



2020 Special 301 Report



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2020 SPECIAL 301 REPORT



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EXECUTIVE SUMMARY

A top trade priority for the Administration is to use all possible sources of leverage to encourage other countries to open their markets to U.S. exports of goods and services and to provide adequate and effective protection and enforcement of intellectual property (IP) rights. Toward this end, a key objective of the Administration's trade policy is ensuring that U.S. owners of IP have a full and fair opportunity to use and profit from their IP around the globe.

The Special 301 Report (Report) is the result of an annual review of the state of IP protection and enforcement in U.S. trading partners around the world, which the Office of the United States Trade Representative (USTR) conducts pursuant to Section 182 of the Trade Act of 1974, as amended (the Trade Act, 19 U.S.C. § 2242). Congress amended the Trade Act in 1988 specifically "to provide for the development of an overall strategy to ensure adequate and effective protection of intellectual property rights and fair and equitable market access for United States persons that rely on protection of intellectual property rights."¹ In particular, Congress expressed its concern that "the absence of adequate and effective protection of United States intellectual property rights, and the denial of equitable market access, seriously impede the ability of the United States persons that rely on protection of intellectual property rights to export and operate overseas, thereby harming the economic interests of the United States."²

This Report provides an opportunity to call out foreign countries and to expose the laws, policies, and practices that fail to provide adequate and effective IP protection and enforcement for U.S. inventors, creators, brands, manufacturers, and service providers. The identification of the countries and IP-related market access barriers in the Report and of steps necessary to address those barriers are a critical component of the Administration's aggressive efforts to defend Americans from harmful IP-related trade barriers.

Specifically, this Administration continues to closely monitor developments in, and to engage with, those countries that have been on the Priority Watch List for multiple years. Over the coming weeks, USTR will review the developments against the benchmarks established in the Special 301 action plans for those countries. For countries failing to address U.S. concerns, USTR will take appropriate actions, which may include enforcement actions under Section 301 of the Trade Act or pursuant to World Trade Organization (WTO) or other trade agreement dispute settlement procedures.

The Report identifies foreign trading partners where IP protection and enforcement has deteriorated or remained at inadequate levels and where U.S. persons who rely on IP protection have difficulty with fair and equitable market access. For example:

¹ Omnibus Trade and Competitiveness Act of 1988, § 1303(a)(2), 102 Stat. 1179.

² *Id.* § 1303(a)(1)(B); *see also* S. Rep. 100-71 at 75 (1987) ("Improved protection and market access for U.S. intellectual property goes to the very essence of economic competitiveness for the United States. The problems of piracy, counterfeiting, and market access for U.S. intellectual property affect the U.S. economy as a whole. Effective action against these problems is important to sectors ranging from high technology to basic industries, and from manufacturers of goods to U.S. service businesses.").

- USTR continues to place China on the Priority Watch List and Section 306 monitoring remains in effect. China’s placement on the Priority Watch List reflects U.S. concerns with China’s system of pressuring and coercing technology transfer, and the continued need for fundamental structural changes to strengthen IP protection and enforcement, including as to trade secret theft, obstacles to protecting trademarks, online piracy and counterfeiting, the high-volume manufacturing and export of counterfeit goods, and impediments to pharmaceutical innovation. Under Section 301 of the Trade Act of 1974, USTR has taken action to address a range of unfair and harmful Chinese acts, policies, and practices related to technology transfer, IP, and innovation. USTR also initiated dispute settlement proceedings at the WTO to address discriminatory licensing practices. Structural impediments to administrative, civil, and criminal enforcement continue to undermine IP protections, as do certain information communications technology (ICT), IP-ownership, and research and development localization requirements. Over the past year, the United States’ engagement of China began to demonstrate key progress with the signing of the U.S. – China Economic and Trade Agreement in January 2020.³ The agreement requires changes in China’s acts, policies, and practices, including structural reforms and other changes to China’s legal and regulatory regime to address numerous longstanding concerns of a wide range of U.S. industries.
- USTR identifies India on the Priority Watch List for lack of sufficient measurable improvements to its IP framework on long-standing and new challenges that have negatively affected U.S. right holders over the past year. Long-standing IP challenges facing U.S. businesses in India include those which make it difficult for innovators to receive, maintain, and enforce patents in India, particularly for pharmaceuticals; ineffectual enforcement activities, copyright⁴ policies that fail to incentivize the creation and commercialization of content, and an outdated and insufficient trade secrets legal framework. In addition to these long-standing concerns, India also further restricted the transparency of information provided on state-issued pharmaceutical manufacturing licenses, continues to apply restrictive patentability criteria to reject pharmaceutical patents, and still has not established an effective system for protecting against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceuticals and certain agricultural chemical products.
- USTR identifies Indonesia on the Priority Watch List due to the reported lack of adequate and effective IP protection and enforcement. Indonesia’s patent law continues to raise serious concerns, including with respect to patentability criteria and compulsory licensing. Further, counterfeiting and piracy continue to be pervasive, IP enforcement remains weak, and there are continued market access restrictions for IP-intensive industries.
- The Report also highlights trading partners such as Chile that have not delivered on IP commitments made to the United States.

³ Economic and Trade Agreement Between the Government of the United States of America and the Government of the People’s Republic of China (“Phase One agreement”) (Jan. 15, 2020), <https://ustr.gov/countries-regions/china-mongolia-taiwan/peoples-republic-china/phase-one-trade-agreement/text>.

⁴ As used in this report, the term “copyright” encompasses copyright and related rights.

- USTR identifies Trinidad & Tobago on the Watch List for a lack of enforcement actions against operators that broadcast unauthorized cable and satellite channels, which Trinidad & Tobago had pledged when it was removed from the Watch List in 2016. The United States will monitor enforcement efforts and efforts to addressing long-standing concerns, including copyright piracy and payment of royalties.

The Report also identifies significant cross-cutting IP issues with regard to adequate and effective IP protection and enforcement worldwide. For example:

- USTR has been engaging with trading partners, including Argentina, Australia, Canada, China, Colombia, Ecuador, Egypt, Indonesia, Japan, Korea, Mexico, New Zealand, Saudi Arabia, Thailand, Turkey, the United Arab Emirates (UAE), and Vietnam, to address concerns related to IP protection, IP enforcement, and market access barriers with respect to pharmaceuticals and medical devices so that trading partners contribute their fair share to research and development of new treatments and cures.
- In virtually all countries identified in this Report, IP enforcement is lacking. Many trading partners, including Brazil, China, Colombia, Hong Kong, India, Indonesia, Nigeria, Paraguay, Singapore, Thailand, Turkey, the UAE, and Vietnam, do not provide adequate or effective border enforcement against counterfeit and pirated goods. In addition, many listed countries' customs officials lack authority to take *ex officio* action to seize and destroy such goods at the border or to take such action against goods in-transit.
- Online and broadcast piracy remains a challenging copyright enforcement issue in many countries, including Argentina, Bulgaria, Canada, Chile, China, Colombia, Dominican Republic, Greece, Guatemala, India, Mexico, the Netherlands, Romania, Russia, Saudi Arabia, Switzerland, Thailand, Ukraine, Vietnam, and elsewhere.
- Several countries, including Brazil, India, Russia, and Ukraine, have not addressed the continuing and emerging challenges of copyright piracy. Countries such as Argentina, Brazil, China, Egypt, Indonesia, Kenya, Mexico, Nigeria, the Philippines, Romania, Russia, Thailand, Ukraine, and Vietnam do not have in place effective policies and procedures to ensure their own government agencies do not use unlicensed software.
- U.S. innovators face challenges, including restrictive patentability criteria, that undermine opportunities for export growth in countries such as Argentina, India, and Indonesia. Innovators also face a lack of effective protection against unfair commercial use, as well as unauthorized disclosure, of test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products in countries such as Argentina, China, Egypt, India, and Saudi Arabia.
- Inadequate protection for trade secrets in a number of countries, notably in China and India, also puts U.S. trade secrets at unnecessary risk.

- The Report highlights the negative market access effects of the approach of the European Union (EU) to the protection of geographical indications (GIs) in the EU and third-country markets on U.S. producers and traders, particularly those with prior trademark rights or who rely on the use of common names.

A number of trading partners have taken steps to address concerns identified in last year's Report as a result of significant engagement by USTR and other U.S. government agencies. Examples include:

- Costa Rica is removed from the Watch List due to concrete steps Costa Rica took to address unlicensed software use in the central government and to implement an online recordation system to improve border enforcement.
- Greece is removed from the Watch List in light of its steps to address the widespread use of unlicensed software in the public sector through the allocation of significant funds to purchase software licenses, progress in online enforcement, and the introduction of legislation to impose fines on those possessing counterfeit products, with the understanding that the United States will continue to monitor its enforcement efforts.
- Jamaica is removed from the Watch List for passing a new Patent and Designs Act to replace its outdated patent and industrial designs regime.
- Kuwait moves from the Priority Watch List to the Watch List for continued steps to update its copyright law and regulations and for significantly increasing its in-country IP enforcement activities, although ongoing concerns remain regarding the protections granted to copyright holders and the availability of counterfeit goods in the country.
- Switzerland is removed from the Watch List due to long-awaited amendments to the Swiss Copyright Act, which came into force on April 1, 2020. The amendments address specific difficulties in its system of online copyright protection and enforcement. The United States will carefully monitor the implementation, interpretation, and effectiveness of the newly enacted legislation and will engage with the Swiss government on these and other IP issues.

USTR looks forward to working closely with the trading partners identified in this year's Report to address these and other priority concerns.

THE SPECIAL 301 PROCESS

The Congressionally-mandated annual Special 301 Report is the result of an extensive multi-stakeholder process. Pursuant to the statute mandating the Report, the United States Trade Representative is charged with designating as Priority Foreign Countries those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products. (See ANNEX 1.) To facilitate administration of the statute, USTR has created a Priority Watch List and a Watch List within this Report. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IP protection, enforcement,

or market access for U.S. persons relying on IP. Provisions of the Special 301 statute, as amended, direct the United States Trade Representative to develop action plans for each country identified as a Priority Watch List country that has also been on the Priority Watch List for at least one year.

Public Engagement

USTR solicited broad public participation in the 2020 Special 301 review process to facilitate sound, well-balanced assessments of trading partners' IP protection and enforcement and related market access issues affecting IP-intensive industries and to help ensure that the Special 301 review would be based on comprehensive information regarding IP issues in trading partner markets.

USTR requested written submissions from the public through a notice published in the *Federal Register* on December 23, 2019 (*Federal Register* notice). In addition, on February 22, 2020, USTR conducted a public hearing that provided the opportunity for interested persons to testify before the interagency Special 301 Subcommittee of the Trade Policy Staff Committee (TPSC) about issues relevant to the review. The hearing featured testimony from witnesses, including representatives of foreign governments, industry, and non-governmental organizations. USTR posted on its public website the testimony received at the Special 301 hearing and offered a post-hearing comment period during which hearing participants could submit additional information in support of, or in response to, hearing testimony.⁵ The *Federal Register* notice and post-hearing comment opportunity drew submissions from 51 non-government stakeholders and 21 foreign governments. The submissions filed in response to the *Federal Register* notice and during the post-hearing comment period are available to the public online at www.regulations.gov, docket number USTR-2019-0012. The public can access the transcript and video of the hearing at www.ustr.gov.

Country Placement

The Special 301 listings and actions announced in this Report are the result of intensive deliberations among all relevant agencies within the U.S. Government, informed by extensive consultations with participating stakeholders, foreign governments, the U.S. Congress, and other interested parties.

USTR, together with the Special 301 Subcommittee, conducts a broad and balanced assessment of U.S. trading partners' IP protection and enforcement, as well as related market access issues affecting IP-intensive industries, in accordance with the statutory criteria. (See ANNEX 1.) The Special 301 Subcommittee, through the TPSC, provides advice on country placement to USTR based on this assessment. This assessment is conducted on a case-by-case basis, taking into account diverse factors such as a trading partner's level of development, its international obligations and commitments, the concerns of right holders and other interested parties, and the trade and investment policies of the United States. It is informed by the various cross-cutting issues and trends identified in Section I. Each assessment is based upon the specific facts and circumstances that shape IP protection and enforcement in a particular trading partner.

⁵ Available at <https://ustr.gov/issue-areas/intellectual-property/special-301/2020-special-301-review>.

In the year ahead, USTR will continue to engage trading partners on the issues discussed in this Report. In preparation for, and in the course of, those interactions, USTR will:

- Engage with U.S. stakeholders, the U.S. Congress, and other interested parties to ensure that the U.S. Government's position is informed by the full range of views on the pertinent issues;
- Conduct extensive discussions with individual trading partners regarding their respective IP regimes;
- Encourage trading partners to engage fully, and with the greatest degree of transparency, with the full range of stakeholders on IP matters;
- Develop an action plan with benchmarks for each country that has been on the Priority Watch List for at least one year to encourage progress on high-priority IP concerns; and
- Identify, where possible, appropriate ways in which the U.S. Government can be of assistance. (See ANNEX 2.)

USTR will conduct these discussions in a manner that both advances the policy goals of the United States and respects the importance of meaningful policy dialogue with U.S. trading partners. In addition, USTR will continue to work closely with other U.S. Government agencies to ensure consistency of U.S. trade policy objectives.

THE 2020 SPECIAL 301 LIST

The Special 301 Subcommittee received stakeholder input on more than 100 trading partners, but focused its review on those submissions that responded to the request set forth in the notice published in the *Federal Register* to identify whether a particular trading partner should be named as a Priority Foreign Country, placed on the Priority Watch List or Watch List, or not listed in the Report. Following extensive research and analysis, USTR has identified 33 trading partners as follows:

Priority Watch List

- Algeria
- Argentina
- Chile
- China
- India
- Indonesia
- Russia
- Saudi Arabia
- Ukraine
- Venezuela

Watch List

- Barbados
- Bolivia
- Brazil
- Canada
- Colombia
- Dominican Republic
- Ecuador
- Egypt
- Guatemala
- Kuwait
- Lebanon
- Mexico
- Pakistan
- Paraguay
- Peru
- Romania
- Thailand
- Trinidad & Tobago
- Turkey
- Turkmenistan
- UAE
- Uzbekistan
- Vietnam

OUT-OF-CYCLE REVIEWS

An Out-of-Cycle Review is a tool that USTR uses to encourage progress on IP issues of concern. Out-of-Cycle Reviews provide an opportunity to address and remedy such issues through heightened engagement and cooperation with trading partners and other stakeholders. Out-of-Cycle Reviews focus on identified IP challenges in specific trading partner markets. Successful resolution of specific IP issues of concern can lead to a positive change in a trading partner's Special 301 status outside of the typical period for the annual review. Conversely, failure to address identified IP concerns, or further deterioration as to an IP-related concern within the specified Out-of-Cycle Review period, can lead to an adverse change in status.

In 2020, USTR plans to conduct an Out-of-Cycle Review of Saudi Arabia, focusing on Saudi Arabia's protection against unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

USTR conducted an Out-of-Cycle Review of Malaysia in 2019 to consider the extent to which Malaysia was providing adequate and effective IP protection and enforcement, including with respect to patents. During this review, the United States and Malaysia have held numerous consultations with a view toward resolving outstanding issues. In 2020, USTR will extend the Out-of-Cycle Review of Malaysia and will press Malaysia to complete actions to fully resolve these concerns in the near term.

USTR may conduct additional Out-of-Cycle Reviews of other trading partners as circumstances warrant or as requested by a trading partner.

REVIEW OF NOTORIOUS MARKETS FOR COUNTERFEITING AND PIRACY (*NOTORIOUS MARKETS LIST*)

In 2010, USTR began publishing annually the *Notorious Markets List* separately from the annual Special 301 Report. The *Notorious Markets List* identifies illustrative examples of online and physical markets that reportedly engage in, facilitate, turn a blind eye to, or benefit from substantial

copyright piracy and trademark counterfeiting, according to information submitted to USTR in response to a notice published in the *Federal Register* requesting public comments. In 2019, USTR requested such comments on August 19, 2019, and published the *2019 Notorious Markets List* on April 29, 2020. USTR plans to conduct its next Review of Notorious Markets for Counterfeiting and Piracy in the fall of 2020.

STRUCTURE OF THE SPECIAL 301 REPORT

The 2020 Report contains the following Sections and Annexes:

SECTION I: Developments in Intellectual Property Rights Protection, Enforcement, and Related Market Access discusses global trends and issues in IP protection and enforcement and related market access that the U.S. Government works to address on a daily basis;

SECTION II: Country Reports includes descriptions of issues of concern with respect to particular trading partners;

ANNEX 1: Special 301 Statutory Basis describes the statutory basis of the Special 301 Report; and

ANNEX 2: U.S. Government-Sponsored Technical Assistance and Capacity Building highlights U.S. Government-sponsored technical assistance and capacity building efforts.

April 2020

SECTION I: Developments in Intellectual Property Rights Protection, Enforcement, and Related Market Access

An important part of the mission of the Office of the United States Trade Representative (USTR) is to support and implement the Administration’s commitment to protect American jobs and workers and to advance the economic interests of the United States. Intellectual property (IP) infringement, including patent infringement, trademark counterfeiting, copyright piracy,⁶ and trade secret theft, causes significant financial losses for right holders and legitimate businesses around the world. IP infringement undermines U.S. competitive advantages in innovation and creativity, to the detriment of American businesses and workers. In its most pernicious forms, IP infringement endangers the public, including through exposure to health and safety risks from counterfeit products, such as semiconductors, automobile parts, apparel, footwear, toys, and medicines. In addition, trade in counterfeit and pirated products often fuels cross-border organized criminal networks and hinders sustainable economic development in many countries. Fostering innovation and creativity is essential to U.S. economic growth, competitiveness, and the estimated 45 million American jobs that directly or indirectly rely on IP-intensive industries.⁷ USTR continues to work to protect American innovation and creativity in foreign markets employing all the tools of U.S. trade policy, including the annual Special 301 Report.

This Section highlights developments in 2019 and early 2020 in IP protection, enforcement, and related market access in foreign markets, including: examples of initiatives to strengthen IP protection and enforcement; illustrative best practices demonstrated by the United States and our trading partners; U.S.-led initiatives in multilateral organizations; and bilateral and regional developments. This Section identifies outstanding challenges and trends, including as they relate to innovative pharmaceutical products and medical devices, forced technology transfer and localization policies, protection of trade secrets, geographical indications (GIs), online and broadcast piracy, and trade in counterfeit goods. This Section also highlights the importance of IP to innovation in the environmental sector and considerations at the intersection of IP and health. Finally, this Section discusses the importance of full implementation of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and developments on the U.S. use of WTO dispute settlement procedures to resolve IP concerns.

⁶ The terms “trademark counterfeiting” and “copyright piracy” may appear below also as “counterfeiting” and “piracy,” respectively.

⁷ Economics and Statistics Administration (ESA) and U.S. Patent and Trademark Office (USPTO), *Intellectual Property and the U.S. Economy: 2016 Update*, at 12-13, <https://www.uspto.gov/sites/default/files/documents/IPandtheUSEconomySept2016.pdf>.

A. IP Protection, Enforcement, and Related Market Access Challenges

Pharmaceutical and Medical Device Innovation and Market Access

To promote affordable healthcare for American patients today and innovation to preserve access to the cutting-edge treatments and cures that they deserve tomorrow, USTR has been engaging with trading partners to ensure that U.S. owners of IP have a full and fair opportunity to use and profit from their IP, including by promoting transparent and fair pricing and reimbursement systems. USTR has sought to: (1) ensure robust IP systems; (2) reduce market access barriers to pharmaceutical products and medical devices, including measures that discriminate against U.S. companies, are not adequately transparent, or do not offer sufficient opportunity for meaningful stakeholder engagement; and (3) enable trading partners to appropriately recognize the value of innovative medicines and medical devices so that trading partners contribute their fair share to research and development of new treatments and cures. Among other examples, USTR, in the past year:

- Secured strong IP provisions with **Canada** and **Mexico**, which are important to incentivizing innovation, in the United States-Mexico-Canada Agreement (USMCA), as well as provisions to ensure that national-level government processes for the listing and reimbursement of pharmaceutical products and medical devices are transparent, provide procedural fairness, are nondiscriminatory, and provide full market access for U.S. products. The USMCA was signed into law by President Trump on January 29, 2020;
- Secured enforceable commitments from **China** to: (1) establish a mechanism for the early resolution of potential pharmaceutical patent disputes, including a cause of action to allow a patent holder to seek expeditious remedies before the marketing of an allegedly infringing product, so that innovative pharmaceutical companies can effectively enforce their rights in China; (2) provide patent term extensions to compensate for unreasonable patent office and marketing approval delays that cut into the effective patent term; and (3) permit the use of supplemental data to meet relevant patentability criteria for pharmaceutical patent applications;
- Engaged with **Korea** to secure meaningful reforms on longstanding issues pertaining to Korea's commitments under the Korea-U.S. Free Trade Agreement (KORUS FTA) to ensure transparency with respect to pharmaceutical and medical device pricing and reimbursement policies and non-discriminatory treatment for U.S. pharmaceutical exports;
- Engaged with **Japan** to ensure transparency and fairness and to address other concerns with respect to pharmaceutical and medical device pricing and reimbursement policies;
- Pressed **Indonesia** to fully resolve concerns regarding revisions to Indonesia's patent law, such as its patentability criteria, local manufacturing and use requirements, and the grounds and procedures for issuing compulsory licenses;
- Raised concerns with **Argentina**, including the scope of patentable subject matter and effective protection against unfair commercial use, as well as unauthorized disclosure, of

undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products; and

- Encouraged the **United Arab Emirates** (UAE) to issue regulations to provide effective protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

This year's Report continues to highlight concerns regarding IP protection and enforcement and market access barriers affecting U.S. entities that rely on IP protection, including those in the pharmaceutical and medical device industries.

For example, actions by trading partners to unfairly issue, threaten to issue, or encourage others to issue compulsory licenses raise serious concerns. Such actions can undermine a patent holder's IP, reduce incentives to invest in research and development for new treatments and cures, unfairly shift the burden for funding such research and development to American patients and those in other markets that properly respect IP, and discourage the introduction of important new medicines into affected markets. To maintain the integrity and predictability of IP systems, governments should use compulsory licenses only in extremely limited circumstances and after making every effort to obtain authorization from the patent owner on reasonable commercial terms and conditions. Such licenses should not be used as a tool to implement industrial policy, including providing advantages to domestic companies, or as undue leverage in pricing negotiations between governments and right holders. It is also critical that foreign governments ensure transparency and due process in any actions related to compulsory licenses. The United States will continue to monitor developments and to engage, as appropriate, with trading partners, including **Chile, Colombia, Egypt, El Salvador, India, Indonesia, Malaysia, Russia, Turkey, and Ukraine.**

Also, measures that are discriminatory, nontransparent, or otherwise trade-restrictive have the potential to hinder market access in the pharmaceutical and medical device sectors and potentially result in higher product costs. Unreasonable regulatory approval delays and non-transparent reimbursement policies also can impede a company's ability to enter the market, and thereby discourage the development and marketing of new drugs and other medical products. The criteria, rationale, and operation of such measures are often nontransparent or not fully disclosed to patients or to pharmaceutical and medical device companies seeking to market their products. By contrast, a number of countries have policies in place that speed up regulatory approvals for pharmaceutical products and reduce the complexity and administrative cost of the approval process, which can increase market access. For example, "reliance" systems, such as the ones implemented by **Egypt and Mexico**, recognize and depend on regulatory approvals by stringent health regulatory authorities in other countries. In this regard, the United States encourages trading partners to provide appropriate mechanisms for transparency, procedural and due process protections, and opportunities for public engagement in the context of their relevant health care systems.

