

OFFICE OF
THE UNITED STATES TRADE REPRESENTATIVE

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GSP 1999 ANNUAL REVIEW

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IPR COUNTRY PRACTICE CASES

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PUBLIC HEARING

FRIDAY

MAY 12, 2000

The Public Hearing was held in the Truman Room in the White House Conference Center, 726 Jackson Place, N.W., Washington, D.C., at 10:00 a.m., John Rosenbaum, Chairman, presiding.

PRESENT:

John Rosenbaum, Chairman
Robert Baker, Department of Treasury
Claude Burcky, USTR
Donna DiPaolo, USTR
Rachel Goslins, U.S. Copyright Office
Katrin Kuhlman, USTR
Deborah Lashley, Department of Commerce
Maureen Pettis, Department of Labor
Diana Wanamaker, Department of Agriculture

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P-R-O-C-E-E-D-I-N-G-S

10:01 a.m.

CHAIRMAN ROSENBAUM: Good morning, ladies and gentlemen. We have a rather full schedule today so we are going to start promptly. I'm John Rosenbaum, Assistant U.S. Trade Representative for Trade and Development. We have with us on the side of the table this morning representatives from various agencies. I think I'll let them introduce themselves.

We have to my right Claude Burcky who is the Deputy Assistant USTR for Property Rights. We're glad to have him here this morning since ask some questions that I'm sure are much more knowledgeable and penetrating than the ones I can ask.

MS. DIPALO: Donna DiPaolo, Director for the Intellectual Property at USTR.

MS. LASHLEY: Deborah Lashley, Trade Compliance Center, Department of Commerce.

MR. BAKER: Robert Baker from Treasury.

MS. WANAMAKER: Diana Wanamaker from the Agriculture Department.

MS. PETTIS: Maureen Pettis from the

1 Department of Labor.

2 CHAIRMAN ROSENBAUM: This is the 1999
3 Country Practice Case Hearings. We were delayed in
4 having these hearings, first because of the GSP
5 program. It was without authorization for about a
6 five-month period from June until December of 1999.

7 Second, because we lost our hearing room
8 place. I know for some of you, you've had a change of
9 plans from time to time. I'm apologizing for that but
10 it's really beyond our control.

11 Well, we'll start right away with Eric
12 Schwartz, Counsel for the International Intellectual
13 Property Alliance.

14 MR. SCHWARTZ: Thank you. My name, for the
15 record, is Eric Schwartz and I'm Counsel to the
16 International Intellectual Property Alliance. Thank
17 you very much for allowing me to speak this morning,
18 mid-morning and this afternoon on a number of
19 petitions.

20 I'm going to use just a minute or two of my
21 time to make some introductory remarks that pertain to
22 the petitions, not only of Armenia but also

1 Kazakhastan, Moldova, Ukraine, and Uzbekistan because
2 a lot of what we have included in our petition and a
3 lot of the deficiencies that exist in the countries
4 are, if not similar, very similar or identical. They
5 are based on similar standards based on a bilateral
6 agreement which is identical in all of the countries.

7 Just for the record, the International
8 Electoral Property Alliance is an alliance of seven
9 associations consisting of the major copyright
10 producers and book publishers, motion picture
11 industry, record industry, software industry, the
12 computer industry including business software and
13 entertainment software and the music publishers and
14 book publishers.

15 My own experience in this area may also be
16 pertinent to some of the things I'm going to say
17 because, in particular, we're talking in these
18 countries about deficiencies with the Bilateral
19 Agreement that I have a lot of familiarity with
20 because at the time the bilaterals were signed, I was
21 in the U.S. Government in the U.S. Copyright Office
22 and I was the negotiator of the Bilateral Agreement

1 with the countries for whom we are filing these
2 petitions.

3 I know the particulars of the obligations
4 and also the time tables that the countries agree to
5 comply with the Bilateral Agreement. By any measure
6 the five countries are not measuring up to the
7 obligations of the Bilateral Agreement either by not
8 providing adequate copyright protection in their
9 domestic law or in their enforcement provisions the
10 legal reforms necessary or, in all cases, falling down
11 on the enforcement side.

12 To summarize, the Bilateral Agreement has
13 seven obligations very quickly. They are in our
14 petition but I'll just mention them.

15 Joining the Berne Convention; protecting
16 sound recordings; protecting American sound recordings
17 by making best efforts to join the Geneva Phonograms
18 Convention; protecting computer programs and
19 databases; providing adequate and effective protection
20 and enforcement which is understood to include
21 deterrent civil criminal penalties as well as
22 effective boarder measures. The seventh was to

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1 establish working groups between the two countries.

2 I would like to think that having now taken
3 the long view of 11 years of working with these
4 countries that there are really three stages of
5 development, not necessarily sequential, in terms of
6 passing laws that include on the enforcement side
7 criminal penalties, adequate criminal procedures,
8 customs provisions, civil and administrative penalties
9 that are effective, and on the civil and criminal
10 side, ex parte search procedures.

11 Secondly, that the countries join the
12 relevant treaties; Berne, Geneva Phonograms, TRIPS
13 Agreement, and now with the problems of Internet
14 piracy and digital piracy the new digital treaties,
15 the WIPO. Then, as I said, last the enforcement which
16 has to be actual working enforcement to provide
17 adequate and effective protection and simply suggest
18 that countries can have very good black letter law and
19 have no on the ground enforcement as to really have no
20 meaning to the standards for GSP or for any other
21 purpose to have adequate and effective protection.

22 That includes the ability and the actual

1 raids, seizures, prosecutorial actions, and to turn
2 penalties imposed. This is especially a problem
3 because in this region optical media piracy when we
4 talk in particular about Ukraine is something that is
5 growing at an expedient rate in the region as a
6 result of organized criminal activity and it is a
7 runaway problem that for several years we have been
8 trying to get the countries to focus attention on and
9 now it has grown to this size problem.

10 It is a result of the ineffective
11 enforcement and the poor legal structure that makes
12 these countries so ripe for this type of large scale
13 commercial optical media and other piracy.

14 Let me turn to Armenia with my remaining
15 seven minutes. By any standard Armenia is not living
16 up to any of the stages that I suggested. Though they
17 obligated themselves in a Bilateral Agreement that
18 went into force on April 7, 1992, over eight years
19 ago, to do the following, and I mentioned the seven
20 obligations in the Bilateral Agreement, they have
21 neither joined the Berne Convention. Have not joined
22 Geneva Phonograms Convention. They do not have a

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1 TRIPS compatible law. They have no enforcement to
2 speak of.

3 In essence, not joining the Berne or Geneva
4 Phonograms Convention means that there is no point of
5 attachment for the protection of works or sound
6 recordings, American works or sound recordings of any
7 kind. Nor is there clear protection even under their
8 law when they join preexisting works, so-called
9 retroactive protection both for works or sound
10 recordings.

11 As I said, there's no enforcement to speak
12 of, though the criminal code provisions look to be
13 adequate. There is no police authority to commence
14 their own raids, so-called ex officio authority, none
15 by customs officials to do the same. We know of no
16 convictions under the criminal code and, therefore, no
17 meaningful police or prosecutorial activity, but how
18 could there be because American works aren't even
19 protected in the country.

20 That is according, by the way, to the
21 Copyright Office's Circular 38A. I have just sort of
22 a minor quibble on that and think that, in fact,

1 Armenia because they signed the Bilateral Agreement
2 is, in fact, a member of the Universal Copyright
3 Convention as a successor state to the Soviet Union's
4 membership effective May 27, 1973.

5 That's not indicated in the Copyright
6 Office's circular which identifies countries that are
7 members through international agreements and the
8 Copyright Office gets its information from the U.S.
9 State Department's treaty in force. It's neither here
10 nor there. they clearly are not protecting sound
11 recordings even if they are UCC members.

12 Also one of the Bilateral Agreement
13 obligations in the discussions that the U.S.
14 Government had with these countries was that they were
15 supposed to send a letter to UNESCO informing them
16 that, in fact, they were a successor to the Universal
17 Copyright Convention since UNESCO and not the WIPO is
18 the secretariat of that international treaty and
19 Armenia did not do that.

20 That in summary are our concerns with
21 Armenia and it had been several years of trying to get
22 them to enact better laws. What we do know is that in

1 December of this year they did pass another law. Our
2 attempts to get copies of it both through the
3 government of Armenia and the U.S. Government have so
4 far been unsuccessful.

5 Our information is that the president of
6 Armenia signed it into force on January 12, 2000.
7 Based on the draft laws, we know it had some
8 improvements but it certainly doesn't have all the
9 improvements necessary to provide adequate and
10 effective protection and enforcement because it didn't
11 have enforcement provisions in it.

12 Until they joined the treaties, there is
13 still no applicability to American works or sound
14 recordings. As good a law as it may be, it's still
15 not providing the so-called point of attachment to be
16 applicable to American works or sound recordings.

17 I would be happy to answer any questions you
18 have on Armenia or the Bilateral Agreement.

19 CHAIRMAN ROSENBAUM: Let's restrict our
20 comments, if any, or questions to the Armenia case.
21 I note that the government of Armenia has chosen not
22 to participate this morning. I don't know if there is

1 anybody here representing the government of Armenia.

2 If there is, I would encourage Armenia to
3 participate in the future parts of this GSP review.
4 I think it would be in their interest to do so.
5 Otherwise, we're only going to have what you say, plus
6 our own knowledge.

7 MR. SCHWARTZ: We welcome their
8 participation as well and I think that has been part
9 of the frustration and the reasons frankly why we
10 filed these petitions, out of a sense of exasperation.
11 The last thing we want to do in these particular
12 countries is punish the developing economies. But the
13 sense that we have had is they do not pay attention to
14 the intellectual property requirements to the
15 Bilateral Agreement.

16 I know personally that I've gone to many
17 countries and raised the issues of the Bilateral
18 Agreement and have gotten blank stares or questions
19 from middle and high-level government officials who
20 say, "What Bilateral Agreement?" I think filing of
21 the petition was unfortunately necessary to get that
22 attention.

1 CHAIRMAN ROSENBAUM: Is there anyone here
2 from the Armenia government or the embassy? Anyone
3 have questions?

4 MR. BURCKY: Just to clarify. I think you
5 may have answered this in your last statement but I
6 take it your industry has done more than just come to
7 the United States Government and seek pressure to get
8 these countries to implement these agreements. Have
9 you actually worked with the governments themselves?

10 MR. SCHWARTZ: Yes. I mean, at every
11 opportunity we have made ourselves available both in
12 the countries or here in the United States when they
13 are visiting delegations. We meet regularly with
14 visiting delegations of copyright officials, trade
15 officials, private sector individuals trying to
16 establish collecting right societies in the countries.

17 What we want, as I said, is not to punish
18 countries by revoking GSP and hurting them on trade
19 but the opposite. We want them to develop their trade
20 with the United States and to improve their levels of
21 protection and enforcement. We've been trying to do
22 that.

1 We are happy to work with any of the
2 countries on technical matters that they have with
3 regard to the development of their laws, their
4 enforcement systems, and I, in particular, have been
5 involved in numerous training sessions with officials
6 on effective enforcement on the development of the
7 laws for eight, nine, 10 years with these countries.

8 CHAIRMAN ROSENBAUM: Have you been in
9 contact with the embassy here?

10 MR. SCHWARTZ: We did send a copy of our
11 petition to the embassy here. We asked them to send
12 a copy or a response to us and we did not get a
13 response in this particular country. Some of the
14 others I have had meetings with the embassies, but
15 we'll talk about that when we deal with those
16 petitions.

