

2023 Special 301 Report



Office of the United States Trade Representative

ACKNOWLEDGEMENTS

The Office of the United States Trade Representative (USTR) is responsible for the preparation of this Report. United States Trade Representative Katherine Tai gratefully acknowledges the contributions of staff to the writing and production of this Report and extends her thanks to partner agencies, including the following Departments and agencies: State; Treasury; Justice; Agriculture; Commerce, including the International Trade Administration and the Patent and Trademark Office; Labor; Health and Human Services, including the Food and Drug Administration; Homeland Security, including the United States Customs and Border Protection, Homeland Security Investigations, and the National Intellectual Property Rights Coordination Center; and the United States Agency for International Development. USTR also recognizes the contributions of the Office of the Intellectual Property Enforcement Coordinator, as well as those of the United States Copyright Office.

In preparing the Report, substantial information was solicited from U.S. embassies around the world, from U.S. Government agencies, and from interested stakeholders. The draft of this Report was developed through the Special 301 Subcommittee of the interagency Trade Policy Staff Committee.

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EXECUTIVE SUMMARY

The Special 301 Report (Report) is the result of an annual review of the state of intellectual property (IP) protection and enforcement in U.S. trading partners around the world, which the Office of the United States Trade Representative (USTR) conducts pursuant to Section 182 of the Trade Act of 1974, as amended (the Trade Act, 19 U.S.C. § 2242). Congress amended the Trade Act in 1988 specifically “to provide for the development of an overall strategy to ensure adequate and effective protection of intellectual property rights and fair and equitable market access for United States persons that rely on protection of intellectual property rights.”¹ In particular, Congress expressed its concern that “the absence of adequate and effective protection of United States intellectual property rights, and the denial of equitable market access, seriously impede the ability of the United States persons that rely on protection of intellectual property rights to export and operate overseas, thereby harming the economic interests of the United States.”²

This Report provides an opportunity to put a spotlight on foreign countries and the laws, policies, and practices that fail to provide adequate and effective IP protection and enforcement for U.S. inventors, creators, brands, manufacturers, and service providers, which, in turn, harm American workers whose livelihoods are tied to America’s innovation- and creativity-driven sectors. The Report identifies a wide range of concerns, including: (a) challenges with border and criminal enforcement against counterfeits, including in the online environment; (b) high levels of online and broadcast piracy, including through illicit streaming devices; (c) inadequacies in trade secret protection and enforcement in China, Russia, and elsewhere; (d) troubling “indigenous innovation” and forced or pressured technology transfer policies that may unfairly disadvantage U.S. right holders in markets abroad; and (e) other ongoing, systemic issues regarding IP protection and enforcement, as well as market access, in many trading partners around the world. Combating such unfair trade policies can foster American innovation and creativity and increase economic security for American workers and families.

A priority of this Administration is to craft trade policy in service of America’s workers, including those in innovation- and creativity-driven export industries. The Report serves a critical function by identifying opportunities and challenges facing U.S. innovative and creative industries in foreign markets and by promoting job creation, economic development, and many other benefits that effective IP protection and enforcement support. The Report informs the public and our trading partners and seeks to be a positive catalyst for change. USTR looks forward to working closely with the governments of the trading partners that are identified in this year’s Report to address both emerging and continuing concerns and to build on the positive results that many of these governments have achieved.

¹ Omnibus Trade and Competitiveness Act of 1988, § 1303(a)(2), 102 Stat. 1179.

² *Id.* § 1303(a)(1)(B); *see also* S. Rep. 100-71 at 75 (1987) (“Improved protection and market access for U.S. intellectual property goes to the very essence of economic competitiveness for the United States. The problems of piracy, counterfeiting, and market access for U.S. intellectual property affect the U.S. economy as a whole. Effective action against these problems is important to sectors ranging from high technology to basic industries, and from manufacturers of goods to U.S. service businesses.”).

THE 2023 SPECIAL 301 LIST

The Special 301 Subcommittee received stakeholder input on more than 100 trading partners but focused its review on those submissions that responded to the request set forth in the notice published in the *Federal Register* to identify whether a particular trading partner should be named as a Priority Foreign Country, placed on the Priority Watch List or Watch List, or not listed in the Report. Following extensive research and analysis, USTR has identified 29 trading partners as follows:

Priority Watch List	Watch List	
<ul style="list-style-type: none">• Argentina• Chile• China• India• Indonesia• Russia• Venezuela	<ul style="list-style-type: none">• Algeria• Barbados• Belarus• Bolivia• Brazil• Bulgaria• Canada• Colombia• Dominican Republic• Ecuador• Egypt	<ul style="list-style-type: none">• Guatemala• Mexico• Pakistan• Paraguay• Peru• Thailand• Trinidad and Tobago• Turkey• Turkmenistan• Uzbekistan• Vietnam

The Special 301 review of Ukraine has been suspended due to Russia's premeditated and unprovoked further invasion of Ukraine in February 2022.

OUT-OF-CYCLE REVIEWS

An Out-of-Cycle Review is a tool that USTR uses to encourage progress on IP issues of concern. Out-of-Cycle Reviews provide an opportunity to address and remedy such issues through heightened engagement and cooperation with trading partners and other stakeholders. Out-of-Cycle Reviews focus on identified IP challenges in specific trading partner markets. Successful resolution of specific IP issues of concern can lead to a positive change in a trading partner's Special 301 status outside of the typical period for the annual review. Conversely, failure to address identified IP concerns, or further deterioration as to an IP-related concern within the specified Out-of-Cycle Review period, can lead to an adverse change in status.

In 2023, USTR will conduct an Out-of-Cycle Review of Bulgaria. This Out-of-Cycle review will provide an opportunity for Bulgaria to demonstrate progress in the coming months with addressing deficiencies in its investigation and prosecution of online piracy cases by allowing criminal investigations, expert examinations, and prosecutions to proceed with just a subset of seized infringing works, either by evidence sampling or some other method.

USTR may conduct additional Out-of-Cycle Reviews of other trading partners as circumstances warrant or as requested by a trading partner.

REVIEW OF NOTORIOUS MARKETS FOR COUNTERFEITING AND PIRACY

In 2010, USTR began publishing annually the *Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List)* separately from the annual Special 301 Report. The *Notorious Markets List* identifies illustrative examples of online and physical markets that reportedly engage in, facilitate, turn a blind eye to, or benefit from substantial copyright piracy and trademark counterfeiting, according to information submitted to USTR in response to a notice published in the *Federal Register* requesting public comments. In 2022, USTR requested such comments on August 26, 2022, and published the *2022 Notorious Markets List* on January 31, 2023. USTR plans to conduct its next Review of Notorious Markets for Counterfeiting and Piracy in the fall of 2023.

THE SPECIAL 301 PROCESS

The Congressionally mandated annual Special 301 Report is the result of an extensive multi-stakeholder process. Pursuant to the statute mandating the Report, the United States Trade Representative is charged with designating as Priority Foreign Countries those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on relevant U.S. products. (See ANNEX 1.) To facilitate administration of the statute, USTR has created a Priority Watch List and a Watch List within this Report. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IP protection, enforcement, or market access for U.S. persons relying on IP. Provisions of the Special 301 statute, as amended, direct the United States Trade Representative to develop action plans for each country identified as a Priority Watch List country that has also been on the Priority Watch List for at least one year.

Public Engagement

USTR solicited broad public participation in the 2023 Special 301 review process to facilitate sound, well-balanced assessments of trading partners' IP protection and enforcement and related market access issues affecting IP-intensive industries and to help ensure that the Special 301 review would be based on comprehensive information regarding IP issues in trading partner markets.

USTR requested written submissions from the public through a notice published in the *Federal Register* on December 15, 2022 (*Federal Register* notice). In addition, due to the COVID-19 pandemic, USTR fostered public participation via written submissions rather than an in-person hearing. The interagency Special 301 Subcommittee of the Trade Policy Staff Committee (TPSC) sent written questions about issues relevant to the review to those that submitted written comments, including to representatives of foreign governments, industry, and non-governmental organizations. USTR posted the written questions and the written responses online at www.regulations.gov, docket number USTR-2022-0016. The *Federal Register* notice drew submissions from 71 non-government stakeholders and 17 foreign governments. The submissions filed in response to the *Federal Register* notice are available to the public online at www.regulations.gov, docket number USTR-2022-0016.

Country Placement

The Special 301 listings and actions announced in this Report are the result of intensive deliberations among all relevant agencies within the U.S. Government, informed by extensive consultations with participating stakeholders, foreign governments, the U.S. Congress, and other interested parties.

USTR, together with the Special 301 Subcommittee, conducts a broad and balanced assessment of U.S. trading partners' IP protection and enforcement, as well as related market access issues affecting IP-intensive industries, in accordance with the statutory criteria. (See ANNEX 1.) The Special 301 Subcommittee, through the TPSC, provides advice on country placement to USTR based on this assessment. This assessment is conducted on a case-by-case basis, taking into account diverse factors such as a trading partner's level of development, its international obligations and commitments, the concerns of right holders and other interested parties, and the trade and investment policies of the United States. It is informed by the various cross-cutting issues and trends identified in Section I. Each assessment is based upon the specific facts and circumstances that shape IP protection and enforcement in a particular trading partner.

In the year ahead, USTR will continue to engage trading partners on the issues discussed in this Report. In preparation for, and in the course of, those interactions, USTR will:

- Engage with the U.S. Congress and U.S. Government agencies, as well as U.S. stakeholders and other interested parties to ensure that USTR's position is informed by the full range of views on the pertinent issues;
- Conduct extensive discussions with individual trading partners regarding their respective IP regimes;
- Encourage trading partners to engage fully, and with the greatest degree of transparency, with the full range of stakeholders on IP matters;
- Develop an action plan with benchmarks for each country that has been on the Priority Watch List for at least one year to encourage progress on high-priority IP concerns; and
- Identify, where possible, appropriate ways in which the U.S. Government can be of assistance. (See ANNEX 2.)

USTR will conduct these discussions in a manner that both advances the policy goals of the United States and respects the importance of meaningful policy dialogue with U.S. trading partners. In addition, USTR will continue to work closely with other U.S. Government agencies to ensure consistency of U.S. trade policy objectives.

STRUCTURE OF THE SPECIAL 301 REPORT

The 2023 Report contains the following Sections and Annexes:

SECTION I: Developments in Intellectual Property Rights Protection, Enforcement, and Related Market Access discusses global trends and issues in IP protection and enforcement and related market access that the U.S. Government works to address on a daily basis;

SECTION II: Country Reports includes descriptions of issues of concern with respect to particular trading partners;

ANNEX 1: Special 301 Statutory Basis describes the statutory basis of the Special 301 Report; and

ANNEX 2: U.S. Government-Sponsored Technical Assistance and Capacity Building highlights U.S. Government-sponsored technical assistance and capacity-building efforts.

April 2023

SECTION I: Developments in Intellectual Property Rights Protection, Enforcement, and Related Market Access

An important part of the mission of the Office of the United States Trade Representative (USTR) is to support and implement the Administration’s commitment to protect American jobs and workers and to advance the economic interests of the United States. USTR works to protect American innovation and creativity in foreign markets employing all the tools of U.S. trade policy, including the annual Special 301 Report (Report).

Fostering innovation and creativity is essential to U.S. economic growth, competitiveness, and the estimated 63 million American jobs that directly or indirectly rely on intellectual property (IP)-intensive industries.³ IP-intensive industries, defined by the U.S. Patent and Trademark Office (USPTO) as industries that rely most heavily on IP protections, are a diverse group that include, among others, manufacturers, technology developers, apparel makers, software publishers, agricultural producers, and creators of creative and cultural works.⁴ Together, these industries generated 41% of the U.S. gross domestic product (GDP).⁵ The 47.2 million workers that IP-intensive industries employed directly also enjoyed pay that was, on average, 60% higher than workers in non-IP-intensive industries.⁶

IP infringement, including patent infringement, trademark counterfeiting, copyright piracy,⁷ and trade secret theft, causes significant financial losses for right holders and legitimate businesses around the world. IP infringement undermines U.S. competitive advantages in innovation and creativity, to the detriment of American businesses and workers.⁸ In its most pernicious forms, IP infringement endangers the public, including through exposure to health and safety risks from counterfeit products, such as semiconductors, automobile parts, apparel, footwear, toys, and medicines. In addition, trade in counterfeit and pirated products often fuels cross-border organized criminal networks, increases the vulnerability of workers to exploitative labor practices, and hinders sustainable economic development in many countries.

This Section highlights developments in 2022 and early 2023 in IP protection, enforcement, and related market access in foreign markets, including: examples of initiatives to strengthen IP

³ USPTO, *Intellectual Property and the U.S. Economy: Third Edition* at 4 (Mar. 2022), <https://www.uspto.gov/sites/default/files/documents/uspto-ip-us-economy-third-edition.pdf>.

⁴ *See id.* at 15 (table listing IP-intensive industries).

⁵ *Id.* at 13.

⁶ *Id.* at 4 and 9.

⁷ The terms “trademark counterfeiting” and “copyright piracy” may appear below also as “counterfeiting” and “piracy,” respectively.

⁸ The Issue Focus of the 2022 Review of Notorious Markets for Counterfeiting and Piracy examines the impact of online piracy on U.S. workers. Workers, such as content creators and the creative professionals who support the production of creative works, rely more than ever on adequate and effective copyright protection and enforcement to secure their livelihoods in today’s digital era. Online piracy is not only highly detrimental to the U.S. economy as a whole, but it also has a strong impact on the everyday lives of individual workers.

protection and enforcement; illustrative best practices demonstrated by the United States and our trading partners; U.S.-led initiatives in multilateral organizations; and bilateral and regional developments. This Section identifies outstanding challenges and trends, including as they relate to enforcement against counterfeit goods, online and broadcast piracy, protection of trade secrets, forced or pressured technology transfer and preferences for indigenous IP,⁹ geographical indications (GIs), innovative pharmaceutical products and medical devices, trademark protection issues, copyright administration and royalty payment, and government use of unlicensed software. This Section also highlights the importance of IP to innovation in the environmental sector and considerations at the intersection of IP and health. Finally, this Section discusses the importance of full implementation of the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and developments on the use of WTO dispute settlement procedures by the United States to resolve IP concerns.

A. Initiatives to Strengthen Intellectual Property Protection and Enforcement in Foreign Markets

The Office of the United States Trade Representative (USTR) notes the following important developments in 2022 and early 2023:

- In October 2022, **Japan's** Trademark Act amendments that address concerns over Japan's personal use exemption for imported goods, which was used increasingly to send counterfeit items to individuals in Japan via postal and courier services, came into force. Pursuant to the amendment, items imported from "overseas vendors" for personal use now fall within the scope of the Trademark Act, such that counterfeits imported in this manner are subject to seizure.
- In September 2022, the United States and **Paraguay** finalized an IP Work Plan in conjunction with the first meeting under the United States-Paraguay Trade and Investment Framework Agreement (TIFA). The Work Plan will serve as a roadmap to address issues on the protection and enforcement of intellectual property rights in Paraguay. The two countries, with the relevant agencies coordinating, will implement the Work Plan, and review this implementation on an ongoing basis.
- After being removed from the Priority Watch List in 2022, **Saudi Arabia's** Saudi Authority for Intellectual Property (SAIP) continued to take steps to improve IP protection and enforcement. New developments include the introduction of an IP Respect Council to facilitate communication between government entities and private sector stakeholders and the high-profile launch of a national IP strategy. Right holders highlight increased enforcement, improved communications with Customs, and transparent processes for developing regulations.
- **Malaysia** adopted the Copyright (Amendment) Act 2022, which contained new provisions that create a new criminal offense of committing copyright infringement with streaming

⁹ In certain countries, preferences or policies on "indigenous IP" or "indigenous innovation" refer to a top-down, state-directed approach to technology development, which can include explicit market share targets that are to be filled by producers using domestically owned or developed IP.

technology and impose penalties. The amendments entered into force in March 2022. Malaysia should take steps during the implementation and application of the new provisions to clarify their scope with respect to technologies and devices employed for non-infringing uses.

- **Canada** increased the term of copyright protection for all works measured by the life of the author from life of the author plus 50 years to life of the author plus 70 years, which is a United States-Mexico-Canada Agreement (USMCA) obligation.
- **Thailand** amended the Copyright Act, which included new provisions against circumvention of technological protection measures and on secondary liability. The amendments entered into force in August 2022.
- In **Vietnam**, amendments to the IP Code entered into force in January 2023, which include categorizing the illegal uploading and streaming of a cinematographic work as a violation of communication rights and clarifying that copying of part of a work will be considered as a reproduction.
- In 2023, the National Intellectual Property Rights Coordination Center and Homeland Security Investigations Jakarta co-hosted the Intellectual Property Rights Investigative Methods Workshop in **Indonesia** for investigators, prosecutors, regulators, and customs officials from the Directorate General for Intellectual Property (DGIP), Ministry of Law and Human Rights, Indonesian National Police, Indonesia Customs and Excise, BPOM (Indonesian FDA), Attorney General Office, Ministry of Health (Kemenkes), Ministry of Communication and Informatics (Kominfo), Ministry of Trade, and the Ministry of Research, Culture, Education & Technology (Kemendikbudristek). The training was supported by the U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs; U.S. Department of Justice, Office of Overseas Prosecutorial Development, Assistance, and Training; Federal Bureau of Investigation; U.S. Customs and Border Protection; and the U.S. Patent and Trademark Office.
- In March 2023, **Nigeria** adopted the Copyright Act, 2022, with a view to implementing the World Intellectual Property Office (WIPO) Performances and Phonograms Treaty (WPPT) and the WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties, which Nigeria ratified in 2017. The law includes new provisions for enforcement in the online environment and against circumvention of technological protection measures, as well as introduces a making available right.
- As of March 2023, there are 61 members of the 1991 Act of the International Union for the Protection of New Varieties of Plants Convention (UPOV 1991). The treaty requires member countries to grant IP protection to breeders of new plant varieties, known as breeder's rights. An effective plant variety protection system incentivizes plant-breeding activities, which leads to increased numbers of new plant varieties with improved characteristics such as high-yield, tolerance to adverse environmental conditions, and better food quality. In addition, promoting strong plant variety protection and enforcement

globally helps improve industry competitiveness in foreign markets, encourages the importation of foreign plant varieties, and enhances domestic breeding programs.

- As of March 2023, there are 112 parties to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty and 114 parties to the WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties. These treaties, which were completed in 1996 and entered into force in 2002, have raised the standard of copyright protection around the world, particularly with regard to online delivery of copyrighted content. The treaties, which provide for certain exclusive rights, require parties to provide adequate legal protection and effective legal remedies against the circumvention of technological protection measures (TPMs), as well as certain acts affecting rights management information (RMI). Since the publication of the 2022 Special 301 Report, **Thailand** and **Tunisia** have acceded to the WIPO Copyright Treaty, and Tunisia acceded to the WIPO Performances and Phonograms Treaty (WPPT).

The United States will continue to work with its trading partners to further enhance IP protection and enforcement during the coming year.

B. Illustrative Best Intellectual Property Practices by Trading Partners

The Office of the United States Trade Representative (USTR) highlights the following illustrative best practices by trading partners in the area of intellectual property (IP) protection and enforcement:

- Cooperation and coordination among national government agencies involved in IP issues are examples of effective IP enforcement. Several countries, including the United States, have introduced IP enforcement coordination mechanisms or agreements to enhance interagency cooperation. In **Thailand**, the interagency National Committee on Intellectual Property, led by the Prime Minister, approved a “Thailand 4.0” policy and “20-Year IP Roadmap” for IP protection and enforcement. **India**’s Cell for Intellectual Property Rights Promotion and Management (CIPAM) collaborated with the Federation of Indian Chambers of Commerce (FICCI) to create IP enforcement toolkits used as guidance during in-house training of police officers and in workshops at police academies. In **Saudi Arabia**, the Saudi Authority for Intellectual Property (SAIP) created the permanent National Committee for the Enforcement of Intellectual Property to coordinate IP enforcement, issue reports and case studies, and develop IP legislation and regulations. **Brazil**’s National Council on Combating Piracy and Intellectual Property Crimes is composed of representatives from executive branch ministries and the private sector, and works to discuss ongoing IP enforcement issues, propose public policy initiatives, and organize public awareness workshops. **Indonesia** expanded the Intellectual Property Enforcement Task Force to include coordination on IP enforcement with four additional ministries, including the Ministry of Trade and Ministry of Health. **Uzbekistan**’s regional Intellectual Property Centers (IPPCs) seek to foster interagency cooperation on enforcement. In December 2022, the **Dominican Republic** created the National Inter-Ministerial Council of Intellectual Property, led by the Ministry of Industry and Commerce, which will coordinate the agencies involved in IP protection and enforcement and ensure

better cooperation and information sharing. **Romania** appointed its first national IP enforcement coordinator last year who, along with the interagency IP working group, is finalizing Romania's first national strategy for IP protection. The United States encourages other trading partners to consider adopting cooperative IP arrangements.

- Specialized IP enforcement units and specialized IP courts also have proven to be important catalysts in the fight against counterfeiting and piracy. For example, the Special Internet Forensics Unit in **Malaysia's** Ministry of Domestic Trade and Consumer Affairs, which is responsible for IP enforcement, monitors websites and coordinates with other government entities to combat counterfeiting and piracy online.
- Many trading partners conducted IP awareness and educational campaigns, including jointly with stakeholders, to develop support for domestic IP initiatives. In **Spain**, the Ministry of Industry, Trade, and Tourism's Patent and Trademark Office carried out campaigns against IP theft. In **Algeria**, the Office of Copyright and Neighboring Rights (ONDA) works with technology firms to raise awareness of the importance of using licensed software. The **United Arab Emirates (UAE)** holds workshops to help customs officials distinguish between counterfeit and genuine goods. In **Thailand**, the Department of Intellectual Property continued to carry out various IP awareness activities, including the release of animated videos to educate children on IP in cooperation with **Japan** and **Korea** and the organization of IP awareness campaigns at physical markets. In the **Philippines**, the Raise the Economy by Acquiring Protection of Your IP of Your Community (REAP IP) program engaged over 160 local government units on IP awareness. In **Côte d'Ivoire**, the Bureau Ivoirien du Droit d'Auteur (BURIDA) partnered with town halls, national institutions, hotels, and health centers to conduct collective management organization (CMO) education, resulting in an increase of music license collections. In **Nigeria**, the Nigerian Copyright Commission (NCC) and the Nigeria Educational Research and Development Council are partnering to introduce copyright into school curriculums, and the NCC also to organizes writing competitions for secondary students on the importance of copyright.
- Another best practice is the active participation of government officials in technical assistance and capacity building. **Romania's** law enforcement officers and prosecutors participated in several IP workshops and trainings organized by the regional International Computer Hacking and Intellectual Property (ICHIP) Advisor of the U.S. Department of Justice (DOJ) to promote U.S. best practices for IP rights enforcement, including at the border. **Algeria** and **Tunisia's** judges participated in an IP Judicial exchange hosted by the U.S. Patent and Trademark Office. The Intellectual Property Office of the **Philippines** conducted an annual IP Colloquium for the Judiciary, which provided training for judges of the Special Commercial Courts, and organized workshops for law enforcement agents and prosecutors. In **Thailand**, the Department of Intellectual Property organized workshops for law enforcement officers on enhancing IP enforcement, investigation of online piracy, and investigation of counterfeit products. The Department of Intellectual Property also co-organized, in cooperation with the Association of Southeast Asian Nation (ASEAN) Secretariat and U.S. Patent and Trademark Office, a workshop on "Intellectual Property, Consumer Protection, and Unfair Business Practices." **Turkmenistan's** State

Agency for Intellectual Property, under the Ministry of Finance and Economy, proactively sought out capacity building programs for its officials.

- Micro, small, and medium-sized enterprises (MSMEs) play a positive role in the global economy as they contribute widely to innovation, trade, growth, investment, and competition. According to a study by the European Patent Office and the European Union Intellectual Property Office in 2019, small and medium-sized enterprises that have at least one IP right are 21% more likely to experience a growth period.¹⁰ Many trading partners provide capacity building, technical assistance, or other resources to help MSMEs better understand IP and how to protect and enforce their IP. For example, **Thailand** launched “Intellectual Property for Businesses” (IP4B) program to improve the ability of small businesses to commercialize IP. Similarly, the **United Kingdom** provides IP audits to help potential high growth, innovative MSMEs with a tailored assessment of the IP within their business to help them develop IP management strategies.

C. Multilateral Initiatives

The United States works to promote adequate and effective intellectual property (IP) protection and enforcement through various multilateral institutions, notably the **World Trade Organization** (WTO). In the past year, the United States co-sponsored discussions in the WTO Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) on the positive and mutually reinforcing relationship between the protection of IP, innovation, and business development.