In addition, pricing and reimbursement systems in foreign markets that are not market-based, or that do not otherwise appropriately recognize the value of innovative medicines and medical devices, present significant concerns. Such systems undermine incentives for innovation in the

health care sector. It is important that trading partners contribute fairly to research and development for innovative treatments and cures.

The IP-intensive U.S. pharmaceutical and medical device industries have expressed concerns regarding the policies of several trading partners, including **Algeria, Australia, Canada, China, Japan, Korea, New Zealand,** and **Turkey**, on issues related to pharmaceutical innovation and market access. Examples of these concerns include the following:

- **Algeria**'s ban on a significant number of imported pharmaceutical products and medical devices that compete with products manufactured domestically is a matter of paramount concern and is the primary reason why Algeria remains on the Priority Watch List. The United States urges Algeria to remove this market access barrier that is also reportedly adversely affecting access to legitimate medicines.
- Under the United States-Australia Free Trade Agreement, **Australia** must provide that a pharmaceutical patent owner be notified of a request for marketing approval by a third party for a product claimed by that patent and provide measures in its marketing approval process to prevent persons other than the patent owner from marketing a patented product during the patent term. U.S. and Australian pharmaceutical companies have expressed concerns about delays in this notification process. The U.S. Government also has raised concerns about provisions in Australian law that have the potential to negatively impact the enjoyment of patent rights, particularly for the owners of pharmaceutical patents. The Ministry of Health is currently considering proposals that would change the notification process for marketing approvals, and the United States will continue to engage with Australia as it amends the notification process to increase transparency and to promote the early resolution of potential pharmaceutical patent disputes.
- **Canada** has drawn significant concern from stakeholders with changes set for implementation in 2020 that would dramatically reshape how the Patented Medicine Prices Review Board evaluates patented pharmaceuticals and sets their ceiling prices. If implemented, the changes may significantly undermine the marketplace for innovative pharmaceutical products, delay or prevent the introduction of new medicines in Canada, and reduce investments in Canada's life sciences sector.
- The United States has long urged **Japan** to implement predictable and stable pricing and reimbursement policies that reward innovation and provide incentives for companies to invest in the research and development of advanced medical devices and innovative pharmaceuticals. Reforms to Japan's reimbursement system since 2017 represent a retreat from previous progress made in this area. The United States has serious concerns regarding recent policy changes to the Price Maintenance Premium (PMP), a mechanism designed to accelerate the introduction of innovative drugs to the Japanese market. Several factors taken into consideration in PMP calculations, such as the number of local clinical trials and product launches, appear to make it easier for Japanese companies to qualify for the premium. Reimbursement outcomes under the PMP system suggest that U.S. companies, especially small- and medium-sized enterprises, are at a disadvantage compared to Japanese companies. The PMP revisions may also introduce significant uncertainty into

pricing for patented pharmaceuticals, undermining investment planning for capital-intensive drug discovery research and clinical trials. The implementation of the Cost-Effectiveness Assessment, a health technology assessment system, may add uncertainty for companies selling highly innovative and high-impact drugs and medical devices in Japan. Any assessment of healthcare spending should fairly evaluate all areas contributing to costs in the long term, rather than targeting a particular sector. These concerns will remain a priority for the United States, and the United States will continue to closely monitor the situation as it develops.

- The United States has urged **Korea** to seriously consider stakeholders' concerns and ensure that pharmaceutical reimbursement is conducted in a fair, transparent, and nondiscriminatory manner that recognizes the value of innovation. In March 2018, negotiations to improve and better implement the KORUS FTA concluded with a commitment from Korea to amend its Premium Pricing Policy for Global Innovative New Drugs to ensure non-discriminatory and fair treatment for pharmaceutical products and medical devices, including imported products and devices. Korea's implementation of this commitment has resulted in amendments that appear to make it so that very few, if any, companies or products will qualify for premium pricing. It is critical that Korea implement this commitment fully and in good faith, while also addressing continuing U.S. concerns regarding the lack of transparency and predictability and the need to appropriately recognize the value of innovative pharmaceuticals and medical devices in Korea's pricing and reimbursement policies and their underlying methodology.
- There are long-standing concerns about the policies and operation of **New Zealand's** Pharmaceutical Management Agency (PHARMAC), including, among other things, the lack of transparency, fairness, and predictability of the PHARMAC pricing and reimbursement regime, as well as negative aspects of the overall climate for innovative medicines in New Zealand.
- Stakeholders continue to raise concerns regarding **Turkey's** pharmaceutical manufacturing inspection process. The United States urges Turkey to build upon its recent accession to the Pharmaceutical Inspection Convention and Cooperation Scheme (PIC/S) and to recognize Good Manufacturing Practices certificates issued by any of the PIC/S members to improve regulatory timelines. Additionally, ongoing reimbursement issues continue to act as market access barriers.

The United States seeks to establish or continue dialogues with trading partners to address these and other concerns and to encourage a common understanding on questions related to innovation and pricing in the pharmaceutical and medical device sectors. The United States also looks forward to continuing its engagement with our trading partners to promote fair and transparent policies in these sectors.

Technology Transfer, Indigenous Innovation, and Localization

Right holders operating in other countries report an increasing variety of government measures, policies, and practices that require or pressure technology transfer from U.S. companies. While

these measures are sometimes styled as means to incentivize domestic “indigenous innovation,” in practice, they disadvantage U.S. companies, requiring them to give up their IP as the price of market entry. These actions serve as market access barriers and deny U.S. companies reciprocal opportunities to access foreign markets relative to market access provided to foreign companies operating in the United States. Such government-imposed conditions or incentives may also introduce non-market distortions into licensing and other private business arrangements, resulting in commercially suboptimal outcomes for the firms involved and for innovation in general. Furthermore, these measures discourage foreign investment in national economies, hurt local manufacturers, distributors, and retailers, and slow the pace of innovation and economic progress. Government intervention in the commercial decisions that enterprises make regarding the ownership, development, registration, or licensing of IP is not consistent with international practice and may raise concerns regarding consistency with international obligations as well.

These government measures often have the effect of distorting trade by forcing U.S. companies to transfer their technology or other valuable commercial information to national entities. Examples of these policies include:

- Requiring the transfer of technology as a condition for obtaining investment and regulatory approvals or otherwise securing access to a market or as a condition for allowing a company to continue to do business in the market;
- Directing state-owned enterprises in innovative sectors to seek non-commercial terms from their foreign business partners, including with respect to the acquisition and use or licensing of IP;
- Providing national firms with an unfair competitive advantage by failing to effectively enforce, or discouraging the enforcement of, U.S.-owned IP, including patents, trademarks, trade secrets, and copyright;
- Failing to take meaningful measures to prevent or to deter cyber intrusions and other unauthorized activities;
- Requiring use of, or providing preferences to, products or services that contain locally developed or owned IP, including with respect to government procurement;
- Manipulating the standards development process to create unfair advantages for national firms, including with respect to participation by foreign firms and the terms on which IP is licensed; and
- Requiring the submission of unnecessary or excessive confidential business information for regulatory approval purposes and failing to protect such information appropriately.

In **China**, investment and regulatory approvals, market access, government procurement, and the receipt of certain preferences or benefits may be conditioned on a firm’s ability to demonstrate that IP is developed in or transferred to China, or is owned by or licensed to a Chinese party. China

has made enforceable commitments to address forced technology transfer in the U.S. – China Economic and Trade Agreement (Phase One agreement).

In **Indonesia**, it is reported that foreign companies’ approvals to market pharmaceuticals are conditioned upon the transfer of technology to Indonesian entities or upon partial manufacture in Indonesia. Indonesia is taking steps to remove localization provisions in its 2016 Patent Law that require the manufacture of patented products and use of patented processes in Indonesia.

In **Nigeria**, localization policies in the form of local content requirements protect and favor local companies at the expense of foreign firms and investors. In particular, the 2019 Guidelines for Nigerian Content Development in Information and Communications Technology require local production or utilization of Nigerian material and labor across a broad range of information communications technology (ICT) goods and services.

Other country-specific examples of these measures are identified in Section II.

The United States urges that, in formulating policies to promote innovation, trading partners, including **China**, refrain from coercive technology transfer and local content policies and take account of the importance of voluntary and mutually agreed commercial partnerships.

Trade Secrets

This year’s Report continues to reflect the growing need for trading partners to provide effective protection and enforcement of trade secrets. Companies in a wide variety of industry sectors, including ICT, services, pharmaceuticals and medical devices, environmental technologies, and other manufacturing sectors, rely on the ability to protect and enforce their trade secrets and rights in proprietary information. Trade secrets, such as business plans, internal market analyses, manufacturing methods, customer lists, and recipes, are often among a company’s core business assets. A company’s competitiveness may depend on its capacity to protect such assets. Trade secret theft threatens to diminish U.S. competitiveness around the globe and puts U.S. jobs at risk. The reach of trade secret theft into critical commercial and defense technologies poses threats to U.S. national security interests as well.

Various sources, including the U.S. Office of the National Counterintelligence and Security Center, have reported specific gaps in trade secret protection and enforcement, particularly in **China**. Theft may arise in a variety of circumstances, including those involving departing employees taking portable storage devices containing trade secrets, failed joint ventures, cyber intrusion and hacking, and misuse of information submitted by trade secret owners to government entities for purposes of complying with regulatory obligations. In practice, effective remedies appear to be difficult to obtain in a number of countries, including China and **India**. Lack of legal certainty regarding trade secrets also dissuades companies from entering into partnerships or expanding their business activities in these and other countries. Many countries do not provide criminal penalties for trade secret theft sufficient to deter such behavior. In some foreign countries, certain practices and policies, including evidentiary requirements in trade secrets litigation and mandatory technology transfer, put valuable trade secrets at risk of exposure. For example, in

Brazil, Indonesia, Malaysia, and Nigeria, government procurement regulations may require companies to disclose valuable source code.

The United States uses all trade tools available to ensure that its trading partners provide robust protection for trade secrets and enforce trade secrets laws. Given the global nature of trade secret theft, action by our trading partners is also essential. Several trading partners have recently strengthened or have been working toward strengthening their trade secret regimes, including the **European Union (EU)** and **Taiwan**. Action in international organizations is also crucial. For instance, the United States strongly supports continued work in the Organisation for Economic Co-operation and Development (OECD) on trade secret protection, building off two studies released by the OECD in 2014. The first study, titled “Approaches to Protection of Undisclosed Information (Trade Secrets)” (January 30, 2014), surveyed legal protection for trade secrets available in a sample of countries. The second study, titled “Uncovering Trade Secrets—An Empirical Assessment of Economic Implications of Protection for Undisclosed Data” (August 11, 2014), examined the protection of trade secrets for a sample of 37 countries, provided historical data for the period since 1985, and considered the relationship between the stringency of trade secret protection and relevant economic performance indicators. Also, in November 2016, the Asia-Pacific Economic Cooperation (APEC) endorsed a set of “Best Practices in Trade Secret Protection and Enforcement Against Misappropriation,” which includes best practices such as: (1) broad standing for claims for the protection of trade secrets and enforcement against trade secret theft; (2) civil and criminal liability, as well as remedies and penalties, for trade secret theft; (3) robust procedural measures in enforcement proceedings; and (4) adoption of written measures that enhance protection against further disclosure when governments require the submission of trade secrets.

Geographical Indications

The United States is working intensively through bilateral and multilateral channels to advance U.S. market access interests in foreign markets and to ensure that GI-related trade initiatives of the **EU**, its Member States, like-minded countries, and international organizations, do not undercut such market access. GIs typically include place names (or words associated with a place) and identify products as having a particular quality, reputation, or other characteristic essentially attributable to the geographic origin of the product. The EU GI agenda remains highly concerning, because it significantly undermines the scope of trademarks and other IP rights held by U.S. producers and imposes barriers on market access for American-made goods that rely on the use of common names, such as parmesan or feta.

First, the EU GI system raises concerns regarding the extent to which it impairs the scope of trademark protection, including trademark rights that pre-date the issuance of a GI. Trademarks are among the most effective ways for producers and companies, including small- and medium-sized enterprises (SMEs), to create value, to promote their goods and services, and to protect their brands, even with respect to food and beverage products covered by the EU GI system. Many such products are already protected by trademarks in the United States, in the EU, and around the world. Trademark systems offer strong protections through procedures that are easy to use, cost-effective, transparent, and provide due process safeguards. Trademarks also deliver high levels of consumer awareness, significant contributions to gross domestic product (GDP) and employment,

and accepted international systems of protection. The EU GI system undermines trademark protection and may result in consumer confusion to the extent that it permits the registration of GIs that are confusingly similar to prior trademarks.

Second, the EU GI system and strategy adversely impact access for U.S. and other producers in the EU market and other markets. The EU has granted GI protection to thousands of terms that now only certain EU producers can use in the EU market, and many of these producers then block the use of any term that even “evokes” a GI. However, many EU member states such as Denmark and France still produce products that are GIs of other European countries, such as feta, and export these products outside of the EU. Furthermore, in 2017, the EU granted GI protection to the cheese name danbo, a widely traded type of cheese that is covered by an international standard under the Codex Alimentarius (Codex). Argentina, South Africa, Uruguay, and other countries produce danbo. Similarly, in 2019, the EU granted GI protection to havarti, notwithstanding the long-standing and widespread use of this term by producers around the world. Australia, New Zealand, the United States, and other countries produce havarti. Like in the case of danbo, the Codex established an international standard for havarti in 2007, premised on the fact that havarti is produced and marketed in many countries throughout the world under that name. The EU’s approval of GIs for havarti and danbo undermine the Codex standards for these products, and WTO Members have repeatedly challenged the EU to explain its disregard for Codex cheese standards at the WTO, including in the TBT Committee. Moreover, havarti is included in the EU’s MFN tariff rate quota, indicating that havarti was expected to be produced outside of and imported into the EU. Several countries, including the United States, opposed GI protection of these common names both during the EU’s opposition period and at the WTO, but the European Commission granted the protection over that opposition and without sufficient explanation or notice to interested parties.

As part of its trade agreement negotiations, the EU pressures trading partners to prevent all producers, other than in certain EU regions, from using certain product names, such as fontina, gorgonzola, parmesan, asiago, or feta. This is despite the fact that these terms are the common names for products produced in countries around the world. In the EU and other markets that have adopted the EU GI system, American producers and traders either are effectively blocked from those markets or must adopt burdensome workarounds. They either cannot use the descriptors at all, or anything even evoking them, in the market or at best may sell their products only as “fontina-like,” “gorgonzola-kind,” “asiago-style,” or “imitation feta.” This is costly, unnecessary, and can reduce consumer demand for the non-EU products.

The United States runs a significant deficit in food and agricultural trade with the EU. The EU GI system contributes to this asymmetry, which is acute in trade in agricultural products subject to the EU GI system. In the case of cheese, for example, where many EU products enjoy protection under the EU GI system, the EU exported approximately \$1 billion of cheese to the United States last year. Conversely, the United States exported only about \$3.6 million of cheese to the EU last year. Based on this evidence, EU agricultural producers exporting to the United States are doing quite well, benefiting considerably from effective trademark protection, in the absence of an EU-style GI system. Unfortunately, U.S. producers, as evidenced by the deficit, are not afforded the same level of market access to the EU.

Despite these troubling aspects of its GI system, the EU continues to seek to expand its harmful GI system within its territory and beyond. Within its borders, the EU is enlarging its system beyond agricultural products and foodstuffs to encompass non-agricultural products, including apparel, ceramics, glass, handicrafts, manufactured goods, minerals, salts, stones, and textiles. The United States continues to urge the EU to not implement certain proposed changes to the EU's Common Agricultural Policy, which, if adopted, would transfer much of the GI application review process to interested EU Member States and sharply reduce the period for filing a reasoned basis in support of an opposition to register a GI. As noted above, the EU has also sought to advance its agenda through bilateral trade agreements, which impose the negative impacts of the EU GI system on market access and trademark protection in third countries, including through exchanges of lists of terms that receive automatic protection as GIs without sufficient transparency or due process.

The EU has pursued its GI agenda in multilateral and plurilateral bodies as well. For example, in 2015, the EU, several EU Member States, and others expanded the World Intellectual Property Organization (WIPO) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration to include GIs, thereby enshrining several detrimental aspects of EU law in that Agreement. The Geneva Act of the Lisbon Agreement that emerged from these negotiations was the product of a decision led by the EU and certain Member States to break with the long-standing WIPO practice of consensus-based decision-making and to vote to deny the United States and 160 other WIPO countries meaningful participation rights in the negotiations. In 2020, the EU became party to the Geneva Act of the Lisbon Agreement.

In response to the EU's aggressive promotion of its exclusionary GI policies, the United States continues its intensive engagement in promoting and protecting access to foreign markets for U.S. exporters of products that are trademark protected or are identified by common names. The United States is advancing these objectives through its free trade agreements, as well as in international fora, including in APEC, WIPO, and the WTO. In addition to these negotiations, the United States is engaging bilaterally to address concerns resulting from the GI provisions in existing EU trade agreements, agreements under negotiation, and other initiatives, including with **Argentina, Australia, Brazil, Canada, Chile, China, Colombia, Ecuador, Indonesia, Japan, Jordan, Malaysia, Mexico, Morocco, Paraguay, the Philippines, Singapore, South Africa, Tunisia, Ukraine, Uruguay, and Vietnam**, among others. U.S. goals in this regard include:

- Ensuring that the grant of GI protection does not violate prior rights (for example, in cases in which a U.S. company has a trademark that includes a place name);
- Ensuring that the grant of GI protection does not deprive interested parties of the ability to use common names, such as parmesan or feta;
- Ensuring that interested persons have notice of, and opportunity to oppose or to seek cancellation of, any GI protection that is sought or granted;
- Ensuring that notices issued when granting a GI consisting of compound terms identify its common name components; and

- Opposing efforts to extend the protection given to GIs for wines and spirits to other products.

Online Piracy and Broadcast Piracy

The increased availability of broadband Internet connections around the world, combined with increasingly accessible and sophisticated mobile technology, has been a boon to the U.S. economy and trade. One key area of economic growth for the United States has been the development of legitimate digital platforms for distribution of copyrighted content, so that consumers around the world can enjoy the latest movies, television, music, books, and other copyrighted content from the United States.

However, technological developments have also made the Internet an extremely efficient vehicle for disseminating pirated content, thus competing unfairly with legitimate e-commerce and distribution services that copyright holders and online platforms use to deliver licensed content. While optical disc piracy continues in many countries, including in **China, India, Indonesia, Mexico, Peru, Ukraine, and Vietnam**, online piracy is the most challenging copyright enforcement issue in many foreign markets. For example, countries such as **Argentina, Bulgaria, Canada, Chile, China, Colombia, the Dominican Republic, Greece, India, Mexico, the Netherlands, Romania, Russia, Switzerland, Thailand, Ukraine, and Vietnam** have high levels of online piracy and lack effective enforcement. A June 2019 report, titled *Impacts of Digital Video Piracy on the U.S. Economy*, estimated that global online video piracy costs the U.S. economy at least \$29.2 billion and as much as \$71 billion in lost revenue each year.⁸

Stream-ripping, the unauthorized converting of a file from a licensed streaming site into an unauthorized copy, is now a dominant method of music piracy, causing substantial economic harm to music creators and undermining legitimate online services. Stream-ripping is reportedly popular in countries such as **Canada, Mexico, the Netherlands, Sweden, and Switzerland**.

Furthermore, as highlighted in the 2017 *Notorious Markets List* and called out in subsequent *Notorious Markets Lists*, illicit streaming devices (ISDs), also referred to as piracy devices, continue to pose a direct threat to content creators, sports leagues, and live performances, as well as legitimate streaming, on-demand, and over-the-top media service providers. Similarly, illicit Internet Protocol Television (IPTV) services unlawfully retransmit telecommunications signals and channels through dedicated web portals and third-party applications that run on ISDs or legitimate devices. Today, there are many illegal IPTV services worldwide, many of which are subscription-based, for-profit services with vast and complex technical infrastructure. Stakeholders continue to report rampant piracy through ISDs and illicit IPTV apps, including in **Argentina, Brazil, Chile, China, the Dominican Republic, Hong Kong, India, Indonesia,**

⁸ Blackburn, David et al., *Impacts of Digital Video Piracy on the U.S. Economy*, at Foreword, ii (Jun. 2019), <https://www.theglobalipcenter.com/wp-content/uploads/2019/06/Digital-Video-Piracy.pdf>. See also Danaher, Brett et al, *Piracy Landscape Study: Analysis of Existing and Emerging Research Relevant to Intellectual Property Rights (IPR) Enforcement of Commercial-Scale Piracy* USPTO Economic Working Paper No. 2020-2 (April 2020) (evaluating peer-reviewed studies addressing the scope and magnitude of economic harm from piracy, particularly via digital channels, across music and books as well as movies and television), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3577670.

Mexico, Peru, Saudi Arabia, Singapore, Taiwan, Thailand, and Vietnam. China, in particular, is a manufacturing hub for these devices.

Signal theft by cable operators continues to be a problem. In most cases, infringers circumvent encryption systems or otherwise unlawfully access cable or satellite signals to access content. Unauthorized distributors may also steal “overspill” broadcast or satellite signals from neighboring countries, access broadcast signals, or otherwise hack set-top boxes to allow consumers unauthorized access to content, including premium cable channels. Hotels remain common sites of this type of infringement as they may use their own, on-site facilities to intercept programming services and retransmit them throughout the hotel without paying right holders.

The proliferation of “camcords” continues to be a significant trade problem. Illicit camcording is the primary source of unauthorized copies of newly released movies found online. The recordings made in movie theaters today are very different from those by a single person sitting in a theater with a bulky videotape recorder. The results are not shaky, inaudible recordings. It is now easy for a surreptitious recording in a movie theater to result in a clean digital copy of a movie with perfect audio that can be quickly distributed online. The pirated version of the newly-released movie may be available online while it is still in the theaters. The economic damage is magnified because movies may be released in different markets at different times. Thus, a camcord of a movie released in one market can be made available unlawfully in another market before the movie hits the theaters. In addition to theater owners who lose revenue, legitimate digital platforms, who often negotiate for a certain period of exclusivity after the theatrical run, cannot fairly compete in the market.

Stakeholders continue to report a high number of illegal camcords this year. For example, in **Russia**, the total number of sourced camcords was 45 in 2019, with an additional 30 audio-only recordings. In early 2019, **India**, a source of video and audio camcords, took important steps to issue revised draft legislation to criminalize illicit camcording. This legislation awaits consideration and passage by India’s Parliament. An increased volume of unauthorized camcording, including live streams of theatrical broadcasts online, has been traced to **China**, despite a 2015 official notice calling on cinema owners to address camcording and requiring digital watermarking to aid in forensics. A 2016 criminal conviction for unauthorized camcording and the enactment of the Film Promotion Act in 2017, which allowed cinema personnel to stop camcording, did not reverse the negative trend.

Countries also need to update legal frameworks to effectively deter unauthorized camcording and keep up with changing practices. For example, the requirement in some countries that a law enforcement officer must observe a person camcording and then prove that the person is circulating the unlawfully recorded movie before intervening often precludes effective enforcement. Economies like **Argentina, Brazil, Ecuador, Peru, Russia, and Taiwan** do not effectively criminalize unauthorized camcording in theaters, although Peru has submitted draft legislation to address the issue. The United States urges countries to adopt laws and enforcement practices designed to prevent unauthorized camcording, such as laws that have been adopted in **Canada, Japan, and the Philippines**. APEC has also issued a report on “Effective Practices for Addressing Unauthorized Camcording.” As the practice of camcording evolves, so too must methods for detecting and preventing camcording. One best practice to supplement, but not

replace, such effective legal measures is building public awareness. Another important practice is for the private sector to work on capacity building to help theater managers and employees to detect camcording and assist law enforcement.

