

**OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
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CONTACT: BRENDAN DALY
AMY STILWELL
TODD GLASS
(202) 395-3230**

**USTR RELEASES SUPER 301, SPECIAL 301
AND TITLE VII REPORTS**

United States Trade Representative Charlene Barshefsky today set forth the Clinton Administration's trade expansion priorities for the year 2000, announced seven enforcement actions to be taken at the World Trade Organization and reiterated the Administration's position on health-related Intellectual Property Rights (IPR) in developing nations. This announcement was made in the context of today's release of three annual reports to Congress, known as Super 301, Special 301, and Title VII.

"We have negotiated nearly 300 trade agreements since 1993, and used our enforcement tools on more than 100 occasions. Enforcement of these agreements is critical to trade expansion," said Ambassador Barshefsky. "We have made enforcement a top priority, as reflected once again in this year's Super 301, Special 301 and Title VII announcements."

"In general, our trading partners have made good progress in the implementation of existing commitments," noted Ambassador Barshefsky. "However, we remain concerned about certain failures to comply fully with WTO agreements. Therefore, we are pursuing WTO dispute settlement action in seven cases covering customs valuations practices, investment measures, and intellectual property rights. These cases underscore our determination to take vigorous action against foreign government practices that conflict with international obligations."

The Special 301 report also pays special attention to the Administration's policy on health-related IPR matters, especially HIV/AIDS issues in developing countries. President Clinton announced last December that the United States is committed to helping developing countries gain access to essential medicines, and Ambassador Barshefsky reiterated that commitment today. "We have begun implementing a cooperative approach on health-related intellectual property matters to ensure that the application of U.S. trade law related to intellectual property remains sufficiently flexible to respond to public health crises. We are working closely with interested non-governmental organizations and industry to ensure that this policy is implemented

effectively," said Ambassador Barshefsky.

Ambassador Barshefsky also announced the Administration's trade expansion priorities for 2000. In addition to the enforcement actions, these include: completing China's accession to the WTO, securing enactment of legislation to promote trade with certain regions, advancing negotiations for the Free Trade Area of the Americas, and continuing multilateral negotiations to open markets to U.S. exports. (For a full description of USTR activities in these and other areas, see the President's 1999 Annual Report on the Trade Agreements Program.)

The United States is pursuing WTO action in the following areas:

- ▶ ***Customs Valuation Practices:*** The United States will request WTO consultations with with Brazil regarding its reference prices for certain textile products; and with Romania regarding its discriminatory reference prices for products such as clothing, poultry, and certain types of distilled spirits.
- ▶ ***Motor Vehicle Investment Measures:*** The United States will take the next step in its ongoing WTO dispute with India regarding measures governing investment in the automotive industry, such as requiring manufacturing firms to use, among other things, specified levels of local content. The United States will also request WTO consultations with the Philippines in a continuing effort to resolve questions concerning local content requirements on producers of motorcycles, automobiles and certain commercial vehicles.
- ▶ ***Intellectual Property Rights:*** The United States will request WTO dispute settlement consultations with Argentina regarding significant deficiencies in its patent regime, including its failure to grant exclusive marketing rights for certain technologies and to protect confidential test data submitted to government regulatory authorities for obtaining marketing approval. The United States will also consult with Brazil in the WTO regarding a longstanding difference of views on interpretation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) regarding a narrow aspect of Brazil's patent regime that can only be resolved through WTO dispute settlement. The United States will also proceed to a WTO panel with respect to Denmark's enforcement of intellectual property laws unless imminent progress is made.

The USTR has also described a number of trade practices of significant concern that may warrant stepped-up enforcement action in the near future. These include, among others:

- ▶ ***European Union***-ongoing subsidization of Airbus by EU Member States;
- ▶ ***Japan***-market access and competition problems in the flat glass sector and a significant and persistent pattern of discrimination that impedes access to Japan's public works market;

- ▶ *Korea*-access barriers in the pharmaceuticals and autos market;
- ▶ *Mexico*-minimum price regime for certain imported products; and
- ▶ *Intellectual Property Protection* in almost 60 countries, which are highlighted in the "Special 301" report.

BACKGROUND

Today's announcement of the Clinton Administration's trade expansion priorities and new WTO actions takes place in the context of the simultaneous release of three annual reports to Congress: Super 301, Special 301, and Title VII. These three reports build on the 2000 Trade Policy Agenda (released on March 2, 2000, *see* USTR News Release 00-16) and the 2000 National Trade Estimate (NTE) Report on Foreign Trade Barriers (released on March 31, 2000, *see* USTR News Release 00-23) and represent key provisions of U.S. trade law designed to promote compliance with trade agreements. These reports are prepared in close consultation with other U.S. government agencies and rely on information submitted by the public and U.S. embassies abroad.

These three reports are complemented by another key domestic trade law tool: Section 1377 of the Omnibus Trade and Competitiveness Act of 1988. Last month, the USTR completed its annual review of foreign countries' compliance with telecommunications trade agreements pursuant to Section 1377. This year's Section 1377 review focused on Japan's compliance with its WTO commitments on interconnection rates and alleged telecommunications trade barriers in Canada, Germany, Israel, Mexico, Peru, South Africa, Taiwan, and the United Kingdom (*see* USTR News Release 00-22, March 30, 2000, and USTR News Release 00-25, April 4, 2000).

"SUPER 301" REPORT ON TRADE EXPANSION PRIORITIES

- ▶ Super 301 – re-instituted by President Clinton on March 31, 1999 by Executive Order 13116 – provides a mechanism for the USTR annually to review U.S. trade expansion priorities and focus U.S. resources on eliminating significant unfair trade practices facing U.S. exports.
- ▶ This year's Super 301 report reviews U.S. trade expansion priorities, highlights the progress made in securing implementation of WTO commitments, initiates WTO dispute settlement in cases where countries are failing to meet their obligations, and focuses attention on other significant unfair trade practices facing U.S. exports.
- ▶ The Super 301 report identifies top trade expansion priorities: (1) complete China's accession to the WTO; (2) secure enactment of legislation promoting trade with certain regions; (3) advance negotiations for the Free Trade Area of the Americas; (4) pursue

multilateral negotiations to open world markets to U.S. exports; and (5) enhance U.S. monitoring and enforcement efforts.

- ▶ The report also highlights various successes that this Administration has had regarding implementation of the WTO commitments of our trading partners. The Administration has used U.S. trade tools (such as Super 301 and Section 1377), worked through WTO oversight bodies (such as the Committee on Agriculture), and pursued WTO dispute settlement to secure compliance with trade agreements. Some notable successes include:
 - ▶ a commitment on the part of the Government of Israel to terminate its discriminatory access charge on calls to/from North America (part of this year's 1377 process);
 - ▶ enhanced implementation of the WTO Agreement on Agriculture (in the WTO Committee on Agriculture); and
 - ▶ an agreement on expeditious elimination of India's import bans on 2,700 tariff lines of goods and a commitment by Canada to reduce its subsidized exports of dairy products (by prevailing in WTO dispute settlement).
- ▶ The Report also announces the use of WTO dispute settlement in four cases, covering auto investment measures in India and the Philippines and customs valuation practices in Brazil and Romania.
- ▶ Finally, the Super 301 Report identifies a number of country practices of significant concern, including EU Member State subsidization of Airbus, market access barriers in Japan's flat glass sector, and Mexico's customs valuation practices.

"SPECIAL 301" REPORT ON INTELLECTUAL PROPERTY RIGHTS

Ambassador Barshefsky also announced today 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," she said.

- ▶ The decisions announced by Ambassador Barshefsky include specific actions:
 - ▶ to invoke WTO dispute settlement consultation procedures with Argentina and Brazil, and to proceed to a WTO panel with Denmark unless progress is made.

- ▶ to monitor 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.
- ▶ to place 16 trading partners on the Special 301 Priority Watch List: Argentina, Dominican Republic, EU, Egypt, Greece, Guatemala, India, Israel, Italy, Korea, Malaysia, Peru, Poland, Russia, Turkey, and Ukraine. Additionally, there will be an "out-of-cycle" review scheduled for Italy, Korea and Macau.
- ▶ to place 39 trading partners on the Watch List. These countries include ones being placed on the Watch List for the first time, such as Kazakhstan, Latvia, and Lithuania.
- ▶ Other WTO dispute settlement proceedings and out-of-cycle reviews will be initiated if necessary.
- ▶ The Special 301 Report also elaborates upon the Administration's health-related IPR policy.
 - ▶ Since December 1, USTR and Health and Human Services (HHS) staffs have worked together to address individual health-related intellectual property issues that have arisen with U.S. trading partners, as in the case of Thailand, as well as with respect to the health-related issues that have arisen in this year's Special 301 process. For the first time, HHS has participated actively as a member of the Special 301 Trade Policy Staff Sub-Committee that is charged with developing the Special 301 recommendations. The committee has taken health and development issues into account in accordance with the Administration's December 1 policy in making its Special 301 recommendations.
 - ▶ Since December 1, the United States has encouraged its trading partners facing a health care crisis to explore all options for extending access to effective treatments. The Administration has made clear that the final choice of what policies to employ is one for each government to make on its own. Should a government avail itself of the flexibility the WTO TRIPS Agreement provides to address a health care crisis, the United States will raise no objection, provided the policy employed is consistent with the provisions of the TRIPS Agreement.

"TITLE VII" REPORT ON DISCRIMINATORY FOREIGN GOVERNMENT PROCUREMENT PRACTICES

- ▶ The Title VII Report – also reinstated by Executive Order 13116 on March 31, 1999 – gives the USTR the means to address discriminatory foreign government procurement practices.
- ▶ This Year's Title VII Report announces the successful resolution of the 1996 Title VII identification of Germany for failing to provide an adequate remedies system to challenge procurement decisions in the heavy electrical sector. Since being identified, Germany has enacted legislation to reform its bid challenge system. Although the law is still relatively new, a precedent-setting decision in an August 1999 case demonstrated that losing bidders can now challenge procurement decisions in a German court and anticipate a fair ruling.
- ▶ As in previous years, this report calls attention to concerns with a number of procurement practices that, while not currently meeting the Executive Order's threshold for formal identification, require continued monitoring with the potential for future identification.
- ▶ For instance, this year's report again notes U.S. disappointment with a significant and persistent pattern of practices of discrimination that continue to impede American companies' access to Japan's public works sector despite commitments made by Japan in the bilateral public works agreements. Because of the need for urgent progress in addressing these problems, the report makes clear that the Clinton Administration expects their resolution in a timely manner. If this does not occur, the United States will initiate the steps necessary to identify Japan under Title VII.
- ▶ The other concerns specifically mentioned relate to general aspects of Taiwan's procurement regime, Canadian provinces' "buy Canada" price preferences, implementation of Mexico's new procurement laws and NAFTA provisions on tendering periods, Korean airport construction (currently in WTO dispute settlement), and Germany's "sect filter" purchasing restrictions.
- ▶ In addition, this report describes the Administration's efforts to reduce discriminatory foreign procurement practices by building and strengthening the international rule of law in a wide range of multilateral, regional and bilateral fora, including negotiations on WTO and FTAA procurement agreements, implementation of the NAFTA procurement chapter, the Organization for Economic Cooperation and Development and Organization of American States anti-corruption conventions, and military-to-military consultations on the use of offsets in defense trade.

