

## 2001 SPECIAL 301 REPORT

United States Trade Representative Robert B. Zoellick today announced the results of the 2001 "Special 301" annual review, which examined in detail the adequacy and effectiveness of intellectual property protection in approximately 80 countries, the largest number of countries ever reviewed. In announcing the results of this year's review, Ambassador Zoellick stressed Ukraine's persistent failure to take effective action against significant levels of optical media piracy and to implement adequate and effective intellectual property laws. Ukraine was identified as a Priority Foreign Country on March 12, 2001, and an investigation was initiated under Section 301 of the Trade Act of 1974. Failure by Ukraine to adequately address the problem of pirated optical media production within three months of the initiation of the 301 investigation could lead to the imposition of trade sanctions. In addition, failure to adequately protect intellectual property rights could jeopardize Ukraine's efforts to join the World Trade Organization (WTO) and seriously undermine its efforts to attract trade and investment. The U.S. Government will remain actively engaged with Ukraine during the course of the investigation to encourage the nation to combat piracy and to enact the necessary intellectual property rights legislation.

Ambassador Zoellick announced that the focus of this year's report is highlighting the progress that has been made over the past year toward resolving outstanding bilateral concerns identified through previous Special 301 determinations or previously announced WTO dispute settlement cases, either through full utilization of the dispute settlement process or through consultations. Specific progress has occurred in a number of countries over the past year, including Italy, Turkey, Spain, Peru, Moldova, Guatemala, Macau, Hong Kong, and Ecuador. In addition, the report highlights the resolution of WTO dispute settlement procedures with Denmark, Greece and Ireland. A total of 14 intellectual property complaints have been filed by the United States in the WTO since 1996.

The Special 301 report addresses significant concerns in such trading partners as India, Hungary, Taiwan, the Dominican Republic, Korea, Lithuania, the Philippines, Costa Rica, Russia, Egypt, Israel, Saudi Arabia, UAE and Uruguay. In addition the report notes that the United States will consider all options, including but not limited to initiation of dispute settlement consultations with countries that do not appear to have implemented fully their obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). Such countries include Hungary, the Andean Community, the Dominican Republic, India, Israel and the Philippines.

In this year's review, USTR devoted special attention to reducing production of unauthorized copies of "optical media" products such as CDs, VCDs, DVDs, and CD-ROMs, in Ukraine, Malaysia and Taiwan in particular. In addition, USTR continued to focus on other critically important issues including proper implementation of the TRIPS Agreement by developing country WTO Members, as required by January 1, 2000, and full implementation of TRIPS standards by new WTO Members at the time of their accession. USTR also continued to encourage countries to ensure that government ministries use only authorized software.

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

The United States is committed to a policy of promoting intellectual property protection, in this regard we are also making progress in advancing the protection of these rights through the negotiation of free trade agreements. As part of the negotiations with Jordan, Chile and Singapore, as well as in the hemispheric Free Trade Area of the Americas, we have sought a higher level of intellectual property protection in a number of areas covered by the TRIPS Agreement. The negotiation of these new agreements gives us the opportunity to reflect in the intellectual property provisions the technological changes that have occurred since the TRIPS Agreement was negotiated in the late 1980s and early 1990s.

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

### **2001 Special 301 Decisions**

Under the Special 301 provisions of the Trade Act of 1974, as amended, Ambassador Zoellick today identified 51 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon intellectual property protection.

The United States Trade Representative stated that for more than two years, the U.S. Government has been urging the Ukrainian Government to close down the pirates' CD production facilities currently exporting throughout Europe and enact legislation to adequately protect copyrighted works and sound recordings. Despite many promises, including high-level commitments made in June 2000, the Ukrainian Government has been unwilling or unable to curtail the activities of these pirates. Because of this lack of progress, Ukraine was identified as a Priority Foreign Country and a Section 301 investigation was initiated. Regrettably, according to estimates from our copyright industry, Ukraine remains the single largest source of pirated optical media products in central and eastern Europe. Within weeks of identifying Ukraine as a Priority Foreign Country, the U.S. Government engaged with the Government of Ukraine in an intense effort to resolve this problem but no meaningful progress has yet been made.

Copyright piracy in Ukraine is extensive and enforcement is severely lacking, resulting in increasing unauthorized production and export of CDs and CD-ROMs. U.S. industry estimates that losses to the music industry alone are \$200 million. The United States urges the Government of Ukraine to take stronger measures on an expedited basis to address this problem

through the implementation of effective optical media production controls, enforcement of copyright law, and other available means. The U.S. Government will remain actively engaged with Ukraine, to help and encourage the nation to combat piracy and to enact the intellectual property rights legislation required by both the 1992 bilateral Trade Relations Agreement and the WTO TRIPS Agreement.

The U.S. Government has been consulting with the European Union and other countries about the serious piracy problem in Ukraine. We are pleased to see the European Union actively engaged in trying to resolve this problem and in upgrading Ukraine's intellectual property regime.

Ambassador Zoellick again designated Paraguay and China for "Section 306 monitoring" to ensure both countries comply with the commitments made to the United States under bilateral intellectual property agreements.

Although lack of enforcement of intellectual property rights remains a significant problem in China, particularly for trademarked products and copyrighted works, China's officials recognize the need for more effective action to address this continuing problem. Ambassador Zoellick welcomed the initial progress they have made through such actions as the new anti-counterfeiting "campaigns" initiated in late 2000 and continued into 2001. Nevertheless, piracy and counterfeiting remain rampant in China. The United States will continue to monitor China's actions to address these problems through an active program of bilateral consultations to ensure that the laws as enacted are consistent with China's WTO obligations and that China applies its laws in a manner that provides more effective protection of intellectual property rights.

Special concern was expressed that Paraguay's efforts to implement the bilateral agreement with the United States over the past year, especially regarding enforcement and enactment of a TRIPS-consistent patent law, have not been sufficient and further consultations will be scheduled. If no progress is made in the coming year, the U.S. Government may have no choice but to reactivate the Section 301 investigation.

Ambassador Zoellick also announced placement of 16 trading partners on the Special 301 Priority Watch List: Argentina, Costa Rica, Dominican Republic, EU, Egypt, Hungary, India, Indonesia, Israel, Korea, Lebanon, Malaysia, the Philippines, Russia, Taiwan, and Uruguay. Additionally, there will be an "out-of-cycle" review (OCR) scheduled for Costa Rica and Malaysia. He also placed 32 trading partners on the Watch List.

Finally, Ambassador Zoellick noted that, while not listing Mexico, enforcement efforts in Mexico continue to need improvement. Also, while not listing Japan, the Bahamas, Georgia and the Kyrgyz Republic, USTR will conduct OCRs of Georgia and the Kyrgyz Republic later in the year and OCRs of Japan and the Bahamas as warranted.

Should a review of Japan be necessary, it will focus on assessing the Japanese Government's

efforts to address the major concerns of the United States which are: the need for Japan to enact clear-cut internet service provider (ISP) liability laws that properly balance the interests and rights of carriers and right-holders; the need for explicit protection of temporary copies as required by the TRIPS Agreement; and expeditious ratification of the WIPO Performances and Phonograms Treaty (WPPT). As a first step, we urge Japan to agree to expert-led consultations to achieve mutual understanding of our respective concerns with regard to the current draft legislation for ISP liability rules, as well as to provide an opportunity for U.S. experts to explain how the United States dealt with the complex issues involved with ISP liability rules under our Digital Millennium Copyright Act legislation. The review would also examine the Government of Japan's implementation of recent assurances to address concerns over lax border enforcement with regard to the processing of counterfeit imports and the re-export of counterfeit goods from Japan's ports so as to ensure effective implementation of TRIPS border enforcement obligations.

Likewise, should the review of the Bahamas be warranted, it will focus on the Bahamian Government's efforts to meet its bilateral commitment to amend its copyright law to eliminate provisions that create a compulsory license for unauthorized re-transmissions by cable television systems of any copyrighted work transmitted over its territory, including encrypted transmissions. Such provisions violate the Bahamas' obligations under the Berne Convention. In addition, the Bahamas also agreed to revise its copyright law to make clear that internet transmissions are similarly not subject to compulsory licenses.

The reviews of Georgia and the Kyrgyz Republic will assess the progress made by these governments toward the enactment of necessary clarifications in their intellectual property regimes to ensure full compliance with their obligations under bilateral trade agreements with the United States and the TRIPS Agreement, including full protection for pre-existing works and sound recordings. In addition, we look to these governments to take steps toward improving their enforcement regimes, and in particular, to guard against the establishment of pirate optical media production facilities within their borders. Out-of-cycle reviews of both countries will be conducted in December 2001.

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

In announcing the results of the 2001 Special 301 review, Ambassador Zoellick reiterated that USTR is not considering a change in the present flexible approach to health-related intellectual property issues. Consistent with America's protection of intellectual property, we remain committed to working with countries that develop serious programs to prevent and treat HIV/AIDS.

We are informing countries that, as they take steps to address a major health crisis, like the HIV/AIDS crisis in sub-Saharan Africa, they should be able to avail themselves of the flexibilities afforded by the TRIPS Agreement, provided that any steps they take comply with the provisions of the Agreement.

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

A comprehensive approach is needed to deal with any serious health emergencies, such as the AIDS crisis. In dealing with such serious threats to public health, like AIDS, countries need to stress education and prevention. The cost of drugs is but one of many important issues that must be addressed. Effective drug treatment necessitates urgent action to strengthen health management systems – especially with regard to the means and methods of drug distribution. Other needed measures include: the development of appropriate drug selection policies and standard treatment guidelines; the training of care providers at all levels; an increase in the availability of adequate laboratory support to diagnose and monitor these complex therapies; and ensuring that the right drugs are used for the right purpose and in the right amount.

Certain countries have done an excellent job addressing the AIDS crisis, especially given their limited means. Such countries include <sup>Botswana</sup> Uganda, Senegal, and Thailand. However, some interested parties blame only the pharmaceutical companies without fully examining the many issues involved in addressing the AIDS crisis.

Certain countries try to justify use of protectionist measures by associating these measures with the AIDS crisis when no such linkage exists. This behavior diverts countries, and other interested parties, from focusing on areas of real concern. Indeed, local production requirements can also cost the jobs of American workers.

In sum, the HIV/AIDS scourge is devastating – but there are ways to counter it. Drug therapies must be part of an integrated approach. Solutions must be found to encourage the discovery and production of other effective treatments in the future – for this disease and others.

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

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

Developed countries were required to fully implement TRIPS as of January 1, 1996, while developing countries were given a transition period – until January 1, 2000 – to implement the Agreement's provisions. Ensuring that developing countries are in full compliance with the

Agreement now that this transition period has come to an end is one of this Administration's highest priorities with respect to intellectual property rights. With respect to least developed countries, and with respect to the protection of pharmaceuticals and agriculture chemicals in certain developing countries, even longer transitions are provided.