In 2022, the United States advanced its Intellectual Property and Innovation agenda in the TRIPS Council through a series of different initiatives that cover often unexplored areas connected to IP and innovation. Over the course of three meetings, the United States and co-sponsors presented on the relationship between IP, innovation, and microfinance; IP licensing opportunities; and the role of IP to raise finance for start-ups. The discussions were wide-ranging and spurred Members to consider the links between these areas.

Throughout 2022, the United States, together with other Members of the WTO, worked to orient Members’ efforts towards a pandemic response and greater preparedness, and sought to identify priority steps that could be taken, including in the area of trade facilitation and IP protections. As part of the Biden Administration’s comprehensive effort to combat the COVID-19 pandemic, the United States supported negotiations that resulted in the WTO issuing two Ministerial Decisions in June 2022. One was on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics. The other was on the TRIPS Agreement. The United States supports continued discussions at the WTO on this issue, and USTR has requested that the U.S. International Trade Commission launch an investigation into COVID-19 diagnostics and therapeutics and provide information on market dynamics to help inform the discussion around supply and demand, price points, the relationship between testing and treating, and production and access.

¹⁰ See EPO/EUIPO, *High-growth Firms and Intellectual Property Rights: IPR Profile of High-potential SMEs in Europe* (May 2019), [http://documents.epo.org/projects/babylon/eponet.nsf/0/F59459A1E64B62F3C12583FC002FBD93/\\$FILE/high_growth_firms_study_en.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/F59459A1E64B62F3C12583FC002FBD93/$FILE/high_growth_firms_study_en.pdf).

D. Bilateral and Regional Initiatives

The United States works with many trading partners on IP protection and enforcement through the provisions of bilateral instruments, including trade agreements and memoranda of cooperation, and through regional initiatives.

The following are examples of bilateral coordination and cooperation:

- Trade and Investment Framework Agreements (TIFAs) between the United States and more than 50 trading partners and regions around the world have facilitated discussions on IP protection and enforcement. In May 2022, the United States and **Taiwan** held a TIFA intersessional meeting under the auspices of the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO) and discussed updates related to copyright legislation and digital piracy. The seventh round of U.S.-**Algeria** TIFA talks held in June 2022 included discussion on customs enforcement, piracy devices, and improvements needed in the patent system. In July 2022, the Intellectual Property Working Group under the United States-**Central Asia** TIFA met to discuss and share ideas about customs enforcement in each country. In September 2022, the United States and Paraguay met for the first time under the U.S.-**Paraguay** TIFA. At the TIFA meeting, Paraguay finalized an IP Work Plan with USTR. Also in September 2022, the United States and Thailand held a technical meeting to discuss issues raised under the U.S.-**Thailand** TIFA. In December 2022, the United States-**Argentina** Innovation and Creativity Forum for Economic Development held its seventh meeting to discuss IP issues that are essential to the success of each country's innovation economy. Also, **Bangladesh** and the United States held the sixth meeting of the Trade and Investment Cooperation Forum Agreement with a discussion focused on increasing expert-level IP engagement. In addition, the United States and **Egypt** held a TIFA meeting in December 2022 and discussed the new National IP Strategy, as well as efforts to combat unlicensed content on satellite channels. The Intellectual Property Working Group under the **India**-United States Trade Policy Forum (TPF) exchanged ideas and discussed developments on patent, copyright, and trademark issues, among others. At the thirteenth Ministerial-level meeting of the TPF held in January 2023, India clarified certain aspects of its patent and trademark system reforms. A February 2023 United States-**Pakistan** TIFA Ministerial meeting included engagement on updates to Pakistan's IP laws and Pakistan's progress on joining IP treaties. An IP technical working group under the U.S.-**Saudi Arabia** TIFA met ahead of the March 2023 TIFA meeting to discuss private-public engagement on IP issues, enforcement best practices, and updates on **Saudi Arabia's** planned accession to several IP treaties.

Regional coordination and cooperation also increase the effectiveness of engagement on IP protection and enforcement challenges that extend beyond individual jurisdictions:

- In 2023, the United States hosted the **Asia-Pacific Economic Cooperation (APEC)** with a host year theme of "Creating a Resilient and Sustainable Future for All." The United States continued to use the Intellectual Property Experts Group and other APEC sub-fora to build capacity and raise standards in the Asia-Pacific region. This included continued

discussions with APEC economies on effective practices for enforcement against illicit streaming in a U.S.-led initiative on illicit streaming, which previously included the joint publication of the *Report on Results of Survey Questionnaire on Domestic Treatment of Illicit Streaming Devices (ISDs) by APEC Economies* and a virtual workshop. The United States also organized workshops on the margins of the Intellectual Property Experts Group Meeting. The “Roundtable on Copyright and Creativity in the Digital Economy” provided diverse perspectives from independent creators, producers, and union workers on the importance of copyright protection and enforcement for promoting inclusive growth for individuals and small and medium-sized enterprises (SMEs) in the creative industries. The “Workshop on Geographical Indications and Preservation of Common Names” fostered a dialogue on inclusive trade by featuring SME producers and other stakeholders who spoke about the economic benefits of preserving the use of common names and the problems they encounter when common names are not preserved. The United States organized a workshop “Leveraging Industrial Design Protections for Small-and-Medium Sized Enterprises” as it continues to lead an initiative on industrial design protection, which highlighted industrial design protection as a critical component of any IP portfolio for competitive businesses in the modern innovation economy, particularly for small and medium-sized businesses in the APEC region.

- Under its trade preference program reviews, the Office of the United States Trade Representative (USTR), in coordination with other U.S. Government agencies, examines IP practices in connection with the implementation of Congressionally authorized trade preference programs, including the Generalized System of Preferences (GSP) program, the African Growth and Opportunity Act, the Caribbean Basin Economic Recovery Act, and the Caribbean Basin Trade Partnership Act. USTR has ongoing GSP reviews of IP practices in **Indonesia** and **South Africa** but is not making any determinations about ongoing reviews while duty-free benefits under GSP remain lapsed. USTR continues to work with trading partners to address policies and practices that may adversely affect their eligibility under the IP criteria of preference programs.

In addition to the work described above, the United States anticipates engaging with its trading partners on IP-related initiatives in fora such as the **Group of Seven (G7)**, **WIPO**, the **Organisation for Economic Co-operation and Development (OECD)**, and the **World Customs Organization**. USTR, in coordination with other U.S. Government agencies, looks forward to continuing engagement with trading partners to improve the global IP environment.

E. Intellectual Property Protection, Enforcement, and Related Market Access Challenges

Border, Criminal, and Online Enforcement Against Counterfeiting

Trademark counterfeiting harms consumers, legitimate producers, and governments. Consumers may be harmed by fraudulent and potentially dangerous counterfeit products,¹¹ particularly

¹¹ See OECD/EUIPO, *Dangerous Fakes: Trade in Counterfeit Goods that Pose Health, Safety and Environmental Risks* (March 2022), <https://www.oecd.org/publications/dangerous-fakes-117e352b-en.htm> (identifying types of

medicines, automotive and airplane parts, and food and beverages that may not be subject to the rigorous good manufacturing practices used for legitimate products. Infringers often disregard product quality and performance for higher profit margins. Legitimate producers and their employees face diminished revenue and investment incentives, adverse employment impacts, and reputational damage when consumers purchase fake products. Counterfeiting may also increase costs for firms to enforce their intellectual property (IP) rights. Governments lose the tax revenues generated by legitimate businesses and may find it more difficult to attract investment when illegal competitors undermine the market.

The problem of trademark counterfeiting continues on a global scale and involves the production, transshipment, and sale of a vast array of fake goods. Counterfeit goods, including semiconductors and other electronics, chemicals, medicines, automotive and aircraft parts, food and beverages, household consumer products, personal care products, apparel and footwear, toys, and sporting goods, make their way from **China**¹² and other source countries, such as **India** and **Turkey**, directly to purchasers around the world.

The counterfeits are shipped either directly to purchasers or indirectly through transit hubs, including **Hong Kong**, **Kazakhstan**, **Kyrgyzstan**, **Singapore**, and **Turkey**, to third-country markets such as **Brazil**, **Kenya**, **Nigeria**, **Paraguay**, and **Russia** that are reported to have ineffective or inadequate IP enforcement systems.

According to an Organisation for Economic Co-operation and Development (OECD) and European Union Intellectual Property Office (EUIPO) study released in June 2021, titled *Global Trade in Fakes: A Worrying Threat*, the global trade in counterfeit and pirated goods reached \$464 billion in 2019, accounting for 2.5% of the global trade in goods for that year.¹³ **China** (together with **Hong Kong**) continues to be the largest origin economy for counterfeit and pirated goods, accounting for more than 85% of global seizures of counterfeit goods from 2017 to 2019.¹⁴ The report identified **Bangladesh** as one of the top five source economies for counterfeit clothing globally, which stakeholders have also identified as a concern this year.¹⁵ Stakeholders also continue to report dissatisfaction with border enforcement in **Singapore**, including concerns about the lack of coordination between Singapore's Customs authorities and the Singapore Police Force's Intellectual Property Rights Branch.

The manufacture and distribution of pharmaceutical products and active pharmaceutical ingredients bearing counterfeit trademarks is a growing problem that has important consequences for consumer health and safety and is exacerbated by the rapid growth of illegitimate online sales. Counterfeiting contributes to the proliferation of substandard, unsafe medicines that do not

potentially dangerous counterfeit products, associated health and safety risks, and global trade statistics from 2017 to 2019 for these products).

¹² In fiscal year 2021, China and Hong Kong accounted for 75% of the value (measured by manufacturers' suggested retail sale price) of counterfeit and pirated goods seized by the U.S. Customs and Border Protection. U.S. Customs and Border Protection Office of Trade, *Intellectual Property Rights Seizure Statistics: Fiscal Year 2021* at 35 (Sep. 2022), <https://www.cbp.gov/document/annual-report/fy-2021-ipr-seizure-statistics>.

¹³ OECD/EUIPO, *Global Trade in Fakes: A Worrying Threat* at 9 (Jun. 2021), https://www.oecd-ilibrary.org/governance/global-trade-in-fakes_74c81154-en.

¹⁴ *Id.* at 27.

¹⁵ *Id.* at 48.

conform to established quality standards. The United States is particularly concerned with the proliferation of counterfeit pharmaceuticals that are manufactured, sold, and distributed by numerous trading partners. The top countries of origin for counterfeit pharmaceuticals seized at the U.S. border in Fiscal Year 2022 were **China, India, and Turkey**. A recent study by OECD and EUIPO found that **China, India, Indonesia, Pakistan, the Philippines, and Vietnam** are the leading sources of counterfeit medicines distributed globally.¹⁶ In addition to counterfeit medicines, this past year, United States Customs and Border Protection (CBP) continued to target and seize illegal imports of counterfeit, unapproved, or otherwise substandard COVID-19 related products that threatened the health and safety of American consumers. These seizures included over 5.8 million counterfeit face masks in 142 incidents. U.S. brands are the most popular targets for counterfeiters of medical products, and counterfeit U.S.-brand medicines account for 38% of global counterfeit medicine seizures.¹⁷ While it may not be possible to determine an exact figure, the World Health Organization (WHO) estimated that substandard or falsified medical products comprise 10% of total medical products in low- and middle-income countries.¹⁸ Furthermore, the increasing popularity of online pharmacies¹⁹ has aided the distribution of counterfeit medicines. A 2020 study by Pennsylvania State University found that illicit online pharmacies, which provide access to prescription drugs, controlled substances, and substandard or counterfeit drugs, represent between 67% to 75% of web-based drug merchants.²⁰ The U.S. Government, through the United States Agency for International Development and other federal agencies, supports programs in sub-Saharan Africa, Asia, and elsewhere that assist trading partners in protecting the public against counterfeit and substandard medicines in their markets.

Counterfeiters increasingly use legitimate express mail, international courier, and postal services to ship counterfeit goods in small consignments rather than ocean-going cargo to evade the efforts of enforcement officials to interdict these goods. Approximately 90% of U.S. seizures at the border are made in the express carrier and international mail environments. Counterfeiters also continue to ship products separately from counterfeit labels and packaging to evade enforcement efforts that are limited by laws or practices that require counterfeit items to be “completed,” which may overlook the downstream application of counterfeit labels.²¹

¹⁶ OECD/EUIPO, *Trade in Counterfeit Pharmaceutical Products* at 35 (Mar. 2020), <http://www.oecd.org/gov/trade-in-counterfeit-pharmaceutical-products-a7c7e054-en.htm>.

¹⁷ *Id.* at 12.

¹⁸ WHO, *Substandard and Falsified Medical Products* (Jan. 2018), <https://www.who.int/news-room/fact-sheets/detail/substandard-and-falsified-medical-products>.

¹⁹ See Alliance for Safe Online Pharmacies (ASOP Global) / Abacus Data, *2020 National Survey on American Perceptions of Online Pharmacies* (Oct. 2020), https://buysaferx.pharmacy/wp-content/uploads/2020/10/ASOP-Global-Survey-Key-Findings_October-2020-FINAL.pdf (based on a July 2020 poll of 1500 American consumers, “35% of Americans have now reported using an online pharmacy to buy medication for themselves or someone in their care” with “31% [doing] so for the first time this year because of the pandemic”).

²⁰ Journal of Medical Internet Research, *Managing Illicit Online Pharmacies: Web Analytics and Predictive Models Study* (Aug. 2020), <https://www.jmir.org/2020/8/e17239/>; cf. ASOP Global / Abacus Data, *infra* (“At any given time, there are 35,000 active online pharmacies operating worldwide, 96% of which are operating illegally in violation of state and/or federal law and relevant pharmacy practice standards.”); FDA, *Internet Pharmacy Warning Letters* (Mar. 2021), <https://www.fda.gov/drugs/drug-supply-chain-integrity/internet-pharmacy-warning-letters> (listing illegally operating online pharmacies that have been sent warning letters by the FDA).

²¹ For more information on these trends and CBP’s and United States Immigration and Customs Enforcement Homeland Security Investigations’ IP enforcement efforts, see the Department of Homeland Security (DHS), Intellectual Property Rights Annual Seizure Statistics at <https://www.cbp.gov/trade/priority-issues/ipr/statistics>.

Counterfeiters also increasingly sell counterfeit goods on online marketplaces, particularly through platforms that permit consumer-to-consumer sales. The Office of the United States Trade Representative (USTR) urges e-commerce platforms to take proactive and effective steps to reduce piracy and counterfeiting, for example, by establishing and adhering to strong quality control procedures in both direct-to-consumer and consumer-to-consumer sales, vetting third-party sellers, engaging with right holders to quickly address complaints, and working with law enforcement to identify IP violators.²²

The United States continues to urge trading partners to undertake more effective criminal and border enforcement against the manufacture, import, export, transit, and distribution of counterfeit goods. The United States engages with its trading partners through bilateral consultations, trade agreements, and international organizations to help ensure that penalties, such as significant monetary fines and meaningful sentences of imprisonment, are available and applied to deter counterfeiting. In addition, trading partners should ensure that competent authorities seize and destroy counterfeit goods, as well as the materials and implements used for their production, thereby removing them from the channels of commerce. Permitting counterfeit goods, as well as materials and implements, to re-enter the channels of commerce after an enforcement action wastes resources and compromises the global enforcement effort.

In addition, trading partners should also provide enforcement officials with *ex officio* authority to seize suspect goods and destroy counterfeit goods in-country as part of their criminal procedures and at the border during import, export, or in-transit movement, without the need for a formal complaint from a right holder. In **Colombia**, for example, the customs police reportedly do not have authority to enter primary inspection zones and lack *ex officio* authority to inspect, seize, and destroy counterfeit goods in those zones. Similarly, in **Ecuador**, stakeholders have reported concerns with a lack of *ex officio* authority. Although **Indonesia** provides *ex officio* authority for its customs authorities and has a recordation system, right holders can only benefit from the system if they meet several stringent requirements, including local permanent establishment requirements and large deposit requirements. Customs officials in **Mexico** only have *ex officio* authority to initiate border actions, not to make a determination that suspected counterfeit or pirated goods should be seized. An order from either another government agency is required before such goods can be seized. **Turkey** provides its National Police with *ex officio* authority only in relation to copyright violations and not for trademark counterfeiting violations. **Pakistan** has not provided criminal enforcement authorities *ex officio* authority to take action against counterfeit goods. **Turkmenistan** lacks *ex officio* authority for border enforcement.

The United States coordinates with and supports trading partners through technical assistance and sharing of best practices on criminal and border enforcement, including with respect to the destruction of seized goods (see ANNEX 2).

Supply chains offer many new opportunities for counterfeit goods to enter into the supply chain, including in the production process. This practice can taint the supply chain for goods in all countries, and countries must work together to detect and deter commerce in counterfeit goods. To this end, the United States strongly supports continued work in the OECD and elsewhere on

²² For more examples, see DHS, *Combating Trafficking in Counterfeit and Pirated Goods* (January 2020), https://www.dhs.gov/sites/default/files/publications/20_0124_pley_counterfeit-pirated-goods-report_01.pdf.

countering illicit trade. For example, the OECD recently adopted recommendations for enhancing transparency and reducing opportunities for illicit trade in free trade zones (also known as foreign-trade zones).²³ The United States encourages the OECD and our trading partners to build off the *Governance Frameworks to Counter Illicit Trade* OECD report²⁴ and the International Chamber of Commerce (ICC) *Know Your Customer* initiative²⁵ aimed at tackling the problem of counterfeit goods transported by international shipping companies. The United States commends these efforts by the OECD and the ICC.

Online Piracy and Broadcast Piracy

The increased availability of broadband Internet connections around the world, combined with increasingly accessible and sophisticated mobile technology, has been a boon to the U.S. economy and trade. One key area of economic growth for the United States has been the development of legitimate digital platforms for distribution of copyrighted content, so that consumers around the world can enjoy the latest movies, television, music, books, and other copyrighted content from the United States.

However, technological developments have also made the Internet an extremely efficient vehicle for disseminating pirated content that competes unfairly with legitimate e-commerce and distribution services that copyright holders and online platforms use to deliver licensed content. While optical disc piracy continues in many countries, including **China, India, Mexico, and Pakistan**, online piracy is the most challenging copyright enforcement issue in many foreign markets. For example, during the review period, countries such as **Argentina, Bulgaria, Canada, Chile, China, Colombia, the Dominican Republic, India, Mexico, the Netherlands, Pakistan, Romania, Russia, Switzerland, Thailand, Ukraine, and Vietnam** had high levels of online piracy and lacked effective enforcement. A June 2019 report, titled *Impacts of Digital Video Piracy on the U.S. Economy*, estimated that global online video piracy costs the U.S. economy at least \$29.2 billion and as much as \$71 billion in lost revenue each year.²⁶

Stream-ripping software can be used to create infringing copies of copyrighted works from licensed streaming sites, and stream-ripping is now a dominant method of music piracy, causing substantial economic harm to music creators and undermining legitimate online services. During the review period, stream-ripping was reportedly popular in countries such as **Canada, India, Korea, Mexico, Russia, Switzerland, Ukraine, and the United Arab Emirates**.

²³ OECD, *Recommendation of the Council on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones* (Oct. 2019), <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0454>.

²⁴ OECD, *Governance Frameworks to Counter Illicit Trade* (Mar. 2018), https://www.oecd-ilibrary.org/governance/governance-frameworks-to-counter-illicit-trade_9789264291652-en.

²⁵ International Chamber of Commerce, *Know Your Customer* (Mar. 2018), <https://cdn.iccwbo.org/content/uploads/sites/3/2018/09/icc-2018-kyc-and-supply-chain-paper.pdf>.

²⁶ Blackburn, David et al, *Impacts of Digital Video Piracy on the U.S. Economy* at Foreword, ii (Jun. 2019), <https://www.theglobalipcenter.com/wp-content/uploads/2019/06/Digital-Video-Piracy.pdf>. See also Danaher, Brett et al, *Piracy Landscape Study: Analysis of Existing and Emerging Research Relevant to Intellectual Property Rights (IPR) Enforcement of Commercial-Scale Piracy*, USPTO Economic Working Paper No. 2020-2 (Apr. 2020) (evaluating peer-reviewed studies addressing the scope and magnitude of economic harm from piracy, particularly via digital channels, across music and books as well as movies and television), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3577670.

Furthermore, as highlighted in the 2017 *Notorious Markets List* and called out in subsequent *Notorious Markets Lists*, illicit streaming devices (ISDs), also referred to as piracy devices, continue to pose a direct threat to content creators, sports leagues, and live performances, as well as legitimate streaming, on-demand, and over-the-top media service providers. Similarly, illicit Internet Protocol television (IPTV) services unlawfully retransmit telecommunications signals and channels containing copyrighted content through dedicated web portals and third-party applications. Today, there are many illegal IPTV services worldwide, many of which are subscription-based, for-profit services with vast and complex technical infrastructures. Stakeholders continue to report notable levels of piracy through ISDs and illicit IPTV apps, including in **Argentina, Brazil, Canada, Chile, China, Guatemala, Hong Kong, India, Indonesia, Iraq, Jordan, Mexico, Morocco, Singapore, Switzerland, Taiwan, Thailand, Tunisia, and Vietnam**. China, in particular, is a manufacturing hub for these devices, and Iraq is reportedly a source of satellite receivers pre-loaded with pirate IPTV apps.

Signal theft by cable operators continues to be a problem. In most cases, infringers circumvent encryption systems or otherwise unlawfully access cable or satellite signals to access copyrighted content. For example, in **Brazil**, signal theft is used as a source of premium live content. **Argentina's** law enforcement authorities do not prioritize theft of pay-tv signals. **Honduras** has one of the highest rates of signal piracy in Latin America and the Caribbean, with lack of enforcement being an ongoing problem. There are also concerns that a major cable provider in the country offers unlicensed programming, is using that pirated content to expand its market share, and is now moving to illegal streaming as well. Prior to January 2022, many **Ukrainian** cable operators reportedly had continued to transmit audiovisual programming without licenses. Unauthorized distributors may also steal "overspill" broadcast or satellite signals from neighboring countries, access broadcast signals, or otherwise hack set-top boxes to allow consumers unauthorized access to copyrighted content, including premium cable channels. Hotels remain common sites of this type of infringement as they may use their own, on-site facilities to intercept programming services and retransmit them throughout the hotel without paying right holders.

The proliferation of "camcords" continues to be a significant trade problem. Unauthorized camcording is the primary source of infringing copies of newly released movies found online. The recordings made in movie theaters today are very different from those by a single person sitting in a theater with a bulky videotape recorder. The results are not shaky, inaudible recordings. It is now easy for a surreptitious recording in a movie theater to result in a clean digital copy of a movie with perfect audio that can be quickly distributed online. The pirated version of the newly released movie may be available online while it is still showing in theaters. The economic damage is magnified because movies may be released in different markets at different times. Thus, a camcord of a movie released in one market can be made available unlawfully in another market before the movie hits the theaters there. In addition to theater owners who lose revenue, legitimate digital platforms, which often negotiate for a certain period of exclusivity after the theatrical run, cannot fairly compete in the market due to unauthorized camcording.

Stakeholders continue to report serious concerns regarding unauthorized camcords. For example, in **Russia**, the number of sourced camcords prior to the COVID-19 pandemic was reportedly 48 in 2018 and 45 in 2019. While COVID-19-related cinema closures suppressed this activity during the pandemic, camcords have reportedly reappeared as theaters have started to reopen. Although

the closure of theaters and the small number of foreign films approved for distribution in 2022 continued to result in a decreased volume of unauthorized camcording, **China** remains a notable source of unauthorized camcords, including live streams of theatrical broadcasts online. China has taken some enforcement actions in recent years, but still lacks a specific criminal law to address the issue. Additionally, the number of camcords originating from **India** continues to grow.

Countries also need to update legal frameworks to effectively deter unauthorized camcording and keep up with changing practices. For example, the requirement in some countries that a law enforcement officer must observe a person camcording and then prove that the person is circulating the unlawfully recorded movie before intervening often precludes effective enforcement. Countries like **Argentina, Brazil, Ecuador, India, Peru, and Russia** do not effectively criminalize unauthorized camcording in theaters. The United States urges countries to adopt laws and enforcement practices designed to prevent unauthorized camcording, such as laws that have been adopted in **Canada, Japan, the Philippines, and Ukraine**. The Asia-Pacific Economic Cooperation (APEC) has also issued a report titled *Effective Practices for Addressing Unauthorized Camcording*.²⁷ As the practice of camcording evolves, so too must methods for detecting and preventing camcording. One best practice to supplement, but not replace, such effective legal measures is building public awareness. Another important practice is for the private sector to work on capacity building to help theater managers and employees to detect camcording and assist law enforcement.