In addition to the distribution of copies of newly released movies resulting from unauthorized camcording, other examples of online piracy that damage legitimate trade are found in virtually every country listed in the Special 301 Report and include: the unauthorized retransmission of live sports programming online; the unauthorized cloning of cloud-based entertainment software, through reverse engineering or hacking, onto servers that allow users to play pirated content online, including pirated online games; and online distribution of software and devices that allow for the circumvention of technological protection measures (TPMs), including game copiers and mod chips that allow users to play pirated games on physical consoles. Piracy facilitated by online services presents unique enforcement challenges for right holders in countries where copyright laws have not been able to adapt or keep pace with these innovations in piracy.

The availability of, as well as recourse by right holders to, enforcement procedures and remedies is a critical component of the online ecosystem. For all the above reasons, governments should avoid creating a domestic environment that offers a safe haven for online and broadcast piracy.

Border, Criminal, and Online Enforcement Against Counterfeiting

The problem of trademark counterfeiting continues on a global scale and involves the production and sale of a vast array of fake goods. Counterfeit goods, including semiconductors and other electronics, chemicals, automotive and aircraft parts, medicines, food and beverages, household consumer products, personal care products, apparel and footwear, toys, and sporting goods, make their way from **China**⁹ and other source countries directly to purchasers around the world. The counterfeits are shipped either directly to purchasers or indirectly through transit hubs, including **Hong Kong, Indonesia, Turkey, and the UAE**, to third country markets such as **Brazil, Nigeria, and Paraguay** that are reported to have ineffective or inadequate IP enforcement systems. According to an OECD study released in March 2019, titled *Trends in Trade in Counterfeit and Pirated Goods*, the global trade in counterfeit and pirated goods reached \$509 billion in 2016, accounting for 3.3% of the global trade in goods for that year.¹⁰ According to that study, **China** was the top origin economy for counterfeit and pirated goods, accounting for 47% of the world exports of counterfeit goods in 2016 with a total value of \$239 billion.¹¹

Trademark counterfeiting harms consumers, legitimate producers, and governments. Consumers may be harmed by fraudulent and potentially dangerous counterfeit products, particularly medicines, automotive and airplane parts, and food and beverages that may not be subject to the rigorous good manufacturing practices used for legitimate products. Infringers often disregard product quality and performance for higher profit margins. Legitimate producers and their

⁹ In fiscal year 2018, China and Hong Kong accounted for 87% of all U.S. IP rights seizures. U.S. Customs and Border Protection Office of Trade, *Intellectual Property Rights: Fiscal Year 2018 Seizure Statistics*, at 16 (Aug. 2019), https://www.cbp.gov/sites/default/files/assets/documents/2019-Aug/IPR_Annual-Report-FY-2018.pdf.

¹⁰ OECD/EUIPO, *Trends in Trade in Counterfeit and Pirated Goods*, at 11 (Mar. 18, 2019), <https://www.oecd-ilibrary.org/docserver/g2g9f533-en.pdf>.

¹¹ *Id.* at 46.

employees face diminished revenue and investment incentives, adverse employment impacts, and reputational damage when consumers purchase fake products. Counterfeiting may also increase costs for firms to enforce their IP rights, which may be passed on to consumers. Governments lose the tax revenues generated by legitimate businesses and may find it more difficult to attract investment when illegal competitors undermine the market.

In particular, enforcement authorities face difficulties in responding to the trend of increasing online sales of counterfeit goods. Counterfeiters increasingly use legitimate express mail, international courier, and postal services to ship counterfeit goods in small consignments rather than ocean-going cargo to evade the efforts of enforcement officials to interdict these goods. Over 90% of U.S. seizures at the border are made in the express carrier and international mail environments. Counterfeiters also continue to ship products separately from counterfeit labels and packaging to evade enforcement efforts that are limited by laws or practices that require counterfeit items to be “completed,” which may overlook the downstream application of counterfeit labels.¹²

The United States continues to urge trading partners to undertake more effective criminal and border enforcement against the manufacture, import, export, transit, and distribution of counterfeit goods. The United States engages with its trading partners through bilateral consultations, trade agreements, and international organizations to help ensure that penalties, such as significant monetary fines and meaningful sentences of imprisonment, are available and applied to deter counterfeiting. In addition, trading partners should ensure that competent authorities seize and destroy counterfeit goods, as well as the materials and implements used for their production, thereby removing them from the channels of commerce. Permitting counterfeit goods and enabling materials to re-enter the channels of commerce after an enforcement action wastes resources and compromises the global enforcement effort. Trading partners should also provide enforcement officials with *ex officio* authority to seize suspect goods and destroy counterfeit goods in-country and at the border during import, export, or in-transit movement, without the need for a formal complaint from a right holder. For example, the re-exportation and transshipment of infringing goods in and through free trade zones (FTZs), particularly in Dubai but also in other emirates such as Ajman, Ras Al-Khaimah, and Sharjah, continues to be a significant concern with the UAE’s IP enforcement. According to the March 2019 OECD study, the value of counterfeit and pirated goods exported from the UAE, primarily through its FTZs, reached \$16 billion in 2016.¹³ The United States remains deeply concerned over the transshipment and manufacturing of counterfeit products within certain FTZs in the UAE, a lack of will within some emirate-level customs authorities to enforce IP in FTZs, and reluctance to engage bilaterally on these and other border enforcement issues. Stakeholders also continue to report dissatisfaction with enforcement in **Singapore**’s FTZs, including concerns about the lack of coordination between Singapore’s Customs authorities and the Singapore Police Force’s IPR Branch. The United States coordinates with and supports trading partners through technical assistance and sharing of best practices on criminal and border enforcement, including with respect to the destruction of seized goods (see ANNEX 2).

¹² For more information on these trends and Customs and Border Protection’s and Immigration and Customs Enforcement/Homeland Security Investigation’s IP enforcement efforts, see U.S. Department of Homeland Security, Intellectual Property Rights Annual Seizure Statistics at <https://www.cbp.gov/trade/priority-issues/ipr/statistics>.

¹³ OECD/EUIPO, *Trends in Trade in Counterfeit and Pirated Goods*, at 46 (Mar. 18, 2019), <https://www.oecd-ilibrary.org/docserver/g2g9f533-en.pdf>.

In June 2017, the OECD and the European Union Intellectual Property Office (EUIPO) published the joint study titled *Mapping the Real Routes of Trade in Fake Goods*.¹⁴ This study traced the complex trade routes employed by counterfeiters across ten product categories and noted the prevalence of international counterfeit sales through small shipments and parcels. This research determined that “**China** is the top producer of counterfeit goods in nine out of ten analyzed product categories, while **Hong Kong (China)**, the **UAE**, and **Singapore** are global hubs for trade in counterfeit goods.” In those categories alone, the trade in counterfeit goods amounted to \$284 billion in 2013. By 2016, the value of exports of counterfeit goods in those same categories had reached about \$292 billion, and the value of the ten most heavily exported product categories of counterfeit goods was about \$320 billion.¹⁵ Also, in **Colombia**, the customs police reportedly does not have authority to enter primary inspection zones and lacks *ex officio* authority to inspect, seize, and destroy counterfeit goods in those zones. In certain sectors, other countries were found to be major counterfeit producers. These countries include **India** for counterfeit medicines exported to Africa, Canada, the Caribbean, the EU, South America, and the United States, and **Turkey** for counterfeit leather goods and foodstuffs.

Modern supply chains offer many new opportunities for counterfeit goods to enter into the supply chain, including in the production process. This practice can taint the supply chain for goods in all countries, and countries must work together to detect and deter commerce in counterfeit goods. To this end, the United States strongly supports continued work in the OECD on countering illicit trade. For example, the OECD recently adopted recommendations for enhancing transparency and reducing opportunities for illicit trade in FTZs.¹⁶ The United States encourages the OECD and our trading partners to build off the OECD report released in March 2018, titled *Governance Frameworks to Counter Illicit Trade*. The report provided an overview of key enforcement challenges in BRICS economies (Brazil, China, India, Russia and South Africa), identified gaps in enforcement systems, and highlighted ways in which governments can better combat the trade in counterfeit goods that threatens to permeate modern supply chains, including through: (1) establishing deterrent sanctions and penalties; (2) addressing sharp growth in the use of postal and courier streams to transport illicit goods; (3) improving supervision and enforcement within FTZs; and (4) strengthening cooperation with stakeholders and other governments.

In another example of an integrated approach to combatting illicit trade, the International Chamber of Commerce (ICC) launched the “Know Your Customer” initiative in 2018 aimed at tackling the problem of counterfeit goods transported by international shipping companies.¹⁷ This initiative promotes a voluntary framework of best practices agreed upon by maritime companies and brands. The initiative emphasizes specific steps that shipping operators can take to ensure they deal only with legitimate customers, including verifying customers’ identities, performing due diligence,

¹⁴ OECD/EUIPO, *Mapping the Real Routes of Trade in Fake Goods* (Jun. 23, 2017), https://euiipo.europa.eu/tunnel-web/secure/webdav/guest/document_library/observatory/documents/reports/Mapping_the_Real_Routes_of_Trade_in_Fake_Goods_en.pdf.

¹⁵ OECD/EUIPO, *Trends in Trade in Counterfeit and Pirated Goods*, at 47 (Mar. 18, 2019), <https://www.oecd-ilibrary.org/docserver/g2g9f533-en.pdf>.

¹⁶ OECD, *Recommendation of the Council on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones* (Oct. 20, 2019), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0454>.

¹⁷ International Chamber of Commerce, *Know Your Customer* (Mar. 2018), <https://cdn.iccwbo.org/content/uploads/sites/3/2018/03/kyc-paper-doi-published.pdf>.

identifying possible counterfeit shipments, communicating policies against the shipment of counterfeit goods, and taking certain remedial actions. The United States commends this effort by the ICC and the international shipping community.

Also, the manufacture and distribution of pharmaceutical products and active pharmaceutical ingredients bearing counterfeit trademarks is a growing problem that has important consequences for consumer health and safety and is exacerbated by the rapid growth of illegitimate online sales. Counterfeiting contributes to the proliferation of substandard, unsafe medicines that do not conform to established quality standards. The United States notes its particular concern with the proliferation of counterfeit pharmaceuticals that are manufactured, sold, and distributed in numerous trading partners. The majority, by value, of all counterfeit pharmaceuticals seized at the U.S. border in Fiscal Year 2019 was shipped from or transshipped through **China, Hong Kong, India, Canada,** and the **Dominican Republic**. A recent OECD study found that China, India, the **Philippines, Vietnam, Indonesia,** and **Pakistan** are the leading sources of counterfeit medicines distributed globally. Industry has also identified **Bangladesh, Myanmar,** and **Sri Lanka** as emerging sources of counterfeit oncology drugs. U.S. brands are the most popular targets for counterfeiters, and counterfeited U.S.-brand medicines account for 38% of global counterfeit medicine seizures. While it may not be possible to determine an exact figure, the World Health Organization (WHO) estimated that substandard or falsified medical products comprise 10% of total medical products in low- and middle-income countries and 1% of the total medical products in high-income countries. Furthermore, the increasing popularity of online pharmacies has aided the distribution of counterfeit medicines. A 2016 report by a compliance firm found that 96% of online pharmacies failed to adhere to applicable legal requirements, such as by selling prescription drugs without a prescription, selling unapproved and unregulated drugs, or failing to obtain pharmacy licenses. The U.S. Government, through the United States Agency for International Development and other federal agencies, supports programs in sub-Saharan Africa, Asia, and elsewhere that assist trading partners in protecting the public against counterfeit and substandard medicines in their markets.

The annual *Notorious Markets List* draws attention to markets, including online markets that sell counterfeit pharmaceuticals, among other types of counterfeit products. In some cases, this public attention has helped result in concrete action, such as action taken against Nanjing Imperiosus Technology Co., Ltd., which reportedly provided domain name services to over 2,300 known illicit online pharmacies. The 2019 *Notorious Markets List* continues to highlight Hosting Concepts B.V. and Regional Network Information Center as domain registrars that serve as havens for online sellers of counterfeit pharmaceuticals.

USTR also notes the proliferation of counterfeit goods for sale on online marketplaces, particularly through platforms that permit consumer-to-consumer sales. USTR urges e-commerce platforms to take proactive and effective steps to reduce piracy and counterfeiting, for example, by establishing and adhering to strong quality control procedures in both direct-to-consumer and consumer-to-consumer sales, engaging with right holders to quickly address complaints, and working with law enforcement to identify IP violators.

Copyright Administration and Payment of Royalties

Collective management organizations (CMOs) for copyright can play an important role in ensuring compensation for right holders when CMO practices are fair, efficient, transparent, and accountable. Unfortunately, CMO systems in several countries are reportedly flawed or non-operational. For example, **India**'s copyright royalty board remains non-functional. In some countries, like India, government agencies are attempting to extend the scope of mandatory collective management of rights and statutory license fees for certain types of digital content. Also, the collection and distribution of royalties to U.S. and other right holders should be carried out on a national treatment basis. In the **UAE**, the Ministry of Economy's failure to issue the necessary operating licenses to allow copyright licensing and royalty payments represents a 16-year-plus challenge that the UAE should address without further delay so that right holders can receive compensation for their works. While **Ukraine** passed legislation seeking to reform its CMO regime and combat the prevalence of rogue CMOs operating freely in Ukraine, significant concerns remain with the law, including those pertaining to royalty rate calculations. It is critical that Ukraine pursue amendments to the law to ensure that there is a transparent, fair, and predictable system for the collective management of royalties in Ukraine.

In addition, it is important for right holders of a work, performance, or phonogram to be able to freely and separately transfer their economic rights by contract and to fully enjoy the benefits derived from those rights. Limitations on the freedom to contract raise concerns because they reduce the ability of creators to earn a living from their works, performances, and phonograms. For example, proposed provisions in two pending bills in **South Africa** limit certain assignments of rights to a maximum of 25 years and provide for the government to set standard and compulsory contractual terms for contracts governing the use of works, performances, and phonograms.

Trademark Protection Issues

Trademarks help consumers distinguish providers of products and services from each other and thereby serve a critical source identification role. The goodwill represented in a company's trademark is often one of a company's most valuable business assets.

However, in numerous countries, legal and procedural obstacles exist to securing trademark rights, and trademark registration procedures lack transparency and consistency. For example, the trademark system in **China** lacks effective tools to combat widespread bad faith trademark applications, unnecessarily constrains examiners from considering related classes when evaluating bad faith, likelihood of confusion and other matters, gives insufficient legal weight to notarized and legalized witness declarations in China Trademark Office and Trademark Review and Adjudication Board proceedings, has unreasonably high standards for establishing well-known mark status, does not give full consideration to consent and coexistence agreements, and lacks transparency in all phases of trademark prosecution. It remains to be seen whether commitments made by China in the Phase One agreement on these concerns will improve the protection of IP. Many other countries, including **India**, **Malaysia**, and the **Philippines**, reportedly have slow opposition or cancellation proceedings, while **Panama** and **Russia** have no administrative opposition proceedings.

Another concern includes mandatory requirements to record trademark licenses, as they frequently impose unnecessary administrative and financial burdens on trademark owners and create difficulty in the enforcement and maintenance of trademark rights. Also, the absence of adequate means for searching trademark applications and registrations, such as by online databases, makes obtaining trademark protection more complicated and unpredictable. The lack of such online systems leads to additional costs, both in terms of initial filing and in relation to docketing and maintenance of multiple registrations. Furthermore, strict use of the Nice Classification or a country's own sub-classification system that does not reflect the underlying goods or services introduces uncertainty into the registration process.

In addition, a number of countries do not provide the full range of internationally recognized trademark protections. For example, dozens of countries do not offer a certification mark system for use by foreign or domestic industries or impose burdens that dilute the international standard of the certificate. The lack of a certification mark system can make it more difficult to secure protection for products with a quality or characteristic that consumers associate with the product's geographic origin. Robust protection for well-known marks is also important for many U.S. producers and traders who have built up the reputation of their brands.

The absence of default judgments in opposition and invalidation proceedings in certain countries, such as **China**, incurs significant costs to U.S. companies. Companies are forced to submit detailed arguments and evidence in proceedings when it is clear that the owners of the applications and registrations have no interest or intention in defending them, particularly in the case of bad-faith trademark registrations and trademark squatters. Owners of challenged trademarks should be required to submit a written statement that they still have an interest in their trademark in order for a full proceeding to continue.

Trademark Protection Challenges in Country Code Top-Level Domain Names

Trademark holders continue to face challenges in protecting their trademarks against unauthorized domain name registration and trademark uses in country code top-level domain names (ccTLDs). U.S. right holders face significant trademark infringement and loss of valuable Internet traffic because of such cybersquatting, and it is important for countries to provide for appropriate remedies in their legal systems to address this issue. Many ccTLD registrars have helpful policies that prohibit cybersquatting, require the registrant to provide true and complete contact information, and make such registration information publicly available.¹⁸ However, the ccTLD registrars of some countries have been identified by right holders as lacking transparent and

¹⁸ For example, in June 2018, the European Registry of Internet Domains and the International AntiCounterfeiting Coalition announced a joint initiative to combat cybercrime on .eu and .euo domain names, with a focus on clearing the registration database of fraudulent domain names through the exchange of knowledge and support pertaining to cybercrime, specifically counterfeiting and piracy. Press Release: EURid and IACC Team Up to Fight Cybercrime (June 27, 2018), <https://www.iacc.org/media/press-release-eurid-and-iacc-team-up-to-fight-cybercrime>. Also, Denmark's ccTLD body, DK Hostmaster, created stricter identity checks at the end of 2017, which DK Hostmaster claims have helped combat IP infringement. Danish Internet Forum, *Crime prevention on the internet: Report on the efforts of DK Hostmaster and DIFO to prevent internet crime pertaining to IPR violations*, at 3, 5, 9 (undated), https://www.dk-hostmaster.dk/sites/default/files/2018-06/DIFOs%20kriminalitetsbekaempelse_EN.pdf; Press Release: Significantly fewer scam web shops in the .dk zone (Apr. 16, 2018), <https://www.dk-hostmaster.dk/en/news/significantly-fewer-scam-web-shops-dk-zone>.

predictable domain name dispute resolution policies. Effective policies should assist in the quick and efficient resolution of trademark infringement-related domain name disputes.

Government Use of Unlicensed Software

According to a study by BSA | The Software Alliance, the commercial value of unlicensed software globally was at least \$46 billion in 2018.¹⁹ The United States continues to work with other governments to address government use of unlicensed software, particularly in countries that are modernizing their software systems or where there are infringement concerns. Considerable progress has been made under this initiative, leading to numerous trading partners mandating that their government agencies use only legitimate software. It is important for governments to legitimize their own activities in order to set an example of respecting IP for private enterprises. Additionally, unlicensed software exposes governments and enterprises to higher risks of security vulnerabilities. Further work on this issue remains with certain trading partners, including **Argentina, Brazil, China, Egypt, Greece, Guatemala, Indonesia, Kenya, Mexico, Nigeria, Paraguay, the Philippines, Romania, Russia, Thailand, Turkey, Ukraine, and Vietnam**. The United States urges trading partners to adopt and implement effective and transparent procedures to ensure legitimate governmental use of software.

Other Issues

U.S. stakeholders have expressed views with respect to the EU Directive on Copyright in the Digital Single Market. The United States continues to monitor copyright issues in the EU and its Member States and will continue to engage with various EU and Member State entities to address the equities of U.S. stakeholders. The United States urges the European Commission to engage closely with stakeholders as it develops guidance on certain implementation issues. It is also critical that EU Member States ensure full transparency in the implementation process with meaningful opportunities for stakeholders to provide input.

B. Initiatives to Strengthen IP Protection and Enforcement in Foreign Markets

USTR notes the following important developments in 2019 and early 2020:

- **Costa Rica** is removed from the Watch List this year due to concrete steps Costa Rica took to improve its IP regime. In addition to addressing long-standing concerns regarding online piracy and issuing a decree requiring any geographical indication issued to include the identification of generic terms in compound names, its Copyright Registry launched an online platform to determine the level of unlicensed software use in the central government, and the Directorate General of Customs created an online recordation system to improve border enforcement. The United States will continue to work with Costa Rica to ensure effective implementation of these developments.
- **Greece** is removed from the Watch List this year due to progress in addressing concerns regarding IP protection and enforcement. The widespread use of unlicensed software in

¹⁹ BSA, *2018 Global Software Survey*, at 12 (June 2018), https://gss.bsa.org/wp-2content/uploads/2018/05/2018_BSA_GSS_Report_en.pdf.

the public sector in Greece has been of long-standing concern to right holders. In December 2019, Greece took clear steps to address this matter by allocating over 39 million Euros for the purchase of software licenses. In addition, the Committee for Notification of Copyright and Related Rights Infringement on the Internet has been taking steps to address enforcement in the online environment, and Greece introduced a new law imposing fines for possessing counterfeit products. USTR will continue to monitor Greece's enforcement efforts, especially regarding criminal investigations, prosecutions, sentencing, and customs enforcement, and looks forward to continued improvements.

- **Jamaica** is removed from the Watch List this year after passing a new Patent and Designs Act in January 2020, which replaces the outdated Patent Act of 1857 and Designs Act of 1937, in an effort to modernize its patent and industrial designs regime and to implement its international obligations. The United States will continue to engage with Jamaica to monitor these reforms.
- **Kuwait** moves from the Priority Watch List to the Watch List due to taking further steps to reform its system of copyright protection and enforcement by passing the 2019 Copyright and Related Rights Law and the Implementing Regulations, as well as increasing IP enforcement by Kuwaiti officials.
- In December 2019, **Paraguay** established an interagency coordination center to provide a unified government response to IP violations. This was one of Paraguay's commitments in the Memorandum of Understanding it signed with the United States in 2015 and is intended to help facilitate an enhanced and effective enforcement effort by the agencies within the country. The United States will continue to engage with Paraguay on the action plan of this new coordination center.
- BeoutQ, the notorious online and satellite piracy service reportedly operating out of **Saudi Arabia**, was taken offline in August 2019, and the Saudi Authority for Intellectual Property has since raided stores selling illicit streaming devices and conducted IP awareness campaigns to combat online piracy.
- In recognition of **Switzerland's** recently enacted legislation that came into force on April 1, 2020, and is intended to address specific difficulties in its system of online copyright protection and enforcement discussed in recent Special 301 Reports, Switzerland is removed from the Watch List. This is an important step after many years of engagement, and the United States will carefully monitor the implementation, interpretation, and effectiveness of the newly enacted legislation, including any difficulties right holders may have in enforcing their rights against anonymous infringers, as well as the continued existence of a system that permits individuals to reproduce and, in some cases re-disseminate, copies of works (including copies made from illegal sources) without any opportunity for remuneration to the right holder. The United States will continue to engage with the Swiss government on these and other IP issues.
- As of February 2020, there are 59 members of the 1991 Act of the International Union for the Protection of New Varieties of Plants Convention (known as UPOV 1991). The treaty

requires member countries to grant IP protection to breeders of new plant varieties, known as breeder's rights. An effective plant variety protection system incentivizes plant-breeding activities, which leads to increased numbers of new plant varieties with improved characteristics such as high-yield, tolerance to adverse environmental conditions, and better food quality. In addition, promoting strong plant variety protection and enforcement globally helps improve industry competitiveness in foreign markets, encourages the importation of foreign plant varieties, and enhances domestic breeding programs. New members of the 1991 Act this year were **Belgium** and **Egypt**.

