

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## APPENDIX E: HISTORICAL SUMMARY OF SELECTED COUNTRIES' PLACEMENT FOR COPYRIGHT-RELATED MATTERS ON THE SPECIAL 301 LISTS

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### ARGENTINA

IIPA recommends that Argentina remain on the Priority Watch List. See IIPA's 2004 report on Argentina at <http://www.iipa.com/rbc/2004/2004SPEC301ARGENTINA.pdf>. Argentina has been on the Special 301 lists since 1989, fluctuating between the Watch List and the Priority Watch List. In April 1996, USTR elevated Argentina to the Priority Watch List because of serious problems involving patent legislation and the lack of criminal penalties for infringement of computer programs. USTR has kept Argentina on the Priority Watch List every year since 1996. In the April 30, 2001 Special 301 Announcement, USTR noted that despite inadequate implementation of a 1998 law criminalizing software piracy, Argentina strengthened its copyright laws by "ratifying the latest act of the Berne Convention." In its April 30, 2002 Special 301 Announcement, USTR noted that despite some progress in improving Argentina's intellectual property regime, "significant barriers to the effective enforcement of intellectual property rights remain." No such improvement is noted in USTR's 2003 Special 301 Announcement, which cites "lax and ineffective enforcement against piracy . . . and counterfeiting." Specifically, enforcement efforts have been hampered by "inadequate resources and border controls and slow court procedures."

Argentina also participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide "adequate and effective" copyright protection. On January 15, 1997, the Clinton administration withdrew 50 percent of the trade benefits granted to Argentina under the GSP program, and placed increased duties on about \$260 million worth of Argentina's imports (resulting in only about a \$13 million penalty). In 2002, \$287.5 million worth of goods from Argentina entered the U.S. under the GSP duty-free code, accounting for roughly 9.0% of its total imports. During the first 11 months of 2003, \$407.6 million worth of Argentine goods (or 14.6% of Argentina's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 62.7% increase over the same period in 2002.

### ARMENIA

IIPA highlights copyright concerns in Armenia in its Special Mention section this year. See IIPA's 2004 Armenia country report at <http://www.iipa.com/rbc/2004/2004SPEC301ARMENIA.pdf>. Armenia does not currently appear on any of the USTR lists. In 1995 and 1997, IIPA requested that USTR add the nations of the Commonwealth of Independent States (CIS) collectively, excluding the Russian Federation, to the Special 301 Watch List because almost none of the CIS countries had met their bilateral IPR obligations, piracy was rampant, enforcement inadequate, and copyright law reform urgently needed. In 2000, IIPA recommended that ten of the CIS countries be placed on the Special 301 Watch List (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, and Uzbekistan). In the May 30, 2000 Special 301 Announcement, USTR placed seven CIS countries on the

Special 301 Watch List for the first time: Armenia, Azerbaijan, Kazakhstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

In 2001, IIPA recommended that USTR place Armenia on the Watch List, and USTR agreed. In the 2001 Special 301 submission, IIPA suggested again that 10 of the 12 CIS countries individually (excluding Russia and Ukraine, for much more serious piracy problems) be listed, and for filing purposes only, grouped them together due to the similarity of copyright concerns each country faces. These deficiencies include the lack of legislative implementation of the bilateral trade agreements, the failure to comply with the WTO TRIPS Agreement, and the failure to adopt optical media production and distribution controls. In its April 30, 2001 Special 301 Announcement, USTR noted that “Armenia has several remaining steps to take in order to fulfill its intellectual property commitments under the 1992 U.S.-Armenia Trade Agreement and to become TRIPS-consistent in preparation for accession to the WTO.” In its April 30, 2002 announcement, USTR kept Armenia on the Watch List, noting, as in the past, that the country has many steps to go to comply with the intellectual property requirements of the 1992 U.S.-Armenia Trade Agreement. In particular, USTR pointed out Armenia’s lack of protection for U.S. and other sound recordings, lack of retroactive protection for works or sound recordings under its copyright law, and weak enforcement of intellectual property rights. Despite continued deficiencies in its protection and enforcement of intellectual property, Armenia became a member of the WTO, effective February 5, 2003.

In June 1999, IIPA filed a petition with USTR requesting that the country eligibility of Armenia, Belarus, Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, Ukraine, and Uzbekistan under the Generalized System of Preferences (GSP) trade program be reviewed for its failure to provide adequate and effective copyright protection and enforcement for U.S. copyright owners. In February 2000, the administration accepted IIPA’s petition for review of Armenia, Kazakhstan, Moldova, Ukraine, and Uzbekistan, and on May 12, 2000, the U.S. government held public hearings on the GSP petitions regarding these five countries. The U.S. government has not yet decided on whether to withdraw or suspend GSP benefits in Kazakhstan or Uzbekistan. Armenia acceded to the WTO on February 5, 2003. On September 3, 2003, USTR announced that it had terminated Armenia’s GSP review.

