayan Administration to rapidly and fully implement the November 1998 MOU, most immediately by ensuring that copyright enforcement is designated as a "public crime" and by taking significant and effective enforcement actions to protect intellectual property rights, both within Paraguay and at its borders.

China: Based on the 1995 and 1996 bilateral IPR agreements and extensive follow-up work with Chinese officials, China now has a functioning system capable of protecting intellectual property rights. China has made progress on software end-user piracy including the recent issuance of a State Council directive to all government ministries mandating that only legitimate software be used in government and quasi-government agencies. Enforcement of intellectual property rights has become part of China's nationwide anti-crime campaign; the Chinese police and court system have become involved in combating IPR piracy. The production of pirated copyrighted works has dropped dramatically. China expects to enact a new copyright law this year. Reform of the trademark and patent law are expected to follow. China needs to comply with international standards such as those in the WTO Agreement on Trade-Related Aspects of Intellectual Property and other international IPR Agreements.

Various problems remain. American companies report that retail piracy and counterfeit goods remain widespread in China. The structure of IPR administration and enforcement in China remains opaque. Enforcement at the provincial level is sporadic. Corruption remains a problem and convictions only occasionally result in jail time. Enforced quotas on imported U.S. films, end-user piracy of business software, trademark infringement, and problems in obtaining administrative protection for pharmaceuticals are persistent problems. Progress on market access issues, while improved over last year, remains disappointing and significant improvements need to be made bilaterally and in the WTO accession negotiations.

### **PRIORITY WATCH LIST**

Argentina: Argentina's patent regime denies adequate and effective protection to U.S. right holders, particularly in the pharmaceutical industry, which in 1997 led to a withdrawal of benefits for approximately 50 percent of Argentina's exports under the Generalized System of Preferences (GSP) program. The Argentine patent regime, which contains onerous compulsory licensing provisions and fails to adequately protect test data, does not yet meet the WTO TRIPS

standard of protection established for developing countries, and will not provide pharmaceutical patent protection until November 2000. Argentina's level of protection for intellectual property has deteriorated in certain areas over the past year. Agrochemicals, which enjoy patent protection under Argentine law, received protection of confidential test data until August 1998, when a new government regulation eliminated the 10-year exclusivity period. Further, the Argentine Government has failed to provide effective exclusive marketing rights to qualifying pharmaceutical products in accordance with current TRIPS obligations. We have consistently urged the Government of Argentina to comply with its international commitments in this regard, and it has failed to respond. We therefore are requesting WTO consultations on these matters and urge the Argentine Government to bring its intellectual property regime into compliance with its WTO obligations. The passage in late 1998 of a bill criminalizing software piracy was a positive step, and we look to the Argentine Government to ensure its effective implementation and that its copyright regime meets TRIPS standards no later than January 1, 2000.

Dominican Republic: The piracy of computer software, video and audio tapes, and compact disc technologies, as well as TV piracy is widespread, although the Dominican Copyright Office has been more active during the past year in enforcing existing laws. The 1911 Patent Law provides for broad exclusions of subject matter from patentability, and includes onerous local working requirements. Current law is also inadequate with respect to term of protection. The Fernandez Government has submitted new intellectual property legislation that, as presently written, will contravene several TRIPS provisions, such as those pertaining to compulsory licenses. The Ministry of Health is still granting marketing approvals for products that infringe pharmaceutical patents. The Dominican Republic must bring its legal regime into conformity with TRIPS by January 1, 2000. As a major beneficiary of the Caribbean Basin Economic Recovery Act (CBERA) and the Generalized System of Preferences (GSP), it is incumbent upon the Government of the Dominican Republic to provide adequate and effective protection for intellectual property.

Egypt: Egypt's patent law excludes pharmaceutical products from patentability, contains overly broad compulsory licensing provisions, and does not provide a term of protection consistent with TRIPS requirements. The government has stated its intention to delay pharmaceutical patent protection until the year 2005, availing itself of the TRIPS transitional period for certain developing countries, but it must bring its patent law into conformity with other TRIPS obligations by January 1, 2000. Although the United States is concerned about Egypt's compliance with its TRIPS obligation to provide exclusive marketing rights for pharmaceutical and agricultural chemical products, the Government of Egypt recently provided assurances that it will take the steps necessary to fully implement this obligation in the coming weeks. Copyright piracy and trademark infringement are rampant. Although police and Ministry of Culture officials have increased anti-piracy activities over the past year, enforcement of copyright and trademark laws remains inadequate. We urge the Government of Egypt to work more closely with right-holders to ensure effective enforcement of existing laws and to bring its patent regime into conformity with international obligations as soon as possible.

The European Union: Ambassador Barshefsky today announced her intention to request WTO dispute settlement consultations with the European Union regarding its regulation concerning

geographical indications for foodstuffs and agricultural products. Concerns have been expressed that this regulation denies national treatment and does not adequately protect trademarks. The EU continues to deny national treatment to U.S. intellectual property right holders in other areas as well. For example, the reciprocity requirement in the data base directive continues to be of concern. Restrictions in certain member states also deny market access opportunities for U.S. right holders. Other intellectual property issues of concern to the United States are being addressed in the context of the U.S. - EU TransAtlantic Economic Partnership discussions.

Greece: High rates of copyright piracy and trademark counterfeiting continue to be of serious concern. In 1998 Ambassador Barshefsky announced the initiation of WTO dispute settlement consultations with Greece and the European Union regarding the high rates of television piracy in Greece. Those consultations are on-going. The Government of Greece has taken steps toward addressing this problem, including the passage of additional legislation and the recent closure of two television stations. However, Greek TV stations continue to broadcast U.S.-owned motion pictures and television programming without authorization. U.S. right holders continue to be unable to find effective relief in the courts, where television piracy cases are generally accorded the lowest priority by prosecutors and judges. We look to Greece and the European Union to recognize their obligations and to move quickly to end piracy of U.S. copyrighted works.

