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CONTACT: KATHY LYDON  
TIM O'LEARY  
PAT NORMAN  
202/395-3230

USTR ANNOUNCES SPECIAL 301, TITLE VII REVIEWS

United States Trade Representative (USTR) Carla A. Hills today identified Taiwan, India and Thailand under the special 301 provisions of the Trade Act of 1974. Special 301 calls for the identification of trading partners that deny adequate and effective protection for U.S. intellectual property, such as patents, trademarks, and copyrights or that deny market access for persons relying on intellectual property protection.

Under Special 301, Taiwan was added this year to the trading partners identified as priority foreign countries. In addition, India and Thailand remain identified as priority foreign countries.

"Improved protection for intellectual property is one of the Bush Administration's top trade priorities," Hills said. "We are firmly committed to achieving satisfactory results in these countries and we are prepared to take every step that will move us towards that goal."

Hills today also reported on actions taken pursuant to the Title VII provisions of the 1988 Omnibus Trade and Competitiveness Act, which calls for the identification of countries that discriminate against U.S. firms in their government procurement practices. Under Title VII, Norway and the European Community (EC) remain identified for their discrimination against U.S. firms in government procurement practices. (See page three.)

SPECIAL 301

USTR noted the following concerns about Special 301 priority watch countries:

- o Taiwan is a center for copyright piracy and trademark counterfeiting of U.S. products. Improved intellectual property laws have been under consideration for some time in Taiwan, but prompt enactment is key to improved protection.

- o In Thailand and India, the US is concerned about the overall protection accorded pharmaceuticals and other patent provisions. Effective copyright enforcement is a special concern in Thailand. The US investigated these issues with Thailand and India last year and will vigorously pursue them without initiating new investigations under Special 301.

- After identifying a trading partner as a priority foreign country, USTR must decide within 30 days whether to initiate a section 301 investigation of "the acts, policies and practices" that are the basis of the identification. If the issues under investigation are not resolved after a six-month or, in certain circumstances, nine-month period, the USTR must decide whether the acts, policies, and practices are actionable and whether to take trade action under section 301. The USTR may identify a trading partner as a priority foreign country at any time that the facts warrant, or may revoke a trading partner's identification at any time.

Hills also announced that six trading partners, Egypt, Hungary, Korea, the Philippines, Poland and Turkey, have been placed on the special 301 priority watch list. Australia, Brazil and the EC remain on that list.

"We need to see significant progress in addressing deficiencies in intellectual property protection or market access in those countries," Hills said. "With each, we want to continue working to improve the situation, before further action becomes warranted under our trade laws."

Twenty-two trading partners have been placed on the special 301 watch list, according to Hills. They include: Argentina, Canada, Chile, China, Colombia, Cyprus, Ecuador, El Salvador, Germany, Greece, Guatemala, Indonesia, Italy, Japan, New Zealand, Pakistan, Paraguay, Peru, Spain, Saudi Arabia, the United Arab Emirates, and Venezuela. Persistent problems must be addressed in the near term in these countries.

"We must note some progress as we place a number of countries on the special 301 watch list this year," Hills said. "I commend the leaders of Colombia and Venezuela for advocating improvements in patent protection in the Andean Pact. While these improvements mark a step forward, the patent laws of Andean Pact members, including Colombia and Venezuela, continue to have serious deficiencies."

Hills noted that the Government of El Salvador has proposed legislation aimed at improving intellectual property protection. Those proposals have a number of deficiencies and have not yet been enacted and implemented.

Indonesia will remain on the watch list. It has indicated that it will liberalize access for U.S. motion picture companies and has made other improvements to its intellectual property regime.

New Zealand ministers announced in December 1991 that they intended to introduce legislation to repeal the compulsory licensing provisions of the patent law.

"We welcome these efforts and look forward to removing New Zealand from the watch list when such legislation is enacted," Hills said.

The U.S. is increasingly concerned about Spain's protection of trademarks and copyrights, according to Hills. While Spain remains on the watch list, recent developments in the enforcement area, such as the NIKE case, will be closely monitored.

