

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

FOR IMMEDIATE RELEASE
Friday, April 27, 1990

90-27
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HILLS ANNOUNCES RESULTS OF SPECIAL 301 REVIEW

United States Trade Representative Carla A. Hills announced today that significant progress has been made in negotiations to obtain improved protection and enforcement of intellectual property rights with the trading partners identified under Special 301 last May. Therefore, at this time, no country will be designated as a "priority foreign country", making it subject to investigation and possible retaliation under the Special 301 provisions of U.S. trade law.

"This has been a year of steady improvement in the protection of intellectual property rights around the world" Hills said. "In both market and non-market economies, there is the growing realization that innovation and creativity must be protected as vigilantly as any national resource. Since late last year, the governments of Korea, Poland, Czechoslovakia, Mexico, Saudi Arabia, Colombia, Chile, Malaysia, Indonesia, Egypt, Spain, Portugal and Yugoslavia took specific measures to enhance intellectual property protection or its enforcement. Other countries have committed considerable effort to the Uruguay Round Trade Related Intellectual Property Rights negotiations, scheduled to conclude in December 1990."

On May 25, 1989 USTR announced that under the Special 301 intellectual property provisions of the Omnibus Trade and Competitiveness Act of 1988, the Administration had identified 25 countries whose practices deserved special attention. Of these, 17 were placed on the Watch List while the remaining eight trading partners were placed on a Priority Watch List.

The status of the eight trading partners on the Priority Watch List was reviewed on November 1, 1989. Saudi Arabia, Korea and Taiwan were moved to the Watch List at that time because of significant progress in the protection of intellectual property rights.

Brazil, India, the Peoples' Republic of China, (PRC) and Thailand remain on the Priority Watch List. Although the PRC has taken some steps to improve its protection of intellectual

property rights, including drafting and submitting for legislation a copyright law, that law has not yet been enacted and proposed patent legislation does not cover important sectors. We will reassess the status of these trading partners under Special 301 when the situation warrants.

Of the 25 countries placed on the original Watch and Priority Watch Lists in May 1989, all remain on the lists except Portugal and Mexico.

Intellectual property protection in some Watch List countries is still well below international standards and is a cause for concern. For example, while Indonesia took the important step of enacting its patent law, problems with market access for motion pictures and insufficient protection for the pharmaceutical industry stand out in an otherwise important year for intellectual property protection. In Turkey, improvements in the area of copyright, specifically stiffer penalties and much improved enforcement, would positively affect the book and motion picture industries. Further discussions are also needed on the protection of computer software under existing copyright law and on the draft patent law. In the Philippines, we are concerned that piracy of videotape and sound recordings has reached very serious proportions. The Philippines should develop solutions for problems with copyright and compulsory licensing.

In this year's review of intellectual property protection, developments in the Federal Republic of Germany have caused concern because judicial interpretations of copyright protection for computer programs appear to have undermined the effective level of protection. The U.S. has made its concerns known to the Federal Republic of Germany.

There has been noteworthy progress in Mexico and Portugal. In January 1990, Mexico was removed from all lists after publishing its "Industry and Trade Sectoral Plan" outlining the Mexican government's program to modernize protection of patents, trademarks and trade secrets. In addition, Mexico has stepped up enforcement efforts against patent and trademark infringers. We look forward to the implementation of Mexico's plan as well as improvements in the level of copyright protection in Mexico, in particular with respect to computer programs and sound recordings. In Portugal, strides in the protection of intellectual property rights have warranted that it now be removed from all lists.

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FACT SHEET

"SPECIAL 301" ON INTELLECTUAL PROPERTY

Carla A. Hills, the United States Trade Representative (USTR), announced today the Administration's plans to ensure further action by our trading partners to provide adequate and effective protection of intellectual property rights. Since May 1989, the USTR has implemented the so-called "Special 301" intellectual property provisions of the Omnibus Trade and Competitiveness Act of 1988. The Special 301 authority is designed to formulate an overall strategy on intellectual property and market access and enhance the Administration's ability to negotiate improvements in foreign intellectual property regimes through bilateral and/or multilateral initiatives.