Guatemala: Guatemala is being elevated to the Priority Watch List because it has failed to enforce adequately existing laws, claims that copyright infringement remains a "private action," and has a legal regime that does not meet international standards. Although it is making some efforts to modernize its intellectual property regime, Guatemala's continuing failure to enforce its laws must be remedied. There has been virtually no enforcement by the government of the new Copyright Law, and piracy remains widespread. Although the software industry has successfully brought some civil actions against resellers of pirated software, distribution and use of illegally copied software – including use by government agencies – is commonplace. Piracy of signals by cable system operators continues. Guatemala's 1986 patent law is out of date and falls far short of international standards. Guatemala's trademark law provides insufficient protection for owners of well-known marks. We call on the Government of Guatemala to effectively enforce its laws and bring its legal regime into conformity with TRIPS no later than January 1, 2000. As a major beneficiary of the Caribbean Basin Economic Recovery Act (CBERA) and the Generalized System of Preferences (GSP), it is incumbent upon the Government of Guatemala to provide adequate and effective protection for intellectual property.

India: Notwithstanding the recent resolution of the U.S. WTO case filed against India regarding certain types of transitional patent protection for pharmaceutical and agricultural chemical products, India's patent and trademark laws continue to fall well short of meeting TRIPS standards and providing adequate and effective protection. India has a modern copyright law; however, the Indian Government has failed to take sufficient enforcement actions to control high levels of piracy of videos, video CDs, cable systems, computer software and sound recordings. The United States urges the Government of India to amend its patent and trademark laws to comply fully with TRIPS requirements, and to make progress toward addressing the enforcement situation before next year's review.

Indonesia: Indonesia has not made sufficient progress to address the lack of adequate and effective protection for intellectual property rights and therefore remains on the Special 301 Priority Watch List. Indonesian copyright and patent laws do not provide minimum levels of IPR protection consistent with TRIPS obligations. While we welcome improvements in enforcement over the past year, the Indonesian government has failed to take sufficient actions against the piracy of computer software, video compact discs, books, and infringement of pharmaceutical patents. The United States urges Indonesia to make IPR protection a priority and to demonstrate concrete progress toward addressing this situation in the short term.

Israel: Israel's copyright law is inadequate, enforcement and penalties are ineffective, and optical media piracy is rampant. Pirate sound recordings, video games and computer programs now overwhelm Israel's legitimate domestic markets. Israel has become a distribution hub in a multi-country network for pirated optical media product, much of which is manufactured in Israel. February 1999 amendments to the Pharmacists Law diminish pharmaceutical patent protection by permitting the parallel importation of pharmaceuticals and sanction the unfair commercial use of test data. The United States Government and U.S. research-based pharmaceutical industry actively oppose this change. In June 1998, the United States Government requested that the Government of Israel adopt an Action Plan which includes passage of the new copyright bill and stepped up efforts to combat piracy. The plan includes introduction of effective CD plant controls, including the use of source identification codes; raids and seizures; organization of a special police unit; improved customs activity; and the implementation of tough criminal penalties. Although Israel has agreed to most elements of the Action Plan, it has made little progress towards implementing the plan. We remain extremely concerned about the state of intellectual property protection in Israel, particularly with regard to the lack of enforcement, and will conduct an out-of-cycle review in December to evaluate Israel's progress on enforcement and in meeting its TRIPS obligations which become effective January 1, 2000.

Italy is being retained on the Priority Watch List due to the Government of Italy's continued failure to enact anti-piracy legislation that includes TRIPS-consistent penalties sufficient to provide an effective deterrent to piracy and counterfeiting. Ambassador Barshefsky, and other senior Administration officials, have stressed repeatedly that the U.S. looked to the GOI to pass such legislation prior to this year's annual review. We are especially concerned that Italy has failed to pass this important legislation because Italy 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 relatively widespread practices, particularly with regard to piracy of video, sound recordings and computer software. While noting that Italy has increased enforcement actions in the past year, we remain concerned that TRIPS-consistent remedies against end-user software piracy may not be available in Italy.

Kuwait has not yet complied fully with the requirements of the TRIPS Agreement in a number of areas. Kuwait's failure to enact the pending draft copyright law leaves it as the worst pirate market in the Gulf region, and the only WTO country without a copyright law. Copyright enforcement remains a serious problem as authorities have not vigorously enforced the 1995 ministerial decree against copyright violations. Kuwait's patent law is deficient with respect to

the term of protection, protection for pharmaceutical and agricultural products and compulsory licensing. However, Kuwait issued a decree in December 1998 to ban the registration of unauthorized copies of drugs still under patent in the country of origin. The decree takes effect June 1999. Kuwait's trademark law also falls short of TRIPS especially with regard to the lack of protection for unregistered well-known marks. We urge Kuwait to take the necessary steps to bring its intellectual property laws into full compliance with TRIPS by the January 1, 2000 deadline. We will conduct an out-of-cycle review of Kuwait's progress toward addressing these concerns in December 1999.

Macau: Macau has taken positive steps to address the problem of optical disk piracy. It has strengthened the legal regime and has increased raids and enforcement efforts. There is strong evidence that Macau remains a major source of pirated material and there is little evidence that Macau's legal and enforcement actions have been effective in reducing piracy significantly. Lack of transparency in enforcement efforts and a slow moving judiciary are particular problems. We urge Macau to step up its enforcement efforts in the areas of prosecution, border control, and licensing and inspections. We also call on Macau to enact a new copyright law, which has been under consideration for the last two years.

Peru: The Government of Peru provides both administrative and criminal avenues for enforcement. While each of these has been useful to rights holders up to a point, each has its inadequacies. The Appellate Tribunal of the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI) has been unwilling to impose deterrent penalties and has in the past year been slow to reach decisions. Meanwhile, insufficient customs, police and judicial action have been a problem in such areas as sound recordings. The U.S. Government has signaled its concern with the functioning of INDECOPI's Appellate Tribunal, but the response has not been satisfactory. Therefore, Peru is being moved to Priority Watch List.