Progress continues to be made by developing countries toward full implementation of their TRIPS obligations. Nevertheless, a number of countries are still in the process of finalizing implementing legislation and establishing adequate enforcement mechanisms. The United States will continue to work with such countries and expects further progress in the very near future to complete the TRIPS implementation process. However, in those instances where additional progress is not achieved in the near term the United States will pursue our rights through WTO dispute settlement proceedings.

### **Controlling Optical Media Production and Internet Piracy**

To address existing and prevent future piratical activity, over the past year several of our trading partners, including Malaysia, have taken important steps toward implementing, or have committed to adopt, much needed controls on optical media production. However, others that are in urgent need of such controls, including Ukraine and Taiwan, have made insufficient progress in this regard.

Governments such as those of Bulgaria, China, Hong Kong and Macau that implemented optical media controls in previous years have clearly demonstrated their commitment to continue to enforce these measures. The effectiveness of such measures is underscored by the direct experience of these governments in successfully reducing pirate production of optical media. We continue to urge our trading partners facing the challenge of pirate optical media production within their borders, or the threat of such production developing, to adopt similar controls in the coming year. Ambassador Zoellick took note of the positive initial steps taken by Malaysia to implement its optical media law and urged Russia, Thailand, Indonesia, the Philippines and Taiwan to follow suit.

As serious as the problem of optical media piracy is, the internet is even more problematic in that it has provided an efficient global distribution network for pirate products. Several approaches must be taken by governments to address this problem, including full implementation of the TRIPS Agreement's enforcement obligation to provide effective action and adequate deterrence against commercial piracy whether it occurs in the on-line environment or in the physical world. In addition, governments should ratify and implement the two WIPO "internet" treaties, which clarify exclusive rights in the on-line environment and specifically prohibit the circumvention of technological protection measures for copyrighted works.

### **Government Use of Software**

In October 1998, the Vice President of the United States announced a new Executive Order

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

The United States has achieved considerable progress under this initiative since October of 1998. Countries that have issued decrees mandating the use of only authorized software by government ministries include China, Colombia, Ireland, Jordan, Paraguay, Thailand, France, the U.K., Greece, Hungary, Hong Kong, Macau, Lebanon, Taiwan and the Philippines. This year the Governments of Israel and Spain reported that they have also issued similar decrees. Ambassador Zoellick noted his pleasure that these governments have recognized the importance of setting an example in this area. The United States looks forward to the adoption of similar decrees, with effective and transparent procedures that ensure legitimate use of software, by additional governments prior to the conclusion of the Special 301 review in April 2002.

### **WTO Dispute Settlement**

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

#### **CANADA**

The initiation of this dispute, in which the United States prevailed, was announced in the 1999 Special 301 report. The United States argued successfully that the Canadian Patent Act violated the TRIPS Agreement. TRIPS obligates WTO Members to grant a term of protection for patents that runs at least 20 years from the filing date of the underlying application, and requires each Member to grant this minimum term to all patents existing as of the date of application of the Agreement to that Member. Under the Canadian Patent Act, the term granted to patents issued on the basis of applications filed before October 1, 1989, is only 17 years from the date on which the patent is issued. A WTO panel was established on September 22, 1999, and in its report, circulated on May 5, 2000, the panel agreed with the United States that Canada's law fails to provide the patent term guaranteed by TRIPS. On September 18, 2000, the Appellate Body affirmed the panel's rulings. The WTO Dispute Settlement Body (DSB) adopted the reports of the panel and Appellate Body on October 12, 2000. Subsequently a WTO arbitrator determined that Canada must comply with the DSB's recommendations and rulings by August 12, 2001. We understand that, in response to the decision in this case, Canada tabled legislation that will extend patent term protection from 17 to 20 years. We look forward to the Canadian Parliament's

passage of this legislation before the August implementation deadline.

#### **IRELAND**

USTR announced in its 1997 Special 301 report that it would launch a WTO dispute settlement case against Ireland because of Ireland's failure to implement a fully TRIPS-consistent copyright law. Deficiencies included the absence of rental rights for sound recordings, inadequate protection for pre-existing works, absence of clear civil "anti-bootlegging" remedies, and criminal penalties so low that they failed to deter piracy. After numerous consultations with the United States, Ireland committed in February 1998 to accelerate its implementation of copyright reform legislation by initially passing a bill on an expedited basis to address two particularly pressing enforcement issues, which included the need to raise criminal penalties for copyright infringement. This legislation – the Intellectual Property (Miscellaneous Provisions) Act 1998 {28 of 1998} – was enacted in July 1998. Subsequently, on July 10, 2000, Ireland passed the comprehensive Copyright and Related Rights Act 2000 {28 of 2000}, thus resolving the remainder of the U.S. concerns. This new Irish copyright law, among other things, simplifies the procedure necessary to bring a copyright lawsuit, and allows courts to order infringers to pay punitive as well as compensatory damages to copyright owners. The new law provides maximum penalties of a five-year prison sentence and fines of up to IR€100,000 for infringing copyrights. It also makes bootlegging an offense. The United States and Ireland formally notified the settlement of the WTO dispute on November 6, 2000, and the new law became effective on January 1, 2001.

#### **GREECE**

In 1998, USTR announced in its Special 301 report the initiation of WTO dispute settlement proceedings against Greece concerning the Greek Government's failure to enforce its intellectual property laws effectively against television stations that broadcast U.S. copyrighted works without authorization. Prior to the initiation of this case, the high rate of television piracy in Greece had been a contentious bilateral issue between the United States and Greece for a number of years. Notwithstanding the existence of Greek laws prohibiting broadcast piracy, a large number of local and regional television stations in Greece had regularly broadcast U.S. copyrighted motion pictures and television programs without authorization of the U.S. copyright owners. No television station had ever been held criminally liable for copyright infringement, no station had ever been closed by regulatory authorities for copyright violations, and TV piracy cases languished in the Greek courts for years without resolution. The TRIPS Agreement, however, requires WTO Members to provide effective enforcement remedies that "constitute a deterrent to further infringement." After initiating this WTO case, the United States and Greece held several rounds of consultations in both Geneva and Athens. On March 22, 2001, the United States and Greece formally notified the WTO of the resolution of this dispute. This resolution was possible due to the improved situation in Greece, specifically: the sharp decline in the level of television piracy in Greece over the past years; the passage of new legislation providing for the immediate closure of television stations that infringe upon intellectual property rights; the actual closure, based on complaints by U.S. right holders, of several stations that had pirated U.S. films; the issuance of the first criminal convictions for television piracy in Greece; the Greek



Government's formal instructions to public prosecutors to ensure the timely prosecution of television piracy cases; and – most importantly – the commitment by Greece to continue these enforcement efforts.

#### **DENMARK**

In the 1997 Special 301 report, the United States announced that it was invoking WTO dispute settlement procedures against Denmark for failure to make available *ex parte* search remedies in intellectual property enforcement actions, as required by Article 50 of the TRIPS Agreement. This type of enforcement remedy is needed to ensure that relevant evidence with respect to alleged intellectual property infringements is preserved, especially given the ease and speed with which infringing software can be deleted from a suspected infringer's computer. After the United States and Denmark held several rounds of formal and informal consultations, the Danish Government agreed to implement its TRIPS obligations, and formed a Legal Preparatory Committee to draft the appropriate legislation to amend Denmark's intellectual property regime. The United States did not move forward with a panel request given this commitment by Denmark. However, after two years in which minimal progress was made in the Committee, USTR announced in last year's Special 301 report that it would take the next step in this dispute and request the establishment of a WTO panel "unless progress [was] made imminently." In June 2000, the Legal Preparatory Committee issued its report recommending an amendment to Danish intellectual property legislation to include an *ex parte* search provision, and introduced the requisite legislation into the Danish Parliament for consideration and passage. On March 20, 2001, the Danish Parliament approved the legislation, which was then signed into law on March 28, 2001. The United States welcomes the passage and implementation of this legislation, and is now in the process of formally settling this dispute with Denmark in the WTO.

#### **ARGENTINA**

On May 6, 1999, as a result of the 1999 Special 301 determinations, the United States filed a WTO dispute settlement case challenging Argentina's failure to provide a system of exclusive marketing rights for pharmaceutical products, and to ensure that changes in its laws and regulations during its transition period do not result in a lesser degree of consistency with the TRIPS Agreement. Subsequently, as announced in the 2000 Special 301 Report, the United States expanded its claims to include new concerns that arose due to Argentina's failure to fully implement its remaining TRIPS obligations that came into effect on January 1, 2000. These concerns include Argentina's failure to protect confidential test data submitted to government regulatory authorities for marketing approval for pharmaceuticals and agricultural chemicals; denial of certain exclusive rights for patents; failure to provide such provisional measures as preliminary injunctions to address patent infringement; and exclusion of certain subject matter from patentability. In all, the United States raised nine distinct claims with Argentina in this dispute. We are pleased that recent consultations with the Government of Argentina have been constructive and are encouraged by the dialogue that has developed to possibly resolve certain claims in the case. However, there are still some outstanding issues that must be addressed before the dispute settlement case can be fully concluded.

## **EUROPEAN UNION**

At the conclusion of the 1999 Special 301 review, the United States initiated a WTO dispute settlement case against the EU, based on the apparent TRIPS deficiencies in EU Regulation 2081/92, which governs the protection of geographical indications (GIs) for agricultural products and foodstuffs in the EU. The Regulation denies national treatment to foreign GIs. According to the plain language of the Regulation, only domestic GIs may be protected in the EU. Foreign GIs cannot be registered in the EU, and thus are not eligible for protection, in the EU. In addition, although the Regulation permits EU nationals to oppose or cancel GIs, non-EU nationals are prohibited from raising any objections. With respect to trademarks, the Regulation permits dilution and even cancellation of trademarks when a GI is created later in time. The United States requested consultations regarding this matter on June 1, 1999, and numerous consultations have been held since then. At the most recent consultations, held in February 2001, the EU indicated that it would consider amending certain articles of Regulation 2081/92 by May 2001, in order to bring those articles into compliance with the requirements of the TRIPS Agreement. The United States looks forward to reviewing the adequacy of these amendments, and will consider the next steps of this dispute accordingly.