- As of March 2020, there are 104 parties to the WIPO Performances and Phonograms Treaty and 104 parties to the WIPO Copyright Treaty, collectively known as the WIPO Internet Treaties. These treaties, completed in 1996 and which entered into force in 2002, have raised the standard of copyright protection around the world, particularly with regard to online delivery of copyrighted content. The treaties, which provide for certain exclusive rights, require parties to provide adequate legal protection and effective legal remedies against the circumvention of TPMs, as well as certain acts affecting rights management information. Since the publication of the 2019 Special 301 Report, **Barbados, Belize, Cabo Verde, Cook Islands, New Zealand, Sao Tome and Principe, and Uzbekistan** have acceded to the WIPO Internet Treaties.

The United States will continue to work with its trading partners to further enhance IP protection and enforcement during the coming year.

C. Illustrative Best IP Practices by Trading Partners

USTR highlights the following illustrative best practices by trading partners in the area of IP protection and enforcement:

- Cooperation and coordination among national government agencies involved in IP issues is an example of effective IP enforcement. Several countries, including the United States, have introduced IP enforcement coordination mechanisms or agreements to enhance interagency cooperation. **Thailand's** interagency National Committee on Intellectual Property and a subcommittee on enforcement against IP infringement, led by the Prime Minister and a Deputy Prime Minister, respectively, has significantly improved coordination among government entities. **India's** Cell for Intellectual Property Rights Promotion and Management (CIPAM) organizes and spearheads the government's efforts to simplify and streamline IP processes, increase IP awareness, promote commercialization, and enhance enforcement. The United States encourages other trading partners to consider adopting cooperative IP arrangements.
- Specialized IP enforcement units also have proven to be important catalysts in the fight against counterfeiting and piracy. The specialized IP police unit in Rio de Janeiro, **Brazil**, could be a model for other cities in the country and around the world. Other examples include the Special Internet Forensics Unit in **Malaysia's** Ministry of Domestic Trade, Cooperatives, and Consumerism responsible for IP enforcement, and **Jamaica's** establishment of a specialized IP vice-squad within the Jamaica Constabulary Force.

- Many trading partners conducted IP awareness and educational campaigns, including jointly with stakeholders, to develop support for domestic IP initiatives. In **Spain**, the Ministry of Education and the Ministry of Culture and Sport partnered with the Ministry of Interior to include messaging against IP theft in police presentations in public schools. **India**'s CIPAM has reportedly undertaken 19 IP awareness roadshows in 18 Indian states and maintains an active social media presence. In **Thailand**, the Department of Intellectual Property continued to carry out various IP awareness activities, including a series of seminars on online copyright protection and, in partnership with the U.S. Embassy in Bangkok, a campaign highlighting the harmful effects and risks of counterfeit drugs. **Taiwan** worked with right holders to organize dozens of outreach campaigns for students and created training seminars to reach multiple sectors of the government to address IP rights, piracy, and camcording. In **Vietnam**, IP Vietnam and its partners carried out various trainings and capacity building activities, including on trademark examination, copyright-related issues, and customs enforcement.
- Another best practice is the active participation of government officials in technical assistance and capacity building. **Singapore** collects manifest data from 11 major shipping lines as part of its World Customs Organization Cargo Targeting System and maintains a strong working relationship conducting joint investigations with U.S. Immigration and Customs Enforcement/Homeland Security Investigations. **Romania**'s economic police officers were involved in 57 international IP operations, working groups, and training programs, including Europol's IP Crime Coordinated Coalition working group. As further explained in Annex 2, the United States encourages foreign governments to make training opportunities available to their officials and actively engages with trading partners in capacity building efforts both in the United States and abroad.

D. Multilateral Initiatives

The United States works to promote adequate and effective IP protection and enforcement through various multilateral institutions, notably the **WTO**. These efforts are critical, as stakeholders have raised concerns regarding the use of multilateral institutions to undermine IP rights by some member countries. In the past year, the United States co-sponsored discussions in the TRIPS Council on the positive and mutually-reinforcing relationship between innovation and the protection and enforcement of IP.

In 2019, the United States advanced its IP and Innovation agenda in the TRIPS Council through a series of initiatives designed to facilitate greater understanding of the critical role that IP plays in promoting innovation, entitled "Public-Private Collaborations in Innovation." Over the course of three meetings, the United States and co-sponsors presented on the role that IP plays in promoting innovation. Each session focused on a sub-theme within the overarching topic and highlighted how public-private partnerships spur innovations in research and development (R&D), assist in brand promotion and the creative industries, and aid in IP commercialization.

E. Bilateral and Regional Initiatives

The United States works with many trading partners to strengthen IP protection and enforcement through the provisions of bilateral instruments, including trade agreements and memoranda of cooperation, and through regional initiatives.

The following are examples of bilateral coordination and cooperation:

- Trade and Investment Framework Agreements (TIFAs) between the United States and more than 50 trading partners and regions around the world have facilitated discussions on enhancing IP protection and enforcement. In June 2019, the U.S.-**Argentina** Innovation and Creativity Forum for Economic Development held its fourth meeting to discuss IP issues that are essential to the success of each country's innovation economy. At the July 2019 U.S.-**Thailand** TIFA meeting, the United States and Thailand agreed to develop a revised IP work plan to address remaining IP protection and enforcement issues in Thailand. At the October 2019 U.S.-**Vietnam** TIFA meeting, the United States and Vietnam agreed to develop an IP work plan that sets a roadmap for addressing IP protection and enforcement concerns in Vietnam.
- With the recent departure of the **United Kingdom** (UK) from the European Union (EU), the United States has a new opportunity to expand and deepen our existing relationship with the UK, including strengthening the protection of IP rights and addressing a range of barriers to U.S. trade and investment through a free trade agreement. Both the United States and the UK are committed to working toward an agreement that promotes high IP standards and engenders transparent and efficient administration and enforcement of IP rights. In February 2019, the United States issued its negotiating objectives for a comprehensive trade agreement with the UK, including IP rights, and on March 2, 2020, the UK issued its negotiating objectives for the United States. During the July 2019 meetings of the U.S.-UK Trade and Investment Working Group, the United States and the UK continued to recognize the importance of IP to their respective economies and to their bilateral trade relationship, and agreed to continue discussions on a range of IP concerns, including enforcement approaches and policy tools. At the November 2019 Transatlantic IP Working Group meeting, the United States and the **EU** discussed enforcement cooperation in third-countries and in multilateral fora.
- Also, at the October 2019 U.S.-**Moldova** Joint Commercial Commission meeting, the United States stressed the need for effective enforcement of IP rights in order to support innovative and creative industries and encourage investment in Moldova. In addition, the November 2019 U.S.-**Ukraine** Trade and Investment Council meeting provided an opportunity for the United States to applaud the growing bilateral engagement on IP issues and voice concerns regarding online piracy, the use of unlicensed software by government agencies, and the shortcomings of the recently passed collective management organization law.

Regional coordination and cooperation also increase the effectiveness of engagement on IP protection and enforcement challenges that extend beyond individual jurisdictions:

- In 2019 and 2020, the United States continued to use the **APEC** Intellectual Property Experts Group and other APEC sub-fora to build capacity and raise standards for the protection of IP rights in the Asia-Pacific region. This included a U.S.-led initiative on industrial design protections, including the benefits of the Hague System. Industrial design protection is a critical component of any IP portfolio for competitive businesses in the modern innovation economy, particularly for small and medium-sized businesses in the APEC region. The United States also initiated a survey to analyze APEC economies' treatment of, and approaches to, illicit streaming devices (ISDs) under domestic laws or regulations. This initiative is an important step to inform future APEC work on addressing piracy through ISDs in the region.
- The U.S.-**Central Asia** IP Working Group met for the first time in September 2019, which facilitated constructive engagement on long-standing IP issues in the region, including: (1) protecting foreign sound recordings, including accession to the Geneva Phonograms Treaty and WIPO Internet Treaties; (2) improving enforcement of IP rights for hard goods and in the digital environment by providing the necessary legal framework to stem the illicit trade in counterfeit goods and piracy; (3) enhancing the capacity of government efforts to implement international best practices for IP protection and enforcement; and (4) facilitating the use of licensed software by government authorities.
- Under its trade preference program reviews, USTR, in coordination with other U.S. Government agencies, examines IP practices in connection with the implementation of Congressionally-authorized trade preference programs, such as the Generalized System of Preferences (GSP) program, and regional programs, including the African Growth and Opportunity Act, Caribbean Basin Economic Recovery Act, and Caribbean Basin Trade Partnership Act. Pursuant to such a review, in 2017, USTR announced the partial suspension of GSP benefits to **Ukraine** due to inadequate protection and enforcement of IP. The announcement specifically referenced the importance of improving Ukraine's system for CMOs. In 2019, USTR announced the partial restoration of GSP benefits due to tangible steps Ukraine is taking to reform its CMO regime. Also, in 2019, USTR closed the GSP review for **Uzbekistan** due to Uzbekistan's accession to the Geneva Phonograms Convention and the WIPO Internet Treaties. USTR is also currently reviewing IP practices in **Indonesia**. USTR continues to work with trading partners to address policies and practices that may adversely affect their eligibility under the IP criteria of each preference program.
- In 2019, the United States continued to engage with members of the Caribbean Community and other governments in the region on concerns regarding inadequate and ineffective IP protection and enforcement, including ongoing broadcast television and satellite signal piracy and unlicensed and uncompensated use of copyrighted music. Heightened engagement on a regional basis, including conferences and trainings in the **Dominican Republic, Jamaica**, and others, with strong U.S. Government leadership and participation, has led to increased expertise, awareness, and initial positive steps. The United States is looking forward to increased engagement on this topic in 2020.

In addition to the work described above, the United States anticipates engaging with its trading partners on IP-related initiatives in fora such as the G7, WIPO, the OECD, and the World Customs Organization. USTR, in coordination with other U.S. Government agencies, looks forward to continuing engagement with trading partners to improve the global IP environment.

F. Intellectual Property and the Environment

Strong IP protection and enforcement are essential to promoting investment in innovation in the environmental sector. Such innovation not only promotes economic growth and supports jobs, but also is critical to responding to environmental challenges. IP provides incentives for research and development in this important sector, including through university research. Conversely, inadequate IP protection and enforcement in foreign markets discourages broader investment in those markets. This may hinder economic growth, as well as technological advances needed to meet environmental challenges.

G. Intellectual Property and Health

Numerous comments in the 2020 Special 301 review process highlighted concerns arising at the intersection of IP policy and health policy. IP protection plays an important role in providing the incentives necessary for the development and marketing of new medicines. An effective, transparent, and predictable IP system is necessary for both manufacturers of innovative medicines and manufacturers of generic medicines.

The 2001 WTO Doha Declaration on the TRIPS Agreement and Public Health recognized the gravity of the public health problems afflicting many developing and least-developed countries (LDCs), especially those resulting from HIV/AIDS, tuberculosis, malaria, and other epidemics. As affirmed in the Doha Declaration on the TRIPS Agreement and Public Health, the United States respects a trading partner's right to protect public health and, in particular, to promote access to medicines for all. The United States also recognizes the role of IP protection in the development of new medicines while being mindful of the effect of IP protection on prices. The assessments set forth in this Report are based on various critical factors, including, where relevant, the Doha Declaration on the TRIPS Agreement and Public Health.

The United States is firmly of the view that international obligations such as those in the TRIPS Agreement have sufficient flexibility to allow trading partners to address the serious public health problems that they may face. The United States urges its trading partners to consider ways to address their public health challenges while also maintaining IP systems that promote innovation.

The United States also supports the WTO General Council Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, concluded in August 2003. Under this decision, WTO Members are permitted, in accordance with specified procedures, to issue compulsory licenses to export pharmaceutical products to countries that cannot produce drugs for themselves. The WTO General Council adopted a Decision in December 2005 that incorporated this solution into an amendment to the TRIPS Agreement, and the United States became the first WTO Member to formally accept this amendment. In January 2017, the necessary two-thirds of WTO Member support was secured, resulting in the formal amendment to

the TRIPS Agreement. Additional notifications of Member acceptances of the Agreement have followed.

The U.S. Government works to ensure that the provisions of its bilateral and regional trade agreements, as well as U.S. engagement in international organizations, are consistent with U.S. policies concerning IP and health policy and do not impede its trading partners from taking measures necessary to protect public health. Accordingly, USTR will continue its close cooperation with relevant agencies to ensure that public health challenges are addressed and IP protection and enforcement are supported as one of various mechanisms to promote research and innovation.

H. Implementation of the WTO TRIPS Agreement

The TRIPS Agreement, one of the most significant achievements of the Uruguay Round (1986-1994), requires all WTO Members to provide certain minimum standards of IP protection and enforcement. The TRIPS Agreement is the first broadly-subscribed multilateral IP agreement that is subject to mandatory dispute settlement provisions.

Developed country WTO Members were required to implement the TRIPS Agreement fully as of January 1, 1996. Developing country Members were given a transition period for many obligations until January 1, 2000, and in some cases until January 1, 2005. Nevertheless, certain Members are still in the process of finalizing implementing legislation, and many are still engaged in establishing adequate and effective IP enforcement mechanisms.

Recognizing the particular issues faced by WTO Members that are LDCs, the United States has worked closely with them and other WTO Members to extend the implementation date for these countries. Most recently, on November 6, 2015, the TRIPS Council reached consensus to extend the transition period for LDC Members to implement Sections 5 and 7 of the TRIPS Agreement with respect to pharmaceutical products until January 1, 2033, and reached consensus to recommend waiving Articles 70.8 and 70.9 of the TRIPS Agreement with respect to pharmaceuticals also until January 1, 2033, which the WTO General Council adopted on November 30, 2015.

At the WTO Ministerial Conference in December 2017, WTO Members reached consensus to extend the moratorium on non-violation and situation complaints under the TRIPS Agreement until the next Ministerial. The moratorium was originally introduced in Article 64 of the TRIPS Agreement, for a period of five years following the entry into force of the WTO Agreement (*i.e.* until December 31, 1999). The moratorium has been referred to and extended in several WTO Ministerial documents. In 2015, the TRIPS Council intensified its discussions on this issue, including on the basis of a communication by the United States to the Council outlining the U.S. position on non-violation and situation complaints. This communication (IP/C/W/599) addressed the relevant TRIPS Agreement provisions and WTO and General Agreement on Tariffs and Trade (GATT) disputes and provided responses to issues raised by other WTO Members.

The United States participates actively in the WTO TRIPS Council's scheduled reviews of WTO Members' implementation of the TRIPS Agreement and uses the WTO's Trade Policy Review

mechanism to pose questions and seek constructive engagement on issues related to TRIPS Agreement implementation.

I. Dispute Settlement and Enforcement

The United States continues to monitor the resolution of concerns and disputes announced in previous Special 301 Reports. The United States will use all available means to resolve concerns, including bilateral dialogue and enforcement tools such as those provided under U.S. law, the WTO, and other dispute settlement procedures, as appropriate.

Under Section 301 of the Trade Act of 1974, USTR is taking action to address a range of unfair and harmful Chinese acts, policies, and practices related to technology transfer, IP, and innovation. USTR also initiated dispute settlement proceedings at the World Trade Organization (WTO) to address discriminatory licensing practices. Over the past year, the United States' engagement with China began to demonstrate progress with the signing of the Phase One agreement in January 2020. The agreement requires changes in China's acts, policies, and practices, including structural reforms and other changes to China's legal and regulatory regime to address numerous longstanding concerns of a wide range of U.S. industries.

Following the 1999 Special 301 review process, the United States initiated dispute settlement consultations concerning the EU regulation on food-related GIs, which appeared to discriminate against foreign products and persons, notably by requiring that EU trading partners adopt an "EU-style" system of GI protection, and appeared to provide insufficient protections to trademark owners. On April 20, 2005, the Dispute Settlement Body (DSB) adopted a panel report finding in favor of the United States that the EU GI regulation is inconsistent with the EU's obligations under the TRIPS Agreement and the General Agreement on Tariffs and Trade 1994. On March 31, 2006, the EU published a revised GI Regulation that is intended to comply with the DSB recommendations and rulings. There remain some concerns, however, with respect to this revised GI Regulation that the United States has asked the EU to address. The United States continues monitoring this situation. The United States is also working bilaterally and in multilateral fora to advance U.S. market access interests and to ensure that the trade initiatives of other countries, including with respect to GIs, do not undercut market access for U.S. companies.

SECTION II: Country Reports

PRIORITY WATCH LIST

EAST ASIA AND THE PACIFIC

CHINA

China remains on the Priority Watch List in 2020 and is subject to continuing Section 306 monitoring.

Ongoing Challenges and Concerns

China needs to refrain from forcing or pressuring technology transfer, make fundamental structural changes to strengthen intellectual property (IP) protection and enforcement, implement recent revisions to its IP measures, open China's market to foreign investment, and allow the market a decisive role in allocating resources. For U.S. persons who rely on IP protection in what is already a very difficult business environment, severe challenges persist because of informal pressure and coercion to transfer technology, gaps in the scope of IP protection, incomplete legal reforms, and weak enforcement channels.

Under Section 301 of the Trade Act of 1974, the Office of the U.S. Trade Representative (USTR) is taking action to address a range of unfair and harmful Chinese acts, policies, and practices related to technology transfer, IP, and innovation. USTR also initiated dispute settlement proceedings at the World Trade Organization (WTO) to address discriminatory licensing practices. Over the past year, the United States' engagement with China began to demonstrate progress with the signing of the U.S. – China Economic and Trade Agreement (Phase One agreement) in January 2020.

The Phase One agreement contains separate chapters on technology transfer and IP. The chapters address numerous longstanding concerns of a wide range of U.S. industries whose businesses depend on the protection of their innovations, creative expressions, and brands to remain competitive. The agreement requires China both to end its practice of applying informal pressure and coercion to accomplish technology transfer and to revise its legal and regulatory regimes in a number of ways, including in the areas of trade secrets, patents, pharmaceutical-related IP, trademarks, and geographical indications. In addition, the agreement requires China to make numerous changes to its judicial procedures, to establish deterrent-level penalties, and to ensure the effective enforcement of judgments. China also is to take various specific steps to improve civil, administrative, and criminal enforcement against pirated and counterfeit goods. The United States will vigilantly monitor China's progress in eliminating its unfair trade practices and implementing these obligations.

Developments, Including Progress, and Actions Taken

USTR's investigation under Section 301 of the Trade Act of 1974 found that China pursues a range of unfair and harmful acts, policies, and practices related to technology transfer, IP, and innovation. These include investment and other regulatory requirements that require or pressure technology transfer, substantial restrictions on technology licensing terms, direction or facilitation of the acquisition of foreign companies and assets by domestic firms to obtain cutting-edge technologies, and conducting and supporting unauthorized intrusions into and theft from computer networks of U.S. companies to obtain unauthorized access to IP.

In March 2018, the USTR initiated dispute settlement proceedings at the WTO to address China's discriminatory licensing practices, a concern highlighted repeatedly in past Special 301 Reports. Consultations took place in August 2018, and a panel was established to hear the case in November 2018. In March 2019, China revised the measures that the United States had challenged, and the significance of these revisions is under review.

As part of the Phase One agreement, China agreed to provide effective access to Chinese markets without forcing or pressuring U.S. persons to transfer their technology to Chinese persons. China also agreed that any transfer or licensing of technology by U.S. persons to Chinese persons must be based on market terms that are voluntary and reflect mutual agreement and that China would not support or direct the outbound foreign direct investment activities of its persons aimed at acquiring foreign technology with respect to sectors and industries targeted by its industrial plans that create distortion. USTR is working with stakeholders to evaluate whether these commitments have resulted in changes in China's ongoing conduct at the national, provincial, and local levels.

China has enacted amendments to certain IP-related legal and regulatory measures, but these steps toward reform require effective implementation and also fall short of the full range of fundamental changes needed in the IP landscape in China. Notably, China amended the Trademark Law (effective November 1, 2019), Anti-Unfair Competition Law (AUCL), and Administrative Licensing Law (effective April 23, 2019) and published implementing regulations for the Trademark Law amendments (effective December 1, 2019). As discussed further below, the effectiveness of these amendments remains unclear, and right holders report that long-standing problems persist.

In addition, China passed a new Foreign Investment Law on March 15, 2019. Provisions of the Foreign Investment Law broadly state that China will protect the IP rights for foreign investors and foreign-funded enterprises. However, high-level statements raise concerns that such protections will only apply to foreign right holders that have registered local operations in China.

Since the 2018 reorganization of ministries and agencies responsible for the protection and enforcement of IP, the China National Intellectual Property Administration (CNIPA) has operated under the State Administration for Market Regulation (SAMR), which centralized responsibilities for administrative enforcement of patents, trade secrets, and trademarks, enforcement of the Anti-Monopoly Law, regulatory approval of pharmaceutical products, and standards-setting, among other responsibilities. However, these efforts to reorganize and centralize administration and

enforcement of IP have not reduced the large quantities of poor quality patents and trademarks granted to applicants, which undermine the integrity of the patent and trademark registries.

Furthermore, Chinese judicial authorities continue to demonstrate a lack of transparency, such as by publishing only selected decisions rather than all preliminary injunctions and final decisions. U.S. right holders report that procedural obstacles to appealing decisions to the Beijing IP Court are sometimes insurmountable and may frustrate appeals altogether. Administrative enforcement authorities fail to provide right holders with information regarding the process or results of enforcement actions. Broader concerns include the continuing emphasis on administrative enforcement, as well as interventions by local government officials, party officials, and powerful local interests that undermine the independence of the courts and rule of law. A truly independent judiciary is critical to promote rule of law in China and to protect IP rights.

In addition to insufficient judicial independence, right holders continue to report numerous challenges, including obstacles to establishing actual damages in civil proceedings, resulting in insufficient damage awards based on low-level statutory minimums. Burdensome thresholds for criminal enforcement, onerous authentication and other evidentiary requirements, lack of means to require evidence production, lack of preliminary injunctive relief, and lack of deterrent-level statutory damages and criminal penalties all undermine the effectiveness of China's court system for addressing IP infringement.

The Phase One agreement requires China to provide deterrent-level civil remedies and criminal penalties for IP theft, including by increasing the range of minimum and maximum pre-established damages, sentences of imprisonment, and monetary fines. The agreement also commits China to require the transfer of cases from administrative to criminal authorities when there is a reasonable suspicion of a criminal violation, to ensure expeditious enforcement of judgments, to provide legal presumptions of copyright ownership, and to waive certain unnecessary requirements for bringing copyright infringement claims. In addition, the agreement requires China to eliminate or streamline requirements for foreign litigants to authenticate evidence for use in Chinese courts and to provide a reasonable opportunity to present witnesses and cross-examine opposing witnesses in civil proceedings.

Trade Secrets

The April 2019 amendments to China's AUCL and Administrative Licensing Law included changes to China's trade secret regime, including as to the scope of covered actions and actors, evidentiary burden shifting in appropriate circumstances, and protection against unauthorized disclosure of trade secrets and confidential business information by administrative government personnel and personnel participating in expert reviews. However, gaps persist in the scope of protections, and implementation concerns remain. Likewise, it is unclear whether the issuance of a judicial interpretation on "act preservation" in IP disputes, which went into effect in January 2019, has enabled right holders to obtain timely preliminary injunctions.

China should not only address these shortcomings, but also issue judicial interpretations or guiding court decisions to improve consistency in judicial decisions on trade secrets. Reforms should also provide procedural safeguards to prevent the unauthorized disclosure of trade secrets and other

confidential information submitted to government regulators, courts, and other authorities and to address obstacles to criminal enforcement.