Armenia currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide “adequate and effective” copyright protection. In 2002, \$13.6 million worth of Armenian goods entered the U.S. under the GSP duty-free code, accounting for 44.4% of its total exports to the U.S. During the first 11 months of 2003, \$20.6 million worth of Armenian goods (or 62% of Armenia’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 67.7% increase over the same period in 2002.

## **AUSTRALIA**

Australia does not currently appear on any of the USTR lists. In 1994, Australia was named to the Watch List. Between 1991 and 1994, IIPA filings cited a number of issues that harmed U.S. copyright industry sales and exports in Australia, notably the threat to remove parallel import protections for sound recordings and computer programs; the failure to provide exclusive rental rights to sound recordings; the denial of national treatment to the U.S. recording and music publishing industries in the administration of Australia’s audio levy; concerns about the strength of copyright protection for computer programs; and a severe problem of bootleg recordings of U.S. performers. In 1991, Australia was placed on USTR’s Priority Watch List, where it remained until 1993.

Australia was briefly dropped from the Watch List after some legal reforms were undertaken but was reinstated to the Watch List because of deficiencies in the protection of pharmaceutical test data in 1996. In 1997, noting the renewed threat to weaken or eliminate the importation right, IIPA recommended placement of Australia on the Watch List. USTR agreed, and Australia remained on the Watch List through 1999, in part because of what was described as “serious concern” over 1998 legislation

abolishing the importation right for sound recordings and pending legislation abolishing the importation right for other copyrighted works including software, electronic games, and gaming equipment.

Although Australia was removed from any Special 301 List in 2000, USTR noted in its May 1, 2000 Special 301 Announcement the possible initiation of future WTO dispute settlement cases against several countries, including Australia, for apparent noncompliance with TRIPS obligations.

## **AZERBAIJAN**

IIPA recommends that Azerbaijan remain on the Watch List, where it has remained since 2000. See IIPA's 2004 CIS report at <http://www.iipa.com/rbc/2004/2004SPEC301CIS.pdf>. In 1995 and 1997, IIPA requested that USTR add the nations of the Commonwealth of Independent States (CIS) collectively, excluding the Russian Federation, to the Special 301 Watch List because nearly all of the CIS countries had failed to meet their bilateral IPR obligations, piracy was rampant, enforcement inadequate, and copyright law reform urgently needed. In 2000, IIPA recommended that ten of the CIS countries be placed on the Special 301 Watch List (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, and Uzbekistan). In its May 30, 2000 Special 301 Announcement, USTR placed seven CIS countries on the Special 301 Watch List for the first time: Armenia, Azerbaijan, Kazakhstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

In 2001, IIPA recommended and USTR agreed to place Azerbaijan on the Watch List. In the 2001 Special 301 submission, IIPA suggested again that 10 of the 12 CIS countries individually (excluding Russia and Ukraine, for much more serious piracy problems) be listed, and for filing purposes only, grouped them together due to the similarity of copyright concerns each country faces. These deficiencies include the lack of legislative implementation of the bilateral trade agreements, failure to comply with the WTO TRIPS Agreement, and the failure to adopt optical media production and distribution controls. In its April 30, 2001 Special 301 Announcement, USTR noted that "Azerbaijan has yet to fulfill its intellectual property commitments under the 1995 U.S.-Azerbaijan Trade Agreement," citing failure to adhere to the Geneva Phonograms Convention as well as weak criminal provisions for IP violations.

In 2002, IIPA recommended that Azerbaijan remain on the Watch List. In its April 30, 2002 announcement, USTR kept Azerbaijan on the Watch List. The announcement notes that the country "has several remaining steps to take before fulfilling its intellectual property rights commitments under the 1995 U.S.-Azerbaijan Trade Agreement." In particular, USTR pointed to Azerbaijan's lack of protection for U.S. and other foreign sound recordings and lack of a clear provision of retroactive protection for works or sound recordings. USTR's 2003 Announcement, which kept Azerbaijan on the Watch List, cited similar problems, noting "provisions under the Azerbaijani Criminal Code are minimal and contain a high threshold for the imposition of criminal penalties." Moreover, they are limited to copyright and patent violations, completely excluding neighboring rights violations, and do not provide *ex officio* authority.