## **BRAZIL**

The 2000 Special 301 report announced U.S. initiation of a WTO dispute against Brazil over a longstanding issue between the two countries regarding Article 68 of Brazil's patent law, which requires all patent owners to manufacture their patented products in Brazil or else be subject to the compulsory licensing of their patents. This appears to be in violation of TRIPS Article 27.1, which prohibits Members of the WTO from requiring the local production of the patented invention as a condition for enjoying exclusive patent rights. This issue has been unresolved for more than five years, therefore, the United States decided to resort to WTO dispute settlement procedures. Despite numerous consultations, a mutually acceptable resolution could not be reached. On February 1, 2001, a WTO panel was established. Since the establishment of this panel, however, Brazil has asserted that the U.S. case will threaten Brazil's widely-praised anti-AIDS program, and will prevent Brazil from addressing its national health crisis. Nothing could be further from the truth. For example, should Brazil choose to compulsory license anti-retroviral AIDS drugs, it could do so under Article 71 of its patent law, which authorizes compulsory licensing to address a national health emergency, consistent with TRIPS, and which the United States is not challenging. In contrast, Article 68 -- the provision under dispute -- may require the compulsory licensing of any patented product, from bicycles to automobile components to golf clubs. Article 68 is unrelated to health or access to drugs, but instead is discriminating against all imported products in favor of locally produced products. In short, Article 68 is a protectionist measure intended to create jobs for Brazilian nationals.

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

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

obligations.

One country especially worth noting in this regard is Hungary, which is on the Priority Watch List this year. USTR is currently considering initiating a WTO dispute settlement case against Hungary for its failure to adequately protect confidential test data submitted by pharmaceutical companies associated with applications for marketing approval, in apparent violation of Article 39.3 of the TRIPS Agreement. Specifically, Hungary does not provide protection against the unfair commercial use of test or other data submitted to its regulatory authorities in order to obtain marketing approval. As a result, generic pharmaceutical companies have been permitted to rely on data generated and submitted at great cost and effort by innovator companies -- without their consent -- almost immediately after the original applications for marketing approval have been filed. U.S. industry estimates that it loses between \$50 million and \$100 million annually due to the TRIPS Article 39.3 problem and other weaknesses in Hungary's patent protection regime.

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

### **Examples of Progress during the Past Year**

While ongoing piracy and counterfeiting problems persist in many countries, progress has occurred in a number of countries. An attachment to this release, entitled Developments in Intellectual Property Protection, identifies the improvements made by a range of countries. Significant developments are highlighted below.

- China's Vice Premier Wu Bangguo initiated a campaign against counterfeiting to be implemented at the national, provincial and municipal levels in October and the State Council issued Document No. 18 earlier on June 27, 2000 which made clear that no entity (public or private) may make unauthorized use of software.
- Italy's long-awaited anti-piracy legislation, which significantly increased penalties, became effective in September 2000. We anticipate immediate resolution of the legislation's sticker requirement.
- Malaysia's Optical Disc Act 2000 was enacted September 15, 2000. It gives the Government of Malaysia greater enforcement powers and allows for stiffer penalties (including jail time) for the production and export of pirated optical media products.

- Argentina began to issue pharmaceutical patents for the first time on October 24, 2000.
- In a bilateral exchange of letters following consultations, the Bahamas committed to amend its Copyright Act and regulations to narrow the scope of its compulsory licensing regime in accordance with its international obligations.
- Jordan signed a Free Trade Agreement with the United States, which incorporates significantly enhanced levels of intellectual property protection in areas covered by the TRIPS Agreement.
- Indonesia passed legislation on the protection of plant varieties, trade secrets, industrial design and the lay-out of integrated circuits, which are designed to comply with TRIPS requirements.
- Peru established CONTRACOPIA, a public-private commission to address counterfeiting and piracy, and also created a new office of specialized intellectual property prosecutors.
- Turkey enacted long-awaited amendments to its Copyright Law, with the goal of bringing Turkey into compliance with the TRIPS Agreement.
- President Kim of Korea issued public orders to the Ministries of Information and Communications and the Ministry of Justice designed to strengthen their copyright enforcement efforts.

### **World Intellectual Property Organization (WIPO) “Internet” Treaties**

The United States Government has continued to work at all levels to encourage countries to ratify and implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. These treaties provide the essential legal framework for the continued spectacular growth of e-commerce in coming years by ensuring that valuable content is fully protected from piracy on the Internet. As of April 30, 2001, of the 159 members of WIPO, 51 have signed and 24 have ratified the Copyright Treaty, and 50 have signed and 22 have ratified the Performances and Phonograms Treaty. Thirty ratifications are necessary to bring each treaty into effect. We are optimistic that these treaties will come into effect by this fall or earlier.

## FACT SHEET

### "SPECIAL 301" ON INTELLECTUAL PROPERTY RIGHTS

United States Trade Representative Robert B. Zoellick today announced the Administration's decision with respect to this year's review under the so-called "Special 301" provisions of the Trade Act of 1974, as amended.

This decision reflects the Administration's continued commitment to aggressive enforcement of intellectual property rights. Intellectual property protection standards and enforcement have improved in part as a result of implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). In addition, actions announced today reflect progress made since April 2000 in resolving many long-standing problems.

The decisions and progress announced by Ambassador Zoellick include the following:

- the designation on March 12, 2001 of **Ukraine** as a Priority Foreign Country due to its persistent failure to take effective action against significant levels of optical media piracy and to implement intellectual property laws that provide adequate and effective protection.
- progress in a number of trading partners over the past year, including **Italy, Turkey, Spain, Peru, Moldova, Guatemala, Ecuador, China, Hong Kong, Macau, Malaysia, and Taiwan.**
- the resolution of WTO dispute settlement procedures with **Denmark, Greece and Ireland** and progress toward resolution of the case against **Argentina.**
- monitoring **China** and **Paraguay** under Section 306 of the Trade Act of 1974, as amended. This means that USTR will be in a position to move directly to trade sanctions if there is slippage in either country's enforcement of bilateral intellectual property rights agreements.
- placing 16 trading partners on the Special 301 Priority Watch List: **Argentina, Costa Rica, Dominican Republic, European Union, Egypt, Hungary, India, Indonesia, Israel, Korea, Lebanon, Malaysia, Philippines, Russia, Taiwan, and Uruguay.** Additionally, there will be an "out-of-cycle" review (OCR) scheduled for **Costa Rica, and Malaysia.**
- placing 32 trading partners on the Watch List. There will be an OCR scheduled for Lithuania.
- scheduling OCRs of **Georgia, the Kyrgyz Republic, and, as warranted for Japan and the Bahamas.**

Other WTO dispute settlement proceedings and out-of-cycle reviews will be initiated if necessary.

## STATUTORY AUTHORITY

The "Special 301" provisions of the Trade Act of 1974, as amended, require USTR to identify foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection. Special 301 was amended in the Uruguay Round Agreements Act to clarify that a country can be found to deny adequate and effective intellectual property protection even if it is in compliance with its obligations under the TRIPS Agreement. It was also amended to direct USTR to take into account a country's prior status under "Special 301," the history of U.S. efforts to achieve stronger intellectual property protection, and the country's response to such efforts.

Once this pool of countries has been determined, the USTR is required to decide which, if any, of these countries should be designated Priority Foreign Countries. Priority Foreign Countries are those countries that:

- (1) have the most onerous and egregious acts, policies and practices which have the greatest adverse impact (actual or potential) on the relevant U.S. products; and,
- (2) are not engaged in good faith negotiations or making significant progress in negotiations to address these problems.

If a trading partner is identified as a Priority Foreign Country, USTR must decide within 30 days whether to initiate an investigation of those acts, policies and practices that were the basis for identifying the country as a Priority Foreign Country. A Special 301 investigation is similar to an investigation initiated in response to an industry Section 301 petition, except that the maximum time for an investigation under Special 301 is shorter in some circumstances.

Today's Special 301 announcement follows a lengthy information gathering and negotiation process. The interagency Trade Policy Staff Committee that advises USTR on implementation of Special 301 obtains information from the private sector, American embassies, the United States' trading partners, and the *National Trade Estimates* report.

This Administration is determined to ensure the adequate and effective protection of intellectual property and fair and equitable market access for U.S. products. The measures announced today result from close consultations with affected industry groups, other private sector representatives, and Congressional leaders, and demonstrate the Administration's commitment to utilize all available avenues to pursue resolution of intellectual property rights issues. In issuing the announcement, Ambassador Zoellick is expressing the Administration's resolve to take consistently strong actions under the Special 301 provisions of the Trade Act.

## **DESCRIPTION BY COUNTRY OF EXISTING SITUATION AND MEASURES TAKEN**

### **PRIORITY FOREIGN COUNTRY**

#### **UKRAINE**

On March 12, 2001, Ukraine was designated as a "Priority Foreign Country" (PFC) for persistent failure to take effective action against significant levels of optical media piracy and to implement intellectual property laws that provide adequate and effective protection. According to industry, Ukraine is the largest producer and exporter of pirated optical disks in Europe. Ukraine's exports of pirated compact discs (CDs) are disrupting markets throughout the region and beyond. For more than two years, the U.S. Government has been urging the Ukrainian Government to close down the pirates' CD production facilities and enact legislation to adequately protect copyrights. Despite many promises, including high-level commitments made in June 2000, the Ukrainian Government has been unwilling or unable to curtail the activities of these pirates. As a result of the PFC designation, USTR also initiated an investigation of Ukraine's practices under Section 301 of the Trade Act of 1974. As part of this process, USTR conducted consultations with the Government of Ukraine in early April to discuss the above concerns. Failure by the Government to address these concerns within three months of initiating the investigation could lead to the imposition of trade sanctions. Further, this failure to protect intellectual property rights could jeopardize Ukraine's efforts to join the WTO and undermine its efforts to attract trade and investment. The U.S. Government will remain actively engaged with Ukraine, to help and encourage the nation to combat piracy and to enact the intellectual property rights legislation required by both the 1992 bilateral Trade Relations Agreement and the TRIPS Agreement.

### **SECTION 306 MONITORING**

#### **CHINA**

Although lack of enforcement of intellectual property rights remains a significant problem in China, particularly for trademarked products and copyrighted works, China's officials recognize the need for more effective action to address this continuing problem. Nevertheless, despite intensive enforcement campaigns and senior level attention to the problem, trademark counterfeiting remains widespread, with large-scale production of fake products running the gamut from pharmaceuticals to shampoo to batteries. Unauthorized production and sale of copyrighted products remain widespread. A new and disturbing phenomenon is the increased production of pirated optical media products by licensed plants that had previously only manufactured legitimate products. In addition, piracy of U.S. books continues unabated. The effectiveness of enforcement efforts varies from region to region, and is hobbled by lack of transparency and poor coordination among responsible police and government agencies. Criminal actions are rarely filed, the legal thresholds for prosecutions are too high, and administrative penalties are too low to deter further piracy.

