

## 2002 SPECIAL 301 REPORT

### Executive Summary

United States Trade Representative Robert B. Zoellick today announced the results of the 2001 "Special 301" annual review, which examined in detail the adequacy and effectiveness of intellectual property protection in approximately 72 countries.

USTR notes with disappointment the continued designation of Ukraine as a Priority Foreign Country due to its persistent failure to take effective action against significant levels of optical media piracy and to implement intellectual property laws that provide adequate and effective protection. As a result, the \$75 million worth of sanctions imposed on Ukrainian products on January 23, 2002, remain in place. This continued failure to adequately protect intellectual property rights could also jeopardize Ukraine's efforts to join the World Trade Organization (WTO) and seriously undermine its efforts to attract trade and investment. The U.S. Government continues to remain actively engaged with Ukraine in encouraging the nation to combat piracy and to enact the necessary intellectual property rights legislation and regulations.

The Special 301 report addresses significant concerns in such trading partners as Brazil, Colombia, India, Hungary, Taiwan, the Dominican Republic, Kuwait, the Philippines, Russia, Egypt, Turkey, Saudi Arabia, Uruguay, and members of the Andean Community. While not listing Mexico, enforcement efforts in Mexico continue to need improvement and an out-of-cycle review will be conducted later this year. In addition, the report notes that the United States will consider all options, including but not limited to, initiation of dispute settlement consultations with countries that do not appear to have implemented fully their obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Such countries include Hungary, members of the Andean Community, the Dominican Republic, India and Kuwait.

In this year's review, USTR devoted special attention to the growing issue of Internet piracy, as well as the ongoing campaign to reduce production of unauthorized copies of "optical media" products such as CDs, VCDs, DVDs, and CD-ROMs. Optical disk piracy is an increasing problem in many countries, in particular, Ukraine, Indonesia, Malaysia, the Philippines, Russia, Thailand and Taiwan. In addition, USTR continued to focus on other critically important issues including proper implementation of the TRIPS Agreement by developing country WTO Members and full implementation of TRIPS standards by new WTO Members at the time of their accession. USTR also continued to encourage countries to ensure that government ministries use only authorized software.

Over the past year, progress was made by many developing countries and by newly acceding WTO Members toward implementing TRIPS obligations. Nevertheless, full implementation of TRIPS obligations has yet to be achieved in certain countries, particularly with respect to the Agreement's enforcement provisions. As a result, piracy and counterfeiting of U.S. intellectual property remain

unacceptably high in these countries.

The United States is committed to a policy of promoting increased intellectual property protection. In this regard we are making progress in advancing the protection of these rights through a variety of mechanisms, including through the negotiation of free trade agreements. As part of the negotiations with Chile and Singapore, as well as in the hemispheric Free Trade Area of the Americas, we are seeking higher levels of intellectual property protection in a number of areas covered by the TRIPS Agreement. These negotiations, as well as any other negotiations that USTR may undertake in the course of this year, give us the opportunity to build upon the standards in the TRIPS Agreement to reflect the technological changes that have occurred since the late 1980s and early 1990s.

USTR will continue to use all statutory tools, as appropriate, to improve intellectual property protection in such countries where it is inadequate, such as Ukraine, Russia, Brazil, the Dominican Republic, and Turkey including through implementation of the Generalized System of Preferences and other trade preference programs.

### **Internet Piracy and the WIPO Copyright Treaties**

Throughout the world, countries have begun to recognize the importance of the Internet as a vehicle for economic expansion. However, despite the promise that the Internet holds for innovative and creative industries, it also creates significant challenges, as it serves as an extremely efficient global distribution network for pirate products. We are currently working with other governments, as well as consulting with U.S. industry, to develop the best strategy to address Internet piracy.

An important first step in the fight against Internet piracy was achieved at the World Intellectual Property Organization (WIPO), when it concluded two copyright treaties in 1996; the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), referred to as the WIPO Internet Treaties. These Treaties help raise the minimum standards of intellectual property protection around the world, particularly with respect to Internet-based delivery of copyrighted works.

These Treaties represent the consensus view of the world community that the vital framework of protection under existing treaties, including the TRIPS Agreement, should be supplemented to eliminate any remaining gaps in copyright protection on the Internet that could impede the development of electronic commerce.

In order to realize the enormous potential of the Internet, a growing number of countries are implementing the WIPO Internet Treaties and creating a legal environment conducive to investment and growth in Internet-related businesses and technologies. In the competition for foreign direct investment, these countries now hold a decided advantage. We urge other governments to ratify and implement the two WIPO Internet Treaties, which clarify exclusive rights in the on-line environment and specifically

prohibit the devices and services intended to circumvent technological protection measures for copyrighted works.

We are pleased to report that as of May 20, 2002, both Treaties will be in effect, as the required number of ratifications have been deposited in Geneva with WIPO. We continue to work internationally to promote ratification of these Treaties by other trading partners. These Treaties represent the current state of international copyright law and provide the critical foundation needed to enable e-commerce to flourish. These treaties provide necessary tools to combat piracy on the Internet.

The United States is also pleased to learn that Japan has recognized the need to protect temporary copies of works and phonograms. This is an important improvement in Japan's protection of copyright and related rights. Unfortunately, Japan's ability to develop a vibrant e-commerce market in works protected by copyright and related rights is now hampered by the enactment of an Internet service provider liability law which fails to provide the necessary protections to right holders. The U.S. encourages Japan best chance to improve this situation by adopting implementing regulations which, without imposing unfair or unequal burdens, provide the necessary incentives for service providers to work with right holders to remove infringing material expeditiously without discriminating against individual right holders, and to provide right holders the ability to learn the identity of accused online infringers.

#### **Other Initiatives Regarding Internet Piracy**

We are seeking to incorporate the highest standards of protection for intellectual property into appropriate bilateral and regional trade agreements that we negotiate. We have already had our first success in this effort by incorporating the standards of the WIPO Internet Treaties as substantive obligations in our FTA with Jordan. The Jordan FTA laid the foundation for pursuing this goal in the free trade agreements we are negotiating with Chile and Singapore as well as the Free Trade Area of the Americas (FTAA), and other FTAs yet to be launched. Moreover, our proposals in these negotiations will further update copyright and enforcement obligations to reflect the technological challenges we face today as well as those that may exist at the time negotiations are concluded several years from now.

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

One of the most significant achievements of the Uruguay Round was the negotiation of the TRIPS Agreement, which requires all WTO Members to provide certain minimum standards of protection for patents, copyrights, trademarks, trade secrets, geographical indications and other forms of intellectual property. The Agreement also requires countries to provide effective enforcement of these rights. 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.

Developed countries were required to fully implement TRIPS as of January 1, 1996, while developing countries were given a transition period – until January 1, 2000 – to implement 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 countries, and with respect to the protection of pharmaceuticals and agriculture chemicals in certain developing countries, even longer transitions are provided.

Progress continues to be made by developing countries toward full implementation of their TRIPS obligations. Nevertheless, certain countries are still in the process of finalizing implementing legislation and establishing adequate enforcement mechanisms. Every year the U.S. Government provides extensive technical assistance and training on the implementation of the TRIPS Agreement, as well as other international intellectual property agreements, to a large number of U.S. trading partners. Such assistance is provided by a number of U.S. Government agencies, including the U.S. Patent and Trademark Office, the U.S. Copyright Office, the State Department and the Justice Department, on a country-by-country basis, as well as in group seminars, including those co-sponsored with WIPO and the WTO. Technical assistance involves review of and drafting assistance on laws concerning intellectual property and enforcement. Training programs usually cover the substantive provisions of the TRIPS Agreement, as well as enforcement. The United States will continue to work with WTO Members and expects further progress in the near term to complete the TRIPS implementation process. However, in those instances where additional progress is not achieved in the near term, the United States will pursue our rights through WTO dispute settlement proceedings.

### **Controlling Optical Media Production**

To address existing and prevent future piratical activity, over the past year some of our trading partners, such as Malaysia and Taiwan, have taken important steps toward implementing, or have committed to adopt, much needed controls on optical media production. We await news of aggressive enforcement of these laws. However, others that are in urgent need of such controls, including Ukraine, Thailand, Indonesia, Pakistan, the Philippines, and Russia, and have not made sufficient progress in this regard.

Governments such as those of China, Hong Kong and Macau 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 continue to 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, or aggressively enforce existing regulations, in the coming year. USTR is concerned, however, about recent reports of increased piracy and counterfeiting in Bulgaria, which had been a model in its region for taking the necessary steps to tackle

optical media piracy, including the enactment of optical media controls. Particularly troubling are reports that the CD plant licensing laws might be revised in such a manner so as to undermine, not improve, their effectiveness. We will be closely monitoring the situation and look to the Government of Bulgaria to maintain strong optical disk (OD) regulations.

### **Government Use of Software**

In October 1998, the United States announced a new Executive Order directing U.S. Government agencies to maintain appropriate, effective procedures to ensure legitimate use of software. In addition, USTR was directed to undertake an initiative 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 of illegal software.