## **BAHAMAS**

The Bahamas is currently on the Special 301 Priority Watch List. The Bahamas has made very little progress in meeting the commitments it undertook in an exchange of letters between its government and the U.S. government dated October 26 and November 9, 2000, or to implement its commitments contained in a letter of April 2000. Those series of commitments involve the need for legal and regulatory reform of the Bahamas' copyright law and regulations, which created an overbroad compulsory license for unauthorized re-transmission by cable television systems of any copyrighted work transmitted over its territory, including encrypted transmissions. Such provisions violate the Bahamas' obligations under the Berne Convention. In 2001, the IIPA recommended that the Bahamas be placed on the Watch List in order to monitor the promises made in the bilateral agreement. In its April 30, 2001 Special 301 Announcement, USTR announced that an out-of-cycle review (OCR) would be conducted. On February

12, 2002, USTR announced the outcome of the OCR and placed the Bahamas on the Watch List. USTR pointed to the failure of the Bahamas to amend certain objectionable provisions in its copyright law, and made clear that “the key concern remains the existence of provisions in the Bahamian law allowing for compulsory licensing to Bahamian cable operators of retransmission of premium cable television programming.” The Bahamas’ efforts to amend the copyright law, address remaining problems in its regulations, and engage right holders in the regulatory process have not resulted in concrete action to satisfy its bilateral commitments. In the April 30, 2002 Special 301 Announcement, USTR placed the Bahamas on the Watch List, citing the same, continued problems in its copyright law that were noted in the February 12, 2002 announcement. USTR also noted that it would conduct an OCR “to review actions in this regard.” We believe that OCR did not occur. In the 2003 301 announcement, USTR cited the same problems regarding compulsory licensing and Bahamas’ failure to act, and elevated the Bahamas to the Priority Watch List.

The Bahamas currently participates in the Caribbean Basin Initiative (CBI), and is also an eligible beneficiary country under the Caribbean Basin Trade Partnership Act (CBPTA). One of the CBI discretionary criteria requires that the Bahamas provide “adequate and effective means under its laws for foreign nations to secure, to exercise, and to enforce exclusive rights in intellectual property, including . . . copyrights.” In 2002, \$70.8 million worth of Bahamian goods entered the U.S. under the CBI, representing 15.4% of the Bahamas’ total exports to the U.S. During the first 11 months of 2003, \$79.7 million worth of Bahamian goods (or 18.7% of the Bahamas’ total exports to the U.S. from January to November) entered under the CBI, representing an increase of 24.8% from the same period in 2002.

## **BAHRAIN**

Bahrain does not currently appear on any of the USTR lists. IIPA first recommended placing Bahrain on the Watch List in 1993, and renewed its recommendation over the next two years, citing severe video and audio piracy problems, including exports. In April 1995, USTR placed Bahrain on the Watch List. From 1996 through 1999, IIPA recommended that Bahrain remain on the Watch List because its law was out of sync with its international obligations under TRIPS, and because high piracy levels continued while enforcement was weak. USTR kept Bahrain on the Watch List through the 1998 cycle. However, due to concerted enforcement actions throughout 1998 and into 1999, USTR removed Bahrain from the Watch List in April 1999. Since it was removed from the 301 lists, Bahrain has not reappeared on any list.

Bahrain currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide “adequate and effective” copyright protection. In 2002, \$54.3 million worth of goods from Bahrain entered the United States under the GSP duty-free code, accounting for 13.7% of its total exports to the U.S. During the first 11 months of 2003, \$60.4 million worth of goods from Bahrain (or 17.1% of Bahrain’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing an increase of 28.2% from the same period in 2002.

## **BELARUS**

IIPA recommends that Belarus remain on the Watch List, where it has remained since 1999. See IIPA’s 2004 CIS country report at <http://www.iipa.com/rbc/2004/2004SPEC301CIS.pdf>. In 1995 and 1997, IIPA requested that USTR add the nations of the Commonwealth of Independent States (CIS) collectively, excluding the Russian Federation, to the Special 301 Watch List because nearly all of the CIS countries had failed to meet their bilateral IPR obligations, piracy was rampant, enforcement inadequate, and copyright law reform urgently needed. In both 1998 and 1999, IIPA made individual filings focusing on concerns in Belarus, Ukraine and Kazakhstan, the countries with the most serious IPR problems (although problems persist in other former republics) in addition to the filing made for Russia. In 1998,

Belarus was placed on the Other Observations list. The next year, Belarus was elevated to the Watch List. In 2000, IIPA recommended that ten of the CIS countries be placed on the Special 301 Watch List (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, and Uzbekistan). In the May 30, 2000 Special 301 Announcement, USTR kept Belarus on the Watch List. In 2001, USTR again kept Belarus on the Watch List, noting its lack of protection for U.S. and other foreign sound recordings and its lack of clear, retroactive protection for pre-existing works or sound recordings. USTR also noted weak IPR enforcement and high piracy levels. Further, though Belarus had amended its criminal code, relevant government agencies did not have the authority “to initiate criminal cases concerning copyright infringement on their own initiative.” In its April 30, 2002 Special 301 Announcement, USTR again placed Belarus on the Watch List. Not only did USTR cite the continued problems noted in the 2001 announcement, but further noted that “Belarus has also become a transshipment point for pirate materials throughout the region. The United States is very concerned about recent reports that optical disk production capacity has migrated from Ukraine into Belarus due to lax border enforcement.” The USTR’s 2003 Special 301 Announcement expressed gratification that the Armita optical media plant was shut down and that the Geneva Phonograms Convention had entered into force in Belarus. USTR also, however, restated numerous concerns from the 2001-2002 Announcements, as well as the Interior Ministry’s comments that it does not intend to take action to end retail piracy of optical media. Belarus therefore remained on the Watch List in 2003.