The statute requires the USTR to identify those foreign countries which deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons relying on intellectual property protection. If those trading partners are not making significant progress or entering into good faith negotiations, countries that represent the most egregious cases may be identified as "priority foreign countries."

Due to significant progress to date in current negotiations, the Administration has not identified any "priority foreign countries" under Special 301. It has, however, retained a Watch List and a Priority Watch List of trading partners deserving special attention.

After the last review in November 1989, there were 20 trading partners on the Watch List and four on the Priority Watch List. As a result of its 1990 review under Special 301, the Administration determines that no trading partner on these lists has taken sufficient action to merit a change in status, with the exception of Portugal, where positive steps to improve intellectual property rights warrant that it be removed from all lists.

Brazil, India, the People's Republic of China (PRC) and Thailand remain on the Priority Watch List. Although the PRC has taken some steps to improve its protection of intellectual property

rights, a copyright law has not yet been enacted and proposed patent legislation does not cover important sectors.

Intellectual property protection in some Watch List countries is still well below international standards and is a cause for concern. For example, in Indonesia, despite the important step of enacting its first-ever patent law, problems with market access for motion pictures and insufficient protection for the pharmaceutical industry stand out as issues that must be resolved. In Turkey, improvements in the area of copyright, specifically stiffer penalties and much improved enforcement, would positively affect the book and motion picture industries. Clarification of computer software protection is needed, as well as passage of patent legislation. In the Philippines, we are concerned that piracy of videotape and sound recordings has reached dramatic proportions. The Philippines should develop solutions for problems with copyright and compulsory licensing.

In this year's review of intellectual property protection, developments in the Federal Republic of Germany (FRG) have cause concern because judicial interpretations of copyright protection for computer programs appear to have undermined the effective level of protection.

There has been noteworthy progress in Mexico. In January 1990, Mexico was removed from all lists after publishing its "Industry and Trade Sectoral Plan" outlining the Mexican government's program to modernize protection of patents, trademarks, and trade secrets. In addition, Mexico has stepped up enforcement efforts against patent and trademark infringers. However, the level of copyright protection in Mexico needs certain important revisions in particular with respect to computer programs and sound recordings.

The following is the status of the 23 trading partners currently listed:

The Priority Watch List

Brazil
India
China (PRC)
Thailand

The Watch List

Argentina	Korea
Canada	Malaysia
Chile	Pakistan
Colombia	Philippines
Egypt	Saudi Arabia
Greece	Spain
Indonesia	Taiwan
Italy	Turkey
Japan	Venezuela
	Yugoslavia

The Administration made this determination following close consultation with key sectors of the U.S. business community regarding foreign government practices and the amount of harm resulting from those practices.

Today's action underscores Congressional findings that international protection of intellectual property rights is vital not only to U.S. competitiveness but to continued investment and technological growth in all economies. Denial of such protection undermines essential economic benefits flowing from creativity, invention and investment.

The Administration's decision to place certain of our trading partners on the Priority Watch List and Watch List reflects the recognition that governments may be at different stages in providing adequate and effective protection of intellectual property. Also the economic interests of the United States require it to attach greater priority to certain foreign markets. Many countries have already made progress as a result of bilateral negotiations and consultations; others are at an earlier stage of the process. Nevertheless, expeditious improvements will be sought from all of our trading partners.

Use of Special 301 to date

On May 25, 1989 USTR announced that under the Special 301 intellectual property provisions of the Omnibus Trade and Competitiveness Act of 1988, the Administration singled out 25 trading partners whose practices deserved special attention. Of these, 17 were placed on the Watch List, while the remaining eight were placed on a Priority Watch List.

The status of the eight trading partners placed on the Priority Watch List was carefully reviewed on November 1, 1989. Saudi Arabia, Korea and Taiwan were moved to the Watch List at that time because of significant progress in the protection of intellectual property rights. In the press release issued on November 1, 1989, the Administration expressed concern about certain intellectual property practices of two countries that remain on the Watch List: Malaysia and Turkey.

