

EXECUTIVE SUMMARY

A top trade priority for the Administration is to use all possible sources of leverage to encourage other countries to open their markets to U.S. exports of goods and services, and provide adequate and effective protection and enforcement of U.S. intellectual property (IP) rights. Toward this end, a key objective of the Administration's trade policy is ensuring that U.S. owners of IP have a full and fair opportunity to use and profit from their IP around the globe.

The Special 301 Report (Report) is the result of an annual review of the state of 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 by the Omnibus Trade and Competitiveness Act of 1988, the Uruguay Round Agreements Act, and the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. § 2242).

The Report reflects the resolve of this Administration to call out foreign countries and expose 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. The identification of the countries and IP-related market access barriers in this Report and of steps necessary to address those barriers are a critical component of the Administration's aggressive efforts to defend Americans from harmful IP-related trade barriers.

The Report identifies foreign trading partners where IP protection and enforcement has deteriorated or remained at inadequate levels and where U.S. persons who rely on IP protection have difficulty with fair and equitable market access. For example:

- USTR continues to place China on the Priority Watch List (and, as before, Section 306 monitoring remains in effect). China's placement on the Priority Watch list reflects the urgent need to remediate a range of IP-related concerns, including as to trade secret theft, online piracy and counterfeiting, the high-volume manufacture and export of counterfeit goods, technology transfer requirements imposed as a condition to access the Chinese market, the mandatory application of adverse terms to foreign IP licensors, and IP-ownership and research and development localization requirements. Structural impediments to administrative, civil, and criminal IP enforcement are also problematic, as are impediments to pharmaceutical innovation.
- USTR identifies India on the Priority Watch List for lack of sufficient measurable improvements to its IP framework on longstanding and new challenges that have negatively affected U.S. right holders over the past year. Longstanding IP challenges facing U.S. businesses in India include those which make it difficult for innovators to receive and maintain patents in India, particularly for pharmaceuticals, enforcement action and policies that are insufficient to curb the problem, copyright policies that do not properly incentivize the creation and commercialization of content, and an outdated and insufficient trade secrets legal framework. New and growing concerns, including with respect to reductions in transparency by India's pharmaceutical regulator through the removal of a requirement that applicants submit information about a product's patent status, as well as positions that India supports and voices in multilateral fora on IP issues, continue to

generate skepticism about whether India is serious about pursuing pro-innovation and -creativity growth policies.

- USTR identifies Indonesia on the Priority Watch List due to the lack of adequate and effective IP protection and enforcement. For example, revisions to Indonesia’s patent law have raised serious concerns, including with respect to patentability criteria and local manufacturing and use requirements.
- USTR identifies Colombia on the Priority Watch List with an Out-of-Cycle Review focused on certain provisions of the United States-Colombia Trade Promotion Agreement (CTPA) and monitoring the implementation of Colombia’s National Development Plan. In 2017, USTR conducted an Out-of-Cycle Review of Colombia focused on certain provisions of the CTPA and monitoring the implementation of Colombia’s National Development Plan. Colombia’s lack of meaningful progress warrants its elevation to the Priority Watch List. In 2018, Colombia will be subject to an Out-of-Cycle Review on the same issues to determine whether a change in status to Watch List is warranted.
- The Report also highlights trading partners such as Chile that have not delivered on IP commitments made to the United States.

The Report also identifies significant cross-cutting IP issues with regard to adequate and effective IP protection and enforcement worldwide. For example:

- USTR has been engaging with trading partners, including Algeria, Argentina, Canada, China, Korea, India, Indonesia, Japan, Malaysia, Saudi Arabia, and the United Arab Emirates (UAE), to address concerns related to IP protection and enforcement and market access barriers with respect to pharmaceuticals and medical devices so that trading partners contribute their fair share to research and development of new treatments and cures.
- In virtually all countries identified in this Report, IP enforcement is lacking. Many of the listed trading partners, including Canada, Egypt, Indonesia, Mexico, Turkey, Turkmenistan, UAE, and Uzbekistan, do not provide adequate or effective border enforcement against counterfeit and pirated goods; in addition, many listed countries’ customs officials lack authority to take *ex officio* action to seize and destroy such goods at the border or to take such action for goods in-transit.
- Several countries, including China, Mexico, Russia, Ukraine and Vietnam, have not addressed the continuing and emerging challenges of copyright piracy.¹ Countries such as Argentina, Greece, Tajikistan, Turkmenistan, Uzbekistan, and Venezuela do not have in place effective policies and procedures to ensure their own government agencies do not use unlicensed software.
- Online piracy remains a challenging copyright enforcement issue in many trading partner markets, including Canada, China, India, the Netherlands, Romania, Russia, Switzerland,

¹ As used in this report, the term “copyright” encompasses copyright and related rights.