The Phase One agreement requires China to strengthen its protections for trade secrets and enforcement against trade secret theft in China. In particular, it requires China to expand the scope of civil liability for misappropriation beyond entities directly involved in the manufacture or sale of goods and services, to cover acts such as electronic intrusions as prohibited acts of trade secret theft, to shift the burden of producing evidence or burden of proof in civil cases to defendants when there is a reasonable indication of trade secret theft, and to make it easier to obtain preliminary injunctions to prevent the use of stolen trade secrets. It also requires China to allow for initiation of criminal investigations without the need to show actual losses, to ensure that criminal enforcement is available for willful trade secret misappropriation, and to prohibit government personnel or third party experts or advisors from engaging in the unauthorized disclosure of undisclosed information, trade secrets, or confidential business information submitted to the government. The United States will vigilantly monitor China's implementation of these obligations.

Manufacturing, Domestic Sale, and Export of Counterfeit Goods

China continues to be the world's leading source of counterfeit and pirated goods, reflecting its failure to take decisive action to curb the widespread manufacture, domestic sale, and export of counterfeit goods.²⁰ Over the past three years, China and Hong Kong accounted for over 80% of U.S. IP seizures.²¹ The massive problem affects not only interests of IP right holders, but also poses health and safety risks. Right holders report that the production, distribution, and sale of counterfeit medicines, fertilizers, pesticides, and under-regulated pharmaceutical ingredients remain widespread in China.

As the top manufacturer and a leading exporter of pharmaceutical ingredients, China has not closed the gaps in regulatory oversight. In particular, China does not subject exports to regulatory review, enabling many bulk chemical manufacturers to produce and export active pharmaceutical ingredients outside of regulatory controls. Furthermore, China lacks central coordination of enforcement against counterfeit pharmaceutical products or ingredients, resulting in ineffective enforcement at the provincial level.

The Phase One agreement requires China to take effective enforcement action against counterfeit pharmaceuticals and related products, including active pharmaceutical ingredients, and to significantly increase actions to stop the manufacture and distribution of counterfeits with significant health or safety risks. The agreement also requires China to provide that its judicial authorities shall order the forfeiture and destruction of pirated and counterfeit goods, along with materials and implements predominantly used in their manufacture. In addition, the agreement requires China to significantly increase the number of enforcement actions at physical markets in China and against goods that are exported or in transit and to significantly increase training of

²⁰ OECD/EUIPO, *Trends in Trade in Counterfeit and Pirated Goods*, at 27-28 (Mar. 18, 2019), <https://www.oecd-ilibrary.org/docserver/g2g9f533-en.pdf>.

²¹ CBP, *Intellectual Property Rights Annual Seizure Statistics*, <https://www.cbp.gov/trade/priority-issues/ipr/statistics>.

relevant customs personnel. The United States will vigilantly monitor China's implementation of these obligations.

Amendments to the Trademark Law, which went into effect in November 2019, provide new grounds for trademark examiners to refuse bad-faith trademark applications and invalidate existing bad-faith registrations. However, the amendments target bad-faith filers lacking an intent to use the mark in commerce. It remains to be seen if the amendments will be effective in preventing knockoffs and "parasite brands," which copy the "look and feel" of a legitimate product, and other third parties from registering large numbers of trademarks that are identical to, substantially indistinguishable from, or similar to existing U.S. brands. Such third parties have been able to obtain trademarks in China in bad faith even when the U.S. trademark is famous or well known, and the resulting registrations damage the goodwill or interests of U.S. right holders.

Bad-faith trademark registration is an area covered by the Phase One agreement. The agreement requires China to address long-standing U.S. concerns regarding bad-faith trademark registration, such as by invalidating or refusing bad-faith trademark applications. The United States will vigilantly monitor China's progress in eliminating bad-faith trademark practices and implementing these obligations.

E-Commerce Piracy, Counterfeiting, and Other Issues

As China has become the largest e-commerce market in the world, widespread online piracy and counterfeiting in e-commerce markets represent critical concerns for U.S. right holders. Counterfeiters have become adept at evading enforcement efforts, such as through the use of small parcels and minimal warehouse inventories, and exploiting the high volume of packages to the United States to escape enforcement. Furthermore, although some leading online sales platforms have reportedly streamlined procedures to remove offerings of infringing articles and enhanced cooperation with stakeholders to improve criminal and civil enforcement of IP, right holders continue to express concerns about ineffective takedown procedures, slowness to respond to SMEs, and insufficient measures to deter repeat infringers. Other right holders report a growing trend of counterfeit products being offered for sale on e-commerce features related to large online platforms. Right holders also express concern over the growth of online piracy in the form of thousands of "mini Video on Demand (VOD)" locations that show unauthorized audiovisual content and online platforms that disseminate unauthorized copies of scientific, technical, and medical journal articles and academic texts. As a leading source and exporter of systems that facilitate copyright piracy, China should take sustained action against websites containing or facilitating access to unlicensed content, illicit streaming devices (ISDs), and piracy apps that facilitate access to such websites. A range of such concerns led to the re-listing of DHgate.com, Alibaba online sales platform Taobao, and Pinduoduo.com as notorious markets in the 2019 *Notorious Markets List*.

The implementation of the E-Commerce Law in 2019 failed to address major concerns regarding burdensome requirements on right holders seeking to enforce their IP, strict liability for erroneous notices filed in good faith, and counter-notifications that lack sufficient information to ensure their validity. An updated draft Tort Liability Chapter of the Civil Code contains provisions similar to problematic portions of the E-Commerce Law. The final version of the Tort Liability Chapter

should bring about a predictable legal environment that promotes effective cooperation among interested parties in deterring online copyright infringement.

In 2019, China again failed to reform measures that bar or limit the ability of foreign entities to engage in online publishing, broadcasting, and distribution of creative content, such as prohibitions in the Foreign Investment Catalogue and requirements that state-owned enterprises (SOEs) hold an ownership stake in online platforms for film and television content. Right holders report that growing advance approval requirements and other barriers have severely limited the availability of foreign TV content and prevented the simultaneous release of foreign content in China and other markets. Collectively, these measures create conditions that result in greater piracy and a market that is less open than others to foreign content and foreign entity participation. Additionally, it is critical that China fully implement the terms of the 2012 U.S.-China Memorandum of Understanding regarding films and abide by its commitment to negotiate additional meaningful compensation for U.S. content.

The Phase One agreement requires China to provide effective and expeditious action against infringement in the online environment, including by requiring expeditious takedowns and by ensuring the validity of notices and counter-notices. It also requires China to take effective action against e-commerce platforms that fail to take necessary measures against infringement. The United States will vigilantly monitor China's implementation of these obligations.

Need to Promote Innovation through Sound Patent and Related Policies

China has not enacted new Patent Law reforms, despite releasing a new draft of amendments to the Patent Law in January 2019. CNIPA has issued new measures, such as the Patent Agency Administration Measures, the Administrative Regulations of Collective Patent Examination, revised Patent Examination Guidelines, and Guidelines for the Administrative Handling of Patent Infringement Disputes. However, strong concerns remain about the presence of competition law concepts in the patent law and measures, an undue emphasis on administrative enforcement, and the absence of critical reforms, as described below.

Major challenges confront pharmaceutical innovators attempting to protect and enforce their IP rights in China. The August 2019 issuance of a new Drug Administration Law and the October 2019 draft revisions to the Drug Registration Regulation represent missed opportunities to establish an effective mechanism for early resolution of potential patent disputes and data protection. China continues to impose unfair and discriminatory conditions on the effective protection against unfair commercial use, as well as unauthorized disclosure, of test or other data generated to obtain marketing approval for pharmaceutical products. Right holders remain concerned about restrictive patentability criteria, which do not permit innovators to rely on supplemental data on a consistent basis, and the lack of patent term extensions to compensate for unreasonable delays that occur in granting a patent or in relation to marketing approvals. The Human Genetic Resources Administrative Regulation, which went into effect in July 2019, mandated collaboration with a Chinese partner for any research, sharing of all records and data, and joint ownership of any patent rights resulting from the collaboration. These and other requirements, such as the requirement to sign an undertaking letter to certify compliance with China's regulations, create significant hurdles for pharmaceutical innovators seeking to bring

products to market in China, including by conducting research and clinical trials in China. China should also address delays, a lack of transparency, and inadequate engagement with pharmaceutical suppliers in government pricing and reimbursement processes.

As part of the Phase One agreement, China agreed to establish a nationwide mechanism for the early resolution of potential pharmaceutical patent disputes covering both small molecule drugs and biologics, including a cause of action to allow a patent holder to seek expeditious remedies before the marketing of an allegedly infringing product. Going forward, the United States will work closely with U.S. industry to monitor developments and to ensure that China's new system works as contemplated. Separately, the agreement also provides for patent term extensions to compensate for unreasonable patent and marketing approval delays that cut into the effective patent term, and it permits the reliance on supplemental data to meet relevant patentability criteria for pharmaceutical patent applications. The United States and China agreed to address data protection for pharmaceuticals in future negotiations.

China must address each of these concerns to better promote pharmaceutical innovation and bring China into closer alignment with the practices of other major patenting jurisdictions. In addition, China should address continuing problems with the difficulty in obtaining evidence of infringement, disclosure obligations in standards-setting processes, the failure to clarify that a patentee's right to exclude extends to manufacturing for export, and the need to harmonize China's patent grace period and statute of limitations with international practices.

After various ministries issued a November 2018 memorandum of understanding (MOU) imposing "social credit system" penalties for certain categories of patent-related conduct, CNIPA issued in October 2019 the Trial Measures for Administering the List of Targets for Joint Punishment Due to Serious Dishonesty in the Patent Field. These measures lack critical procedural safeguards, such as notice to the targeted entity, clear factors for determinations, or opportunities for appeal. The United States objects to any attempt to expand the "social credit system" in the field of IP.

Implementation of the Standardization Law failed to establish that standards-setting processes are open to domestic and foreign participants on a non-discriminatory basis and to provide sufficient protections for standards-related copyright and patent rights and protections from public disclosure for enterprise standards.

In January 2020, China published for public comment a revised draft of the Anti-Monopoly Law (AML). These draft provisions contain clarifications about the fair competition review system but raise concerns that China's competition authorities may continue to target foreign patent holders for AML enforcement and use the threat of enforcement to pressure U.S. patent holders to license to Chinese parties at lower rates, despite the United States repeatedly expressing strong concerns regarding this practice. It is critical that China's AML enforcement be fair, transparent, and non-discriminatory, afford due process to parties, focus only on the legitimate goals of competition law, and not be used to achieve industrial policy goals.

Pending Copyright Law Amendments

Draft amendments of the Copyright Law remain pending. It is critical that China address major deficiencies in its copyright framework, such as the lack of deterrent civil damages, ineffective criminal enforcement, and the failure to provide protection against the unauthorized transmission of sports and other live broadcasts.

China's "Secure and Controllable" Policies

Since enacting its Cybersecurity Law (CSL) in 2017, China has taken multiple steps backward through its efforts to invoke cybersecurity as a pretext to force U.S. IP-intensive industries to disclose sensitive IP to the government, transfer it to a Chinese entity, or restrict market access. Through draft and final measures, China has often applied the poorly defined concept of "secure and controllable" Information Communications Technology (ICT) products and services and associated "risk" factors as a putative justification for erecting barriers to sale and use in China.

In May 2019, the Cyberspace Administration of China (CAC) issued draft Cybersecurity Review Measures that imposed cybersecurity review by the CAC on all "critical information infrastructure operators." The measures raise concerns about their broad and vague scope, the lack of definition of "critical information infrastructure operators," the lack of clear criteria for self-reporting requirements, and the absence of an appeals process or other mechanism for recourse against review decisions. In October 2019, China adopted a Cryptography Law that includes restrictive requirements for commercial encryption products that "involve national security, the national economy and people's lives, and public interest," which must undergo a security assessment. This broad definition of commercial encryption products that must undergo a security assessment raises concerns that the new Cryptography Law will lead to unnecessary restrictions on foreign ICT products and services.

Right holders continue to report strong concerns about other draft and final measures, particularly requirements for public disclosure of enterprise standards under the amended Standardization Law and the draft standards published by the National Information Security Standardization Technical Committee (TC-260).

U.S. right holders should not be forced to choose between protecting their IP against unwarranted disclosure and competing for sales in China. Going forward, China must not invoke security concerns in order to erect market access barriers, require the disclosure of critical IP, or discriminate against foreign-owned or -developed IP.

Other Concerns

Stakeholders report considerable concern that China's rules and procedures limit parties' abilities to challenge geographical indications (GIs) via opposition, cancellation, invalidation, and other processes that would ensure GIs do not impose market access barriers to U.S. exports. In November 2019, China and the EU announced that they had reached a bilateral agreement to protect a number of GIs. Subsequently, CNIPA issued decisions rejecting all oppositions filed by stakeholders against proposed GIs under the pending agreement. It is critical that China ensure

full transparency and procedural fairness with respect to the protection of GIs, including safeguards for generic terms, respect for prior trademark rights, clear procedures to allow for opposition and cancellation, and fair market access for U.S. exports to China relying on trademarks or the use of generic terms.

The Phase One agreement requires China to ensure that any GI measures taken in connection with an international agreement do not undermine market access for U.S. exports to China using trademarks and generic terms. It also requires China to use relevant factors when making determinations for genericness, including usage of a term in dictionaries, newspapers, and websites, how the good referred to by a term is marketed and used in trade, and whether the term is used in relevant standards. In addition, it requires that China not provide GI protection to individual components of multi-component terms if the individual component is generic and to identify publicly which individual components are not protected when granting GI protection to multi-component terms. The United States will vigilantly monitor China's implementation of these obligations.

Right holders have raised concerns about plant protection in China, including about the definition of novelty, exemptions from protection, and gaps in protection that exclude species outside a limited number of taxa. Certain plant-based inventions are excluded from protection under the patent law and under China's plant variety protection system.

The United States continues to urge all levels of the Chinese government, as well as SOEs, to use only legitimate, licensed copies of software. Right holders report that government and SOE software legalization programs are still not implemented comprehensively and urge the use of external audits to ensure accountability. The Phase One agreement requires China to ensure, through third-party audits, that government agencies and SOEs only use licensed software. The United States will vigilantly monitor China's implementation of these obligations.

Finally, stakeholders continue to identify concerns relating to opposition examiners at the China Trademark Office, particularly unnecessary constraints on examiners' ability to consider applications and marks across classes when evaluating bad faith, likelihood of confusion, and other matters. Stakeholders continue to report that trademark authorities do not give full consideration to co-existence agreements and letters of consent in registration processes, among other issues. Additional concerns include onerous documentation requirements for opposition and cancellation, lack of transparency in opposition proceedings, absence of default judgments against applicants who fail to appear, and legitimate right holders' difficulty in obtaining well-known trademark status. Moreover, changes to trademark opposition procedures eliminated appeals for opposers, which resulted in longer windows for bad-faith trademark registrants to use their marks, or extort from the legitimate brand owner, before a decision is made in a cancellation proceeding.

INDONESIA

Indonesia remains on the Priority Watch List in 2020.

Ongoing Challenges and Concerns

U.S. right holders continue to face challenges in Indonesia with respect to adequate and effective intellectual property (IP) protection and enforcement, as well as fair and equitable market access. Concerns include widespread piracy and counterfeiting and, in particular, the lack of enforcement against dangerous counterfeit products. To address these issues, Indonesia would need to develop and fully fund a robust and coordinated IP enforcement effort that includes deterrent-level penalties for IP infringement in physical markets and online. Indonesia's 2016 Patent Law continues to raise concerns, including with respect to the patentability criteria for incremental innovations, the grounds and procedures for issuing compulsory licenses, and the disclosure requirements for inventions related to traditional knowledge and genetic resources. Indonesia's law concerning geographical indications (GIs) raises questions about the effect of new GI registrations on pre-existing trademark rights and the ability to use common food names. Indonesia also lacks an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. Online piracy is a concern, particularly through piracy devices and applications, and illegal camcording and unlicensed use of software remain problematic. In addition, the United States remains concerned about a range of market access barriers in Indonesia, including certain measures related to motion pictures and requirements for domestic manufacturing and technology transfer for pharmaceuticals and other sectors.

Developments, Including Progress and Actions Taken

Indonesia has made progress in addressing some of these concerns but has faltered or taken steps backward in other areas. In December 2019, the Ministry of Law and Human Rights (MLHR) issued Regulation 30/2019, which establishes procedures for compulsory licenses and addresses a number of concerns included in the previous compulsory licensing regulation, Regulation 39/2018. U.S. stakeholders have also noted positive developments related to Indonesia's efforts to address online piracy, such as increased enforcement efforts by the Ministry of Communications and Information Technology and its support of industry-led efforts to develop an Infringing Website List to help advertising brokers and networks avoid placing advertisements on listed websites. In recent years, the Ministry of Finance has issued regulations clarifying its *ex officio* authority for border enforcement against pirated and counterfeit goods and instituted a recordation system; however, concerns remain regarding the ability of foreign right holders to benefit from the system. Although Indonesia took steps in 2016 to allow 100% foreign direct investment in the production of films and sound recordings, as well as in film distribution and exhibition, Indonesia has issued implementing regulations to the 2009 Film Law that, if enforced, would further restrict foreign participation in this sector. Specifically, Ministry of Education and Culture Regulation 34/2019 includes screen quotas and a dubbing ban for foreign films.

Overall, IP enforcement has been insufficient, and the United States continues to urge Indonesia to improve enforcement cooperation among relevant agencies, including the Coordinating Ministry for Politics, Law, and Security, Directorate General for Intellectual Property (DGIP), Attorney General's Office, Ministry of Tourism and Creative Economy, and National Agency for Drug and Food Control. In particular, the United States is concerned that the National Inter-Ministerial IPR Task Force appears to be inactive. The United States also encourages Indonesia to develop a specialized IP unit under the Indonesia National Police to focus on investigating the Indonesian criminal syndicates behind counterfeiting and piracy and to initiate larger and more significant cases.

The United States welcomes Indonesia's efforts to eliminate the 2016 Patent Law's local working requirement, including by introducing an amendment to the law through the Job Creation omnibus bill. The United States urges the passage of this amendment and continues to urge Indonesia to undertake a more comprehensive amendment to the 2016 Patent Law to address remaining concerns. As Indonesia amends the Patent Law and develops implementing regulations, the United States urges Indonesia to provide affected stakeholders with meaningful opportunities for input. Indonesia also has imposed excessive and inappropriate penalties upon patent holders as an incentive to collect patent maintenance fees. Although DGIP has extended its deadline to collect the fees, the United States continues to monitor the issue. The United States also continues to urge Indonesia to fully implement the bilateral Intellectual Property Rights Work Plan and plans continued, intensified engagement with Indonesia under the U.S.-Indonesia Trade and Investment Framework Agreement to address these important issues.

SOUTH AND CENTRAL ASIA

INDIA

India remains on the Priority Watch List in 2020.

Ongoing Challenges and Concerns

Over the past year, India has been inconsistent in its progress on intellectual property (IP) protection and enforcement. While India's enforcement of IP in the online sphere has gradually improved, a lack of concrete benefits for innovators and creators persists, which continues to undermine their efforts. India remains one of the world's most challenging major economies with respect to protection and enforcement of IP.

Patent issues continue to be of particular concern in India as long-standing issues remain for innovative industries. The potential threat of compulsory licenses and patent revocations, and the narrow patentability criteria under the India Patents Act, burden companies across different sectors. Moreover, patent applicants continue to confront costly and time-consuming pre- and post-grant oppositions, long waiting periods to receive patent approval, and excessive reporting requirements.

The lack of any effective system for protecting against the unfair commercial use, and unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for products remains an obstacle for the pharmaceutical and agricultural chemical industries. In the pharmaceutical sector, Section 3(d) of the India Patents Act also remains problematic. One implication of its restriction on patent-eligible subject matter is the failure to incentivize innovation that would lead to the development of improvements with benefits for Indian patients. India still lacks an effective system for notifying interested parties of marketing approvals for follow-on pharmaceuticals, which would allow for the early resolution of potential patent disputes. Despite India's justifications of limiting IP protections as a way to promote access to technologies, India maintains extremely high customs duties directed to IP-intensive products such as medical devices, pharmaceuticals, Information and Communications Technology (ICT) products, solar energy equipment, and capital goods.

India's overall IP enforcement, despite progress made online, remains inadequate. During the last year, India has taken steps against websites with pirated content. Nonetheless, weak enforcement of IP by the courts and police officers, a lack of familiarity with investigation techniques, and the continued absence of any centralized IP enforcement agency, combined with a failure to coordinate actions on both the national and state level, threaten to undercut any progress made. The status of India as one of the top five source-economies for fake goods, as noted in the OECD's *Trends in Trade in Counterfeit and Pirated Goods* (2019), highlights the serious nature of counterfeiting and the ineffective level of enforcement. Although a small number of India's state authorities, including in Maharashtra and Telangana, continue to operate dedicated crime enforcement units, other states have not followed suit or face organizational challenges. Given the scale and nature of the problem, the United States continues to encourage the adoption of a national-level enforcement task force for IP crimes.

Overall, the levels of trademark counterfeiting continue to remain problematic. In addition, U.S. brand owners continue to report excessive delays in obtaining trademarks and a lack of quality in examination. For example, there is little clarity concerning whether trademark owners can apply directly for recognition of “well-known” trademark status without having to rely on Indian court decisions. The United States continues to urge India to join the Singapore Treaty on the Law of Trademarks. Companies also continue to face uncertainty caused by insufficient legal means to protect trade secrets in India.

Copyright holders continue to report high levels of piracy, particularly on the Internet and through commercial broadcasts. Court cases and government memoranda also raise concerns that a broad range of published works will not be afforded meaningful copyright protection. In 2019, the Department for Promotion of Industry and Internal Trade (DPIIT) proposed draft Copyright Amendment Rules that would broaden the scope of statutory licensing to encompass not only radio and television broadcasting but also online broadcasting, despite a high court ruling earlier in 2019 that held that statutory broadcast licensing does not include online broadcasts. If implemented, the Amendment Rules would have severe implications for Internet content-related right holders. This proposal, along with the granting of licenses under Chapter VI of the Indian Copyright Act and overly broad exceptions for certain uses, have raised concerns about the strength of copyright protection and complicated the functioning of the market for music licensing. Furthermore, industry has reported continuing problems with unauthorized file sharing of videogames, signal theft by cable operators, commercial-scale photocopying and unauthorized reprints of academic books, and circumvention of technological protection measures.

The 2015 passage of the Commercial Courts Act, highlighted in previous Reports, provided an opportunity to reduce delays and increase expertise in judicial IP matters. However, to date only a limited number of courts have benefited under this Act, and right holders report that jurisdictional challenges have reduced their effectiveness and that inadequate resources for staffing and training continue. Furthermore, India’s copyright royalty board, which has been folded into the Intellectual Property Appellate Board, is not fully functional, as technical members still need to be appointed. India also has yet to ensure that collective management organizations are licensed promptly and able to operate effectively.

Developments, Including Progress and Actions Taken

While India made meaningful progress to promote IP protection and enforcement in some areas over the past year, it failed to resolve recent and long-standing challenges, and it created new concerns for right holders.