17 CHAIRMAN ROSENBAUM: Anything else? Okay.
18 We'll be seeing more of you today.

19 MR. SCHWARTZ: Yes. I'll clear the table.
20 Thank you very much.

21 CHAIRMAN ROSENBAUM: I might just say that
22 these reviews are very rarely end in the withdrawal of

1 GSP benefits but they do and have done in the past
2 when we find that we're not able to make any progress.
3 When we can't engage the other party, it becomes
4 difficult to show progress.

5 I would like to invite the representatives
6 of the Dominican Republic to the table. We have with
7 us the Ambassador for the Dominican Republic in
8 Washington, Roberto Saladin. We have the Under
9 Secretary, Ministry of Industry and Commerce, Angel
10 Cano. There are several other officials and I will
11 have the Ambassador introduce all of his colleagues.
12 I don't think I have all of the names.

13 AMBASSADOR SALADIN: To my right is the
14 District Attorney of Santo Domingo, Francisco
15 Dominguez Brito. To my right the Under Secretary of
16 Industry and Commerce, Angel Cano. Mr. Robert W.
17 Johnson, our lawyer. The Ambassador in Geneva, Dr.
18 Frederico Quayo. The Director of the Copyright Office
19 for the Dominican Republic, Pedro Feliz Montes of the
20 Secretary of Industry and Commerce. I, myself, the
21 Ambassador of the Dominican Republic.

22 CHAIRMAN ROSENBAUM: Welcome. We are happy

1 to have all of you. I must say your Ambassador in
2 Geneva, every time we have a problem with him, he
3 tells me I taught him all his tricks. Why don't you
4 proceed as you wish using your 15 minutes as you so
5 choose.

6 MR. JOHNSON: Thank you, John. I'm Robert
7 Johnson, for the record, for Johnson, Rogers and
8 Clifton. My law firm represents the government of the
9 Dominican Republic in this case. We are going to have
10 three witnesses to speak. I'm going to lead off to
11 discuss the framework of the case and several of my
12 observation. Ambassador Saladin is going to talk
13 about the recent developments in the country and the
14 protection of intellectual property rights. He is
15 also going to talk about his country's commitment to
16 meet its TRIPS obligations.

17 Under Secretary Cano, as the Ambassador
18 mentioned, is accompanied by the head of the National
19 Copyright Office and Director of the National Patent
20 Registry and the District Attorney from Santo Domingo.
21 Ambassador Quayó is here as an adviser on substantive
22 issues. We are going to have three people who speak.

1 The delegation will answer questions if you have
2 technical questions for them.

3 Frankly, I am glad to be here in this
4 proceeding to have the opportunity to correct some
5 misinformation, some disinformation, and lack of
6 information. I take this case seriously and, as the
7 government will testify, they do too.

8 This is actually for me the second time I
9 have been involved in an intellectual property case
10 defending the government of the Dominican Republic.
11 On the other hand, I have worked for our colleagues in
12 the motion picture business. My old law firm
13 represented Paramount Pictures and Columbia Pictures
14 and the Motion Picture Association in the recent past.
15 We also represented Simon and Schuster and some other
16 book publishers.

17 My current law firm represents a best
18 selling author whose work is currently being pirated
19 by the Chinese, the author of Forrest Gump, Winston
20 Groom. We are very sensitive to these issues.

21 I actually want to commend the IIPA for it's
22 constructive criticism in this case. I think they

1 have spurred the government of the Dominican Republic
2 and its private sector to a number of changes that we
3 want to inform the committee about since the petition
4 was filed almost a year ago.

5 Many of the criticisms in the petition were
6 warranted at that time but I do think since then many
7 have been addressed and we will continue to be engaged
8 with IIPA and other organizations to address any
9 lingering issues.

10 This case started because of copyright
11 issues, I want to point out. The Dominican copyright
12 law at the time the petition was filed in June of 1999
13 was clearly not TRIPS compliant. The Dominican
14 Republic's TRIPS obligations came into force on
15 January 1st of this year.

16 The enforcement, as IIPA claimed, was
17 somewhat spotty in areas. Now there have been major
18 improvements in both areas. Don't take my word for
19 this. I'm sure you won't. Look at what IIPA has said
20 in this case thus far, what they have said in their
21 special 301 filings, and what they will say today.

22 If they don't address this specifically,

1 please ask them. Please ask the U.S. Ambassador of
2 Santo Domingo. If you ask IIPA, you'll get an answer,
3 I'm sure, that is fair and based on the best
4 information they have. You're not going to get any
5 baseless or distorted criticism from IIPA. That's why
6 I'm personally looking forward to working with them on
7 the remaining issues.

8 With respect to enforcement, there have been
9 tremendous improvements in the Copyright Office and in
10 the District Attorney's Office in the last year and a
11 half or so. Once the enforcement witnesses talk, I
12 think you'll understand that if information as to
13 counterfeit or pirated materials is presented to them,
14 they are going to guarantee results as far as seizures
15 and destruction of such materials.

16 The District Attorney's Office twice has
17 conducted block by block, building by building
18 searches in the business district looking for licenses
19 to make sure that business software was licensed. I
20 don't think that has happened in Washington, D.C., or
21 anywhere in the United States where they check every
22 computer and see if you have a license for all the

1 computer programs on that computer. They checked over
2 a thousand business computers.

3 One of the problems that has arisen in
4 enforcement is, frankly, the difficulty in identifying
5 good and bad material, material that is pirated or
6 counterfeit. Sometimes it's hard to tell. Sometimes
7 it's obvious on its face.

8 We have asked IIPA to work with us on
9 information exchange to provide the enforcement
10 authorities with clear information so we can take the
11 proper steps.

12 As for resources, resources are in short
13 supply and they are always a problem in the law
14 enforcement business. The ball is already rolling for
15 the government of the Dominican Republic to ask the
16 U.S. Government and IIPA for assistance in these areas
17 just like the Dominican government did in the 1993,
18 1994 intellectual property case where we worked with
19 the Motion Picture Association to get equipment to
20 monitor cable transmissions. As a matter of fact, we
21 asked MPAA for so much assistance to help in this that
22 I think they got sick of us.

1 I would like to turn briefly to patent
2 issues. They were not part of the original complaint
3 but this seems to be where most of the heat is. As a
4 matter of fact, I met with Ambassador Monat in Santo
5 Domingo several weeks ago and he said where his main
6 concern is he thinks there has been a lot of progress
7 in enforcement and in the copyright issues.

8 The copyright law, I might add, there's a
9 new legislation that is pending in the Dominican
10 congress and IIPA has commended many parts of it.
11 There are still some areas that they want to see
12 improvement and we've actually had discussions with
13 them as recently as yesterday about what changes need
14 to be done to get the legislation shaped up.

15 As far as patents, there have been some
16 heated allegations about piracy in the Dominican
17 Republic of U.S. pharmaceutical patents. I think when
18 you examine the 1911 Dominican Patent Law, you'll find
19 that the Dominican Patent Office right now functions
20 merely to look at the formalities of an application.
21 They do not examine the patent application to see
22 whether or not -- they don't examine it like the

1 Patent Office does here.

2 What has happened is, in my opinion, the
3 U.S. pharmaceutical industry ignored the Dominican
4 Republic throughout the '80s and '90s as far as
5 registering patents in the Dominican Republic under
6 the Paris Convention. They have just recently started
7 doing it.

8 Some of these patents that are registered
9 were registered -- a lot of them were registered after
10 the one year time limit in the Paris Convention. The
11 Dominican government under the existing law doesn't
12 have the authority. They don't vouch for the patent
13 and they don't revoke a patent. They don't examine
14 it.

15 What happens if there is a dispute, somebody
16 will go into business and there will be a Dominican
17 patent holder that holds the Dominican patent based on
18 the U.S. patent. What he needs to do if he thinks
19 somebody is infringing his patent is file a lawsuit
20 and prove that his patent is valid in the lawsuit.

21 There have been claims that the bonding
22 requirements are onerous. I have to point out that

1 the new Patent Law has been approved by the Dominican
2 congress and it's at the Office of the President right
3 now being considered. The bonding requirements have
4 been eliminated.

5 I believe there will be accusations or
6 comments that the Dominican Patent Law is one of the
7 worst in the hemisphere. It may be unliked by the
8 U.S. patent industry because it provides for
9 compulsory licenses but it is TRIPS compliant. TRIPS
10 Article 31 especially provides for compulsory licenses
11 under certain circumstances and the Dominican Patent
12 Law has recently been amended to reflect those
13 additional requirements and conditions in Article 31.

14 Finally, the Dominican Republic takes its
15 TRIPS obligations seriously. I'm sure the United
16 States does, too. Especially, I hope, Article 67
17 which requires developed countries to provide
18 technical and financial assistance to developing
19 countries. I think this will be the basis for
20 assistance in the Dominican Republic and to helping
21 improve the patent regime and copyright regime.

22 Ambassador.

1 AMBASSADOR SALADIN: Thank you very much.
2 Good morning, Mr. Chairman, and members of the GSP
3 subcommittee. I'm Roberto Saladin, Ambassador of the
4 Dominican Republic to the United States. I appreciate
5 the opportunity to testify before the committee today.
6 I have prepared a written statement which I would like
7 to be made part of the public record.

8 In the interest of the time I will summarize
9 it and then ask my colleagues who have come here from
10 Santo Domingo to give a brief analysis regarding the
11 enforcement issues.

12 My purpose in being here today is two-fold.
13 First, to make this committee aware of the many steps
14 that the government of the Dominican Republic has
15 taken to protect intellectual property right in the
16 country and, in particular, to address those steps
17 that have been taken since the IIPA filed its petition
18 in June, 1999. Especially the important developments
19 that have occurred since the preceding brief was filed
20 on March 16.

21 Second, I am here to assure this committee
22 that my government is fully committed to protecting

1 intellectual property rights and to meeting our
2 international obligations. The Dominican Republic
3 will make every possible effort to ensure that the
4 intellectual property rights are respected and
5 enforced within its borders.

6 Furthermore, we intend to work with the GSP
7 subcommittee, IIPA, WIPO, and other organizations
8 including PhRMA and its counterparts in the Dominion
9 Republic if they are agreeable to give an absolution
10 that addresses the interest of all concerned in a fair
11 and agreeable manner.

12 The essence of the Dominican government's
13 position is that significant progress has been made in
14 recent years to protect intellectual property rights
15 in the country. Much progress has been made since
16 IIPA petition was filed in June 1999 and the Dominican
17 government is committed to making further progress in
18 modernizing its laws and its enforcement actions.

19 Moreover, the Dominican government is
20 continuing to take the necessary steps to ensure that
21 the intellectual property rights are protected in
22 practice. What we must keep in mind throughout this

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1 proceeding is that the Dominican Republic has
2 continued to make extremely favorable progress in the
3 area of IPR protections since the Motion Picture
4 Association of American withdrew a GSP petition in
5 September 1994.

6 Among the more important actions are the
7 following: 1995 investment law enacted. 1996 project
8 to overhaul ITR laws were started by the new
9 administration with President Fernandez Reyna. In
10 1997 the Dominican Republic acceded to the Berne
11 Convention enacting a modern telecommunication role
12 and the Paris working group compound set up in the
13 Ministry of Commerce and Industry.

14 In 1998 the IPR unit established by the
15 District Attorney of National District for enacted and
16 promised activities. Market order code package of a
17 new IPR was introduced in the Dominican congress.
18 1999 comprehensive IPR training intensified. National
19 Copyright Office reorganized and given larger budget
20 an additional responsibilities.