In June 1999, IIPA filed a petition with USTR requesting that the country eligibility of Armenia, Belarus, Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, Ukraine, and Uzbekistan under the Generalized System of Preferences (GSP) trade program be reviewed for its failure to provide adequate and effective copyright protection and enforcement for U.S. copyright owners, as required under the GSP. GSP benefits for Ukraine were withdrawn in 2001. GSP benefits were withdrawn from Belarus for reasons unrelated to intellectual property matters.

## **BOLIVIA**

IIPA recommends that Bolivia remain on the Watch List, where it has been since 1999. See IIPA’s 2004 Bolivia country report at <http://www.iipa.com/rbc/2004/2004SPEC301BOLIVIA.pdf>. In February 1995, IIPA recommended that Bolivia be added to the Special 301 Watch List because of widespread piracy of all kinds of copyrighted works unchallenged by any meaningful government enforcement efforts. In 1996, IIPA again advocated that Bolivia be placed on the Watch List; USTR placed it on the Special Mention list and added an out-of-cycle review (OCR). In December 1996, upon conclusion of the OCR, USTR announced that Bolivia was being elevated to the Watch List because it had not yet taken adequate steps to combat copyright piracy, particularly in the area of illegal computer software production; to adequately implement the Andean Pact Decision 351 on copyright requirements; or to revise its copyright law to conform with international standards. Bolivia stayed on the Watch List in 1997. In April 1998, Bolivia signed a bilateral investment treaty with the U.S. and in so doing, committed to becoming TRIPS-compatible within 12 months. As a result, USTR placed Bolivia on the Other Observations list for 1998. However, USTR has kept Bolivia on the Special 301 Watch List since 1999. In 2002, IIPA recommended that Bolivia remain on the Watch List, pointing to that country’s continued high piracy rates and failure to meet basic TRIPS standards. USTR’s April 30, 2002 Special 301 Announcement again placed Bolivia on the Watch List but noted that “[t]he United States is heartened by the appointment of a new director to head the intellectual property rights service (SENAPI), and encourages Bolivia to support the director’s efforts to improve the IPR situation in Bolivia.” The USTR 2003 Special 301 Announcement also kept Bolivia on the Watch List, noting “efforts to amend its copyright law have languished, “ and adding “the government has not taken significant steps toward legalizing the use of its own software.”

In IIPA’s 2004 report, IIPA also recommends that if the requisite improvements in Bolivian law and copyright enforcement are not forthcoming, IIPA will request that the U.S. government initiate a review of Bolivia’s eligibility to obtain trade benefits under the Generalized System of Preferences and the Andean Trade Preferences Act. In 1995, IIPA also requested that USTR initiate investigations of Bolivia’s

copyright practices under the statutory provisions of the GSP and ATPA programs, both of which include discretionary criteria that the country provide “adequate and effective” copyright protection. IIPA never received notice of any formal action taken on its 1995 GSP and ATPA petitions, and thus concluded that they were denied. In 2002, \$31.5 million worth of goods from Bolivia entered the U.S. under the duty-free GSP code, accounting for 19.7% of its total exports to the U.S. Another \$32.6 million worth of Bolivia’s exports to the U.S. received benefits under the ATPA program, accounting for 23% of its total exports to the U.S. that year. During the first 11 months of 2003, \$7.8 million worth of Bolivian goods (or 4.7% of Bolivia’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 74.5% decrease over the same period in the previous year. Another \$85 million worth of Bolivian goods entered the U.S. under the ATPA in the first 11 months of 2003, representing an increase of 159.3% from the same period in 2002.

## **BOSNIA AND HERZEGOVINA**

Bosnia and Herzegovina have never appeared on a USTR Special 301 list. This year, in its Special Mention section [http://www.iipa.com/rbc/2004/2004SPEC301BOS\\_HERZ.pdf](http://www.iipa.com/rbc/2004/2004SPEC301BOS_HERZ.pdf), IIPA highlights certain legislative and enforcement deficiencies which adversely affect the business software and music industries.

## **BRAZIL**

IIPA recommends that Brazil stay on the Priority Watch List, to which it was elevated in 2002. See IIPA’s 2004 Brazil country report at <http://www.iipa.com/rbc/2004/2004SPEC301BRAZIL.pdf>. During the 1990s, Brazil received a significant degree of attention from the U.S. government under the Special 301 bilateral trade tool. On April 30, 1993, USTR designated Brazil as a Priority Foreign Country. As a result of the ensuing Section 301 investigation, the Brazilian government committed in a February 1994 diplomatic agreement to take certain concrete steps to improve its IPR regime, including the early implementation of TRIPS, improving protection for computer software, addressing certain tax issues affecting computer software, and improving copyright enforcement in general. Over the next few years, Brazil’s placement on the Special 301 lists seesawed between the Special Mention list and the Watch List. On May 1, 1998, USTR removed Brazil from the Special 301 list, in recognition of its legislative accomplishments on copyright legal reform, adding: “However, Brazil must take further significant steps to combat piracy.”