Finally, Hills said that while none of the republics formerly part of the Soviet Union or Yugoslavia were placed on any of the special 301 lists this year, the U.S. will monitor developments in the successor states and seek to negotiate bilateral intellectual property agreements with each of them as soon as possible.

#### TITLE VII

Title VII of the 1988 Trade Act directs the Administration to identify in an annual report to Congress foreign countries that are discriminating, as defined by the statute, against U.S. goods or services in their government procurement practices.

The U.S. continued the identification of Norway under Title VII as a country in apparent violation of its GATT Government Procurement Code obligations.

Norway was first identified in 1991 for excluding U.S. and other foreign suppliers from competing for a contract on an electronic toll booth collection system. As required under Title VII, USTR requested consultations with Norway. When these consultations did not prove successful in addressing U.S. concerns within the 60-day period specified by the statute, the U.S. initiated formal dispute settlement proceedings, which are expected to conclude in the near future.

In last year's Title VII review, the U.S. committed to conducting an "early review" of the EC, France, Germany and Italy. This review was completed in February 1992 and, on February 21, President Bush identified the EC for the discriminatory provisions of its "Utilities Directive," which is scheduled to come into effect by January 1, 1993. At the

conclusion of the consultation period provided under Title VII, the President on April 22 reaffirmed the identification of the EC. The implementation of sanctions will take effect by January 1993, subject to the implementation of the discriminatory provisions of the EC's directive.

In its report to Congress, the Administration also provided information on certain sectors of the procurement markets of Australia (information systems procurement), Japan (telecommunications), and China that are of concern. Hills indicated that the U.S. will closely monitor developments in these markets.

The report to Congress notes progress achieved in the elimination of certain discriminatory practices in the procurement markets of Australia (elimination of offsets), and Japan (bilateral agreements on construction and computers). Further, Hills noted the progress made by the Republic of Korea and Greece in liberalizing procurement markets.

## FACT SHEET

### "SPECIAL 301" ON INTELLECTUAL PROPERTY

Ambassador Carla A. Hills, the United States Trade Representative (USTR), announced today the Administration's decisions with respect to this year's annual review under the so-called "Special 301" provisions of the Trade Act of 1974.

The statute requires the USTR to identify those foreign countries that deny adequate and effective protection of intellectual property rights, or deny fair and equitable market access for U.S. persons relying on intellectual property protection, and to determine which of those countries are priority foreign countries. Priority foreign countries are those countries whose practices are the most egregious and have the greatest adverse impact, actual or potential, on U.S. products, and who are not making significant progress in bilateral or multilateral intellectual property negotiations.

Under the special 301 provisions, if a country is identified as a priority foreign country, the USTR must, within 30 days of identification, decide whether to initiate a section 301 investigation of the policies and practices that were the basis of the identification. If an investigation is initiated, it must be concluded within six months. This period may be extended to nine months, if certain statutory criteria are met. At the end of the investigation period, the USTR must decide whether the measures under investigation are actionable, and if so, decide what response is appropriate, including possible retaliation.

USTR may identify a country as a priority foreign country at any time that the facts warrant or may remove a country's identification at any time.

#### PRIORITY FOREIGN COUNTRIES

Despite progress in negotiating mutually acceptable solutions to our intellectual property problems in many countries around the world, the lack of adequate and effective intellectual property protection and market access has remained particularly acute in some of our trading partners. As a result, the Administration has identified the following trading partners as priority foreign countries:

India  
Taiwan  
Thailand

All of these trading partners were on the Administration's special 301 lists in 1991.

In Taiwan major problems exist with respect to obtaining effective

enforcement of intellectual property rights. While significant improvements in intellectual property laws are either in pending legislation or under review, Taiwan has made little progress in enacting and implementing these improvements. Chronic enforcement problems appear to be the result of the failure to apply penalties that deter further infringement and inadequate levels of enforcement.