21 Interagency at the Paris commission created
22 a new IPR law passed by the Dominican senate. 2000

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1 Rurema Commission convened to revise conversion
2 aspects of the IPR bill pending. WIPO asked to review
3 pending IPR bill. IPR training and activities
4 increase, much of them with the support of the U.S.
5 embassy.

6 Dominican Republic joined WIPO as a full
7 member. Dominican Chamber of Deputies and Senate
8 passed the Patent Law as mentioned by our lawyer with
9 important revisions to make it TRIPS compatible. The
10 bill is under review by President Fernandez Reyna and
11 his staff at this very moment.

12 On the other side important U.S.
13 corporations as Microsoft and Oracle agreed to large
14 investment in the Dominican Republic based on their
15 confidence in the investment code and intellectual
16 property laws and the authorities willingness to carry
17 out activities if violations occur.

18 Those two agreements were signed very
19 recently during the visit of President Fernandez Reyna
20 to Sierra where he met Mr. Ballmer, CEO of Microsoft.
21 The agreement between Oracle and the Dominican
22 government was signed by the Technical Secretary of

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1 the Presidency.

2 Besides that, on August 1st the new
3 Cyberpark will be inaugurated by the present
4 government. We are aware of the importance of the
5 protection of the intellectual property rights because
6 a lot of direct investments of the west needs this
7 framework and once approved by the Chamber of Deputies
8 in the next weeks will be one of the most modern of
9 the whole Latin America.

10 Importantly, this development has taken
11 place since March 6 when the brief was submitted. The
12 patent law revision was passed first by the Dominican
13 senate on April 4, 2000. The copyright law is
14 pending, as I mentioned before, in the Chamber of
15 Deputies. As the copyright law revision is not as
16 controversial as the patent law, its passage through
17 the legislative process is suspected to be much more
18 smooth.

19 As our counsel mentioned earlier, the
20 Dominican government strongly believes that the patent
21 law bill is compliant with the TRIPS requirement as a
22 result of the amendment made by the Chamber of

1 Deputies.

2 As I told you previously, the Dominican
3 Republic has painstakingly enacted this copyright law
4 to increase the levels of protection and to make the
5 law compatible with TRIPS and other international
6 requirements. IPA has made comments on the features
7 of the legislation on several occasions.

8 The Dominican Republic currently has a more
9 independent, reliable, and expeditious judicial system
10 due to the recently created national magistrate
11 council and the election of a new supreme court of
12 justice in 1997. This is one of the most important
13 reforms in the present government in the Dominican
14 Republic.

15 The judicial system now has judges who are
16 elected and have clear public process free of
17 political influences as a whole. Additionally, the
18 creation of intellectual property unity, July 1998,
19 within the Santo Domingo's District Attorney's Office
20 with an increased budget will enable the Dominican
21 Republic to increase persecution of patent law
22 violators.

1 The Dominican government agencies involved
2 have taken action to improve compliance with the law
3 and attack piracy of the intellectual property rights.
4 To keep this in perspective, the judicial reform, as
5 I just mentioned, are part of reforms and organization
6 of government and economic structure in the Dominican
7 Republic. That has taken place over the past four
8 years.

9 The government intends to develop and
10 maintain a close working relationship with IIPA, to
11 stamp out piracy in all its manifestations and to take
12 other actions to protect intellectual property rights.
13 To accomplish this, the government is considering
14 suggesting joint action with IIPA to develop
15 educational problems, to develop enforcement mechanism
16 to request technical assistance and other elements of
17 the U.S. Government and from private organizations and
18 to share information.

19 The GSP and the CBI programs has been of
20 enormous benefit to the Dominican Republic as well as
21 to the United States. They have been crucial in
22 forming the economic development and social

1 advancement of the Dominican Republic. The allowed
2 the communication between experts and foreign exchange
3 nearly to diversify the economy and to reduce the
4 dependence on the traditional export items.

5 Our country's participation in the GSP and
6 CBI program has been of significant benefit to the
7 United States as well because many of the production
8 sharing arrangement that has been established between
9 the U.S. and the Dominican Republic.

10 We are, by the way, the largest users in the
11 textile and industry of raw materials of the U.S.
12 compared to the other Caribbean countries and the
13 Central American countries.

14 Our government wants to spread to the GSP
15 subcommittee its willingness to work with the U.S.
16 Government and the IIPA in a constructive manner to
17 develop solutions that address interests of all
18 concerned in a fair manner including harmonizing with
19 the TRIPS framework and inspecting for piracy of
20 protected material.

21 All of the reform and improvement that I
22 have mentioned here today and in my written statement

1 represent a guarantee for investors in the country
2 including those investing in the new revolutionary new
3 Cyberpark that will be inaugurated on August 1
4 sponsored and developed by the Dominican government.

5 What I have to say to inform you members of
6 the committee that a new Cyberpark sponsored by the
7 private sector in Largo Manna were the central
8 corporation in the U.S., they will be developing
9 another Cyberpark in the near future. That's why our
10 government is so much important to the question of the
11 protection of the intellectual property rights.

12 Thank you for your attention. I will now
13 let my colleagues speak about the government's
14 activities. Thank you again.

15 CHAIRMAN ROSENBAUM: Thank you, Ambassador.

16 AMBASSADOR SALADIN: I just pass you the
17 document for the record.

18 CHAIRMAN ROSENBAUM: Before we go on, my
19 primary role here is to see that the trains run on
20 time, as they say. We have a lot of people to testify
21 yet today and we only have today to do it. We've had
22 about a half-hour's presentation.

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1 We're trying to restrict these to 15 minutes
2 so I would prefer at this point to ask my colleagues
3 if they have any questions of you and your colleagues.
4 I know you've come all the way up from the Dominican
5 Republic so I frankly granted an additional 15 minutes
6 but I think if we continue this way, it's not going to
7 be fair to the other speakers.

8 MR. JOHNSON: John, may I say one thing?
9 Thank you very much. We were intending to submit a
10 detailed report on enforcement anyway on the
11 activities. We'll do it in a written form if that
12 would speed things up.

13 CHAIRMAN ROSENBAUM: You have a question?

14 MR. BURCKY: Thanks, John. Actually, I
15 wanted to first of all thank you, especially you, Mr.
16 Ambassador, for coming today with such a full
17 delegation to address the concerns. I would say that
18 this discussion here and discussions we've had over
19 the past few days and before that have certainly
20 indicated to me your government's commitment to
21 implement the TRIPS Agreement fully. I appreciate
22 your statement that you are willing to work with all

1 stakeholders to achieve that.

2 We do have one technical question of
3 clarification this morning about the copyright law
4 which you indicated is on its way through the process
5 and hopefully will be passed shortly.

6 MS. DIPAOLO: Thank you. It really is just
7 a point of clarification, Mr. Ambassador, to make sure
8 that the subcommittee has full and accurate
9 information regarding the copyright law that is, as I
10 understand, now before the chamber of deputies having
11 been passed by the senate.

12 The copy of the law that we have looked at
13 that I understand to be the current version for the
14 Chamber of Deputies seems to be dated September 14 of
15 1999. That date stamp is on, I believe, every page of
16 the document.

17 However, the written submission that Mr.
18 Johnson, I believe, made on March 16, 2000, indicated
19 to me that there were still amendments being made to
20 the text. I wondered if the text that we have dated
21 September '99, in fact, reflects amendments made after
22 that date.

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1 AMBASSADOR SALADIN: I will allow the Under
2 Secretary of Industry and Commerce and Dr. Pedro
3 Feliz, the Director of ONDA to answer this question.
4 Would you like to pass the question to Dr. Pedro
5 Feliz?

6 MR. FELIZ: (Speaks Spanish).

7 MR. ESPINEIRA: What he's saying is that
8 this is the version that was submitted to the senate
9 and the one you have is the one approved by the
10 senate. This is now under consideration in the
11 Chamber of Deputies. As far as we can tell, that is
12 the one that is going to be approved.

13 MS. DIPAOLO: But have amendments been made?
14 Are there amendments reflected in that text which have
15 been made since September?

16 MR. JOHNSON: We will get you an definitive
17 answer for the record.

18 AMBASSADOR SALADIN: Maybe I should
19 complement the answer of Pedro Feliz. You know, this
20 law was part of the other market code. Because of the
21 discussion in our national congress and because the
22 most difficult part of the law was the property law,

1 the congress focused their attention on this part of
2 the law that was the most difficult because they were
3 aware that there was a consensus on all the sectors
4 involved in the copyright law and there were no
5 objections from anybody.

6 In the drafting of the copyright law
7 participates not only the private sector of the
8 Dominican Republic, the government sector, but the
9 lawyers of the U.S. corporation that were present in
10 Santo Domingo. There was a very, very strong
11 consensus about this law. The amendments were made
12 mainly on the intellectual property law.

13 MR. JOHNSON: That doesn't mean any
14 amendments are foreclosed but we'll give you an answer
15 because IIPA has suggested additional amendments that
16 we think should be considered.

17 CHAIRMAN ROSENBAUM: Thank all of you for
18 coming. I'm sorry that we don't have more time.

19 AMBASSADOR SALADIN: For the record, Mr.
20 Chairman, we could deposit the declaration of the
21 Under Secretary of Industry and Commerce.

22 CHAIRMAN ROSENBAUM: Please.

1 AMBASSADOR SALADIN: Thank you very much.

2 CHAIRMAN ROSENBAUM: Thank you.

3 And now I want to invite to the table the
4 IIPA. We have Maria Strong who is the Vice President,
5 and Associate General Counsel Ricardo Dopico, the
6 Director of Latin Music, Recording Industry
7 Association of America, and Elizabeth Pearsall, Legal
8 Counsel for the Business Software Alliance in the
9 Dominican Republic. Welcome all.

10 MS. STRONG: Thank you to all the members of
11 the subcommittee. My name is Maria Strong and sitting
12 next to me, Elizabeth Pearsall representing the
13 Business Software Alliance, and Ricardo Dopico
14 representing the Recording Industry Association of
15 America.

16 I would like to say on behalf of all our
17 members we have been working for many years in the
18 Dominican Republic as a staff attorney representing
19 the IIPA. I coordinate with the U.S. Government here
20 in Washington and work with the embassy here in
21 Washington.

22 Our members, for example, the MPAA, the

1 BSARAA, and others, they are the ones who are in
2 charge of operational matters in the Dominican
3 Republic and as the actual copyright owners it is they
4 and their members who are regularly in Santo Domingo
5 and other cities taking action.

6 We appreciate the Ambassador and Mr.
7 Johnson's willingness to work with IIPA and our
8 members. I want to make it very clear to the
9 subcommittee and to the embassy officials that we have
10 a multi-layered level of companies and associations
11 and we can work both here and in Santo Domingo.

12 The Dominican Republic is no strange to the
13 GSP and CBI process having been here before in the
14 early '90s. I want to acknowledge the process that
15 has been made in the Dominican Republic with respect
16 to amendments in the copyright bill to the 1986
17 copyright law which, as we all know, is clearly
18 inadequate.

19 In fact, the government of the Dominican
20 Republic candidly acknowledges and appreciates the
21 comments, as mentioned earlier, our constructive
22 criticism of not only the current law but also the

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1 proposed law which we saw in the market order code two
2 years ago.

3 Based on the copyright law that we received
4 yesterday, the draft which passed on March 28, for the
5 record, not back in November, we have seen no
6 incorporation of our amendments in that bill so I
7 appreciate the subcommittee's question for
8 clarification.

9 Back in October the IIPA on behalf of its
10 members filed an 11 page document which addressed
11 certain refinements and issues we would like to see in
12 the proposed copyright bill. For the record, we
13 acknowledge that the pending bill is a vast
14 improvement over the 1986 law.