China is now undertaking a comprehensive review and revision of its intellectual property rights laws in preparation for accession to WTO. In that connection, China has agreed to implement its obligations under the TRIPS Agreement as of the date of its accession to the WTO. China's revised patent law will take effect in July 2001 and amendments to its copyright law and trademark law are currently under final review. Current drafts take steps to improve enforcement

authority, including providing for more effective provisional relief.

China's courts have issued some significant decisions on enforcement of copyright, in particular rights in works transmitted over the internet. That said, the underlying problem of obtaining effective enforcement remains. We will be monitoring China's actions to address these problems to ensure that the laws as enacted are consistent with China's WTO obligations and that China applies its laws to provide more effective protection of intellectual property rights. We will continue our active program of bilateral consultations and work through the WTO and WIPO as well.

#### **PARAGUAY**

Both internally and at its borders, Paraguay denies adequate and effective protection for copyrights, and trademarks and patents. Paraguay was identified as a Priority Foreign Country in January 1998. The subsequent Section 301 investigation terminated with the signing of a comprehensive Memorandum of Understanding (MOU) on the protection of intellectual property. Unfortunately, the implementation of the MOU has been inadequate, and Paraguay continues to be a regional center for piracy and counterfeiting and a transshipment point to the larger markets bordering Paraguay, particularly Brazil, where the sales of pirated copyright products in optical media and other formats have been of particular concern. Notable examples of Paraguay's mixed record on honoring its MOU commitments include the passage of a new copyright law that addressed most of the U.S. concerns, but nevertheless designates copyright piracy as a private rather than a public action, thus requiring legal action by the offended party to seek redress. A subsequent law remedied the situation by appointing three specialized intellectual property prosecutors in Paraguay with the ability to pursue copyright infringement cases as "public" actions, but subsequently the government ordered the prosecutors to devote their time to other cases. Also, despite issuing a decree on December 31, 1998, requiring government use of legitimate software, in compliance with the MOU, the government nevertheless missed the decree's deadline to legalize software and also failed to inventory installed software. To date, the U.S. Government has had no indication that the Government of Paraguay provides TRIPS-consistent protection for industrial designs, the layout-designs of integrated circuits, or undisclosed information (trade secrets and test data). The United States is concerned with these lapses in the implementation of the MOU and will seek consultations with Paraguay in the near future to review these concerns. If no progress is made on these issues in the coming year, the U.S. Government may have no choice but to reactivate the Section 301 investigation.

### **PRIORITY WATCH LIST**

#### **ARGENTINA**

Argentina has fulfilled some, but not all, of its long-standing commitments to the United States on intellectual property. Most notably, in October 2000, Argentina began issuing pharmaceutical patents. However, other parts of its patent, as well as its copyright, and trade secrets regimes are still not up to international standards. Its lax enforcement against piracy, counterfeiting and unauthorized use of protected seed varieties remains a problem. Argentina's lack of patent protection for pharmaceutical products has been a very contentious bilateral issue since 1987,



and resulted in the suspension in 1997 of 50% of Argentina's benefits under the Generalized System of Preferences. In 1999, the United States filed a WTO dispute settlement case challenging, among other things, Argentina's failure to provide an exclusive marketing rights system for pharmaceutical products. On May 30, 2000, the United States expanded its claims in this dispute to include new concerns that have arisen as a result of Argentina's failure to fully implement its remaining TRIPS obligations that came due on January 1, 2000, such as Argentina's failure to provide preliminary injunctions to prevent infringements of patent rights and its exclusion of certain subject matter from patentability. Recent consultations with the Government of Argentina have been constructive and a number of claims in the case may be resolvable. However, there are still some outstanding issues that must be addressed before the dispute settlement case can be fully concluded.

On the copyright front, while a 1998 law criminalizing software piracy has not been effectively implemented, Argentina has improved its copyright laws by ratifying the latest act of the Berne Convention. We remain concerned about a 1999 tax reform law that imposes customs duties on all forms of intellectual property, as well as the possible imposition of duties on electronic commerce, despite Argentina's support of the 1998 WTO Ministerial declaration on keeping cyberspace duty-free.

#### **COSTA RICA**

Despite positive steps taken by Costa Rica in 2000, including amending its 1982 copyright law to comply with the TRIPS Agreement, there is growing concern regarding the lack of effective enforcement activity by the Government of Costa Rica. This lack of effective enforcement has been exacerbated by weaknesses in a new law on criminal procedures and penalties for intellectual property crimes passed last year. The law, among other things, provides lesser penalties for intellectual property crimes than for non-IP crimes, and de-criminalizes infringement deemed of "insignificant character" or that is committed "without intention of profit." Estimates of the level of optical media piracy remain roughly constant from last year, but the Government of Costa Rica's willingness and ability to address this problem through existing legal mechanisms is in serious doubt. The United States urges Costa Rica to improve coordination of enforcement activities between public prosecutors and investigators; appoint special prosecutors to take on intellectual property cases; create a coordinated nationwide plan for defending and enforcing IP rights; and improve enforcement-related training at all levels of government. The United States will conduct an OCR in the fall to assess Costa Rica's legislative and enforcement efforts.

#### **DOMINICAN REPUBLIC**

Serious deficiencies in the patent law enacted in May 2000 have not been corrected, although the Dominican Republic recently established a commission to review the law's implementing regulations, as well as a separate commission to coordinate the "national policy of struggle against the violation of intellectual property rights." The Government's commitment to correct deficiencies that can only be addressed through legislative changes, however, remains less certain. Among the problems with the law are: overly-broad exclusions of subject matter from patentability, protectionist local working requirements, and an inadequate patent term. In September 2000, the U.S. Government urged the newly-inaugurated Mejia Administration to

take steps to correct the patent law, and received the President's assurances that the Dominican Republic would abide by its international obligations. We urge the Dominican Republic to build on the momentum that it has created through the appointment of the two new commissions, and work expeditiously to correct the remaining patent law deficiencies by the end of the year. There have been substantial improvements in the copyright area, especially with the passage of a TRIPS-conforming law and the impressive enforcement efforts on the part of the National Copyright Office (ONDA). Nonetheless, there continues to be concern with respect to the enforcement of the new copyright law, and enforcement coordination between ONDA and the police remains poor.

#### **EGYPT**

Egypt's copyright law appears inconsistent with its obligations under the TRIPS Agreement, and pending amendments may not sufficiently address all of the law's weaknesses. The current draft of the pending bill does not make clear that sound recordings are protectable works, nor does it provide express retroactive protection for such works still under copyright in the country of origin. The bill also does not provide for civil *ex parte* search orders. Moreover, we were concerned by Egypt's approval of fraudulent licenses to distributors of pirated copyright works, which facilitated pirate operations while hampering legitimate producers. We are heartened that the Egyptian Government has recently begun taking steps to prevent approval of such licenses and has, in fact, terminated some licenses that were approved in error; we hope this trend continues. Egypt's patent law also does not appear to comply with TRIPS. It provides for only a 15-year patent term, excludes from patentability substances produced by chemical processes intended for use in food or medicine, and has overly-broad compulsory licensing provisions. Egypt has tabled a new draft patent law, but this new law also appears inadequate. For example, it requires that patent applications for medicines be adjudicated by the Ministry of Health rather than the Patent Office, thus treating medical patent applications differently than applications from other fields of technology, in seeming contravention of TRIPS. The United States is very concerned by recent reports that the Egyptian Government has granted marketing approval for generic copies of patent-protected drugs based on the confidential test data submitted by the innovator firms. This appears to violate both the TRIPS Agreement and Egypt's own Prime Ministerial Decree 2211, which is meant to protect such test data. On enforcement, the Egyptian Government took strong steps during 2000 against software piracy, including police raids and convictions. Nonetheless, piracy of audio and video CDs and other products remains widespread and virtually all entertainment software on the market are pirated. We will continue to aid the Egyptian Government in complying with its TRIPS obligations through our SIPRE (Strengthening Intellectual Property Rights in Egypt) program.

#### **EUROPEAN UNION**

At the conclusion of the 1999 Special 301 review, the United States initiated a WTO dispute settlement case against the EU, based on the apparent TRIPS deficiencies in EU Regulation 2081/92, which governs the protection of geographical indications (GIs) for agricultural products and foodstuffs in the EU. In addition, the Regulation permits dilution and cancellation of trademarks, even when a GI is created later in time. The United States requested consultations regarding this matter on June 1, 1999, and numerous consultations have been held since then. At the most recent consultations, held in February 2001, the EU indicated that it would consider

amending certain articles of Regulation 2081/92 by May 2001. The United States looks forward to reviewing the adequacy of these amendments with respect to the EU's TRIPS obligations, and will consider the next steps of this dispute accordingly.

#### **HUNGARY**

Hungary does not adequately protect confidential test data submitted by pharmaceutical companies seeking marketing approval, which raises concerns about its compliance with its international obligations. Specifically, Hungary does not have an express requirement that governmental authorities must protect undisclosed test data submitted as a condition for obtaining marketing approval from unfair commercial use. In fact, rival pharmaceutical firms have sometimes been allowed to rely on data generated and filed by the original applicant without its consent shortly after the original filing. Despite extensive negotiations, Hungary still has not fixed this major shortcoming, which has left U.S. pharmaceutical products vulnerable to exploitation by aggressive Hungarian generic pharmaceutical producers. Hungary recently introduced a decree that would protect test data starting on January 1, 2003. However, such a decree would still not provide protection for the test data submitted prior to that date. We look to Hungary to address this deficiency immediately. On the enforcement front, Hungary has made only modest progress in reducing the substantial levels of piracy. In fact, prosecutors and judicial authorities have thus far not demonstrated much vigor in protecting intellectual property rights.

#### **INDIA**

India's patent system and protection of exclusive test data are far from compliant with its obligations under the TRIPS Agreement. The term of protection for pharmaceutical process patents is only seven years. India fails to provide patent protection for pharmaceutical and agricultural chemical products and the compulsory licensing system seems overly broad. Also, pending legislation meant to rectify India's TRIPS deficiencies may fall short of that goal. To make matters worse, the inadequate patent protection currently available is difficult for innovators to obtain: India's patent office suffers from a backlog of 30,000 patent applications and a severe shortage of patent examiners. Moreover, India's overly-generous opposition procedures often allow competitors to delay patent issuance until the patent has expired, resulting in a *de facto* removal of patent protection. India's copyright legislation is generally strong, but poor enforcement allows rampant piracy. Indeed, piracy of motion pictures, music, software, books and video games is widespread; videos and VCDs are often available on the street before titles even open in cinemas. We will continue to consult with the Indian Government to resolve outstanding TRIPS compliance concerns, but if these consultations do not prove constructive, we will consider all other options available, including WTO dispute settlement, to resolve these concerns.