India has been identified as a Priority Foreign Country in 1991, and continues to be so identified because the patent problems which led to the 1991 decision have not been addressed. India has made substantial commitments to address piracy of copyrighted materials including books, videos, sound recordings, and computer software, as well as with respect to market access for motion pictures. In February, the USTR determined that India's denial of adequate and effective patent protection is unreasonable. Because of that determination, no new investigation will be initiated in 1992.

Thailand was identified as a Priority Foreign Country in 1991, and continues to be so identified because of problems with respect to enforcement of copyrights and deficiencies in patent protection despite the enactment of amendments to the Thai patent law. In the area of copyright, ineffective enforcement has led to significant losses for the U.S. motion picture, sound recording and computer software industries. Since the issues with Thailand are already subject to action under the section 301 chapter of the trade law, the USTR will not initiate a new investigation of Thailand's copyright enforcement and patent protection. We will be meeting with the new Thai government shortly to develop specific solutions for these matters.

#### PRIORITY WATCH LIST

Countries whose acts, policies and practices meet some, but not all, of the criteria for priority foreign country identification have been placed on the Priority Watch List. Their lack of adequate and effective intellectual property protection and/or their denial of market access for U.S. goods relying on this protection are of great concern to the Administration.

Accordingly, the Administration will work actively to resolve these problems and will monitor closely the situations in these countries to determine if any further action under Special 301 is warranted.

The following countries have been placed or retained on the priority watch list:

Australia	Brazil
European Community	Egypt
Hungary	Korea
Philippines	Poland
Turkey	

Australia was placed on the Priority Watch List under the market access provisions of the statute for limiting U.S. audiovisual exports. Australia maintains a quota on Australian-origin television programming from 6 a.m. to midnight (this quota will rise to 50 percent in 1993) as well as local content requirements for television commercials. In addition, we are concerned about the level of protection Australia provides to sound recordings and textbooks.

Brazil was placed on the Priority Watch List in 1989 for serious deficiencies in its patent law, including failure to provide process or product patent protection for foodstuffs, and pharmaceuticals. A new law on patents and trademarks was introduced in May 1991, but the proposed law contains serious deficiencies and the Brazilian Congress has yet to take action. In addition, losses from piracy in the video and computer software areas are significant. Although some market access restrictions on computer software continue in place, there has been improvement.

The European Community was placed on the Priority Watch List for market access restrictions that limit U.S. audiovisual exports. The EC Broadcast Directive, requires EC member states to ensure "where practicable" that TV broadcasters reserve a majority of broadcast time for European works. The Directive took effect on October 3, 1991.

Egypt was placed on the priority watch list because of deficiencies in its patent, copyright and related laws, as well as significant enforcement problems. Piracy in Egypt affects all categories of works. Motion pictures (in video cassette format), sound recordings, printed matter (notably medical textbooks), and computer software are especially vulnerable. Egypt's copyright law is insufficient in many respects. It does not specifically protect sound recording and computer programs, terms of protection are too short and penalties are too weak. Long-promised comprehensive amendments to the copyright law have still not been submitted to the People's Assembly for approval, and it is unclear that they will address the law's deficiencies. In addition, Egypt's quotas on imports of video cassette titles and theater films continue to impede U.S. film access to the Egyptian market. There are several provisions in the Egyptian patent law that do not meet modern standards of intellectual property protection. These include limits on patentable subject matter, insufficient term of protection, restrictions on rights conferred by patents, and excessive use of compulsory licensing and forfeiture. Although the Egyptian government stated in 1989 that a new patent law was under consideration, the government to date has not yet submitted legislation.

Hungary is the only major formerly centrally planned economy which has failed to conclude a bilateral agreement with the United States on the protection of intellectual property. Hungary does not

provide product patent protection to a number of classes of inventions, including pharmaceuticals. Hungary's patent law also has extensive provisions permitting grant of compulsory licensing. Many rounds of bilateral negotiations and consultations over more than two years have failed to result in a resolution of the U.S. concerns.