15 We do not oppose the efforts of the
16 Dominican Republic to pass this legislation. However,
17 it is critical for everyone to understand that the
18 amendments we propose, while not controversial, are
19 very important to our members and the development of
20 a very good copyright law in the Dominican Republic.

21 In order for the Cyberpark to succeed, the
22 amendments we propose, while very technical and very

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1 legal, will promote the development and distribution
2 of new kinds of copyrighted material on different
3 media throughout the Internet and through other means
4 of communication. I want to express our support for
5 the government's willingness to consider our
6 amendments.

7 While time is short in the Dominican
8 Republic before congress goes out and there are
9 elections, we do emphasize the importance of
10 consideration of our amendments as contained in our
11 October 1999 document.

12 We also appreciate the efforts taken on
13 enforcement recently after our petition was filed. I
14 would like to go through a couple of points, and I'm
15 sure my colleagues will as well, on our understanding
16 of both the pros and the cons in what has happened
17 over the last nine months or so.

18 Right now a snapshot version is this. The
19 copyright law is still pending. It has passed the
20 senate and is in the Chamber of Deputies. The changes
21 we have seen, as I just mentioned, our changes have
22 not been incorporated or reflected in the pending law.

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1 Right now there is no civil ex parte remedy
2 for copyright holders to take action in the Dominican
3 Republic should they choose so. Yes, the bill will
4 fix it but it is important to note that we need to see
5 how the remedies in these measures are actually
6 implemented by judges in the Dominican Republic and
7 that can't necessarily be evaluated by the strict
8 passage of a law.

9 Penalties in the current bill are much
10 improvement but, as of right now, there are very low
11 nondeterrent penalties under Dominican law. I'm sure
12 this frustrates Dominican police and prosecutors who
13 are hard at work to enforce the current inadequate law
14 only to at the end of the day see sentences being
15 nondeterrent.

16 Status today still remains the fact that the
17 cost of bonds remains very high for foreign right
18 holders to bring cases. The levels of piracy most
19 disturbingly continue to remain high in the Dominican
20 Republic.

21 I would also like to mention that there's
22 been much emphasis on the Dominican Republic's efforts

1 to meet TRIPS standards. As I'm sure the subcommittee
2 knows, the TRIPS standards are a floor. They are not
3 the ceiling. In the copyright reality we have higher
4 levels of obligations that are recognized around the
5 world as contained in the WIPO treaties and to much
6 extent that is where our comments are aimed at
7 improving the copyright law. I think it is in
8 everyone's interest, not only U.S. right holders, but
9 Dominican producers and performers and authors to
10 amend their law.

11 Finally, I would just like to say that the
12 Dominican Republic has been receiving these benefits
13 for 17 years with the CBI and 16 years with the GSP.
14 We've gone through this review before. What we are
15 asking for from you now is the continued review and
16 acceptance of our petition while these changes both
17 legislative and enforcement are being made.

18 I think there is progress being made and at
19 the end of the day we are looking for the tangible
20 results of the legislation and enforcement, everything
21 from raids through judicial determination.

22 I would like to pass the microphone to my

1 colleague from the BSA and then to RIAA, and at the
2 end I would like to reserve some time for myself to
3 bring you up to speed on developments in the motion
4 picture industry. Thank you.

5 CHAIRMAN ROSENBAUM: Let me just say that
6 this petition that you filed has been accepted. It's
7 under active review and this is part of the review.

8 MS. PEARSALL: Good morning. My name is
9 Elizabeth Pearsall and I'm here this morning
10 representing the Business Software Alliance. I would
11 certainly like to begin by echoing some of the things
12 that Maria brought to your attention in her remarks.
13 We have definitely seen some very encouraging signs
14 from the Dominican government of their commitment to
15 protecting intellectual property rights in that
16 country.

17 In particular, I would like to commend the
18 DA, Mr. Dominguez Brito, and his office. They have
19 made a consistent and concerted enforcement effort
20 really since last summer. We through our member
21 companies and through our local counsel in Santo
22 Domingo have had the opportunity to work very closely

1 with Mr. Dominguez Brito and we look forward to
2 continuing that in the future.

3 However, our members as software producers
4 we feel that we need to see a comprehensive and
5 sustained government commitment to intellectual
6 property protection. As I mentioned, the enforcement
7 efforts by Mr. Dominguez Brito and also by Mr. Pedro
8 Feliz have been very encouraging.

9 However, we also need to see legislative
10 improvements. We have been working with the Dominican
11 government in meetings both in Santo Domingo and here
12 in Washington on the work that they've been doing on
13 passing the new copyright bill. We are very
14 encouraged now that one version of that bill has
15 passed the senate and we are looking forward to
16 working with them to refine some of the provisions of
17 that bill as it goes through their lower house.

18 That is definitely a part of what the BSA
19 members are very interested in seeing. The executive
20 branch through their enforcement actions has been very
21 active and we look forward to being able to observe a
22 continued commitment on the part of the executive

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1 branch. Then also with the judicial branch we are
2 very hopeful that the copyright bill can be passed.

3 One of the very important provisions for the
4 members of our association in that copyright law has
5 to do with bonding requirements. As you all have
6 probably been made aware, in the past we've had very
7 serious problems with judges in the Dominican Republic
8 requiring extremely high bonds.

9 In one recent case just within the last few
10 months the bond that the judge required was 200
11 percent of our damages claim. To further compound
12 this problem, no insurers in the Dominican Republic
13 will issue this bond so basically all our members in
14 order to pursue these cases have to put up a cash bond
15 into the registry of the court for an unspecified
16 period of time that can extend into years. That has
17 certainly been a factor in our ability to pursue some
18 of these cases effectively. It's a factor in our
19 ability to protect the IP rights of our members in the
20 Dominican Republic.

21 Let me just briefly as a point of
22 clarification, also you heard from His Excellency the

1 Ambassador that Microsoft and other companies are
2 going to be participating in the Cyberpark project
3 that the Dominican Republic government is working on.
4 We are very excited about the Cyberpark project.

5 However, I would like to clarify for you
6 that it's my understanding based on assurances from
7 consultants working with the Dominican government that
8 all participants who do business in the Cyberpark will
9 be obligated to a higher level of IP protection than
10 what is provided in Dominican law. They will contract
11 with each other for higher TRIPS compliance and, even
12 beyond TRIPS, IP protections. If that information is
13 of interest to the subcommittee, I can certainly
14 provide you with more specific details on that in a
15 written submission. That's my understanding based on
16 assurances from the Dominican government's consultants
17 working on the Cyberpark project.

18 CHAIRMAN ROSENBAUM: I think we would be
19 interested in seeing that.

20 MS. PEARSALL: Absolutely. I'll be happy to
21 provide that. I'm available for questions or
22 otherwise I'll pass the microphone over to my

1 colleague, Mr. Dopico.

2 CHAIRMAN ROSENBAUM: You have a few minutes.

3 MR. DOPICO: I'll try to use them well.

4 I'll be as brief as possible. Good morning and thank
5 you for the opportunity to speak. My name is Ricardo
6 Dopico here on behalf of the Recording Industry
7 Association. The Recording Industry remains seriously
8 concerned by tolerably high levels of sound recording
9 piracy in the Dominican Republic. While the
10 government has communicated its intention to protect
11 sound recordings and we are hopeful that these
12 promises will be fulfilled.

13 While there have been a small number of
14 enforcement actions taken since the filing of the
15 IIPA's petition in the past year, these have had
16 little impact. A cassette piracy rate of 80 percent
17 cannot possibly constitute adequate and effective
18 protection.

19 In addition, surveys conducted as recently
20 as a month ago in the norther region of the country
21 revealed that our initial assessments of CD piracy
22 were probably a little low. If unchecked, the record

1 industry fears that the pirate CD market will overcome
2 or pass the legitimate CD market.

3 Enforcement is the recording industry's most
4 significant concern and we are hopeful the government
5 will fulfill its obligations under international and
6 bilateral treaties and agreements to provide for
7 vigorous enforcement than we have seen so far. The
8 RIAA wants to be part of this solution and is
9 committed to continue to render assistance both
10 through educational training and resources.

11 I would like to reiterate that while the
12 copyright bill presently before the Chamber is an
13 improvement over existing legislation, there are some
14 serious deficiencies which were pointed out not only
15 by the IIPA but separately by the U.S. recording
16 industry as well as the Latin American recording
17 industry through the IFPI Latin America back in
18 October and none of these amendments were reflected in
19 the bill that passed in the senate in March of this
20 year.

21 Despite the current lack of adequate and
22 effective protection, we remain hopeful that the

1 stated intent of the government to tackle sound
2 recording piracy will translate into a long-term
3 process to reduce music piracy to tolerable levels.
4 The RIAA wants to reiterate that we hope to work
5 closely with the current administration and with any
6 subsequent administration to ensure comprehensive
7 long-term programs.

8 CHAIRMAN ROSENBAUM: That's good. A fast
9 talker. Must be from New York.

10 MR. DOPICO: From Miami.

11 CHAIRMAN ROSENBAUM: From Miami.

12 MS. STRONG: I just have some final words on
13 behalf of the motion picture industry and specifically
14 the Motion Picture Association which has an anti-
15 piracy program in Santo Domingo and, as you well know,
16 was a previous petitioner in a GSP proceeding in this
17 country.

18 The biggest problems that these companies
19 face in the Dominican Republic are cable and MMDS
20 piracy as well as video piracy. There has been some
21 anti-piracy efforts on the cable issue late. Within
22 the last month we understand several ex officio raids

1 were taken on cable companies.

2 As I understand it, the MPAA has not yet
3 filed cable cases. They are attempting to work with
4 government authorities in efforts to meet with
5 broadcasting and cable companies in the DR and at last
6 report that has not met with any success.

7 On the video side, last summer ONDA and
8 their colleagues made several ex officio raids
9 resulting in the seizures of tens of thousands of
10 videos. Right now all seven of the motion picture
11 studios that comprise MPAA are in the theatrical and
12 the television market in the Dominican Republic. Four
13 out of the seven companies currently are in the video
14 market and the other three are considering market
15 entry.

16 Within recent weeks there has been a serious
17 problem which has developed in the Dominican Republic
18 and we are working with MPAA and will provide further
19 information and post-hearing briefs but let me
20 highlight it here.

21 Several video ~~cases~~ apparently have been
22 dismissed by a new requirement by ONDA and the

1 Ministry of Industry and Commerce because they are now
2 requiring that titles of films be registered with
3 ONDA. The gist of this is if the video titles -- the
4 film titles are not registered, then the government of
5 the Dominican Republic might issue a certificate to
6 importers of videos allowing them to bring in videos
7 from outside the country.

8 This obviously could cause a great market
9 disturbance in the sequential release of motion
10 pictures in the Dominican Republic. It may also
11 impact on the ability of the member companies to
12 pursue video piracy cases in the Dominican Republic.

13 As we understand it, this very recent change
14 in operating procedures is not the result of any
15 specific law or regulation but is under a letter that
16 we are in the efforts to get, a letter from ONDA to
17 the motion picture companies.

18 An MPAA representative has been in Santo
19 Domingo recently and has met with ONDA and other
20 officials to discuss this. As I said, we are working
21 with MPAA to get further details but this is a very
22 recent change that is of quite a lot of concern to the

1 motion picture companies. We are open for questions.

2 Thank you.

3 CHAIRMAN ROSENBAUM: Thank you. Let me just
4 say to our Dominican Colleagues, I hope that you can
5 resolve these motion picture problems because we did
6 have a successful conclusion of a previous case and we
7 would like that issue to not be clouded and I could
8 take credit once in a while for some accomplishments
9 in this program.