In February 1999, IIPA recommended that Brazil be elevated to the Priority Watch List because of the continuing failure of that government to address the rising piracy problems and deteriorating enforcement actions by the government authorities despite very active participation in anti-piracy efforts by the affected copyright industries. USTR put Brazil back on the Watch List in April 1999, noting “the lack of effective enforcement is a serious and growing concern. Some efforts have been made to improve copyright enforcement, but these efforts have fallen short given the scale of the piracy problem in Brazil and the absence of a coordinated strategy on the part of the government. We have particular concerns with proposed legal reforms that could reduce criminal penalties for intellectual property crimes and remove policy authority to engage in ex officio searches and seizures on their own initiative ... We also look to the Brazilian government to ensure full implementation of all TRIPS obligations, including enforcement obligations, no later than January 1, 2000.” The 2000 deadline came and went. Despite IIPA’s recommendation that Brazil be elevated to the Priority Watch List, USTR kept Brazil on the Watch List, and noted in the May 1, 2000 Special 301 Announcement: “...Progress has not been sufficient on Brazil’s commitment to increase effective enforcement actions, from raids through judicial decisions, against intellectual property infringement; the rate of CD piracy in Brazil continues to worsen. Failure to address this problem could lead to the collapse of the market for legitimate CDs in Brazil.”

In 2001, USTR kept Brazil on the Watch List, noting that “[t]he serious copyright piracy problem shows little sign of abatement.” Despite this, USTR was “pleased to see the establishment of an Inter-Ministerial

Committee to Fight Piracy pursuant to the Presidential Decree of March 2001.” In its 2002 Special 301 submission, IIPA recommended that Brazil be elevated to the Priority Watch List. In its April 30, 2002 Special 301 Announcement, USTR did in fact elevate Brazil to the Priority Watch List. The announcement noted that despite enacting modern, largely TRIPS-consistent legislation, the country has taken “no serious enforcement actions against increasing rates of piracy.” Despite encouragement from some positive moves by the Brazilian government, including the income tax authority’s destruction of a large amount of seized pirated goods, and Sao Paulo’s creation of a piracy and related crimes division in the civil police force, USTR notes that there are still enforcement problems. For example, the Inter-Ministerial Committee has “taken very little action on the anti-piracy front.” The USTR’s 2003 Special 301 Announcement commented on the continued lack of enforcement actions, noting “very few prosecutions and deterrent convictions result from raids.” Brazil therefore remained on the Priority Watch List.

IIPA’s dissatisfaction with the lack of progress being made by Brazil to enforce its copyright law led IIPA to file a petition with USTR in August 2002, requesting that Brazil’s eligibility under the Generalized System of Preferences (GSP) trade program be reviewed for its failure to provide adequate and effective copyright protection and enforcement for U.S. copyright owners. The petition was accepted, and hearings were held in March 2001 and October 2003. The investigation remains underway. In 2002, \$2.1 billion worth of goods from Brazil entered the United States under the duty-free GSP code, accounting for 13.6% of its total exports to the U.S. During the first 11 months of 2003, \$2.3 billion worth of Brazilian goods (or 14% of Brazil’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 17.5% increase over the same period in 2002.

## **BULGARIA**

IIPA recommends that Bulgaria be placed on the Priority Watch List. See IIPA’s 2004 Bulgaria country report at <http://www.iipa.com/rbc/2004/2004SPEC301BULGARIA.pdf>. Bulgaria does not currently appear on any of the USTR lists, though there was much engagement under Special 301 in themed-1990s. By 1995, it was clear that not only had Bulgaria failed to carry out its intellectual property protection obligations under the 1991 bilateral agreement with the United States, but also that the Bulgarian government had begun to play a direct role in massive piracy. One of the compact disc plants was operated by the government in partnership with a leading pirate company; another was operating on land leased by the government; and both were churning out pirated sound recordings for export into Russia, Europe, and other markets. Accordingly, in February 1995, IIPA asked USTR to designate Bulgaria as a Priority Foreign Country and to withdraw Bulgaria’s preferential trade benefits under the Generalized System of Preferences (GSP) program.

Faced with the prospect of sanctions under Special 301, and aided by a change in government in Sofia, Bulgaria moved quickly to address the issues highlighted in IIPA’s filing. On the eve of USTR’s Special 301 decision, the U.S. and Bulgaria exchanged letters in which Bulgaria promised to accede to the Geneva Phonograms Convention “on a priority basis” and to protect U.S. sound recordings published in the last 50 years; to establish a title-verification system to prevent piracy of compact discs, laser discs, CD-ROMs and videos; and to enact deterrent criminal penalties applicable to a broad range of infringements, including inflation-adjusted fines and mandatory destruction of pirate product. In response to these commitments, USTR listed the country on the Special Mention list without otherwise ranking it for Special 301 purposes for 1995.