#### **INDONESIA**

Indonesia has yet to pass TRIPS-consistent copyright, trademark, and patent laws. We look forward to prompt legislative action to bring Indonesia into full compliance with its TRIPS obligations. Piracy levels in Indonesia's enormous market for copyright and trademark goods are among the highest in the world. Industry estimates the levels of music and business software piracy at 87%, motion picture piracy at 90%, and game software piracy at 99%. Optical media

production capacity expanded alarmingly during the past year, from fewer than a dozen illicit production lines a year ago to at least 70 today. This capacity is far in excess of Indonesia's domestic demand. It is becoming increasingly apparent that, as other countries in the region intensify their fight against copyright infringement, audio and video pirates are finding refuge in Indonesia. Trademark infringement is a growing problem, with famous U.S. trademarks appearing on products ranging from televisions to blue jeans, which is detrimental to U.S. mark owners. The Indonesian judicial system remains an ineffective mechanism for enforcing intellectual property rights. The United States presented the Indonesian Government in January 2001 with an action plan for intellectual property protection on which we expect to work with Government of Indonesia in the coming months.

#### **ISRAEL**

While the United States is gratified by reports that illicit commercial-scale production of optical media in Israel may have fallen substantially, Israel's domestic market for copyright goods remains dominated by pirated music, video and software CDs. Further, Israel is part of an enormous transshipment network for pirated versions of Russian-language software, as well as audio and video CDs and cassettes. While enforcement of copyright has improved in the public sector, enforcement against piracy in the private sector needs to be strengthened further. Israel has demonstrated that it is serious about addressing piracy and has translated this commitment into action by increasing its special police intellectual property rights enforcement units, but these units remain too small and underfunded to be effective. Even when they do act, convictions are rare and do not result in deterrent penalties. Patent protection in Israel is inadequate. In May 2000, the Minister of Health approved regulations permitting the parallel import of pharmaceuticals protected by patents. Further, Israel allows generic pharmaceutical manufacturers to obtain marketing approval based on confidential test data submitted by innovator pharmaceutical firms. Israel's failure to protect this data, generated at great expense by the innovators, appears to be a violation of its obligations under Article 39.3 of TRIPS. We have continuing consultations with the Israeli Government on intellectual property issues, and we hope these will soon bear fruit. If there is no progress in the data protection area, the United States will need to consider other options for encouraging Israel to remedy this situation.

#### **KOREA**

In February, Korean President Kim announced a stepped-up copyright enforcement program, with special enforcement periods set for March-April and September-October, including investigations of government agencies, universities, and corporations for unauthorized use of copyrighted software. The Korean Government also announced that it will establish a standing organization to enforce intellectual property rights, particularly copyright piracy, on an on-going basis. The United States welcomes these positive developments. Unfortunately, it is too soon to judge their effectiveness. The first special enforcement period is still underway and questions remain about whether the enforcement program is transparent and non-discriminatory, as well as whether the stepped-up enforcement effort will be sustained. We also look to the Government of Korea to effectively address the widespread piracy of U.S. trade and educational books.

In January 2001, the Korean Government enacted amendments to strengthen its patent and trademark laws. While this is encouraging, there remain a number of weaknesses in Korea's

intellectual property legislation, particularly in the copyright area. For example, Korea still apparently fails to provide full protection to works created after 1950, as required by the TRIPS Agreement. In December 2000, the Korean National Assembly passed welcome amendments to the Computer Programs Protection Act (CPPA), but these fail to provide explicit protection for temporary copies, as required by the TRIPS Agreement. We look to the Korean Government to make the necessary improvements to its copyright regime in the coming year. It also remains unclear whether Korean law protects against the unfair commercial use of confidential test data as mandated by TRIPS.

The United States will continue its detailed dialogue with the Korean Government on intellectual property issues and will periodically review Korea's progress on both legislative and enforcement issues. The U.S. Government hopes that continued progress in these areas will result in a substantial reduction in software piracy and other tangible improvements, which would lead to a favorable review of Korea's Special 301 status later this year.

#### **LEBANON**

Cable piracy is a particular problem in Lebanon. There are over 1,000 cable operators in the country, many of whom retransmit domestic and foreign programming without authorization from right-holders. Piracy of video and audio cassettes is common, and virtually the entire market for video games is illegitimate. Software and book piracy is equally widespread. Unauthorized software is used not only by small companies, but also by major banks, trading companies and much of the government. Lebanese censorship authorities have seized some inbound pirated videotapes at the border and police are raiding video shops. Other elements in the Lebanese Government, however, are not as diligent about intellectual property protection. Police enforcement efforts are thwarted by a clogged judicial system apparently incapable of handling intellectual property cases. Further, there is very little enforcement against software piracy, even though the industry makes the effort to inform the government about particular companies that use unauthorized software. Protection of patents in Lebanon is stronger. The Lebanese Government passed a new industrial property law that is more thorough than the law it replaced and, with some amendments, will be able to bring Lebanon into compliance with its patent obligations in TRIPS. We will continue to press Lebanon to address its severe copyright protection problems.

#### **MALAYSIA**

During the past year, Malaysia passed a number of new laws meant to strengthen the protection of intellectual property and bring the country into compliance with its obligations under the TRIPS Agreement. These include amendments to the copyright, patent, and trademarks laws as well as new laws on protection of integrated circuits and geographical indications. A particularly positive development over the past year was the enactment of the Optical Disc Act, which when fully implemented should prove to be an effective tool to fight copyright piracy. However, so far Malaysia has only begun to take the steps necessary to enforce these new laws, particularly the optical media licensing law. While the Malaysian Government has launched thousands of raids and plant inspections over the past two years, virtually no criminal prosecutions for piracy have yet been completed. Nonetheless, we remain encouraged by the enactment of these new laws and the important first steps that have been taken since March 15, 2001, to implement the Optical

Disc Act. The United States will conduct an out-of-cycle review in the fall to assess Malaysia's enforcement efforts, particularly its full implementation of the Optical Disc Act by September 15, 2001.

#### **THE PHILIPPINES**

The Philippines' copyright enforcement is weak and we are concerned that the Philippines has the potential of becoming a center of pirate optical media production in Asia. The number of production lines for compact discs and other optical media has doubled during the past year. Like Indonesia, the Philippines is apparently becoming a destination for pirate producers forced out of Asian countries that have more vigorous enforcement regimes. Legislation to control pirated optical media production is urgently needed. Cable piracy is also widespread. A large number of cable systems retransmit new and recent films without authorization from right-holders. Despite the Government's recent elimination of its reprint licensing scheme, we are concerned that piracy of U.S. textbooks remains rampant in the Philippines. Resources for enforcement are inadequate, customs efforts at the border are sporadic and the judicial process is so slow that it is virtually ineffective. While the Philippines has designated dozens of Special Intellectual Property Rights Courts, such designation has not improved the handling of IP cases. Moreover, a recent court decision suggests that the Philippines does not provide for civil *ex-parte* search remedies, in apparent violation of the TRIPS Agreement. We are, however, heartened by comments suggesting that the new government of President Macapagal-Arroyo will take the Philippines' IP problems more seriously. We look forward to a productive dialogue and concrete progress on intellectual property issues with the new Philippines' Government.

#### **RUSSIA**

Certain provisions in Russia's copyright law, trademark law, other intellectual property laws and in its enforcement regime are not consistent with the intellectual property provisions of the 1991 U.S.-Russian Federation bilateral trade agreement, nor do we believe that they are in compliance with the TRIPS Agreement. Among the deficiencies are: the lack of full retroactive protection for works and sound recordings, the lack of civil *ex parte* search procedures and other enforcement-related deficiencies. We are also concerned about the lack of legislation to control pirated optical media production, which is urgently needed. Lack of enforcement against unauthorized production and export of CDs and CD-ROMs, and concerns about the inadequate protection of well-known trademarks, remain growing problems that cause U.S. industry substantial losses annually. Trademark counterfeiting is also widespread; the local market is full of counterfeit clothing, footwear, household chemicals and pharmaceuticals. Given Russia's ongoing WTO accession negotiations, we urge that Russia to bring its laws in line with international standards before joining the WTO.

#### **TAIWAN**

The U.S. copyright industries contend that Taiwan is one of the largest producers of pirated optical media products in the world. Dozens of optical media plants operate in Taiwan, with a total production capacity that far exceeds Taiwan's domestic demand. Despite this problem, Taiwan has declined to enact the kind of strong optical media licensing legislation that has been effective in countering piracy elsewhere in the region. It has also failed to shut down known pirate operations.

Some aspects of Taiwan's copyright and patent laws appear out of compliance with the TRIPS Agreement, which Taiwan has agreed to implement fully as of the date of its accession to the WTO. Although Taiwan's current patent law provides a 20-year term of protection from the date of application, this TRIPS-consistent term is only provided to patents that were applied for after January 23, 1994. Patents with applications prior to this date receive only a 15-year term of protection from the date of publication of the application, with a maximum of 18 years from the date of actual application. The copyright law also needs strengthening in a number of areas including protection for temporary copies. Trademark owners also experience significant levels of counterfeiting in Taiwan, particularly of auto spare parts.

Enforcement of intellectual property rights improved somewhat over the past year, with increased raids against and prosecutions of IPR infringers, as well as efforts to ensure the use of only licensed software in government offices. However, without adequate legislation and sustained enforcement efforts, Taiwan remains a haven for pirates. U.S. trade officials have visited Taiwan twice in recent months to discuss with Taiwan authorities about how Taiwan can strengthen its IPR protection, and we understand that legislation that is intended to address our concerns regarding patent term was introduced in April. Specifically, we look to Taiwan to enact an effective optical media licensing law and complete the process of amending its copyright law in the coming months, and to enact a TRIPS-consistent patent law that would be effective upon accession to the WTO.

#### **URUGUAY**

We have been pressing Uruguay to reform its outdated patent and copyright legislation since 1997, and despite repeated engagement and consultations on the necessary amendments, serious deficiencies remain in its intellectual property rights regime. Uruguay's draft copyright legislation has become entangled in legislative wrangling and currently contains numerous shortcomings even in its draft form, most notably the separation from the comprehensive copyright bill of software protection into a stand-alone bill. Enforcement of both criminal and civil copyright cases is weak and sporadic. While new patent legislation was recently passed, it also contains major flaws, including the lack of provisions for exclusive marketing rights for pharmaceutical products, apparent non-TRIPS compliant exclusive licensing provisions, overly-broad compulsory license provisions, and the omission of data protection requirements. The United States urges Uruguay to fix these and other flaws in its intellectual property legislation as soon as possible.