Following placement of Taiwan on the Special 301 Priority Watch List in May 1989, authorities on Taiwan agreed to take measures to prevent unauthorized public performance of U.S. motion pictures in video rental shops, and initialled a bilateral agreement to improve copyright protection on Taiwan.

In January 1990, Mexico was removed from all lists after it published its "Industry and Trade Sectoral Plan" outlining the Mexican government's intention to improve process and product

patent protection, in addition to improving the enforcement of trademarks and providing enhanced protection for trade secrets.

Additional examples of strengthened intellectual property rules within the past year include the following:

- o In April 1990, we secured Malaysian government commitments to amend its copyright law and accede to the Berne Convention by the end of 1990.
- o We signed an agreement in March 1989 with Indonesia establishing bilateral copyright relations and in October 1989 Indonesia enacted its first patent law.
- o In April 1990, the EC tabled a legal text in the Uruguay Round negotiations on the Trade Related Aspects of Intellectual Property Rights.
- o We signed trade agreements with Poland and Czechoslovakia in March and April 1990, respectively, which include strong terms for intellectual property rights protection.
- o In March 1990, Yugoslavia amended its patent law to extend the term of protection to 20 years from filing, among other improvements.
- o Chile passed a new patent law in January 1990.
- o In January 1990, the FRG increased penalties for intellectual property infringement.
- o Saudi Arabia implemented a new copyright law in December 1989.
- o The PRC submitted a draft copyright law to the National People's Congress Standing Committee and patent law amendments to the State Council in December 1989.
- o Colombia passed a law defining computer software as a copyrightable material in June 1989.
- o In November 1989, Portugal increased penalties for audio piracy.
- o Italy introduced legislation to prevent computer software piracy in November 1989.
- o Spain extended patent protection to U.S. plant varieties on a reciprocal basis in June 1989.

Reasons for the determination and other decisions by the USTR under Special 301

- o The level of intellectual property protection and market access provided by U.S. trading partners was reviewed by the USTR with the advice of the interagency Trade Policy Staff Committee, the Commissioner of Patents and Trademarks and the Register of Copyrights.
- o The standard for adequate and effective intellectual property protection is set forth in the U.S. proposal on intellectual property, tabled in the GATT negotiations on intellectual property.
- o After interagency review, the USTR concludes that no country satisfies all of the standards for adequate and effective protection of intellectual property. The countries appearing on the Priority Watch List and the Watch List share deficiencies in intellectual property protection or maintain substantial impediments to market access.
- o Thus, the USTR has determined that all countries could be eligible for potential priority designation, based on the U.S. GATT proposal, because all countries "deny adequate and effective protection of intellectual property rights" within the meaning of the statute.
- o Those practices of particular concern have been communicated to each trading partner and delineated in the National Trade Estimate (NTE) Report.
- o Since May 1989, our trading partners have entered into good faith negotiations and are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property.
- o Thus, USTR has decided not to identify any trading partners as "priority foreign countries" under the statute.
- o In line with previous actions, the USTR decided to continue the Watch List and Priority Watch List of trading partners identified for further consultation and action.

Watch List

- o Nineteen trading partners were identified whose intellectual property-related practices or barriers to market access required special attention, thus placing them on the Watch List.

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- o USTR is in the process of consulting with all those on the Watch List to resolve problems associated with inadequate intellectual property protection or barriers to market access.

Priority Watch List

- o In addition to the 19 trading partners cited for placement on the Watch List, the USTR identified four other countries whose acts, policies and practices satisfy some or all of the criteria for "priority foreign country" identification.
- o Their lack of adequate and effective intellectual property protection is of considerable concern, and merits rigorous attention in the coming months.
- o However, because these trading partners have made progress in recent bilateral or multilateral negotiations, they will not be identified as "priority foreign countries" under the statute at this time.

We expect that commitments to adhere to a Uruguay Round trade-related intellectual property rights agreement in December 1990 will correct many of the practices presently at issue with those trading partners on both lists.

The Administration intends to assess the progress of those on the Priority Watch List and Watch List on a regular basis to ensure progress. The USTR may make identifications of "priority foreign countries" or recognize progress at any time.