India’s accession to the World Intellectual Property Organization (WIPO) Internet Treaties and the Nice Agreement was a positive step. However, amendments to the Copyright Act needed to bring India’s domestic legislation into alignment with international best practices are absent. The December 2018 draft Cinematograph Act (Amendment) Bill containing promising provisions to criminalize illicit camcording of films continues to await Parliament’s approval. India is moving forward on trying to resolve burdensome patent reporting requirements by issuing a revised Manual of Patent Office Practice and Procedure and considering revisions to Form 27 on patent working. The Manual included the requirement for patent examiners to look to the WIPO

Centralized Access to Search and Examination (CASE) system and Digital Access Service (DAS) to find information filed by patent applicants in other jurisdictions, with the aim of eliminating the need for applicants to file redundant information with India. In June 2019, India deposited notifications of accession for three WIPO classification treaties: the Nice Agreement, Vienna Agreement, and Locarno Agreement. These treaties came into force on September 7, 2019, and India continues to work on guidelines for their implementation. The Cell for IPR Promotion and Management (CIPAM), established under DPIIT, released draft guidelines for implementing IP policies aimed at academic institutions. CIPAM continues to promote IP awareness, commercialization, and enforcement throughout India.

In January 2019, the Ministry of Health and Family Welfare issued a notice further restricting the transparency of information about manufacturing licenses issued by states. This represented a step backward in providing an effective system for notifying interested parties of marketing approvals for follow-on pharmaceuticals in a manner that would allow for the early resolution of potential patent disputes. The pharmaceutical industry reports concerns as to India's continued use of the threat of compulsory licensing to coerce right holders to lower pharmaceutical prices. Right holders also reported growing concerns over the expansive application of patentability exceptions to reject pharmaceutical patents.

The United States intends to continue to engage with India on IP matters, including through the U.S.-India Trade Policy Forum's Intellectual Property Working Group.

NEAR EAST, INCLUDING NORTH AFRICA

ALGERIA

Algeria remains on the Priority Watch List in 2020.

Ongoing Challenges and Concerns

Significant challenges continue with respect to fair and equitable market access for U.S. intellectual property (IP) right holders in Algeria, notably for pharmaceutical and medical device manufacturers. The ban on importation of 368 pharmaceutical products and medical devices originally imposed in 2009 remains in place. Moreover, Algeria does not provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. Furthermore, Algeria needs to make more progress to provide adequate and effective IP protection and enforcement, including providing adequate judicial remedies in cases of patent infringement and increasing enforcement efforts against trademark counterfeiting and copyright piracy.

Developments, Including Progress and Actions Taken

Algeria took some positive steps to improve the environment for IP protection and enforcement in recent years. In October 2019, the government of Algeria formed a committee chaired within the Ministry of Industry and Mines to oversee improvements in IP protection and enforcement. Authorities in 2019 made increased efforts at IP enforcement, including by disbanding informal markets selling counterfeit merchandise. Customs authorities successfully seized counterfeit items through increased coordination with law enforcement. Algeria also supported capacity-building and training efforts for law enforcement, customs officials, judges, and IP protection agencies, and the Algerian government filed briefs in court proceedings supporting companies who have turned to the judiciary for assistance in combatting infringing activity. In addition, Algeria worked with the World Intellectual Property Organization (WIPO) to establish a WIPO external bureau in Algiers to help improve Algeria's IP framework over the next two years. Moreover, the Algerian government took steps in January 2019 to address some market access issues faced by companies reliant on IP protection by replacing temporary import barriers, originally established in January 2018, with a set of tariffs.

The United States strongly urges Algeria to build upon these positive developments. Algeria needs to promptly remove IP-related market access barriers and address the important IP concerns identified above.

SAUDI ARABIA

Saudi Arabia remains on the Priority Watch List in 2020 with an Out-of-Cycle Review focused on addressing protection against unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval of pharmaceutical products.

Ongoing Challenges and Concerns

Saudi Arabia was placed on the Priority Watch List in 2019 for failing to take action against the rampant satellite and online piracy made available by illicit pirate service beoutQ, continued lack of effective protection of intellectual property (IP) for pharmaceutical products, as well as long-outstanding concerns regarding enforcement against counterfeit and pirated goods within the country. BeoutQ ceased operations in August 2019, and the Saudi Authority for Intellectual Property (SAIP) has taken steps to improve IP protection, IP enforcement, and IP awareness throughout Saudi Arabia. However, the Saudi Arabia Food and Drug Authority (SFDA), which the Minister of Health oversees, has not provided effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

Since 2006, Saudi regulations have provided for protection against unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval. However, since 2016, SFDA has granted marketing approval to domestic companies relying on another company's undisclosed test or other data for products despite the protection provided by Saudi regulations. The United States has been engaging with Saudi Arabia on this issue, but SFDA's continued actions and the lack of redress for affected companies have intensified concerns. Furthermore, the National Unified Procurement Company for Medical Supplies, also overseen by the Minister of Health, reportedly awarded national tenders to some of these domestic companies. The United States urges Saudi Arabia to ensure protection against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval, taking into account its international obligations.

The United States continues to remain concerned about reportedly high levels of online piracy in Saudi Arabia, particularly through illicit streaming devices (ISDs), which right holders report are widely available and generally unregulated in Saudi Arabia. The United States encourages Saudi Arabia to increase IP enforcement actions and IP awareness campaigns particularly targeted at reducing online piracy and to combat the perception spurred by beoutQ's activity that pirating copyrighted material is permissible.

Right holders have expressed further concerns regarding effective civil enforcement of IP, including the ability to file civil actions, enforce judgments, and assess deterrent-level fines against infringers. Additionally, with regard to criminal enforcement of IP, right holders remain concerned that criminal sentences and financial penalties are not consistently imposed.

Developments, Including Progress and Actions Taken

In 2017, Saudi Arabia established SAIP to regulate, support, develop, sponsor, protect, enforce, and upgrade IP fields in accordance with the best international practices. Over the past two years, SAIP has worked to consolidate IP protection competence, coordinated and led online and in-market IP enforcement efforts, worked to establish specialized IP courts, and promoted awareness of the importance of respecting IP and the consequences of violating another's IP rights. The United States appreciates the positive cooperation between SAIP, the Office of the U.S. Trade Representative, and the U.S. Patent and Trademark Office (USPTO) over the past year, including the signing of a Cooperation Arrangement in October 2019 between SAIP and USPTO. The United States commends SAIP's efforts to increase transparency, join international treaties, improve stakeholder involvement in policymaking, and continue legislative development. The United States recognizes SAIP's commitment to the highest standards for Saudi Arabia's IP environment and looks forward to working with SAIP to achieve its goals. The United States also recognizes the efforts by the Saudi Arabia Customs Authority to significantly enhance its IP enforcement efforts and capacity, having seized over 3 million counterfeit and other illegal goods in 2019, having partnered closely with trademark and copyright owners, and systematically notifying right holders of suspected shipments.

The United States welcomes continued progress on these areas but also underscores the need for Saudi Arabia to address the serious concerns regarding the IP protection and enforcement issues identified above.

EUROPE AND EURASIA

RUSSIA

Russia remains on the Priority Watch List in 2020.

Ongoing Challenges and Concerns

Challenges to intellectual property (IP) protection and enforcement in Russia include continued copyright infringement, trademark counterfeiting, and the existence of non-transparent procedures governing the operation of collective management organizations (CMOs). In particular, the United States is concerned about stakeholder reports that IP enforcement remains inadequate and that Russian authorities continue to lack sufficient staffing, expertise, and the political will to effectively combat IP violations and criminal enterprises.

Developments, Including Progress and Actions Taken

The overall IP situation in Russia remains extremely challenging. The lack of robust enforcement of IP rights is a persistent problem, compounded by burdensome court procedures. For example, the requirement that plaintiffs notify defendants a month in advance of instituting a civil cause of action allows defendants to liquidate their assets and thereby avoid liability for their infringement. Additionally, requiring foreign right holders to abide by strict documentation requirements, such as verification of corporate status, hinders their ability to bring civil actions.

Inadequate and ineffective protection of copyright, including with regard to online piracy, continues to be a significant problem, damaging both the market for legitimate content in Russia as well as in other countries. While recent implementation of anti-piracy legislation holds some promise, Russia remains home to several sites that facilitate online piracy, as identified in the 2019 *Notorious Markets List*. Stakeholders continue to report significant piracy of video games, music, movies, books, journal articles, and television programming. Mirror sites related to infringing websites and smartphone applications that facilitate illicit trade are also a concern. Russia needs to direct more action to rogue online platforms targeting audiences outside the country. In 2018, right holders and online platforms in Russia signed an anti-piracy memorandum to facilitate the removal of links to infringing websites. This memorandum may be implemented as legislation that would cover all copyrighted works and apply to all Russian platforms and search engines. Furthermore, although right holders are able to obtain court-ordered injunctions against infringing websites, additional steps must be taken to target the root of the problem, namely, investigating and prosecuting the owners of the large commercial websites distributing pirated material, including software. Moreover, while reports indicate that the market for online pirated movies declined by 27% in 2019, prominent Russian online platforms continue to provide access to thousands of pirated films and television shows.

Royalty collection by CMOs in Russia continues to lack transparency and does not correspond to international standards. Reports indicate that right holders are denied detailed accounting reports, making it difficult to verify how much money is being collected and distributed. Also, right holders are excluded from the selection and management of CMOs. The United States encourages

Russia to update and modernize its CMO regime and institute practices that are fair, transparent, efficient, and accountable.

Russia remains a thriving market for counterfeit goods sourced from China. Despite increased seizures by the Federal Customs Service, certain policies hamper IP enforcement efforts. For example, the “return to sender” policy for small consignments, which returns counterfeit goods to their producer, is problematic because it does not remove such goods from channels of commerce.

The United States is also concerned about Russia’s implementation of its World Trade Organization commitments related to the protection against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. Stakeholders report that Russia is eroding protections for undisclosed data, and the United States urges Russia to adopt a system that meets international norms of transparency and fairness. Stakeholders are also concerned about recent initiatives that reportedly may inappropriately expand the use of compulsory licensing.

The United States urges Russia to develop a more comprehensive, transparent, and effective enforcement strategy to reduce IP infringement, particularly the sale of counterfeit goods and the piracy of copyright-protected works. The United States continues to monitor Russia’s progress on these and other matters through appropriate channels.

UKRAINE

Ukraine remains on the Priority Watch List in 2020.

Ongoing Challenges and Concerns

Ukraine's designation as a Priority Watch List country is based on three long-standing issues: (1) the unfair, non-transparent administration of the system for collective management organizations (CMOs) that are responsible for collecting and distributing royalties to right holders; (2) widespread use of unlicensed software by Ukrainian government agencies; and (3) failure to implement an effective means to combat widespread online copyright infringement. In December 2017, the United States announced Ukraine's partial suspension as a beneficiary country under the Generalized System of Preferences (GSP) due to Ukraine's failure to provide adequate and effective protection of intellectual property (IP) rights. The announcement of the partial suspension of Ukraine's GSP benefits specifically referenced the importance of improving its CMO regime. In 2019, the United States restored some of the suspended GSP benefits in recognition of the concrete steps Ukraine took to reform its CMO regime. The United States will continue to monitor recent legislative and operational efforts to improve IP protection and enforcement in Ukraine.

Developments, Including Progress and Actions Taken

For many years, Ukraine's CMO regime had been non-transparent, unfair, and dominated by rogue CMOs that did not distribute the royalties they collected. In July 2018, Ukraine enacted legislation that fundamentally reformed its CMO system. While Ukraine's CMO system remains a source of concern, the 2018 law is an encouraging step forward toward a framework in which U.S. right holders can receive proper and adequate compensation for their creative works in Ukraine. It is critical that Ukraine continue its work to establish a transparent, fair, and predictable system for the collective management of royalties, including through effective implementation and enforcement of the 2018 law, as well as further legislative reform addressing still-existing concerns.

The use of unlicensed software by Ukrainian government agencies continues to raise concerns for the United States. Recently, Ukraine started to explore using its state procurement systems to require the purchase of legitimate software. The United States encourages Ukraine to build upon this important step and to work with industry representatives to assess the use of unlicensed software obtained prior to the introduction of the new procurement processes.

Online piracy remains a significant problem in Ukraine and fuels piracy in other markets. Pirated films generated from illegal camcording, which are made available online and in some theaters, cause particular damage to the market for first-run movies. In addition, inadequate enforcement in Ukraine continues to raise concerns among IP stakeholders. In 2017, Ukraine's parliament enacted the law "On State Support of Cinematography," which contains provisions to address online piracy. The law establishes criminal penalties for illegal camcording and clarifies the availability of penalties for online piracy (not just hardcopy piracy). Also, in April 2019, the Cyber Police successfully launched a nationwide operation that targeted prominent infringing websites.

The United States urges Ukraine to engage actively with all affected stakeholders to ensure the statutory framework for reducing online piracy is effective and efficient. Reinstating an empowered group of full-time state inspectors to investigate copyright violations would likely help combat online piracy. Initiatives like the Cyber Police's April 2019 anti-piracy operation, coupled with coordinated and effective prosecutions against operators of illicit websites, would also help fight online piracy in Ukraine.

Recently, Ukraine has adopted legislation concerning semiconductors, geographical indications, and customs enforcement and is considering draft patent, trademark, and copyright legislation. Progress continues, albeit slowly, to establish a fully functional specialized Intellectual Property High Court, legislatively enacted in 2017. In addition, Ukraine is moving forward with legislation that creates a new National IP Office to replace the State Intellectual Property Service. The United States looks forward to the new National IP Office's role in strengthening Ukraine's system for IP protection and enforcement.

The United States appreciates the increased engagement with Ukraine, including the tangible steps Ukraine is taking to improve its IP regime, and will continue to work intensively with Ukraine, including through the U.S.-Ukraine Trade and Investment Council.

WESTERN HEMISPHERE

ARGENTINA

Argentina remains on the Priority Watch List in 2020.

Ongoing Challenges and Concerns

Argentina continues to present long-standing and well-known challenges to intellectual property (IP)-intensive industries, including those from the United States. A key deficiency in the legal framework for patents is the unduly broad limitations on patent-eligible subject matter. Pursuant to a highly problematic 2012 Joint Resolution establishing guidelines for the examination of patents, Argentina rejects patent applications for categories of pharmaceutical inventions that are eligible for patentability in other jurisdictions, including in the United States. Additionally, to be patentable, Argentina requires that processes for the manufacture of active compounds disclosed in a specification be reproducible and applicable on an industrial scale. Stakeholders assert that Resolution 283/2015, introduced in September 2015, also limits the ability to patent biotechnological innovations based on living matter and natural substances. These measures have interfered with the ability of companies investing in Argentina to protect their IP and may be inconsistent with international norms. Another ongoing challenge to the innovative agricultural chemical and pharmaceutical sectors is inadequate protection against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for products in those sectors. Finally, Argentina struggles with a substantial backlog of patent applications resulting in long delays for innovators seeking patent protection in the market. Government-wide hiring restrictions that remain in place, going back to a hiring freeze in 2018, have resulted in a limited number of patent examiners. The United States encourages Argentina to extend the National Institute of Industrial Property's (INPI) participation in the Patent Prosecution Highway with the U.S. Patent and Trademark Office, which expired in March.

Enforcement of IP rights in Argentina continues to be a challenge, and stakeholders report widespread unfair competition from sellers of counterfeit and pirated goods and services. La Salada in Buenos Aires remains the largest counterfeit market in Latin America. Argentine police generally do not take *ex officio* actions, prosecutions can stall and languish in excessive formalities, and, when a criminal case does reach final judgment, criminal infringers rarely receive deterrent sentences. Hard goods counterfeiting and optical disc piracy are widespread, and online piracy continues to grow due to nearly non-existent criminal enforcement against such piracy. As a result, IP enforcement online in Argentina consists mainly of right holders trying to convince Argentine Internet service providers to agree to take down specific infringing works, as well as attempting to seek injunctions in civil cases, both of which can be time-consuming and ineffective. Right holders also cite widespread use of unlicensed software by Argentine private enterprises and the government.

Developments, Including Progress and Actions Taken

Argentina made limited progress in IP protection and enforcement in a year that saw a presidential transition. INPI began accepting electronic filing of patent, trademark, and industrial design

applications in 2018 and is working toward transitioning to an all-electronic filing system by 2020. Argentina continued to improve procedures for trademarks, with INPI reducing the time for a trademark opposition from an average of 3.5 years to one year. On trademarks, the law provides for a fast track option that reduces the time to register a trademark to four months. The United States welcomes and continues to monitor this change. To further improve patent protection in Argentina, including for small and medium-sized enterprises, the United States urges Argentina to ratify the Patent Cooperation Treaty. The United States encourages Argentina to provide transparency and procedural fairness to all interested parties in connection with potential recognition or protection of geographical indications, including in connection with trade agreement negotiations.

Argentina's efforts to combat counterfeiting continue, but without systemic measures, illegal activity persists. There have been reports of a resurgence of markets selling counterfeit and pirated goods, including at La Salada, the largest of these types of markets. The United States encourages Argentina to create a national IP enforcement strategy to build on its successes and move to a sustainable, long-lasting initiative. The United States also encourages legislative proposals to this effect, along the lines of prior bills introduced in Congress to provide for landlord liability and stronger enforcement on the sale of infringing goods at outdoor marketplaces such as La Salada, and to amend the trademark law to increase criminal penalties for counterfeiting carried out by criminal networks. Argentina formally created the Federal Committee to Fight Against Contraband, Falsification of Trademarks, and Designations, formalizing the work on trademark counterfeiting under the National Anti-Piracy Initiative launched in 2017. The United States encourages Argentina to expand this initiative to online piracy. Revisions to the criminal code that had been submitted to Congress, including certain criminal sanctions for circumventing technological protection measures, have stalled. The creation of a federal specialized IP prosecutor's office and a well-trained enforcement unit could potentially help combat online piracy as well as prevent lengthy legal cases with contradictory rulings. In June 2019, Argentina and the United States held a bilateral meeting under the Innovation and Creativity Forum for Economic Development, part of the U.S.-Argentina Trade and Investment Framework Agreement, to continue discussions and collaboration on IP topics of mutual interest. The United States intends to monitor all the outstanding issues for progress and urges Argentina to continue its efforts to create a more attractive environment for investment and innovation.

CHILE

Chile remains on the Priority Watch List in 2020.

Ongoing Challenges and Concerns

The United States continues to have serious concerns regarding long-standing implementation issues with a number of intellectual property (IP) provisions of the United States-Chile Free Trade Agreement (Chile FTA). Chile must establish protections against the unlawful circumvention of technological protection measures. The United States continues to urge Chile to ratify and implement the 1991 Act of the International Union for the Protection of New Varieties of Plants Convention (UPOV 1991) and improve protection for plant varieties. In 2018, Chile made progress with regard to the implementation of certain IP obligations under the Chile FTA, passing legislation establishing criminal penalties for the importation, commercialization, and distribution of decoding devices used for the theft of encrypted program-carrying satellite signals. We urge Chile to clarify the full scope of activities criminalized in the implementation of the law. The United States also urges Chile to provide remedies or penalties for willfully receiving or further distributing illegally decoded encrypted program-carrying satellite signals, as well as the ability for parties with an interest in stolen satellite signals to initiate a civil action. Concerns remain regarding the availability of effective administrative and judicial procedures, as well as deterrent-level remedies, to right holders and satellite service providers. The United States also urges Chile to make effective its system for resolving patent issues expeditiously in connection with applications to market pharmaceutical products and to provide adequate protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. In addition, the United States urges Chile to improve its Internet service provider liability framework to permit effective and expeditious action against online piracy.

Chile's Ministry of Health has maintained Resolution 399 since 2018, which declared that there are public health reasons that justify issuing compulsory licenses on certain patent-protected drugs used to treat hepatitis C. While Chile has not issued a compulsory license, the resolution satisfies an initial legal requirement after which a third party may then make the request. The United States urges Chile to ensure transparency and due process in any actions related to compulsory licenses. To maintain the integrity and predictability of IP systems, Chile should use compulsory licenses only in extremely limited circumstances and after making every effort to obtain authorization from the patent owner on reasonable commercial terms and conditions.

Developments, Including Progress and Actions Taken

In the past year, Chile carried out strong enforcement efforts to combat counterfeits. The National Customs Service reported that it had seized more than 11.6 million counterfeit products in 2019, worth a total of \$139.5 million. The National Institute of Industrial Property continued to make improvements to strengthen the climate for IP protection, further reducing the average time of patent application processing to 3 years in 2019. Separately, the United States encourages Chile to provide transparency and procedural fairness to all interested parties in connection with potential

recognition or protection of geographical indications, including in connection with trade agreement negotiations.

It is critical that Chile address the long-standing Chile FTA implementation issues and other IP issues. It has now been over fifteen years since the Chile FTA entered into force, and the United States urges the need for tangible progress in these areas in 2020.

VENEZUELA

Venezuela remains on the Priority Watch List in 2020.

Ongoing Challenges and Concerns

Recognizing the significant challenges in Venezuela at this time, the United States has several ongoing concerns with respect to the country's lack of adequate and effective intellectual property (IP) protection and enforcement. Venezuela's reinstatement several years ago of its 1955 Industrial Property Law, which falls below international standards and raises concerns about trade agreements and treaties that Venezuela subsequently ratified, has created significant uncertainty and deterred investments related to innovation and IP protection in recent years. Additionally, Venezuela's Autonomous Intellectual Property Service has not issued a new patent since 2007. Piracy, including online piracy, as well as unauthorized camcording and widespread use of unlicensed software, remains a persistent challenge. Counterfeit goods are also widely available, and IP enforcement remains ineffective. The World Economic Forum's 2019 Global Competitiveness Report ranked Venezuela last in IP protection, out of 141 countries, for the seventh straight year. The Property Rights Alliance's 2019 International Property Rights Index also ranked Venezuela 128th out of 129 countries in a metric that includes standards for IP protection.

Developments, Including Progress and Actions Taken

The United States is unaware of significant progress or actions taken by Venezuela to address IP protection and enforcement deficiencies over the past year.

WATCH LIST

EAST ASIA AND THE PACIFIC

THAILAND

Thailand remains on the Watch List in 2020. Thailand continues to make progress and address concerns raised as part of the bilateral U.S.-Thailand Trade and Investment Framework Agreement (TIFA). A subcommittee on enforcement against intellectual property (IP) infringement, led by a Deputy Prime Minister, continues to convene. In particular, Thailand continues to seize counterfeit and pirated goods and to publish enforcement statistics online. Thailand is in the process of amending its Patent Act to streamline the patent registration process, to reduce patent backlog and pendency, and to help prepare for accession to the Hague Agreement. Thailand has also increased the number of examiners to reduce the patent backlog. With respect to copyright legislation, Thailand is amending its Copyright Act to prepare for accession to the World Intellectual Property Organization (WIPO) Internet Treaties. While Thailand continues to make progress in these areas, concerns remain. Counterfeit and pirated goods continue to be readily available, both in physical markets and online, and the United States urges Thailand to continue to improve on its provision of effective and deterrent enforcement measures. In addition, the United States remains concerned about a range of copyright-related issues. In particular, the United States urges Thailand to amend its Copyright Act to address concerns expressed by the United States and other foreign governments and stakeholders, including regarding overly broad technological protection measure exceptions, procedural obstacles to enforcement against unauthorized camcording, and unauthorized collective management organizations. The United States also encourages Thailand to address the issue of online piracy by devices and applications that allow users to stream and download unauthorized content. Other U.S. concerns include a backlog in pending pharmaceutical patent applications, widespread use of unlicensed software in both the public and private sectors, lengthy civil IP enforcement proceedings and low civil damages, and extensive cable and satellite signal theft. U.S. right holders have also expressed concerns regarding legislation that allows for content quota restrictions for films. The United States continues to encourage Thailand to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. The United States looks forward to continuing to work with Thailand to address these and other issues through the TIFA and other bilateral engagement, including by agreeing to a revised IP work plan.