### **WATCH LIST**

#### **ARMENIA**

Armenia has several remaining steps to take in order to fulfill its intellectual property commitments under the 1992 U.S.-Armenia Trade Agreement and to become TRIPS consistent in preparation for accession to the WTO. Armenia is not yet a party to the Geneva Phonograms Convention as required by the bilateral trade agreement; nor does it provide any protection for U.S. and other foreign sound recordings, or clear protection for pre-existing works or sound recordings under its copyright law. In addition, enforcement of intellectual property laws in Armenia is weak, and while new criminal penalties for intellectual property rights violations

have been adopted, there have been no known convictions under the new law. Moreover, it is unclear whether the government has ex officio authority to commence criminal prosecution against copyright infringement.

#### **AZERBAIJAN**

Azerbaijan has yet to fulfill its intellectual property commitments under the 1995 U.S.-Azerbaijan Trade Agreement. Azerbaijan is not yet a party to the Geneva Phonograms Convention, as required by the bilateral trade agreement, does not clearly provide protection for pre-existing works or sound recording, and does not clearly provide national treatment for sound recordings under its copyright law. In addition, there is weak enforcement of intellectual property rights in Azerbaijan. New criminal penalties for intellectual property rights violations have been adopted. However, the intellectual property rights provisions under the Criminal Code are weak and are limited to copyright and patent violations, completely excluding neighboring rights violations. In addition, the Customs Code does not provide the proper authority to seize infringing products at the border as required by the TRIPS Agreement.

#### **BELARUS**

Belarus has several remaining steps to take to fulfill its intellectual property commitments under the 1993 U.S.-Belarus Trade Agreement. Like Armenia and Azerbaijan, Belarus is not yet a party to the Geneva Phonograms Convention, and thus does not provide protection for U.S. and other foreign sound recordings. It also does not clearly provide protection for pre-existing works or sound recordings. In addition, there is weak enforcement of intellectual property rights in Belarus and piracy levels remain extremely high. Belarus has amended its Criminal Code in order to provide higher penalties for intellectual property rights violations, but the Criminal Code still does not contain the proper authority for relevant government agencies to initiate criminal cases concerning copyright infringement on their own initiative.

#### **BOLIVIA**

Bolivia has made marginal progress over the past year in its protection of intellectual property rights. However, Bolivia appears to remain non-compliant both in terms of its legal requirements and enforcement capabilities. Although Bolivia has made some progress with institutional reforms in the National Intellectual Property Service (SENAPI), enforcement of intellectual property rights remains weak and, as a result, the levels of copyright piracy continue to be among the highest in Latin America. The Government of Bolivia submitted a comprehensive intellectual property rights reform law to Congress in February 2001, but a preliminary overview of the proposed legislation has revealed some flaws that suggests that it might not be TRIPS compliant. Enforcement of existing laws to protect patented pharmaceutical products in Bolivia is also inadequate. Although the Andean Community Decision 486 has brought the country closer to TRIPS compliance, the Decision fails to protect data confidentiality adequately and to provide for second-use patents. Finally, the use of pirated software is still widespread among Bolivian Government institutions.

#### **BRAZIL**

While we were pleased to note that during 2000, the Government of Brazil processed a good number of patent applications, including some pipeline applications, more needs to be done to



reduce the growing backlog of patent. After the failure of extensive efforts to work with Brazil to resolve U.S. concerns regarding Brazil's "local manufacturing requirement" for patents, the United States initiated WTO dispute settlement proceedings to resolve the dispute. A panel was then established on February 1, 2001. In addition, we are concerned about the codification of a previously provisional ruling requiring that Brazil's health authority approve all patent applications for pharmaceutical products prior to the granting of the patent. Such a requirement has apparently prevented Brazil from granting pipeline patents as of October 2000, and appears to undermine the implementation of the TRIPS Agreement in Brazil by singling out pharmaceutical patents for discriminatory treatment.

The serious copyright piracy problem shows little sign of abatement and no significant enforcement actions were taken in the past year to combat this alarming situation. We are, however, pleased to see the establishment of an Inter-Ministerial Committee To Fight Piracy pursuant to the Presidential Decree of March 2001. We look to the Government of Brazil to develop and implement an effective action plan to allow this Committee to take concrete, significant action to reduce and deter piracy in Brazil.

#### **CANADA**

The WTO determined that Canada's patent law fails to comply with TRIPS as it does not provide a 20-year term of protection for patents that were applied for prior to October 1, 1989. New legislation to rectify this incompatibility has been introduced in the Canadian Senate, and the United States hopes for its early passage. We are concerned, however, that Canada fails to protect from unfair commercial use confidential test data submitted to health authorities for marketing approval. While the Canadian Food and Drug Regulations appear on their face to provide for such data protection, Canadian courts have interpreted these provisions so narrowly as to render them meaningless, thus permitting second-comers to unfairly rely on test data generated and submitted by innovator companies to obtain marketing approval for themselves almost immediately after the innovator companies' own marketing approval applications are filed.

#### **CHILE**

Chile's intellectual property laws are not fully consistent with its international obligations. As we mentioned in last year's report, the Government of Chile introduced legislation in 1999 intended to make Chile's intellectual property regime TRIPS-compliant. This legislation has still not been enacted and reportedly is not TRIPS-consistent, even in its draft form. Among other issues, we are concerned that the draft law may not provide adequate protection for confidential test data. Inadequate enforcement against piracy and counterfeiting also remains a serious problem, as does the large backlog of pending patent applications. We are now engaged in negotiations on the U.S.-Chile Free Trade Agreement. We expect the Government of Chile to bring its legal regime into compliance with TRIPS before we conclude these negotiations.

#### **COLOMBIA**

Colombia has made limited progress over the past year to improve its intellectual property regime. Colombia lacks effective enforcement of its existing copyright laws and, as a result, piracy levels for most copyright sectors remain high. Cable piracy in particular continues to be

rampant despite increased licensing and inspection efforts, and this situation exemplifies the case for most other sectors. In short, current enforcement efforts and penalties have not proven to be a significant deterrent. Government use of unauthorized software appears to be on the decline, however, thanks to the efforts of the Colombian Government. With regard to patents, Andean Community Decision 486 has brought the country closer to TRIPS compliance, although the Decision fails to adequately protect test data submitted for marketing approval purposes or to provide for second-use patents. Deficiencies in Colombian Government data protection for pharmaceutical products have also led to high piracy levels in this area.

#### **GREECE**

On March 22, 2001, the U.S. and Greece formally resolved their WTO dispute, first announced in the 1998 Special 301 Report, over television piracy. Since the initiation of this case, Greece has passed new legislation providing for the immediate closure of television stations that infringe upon intellectual property rights, and estimated levels of television piracy in Greece have fallen significantly as a result. Piracy rates for audio-visual works, video games and business software, however, remain high. Counterfeiting of trademarked apparel is also an ongoing problem.

#### **GUATEMALA**

In mid-2000 the Guatemalan Congress passed new patent and trademark legislation as well as amendments to its 1998 Copyright Law. The new legislation appears to meet most TRIPS requirements. The legislation reinstated the government's legal authority to prosecute anti-piracy cases even in the absence of privately-filed complaints. On a less positive note, the amendments decreased criminal penalties in cases of infringement of intellectual property, and the provision providing for statutory damages was removed. The United States will be looking to the Government of Guatemala to ensure a vigorous and effective enforcement of the country's improved legal framework. The United States will be particularly interested in seeing the prompt appointment of a special prosecutor for intellectual property matters, as provided for under the new law.

#### **ITALY**

After five years of engagement with the U.S. government, the Government of Italy in July 2000 passed the long-awaited Anti-Piracy Bill (APB), which significantly increases minimum criminal penalties for intellectual property rights violations, including increased minimum fines and duration of incarceration. Passage of the bill is a laudable development toward improving Italy's intellectual property environment, especially given that Italy had some of the lowest criminal penalties and one of the highest rates of piracy in Europe. We remain concerned however, about full implementation of this law and about the APB's "sticker" requirement; the bill does not clearly set out whether the software industry would be exempt from a provision requiring that copyright owners pay for and apply government-approved stickers on genuine copyrighted works, based on previous representations by the Italian Government. Indeed, without this exemption, Italy could be in violation of the Berne Convention and its TRIPS obligations for conditioning protection of foreign software on compliance with a mere formality. Moreover, despite the passage of this landmark legislation, piracy of U.S. intellectual property in Italy continues to be relatively widespread practice, particularly with regard to pirating video products, sound recordings, computer software, books, and video games. Counterfeiting of trademarked

apparel is also a problem: Italy is a significant supplier of counterfeit clothing and leather goods to the European market. Finally, expeditious enforcement of criminal and civil remedies in Italy against intellectual property rights violators remains insufficient and cumbersome.

#### **JAMAICA**

Jamaica's intellectual property regime does not yet meet international standards. It appears that Jamaica lacks patent, industrial design, geographical indication and plant variety legislation consistent with its obligations under the TRIPS Agreement. This situation constitutes the primary obstacle to Jamaica's removal from the Watch List, and we urge the Jamaican Government to complete the process of enacting TRIPS-conforming legislation. On the other hand, Jamaica has made continual progress in the enforcement of existing intellectual property laws, including with respect to the misuse of well-known marks and unlicensed cable television re-transmissions.

#### **KAZAKHSTAN**

Kazakhstan has several remaining steps to take to fulfill its intellectual property commitments under the 1992 U.S.-Kazakhstan Trade Agreement. In particular, Kazakhstan does not clearly provide retroactive protection for works or sound recordings under its copyright law. In addition, there is weak enforcement of intellectual property rights in Kazakhstan. However, we are encouraged that the Government of Kazakhstan has recently taken measures to educate law enforcement professionals on enforcing intellectual property laws, and it just raided and closed down a video pirating operation. New criminal penalties for intellectual property rights violations have been adopted. We question the effectiveness of the new Criminal Code provisions in deterring piracy, however, due to the high burden of proof threshold. This lack of effectiveness is evidenced by the dearth of intellectual property cases commenced under the new criminal laws.

#### **KUWAIT**

Although the Government of Kuwait successfully passed a copyright law in December 1999 that comes close to complying with the provisions of the TRIPS Agreement, it has yet to introduce amendments necessary to make the law fully consistent with its obligations under the Agreement. Kuwait has also failed to pursue sustained and deterrent enforcement actions against copyright infringement, and no cases have yet resulted in a conviction and imprisonment. Piracy levels remain high, and the use of unauthorized computer software continues in private enterprises. We will continue to consult with the Government of Kuwait on passage of the necessary amendments to the 1999 Copyright Law and ensure its compliance with the TRIPS Agreement. We look to Kuwait to provide effective enforcement of its intellectual property legal regime and to ensure that the judicial system reinforces these actions with serious and consistent sentencing, including deterrent fines and penalties. We call upon Kuwait to also develop a strategy to ensure the use of only authorized computer software in private enterprises.