In addition to the distribution of copies of newly released movies resulting from unauthorized camcording, other examples of online piracy that damage legitimate trade are found in virtually every country listed in the Report and include: the unauthorized retransmission of live sports programming online; the unauthorized cloning of cloud-based entertainment software through reverse engineering or hacking onto servers that allow users to play pirated content online, including pirated online games; and the online distribution of software and devices that allow for the circumvention of technological protection measures, including game copiers and mod chips that allow users to play pirated games on physical consoles. Piracy facilitated by online services presents unique enforcement challenges for right holders in countries where copyright laws have not been able to adapt or keep pace with these innovations in piracy.

The availability of recourse to right holders, enforcement procedures, and remedies are critical components of the online ecosystem. For all the above reasons, governments should avoid creating a domestic environment that offers a safe haven for online and broadcast piracy.

Trade Secrets

This year's Report continues to reflect the growing need for trading partners to provide effective protection and enforcement of trade secrets. Companies in a wide variety of industry sectors, including information and communications technology, services, environmental technologies, and other manufacturing sectors, rely on the ability to protect and enforce their trade secrets and rights in proprietary information. Trade secrets are particularly important to small businesses, which often rely on trade secret protection to preserve the secrecy and value of their technology. Small

²⁷ APEC, *Effective Practices for Addressing Unauthorized Camcording* (Nov. 11, 2011), https://www.apec.org/docs/default-source/groups/ip/11_amm_014app05.doc.

businesses may not have the resources to obtain and enforce patents, which require disclosure of the technology and risk infringement by others. Trade secrets, such as business plans, internal market analyses, manufacturing methods, customer lists, and recipes, are often among a company's core business assets. A company's competitiveness may depend on its capacity to protect such assets. Trade secret theft threatens to diminish U.S. competitiveness around the globe and puts U.S. jobs at risk. The reach of trade secret theft into critical commercial and defense technologies poses threats to U.S. national security interests as well.

Various sources, including the National Counterintelligence and Security Center (NCSC), have reported specific gaps in trade secret protection and enforcement, particularly in **China** and **Russia**.²⁸ Theft may arise in a variety of circumstances, including those involving departing employees taking portable storage devices containing trade secrets, failed joint ventures, cyber intrusion and hacking, and misuse of information submitted by trade secret owners to government entities for purposes of complying with regulatory obligations. In practice, effective remedies appear to be difficult to obtain in a number of countries, including **China**, **India**, and **Russia**. Lack of legal certainty regarding trade secrets also dissuades companies from entering into partnerships or expanding their business activities in these and other countries. Many countries do not provide criminal penalties for trade secret theft sufficient to deter such behavior. In some foreign countries, certain practices and policies, including evidentiary requirements in trade secrets litigation and mandatory technology transfer, put valuable trade secrets at risk of exposure. Certain data governance regimes (whether proposed or implemented) also raise concerns for intellectual property protection in general and trade secret protection of proprietary data in particular. The United States continues to monitor this trend and its impact on incentivizing innovation and market access.

The United States uses all trade tools available to ensure that its trading partners provide robust protection for trade secrets and enforce trade secrets laws. Given the global nature of trade secret theft, action by our trading partners is also essential. Several trading partners have recently strengthened or have been working toward strengthening their trade secret regimes, including the **European Union** (EU), **Chile**, and **Taiwan**. In the EU, however, the pending Data Act and other legislation would mandate that companies, in some circumstances, disclose data considered as trade secrets to users of the products, and certain drafts of the legislation do not provide the trade secret owner the opportunity to object or appeal, and without requiring sufficient protection of the trade secrets once disclosed.

The United States-Mexico-Canada Agreement (USMCA), which entered into force in July 2020, has the most robust protection for trade secrets of any prior U.S. trade agreement. It includes a number of commitments addressing the misappropriation of trade secrets, including by state-owned enterprises: civil procedures and remedies, criminal procedures and penalties, prohibitions against impeding licensing of trade secrets, judicial procedures to prevent disclosure of trade secrets during the litigation process, and penalties for government officials for the unauthorized disclosure of trade secrets. The United States-China Economic and Trade Agreement (Phase One Agreement), signed in January 2020, also includes several trade secret commitments to address a number of long-standing concerns in **China**, including on expanding the scope of civil liability,

²⁸ NCSC, *Foreign Economic Espionage in Cyberspace* at 5-9 (2018), <https://www.dni.gov/files/NCSC/documents/news/20180724-economic-espionage-pub.pdf>.

covering acts such as electronic intrusions as trade secret theft, shifting the burden of producing evidence, making it easier to obtain preliminary injunctions to prevent use of stolen trade secrets, allowing criminal investigations without need to show actual losses, ensuring criminal enforcement for willful misappropriation, and prohibiting unauthorized disclosure of trade secrets and confidential business information by government personnel or third-party experts.

Action in international organizations is also crucial. For instance, the United States strongly supports continued work in the Organisation for Economic Co-operation and Development (OECD) on trade secret protection, building off two studies released by the OECD in 2014. The first study, titled *Approaches to Protection of Undisclosed Information (Trade Secrets)*,²⁹ surveyed legal protection for trade secrets available in a sample of countries. The second study, titled *Uncovering Trade Secrets - An Empirical Assessment of Economic Implications of Protection for Undisclosed Data*,³⁰ examined the protection of trade secrets for a sample of 37 countries, provided historical data for the period since 1985, and considered the relationship between the stringency of trade secret protection and relevant economic performance indicators. Also, in November 2016, the Asia-Pacific Economic Cooperation endorsed a set of *Best Practices in Trade Secret Protection and Enforcement Against Misappropriation*,³¹ which includes best practices such as: broad standing for claims for the protection of trade secrets and enforcement against trade secret theft; civil and criminal liability, as well as remedies and penalties, for trade secret theft; robust procedural measures in enforcement proceedings; and adoption of written measures that enhance protection against further disclosure when governments require the submission of trade secrets.

Forced or Pressured Technology Transfer, Indigenous Innovation, and Preferences for Indigenous Intellectual Property

Right holders operating in other countries report an increasing variety of government measures, policies, and practices that require or pressure technology transfer from U.S. companies. While these measures are sometimes styled as means to incentivize domestic “indigenous innovation,” in practice they disadvantage U.S. companies, effectively requiring them to give up their intellectual property (IP) as the price of market entry. These actions serve as market access barriers and deny U.S. companies reciprocal opportunities to access foreign markets relative to market access provided to foreign companies operating in the United States. Such government-imposed conditions or incentives for technology transfer to domestically owned companies may also introduce non-market distortions into licensing and other private business arrangements, resulting in commercially suboptimal outcomes for the firms involved and for innovation in general. Furthermore, these measures discourage foreign investment in national economies, hurt local manufacturers, distributors, and retailers, and slow the pace of innovation and economic progress. This kind of government intervention in the commercial decisions that enterprises make regarding the ownership, development, registration, or licensing of IP is not consistent with international practice and may raise concerns regarding consistency with international obligations as well.

²⁹ Schultz, M. and D. Lippoldt, *Approaches to Protection of Undisclosed Information (Trade Secrets): Background Paper* (Jan. 2014), <https://doi.org/10.1787/5jz9z43w0jnw-en>.

³⁰ Lippoldt, D. and M. Schultz, *Uncovering Trade Secrets - An Empirical Assessment of Economic Implications of Protection for Undisclosed Data* (Aug. 2014), <https://doi.org/10.1787/5jxzl5w3j3s6-en>.

³¹ *Best Practices in Trade Secret Protection and Enforcement Against Misappropriation*, <https://ustr.gov/sites/default/files/11202016-US-Best-Practices-Trade-Secrets.pdf>.

These government measures often have the effect of distorting trade by forcing U.S. companies to transfer their technology or other valuable commercial information to domestically owned entities. Examples of these policies include:

- Requiring the transfer of technology as a condition for obtaining investment and regulatory approvals or otherwise securing access to a market or as a condition for allowing a company to continue to do business in the market;
- Directing state-owned enterprises in innovative sectors to seek non-commercial terms from their foreign business partners, including with respect to the acquisition and use or licensing of IP;
- Providing domestically owned firms with an unfair competitive advantage by failing to effectively enforce, or discouraging the enforcement of, U.S.-owned IP, including patents, trademarks, trade secrets, and copyright;
- Failing to take meaningful measures to prevent or to deter cyber intrusions and other unauthorized activities;
- Requiring use of, or providing preferences to, products or services that contain domestically developed or owned IP, including with respect to government procurement;
- Manipulating the standards development process to create unfair advantages for domestically owned firms, including with respect to participation by foreign firms and the terms on which IP is licensed; and
- Requiring the submission of unnecessary or excessive confidential business information for regulatory approval purposes and failing to protect such information appropriately.

In **China**, investment and regulatory approvals, market access, government procurement, and the receipt of certain preferences or benefits may be conditioned on a firm's ability to demonstrate that IP is developed in or transferred to China, or is owned by or licensed to a Chinese party. China has made enforceable commitments to address forced or pressured technology transfer in the United States-China Economic and Trade Agreement (Phase One Agreement).

In **Indonesia**, it is reported that foreign companies' approvals to market pharmaceuticals are conditioned upon the transfer of technology to Indonesian entities or upon partial manufacture in Indonesia. Indonesia amended its 2016 Patent Law to remove localization provisions that require the manufacture of patented products and use of patented processes in Indonesia. Indonesia subsequently revoked the amendments due to a ruling by the Indonesian Constitutional Court but issued a new regulation to replace them, which Parliament passed in March 2023.

Other country-specific examples of these measures are identified in Section II.

The United States urges that, in formulating policies to promote innovation, trading partners, including **China**, refrain from coercive technology transfer and local preferences for indigenous IP and take account of the importance of voluntary and mutually agreed commercial partnerships or arrangements.

Geographical Indications

The United States is working intensively through bilateral and multilateral channels to advance U.S. market access interests in foreign markets and to ensure that geographical indications (GI)-related trade initiatives of the **European Union** (EU), its Member States, like-minded countries, and international organizations do not undercut such market access. GIs typically include place names (or words associated with a place) and identify products as having a particular quality, reputation, or other characteristic essentially attributable to the geographic origin of the product. The EU GI agenda remains highly concerning because it significantly undermines protection of trademarks held by U.S. producers and imposes barriers on market access for U.S.-made goods that rely on the use of common names, such as parmesan or feta.

First, the EU GI system raises concerns regarding the extent to which it impairs the scope of trademark protection, including exclusive rights in registered trademarks that pre-date the protection of a GI. Trademarks are among the most effective ways for producers and companies, including micro, small, and medium-sized enterprises (MSMEs), to create value, to promote their goods and services, and to protect their brands, even with respect to food and beverage products covered by the EU GI system. Many such products are already protected by trademarks in the United States, in the EU, and around the world. Trademark systems offer strong protections through procedures that are easy to use, cost-effective, transparent, and provide due process safeguards. Trademarks also deliver high levels of consumer awareness, significant contributions to GDP and employment, and accepted international systems of protection. The EU GI system undermines trademark protection and may result in consumer confusion to the extent that it permits the registration and protection of GIs that are confusingly similar to prior trademarks.

Second, the EU GI system and strategy adversely impact access for U.S. and other producers in the EU market and other markets by granting protection to terms that are considered in those markets to be the common name for products. The EU has granted GI protection to thousands of terms that now only certain EU producers can use in the EU market, and many of these producers then block the use of any term that even “evokes” a GI. However, many EU Member States, such as Denmark and France, still produce products that are claimed as GIs of other European countries, such as feta, and export these products outside of the EU using the protected GIs as the common name of the products. Furthermore, in 2017, the EU granted GI protection to the cheese name danbo, a widely traded type of cheese that is covered by an international standard under the Codex Alimentarius (Codex). Argentina, South Africa, Uruguay, and other countries produce danbo. Similarly, in 2019, the EU granted GI protection to havarti, notwithstanding the long-standing and widespread use of this term by producers around the world. Australia, New Zealand, the United States, and other countries produce havarti. Like in the case of danbo, the Codex established an international standard for havarti in 2007, premised on the fact that havarti is produced and marketed in many countries throughout the world under that name. The EU’s approval of GIs for havarti and danbo undermine the Codex standards for these products, and World Trade

Organization (WTO) Members have repeatedly challenged the EU to explain its disregard for Codex cheese standards at the WTO, including in the Technical Barriers to Trade Committee. Moreover, havarti is included in the EU's most favored nation tariff rate quota, indicating that havarti was expected to be produced outside of and imported into the EU. Several countries, including the United States, opposed GI protection of these common names, both during the EU's opposition period and at the WTO, but the European Commission granted the protection over that opposition and without sufficient explanation or notice to interested parties.

As part of its trade agreement negotiations, the EU pressures trading partners to prevent any producer, except from those in certain EU regions, from using certain product names, such as fontina, gorgonzola, parmesan, asiago, or feta. This is despite the fact that these terms are the common names for products produced in countries around the world. In the EU and other markets that have protected EU GIs within their own GI systems, U.S. producers and traders either are effectively blocked from those markets or must adopt burdensome workarounds. They either cannot use the descriptors at all, or anything even evoking them, in the market or at best may sell their products only as "fontina-like," "gorgonzola-kind," "asiago-style," or "imitation feta." This is costly, unnecessary, and can reduce consumer demand for the non-EU products, as well as reduce consumer choice and cause consumer confusion.

The United States runs a significant deficit in food and agricultural trade with the EU. The EU GI system contributes to this asymmetry, which is acute in trade in agricultural products subject to the EU GI system. In the case of cheese, for example, where many EU products enjoy protection under the EU GI system, the EU exported more than \$1.1 billion of cheese to the United States last year. Conversely, the United States exported only about \$8.1 million of cheese to the EU last year. Based on this evidence, EU agricultural producers exporting to the United States are doing quite well, benefiting considerably from the effective U.S. system of trademark protection of GIs, despite the absence of an EU-style GI system. Unfortunately, U.S. producers, as evidenced by the deficit, are not afforded the same level of market access to the EU.

Despite these troubling aspects of its GI system, the EU continues to seek to expand its harmful GI system within its territory and beyond. Within its borders, the EU is enlarging its system beyond agricultural products and foodstuffs to encompass non-agricultural products, including apparel, ceramics, glass, handicrafts, manufactured goods, minerals, salts, stones, and textiles. The United States continues to remain concerned about certain changes to the EU's Common Agricultural Policy, adopted in November 2021 and entered into force on January 1, 2023, which would transfer much of the GI application review process to interested EU Member States and sharply reduce the period for filing a reasoned basis in support of an opposition to register a GI. As noted above, the EU has also sought to advance its agenda through trade agreements, which impose the negative impacts of the EU GI system on market access and trademark protection in third countries, including through exchanges of lists of terms that receive automatic protection as GIs without sufficient transparency or due process.

The EU has pursued its GI agenda in multilateral and plurilateral bodies as well. For example, in 2015, the EU, several EU Member States, and others expanded the World Intellectual Property Organization (WIPO) Lisbon Agreement for the Protection of Appellations of Origin and their International Registration to include GIs, thereby enshrining several detrimental aspects of EU law

in that Agreement. The Geneva Act of the Lisbon Agreement that emerged from these negotiations was the product of a decision led by the EU and certain Member States to break with the long-standing WIPO practice of consensus-based decision-making and to deny the United States and 160 other WIPO countries meaningful participation rights in the negotiations. In 2020, the EU became party to the Geneva Act of the Lisbon Agreement. In other international organizations, such as the United Nations Food and Agriculture Organization, the EU has attempted to pursue its agenda by alleging a connection between GIs and unrelated issues, such as biodiversity, sustainability, and food safety.

The proposed expansions of EU's GI system also threaten to create a conflict with the Internet Corporation for Assigned Names and Numbers (ICANN) policies for generic top-level domains (gTLDs) by imposing a requirement for a dispute resolution mechanism for geographical indications for any top-level domain registry operating in the EU. gTLDs are subject to ICANN's long-standing Uniform Domain Name Dispute Resolution Policy. Creating EU-specific dispute resolution mechanisms for gTLDs that operate in the EU will contravene ICANN's policy development process, undermine ICANN's multi-stakeholder model, and result in a patchwork of dispute resolution policies.

In response to the EU's aggressive promotion of its exclusionary GI policies, the United States continues its intensive engagement in promoting and protecting access to foreign markets for U.S. exporters of products that are identified by common names or otherwise marketed under previously registered trademarks. The United States is advancing these objectives through its trade agreements, as well as in international fora, including in the Asia-Pacific Economic Cooperation, WIPO, and the WTO. In addition to these negotiations, the United States is engaging bilaterally to address concerns resulting from the GI provisions in existing EU trade agreements, agreements under negotiation, and other initiatives, including with **Argentina, Australia, Brazil, Canada, Chile, China, Ecuador, Indonesia, Japan, Kenya, Korea, Malaysia, Mexico, Moldova, Morocco, New Zealand, Paraguay, the Philippines, Singapore, Tunisia, Uruguay, and Vietnam**, among others. U.S. goals in this regard include:

- Ensuring that the grant of GI protection does not violate prior rights (for example, in cases in which a U.S. company has a trademark that includes a place name);
- Ensuring that the grant of GI protection does not deprive interested parties of the ability to use common names, such as parmesan or feta;
- Ensuring that interested persons have notice of, and opportunity to oppose or to seek cancellation of, any GI protection that is sought or granted;
- Ensuring that notices issued when granting a GI consisting of multiple terms identify its common name components; and
- Opposing efforts to extend the protection given to GIs for wines and spirits to other products.

Pharmaceutical and Medical Device Innovation and Market Access

The COVID-19 pandemic highlighted the importance of pharmaceutical, medical device, and other health-related innovations, as well as a lack of widespread, timely, and equitable global distribution of these innovations. At the same time, extraordinary circumstances such as pandemics call for extraordinary measures. Thus, the Office of the United States Trade Representative (USTR) continues to seek adequate and effective protection for pharmaceutical and other health-related IP around the world to ensure robust American innovation in these critical industries to fight not only the current, but also future pandemics. USTR also recognizes that access to medicines in developing economies is important to development itself. USTR has also sought to level the playing field abroad by reducing market access barriers, including those that are discriminatory, are not adequately transparent, or do not offer sufficient opportunity for meaningful stakeholder engagement. USTR continues to seek to address policies that harm American innovators and workers in health-related industries through unfair competition. Addressing these market access barriers will help to facilitate accessible health care today and encourage innovation for improved health care tomorrow.

Tariffs, combined with domestic charges or measures, particularly those that lack transparency or opportunities for meaningful stakeholder engagement or that appear to exempt domestically developed and manufactured medicines, can hinder government efforts to promote increased access to health care products. According to an October 2021 Geneva Network report titled *How Tariffs Impact Access to Medicines*, low and middle-income countries maintain the highest tariffs on medicines and pharmaceutical inputs among the World Trade Organization (WTO) Members identified in the report, a trend that contributes to higher prices and decreased supply of medical goods in those countries.³² The report notes that, in particular, large developing countries such as **Brazil**, **India**, and **Indonesia** have the highest tariffs for such products. Also, in Brazil, combined federal and state taxes account for 31% of the cost of medicines.³³

Moreover, unreasonable regulatory approval delays and non-transparent reimbursement policies can impede a company's ability to enter the market. The criteria, rationale, and operation of such measures are often non-transparent or not fully disclosed to patients or to pharmaceutical and medical device companies seeking to market their products. By contrast, various countries have implemented policies that significantly decrease regulatory timelines by "relying" on regulatory approvals by stringent health regulatory authorities in other countries, or relevant assessments by the World Health Organization. These policies are especially critical during health emergencies, where expediency is of the essence. USTR encourages trading partners to provide appropriate mechanisms for transparency, procedural and due process protections, and opportunities for public engagement in the context of their relevant health care systems.

Among other examples, USTR engagement in the past year included:

- Monitored and enforced the implementation of **Canada** and **Mexico**'s IP commitments in the United States-Mexico-Canada Agreement (USMCA), which are important to

³² Geneva Network, *How Tariffs Impact Access to Medicines* (Oct. 2021), <https://geneva-network.com/research/how-tariffs-impact-access-to-medicines/>.

³³ IQVIA, *Market Prognosis Country Report: Brazil* (2021).

incentivizing innovation, as well as the implementation of other provisions to ensure that national-level government processes for the listing and reimbursement of pharmaceutical products and medical devices are transparent, provide procedural fairness, are nondiscriminatory, and provide full market access for U.S. products;

- Monitored and enforced **China**'s commitments with respect to: (1) a mechanism for the early resolution of potential pharmaceutical patent disputes, including a cause of action to allow a patent holder to seek expeditious remedies before the marketing of an allegedly infringing product; and (2) patent term extensions to compensate for unreasonable patent office and marketing approval delays that cut into the effective patent term;
- Engaged with **Japan** to ensure transparency and fairness, including by providing meaningful opportunities for interested stakeholders to provide input regarding changes to pricing and reimbursement policies;
- Engaged with **India** on the administration of its patent regime, including on disclosure requirements, treatment of confidential information, and patent application oppositions.

The IP-intensive U.S. pharmaceutical and medical device industries have expressed concerns regarding the policies of several trading partners, including **Algeria, Australia, Brazil, Canada, China, Colombia, Japan, Korea, New Zealand, Russia, Saudi Arabia, Tunisia, and Turkey**, on issues related to pharmaceutical innovation and market access. Examples of these concerns include the following:

- Stakeholders have expressed concerns about delays by **Australia** in its implementation of the notification process as required, for example, under Article 17.10.4(b) of the United States-Australia Free Trade Agreement. In October 2020, the Ministry of Health announced planned reforms, but they require legislative changes, which have yet to be introduced in Parliament. The United States will continue to engage with Australia as it introduces legislation to increase transparency and to promote the early resolution of potential pharmaceutical patent disputes.
- Stakeholders have long expressed concerns about **Japan**'s shortcomings in terms of transparency, especially including meaningful stakeholder input regarding pricing and reimbursement policies for advanced medical devices and innovative pharmaceuticals. Other concerns raised by stakeholders relate to a reported lack of meaningful stakeholder input in the development of a health technology assessment system, as well as a lack of transparency and predictability associated with Japan's implementation in April 2021 of annual repricing for drug reimbursement, which applies to a larger-than-expected range of products.
- Stakeholders continue to report concerns regarding a lack of transparency in **Korea**'s pricing and reimbursement policies for pharmaceuticals and medical devices.
- Stakeholders continue to raise concerns regarding **Turkey**'s pharmaceutical manufacturing inspection process. The United States urges Turkey to build upon its recent accession to

the Pharmaceutical Inspection Convention and Co-operation Scheme (PIC/S) and to recognize Good Manufacturing Practices certificates issued by any of the PIC/S members to improve regulatory timelines.

The United States seeks to establish or continue dialogues with trading partners to address these and other concerns and to encourage a common understanding on questions related to innovation and pricing in the pharmaceutical and medical device sectors. The United States also looks forward to continuing its engagement with our trading partners to promote fair and transparent policies in these sectors.

Trademark Protection Issues

Trademarks help consumers distinguish providers of products and services from each other and thereby serve a critical source identification role. The goodwill represented in a company's trademark is often one of a company's most valuable business assets.

However, in numerous countries, legal and procedural obstacles exist to securing trademark rights, and trademark registration procedures lack transparency and consistency. For example, while some progress occurred in 2022, the trademark system in **China** still largely lacks effective tools to combat widespread bad faith trademark applications, in part because it unnecessarily constrains examiners from considering marks for related goods or services in different classes when evaluating bad faith, likelihood of confusion, and other matters. The China National Intellectual Property Administration's Trademark Registration and Examination Department and the Trademark Review and Adjudication Department proceedings give insufficient legal weight to notarized and legalized witness declarations. Such proceedings also have unreasonably high standards for establishing well-known mark status and do not give full consideration to consent and coexistence agreements. Furthermore, China lacks transparency in all phases of trademark prosecution. While China published draft amendments to its Trademark Law in 2022 that appear to expand the definition of bad faith trademarks, which would allow for greater enforcement, it remains to be seen whether the steps China has taken with respect to commitments in the United States-China Economic and Trade Agreement (Phase One Agreement) will address these concerns. Stakeholders also raised concerns about continued blatant bad faith trademarks being registered in the **EU** and its Member States. Bad faith is not a ground to reject or oppose trademark applications at the EU Intellectual Property Office (EUIPO), nor does the EU Trade Mark Regulation require Member States to include bad faith in the grounds for rejection and opposition.

Trademark holders also continue to face challenges in protecting their trademarks against unauthorized domain name registration and trademark uses in some country code top-level domain names.

Robust protection for well-known marks, another internationally recognized means of protecting marks outlined in the Paris Convention for Protection of Industrial Property, is also important for many U.S. producers and traders who have built up the reputation of their brands. Stakeholders report that some countries that do have well-known mark provisions, such as **China**, nevertheless impose significant burdens on brand owners that attempt to establish that their marks are well known.