The United States has achieved considerable progress under this initiative. Countries that have issued decrees mandating the use of only authorized software by government ministries include Bolivia, China, Chile, Colombia, the Czech Republic, Ireland, Israel, Jordan, Paraguay, Thailand, France, the U.K., Spain, Greece, Turkey, Hungary, Korea, Hong Kong, Macau, Lebanon, Taiwan and the Philippines. Ambassador Zoellick noted his pleasure that these governments have recognized the importance of setting an example in this area and his expectation that these decrees will be fully implemented. The United States looks forward to the adoption of similar decrees, with effective and transparent procedures that ensure legitimate use of software, by additional governments in the coming year.

### **Intellectual Property and Health Policy**

In announcing the results of the 2002 Special 301 review, Ambassador Zoellick reiterated that USTR would not change the present approach to health-related intellectual property issues. That is to say, consistent with the United States' protection of intellectual property, we remain committed to working with countries to develop workable programs to prevent and treat HIV/AIDS, malaria, tuberculosis and other epidemics.

We have informed countries that, as they take steps to address a major health crisis, like the HIV/AIDS crisis in sub-Saharan Africa, they should be able to avail themselves of the flexibilities afforded by the TRIPS Agreement, provided that any steps they take comply with the provisions of the Agreement. The Declaration on the TRIPS Agreement and Public Health agreed upon at the WTO Doha Ministerial in November 2001 is a reflection of this commitment.

The U. S. Government also remains committed to a policy of promoting intellectual property protection, including for pharmaceutical patents, because of intellectual property rights' critical role in the rapid innovation, development, and commercialization of effective and safe drug therapies. Financial incentives are needed to develop new medications. No one benefits if research on such products is discouraged.

## **WTO Dispute Settlement**

In past years, USTR has used the annual Special 301 report as a vehicle to announce the launch of WTO dispute settlement proceedings against countries that have not met their TRIPS obligations. As with last year's report, the focus this year is on resolving the WTO cases that were announced through previous Special 301 determinations, either through full utilization of the dispute settlement process (*e.g.*, panel proceedings, Appellate Body review, and reasonable period of time arbitration), or through consultations, which are more efficient and are therefore the preferred manner of reaching mutually satisfactory solutions. The following section provides updates of previously announced WTO cases, highlighting the progress made in the past year.

### **ARGENTINA**

On May 6, 1999, as a result of the 1999 Special 301 determinations, the United States filed a WTO dispute settlement case challenging Argentina's failure to provide a system of exclusive marketing rights for pharmaceutical products, and to ensure that changes in its laws and regulations during its transition period do not result in a lesser degree of consistency with the TRIPS Agreement. Subsequently, as announced in the 2000 Special 301 Report, the United States expanded its claims to include new concerns that arose due to Argentina's failure to fully implement its remaining TRIPS obligations that came into effect on January 1, 2000. These concerns include Argentina's apparent failure to protect confidential test data submitted to government regulatory authorities for marketing approval for pharmaceuticals and agricultural chemicals; denial of certain exclusive rights for patents; failure to provide such provisional measures as preliminary injunctions to address patent infringement; and exclusion of certain subject matter from patentability. In all, the United States raised ten distinct claims with Argentina in this dispute. Consultations were then held on July 17, 2000, November 29, 2000, April 2, 2001, July 13, 2001, September 21, 2001, and November 5, 2001. Progress was made during these consultations, and on the week of April 15, 2002, in meetings held in Buenos Aires, the United States and Argentina agreed to harvest the progress made and finalized the elements of a joint notification to the WTO, partially settling this dispute.

In the joint notification to the WTO, Argentina clarified how certain aspects of its intellectual property system, such as those related to its exclusive marketing rights regime, operate so as to conform with the TRIPS Agreement. In addition, Argentina agreed to amend its patent law to provide protection for products obtained from a process patent, to ensure that preliminary injunctions are available in intellectual property court proceedings, and to shift the burden of proof from the plaintiff to the defendant in civil proceedings involving process patents. Finally, on the two outstanding issues that remain, that of data protection and the ability of patentees to amend pending applications to claim certain enhanced protection provided by the TRIPS Agreement, the United States retained its right to seek resolution under the WTO dispute settlement mechanism.

## **EUROPEAN UNION**

At the conclusion of the 1999 Special 301 review, the United States initiated a WTO dispute settlement case against the EU, based on the apparent TRIPS deficiencies in EU Regulation 2081/92, which governs the protection of geographical indications (GIs) for agricultural products and foodstuffs in the EU. The Regulation appears to deny national treatment to foreign GIs. According to the plain language of the Regulation, only EU GIs may be protected. Foreign GIs cannot be registered in the EU, and thus are not eligible for protection. In addition, although the Regulation permits EU nationals to oppose or cancel GIs, non-EU nationals are prohibited from raising any objections. With respect to trademarks, the Regulation permits dilution and even cancellation of trademarks when a GI is created later in time. The United States requested consultations regarding this matter on June 1, 1999, and numerous consultations have been held since then. In March of this year, the EU produced proposed amendments to the Regulation. Although the proposal, as written, would address some of the deficiencies of the Regulation, it is lacking in several significant respects, including its treatment of foreign GIs. We are exploring the possibility of addressing these concerns in order to reach a satisfactory settlement with the EU. If a mutually agreeable solution can not be found, the United States may have no option but to continue to pursue resolution through WTO dispute settlement procedures.

## **BRAZIL**

The 2000 Special 301 report announced our initiation of a WTO dispute against Brazil over a longstanding issue between the two countries regarding Article 68 (1) (I) of Brazil's patent law, which requires all patent owners to manufacture their patented products in Brazil or else be subject to the compulsory licensing of their patents. This appears to be in violation of TRIPS Article 27.1, which prohibits Members of the WTO from discriminating on the basis of "...whether the products are imported or locally produced." The United States continues to question whether such a requirement is consistent with Brazil's obligations under the TRIPS Agreement. In June 2001 the United States and Brazil reached an agreement to transfer our dispute to a newly formed U.S.-Brazil Bilateral Consultative Mechanism. Under the Consultative Mechanism, the United States will receive advance notice from the Government of Brazil should it decide to use Article 68 (1) (I). The United States has fully reserved all of its WTO rights in this matter. The establishment of the Consultative Mechanism is a step forward in resolving this dispute with Brazil.

### ***Potential Dispute Settlement Cases***

No new dispute settlement proceedings are being announced at this time. However, the United States is actively considering the initiation of new WTO cases for later this year or early next year against certain WTO Members that appear not to be in compliance with their TRIPS obligations.

One area that we continue to monitor closely is the protection of confidential test data. We note, in particular, that we have serious concerns with Hungary's failure to adequately protect confidential test

data associated with applications for marketing approval submitted by pharmaceutical companies, in apparent violation of Article 39.3 of the TRIPS Agreement. Specifically, Hungary does not provide protection against the unfair commercial use of test or other data submitted to its regulatory authorities in order to obtain marketing approval. As a result, generic pharmaceutical companies have been permitted to rely on data generated and submitted at great cost and effort by innovator companies -- without their consent -- almost immediately after the original applications for marketing approval have been filed. U.S. industry estimates that it loses between \$50 million and \$100 million annually due to the TRIPS Article 39.3 problem and other weaknesses in Hungary's data protection regime.

Other countries that do not appear to meet their TRIPS obligations include several countries in the Andean Community, as well as the Dominican Republic, India, Israel and Kuwait. The United States will consider all options, including but not limited to possible initiation of new WTO dispute settlement cases, in working with these countries toward full TRIPS implementation. The United States will continue to consult in the coming months with all of these countries in an effort to encourage them to resolve outstanding TRIPS compliance concerns as soon as possible.

## STATUTORY AUTHORITY

The "Special 301" provisions of the Trade Act of 1974, as amended, require 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 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, 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 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 and fair and equitable market access for U.S. products. The measures announced today result from close consultations with affected industry groups, other private sector representatives, 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 Zoellick is expressing the Administration's resolve to take consistently strong actions under the Special 301 provisions of the Trade Act.

## Developments in Intellectual Property Rights

2001

### May

- On May 8, Lithuania became a member of the WTO and obligated itself to fully comply with the TRIPS Agreement on that date.
- Japan took measures to tighten its border enforcement against counterfeit goods, including the issuance of new guidelines to address the re-exportation of goods that infringe trademarks.
- The Lithuanian Interior Ministry published an order establishing the guidelines governing the government's use of business software by all government entities and contractors, in addition to establishing a central software purchasing authority.

### June

- On June 5, the Czech Ministry of the Interior, which oversees the police force, adopted a concept for the battle against computer crimes as part of the overall plan for combating organized crime.
- Guatemala created a special IP Prosecutor's office to assist with rapidly responding to instances of IP violations.
- Paraguay established the National Council for the Protection of Intellectual Property Rights to create a more coordinated approach for the enforcement of IP laws among government ministries, law enforcement authorities, and industry representatives.