#### **LATVIA**

Large volumes of pirated products are transshipped through Latvia from Russia and Ukraine and many pirated materials also end up in the domestic market. Unfortunately, Latvia has poor on-the-ground enforcement to combat this piracy, but efforts are underway, with the assistance of

the United States Customs Service, to enhance their border control enforcement. Legislation is needed to improve the ability of law enforcement and judicial authorities to combat this piracy, such as providing for adequate civil *ex parte* search remedies. These serious enforcement and criminal law deficiencies mar the progress Latvia has made in improving its intellectual property rights laws and regulations. We urge Latvia to increase its efforts to combat piracy.

#### **LITHUANIA**

Lithuania is awash with pirated copyrighted materials, including large volumes of optical media products. It has become a major transshipment country in between pirate producers in Russia and Ukraine and consumers in the West. Lithuania's domestic markets are themselves also flooded with pirated products. Lithuania could potentially become a major producer of pirated optical media products if it does not introduce and enforce a strict licensing regime. Also of concern is the fact that Lithuania does not appear likely to ratify the 1994 bilateral Trade Relations and Intellectual Property Rights Agreement, nor provide the transitional "pipeline" protection agreed to in that agreement. Further, Lithuania does not appear to provide protection for confidential test data submitted by pharmaceutical firms, which is required by the TRIPS Agreement. We encourage Lithuania to bring its intellectual property rights regime into conformity with the TRIPS Agreement and to greatly step up its anti-piracy efforts. The United States will conduct an OCR in the fall to assess Lithuania's enforcement efforts.

#### **MACAU**

In December 2000, USTR conducted an out-of-cycle review of Macau and decided to keep Macau on the Watch List. Since that time, Macau has made some progress in enhancing its intellectual property regime, but Macau's failure to convict and sentence manufacturers of infringing intellectual property products remains a serious concern. Macau has demonstrated its willingness to improve intellectual property protections by signing a contract for the implementation of Source Identification (SID) codes to be embossed on all optical disks produced in Macau. Also, a new licensing requirement for the raw materials used in optical media production led to the reduction of manufacturing lines from 38 in mid-1999 to 10 in early 2001. Despite these improvements, a major manufacturer of pirated CDs, who was eventually convicted by Macau's Court of Final Appeal, received only an eight month suspended sentence and a fine of \$15,000 as penalty for his crime. This case is significant because it was the first intellectual property case to exhaust appeals, and yet the courts ordered the forfeiture of production equipment without sentencing the accused to any jail time. As such, we continue to urge Macau to improve intellectual property protection and to vigorously prosecute and punish those responsible for piracy.

#### **NEW ZEALAND**

In 1999, the Government of New Zealand pledged to introduce legislation imposing bans on parallel imports of newly-released copyrighted products (*e.g.*, music, films, software and books) for up to two years. By the end of 2000, however, the government had not introduced this legislation. The continuation of New Zealand's policy regarding parallel imports erodes the value of copyright protection and threatens to stimulate black market trade in copyrighted goods throughout the region. We urge the Government of New Zealand to introduce this promised legislation as soon as possible and to follow through on separate plans to strengthen other laws

on copyrights and trademark protection.

#### **PAKISTAN**

In 2000, Pakistan attempted to address most of its major TRIPS-related deficiencies through enactment of several new intellectual property laws, thus expressing political will at the highest levels to tackle these issues. The sharp growth in optical media piracy, however, offsets the promising developments in legal infrastructure. Pakistan now hosts up to seven illegal optical media production plants with a reported capacity of 100 million units. Pirated goods account for 90% of the domestic marketplace, and are exported throughout the region. In addition, book piracy remains a significant issue, accounting for \$45 million in losses for U.S. publishers. Illegal reprinting of scientific, technical and medical texts plague legitimate sales. Also, the refusal of Pakistani courts to issue *ex parte* search orders continues to hamper enforcement efforts, particularly in the area of business software. Delayed court proceedings and non-deterrent fines similarly reduce the effectiveness of a government positively disposed toward intellectual property protection.

#### **PERU**

In the last year, the Government of Peru took several positive steps in cooperating with U.S. industry on intellectual property protection. For example, Peru formed a public-private entity (CONTRACOPIA), which has shared intelligence to help Peruvian Government enforcement agencies conduct raids, and has conducted advertising campaigns against piracy. The government intellectual property agency (INDECOPI) has also conducted two joint publicity campaigns with the Business Software Alliance. Peru has attempted to strengthen enforcement by training specialized prosecutors. Despite these efforts, however, criminal enforcement remains a problem. The Government of Peru has negotiated the text of a software legalization agreement with U.S. industry, but has not yet put it into effect. With respect to patents, Peru (unlike other members of the Andean Community) has been issuing second-use patents over the objection of the Andean Tribunal, and is appealing the Tribunal's prohibition of such patents to the Andean Supreme Court. Concerns, however, remain regarding Andean Community Decision 486, which is not sufficiently explicit with respect to the protection of test or other data submitted with marketing approval applications, thereby opening the way to the possible erosion of the protection of such information.

#### **POLAND**

Poland amended its Copyright Law in June 2000 to provide copyright protection for pre-1974 sound recordings. This closed a major deficiency in Poland's intellectual property regime and brought it generally into conformity with the TRIPS Agreement. Nonetheless, Poland still has a substantial piracy problem. Prosecutors and judicial authorities have not vigorously protected intellectual property rights and, in fact, law enforcement authorities continue to allow the open-air Warsaw Stadium to operate as a major center for the distribution of pirated products. Further, the three-year period of exclusive protection for test data now in place in Poland, coupled with weak protection of process patents, leaves research-based pharmaceutical companies vulnerable to rival firms appropriating valuable products that are still under protection by process patents. Poland has not yet increased the term of protection for a process patent from 15 years to 20 years, as required by the TRIPS Agreement. We look to Poland to improve its enforcement efforts,

especially at the Warsaw Stadium, and to correct the deficiencies in its patent and data protection laws.

#### **ROMANIA**

Piracy of sound recordings, audiovisual products (videos, broadcast television and cable television), and business and entertainment software continues at very high rates despite reforms to the legal regime. In addition, Romania has not established civil *ex parte* search procedures, as required by the TRIPS Agreement. These procedures would significantly help in combating piracy of computer software. Inconsistent enforcement of intellectual property rights legislation, the low level of priority given piracy by regional and local authorities, and the lack of resources dedicated to combating piracy combine to make intellectual property protection a major challenge for Romania. We encourage Romania to increase its efforts to combat piracy and to finally provide civil *ex parte* search procedures consistent with its obligations under the TRIPS Agreement.

#### **SAUDI ARABIA**

As part of its effort to accede to the WTO, Saudi Arabia is currently working with WTO Members to revise its intellectual property laws. Saudi Arabia has apparently drafted revised legislation, which is under review in the Bureau of Experts at the Council of Ministers, but has not provided an opportunity for WTO Members to review the legislation to ensure compliance with the TRIPS Agreement. In practice, Saudi Arabia has respected U.S. patents, and there have not yet been any major incidences of patent infringement. However, U.S. pharmaceutical companies report that a local Saudi company has recently attempted to register unauthorized copies of patented U.S. pharmaceutical products with the Saudi Ministry of Health. Enforcement actions against copyright infringement are not carried out with sufficient regularity and are not accompanied by the appropriate level of publicity and sentences to reduce the level of piracy, thus piracy rates in Saudi Arabia remain high. We look to Saudi Arabia to pursue sustained and deterrent enforcement actions against copyright infringement and continue the process of legalizing software used by government entities. We urge Saudi Arabia to also revise its intellectual property laws to bring them into conformity with the TRIPS Agreement in the near term.

#### **SLOVAKIA**

Slovakia's protection of confidential pharmaceutical test data submitted to obtain marketing approval is seriously undercut by a provision that shortens the term of protection in certain cases: Slovakia currently reduces its six-year period of data exclusivity to the extent the data was submitted earlier in an European Union member state. This shortcoming greatly diminishes, or eliminates altogether, the protection of confidential test data. Moreover, Slovakia's patent protection regime has some important deficiencies: it fails to extend process patent terms from 15 to 20 years for all subsisting patents, as required by the TRIPS Agreement; it lacks clarity about the availability of preliminary injunctions in infringement actions; and it has no explicit provision for relief against contributory infringement in patent cases. In the copyright area, Slovakia still lacks civil *ex parte* search procedures and there is doubt as to whether the amended Copyright Act provides protection for pre-existing works and sound recordings. Finally, border enforcement measures are needed to allow customs and border officials to seize pirated and

counterfeit goods. We urge Slovakia to provide adequate protection for confidential test data, introduce clear civil *ex parte* search procedures, and to increase the term for process patents to 20 years.

#### **TAJIKISTAN**

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

#### **THAILAND**

Despite the passage of significant intellectual property rights legislation, substantial improvements in the court system, and a good working relationship between foreign business entities and Thai enforcement authorities, copyright piracy rates continue to be high. Thailand's remaining two pieces of TRIPS-related legislation – a Trade Secrets Act and a Geographic Indications Act – were introduced into the legislature in 2000 but have yet to be passed. Thailand has also indicated it plans to address significant concerns regarding data protection. We remain concerned over the increasing in the illicit use of business software and rate of optical media piracy. In particular, we look to the new Thai Government to move draft optical media legislation forward that will enhance the authority and capabilities of the police to act against the unauthorized producers of optical media products.

#### **TURKEY**

In February 2001, the Turkish Parliament passed amendments to the Copyright Law designed to bring Turkey into compliance with its TRIPS obligations. The amendments enhance the protections under Turkey's copyright regime and add deterrent penalties and jail terms to improve the effectiveness of enforcement efforts. This represents a significant step forward in improving Turkey's intellectual property regime. However, more work must be done to take effective action against piracy – including growing optical media piracy – and counterfeiting. In fact, counterfeiting of trademarked apparel also remains a problem. With its legal system upgraded and deterrent penalties available, Turkey should focus its efforts on sustained and thorough enforcement of intellectual property laws. We also remain concerned about false licensing of banderoles under the copyright law.

#### **TURKMENISTAN**

Turkmenistan has several remaining steps to take to fulfill its intellectual property rights commitments under the 1993 U.S.-Turkmenistan Trade Agreement. Turkmenistan is still not a party to the Berne Convention or the Geneva Phonograms Convention. Thus, Turkmenistan is not providing any protection for U.S. and other foreign sound recordings, nor does it provide protection for pre-existing works or sound recordings under its copyright law. Criminal penalties for intellectual property rights violations have not yet been adopted as required by the 1993 Agreement, and the Customs Code does not provide the proper authority for government officials

to seize infringing material at the border, as is necessary to conduct effective border enforcement.