Another concern includes mandatory requirements to record trademark licenses, such as in **Brazil, Ecuador, Egypt, Spain, Turkmenistan, and Uzbekistan**, as they frequently impose unnecessary administrative and financial burdens on trademark owners and create difficulty in the enforcement and maintenance of trademark rights.

Certain formalities and documentation requirements, such as requirements for obtaining traditional pen-and-ink signatures, notarized or legalized powers of attorney, and original documents, can create trade barriers. Numerous countries including **Algeria, China, Indonesia, Iraq, Jordan, and the United Arab Emirates** require formalities for filing documents, such as intellectual property (IP) applications, registration maintenance, transfer of ownership submissions, and in opposition and cancellation proceedings, even though such formalities do not appear to advance any legitimate public policy goals.

The absence of default judgments in opposition and invalidation proceedings in certain countries, such as **China**, incurs significant costs to U.S. companies. Companies are forced to submit detailed arguments and evidence in proceedings when the owners of the applications and registrations clearly have no interest in or intention of defending their claims to exclusive rights in such marks, particularly in the case of bad faith trademark registrations and trademark squatters. Owners of challenged trademarks should be required to submit a written statement that they have an ongoing interest in their trademark in order to continue with a full proceeding before the relevant authorities.

A number of countries do not provide the full range of internationally recognized trademark protections. For example, many countries do not provide protection for certification marks that are used to show consumers that particular goods or services, or their providers, come from a specific geographic region; meet standards with respect to quality, materials, or manufacturing methods such as with environmentally “green” products; or that labor was performed by a union member or member of a specific organization. In other countries, the nature of the requirements imposed for registration of certification marks creates burdens on certifying entities. As direct-to-consumer global e-commerce has flourished during the COVID-19 pandemic, certified products have been valued by an ever-growing marketplace of purchasers. Providing for registration of and mechanisms to enforce rights in certification marks are essential to ensure safe, compliant, and reputable products and services. In **Mexico**, reforms to the Law for the Protection of Industrial Property in 2020 provide for registration of certification marks.

Companies use letters of consent to resolve potential disputes and overcome refusals based on a likelihood of confusion when multiple trademark owners agree that their marks may coexist in the marketplace without confusion as to the source of the identified goods or services. Some countries refuse to recognize letters of consent. Some countries accept the letters yet view them as informational only. Other countries allow submission of the letters with the caveat that they may be ignored. When letters of consent are rejected, or given little or no effect, companies may be forced to employ alternative measures requiring detailed arguments and evidence, including litigation, that could be avoided. Some countries such as **Turkey** now accept letters of consent.

Strict use of the Nice Classification or a country's own sub-classification system to determine conflicts with prior marks does not reflect the realities of the relatedness of underlying goods or services in the current marketplace and introduces uncertainty into the registration process. Goods and services should be considered based on their commercial relationship and not solely in light of classification systems developed for administrative convenience.

Many countries, including **India**, **Malaysia**, and the **Philippines**, reportedly have slow opposition or cancellation proceedings, while **Panama** and **Russia** have no administrative opposition proceedings.

Delays in obtaining registrations present a significant obstacle for protecting IP rights in foreign markets, with stakeholders identifying **Iraq**, **Pakistan**, and **South Africa** as countries with extreme delays in processing trademark applications.

A number of countries do not consider a likelihood of confusion with previously filed applications and registrations during examination, otherwise known as "relative grounds" refusals. The failure to make these rejections costs U.S. companies millions of dollars a year in unnecessary opposition proceedings. Some countries that do consider relative grounds provide a pre-examination opposition period to allow third parties to submit objections before the national office conducts its own examination, thus resulting in unnecessary expenses to oppose marks the national office would likely refuse during examination.

The absence of adequate means for searching trademark applications and registrations, such as by online databases, makes obtaining trademark protection more complicated and unpredictable. The lack of such online systems leads to additional costs, both in terms of initial filing and in relation to docketing and maintenance of multiple registrations.

Copyright Administration and Payment of Royalties

Collective management organizations (CMOs) for copyright can play an important role in ensuring compensation for right holders when CMO practices are fair, efficient, transparent, and accountable. Also, the collection and distribution of royalties to U.S. and other right holders should be carried out on a national treatment basis. Unfortunately, CMO systems in several countries are reportedly flawed or non-operational. In some countries, like **Kenya** and **Nigeria**, changes in authorization to operate leave right holders in defunct CMOs and music users confused over whom to pay. In the **United Arab Emirates** (UAE), the Ministry of Economy and the International Federation of the Phonographic Industry (IFPI) signed an MOU to draft procedures for the creation of a CMO in a first step to address an 18-year-plus challenge to introduce CMOs for music rights that has prevented right holders from receiving compensation for their works.

In addition, it is important for right holders of a work or phonogram to be able to freely and separately transfer their economic rights by contract and to fully enjoy the benefits derived from those rights. Unclear limitations on the freedom to contract raise concerns because they reduce the ability of right holders to choose the terms by which they exploit their works or phonograms and reduce public access to the work or phonogram. For example, proposed provisions in two pending bills in **South Africa** limiting certain assignments are vague, lack certainty for parties,

and provide for the government to set standard and compulsory contractual terms for certain contracts governing the use of works, performances, and phonograms. In 2021, **Japan** amended its Copyright Act to create a presumption that when a right holder enters into a license agreement authorizing a broadcast or cablecast (linear broadcast rights) of a copyrighted work, the agreement will be presumed to also grant so-called “simulcast” rights to the broadcaster (allowing simultaneous transmissions of the broadcasted content for one week on other platforms, such as online streaming) unless a contrary intention is clearly indicated. This represented a departure from the previous practice in Japan and current practice of many other countries where express permission from the copyright owner for the additional transmission is not presumed, but required, and exceptions are confined to certain special cases.

Government Use of Unlicensed Software

According to a 2018 study, the commercial value of unlicensed software globally was at least \$46 billion in 2018.³⁴ The United States continues to work with other governments to address government use of unlicensed software, particularly in countries that are modernizing their software systems or where there are infringement concerns. Considerable progress has been made under this initiative, leading to numerous trading partners mandating that their government agencies use only legitimate software. It is important for governments to legitimize their own activities in order to set an example of respecting intellectual property for private enterprises. Additionally, unlicensed software exposes governments and enterprises to higher risks of security vulnerabilities. Further work on this issue remains with certain trading partners, including **Argentina, China, Guatemala, Indonesia, Moldova, Pakistan, Paraguay, Romania, Turkey, Turkmenistan, Uzbekistan, and Vietnam**. The United States urges trading partners to adopt and implement effective and transparent procedures to ensure legitimate governmental use of software.

Other Issues

U.S. stakeholders have expressed views with respect to the **European Union (EU)** Directive on Copyright in the Digital Single Market. The United States continues to monitor copyright issues in the EU and its Member States as implementation progresses. Stakeholders have expressed concern with the inconsistencies in Member States’ approaches to implementation. The United States urges the European Commission to engage closely with stakeholders as it develops guidance on certain implementation issues. It is also critical that EU Member States ensure full transparency in the implementation process with meaningful opportunities for stakeholders to provide input. The United States will continue to engage with various EU and Member State entities to address the equities of U.S. stakeholders.

The Digital Services Act (DSA) went into effect in November 2022 and is intended to regulate certain online services, including through rules for how content is shared online. U.S. stakeholders expressed concern that the DSA’s adoption of a framework for limitations of liability included modifications to the eligibility threshold and conditions that had been set in the E-Commerce Directive, which may adversely impact their IP rights, in particular for copyright and trademarks.

³⁴ BSA, *2018 Global Software Survey* at 12 (Jun. 2018), https://gss.bsa.org/wp-2content/uploads/2018/05/2018_BSA_GSS_Report_en.pdf.

F. Intellectual Property and Sustainability

Strong intellectual property (IP) protection and enforcement are essential to promoting investment in innovation for a sustainable future. Such innovation not only promotes sustainable economic growth and supports jobs, but also is critical to responding to environmental challenges such as climate change. IP provides incentives for research and development in this important sector, including through university research.

G. Intellectual Property and Health

The 2023 Special 301 review period has taken place in the wake of the COVID-19 pandemic, the largest global health crisis in more than a century. The United States has made significant efforts toward ending the acute phase of the pandemic in the United States and around the world. To date, the U.S. Government has worked to fight COVID-19 in more than 120 countries and is committed to building back a better world, one that is prepared to prevent, detect, and respond to future biological threats, and where all people can live safe, prosperous, and healthy lives. This includes donating vaccine doses to countries in need, investing in delivery and administration of vaccines globally, and engaging with our international partners and stakeholders to continue to increase equitable global access to safe and effective vaccines, tests, treatments, and other critical products to respond to COVID-19.

The United States also encourages voluntary licensing and technology transfer agreements on mutually agreed terms to promote greater access to pandemic response products. For example, right holders have entered into voluntary licensing agreements with the Medicines Patent Pool (MPP) to enable sublicenses with generic manufacturers in order to help facilitate broad access to COVID-19 therapeutics in all low-income countries, all or nearly all lower-middle-income countries (depending on the license), and several upper-middle-income countries. In some cases, right holders have entered into voluntary licensing agreements directly with generic manufacturers for COVID-19 therapeutics, including agreements that do not require the generic manufacturers to pay a royalty to the right holder. Additionally, in May 2022, the United States, through the National Institutes of Health, licensed critical U.S.-owned COVID-19 technologies to the MPP through the COVID-19 Technology Access Pool (C-TAP).

Numerous comments in the 2023 Special 301 review process highlighted concerns arising at the intersection of intellectual property (IP) policy and health policy. IP protection plays an important role in providing incentives for the development and marketing of new medicines. An effective, transparent, and predictable IP system is important for both manufacturers of innovative medicines and manufacturers of generic medicines.

The 2001 World Trade Organization (WTO) Declaration on the TRIPS Agreement and Public Health (Doha Declaration) recognized the gravity of the public health problems afflicting many developing and least-developed countries (LDCs), especially those resulting from HIV/AIDS, tuberculosis, malaria, and other epidemics. As affirmed in the Doha Declaration, the United States respects a trading partner's right to protect public health and, in particular, to promote access to medicines for all. The United States also recognizes the role of IP protection in the development of new medicines while being mindful of the effect of IP protection on prices. The assessments

set forth in this Report are based on various critical factors, including, where relevant, the Doha Declaration.

International obligations such as those in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) provide flexibility for trading partners to take measures to address serious public health emergencies and circumstances of extreme urgency within that trading partner's territory. The COVID-19 pandemic certainly qualifies as such. Consistent with this view, the United States respects its trading partners' rights to grant compulsory licenses in a manner consistent with the provisions of the TRIPS Agreement and the Doha Declaration.

Article 31 of the TRIPS Agreement establishes requirements that must be met with respect to compulsory licenses. Importantly, a Member choosing to issue a compulsory license may waive some of these requirements in certain circumstances. For example, in cases of national emergency or extreme urgency or in cases of public non-commercial use, Members may waive the requirement to seek prior authorization from the patent holder before issuing a compulsory license. In addition, under Article 31bis, the requirement that compulsory licenses must be authorized predominantly for the supply of the Member's domestic market may be waived in certain circumstances. Recognizing that Members with insufficient pharmaceutical manufacturing capacities could face difficulties in making effective use of compulsory licensing, Article 31bis and its related Annex set forth a system whereby such Members can import from another Member pharmaceutical products produced subject to a compulsory license. The United States respects the right of its trading partners to exercise the full range of existing flexibilities in the TRIPS Agreement, including Article 30, Article 31, and Article 31bis, and the Doha Declaration. The United States further recognizes that these flexibilities are available in order to scale up the production and distribution necessary to overcome the challenges of the ongoing COVID-19 pandemic.

The United States also strongly supports the WTO General Council Decision on the Implementation of Paragraph 6 of the Doha Declaration, concluded in August 2003. Under this decision, WTO Members are permitted, in accordance with specified procedures, to issue compulsory licenses to export pharmaceutical products to countries that cannot produce drugs for themselves. The WTO General Council adopted a Decision in December 2005 that incorporated this solution into Article 31bis, as described above, to the TRIPS Agreement, and the United States became the first WTO Member to formally accept this amendment. In January 2017, the necessary two-thirds of WTO Member support was secured, resulting in the formal amendment to the TRIPS Agreement. Additional notifications of WTO Member acceptances of the Agreement have followed.

In May 2021, USTR announced support for a waiver of intellectual property protections for COVID-19 vaccines as part of the U.S. Government's comprehensive effort to end the pandemic, which helped spur text-based negotiations that resulted in the June 2022 Ministerial Decision on the TRIPS Agreement. This Ministerial Decision contains time-bound accommodations to certain IP rules for COVID-19 vaccines that can facilitate a global health recovery. With respect to ongoing discussions at the WTO regarding IP and public health, USTR will continue to consult and engage with Congress, stakeholders from industry and civil society, multilateral institutions,

and WTO Members to inform our positions. In addition, in December 2022, USTR requested that the United States International Trade Commission launch an investigation into COVID-19 diagnostics and therapeutics and provide information on market dynamics to help inform the discussion around supply and demand, price points, the relationship between testing and treating, and production and access.

The U.S. Government works to ensure that the provisions of its bilateral and regional trade agreements, as well as U.S. engagement in international organizations, including the United Nations and related institutions such as the World Intellectual Property Organization (WIPO) and the World Health Organization (WHO), are consistent with U.S. policies concerning IP and health and do not impede its trading partners from taking measures necessary to protect public health. For example, in recent U.S. trade agreements, the U.S. Government has clarified that notwithstanding provisions on the protection of undisclosed test or other data, a Party may take measures to protect public health in accordance with the Doha Declaration, or any waiver or amendment of the TRIPS Agreement to implement the Doha Declaration.

H. Implementation of the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights

The World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) requires all WTO Members to provide certain minimum standards of intellectual property (IP) protection and enforcement. The TRIPS Agreement is the first broadly subscribed multilateral IP agreement that is subject to dispute settlement provisions.

Developed country WTO Members were required to implement the TRIPS Agreement fully as of January 1, 1996. Developing country WTO Members were given a transition period for many obligations until January 1, 2000, and in some cases until January 1, 2005. Nevertheless, certain WTO Members are still in the process of finalizing implementing legislation, and many are still engaged in establishing adequate and effective IP enforcement mechanisms.

Recognizing the particular issues faced by WTO Members that are least developed countries (LDCs), the United States has worked closely with them and other WTO Members to extend the implementation date for these countries. Most recently, on June 29, 2021, the WTO Council for the Trade-Related Aspects of Intellectual Property Rights (TRIPS Council) reached consensus on a decision to again extend the transition period under Article 66.1 of the TRIPS Agreement for LDC WTO Members. Under this decision, LDC WTO Members are not required to apply the provisions of the TRIPS Agreement, other than Articles 3, 4, and 5 (provisions related to national treatment and most-favored nation treatment), until July 1, 2034, or until such a date on which they cease to be an LDC WTO Member, whichever date is earlier. Likewise, on November 6, 2015, the TRIPS Council reached consensus to extend the transition period for LDC WTO Members to implement Sections 5 and 7 of Part II of the TRIPS Agreement with respect to pharmaceutical products until January 1, 2033, and reached consensus to recommend waiving Articles 70.8 and 70.9 of the TRIPS Agreement with respect to pharmaceuticals for LDC Members also until January 1, 2033.

At the WTO Ministerial Conference in December 2017, WTO Members reached consensus to extend the moratorium on non-violation and situation complaints under the TRIPS Agreement until the next Ministerial in 2019. On December 10, 2019, the General Council reached consensus to extend this moratorium until the 12th Ministerial Conference. The moratorium was originally introduced in Article 64 of the TRIPS Agreement, for a period of five years following the entry into force of the WTO Agreement (i.e., until December 31, 1999). The moratorium has been extended in several WTO Ministerial Decisions. During 2021, the United States joined the consensus in the TRIPS Council to extend the moratorium on the initiation of non-violation and situation complaints under the TRIPS Agreement to the 13th Ministerial Conference.

The United States participates actively in the TRIPS Council's scheduled reviews of WTO Members' implementation of the TRIPS Agreement and uses the WTO's Trade Policy Review mechanism to pose questions and seek constructive engagement on issues related to TRIPS Agreement implementation.

I. Dispute Settlement and Enforcement

The United States continues to monitor the resolution of concerns and disputes announced in previous Reports. The United States will use all available means to resolve concerns, including bilateral dialogue and enforcement tools such as those provided under U.S. law, the World Trade Organization (WTO), and other dispute settlement procedures, as appropriate.

Under Section 301 of the Trade Act of 1974, as amended (19 U.S.C. § 2411) (Section 301), the Office of the United States Trade Representative (USTR) has been taking action to address a range of unfair and harmful Chinese acts, policies, and practices related to technology transfer, intellectual property (IP), and innovation. USTR has also successfully pursued dispute settlement proceedings at the WTO to address discriminatory licensing practices. The United States and China signed the United States-China Economic and Trade Agreement (Phase One Agreement) in January 2020, which included commitments to address numerous long-standing concerns in the areas of trade secrets, patents, pharmaceutical-related IP, trademarks, copyrights, geographical indications, and technology transfer. The United States has been closely monitoring China's progress in implementing its commitments.

Following the 1999 Special 301 review process, the United States initiated dispute settlement consultations concerning the European Union (EU) regulation on food-related geographical indications (GIs), which appeared to discriminate against foreign products and persons, notably by requiring that EU trading partners adopt an "EU-style" system of GI protection, and appeared to provide insufficient protections to trademark owners. On April 20, 2005, the Dispute Settlement Body (DSB) adopted a panel report finding in favor of the United States that the EU GI regulation is inconsistent with the EU's obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights and the General Agreement on Tariffs and Trade 1994. On March 31, 2006, the EU published a revised GI Regulation that is intended to comply with the DSB recommendations and rulings. There remain some concerns, however, with respect to this revised GI Regulation that the United States has asked the EU to address. The United States continues monitoring this situation. The United States is also working bilaterally and in multilateral fora to

advance U.S. market access interests and to ensure that the trade initiatives of other countries, including with respect to GIs, do not undercut market access for U.S. companies.

SECTION II: Country Reports

UKRAINE – REVIEW SUSPENDED

Ukraine was placed on the Priority Watch List in 2021. In 2021, prior to Russia’s full-scale invasion, Ukraine engaged meaningfully with the United States on longstanding areas of concern with Ukraine’s intellectual property regime, including: (1) the administration of the system for collective management organizations that are responsible for collecting and distributing copyright royalties to right holders; (2) the use of unlicensed software by government agencies; and (3) the implementation of effective means to combat widespread online copyright infringement. However, due to Russia’s ongoing premeditated and unprovoked further invasion of Ukraine, the Special 301 review of Ukraine remains suspended.

PRIORITY WATCH LIST

ARGENTINA

Argentina remains on the Priority Watch List in 2023.

Ongoing Challenges and Concerns

Argentina continues to present long-standing and well-known challenges to intellectual property (IP)-intensive industries, including those from the United States. Enforcement of IP rights in Argentina remains a challenge, and stakeholders report widespread unfair competition from sellers of counterfeit and pirated goods and services. The physical market of La Salada in Buenos Aires has resumed operations after being closed due to the pandemic, and online orders of counterfeit goods continue through social media applications. Counterfeit sales in other physical locations remain high, with surges in the selling of counterfeit goods occurring in small markets, through illegal street vendors, and in the Barrio Once and other markets in Buenos Aires. In addition, Argentine police generally do not take *ex officio* actions, and prosecutions can stall and languish in excessive formalities. Also, when a criminal case does reach final judgment, infringers rarely receive deterrent-level sentences. Online piracy continues to grow due to nearly non-existent criminal enforcement against such piracy. As a result, IP enforcement online in Argentina consists mainly of right holders trying to convince Argentine Internet service providers to take down specific infringing works, as well as attempting to seek injunctions in civil cases, both of which can be time-consuming and ineffective.

In addition, a key deficiency in the legal framework for patents remains the unduly broad limitations on patent-eligible subject matter, including patent examination guidelines that automatically reject patent applications for categories of pharmaceutical inventions that are eligible for patentability in other jurisdictions and requirements that processes for the manufacture of active compounds disclosed in a specification be reproducible and applicable on an industrial scale. Stakeholders remain concerned about the limits on patentability for biotechnological innovations based on living matter and natural substances in Resolution 283/2015, which differ

from the standard in many other countries. Another ongoing challenge to the innovative agricultural chemical and pharmaceutical sectors is inadequate protection against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for products in those sectors. The National Institute of Industrial Property (INPI) continues to operate with a reduced number of patent examiners, with limited resources posing challenges to recruitment and retention.

Developments, Including Progress and Actions Taken

Argentina made limited progress in IP protection and enforcement in 2022. During 2022, INPI examined pharmaceutical patent applications more quickly, and the number of patents granted was higher than the number of applications, clearing some of the backlog from prior years. Argentina also reduced trademark application processing time to an average of three days. Argentina also improved transparency by providing filers access to their files, payments, and requests online. Argentina similarly modernized its copyright system, and the Copyright Office now accepts digital copies instead of physical ones as of July 2022. The United States welcomes and continues to monitor these enhancements. To further improve patent protection in Argentina, including for small and medium-sized enterprises, the United States urges Argentina to ratify the Patent Cooperation Treaty. The United States urges Argentina to ensure transparency and procedural fairness in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Argentina proceeds with the European Union-Mercosur Trade Agreement.

While Argentine customs officials carried out limited raids in 2022 targeting sale of counterfeit products, including those related to the FIFA World Cup, illegal activity largely persists in Argentina, in the absence of systemic measures. The United States encourages Argentina to create a national IP enforcement strategy to enhance interagency coordination in enforcement efforts and move to having a sustainable, long-lasting impact on IP infringements. During 2022, Argentina did not file or approve any new legislation to update IP laws. The United States encourages legislative proposals to provide for landlord liability and stronger enforcement on the sale of infringing goods at outdoor marketplaces such as La Salada, and to amend the trademark law to increase criminal penalties for counterfeiting carried out by criminal networks. In 2017, Argentina formally created the Federal Committee to Fight Against Contraband, Falsification of Trademarks, and Designations, formalizing the work on trademark counterfeiting under the National Anti-Piracy Initiative. The Committee has not met since 2019, but the United States encourages Argentina to continue this initiative and expand it to include online piracy. Revisions to the criminal code that had been submitted to Argentina's Congress, including certain criminal sanctions for circumventing technological protection measures, have stalled. The creation of a federal specialized IP prosecutor's office and a well-trained enforcement unit could potentially help combat online piracy as well as prevent lengthy legal cases with contradictory rulings.

In December 2022, Argentina and the United States met in Buenos Aires for a meeting under the Innovation and Creativity Forum for Economic Development, which was established under the United States-Argentina Trade and Investment Framework Agreement, to continue discussions and collaboration in these areas. In April 2022, the Argentina Copyright Office collaborated with the United States on outreach focused on youth and entrepreneurs to commemorate World IP Day.

INPI also collaborated with the United States in areas such as women and IP rights and renewed a memorandum of understanding on collaboration with the United States Patent and Trademark Office in March 2023. The United States intends to monitor all the outstanding issues for progress and urges Argentina to continue its efforts to create a more attractive environment for investment and innovation.

CHILE

Chile remains on the Priority Watch List in 2023.

Ongoing Challenges and Concerns

The United States continues to have serious concerns regarding long-standing implementation issues with a number of intellectual property (IP) provisions of the United States-Chile Free Trade Agreement (Chile FTA). Chile must establish protections against the unlawful circumvention of technological protection measures (TPMs), including civil and criminal liability for the act of circumvention as well as criminal and civil or administrative measures for trafficking circumvention devices and providing circumvention services. The United States continues to urge Chile to ratify and implement the 1991 Act of the International Union for the Protection of New Varieties of Plants Convention (UPOV 1991) and improve protection for plant varieties. The United States also urges Chile to improve its Internet service provider liability framework to permit effective and expeditious action against online piracy. Chile passed legislation establishing criminal penalties for the importation, commercialization, and distribution of decoding devices used for the theft of encrypted program-carrying satellite signals, but the United States urges Chile to clarify the full scope of activities criminalized in the implementation of the law. The United States also urges Chile to provide remedies or penalties for willfully receiving or further distributing illegally decoded encrypted program-carrying satellite signals, as well as the ability for parties with an interest in stolen satellite signals to initiate a civil action. Concerns remain regarding the availability of effective administrative and judicial procedures, as well as deterrent-level remedies for right holders and satellite service providers.