### July

- The Indonesian Parliament enacted new patent and trademark laws, which increased fines for infringements, transferred intellectual property disputes to commercial courts, and combined all previous amendments into a single definitive text.
- On July 12, amendments to Canada's patent law entered into force, providing a term of protection of 20 years for patents granted based on applications filed before October 1, 1989.

- On July 26, Moldova became a member of the WTO and obligated itself to fully comply with the TRIPS Agreement on that date.
- With the entry into force of the new Trademark Law, Nicaragua now has modernized laws on patents, integrated circuit design, plant variety protection, program signals, copyrights and trademarks.

### **August**

- On August 3, Kazakhstan became a party to the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms.
- On August 6, the President of the Philippines approved an act providing for the protection of layout-designs (topographies) of integrated circuits, in an effort to comply with Section 6 of the TRIPS Agreement.
- On August 22, the Philippine National Police (PNP) created a unit called the Anti-Fraud and Commercial Crime Division (AFCCD) that will address IPR violations.

### **September**

- Ukraine's copyright amendments, passed in July 2001, which included protection for pre-existing works and sound recordings, became effective.
- On September 1, amendments to Ukraine's criminal code, which included criminal liability for IPR violations, went into force.
- On September 15, Malaysia's Optical Disc Act came into effect. The law establishes a licensing and regulatory framework for manufacturing copyrighted works. Violations under the Act may lead to license revocation, seizure, and forfeiture of manufacturing equipment and significant fines and jail terms.
- Ukraine ratified the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. It deposited its instrument of accession in November 2001.
- On September 1, Azerbaijan became a party to the .
- On September 26, the Government of Kazakhstan issued a resolution (#1249) instructing the appropriate government ministries to draft laws and regulations that would remedy the acknowledged deficiencies in the Kazakh enforcement regime.

## **October**

- The Czech Parliament ratified the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty.
- On October 2, the State of San Paulo in Brazil created a new department of investigations of organized crime to combat copyright infringement and crimes committed through the Internet.

## **November**

- Taiwan passed the Optical Media Law (OML), which regulates the production of pre-recorded optical media, blank optical media, and stampers/masters through a system of permits and reporting. The OML will be implemented fully on May 14, 2002. Failure to comply with the OML is punishable by fines, equipment seizures, and possible jail terms.

## **December**

- The Beirut Court of First Instance issued an encouraging verdict against a pirated software reseller in the first case brought under the 1999 copyright law.
- On December 11, China became a member of the WTO, and as part of this process, revised its intellectual property laws to comply with the provisions of the TRIPS Agreement.
- On December 10, the United States - Vietnam Bilateral Trade Agreement (BTA) entered into force. The IPR chapter of the BTA commits Vietnam to bring its intellectual property regime and enforcement practices up to international standards within two years of the BTA's implementation.
- Honduras ratified the WIPO Copyright Treaty and the WIPO Performances and Phonogram Treaty.
- On December 30, Russia adopted a new Code on Administrative Misdemeanors which will come into force on July 1, 2002. The Code will make it possible to initiate administrative cases against legal entities and to impose fines from US \$900-1200 for copyright infringement.

## **2002**

### **January**

- Mali created a new center aimed at strengthening and enforcing IP laws, which will be funded by fees collected from the private sector.

- On January 1, Taiwan became a member of the WTO and obligated itself to fully comply with the TRIPS Agreement on that date.
- On January 1, coinciding with Taiwan's WTO accession, Taiwan lengthened patent protection from 15 to 20 years for patents granted before January 21, 1994.
- The Philippine Supreme Court issued new rules giving courts the authority to order the seizure of pirated material without notice to the suspected infringer, as required by TRIPS Article 50.
- The Czech government adopted a comprehensive new regulation, effective January 1, on the use of software in government offices.
- Amendments to Moldova's Customs Code came into force, providing *ex officio* authority for customs officials to seize material at the border as required by the TRIPS Agreement.

## February

- Kazakhstan joined the WIPO Trademark Law Treaty and the Locarno Agreement on Establishment of International Classification of Industrial Models.
- The Government of Paraguay impounded 12.6 million blank CDs in early February and charged the importers with tax evasion.
- On February 7, Costa Rica's Public Ministry appointed 12 specialized "Link Prosecutors" to provide priority handling of IP cases in Costa Rica.
- The Costa Rican government signed a government software decree on February 21, which requires all ministries to conduct inventories and audits by December 15, 2002, and to come into full compliance no later than July 15, 2003.
- Jamaica formed a new Intellectual Property Office (JIPO), consolidating the administration of Jamaican copyright, trademark and patent laws.

## March

- Amendments to Qatar's 1995 copyright law, which were approved by the Advisory Council in February, were brought to the final stages of approval.
- Peru signed and published the WIPO Performances and Phonograms Treaty on March 2.

- On March 27, the UAE made written commitments to provide comprehensive protection for U.S. pharmaceuticals including extending data exclusivity protection, providing joint review by Health-Finance Ministry officials, and allowing USG review of draft patent law for TRIPS compliance.
- Japan announced that it will interpret temporary copying as violating copyright laws.

#### **April**

- Israel formally introduced legislation in the Knesset that would increase criminal penalties for copyright violations.
- Qatar's Copyright Office began a new public information campaign, which will include the distribution of posters and other handouts, to coincide with World IP Day.
- Costa Rica's National Registry will inaugurate its center for arbitration and reconciliation on IPR issues. The center will offer free reconciliation and low cost arbitration services for IPR disputes. All Internet domain names registered in Costa Rica will contain a clause naming the center as the official arbitrator for domain name disputes.
- Poland reinstated data exclusivity protection.
- Slovenia reinstated data exclusivity protection.
- On April 15, Brazil's Receita Federal initiated the destruction of almost 680 tons of smuggled, counterfeit and pirated goods.

#### **WIPO Copyright Treaty and Performance and Phonograms Treaty**

The following countries deposited their instruments of accession to the World Intellectual Property Organization (WIPO) Copyright and Performances and Phonograms Treaties (WCT and WPPT) during the May 2001 - April 2002 time frame:

Albania (deposited WPPT only)  
 Czech Republic  
 Gabon  
 Georgia  
 Guinea (deposited WCT, WPPT deposited previously)

Honduras  
Jamaica (deposited WCT, WPPT deposited previously)  
Mali  
Peru  
Senegal  
Ukraine

The WCT entered into force on March 6, 2002. The WPPT will enter into force on May 20, 2002, three months after the deposit by thirty States of their instruments of accession or ratification. The current number of countries which have deposited their instruments of accession is: WCT - 35, WPPT - 33.

## **PRIORITY FOREIGN COUNTRY**

### **UKRAINE**

The U.S. Government withdrew benefits from Ukraine under the Generalized System of Preferences (GSP) in August 2001, and imposed \$75 million worth of sanctions on Ukrainian imports on January 23, 2002, based on the repeated failure of Ukraine to comply with the June 2000 Joint Action Plan. Ukraine unfortunately enacted an unsatisfactory optical disk (OD) law in February 2002. The U.S. Government has worked with industry to develop an approach to improve the actual enforcement of copyright protection even with this inadequate OD law. To that end, the United States, in cooperation with Ukraine and industry officials, has developed a set of ten regulations to be implemented to improve the inadequate OD law. We hope to see Ukraine implement the substance of these regulations soon and follow up with strict enforcement of the current OD law. At the same time, the United States remains committed to working with Ukraine to address the remaining deficiencies in the existing OD law and thereby work toward reestablishing normal trade relations.

## **SECTION 306**

### **CHINA**

The United States and China concluded bilateral agreements in 1992 and 1995 that were the basis for resolving two investigations under Section 301. The U.S. Government has been monitoring China's implementation of these agreements since they were concluded. In addition, China became a member of the World Trade Organization (WTO) in December 2001 and agreed that it would fully implement its WTO TRIPS obligations from the date it became a WTO member.

China has made progress in some aspects of intellectual property rights protection since our agreements in 1992 and 1995. In connection with its accession to the WTO, China strengthened its legal framework considerably, amending its patent law in 2000 and its trademark and copyright laws in 2001, as well as issuing judicial interpretations and other administrative regulations to make them more compliant with the TRIPS Agreement and international standards. While some implementing regulations for these laws have been issued, China needs to issue all necessary regulations. The United States has continuing concerns about the consistency of some provisions of the copyright law and current regulations with international standards. For instance, while we welcome China's efforts to address some of the issues in the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, the U.S. Government concerned that these efforts are not yet complete.

The United States recognizes the enforcement efforts that China has made to date, but the continuing unacceptably high levels of piracy and counterfeiting require more effective and coordinated action. While export of pirated copyrighted products has largely subsided, such products are still being produced locally and imports of pirated products from other countries continue to flood the Chinese

market. The levels of optical media piracy (CDs, VCDs and DVDs) in China remain at extremely high levels in the domestic market, and China remains a center for entertainment software piracy and the production of pirated cartridge-based video game products. In particular, end-user piracy of business software within the government remains largely unabated despite issuance of decrees instructing government ministries to use only legitimate software. In addition, the piracy of journals and books is a significant problem that has only now begun to show some improvement. The counterfeiting of goods bearing American trademarks, including well-known marks, by Chinese companies remains a major problem. Despite some enforcement efforts against such activities, large volumes of counterfeit goods, often of well-known products, continue to be produced and sold in China and to be exported to many other countries.