10 MR. BURCKY: Solving forever one problem.
11 Well, we look forward very much to your post-hearing
12 brief on that issue. I just wanted to clarify
13 something with respect to sound recording CD and
14 cassette piracy. Is this largely a problem of imports
15 from Asia being shipped or is there a large domestic
16 production problem in the Dominican Republic?

17 MR. DOPICO: With regard to cassette piracy,
18 it is purely a domestic problem. The blank cassettes
19 are imported from the exterior but the actual
20 production and distribution is purely domestic. With
21 regard to CD piracy, we have two forms. We have some
22 industrial piracy which is being imported from the

1 exterior, though we have a significant amount, if not
2 the majority of it, is in the form of CD recordable
3 piracy which, as you all may know, is a domestic issue
4 simply because the means of manufacture are very easy
5 and easy to hide.

6 MR. BURCKY: Thank you.

7 MS. DIPAOLO: I'd just like to get a little
8 bit of clarification on the status of the pending
9 copyright bill and then the amendments that have been
10 proposed there, too. I just wasn't clear when you
11 were discussing these amendments, are these amendments
12 that IPA has proposed and have not, to your knowledge
13 to date, been incorporated? Are these amendments that
14 in your view are necessary to make the bill TRIPS
15 compliant or are these things that U.S. industry would
16 like to see in a copyright law that would go above and
17 beyond the TRIPS minimum?

18 MS. STRONG: Yes, the IIPA provided comments
19 to both the U.S. Government and to our colleagues in
20 the Dominican Republic back in October of 1999. Those
21 comments were developed in reaction to the then
22 pending copyright provisions which were separated from

1 the market code bill.

2 As our public comments reflect, that bill
3 does seem to reflect most of the implementation with
4 respect to TRIPS requirements. The gist of our
5 amendments, however, does go beyond TRIPS and
6 addresses certain issues that are vital in a digital
7 world with respect to the IIPA treaties.

8 I would note, however, though there are
9 several provisions in the bill which do address TRIPS,
10 specifically Berne Convention issues. For example,
11 our translation and reproduction licenses that
12 continue to remain in the bill and which we think in
13 a TRIPS world are not necessary and that goes back to
14 a Berne issue.

15 We also find that there are overbroad
16 exceptions to protection which would violate Berne
17 Article 9, TRIPS Article 13. These are detailed in
18 our October court comments so with respect to the
19 primary TRIPS issues which we as a collect really care
20 about civil ex parte, something as significant as
21 that.

22 The bill does go a long way in improving the

1 1986 law so our comments do reflect a mix, but we do
2 believe that the significantly legal technical memis
3 we require with respect to implementation of higher
4 levels of protection are noncontroversial and are
5 necessary to create a kind of economy that can sponsor
6 something like a Cyberpark.

7 CHAIRMAN ROSENBAUM: Anyone else? Thank
8 you.

9 Next we will turn to the patent side of the
10 intellectual property rights and the concerns that
11 have been raised about the Dominican Republic. Let me
12 ask for the speakers on that who are Susan Kling
13 Finston of PhRMA, Dr. J. Anthony Inler of Merck, and
14 Juan Acavedo of Bristol-Myers.

15 Let me just say that this case was brought
16 by those concerned about intellectual property rights
17 and we know you have missed the deadline for filing so
18 we have decided to allow you to have your say. For
19 the record, the GSP case to be expanded or have a
20 separate case on patents will require you all to file
21 independently next time we have a petition which will
22 probably be soon.

1 MS. FINSTON: PhRMA has every intention of
2 meeting the June 1st deadline. We appreciate this
3 committee's agreement to allow us to speak and address
4 the patent concerns which we think are very serious
5 and we hope that they will be taken into consideration
6 with regard to the issue of the seriousness of the
7 Dominican Republic's commitment to promote protection
8 of all intellectual property because I think that goes
9 to the important issue of whether they really are
10 going to meet their TRIPS commitments which is a
11 requirement for being a beneficiary of GSP and CBI so
12 we appreciate the opportunity to be heard.

13 CHAIRMAN ROSENBAUM: Let me just say that
14 the deadline for the initial petitions will be put out
15 in the Federal Register notice and it will probably
16 not be June 1.

17 MS. FINSTON: Oh, it's not June 1? That's
18 great news.

19 CHAIRMAN ROSENBAUM: Since we've lost six
20 months of this year's review, we have to catch up a
21 little bit.

22 MS. FINSTON: It's very good news.

1 CHAIRMAN ROSENBAUM: It will be in the next
2 couple of months.

3 MS. FINSTON: Okay. Thank you.

4 Good morning. As Assistant Vice President
5 for Intellectual Property with the Pharmaceutical
6 Research and Manufacturers, I appreciate the
7 opportunity to be here today. Accompanying me is, as
8 you know, Dr. J. Anthony Inler, Director for Public
9 Policy, Merck and Company, Incorporated, and Mr. Juan
10 Acavedo, who has come from Puerto Rico to speak as
11 Vice President of Bristol-Myers Puerto Rico
12 Administration.

13 PhRMA represents nearly 100 of America's
14 leading research-based pharmaceutical and
15 biotechnology companies. In this year alone PhRMA
16 member companies plan to spend more than \$26 billion
17 to develop and bring to market new medications.
18 In 1999 PhRMA members introduced 40 new treatments.
19 It is strong patent protection that makes this
20 possible.

21 On March 9 we did write in support of IPA's
22 petition and we appreciate this opportunity to discuss

1 the damage to the research-based pharmaceutical
2 industry in the Dominican Republic. I would like to
3 clarify that there are PhRMA member companies with
4 registered patents in the Dominican Republic, patents
5 that have been intentionally registered in the DR for
6 products on the market in the DR that are being
7 infringed.

8 I think there was a statement to the effect
9 that that isn't the case. Although not all member
10 company's products are registered in the DR, there are
11 infringements currently taking place of products that
12 are registered in the DR and I agree that is an
13 important distinction to make.

14 Departing from my written statement to
15 address the current developments, and I also want to
16 convey our appreciation that when a Dominican witness
17 could not appear, you did allow, and are allowing, the
18 substitution of Dr. Inler in his place.

19 PhRMA does believe the industrial property
20 bill pending before President Fernandez fails to meet
21 the international standards contained in TRIPS, the
22 trade related aspects of intellectual property rights

1 under the WTO, and that it is not a question of a
2 PhRMA view that we don't like the bill that much.

3 Going to the issue both of technical
4 assistance and the impartial views of think tanks and
5 other IP rights holders, I would like to take issue
6 with the idea that this is a surprise or that there
7 hasn't been an opportunity for the Dominican Republic
8 to seek the benefit of advice.

9 It was mentioned in the Dominican Republic
10 presentation, for example, that WIPO advice was sought
11 and that they are aware of some views on the law from
12 that. John Marshall School of Law Professor Doris
13 Long who has since joined the Patent and Trademark
14 Office also has presented the Dominican Republic with
15 an extended criticism that goes along the exact same
16 lines as the PhRMA views in terms of TRIPS
17 inconsistencies.

18 There are local Dominican groups including,
19 and I will not be pronouncing this properly and I
20 apologize, Fendosian Institutional Adod E Agististio,
21 a think tank based on Santo Domingo that has also
22 provided the similar criticisms, the Association of

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1 Pharmaceutical Industries of Research and Development
2 EFED, the Association of Intellectual Property Rights,
3 ADOPE, the Office of Promotion of Foreign Investment,
4 Dominican Association of Free Trade Zones, the
5 National Council of Private Enterprises all oppose the
6 bill's passage.

7 I am sorry to bore you with this list. I
8 want to make it clear that PhRMA is not seeking a
9 dispute. American companies want to work productively
10 in the Dominican Republic and have a long history of
11 operations in the Dominican Republic. This is not a
12 PhRMA argument and this is not our trying to impose
13 higher standards on the Dominican Republic. We share
14 the concerns of many other organizations but this bill
15 does not meet TRIPS requirements.

16 PhRMA has asked President Fernandez to
17 reject the flawed legislation. We have absolutely no
18 assurance that he will veto the bill or direct there
19 be changes to be made to meet TRIPS requirements.

20 The current law contains provisions as bad
21 or worse than those in Argentine patent law. PhRMA
22 continues to believe that the Dominican Republic's

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1 draft industrial property bill is a tool for those who
2 are attempting to weaken the fabric of the WTO TRIPS
3 Agreement.

4 If the legislation is implemented with
5 impunity, the negative precedent will harm prospects
6 for effective patent protection in the region and the
7 larger developing world.

8 In addition, going to the issue of the
9 Dominican Republic's intention, they are currently in
10 violation of the TRIPS obligations under Article 39(3)
11 for protection of confidential data.

12 In spite of both domestic law and
13 international commitments, the Department of Health in
14 the DR continues to approve the import, export,
15 manufacturing, marketing, and/or sale of
16 pharmaceutical products which are unauthorized copies
17 of patented products which are registered in the
18 Dominican Republic.

19 In fact, four weeks after the WTO TRIPS
20 implementation deadline on January 28, 2000, the legal
21 counsel to the president of the Dominican Republic
22 issued a formal opinion authorizing the Secretary of

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1 Health to issue all health registration for
2 pharmaceutical products regardless of opposition by
3 patent holders.

4 That is why this is not a local issue for
5 the courts. We are not talking about the
6 unintentional infringement of a patent due to an error
7 in registration. We are talking about a systematic
8 policy at the highest levels of government to instruct
9 the Ministry of Health to continue a current policy of
10 registering for sale products which are known to
11 infringe by their direct reliance on confidential
12 protected data.

13 We submitted in our March supplement to the
14 IIPA petition examples of some of these
15 certifications. There is no question this is a direct
16 policy of the current government.

17 In fact, USTR already has found these
18 practices pose a threat to the protection of
19 intellectual property in the Dominican Republic. On
20 May 1, 2000, Ambassador Charlene Barshefsky, U.S.
21 Trade representative, noted in this year's special 301
22 release that the Dominican Republic may well face a

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1 WTO action later in this year because of serious
2 concerns about the adequacy and effectiveness of
3 protection for both copyrighted works and patented
4 products. In addition, the Dominican Republic was
5 included in the special 301 priority watch list.

6 Given the foregoing, PhRMA asks the GSP
7 committee to review the eligibility of the Dominican
8 Republic as a GSP beneficiary, as well as eligibility
9 for relevant expanded benefits under the Caribbean
10 based leadership and that these benefits be suspended
11 or withdrawn in whole or in part if the Dominican
12 Republic does not improve its record on both
13 protection of patented pharmaceutical products as well
14 as on protection with copyrighted works and we think
15 that is consistent with the statutes that authorize
16 these benefits.

17 Thank you very much. I would now like to
18 ask Dr. Inler to make some supplementary comments that
19 go further into the issues I've raised.

20 CHAIRMAN ROSENBAUM: Would you share your
21 microphone with him, please.

22 DR. INLER: Good morning. Mr. Chairman and

1 other members of the GSP committee, my name is Tony
2 Inler. I am the Director of Public Policy at Merck,
3 a research-based pharmaceutical company. I appreciate
4 this opportunity to contribute to the committee's 1999
5 Country Practices Review.

6 As you know, the objective of the
7 generalized system of preferences is to promote
8 economic growth and development by stimulating
9 exports. This unilateral trade program as more than
10 fulfilled its promise by allowing in 1998 duty free
11 entry into the United States more than 4,650 products
12 from 140 countries and territories.