Concerns also remain with the lack of copyright enforcement efforts by the Chilean authorities. As a result, stakeholders note the high and increasing levels of online piracy and the availability of circumvention devices in Chile, including through online marketplaces. In addition, pharmaceutical stakeholders continue to raise concerns over the efficacy of Chile's system for resolving patent issues expeditiously in connection with applications to market pharmaceutical products and over the provision of adequate protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

Developments, Including Progress and Actions Taken

There was some progress by Chile in strengthening its legal framework for IP. In January 2022, a new law modernizing many aspects of Chile's IP regime entered into force, with changes that include criminalizing trademark falsification, recognition of non-traditional marks, introducing provisional applications for patents, incorporating a broader definition of trade secrets, and extending the term of protection for industrial designs to 15 years. In February 2022, Chile enacted a new law that seeks to identify and disrupt criminal organizations engaged in the sale of counterfeit or pirated goods. Among other things, the laws permit the authorities to conduct "controlled deliveries" of infringing items as part of investigations; authorizes police, municipal inspectors, and tax officials to monitor the compliance of street sellers with various regulations and ensure that they are not selling counterfeit or pirated goods; and raises penalties for trafficking

in infringing products and evading taxes. In April 2022, Chile acceded to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. In May 2022, the National Institute of Industrial Property (INAPI) brought online a new electronic platform for submitting and tracking patent and trademark applications. The United States also encourages Chile to provide transparency and procedural fairness to all interested parties in connection with potential recognition or protection of geographical indications (GIs) and to ensure that the grant of GI protection or recognition does not deprive interested parties of the ability to use common names, particularly as Chile finalizes the modernization of the European Union-Chile Association Agreement.

The United States appreciates Chile's engagement with the United States and the steps Chile has taken as an attempt to resolve ongoing issues pertaining to the Chile FTA, but it has been over nineteen years since the Chile FTA entered into force. It remains important that Chile show tangible progress in addressing the long-standing Chile FTA implementation issues and other IP issues in 2023.

CHINA

China remains on the Priority Watch List in 2023 and is subject to continuing monitoring pursuant to Section 306 of the Trade Act of 1974, as amended (19 U.S.C. § 2416).

Ongoing Challenges and Concerns

In 2022, China continued implementation of amendments to the Patent Law, Copyright Law, and Criminal Law, as well as other previously issued measures, but the pace of reforms aimed at addressing intellectual property (IP) protection and enforcement has slowed. While right holders have welcomed some positive developments, their concerns remain about the adequacy and effective implementation of IP measures, as well as about long-standing issues like technology transfer, trade secrets, counterfeiting, online piracy, copyright law, and patent and related policies. China needs to complete the full range of fundamental changes that are required to improve the IP landscape in China.

Statements by Chinese officials that tie IP rights to Chinese market dominance continue to raise strong concerns. For example, the Chinese Communist Party Central Committee and State Council highlighted IP as a “strategic resource” for China’s international competitiveness in an outline of IP goals for 2021-2035. The president of the Supreme People’s Court (SPC) wrote in a 2021 essay that the courts should serve the Chinese Communist Party and industrial policy goals. In a June 2022 statement, President Xi stressed the need for China to intensify its efforts to possess core technologies with indigenous IP and to allow no delays in breaking through the “chokehold” of critical core technologies. Taken together, such statements recall longstanding concerns about requiring or pressuring technology transfer from foreign individuals or companies to Chinese companies, as well as about whether IP protection and enforcement will apply fairly to foreign right holders in China. These concerns are particularly acute in an environment where, as some right holders warn, IP violations can lead to potential “end-of-life” situations for U.S. companies, particularly small businesses. China should provide a level playing field for IP protection and enforcement, refrain from requiring or pressuring technology transfer to Chinese companies at all levels of government, open China’s market to foreign investment, and embrace open, market-oriented policies.

Under Section 301 of the Trade Act of 1974, as amended (19 U.S.C. § 2411) (Section 301), the Office of the United States Trade Representative (USTR) has been taking action to address a range of unfair and harmful Chinese acts, policies, and practices related to technology transfer, IP, and innovation. USTR has also successfully pursued dispute settlement proceedings at the World Trade Organization (WTO) to address discriminatory licensing practices. The United States and China signed the United States-China Economic and Trade Agreement (Phase One Agreement) in January 2020, which included commitments to address numerous long-standing concerns in the areas of trade secrets, patents, pharmaceutical-related IP, trademarks, copyrights, geographical indications (GIs), and technology transfer. The United States has been closely monitoring China’s progress in implementing its commitments.

China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

In 2018, USTR reported that its investigation under Section 301 found that China pursues a range of unfair and harmful acts, policies, and practices related to technology transfer, IP, and innovation. These include investment and other regulatory requirements that require or pressure technology transfer, substantial restrictions on technology licensing terms, direction or facilitation of the acquisition of foreign companies and assets by domestic firms to obtain cutting-edge technologies, and conducting and supporting unauthorized intrusions into and theft from computer networks of U.S. companies to obtain unauthorized access to IP.

In March 2018, the United States initiated a WTO case challenging Chinese measures that deny foreign patent holders the ability to enforce their patent rights against a Chinese joint-venture partner after a technology transfer contract ends and that impose mandatory adverse contract terms that discriminate against and are less favorable for imported foreign technology as compared to Chinese technology. Consultations took place in July 2018, and a panel was established to hear the case at the United States' request in November 2018. In March 2019, China announced the withdrawal of certain measures that the United States had challenged in its panel request, including the Regulations on the Administration of Import and Export of Technologies. The United States considered that China's actions had sufficiently addressed U.S. concerns, and the authority of the panel expired on June 9, 2021.

As part of the Phase One Agreement, China agreed to provide effective access to Chinese markets without requiring or pressuring U.S. persons to transfer their technology to Chinese persons. China also agreed that any transfer or licensing of technology by U.S. persons to Chinese persons must be based on market terms that are voluntary and mutually agreed, and that China would not support or direct the outbound foreign direct investment activities of its persons aimed at acquiring foreign technology with respect to sectors and industries targeted by its industrial plans that create distortion. In addition, China committed to ensuring that any enforcement of laws and regulations with respect to U.S. persons is impartial, fair, transparent, and non-discriminatory. USTR continues to work with stakeholders to evaluate whether these commitments have resulted in changes in China's ongoing conduct at the national, provincial, and local levels.

Trade Secrets

Stakeholders reported that, with implementation of the Criminal Law amendments and other measures, China appears to be taking some steps toward stronger enforcement of trade secrets. For example, stakeholders welcomed improvements under the amended Anti-Unfair Competition Law, the expansion of specialized IP courts, and the granting of preliminary injunctions in a handful of cases. However, further implementation of these measures is still needed, such as finalization of an SPC and Supreme People's Procuratorate's (SPP) draft judicial interpretation defining a key term in the Criminal Law and updating of a related standard issued by the SPC and Ministry of Public Security, which together appear to implement the Criminal Law's changes to the thresholds for triggering criminal investigations. Moreover, stakeholders continue to identify significant enforcement challenges, including high evidentiary burdens, limited discovery, difficulties meeting stringent conditions to enforce agreements related to protection of trade secrets

and confidential business information against theft, and difficulties in obtaining deterrent-level damages awards.

The risk of unauthorized disclosures of trade secrets and confidential business information by government personnel, particularly through regulatory and judicial processes, continues to be a serious concern for the United States and U.S. stakeholders in industries such as software, manufacturing, and cosmetics. The draft Guiding Opinions on Strengthening the Protection of Trade Secrets and Confidential Business Information in Administrative Licensing were published for public comment in August 2020 by the Ministry of Justice but have not been finalized. Reforms are needed to limit government requests for trade secrets and confidential business information and prevent the unauthorized disclosure of such information submitted to government authorities, including unauthorized disclosure by third-party experts and advisors.

U.S. stakeholders continued to raise concerns about administrative trade secret enforcement, for which the State Administration of Market Regulation (SAMR) issued draft rules in 2020 that have not been finalized. In particular, stakeholders express reservations about the potential for discriminatory treatment and unauthorized disclosure of their information by local authorities under the proposed expansion of the administrative enforcement system.

Manufacturing, Domestic Sale, and Export of Counterfeit Goods

China continues to be the world's leading source of counterfeit and pirated goods. For example, a 2022 report identified China and Hong Kong as the largest exporters of counterfeit foodstuffs and cosmetics, accounting for approximately 60% of counterfeit foodstuffs customs seizures and 83% of counterfeit cosmetics customs seizures.³⁵ China and Hong Kong accounted for over 75% of the value measured by manufacturers' suggested retail sale price of counterfeit and pirated goods seized by U.S. Customs and Border Protection.³⁶ The failure to curb the widespread manufacture, domestic sale, and export of counterfeit goods affects not only right holders, but also the health and safety of consumers. The production, distribution, and sale of counterfeit medicines, fertilizers, pesticides, and under-regulated pharmaceutical ingredients remain widespread in China.

Although China has taken some enforcement actions against counterfeit medicines and implemented new criminal penalties under the amended Criminal Law, right holders expressed concerns regarding reported de-prioritization of prosecution of IP-related crimes and the reduction in use of criminal penalties. Furthermore, as the top manufacturer and a leading exporter of pharmaceutical ingredients, China still lacks effective regulatory oversight. In particular, China does not regulate manufacturers that do not declare an intent to manufacture active pharmaceutical ingredients (APIs) for medicinal use. It also does not subject exports to regulatory review, enabling many bulk chemical manufacturers to produce and export APIs outside of regulatory controls. Furthermore, China lacks central coordination of enforcement against counterfeit

³⁵ OECD/EUIPO, *Dangerous Fakes: Trade in Counterfeit Goods that Pose Health, Safety, and Environmental Risks* at 68, 70 (Mar. 9, 2022), <https://www.oecd.org/social/dangerous-fakes-117e352b-en.htm>.

³⁶ U.S. Customs and Border Protection Office of Trade, *Intellectual Property Rights Seizure Statistics: Fiscal Year 2021* at 35 (Sep. 2022), <https://www.cbp.gov/document/annual-report/fy-2021-ipr-seizure-statistics>.

pharmaceutical products and ingredients, resulting in ineffective enforcement at the provincial level and with respect to online sales.

Availability of Counterfeit Goods Online, Online Piracy, and Other Issues

China's e-commerce markets, the largest in the world, remain a source of widespread counterfeits as infringing sales have migrated from physical to online markets. Some sellers have shifted tactics by maintaining less inventory on site and offering a larger range of counterfeit products online. Counterfeiters exploit the use of small parcels and minimal warehouse inventories, the separation of counterfeit labels and packaging from products prior to the final sale, and the high volume of packages shipped to the United States to escape enforcement and to minimize the deterrent effect of enforcement activities. Although some leading online sales platforms have streamlined procedures and improved monitoring, concerns remain about ineffective, inefficient, and duplicative takedown procedures, unresponsiveness to requests from small- and medium-sized enterprises, insufficient measures to deter repeat infringers, and fraudulent counter-notifications that require court action by rights holders to secure removal of counterfeit goods. Obstacles to criminal enforcement include the method by which online platforms record sales, difficulties in obtaining records to pursue investigations, and strict evidentiary requirements before the initiation of investigations. Counterfeit products are increasingly offered for sale through non-traditional online e-commerce conduits, including through e-commerce features related to social media platforms with integrated e-commerce ecosystems, as well as through live-streaming features of such platforms. Counterfeiters have also taken advantage of social media and messaging websites and mobile apps to subvert detection controls and trick consumers on traditional e-commerce platforms.

Widespread online piracy also remains a major concern, including in the form of "mini Video on Demand (VOD)" physical locations and unauthorized copies of or access codes to scientific journal articles and academic texts. As a leading source and exporter of systems that facilitate copyright piracy, China should take sustained action against websites and online platforms containing or facilitating access to unlicensed content, illicit streaming devices (ISDs), and piracy apps that facilitate access to such websites.

There was no progress in 2022 on finalizing amendments to the E-Commerce Law, which were issued by SAMR for public comment in August 2021. The draft amendments to the E-Commerce Law include changes that would extend the deadline for right holders to respond to a counter-notification of non-infringement, and impose penalties for fraudulent counter-notifications and penalties that restrict the business activities of platforms for serious circumstances of infringement. Although noting improvements under the draft amendments, right holders have raised concerns about the failure to codify the elimination of liability for erroneous notices submitted in good faith, as well as proposed changes that would allow reinstatement of listings upon posting a guarantee.

The 2021 Foreign Investment Negative List, which remains in effect in 2022, continues to maintain restrictions on foreign investment in online publishing, broadcasting, and distribution of creative content. The List continues to allow foreign investment in online music services, which right holders regard as a positive step. However, China still maintains requirements for state-owned enterprises (SOEs) to hold an ownership stake in online platforms for film and television content.

Also, right holders report significant obstacles to releasing content in China, including limited windows to submit content for review, a non-transparent content review system, and significantly slowed processing and licensing of content for online streaming platforms. Another challenge has been burdensome requirements for legalized documentation of chain of title and ownership information. These barriers have severely limited the availability of foreign content, prevented the simultaneous release of foreign content in China and other markets, and created conditions for greater piracy. Right holders also report that a draft bill published in March 2021 could restrict participation of foreign companies in radio and television, including online. Also, China's extension of its content review system to cover books intended for distribution in other markets has imposed heavy burdens on foreign publishers.

Additionally, it is critical that China fully implement the terms of the 2012 United States-China Memorandum of Understanding (MOU) regarding films and abide by its commitment to negotiate additional meaningful compensation for U.S. content.

Copyright Law Amendments

Right holders welcomed positive changes in the amended Copyright Law in 2021, such as new rights of public performance and broadcasting for producers of sound recordings, protections against circumvention of technological protection measures, and the destruction of materials or tools mainly used to produce infringing copies. However, right holders continue to highlight the need for effective implementation and clarification of criminal liability for the manufacture, distribution, and exportation of circumvention devices, as well as new measures to address online piracy. Right holders also report continuing uncertainty about whether recent amendments to the Copyright Law protect sports and other live broadcasts, and recommend clarification in the copyright regulations.

Patent and Related Policies

Although right holders welcomed the implementation of amendments to the Patent Law and Patent Examination Guidelines, some continue to raise concerns about individual patent examiners' inconsistency in allowing the filing of supplemental data to support disclosure and patentability requirements. Right holders continue to express strong concerns about obstacles to patent enforcement, such as lengthy delays in courts, lack of preliminary injunctions, competition law concepts in the Patent Law, and undue emphasis on administrative enforcement.

Right holders have generally welcomed the creation in 2021 of a mechanism for the early resolution of potential pharmaceutical patent disputes but have raised concerns about the cumbersome registration system and difficulties in obtaining preliminary injunctions. Right holders have also continued to express concerns about the scope of patents and pharmaceuticals covered by the mechanism, the length of the stay period, the availability of injunctive relief, the lack of clarity about what could trigger a dispute under the mechanism, and uncertainties with respect to parallel civil judicial and administrative proceedings. The lack of transparency and technical expertise in administrative proceedings is also a concern, as well as the possibility of bias in favor of Chinese companies. Right holders have also expressed concern about the

implementation of patent term extensions for unreasonable marketing approval delays, including limits on the type of protection provided. Furthermore, existing obstacles to patent enforcement include lengthy delays in the court system, the reported unwillingness of courts to issue preliminary injunctions, and burdensome hurdles created by parallel administrative invalidity proceedings.

China continues to impose unfair and discriminatory conditions on the effective protection against unfair commercial use, as well as unauthorized disclosure, of test or other data generated to obtain marketing approval for pharmaceutical products. The United States and China agreed to address this issue in future negotiations.

Stakeholders continue to express concern regarding the 2019 Human Genetic Resources Administrative Regulation and the 2020 Biosecurity Law, which mandate collaboration with a Chinese partner and shared ownership of patent rights arising out of any research generated by using human genetic resource materials in China. According to stakeholders, these measures create uncertainty about the type of exploratory research that would trigger the sharing of IP rights, whether the government would approve any IP arrangements, the risk of forced or pressured technology transfer, and potential conflicts of interest with hospitals conducting clinical trials. These measures also impose non-transparent requirements for government approval before any transfer of data outside of China. Lack of transparency in government pricing and reimbursement processes for pharmaceutical products also needs to be addressed by China.

In addition, China should address outstanding patent-related concerns, including regarding the onerous evidentiary requirements for proving patent infringement, ambiguity regarding whether a patentee's right to exclude extends to manufacturing for export, and lack of harmonization between China's patent grace period and statute of limitations and international practices. With respect to standards, China should establish standards-setting processes that are open to domestic and foreign participants on a non-discriminatory basis, eliminate unreasonable public disclosure obligations in standards-setting processes, and provide sufficient protections for standards-related copyrights and patent rights.

Right holders have raised concerns about application of Anti-Monopoly Law (AML) to the licensing of patents in certain instances. In 2021, a local intermediate court issued the first instance of a decision declaring certain patents of a foreign company to be an "essential facility" and finding the company's failure to license its IP to Chinese plaintiffs, notwithstanding existing licenses to other Chinese parties, to be an abuse of dominance. The case is currently awaiting decision on appeal to the SPC. Right holders have raised concerns that this decision, if upheld, may lead China's courts and competition authorities to apply the AML to patent licensing practices in the absence of harm to competition or the competitive process and, more generally, indicate that AML enforcement can be misused for the purpose of depressing the value of foreign-owned IP in key technologies.

It is critical that China's AML enforcement be fair, transparent, and non-discriminatory; afford due process to parties; focus on whether there is harm to competition or the competitive process, consistent with the legitimate goals of competition law; and appropriately tailor competition

remedies to the competitive harms. Competition law should not be used when there is no harm to competition or the competitive process to advance industrial policy or other non-competition goals.

Developments, Including Progress and Actions Taken

Bad Faith Trademarks and Other Trademark Examination Issues

In January 2023, China proposed further amendments to its Trademark Law regarding bad faith trademarks to supplement amendments from 2021. The amendments include provisions on identifying the types of activities that are considered bad faith acts, a requirement on use or to explain non-use of a trademark, and rules for assessing a trademark's well-known status. In addition, the Beijing IP Court has issued several decisions favorable to right holders, including in May 2022 when it refused to adjudicate trademark infringement disputes where the plaintiff obtained the asserted trademark in bad faith, and in July 2022 when it upheld a district court ruling that preemptive registration of trademarks in bad faith is a form of unfair competition. However, bad faith trademarks remain one of the most significant challenges for U.S. brand owners in China, and the United States continues to urge China to take further steps to address concerns, including by adopting an intent-to-use requirement for trademark applications.

The limited success brand owners have had in challenging bad faith registrations is insufficient when compared to the overwhelming number of bad faith trademark applications filed and registrations granted. While some right holders welcomed the reported reduction in filing fees, review times, and examination times, these changes have also made it easier for bad faith trademarks to be registered and gain approval. Right holders also report some improvements in the China National Intellectual Property Administration's (CNIPA) rejection at the examination stage of bad faith trademarks filed without an intention to use the marks in commerce, such as marks filed in volume by "hoarders." However, problems persist with the large number of inconsistent decisions and low rate of success for oppositions. With the elimination of appeals for opposition procedures in 2013, bad faith trademarks are immediately registered after a failed opposition, and bad actors have longer windows in which to use their marks or extort from the legitimate brand owner before a decision is made in a cancellation proceeding.

Authorities have not yet addressed the targeting of specific brands by bad faith actors, which involves filing only a small quantity of marks to avoid the examiners' focus on trademark "hoarding" through a large number of contemporaneous filings from an applicant. This tactic allows many knockoffs and "parasite brands" to avoid immediate scrutiny by CNIPA and to obtain trademarks in China in bad faith, even when the U.S. trademark is famous or well known. Right holders report that even if one bad faith trademark is successfully challenged, there is little consistency with respect to other applications by the same or related entities. The resulting registrations damage the goodwill and interests of U.S. right holders, especially for small businesses, including by preventing them from marketing their legitimate products in China.

Right holders seek more active support from CNIPA to combat bad faith trademarks before the marks are published for opposition, to address stylization of letters or numbers, to clarify *ex officio* authority to address bad faith applications, to apply consistent examination standards, and to impose deterrent penalties. CNIPA initiated campaigns and issued notices targeting bad faith

trademarks in 2022 and 2023, such as the “Blue Sky” Special Campaign and the *Notice on Continuously Severely Cracking-down on Bad Faith Trademark Registrations*. However, U.S. right holders continue to note that these efforts do not address the principal issue when registering brands in China, namely the preemptive bad faith registration of U.S. brands’ legitimate trademarks by bad actors.

Stakeholders also continue to express concerns relating to trademark examination, including regarding unnecessary constraints on examiners’ ability to consider applications and marks across classes of goods and services, as well as the lack of consideration of co-existence agreements and letters of consent in the registration processes. They also noted that in 2022 CNIPA’s Trademark Office increasingly and erroneously refused trademark applications on absolute grounds (such as lacking distinctiveness, being deceptive as to product quality or source, and being offensive to socialist morality), which are much more difficult to overcome on appeal and often lead to refusals in future applications for the same trademark. In addition to denying right holders the ability to register their legitimate trademarks, erroneous refusals on absolute grounds significantly impact business operations, because in such cases, the right holders must immediately cease use of the mark even if the product is already launched or face significant potential penalties by administrative enforcement officials. Right holders also reported in 2022 that CNIPA is increasingly rejecting defensive filings allowed under the Guidelines for Trademark Examination and Trial, denying brand owners a useful proactive tool to defend against bad faith filings.

Trademark applicants also continue to raise concerns about onerous documentation requirements, the lack of transparency in opposition proceedings, and the unavailability of default judgments against applicants who fail to appear in opposition, cancellation, and invalidation proceedings. In addition, stakeholders continue to urge the adoption of reforms to address the difficulties faced by legitimate right holders in obtaining well-known trademark status. The United States urges China to address these concerns from right holders concerning the administration of trademarks.

Legislative, Administrative, and Judicial Developments

In 2022, the National People’s Congress (NPC) and its Standing Committee issued no new or amended legislation directly addressing IP. China still has not addressed right holder concerns with respect to preliminary injunctive relief, evidence production, authentication and other evidentiary requirements, establishment of actual damages, insufficient damage awards, burdensome thresholds for criminal enforcement, and lack of deterrent-level damages and penalties. For example, right holders continue to raise concerns about their ability to meet consularization and notarization requirements for documents submitted to the Beijing IP Court and in other IP-related proceedings. As a positive step, in March 2023, China acceded to the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (Apostille Convention), which will enter into force with respect to China in November 2023. The United States will monitor China’s implementation of obligations under the Apostille Convention and whether it addresses right holders’ concerns regarding foreign government document legalization requirements.

In March 2023, the NPC announced that CNIPA, which is currently administered as a bureau under SAMR, will be elevated to receive direct oversight from the State Council. The State Council

indicated that the reorganization will accelerate China’s development as a “strong IP nation.” The practical impact of this reorganization is yet to be determined.

Transparency remains a key concern with Chinese courts, which publish only selected decisions rather than all preliminary injunctions and final decisions. Likewise, right holders express concerns about the increased emphasis on administrative enforcement, as authorities often fail to provide right holders with information regarding the process or results of enforcement actions. Additional concerns include interventions in judicial proceedings by local government officials, party officials, and powerful local interests that undermine the authority of China’s judiciary and rule of law. The recent emphasis placed by judges in public hearings or court reports on IP disputes involving “chokehold technologies,” such as microelectronics and semiconductor technologies owned by Chinese companies, as well as the establishment of a new “green channel” for quick handling of such cases by the Beijing IP court, raise concerns about the potential bias against foreign right holders in accessing expedited handling or in case outcomes. A judiciary truly independent from the Communist Party of China is critical to promote rule of law in China and to protect and enforce IP rights.

In 2022, China continued to develop and implement “social credit” systems for IP. CNIPA issued *Provisions on Intellectual Property Rights Credit Management* in January 2022 to expand the scope of conduct that will result in social credit penalties, such as addition to a blacklist and potential joint punishment by a wide range of agencies. A March 2022 document issued by the Central Committee of the Communist Party of China and the State Council emphasized the expansion of the social credit system to IP. In July 2022, CNIPA identified the first confirmed use of social credit penalties in IP, as punishment for an instance of willful patent infringement. These measures lack critical procedural safeguards, such as sufficient notice to the entity targeted for punishment, clear factors for determinations, and opportunities for appeal. The United States continues to object to any use of the “social credit system” in the field of IP.

Patent and Related Developments

In 2021, CNIPA issued measures aimed at improving the quality of patents and fining unqualified patent agents. However, large quantities of poor-quality patents continue to be granted. Although CNIPA announced in January 2021 the elimination of patent subsidies by 2025, local incentivization mechanisms continue to subsidize patent grants and trademark registrations. On January 25, 2022, CNIPA issued the *Notice on Continuing and Strictly Regulating Patent Application Behavior*, which required provincial and local IP offices to reduce patent subsidies by 25% per year, with total elimination by 2025. In April 2022, the CNIPA Commissioner noted in a press conference that China has completely eliminated all subsidies and awards for patents and trademarks at the application stage.