While industries report improved cooperation with administrative enforcement agencies in regard to raids, administrative penalties have failed to deter further infringements. Criminal investigations and sanctions are rare (*i.e.*, administrative fines imposed are nominal), and very few cases are referred to criminal prosecution. The thresholds for initiating criminal cases for IPR infringements remain very high. The United States urges China to ensure that U.S. trademark and copyright holders can enforce their rights through criminal prosecutions and to ensure that the Supreme People's Court amend its interpretations of China's Criminal Code to allow more effective prosecution of cases and the imposition of deterrent sentences. In addition, the United States has concerns over China's lack of protection of foreign well-known marks in a manner that is consistent with international standards.

Certain U.S. pharmaceutical companies in China continue to experience difficulties in obtaining administrative protection for their products. The United States will be monitoring closely China's implementation of its WTO commitments, including its commitments relating to the protection of data submitted to obtain regulatory approval of pharmaceuticals and agricultural chemicals. The United States also urges China to improve communication and coordination between its patent office and agencies with responsibility for granting marketing approvals so that patent-infringing products cannot be marketed.

## **PARAGUAY**

The U.S. Government identified Paraguay as a Priority Foreign Country in January 1998. The subsequent Section 301 investigation terminated with the signing of a comprehensive Memorandum of Understanding (MOU) on the protection of intellectual property rights in Paraguay. Paraguayan implementation of the MOU has been uneven. Despite some progress, such as the appointment of special prosecutors dedicated to IPR cases, Paraguay remains a key entry and distribution point for pirated goods destined for the Latin American market. The United States is heartened by the seizure and destruction of millions of blank and pirated CDs, the closure of several multi-million dollar high-tech pirate CD factories, and a concerted effort in the latter part of 2001 to conduct frequent and repeated raids in Ciudad del Este and other centers of counterfeiting. However, the U.S. Government is troubled to learn that pirate optical media production has been dispersed to smaller enterprises, in order

to evade law enforcement efforts. Moreover, the United States is discouraged by the lack of initiative by the Customs Authorities to implement vigorous border enforcement measures, as agreed to in the MOU. The U.S. Government intends to hold consultations with Paraguay in the coming year to discuss plans for improving implementation of the MOU. The U.S. Government will use these meetings to formulate our positions on the future of the MOU, which comes up for renewal in January 2003.

## **PRIORITY WATCH LIST**

### **ARGENTINA**

Although Argentina has made incremental progress in improving its intellectual property rights (IPR) regime, such as by enacting some measure of patent protection, much work still remains to be done. Significant barriers to the effective enforcement of intellectual property rights remain, including weak and inconsistently applied penalties for IPR violations. Pirated copies of copyrighted material and counterfeit brand-name goods are widely available. Illegal decoding, distribution, and resale of satellite signals continue unabated. The use of unlicensed software remains widespread in businesses and in some government entities. Industry estimates that copyright piracy resulted in losses of \$256 million in 2001. The process of private civil enforcement against copyright infringement has improved, but criminal charges and convictions are rarely sought or obtained. Although there has been an increase in police raids and other enforcement actions, these actions usually do not result in prosecutions or in deterrent sentences if prosecution occurs.

Argentine pharmaceutical firms continue to produce and export unlicensed copies of patented products. Industry estimates that the lack of adequate patent protection results in annual losses of \$750 million. In 1999, the U.S. initiated a WTO dispute settlement case against Argentina on exclusive marketing rights and confidential test data protection. The U.S. initiated a subsequent WTO case in 2000, which involved a number of other patent issues. Earlier this month, however, a partial settlement was reached on a number of these issues. In this settlement, Argentina agreed to clarify how certain aspects of its IPR system operate in a manner consistent with their TRIPS Agreement obligations. In addition, Argentina agreed to amend portions of its patent law that were inconsistent with TRIPS. Two important issues, including data protection, remain unresolved.

### **BRAZIL**

Brazil is both one of the largest markets globally for legitimate copyrighted products, and one of the world's largest pirate markets. Losses suffered by the U.S. copyright industry are the largest in the hemisphere, with industry estimates exceeding \$700 million in the past year. Piracy-driven losses suffered by the Brazilian music industry are particularly staggering. Despite having adopted modern copyright legislation that appears largely to be consistent with TRIPS, Brazil has taken no serious enforcement actions against increasing rates of piracy.

On the national level, Brazil established an Inter-Ministerial Committee (IMC) in March 2001 to combat piracy, and the income tax authority recently began the destruction of a large amount of seized pirated goods. The state of Sao Paulo created a new division within the civil police to deal specifically with piracy and related crimes. Although the United States is encouraged by these actions, Brazil still has not adopted an action plan against piracy, and no lasting improvement in the enforcement situation has occurred at the national level. In particular, the IMC has taken very little action on the anti-piracy front. Intermittent, localized antipiracy and anticounterfeiting campaigns are an inadequate substitute for a planned, systemic, and consistent approach to domestic and border enforcement activity and the application by the Brazilian legal system of deterrent penalties.

In the patent area, Brazil has made very minor progress under an April 1998 agreement with the U.S. to process the backlog of 15,000 pending patent applications for which it has already collected several million dollars in processing fees. In 2000, the U.S. initiated dispute settlement proceedings against Brazil on a "local working" requirement in the patent law. In June 2001, the United States and Brazil agreed to transfer their dispute to a Bilateral Consultative Mechanism created to address this and other concerns.

## **COLOMBIA**

U.S. pharmaceutical firms are experiencing significant losses in the Colombian market due to inadequate protection of confidential test data and the unavailability of "second use" patents. Colombia is second only to Argentina among Latin American countries in the prevalence of pirated pharmaceuticals. The U.S. Government is disappointed in actions taken by Colombia, on its own and through the Andean Community, to weaken data protection and prohibit "second use" patents throughout the Andean Community.

There is also a need for stronger enforcement of copyright and trademark laws. Although pirated and counterfeit goods are occasionally seized by enforcement authorities, prosecutions rarely follow. Despite repeated requests by the U.S. Government, Colombia has been slow to shut down illegal cable television networks so that licensed ones can take their place. The U.S. Government urges Colombia to take action immediately to remedy the current IPR situation, particularly with regard to patent protection, both in its national legislation and within the Andean Community institutions.

## **DOMINICAN REPUBLIC**

Over the past year, the Dominican Republic has taken some steps to strengthen its IPR regime. However, there are still significant areas of concern that need to be addressed. The industrial patent law appears to suffer from several significant shortcomings with respect to international standards, including in the area of data protection. The U.S. Government also is concerned that the implementing regulations could worsen some of the existing problems with the industrial property law.

On a positive note, the United States is encouraged by the efforts of the National Copyright Office to investigate and punish copyright piracy, and to educate the public and judiciary about the importance of compliance with and enforcement of, the copyright law. However, copyright and trademark owners, as well as patent holders, continue to have difficulty in enforcing their intellectual property rights. Current efforts to enforce the copyright law have not prevented the widespread sale of pirated materials. In addition, we are concerned about the recent apparent increase in television piracy. The U.S. Government looks forward to further consultations with the Dominican Republic on possible improvements in its intellectual property rights regime.

## **EGYPT**

Despite significant ongoing U.S. Government technical IPR assistance, Egypt has not yet enacted modern intellectual property rights laws to comply with its international obligations. The United States is encouraged, however, by reports that such laws may be passed by the end of this spring. The United States continues to strongly urge Egypt to correct the reported deficiencies in the draft copyright and patent laws before these laws are enacted by the legislature. The United States remains concerned, in particular, about the possible insertion in the draft patent law of a previously rejected provision calling for health-related patents to be reviewed by the Ministry of Health, which would appear to contradict the TRIPS Agreement requirement to provide patent protection without discrimination as to field of technology. On a positive note, the U.S. Government welcomes improvements that have been made regarding protection of test data and exclusive marketing rights, which we hope will remain in the final bill. The United States is also heartened by the steps Egypt has taken to ensure the authorized use of legitimate business software by government entities. However, enforcement on the whole remains lax and copyright piracy remains unchecked. The U.S. Government is also seriously concerned about the continuing problem of granting false licenses to pirates by the Ministry of Culture, a practice that undermines copyright protection, in particular for entertainment software and music.