13 Among the criteria for country eligibility
14 for this program is Section 502(c)(5) which states,
15 and I quote, "The extent to which such a country
16 provides adequate and effective protection of
17 intellectual property rights including patents,
18 copyrights, and trademarks."

19 It is my contention, and that of my
20 colleagues, that the Dominican Republic now falls, and
21 for the foreseeable future will continue to fall, well
22 short of that clearly stated standard.

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1 We further believe that the failure of the
2 Dominican Republic to honor it's international
3 obligations, specifically the trade related
4 intellectual property or TRIPS Agreement, has serious
5 repercussions for our commercial prospects both in the
6 Dominican Republic and markets in neighboring
7 Caribbean and Central American countries as well.

8 This is reflected in the Dominican
9 Republic's leadership role in the region in promoting
10 and actively participating in CARICOM and Caribbean
11 free trade agreements. The estimated value of this
12 larger pharmaceutical market is approximately \$1.8
13 billion.

14 Let me illustrate the problem with examples
15 from my company. As in many countries around the
16 world, we currently have patents on key products in
17 the Dominican Republic. Looking at six of these, the
18 situation is as follows. For Analapril, a major anti-
19 hypertensive, we have identified no fewer than 19
20 copies. Our patented product is not even the market
21 leader and, in fact, commands only 17 percent of a
22 nearly \$2 million market. Another anti-hypertensive,

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1 Vasoretic, has six copies and a 26 percent share of a
2 \$1 million market.

3 Our newer products in this therapeutic area,
4 Cozar and Hizar, are doing a little better. Four
5 copies and 42 percent of the market for the former and
6 one copy and 74 percent of a much smaller market for
7 the latter. Likewise our cholesterol lowering product
8 Zocor faces one copy, while Proscar competes against
9 two.

10 When you add up the sales of the original
11 products and the 33 copies of them, they are just over
12 \$3.7 million. The copy share is fully 72 percent of
13 that or \$2.675 million.

14 Needless to say, these figures are extremely
15 disappointing for an industry characterized by its
16 dependence on intellectual property protection. The
17 research-based pharmaceutical industry must have full
18 and complete enforcement of this protection to
19 continue to pursue the discovery of new compounds for
20 the benefits of millions of people around the world.

21 There's a great difference between the cost
22 of producing an original product and the cost of

1 producing copies. The estimated cost of producing an
2 original pharmaceutical product is more than \$500
3 million. It generally takes 10 to 12 years to bring
4 a new compound through three stages of clinical trials
5 and then to the market. Our industry needs time to
6 recover this substantial investment. Therefore, it is
7 essential to keep copies off the market and thus
8 ensure market exclusivity for the period granted by
9 the patent in accord with international agreements.

10 Patents protect the idea behind the
11 invention thus preventing others from exploiting the
12 original product. Data exclusivity protects the
13 valuable proprietary and confidential data required to
14 get marketing approval.

15 Our position is that regulatory authorities
16 should not accept or approve applications for
17 marketing approval of a similar drug until the data
18 exclusivity period referenced in TRIPS Article 39(3)
19 is over and should not grant marketing approval if an
20 intervening patent already exist.

21 I would like to close by quoting from an
22 issue brief published by the Alexis de Tocqueville

1 Institution. In thinking about the cost of the lack
2 of intellectual property protection, it states that
3 the real losers will be Dominican consumers. Foreign
4 companies that depend on patent protection such as the
5 pharmaceutical industry will be reluctant to invest in
6 the Dominican Republic or market new drugs there.

7 Local pharmaceutical companies will continue
8 to copy patented drugs and thus contribute little to
9 new research efforts, particularly those directed at
10 localized health concerns.

11 Again, I thank you for the chance to present
12 our views and urge you to take appropriate measures
13 including withdrawal of GSP benefits if the Dominican
14 Republic continues to refuse to meet the Section
15 502(c)(5) standard of adequate and effective
16 protection of intellectual property rights.

17 CHAIRMAN ROSENBAUM: Thank you. Maybe I
18 have to recuse myself since my wife takes Zocor.

19 DR. INLER: I hope it helps her.

20 MR. ACEVEDO: Good morning, ladies and
21 gentlemen.

22 MS. FINSTON: Did we hand out --

1 CHAIRMAN ROSENBAUM: It might help to have
2 the written copy of Juan's --

3 MR. ACEVEDO: Good morning ladies and
4 gentlemen. It is a pleasure to be here before such an
5 important panel of U.S. Government officials.

6 My name is Juan Acavedo and I work for
7 Bristol-Myers Squibb as Vice President of Corporate
8 and Government Affairs for Puerto Rico and the
9 Caribbean.

10 Bristol-Myers Squibb believes that it is
11 extremely important that the U.S. Government maintains
12 strong opposition to the adoption of this legislation.
13 Otherwise, it is very likely that this clearly non-
14 TRIPS-compliant bill will be passed into law.

15 I want to outline to this committee the
16 current impact of patent violations in Dominican
17 Republic through actual examples and thus explain why
18 it is so necessary to reinforce the importance of
19 TRIPS-compliant legislation in the Dominican Republic.

20 The total pharmaceutical market in the
21 Dominican Republic is approximately \$200 million or 25
22 percent of the total Caribbean market. There are more

1 than 150 companies competing in the Dominican Republic
2 pharmaceutical market. Many companies are
3 incorporated under Dominican laws and, therefore, are
4 considered local companies, but are composed of
5 foreign capital and controlled by foreign interests.

6 For example, two of the major copy
7 companies, Rowe Laboratories, C.A. and Roemmers, S.A.,
8 are incorporated under Dominican Law. But if we look
9 more deeply, the reality is different -- the president
10 of Rowe Laboratories is Rodolfo Wehe, a German-
11 Argentinean citizen. This company is 99.2 percent
12 controlled by one of the major pharmaceutical
13 distribution companies in the country (Leterago).

14 The president of this company is also
15 Rodolfo Wehe. Furthermore, the influence of the
16 company has a much wider scope since this company
17 appears to be part of a large group of interrelated
18 pharmaceutical companies (Rowe, Roemmers, Leterago,
19 Lynea, Ethical, Ratio, BYK, Osmopharm, Sohanare,
20 K.H.3, Hexal, Miupa, Merz, Bussie, Pharma Investi,
21 Mack, Nattermann and Prodes).

22 Three of these companies are well-known

1 copiers of pharmaceutical products (Rowe, Roemmers and
2 Ethical), and three others have filed annulment suits
3 for Merck's patents (Hexal, Ratio and Lynea).
4 Roemmers, S.A. is also a local incorporated company
5 but in reality is a division of Roemmers, S.A. I.F.,
6 a well-known Argentinean company. The president of
7 the local company is Rodolfo Federico Hess, an
8 Argentinean citizen, and its executive Vice-President
9 is Eduardo Macchiavello, also Argentinean.

10 Rodolfo Wehe and Eduardo Macchiavello are
11 recurrent names in the incorporation documents of most
12 of the aforementioned companies.

13 In addition, the adviser to the Industry and
14 Commerce Office of the Dominican Republic for the
15 proposed industry property bill was Mr. Carlos Correa,
16 an Argentinean and well-known representative of CILFA,
17 an association representing local Argentine companies
18 which copy the products of the research-based
19 industry.

20 All of these companies exploit their image
21 as the local "national industry," and are members of
22 INFADOMI (Industrias Farmaceuticas Dominicanas), an

1 association representing the interests of the local
2 pharmaceutical industries. The truth is most of the
3 products produced by these firms are imported from
4 Argentina or other Latin American countries, either
5 through finished product or by bulk that is only
6 packaged in the DR.

7 This association (INFADOMI) has been the
8 spokesman of these companies and one of the most
9 aggressive activists advocating in favor of approving
10 the industrial property bill notwithstanding its non-
11 compliance with TRIPS. The President of INFADOMI is
12 also the Argentinean Eduardo Macchiavello.

13 Once an unauthorized copy enters the market,
14 original brand revenues erode rapidly during the first
15 year and steadily thereafter. After a few years the
16 original brand sales becomes a fraction of what they
17 used to be. When a pharmaceutical compound is copied
18 before the expiration of its patent, as is the
19 practice in the Dominican Republic in flagrant
20 violation to their own law of 1911, the company that
21 copies the product prices it receives the benefits
22 from the therapeutic innovation, clinical results and

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1 promotional efforts that the original compound brought
2 to the market.

3 There is no assurance that the copied
4 product is bioequivalent to the original brand, thus
5 raising concerns about quality of the raw materials.
6 Manufacturing processes may not meet good
7 manufacturing practices (GMP) as required by the FDA.

8 These activities erode the revenue
9 generation of the original compound, which is
10 essential to cover the development costs, the
11 generation of clinical trials, marketing expenses, and
12 most important, the need to reinvest in research and
13 development in order to discover new and innovative
14 compounds. Bristol-Myers Squibb alone plans to spend
15 more than \$2 billion on company-wide research and
16 development this year.

17 Bristol-Myers Squibb pharmaceutical sales in
18 the Dominican Republic account for \$4.3 million with
19 a market share of 2.2 percent, and is ranked in the
20 14th position. Currently, we have two products that
21 have been copied by three companies: a local company,
22 Ethical; a Colombian company, Chalver; and an

1 Argentinean company, Asofarma. These products are
2 Buspar (buspirone) and Taxol (paclitaxel).

3 Buspar is a chemical compound indicated for
4 the management of anxiety. Taxol is a natural
5 compound with anti-tumor activity, indicated for the
6 treatment of ovarian, breast and lung cancer, and
7 Kaposi Sarcoma.

8 Total annual sales of copies of Bristol-
9 Myers Squibb's two products accounts for approximately
10 \$417,000 versus \$350,000, a negative impact of 119%.
11 This is the estimated impact for Bristol-Myers Squibb
12 in only two products. When this is projected to the
13 other 16 U.S. companies doing business in the
14 Dominican Republic, the resulting impact is even more
15 dramatic. The U.S. pharmaceutical industry currently
16 assesses its economic losses in pharmaceutical
17 products, in the DR market, in excess of \$50 million.

18 - Bristol-Myers Squibb will soon introduce
19 Vanlev (omapatrilat), a new therapeutic approach that
20 may more effectively address hypertension, a condition
21 affecting more than 600 million people worldwide.
22 Vanlev has the clear potential to revolutionize the

1 treatment of hypertension by extending and enhancing
2 the lives of millions of patients worldwide who suffer
3 from this serious medical condition. We are in the
4 process of filing applications to market Vanlev with
5 more than 20 regulatory authorities worldwide.

6 If the DR President approves the proposed
7 industrial property bill, as currently drafted,
8 Bristol-Myers Squibb Vanlev's patent rights will be
9 undermined. This bill would allow unrestricted
10 compulsory licensing of Vanlev.

11 This exhibit demonstrates the scale of
12 copying of innovative products by local companies that
13 have not invested in their development.

14 Time does not allow us to cover all of the
15 examples of unauthorized copies of medicines in great
16 detail. I hope that these examples have provided this
17 committee with a sense of the impact of patent
18 violations in Dominican Republic and the need to seek
19 a TRIPS-compliant industrial property bill that will
20 protect the intellectual property of the U.S.
21 companies conducting business in this country.
22 Bristol-Myers Squibb concurs in the request for relief

1 made by Ms. Finston on behalf of PhRMA. Thank you
2 very much.

3 CHAIRMAN ROSENBAUM: Thank you.

4 MR. BURCKY: Thank you all very much for
5 coming and providing us with this presentation. I
6 would note that the previous testimony of the
7 government of the Dominican Republic indicated that
8 they, in fact, are open to discussing with all
9 stakeholders resolving the issues over TRIPS
10 deficiencies.