2000 SPECIAL 301 REPORT

United States Trade Representative Charlene Barshefsky today announced the results of the 2000 "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, as a result of this year's Special 301 review, she will initiate World Trade Organization (WTO) dispute settlement consultations with Argentina and Brazil, and take the next step in our dispute with Denmark and request the establishment of a WTO panel unless imminent progress is made. This brings to 14 the number of intellectual property-related WTO complaints filed by the United States since 1996. Consultations about implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) also may be initiated with other countries in the near future. The Special 301 report also addresses significant concerns in such trading partners as Ukraine, Italy, Israel, Malaysia, India, Korea, Poland, and the West Bank and Gaza, as well as progress in economies such as UAE, Sweden, Mexico, and Macau.

In this year's review, USTR devoted special attention to proper and timely implementation of the WTO TRIPS Agreement by developing country WTO members, which was required as of January 1, 2000. In addition, USTR continued to focus on two other critically important issues: cracking down on production of unauthorized copies of "optical media" such as CDs, VCDs, DVDs, and CD-ROMs, and ensuring that government ministries use only authorized software. Considerable progress has been made over the past year by many developing countries in implementing their TRIPS obligations. USTR also has made progress again this year in encouraging our trading partners to implement optical media controls and appropriate software management programs. While progress also has been made on improving enforcement in many countries, the unacceptably high rates of piracy and counterfeiting of U.S. intellectual property around the world require on-going vigilance.

2000 Special 301 Decisions

Under the Special 301 provisions of the Trade Act of 1974, as amended, Ambassador Barshefsky today identified 59 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 identified Ukraine for potential Priority Foreign Country designation on August 1, 2000. Ambassador Barshefsky stated that the United States has worked with Ukrainian officials over the past several years in an effort to reduce alarming levels of copyright piracy and to improve Ukraine's overall intellectual property regime. Regrettably, according to estimates from our copyright industry, Ukraine is the single largest source of pirate CDs in the Central and East European region. The U.S. Government currently is engaged with the Government of Ukraine in an intense effort to resolve this problem. At this juncture, the United States considers its interests to be best served by continuing these

efforts over the next few months. However, Ukraine will be identified as a Priority Foreign Country if it fails to make substantial progress toward eliminating pirate optical media production prior to August 1, 2000.

Copyright piracy in Ukraine is extensive and enforcement is severely lacking, resulting in increasing unauthorized production and export of CDs and CD-ROMs. U.S. industry estimates that losses to the music industry alone are \$210 million. The United States urges the Government of Ukraine to take stronger measures on an urgent basis to address this problem through the implementation of effective optical media production controls and other available means. In addition, a number of Ukraine's intellectual property laws, especially trademark, patent and copyright, fall short of compliance with the minimum standards set out in the TRIPS Agreement and the 1992 U.S.-Ukraine bilateral trade agreement. It is unclear whether Ukraine protects pre-1973 copyrighted works; it does not provide retroactive protection for sound recordings.

Ambassador Barshefsky again 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. Special concern was expressed that Paraguay's efforts have not been sufficient in recent months, and further consultations will be scheduled.

Ambassador Barshefsky also announced placement of 16 trading partners on the "Priority Watch List": Argentina, the Dominican Republic, Egypt, the European Union, Greece, Guatemala, India, Israel, Italy, Korea, Malaysia, Peru, Poland, Russia, Turkey, and Ukraine. She also placed 39 trading partners on the "Watch List." Countries that were not mentioned in the report last year but are on the Watch List this year include: Armenia, Azerbaijan, Kazakhstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan. In addition, out-of-cycle reviews will be conducted of Italy, Korea and Macau.

Finally, Ambassador Barshefsky noted that while she was not listing El Salvador or the West Bank and Gaza, USTR will conduct out-of-cycle reviews of each in September and December 2000, respectively. The review of El Salvador will assess the government's efforts to improve enforcement procedures and to promote the use of authorized software in all government ministries. The review of the West Bank and Gaza will assess its progress toward implementation of promised enforcement actions against pirate CD manufacturers.

Intellectual Property and Health Policy

On December 1, 1999, President Clinton announced that the United States is committed to helping developing countries gain access to essential medicines, including those for HIV/AIDS. Also on December 1, United States Trade Representative Charlene Barshefsky and Secretary of Health and Human Services Donna E. Shalala announced their intention to develop a cooperative approach on health-related intellectual property matters to ensure that the application of U.S. trade law related to intellectual property remains sufficiently flexible to respond to public health

crises.

Specifically, the announcement stated that USTR and HHS will work together to establish a process for analyzing and evaluating health issues that are relevant to the application of U.S. trade-related intellectual property laws and policy. When a foreign government expresses concern that U.S. trade law related to intellectual property protection significantly impedes its ability to address a health crisis in that country, USTR will seek and give full weight to the advice of HHS regarding the health considerations involved. This process will permit the application of U.S. trade-related intellectual property law to remain sufficiently flexible to react to public health crises brought to the attention of USTR. It will also ensure that the minimum standards of the TRIPS Agreement are respected.

In announcing the results of the Special 301 review today, Ambassador Barshefsky stated that USTR has begun implementation of the policy she and Secretary Shalala announced on December 1. USTR and HHS have done so by establishing a regular consultative mechanism on health-related intellectual property matters consistent with their goal of helping poor countries gain access to essential medicines. The agencies are also working closely with interested NGOs and industry to ensure that this policy is implemented effectively.

Since December 1, USTR and HHS staff have worked together to address individual health-related intellectual property issues that have arisen with U.S. trading partners, as in the case of Thailand, as well as with respect to the health-related issues that have arisen in this year's Special 301 process. For the first time, HHS has participated actively as a member of the Special 301 Trade Policy Staff Sub-Committee that is charged with developing the Special 301 recommendations. Ambassador Barshefsky said that she was very pleased to have been able to rely on the helpful support of HHS in making her final decisions in this review.

The Special 301 committee has not been approached directly by any government with a request under the December 1 policy. Nevertheless, the committee has taken health and development issues into account in accordance with the Administration's December 1 policy in making its Special 301 recommendations.

Ambassador Barshefsky went on to say that since December 1, USTR has encouraged U.S. trading partners facing a health care crisis to explore all options for extending access to effective treatments. Nevertheless, the U.S. Government has made clear that the final choice of what policies to employ is one for each government to make on its own. In the view of the U.S. Government, should a government determine to avail itself of the flexibility the TRIPS Agreement provides to address a health care crisis, the United States will raise no objection, provided the policy employed is consistent with the provisions of the WTO TRIPS Agreement.

Ambassador Barshefsky went on to stress that access to modern pharmaceuticals can and should be enhanced in a manner that assures the safety and efficacy of the drugs, preserves intellectual property rights, and promotes the worldwide pursuit of newer, more effective medicines. She

concluded by noting that a modern patent system helps promote the rapid innovation, development, and commercialization of effective and safe drug therapies and that sound public health policy and intellectual property protection are mutually supportive.

Implementation of the WTO TRIPS Agreement

One of the most significant achievements of the Uruguay Round was negotiation of the TRIPS Agreement, which requires all WTO Members to provide certain minimum 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 broadly-subscribed multilateral intellectual property agreement that is enforceable between governments, allowing them to resolve disputes through the WTO's dispute settlement mechanism.

While developed countries are already required to fully implement TRIPS, developing countries were given a five year transition period -- until January 1, 2000 -- to implement most of the Agreement's provisions. Ensuring that developing countries are in full compliance with the Agreement now that this transition period has come to an end is one of this Administration's highest priorities with respect to intellectual property rights. With respect to least developed developing countries, and with respect to the protection of pharmaceuticals and agriculture chemicals in certain developing countries, an even longer transition was provided.

Substantial progress has been made over the past year by developing countries toward full implementation of their TRIPS obligations. The United States has worked diligently to assist countries in meeting this goal through consultations and bilateral technical assistance.

Nevertheless, a review of developing country implementation, launched last December, has revealed that a number of countries are still in the process of finalizing implementing legislation. The United States will continue to work with such countries and expects further progress in the very near future to complete this process. However, in those instances where additional progress is not likely in the near term, or where the United States has been unable to resolve concerns through bilateral consultation, we are pursuing our rights through WTO dispute settlement proceedings.

Ambassador Barshefsky stated that she is today announcing initiation of dispute settlement proceedings to address significant deficiencies in Argentina's patent regime. USTR also is initiating consultations with Brazil to address a longstanding difference between our two governments with respect to a narrow aspect of Brazil's patent regime.

The United States has had longstanding concerns with Argentina's implementation of its obligations in the area of intellectual property protection, including for pharmaceuticals and agricultural chemicals. In fact, at this time last year the United States invoked its WTO rights because of Argentina's failure to comply with its TRIPS Agreement obligations which came into

force on January 1, 1996. Today, Ambassador Barshefsky announced that USTR is expanding these claims to include new concerns that have arisen as a result of Argentina's failure to implement several significant TRIPS obligations that came due on January 1, 2000.

Ambassador Barshefsky concluded by noting that Brazil, in contrast, has a largely TRIPS-consistent patent regime which has been in place for some time. Nevertheless, there remains a longstanding difference between the U.S. and Brazil over the provision of the TRIPS Agreement which prohibits Members from requiring patent owners to manufacture their product in-country in order to maintain full patent rights. Having been unable to resolve this narrow difference over the past five years, both governments have now accepted that the matter should be referred to dispute settlement in the WTO.

Progress continues by many countries toward more effective enforcement against piracy and counterfeiting, though there are notable exceptions highlighted in this report. This is an ongoing effort which USTR is addressing in a number of ways, including pressing for government software legalization decrees and controls on optical media production.

Controlling Optical Media Production

To prevent piratical activity, over the past year several of our trading partners, including Macau, Malaysia and Thailand, have adopted new measures, have taken important steps toward adopting, or have committed to adopt much needed controls on optical media production. However, others that are in urgent need of such controls, including Israel, Ukraine and the West Bank and Gaza, have made insufficient progress.

Governments such as those of Bulgaria, China, and Hong Kong that implemented optical media controls in previous years have clearly demonstrated their commitment to continue to enforce these measures. The effectiveness of such measures is underscored by the direct experience of these governments in successfully reducing pirate production of optical media. We urge our trading partners facing the challenge of pirate optical media production within their borders, or the threat of such production developing, to adopt similar controls in the coming year.