## **EUROPEAN UNION**

At the conclusion of the 1999 Special 301 review, the United States initiated a WTO dispute settlement case against the EU, based on the apparent TRIPS deficiencies in EU Regulation 2081/92, which governs the protection of geographical indications (GIs) for agricultural products and foodstuffs in the EU. The Regulation appears to deny national treatment to foreign GIs. According to the plain language of the Regulation, only EU GIs may be protected. Foreign GIs cannot be registered in the EU, and thus are not eligible for protection. In addition, although the Regulation permits EU nationals to oppose or cancel GIs, non-EU nationals are prohibited from raising any objections. With respect to trademarks, the Regulation permits dilution and even cancellation of trademarks when a GI is created later in time. The United States requested consultations regarding this matter on June 1, 1999, and numerous consultations have been held since then. In March of this year, the EU produced proposed amendments to the Regulation. Although the proposal, as written, would address some of the deficiencies of the Regulation, it is lacking in several significant respects, including its treatment of

foreign GIs. We are exploring the possibility of addressing these concerns in order to reach a satisfactory settlement with the EU. If a mutually agreeable solution can not be found, the United States may have no option but to continue to pursue resolution through WTO dispute settlement procedures.

## **HUNGARY**

Hungary does not provide adequate protection for confidential test data submitted by pharmaceutical companies for marketing approval, which appears to violate its obligations under Article 39.3 of the TRIPS Agreement. While Hungary has repeatedly indicated that it disagrees with this interpretation of TRIPS, it intends to put very limited data exclusivity into place effective January 1, 2003, in order to comply with EU directives. U.S. pharmaceutical products remain vulnerable to exploitation by large and aggressive Hungarian pharmaceutical copiers. On other legislative matters, Hungary seems to have made substantial progress in bringing its copyright, patent, trademark, customs code, and criminal and civil codes into conformity with its IPR obligations under the TRIPS Agreement and under the U.S.-Hungary bilateral IPR agreement. Enforcement, however, remains problematic and piracy remains moderately high. The U.S. Government urges Hungarian prosecutors and judicial authorities to take a more proactive approach to the enforcement of intellectual property rights.

## **INDIA**

India's patent system and protection of exclusive test data appear far from compliant with its obligations under the TRIPS Agreement. The term of protection for pharmaceutical process patents is only seven years. India fails to provide patent protection for pharmaceutical and agricultural chemical products and the compulsory licensing system seems overly broad. Also, pending legislation meant to rectify India's TRIPS deficiencies may fall short of that goal. To make matters worse, the inadequate patent protection currently available is difficult for innovators to obtain: India's patent office suffers from a backlog of 30,000 patent applications and a severe shortage of patent examiners. Moreover, India's overly-generous opposition procedures often allow competitors to delay patent issuance until the patent has expired, resulting in a *de facto* removal of patent protection. In addition, India's copyright law, which is generally consistent with international standards, was weakened by amendments enacted in 2000 that undermine protection for computer programs. Enforcement against piracy remains a growing concern for U.S. copyright industries, especially given that pirated imports are entering the market from Southeast Asia and that there is growing Internet piracy. We will continue to consult with the Indian Government to resolve outstanding TRIPS compliance concerns, but if these consultations do not prove constructive, we will consider all other options available, including WTO dispute settlement, to resolve these concerns.

## **INDONESIA**

Indonesia demonstrated some improvements to its intellectual property rights regime in 2001. While

Indonesia is responsive to private sector requests for enforcement assistance and welcomes input on draft legislation, overall enforcement of intellectual property rights, including that of trademarks, held by U.S. companies, remains weak. Industry reports a troubling increase in illegal production lines for optical media and pirated books far beyond Indonesia's domestic consumption capacity. Indonesia's judicial system continues to frustrate right-holders with years of delay and a pronounced lack of deterrent penalties. However, the U.S. Government is encouraged by several recent developments in Indonesia that may address some of the deficiencies listed in the action plan the United States provided Indonesia in January 2001. In particular, Indonesia prepared draft optical media regulations and established provisions for commercial courts throughout the country to process intellectual property rights cases within the country's district court system. The United States urges Indonesia to work with the U.S. Government to ensure that the draft regulations are adequate and effective *prior* to their enactment and to continue to develop specialized legal and judicial expertise for the prosecution of intellectual property rights violations. Rigorous enforcement in the near term of these regulations and of the copyright law against illegal optical disk producers is critical. The U.S. Government is providing an updated action plan to Indonesia that reflects these recent developments and further refines the specific benchmarks contained in the earlier action plan. The United States will conduct an Out-of-Cycle Review in the fall to assess progress toward achieving these benchmarks.

## **ISRAEL**

The United States commends the notable progress Israel achieved in 2001 in copyright enforcement. In 2001 Israel significantly increased the budgetary, educational, police and judicial resources it devotes to such enforcement efforts, with extensive concrete results in terms of raids, abatement of illegal CD production, and a drop in the piracy level for U.S. repertoire. Knesset approval is expected soon for a copyright law that would increase penalties and expedite prosecution for copyright violations, a step which would be a highly positive development. However, Israel maintains its policy of allowing its generic pharmaceuticals to rely on the confidential test data of U.S. innovator firms to obtain marketing approval, a policy it contends is TRIPS-consistent. Moreover, the lack of a clear definition for end-user piracy of business software as a crime, court procedural delays, and inadequate compensatory and deterrent civil damages have weakened some of its enforcement efforts. An opinion by the Ministry of Justice concluding that payment for the broadcasting and public performance of U.S. sound recordings is no longer necessary remains a concern, and the U.S. Government continues to seek clarification regarding the bearing of this opinion on Israel's bilateral obligations to the United States. The U.S. Government urges the Knesset to act soon to pass the copyright law and looks forward to continued improvements in Israel's intellectual property regime, including sustained efforts to strengthen copyright enforcement, that can be reflected in the OCR to be conducted later this year.

## **LEBANON**

The United States is concerned by Lebanon's severe copyright piracy problem and the lack of a comprehensive governmental commitment to eliminate piracy and foster legitimate business. Despite

the passage of the copyright law, there has been virtually no action by Lebanon against piracy. In addition, pervasive cable piracy continues to devastate legitimate theatrical, video, and television service providers. End-user piracy of computer software is pervasive among large companies, banks, trading companies, and most government ministries. Also troubling is an overly broad software exception for certain educational uses in the new copyright law that seriously undermines the viability of this market for legitimate products. The U.S. Government is also concerned by the establishment of an optical media production facility in Lebanon, which has become an exporter of pirated product. The United States urges Lebanon to address its severe copyright protection problems.

## **PHILIPPINES**

Significant problems remain in ensuring adequate and effective protection of intellectual property rights in the Philippines. Legislation to fully implement its TRIPS Agreement commitments has been slow to develop, and enforcement efforts have had little deterrent effect on the extraordinary level of copyright piracy. The United States, however, is encouraged by President Macapagal-Arroyo's strong commitment to tackling intellectual property rights issues, and the United States welcomes the Supreme Court's recent ruling affirmatively establishing the ability of the court to grant *ex parte* search warrants. The United States hopes this ruling initiates a trend to improve the quality of the Philippines IPR-related laws and regulations. However, there remain many obstacles to the effective enforcement of intellectual property rights in the Philippines, including the low number of raids, insufficiently trained prosecutors, and procedural and judicial delays. Meanwhile, optical disk piracy and trademark counterfeiting continues to increase dramatically. The U.S. Government urges the Philippines to redouble its enforcement efforts across the board and to enact strong IPR laws and regulations, including a strong law to regulate the production of optical disks. The U.S. Government will conduct an OCR later in the year in order to monitor the situation in the Philippines.

## **RUSSIA**

As part of its efforts to join the WTO, Russia will need to bring its intellectual property rights regime into full compliance with the TRIPS Agreement by the date of accession. Certain provisions of the Russian Copyright Law and Russia's enforcement regime appear to be inconsistent with the TRIPS Agreement and the intellectual property rights provisions of the 1992 U.S.-Russian Federation Trade Agreement. Lack of an effective OD law, , enforcement against unauthorized production and export of CDs and CD-ROMs and concerns about protection for well-known marks are growing problems, and result in substantial losses to U.S. industry each year. The United States urges Russia to pass the IPR legislation pending before the Duma (except for Part IV of the Civil Code), to establish an effective optical media regime, and to increase enforcement efforts across the board for both copyrights and trademarks.

## **TAIWAN**

During the past year, Taiwan passed a number of new laws meant to strengthen the protection of intellectual property rights and bring the economy into compliance with its obligations under the TRIPS Agreement. These include certain amendments to its patent and copyright laws as well as new legislation to license the production of optical media, although the U.S. Government was disappointed that the optical media legislation was weakened before passage. Despite these positive steps, the lax protection of IPR in Taiwan remains very serious. U.S. companies report significant problems in being able to protect and enforce their intellectual property rights. Taiwan is one of the largest sources of pirated optical media products in the world. Its copyright law needs strengthening in a number of areas to deal with growing piracy. Corporate end-user piracy remains at a high level. Taiwan also suffers from trademark counterfeiting, including that of pharmaceuticals. Taiwan has only begun to take the steps necessary to enforce these new laws, particularly the optical media management statute. Nonetheless, the United States remains encouraged by the passage of these laws and the important first steps that have been taken in terms of implementation. The United States will continue our dialogue with Taiwan on the protection and enforcement of intellectual property rights during the coming year to help improve the situation.