11 Yet, with respect to the copyright law, I
12 detected that a dialogue was already underway with the
13 industry to address remaining TRIPS deficiencies. I
14 would ask is PhRMA or any of the member companies
15 engaged in a dialogue with the Dominican Republic to
16 address what seems to be a clear difference of opinion
17 over whether the bill that is about to be passed is,
18 in fact, TRIPS compliant?

19 DR. INLER: Claude, I think it's always been
20 clear, we've worked together a long time, that when
21 we're asked for technical assistance or to comment on
22 a provision from our perspective we are always happy

1 to do that and there is no difference in this
2 particular case.

3 We would be glad to sit down with
4 representatives of the Dominican Republic government
5 at any time to discuss specific provisions and provide
6 our input, our expertise. What we are not prepared to
7 do is renegotiate the TRIPS Agreement country by
8 country.

9 It's our view that countries which sign the
10 agreement in 1995 have, in fact, passed the deadline
11 for being in full compliance with those provisions
12 honoring the international agreements and we are not
13 in a position to take your place or your colleague's
14 place in renegotiating that.

15 Nor do we feel that it is appropriate at all
16 to have the government convene a group of competing
17 interests to sit down and negotiate the lowest common
18 denominator. We would be glad to meet with
19 representatives of the Dominican government. I know
20 Ambassador Monat and his colleagues in the embassy
21 would be happy to join in that and work with us, but
22 we will not be part of a group that purports to

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1 renegotiate or interpret TRIPS or includes competing
2 elements.

3 MS. FINSTON: If I could just add one thing.
4 After it passed originally in the senate, we did try
5 to engage with the legislatures on the basis that Tony
6 is indicating under terms that are allowed under U.S.
7 law and under conditions that he has outlined and the
8 way that the process proceeded after initial meetings
9 there were conditions introduced that made it
10 impossible for member companies to continue a dialogue
11 under terms that wouldn't open them to liability in
12 the U.S. and we can't operate on that basis.

13 We would be interested in pursuing again the
14 kind of dialogue that we tried to do late last year
15 and early this year. We, like IIPA, found that our
16 suggestions were not taken and that other interests
17 were stronger and overtook the process.

18 CHAIRMAN ROSENBAUM: It's almost noontime so
19 my prescription is you're taking a lunch. Thank you.

20 As I said, we're coming up to the lunch
21 hour. We will continue now with hearing from the
22 Government of the Republic of Kazakhstan but we will

1 finish before noon with Eric Schwartz of the IIPA and
2 then come after lunch starting again with the IIPA for
3 a presentation, I guess, that has to do with Ukraine.

4 We're not going to hear from the Wedderburn
5 & Jacobs. We're going to go right to Kazakhstan.

6 MR. UMAROV: Good morning. I'm Minister
7 Counselor of the Embassy of the Republic of Kazakhstan
8 here in Washington. I appreciate this opportunity to
9 speak to this distinguished group.

10 Let me first start with saying that we
11 consider this petition as very serious and the
12 government of Kazakhstan is committed to doing
13 whatever possible to improve the situation. Further
14 in my presentation I'll just speak about that.

15 Let me mention by just saying that
16 Kazakhstan is only eight years of independence.
17 That's a very short of time and, of course, I don't
18 mean here to use it as an excuse but I would like this
19 fact to be borne in mind when we will be speaking
20 about the country.

21 I think it is of no necessity to tell here
22 that Kazakhstan before gaining its sovereignty in

1 1990. Presently during these last years everything
2 had to be done from scratch to put the new market
3 arena system into operation.

4 Today's world is complex and sophisticated
5 and Kazakhstan is just making its first steps into the
6 world economy. Sometimes it has to deal with the
7 issues which he have not any experience before. With
8 just considering that the U.S. law makers are still
9 working on some of the issues affecting and improving
10 the legislation this year, Kazakhstan is just eight
11 years of age and is dealing here with the basics.

12 Of course, not everything could be done in
13 a very short period of time but there is the will and
14 commitment of the government to work in this sphere
15 and to put protection of intellectual property into
16 force.

17 In the cases where Kazakhstan legislation
18 has some drawbacks, we have an unprecedented case when
19 international laws are prevailing the national
20 legislation. In this way we are trying to eliminate
21 a situation when we could be out of the international
22 standards.

1 Kazakhstan consistently undertakes measures
2 to further develop and improve legislation and
3 implementation practice in the sphere of intellectual
4 property rights. These efforts are aimed at meeting
5 and observing TRIPS and eventual Kazakhstan accession
6 to the WTO.

7 Though Kazakhstan is only eight years of
8 independence, still Kazakhstan has done a lot in those
9 years. Kazakhstan is a full-fledged member of the
10 Berne Convention. Starting on April 12, 1999,
11 Kazakhstan is a full-fledged member. I know that
12 there are concerns concerning Phonograms Convention.

13 On February 16, 2000, the government of
14 Kazakhstan submitted for parliament's consideration
15 the deal on Kazakhstan accession to the convention
16 protection of phonograms from the legal reproduction
17 of October 29, 1991. The bill is currently under
18 discussion at the committees of Margalis. This is the
19 lower chamber of the parliament.

20 In December of '99 the interagency review
21 process began to consider the draft bill on
22 Kazakhstan's accession to the Rome Convention on

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1 protection of interest of manufacturers of phonograms
2 and protesting organizations of October 1961.

3 I would like to assure that all the
4 necessary work for acceding to Phonograms and Rome
5 Conventions will be completed during this current
6 year. All efforts are done towards that end.

7 With regard to the IIPA's remarks that it's
8 not clear whether Kazakhstan adopted any border
9 control legislation to stop the consummate flow of
10 pirate production, it should be noted that Article
11 218-1 and 218-5 of the law of the Republic of
12 Kazakhstan on customs clearly define a mechanism of
13 intellectual property right protection for goods
14 crossing the border of the country. Customs committee
15 of the Ministry of State Revenues of the Republic of
16 Kazakhstan enforces the provision of the law in
17 practice.

18 On March 1, 2000, the Joint Order of
19 Ministry of Internal Affairs, Ministry of State
20 Revenues, Ministry of Justice of Kazakhstan on
21 measures to protect property rights of orders and
22 owners of neighboring rights approved by the General

1 Prosecutors Office came into force. This enforcement
2 mechanism is over there.

3 With regard to other items subject to
4 intellectual property rights protection such as
5 inventions, models, industrial samples, trademarks,
6 etc., the National Patent Organization of Ministry of
7 Energy, Industry, and Trade of the Republic of
8 Kazakhstan is working on improving and expanding
9 legislation in that sphere to meet TRIPS requirements.

10 Significant corrections and changes were
11 made in the current legislation concerning the
12 protection of industrial property. In particular,
13 last year a new park regarding protection of
14 intellectual property rights was introduced to
15 Kazakhstan's civil code.

16 New patent law, laws on trademarks, and on
17 protection of selection of achievements were also
18 adopted. Provisions of existing laws and regulations
19 were modified to meet requirements of international
20 conventions in the field of industrial property.
21 Kazakhstan legislation in the area of industrial
22 property protection by the estimates of independent

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1 experts could be considered as a model to other states
2 in the region.

3 Kazakhstan is a member of the World
4 Intellectual Property Organization and a party to the
5 Paris Convention on Industrial Property Protection,
6 Eurasia Patent Convention, Madrid Treaty concerning
7 International Registration of Marks, and Treaty on
8 Patent Classification.

9 Currently Kazakhstan is finalizing the
10 preparation for accession to Budapest Treaty on
11 International Recognition of the Deposit of
12 Microorganisms, Nice Treaty on International Goods and
13 Services Classification for Trademark Registration,
14 Locarno Treaty establishing an International
15 Classification of Industrial Samples, Strasbourg
16 Treaty on the International Patent Classification,
17 Treaty on Laws on Trademarks.

18 I would like to say a little bit about the
19 bilateral cooperation with the U.S. in developing IP
20 protection practices.

21 Further commenting on the subject, we would
22 like to state that the IP issue occupies significant

1 place in bilateral Kazakhstan/U.S. dialect. In the
2 final report of Kazakhstan/U.S. joint commission
3 signed by Kazakhstan President Nursultan Nazarbayev
4 and U.S. Vice President Al Gore. It was in December
5 of last year.

6 It is stated that Kazakhstan expressed
7 strong support for the work of the WTO in Seattle.
8 Kazakhstan reaffirmed its commitment to proceed with
9 accession as quickly as possible and actively enforce
10 laws and regulations such as intellectual property
11 rights that would enhance the trade and investment
12 requirement.

13 With regard to Kazakhstan's customs role on
14 IP protection, we would like to mention another
15 provision of the final report of the commission
16 stating that the U.S. side intends to run the
17 technical assistance according to the WTO and reaffirm
18 its readiness to continue to work for Kazakhstan
19 customs officials to bring customs practices in line
20 with international standards.

21 All of the above mentioned gives
22 certification to state that IIPA premise of Kazakhstan

1 has not enacted that of a copyright or met its
2 enforcement obligations, thus failing to meet it's
3 obligation in copyright areas as required by the
4 Bilateral Agreement is incorrect. Thus the government
5 of Kazakhstan respectfully request that the IIPA
6 petition be rejected.

7 CHAIRMAN ROSENBAUM: Thank you for coming.
8 Let me see if my colleagues have some questions for
9 you.

10 MR. BURCKY: Thank you very much for the
11 clarification about what your government is
12 undertaking to do to address the concern about IP
13 protection in Kazakhstan. Can you give me any sense
14 of the prospect or the legislation to join the Geneva
15 Phonograms Convention? I know you say it was
16 introduced in February. Is it particularly
17 controversial? Is it something that we could expect
18 would move swiftly through your parliament?

19 MR. UMAROV: According to the information
20 that we have, the parliament is going to consider this
21 year this legislation. I*presently don't have the
22 exact timetable because you understand that the

1 parliament is presently heading a pool and a lot of
2 laws have to be taken.

3 We have a strong commitment of the
4 parliament to consider it this year. When I started
5 my presentation I said that the government and the
6 parliament has all the commitments and strong will to
7 have this be adopted this year.

8 CHAIRMAN ROSENBAUM: Katrin?

9 MS. KUHLMAN: I was going to ask that
10 question, too.

11 MR. UMAROV: We consider it very seriously
12 so we would like to be eligible for GSP.

13 CHAIRMAN ROSENBAUM: You are getting GSP now
14 and we realize you are only eight years old but your
15 government did make certain commitments in the
16 Bilateral Agreement and we expect that you will meet
17 your obligations as we are doing on our side.

18 MR. UMAROV: Sure. I think the government
19 which is only -- I don't know any other example of a
20 country having eight years of independence to have
21 everything perfect. I would like to say that surely
22 the legislations which we have are of international

1 standards.

2 The problem right now for us to enforce it
3 and to create an environment in the country that this
4 all will be done because only the legislation does not
5 solve the problem so the government is presently
6 working hardly to create this environment, this
7 climate for all this legislation to be fully
8 implemented.

9 CHAIRMAN ROSENBAUM: Thank you very much for
10 coming.

11 Mr. Schwartz.

12 MR. SCHWARTZ: Thank you, Mr. Chairman, and
13 members of the committee. Let me respond to -- well,
14 first, let me begin by saying that I concur and
15 appreciate the government's activity to date on some
16 of the legislative reforms. I agree that they have
17 made some progress but, as I mentioned in my earlier
18 presentation, they made commitments in a Bilateral
19 Agreement that went in force in February of 1993 with
20 commitments to make best efforts to do these things.
21 I believe it was by the end of 1993 so seven years
22 ago. It may have been by the end of '94.