Russia: The Government of Russia has not made sufficient progress to address the lack of adequate and effective protection for intellectual property since last year's review and therefore remains on the Special 301 Priority Watch List. Russia has a relatively comprehensive legal regime, with some significant exceptions, notably its failure to provide copyright protection for pre-existing works, and the absence of Customs authority to examine and seize suspected infringing goods or works. Russia has proposed comprehensive legislation to amend the Customs Code, as well as amendments to the Criminal and Administrative Procedure Codes to further strengthen the IP regime. Nevertheless, the U.S. government remains seriously concerned by renewed discussion of a new detailed and lengthy Civil Code (Part III) in the area of intellectual property. This could undermine progress made to date towards TRIPS compliance and WTO Accession and reduce already weak IP enforcement. While police investigations of IP cases have increased substantially, this has not carried forward into expanded prosecutions and imposition of deterrent penalties. More needs to be done. The U.S. views positively the recent results of the Bilateral Intellectual Property Working Group and ongoing law enforcement technical assistance, and looks forward to continued cooperation and progress through these mechanisms.

Turkey: In the past year, Turkey made limited progress on fulfilling six benchmarks identified in the Special 301 process two years ago. The Copyright Law and the Cinema, Video and Music Works Law have not been amended to provide retroactive copyright protection and to include deterrent penalties against pirates. Despite stepped up law enforcement activity over the past year, in those cases where court verdicts have resulted in convictions, sentences involved only minimal penalties and no prison terms. As a result, enforcement of existing laws is ineffective and copyright piracy remains widespread. We commend the Turkish government's actions to ensure that pharmaceutical patent protection was implemented on January 1, 1999. We hope that a new project to create specialized courts to review copyright, patent and trademark infringements will move forward this year, enabling Turkish jurists to effectively apply existing laws. Turkey's intellectual property laws do not fully comply with its TRIPs obligations, which must be met by January 1, 2000. Until the government amends its laws and adequately addresses the copyright enforcement issue, Turkey's benefits under the Generalized System of Preferences (GSP) will not be augmented.

Ukraine: Ukraine is being elevated to the Priority Watch List because copyright piracy is extensive, enforcement is minimal and pirate optical media producers have taken advantage of weaknesses in Ukraine's legislative and enforcement regime to produce and export large quantities of unauthorized CDs and CD-ROMs throughout the region and to other parts of the world. Significant levels of piracy of audiovisual works, computer programs and sound recordings are causing substantial losses to U.S. industry. Moreover, Ukraine does not grant protection to U.S. works created prior to 1973, does not protect U.S. sound recordings, and has not implemented adequate and effective penalties for commercial piracy despite its international treaty obligations and its obligations under the 1992 U.S.-Ukraine bilateral trade agreement. Ukraine still lacks both deterrent civil and criminal penalties for infringement of intellectual property, and the customs service lacks border authority over suspected infringing goods or pirated works. We look to Ukraine to bring its intellectual property laws into full compliance with its international obligations and our bilateral agreement, and into full compliance with TRIPs no later than the date of its accession to the WTO.

### WATCH LIST

Australia: In general, Australia has provided sound intellectual property protection. However, the United States is seriously concerned with the minimalist approach Australia has taken toward intellectual property protection in recent years, especially with respect to certain decisions taken over the last year that clearly erode the level of copyright protection available in Australia. In 1998, Australia passed legislation to abolish the importation right for sound recordings over the strong objection of right holders, Australian recording artists, and the United States Government. Regrettably, Australia is also now considering abolishing the importation right for other copyrighted works including software, electronic games and gaming equipment. More recently, the Australian government has announced that it will introduce legislation that allows for software decompilation under certain conditions. Serious concerns have been expressed about the scope of this proposal and its potential to result in significant copyright infringement. The proposal should be amended to guard against that eventuality. Finally, in April 1998 Australia

implemented a regime to protect test data submitted to regulatory authorities for marketing approval of pharmaceuticals as required by the TRIPS Agreement. In March 1999, Australia also implemented a regime to protect test data of agricultural chemical and veterinary medicines but for only 5 years. However, these regimes only provide protection for new chemical compounds. The United States remains concerned that no protection is provided for new uses and new formulations for existing compounds.

Belarus: Copyright piracy in Belarus remains extensive and enforcement efforts are insufficient. Although Belarus has made progress in developing its intellectual property rights (IPR) regime through a strengthened copyright law, it fails to provide protection for U.S. sound recordings and has not yet become a signatory to the Geneva Phonograms Convention. In addition, there are no criminal penalties for commercial-scale copyright and trademark infringement. The United States urges the Belarussian government to implement effective enforcement measures, including criminal penalties for IP infringement, in a TRIPS-consistent manner.

Bolivia: Bolivia is being placed back on the Watch List this year. Bolivia's protection of intellectual property has not significantly improved over the last year. Further, when the U.S. and Bolivia concluded a bilateral investment treaty on April 17, 1998, the Bolivian Government committed to bring itself into compliance with TRIPS within one year. As a result of its commitments, Bolivia was moved from the Watch List to Other Observations in the 1998 Special 301 review. However, Bolivia has not achieved TRIPS compliance by the April 17, 1999 deadline.

Brazil: While Brazil continues to make progress toward enacting TRIPS-consistent laws, deficiencies remain and the lack of effective enforcement is a serious and growing concern. Also of concern is the notable backlog of pending patent applications. Brazil has taken some steps to address the backlog and has developed a strategy for the institutional reform of the patent office (INPI). We encourage the Government of Brazil to swiftly pursue the needed reform of this institution to allow for further backlog reductions. We also look to the Brazilian Government to bring the local working requirement included in its patent law in line with TRIPS requirements. Some efforts have been made to improve copyright enforcement, but these efforts have fallen short given the scale of the piracy problem in Brazil and the absence of a coordinated strategy on the part of the government. Piracy rates have continued to climb over the past year, and the sound recording industry saw its losses double in 1998. We have particular concerns with proposed legal reforms that could reduce criminal penalties for intellectual property crimes and remove police authority to engage in *ex officio* searches and seizures on their own initiative. We look to the Government of Brazil to take decisive action to reduce piracy rates, focusing on the major markets currently being devastated by piracy. We also look to the Brazilian Government to ensure full implementation of all TRIPS obligations, including enforcement obligations, no later than January 1, 2000.