Government Use of Software

In October 1998, Vice President 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 of 1998. Last year, China, Colombia, Jordan, Paraguay, and the Philippines issued decrees mandating the use of only

authorized software by government ministries. This year Colombia, Macau, Lebanon, and Taiwan have each issued similar decrees. Ambassador Barshefsky noted her pleasure that these governments have recognized the importance of setting an example in this area. The United States looks forward to the adoption of similar procedures in the near future by the governments of Spain and Israel. It also looks forward to the establishment of effective and transparent procedures to implement these decisions, and calls upon other governments to take this very important step prior to the conclusion of the Special 301 review in April 2001.

WTO Dispute Settlement

As in previous years, Ambassador Barshefsky is using the annual Special 301 announcement as a vehicle to announce the launch of WTO dispute settlement proceedings against countries that have not met their TRIPS obligations. A priority of this year's Special 301 review is the proper and timely implementation of the WTO TRIPS Agreement, particularly developing country implementation which was required as of January 1, 2000 for most obligations.

In December 1999, USTR initiated an out-of-cycle review of developing countries' progress toward implementing their TRIPS obligations. This review was conducted in tandem with this year's Special 301 review. In conducting the review, it was determined that the vast majority of developing countries have made a serious effort to comply with their TRIPS obligations, though further progress in the area of enforcement is particularly needed. The United States will continue to work with developing countries that are in the process of finalizing their implementation of the Agreement and expects further progress in the very near future to complete this process. However, in those instances where additional progress is not likely in the near term, or where we have been unable to resolve concerns through bilateral consultation, USTR is pursuing U.S. rights through WTO dispute settlement proceedings.

Specifically, Ambassador Barshefsky today announced the initiation of WTO dispute settlement proceedings against Argentina and Brazil, and that we will take the next step in our dispute with Denmark and request the establishment of a WTO panel unless progress is made imminently.

Argentina

Argentina has failed to grant exclusive marketing rights for pharmaceuticals, despite being obliged to do so under the TRIPS Agreement, since Argentina does not provide patent protection for such products. In addition, Argentina fails to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals. Other deficiencies in Argentina's patent law include the denial of certain exclusive rights for patents, such as the protection of products produced by patented processes and the right of importation; the failure to provide prompt and effective provisional measures to address patent infringement; and the exclusion of micro-organisms from patentability. Many of these deficiencies relate to concerns regarding Argentina's compliance with the TRIPS Agreement obligations that applied to Argentina as of January 1, 2000. As such, these claims are being added to the already

on-going dispute settlement case against Argentina announced in last year's Special 301 report.

Brazil

Brazil's patent law imposes a "local working" requirement as a condition for enjoyment of exclusive patent rights. This requirement can only be satisfied by local production, and not importation, of the patented product. This appears inconsistent with Brazil's obligations under Article 27 of the WTO TRIPS Agreement, which requires that patent rights be "enjoyable without discrimination as to . . . whether products are imported or locally produced." Brazil has stated repeatedly that it disagrees with this interpretation of the TRIPS Agreement. In order to resolve this longstanding difference in views over this issue, as well as to address the concern that other countries may cite the Brazilian "local working" requirement as a justification for proposing similar legislation, the United States is now requesting WTO consultations with Brazil to pursue this single-issue case.

Previously-filed WTO TRIPS Cases

Last year, in addition to the action against Argentina, Ambassador Barshefsky announced the initiation of two additional cases. In the dispute against Canada regarding its failure to provide a patent term of at least twenty years from the date of filing for all patents existing on January 1, 1996, a WTO panel recently ruled in favor of the United States. The dispute against the EU over its denial of national treatment with respect to geographical indications, and its failure to provide sufficient protection for pre-existing trademarks that are similar or identical to geographical indications, remains in consultations.

Several of the dispute settlement cases previously announced by Ambassador Barshefsky also remain outstanding:

Denmark -- The United States filed a WTO case against Denmark in May 1997 to address Denmark's failure to make available *ex parte* search remedies in intellectual property enforcement actions, as required by the TRIPS Agreement. This type of enforcement remedy is particularly important to the enforcement efforts of the software industry because of the ease and speed with which infringing software can be deleted from a suspected infringer's computer. The United States did not go forward with a panel request on the basis of Denmark's commitment in May 1998 to resolve these concerns. Denmark announced that it would form a Special Legislative Committee to consider the issue and determine the need for amendments to Danish law. Indeed, Danish officials have provided assurances that once this process is finished, the legislation will likely be passed very quickly by the Danish Parliament.

However, it has been almost two years since Denmark made its commitment to reform, and the committee has yet to produce a draft bill. As a developed country, Denmark should be a model of timely compliance with WTO obligations for other countries. Therefore, because of the lack

of progress to date, USTR will take the next step in our dispute with Denmark and request the establishment of a WTO panel unless progress is made imminently.

Greece -- In 1998, Ambassador Barshefsky announced the initiation of WTO dispute settlement proceedings against Greece, concerning rampant television piracy in Greece and their failure to comply with the enforcement provisions of the TRIPS Agreement. In September 1998, Greece enacted legislation that offered an additional administrative enforcement procedure against such concerns. Despite this progress, however, the United States has been unable to resolve this dispute because of the refusal of Greece and the EC to provide assurances that Greece will continue to implement its new enforcement procedure in a strong and consistent manner, and will continue to seek to improve the handling of intellectual property cases in the court system. We look to the Government of Greece to quickly provide these assurances so that this long-standing bilateral irritant can be removed from our bilateral agenda.

Ireland -- It has been over five years since the WTO TRIPS Agreement came into force and the Government of Ireland has yet to implement a fully TRIPS-consistent copyright law. Three years ago, the United States initiated dispute settlement proceedings to address our concern over this situation. After numerous consultations, Ireland committed to enact comprehensive copyright reform legislation by December 1, 1998, 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 June 1998 raising criminal penalties for copyright infringement and addressing other enforcement issues. However, Ireland's commitment to enact comprehensive copyright legislation has not been met. We understand recent progress has been made toward finalizing this legislation and expect it will be enacted by parliament before its summer recess. The U.S. Government remains hopeful that Ireland will take the steps necessary to complete the legislative process in the very near future, but will feel compelled to consider other options in the face of any further delay.

Potential Dispute Settlement Cases

In addition to the above, there are a number of other WTO Members that likewise appear not to be in compliance with their TRIPS obligations, and which we are still considering as possible future dispute settlement cases. These countries include members of the Andean Community, Australia, the Czech Republic, the Dominican Republic, Egypt, India, Israel, Italy, the Philippines, Poland, and Uruguay. We will continue to consult in the coming months with all these countries in an effort to encourage them to resolve outstanding TRIPS compliance concerns as soon as possible. We will also gather data on these countries' enforcement of their TRIPS obligations and assess the best cases for further action if consultations prove unsuccessful.

Examples of Progress during the Past Year

While on-going piracy and counterfeiting problems persist in many countries, progress has occurred in a number of countries. An attachment to this release, entitled Developments in

Intellectual Property Rights, identifies the improvements made by a range of countries. Significant developments are highlighted below.

- The United Arab Emirates (UAE) has recently provided a written commitment to take specific steps to assure the adequate and effective protection of patented products. These include specific commitments on TRIPS implementation, data protection and not providing marketing approval for unauthorized copies of patented products.
- The Government of the Bahamas has recently provided written assurances that it would not permit transmission of copyrighted works over the Internet without the right holder's consent, and that it would negotiate with the U.S. Government on other issues of concern related to its copyright regime.
- The Government of the Czech Republic passed a new Copyright Law on April 26 to meet its TRIPS Agreement obligations.
- The Chinese Government launched the first phase of several special enforcement actions against illegal replication and smuggling of copyrighted audio and video products, including DVDs.
- The Mexican Government amended its criminal code on May 17 to increase the level of penalties imposed for copyright offenses. The law has been enforced by the Mexican Government over the past year, resulting in criminal prosecutions, fines and jail terms being imposed on pirates. The U.S. and Mexico have re-initiated bilateral discussions under the IP working group.
- The Russian State Customs Committee issued an executive decree on May 27 that designates a department within the customs department to fight piracy and provides that department with specialized tools and new rules to fight piracy.
- The Paraguayan Government amended its criminal code making copyright crimes "public" actions, thereby allowing prosecutors to pursue copyright cases on their own initiative. Paraguay also issued a software decree requiring the use of legal software in all federal agencies.
- Oman, Jordan, Liechtenstein, the Kyrgyz Republic, Azerbaijan, Bangladesh, and Belgium joined the Berne Convention for the Protection of Literary and Artistic Works.
- The Singapore Parliament passed the Copyright Act Amendment Bill of 1999 on August 17, thereby amending Singapore's copyright law.
- To intensify efforts by the government of the Dominican Republic to combat piracy, a commission led by the Ministry of Industry and Commerce, which includes the legal

counsel to the President, the attorney general, a prosecutor, enforcement agencies and the Intellectual Property Office of the Ministry of Industry and Commerce, was created in September.

- Macau adopted several essential improvements to its regulatory regime, including licensing requirements for all retail establishments dealing with optical media products, requiring all optical media products manufactured in Macau to bear a source identification (SID) code, adopting a decree mandating government use of authorized software, and improving its enforcement regime.
- The Royal Thai Government put before the cabinet for approval a bill to control the illegal reproduction of compact discs, and to further crack down on the manufacturing and distribution of pirate CDs.
- The “AntiPiracy Act” of the Czech Republic became effective on December 1, 1999. The Act set forth the conditions under which Custom authorities can take measures against alleged infringing and counterfeit goods.

World Intellectual Property Organization (WIPO) “Digital” Treaties.

The USG has continued to work at all levels to encourage countries to sign, ratify and implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. These treaties provide the essential legal framework for the continued spectacular growth of e-commerce in coming years by ensuring that valuable content is fully protected from piracy on the Internet. As of March 22, of the 159 members of WIPO, 51 have signed and 14 have ratified the copyright treaty, and 50 have signed and 13 have ratified the performances and phonograms treaty.

Ambassdor Barshefsky concluded by saying that the progress USTR has 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.

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

FACT SHEET

"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 since April 1999 in resolving many long-standing problems.

The decisions announced by Ambassador Barshefsky include the following specific actions:

- initiating WTO dispute settlement procedures against **Argentina and Brazil**, and taking the next step in our dispute with **Denmark** and request the establishment of a WTO panel unless imminent progress is made.
- 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: **Argentina, Dominican Republic, EU, Egypt, Greece, Guatemala, India, Israel, Italy, Korea, Malaysia, Peru, Poland, Russia, Turkey, and Ukraine**. Additionally, there will be an "out-of-cycle" review (OCR) scheduled for **Italy and Korea**.
- placing 39 trading partners on the Watch List. These countries include ones being placed on the Watch List for the first time, such as **Kazakhstan, Latvia and Lithuania**. There will be an OCR scheduled for **Macau**.
- scheduling OCRs of **El Salvador and the West Bank and Gaza**.

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

China: China is currently engaged in completing the first major revision to its overall IPR regime since our bilateral IPR agreements were concluded in 1992 and 1995. China has agreed in the context of the negotiations on accession to the World Trade Organization to implement the TRIPS Agreement without recourse to any transition period. In the meantime, ensuring effective implementation of our bilateral agreements remains an important effort.