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1 Yes, they joined the Berne Convention but
2 the absence of Geneva Phonograms has been troubling.
3 What I have in terms of an update on that information
4 I should share with you. According to an April 20th
5 Kazakh news agency report the Geneva Phonograms
6 legislation passed the lower house on April 19th. It
7 was being sent for discussion to the senate's upper
8 chamber. That's the good news.

9 The bad news is the statement by Deputy
10 Justice Minister Andre Kotlav who said that Kazakhstan
11 would not be answerable for the recordings made before
12 the convention came into force in Kazakhstan. Only
13 those sound recordings which will be made after
14 Kazakhstan joins the convention will be protected in
15 the country.

16 The good news is they will join, although
17 the time table is not clear when the senate will adopt
18 the Phonograms Convention. The bad news is that they
19 are making clear they will not provide any retroactive
20 protection for preexisting work.

21 As a matter of copyright enforcement, an
22 issue we've obviously raised many, many times, the

1 absence of protection for preexisting works
2 essentially thwarts any effective enforcement for
3 copyright piracy because if you don't stop the piracy
4 of old materials, it competes with the new material.

5 The police fail to seize the material at the
6 kiosk because they say that it includes a mixture of
7 old and new material and, therefore, they really can't
8 start sorting that which is pre-19 or 2000 and that
9 which is post-2000 and you have no effective
10 enforcement activity.

11 I would simply urge my colleagues and
12 friends in Kazakhstan to at least reconsider this
13 particular part of the adherence to the Geneva
14 Phonograms Convention. Granted the Geneva Phonograms
15 Convention doesn't require retroactivity but the TRIPS
16 Agreement does and so does adequate and effective
17 enforcement and protection.

18 CHAIRMAN ROSENBAUM: While we're on that
19 point, let me interrupt you. Mr. Umarov, could you
20 come up here a second, please? I don't know whether
21 you heard Mr. Schwartz' assertion that this would only
22 apply to new --

1 MR. UMAROV: Yes, I heard about this.

2 CHAIRMAN ROSENBAUM: We seem to have a
3 different interpretation here so who is right?

4 MR. UMAROV: Actually, as I've mentioned
5 before, Kazakhstan has -- just to have the
6 international laws prevail over the national ones in
7 cases when they compete with each other. In case the
8 senate approves that, I do hope that this issue will
9 not be raised by the parliament. If it is, then we
10 will urge from our side to work on this. I just tell
11 you frankly I just don't have this feeling about this
12 particular issue and how it was considered in the
13 parliament.

14 MR. BURCKY: But I take it, Eric, from your
15 statement this is someone within the administration.

16 MR. SCHWARTZ: This was someone within the
17 Kazakh administration and I'll be happy to share with
18 you and with the committee this is a BBC article that
19 we got online from Interfax Kazakhstan news agency
20 April 20, 2000.

21 MR. UMAROV: Can we clarify an additional
22 point? You make reference to the fact that

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1 international treaties take precedence over domestic
2 law where there is a conflict. But, Eric, do I
3 understand correctly that Geneva is not going to take
4 care of this problem.

5 MR. SCHWARTZ: That's right. I mean, the
6 Geneva Convention does not require retroactive
7 protection so the fact that they join the Geneva
8 Phonograms Convention, and it supersedes any
9 inconsistencies or unclear provisions in their
10 domestic law, means that they will not be providing
11 retroactive protection for sound recordings to the
12 extent that a judge understands the way in which the
13 interaction between the Berne Convention and the
14 Kazakhstan law works. They could provide retroactive
15 protection for works, books, music and musical
16 compositions and films and the like retroactively.

17 What we suggest, and have been suggesting
18 for a number of years to Kazakhstan and other
19 countries, is to adopt explicit language in their
20 copyright law that explicitly makes clear this
21 retroactive protection because the police -- I mean,
22 when this becomes an issue that copyright lawyers can

1 issues a separate order which imposed an individual
2 license requirement on all export/import of companies
3 named in this application.

4 As of today, nine plans alleged in
5 production and distribution of the pirated CDs are
6 released. Four out of them are those named on the
7 list provided by the Office of the United States Trade
8 Representative earlier in December 1999 to the
9 Ukrainian government.

10 Inner-ministerial committee on protection of
11 intellectual property. It was adopted on February 16,
12 2000. The key task of this committee is recognition
13 of activities of all state institutions in the field
14 of protection of intellectual property rights.

15 The first meeting of the committee took
16 place on March 6, 2000. The committee and the
17 Minister of Interior jointly with the General
18 Prosecutor's Office, State Custom Service, Tax
19 Administration, and the Security Service to prepare
20 and submit for review a plan of action to fight piracy
21 activities.

22 Now for new legislation. On March 23, 2000,

1 the illegal production, use, and sales of control
2 labels by imprisonment meant for up to five years or
3 a fine from \$300 to around a \$1,000 nontaxable income
4 with confiscation of all personal property.

5 That's it for now. I'll give the floor to
6 Mr. Riabokon.

7 MR. RIABOKON: Thank you. I would like to
8 start out comments with a note that we are very
9 sympathetic to an U.S. industry that incurs losses
10 caused by its act of copyright in Ukraine.
11 Notwithstanding, we do not appreciate the way the U.S.
12 decided to deal with this problem, especially by
13 accusing Ukraine of the breach of the U.S./Ukraine
14 trade agreement.

15 U.S. industry has not even tried to utilize
16 existing in Ukraine enforcement mechanisms but it has
17 already stated that the system is ineffective.
18 Ukraine has fulfilled all of its international
19 obligations in Article 8 of the Ukraine and U.S.
20 agreement on trade relations of '92 and the company
21 letters on intellectual property issues.

22 Ukraine is a member of the Berne Convention.

1 Ukraine has provided copyright protection for computer
2 programs and databases, as well as sound recordings
3 under its copyright laws. Ukraine did adhere to the
4 Geneva Phonograms Convention and demands by the
5 petitioner that Ukraine shall provide retroactive
6 protection to preexisting works under this convention
7 has no legal ground as in accordance with paragraph 3,
8 Article 7 of the convention, "No state shall be
9 required to apply the provisions of this convention to
10 any phonogram fixed before this convention entered
11 into force with respect to that state."

12 Ukraine does provide protection to the
13 preexisting U.S. copyrighted works in accordance with
14 Article 18 of the Berne Convention. Again, I am
15 turning to the prehearing brief filed by the
16 petitioners, pages 4 and 11 where petitioner stated
17 that in accordance with the Bilateral Trade Agreement
18 Ukraine has undertaken to provide full retroactivity
19 to the copyrighted works as per Article 18 of the
20 Berne.

21 We believe this statement is misinterpreting
22 the provisions of the agreement. According to

1 paragraph 3, Article 8 of the Bilateral Trade
2 Agreement, which I quote, "Upon the date when both
3 parties are members of the Berne union, the protection
4 of works in existence prior to that date shall be
5 determined in accordance with Article 18 of the 1971
6 Paris Act of the Berne Convention."

7 Ukraine did fulfill its obligations and thus
8 provide protection in accordance Article 18 of the
9 Berne. As there was no convention between Ukraine and
10 the United States governing the application of the
11 retroactivity principle stated in Article 18 of the
12 Berne Convention, Ukraine used the right granted in
13 Article 18 to individual countries by specifying that
14 the convention shall not apply to works that on the
15 date of its coming into force for Ukraine have already
16 fallen into the public domain on its territory.
17 Therefore, Ukraine has fully observed its obligations
18 under paragraph 3 of Article 8 of the Bilateral Trade
19 Agreement.

20 Ukraine did meet with the United States in
21 the framework of working groups. Ukraine enforces the
22 copyright and the enforcement is effective when it is

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1 used. Under Article 42 of the copyright law,
2 enforcement of moral and economic rights of the right
3 holders is available through civil, administrative,
4 and criminal procedures.

5 Any person including foreign persons whose
6 copyright or neighboring rights have been infringed in
7 Ukraine has the right to file a claim in Ukraine in
8 court. I would like to know unlike the Dominican
9 presentation that we were given where court bond is
10 about 200 percent, Ukraine is very reasonable and
11 would not be higher than five percent.

12 The court can order to desist infringement
13 including stopping production of goods or performance
14 of the work, phonogram, broadcasting, distribution, or
15 to attach or confiscate all copies, equipment, and raw
16 materials used in production of application if there
17 is enough evidence on the record supporting the
18 infringement of copyright and neighboring rights.

19 To provide effective deterrent to further
20 infringement the court can also order to destroy or
21 seize all copies of a work or phonogram that were
22 produced and distributed infringing the exclusive

1 rights of the right holder.

2 Further, the law also provides to the right
3 holders a right of claim such as compensation of
4 losses, a word to their favor of all revenues of an
5 infringer, or compensation the amount of which can be
6 determined by the court from 10 to 50,000 times of the
7 minimum wage rate, and moral damages in the amount
8 awarded by the court.

9 In addition to compensation, the infringer
10 must pay a state penalty of 10 percent of the total
11 amount granted to the party that brought the case.
12 Taking into account the need for prompt and effective
13 legal action against infringement, the court may order
14 provisional injunctive relief which may take the
15 following forms: attachment of property of funds that
16 belong to the defendant; prohibition by the defendant
17 to take certain actions; prohibition for third parties
18 to take certain actions with regard to the subject of
19 the case.

20 We have started the situation with the U.S.
21 companies and we are trying to identify what cases
22 were brought by U.S. companies. To our big surprise,

1 we have established the following.

2 U.S. companies have no basis to judge
3 whether enforcement of copyright is adequate and
4 effective in Ukraine for no claims were filed by U.S.
5 nationals with the supreme court of Ukraine for the
6 period of '92 to 2000. In the highest court of
7 arbitration there were no cases filed in 1999.

8 Meanwhile, other foreign companies
9 effectively and adequately enforced their copyrights
10 in Ukraine. In our prehearing brief we cited one of
11 those cases. We have also provided a translated copy
12 of a court decision that proves how effective the
13 enforcement system may be. In that case, the Russian
14 company effectively enforces copyright in a computer
15 program receiving \$137,000 in damages compared to the
16 total estimated commercial value of the program at
17 \$110,000.

18 - Administrative and criminal measures serve
19 as an additional deterrent and an effective supplement
20 to the civil judicial remedies in fighting
21 infringements of copyright and neighboring rights.
22 U.S. industry urges that all the Ukrainian enforcement

1 is ineffective. Again, we would like to ask whether
2 U.S. industry has filed any complaint with the
3 agencies responsible for implementing administrative
4 and criminal measures. According to our information,
5 there were no applications filed by the U.S. industry.

6 Further, it seems like the petitioners build
7 their whole case around the issue of ex officio
8 actions like there is no other means of enforcing
9 copyright infringement but to allow police to seize
10 the property at will.

11 Notwithstanding, Ukraine already has
12 administrative and criminal regulatory framework that
13 allows certain ex officio actions as was reports in
14 our prehearing brief. We took some of the statistic
15 data provided by the Minister of Interior which shows
16 that in 1999 there were 6,000 companies investigated
17 for infringement of copyright legislation.

18 Every third company was found in violation.
19 Penalties were applied in 1,800 cases. 108 criminal
20 investigations were initiated. 85,000 video tapes,
21 157,000 audio tapes, and 78,000 optical disks were
22 confiscated. The statistics go on and you can see it