In 1996, the IIPA filing commended Bulgaria’s enactment of criminal sanctions and its accession to the Phonograms Convention, but noted that other critical commitments, such as title verification, had not been met, and that real enforcement against piracy was virtually nonexistent, while high-volume pirate CD production continued unchecked. IIPA recommended that Bulgaria be placed on the Special 301 Watch List. In its April 30 report, USTR listed Bulgaria on the Special Mention list, noting that a title verification decree had just been issued, but criticizing lax enforcement and increased exports of pirated product. It scheduled an out-of-cycle review (OCR), which concluded on October 2, 1996. At that time,

USTR placed Bulgaria on the Watch List, citing the lack of progress in suppressing the production and export of pirate CDs and CD-ROM products. In its 1997 filing, IIPA called for elevating Bulgaria to the Priority Watch List because of its continued failure to enforce its laws aggressively against the unauthorized production and world-wide export of CD-based products, and the overall lack of criminal prosecution. IIPA noted that deterrent penalties remained absent from the Bulgarian law, although the primary problem was the lack of effective enforcement, not the legal framework. As the piracy problem escalated in 1997 with a production capacity level of over 40 million units, USTR announced an OCR. Upon completion of the OCR in January 1998, Bulgaria was elevated from the Watch List to the Priority Watch List because of its persistent failure to take any meaningful action to eliminate the massive volume of exported pirate music CDs and CD-ROMs. In that January out-of-cycle review, and again in its February 1998 301 submission, IIPA recommended designation of Bulgaria as a Priority Foreign Country (PFC) because of the longevity of the problem, and the lack of political will to shut down the production and export of illegal goods.

With the possibility looming of a PFC designation in April, the Bulgarian authorities finally took action in February and March 1998, to control the production and distribution of pirate CDs by Bulgarian plants by closing all of the plants and re-opening them only upon compliance with the newly introduced Plant Licensing Decree. The United States government decided to keep Bulgaria on the Priority Watch List in April, and to conduct a six-month out-of-cycle review in 1998 to monitor the progress and success of these production controls. Satisfied that progress was being made, USTR announced in November 1998 that it was moving Bulgaria to the Watch List, a placement supported, albeit cautiously, by IIPA. At the time of the announcement in November 1998, both USTR and IIPA agreed that title verification had to be significantly improved, and that additional controls on optical media production were required. In USTR's April 1999 Special 301 Announcement, progress in Bulgaria was noted, and in recognition of its "firm commitment to effective enforcement" of its IPR laws and its roles as serving as "a model for other economies which are at risk of developing unwanted production capacity of pirated optical media," Bulgaria was removed from all Special 301 lists.

In 2002, IIPA recommended that Bulgaria be placed on the Watch List, noting resurging problems with the production, distribution, and importation of optical disc media. Though Bulgaria was not placed on any 301 list in 2001 or 2002, USTR's April 30, 2002 announcement stated that "based on recent reports of increased piracy in Bulgaria, the United States will be closely monitoring the situation and will look to the Government of Bulgaria to ensure the maintenance of the Optical Disk (OD) regulations." U.S. Trade Representative Robert Zoellick noted that despite Bulgaria's reputation for tackling optical media piracy, "we are concerned by reports that it may weaken its optical media control regime." Despite IIPA's request to add Bulgaria to the Watch List in 2003, USTR choose to keep Bulgaria off the lists, noting again that increased piracy and revisions to CD planting licensing laws may be being revised to undermine their effectiveness.

In terms of GSP, in 2002, \$30.2 million worth of goods from Bulgaria entered the United States under the duty-free GSP code, accounting for 8.6% of its total exports to the U.S. During the first 11 months of 2003, \$37.4 million worth of Bulgarian goods (or 9.3% of Bulgaria's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 44.2% increase over the same period in 2002.

## **CANADA**

USTR has kept Canada on the Watch List since 1995 for a variety of copyright and patent concerns as well as poor border enforcement. This year, in its Special Mention section (<http://www.iipa.com/rbc/2004/2004SPEC301CANADA.pdf>), IIPA highlights the importance placed on closely monitoring Canada's ongoing copyright reform efforts and its glacial progress toward implementing the WIPO internet treaties.

## CAMBODIA

Cambodia has never appeared on a USTR Special 301 list. In its 2003 submission, IIPA noted Cambodia as a Special Mention country, citing concerns over migration of optical disc plants. This year, in its Special Mention section (<http://www.iipa.com/rbc/2004/2004SPEC301CAMBODIA.pdf>), IIPA highlights certain legislative and enforcement deficiencies, particularly the lack of an optical disc regulation, which, if passed, would help insulate Cambodia from potential migration of optical disc plants from neighboring countries.