Korea: Since 1990 the United States has faced a growing number of problems in the areas of enforcement, and protection for copyrights, trade secrets and integrated circuits. In the area of copyright, piracy of computer programs is a serious problem, with many large firms allegedly engaged in internal unauthorized copying of computer programs. In the sound recording and video areas, many licenses have been issued to reproduce and distribute these products based on false documents over the objections of the legitimate owners of the copyright in these works. Korea patent law also suffers from a number of deficiencies, including a short term of protection.

Philippines: The Philippines has been on the watch list since 1989 because of problems with enforcement, and inadequate protection for trademarks and copyrights. Philippine copyright law has provisions permitting the issuance of compulsory licenses on foreign books subject to a de minimis royalty payment. In addition, the law provides for very low penalties against infringers and does not clearly protect sound recordings. Piracy of U.S. sound recordings and motion pictures is extensive; in excess of sixty percent of the market for these products is occupied by pirated copies. In the trademark area, counterfeiting is rampant and penalties are ineffective.

Poland: Poland was placed on the priority watch list because piracy of U.S. copyrighted works is acute and Polish intellectual property laws do not provide adequate levels of protection. Poland has not introduced copyright or patent legislation consistent with its treaty obligations under the bilateral Business and Economic Agreement which would address U.S. concerns.

Turkey was placed on the priority watch list because U.S. companies have encountered severe patent and copyright problems in Turkey. Over the years we have held discussions which have yielded promises for improvement, but little by way of action. While Turkey is proceeding with reform of both the patent and the copyright laws, and has recently held constructive consultations with the U.S., both proposals are still in the draft stages.

#### WATCH LIST

In reviewing the practices of all of our trading partners, the USTR has decided that 22 of those trading partners should be placed or retained on the Watch List for special attention (rather than be otherwise identified) because they maintain intellectual property



practices or barriers to market access that are of particular concern.

Over the next year, the United States will step up its efforts with these trading partners to resolve problems associated with protection of intellectual property or market access.

Those placed or retained on the Watch List are:

Argentina	Canada
Chile	China
Colombia	Cyprus
Ecuador	El Salvador
Germany	Greece
Guatemala	Indonesia
Italy	Japan
New Zealand	Pakistan
Paraguay	Peru
Spain	Saudi Arabia
UAE	Venezuela

ATTACHMENT

## PROGRESS ON INTELLECTUAL PROPERTY ISSUES

JANUARY - APRIL 1992

- o -The United States and China signed a Memorandum of Understanding committing China to improve protection for U.S. intellectual property, including providing strong protection for U.S. inventions and copyrighted works, computer software and sound recordings, and trade secrets. (January)
- o Japan amended its copyright law: to extend the protection of sound recordings to 50 years; to protect foreign sound recordings created between 1968 and 1978; and to extend to foreign producers the right to authorize and prohibit the rental of their sound recordings from one year from the date of release. (January)
- o The Commission of Cartagena (the Andean Pact) passed decision 313, which replaced decision 85 covering industrial property protection and provides for certain improvements in patent protection. (February)
- o India committed to the liberalizing of market access for motion pictures effective April 1, 1992. (February)
- o India announced that it will accord national treatment for the use of trademarks owned by foreign proprietors. India also announced that it will introduce legislation in parliament to provide statutory protection of service marks and clarify the condition under which the cancellation of a mark due to non-use is justified. (February)
- o Thailand's National Legislative Assembly enacted amendments to the patent law that will extend product patent protection to 20 years from filing. However, the law does not provide protection for existing patented products that have not yet been marketed in Thailand, and contains extremely broad compulsory licensing provisions. (February)
- o Poland submitted drafts of new copyright and patent legislation to Parliament. These proposals are flawed in a number of respects. (March)
- o The United States and China establish bilateral copyright relations (March).
- o Greece submitted a new copyright law to its parliament. (April)

- o The United Arab Emirates enacted a trademark law. (April)
- o Japan's law providing for registration and protection of service marks took effect. (April)
- o Indonesia agrees to provide improved market access for U.S. motion pictures. (April)