#### **UNITED ARAB EMIRATES**

The United Arab Emirates (UAE) was removed from the Watch List last year in recognition of its commitment to not provide marketing approval to unauthorized copies of patented pharmaceutical products. However, the UAE subsequently granted marketing approval for a number of unauthorized copies of patented pharmaceuticals. As a result, the U.S. Government conducted a Special 301 out-of-cycle review in December 2000 to examine the adequacy and effectiveness of intellectual property protection in the UAE. In light of assurances from the Government of the UAE that it would reverse any marketing approvals for unauthorized copies of patented products and prevent any further such registrations, the UAE was not listed in the out-of-cycle review. However, to date the UAE had not reversed any of the relevant marketing approvals. Thus, the UAE is now being placed on the Watch List. We will continue to monitor the UAE's fulfillment of its commitments and look to the UAE to resolve concerns regarding marketing approvals for unauthorized copies of patented U.S. pharmaceutical products. The United States would look favorably on a rapid and satisfactory resolution to this problem.

#### **UZBEKISTAN**

Uzbekistan has several remaining steps to take to fulfill its intellectual property commitments under the 1994 U.S.-Uzbekistan Trade Agreement. Specifically, Uzbekistan is not yet a party to the Berne Convention or the Geneva Phonograms Convention. Thus, Uzbekistan does not provide any protection or rights to U.S. and other foreign sound recordings, nor does it clearly provide protection for pre-existing works or sound recordings under its copyright law. In addition, there is weak enforcement of intellectual property rights in Uzbekistan.

#### **VENEZUELA**

Venezuela continues to present a mixed record of success with respect to its protection of intellectual property rights, although in some respects it is gradually moving in the right direction. The Venezuelan trademark office (SAPI) and the anti-piracy command of the judicial police (COMANPI) continue to make positive efforts, but operate under severe personnel and resource constraints, which have significantly hampered their effectiveness. Delays in the judicial system have also presented a significant hurdle in efforts against copyright piracy. Venezuela's enforcement of copyright laws is severely lacking, and as a result there is little deterrence. Only a few government agencies have legalized their software and no negotiations are underway to legalize the rest. Although overall piracy levels have declined slightly, there is still much room for improvement. With regard to patents, Andean Community Decision 486 has brought the country closer to TRIPS compliance, although the Decision apparently fail to protect confidential test data adequately and omits protection for second-use patents.

#### **VIETNAM**

Piracy rates for all forms of intellectual property, in particular copyright, remain very high in Vietnam. Vietnam has pledged to improve this situation, most importantly by agreeing to provide comprehensive intellectual property protection consistent with international standards in the U.S.-Vietnam bilateral trade agreement, concluded in July 2000. The agreement needs to be approved by the legislatures of both countries in order for it to enter into force. Vietnam's efforts



to modernize its legal regime for all forms of intellectual property represent an important step forward. Effective implementation and enforcement of new laws and regulations will be critical for reducing the pervasive piracy that now exists.

### **Developments in Intellectual Property Rights**

#### **2000**

##### **May**

- Croatia passed legislation to ratify the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.
- Estonia became a party to the Geneva Phonograms Convention, effective May 28<sup>th</sup>.
- Russia's "Rules for Recognizing a Trademark as a Well-Known Trademark in the Russian Federation" was registered with its Ministry of Justice.
- Nicaragua became a party to the Geneva Phonograms Convention.

##### **June**

- China's State Council issued Document No. 18 on June 27, which makes clear that no entity (public or private) may make unauthorized use of software.
- On June 14, Georgia became a Member of the WTO and obligated itself on that date to fully comply with the TRIPS Agreement.
- Poland amended its Copyright Law to provide copyright protection for pre-1974 sound recordings.
- On June 16, Hong Kong published proposed amendments to its Trademarks Ordinance. The new law should provide enhanced protection for well-known trademarks.
- Nicaragua joins the Berne Convention for the Protection of Literary and Artistic Works.

##### **July**

- The United States and Vietnam signed a landmark bilateral trade agreement, which included provisions on comprehensive intellectual property protection.
- Korea implemented a revised copyright law.

- Belarus's new criminal code went into effect on July 1, 2000.
- Moldova became a member of the Geneva Phonograms Convention.
- Qatar joined the Berne Convention for the Protection of Literary and Artistic Works on July 5.

### **August**

- On August 17, the Australian parliament took final action on the Copyright Amendment (Digital Agenda) Bill 1999, designed to implement Australia's obligations under the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.
- Venezuela introduced bills to ratify the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty on August 21.
- Bhutan and Greece became parties to the Madrid Protocol, effective August 4 and 10, respectively.

### **September**

- Guatemala passed new patent, copyright and trademark legislation designed to meet TRIPS requirements.
- Italy's anti-piracy legislation with TRIPS-consistent penalties became effective.
- Albania acceded to the WTO, and as part of this process, Albania revised its intellectual property laws to comply with the provisions of the TRIPS Agreement.
- Malaysia's Optical Disc Act 2000 became effective September 15. It gives the Government of Malaysia greater enforcement powers and allows for stiffer penalties (including jail time) for the production and export of pirated optical media.
- The "Joint Recommendation Concerning Trademark Licenses" was adopted by the 35<sup>th</sup> Session of the WIPO General Assembly and the Assembly of the Paris Union during the September 25 - October 3, 2000 meeting in Geneva.
- Sudan joins the Berne Convention for the Protection of Literary and Artistic Works.

### **October**

- China's Vice Premier Wu Bangguo initiated a campaign against counterfeiting to be implemented at the national, provincial and municipal levels.
- Argentina began to issue pharmaceutical patents, for the first time, on October 24.

- Dominican Republic adopted a new copyright law designed to meet TRIPS requirements.
- In a bilateral exchange of letters following consultations, the Bahamas committed to amend its Copyright Act and regulations to narrow the scope of its compulsory licensing regime in accordance with its international obligations.
- Armenia's accession to the Berne Convention for the Protection of Literary and Artistic Works became effective on October 19.
- Jordan signed a Free Trade Agreement with the United States, which builds on Jordan's implementation of the TRIPS Agreement.
- Armenia became a party to the Madrid Protocol, effective October 19.
- Singapore became a party to the Madrid Protocol, effective October 31.

#### **November**

- China's State Council approved a new draft copyright law designed to meet TRIPS requirements on November 22. It has been transmitted to the National People's Congress for its review.
- Ireland adopted new copyright legislation that provides deterrent penalties in accordance with the TRIPS Agreement. As a result of this legislation, Ireland and the United States notified the WTO that a mutually satisfactory solution to their copyright case has been reached.
- Oman acceded to the WTO, and as part of this process, Oman revised its intellectual property laws to comply with the provisions of the TRIPS Agreement.
- Croatia acceded to the WTO, and as part of this process, Croatia revised its intellectual property laws to comply with the provisions of the TRIPS Agreement.
- Colombia joins the Patent Cooperation Treaty.

#### **December**

- China's Supreme People's Court issued its "Interpretation of Laws on Solving Online Copyright Dispute," which became effective December 20<sup>th</sup>. The interpretations are designed to protect the on-line environment from rampant piracy.
- Andean Community Decision 486, designed to meet TRIPS requirements related to patents and protection of test data, took effect on December 1.

- As an aid in anti-piracy efforts, Macau's Economic Services agency signed a contract for implementation of Source Identification (SID) codes to be embossed on all optical discs produced in Macau.
- Korea passed revisions to its Computer Programs Protection Act.
- The Czech Republic's new Copyright Law went into effect on December 1.
- Ukraine became a party to the Madrid Protocol, effective December 29.

## **2001**

### **January**

- Indonesia passed legislation on the protection of plant varieties, trade secrets, industrial design and the lay-out of integrated circuits, which are designed to comply with TRIPS requirements.
- Korea passed amendments to the patent, trademark and utility model laws, which increased monetary penalties for infringement cases.
- Lithuania's new Law on Trade and Service Marks took effect on January 1, and is designed to provide better protection for well-known marks.
- Armenia amended its Customs Code, effective on January 1, to provide the proper authority to seize infringing material at the border as required by the TRIPS Agreement.
- Peru established CONTRACOPIA, a public-private commission to address counterfeiting and piracy.
- Panama's Executive Decree directing government agencies to ensure legitimate use of software became effective January 1.
- St. Lucia becomes a party to the Geneva Phonograms Convention.

### **February**

- Argentina's accession to the Paris text of the Berne Convention for Literary and Artistic Works became effective February 19.
- Peru created a new office of specialized intellectual property rights prosecutors.
- The Czech Republic approved the drafting of a decree requiring all government entities to use only legitimate software.

- Georgia adopted a new Criminal Code, which came into force on February 15<sup>th</sup> and which provides for criminal penalties for copyright and neighboring right violations.
- Kyrgyz Republic adopted a new Criminal Code, which came into force on February 15<sup>th</sup> and which provides for criminal penalties for copyright and neighboring right violations.
- Turkey passed amendments to its Copyright Law, which is designed to bring Turkey into compliance with the TRIPS Agreement.
- Ecuador acceded to the Patent Cooperation Treaty.
- President Kim of Korea issued public orders to the Ministries of Information and Communications and the Ministry of Justice to strengthen their copyright enforcement efforts.

### **March**

- Brazil established an interagency intellectual property rights committee, coordinated by the Ministry of Justice, to improve anti-piracy enforcement.
- The United States, Greece and the European Union notified the WTO Dispute Settlement Body that a mutually satisfactory solution to their copyright enforcement case had been reached.
- On March 16, Mongolia notified its ratification of the Madrid Protocol, which will come into effect for Mongolia on June 16.
- On March 28, the Danish Parliament passed a bill that was signed into law to make available *ex parte* search remedies in intellectual property enforcement actions. As a result of this legislation, Denmark and the United States intend to notify the WTO that a mutually satisfactory solution has been reached in this case on this matter.
- Nepal joins the Paris Convention.

### **April**

- Hong Kong's amendments to its Copyright Ordinance, clarifying that end-user software piracy is a criminal offense, became effective April 1.
- The European Union's Council of Ministers approved amendments to the Copyright Directive on April 9. The Copyright Directive should provide significant legal protection for technological measures and spur development of the Information Society.
- Slovenia approved legislation enacting data exclusivity protection.

## **WIPO Copyright Treaty and Performances and Phonograms Treaty**

The following countries deposited their instruments of accession to the World Intellectual Property Organization (WIPO) Copyright and Performances and Phonograms Treaties (WCT and WPPT) during the May 2000 - April 2001 timeframe:

Bulgaria  
Colombia  
Costa Rica  
Chile  
Croatia  
Ecuador  
Mexico (deposited WCT; WPPT deposited in 1999)  
Paraguay  
Romania  
Japan (deposited only the WCT)

The current number of countries that have deposited their instruments of accession with WIPO is: WCT- 24; WPPT- 22. Thirty countries are needed to put each treaty into effect.