While the production of pirated copyrighted works has dropped dramatically since 1996, imports of pirated products remain a concern. U.S. companies report that retail piracy and counterfeit goods remain widespread in China, in part because of the inadequacy of deterrent sanctions, including lack of criminal penalties. The structure of IPR administration and enforcement in China still remains too opaque. Enforcement at the provincial level is sporadic, but steps in Guangdong province to increase sanctions against piracy and counterfeiting were a positive development.

In addition, four Chinese enforcement authorities have joined together to act against optical media, including DVD, pirates. Most recently, in March 2000, the State Press and Publication Administration, the National Copyright Administration of China, the Ministry of Public Security, and the State Administration of Industry and Commerce issued an urgent joint circular to urge every provincial, regional and municipal government authority to launch a special campaign against DVD piracy in China.

End-user piracy of business software (particularly in companies), trademark infringement, and problems in obtaining administrative protection for pharmaceuticals are persistent problems. Market access for products protected by IPRs needs improvement, and China has agreed to some improvements in market access for motion pictures, software and sound recordings in the context of the WTO accession negotiations.

Paraguay: On January 16, 1998, Paraguay was identified as a Priority Foreign Country (PFC) under the Special 301 provisions of the Trade Act of 1974. In November 1998, the U.S. Government and the Government of Paraguay signed a Memorandum of Understanding (MOU) on the Protection of Intellectual Property. While Paraguay initially made progress toward fulfilment of its obligations under the MOU, more recently progress has stalled. Last year, the

Government of Paraguay, in coordination with industry, seized and destroyed two multi-million dollar pirate CD factories and made several important reforms to its legal regime for the protection of intellectual property. However, Paraguay continues to be a regional center for piracy, especially of optical media, as well as for counterfeiting, and continues to serve as a transshipment point for an alarming volume of infringing products from Asia to the larger markets bordering Paraguay, particularly Brazil. In addition, Paraguay has failed to implement its obligation under the WTO TRIPS Agreement and the bilateral MOU to enact a modern patent law, among other reforms. Of particular concern are growing indications that the current Paraguayan Administration no longer attaches high priority to the protection of intellectual property rights and implementation of its international obligations in this area. Failure to aggressively prosecute known pirates, such as one high-profile case in which a pirate was twice released on bail despite substantial evidence, is a worrisome sign that further progress toward correcting Paraguay's role as a haven for piracy and counterfeiting is threatened. Therefore, the United States has requested consultations under the MOU which will be held in the coming months. If further results are not forthcoming, the United States may consider other options for resolving concerns regarding protection for intellectual property in Paraguay.

PRIORITY WATCH LIST

Argentina: Argentina's patent regime denies adequate and effective protection to U.S. right holders. USTR initiated WTO dispute settlement proceedings in April 1999 to address concerns in this area. Today Ambassador Barshefsky announced initiation of a second WTO dispute settlement case to address additional concerns that have arisen as a result of Argentina's failure to implement obligations that came due on January 1, 2000. Argentina's level of intellectual property protection, including for pharmaceutical and agricultural chemicals, has steadily deteriorated over the past two years. Argentina's regime fails to comply with the obligations set forth in the WTO TRIPS Agreement, not only those obligations that came into force most recently on January 1, 2000 but also those obligations that have been in effect since January 1, 1996. Overall, Argentina's patent law fails to grant exclusive marketing rights as required by the TRIPS Agreement for pharmaceuticals and fails to protect confidential test data submitted to government regulatory authorities for pharmaceuticals and agricultural chemicals. Other deficiencies in Argentina's patent law include – among other things – the denial of certain exclusive rights for patents, such as the protection of products produced by patented processes and the right of importation; the failure to provide prompt and effective provisional measures for purposes of preventing infringements of patent rights from occurring; and the improper exclusion of micro-organisms from patentability. The United States continues to urge the Argentine Government to bring its intellectual property regime into compliance with its WTO obligations. We also look forward to implementation of full patent protection in Argentina in November of this year. In contrast to the lack of protection in other areas, Argentina's copyright regime has continued to improve over the past two years with Argentina's enactment of legislation in 1999 to ratify the WIPO Copyright Treaty and Performance and Phonograms Treaty. Regrettably, enforcement against copyright piracy and trademark counterfeiting remains significantly below

TRIPS standards.

Dominican Republic: The Dominican Republic has failed to correct deficiencies in its legal framework to meet its obligations under the TRIPS Agreement. Draft copyright legislation would be a major improvement over current law. However, draft patent legislation does not appear to meet TRIPS Agreement standards. The U.S. looks to the Government of the Dominican Republic to pass TRIPS-consistent legislation in both areas in conformance with its international commitments. We will continue to consult informally with the Government of the Dominican Republic in an effort to encourage it to resolve outstanding TRIPS compliance concerns as soon as possible in the coming months. Lax enforcement also remains a problem. Despite some reductions in video piracy, piracy of videos, sound recordings, computer software, books, and satellite and cable piracy remain widespread. The same is true for counterfeiting of well-known trademarks. In response to a petition from the copyright industry, USTR is reviewing the eligibility status of the Dominican Republic under the Generalized System of Preferences (GSP) program.

Egypt: Egypt's intellectual property laws do not comply fully with the TRIPS Agreement. The copyright law remains deficient in the area of protection for pre-existing sound recordings. Egypt's patent law does not provide protection for pharmaceutical and agricultural chemical products and contains other provisions that do not comply with TRIPS Agreement obligations. The government has drafted a new patent law, but had announced previously that it intends to avail itself of the full transition period for product patent protection, i.e., until January 1, 2005. Although the Government of Egypt recently adopted a decree nominally designed to comply with the TRIPS Agreement obligation to provide exclusive marketing rights for pharmaceutical and agricultural products, the adequacy of the decree remains untested. Egypt is considering a revision of its trademark law to meet TRIPS Agreement standards, but the existing trademark law is not enforced strenuously and the courts have only limited experience in adjudicating infringement cases. Although raids have increased, enforcement on the whole remains lax and therefore copyright piracy and trademark infringement remain unchecked. We will continue to consult informally with the Government of Egypt in an effort to encourage it to resolve outstanding TRIPS compliance concerns as soon as possible in the coming months.

The European Union: In 1999, the United States initiated WTO dispute settlement proceedings against 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 pre-existing 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. The Administration has made several efforts to address other intellectual property issues of concern to the United States in the context of the U.S. - EU TransAtlantic Economic Partnership -- those efforts have produced little result to date, though the United States remains hopeful of progress in these areas.

Greece: In 1998, USTR announced the initiation of WTO dispute settlement consultations with Greece and the European Union regarding the high rates of television piracy in Greece. During the course of these consultations, the Government of Greece has taken steps toward addressing this problem, including the passage of additional legislation and the closure of a number of television stations which continued to broadcast programming without authorization. However, Greece has yet to provide assurances that it would 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 for the purposes of resolving this dispute. We look to the Government of Greece to quickly provide these assurances so that this long-standing bilateral irritant can be removed from our bilateral agenda.

Guatemala: Guatemala's Criminal Procedures Code requires that all criminal enforcement be brought as "private actions", making criminal penalties difficult to obtain in cases of copyright infringement. Piracy, including by government agencies, is widespread, and the Government of Guatemala has failed to take effective enforcement action. The U.S. urges Guatemala to honor its WTO TRIPS Agreement commitments to enforce protection of intellectual property.

India: India continues to lack adequate and effective patent protection, failing to comply with the obligations of the TRIPS Agreement in a number of areas, especially with regard to local working requirements, patentable subject matter and exclusive patent rights, term of protection, and protection for test data. Although not required to do so under the TRIPS Agreement until 2005, India has yet to provide patent protection for pharmaceutical and agricultural chemical products. Patent legislation has been drafted but not yet passed. While India's copyright law is generally compliant with the TRIPS Agreement, amendments passed in 1999 undermine TRIPS requirements concerning protection for computer programs. In addition, enforcement against piracy, especially cable piracy, remains a growing concern for U.S. copyright industries, as well as enforcement against imports of pirated products coming from Southeast Asia, for the most part Malaysia. We will continue to consult with the Government of India in the coming months in an effort to encourage it to resolve outstanding TRIPS compliance concerns as soon as possible.

Israel: The Knesset enacted TRIPS omnibus legislation in December 1999 covering a number of areas, including patents, trademarks and copyright. In the last six months, the Government of Israel has allocated additional resources, including hiring new policemen for intellectual property enforcement and funding new prosecutors, to combat widespread copyright infringement. However, we remain very concerned about the unacceptably high rate of piracy of all forms of optical media in Israel. Israel remains a key distribution hub in a multi-country network (including Eastern Europe and Russia) for pirated optical media product, much of which is still manufactured in Israel. We urge the Government of Israel to expedite its ongoing review of CD plant controls, including mandatory use of source identification codes, and to implement quickly effective controls. Other concerns with Israel's intellectual property regime include possible TRIPS deficiencies such as failure to protect adequately confidential test data and to provide criminal penalties for unauthorized end-user copying of computer software, and continued

concerns about possible adoption of amendments to the Pharmacists Law which would weaken patent protection for pharmaceuticals and permit the unfair commercial use of test data. We will continue to consult informally with the Government of Israel in the coming months in an effort to encourage it to resolve outstanding TRIPS compliance concerns as soon as possible. Should this effort not be successful, we will review other options for addressing our concerns.

Italy: Despite five years of effort, the Government of Italy has failed 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 over the past several years that the U.S. expected Italy to pass such legislation prior to the annual Special 301 review. Italy's failure to pass this important legislation is of particular concern because it 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, computer software, books, and video games. As a result of Italy's continued failure to enact this anti-piracy legislation, USTR will conduct an out-of-cycle review of Italy in September of this year. During the period leading up to the September review, the United States will examine whether to initiate formal dispute settlement proceedings if the legislation is not enacted by that time.

Korea: Korea is being elevated to the Priority Watch List this year because of a number of longstanding issues, concerns about enforcement, and new issues relating to recent amendments to Korean copyright laws. Despite numerous U.S. attempts, including at the highest levels, and in a variety of fora, several longstanding issues remain unresolved. These issues include protection of clinical test data against unfair commercial use and disclosure, protection of pre-existing copyrighted works, providing for "linkage" between health and intellectual property authorities such that approval is not granted for the launch into the Korean market of drugs that would infringe valid patents, and market access for motion pictures. The United States also has ongoing concerns about the consistency, transparency, and effectiveness of Korean enforcement efforts, particularly with regard to piracy of U.S. computer software and books. Finally, at the end of last year, a new issue arose when the Korean National Assembly passed amendments to the Korean Copyright Act (CA) and Computer Programs Protection Act (CPPA). These amendments, as well as other issues discussed above, call into question Korea's compliance with its bilateral and international obligations, including under the WTO TRIPS Agreement and the Berne Convention. Recently, the Korean Government has indicated its willingness to engage the U.S. Government to advance progress on these issues. While this is a positive start, we look for the Korean Government to work with us to resolve these issues as soon as possible. Ambassador Barshefsky also announced today that the U.S. Government will conduct an out-of-cycle review in December to review progress on Korean intellectual property policies.

