

Appendix C

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C.—FACT SHEET, “SPECIAL 301” ON INTELLECTUAL
PROPERTY

United States Trade Representative (USTR) Carla A. Hills announced today the action the Administration will take pursuant to the so-called “Special 301” intellectual property provisions of the Omnibus Trade and Competitiveness Act of 1988. Those provisions call for the development of an overall strategy to ensure adequate and effective protection of intellectual property rights.

The Special 301 authority was designed to enhance the Administration’s ability to negotiate improvements in foreign intellectual property regimes through bilateral and/or multilateral initiatives. Specifically, the statute requires the USTR to identify those foreign countries denying protection of intellectual property rights and market access to U.S. firms relying on such protection, and to determine which of those countries are “priority countries,” triggering an accelerated six month investigation. However, where countries are entering into or making significant progress in, good faith negotiations, the USTR is precluded by the statute from identifying them as priority countries.

Because of significant progress made in various negotiations, the Administration has identified no “priority countries” under Special 301. Rather, the Administration has singled out 25 countries whose practices deserve special attention; 17 of those countries will be placed on a *Watch List*, while the remaining 8 trading partners will be placed on a *Priority Watch List*:

Brazil
Republic of Korea
India
Saudi Arabia
Mexico
Taiwan
People’s Republic of China Thailand
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Actions plans for resolving outstanding issues have been developed for each of the eight trading partners on the Priority Watch List; their status under Special 301 will again be reviewed no later than November 1, 1989.

The decision follows close consultations with key sectors of the U.S. business community that have been victimized by inadequate foreign intellectual property protection. They support this decision.

The announced action underscores the Congressional finding that international protection of intellectual property rights is vital to U.S. competitiveness. The denial of such protection is not only harmful to the economic interests of the United States, it undermines the creativity, invention and investment that are essential to economic and technological growth in all countries.

The Administration's plan reflects an understanding that countries may be at different stages in recognizing the importance of adequate and effective intellectual property protection. The economic interests of the United States also require it to attach greater priority to certain foreign markets. Many countries have already made progress as a result of bilateral negotiations and consultations. Others may be at an earlier stage of entering into negotiations. Nevertheless, expeditious improvements will be sought from all countries.

Legal Determinations and Other Decisions by the USTR Under Special 301

The USTR, with the advice of the interagency Trade Policy Staff Committee, the Patent and Trademark Office, and the Copyright Office, reviewed the intellectual property regimes of, and market access provided by, U.S. trading partners.

As a result of this extensive review, the USTR concluded that no foreign country currently meets every standard for adequate and effective intellectual property protection as set forth in the U.S. proposal on intellectual property tabled in the Uruguay Round.

Thus the USTR has determined that all countries are eligible for potential priority designation based on the standards of the U.S. Uruguay Round proposal, because all countries "deny adequate and effective protection of intellectual property rights" within the meaning of the statute.

Practices of particular concern have been communicated to each trading partner. Many of those practices were enumerated in the National Trade Estimate Report.

The USTR further decided to establish a *Watch List* and a *Priority Watch List* of trading partners identified for further attention or scrutiny and action.

Watch List

The USTR decided that of all our trading partners, 17 countries should be placed on a Watch List for special attention (rather than

be otherwise identified) because they maintain intellectual property-related practices or barriers to market access that are of particular concern.

Over the next year the United States will step up its efforts with these 17 Watch List countries to resolve problems associated with inadequate intellectual property protection or barriers to market access.

Countries on the Watch List include:

Argentina
Indonesia
Portugal
Canada
Italy
Spain
Chile
Japan
Turkey
Colombia
Malaysia
Venezuela
Egypt
Pakistan
Yugoslavia
Greece
Philippines

Priority Watch List

Beyond the 17 countries on the Watch List, the USTR determined that the following eight trading partners maintain acts, policies, or practices that satisfy some or all of the statutory criteria for priority country identification. However, because they have made progress in recent bilateral or multilateral negotiations, they will not be identified as priority countries under the statute at this time:

Brazil
Republic of Korea
India
Saudi Arabia
Mexico
Thailand
People's Republic of China

These eight trading partners have been placed on a Priority Watch List. Accelerated action plans for resolving any outstanding issues

will be pursued with each of them over the next 150 days. Those plans are attached.

The status of each of these eight trading partners under Special 301 will again be reviewed by no later than November 1, 1989, taking into account the extent to which the objectives of the accelerated action plans have been achieved.

Recent Progress on Intellectual Property Matters

In the course of carrying out the review under Special 301, the USTR noted that extensive U.S. efforts in recent years to obtain strengthened intellectual property protection around the world for relevant U.S. products had contributed to substantial gains in a number of countries. The USTR also noted that the focus of these intellectual property efforts in trade negotiations coincided with the inclusion of provisions on intellectual property in various U.S. trade statutes. This statutory development began almost a decade ago with an amendment to section 301 in Senator Danforth's reciprocity bill which was enacted as part of the Trade and Tariff Act of 1984. The Omnibus Trade and Competitiveness Act of 1988's Special 301 provisions continued this Congressional priority, and its implementation has contributed positively to U.S. efforts to ensure adequate and effective intellectual property protection.

Some of these recent examples of strengthened intellectual property protection include:

1989

The People's Republic of China commits to provide copyright protection for computer software (May)

Colombia resolves royalty remission problem concerning motion pictures (May)

Taiwan agrees to expeditiously resolve copyright problems concerning motion pictures (May)

Saudi Arabia adopts a patent law (May)

Bilateral Agreement on Copyright signed with Indonesia (April)

Positive Uruguay Round mid-term review decision on intellectual property (April)

Agreement reached to establish bilateral copyright relations with Taiwan (January)

Chile submits proposed patent law amendments, including product patent protection for pharmaceuticals

Indonesia submits a patent law, including product protection for pharmaceuticals

1988

Republic of Korea establishes intellectual property enforcement task force
 Japan patent office introduces accelerated examination and appeal procedure
 Patent secrecy agreement with Japan
 Intellectual property annexes to Science and Technology agreements with Japan, the Soviet Union and Poland
 Brazil extends copyright protection to computer software
 Canada improves copyright law, enhancing penalties

1987

Republic of Korea upgrades patent law, revises its copyright laws, passes computer program protection act, and accedes to Universal Copyright Convention and Geneva Phonograms Convention
 Indonesia adopts copyright law
 Malaysia strengthens its copyright law
 Turkey adopts new law to control piracy of video and audio cassettes
 Mexico upgrades patent and trademark laws, including dropping trademark linking
 Singapore and U.S. establish bilateral copyright relations

1986

Intellectual property included on Uruguay Round negotiating agenda at Punta del Este Ministerial
 Taiwan adopts new patent law
 Singapore adopts new copyright law
 Malaysia adopts new patent law

1985

Taiwan revises copyright and trademark laws
 Japan provides protection for computer software under copyright

Accelerated Action Plans for Countries on the Priority Watch List Under Special 301

Each trading partner on the Priority Watch List will be reviewed again no later than November 1, 1989 to determine whether it should be identified as a priority country under section 182(a)(2) of the Trade Act of 1974, as amended.

A country may be designated as a priority country at any time during the period and section 301 action initiated if statutory criteria are met, (e.g., if the country is no longer engaged in good faith negotiations or no longer making satisfactory progress).

A trading partner may be removed from the Priority Watch List at any time if U.S. objectives are accomplished.

The assessment of each trading partner over the 150-day period will be based, *inter alia*, on satisfactory progress and results in the following areas, taking into account the U.S. proposals on intellectual property in the Uruguay Round.