Canada: Ambassador Barshefsky announced her intention to initiate WTO dispute settlement consultations with Canada regarding its failure to grant a full twenty-year patent term to certain patents as required by the TRIPS Agreement. In 1997, the Government of Canada 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 their implementation and any future reform of Canada's copyright laws.

Chile: While generally strong, Chile's intellectual property laws are not yet consistent with TRIPS standards. For example, the term of patent protection falls short of the 20-year standard mandated by TRIPS, the trademark law is deficient in a number of areas and computer software is not clearly protected as a "literary work." We understand that the Chilean Government intends to address the outstanding problems prior to January 1, 2000. Inadequate enforcement of copyrights and trademarks remains a serious concern, as does the large backlog of pending patent applications. We look to the Government of Chile to make great strides in eliminating this backlog and to bring its legal regime into compliance with TRIPS in 1999.

Colombia has ratified, but not yet fully implemented TRIPS, and does not yet provide adequate and effective intellectual property protection. Although Colombia has made efforts to improve copyright enforcement, piracy is widespread with music piracy having worsened and counterfeit CDs flooding the market. Colombia has still to resolve the major issue USTR highlighted in its December out-of-cycle review - - failure to license legitimate pay television operators and pursue pirate operators. However, Colombia's Attorney General has reportedly begun legal action against 108 community television operators, and the failed November 1998 cable-TV licensing process is scheduled for completion in July 1999. President Pastrana recently took the welcome step of issuing a directive to all government and educational institutions to protect copyrighted material and use of software. We urge Colombia to improve its enforcement efforts and bring its laws into full TRIPS compliance by January 1, 2000. We will conduct an out-of-cycle review of Colombia's progress toward addressing these concerns in September 1999.

Costa Rica: Costa Rica will remain on the Watch List. Enforcement of copyright law has become a major problem for U.S. industry. The Costa Rican Government has failed to take sufficient enforcement actions against motion picture and sound recording piracy. Poor and cumbersome enforcement procedures have also adversely affected the U.S. business software industry, particularly in San Jose. In addition to copyright protection problems, Costa Rican patent law is deficient in several key areas. Patents are granted for a non-extendable 12-year term from the date of the grant (for pharmaceuticals, agricultural chemicals, fertilizers, and beverage/ food products, the term is only one year). A new patent law is being drafted to bring Costa Rica in line with its obligations under the WTO TRIPS Agreement. We look to Costa Rica to implement its TRIPS obligations no later than January 1, 2000. As a major beneficiary of the Caribbean Basin Economic Recovery Act, it is incumbent upon the Government of Costa Rica to offer adequate and effective protection for intellectual property.

Czech Republic: The Czech Republic has not made sufficient progress to address the lack of adequate and effective protection for intellectual property rights since last year's Special 301 review. Czech law does not provide an effective ex parte search procedure necessary to guarantee that evidence is not destroyed before commencement of civil litigation over alleged

copyright infringement. This procedure is mandated by TRIPS Article 50. Retroactive protection for works and sound recordings, also required under TRIPS, is absent from Czech law. Moreover, there has been insufficient improvement over the last year in the enforcement of rights that do currently exist under Czech law. The U.S. is concerned that the situation has the potential to worsen, especially with respect to optical media (CD, CD-ROM, and DVDs) piracy, if courts, prosecutors and police continue to fail in providing effective deterrent enforcement. We look to the Czech Republic to improve its enforcement structure and will conduct an out-of-cycle review of the Czech Republic's progress toward addressing these concerns in September 1999.

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. After numerous consultations with the United States, the Government of Denmark agreed to form a special committee to consider amending Danish law to provide this type of remedy. The work of the committee appears to be proceeding in the right direction, and we urge the Government of Denmark to move as expeditiously as possible to adopt appropriate legislative changes in 1999.

Ecuador: Ecuador enacted major legislation in May 1998 that met a number of TRIPS requirements. Ecuador recently established an IPR institute, the IEPI. Although it is not yet fully functional, the IEPI has begun enforcement actions against IP pirates. While the Government of Ecuador issued some pharmaceutical pipeline patents in the spring of 1998, there has been no recent progress in that area. Dealers' Act cases continued to be brought and to progress in the courts against U.S. companies, despite the September 1997 repeal of this Act. Its application prevents U.S. and other foreign suppliers from terminating distributorship contracts without mutual consent and judicial approval even if there was a unilateral termination clause in the contract. We also remain concerned about the lack of clarity regarding protection for confidential data submitted to government authorities for marketing approval.

Hungary: Hungary has been placed on the Special 301 Watch List because intellectual property protection has been inadequate and substantive gaps remain in the current copyright and patent laws that are not TRIPS consistent. Hungary needs to provide retroactive protection for pre-existing sound recordings. Also, prosecution against copyright piracy has been slow and has not posed an effective deterrent. Hungary needs to provide adequate legal protection for confidential test data and to refine its law on pipeline protection for pharmaceutical patents. The United States government urges the Hungarian government to address these deficiencies and use the time remaining prior to the deadline of January 1, 2000 to bring itself into full compliance with the obligations of the TRIPS agreement.

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. After numerous consultations with the United States, Ireland committed in February 1998 to accelerate its implementation of comprehensive copyright reform legislation, and agreed to pass a separate bill, on an expedited basis, to address two particularly pressing enforcement issues. Consistent with this agreement, Ireland enacted legislation in July 1998 raising criminal penalties for copyright infringement and addressing other enforcement issues. The process of completing comprehensive copyright legislation is progressing, but is behind schedule. We look to the Government of Ireland to enact revised legislation no later than July 1999.