VIETNAM

Vietnam remains on the Watch List in 2020. While there have been positive developments over the past year, such as the issuance of the national intellectual property (IP) strategy, continued public awareness campaigns and training activities, and reported improvements on border enforcement in some parts of the country, IP enforcement continues to be a challenge and the online sale of pirated and counterfeit goods remains a serious problem. Lack of coordination among ministries and agencies responsible for enforcement remains concerning, and capacity constraints related to enforcement persist, in part due to a lack of resources and IP expertise. Vietnam continues to rely heavily on administrative enforcement actions, which have consistently failed to deter widespread counterfeiting and piracy. The United States is closely monitoring and engaging with the Vietnamese government on the ongoing implementation of amendments to the 2015 Penal Code with respect to criminal enforcement of IP violations. Counterfeit goods remain widely available in physical markets. In addition, online piracy, including the use of piracy devices and applications to access unauthorized audiovisual content, book piracy, and cable and satellite signal theft persist, while both private and public sector software piracy remains a concern. In addition, Vietnam's system for protecting against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products needs clarification. The United States is monitoring the implementation of IP provisions of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, which the National Assembly ratified in November 2018, and the European Union-Vietnam Free Trade Agreement, which is expected to be ratified by the National Assembly in May 2020. Vietnam has committed in its international agreements to strengthen its IP regime and is in the process of drafting implementing legislation and other measures in a number of IP-related areas, including in preparation for acceding to the World Intellectual Property Organization (WIPO) Copyright Treaty and the WIPO Performances and Phonograms Treaty. In September 2019, Vietnam acceded to the Hague Agreement Concerning the International Registration of Industrial Designs, and the United States will monitor the effective implementation of that agreement. The United States urges Vietnam to engage on and address these issues and to provide interested stakeholders with meaningful opportunities for input as it proceeds with these reforms. The United States also encourages continued bilateral cooperation through the implementation of the recently signed Customs Mutual Assistance Agreement. The United States will continue to press on these and other IP issues with Vietnam through the U.S.-Vietnam Trade and Investment Framework Agreement and other bilateral engagement.

SOUTH AND CENTRAL ASIA

PAKISTAN

Pakistan remains on the Watch List in 2020. Pakistan has maintained a positive dialogue with the United States on intellectual property (IP) and has conducted meaningful public awareness, capacity building, and training programs to promote IP protection and enforcement in Pakistan. For example, in December 2019, Pakistan Customs hosted a public event highlighting the destruction of over 3 million seized counterfeit products. Pakistan's Intellectual Property Organization (IPO) also continues to make efforts to coordinate the various government bodies involved in IP. Nonetheless, serious concerns remain, particularly in the area of IP enforcement. Sales of counterfeit and pirated goods remain widespread, including with respect to pharmaceuticals, printed works, digital content, and software. Reports of numerous cable operators providing pirated content are also prevalent. Pakistan's establishment of IP Tribunals in Lahore, Islamabad, and Karachi, along with plans to create new tribunals in Peshawar and Quetta, have been welcome developments. However, litigants with experience in these tribunals raise concerns over the lack of capacity, inconsistency of rulings, nominal fines, and a general lack of expertise among tribunal judges. In addition, many of the injunctive orders issued by these courts for civil violations have been ignored by criminal enterprises. Effective trademark enforcement continues to be a challenge due to the lack of *ex officio* authority to take criminal enforcement actions without a right holder's complaint. Nonetheless, the Competition Commission of Pakistan (CCP) has made some progress in cases involving counterfeit trademarks and other trademark-related anti-competitive violations. Although the reconstituted IP Policy Board, established by the IPO Act, met twice during 2019, the IPO continues to face challenges in coordinating enforcement among different government agencies and operates at levels well below approved staffing. The application of deterrent penalties, and a sustained focus on judicial consistency and efficiency, is critical to moving forward. A strong and effective IPO will support Pakistan's reform efforts, and Pakistan should provide sufficient human and financial resources to empower IPO's efforts. On a positive note, during 2019, Pakistan participated with the U.S. Patent and Trademark Office (USPTO) on a program dedicated to the administration of trademark IP offices. The Office of the U.S. Trade Representative (USTR) in conjunction with USPTO and the Commercial Law Development Program (CLDP) provided technical advice on the most recent drafts of the Patent, Trademark, and Copyright Ordinances. IPO states that the IP Policy Board approved the most recent amendments to the IP laws and that the Ministry of Commerce will review and send them to the Ministry of Law. The United States encourages Pakistan to continue to work bilaterally, including through USPTO capacity building programs, CLDP programs, and Trade and Investment Framework Agreement meetings, and make further progress on IP reforms, with a particular focus on aligning its IP laws, regulations, and enforcement regime with international standards. As Pakistan amends its IP laws, the United States encourages Pakistan to undertake a transparent process that provides stakeholders with sufficient opportunity to comment on draft laws. The United States also welcomes Pakistan's interest in joining international treaties, such as the World Intellectual Property Organization (WIPO) Internet Treaties, Madrid Protocol, and the Patent Cooperation Treaty, and urges Pakistan to continue to convene regular meetings of the IP Policy Board.

TURKMENISTAN

Turkmenistan remains on the Watch List in 2020. Turkmenistan's lack of progress in raising its intellectual property (IP) protections to international standards since its accession to the Berne Convention in 2016 remains concerning. Turkmenistan has yet to issue a presidential-level decree, law, or regulation mandating the use of licensed software by government ministries and agencies and has yet to modernize its copyright protection for foreign sound recordings, including through accession to and implementation of the Geneva Phonograms Convention and the World Intellectual Property Organization (WIPO) Internet Treaties. The United States continues to be concerned with current levels of protection and enforcement of IP rights and Turkmenistan's failure to enforce its IP laws. Counterfeit and pirated goods reportedly remain widely available in major cities in Turkmenistan. The United States continues to encourage Turkmenistan to undertake legislative IP reforms, including to provide *ex officio* authority for its customs officials and to improve its enforcement procedures. Publishing the activities of the State Service of Intellectual Property, and providing data pertaining to the seizures facilitated by the State Customs Service, will provide transparency that may help inform and enhance IP enforcement in Turkmenistan. The United States stands ready to assist Turkmenistan through engagement facilitated by the Central Asia IP Working Group.

UZBEKISTAN

Uzbekistan remains on the Watch List in 2020. Uzbekistan took important steps recently to address long-standing issues pertaining to intellectual property (IP) protection and enforcement. In particular, accession to the Geneva Phonograms Convention and World Intellectual Property Organization (WIPO) Internet Treaties represents progress toward improving the copyright regime in Uzbekistan. The United States also recognizes the increased high-level political attention to IP, including Uzbekistan's support for and participation in the Central Asia IP Working Group. In addition, the United States notes the progress toward developing a new national strategy for IP. The United States encourages Uzbekistan to continue improving its copyright statutory framework, including through providing adequate protection for foreign sound recordings and implementing the WIPO Internet Treaties. Also, Uzbekistan needs to make progress to address other concerns raised in previous Special 301 Reports, including with regard to *ex officio* authority for enhanced border enforcement, allocating resources to administrative and enforcement IP agencies, and mandating government use of licensed software via presidential decree, law, or regulation.

NEAR EAST, INCLUDING NORTH AFRICA

EGYPT

Egypt remains on the Watch List in 2020. While stakeholders generally acknowledge increased engagement with Egypt on intellectual property (IP) matters, concerns with respect to copyright and trademark enforcement, patentability criteria, patent and trademark examination criteria, and pharmaceutical-related IP issues continue to impede progress toward adequate and effective IP protection and enforcement. The United States welcomes Egypt's efforts to strengthen the protection and enforcement of IP. Until recently, Egypt's efforts to improve its IP regime focused primarily on enhancing its enforcement regime without addressing other U.S. concerns. Over the last year, the Egyptian government made a clear political commitment to reform its IP regime and began to focus on addressing concerns listed in the 2019 Special 301 Report. The United States urges Egypt to provide deterrent-level penalties for IP violations, *ex officio* authority for customs officials to seize counterfeit and pirated goods at the border, and increased training for enforcement officials. While Egypt successfully reduced its patent application backlog from ten years to five years, it needs continued improvement toward a transparent and reliable patent registration system. Egypt has made no progress on developing an effective system for notifying interested parties of applications for marketing approval of follow-on pharmaceuticals in a manner that would allow for the early resolution of potential patent disputes. Egypt also still needs to take steps to clarify and formalize its biotechnology patent guidelines under its Patent Act. While Egypt has made progress toward establishing effective protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, it should clarify and formalize this protection. The United States will closely monitor its implementation. Egypt has begun plans for publishing its patent and trademark examination guides online, but it has not completed this plan and does not appear to have plans to publish granted IP rights online. Similarly, Egypt has made some progress in resolving concerns with respect to illegal streaming services that offer pirated broadcasts of U.S. works, but problems continue with the number of unlicensed satellite channels offering pirated broadcasts of U.S. works, unlawful decryption of encrypted signals, and unauthorized camcording. For example, Egypt has taken action against a number of major infringing streaming sites, recently enacted legislation criminalizing piracy online, and provided more emphasis on enforcement of the Intellectual Property Law of 2003. However, piracy and counterfeiting remain widespread in Egypt. The United States appreciates Egypt's recent enhanced engagement on IP issues with stakeholders and stands ready to work with Egypt to improve its IP regime, including by developing a work plan outlining necessary steps to resolve the concerns described above.

KUWAIT

Kuwait moves from the Priority Watch List to the Watch List in 2019. Kuwait took steps to reform its copyright regime, including in the area of enforcement, by passing the 2019 Copyright and Related Rights Law and the Implementing Regulations. The United States encourages Kuwait to continue to take steps to evaluate and clarify its copyright regime to ensure consistency with international standards and to adopt regulations for collective management organizations, enforcement officials, and registration procedures. The United States looks forward to working with Kuwait, including the National Library of Kuwait, to address concerns with provisions of the law that are unclear, such as ambiguities with certain definitions, the scope of protection, and the scope of certain limitations and exceptions. The United States also acknowledges increased intellectual property (IP) enforcement by the Ministry of Commerce and Industry's Consumer Protection Department, the Kuwait General Administration for Customs Intellectual Property Rights Unit, and the Ministry of Health's Drug and Food Control Department. The United States encourages Kuwait to continue to increase IP enforcement efforts, to enhance outreach and communication with trademark and copyright owners, to implement a modern customs trademark recordation system, and to coordinate IP investigations and enforcement actions between enforcement authorities.

LEBANON

Lebanon remains on the Watch List in 2020. The United States welcomes Lebanon's continued work to promote intellectual property (IP) protection and enforcement in 2019. The United States commends the Ministry of Economy and Trade for drafting a national IP strategy in 2019, which is awaiting approval by the Council of Ministers. The United States encourages Lebanon to ratify and implement several IP treaties, including Articles 1-12 of the Paris Convention, the Singapore Treaty on the Law of Trademarks, and the latest acts of the Nice Agreement. In addition, the United States encourages Lebanon to ratify and implement the Berne Convention for the Protection of Literary and Artistic Works and the World Intellectual Property Organization (WIPO) Copyright Treaty. The United States also encourages Lebanon to join the Patent Cooperation Treaty, the Madrid Protocol, and the WIPO Performances and Phonograms Treaty.

UNITED ARAB EMIRATES

The United Arab Emirates (UAE) remains on the Watch List in 2020. Although the UAE made progress in addressing some intellectual property (IP) concerns, several long-standing concerns remain. The UAE issued Ministerial Decree No. 404 in 2000 to preclude the registration of any pharmaceutical product until expiration of the patent term of the original product and confirmed in a 2002 letter from the Minister of Finance that products should enjoy protection in the UAE through their country-of-origin patent. However, in 2017, UAE officials allowed domestic manufacture of generic versions of a pharmaceutical product still under patent protection in the United States, stating that only UAE and Gulf Cooperation Council patents were enforceable in the UAE. Although, since 2017, the UAE has not registered any pharmaceutical products until expiration of their country-of-origin patents, for products registered prior to 2017, the uncertainty of IP protection for pharmaceutical products in the UAE remains a concern. Additionally, counterfeit enforcement in different Emirates and by different enforcement authorities in each Emirate and port-of-entry remains inconsistent. Dubai Police, Dubai Department of Economic Development, and Abu Dhabi Department of Economic Development have continued their counterfeit enforcement efforts and invested in new technology to detect counterfeit goods. Officials in Ajman, Sharjah, Umm Al Quwain, and Ras Al Khaimah have conducted raids to seize significant quantities of counterfeit goods. However, some enforcement authorities, particularly in free trade zones, reportedly do not regularly investigate and take enforcement actions against sellers or shippers of counterfeit goods, nor do they consistently seize counterfeit goods on their own initiative or destroy or otherwise prevent seized goods from being re-exported to their points of origin or transshipped to other destinations. Investigations into counterfeit goods seized within the UAE demonstrate that such goods are entering through customs without being confiscated. The 2019 *Notorious Markets List* also identifies two physical markets in the UAE that sell a broad range of counterfeit goods to purchasers in the UAE and operate as gateways to distribute counterfeit goods to other markets in the region, North Africa, and Europe. U.S. right holders continue to raise concerns about the lack of IP prosecutions, inconsistent and non-deterrent sentencing, failure of enforcement authorities to take action without detailed complaints from right holders, enforcement capabilities in cross-emirate and cross-authority cases, and a lack of transparency and available information related to raids and seizures of pirated and counterfeit goods. Moreover, despite repeated requests by the United States and right holders, the UAE has yet to grant the necessary operating licenses to establish collective management organizations to facilitate copyright licensing and royalty payments. The United States will engage over the next year with UAE officials to address these and other issues.

EUROPE AND EURASIA

ROMANIA

Romania remains on the Watch List in 2020. The United States continues to welcome the participation of the Romanian government in intellectual property (IP)-related trainings and in international enforcement operations, as well as the continued working-level cooperation in Romania between stakeholders and law enforcement authorities, including prosecutors and police. Positive steps over the past year include the passing in January 2020 of a law to enhance the transparency on the collective management of copyrights and a significant increase in the amount of counterfeit goods seized (6.11 million pieces compared to 1.25 million pieces in 2018). However, despite these steps forward, online piracy and the use of unlicensed software continue to present challenges for U.S. IP-intensive industries in Romania. Trademark concerns also remain. The United States encourages Romania to consult with right holders to address trademark concerns as it completes transposition and implementation of the EU Trademark Directive, including issues relating to certification marks, and proceedings for opposition, invalidations, and administrative cancellations. The United States continues to be concerned that penalties for copyright crimes under Romanian law are reportedly so low that they reduce any deterrent effect of criminal prosecutions. While the United States and Romania held several successful workshops over the past year to strengthen IP enforcement capacity among police and customs authorities, IP enforcement still does not appear to be a priority for border enforcement. Romania has failed to develop a national IP enforcement strategy, which should include the appointment of a high-level IP enforcement coordinator responsible for directing the development and implementation of the national strategy and aid in coordinating enforcement efforts on a national scale. The United States also encourages Romania to ensure full staffing and funding of the IP Coordination Department in the General Prosecutor's Office and the Economic Crimes Investigation Directorate and encourages the Department to prioritize its investigation and prosecution of significant IP cases, with a special focus on online piracy and cases involving criminal networks importing, distributing, or selling counterfeit products. Romania should also provide its specialized police, border police, customs, and local law enforcement with adequate resources, including necessary training in technical expertise for managing IP cases and in online IP enforcement. The United States also encourages Romania to continue its consultations with interested stakeholders as it implements the EU Directive on Copyright in the Digital Single Market and to engage with interested stakeholders as Romania moves forward with the newly enacted Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 469/2009 concerning the supplementary protection certificate for medicinal products (SPC Waiver Proposal). The United States will continue to work with Romania to address these and other issues.

TURKEY

Turkey remains on the Watch List in 2020. Over the last few years, the Turkish government has worked to strengthen its intellectual property (IP) regime, including through continued implementation of the 2016 Industrial Property Law that, among other things, increases criminal sanctions for importing and exporting counterfeit goods and enhances authorities' ability to destroy counterfeit goods. Also, an updated copyright law has been under review for more than a year, as has a five-year, government-wide IP strategy. According to the latest Turkish government data, domestic seizures by Turkey's law enforcement officials increased by 18% from 2017 to 2018, and Turk Patent's "IP Academy" facilitated important training for its government counterparts in 2018 and 2019. Despite these positive developments, concerns among right holders regarding overall IP protection and enforcement in Turkey continue. The United States views with concern Turkey's recent implementation of policies that require localized production of certain pharmaceutical products in order to remain on the government reimbursement list. Additionally, U.S. companies report that Turkey's national pricing and reimbursement policies for pharmaceutical products and medical devices suffer from a lack of transparency and procedural fairness. Also, stakeholders continue to have concerns about certain compulsory licensing provisions in the Industrial Property Law which may inappropriately expand the discretion to consider compulsory licenses. Stakeholders also continue to raise concerns that Turkey does not adequately protect against the unfair commercial use, as well as unauthorized disclosure, of test or other data generated to obtain marketing approval for pharmaceutical products, and has not done enough to reduce regulatory and administrative delays in granting marketing approvals for products. Turkey should establish an effective mechanism for the early resolution of potential pharmaceutical patent disputes. The United States encourages Turkey to fully implement its obligations under the World Intellectual Property Organization (WIPO) Internet Treaties and develop effective mechanisms to address online piracy. The United States continues to encourage Turkey to require that collective management organizations adhere to fair, transparent, and non-discriminatory procedures. Turkey remains a significant source of and transshipment point for counterfeit goods across a number of industry sectors. Levels of pirated products in Turkey remain high. Further, the use of unlicensed software by some government agencies is reported, as are increasing levels of satellite television channel piracy. Enforcement processes are hampered by procedural delays and insufficient personnel, as well as laws that contain lax penalties and inadequate procedures. In particular, the Turkish National Police should be given *ex officio* authority over trademark violations, as well as other tools they currently lack to help enhance IP enforcement capabilities. The United States will engage with Turkey to address these and other issues.

WESTERN HEMISPHERE

BARBADOS

Barbados remains on the Watch List in 2020. Barbados acceded to the World Intellectual Property Organization (WIPO) Internet Treaties on December 13, 2019, but has not proposed intellectual property legislation to implement its treaty obligations. Evidence of a strong commitment to enforce existing legislation also remains incomplete. In the realm of copyright and related rights, the United States continues to have concerns about the unauthorized retransmission of U.S. broadcasts and cable programming by local cable operators in Barbados, including state-owned broadcasters, without adequate compensation to U.S. right holders. The United States also has continuing concerns about the refusal of Barbadian TV and radio broadcasters and cable and satellite operators to pay for public performances of music. The United States urges Barbados to take all administrative actions necessary, without undue delay, to ensure that all composers and songwriters receive the royalties they are owed for the public performance of their musical works. The longstanding failure to enforce judgments and other successful outcomes for right holders and the resulting lack of deterrence are additional sources of concern. The United States looks forward to working with Barbados to resolve these and other important issues.

BOLIVIA

Bolivia remains on the Watch List in 2020. Challenges continue with respect to adequate and effective intellectual property (IP) protection and enforcement in Bolivia. The IP laws in Bolivia are dated and constitutional restrictions limit effective IP protection. Bolivia has not acceded to the World Intellectual Property Organization (WIPO) Internet Treaties. In addition, Bolivia relies on a century-old industrial privileges law, rather than any specific law governing industrial property. Bolivia's government underfunds the protection of IP. The Servicio Nacional de Propiedad Intelectual (SENAPI) has the primary responsibility involving IP protection but continues to suffer from inadequate resources. Similarly, Bolivian Customs lacks *ex officio* authority necessary to stop potentially infringing goods without an application from the right holder. Additionally, the customs authority does not have the human and financial resources needed to effectively address shipments containing counterfeit goods at its international borders. Significant challenges also persist with respect to adequate and effective IP enforcement and communication between SENAPI and Customs. Video, music, literature, and software piracy rates are among the highest in Latin America, and rampant counterfeiting persists, including counterfeit medicine that reportedly represents 21% of the Bolivian market. Criminal charges and prosecutions remain rare. Bolivian Customs has authority under the Cinema and Audiovisual Arts Law of 2018 to pursue criminal prosecutions for IP violations of foreign and domestic visual works, but Bolivia has not promulgated implementing regulations that are necessary to exercise this authority. A new transitional government took office in Bolivia at the end of 2019 and expressed its intention to address concerns with IP protection and enforcement. The United States will work with Bolivia on the necessary steps to improve its IP system and enforcement of IP.

BRAZIL

Brazil remains on the Watch List in 2020. The United States has long-standing concerns about Brazil's intellectual property (IP) enforcement regime, although the country continued to take significant steps in 2019. For example, Brazil conducted a record level of seizures of counterfeit and pirated goods through large-scale raids, such as a seizure of 500,000 counterfeit watches worth an estimated \$12.6 million. Brazil also took actions to address online piracy and to enforce against illegal set-top boxes and key-sharing devices. The United States also commends the cooperation of Brazilian law enforcement with counterparts in neighboring countries and in the United States. Nevertheless, levels of counterfeiting and piracy in Brazil, including online piracy and use of unlicensed software, remain excessively high. The enactment of legislation to increase deterrent penalties for IP crimes and to criminalize unauthorized camcording would help to address these challenges, as would the dedication of additional resources at the federal, state, and local levels for IP enforcement, IP awareness campaigns, and stakeholder partnerships. The United States also recognizes positive developments at Brazil's National Institute of Industrial Property (INPI), which streamlined procedures for certain review processes and reduced examination backlogs. The progress was significant, especially for trademarks, which saw a backlog decrease of 33% in a year. Furthermore, Brazil joined the Madrid Protocol for the international registration of trademarks. In December 2019, INPI and the U.S. Patent and Trademark Office took the important step of putting into effect a new Patent Prosecution Highway program that is technology neutral. The United States remains concerned, however, about the long pendency of patent applications, as well as INPI's actions to invalidate or shorten the term of a number of "mailbox" patents for pharmaceutical and agricultural chemical products. The United States welcomes limits on the role of Brazil's National Sanitary Regulatory Agency (ANVISA) on issues relating to the patentability of new biopharmaceutical inventions but continues to monitor the situation in light of long-standing concerns about duplicative reviews by ANVISA of pharmaceutical applications. Also, although Brazilian law and regulations provide for protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test and other data generated to obtain marketing approval for veterinary and agricultural chemical products, they do not provide similar protection for pharmaceutical products. Right holders are also concerned about the protection of patent rights during Brazil's process for establishing Productive Development Partnerships for pharmaceutical products. The United States encourages Brazil to provide transparency and procedural fairness to all interested parties in connection with potential recognition or protection of geographical indications, including in connection with trade agreement negotiations. Additionally, the United States encourages Brazil to join the World Intellectual Property Organization (WIPO) Internet Treaties as soon as possible. Strong IP protection, available to both domestic and foreign right holders, provides a critical incentive for businesses to invest in future innovation in Brazil, and the United States will engage constructively with Brazil to build a strong IP environment and to address remaining concerns.