## CHILE

IIPA recommends that Chile remain on the Watch List, where it has been since 1991. See IIPA's 2004 Chile country report at <http://www.iipa.com/rbc/2004/2004SPEC301CHILE.pdf>. In 2001, IIPA recommended that Chile be placed on the Watch List due to continued high piracy levels. USTR placed Chile on the Watch List in 2001, noting in its April 30, 2001 Special 301 Announcement that "Chile's intellectual property laws are not fully consistent with its international obligations." The announcement pointed specifically to Chile's failure to enact TRIPS-compliant legislation. USTR also noted that "[i]nadequate enforcement against piracy and counterfeiting also remains a serious problem." In 2002, IIPA recommended that Chile remain on the Watch List, pointing to the country's significant piracy problems and enforcement failures. In its April 30, 2002 Special 301 Announcement, USTR again placed Chile on the Watch List, noting deficiencies in both legislation and enforcement. USTR's 2003 Special 301 Announcement retained Chile on the Watch List, even after the Chile FTA negotiations were announced.

The U.S.-Chile FTA entered into effect on January 1, 2004. For years, Chile participated in the Generalized System of Preferences (GSP) program, a trade program that offers preferential trade benefits to eligible beneficiary countries and includes and IPR discretionary criteria for eligibility. In 2002, \$512.7 million worth of Chilean imports to the United States benefited from the GSP program, accounting for 14.4% of Chile's total exports to the U.S. During the first 11 months of 2003, \$475 million worth of Chilean imports to the United States benefited from the GSP program, or 13.2% of Chile's total exports to the U.S. between January and November, representing a 2.8% increase over the same period in 2002.

## COLOMBIA

IIPA recommends that Colombia be elevated to the Priority Watch List in 2004. See IIPA's 2004 Colombia country report at <http://www.iipa.com/rbc/2004/2004SPEC301COLOMBIA.pdf>. Between 1989 and 2001, Colombia was on the Special 301 Watch List for problems involving copyright enforcement and inadequate patent and trademark legislation. In 1997, USTR noted that "[p]iracy continues to be a significant problem and that the Television Broadcast Law discriminated against foreign content." Because of the need for the Colombian government to license pay-TV operators and improve enforcement efforts, IIPA recommended that Colombia be elevated to the Priority Watch List in 1998. In 1998, USTR kept Colombia on the Watch List, and added an out-of-cycle review in December 1998. In October 1998, President Clinton met with President Pastrana and they initiated consultations on a bilateral investment treaty. One of the key elements of the 1998 out-of-cycle review was whether or not the Colombian government would issue licenses to cable TV operators. In 1999, USTR kept Colombia on the Watch List, noting that although the Colombian Attorney General had initiated legal action against 108 television operators, "Colombia has still to resolve the major issue USTR highlighted in its December [1998] out-of-cycle review – failure to license legitimate pay television operators and pursue pirate operators." USTR also added a September 1999 out-of-cycle review to measure Colombia's progress. Progress was made on issuing these licenses, and on December 17, 1999, USTR announced its decision to keep Colombia on the Watch List as a result of the September 1999 out-of-cycle review. Colombia remained on the Watch List in 2000 in large part because of insufficient enforcement of copyright laws

and high piracy levels. USTR's April 30, 2001 Special 301 Announcement noted that "current enforcement efforts and penalties have not proven to be a significant deterrent." In 2002, IIPA recommended that Colombia remain on the Watch List and that an out-of-cycle review be conducted to monitor legislative and enforcement improvements.

In the April 30, 2002 Special 301 Announcement, USTR elevated Colombia to the Priority Watch List. USTR pointed to a need for stronger IPR enforcement, noting that despite occasional seizures of pirated and counterfeit goods, "prosecutions rarely follow." In 2002, Colombia passed Decree 2085 to implement Article 39.3 of the TRIPS Agreement. Despite continued high levels of piracy (especially in the home video market), USTR noted Colombia's exemplary progress in the area of data protection, and the 2003 USTR Special 301 Announcement downgraded Colombia from the Priority Watch List to the Watch List.

Colombia currently participates in both the Generalized System of Preferences (GSP) program and the Andean Trade Preferences Act (ATPA), U.S. trade programs that offer preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of these programs is that the country provide "adequate and effective protection of intellectual property rights." In 2002, \$204.2 million worth of Colombian goods entered the United States under the GSP program, accounting for 3.8% of its total exports to the U.S. \$404 million worth of Colombian goods entered the U.S. under the ATPA program, accounting for 7.5% of its total exports to the U.S. During the first 11 months of 2003, \$148.4 million worth of Colombian goods (or 2.5% of Colombia's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 16.2% decrease over the same period in the previous year. \$2.7 billion worth of Colombian goods entered the U.S. under the ATPA program for the same period, accounting for a 989% increase from the prior year.