Jamaica: Jamaica needs to implement its obligation under the bilateral IPR agreement signed with the U.S. in 1994. In August 1996 the Jamaican Government informed us that implementing legislation was moving through the legislative process and expected it to be approved by the end of August 1996. In April 1999, the Government passed legislation on copyrights, layout-designs and trademarks. However, legislation on patents has not been passed. With respect to enforcement, the judicial system, is slow and needs improvements.

Japan: While Japan has taken actions in recent years to improve its intellectual property regime shortcomings remain. With regard to copyrights, the United States remains concerned about both end-user piracy and protection of broadcast digital works in Japan. Japan could usefully improve its protection of copyrighted material by imposing statutory damages for copyright infringement, and by an explicit commitment to the use of legitimate software in government agencies. Second, the lack of protection of both trade secrets and confidential patent information in Japanese court proceedings is of concern. Third, with regard to patents, we remain concerned about the fact that strict requirements regarding proof of use by infringers are overly burdensome to patent owners. Finally, on trademarks, we are monitoring the implementation of amendments to Japan's Trademark Law and Unfair Competition Law to see if they remedy Japan's historically weak protection of well-known international trademarks. Japan has committed to taking a number of actions, including the ratification of the two WIPO copyright treaties and a strengthening of Japan's Patent Law, which should result in greater protection of intellectual property in Japan.

Jordan has taken steps to meet the deficiencies in its intellectual property regime which were identified in its April 1998 IPR action plan, but progress to date has been limited. In April 1999, Jordan acceded to the Berne Convention for the Protection of Literary and Artistic Works. With this step, U.S. copyrighted works have obtained a measure of protection in Jordan for the first time. Nonetheless, remaining deficiencies in the copyright area must be remedied to fully comply with TRIPS, and accession to the Geneva Phonograms Convention should be expedited in order to ensure full protection for U.S. recorded works. We remain particularly concerned by the lack of patent protection for pharmaceutical products. Between January 1996 and December 1998, Jordanian companies applied for or registered 70 unauthorized copies of internationally patented pharmaceutical products, more than half of which are of U.S. origin. U.S. pharmaceutical companies lose between USD 25 and 50 million annually due to Jordanian pirate production, much of which is exported to other countries in the region. Amendments to patent and trademark laws have not yet been introduced to parliament, and current drafts fall short of

TRIPS standards. We call upon the new government to strengthen protection of intellectual property in Jordan.

Korea: Korea's intellectual property law does not meet the standards set out in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Most notably, Korea does not provide for TRIPS-consistent protection for pre-existing works and sound recordings. In addition, the United States has raised concerns with the level of patent protection for pharmaceuticals and the protection of data in Korea, as well as with Korea's market access restrictions on pharmaceutical products and on motion pictures and cable TV programming. The Korean Government has indicated that it is making changes to address some of the intellectual property issues raised by the United States. The Administration will continue to work with the Korean Government to ensure that all of our intellectual property concerns are fully addressed, specifically in negotiations on a Bilateral Investment Treaty (BIT), in the out-of-cycle review of TRIPS consistency in December, and in other fora. The U.S. Government has indicated that the TRIPS-consistency issues that have arisen with Korea must be resolved at the time of signing of a BIT.

Lebanon passed a modern copyright law earlier this year; however, we remain seriously concerned by TRIPS-inconsistent provisions that undermine protection of software by providing overly broad educational exemptions and other fair use provisions. Copyright piracy is widespread and unauthorized use of software remains pervasive among private firms and government ministries. Lebanon has also failed to take sufficient enforcement actions against copyright book, computer software and optical media piracy. Concerns remain that Lebanon is considering allowing the registration of generic copies of drugs still protected by patents. In the coming year, we urge Lebanon to address these concerns and look forward to implementation of pending patent and trademark legislation with the expectation it will bring Lebanon into conformity with international standards.

Mexico: Mexico has committed to implement and enforce high levels of intellectual property protection consistent with its international obligations. Nevertheless, piracy and counterfeiting remain problems. As has been the case in recent years, despite a significant number of raids in 1998, only a small percentage resulted in court decisions and the levels of penalties assessed when court decisions are made are inadequate to deter future piracy. However, we were encouraged by the Government of Mexico's announcement of an initiative to combat piracy last year; and the passage of legislation yesterday of additional anti-piracy legislation. We look to the Government of Mexico now to devote the resources necessary and efforts necessary to fully enforce the new anti-piracy initiative.

New Zealand: New Zealand generally provides sound intellectual property protection, however, recent decisions to erode the level of copyright protection available to right holders in New Zealand are of serious concern. On May 16, 1998 the New Zealand government passed an amendment to the Copyright Act abolishing the importation right for all copyrighted works, including sound recordings, books, movies, and software. Shortly after this decision was announced, Ambassador Barshefsky expressed her concern with this decision and the fact that it was made with little consultations with interested parties in announcing an out-of-cycle review

last year. This unfortunate decision is further aggravated by the fact that New Zealand's enforcement regime does not effectively deter piracy. We commend the Government of New Zealand for actively reviewing the necessary improvements to its anti-piracy laws and urge New Zealand to take swift action to implement the full scope of measures recommended.

Oman has taken notable steps during the past year towards TRIPS compliance and stepped up enforcement against copyright piracy. However, Oman's copyright law has a number of shortcomings. Protection of foreign works not registered in Oman remains in question, protection for software is pending, and additional changes to the copyright law, including extending the terms of protection and providing a point of attachment for foreign works, need be made to bring it into full TRIPS compliance. Oman's continuing lack of patent protection for pharmaceutical products remains of particular concern. We urge Oman to continue the positive progress being made in the enforcement area and in bringing its intellectual property regime into compliance with TRIPS as part of its WTO accession process.