1991

- o Chile enacted a revised patent and trademark law, including product patent protection for pharmaceuticals. (January)
- o The United States and the People's Republic of Mongolia signed a trade agreement including strong protection for intellectual property rights. (January)
- o The United States and Bulgaria signed a trade agreement including strong protection for intellectual property rights. (April)
- o The European Community adopted a directive requiring member states to provide copyright protection for computer software programs. (May)
- o Brazil introduced a draft patent law into its congress which will provide protection for pharmaceuticals. However, the draft does not contain pipeline protection, contains overly broad compulsory licensing provisions, and allows for parallel imports. (May)
- o Mexico enacted an industrial property law which extended patent protection to chemical, pharmaceutical and metal alloy products, as well as to some biotechnological inventions; extended the term of patent protection to 20 years from filing; and extended the term of trademark protection to a renewable period of ten years. (June)
- o China's new copyright law took effect. (June)
- o Mexico enacted an copyright law which extends the term of protection for sound recordings, creates rental rights and significantly increased sanctions. (July)
- o Indonesia's patent law took effect. (August)
- o Chile implemented its new patent and trademark law. (September)
- o Indonesia initiated a crackdown on pirated videos. (September)

- o Argentina proposed a new patent law to modernize its existing 1864 regime, including product protection for pharmaceuticals. (October)
- o Romania and the United States reached agreement on a trade agreement, including strong protection for intellectual property rights. (November)
- o The New Zealand Government announced that it would introduce legislation to eliminate the compulsory licensing provisions of its patent law within the near future. (December)

### 1990

- o Mexico published its "Industry and Trade Sectoral Plan" outlining the government's program to modernize protection and enforcement of patents, trademarks and trade secrets (January).
- o The Federal Republic of Germany increased penalties for infringement of intellectual property rights (January).
- o Yugoslavia amended its patent law to extend the term of protection to 20 years from filing, among other improvements (March).
- o The United States signed a trade agreement with Poland which includes strong terms of protection for intellectual property rights (March).
- o The United States signed a trade agreement with Czechoslovakia which includes strong terms of protection for intellectual property rights (April).
- o In Spain, several defendants were found guilty of computer software piracy by a district court judge in the first case to test the 1987 intellectual property law (May).
- o Chile clarified its copyright protection for computer software, thus ensuring that it is a literary work (June).
- o The People's Republic of China passed a copyright law with protection effective in June, 1991. However, the law does not protect foreign authors' works first published outside China. (September).
- o Malaysia amended its copyright law and acceded to the Berne Convention for the Protection of Literary and Artistic Works (October).
- o Japan enacted a law protecting trade secrets (October).

- o The European Community took a "common position" on protection for computer software, including a 50-year term of copyright protection (December).

#### 1989

- o Agreement was reached to establish bilateral copyright relations with Taiwan (January).
- o Korea created a task force to coordinate intellectual property responsibilities between ministries and designated enforcement teams (January).
- o A Bilateral Agreement on Copyright was signed with Indonesia (March).
- o A Uruguay Round mid-term review decision on intellectual property was reached (April).
- o The People's Republic of China committed to provide copyright protection for computer software (May).
- o Colombia resolved royalty remission problem concerning motion pictures (May).
- o Taiwan agreed to expeditiously resolve copyright problems concerning motion pictures (May).
- o Saudi Arabia adopted a patent law (May).
- o Colombia passed a law defining computer software as copyrightable material (June).
- o Spain extended patent protection to U.S. plant varieties on a reciprocal basis (June).
- o Taiwan initialled a bilateral copyright agreement, and submitted legislation which better protects films from unauthorized public performance (July).
- o Argentina agreed to modify its pharmaceutical product registration procedures, and to address the issue of patent protection for pharmaceutical products (September).
- o Indonesia enacted its first patent law including product protection for pharmaceuticals, effective August 1991 (October).
- o Portugal increased penalties for audio piracy (November).

- o Italy introduced legislation to prevent computer software piracy (November).
- o Saudi Arabia enacted a new copyright law (December).