

EXECUTIVE SUMMARY

The “Special 301” Report is an annual review of the global state of intellectual property rights (IPR) protection and enforcement, which the Office of the United States Trade Representative (USTR) conducts pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994).

This Report reflects the Administration’s resolve to encourage and maintain effective IPR protection and enforcement worldwide. It identifies a wide range of concerns, including troubling “indigenous innovation” policies that may unfairly disadvantage U.S. rights holders in China, the continuing challenges of copyright piracy over the Internet in countries such as Canada, Spain, Italy and Russia, and the ongoing, systemic IPR enforcement issues presented in many trading partners around the world.

USTR is pleased to announce a new initiative in the 2011 review, whereby it invites any trading partner appearing on the Special 301 Priority Watch List or Watch List to negotiate a mutually agreed action plan designed to lead to that trading partner’s removal from the relevant list. This initiative is further described in Section I below. Through action plans and other engagement in the coming year, USTR looks forward to working with U.S. trading partners to address both emerging and continuing concerns, and to building on the positive results achieved thus far.

Public Engagement

USTR continued its enhanced approach to public engagement activities in this year’s Special 301 process. These activities are designed to ensure that Special 301 decisions are based on a robust understanding of complicated intellectual property issues, and to help facilitate sound, well-balanced assessments of IPR protection and enforcement in particular trading partners.

USTR requested written submissions from the public through a notice published in the *Federal Register* on December 30, 2010. This year’s review yielded 49 comments from interested parties. The submissions received by USTR were made available to the public online at www.regulations.gov, docket number USTR-2010-0037. Further, on March 2, 2011, USTR conducted a public hearing that permitted interested persons to testify before the interagency Special 301 subcommittee about issues relevant to the review. The hearing featured testimony from 17 witnesses, including representatives of foreign governments, industry, and non-governmental organizations. A transcript of the hearing is available at www.ustr.gov.

Country Placement

The Special 301 designations and actions announced in this Report are the result of deliberation among all relevant agencies within the U.S. Government, informed by extensive consultation with affected stakeholders, foreign governments, the U.S. Congress, and other interested parties.

USTR, together with the Special 301 subcommittee of the Trade Policy Staff Committee, works to make a well-balanced assessment of U.S. trading partners’ IPR protection and enforcement, as well as related market access issues, in accordance with the statutory criteria set out by Congress (see Annex 1).

This assessment is necessarily 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 rights 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 below in

Section I – Developments in Intellectual Property Rights Protection and Enforcement. Each assessment is based upon the specific facts and circumstances that shape IPR protection and enforcement regimes in a particular trading partner.

In the year ahead, USTR will continue to interact closely with the governments of the trading partners that are discussed in this report. USTR expects that, in preparation for and in the course of those interactions, it will:

- engage with U.S. stakeholders, the U.S. Congress, and other interested parties to ensure that the U.S. Government position is well-informed by the full range of views on the pertinent issues;
- conduct extensive discussions with individual trading partners regarding their respective IPR regimes;
- encourage those trading partners to engage fully, and with the greatest degree of transparency, with the range of stakeholders on IPR matters; and
- identify, where possible, ways in which the United States can be of assistance.

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. Additionally, USTR works closely with other agencies to ensure consistency of U.S. trade policy objectives with other Administration policies. As one example, USTR works closely with the Department of Health and Human Services to ensure that the Administration's trade policy (including support for the 2001 WTO Doha Declaration on the TRIPS Agreement and Public Health) is consistent with the Administration's public health policies and priorities.

2011 Special 301 List

The 2011 Special 301 review process examined IPR protection and enforcement in 77 trading partners. Following extensive research and analysis, USTR has listed the 42 trading partners below as follows:

Priority Watch List: Algeria, Argentina, Canada, Chile, China, India, Israel, Indonesia, Pakistan, Russia, Thailand, Venezuela.

Watch List: Belarus, Bolivia, Brazil, Brunei, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, Finland, Greece, Guatemala, Italy, Jamaica, Kuwait, Lebanon, Malaysia, Mexico, Norway, Peru, Philippines, Romania, Spain, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan, Vietnam.

Section 306 Monitoring: Paraguay.

2011 Out-of-Cycle Reviews

An Out-of-Cycle Review (OCR) is a tool that USTR uses to encourage progress on IPR issues of concern. It provides an opportunity for heightened engagement with trading partners to address and remedy such issues. Successful resolution of specific IPR issues of concern can lead to a change in a trading partner's status on the Special 301 list outside of the typical time frame for the annual Special 301 Report. In 2011, USTR will conduct an OCR of Italy to monitor progress on IPR protection and enforcement, in particular in the area of piracy over the Internet. USTR may conduct additional

OCRs in consultation with a trading partner as circumstances warrant. Once again, USTR plans to conduct an OCR on notorious markets, consistent with the Administration's 2010 Joint Strategic Plan on IP Enforcement.

Format of the Special 301 Report

The Special 301 Report is divided into the following two main sections and two Annexes:

- **Section I: Developments in Intellectual Property Rights Protection and Enforcement** discusses broad global trends and issues in IPR protection and enforcement that USTR works to address on a daily basis.
- **Section II: Country Reports** includes descriptions of issues of concern with particular trading partners.
- **Annex 1** provides the statutory background for the Special 301 Report.
- **Annex 2** provides information about parties to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and the WIPO Copyright Treaty (WCT) (*i.e.*, the WIPO Internet Treaties).