Pakistan took the steps necessary in 1997 to implement its patent mailbox obligations under the TRIPS Agreement; however, other problems remain. Pakistan lacks patent protection for pharmaceutical products and the term of protection under its patent law for processes is not consistent with TRIPS. Copyright piracy in Pakistan remains widespread. Business and entertainment software rates are extremely high and the reprinting of books (especially computer books, business titles and medical texts) without authorization continues to be a significant problem. 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. However, some improvement in Pakistan's anti-piracy program has been noted in 1998. For example, piracy rates for videos have declined as a result of strengthened law enforcement and some video outlets are taking steps to offer legitimate products. There are reports that three optical media production plants have recently been established in Pakistan. We look to the Government of Pakistan guard against the production of unauthorized optical media, and to take the steps necessary to fully comply with the TRIPS Agreement no later than January 1, 2000.

The Philippines: Since enactment of a comprehensive IPR code in 1997, the Philippines has taken insufficient steps to clarify ambiguities in the law and to ensure consistency with TRIPS obligations. Although implementing regulations related to the code have been promulgated in some areas, no substantive regulations pertaining to copyright protection have been issued. Other deficiencies not addressed by regulations include the absence of ex parte search and seizure authority, onerous technology licensing restrictions, and an overly broad exception for the decompilation of computer programs. Progress toward more effective policy-making and enforcement has been hampered by hiring delays and resource constraints. Nationwide enforcement efforts are inconsistent and rarely result in deterrent penalties, however the Bureau of Customs has recently undertaken an aggressive and encouraging enforcement program. The Philippines has yet to enact legislation to implement TRIPS obligations in the areas of integrated circuit design, although work is ongoing. The Philippines is also considering a proposal which would conflict with TRIPS trademark obligations by restricting the use of brand names on pharmaceutical products. Unlike other parts of Asia, optical disc production is a relatively recent

occurrence in the Philippines. The United States, therefore, strongly urges the Philippine government to adopt an effective regulatory system in order to deter digital piracy before the problem takes root, as it has elsewhere in the region.

Poland: The Government of Poland has not made sufficient progress to address the lack of adequate and effective protection for intellectual property. Pirated optical media (CDs, DVDs, CD-ROMS) are widespread in the Polish market, and production and distribution of pirated optical disc media appear to be a growing problem. Industry estimates that losses to copyright piracy increased by \$26 million between 1997 and 1998. Polish copyright law does not appear to provide a clear point of attachment for foreign sound recordings, the absence of which would violate its existing international obligations. Furthermore, there is no protection for pre-1974 sound recordings, as required by the TRIPS Agreement. With regard to patents, Polish law does not conform to TRIPS requirements on protection for confidential test data. We look to Poland to address these shortcomings quickly and to strengthen enforcement generally. We will conduct an out-of-cycle review in December 1999 to evaluate Poland's progress in these areas and in meeting its TRIPS obligations which become effective January 1, 2000.

Qatar: has not made sufficient progress to address the lack of adequate and effective protection for intellectual property rights since last year's review and will remain on the Special 301 Watch List. Qatar has failed to adopt TRIPS consistent legislation in the area of copyright or patents. We remain particularly concerned about the lack of patent protection for pharmaceutical products. We recognize progress made in the last year by Qatar to reduce copyright piracy, except in the area of business software where piracy rates remain unacceptably high. We call on Qatar to legalize software used by government agencies, improve copyright enforcement, and to take concrete steps to fully meet its TRIPS obligations prior to the January 1, 2000 deadline.

Romania: The Government of Romania has not made sufficient progress in the protection of copyrights and other intellectual property since last year's review, and is being elevated to the Watch List. Romania has made little progress over several years to improve the enforcement of intellectual property rights. Rates of piracy of sound recordings, audiovisual works, television and computer programs have all increased. U.S. pharmaceutical patent owners have been adversely affected by inadequate protection of patents and proprietary data. The United States urges the Romanian Government to address these deficiencies and use the time remaining prior to the deadline of January 1, 2000 to bring itself into full compliance with the obligations of the TRIPS Agreement.

Saudi Arabia: Saudi Arabia's laws, regulations, and procedures fall short of international standards in a number of key areas. While the Saudi Government has embarked on a revision of its intellectual property laws as part of its WTO accession, the most significant need is for better enforcement of its laws. There was, however, some improvement in enforcement in 1998, particularly with regard to software, audio materials, and videos. However, software piracy remains a problem and the Government needs to control the unauthorized use of software in its offices. We urge the Government of Saudi Arabia to bring its IPR regime into compliance with TRIPS as part of its WTO accession process, greatly improve the operation of its patent office so that patents are issued, publicize its enforcement activities in order to provide a greater deterrent effect, and adopt a directive prohibiting the illegal use of software in government agencies.

Singapore: Singapore took a number of steps during 1998 to enhance intellectual property protection, including accession to the Berne Convention, and the enactment of geographic indications and integrated circuits legislation which is intended to implement fully Singapore's TRIPS obligations a year ahead of the mandatory deadline. Nevertheless, overall piracy rates increased since last year. One shortcoming of Singapore's intellectual property regime is the maintenance of a voluntary code of conduct for optical disc producers which lacks an effective enforcement mechanism available to rights holders. Although it appears that most or all of the infringing discs sold in Singapore are smuggled into the country, effective border measures have not been taken to address the importation and transshipment of infringing goods through Singapore. A fundamental deficiency in Singapore's regime is the "self-policing" approach to IPR enforcement which shifts to rights owners the primary burden and expense of investigating and prosecuting infringement. This system is inadequate to cope with the growing problem of optical disc piracy, as illustrated by the increased levels of retail piracy. Although Singapore has initiated a consumer awareness initiative in order to reduce demand for pirated goods, the government's failure to address the open marketing and sale of substantial volumes of pirated materials in well-known malls sends conflicting signals about the government's genuine intentions.