Malaysia: Over the past year, Malaysia has focused its efforts on legislation intended to strengthen IPR enforcement against piracy. These priority measures include amendment of an onerous affidavit requirement in section 42 of Malaysia's copyright law, and enactment of a law

necessary to implement a comprehensive regime regulating the production of optical disks. While section 42 legislation was passed by the lower house, that body adjourned before acting on the centerpiece optical disk legislation. Malaysia also continues to work closely with U.S. companies to deter unlicensed use of software by end-users. However, there is a substantial backlog of IPR cases in the Malaysia courts, and when penalties are imposed they are often insufficient to deter future or repeat offenses. While the number of raids initiated by government authorities increased during 1999, more needs to be done to address general nationwide enforcement. Legislation to implement TRIPS Agreement obligations, which needs to be enacted expeditiously, also was passed by the lower house of Parliament and, like the section 42 legislation, is now pending before the upper house. The United States will closely monitor progress to evaluate Malaysia's concrete efforts on enactment and implementation of legislation as well as enforcement.

Peru: The Government of Peru has put in place an ambitious plan to strengthen IPR enforcement during 2000. We are encouraged by the initial steps already taken by the government to implement the plan by bolstering its inter-agency coordination and by collaborating more actively with key private sector interests. For instance, the software industry and Peru's Institute for the Defense of Competition and Protection of Intellectual Property (INDECOPI) have cooperated in creating a joint campaign of education, training and enforcement regarding software legalization by organizations in Peru through June of this year. U.S. industry continues to express concern about decisions by the INDECOPI Tribunal that are not adequate to deter piracy. We look forward to seeing more complete results from these efforts by late 2000. With respect to patents, the provisions of the revised Andean Community Decision 344 have not yet been brought into conformity with the TRIPS Agreement. We will continue to consult informally with Andean Community governments in an effort to encourage them to resolve the outstanding TRIPS compliance concerns as soon as possible in the coming months.

Poland: Poland has not yet brought its copyright regime into line with its obligations under the TRIPS Agreement. The Copyright Law currently does not cover pre-1974 sound recordings. The parliament has made significant progress in preparing amendments to the Copyright Law that would provide for the TRIPS-mandated 50-year retroactive protection of sound recordings and would clarify the point of attachment for sound recordings. We urge the Government of Poland to pass these amendments quickly. The amendments would significantly strengthen Poland's regime for the protection of intellectual property, and passage would trigger a review of Poland's Special 301 status. With respect to enforcement, prosecutors and judicial authorities have not vigorously protected intellectual property rights. This inadequate enforcement has allowed unauthorized copies of videos and sound recordings (tapes, cassettes and optical media) and computer software products to saturate the Polish market. A three-year period of exclusive protection for test data now in place in Poland, coupled with weak protection of process patents, leaves research-based pharmaceutical companies vulnerable to rival firms appropriating valuable products that are still under process patents. We will continue to consult informally with the Government of Poland in an effort to encourage it to resolve outstanding TRIPS compliance concerns as soon as possible in the coming months.

Russia: A number of the intellectual property laws, especially the patent, copyright and data protection laws, and the enforcement regime of the Russian Federation do not comply with the TRIPS Agreement or the intellectual property provisions of the U.S.-Russian Federation bilateral trade agreement signed in 1991. Despite a significant number of police raids, and commendable official efforts to improve the enforcement climate, criminal enforcement of intellectual property rights remains minimal in Russia. As a consequence, production of unauthorized music CDs and CD-ROMs containing business and entertainment software, and now VDCs and DVDs, remains serious and growing problems, as does lack of protection for well-known marks. Russia's ineffective criminal enforcement system and the lack of any border control not only have allowed the domestic market to become saturated by Ukrainian and Asian-origin pirate products, but have also resulted in the development of Russia into a major transit country for counterfeit products destined for European markets.

Turkey: To date, Turkey has not yet addressed all of the benchmarks set out in the 1997 review. Remaining work needs to be done to enhance Turkey's copyright regime to include copyright protection for pre-existing works and sound recordings and ex parte and injunctive relief, and to include deterrent penalties and jail terms. Passage of amendments to the copyright law to address these concerns is anticipated in the near future, and we urge expeditious legislative action. With respect to enforcement, efforts have increased to curb copyright piracy, but remain ineffective.

Ukraine: Previously expressed concerns about growth of copyright piracy and lack of enforcement have been inadequately addressed. Unauthorized production and export of CDs and CD-ROMs have increased, and Ukraine has become the regional leader in production of illegal optical media discs. We urge the Government of Ukraine to address this problem on an urgent basis. If sufficient action is not taken to curb illicit production by August 1, 2000, we are prepared to designate Ukraine a Priority Foreign Country. Additional concerns are that a number of Ukraine's intellectual property laws, especially trademark, patent and copyright, fall short of compliance with the TRIPS Agreement or the 1992 U.S.-Ukraine bilateral trade agreement. It is unclear whether Ukraine protects pre-1973 works; it does not provide copyright protection for pre-existing sound recordings. In addition, criminal penalties need to be strengthened. We look to the Government of Ukraine to address these concerns expeditiously.

WATCH LIST

Armenia: Armenia has several remaining steps to take to fulfill its intellectual property commitments under the 1992 U.S.-Armenia Trade Agreement and to make its intellectual property regime consistent with the TRIPS Agreement. These steps include: joining the Berne Convention and the Geneva Phonograms Convention; providing protection or rights to U.S. and

other foreign sound recordings; and providing retroactive protection for works or sound recordings under its copyright law. In addition, we are concerned about weak enforcement of intellectual property rights in Armenia. Although new criminal penalties for intellectual property violations have been adopted, there have been no convictions under the new law and police authority to commence criminal copyright cases is unclear. Further, Armenia's Customs Code does not provide the proper authority to seize material at the border as required by the TRIPS Agreement. If not addressed, ineffective border enforcement could cause Armenia to become a target for illegal optical media producers, a problem that other countries of the region have faced.

Azerbaijan: Azerbaijan has several remaining steps to take to fulfill its intellectual property commitments under the 1995 U.S.-Azerbaijan Trade Agreement and to make its intellectual property regime consistent with the TRIPS Agreement. Specifically, Azerbaijan has not yet become a member of the Geneva Phonograms Convention, is not providing any protection or rights to U.S. and other foreign sound recordings; and does not clearly provide retroactive protection for works or sound recordings under its copyright law. Enforcement also remains weak despite adoption of new criminal penalties (which address copyright and patent right violations but exclude neighboring rights violations). In addition, the Customs Code does not provide the proper authority to seize material at the border as required by the TRIPS Agreement. If not addressed, ineffective border enforcement could cause Azerbaijan to become a target for illegal optical media producers, a problem that other countries of the region have faced.

Belarus: Belarus has several remaining steps to take to fulfill its intellectual property commitments under the 1993 U.S.-Belarus Trade Agreement and to make its intellectual property regime consistent with the TRIPS Agreement. Specifically, Belarus is not yet a member of the Geneva Phonograms Convention, does not provide any protection or rights to U.S. and other foreign sound recordings, and does not clearly provide retroactive protection for works or sound recordings under its copyright law. In addition, there is weak enforcement of intellectual property rights in Belarus and piracy levels are extremely high. Belarus has amended its Criminal Code to adopt deterrent penalties for intellectual property violations, but the Criminal Code still does not contain the proper authority for police officials to initiate copyright criminal cases. Belarus currently has large-scale illegal music cassette production facilities. While there is not yet any known illegal optical media production in Belarus, the organized criminal element involved in illegal musical cassette production in Belarus is active in illegal optical media production in neighboring countries, and, absent effective border enforcement and optical media controls, Belarus is a prime target for the illegal distribution and production of optical media.

Bolivia: Bolivia has made some progress this past year with the long-awaited appointment of a director to the National Intellectual Property Service (SENAPI), created by President Banzer in 1997. SENAPI officials appear to be making a good faith effort to train personnel and acquire the resources needed to strengthen the institution. However, SENAPI continues to be seriously underfunded, lacks trained technical personnel, and has no mechanism to enforce intellectual property protections. Overall, enforcement of intellectual property protection in Bolivia remains weak. Software piracy continues to flourish unabated and counterfeit products are produced in

Bolivia and imported into the country with impunity, despite efforts by a new national customs service to control contraband at Bolivia's borders and ports of entry. Legislation to meet Bolivia's TRIPS Agreement obligations is still pending before the Bolivian Congress, and may not be fully consistent with TRIPS Agreement obligations. With respect to patents, Bolivian officials have stated that Bolivia will comply with the provisions of the revised Andean Community Decision 344, but that Decision has not yet been brought into conformity with the TRIPS Agreement. We will continue to consult informally with Andean Community governments in an effort to encourage them to resolve the outstanding TRIPS compliance concerns as soon as possible in the coming months.

Brazil: Brazil made substantial progress on an April 1998 commitment to process pipeline applications in an expedited manner, and it has significantly increased the rate at which it processes regular patent applications. However, in 1999 the Brazilian Government issued a Medida Provisoria which contains some problematic provisions related to issuance of pharmaceutical patents. Progress has not been sufficient on Brazil's commitment to increase effective enforcement actions, from raids through judicial decisions, against intellectual property infringement; the rate of CD piracy in Brazil continues to worsen. Failure to address this problem could lead to the collapse of the market for legitimate CDs in Brazil. We look to Brazil to significantly increase its enforcement efforts against video, music CD, video game, as well as other piracy in the coming year, consistent with its WTO obligations. We hope that the newly-formed inter-ministerial IPR task force will prove effective in this regard. Ambassador Barshefsky also announced that the United States was requesting WTO dispute settlement consultations to address concern over the "local working" requirement in Brazil's 1996 industrial property law.

Canada: A WTO dispute settlement panel recently confirmed that Canada's patent law fails to grant a full twenty-year patent term to certain patents as required by the TRIPS Agreement. In 1999, Ambassador Barshefsky announced initiation of WTO dispute settlement proceedings to address this situation. The United States looks to the Government of Canada to comply swiftly with the panel's ruling and bring its patent regime into compliance with Canada's international obligations before further losses are suffered by patent owners in Canada. 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 right of remuneration for the public performance of sound recordings and performances. 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 record producers are denied national treatment with respect to both these provisions and also that the remuneration right for public performances does not give producers and performers exclusive rights over on-demand and interactive uses. We will closely monitor their implementation and any future reform of Canada's copyright laws. More recently, U.S. industry has expressed concern over specific deficiencies in Canada's enforcement against piracy and counterfeiting, particularly at the border. We urge the Government of Canada to address these concerns this year.