With respect to patent prosecution, reports indicate that patent applicants do not receive notice of third-party submissions or the opportunity to respond, despite the reliance of examiners on arguments from such submissions. Right holders express strong concerns about the lack of transparency and fairness in patent prosecution.

The issuance of anti-suit injunctions by Chinese courts in standard essential patent (SEP) disputes continues to raise due process and transparency concerns for right holders. Right holders are also concerned about how such rulings may favor domestic companies over foreign patent holders. Although some stakeholders have compared anti-suit injunctions in China to their use in other jurisdictions, right holders have raised concerns that Chinese courts appear to use the issuance of anti-suit injunctions in support of their attempts to assert jurisdiction over global SEP disputes. High-level political and judicial authorities have called for extending the jurisdiction of China's courts over global IP litigation and have cited the issuance of an anti-suit injunction as an example of the court "serving" the "overall work" of the Chinese Communist Party and the Chinese State.

In June 2022, the National People's Congress passed amendments to the AML, which entered into effect in August 2022. Right holders have raised concerns about the implementation of the amended AML, particularly regarding draft implementing rules that define anti-competitive behavior by collective management organizations and in the development of standards and the implementation of SEPs.

Industrial Designs

In 2022, China acceded to the Hague Agreement Concerning the International Registration of Industrial Designs. CNIPA issued interim measures in April 2022 to provide guidance on procedural issues for design applications and indicated that it will issue revised *Detailed Rules for the Implementation of the Patent Law* in the future.

China's "Secure and Controllable" Policies

China continues to build on its policies for "secure and controllable" information and communications technology (ICT) products under the Cybersecurity Law (CSL) and the Cryptography Law. In 2022, the Cyberspace Administration of China issued final implementing measures for conducting cybersecurity reviews under the CSL. Right holders continue to raise concerns about the invocation of cybersecurity as a pretext to require disclosure of trade secrets and other types of IP and to restrict market access. Furthermore, encryption laws, which impose mandatory approval requirements with unclear exemptions, create an uncertain business environment for foreign companies.

U.S. right holders should not be forced to choose between protecting their IP against unwarranted disclosure and competing for sales in China. Going forward, China must not invoke security concerns in order to erect market access barriers, require the disclosure of critical IP, or discriminate against foreign-owned or -developed IP.

Geographical Indications

The agreement between China and the European Union on geographical indications (GIs) entered into force in 2021. In December 2022, CNIPA published a list of 173 terms for which the European Union (EU) has requested GI protection under the agreement. CNIPA provided an opportunity for opposition by inviting entities or individuals who have any objections to the protection of these terms as GIs in China to submit such objections in writing within two months. However, CNIPA

did not publicly identify the individual components of multi-component terms that are being considered for protection when it published terms for opposition. Without this information, interested parties may assume that all individual components of multi-component terms will also be protected as GIs. In addition, right holders continue to raise concerns about certain trademark examination cases that involve the use of common names (generic terms). It is critical that China ensure full transparency and procedural fairness with respect to the protection of GIs, including safeguards for common names, respect for prior trademark rights, clear procedures to allow for opposition and cancellation, and fair market access for U.S. exports to China relying on trademarks or the use of common names.

Other Concerns

Following amendments to the Seed Law in March 2022, the Ministry of Agriculture and Rural Affairs (MARA) issued several implementing measures, including the *Guiding Opinions on Protecting IP in the Seed Industry, Combating Counterfeit as well as Plant Variety Name Infringement, and Creating a Good Environment for the Revitalization of the Seed Industry*. The *Guiding Opinions* addresses areas such as legislative reform, judicial protection for seed and plant IP, quality control in the granting of seed and plant IP, and administrative enforcement. In November 2022, MARA issued a draft *Revision of the Regulations on the Protection of New Varieties of Plants* for public comment. The United States is monitoring this development to assess the potential impact of these measures on U.S.-based plant breeders and related parties. Finally, right holders continue to raise concerns about gaps in plant protection with respect to genera and species outside a limited number of categories, as well as concerns regarding local administrative enforcement offices that are often susceptible to local favoritism.

The United States continues to urge all levels of the Chinese government, as well as SOEs, to use only legitimate, licensed copies of software. The United States also urges the use of third-party audits to ensure accountability, as China committed to provide under the Phase One Agreement.

INDIA

India remains on the Priority Watch List in 2023.

Ongoing Challenges and Concerns

Over the past year, India has remained inconsistent in its progress on intellectual property (IP) protection and enforcement. Although India has worked to strengthen its IP regime, including raising public awareness of the importance of IP, and engagement with the United States on IP issues has increased, there continues to be a lack of progress on long-standing IP concerns raised in prior Special 301 Reports. India remains one of the world's most challenging major economies with respect to protection and enforcement of IP.

Patent issues continue to be of particular concern in India. The potential threat of patent revocations, lack of presumption of patent validity, and the narrow patentability criteria under the Indian Patents Act impact companies across different sectors. Moreover, patent applicants continue to confront costly and time-consuming pre- and post-grant oppositions, long waiting periods to receive patent grants, and excessive reporting requirements. Stakeholders continue to express concerns over vagueness in the interpretation of the Indian Patents Act.

Despite India's justifications of limiting IP protections as a way to promote access to technologies, India maintains high customs duties directed to IP-intensive products such as medical devices, pharmaceuticals, information and communications technology products, solar energy equipment, and capital goods. In the pharmaceutical sector, the United States continues to monitor the restriction on patent-eligible subject matter in Section 3(d) of the Indian Patents Act and its impacts. Pharmaceutical stakeholders also express concerns as to whether India has an effective mechanism for the early resolution of potential pharmaceutical patent disputes, particularly shortcomings in notifying interested parties of marketing approvals for follow-on pharmaceuticals, and view the further restricting in 2019 of transparency of information about manufacturing licenses issued by states as a step backward. Stakeholders also continue to raise concerns as to whether India has an effective system for protecting against the unfair commercial use, and unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products.

India's overall IP enforcement remains inadequate. During the last year, India has continued to take actions against websites with pirated content. Nonetheless, weak enforcement of IP by the courts and police officers, a lack of familiarity with investigation techniques, and the continued absence of coordination among India's many national- and state-level IP enforcement agencies, continue to hamper enforcement efforts. India remains home to several markets that facilitate counterfeiting and piracy, as identified in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (*Notorious Markets List*). While some of India's state authorities continue to operate dedicated crime enforcement units, given the scale and nature of the problem, the United States continues to encourage the adoption of a national-level enforcement task force for IP crimes.

Overall, the levels of trademark counterfeiting continue to remain problematic. In addition, U.S. brand owners continue to report excessive delays in trademark opposition proceedings and a lack of quality in examination. Initiatives taken by the Department for Promotion of Industry and Internal Trade (DPIIT) reduced trademark application examination to less than 30 days, but right holders remain concerned with trademark examination quality and the increase in trademark opposition proceedings backlog. Additionally, it remains unclear whether trademark owners can apply directly for recognition of “well-known” trademark status without having to rely on previous Indian court or trademark office decisions. The United States continues to urge India to join the Singapore Treaty on the Law of Trademarks.

Companies also continue to face uncertainty due to insufficient legal means to protect trade secrets in India. The Department Related Parliamentary Standing Committee on Commerce (DRPSCC), in its July 2021 Report titled “Review of the Intellectual Property Rights Regime in India,” recommended “to consider enacting a separate legislation or a framework” and “to examine the relevant and best practices” for protection of trade secrets. However, as of 2023, no civil or criminal laws in India specifically address the protection of trade secrets. Criminal penalties are not expressly available for trade secret misappropriation in India, and civil remedies reportedly are difficult to obtain and do not have a deterrent-level effect. U.S. and Indian companies have identified trade secret protection as a growing concern and expressed interest in India eliminating gaps in its trade secrets regime, such as through the adoption of trade secret legislation that comprehensively addresses these concerns.

Copyright holders continue to report high levels of piracy, particularly online. In August 2021, the DPIIT issued a notice requesting comments on the recommendation of a Parliamentary committee to extend statutory licensing under Section 31D of the Indian Copyright Act, which provides statutory licenses for broadcasting sound recordings and literary and musical works, to “internet or digital broadcasters.” Amending Section 31D to permit statutory licensing of interactive transmissions would have severe implications for right holders who make their content available online, and the United States urges India to ensure consistency with its international obligations. Moreover, the September 2016 Department of Industrial Policy and Promotion (which is now DPIIT) memo interpreting Section 31D to cover “internet broadcasting” has not yet been withdrawn or superseded, even though in 2019 the Bombay High Court found the memo contrary to the legislation. The Bombay High Court Division Bench decision on the issue is expected to be forthcoming. The lack of predictability around Section 31D and overly broad exceptions for certain uses have raised concerns about the strength of copyright protection in India. In June 2021, the Ministry of Information and Broadcasting proposed to introduce the Cinematograph (Amendment) Bill, 2021, revising the 2019 Bill. The Cinematograph (Amendment) Bill which would enhance criminal and financial penalties for unauthorized camcording continues to await parliamentary approval. Despite India’s commitment at the United States-India Trade Policy Forum (TPF) in November 2021 to comply with the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties, to which India acceded in 2018, amendments to the Indian Copyright Act are still needed to fully implement the WIPO Internet Treaties and bring India’s domestic legislation into alignment with international best practices. Furthermore, stakeholders have reported continuing problems with unauthorized

file sharing of video games, signal theft by cable operators, commercial-scale photocopying and unauthorized reprints of academic books, and circumvention of technological protection measures.

The 2015 passage of the Commercial Courts Act, highlighted in previous Special 301 Reports, provided an opportunity to reduce delays and increase expertise in judicial IP matters. In 2021, India made additional changes to try to improve IP adjudication by abolishing the slow and inefficient Intellectual Property Appellate Board (IPAB) and transferring its functions to the state High Courts and, for some copyright matters, to the Commercial Courts. The Delhi High Court established an Intellectual Property Division to handle matters related to IP, and the “Delhi High Court Intellectual Property Rights Division Rules” came into effect in April 2022. Despite these efforts, the need for such dedicated IP divisions in other High Courts and additional staffing and training continues. The United States continues to monitor these developments and to encourage allocating resources for training and staffing.

Developments, Including Progress and Actions Taken

India made meaningful progress to promote IP protection and enforcement in some areas over the past year and expressed a willingness to improve long-standing issues with trademark infringement investigations and patent pre-grant opposition proceedings, and to engage on the copyright provisions in view of commitments under the WIPO Internet Treaties. In addition, the United States welcomes India’s recent efforts towards resolving the extensive trademark opposition backlog pursuant to the directions of the Delhi High Court. However, it failed to resolve recent and long-standing challenges, and it created new concerns for right holders. The United States is monitoring India’s next steps, including any actions taken on the many recommendations in the earlier referenced DRPSCC July 2021 report, “Review of the Intellectual Property Rights Regime in India”.

In December 2021, a Joint Parliamentary Committee released a report recommending changes to the Personal Data Protection Bill, 2019 (PDPB) that could undermine important IP protections in India. The United States on several occasions and in various fora raised IP concerns regarding this report and the Data Protection Bill, 2021. In November 2022, the Ministry of Electronics and Information Technology (MeitY) released an improved draft Digital Personal Data Protection Bill (DPDPB) that took steps to address concerns from the previous draft regarding intellectual property protection. However, right holders remain concerned with the concise language of the bill noting that problematic issues may be reintroduced at the rule-making stage after the bill is enacted. The United States is closely following the progress of this bill. On this and other potential legislation affecting IP, the United States encourages India to undertake a transparent process that provides stakeholders with sufficient opportunity to comment.

India took steps to address stakeholder concerns over burdensome patent reporting requirements by issuing a revised Manual of Patent Office Practice and Procedure in November 2019 and revised Form 27 on patent working in October 2020. The Manual includes the requirement for patent examiners to look to the WIPO Centralized Access to Search and Examination (CASE) system and Digital Access Service (DAS) to find information filed by patent applicants in other jurisdictions, with the aim of eliminating the need for applicants to file redundant information with India, although stakeholders report that this practice is not always followed and uncertainty persists

over the scope of reporting requirements and consequences of non-compliance. While some stakeholders have welcomed the revised version of Form 27, concerns remain with respect to whether Indian authorities will treat as confidential sensitive business information that parties are required to disclose on Form 27. The United States welcomes India's ongoing domestic consultations regarding the treatment of business confidential information related to working of patents, including the requirements on Form 27, and will continue to engage with India on this issue.

The Cell for Intellectual Property Rights Promotion and Management, organized under the guidance of DPIIT, continues to promote IP awareness, commercialization, and enforcement throughout India. In December 2020, the United States Patent and Trademark Office (USPTO) and DPIIT signed a new Memorandum of Understanding (MOU) relating to IP technical cooperation mechanisms, and DPIIT and USPTO are implementing a biennial work plan to guide implementation of the MOU.

The United States intends to continue to engage with India on IP matters, including through the TPF's Intellectual Property Working Group.

INDONESIA

Indonesia remains on the Priority Watch List in 2023.

Ongoing Challenges and Concerns

U.S. right holders continue to face challenges in Indonesia with respect to adequate and effective intellectual property (IP) protection and enforcement, as well as fair and equitable market access. There continues to be widespread piracy and counterfeiting, and concerns regarding IP enforcement remain, including lack of enforcement against counterfeit goods, the lack of deterrent-level penalties for IP infringement in physical markets and online, and ineffective border enforcement. Stakeholders have raised concerns over Indonesia's Copyright Law, including with respect to the circumvention of technological protection measures, and have urged Indonesia to consider revisions to the Copyright Law. Online piracy through piracy devices and applications is a concern, and unauthorized camcording and unlicensed use of software remain problematic. Also, the Ministry of Finance issued regulations in 2018 clarifying its *ex officio* authority for border enforcement against pirated and counterfeit goods and instituting a recordation system, but few foreign right holders are able to benefit from the system because of local domicile and large deposit requirements. The effectiveness of the Directorate General for Customs and Excise (DGCE) has been limited because its recordation system only contains a small number of trademarks and copyrights, and DGCE has not been able to make full use of its *ex officio* authority to detain infringing goods.

Other concerns include Indonesia's law concerning geographical indications (GIs), which raises questions about the effect of new GI registrations on pre-existing trademark rights and the ability to use common food names. In addition, Indonesia's 2016 Patent Law continues to raise concerns, including with respect to patentability criteria and the disclosure requirements for inventions related to traditional knowledge and genetic resources. Stakeholders have also expressed concern about the lack of an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products.

In addition, the United States remains concerned about a range of market access barriers in Indonesia, including certain measures related to motion pictures and certain requirements for domestic manufacturing and technology transfer for pharmaceuticals and other sectors. For example, although Indonesia took steps in 2016 to allow 100% foreign direct investment in the production of films and sound recordings, as well as in film distribution and exhibition, Indonesia has issued implementing regulations to the 2009 Film Law that, if enforced, would further restrict foreign participation in this sector. Specifically, Ministry of Education and Culture Regulation 34/2019 includes screen quotas and a dubbing ban for foreign films.

Developments, Including Progress and Actions Taken

Indonesia has made progress in addressing some of these concerns, but significant concerns remain in other areas.

U.S. stakeholders continue to note positive developments related to Indonesia's efforts to address online piracy, including increased enforcement efforts and cooperation between the Ministry of Communications and Informatics and the Directorate General for Intellectual Property (DGIP), but raise concerns about increasing sales of counterfeit goods online.

In 2022, Indonesia expanded its IP Enforcement Task Force, which aims to improve intra-government coordination on enforcement, to include four additional ministries. The Task Force's activities have included efforts to raise awareness of IP challenges among government agencies and to increase investigation of IP cases. To address insufficient IP enforcement, the United States urges Indonesia to use the IP Enforcement Task Force to improve enforcement cooperation among relevant law enforcement agencies and ministries. The United States also encourages Indonesia to develop a specialized IP unit under the Indonesia National Police to focus on investigating the Indonesian criminal organizations behind counterfeiting and piracy and to initiate larger and more significant cases. Last year, the police only conducted 134 IP investigations and only one case was prosecuted, which are low numbers relative to the country's population. Indonesia also has imposed excessive and inappropriate penalties on patent holders as an incentive to collect patent maintenance fees. The United States continues to monitor the issue.

In November 2020, Indonesia amended its 2016 Patent Law through the Omnibus Law on Job Creation to remove requirements for patents to be worked in Indonesia. However, due to a ruling by the Indonesia Constitutional Court that the Omnibus Law was unconstitutional for procedural reasons, in December 2022, Indonesia revoked the Omnibus Law and issued a new regulation to replace it, which Parliament passed in March 2023. The United States continues to urge Indonesia to undertake a more comprehensive amendment to the 2016 Patent Law to address remaining concerns. As Indonesia amends the 2016 Patent Law and other legislation and develops implementing regulations, the United States also urges Indonesia to provide affected stakeholders with meaningful opportunities for input.

The United States also continues to urge Indonesia to fully implement the bilateral Intellectual Property Rights Work Plan and plans continued engagement with Indonesia under the United States-Indonesia Trade and Investment Framework Agreement to address these issues.

RUSSIA

Russia remains on the Priority Watch List in 2023.

Ongoing Challenges and Concerns

In response to Russia's premeditated and unprovoked further invasion of Ukraine in 2022, the United States, in conjunction with its allies and partners, has taken or plans to take additional steps to isolate Russia from the global economy and hold President Putin accountable for his war against Ukraine. Consequently, the ability of the Office of the U.S. Trade Representative to raise and resolve intellectual property (IP) protection and enforcement issues in Russia is limited.

The overall IP situation in Russia remains extremely challenging. Challenges to IP protection and enforcement in Russia include continued copyright infringement, trademark counterfeiting, and the existence of nontransparent procedures governing the operation of collective management organizations (CMOs). In particular, the United States is concerned about stakeholder reports that IP enforcement remains inadequate and that Russian authorities continue to lack sufficient staffing, expertise, and, most importantly, the political will to effectively combat IP violations and criminal enterprises.

The lack of robust enforcement of IP rights is a persistent problem, compounded by burdensome court procedures. For example, the requirement that plaintiffs notify defendants a month in advance of instituting a civil cause of action allows defendants to liquidate their assets and thereby avoid liability for their infringement. Additionally, requiring foreign right holders to abide by strict documentation requirements, such as verification of corporate status, hinders their ability to bring civil actions.

Inadequate and ineffective protection of copyright, including with regard to online piracy, continues to be a significant problem, damaging both the market for legitimate content in Russia as well as in other countries. Although implementation of 2017 anti-piracy legislation has shown some promise, Russia remains home to several sites that facilitate online piracy, as identified in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (*Notorious Markets List*). Stakeholders continue to report significant piracy of video games, music, movies, books, journal articles, and television programming. Mirror sites related to websites that offer infringing content and smartphone applications that facilitate illicit trade are also a concern. Russia needs to direct more action against rogue online platforms targeting audiences outside the country. In 2018, right holders and online platforms in Russia signed an anti-piracy memorandum, which was extended until February 2022, to facilitate the removal of links to websites that offer infringing content. Stakeholders had expected that in 2022 this memorandum would be implemented as legislation covering all copyrighted works and applying to all Russian platforms and search engines, but no further progress was made in 2022. Stakeholders also reported that in December 2021, right holders and online platforms agreed to update the original memorandum to include new measures on search engines. However, although right holders are able to obtain court-ordered injunctions against websites and smartphone applications that offer infringing content, Russia must take additional steps to target the root of the problem, namely, investigating and prosecuting the owners of the large commercial enterprises distributing pirated material, including software. Moreover,

prominent Russian online platforms continue to provide access to thousands of pirated films and television shows. Stakeholders report that, in 2022, Russia remained among the most challenging countries in the world in terms of video game piracy. While an August 2021 government decree on rules for showing films in theaters allows exhibitors to remove viewers attempting to record films illicitly, the decree does not remedy the existing lack of legal liability under Russian law for unauthorized camcording.

Royalty collection and distribution by CMOs in Russia continue to lack transparency and do not correspond to international standards. Reports indicate that right holders are denied detailed accounting reports, making it difficult to verify how much money is being collected and distributed. Also, right holders are excluded from the selection and management of CMOs. The United States encourages Russia to update and modernize its CMO regime and institute practices that are fair, transparent, efficient, and accountable.

Russia remains a thriving market for counterfeit goods sourced from China. Despite increased seizures by the Federal Customs Service, certain policies hamper IP enforcement efforts. For example, the “return to sender” policy for small consignments, which returns counterfeit goods to their producer, is problematic because it does not remove such goods from channels of commerce.

Stakeholders also report that, in practice, Russia’s trade secret regime places an undue burden on right holders in terms of requiring specific prerequisites for protection that do not reflect the commercial realities of most businesses. Examples include keeping an inventory of trade secret-protected information and marking trade secrets with the names and addresses of owners. In terms of trade secret enforcement, stakeholders report that, despite their availability, deterrent-level penalties and preliminary measures are rarely imposed by courts for trade secret misappropriation.

The United States is also concerned about Russia’s implementation of its World Trade Organization commitments related to the protection against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. Stakeholders report that Russia is eroding protections for undisclosed data, and the United States urges Russia to adopt a system that meets international norms of transparency and fairness. Stakeholders also report that Russia lacks an effective mechanism for the early resolution of potential pharmaceutical patent disputes, and continue to express concerns regarding certain evidentiary standards applied by the judiciary.

Developments, Including Progress and Actions Taken

Over the course of 2022, Russia has taken steps backward with respect to IP protection and enforcement. For example, the United States is concerned regarding plans to target IP rights for foreign right holders from countries whose governments have taken action to hold Russia accountable for its illegal invasion of Ukraine. Some of these plans have been implemented, including Decree 299, which would not require Russian companies and individuals to pay compensation for the use of inventions, utility models, and industrial designs under Article 1360 of the Russian Civil Code, if the right holder comes from a list of countries designated by Russia as “unfriendly” due to factors including publicly supporting or calling for sanctions against Russia. Another new measure, Decree 322, restricts the ability of foreign right holders from “unfriendly

states” to collect license payments for most types of IP. Russia continues to consider other changes as well, including a reported proposal to allow exploitation of copyrighted works of right holders from “unfriendly states” without authorization from the right holder. Stakeholders have expressed concerns that after many brands exited the Russian market in 2022, Russia may deny them the ability to register or renew their trademarks in the country, which could result in their trademarks being registered by another party.

The United States urges Russia to develop a more comprehensive, transparent, and effective enforcement strategy to reduce IP infringement, particularly the sale of counterfeit goods and the piracy of copyright-protected works. The United States continues to monitor Russia’s progress on these and other matters through appropriate channels.

VENEZUELA

Venezuela remains on the Priority Watch List in 2023.

Ongoing Challenges and Concerns

Recognizing the significant challenges in Venezuela at this time, the United States has several ongoing concerns with respect to the country's lack of adequate and effective intellectual property (IP) protection and enforcement. Venezuela's reinstatement several years ago of its 1955 Industrial Property Law, which falls below international standards and raises concerns about trade agreements and treaties that Venezuela subsequently ratified, has created significant uncertainty and deterred investments related to innovation and IP protection in recent years. Piracy, including online piracy, as well as unauthorized camcording and widespread use of unlicensed software, remains a persistent challenge. Counterfeit goods are also widely available, and IP enforcement remains ineffective. The World Economic Forum's *2019 Global Competitiveness Report* ranked Venezuela last in IP protection, out of 141 countries, for the seventh straight year. The Property Rights Alliance's *2022 International Property Rights Index* also ranked Venezuela last out of 129 countries in a metric that includes standards for IP protection.

Developments, Including Progress and Actions Taken

While Venezuela's Autonomous Intellectual Property Service (SAPI) granted new patents and also waived various filing fees for small and medium enterprises to encourage IP system usage in 2021, the country did not make any notable progress towards improving IP protection in 2022.

WATCH LIST

ALGERIA

Algeria remains on the Watch List in 2023. Algeria continues to take steps to improve intellectual property (IP) protection and enforcement, including by implementing a new digital risk management scheme for customs, actively reviewing the IP regulatory framework, constituting a new specialized commercial court responsible for IP- and international trade-related disputes, and engaging in capacity-building and training efforts for law enforcement, customs officials, judges, and IP protection agencies. Algeria is also contemplating legislative amendments to address outstanding concerns, including measures to address counterfeiting. As Algeria plans to amend and implement its IP-related laws, the United States encourages Algeria to provide interested stakeholders with meaningful opportunities for input. Furthermore, Algeria has continued to make improvements on market access issues, including by issuing regulations reducing registration wait times and allowing companies to register their representative offices to do business in Algeria. However, concerns remain. Algeria needs to increase enforcement efforts against trademark counterfeiting and copyright piracy, particularly online and Internet Protocol television (IPTV) piracy. Algeria also needs to provide adequate judicial remedies in cases of patent infringement and provide administrative opposition, as well as fewer formalities, in its trademark system. Algeria still lacks an effective mechanism for the early resolution of potential pharmaceutical patent disputes, and there is a lack of clarity about whether Algeria's system protects against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. The United States will continue to engage with Algeria to improve Algeria's IP protection and enforcement environment.