## **URUGUAY**

Uruguay's efforts to reform its outdated copyright and patent laws have been dominated by slow and uneven progress, which has resulted in an intellectual property rights regime that does not appear to be in compliance with Uruguay's TRIPS obligations. Specifically, Uruguay needs to update its 1937 copyright law to clarify that software is protected as a literary work, among other deficiencies. Movement towards a comprehensive copyright law stalled in 2001, and the U.S. Government is concerned about a flawed, software-only bill, which is moving forward. The United States is heartened by the increase in raids and prosecutions against piracy since 2000. However, inadequate civil remedies and lax border enforcement have caused high piracy rates to persist, and have allowed Uruguay to become a major transshipment point for pirated products. The United States urges Uruguay to ratify the WIPO Internet Treaties, enact TRIPS and WIPO-compliant copyright legislation, and remedy provisions of its patent law that appear to violate its TRIPS obligations.

## **WATCH LIST**

### **ARMENIA**

Armenia has several remaining steps to take to fulfill its intellectual property rights commitments under the 1992 U.S.-Armenia Trade Agreement. In addition, the Armenian intellectual property regime does not appear to be TRIPS-consistent in its current form, so certain changes may have to be made in preparation for Armenia's accession to the WTO. At present, Armenia does not provide any protection or rights to U.S. and other foreign sound recordings or clearly provide retroactive protection for works or sound recordings under its Copyright Law. In addition, there is weak enforcement of

intellectual property rights in Armenia. New criminal penalties for intellectual property rights violations have been adopted; however, there have been no known convictions under the new law, and it is unclear whether the Government has the authority to commence criminal copyright cases.

## **AZERBAIJAN**

Azerbaijan has several remaining steps to take before fulfilling its intellectual property rights commitments under the 1995 U.S.-Azerbaijan Trade Agreement. Specifically, Azerbaijan is not providing any protection or rights to U.S. and other foreign sound recordings, and Azerbaijan 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 Azerbaijan. New criminal penalties for intellectual property rights violations have been adopted. However, the provisions under the Azerbaijani Criminal Code are minimal and are limited to copyright and patent violations, completely excluding neighboring rights violations. In addition, it seems the Customs Code may not provide the proper authority to seize material at the border as required by the TRIPS Agreement.

## **BAHAMAS**

The United States is disappointed that the Bahamas has not yet implemented its commitment to the United States to enact legislation to correct deficiencies in its copyright law. The key concern remains the provisions in the law permitting the compulsory licensing to Bahamian cable operators of retransmission of premium cable television programming. Inadequate remuneration for the compulsory licensing of free-over-the-air broadcasts is a related concern, particularly with respect to uses by hotels and other commercial enterprises. The U.S. Government urges the Bahamas to enact swiftly the necessary amendments to its copyright law. The United States will conduct an out-of-cycle review to review actions in this regard. At the same time, the U.S. Government continues to encourage U.S. copyright owners and operators of premium cable services to enter into negotiations with licensed Bahamian cable companies to provide voluntary licensing on commercial terms for the cable transmission of copyrighted works in the Bahamas.

## **BELARUS**

Belarus has several remaining steps to take to fulfill its intellectual property rights commitments under the 1993 U.S.-Belarus Trade Agreement. Enforcement of intellectual property rights in Belarus is also very weak and piracy levels are extremely high. In fact, while Belarus has amended its Criminal Code to adopt deterrent penalties for intellectual property rights violations, the Criminal Code still does not contain the proper authority for officials to initiate criminal copyright cases. Moreover, Belarus is not providing any protection or rights to U.S. and other foreign sound recordings, nor does it clearly provide retroactive protection for works or sound recordings under its Copyright Law. Belarus is not yet a party to the Geneva Phonograms Convention. Belarus has also become a transshipment point for pirate materials throughout the region. The United States is very concerned about recent reports that

optical disk production capacity has migrated from Ukraine into Belarus due to lax border enforcement. We urge Belarus to implement needed legislative reforms, and enact a strong optical disk control regime before the piracy situation increases further.

## **BOLIVIA**

Despite some early signs of progress, Bolivia made little headway in strengthening its intellectual property rights regime last year. Bolivian legislation designed to bring its IPR regime up to international standards continues to be stalled in the legislature. Enforcement activities have decreased, and allegations of corruption among judges, prosecutors and police have increased. The United States is heartened by the appointment of a new director to head the intellectual property rights service (SENAPI), and encourages Bolivia to support the director's efforts to improve the IPR situation in Bolivia. The United States looks to Bolivia to increase enforcement efforts and enact its IPR reform legislation quickly to comply with international standards.

## **CANADA**

Canada made some progress in improving its IPR regime over the past year, including amending its patent law to provide at least a 20-year term of protection for patents filed before October 1, 1989. However, the problems that originally caused Canada to be placed on the Watch List remain largely unresolved. For example, Canada does not provide adequate data protection in the pharmaceutical area, and systematic inadequacies in Canadian administrative and judicial procedures allow early and often infringing entry of generic versions of patented medicines into the marketplace. Moreover, progress has stalled on resolving the outstanding issue of national treatment of U.S. artists in the distribution of proceeds from Canada's private copying levy and its "neighboring rights" regime. The United States is also concerned about Canada's lax, and potentially deteriorating, border measures that appear to be non-compliant with TRIPS requirements. Finally, the U.S. Government remains concerned about the potential use of compulsory licenses for Internet retransmission of broadcast signals.

## **CHILE**

Chile's intellectual property rights laws do not appear to be fully consistent with their international obligations, and shortcomings remain in copyright and trademark enforcement. Chile has made efforts to arrest those who infringe copyrights, but attempts to enforce copyrights in Chile have met with considerable delays in the courts and weak sentences for offenders. In 2000, for instance, the legislature passed a new criminal procedure law designed to improve the old system. However, separate legislation intended to bring Chile's legal framework into compliance with TRIPS is still pending. Indeed, the bill as it stands now does not appear to provide for the effective use of injunctions in copyright and trademark infringement cases.

Furthermore, the United States is quite concerned about the November 2001 announcement by the Ministry of Health that it would issue marketing approval for pharmaceuticals without regard to whether a patented version already exists. Marketing approvals for many patented drugs have already been issued, seriously undermining the rights of patent holders. Patent approval also remains slow, with time for approval averaging over four years. The United States urges Chile to strengthen its enforcement efforts, and enact legislation to fully comply with TRIPS obligations including by providing adequate protection of confidential data and an effective linkage between the health and patent authorities.

## **COSTA RICA**

Costa Rica has taken important steps since late 2001 to develop a concerted government strategy for improving the enforcement of intellectual property rights. In addition to other positive measures, Costa Rica has appointed specialized prosecutors, intensified training activities for officials involved in enforcement, and implemented a decree focused on legitimizing software used by government agencies. The United States is recognizing this progress by moving Costa Rica from the Priority Watch List to the Watch List. Nonetheless, it is essential that the recent initiatives be fully and expeditiously implemented and that progress continue. Key indications of continuing improvement will be: passage of legislative proposals to correct remaining deficiencies in the criminal procedures laws and the intellectual property laws, including deficiencies in the data exclusivity provisions; more prosecutions of IPR offenders, perhaps facilitated by the establishment of a dedicated IPR unit within the Prosecutor's Office; and vigorous enforcement efforts to reduce continuing high piracy levels, such as closure of retail stores that rent or sell pirated products. In addition, the United States urges Costa Rica to ensure that its new government software legalization decree is implemented on schedule and in a technologically-neutral manner. The United States will conduct an out-of-cycle review of these issues to ensure that recent progress is sustained.

## **GREECE**

Although Greece resolved the WTO TV broadcasting case with the United States last year, optical disk piracy and unauthorized book photocopying remain persistent problems. The United States is encouraged by an increase in police and border enforcement efforts, particularly with respect to business software. However, among European Union member states, Greece continues to have some of the highest piracy rates of music CDs, entertainment software, and business software. The lack of deterrent penalties imposed on pirates and inefficient judicial action hamper Greece's ability to reduce its piracy rates. The use of unauthorized computer software in government offices also remains a problem. Patent protection for pharmaceuticals remains inadequate as data exclusivity is linked directly to the length of patents, rather than being protected in its own right. The United States urges Greece to pursue sustained and deterrent enforcement actions, to ensure that government entities use only authorized software, and to improve its protection of pharmaceuticals as required by international obligations.

## **GUATEMALA**

The United States welcomes the appointment in June 2001 of a special prosecutor for intellectual property rights matters, as part of the government's ongoing efforts to improve enforcement and to implement intellectual property rights legislation enacted in mid-2000. Nonetheless, continuing high piracy levels, particularly with respect to business software applications, remain an ongoing concern, and one that has not been adequately addressed through current enforcement and prosecution activity.

## **ITALY**

Despite Italy's enactment of its Anti-Piracy Bill in September 2000 and increased enforcement actions in 2001, Italy continues to have one of the highest overall piracy and counterfeiting rates in Western Europe. In particular, the rate of piracy of business software by corporate end-users remains among the highest levels in Europe, with losses approaching \$285 million in 2001. Notwithstanding repeated assurances, Italy still has not clarified the Anti-Piracy Bill's implementing regulations for business software, that exempt copyright owners from a requirement to apply government-approved stickers, for which a fee would be charged, on their genuine copyrighted works. Without this exemption, Italy could be in violation of its international obligations, which do not permit conditioning protection on compliance with a stickering formality. The United States urges Italy to resolve this issue without further delay.