CANADA

Canada is placed on the Watch List in 2020. The most significant step forward taken by Canada remains its agreement to important intellectual property (IP) provisions in the U.S. – Mexico – Canada Agreement (USMCA). In April, Canada ratified the USMCA and is expected to issue accompanying regulations and Ministerial Statements that further fulfill its commitments. Significant concerns of Canada's IP environment include poor enforcement with respect to counterfeit or pirated goods at the border and within Canada, deficient copyright protection, and inadequate transparency and due process regarding geographical indications (GIs) protected through free trade agreements. Canada's commitments under the USMCA will substantially improve its IP environment, addressing areas where there have been longstanding concerns, including enforcement against counterfeits, inspection of goods in transit, transparency with respect to new GIs, national treatment, copyright term, and patent term extensions for unreasonable patent office delays. Right holders also report that Canadian courts have established meaningful penalties against circumvention devices and services. Canada also made positive reforms to the Copyright Board related to tariff-setting procedures for the use of copyrighted works. Despite this progress, various challenges to adequate and effective protection of IP rights in Canada remain. Canada's system to provide for patent term restoration for delays in obtaining marketing approval is limited in duration, eligibility, and scope of protection. With respect to pharmaceuticals, the United States will continue to monitor the implementation and effects of recent changes to the Patented Medicines Prices Review Board's pricing regulations. The United States urges Canada to appropriately recognize the value of innovative medicines in both the private and public markets, to ensure its decisions are made transparently, and to contribute fairly to research and development for innovative treatments and cures. The United States remains deeply troubled by the ambiguous education-related exception added to the copyright law in 2012, which has significantly damaged the market for educational publishers and authors. While Canadian courts have worked to clarify this exception, confusion remains and the educational publishing sector reports lost revenue from licensing.

COLOMBIA

Colombia remains on the Watch List in 2020. In 2019, Colombia was placed on the Watch List after an Out-of-Cycle Review in 2018 focused on certain provisions of the United States-Colombia Trade Promotion Agreement (CTPA) and monitoring the implementation of Colombia's 2014-2018 National Development Plan (NDP). In 2019, Colombia made modest progress on the outstanding provisions related to its obligations under Chapter 16 of the CTPA. This includes continued bilateral engagement on draft legal provisions on notice-and-takedown and safe harbor provisions for Internet service providers. With respect to Article 72 of the NDP, Colombia issued Decree 433 in March 2018, as amended by Decree 710 of April 2018, to clarify that Colombia would not condition regulatory approvals on factors other than the safety and efficacy of the underlying compound. Due to an action challenging these decrees, the Council of State provisionally suspended them in September 2019. Colombia and the United States are in discussions with respect to how Colombia will reestablish the provisions of these decrees and resolve this issue. In addition, Colombia still needs to make additional progress on accession to the 1991 Act of the International Union for the Protection of New Varieties of Plants (UPOV 91). Colombia's success combating counterfeiting and other IP violations remains limited. High levels of digital piracy persist year after year, and Colombia has not curtailed the number of free-to-air devices, community antennas, and unlicensed Internet Protocol Television services that permit the retransmission of otherwise-licensed content to a large number of non-subscribers. Colombia has also not been able to reduce significantly the large number of pirated and counterfeit goods crossing the border or sold at markets, on the street, and at other distribution hubs around the country. The United States recommends that Colombia increase efforts to address online and mobile piracy and to focus on disrupting organized trafficking in illicit goods, including at the border and in free trade zones. The United States encourages Colombia to provide key agencies with the requisite authority and resources to investigate and seize counterfeit goods, such as expanding the jurisdiction of the customs police. Finally, the United States continues to engage Colombia on patent-related matters and encourages it to incentivize innovation through strong IP systems.

DOMINICAN REPUBLIC

The Dominican Republic remains on the Watch List in 2020. The United States notes some progress on customs enforcement and prioritizing prosecutions related to counterfeit pharmaceuticals, cigarettes, and alcohol. However, numerous intellectual property (IP) protection and enforcement concerns remain. In particular, the United States is concerned with the Dominican Republic's lack of political will to address IP issues particularly on signal piracy. Signal piracy by unauthorized cable operators and retransmission piracy by hotels are longstanding issues that remain unaddressed. The anti-piracy technical working group established in 2017 to address these issues has thus far failed to produce meaningful changes in policy or enforcement. Little progress occurred on improving coordination among enforcement agencies, and some enforcement agencies remain severely understaffed and under-resourced. The United States urges the Dominican Republic to develop a mechanism to coordinate enforcement activities and to ensure that its enforcement agencies are appropriately funded and staffed. The United States encourages the Dominican Republic to take clear actions in 2020 to improve its IP protection and enforcement.

ECUADOR

Ecuador remains on the Watch List in 2020. In July 2018, Ecuador published for public comment draft regulations implementing the Organic Code on Social Economy of Knowledge, Creativity, and Innovation (Ingenuity Code) and engaged with the U.S. Government and various stakeholders. However, continuing concerns remained about how the final regulations would address issues related to copyright exceptions and limitations, patentable subject matter, and geographical indications (GIs), including opposition procedures for proposed GIs, the treatment of common food names, and the protection of prior trademark rights. Ecuador is considering additional revisions to the Ingenuity Code, and the United States remains open to any engagement on this process. Enforcement of intellectual property (IP) rights against widespread counterfeiting and piracy remains weak, including online and in physical marketplaces. Ecuador is also reportedly a source of unauthorized camcording. Online piracy continues to be a problem, and Ecuador has not yet established notice-and-takedown and safe harbor provisions for Internet service providers (ISPs). The United States urges Ecuador to continue to improve its IP enforcement efforts, to provide for customs enforcement on an *ex officio* basis, including actions against goods in-transit, and to promote more effective means of securing *ex parte* seizures. The United States also encourages Ecuador to make meaningful progress with respect to ensuring that all right holders receive the royalties they are owed for their works. The United States will continue working with Ecuador to address these and other issues.

GUATEMALA

Guatemala remains on the Watch List in 2020. Despite a generally strong legal framework in place, resource constraints, a lack of political will, and poor coordination among law enforcement agencies have resulted in intellectual property (IP) enforcement that appears inadequate in relation to the scope of the problem in Guatemala. The United States urges Guatemala to ensure that its IP enforcement agencies receive sufficient resources and to strengthen enforcement, including criminal prosecution, administrative and border measures, and intergovernmental coordination to address widespread copyright piracy and commercial-scale sales of counterfeit goods. While the sale of counterfeit pharmaceuticals continues to be a significant concern, the United States notes recent raids in late 2019, where prosecutors seized allegedly counterfeit products and closed a pharmacy selling such products. Trademark squatting continues to be a significant concern, affecting the ability of legitimate businesses to use their trademarks, as both administrative remedies and relief through the courts are slow and expensive and outcomes are unpredictable. Government use of unlicensed software also remains widespread. Although cable signal piracy continues to be a serious problem, some major cable providers have discontinued contracts with distributors that illicitly rebroadcast U.S. television programming, and U.S.-based content providers have subsequently entered into contracts with those cable providers. Additionally, the United States urges Guatemala to provide greater clarity in the scope of protection for geographical indications (GIs), ensuring that all producers are able to use common food names, including any that are elements of a compound GI. The United States urges Guatemala to take clear and effective actions in 2020 to improve the protection and enforcement of IP in Guatemala.

MEXICO

Mexico remains on the Watch List in 2020. Mexico's government has significantly reduced resources for numerous government agencies. The failure to provide sufficient resources to intellectual property (IP) protection will continue to hamper Mexico's efforts to improve the environment for IP. To combat growing levels of IP infringement in Mexico, the United States encourages Mexico to devote additional resources to enforcement including the specialized IP unit within the Attorney General's office, as well as to improve coordination among federal and sub-federal officials, bring more IP-related prosecutions, and impose deterrent penalties against infringers. Piracy and counterfeit goods continue to be widespread in Mexico. As broadband access increases, digital IP crimes have been at the forefront of IP violations. The prevalence of counterfeit goods also remains a significant problem, especially at notorious physical marketplaces. The involvement of transnational criminal organizations exacerbates the problem. Regarding IP enforcement at the border, Mexican customs (Servicio de Administración Tributaria) initiated 541 cases, up from 327 cases in 2018, with seizures totaling 3.45 million articles in 2019, down from 4.8 million in 2018. In addition, U.S. brand owners continue to face bad-faith trademark registrations. Right holders also express concern about the length of administrative and judicial patent and trademark infringement proceedings and the persistence of continuing infringement while cases remain pending. In administrative procedures on infringement, preliminary measures can be lifted without any burden of proof on the alleged infringer if the alleged infringer posts a counter-bond. With respect to geographical indications (GIs), Mexico must ensure that any protection of GIs, including those negotiated through free trade agreements, may only be granted after a fair and transparent examination and opposition process. The United States remains highly concerned about countries negotiating product-specific IP outcomes as a condition of market access from the EU and reiterates the importance of each individual IP right being independently evaluated on its individual merit. Despite these shortcomings, Mexico agreed to important IP provisions in the U.S.-Mexico-Canada Agreement (USMCA) and is working with the United States on their implementation. When the USMCA is fully implemented by Mexico, these commitments will address long-standing concerns in Mexico, including with respect to enforcement against counterfeiting and piracy, protection of pharmaceutical-related IP, protection against circumvention of technological protection measures and rights management information, unauthorized camcording of movies, satellite and cable signal theft, transparency with respect to new GIs, copyright protection, pre-established damages, and enforcement of IP rights in the digital environment. The United States will continue to work with Mexico as it implements these key commitments ahead of the USMCA's entry into force, and on other IP concerns.

PARAGUAY

Paraguay remains on the Watch List in 2020. The United States and Paraguay signed a Memorandum of Understanding (MOU) on Intellectual Property (IP) Rights in June 2015. Under the MOU, Paraguay committed to take specific steps to improve its IP protection and enforcement environment. In December 2019, Paraguay established an interagency coordination center to provide a unified government response to IP violations. Nevertheless, Paraguay still has failed to meet key commitments in the MOU, including adopting and enforcing penalties such as imprisonment and monetary fines sufficient to deter future acts of infringement and ensuring that government institutions use computer software with a corresponding license. Paraguay also remains a major transshipment point for counterfeit and pirated goods and has taken little action against IP infringement in Ciudad del Este, one of the main destinations for illicit goods in the region. With the MOU due to expire in 2020, the United States urges Paraguay to make progress on its commitments to strengthen IP protection and enforcement. The United States stands ready to assist Paraguay through enhanced engagement or technical assistance, as appropriate.

PERU

Peru remains on the Watch List in 2020. The primary reasons are the long-standing implementation issues with the intellectual property (IP) provisions of the United States-Peru Trade Promotion Agreement (PTPA), particularly with respect to establishing statutory damages for copyright infringement and trademark counterfeiting as well as a notice-and-takedown and safe harbor system for Internet service providers. The United States urges Peru to implement fully its PTPA obligations and recognizes the steps that Peru has begun to take on establishing statutory damages. With respect to IP enforcement, Peru has been a leader in the region over the past few years and took a number of positive steps in 2019. For example, Peru introduced legislation that criminalizes unauthorized camcording in movie theaters in a manner that allows for effective enforcement. Peru also conducted more than 2,364 operations to seize more than \$140 million in counterfeit goods in 2019. Peru has also taken many administrative enforcement actions. Peru's National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI) granted 532 precautionary measures on trademark matters, an increase of 14.4% from 2018. In 2019, as part of its anti-piracy efforts, INDECOPI also seized illegal merchandise worth \$2.2 million and took actions against online copyright infringement. Peru's interagency cooperation continues to improve. Peru's Tax and Customs Authority (SUNAT) and INDECOPI signed a cooperation agreement in July 2019 to protect IP rights and to prevent the entry of high-risk counterfeit goods. In addition, the United States encourages Peru to expand its specialized IP prosecutors' geographical jurisdiction to cover the entire country and to resolve issues regarding their jurisdiction over issues related to counterfeit medicines. The United States urges Peru to increase the number of prosecutions against counterfeiting and piracy, to continue prosecuting individuals involved in the sale of counterfeit medicines, and to expand the imposition of deterrent-level fines and penalties for counterfeiting and piracy more broadly. The United States further encourages Peru to continue its public awareness activities about the importance of IP protection and enforcement. The United States further encourages Peru to enhance its border enforcement measures and continue to build the technical IP-related capacity of its agencies, law enforcement officials, prosecutors, and judges. The United States looks forward to continuing to work with Peru to address outstanding issues, particularly with respect to full implementation of the PTPA, in 2020.

TRINIDAD & TOBAGO

Trinidad & Tobago is placed on the Watch List for 2020. Trinidad & Tobago was removed from the Watch List in 2016 after the Telecommunications Authority of Trinidad & Tobago (TATT) took steps to enforce an agreement it entered into with domestic broadcasters for the protection of intellectual property (IP). The agreement prohibits those broadcasters from transmitting any program, information, or other material without first obtaining all required permissions from the relevant IP right holders. At the time, Trinidad & Tobago cable and satellite services removed a number of unauthorized channels, and TATT pledged to take further enforcement action. Yet, progress has stalled since 2016, after TATT exercised forbearance on enforcement against operators that continue to retransmit U.S. over-the-air broadcast signals without authorization. In October 2019, the United States welcomed an announcement that TATT was ending the forbearance period by the end of the year. However, since that announcement, TATT has extended this forbearance period at least two times, most recently to July 31, 2020. Moreover, the United States remains concerned about the lack of enforcement action against companies in Trinidad & Tobago violating the agreement, particularly the two state-owned telecommunications networks that broadcast unlicensed U.S. content. Other concerns include optical disc music and video piracy and nonpayment of copyright royalties, as well as online piracy and counterfeit pharmaceuticals and other goods. The United States will engage with Trinidad & Tobago to monitor enforcement of the agreement with broadcasters to combat the transmission of unauthorized content and to seek progress on other IP issues.

ANNEX 1: Special 301 Statutory Basis

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, the Uruguay Round Agreements Act of 1994, and the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. § 2242), USTR is required to identify “those foreign countries that deny adequate and effective protection of intellectual property rights, or deny fair and equitable market access to United States persons that rely upon intellectual property protection.”

The United States Trade Representative shall only designate as Priority Foreign Countries those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products. Priority Foreign Countries are subject to an investigation under the Section 301 provisions of the Trade Act of 1974. The United States Trade Representative may not designate a country as a Priority Foreign Country if it is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of intellectual property (IP). The United States Trade Representative is required to decide whether to identify countries within 30 days after issuance of the annual *National Trade Estimate Report*. In addition, USTR may identify a trading partner as a Priority Foreign Country or re-designate the trading partner whenever the available facts indicate that such action is appropriate.

To aid in the administration of the statute, USTR created a Priority Watch List and Watch List under the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IP protection, enforcement, or market access for persons relying on IP rights. Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning the specific problem areas.

The Trade Facilitation and Trade Enforcement Act of 2015 requires USTR to develop “action plans” for each foreign country that USTR has identified for placement on the Priority Watch List and that has remained on the list for at least one year. The action plans shall include benchmarks to assist the foreign country to achieve, or make significant progress toward achieving, adequate and effective IP protection and fair and equitable market access for U.S. persons relying on IP protection. USTR must provide to the Senate Finance Committee and to the House Ways and Means Committee a description of the action plans developed for Priority Watch List countries and any actions taken by foreign countries under such plans. For those Priority Watch List countries for which an action plan has been developed, the President may take appropriate action if the country has not substantially complied with the benchmarks set forth in the action plan.

Section 306 of the Trade Act of 1974 requires USTR to monitor a trading partner’s compliance with measures that are the basis for resolving an investigation under Section 301. USTR may take trade action if a country fails to implement such measures satisfactorily.

The Trade Policy Staff Committee, in particular the Special 301 Subcommittee, in advising the USTR on the implementation of Special 301, obtains information from and holds consultations with the private sector, civil society and academia, U.S. embassies, foreign governments, and the U.S. Congress, among other sources.

ANNEX 2: U.S. Government-Sponsored Technical Assistance and Capacity Building

In addition to identifying intellectual property (IP) concerns, this Report also highlights opportunities for the U.S. Government to work closely with trading partners to address those concerns. The U.S. Government collaborates with various trading partners on IP-related training and capacity building around the world. Domestically and abroad, bilaterally, and in regional groupings, the U.S. Government remains engaged in building stronger, more streamlined, and more effective systems for the protection and enforcement of IP.

The Office of Policy and International Affairs of the U.S. Patent and Trademark Office (USPTO), through its Global Intellectual Property Academy (GIPA), offers programs in the United States, around the world, and through distance learning to provide education, training, and capacity building on IP protection, commercialization, and enforcement. These programs, conducted for the benefit of U.S. stakeholders, are offered to patent, trademark, and copyright officials, judges and prosecutors, police and customs officials, foreign policy makers, and U.S. right holders.

Other U.S. Government agencies bring foreign government and private sector representatives to the United States on study tours to meet with IP professionals and to visit the institutions and businesses responsible for developing, protecting, and promoting IP in the United States. One such program is the Department of State's International Visitors Leadership Program, which brings groups from around the world to cities across the United States to learn about IP and related trade and business issues.

Internationally, the U.S. Government is also active in partnering to provide training, technical assistance, capacity building, exchanges of best practices, and other collaborative activities to improve IP protection and enforcement. The following are examples of these programs:

- In Fiscal Year (FY) 2019, GIPA developed and provided capacity-building programs that addressed a full range of IP protection and enforcement matters, including enforcement of IP rights at national borders, online piracy, express mail shipments, trade secrets, copyright policy, and patent and trademark examination. During the last year, the programs cumulatively included nearly 3,000 government officials, including examiners, policymakers, police, customs, parliamentarians, judges, and prosecutors, from 120 countries. This international capacity building comprised about 55% of GIPA activity in FY 2019, with additional significant efforts to inform U.S. stakeholders and policymakers about IP protection and enforcement worldwide.
- GIPA has produced 31 free distance learning modules available to the public. These modules cover six different areas of IP law and are available in five different languages (English, Spanish, French, Arabic, and Russian). By the second quarter of FY 2020, the e-learning products had received nearly 114,000 hits by viewers all over the world since publication in FY 2010. In the fourth quarter of FY 2018, GIPA produced and published

an updated patents video,²² which by the second quarter of FY 2020 had received over 12,000 views. GIPA's second quarter of FY 2017 trade secrets micro-learning video has received nearly 18,500 views (see also USPTO GIPA's YouTube Playlist at <http://bit.ly/USPTOGIPA>).

- In addition, the USPTO's Office of Policy and International Affairs provides capacity building in countries around the world and has formed partnerships with 29 national, regional, and international IP organizations, such as the Japan Patent Office, European Patent Office, German Patent and Trademark Office, government agencies of China, the Mexican Institute of Industrial Property, the Korean Intellectual Property Office, the Association of Southeast Asian Nations (ASEAN), the Oceania Customs Organisation (OCO), and the World Intellectual Property Organization (WIPO). These partnerships help establish a framework for joint development of informational and educational IP content, technical cooperation, and classification activities.
- The Department of Commerce's International Trade Administration (ITA) leads the STOPfakes Roadshows, which are day-long, in-depth seminars on protecting IP at home and abroad. Roadshows are presented around the country and include 12 partner agencies from across the U.S. Government. Additionally, ITA develops and shares small business tools to help domestic and foreign businesses understand IP and initiate protective strategies. U.S. companies can also find specific IP information on the STOPfakes.gov website, including valuable resources on how to protect patents, copyright, trademarks, and trade secrets as well as targeted information about protecting IP in more than 50 global markets. Additionally, U.S. companies can find webinars focusing on best practices to protect and enforce IP in China. Under the auspices of the Transatlantic IP Rights Working Group, ITA collaborates with the European Union's (EU) Directorate-General for Trade to identify areas of cooperation to help protect IP in third countries as well as in the United States and the EU. All of the ITA-developed resources, including the U.S.-EU TransAtlantic Portal, as well as information and links to the other programs identified in this Annex, are accessible via WWW.STOPFAKES.GOV. ITA also manages the STOPfakes Twitter account, @STOPfakesGov, which publicizes the release of new resources, live-tweets the STOPfakes Roadshows, and supports IP posts from other agencies.
- In FY 2019, U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI), through the National IPR Coordination Center (IPR Center), conducted HSI-led IP enforcement training programs in Austria, Brazil, the Cayman Islands, Kenya, and Thailand. Additionally, the IPR Center, with support from the Department of State, participated in 12 IP programs sponsored by the USPTO and the Department of Justice International Computer Hacking and Intellectual Property Advisors (DOJ ICHIPs) in Singapore, Botswana, Romania, Vietnam, Taiwan, Argentina, Senegal, Colombia, Thailand, and Paraguay.

²² <https://www.uspto.gov/learning-and-resources/global-intellectual-property-academy-gipa/uspto-webinars-and-ip-e-learning>.

- In FY 2019, U.S. Customs and Border Protection (CBP) provided IP training sessions to foreign customs officials through the HSI-led IP enforcement training programs. These sessions were hosted in Brazil, Austria, Grand Caymans, Kenya, and Thailand.
- The Department of State provides foreign assistance anticrime funds each year to U.S. Government agencies that provide cybercrime and IP enforcement training and technical assistance to foreign governments. The agencies that provide such training include the DOJ, USPTO, CBP, and ICE. The U.S. Government works collaboratively on many of these training programs with the private sector and with various international entities, such as WIPO and the International Criminal Police Organization. Department programs feature deployment of a global network of ICHIPs, experienced DOJ attorneys dedicated to building international cooperation and delivering training. Additionally, the State Department leads the U.S. delegation to the Organization for Economic Co-operation and Development's Task Force on Countering Illicit Trade, working to establish best practices in areas such as free trade zones and small parcel deliveries. The Department of State combined an International Arts Envoy Program with IP outreach to highlight the importance of copyright to creative industries, launching the first program in Bucharest, Romania in 2018.
- IP protection is a priority of the government-to-government technical assistance provided by the Department of Commerce's Commercial Law Development Program (CLDP). CLDP programs address numerous areas related to IP, including legislative reform, enforcement, adjudication of disputes, IP protection and its impact on the economy, and IP curricula in universities and law schools, as well as public awareness campaigns and continuing legal education for lawyers. CLDP supports capacity building in creating and maintaining an innovation ecosystem, including technology commercialization as well as in patent, trademark, and copyright examination and management in many countries worldwide. CLDP also works with the judiciary in various trading partners to improve the skills to effectively adjudicate IP cases and conducts interagency coordination programs to highlight the value of a whole-of-government approach to IP protection and enforcement.
- Every year, the DOJ, with funding from and in cooperation with the Department of State and other U.S. Government agencies, provides technical assistance and training on IP enforcement issues to thousands of foreign officials around the globe. As noted, such assistance is being increased using the new ICHIPs. Topics covered in these programs include: investigating and prosecuting IP cases under various criminal law and criminal procedure statutes; disrupting and dismantling organized crime networks involved in trafficking in pirated and counterfeit goods; fighting infringing goods that represent a threat to public health and safety; combatting online piracy; improving officials' capacity to detain, seize, and destroy illegal items at the border and elsewhere; increasing intra-governmental and international cooperation and information sharing; working with right holders on IP enforcement; and obtaining and using electronic evidence. Major ongoing initiatives include programs in Africa, the Americas, Asia, and Central and Eastern Europe.
- The U.S. Copyright Office, often in conjunction with various international visitor programs, hosts international visitors, including foreign government officials, to discuss

and exchange information on the U.S. copyright system, including law, policy, and registration and recordation functions, as well as various international copyright issues.

The United States reports to the World Trade Organization on its IP capacity-building efforts, including most recently in September 2019 (see Technical Cooperation Activities: Information from Members—United States of America, IP/C/W/655/Add.2). The United States also reports annually on international IP capacity building and training in the annual report issued by the U.S. Intellectual Property Enforcement Coordinator pursuant to Section 304 of the PRO IP Act of 2008 (15 U.S.C. § 8114), issued most recently as the “Annual Intellectual Property Report to Congress” in the spring of 2020.