BARBADOS

Barbados remains on the Watch List in 2023. Barbados acceded to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties, in 2019. Last year's review of draft amendments to Barbados's Copyright Act to implement the treaties has been delayed, and Parliament is now expected to discuss the amendments by the end of 2023. However, the lack of enforcement of intellectual property judgments, insufficient resources for law enforcement, weak enforcement of existing legislation, and long-standing backlogs in the judicial system remain as concerns. In the realm of copyright and related rights, the United States continues to have concerns about the unauthorized retransmission of U.S. broadcasts and cable programming by local cable operators in Barbados, particularly state-owned broadcasters, without adequate compensation to U.S. right holders. Several outstanding copyright infringement cases filed by stakeholders against local cable operators and one local radio station remained at a virtual standstill in 2022. The United States also has continuing concerns about the refusal of Barbadian TV and radio broadcasters and cable and satellite operators to pay for public performances of music. The United States urges Barbados to take all actions necessary to address such cases to ensure that all composers and songwriters receive the royalties they are owed for the public performance of their musical works. The United States looks forward to working with Barbados to resolve these and other important issues.

BELARUS

Belarus returns to the Watch List in 2023. Belarus was removed from the Watch List in 2016 after demonstrating commitment to improve its laws on intellectual property (IP) protection and enforcement. However, in 2022, Belarus passed a law (Law No. 241-3) that legalizes unlicensed use of copyrighted works, including computer programs, broadcasts of a broadcasting organization, audiovisual works, and musical works, if the right holder or collective management organization (CMO) is from a government list of foreign states “committing unfriendly actions.” Furthermore, the law requires Belarus’s National Center of Intellectual Property (NCIP) to collect royalties on this unlicensed use of copyrighted works on behalf of the individuals and entities from “unfriendly” states. While NCIP is instructed to retain this remuneration for three years on behalf of the right holder or CMO, after this period, any royalties not requested by the right holder or CMO will be transferred to Belarus’s general budget within three months. In this event, the Lukashenka regime would directly financially benefit from the unlicensed usage of others’ IP. The United States urges Belarus to rescind this law and to ensure that it complies with its international obligations, including with respect to copyright and related rights.

BOLIVIA

Bolivia remains on the Watch List in 2023. Challenges continue with respect to adequate and effective intellectual property (IP) protection and enforcement in Bolivia. The IP laws in Bolivia are outdated, and constitutional restrictions limit effective IP protection. For example, Bolivia relies on a century-old industrial privileges law, which does not address areas such as trade secrets. In addition, Bolivia has not acceded to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties. While the Servicio Nacional de Propiedad Intelectual (SENAPI) announced in 2022 that they would be drafting an updated national IP law, there has been little movement on this initiative. In September 2022, Bolivia established new administrative procedures for filing and processing infringement complaints, but it remains to be seen whether these procedures will in practice streamline the process. . SENAPI has the primary responsibility for IP protection but continues to suffer from inadequate resources. Similarly, Bolivian Customs lacks *ex officio* authority necessary to interdict potentially infringing goods without an application from the right holder. Additionally, the customs authority does not have the human and financial resources needed to effectively address shipments containing counterfeit goods at its international borders. Significant challenges also persist with respect to adequate and effective IP enforcement and communication between SENAPI and Customs. Video, music, literature, and software piracy rates are among the highest in Latin America. Rampant trademark infringement persists, and counterfeit medicines remain prevalent throughout the country. Bolivian law provides for substantial penalties for IP offenses, but criminal charges and prosecutions remain rare. Bolivian Customs has authority under the Cinema and Audiovisual Arts Law of 2018 to pursue criminal prosecutions for IP violations of foreign and domestic visual works, but Bolivia has not promulgated implementing regulations that are necessary to exercise this authority.

BRAZIL

Brazil remains on the Watch List in 2023. The United States has long-standing concerns about the very high levels of pirated content and counterfeit goods that are available in Brazil, despite some significant intellectual property (IP) enforcement actions taken by authorities in 2022. Brazil conducted several effective enforcement campaigns against online piracy, some in conjunction with enforcement officials in the United States and other countries, including enforcement focused on combatting illicit streaming devices (ISDs), sports piracy during the weeks leading up to the 2022 FIFA World Cup, video game piracy, and piracy in the metaverse. The Ministry of Justice and Public Security's Cybernetic Operations Lab (Ciberlab), the Ministry of Justice and Public Security's National Council to Combat Piracy and Intellectual Property Crimes (CNCIP), the Brazilian Audio-Visual Agency (ANCINE), and the cybercrime unit of the State of São Paulo's Prosecutor's Office (CyberGaeco) have been particularly active in this area. Nevertheless, online piracy, use of ISDs, signal theft, and use of unlicensed software, remain significant barriers to the adoption of legitimate content distribution channels. The United States encourages Brazil to join, as soon as possible, the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties, which are aimed at preventing unauthorized access to creative works online. Regarding enforcement against counterfeit goods, the São Paulo Municipal Government increased the number of large-scale raids of the Rua 25 de Março area, which was identified in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (*Notorious Markets List*), and conducted an IP enforcement campaign that resulted in over 2,000 tons of counterfeit items worth an estimated \$250 million being seized during November 2022. In another positive development for enforcement, Brazil's "Best Practices Guide" for online platforms was adopted by many e-commerce marketplaces, but stakeholders remain concerned that the overall volume of counterfeit goods available online remains high. The port of Santos, which is the busiest container port in Latin America, and the Brazil-Paraguay-Argentina tri-border area also continue to be significant entry points for counterfeit goods. Factors that reduce the effectiveness of enforcement against counterfeit goods include the lack of *ex officio* authority for customs officials to seize counterfeit goods upon inspection, the lack of deterrent-level penalties authorized by statute and issued by the courts, insufficient numbers of customs officers posted at the border, and lengthy prosecution times. Right holders also report difficulties in obtaining information about seized counterfeit goods from customs, which prevents effective follow-on investigations into the source and distribution network of the counterfeits. Brazil continues to implement the country's first National Strategy on Intellectual Property and, reportedly, has reduced the overall average patent pendency time to 6.9 years (although it remains closer to 10 years for biopharmaceutical patents applications). The United States also recognizes the continued implementation of the technology-neutral Patent Prosecution Highway Program. The United States remains concerned, however, about the pendency of patent applications and the impact on the effective patent term. Also, pharmaceutical stakeholders remain concerned that Brazilian law and regulations do not provide protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products although such protection is provided for veterinary and agricultural chemical products. The United States urges Brazil to ensure transparency and procedural fairness in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Brazil proceeds with the European Union (EU)-Mercosur

Trade Agreement. The United States is also concerned about the additional market access impact of Brazil's revocation of the previous determination of entities that qualified as prior users for certain GIs under the EU-Mercosur Trade Agreement, requiring these entities to reapply but with criteria that now disqualifies many U.S. producers. Strong IP protection, available to both domestic and foreign right holders, provides a critical incentive for businesses to invest in future innovation in Brazil, and the United States will engage constructively with Brazil to build a strong IP environment and to address remaining concerns.

BULGARIA

Bulgaria is placed on the Watch List in 2023. In the 2022 Special 301 Report, the Office of the U.S. Trade Representative initiated an Out-of-Cycle Review of Bulgaria to consider the extent to which Bulgaria addressed deficiencies in its investigation and prosecution of online piracy cases, particularly its failure to adopt evidence sampling in criminal cases. Bulgaria did not adopt evidence sampling or other similar measures last year. However, Bulgaria's Intellectual Property (IP) Rights Working Group did begin drafting possible legislative language that may improve the investigation and prosecution of online piracy cases in a way similar to evidence sampling. In addition, Bulgaria raised the maximum sentence for certain IP crimes from five years to six (a long-sought change that will enable police and prosecutors to use additional tools to investigate such offenses) and also created a new cybercrime department within the National Investigative Service, which will assume responsibility for investigating significant computer-based crimes. Long-standing IP enforcement concerns in Bulgaria continue to include inadequate prosecution efforts, lengthy and inefficient procedures, and the lack of deterrent criminal penalties, particularly in the area of online piracy. Stakeholders have raised concerns as to notorious online piracy sites reportedly hosted in or run from Bulgaria. The United States looks forward to continuing to work with Bulgaria to address these IP concerns.

CANADA

Canada remains on the Watch List in 2023. Canada made significant progress in intellectual property (IP) protection and enforcement with the implementation of important IP provisions in the United States-Mexico-Canada Agreement (USMCA), particularly in areas where there have been long-standing concerns, including with full national treatment for copyright protections, transparency and due process with respect to geographical indications (GIs), and more expansive trade secret protection, including criminal penalties for willful misappropriation. In December 2022, Canada extended the general term of copyright protection for all works measured by the life of the author from life of the author plus 50 years to life of the author plus 70 years. The United States continues to monitor Canada's outstanding USMCA commitments with transition periods, including on the Brussels Satellites Convention and patent term extensions for unreasonable patent office delays. Right holders also report that Canadian courts have established meaningful penalties against circumvention devices and services, but piracy through these means persists. In 2019, Canada made positive reforms to the Copyright Board related to tariff-setting procedures for the use of copyrighted works. Despite this progress, various challenges to the adequate and effective protection of IP rights in Canada remain. Significant concerns regarding Canada's IP environment include poor enforcement with respect to counterfeit or pirated goods at the border and within Canada, high levels of online piracy, and inadequate transparency and due process regarding GIs protected through free trade agreements. In particular, reports of enforcement levels suggest that Canadian authorities have yet to take full advantage of expanded *ex officio* powers. Canada's system to provide for patent term restoration for delays in obtaining marketing approval is limited in duration, eligibility, and scope of protection. The United States remains deeply troubled by the ambiguous education-related exception added to the copyright law in 2012, which reportedly has significantly damaged the market for educational publishers and authors.

COLOMBIA

Colombia remains on the Watch List in 2023. In 2022, Colombia made limited progress on the outstanding provisions related to its obligations under Chapter 16 of the United States-Colombia Trade Promotion Agreement (CTPA), including on provisions regarding enforcement against online copyright infringement. In addition, Colombia's accession to the 1991 Act of the International Union for the Protection of New Varieties of Plants Convention (UPOV 1991) remains outstanding. With respect to concerns raised about Article 72 of the National Development Plan, Colombia issued Decree 433 in March 2018, as amended by Decree 710 of April 2018, to clarify that Colombia would not condition regulatory approvals on factors other than the safety and efficacy of the underlying compound. Due to an action challenging these decrees, the Council of State provisionally suspended them in September 2019. Colombia is still considering how it will resolve this issue. Colombia's success in combating counterfeiting and other intellectual property (IP) violations remains limited. High levels of digital piracy persist, and Colombia has not curtailed the number of free-to-air devices, community antennas, and unlicensed Internet Protocol Television (IPTV) services that permit the retransmission of otherwise-licensed content to a large number of non-subscribers. Stakeholders also report that piracy of licensed content through mobile apps has become a growing concern in Colombia. Colombia continues to face a large number of pirated and counterfeit goods crossing the border or sold at markets, on the street, and at other distribution hubs around the country, and stakeholders report that the number of seizures and criminal raids remains low. The United States recommends that Colombia increase efforts to address online and mobile piracy and to focus on disrupting organized trafficking in illicit goods, including at the border and in free trade zones. The United States encourages Colombia to provide key agencies with the requisite authority and resources to investigate and seize counterfeit goods, such as expanding the jurisdiction of the customs police. The United States looks forward to continuing to work with Colombia to address outstanding issues, particularly with respect to full implementation of the CTPA, in 2023.

DOMINICAN REPUBLIC

The Dominican Republic remains on the Watch List in 2023. The Dominican Republic continues to demonstrate a strong political will to improve intellectual property (IP) protection and enforcement, including the creation in December 2022 of the National Inter-Ministerial Council of Intellectual Property, intended to coordinate the agencies involved in IP protection and enforcement and ensure better cooperation and information sharing. The government has designated a specialized prosecutor in every one of the country's provinces to work on IP cases. As a result of increased coordination between the Attorney General's office and Customs, as well as better training of local prosecutors, IP case prosecutions in the country rose from 73 cases in 2018, to 217 cases in 2021, and 584 cases in 2022. Moreover, last year, authorities seized tens of millions of counterfeit items in raids and enforcement operations, including counterfeit medicines. However, despite this progress, the United States remains concerned with prevalent online and signal piracy, the widespread sale of counterfeit goods, and the inconsistent quality of patent examinations. The United States continues to urge the Dominican Republic to improve coordination among enforcement agencies, particularly the Attorney General's Office, National Copyright Office, and the Institute of Telecommunications, to ensure that such agencies are adequately funded and staffed, and to improve support of IP inspections, investigations, and prosecutions. The Dominican Republic should also require IP protection and enforcement agencies make information publicly available about how right holder complaints have been handled and resolved, either through the administrative or criminal process. The United States will continue to engage with the Dominican Republic and monitor the effectiveness of the National Inter-Ministerial Council of Intellectual Property in addressing these and other concerns.

ECUADOR

Ecuador remains on the Watch List in 2023. While Ecuador has made some efforts to improve intellectual property (IP) enforcement in 2022, particularly in the area of border enforcement, Ecuador continues to lack effective laws and regulations covering IP protection and enforcement. Ecuador's Organic Code on Social Economy of Knowledge, Creativity, and Innovation (Ingenuity Code) governs the protection, exercise, and enforcement of IP rights. The Ingenuity Code's implementing regulations, issued in December 2020, do not address concerns raised by the U.S. Government and various stakeholders on issues related to overly broad or vaguely defined copyright exceptions and limitations, patentable subject matter, and geographical indications (GIs), including opposition procedures for proposed GIs, the treatment of common food names, and the protection of prior trademark rights. While Ecuador still plans additional revisions to the Ingenuity Code, little tangible progress has been made. The United States remains open to any engagement on this process. Enforcement of IP rights against widespread counterfeiting and piracy remains weak, including online and in physical marketplaces. Ecuador is also reportedly a source of unauthorized camcording. Despite some increased enforcement activity, Ecuador needs to take additional steps to address continued concerns regarding online piracy. The United States urges Ecuador to continue to improve its IP enforcement efforts and to provide for customs enforcement on an *ex officio* basis, including actions against goods in-transit. The United States also encourages Ecuador to ensure that all government ministries use licensed software and to make meaningful progress to ensure that all right holders receive the royalties they are owed for their copyrighted works. The United States will continue working with Ecuador to address these and other issues.

EGYPT

Egypt remains on the Watch List in 2023. Egypt has made some efforts to strengthen intellectual property (IP) protection and enforcement, including adopting a new national IP strategy and a new system that facilitates sharing of information regarding counterfeit goods among customs offices at different ports. The Egyptian Patent Office published patent examination guidelines for biotechnology in May 2022, and the Ministry of Interior increased its enforcement against unlicensed satellite channels offering pirated broadcasts. Despite these improvements, concerns remain. On enforcement, Egypt should provide deterrent-level penalties for IP violations, grant *ex officio* authority for customs officials to seize counterfeit and pirated goods at the border, and increase training for enforcement officials. Stakeholders raise concerns regarding the lack of an effective mechanism for the early resolution of potential patent disputes and the mandatory requirement to record trademark licenses. Egypt should also complete its plans to update and publish the remainder of its patent and trademark examination guides online. Additionally, the United States encourages Egypt to join and fully implement the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties. The United States looks forward to continuing to work with Egypt to address these and other issues.

GUATEMALA

Guatemala remains on the Watch List in 2023. Despite a generally strong legal framework in place, resource constraints, inconsistent enforcement actions against counterfeiting of apparel and other products, as well as a lack of coordination among law enforcement agencies continue to result in insufficient intellectual property (IP) enforcement. The United States urges Guatemala to strengthen enforcement, including criminal prosecution, administrative and border measures, and intergovernmental coordination to address widespread copyright piracy and commercial-scale sales of counterfeit goods. While the government's use of unlicensed software moderately declined in 2022, signal piracy continues to be a concern, with online piracy through Internet Protocol television (IPTV) services increasing in 2022. The production and sale of counterfeit apparel and pharmaceuticals in Guatemala increased during the past two years, and stakeholders report that the government, while aware of such activity, lacks capacity to effectively curtail the activity. Stakeholders also reported that significant delays in the patent registration process continued in 2022, that the judiciary continues to lack specialization and knowledge to hear and adjudicate IP issues, and that poor communication and coordination between enforcement agencies delayed notifications of alleged counterfeit cases to attorneys for right holders and impeded effective representation. The United States continues to urge Guatemala to take clear and effective actions in 2023 to improve the protection and enforcement of IP in Guatemala.

MEXICO

Mexico remains on the Watch List in 2023. As part of its intellectual property (IP) commitments under the United States-Mexico-Canada Agreement (USMCA), Mexico undertook significant legislative reforms, with amendments to its Copyright Law and Criminal Code, and the passage of the 2020 Federal Law for the Protection of Industrial Property. However, Mexico has not yet issued implementing regulations for the Copyright Law amendments or the Industrial Property Law, which is creating uncertainty for the creative and innovative sectors looking to protect and enforce their IP. In addition, stakeholders report that Mexican authorities are not enforcing certain provisions of the Copyright Law while a constitutional challenge of the Copyright Law remains unresolved with Mexico's Supreme Court. Mexico continues to suffer from very high rates of copyright piracy including through online streaming, peer-to-peer file sharing, direct downloads, stream ripping, illicit streaming devices and apps, circumvention devices for video games and consoles, and physical media. As broadband access increases, online piracy has been increasing, and stakeholders report that Mexico has one of the highest rates of music and video game piracy in the world. A barrier to effective criminal copyright enforcement is the requirement to prove a direct economic benefit to the infringer and the submission of a legitimate physical copy of the pirated content, even if the pirated copies were distributed online. The "direct economic benefit" requirement also prevents effective criminal enforcement against not-for-profit acts of piracy, such as interrupting and distributing cable and satellite signals. According to stakeholders, civil copyright enforcement is difficult and expensive due to the lack of secondary liability for Internet service providers (ISPs), no pre-established damages, no lost profit recovery, no recovery of attorney's fees, and lengthy court cases. Mexico also continues to suffer from significant sales and distribution of counterfeit goods. The prevalence of counterfeit goods at notorious physical marketplaces remains a significant problem, exacerbated by the involvement of transnational criminal organizations. Mexican authorities used to conduct IP enforcement raids against markets listed in the Review of Notorious Markets for Counterfeiting and Piracy (*Notorious Markets List*) such as La Pulga Rio, Mercado San Juan de Dios, and Tepito, but this enforcement activity appears to have ceased in recent years. Criminal investigations and prosecutions for trademark counterfeiting and copyright piracy appears to be non-existent, with the Attorney General's Office (FGR) failing to report any IP enforcement statistics for the past three years. Right holders report that FGR has imposed an internal ban on seeking search warrants in IP cases, which eliminates an essential tool in IP investigations. While administrative actions against counterfeiters through the Mexican Institute of Industrial Property (IMPI) remain effective, they are very limited due to budget cuts and staffing reductions. Regarding enforcement at the border, the National Customs Agency (ANAM) facilitated 493 cases against the importation of counterfeit goods. However, ANAM's effectiveness is also limited due to its inability to make determinations, seize, or destroy the counterfeit goods without an order from IMPI or FGR. Stakeholders continue to raise ongoing issues pertaining to bad faith trademark filings and registrations. Regarding the enforcement against both pirated content and counterfeit goods, Mexico continues to operate with reduced resources for numerous government agencies. To combat growing levels of IP infringement in Mexico, the United States encourages Mexico to restore funding for federal, state, and municipal enforcement, improve coordination among federal and sub-federal officials, prosecute more IP-related cases, and impose deterrent-level penalties against infringers. Right holders also express concern about the length of administrative and judicial IP infringement proceedings and the persistence of continuing infringement while cases remain pending. Right holders are also

concerned that, in administrative procedures on infringement, preliminary measures still can be lifted if the alleged infringer posts a counter-bond, where the counter-bonds are valued at non-deterrent levels. With respect to geographical indications (GIs), the United States urges Mexico to ensure transparency and procedural fairness in the protection of GIs and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly with respect to protection granted pursuant to trade agreements. The United States continues to engage with Mexico and urges Mexico to fully implement the USMCA and to address long-standing concerns, including with respect to enforcement against counterfeiting and piracy, protection of pharmaceutical-related IP, pre-established damages for copyright infringement and trademark counterfeiting, and enforcement of IP rights in the digital environment.

PAKISTAN

Pakistan remains on the Watch List in 2023. Pakistan has maintained a positive dialogue with the United States on intellectual property (IP) matters and engaged in meaningful capacity-building and training programs to promote IP protection and enforcement in Pakistan. Pakistan's Intellectual Property Organization (IPO) also continues to make efforts to coordinate various government bodies involved in IP. Nonetheless, serious concerns remain, particularly in the area of IP enforcement. Counterfeiting and piracy remain widespread, including with respect to pharmaceuticals, printed works, digital content, and software. Reports of numerous cable operators providing pirated content are also prevalent. Pakistan's establishment of IP Tribunals in three cities in 2016 was a welcome development, but plans to create new tribunals in other cities have not moved forward. Moreover, litigants with experience in these tribunals have raised concerns over the lack of capacity, inconsistency of rulings, nominal fines, a general lack of expertise among tribunal judges, and confusion over standards by which courts review tribunal decisions. In addition, judicial bodies in Pakistan have limited jurisdiction to adjudicate criminal complaints for IP violations. Effective trademark enforcement also continues to be a challenge due to the lack of *ex officio* authority to take criminal enforcement actions without a right holder's complaint. Nonetheless, the Competition Commission of Pakistan has made some progress in cases involving counterfeit trademarks and other trademark-related anti-competitive violations. The reconstituted IP Policy Board, established by the IPO Act, met once in 2021 and not again until a new IP Policy Board was reconstituted in January 2023. The United States urges Pakistan to conduct regular meetings of the Board. On IP enforcement, addressing the lack of deterrent-level penalties and a sustained focus on judicial consistency and efficiency are critical to moving forward. A strong and effective IPO will support Pakistan's reform efforts. The IPO continues to face challenges in coordinating enforcement among different government agencies and operates at levels well below approved staffing. The Office of the United States Trade Representative, in conjunction with the U.S. Patent and Trademark Office (USPTO), the U.S. Copyright Office, and the Commercial Law Development Program (CLDP), provided technical advice on draft amendments to the Patent, Trademark, and Copyright Ordinances. The trademark amendment bill is proceeding through the legislative process. However, further engagement on the amendments has stalled, and the timeline for enactment of all of the amendments is unclear. The United States encourages Pakistan to continue to work bilaterally, including through USPTO capacity-building programs, CLDP programs, and Trade and Investment Framework Agreement meetings, and make further progress on IP reforms, with a particular focus on aligning its IP laws, regulations, and enforcement regime with international best practices. As Pakistan amends its IP laws, the United States encourages Pakistan to undertake a transparent process that provides stakeholders with sufficient opportunity to comment on draft laws. The United States also welcomes Pakistan's interest in joining international treaties, such as the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties, and the Patent Cooperation Treaty.

PARAGUAY

Paraguay remains on the Watch List in 2023. Paraguay remains a major transshipment point for counterfeit and pirated goods. Ciudad del Este, which is listed in the 2022 Review of Notorious Markets for Counterfeiting and Piracy (*Notorious Markets List*), serves as one of the main distribution and sales hubs for counterfeit goods in the region and has reportedly become a home to manufacturing and “finishing” facilities for counterfeit goods. Although right holders report strong intellectual property (IP) enforcement efforts by Dirección Nacional de Propiedad Intelectual (DINAPI), the IP Prosecutor’s Office, and the Economic Crimes Unit of the National Police, these efforts are overshadowed by the scale of the IP enforcement challenges, particularly challenges with effective and consistent prosecutions and judicial actions. Paraguay also has an interagency coordination center to address IP violations and to improve coordination among agencies. The United States urges Paraguay to ensure transparency and procedural fairness in the protection of geographical indications (GIs) and to ensure that the grant of GI protection does not deprive interested parties of the ability to use common names, particularly as Paraguay proceeds with the European Union-Mercosur Trade Agreement. In September 2022, the United States and Paraguay agreed on an IP Work Plan that will serve as a roadmap to address issues on the protection and enforcement of IP rights in Paraguay. The United States looks forward to continuing to work with Paraguay to address outstanding IP issues through bilateral engagement, including through the IP Work Plan.