Chile: While generally strong, Chile's intellectual property laws are not yet consistent with its obligations under the WTO TRIPS Agreement which came into force on January 1, 2000. 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." The Government of Chile introduced legislation in 1999 intended to make Chile's intellectual property regime TRIPS-compliant. This legislation has yet to be enacted and reportedly is not, in fact, TRIPS-consistent. Concerns have been expressed that the draft law does not provide adequate protection for confidential test data, among other issues. Inadequate enforcement against piracy and counterfeiting remains a serious concern, as does the large backlog of pending patent applications. We look to the Government of Chile to eliminate the backlog of patent applications and to bring its legal regime into compliance with TRIPS without further delay.

Colombia: Colombian officials worked very cooperatively during the past year with U.S. copyright industries in on-the-ground enforcement actions, and the Government of Colombia made significant progress in establishing a legitimate pay-per-view market. However, enforcement of copyright laws is still insufficient and piracy levels remain high. Enforcement in the trademark area also remains weak. On the patent side, Colombia and its Andean partners have not yet completed the revisions to Andean Decision 344 to bring it into conformity with the TRIPS Agreement. We will continue to consult informally with Andean Community governments in an effort to encourage them to resolve the outstanding TRIPS compliance concerns as soon as possible in the coming months.

Costa Rica: Costa Rica has made significant efforts to improve its legal framework for the protection of intellectual property. The Government of Costa Rica passed seven laws at the end of 1999 in an effort to bring its regime into compliance with its obligations under the TRIPS Agreement, including a provision to extend patent protection terms to TRIPS levels. However, a number of problems remain on the enforcement side, particularly with respect to criminal prosecutions, as evidenced by continued high levels of piracy. The U.S. looks to the Government of Costa Rica to build on its recent progress by taking adequate and effective enforcement actions.

Czech Republic: The Czech Republic has enacted patent, trademark, customs, and criminal and civil code amendments to bring its intellectual property rights regime in line with TRIPS Agreement obligations. Most recently, the Czech Republic passed a new copyright law. We applaud the government's efforts to accelerate enactment of this legislation in recent months. This new law is expected to address remaining significant gaps in the Czech Republic's regime, including extending copyright protection to pre-1974 sound recordings. However, the Czech Republic still does not explicitly provide for ex parte search and seizure authority in civil proceedings, and alternative measures in the Civil Procedure Code do not appear to be adequate. In addition, despite relatively good cooperation with police and customs officials, enforcement problems with prosecutors and courts remain pervasive throughout all sectors of the copyright

industry. As a result, piracy of audiovisual, software, sound recording, book and optical media products continues to be a serious problem in the Czech Republic. We will continue to consult informally with the Czech Republic in the coming months in an effort to encourage it to resolve outstanding TRIPS compliance concerns, including enforcement, as soon as possible.

Denmark: The United States initiated WTO dispute settlement proceedings against Denmark in 1997 as a result of Denmark's failure to implement its obligations under the TRIPS Agreement 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. This type of enforcement remedy is particularly important to the enforcement efforts of the software industry. After numerous consultations with the United States, the Government of Denmark established a Special Legislative Committee to consider the issue and determine the need for amendments to Danish law. The Committee is currently in the process of drafting the necessary legislation, but this process is significantly behind schedule. Therefore, USTR will take the next step in our dispute with Denmark and request the establishment of a WTO panel unless progress is made imminently.

Ecuador: Last year, Ecuador was moved from the Priority Watch List to the Watch List in recognition of its having enacted major legislation and implemented regulations which went a long way toward meeting TRIPS requirements. This year largely saw a consolidation of those gains. However, serious enforcement problems remain, with piracy levels still high, difficulty getting court orders enforced by the national police and the customs service, and a number of Dealers' Act cases still pending in the courts. On the patent side, Ecuador and its Andean partners need to complete the revisions to Andean Decision 344 to bring it into conformity with the TRIPS Agreement. We will continue to consult informally with Andean Community governments in an effort to encourage them to resolve the outstanding TRIPS compliance concerns as soon as possible in the coming months.

Hungary: Hungary has enacted copyright, patent, trademark, and criminal and civil code amendments to bring its intellectual property rights regime in line with its obligations under the TRIPS Agreement and its obligations to the United States and the European Union. However, questions remain whether sufficient legal authority exists as required by the TRIPS Agreement for civil *ex parte* search procedures. We have received indications that continuing concerns about Hungary's protection for confidential test data will be addressed in the coming year. We urge the Government of Hungary to do so quickly. With respect to enforcement, despite good cooperation with the police, video and cable television piracy is widespread, and local television and cable companies regularly transmit programs without authorization. Prosecutors and judicial authorities have generally not dealt with piracy cases in an expeditious manner or imposed deterrent level fines and jail sentences, although the Copyright Act, which entered into force on September 1, 1999, streamlines the procedure for the enforcement of judicial decisions in all copyright infringement cases.

Indonesia: While Indonesia's legal and enforcement regime for the protection of intellectual property remains seriously deficient in a number of areas, the Government of Indonesia has taken a number of steps this past year to address these deficiencies. Draft legislation in the areas of trade secrets, industrial design and integrated circuits, as well as amendments to existing patent, trademark and copyright laws, was prepared to meet the January 1, 2000 deadline for compliance with the TRIPS Agreement. While the Indonesian Parliament did not act on these proposals prior to that deadline, the legislation was resubmitted to Parliament in February 2000. Police raids were stepped up, but optical media piracy remains rampant and effective enforcement continues to be hindered by corruption and a non-transparent legal and judicial system. We urge the Government of Indonesia to intensify its efforts to pass TRIPS-consistent legislation as quickly as possible, and look forward to working with the Government of Indonesia immediately thereafter on an action plan to address our remaining concerns.

Ireland: It has been over five years since the WTO TRIPS Agreement came into force and the Government of Ireland has yet to implement a fully TRIPS-consistent copyright law. Three years ago, the United States initiated dispute settlement proceedings to address our concern over this situation. After numerous consultations with the United States, Ireland committed to enact comprehensive copyright reform legislation by December 1, 1998, 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 June 1998 raising criminal penalties for copyright infringement and addressing other enforcement issues. However, Ireland's commitment to enact comprehensive copyright legislation has not been met. We understand recent progress has been made toward finalizing this legislation and expect it will be enacted by parliament before its summer recess. The U.S. Government remains hopeful that Ireland will take the steps necessary to complete the legislative process in the very near future, but will feel compelled to consider other options in the face of any further delay.

Jamaica: In April 1999, the Government of Jamaica enacted new legislation on copyrights, layout-designs and trademarks. In recent months, Jamaica also has signed both the Paris Convention and the Brussels Convention. However, Jamaica's intellectual property regime does not yet meet TRIPS standards. Specifically, Jamaica lacks patent, industrial design, geographical indication and plant variety legislation consistent with its obligations under the TRIPS Agreement. We urge the Jamaican Government to complete this legislative process, and to continue efforts to improve its enforcement regime, including with respect to misuse of well-known marks.

Kazakhstan: Kazakhstan has several remaining steps to take to fulfill its Intellectual property commitments under the 1992 U.S.-Kazakhstan Trade Agreement and to make its intellectual property regime consistent with the TRIPS Agreement. Specifically, Kazakhstan is not yet a member of the Geneva Phonograms Convention, does not provide any protection or rights to U.S. and other foreign sound recordings, and does not clearly provide retroactive protection for works or sound recordings under its copyright law. There is weak enforcement of intellectual property rights in Kazakhstan and widespread piracy of all copyrighted products. New criminal

penalties for intellectual property violations have been adopted, but few if any cases have been commenced under the new laws. Further, it is not clear whether the Customs Law provides the proper authority to seize material at the border as required by the TRIPS Agreement. Ineffective border enforcement has allowed the importation of illegal sound recordings, and, if not addressed, could cause Kazakhstan to become a target for illegal optical media producers, a problem that other countries of the region have faced.

Kuwait: Kuwait had been lowered to the Watch List this year in recognition of its efforts over the past year to address concerns regarding its intellectual property laws and enforcement actions. The Kuwaiti Parliament passed a copyright law in 1999 that provides a legal framework for protection of U.S. works and sound recordings in Kuwait, and provides the basis to commence enforcement against copyright piracy immediately. Kuwait conducted its first significant enforcement actions under this law early this year. Although some concerns remain with this law, the Government of Kuwait has pledged to submit amendments to make the law fully compliant with the TRIPS Agreement, as well as to implement its draft patent law. We look to Kuwait to pursue sustained and deterrent enforcement actions and quickly pass the draft patent legislation. We will continue to consult informally with the Government of Kuwait in an effort to encourage it to resolve outstanding TRIPS compliance concerns in the coming months.

Latvia: Although Latvia has made progress in improving its intellectual property rights regime since it became a member of the WTO in February 1999, there is still much room for improvement. Latvian law does not allow for civil *ex parte* searches. We urge the Government of Latvia to address these concerns and to make additional efforts to combat piracy. Although pirate optical media production currently is not a problem, there exists a pervasive transshipment problem in Latvia, not only in optical media but in other copyrighted products as well, with much of Latvia's pirated business software flowing over the border from Russia.

Lebanon: The new copyright law provides a firm basis for copyright protection for U.S. works and sound recordings. However, the law contains exemptions that are not consistent with international standards, and there has been little enforcement against piracy. End-user piracy of computer software is pervasive among large companies, banks, trading companies, and most government ministries. In addition, optical media production facilities are reportedly being set up, with the potential for Lebanon to become an exporter of pirated product. The Lebanese Cabinet approved a new patent bill earlier this year, and we urge the Parliament to quickly pass the legislation. Concerns also remain that health authorities are registering unauthorized copies of patented pharmaceuticals. We look to Lebanon to take swift action to address these concerns.

Lithuania: Although Lithuania enacted a new Copyright Act in 1999 and acceded to the Geneva Phonograms Convention in 2000, significant problems remain. Lack of copyright enforcement has led to a pernicious transshipment problem, with many pirated products moving from Russia and Ukraine to Western Europe via Lithuania. Piracy is also problematic in the Lithuanian domestic market. Lithuania signed a yet-unratified bilateral agreement with the United States in

1994. To date, Lithuania has failed to provide transitional pipeline protection, which was a part of the 1994 agreement. Other types of patent protections also remains lacking, including protection for confidential test data and process patents.

Macau: Over the past six months, Macau has made reasonable progress in attacking the piracy problems that led to its placement on the Special 301 Priority Watch List. Macau has enacted a tough, TRIPS-compliant copyright law; required source identifier codes; and required registration of CD production and sales facilities. An Intellectual Property Department has been established to coordinate policy and enforcement, and a government decree has been issued requiring the use by government agencies of licensed software. Over the next several months, we look to Macau to organize a new customs department, incorporating elements of both the Macau Economic Services Department and the Marine Police. Although only a few months have passed since the establishment of the Macau Special Administrative Region (SAR), relations have improved with American copyright associations, especially with the Motion Picture Association, with whom Macau has conducted five joint enforcement operations so far this year. Macau's courts have implemented a special expedited prosecution system that allows a suspect to be brought immediately to trial. We now look to Macau to vigorously prosecute those responsible for piracy. In view of the significant momentum that Macau has demonstrated to improve intellectual property protections, Macau is being lowered from Priority Watch List to Watch List status. USTR will conduct an out-of-cycle review of Macau in December 2000.