## **JAMAICA**

The U.S. Government is heartened by the creation of Jamaica's Intellectual Property Office, and by continued progress in enforcing existing intellectual property rights laws, including with respect to the misuse of well-known marks. We understand that Jamaican officials have categorically denied reports that Jamaica is considering the compulsory licensing of encrypted broadcasts. The United States is encouraged that Jamaica is continuing to seek fair, commercial solutions to this issue. Lack of parliamentary action to bring Jamaica's patent, industrial design, and plant variety laws into conformity with international standards remains the primary motivation for the country's inclusion on the Watch List. The United States urges Jamaica to complete the process of enacting the necessary legislation.

## **KAZAKHSTAN**

Kazakhstan has several remaining steps to take to fulfill its intellectual property rights commitments under the 1992 U.S.-Kazakhstan Trade Agreement. In particular, Kazakhstan does not clearly provide full retroactive protection for works or sound recordings under its Copyright Law. In addition, there is weak enforcement of intellectual property rights in Kazakhstan, and as a result, piracy and counterfeiting rates are growing problems. New criminal penalties for intellectual property rights violations, however, have been adopted, but the United States is concerned about the effectiveness of

the new Criminal Code provisions in deterring piracy and counterfeiting, due to the high burden of proof threshold. The dearth of intellectual property rights cases commenced under the new laws may reflect the impact of this procedural requirement.

## **KOREA**

Korea has taken significant steps to strengthen its IPR enforcement and legislation. On enforcement, it has created a new special enforcement unit which it intends to provide with “police” authority, to step up its protection against software piracy. In addition, to address concerns the U.S. Government has raised about Korea’s failure to implement a transparent, non-discriminatory, and sustained enforcement regime, Korea has agreed to provide the United States with detailed data on its enforcement efforts. Korea has made progress on strengthening its intellectual property legislation, addressing several U.S. concerns related to its Copyright Act and the Computer Program Protection Act. It also announced that it is preparing legislation to provide exclusive transmission rights for sound recordings and performances, which will resolve a longstanding concern. Despite these important developments, U.S. concerns remain with respect to the protection of temporary copies, technical protection measures, ISP liability, and *ex parte* relief, the lack of full retroactive protection for pre-existing copyrighted works, and continued counterfeiting of consumer products. Regarding issues related to the protection of pharmaceutical patents, Korea resolved questions related to its commitment to provide full protection against unfair commercial use of test data submitted for marketing approval, but the lack of coordination between Korean health and IPR authorities on drug product approvals for marketing remains problematic.

## **KUWAIT**

The United States recognizes the recent efforts made by Kuwait to increase intellectual property protection. However, due to continuing problems with copyright piracy, Kuwait will remain on the Special 301 Watch List. Recognizing the importance of protecting intellectual property in a modern, knowledge-driven economy and mindful of the incentive that adequate protection provides for investors, Kuwait and the United States have developed a work plan outlining the initial steps that Kuwait will take to increase its efforts to reduce the high level of copyright piracy still evident in Kuwait. The work plan includes short and medium-term action to, *inter alia*, increase enforcement of current intellectual property laws, apply deterrent penalties, revise copyright legislation, and increase cooperation between the government and private industry. Successful implementation of the work plan will serve as a basis for future cooperation between the United States and Kuwait. The United States and Kuwait are in the process of documenting Kuwait’s intention to carry out this work plan. If we are unable to complete this process satisfactorily by May 31, 2002, Kuwait will be raised to the Priority Watch List.

## **LATVIA**

Although not a producer of pirated optical media products, large volumes of pirated products are transshipped through Latvia from Russia and Ukraine. The United States urges Latvia to pass legislation to ensure that customs and police authorities have the tools needed to combat this piracy, including providing adequate civil *ex parte* search procedures. In addition, the U.S. Government urges the police, customs officials, prosecutors, and judicial authorities to place greater emphasis on combating copyright piracy.

## **LITHUANIA**

Weak enforcement undermines Lithuania's attempts to protect the rights of copyright holders. The country remains flooded with pirated copyrighted materials, including large volumes of optical media products. In addition, Lithuania is a major transshipment country for pirate producers to the East who transport their goods to consumers in the West. Furthermore, Lithuania does not provide protection for confidential test data submitted by pharmaceutical firms for marketing approval.

## **MALAYSIA**

Optical media piracy remains a serious problem in Malaysia. Malaysia's production capacity of optical media exceeds local demand plus legitimate exports, and pirated products believed to have originated in Malaysia have been identified throughout the Asia-Pacific region, North America, South America, Europe, Africa and the Middle East. Although the first year of implementation of the Optical Disk Act was hampered by a slow compliance schedule, the United States continues to appreciate the determined efforts made by agencies within Malaysia to eliminate optical media piracy. The Ministry of Domestic Trade and Consumer Affairs (MDTCA) has inspected licensed factories and conducted raids against pirate plants. Over the past two years, the MDTCA has confiscated a significant amount of pirate product from unlicensed factories and has seized and removed equipment and replication lines. These actions are evidence that Malaysia is serious about stamping out piracy. Although progress has been steady, there is concern that Malaysia has not established a climate of deterrence. Police raids have only infrequently been followed by criminal prosecutions. Without criminal prosecutions and the imposition of serious criminal sentences, there is no true deterrence to piracy in Malaysia. The United States urges Malaysia to continue the progress made against illegal optical disk plants and to focus its attention on the problem of prosecutorial inaction and judicial delays in order to support the enforcement efforts already underway.

## **NEW ZEALAND**

In 1999, New Zealand pledged to introduce legislation regarding imports of newly-released copyrighted products (e.g., music, films, software and books) intended for sale outside New Zealand. By the end of 2001, however, the government had not introduced this legislation. Therefore, the U.S. Government remains concerned about the erosion of the value of copyright protection and the threat of increased piracy of copyrighted goods in New Zealand. However, the United States is encouraged

that New Zealand's parliament is currently considering legislation to strengthen New Zealand's enforcement regime with respect to copyright piracy and trademark counterfeiting, which may move towards addressing our concerns. The United States urges New Zealand to adopt legislation to correct the erosion of copyrights and improve enforcement against piracy and counterfeiting as soon as possible.

## **PAKISTAN**

Over the past two years, Pakistan has attempted to address most of its deficiencies in its intellectual property rights regime. The U.S. Government recognizes and appreciates the efforts made by Pakistan to improve the protection and enforcement of intellectual property rights. However, optical media piracy remains a growth industry in Pakistan. Pakistan has emerged as one of the world's largest exporters of pirate CDs and optical media. Industry estimates eight illegal optical media production plants are operating, with actual production of approximately 55 million units (or ten times Pakistan's legitimate domestic demand). Pirate goods account for 90% of the domestic marketplace. Similarly, book piracy remains a significant issue, accounting for \$44 million in losses for U.S. publishers. At present, lengthy registration processes for innovative drugs offer ample time for generic copies to reach the domestic market despite apparent patent infringements. The United States urges Pakistan to address its serious piracy problems, including, in particular, the rampant optical media piracy situation.

## **PERU**

Peru has continued to improve intellectual property rights protection, although copyright piracy levels have remained fairly constant and the criminal enforcement system remains generally weak. Peru has not yet issued a decree mandating the use of licensed software by government agencies. On a positive note, during the past year Peru ratified both WIPO Treaties related to the digital environment. Several patent-related concerns remain outstanding, the most significant of which relates to an Andean Tribunal decision ordering Peru to stop issuing "second use" patents.

## **POLAND**

Poland has a substantial copyright piracy and trademark counterfeiting problem, the most glaring symbol of which is the Warsaw Stadium and the unauthorized retail activity that is carried on in those premises. Although Poland is not a major producer of pirated optical media products, pirates import unauthorized copies of optical media products, principally from Ukraine, for sale at the Stadium. Poland's enforcement efforts at the Stadium so far have been insufficient to halt the sale of pirated and counterfeit goods. The U.S. Government intends to conduct an out-of-cycle review (OCR) later this year in order to focus on this aspect of Poland's intellectual property rights protection regime. In this OCR, the United States will specifically look to Poland to commence unannounced raids against retailers at the Warsaw Stadium. These raids, followed by prosecutions, should be significant enough in number to stem the sale and distribution of pirated and counterfeit goods at the Stadium. The U.S.

Government will also look to Poland to sustain an adequate and effective enforcement effort against IPR violators in order to establish a deterrent effect in Poland, including at the Stadium.

In addition, despite the Polish Government restoring the provision for three-year confidentiality for data submitted to the health authorities by pharmaceutical firms, shortcomings in the law remain. Specifically, linkage to the patent term is introduced in the law and the period of data protection runs from the date of first marketing authorization granted anywhere in the world, rather than within Poland. Poland agreed to make supplementary protection certificates available for pharmaceuticals registered since January 1, 2000, as required by EU law. However, pharmaceutical firms remain vulnerable on certain older products because they are protected only by process patents.