South Africa: South Africa's Medicines Act appears to grant the Health Minister ill defined authority to issue compulsory licenses, authorize parallel imports, and potentially otherwise abrogate patent rights. Implementation of the law has been suspended pending the resolution of a constitutional challenge in the South African courts. Undisclosed test data is also not adequately protected under South African law. During the past year, South African representatives have led a faction of nation's in the World Health Organization (WHO) in calling for a reduction in the level of protection provided for pharmaceuticals in TRIPS. Copyright piracy and trademark counterfeiting is widespread and the U.S. copyright industry estimates that trade losses due to piracy of copyrighted works increased more than 35 percent between 1997 and 1998. However, the South African Government recently took the welcome step of adopting a implementing strategy to its 1997 Counterfeit Goods Act which could strengthen enforcement. We call on the Government of South Africa to bring its IPR regime into full compliance with TRIPS before the January 1, 2000 deadline, ensure that all Government offices use only legitimate software, and clarify that the powers granted in the Medicines Act are consistent with its international obligations and will not be used to weaken or abrogate pharmaceutical patent protection. We will continue to address these issues with the South African Government and will conduct an out-of-cycle review of South Africa's progress towards addressing these concerns in September 1999.

In Spain, while copyright piracy is generally low in most product areas, the business software industry continues to face some of the highest levels of piracy in Europe. Illegal copying of business application software for internal use remains pervasive, and continues to account for the majority of losses to industry in Spain stemming from piracy. Though Spanish government enforcement activities increased substantially in 1998, the slow pace of both civil and criminal court proceedings has diluted the impact of the increased raids. In particular, we note continued obstacles to timely prosecution of piracy in Spanish courts and inadequate penalties. Enforcement efforts are also hindered by the lack of sufficient criminal penalties to prove a real

deterrent for software piracy. We look to the Spanish government to take concrete steps to curb piracy of business software and to implement adequate procedures to ensure that Government ministries only use authorized software.

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. As a result of the leadership demonstrated by certain concerned government officials who have attempted to address the situation in a mutually satisfactory manner, draft legislation that would ultimately correct the problem was published for public comment in early 1999. We look to the Government of Sweden to swiftly bring this legislation into force and resolve this bilateral irritant without further delay. Should Sweden to make substantial progress in the near term toward resolving this issue, Sweden's Special 301 status will be reviewed in that context. As a result of legislation that entered into force on January 1, 1999, the U.S. and Sweden announced the resolution of the WTO dispute settlement case initiated by the United States in 1997 regarding provisional relief in civil enforcement proceedings.

Taiwan: There are indications that Taiwan has begun to address the problems it has experienced regarding the protection of intellectual property rights, but serious deficiencies remain. The Taiwan Semiconductor Industry Association is to be commended for developing a computer chip marking scheme that will make it possible to trace Taiwan made chips found in pirate video games and other applications. While a serious effort has been made to increase raids on suspected pirates especially in retail-level piracy, the Taiwan enforcement system is time-consuming and cumbersome. Trials often drag on endlessly, or end with penalties that provide little deterrence. There has been little evidence to suggest that existing legal requirements and enforcement actions are reducing the extent to which Taiwan is a source of pirate optical media. Taiwan mandates the use of source identification codes (SID) to identify the producer of optical discs, but enforcement of this requirement has been lax. Pirated material from Taiwan continues to surface in the United States, Central and South America. We urge Taiwan to significantly tighten its controls on optical media production in order to intercept the infringing products at the source. Finally, we urge Taiwan to ensure that foreign companies pursuing infringement cases in the Taiwan courts get fair and expeditious hearings, as well as fair treatment from Taiwan agencies.

Thailand's IPR record over the past year has been inconsistent. While the government agreed to implement an IPR Action Plan embodying a number of priority reforms – including enactment of a world class patent law, issuance of a decree requiring government agencies to use only legitimately licensed software, and reorganization of the interagency mechanism charged with coordination of IPR policy and enforcement – copyright piracy rates continue to increase. Criminal convictions by the specialized IPR court have been handed down; however, these decisions have been overturned on appeal and no individual has ever served a criminal sentence for IPR infringement. The Thai government has also resisted prosecuting infringers for violations of customs and revenue laws, in addition to the copyright law. Thai officials are conducting more frequent retail raids at select malls. While this is a positive step, we encourage Thailand to focus enforcement efforts throughout the country and to also target production facilities including the growing number of optical disc plants. Thai proposals to institute a

voluntary regulatory system to dissuade OD piracy lacks an effective enforcement mechanism and will not address the growing problem of copyright piracy. The inability of enforcement authorities to conduct retail or plant raids during off-hours and weekends further undermines the government's ability to combat the problem. The United States calls on the Thai government to make the priorities outlined in the Action Plan -- including TRIPS implementation, creation of a comprehensive plant and retail enforcement strategy, and effective regulation of OD plants -- its top priorities.

The UAE has made major progress in substantially reducing copyright piracy rates across the board and particularly with regard to reducing software piracy. However, there has only been limited progress toward amending the 1992 patent law which does not provide protection for pharmaceutical products. Moreover, the need for "pipeline" protection of new products in the research and development cycle is critical. This concern is heightened by reports that UAE authorities continue to allow the copying of European and American patented pharmaceutical products. While decisions in several recent court cases have created uncertainty regarding the applicability of copyright protection for foreign works, UAE authorities are addressing these concerns and moving forward with copyright amendments to correct the situation and bring the UAE into compliance with TRIPS. We urge the UAE to provide patent protection for pharmaceutical products and to ensure that its intellectual property regime is TRIPS compliant before the January 1, 2000 TRIPS deadline.

Uruguay: Reform of outdated patent and copyright legislation, needed to bring these laws into compliance with Uruguay's international obligations, has been underway for years. Notably, the current copyright law fails to explicitly extend copyright protection to computer software as required by TRIPS. The draft patent law before the Uruguayan Parliament contains critical flaws, such as: establishing an overly broad compulsory licensing regime, omitting protection for test data, and a lack of pipeline patent protection. We strongly urge the Uruguayan Government to address these shortcomings and to accelerate its efforts to enact TRIPS-consistent legislation prior to January 1, 2000. Further, we are concerned that Uruguay may not be in full compliance with its existing TRIPS obligations with respect to Article 70.9 regarding exclusive marketing rights. The Government of Uruguay has committed to provide us with additional information regarding its implementation of this article in early May, at which time we will assess whether to proceed with a case at the WTO.