Moldova: Moldova has several remaining steps to take to fulfill its intellectual property commitments under the 1992 U.S.-Moldova Trade Agreement and to make its intellectual property regime consistent with the TRIPS Agreement. Specifically, Moldova is not yet a member of the Geneva Phonograms Convention; is not providing any protection or rights to U.S. and other foreign sound recordings; and does not clearly provide retroactive protection for works or sound recordings under its copyright law. In addition, there is weak enforcement of intellectual property rights in Moldova. Moldova's 1994 Copyright Act does include deterrent penalties for intellectual property violations; however, Moldova has yet to amend its Criminal Code to include criminal provisions for intellectual property violations, as required by the 1992 bilateral agreement. Further, the Customs Law does not provide the proper authority to seize material at the border as required by the TRIPS Agreement. Ineffective border enforcement could cause Moldova to become a target for illegal optical media producers, a problem that other countries of the region have faced.

Oman: As part of its efforts to accede to the WTO, Oman is currently working with WTO Members to amend its current copyright law to comply with the provisions of the TRIPS Agreement. Although Oman has started to take steps to combat software piracy, no action has been taken to date against end-users of unauthorized computer software. We urge Oman to continue its progress on amending the copyright law, to join the Geneva Phonograms Convention and to pursue sustained and deterrent enforcement actions against end-users of unauthorized computer software.

Pakistan: Pakistan's regime for protection of intellectual property does not yet comply with the obligations of the TRIPS Agreement. The Government of Pakistan has undertaken the task of rewriting legislation in the areas of copyrights, patents, and trademarks, but this work appears to have been hampered by lack of a central coordinating authority. Intellectual property piracy in Pakistan remains widespread, affecting patented, copyrighted and trademarked products. Pakistani authorities have taken some steps to strengthen enforcement, including stepping up raids, but court action is slow, and courts tend to impose non-deterrent penalties. We continue to be concerned as well that insufficient measures are being taken to curb illicit production of optical media at three plants located in Pakistan, and urge the Government of Pakistan to take action against pirate producers.

The Philippines has been inconsistent in its nationwide enforcement efforts which rarely result in the imposition of deterrent penalties. Work has continued on legislation to implement TRIPS Agreement obligations in the area of integrated circuit design and plant variety protection, but the legislation has not yet been enacted. It is also unclear whether existing law provides right holders an *ex parte* search and seizure remedy as required by TRIPS Article 50, which is a major priority for the United States. Other deficiencies that are not addressed by regulations include onerous technology licensing restrictions. We are also concerned about ineffective enforcement against cable television piracy, and about the persistence of unacceptably high levels of piracy of U.S. textbooks and other publications. In reaction to increased reports about the proliferation of infringing optical disc production in the Philippines, the United States strongly urges the Philippine Government to adopt an effective regulatory system to combat this problem. We will continue to consult informally with the Government of the Philippines in an effort to encourage it to resolve outstanding TRIPS compliance concerns as soon as possible in the coming months.

Qatar: Despite isolated enforcement actions, Qatar has not yet pursued sustained and deterrent enforcement against end-users of unauthorized computer software, including government entities and against retail shops selling pirated software. Although amendments to its copyright law have been drafted to comply with the provisions of the TRIPS Agreement, these amendments have not yet been enacted. The United States looks forward to enactment in the near future. Qatar has announced that it will adhere to the GCC Patent Regulation and use the GCC Patent Office, and recently provided welcome assurances that it would do so in the coming weeks. However, Qatar has yet to approve and implement a TRIPS-consistent patent law. The government has repeatedly assured U.S. government and industry representatives over the years that unauthorized copies of patented U.S. pharmaceuticals would not be permitted to enter the market. These assurances were reaffirmed recently to U.S. industry. USTR will review Qatar's Special 301 status upon its enactment of a TRIPS-consistent intellectual property regime.

Romania: Although Romania has joined the Berne Convention and the Geneva Phonograms Convention, and is a signatory of the WIPO treaties, it has yet to ratify the treaties or pass legislation necessary to implement them. Criminal enforcement against copyright piracy and trademark counterfeiting (especially of U.S. distilled spirits) continues to be lax, resulting in troubling levels of infringements against imported products and growing domestic production of

pirated goods. We urge the Government of Romania to enact an effective criminal *ex parte* mechanism and civil *ex parte* authority, and to take appropriate measures to expedite prosecution of infringement cases and provide deterrent penalties. With respect to patents, Romanian law does not yet provide protection for confidential test data as required by the TRIPS Agreement.

Saudi Arabia: As part of its effort to accede to the WTO, Saudi Arabia is currently working with WTO Members to revise its intellectual property laws, including patent and copyright laws, to bring them into conformity with the TRIPS Agreement. With respect to enforcement, the level of activity undertaken by enforcement officials has been insufficient to deter piracy. While the government has been working with the U.S. copyright-based industries to conduct some raids, overall enforcement is not carried out with sufficient regularity and is not accompanied by the appropriate level of publicity and sentences to reduce the level of piracy. The use of unauthorized computer software in government offices also remains a problem. We urge the Government of Saudi Arabia to revise its intellectual property laws to bring them into conformity with the TRIPS Agreement, pursue sustained and deterrent enforcement actions, and begin the process of ensuring that government entities use only authorized software.

Singapore: Overall piracy rates in Singapore decreased slightly during 1999, while the number of police-organized raids increased. However, the open retail availability of pirated CDs, VCDs and CD-ROMs in notorious shopping malls and at stalls continues to be a serious problem, and has not declined significantly in recent years. The United States urges Singapore to continue its anti-piracy consumer education campaign and to reassess the existing "self-help" approach to intellectual property enforcement which shifts to right owners the primary burden and expense of investigating and prosecuting infringement. This system is inadequate to cope with the growing problem of optical disk piracy, as illustrated by the significant levels of conspicuous retail piracy. Further, we remain concerned about insufficient efforts at the border to stop the in-flow and transshipment of infringing articles through Singapore.

Spain: Piracy of business application software continues to account for the majority of losses to the U.S. intellectual property industry in Spain, while piracy and counterfeiting in other areas of intellectual property remain extremely low. Government enforcement activities have increased substantially in recent years with exemplary cooperation from Spanish police. However, recent court decisions have called into question the adequacy of protection for well-known trademarks. In addition, according to industry reports, rates of unauthorized copying of software by organizations for internal use (end-user piracy) remain among the highest in Western Europe. The slow pace of both civil and criminal court proceedings and lack of sufficient criminal penalties is thought to have diluted the impact of the increased raids in certain areas. Nevertheless, the Government of Spain has undertaken to reinforce its already strong commitment to intellectual property protection through specific proposed actions by an inter-ministerial commission. The United States looks forward to the full implementation of these steps and to further reductions in the piracy of business software in Spain.

Taiwan: Taiwan has had mixed results on intellectual property during the last year. On the

positive side, top level support within the Ministry of Economic Affairs has finally resulted in the establishment of an effective Intellectual Property Office. This office has been well staffed with energetic people. With their leadership, and the active cooperation of the Investigative Bureau of the Ministry of Justice, a number of illegal CD production facilities have been closed during the last year, and a number of retail raids have been conducted. On the negative side, responsibility for intellectual property matters is still badly fragmented among different agencies. Repeated U.S. Government requests for action to improve access to the judicial system in infringements case, to enforce existing source identification code regulations, and to adopt an effective chip marking system have been rebuffed. Taiwan is now among the world's largest producers of optical media. Toleration of extremely lax procedures in enforcing intellectual property rights in this area is out of step with Taiwan's increasing role as an originator of intellectual property.

Tajikistan: Tajikistan has several remaining steps to take to fulfill its intellectual property commitments under the 1993 U.S.-Tajikistan Trade Agreement. Specifically, Tajikistan is not yet a member of the Geneva Phonograms Convention; is not providing any protection or rights to U.S. and other foreign sound recordings; and does not clearly provide retroactive protection for works or sound recordings under its copyright law. There is weak enforcement of intellectual property rights in Tajikistan. Criminal penalties for intellectual property violations have not yet been adopted as required by the 1993 U.S.-Tajikistan Trade Agreement. Further, the Customs Code does not provide the proper authority to seize material at the border, as is necessary to conduct effective border enforcement. Ineffective border enforcement could cause Tajikistan to become a target for illegal optical media producers, a problem that other countries of the region have faced.

Thailand's intellectual property record over the past year has improved moderately. The intellectual property courts are imposing criminal penalties; however, these are often not sufficient to deter infringement and are often suspended pending appeal. Thai prosecutors remain unwilling to charge infringers for violations of customs and revenue laws, in addition to intellectual property infringement. Moreover, the periodic disappearance from police custody of critical evidence of copyright and trademark infringement continues to hamper prosecution. The government continues to focus on retail enforcement, but these efforts have not kept pace with widespread and conspicuous retail sale of infringing goods; however, the lack of confidentiality often results in retail operations becoming aware of raids prior to their execution. The government has stepped up enforcement efforts against infringing production, but needs to do more to address increasing levels of optical media piracy in Thailand. In this regard, the United States will monitor closely ongoing efforts to enact legislation necessary to implement a comprehensive regulatory regime to control optical media production. We also urge Thailand to address the inability of enforcement authorities to conduct raids outside business hours; this deficiency has become a significant liability to the effectiveness of the government's efforts to strengthen intellectual property enforcement.

Turkmenistan: Turkmenistan has several remaining steps to take to fulfill its intellectual

property commitments under the 1993 U.S.-Turkmenistan Trade Agreement. Specifically, Turkmenistan is not yet a member of the Berne Convention or the Geneva Phonograms Convention, is not providing any protection or rights to U.S. and other foreign sound recordings, and does not clearly provide retroactive protection for works or sound recordings under its copyright law. In addition, there is weak enforcement of intellectual property rights in Turkmenistan. Criminal penalties for intellectual property violations have not yet been adopted as required by the 1993 U.S.-Turkmenistan Trade Agreement. Further, the Customs Code does not provide the proper authority to seize material at the border, as is necessary to conduct effective border enforcement. Ineffective border enforcement could cause Turkmenistan to become a target for illegal optical media producers, a problem that other countries of the region have faced.

Uruguay: Reform of outdated patent and copyright legislation has been underway in Uruguay for a number of years. The Uruguayan Congress enacted the patent bill in September 1999, but the new law contains several problematic areas, including omission of protection for confidential test data, overly broad compulsory licensing provisions, failure to address exclusive marketing rights, and international exhaustion of patent rights. We urge the Government of Uruguay to enact TRIPS-consistent copyright legislation and to amend the new patent law to bring it into full compliance with TRIPS Agreement obligations. We will continue to consult informally with the Government of Uruguay in an effort to encourage it to resolve outstanding TRIPS compliance concerns as soon as possible in the coming months.