## **QATAR**

Qatar was removed from the Special 301 Watch List last year in recognition of its enforcement actions against copyright infringement, as well as its commitment to amend copyright and trademark laws to comply with its obligations under the TRIPS Agreement. Qatar has drafted amendments to these laws, but has not yet signed and implemented the necessary legislation. Therefore, Qatar is being placed on the Watch List this year. In addition, although Qatar has pursued some enforcement actions against copyright infringement, high levels of end-user piracy of unauthorized computer software continues.

## **ROMANIA**

Piracy of sound recordings, audiovisual products (videos, broadcast television, and cable television), and computer software persists at high rates despite reforms to the legal regime. Inconsistent enforcement and understanding of IPR legislation, the low level of priority given piracy by regional and local authorities, and the lack of resources dedicated to combating piracy combine to make intellectual property rights protection a continuing challenge in Romania.

## **SAUDI ARABIA**

Saudi Arabia has made notable progress in improving the enforcement of intellectual property rights over the past year. During 2001, the Ministry of Information stepped up investigations, raids and seizures, in conjunction with U.S. companies and U.S. industry groups, and the Ministry of Commerce also established a Fraud Control Department, which has conducted thousands of inspections and seizures. However, the United States remains concerned about continued high losses experienced by U.S. copyright and trademark-based industries and the absence of long-awaited revised intellectual property rights legislation. U.S. industry has expressed frustration with the lack of transparency in the enforcement system, procedural hurdles to judicial enforcement, and the absence of deterrent penalties. Saudi Arabia is currently working to revise its IPR laws to bring them into conformity with the TRIPS Agreement as part of its efforts to join the WTO. The United States looks to Saudi Arabia to strengthen its intellectual property rights enforcement efforts. In particular, the U.S. urges Saudi Arabia

to act quickly to revise IPR legislation to provide for, *inter alia*, penalties sufficiently deterrent to reduce the level of piracy and counterfeiting (including higher fines and longer prison sentences) and greater access for litigants to court proceedings at all stages of the judicial process.

## **SLOVAK REPUBLIC**

The Slovak Republic fails to provide adequate and effective protection for confidential pharmaceutical test data submitted to obtain marketing approval. The six-year period of protection for confidential test data submitted for marketing approval in the Slovak Republic is reduced to the extent the data was submitted earlier in an EU member state. This is a shortcoming which greatly diminishes the protection of confidential test data.

## **TAJKISTAN**

Tajikistan has yet to fulfill all of its intellectual property rights commitments under the 1993 U.S.-Tajikistan Trade Agreement. Specifically, Tajikistan is not yet a party to the Geneva Phonograms Convention. In addition, Tajikistan is not providing any protection or rights to U.S. and other foreign sound recordings, nor does it clearly provide retroactive protection for works or sound recordings under its Copyright Law. Criminal penalties for intellectual property rights violations have not yet been adopted as required by the bilateral trade agreement. In general, there is weak enforcement of intellectual property rights in Tajikistan.

## **THAILAND**

Overall, Thailand has made incremental progress on IPR issues. Pirate optical media production, distribution and export is a significant and growing problem facing U.S. copyright industries. Industry estimates a 300 percent increase in pirate optical disk plants operating in Thailand from 1999. Industry asserts that Thailand has become a primary destination for criminal organizations seeking new bases of operation as controls on illicit wares tighten around the region. Further complicating the protection of IPR in Thailand is the fact that end-user piracy of business software is endemic, perhaps as high as 76 percent, according to industry estimates. Thailand's Central Intellectual Property Court remains a bright spot in the country's efforts to safeguard IPR. The Court's overall effectiveness, however, is hampered by judicial delays, limited resources, and a lack of deterrent sentencing. Key high level Thai Government officials have recently demonstrated a troubling lack of support for the officers of the court and especially the relevant law enforcement agencies.

While the United States recognizes some progress has been made in the past year, the significant and growing problems of optical media production and end-user piracy of business software remain largely unaddressed. For these reasons, the United States will re-evaluate Thailand's IPR situation during an out-of-cycle Review to be conducted in the Fall. The OCR will focus on Thailand's progress in passing and implementing a satisfactory optical media bill; in implementing the Trade Secrets Act in a

TRIPS-compliant manner; and most importantly, in launching a sustained enforcement drive against trademark counterfeiting and copyright piracy, including optical media and illegal end use of business software. The U.S. Government recognizes the important role played by law enforcement officials in this process, and encourages Thailand to provide enforcement authorities the resources and political backing necessary to ensure the successful implementation of a long-term aggressive enforcement policy.

## **TURKEY**

Lack of effective IPR protection in Turkey is a serious concern for the United States. The pharmaceutical licensing regulations of the Ministry of Health do not appear to meet Turkey's TRIPS obligations under Article 39.3. The broadcasting regulations issued last year by the Ministry of Culture undermine the intent of the 2001 copyright law. Piracy levels remain extremely high and government efforts to control piracy, specifically the "banderole" system, have failed. The U.S. recognizes, however, that Turkey's recent economic difficulties have consumed most of the government's attention. The United States encourages Turkey to now turn its attention to IPR issues, in the context of efforts to attract foreign investment. In particular, the U.S. Government encourages the Ministry of Health to amend its pharmaceutical licensing regulations to make them fully consistent with TRIPS Article 39.3 and encourages the Ministry of Culture to revise its broadcast regulations to comply with the intent of the 2001 copyright law. The United States also encourages Turkey to increase the number of raids on sources of piracy, increase control of pirated material at the border, eliminate—or at a minimum reform—the banderole system, address the issuance of registrations to unauthorized distributors of pirate products, increase prosecution of IPR violations, and impose deterrent sentences.

## **TURKMENISTAN**

Turkmenistan has several remaining steps to take to fulfill its intellectual property rights commitments under the 1993 U.S.-Turkmenistan Trade Agreement. Specifically, Turkmenistan is not yet a party to the Berne Convention or the Geneva Phonograms Convention. Turkmenistan is not providing any protection or rights to U.S. and other foreign sound recordings, nor does it clearly provide retroactive protection for works or sound recordings under its Copyright Law. In addition, criminal penalties for intellectual property rights violations have not yet been adopted as required by the U.S.-Turkmenistan Trade Agreement. Furthermore, the Customs Code does not provide the proper authority to seize material at the border, as is necessary to conduct effective border enforcement.

## **UZBEKISTAN**

Uzbekistan has many remaining steps to take to fulfill its intellectual property rights commitments under the 1994 U.S.-Uzbekistan Trade Agreement. Specifically, Uzbekistan is not yet a party to the Berne Convention or the Geneva Phonograms Convention. Uzbekistan is not providing any protection or rights to U.S. and other foreign sound recordings, and it does not clearly provide retroactive protection

for works or sound recordings under its Copyright Law. As a result, there is insufficient enforcement of intellectual property rights in Uzbekistan.

## **VENEZUELA**

The U.S. is pleased that, during the past year, Venezuela sought to defend its issuance of “second use” patents before the Andean Tribunal, and the National Intellectual Property Office (SAPI) improved its enforcement operations. The National Anti-Piracy Brigade (COMANPI) has continued to train and to provide expertise and enforcement with respect to a variety of IPR violations. However, limited resources and a lack of IPR enforcement by Venezuela customs have hampered the government's efforts to lower copyright piracy levels. Venezuelan policies on pharmaceutical data protection need to be clarified as well so as to make clear that their practices are consistent with international standards.

## **VIETNAM**

Enforcement of intellectual property rights (IPR) in Vietnam remains weak, and violations of IPR are rampant. While Vietnam did conduct considerable administrative and law enforcement actions against IPR violations over the past year, IPR enforcement remains the exception rather than the norm. Market access barriers, especially with regard to “cultural products,” continue to impede the availability of legitimate product, further complicating efforts to combat piracy. In most cities, according to industry estimates, up to 100 percent of the music CDs, VCDs, and DVDs on sale are pirated. Trademark violations are also prevalent, with all types of clothing and other items carrying unlicensed versions of famous trademarks available at stands throughout major cities. In spite of this bleak portrait, Vietnam has taken two steps over the last year to strengthen its IPR regime. First, the U.S.-Vietnam Bilateral Trade Agreement, which entered into force on December 10, 2001, has major provisions on IPR that commit Vietnam to make its IPR regime, including enforcement, TRIPS-consistent within two years. Second, Vietnam continued over the past year to make strong progress in strengthening its IPR legal and enforcement structures, including implementing new regulations: (1) extending indefinite protection to well-known or famous marks; (2) protecting new plant varieties for the first time; and (3) providing procedures by which IPR owners can petition Vietnam customs to postpone temporarily the entry or exit of shipments of suspected pirated goods. The United States encourages Vietnam to effectively implement and enforce its new laws and regulations to reduce the pervasive piracy and counterfeiting that continue to exist.