PERU

Peru remains on the Watch List in 2023. The primary reasons are the long-standing implementation issues with the intellectual property (IP) provisions of the United States-Peru Trade Promotion Agreement (PTPA), particularly with respect to Articles 16.11.8 and 16.11.29(b)(ix). The United States urges Peru to implement fully its PTPA obligations and recognizes the steps that Peru has begun to take on establishing statutory damages. Peru has introduced a draft bill addressing statutory damages for copyright and trademark infringement, but the legislation remains pending with a ministerial working group and has not significantly progressed in 2022. With respect to IP enforcement, Peru took a number of positive steps in 2022. Stakeholders have noted that Peru's National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI) serves as a model for strong IP enforcement practices in the Andean region, despite limited resources. INDECOPI has increasingly taken action to fine individuals and legal entities that violate Peru's copyright laws. However, stakeholders have raised concerns regarding the introduction of Proyecto de Ley 878/2021-CR, known as the General Internet Bill, arguing that the legislation needs amendments to require Internet service providers (ISPs) to expeditiously take down infringing content and to provide adequate legal incentives for ISPs to work in conjunction with right holders to take down infringing content. The United States recognizes Peru's efforts to increase the number of prosecutions against piracy and counterfeiting, particularly its efforts with respect to the sale of counterfeit medicines. The United States urges Peru to continue these efforts and to expand the imposition of deterrent-level fines and penalties for counterfeiting and piracy more broadly. The United States further encourages Peru to continue its public awareness activities about the importance of IP protection and enforcement. The United States also continues to encourage Peru to enhance its border enforcement measures and to continue to build the technical IP-related capacity of its agencies, law enforcement officials, prosecutors, and judges. The United States looks forward to continuing to work with Peru to address outstanding issues, particularly with respect to full implementation of the PTPA, in 2023.

THAILAND

Thailand remains on the Watch List in 2023. Thailand continues to make significant progress on improving intellectual property (IP) protection and enforcement. In August 2022, amendments to its Copyright Act entered into force, which included notice-and-takedown provisions intended to address infringement online and prohibitions against circumvention of technological protection measures. The amendments also allowed Thailand to accede in July 2022 to the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT), which subsequently entered into force with respect to Thailand in October 2022. The United States continues to urge Thailand to complete the amendment process to accede to the WIPO Performances and Phonograms Treaty (WPPT). In September 2022, Thailand established the “Thai Customs IPR Recordation System,” a new online recordation database that allows right holders to file confidential information with Customs that would allow customs officers to verify the authenticity of copyrighted or trademarked goods being imported, being exported, or in transit. A subcommittee on enforcement against IP infringement, led by a Deputy Prime Minister, regularly convenes, and agencies have signed an action plan to identify physical markets and other areas for high-priority enforcement actions against counterfeit and pirated goods. Right holders continue to use Thailand’s 2021 memorandum of understanding (MOU) with e-commerce platforms to report online listings of counterfeit products. In 2022, Thailand established another MOU between right holders and online advertisers to combat the sale of counterfeit goods online and online piracy. Thailand has also taken a number of successful enforcement actions against online piracy, particularly through enhanced intra-agency coordination, though stakeholders remain concerned about delays in follow-on criminal prosecutions. Thailand remains in the process of amending its Patent Act to streamline the patent registration process, to reduce patent backlog and pendency, and to help prepare for accession to the Hague Agreement Concerning the International Registration of Industrial Designs. While Thailand is making progress in these areas, concerns remain. Counterfeit and pirated goods are still readily available, particularly online, and the United States urges Thailand to continue to improve on its provision of effective and deterrent enforcement measures, especially against upstream suppliers. In addition, the United States urges Thailand to consider additional amendments to its Copyright Act to address concerns expressed by the United States and other foreign governments and stakeholders, including regarding procedural obstacles to enforcement against unauthorized camcording, unauthorized collective management organizations, and a process established by the 2022 Copyright Act amendments that may lead to overly broad exceptions to the circumvention of technological protection measures. The United States also encourages Thailand to persist in efforts to address the issue of online piracy by devices and applications that allow users to stream and download unauthorized content. Thailand should also address the backlog in pending patent examinations in particular sectors. Other U.S. concerns include continued use of unlicensed software in the private sector, lengthy civil IP enforcement proceedings, and low civil damages. U.S. right holders have also expressed concerns regarding legislation that allows for content quota restrictions for films. Stakeholders also continue to encourage Thailand to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. The United States looks forward to continuing to work with Thailand to address these and other issues through the United States-Thailand Trade and Investment Framework Agreement and other bilateral engagement.

TRINIDAD AND TOBAGO

Trinidad and Tobago remains on the Watch List in 2023. In 2022, the Telecommunications Authority of Trinidad and Tobago (TATT) continued to conduct audits of compliance with the concessions agreement it requires of domestic broadcasters, which mandates respect for intellectual property (IP). The concessions agreement prohibits broadcasters from transmitting any program, information, or other material without first obtaining all required permissions from relevant IP right holders. Although there is reportedly a high level of compliance among broadcasters, TATT has yet to take any enforcement action against the remaining non-compliant broadcasters. Specifically, the United States remains concerned about the lack of enforcement action against the two state-owned telecommunications networks that continue to violate the agreement, both of which broadcast unlicensed U.S. over-the-air signal content as part of their commercial television subscription packages. In other areas, Trinidad and Tobago made progress with respect to IP protection and enforcement. In 2022, through efforts such as the operationalization of the National Intellectual Property Training Centre of Trinidad and Tobago, the country increased training sessions on IP enforcement and prosecution for customs and police authorities. Furthermore, Trinidad and Tobago continues to improve the capabilities of its Anti-Illicit Trade Task Force and, in 2022, worked with United States Customs and Border Protection and the World Intellectual Property Organization (WIPO) on the creation of a Customs Recordal System for IP rights to combat counterfeits at the point of entry. The United States will monitor TATT's enforcement of the concessions agreement with broadcasters and will continue to engage with Trinidad and Tobago to address these and other IP issues.

TURKEY

Turkey remains on the Watch List in 2023. Over the last few years, Turkey has worked to strengthen its intellectual property (IP) regime, including through continued implementation of the 2016 Industrial Property Law that, among other things, increases criminal sanctions for importing and exporting counterfeit goods and enhances authorities' ability to destroy counterfeit goods. An updated copyright law has also been under review, as has a five-year, government-wide IP strategy. In addition, the Turkish Patent and Trademark Office increased its number of patent and trademark examiners. Despite these positive developments, right holders continue to have concerns regarding overall IP protection and enforcement in Turkey. U.S. companies report that Turkey's national pricing and reimbursement policies for pharmaceutical products suffer from a lack of transparency and procedural fairness. Stakeholders continue to express concerns over vagueness in the interpretation of Industrial Property Law No. 6769. Stakeholders also continue to raise concerns that Turkey does not adequately protect against the unfair commercial use, as well as unauthorized disclosure, of test or other data generated to obtain marketing approval for pharmaceutical products, and has not done enough to reduce regulatory and administrative delays in granting marketing approvals for products. Furthermore, the United States urges Turkey to establish an effective mechanism for the early resolution of potential pharmaceutical patent disputes. The United States encourages Turkey to fully implement its obligations under the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties, and develop effective mechanisms to address online piracy. The United States continues to encourage Turkey to require that collective management organizations adhere to fair, transparent, and non-discriminatory procedures. Turkey remains a significant source of, and transshipment point for, counterfeit and pirated goods across a variety of industry sectors, and is one of the world's largest sources of counterfeit medicines and apparel. This has continued throughout 2022 with stakeholders continuing to report high levels of counterfeit good production and purchasing. Furthermore, right holders continue to note the use of unlicensed software by some government agencies, as well as high levels of online piracy. Turkey's enforcement processes are hampered by procedural delays, insufficient personnel staffing, and poor cooperation between the police, Ministry of Trade, Customs, and prosecutors, as well as laws that contain lax penalties and inadequate procedures. Stakeholders also report that a lack of IP training for the judiciary and burdensome evidence requirements for search warrants continue to hamper enforcement efforts. The Turkish National Police should be given *ex officio* authority over trademark violations, as well as other tools they currently lack, to help enhance IP enforcement capabilities. The United States will seek to engage with Turkey to address these and other issues.

TURKMENISTAN

Turkmenistan remains on the Watch List in 2023. While the adoption of a Programme of Development of the Intellectual Property System of Turkmenistan for 2021-2025, issuance of a Presidential resolution on the establishment of an interdepartmental commission for the protection of intellectual property (IP), and participation at meetings of the Intellectual Property Working Group under the United States-Central Asia Trade and Investment Framework Agreement (TIFA) are positive steps, Turkmenistan's lack of tangible progress in recent years in raising its IP protections to international standards remains concerning. Several long-standing IP concerns raised in previous Special 301 Reports remain unaddressed. Although some government agencies have started to use licensed software, Turkmenistan has yet to issue a presidential-level decree, law, or regulation mandating the use of licensed software by government ministries and agencies. Additionally, Turkmenistan has yet to modernize its copyright protection for foreign sound recordings, including through accession to and implementation of the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties. The United States continues to encourage Turkmenistan to undertake legislative IP reforms, including to provide *ex officio* authority for its customs officials and to improve its enforcement procedures. The United States also continues to have concerns with Turkmenistan's reported failure to enforce its IP laws. Counterfeit and pirated goods reportedly remain widely available in major cities in Turkmenistan. Publishing the activities of the State Service for Intellectual Property and providing data pertaining to the seizures facilitated by the State Customs Service would provide transparency that may help inform and enhance IP enforcement in Turkmenistan. The United States stands ready to assist Turkmenistan in improving its IP regime through engagement facilitated by the Intellectual Property Working Group under the United States-Central Asia TIFA.

UZBEKISTAN

Uzbekistan remains on the Watch List in 2023. In recent years, Uzbekistan has taken important steps to address certain long-standing issues pertaining to intellectual property (IP) protection and enforcement. In particular, accession in 2019 to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties, represents progress toward improving the copyright regime in Uzbekistan. The United States also recognizes the continued high-level political attention to IP, including Uzbekistan's support for and participation in the Intellectual Property Working Group under the United States-Central Asia Trade and Investment Framework Agreement (TIFA); the establishment of regional IP Protection Centers; and plans, as announced in the National Strategy for the Development of IP in April 2022, to ensure Uzbekistan's IP regime meets its international obligations. Although Uzbekistan took steps in 2022 toward providing *ex officio* authority for border enforcement, Uzbekistan needs to take further steps to provide full *ex officio* authority. In addition, several concerns raised in the 2022 Special 301 Report remain unaddressed. The United States encourages Uzbekistan to continue improving its copyright statutory framework, including through providing adequate protection for foreign sound recordings and implementing the WIPO Internet Treaties. Also, Uzbekistan needs to make progress to address other long-standing concerns, including by mandating government use of licensed software via presidential decree, law, or regulation.

VIETNAM

Vietnam remains on the Watch List in 2023. Vietnam took steps to improve intellectual property (IP) protection and enforcement, including amending its Intellectual Property Law in June 2022 and acceding to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT), collectively known as the WIPO Internet Treaties, in April 2022 and November 2021 respectively. Right holders also welcomed greater engagement with enforcement authorities and increases in Vietnam Customs' border enforcement in certain areas. However, IP enforcement continues to be a serious challenge. While Vietnamese authorities initiated a criminal investigation against the operators of Phimmoi.net, the investigation has stalled. There are almost no criminal investigations or prosecutions, even though Vietnam has criminal laws imposing substantial fines and years of incarceration for copyright and trademark infringement. Vietnam continues to rely heavily on administrative enforcement actions, which have consistently failed to deter widespread counterfeiting and piracy. In particular, online piracy, including the use of illicit streaming devices and associated piracy applications to access unauthorized audiovisual content, remains a significant concern. Moreover, although Vietnam issued a decree to address the online sale of counterfeit goods, the trafficking of pirated and counterfeit goods through e-commerce sites and elsewhere online remains a serious problem. Counterfeit goods remain widely available in physical markets as well. According to right holders, weak IP enforcement in Vietnam is due to poor coordination among ministries and agencies responsible for enforcement, delays in investigations and court proceedings, and the lack of familiarity with IP law among police, prosecutors, and judges. The United States is closely monitoring and engaging with Vietnam on the ongoing implementation of amendments to the 2015 Penal Code with respect to criminal enforcement of IP violations. In addition, right holders have raised concerns about trademark application backlogs. Furthermore, Vietnam's system for protecting against the unfair commercial use, as well as the unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products needs clarification. The United States is also monitoring the implementation of IP provisions pursuant to Vietnam's commitments under trade agreements with third parties. The European Union-Vietnam Free Trade Agreement (EVFTA) grandfathered prior users of certain cheese terms from the restrictions in the geographical indications (GIs) provisions of the EVFTA, and it is important that Vietnam ensure market access for prior users of those terms who were in the Vietnamese market before the grandfathering date of January 1, 2017. The United States urges Vietnam to engage on and address these issues and to provide interested stakeholders with meaningful opportunities for input as it proceeds with these reforms. The United States will continue to press on these and other IP issues with Vietnam through the United States-Vietnam Trade and Investment Framework Agreement and other bilateral engagement.

ANNEX 1: Special 301 Statutory Basis

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988, the Uruguay Round Agreements Act of 1994, and the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. § 2242), the Office of the United States Trade Representative (USTR) is required to identify “those foreign countries that deny adequate and effective protection of intellectual property rights, or deny fair and equitable market access to United States persons that rely upon intellectual property protection.”

The United States Trade Representative shall only designate as Priority Foreign Countries those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products. Priority Foreign Countries are subject to an investigation under the Section 301 provisions of the Trade Act of 1974. The United States Trade Representative may not designate a country as a Priority Foreign Country if it is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of intellectual property (IP). The United States Trade Representative is required to decide whether to identify countries within 30 days after issuance of the annual *National Trade Estimate Report*. In addition, USTR may identify a trading partner as a Priority Foreign Country or re-designate the trading partner whenever the available facts indicate that such action is appropriate.

To aid in the administration of the statute, USTR created a Priority Watch List and Watch List under the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IP protection, enforcement, or market access for persons relying on IP rights. Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning the specific problem areas.

The Trade Facilitation and Trade Enforcement Act of 2015 requires USTR to develop “action plans” for each foreign country that USTR has identified for placement on the Priority Watch List and that has remained on the list for at least one year. The action plans shall include benchmarks to assist the foreign country to achieve, or make significant progress toward achieving, adequate and effective IP protection and fair and equitable market access for U.S. persons relying on IP protection. USTR must provide to the Senate Finance Committee and to the House Ways and Means Committee a description of the action plans developed for Priority Watch List countries and any actions taken by foreign countries under such plans. For those Priority Watch List countries for which an action plan has been developed, the President may take appropriate action if the country has not substantially complied with the benchmarks set forth in the action plan.

Section 306 of the Trade Act of 1974 requires USTR to monitor a trading partner’s compliance with measures that are the basis for resolving an investigation under Section 301. USTR may take trade action if a country fails to implement such measures satisfactorily.

The Trade Policy Staff Committee, in particular the Special 301 Subcommittee, in advising the USTR on the implementation of Special 301, obtains information from and holds consultations with the private sector, civil society and academia, U.S. embassies, foreign governments, and the U.S. Congress, among other sources.

ANNEX 2: U.S. Government-Sponsored Technical Assistance and Capacity Building

In addition to identifying intellectual property (IP) concerns, this Report also highlights opportunities for the U.S. Government to work closely with trading partners to address those concerns. The U.S. Government collaborates with various trading partners on IP-related training and capacity building around the world. Domestically and abroad, bilaterally and in regional groupings, the U.S. Government remains engaged in building stronger, more streamlined, and more effective systems for the protection and enforcement of IP.

The Office of Policy and International Affairs (OPIA) of the U.S. Patent and Trademark Office (USPTO) conducts programs through its Global Intellectual Property Academy (GIPA) in the United States, around the world, and through distance learning to provide education, training, and capacity building on IP protection, commercialization, and enforcement. These programs, conducted for the benefit of U.S. stakeholders, are offered to patent, trademark, and copyright officials, judges and prosecutors, police and customs officials, foreign policy makers, and U.S. right holders. OPIA-designed GIPA programs are frequently conducted in collaboration with Intellectual Property Attaches and other U.S. Government agencies.

Other U.S. Government agencies bring foreign government and private sector representatives to the United States on study tours to meet with IP professionals and to visit the institutions and businesses responsible for developing, protecting, and promoting IP in the United States. One such program is the Department of State's International Visitor Leadership Program, which brings groups from around the world to cities across the United States to learn about IP and related trade and business issues.

Internationally, the U.S. Government is also active in partnering to provide training, technical assistance, capacity building, exchanges of best practices, and other collaborative activities to improve IP protection and enforcement. The following are examples of these programs:

- In Fiscal Year (FY) 2022, USPTO developed and delivered capacity-building programs that addressed a full range of IP protection and enforcement matters, including enforcement of IP rights at national borders, online piracy, express mail shipments, trade secrets, copyright policy, and patent and trademark examination. Although face-to-face training programs were very limited during this time, training efforts continued as USPTO continued to provide live online training by leveraging various technologies. During FY 2022, USPTO provided 222 programs, serving over 18,633 individuals, including over 11,000 government officials representing 161 countries and intergovernmental organizations. More information is available at www.uspto.gov/GIPA.
- In addition, the USPTO's OPIA provides capacity building in countries around the world and has formed partnerships with 31 national, regional, and international IP organizations, such as the Japan Patent Office, European Patent Office, German Patent and Trademark Office, government agencies of China, the Mexican Institute of Industrial Property, the

Korean Intellectual Property Office, the Association of Southeast Asian Nations (ASEAN), the Oceania Customs Organisation (OCO), the African Regional Intellectual Property Organization (ARIPO), the Organisation Africaine de la Propriété Intellectuelle (OAPI), and the World Intellectual Property Organization (WIPO). These partnerships help establish a framework for joint development of informational and educational IP content, technical cooperation, and classification activities.

- The Department of Commerce’s International Trade Administration (ITA) Office of Standards and Intellectual Property (OSIP) leads and manages the United States government interagency STOPfakes program, which helps U.S. companies navigate IP processes globally. STOPfakes presents Roadshows across the country with over 10 United States government partner agencies. These Roadshows are day-long, in-depth seminars for U.S. companies focused on guidance regarding protecting IP at home and abroad. U.S. companies can also find specific IP information on the STOPfakes.gov website, including valuable resources on how to protect patents, copyright, trademarks, and trade secrets as well as targeted information about protecting IP in more than 80 global markets. The website also includes IP highlights on industry- and policy-specific IP topics, including the newest resource, the Clean Technology Industry toolkit. Consumers can also find webinars focused on best practices to protect and enforce IP in China. In addition to STOPfakes, ITA develops and shares small business tools to help domestic and foreign businesses understand IP and initiate protective strategies. Under the auspices of the Transatlantic Intellectual Property Rights Working Group, ITA collaborates with the European Union’s Directorate-General for Trade to identify areas of cooperation to help protect IP in third countries as well as in the United States and the EU. All of the ITA-developed resources, including the United States-EU TransAtlantic Portal, as well as information and links to the other programs identified in this Annex, are accessible via www.STOPfakes.gov. ITA also manages the STOPfakes Twitter account, @STOPfakesGov, which publicizes the release of new resources, live-tweets the STOPfakes Roadshows, and supports IP social media posts from other agencies.
- In FY 2022, the Homeland Security Investigations (HSI)-led National Intellectual Property Rights Coordination Center (IPR Center) conducted IPR Investigative Methods Training programs in Egypt, Kenya, and South Africa. These programs included representatives from Botswana, Egypt, Eswatini, Kenya, Lesotho, and South Africa and were supported by U.S. Customs and Border Protection (CBP), USPTO, the Department of Justice (DOJ) International Computer Hacking and Intellectual Property Advisors (ICHIPs), and other U.S. federal agencies. Additionally, the IPR Center, with support from the Department of State, participated in 12 IP-related international training programs sponsored by the USPTO and the ICHIPs for audiences from Algeria, American Samoa, Argentina, Bahrain, Bangladesh, Bhutan, Bulgaria, Cambodia, Commonwealth of the Northern Mariana Islands, Fiji, Guam, India, Indonesia, Jordan, Kenya, Laos, Malaysia, Maldives, Mongolia, Montenegro, Morocco, Myanmar, Nepal, Oman, Pakistan, Panama, Paraguay, Peru, the Philippines, Romania, Sri Lanka, Thailand, Tunisia, and Vietnam.
- CBP officials assigned to the IPR Center participate in many engagements with public, private, and international stakeholders hosted by any of the IPR Center’s 27 partner

agencies. In FY 2021, despite pandemic related slow-downs, CBP participated in one meeting with a global toy company and two international delegations. These engagements promoted U.S. leadership in customs matters, illuminated current trends and issues in global IP protection, and developed trade intelligence for further review.

- CBP routinely joins HSI training programs and engagements overseas. In FY 2021, this integrated support included providing training, titled Customs Enforcement of Intellectual Property Rights at the Border, to foreign officials in the Dominican Republic. The audience included representatives from Aruba, Bahamas, Barbados, Cayman Islands, Curacao, the Dominican Republic, Guadeloupe, Haiti, Jamaica, Sint Maarten, St. Kitts and Nevis, Trinidad and Tobago, Turks and Caicos, and the U.S. Virgin Islands.
- The Department of State provides foreign assistance anti-crime funds each year to U.S. Government agencies that provide cybercrime and IP enforcement training and technical assistance to foreign governments. The agencies that provide such training include the DOJ, USPTO, CBP, and ICE. The U.S. Government works collaboratively on many of these training programs with the private sector and with various international entities, such as WIPO and the International Criminal Police Organization (INTERPOL). Department programs feature deployment of a global network of ICHIPs, experienced DOJ attorneys dedicated to building international cooperation and delivering training. Additionally, the State Department leads the U.S. delegation to the Organization for Economic Co-operation and Development's Task Force on Countering Illicit Trade, working to establish best practices in free trade zones and addressing the challenges that illicit trade poses.
- IP protection is a priority of the government-to-government technical assistance provided by the Department of Commerce's Commercial Law Development Program (CLDP). CLDP programs address numerous areas related to IP, including legislative reform, enforcement, adjudication of disputes, IP protection and its impact on the economy, and IP curricula in universities and law schools, as well as public awareness campaigns and continuing legal education for lawyers. CLDP supports capacity building in creating and maintaining an innovation ecosystem, including technology commercialization as well as in patent, trademark, and copyright examination and management in many countries worldwide. CLDP also works with the judiciary in various trading partners to improve the skills to effectively adjudicate IP cases and conducts interagency coordination programs to highlight the value of a whole-of-government approach to IP protection and enforcement.
- Every year, DOJ, with funding from and in cooperation with the Department of State and other U.S. Government agencies, provides technical assistance and training on IP enforcement issues to thousands of foreign officials around the globe. As noted above, much of this occurs through the ICHIP programs, which includes a dozen prosecutors, two agents, and two forensic examiners. Topics covered in training programs include: investigating and prosecuting IP cases under various criminal law and criminal procedure statutes; disrupting and dismantling organized crime networks involved in trafficking in pirated and counterfeit goods; fighting infringing goods that represent a threat to public health and safety; combatting online piracy; improving officials' capacity to detain, seize, and destroy illegal items at the border and elsewhere; increasing intra-governmental and

international cooperation and information sharing; working with right holders on IP enforcement; and obtaining and using electronic evidence. Major ongoing initiatives include programs in Africa, the Americas, Asia, and Central and Eastern Europe.

- The U.S. Copyright Office hosts international visitors, including foreign government officials, to discuss and exchange information on the U.S. copyright system, including law, policy, and registration and recordation functions, as well as various international copyright issues. In particular, in September 2022, through its Office of Policy and International Affairs (PIA), the U.S. Copyright Office co-hosted with WIPO its bi-annual International Copyright Institute. The week-long program brought together senior-level copyright officials from twenty-one countries to learn from government, private industry, and civil society experts on contemporary issues in copyright law and policy. Participants explored the benefits of registration systems; the role of libraries, museums, and archives; licensing digital works; and best practices for interagency cooperation, among other topics.

The United States reports to the World Trade Organization (WTO) on its IP capacity-building efforts, including most recently in September 2022 (see Technical Cooperation Activities: Information from Members—United States of America, IP/C/R/TC/USA/3 at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/CRTC/USA3.pdf&Open=True>). The United States also reports annually on international IP capacity building and training in the annual report issued by the U.S. Intellectual Property Enforcement Coordinator pursuant to Section 304 of the PRO IP Act of 2008 (15 U.S.C. § 8114), issued most recently as the *Annual Intellectual Property Report to Congress* in April 2023. The report is available at https://www.whitehouse.gov/wp-content/uploads/2023/04/FY22-IPEC-Annual-Report_Final.pdf.