Venezuela: While Venezuela has made some progress toward effective protection of intellectual property rights, significant problems remain. The Venezuelan Government has made some noteworthy efforts at enforcement, but has not devoted the resources commensurate with the problem. In some recent cases U.S. holders of prominent patents and trademarks have had to challenge marketing approvals and registrations by imitators. On the whole, piracy levels have not improved significantly. Therefore, Venezuela will remain on the Watch List this year.

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 also some unchecked trademark counterfeiting. Vietnam provides protection for pharmaceutical and agricultural chemical products, but its law is not fully consistent with international standards. On December 27, 1998, the bilateral copyright agreement between the United States and Vietnam

entered into force, following the issuance of implementing regulations by Vietnam. The agreement grants U.S. works copyright protection in Vietnam for the first time. We look to the Government of Vietnam to enforce its new copyright regime vigorously to reduce piracy levels measurably, and to take steps to ensure that all Government offices use only legitimate software. 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.

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Attachment

## **Developments in Intellectual Property Rights**

### **1998**

#### **May**

- Jordan agreed to implement a negotiated Action Plan to ensure improvements in its enforcement and legal regimes.
- Oman's Copyright Enforcement Regulations became effective May 2, resulting in declining levels of pirated videos and sound recordings.
- The Ecuadorean Congress passed, and the President signed, a comprehensive law significantly improving the legal basis for protecting intellectual property rights, including patents, trademarks, and copyrights.
- Romania joined the Geneva Phonograms Convention and passed the Transitory Pipeline Protection Law.
- The Government of Macau adopted regulations to control the import, export and distribution of optical media production equipment and finished products in May.

#### **June**

- Egypt's Ministry of Culture took on its first software piracy end-user case, and prosecuted several dozen end-user cases by the end of 1998.

#### **July**

- Ireland enacted legislation addressing two pressing copyright enforcement issues. The bill significantly raised the level of criminal penalties for copyright infringement and established stronger presumptions of copyright ownership and subsistence.
- Taiwan on July 15 published and implemented a new set of Export Monitoring System Regulations aimed at improving the interception of pirated video game and computer software exports.

**August**

- Paraguay enacted a new trademark law that provides specific protection for well-known trademarks.
- The Government of Hong Kong enacted in August the Prevention of Copyright Piracy Ordinance which controls the import, export and distribution of optical media production equipment and finished products.

**September**

- The Jordanian Prime Minister issued an Announcement on September 8, calling on all Jordanian Government Ministries and official public institutions to acquire authorized copies of computer programs, videotapes, cassettes, audio recordings, original copies of books and reference materials.
- Singapore acceded to the Berne Convention.

**October**

- The amendments to the Jordanian copyright law went into effect on October 1. These amendments increased penalties for copyright infringement, and increased the duration of protection for certain works to international standards.
- The Council of Ministers of Qatar ordered that the Copyright Bureau be moved to the Department of Commercial Affairs at the Ministry of Finance, Economy, and Commerce to improve the enforcement of Qatar's copyright law.
- The National Council of the United Arab Emirates approved proposed amendments to the UAE copyright law eliminating TRIPS-inconsistent copyright formalities.
- The Government of Singapore passed a new trademark bill.
- The Argentinian Chamber of Representatives approved the Copyright Software Protection Law providing specific protection for computer software. Passage of the law had an immediate impact on the market; industry reports that many bootleggers and hard-disk loaders have shut down their activities.

**November**

- Sweden enacted legislative changes to provide *ex parte* relief for copyright owners, allowing the United States and Sweden to resolve the issue and successfully conclude WTO dispute settlement consultations.
- The United States and Paraguay signed a Memorandum of Understanding and Enforcement Action Plan successfully concluding the U.S. Special 301 investigation into Paraguay's intellectual property laws and practices.
- To further combat the problem of imported copies of legitimate products, Venezuela passed a new customs law that gives authorities the right to seize pirated goods at the border.

**December**

- The Government of Kuwait signed a decree on December 22 banning the registration of copies of pharmaceutical products still under patent protection.
- The U.S.-Vietnam Copyright Agreement entered into force on December 23, giving U.S. works legal protection in Vietnam.
- India acceding to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty (PCT), which became effective on December 7.
- Slovenia issued an executive order on protection of end-user software.

**1999****January**

- Estonia enacted new copyright and customs legislation and amended its code of criminal procedures to strengthen IPR protection.
- Turkey extended patent protection to pharmaceuticals.

**February**

- The Government of Colombia issued a Presidential directive on government use of software on February 25.

**March**

- The Kuwaiti Cabinet approved the draft copyright law on March 21.
- The Government of Lebanon passed amendments to its Copyright Law, including adequate protection for computer programs, stiffer penalties for infringement, a term of protection of life of the author plus seventy years, confiscation of illegal products and equipment, and Berne-compatible evidentiary presumption of copyright ownership.
- The United States and Honduras concluded negotiations on a bilateral IPR agreement.
- The Economic Minister of the Palestinian Authority on March 10 brokered an agreement between Israeli music industry representatives and the owner of a pirate CD plant in Hebron to end illicit production in the Palestinian-controlled area.
- The Taiwan Semiconductor Industry Association put forward a proposal for marking semiconductor chips manufactured in Taiwan with source identification (SID) Codes.

**April**

- The Government of China issued a high-level decree requiring the use of only legitimate software by government ministries.
- The Government of India enacted legislation and drafted implementing regulations establishing mailbox and exclusive marketing rights systems for pharmaceutical and agricultural chemical products.
- Malaysia undertook a series of constructive steps toward developing and implementing a regulatory regime to control pirate optical media production, and to strengthen manufacturing and retail level enforcement efforts.
- Jordan signed the instrument of ratification of the Berne Convention, giving U.S. copyrighted works legal protection in Jordan.
- Mexico passed new anti-piracy legislation which is a key part of its overall enforcement initiative announced in 1998.
- Hong Kong announced the formation of a new task force, staffed by an additional 100 customs officers, to strengthen enforcement efforts against copyright piracy.

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