Uzbekistan: Uzbekistan has several remaining steps to take to fulfill its intellectual property commitments under the 1994 U.S.-Uzbekistan Trade Agreement and to make its intellectual property regime consistent with the TRIPS Agreement. Specifically, Uzbekistan is not yet a member of the Berne Convention or the Geneva Phonograms Convention, is not providing any protection or rights to U.S. and other foreign sound recordings, and does not clearly provide retroactive protection for works or sound recordings under its copyright law. In addition, there is weak enforcement of intellectual property rights in Uzbekistan and widespread piracy of all copyrighted products. Uzbekistan has not yet amended its Criminal Code following passage of the 1996 Copyright Act to adopt deterrent penalties for intellectual property violations as required by the 1994 bilateral agreement. The Criminal Code does provide for liability for infringement of copyright and patent violations but does not include neighboring rights. Existing penalties are limited and weak. Further, the Customs Law does not provide the proper authority to seize material at the border as required by the WTO TRIPS Agreement. Ineffective border enforcement could cause Uzbekistan to become a target for illegal optical media producers, a problem that other countries of the region have faced.

Venezuela: Venezuela's protection of intellectual property rights has not improved significantly during this past year, with piracy remaining at about the same level. The trademark office (SAPI) has made notable improvements in its operations during the last year, and the anti-piracy command of the judicial police (COMANPI) has continued to carry out raids against trademark counterfeiters, despite significant resource constraints. However, trademark counterfeiting in the

clothing, toy and sporting good sectors remains common. Copyright piracy also remains rampant, and COMANPI enforcement has been minimal. On the patent side, Venezuela and its Andean partners need to complete the revisions to Andean Decision 344 to bring it into conformity with the TRIPS Agreement. We will continue to consult informally with Andean Community governments in an effort to encourage them to resolve the outstanding TRIPS compliance concerns as soon as possible in the coming months.

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.

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Attachment

Developments in Intellectual Property Rights

1999

May

- The Mexican Government amended its criminal code on May 17 to increase the level of penalties imposed for copyright offenses.
- The Russian State Customs Committee issued an executive decree on May 27 that designates a department within the customs department to fight piracy and provides that department with specialized tools and new rules to fight piracy.
- Bangladesh joined the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) on May 4.

June

- Azerbaijan adhered to the Berne Convention on June 4.
- Kazakhstan's Law on Customs was amended on June 16.
- Lebanon's new copyright law became effective June 14.
- Lithuania's new copyright law became effective June 9.

July

- The Government of Israel established special police units in Israel to tackle copyright piracy problems, and started operating in July.
- The Paraguayan Government amended its criminal code making copyright crimes "public" actions, therefore, allowing prosecutors to pursue copyright cases on their own initiative. The law entered into effect on July 9.
- Georgia's civil code on copyright protection became effective July 8.
- The Kyrgyz Republic joined the Berne Convention, effective July 8.

- Venezuela's new Code of Criminal Procedure entered into force on July 1, establishing specialized IPR courts.
- Oman amended implementing regulations to the copyright law on July 1.
- Oman also joined the Berne Convention, effective July 14.
- Jordan joined the Berne Convention on July 28.
- Liechtenstein acceded to the Paris text of the Berne Convention on July 23.

August

- The Singapore Parliament passed the Copyright Act Amendment Bill of 1999 on August 17, thereby amending Singapore's copyright law.
- Amendments to Turkish Criminal Code and the Criminal Enforcement Act entered into force on August 1.
- Dominica joined the Berne Convention on August 7.

September

- The Chinese Government launched the first phase of several special enforcement actions against illegal replication and smuggling of copyrighted audio and video products.
- Implementing regulations for the 1998 Copyright Law of Paraguay were signed into law on September 13.
- To intensify efforts by the government of the Dominican Republic to combat piracy, a commission led by the Ministry of Industry and Commerce, which includes the legal counsel to the President, the attorney general, a prosecutor, enforcement agencies and the Intellectual Property Office of the Ministry of Industry and Commerce, was created in September.
- Hungary's revised copyright law took effect September 1. It is designed to fulfill Hungary's bilateral commitments as well as comply with WTO TRIPS Agreement obligations.
- Jamaica's revised its copyright and layout design laws with the intention to meet WTO TRIPS requirements. The laws entered into force on September 3.

- Malaysia's amended its industrial designs law with the intention to meet WTO TRIPS requirements. The law entered into force on September 1.
- Nicaragua's amended copyright law entered into force in September. It is designed to meet WTO TRIPS requirements.
- Uruguay's amended patent law entered into force on September 2. It is designed to meet WTO TRIPS requirements.
- Belgium acceded to the Paris text of the Berne Convention on September 29.

October

- Macau adopted several essential improvements to this regulatory regime, including licensing requirements for all retail establishments dealing with optical media products, and requiring all optical media products manufactured in Macau to bear a source identification (SID) code.
- Macau's new copyright law came into effect October 1. It is designed to meet WTO TRIPS requirements.
- The Protocol for Jordan's WTO Accession was agreed upon by Jordan and the U.S. in October, as Jordan was in the final stages of enacting laws and ministerial decrees in the areas of patent, copyright and trademark to meet WTO TRIPS Agreement obligations.

November

- The Thai Government put before the cabinet for approval a bill to control the illegal reproduction of compact discs, and to further crackdown on the manufacturing and distribution of pirate CDs.
- The Colombian Government issued 114 new cable television operator licenses in November to establish a regulatory environment which would be conducive to the growth of a legitimate pay television market.

December

- The "AntiPiracy Act" of the Czech Republic became effective on December 1, 1999. The Act set forth the conditions under which Custom authorities can take measures against alleged infringing and counterfeit goods.

- The Paraguayan Government issued a software decree requiring the use of legal software in all federal agencies on December 31.
- The Czech Republic's legislation granting customs officials broader ex officio authority to seize suspected infringing copies of intellectual property went into force in December.
- The technical committee of the Turkish Government completed its revisions to the copyright amendments and forwarded it to the full subcommittee for review.
- The Colombian Congress passed domestic legislation to permit it to ratify the World Intellectual Property Organization (WIPO) Copyright and Performances and Phonograms Treaties.
- Costa Rica passed copyright legislation on December 31 designed to conform to the requirements of the WTO TRIPS Agreement.
- Costa Rica passed domestic legislation to permit it to ratify the WIPO Copyright and Performances and Phonograms Treaties.
- Jamaica's amended trademark legislation came into force in December.
- Bulgaria's legislation on trademarks, geographical indications, industrial designs and lay out designs came into force on December 14, and are designed to meet WTO TRIPS requirements.
- Indian Parliament passed three bills on December 23 designed to meet WTO TRIPS requirements. The bills include copyright amendments, trademarks and geographical indications.

2000

January

- Israel amended its intellectual property laws with the intention of meeting WTO TRIPS obligations. The laws became effective January 1.
- On January 12, the Hong Kong Government enacted amendments to the Organized and Serious Crimes Ordinance that makes copyright piracy and trademark counterfeiting a more serious criminal offense.
- The Hong Kong Government introduced legislation into the Legislative Council on January 26, 2000, which is designed to prevent bootlegging of copyrighted material and to clarify the law to facilitate prosecution of corporate piracy activities.

- The Paraguayan Government issued a decree on January 27 that places import controls on blank media (blank compact discs, audiotapes and video tapes) to fight against piracy.
- The recording, motion picture and business software industries signed a Memorandum of Understanding with the Polish National Board of Customs with the aim to improve cooperation between the private sector and customs in the fight against piracy on January 24.
- Armenia's new law on Copyright and Neighboring Rights was signed into law on January 12.
- Legal reforms to improve the legal and enforcement copyright regime were adopted in Estonia. Trade Secret and lay out design laws, designed to comply with WTO TRIPS obligations, were also amended in December.
- On January 31, Romania issued a government decree to establish a registration and hologram program for the production and distribution of phonograms, with non-compliance resulting in fines for confiscation of illegal material.
- Honduras published amendments to its copyright law on January 15.
- Australia acceded to the 1991 Act of the UPOV Convention on plant variety protection on January 20.
- Croatia's laws covering industrial designs, patent, trademarks, integrated circuits and trademarks came into effect in January.

February

- Ukraine adhered to the Geneva Phonograms Convention on February 18.
- Georgia adopted a new Criminal Code to improve copyright enforcement, which came into force on February 15.
- The Colombian Government confirmed the National AntiPiracy Campaign, which decrees the involvement of a large number of government and independent agencies in the fight against piracy on February 25.
- Colombia issued a directive to all government and educational institutions to use only legitimate software.
- Kuwait's new copyright law came into effect on February 9, and it is designed to meet

WTO TRIPS requirements.

March

- The lower house of the Czech parliament passed copyright legislation with the intention of making it fully compatible with the WTO TRIPS Agreement.
- Japan's rules and regulations implementing the Madrid Protocol on trademarks came into effect March 14.
- Antigua and Barbuda joined the Berne Convention on March 17.
- Tajikistan joined the Berne Convention on March 9.
- Taiwan signed an agreement with the U.S. on customs cooperation in cracking down on pirated goods in March.
- Four Chinese Authorities joined together to conduct another phase of several special enforcement actions specifically against DVD pirates. On March 2, 2000, the State Press and Publication Administration, the National Copyright Administration of China the Ministry of Public Security and the State Administration of Industry and Commerce issued an urgent joint circular to urge every provincial, regional and municipal government authority to launch a special campaign against DVD piracy in China.

April

- The lower house of the Polish parliament approved amendments to the copyright law which are designed to bring Poland into compliance with its TRIPS obligations.
- The Swedish Parliament passed legislation, which took effect on April 1, that protects unpublished copyrighted material from being copied and disseminated by public authorities.
- Macau issued its directive on software legalization in government agencies.
- Latvia passed copyright law amendments in April.
- Peru announced in April a nation-wide software legalization campaign.
- The Czech Republic passed a new copyright law on April 26 to meet its TRIPS Agreement obligations.

- The United Arab Emirates (UAE) recently provided a written commitment to take specific steps to assure the adequate and effective protection of patented products. These include specific commitments on TRIPS implementation, data protection and not providing marketing approval for unauthorized copies of patented products.
- The Government of the Bahamas has recently provided written assurances that it would not permit transmission of copyrighted works over the Internet without the right holder's consent, and that it would negotiate with the U.S. Government on other issues of concern related to its copyright regime.

WIPO Copyright Treaty and Performances and Phonograms Treaty

The following is a list of countries that deposited their instruments of accession to the World Intellectual Property Organization (WIPO) Copyright and Performances and Phonograms Treaties (WCT and WPPT) during the term of May 1999- April 2000:

Argentina
Burkina Faso
Hungary (deposited only the WCT)
Latvia
Panama
Saint Lucia
Slovenia
United States
Mexico (deposited only the WPPT)