## **COMMONWEALTH OF INDEPENDENT STATES (CIS)**

The CIS, as a whole, no longer appears on any USTR lists. In 1995 and 1997, IIPA requested that USTR add the nations of the Commonwealth of Independent States (CIS) collectively, excluding the Russian Federation, to the Special 301 Watch List because nearly all of the CIS countries had failed to meet their bilateral IPR obligations, piracy was rampant, enforcement inadequate, and copyright law reform urgently needed. See IIPA's 2004 CIS country report at <http://www.iipa.com/rbc/2004/2004SPEC301CIS.pdf>. In both 1998 and 1999, IIPA made individual filings focusing on concerns in Belarus, Ukraine, and Kazakhstan, the countries with the most serious IPR problems (although problems persist in other former republics) in addition to the filing made for Russia. In 1998, both Belarus and Kazakhstan were placed on the Other Observations list, and Ukraine was on the Watch List. The next year, Belarus was elevated to the Watch List, Kazakhstan was removed from Special 301 list, and Ukraine was elevated to the Priority Watch List. In 2000, IIPA recommended that ten of the CIS countries be placed on the Special 301 Watch List (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, and Uzbekistan). In the May 30, 2000 Special 301 Announcement, USTR placed seven CIS countries on the Special 301 Watch List for the first time: Armenia, Azerbaijan, Kazakhstan, Moldova, Tajikistan, Turkmenistan, and Uzbekistan. Belarus was also placed on the Special 301 Watch List in 2000. Russia and Ukraine remained on the Priority Watch List. In the April 30, 2001 Special 301 Announcement, USTR announced that on March 12, 2001 it had designated Ukraine as a Priority Foreign Country, noting that it made the decision "due to its persistent failure to take effective action against significant levels of optical media piracy and to implement intellectual property laws that provide adequate and effective protection." In 2002, IIPA recommended that the CIS countries, excluding the Russian Federation and Ukraine, be placed on the Watch List. IIPA recommended in 2002 that Ukraine be designated a Priority Foreign Country and that the Russian Federation be placed on the Priority Watch List. Ukraine remained a Priority Foreign Country in 2002. In 2002, Russia remained on the Priority Watch List. In 2001 and 2002, all of the seven CIS countries, including Belarus, but not including Moldova, that appeared on the Watch List in 2001 remained on the Watch List in 2002. Moldova was not placed on any list in 2001 or 2002.

In June 1999, IIPA filed a petition with USTR requesting that the country eligibility of Armenia, Belarus, Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, Ukraine, and Uzbekistan under the Generalized System of Preferences (GSP) trade program be reviewed for its failure to provide adequate and effective copyright protection and enforcement for U.S. copyright owners, as required under the GSP. In February 2000, the administration announced that it accepted IIPA's petition for review of Armenia, Kazakhstan, Moldova, Ukraine, and Uzbekistan. On May 12, 2000, the U.S. government held public hearings on the GSP petitions regarding these five countries. On October 23, 2000, the IIPA requested that its petition on Moldova be withdrawn, as a result of cooperation with that government on legal reforms following the filing of the petition. The U.S. government accepted that action, and the GSP review of Moldova ended. The U.S. government has not yet decided whether to withdraw or to suspend GSP benefits in Kazakhstan or Uzbekistan. On September 3, 2003, USTR announced it had terminated GSP review of Armenia. GSP benefits have been withdrawn from Belarus, but for reasons unrelated to intellectual property matters. GSP benefits were withdrawn from Ukraine in 2001.

## **COSTA RICA**

IIPA highlights copyright concerns in Costa Rica in its Special Mention section this year. See IIPA's 2004 Costa Rica country report at <http://www.iipa.com/rbc/2004/2004SPEC301COSTARICA.pdf>.

Costa Rica was placed on the Special 301 Watch List in 1995, for problems associated with inadequate patent protection and inadequate copyright enforcement. In the April 30, 2001 Special 301 Announcement, Costa Rica was placed on the Priority Watch List. USTR noted that "there is growing concern regarding the lack of effective enforcement activity by the Government of Costa Rica." The United States "urge[d] Costa Rica to improve coordination of enforcement activities between public prosecutors and investigators; appoint special prosecutors to take on intellectual property cases; create a coordinated nationwide plan for defending and enforcing IP rights; and improve enforcement-related training at all levels of government." In addition, the announcement noted that "[t]he United States will conduct an out-of-cycle review in the fall to assess Costa Rica's legislative enforcement." On October 31, 2001, USTR announced its decision regarding the out-of-cycle review. Because "little progress has been made on the four-point list of enforcement-related actions in USTR's April 30 announcement," Costa Rica remains on the Priority Watch List. In 2002, IIPA recommended that Costa Rica remain on the Priority Watch List, until concrete results were obtained in the improvement of its enforcement regime. In its April 30, 2002 Special 301 Announcement, USTR downgraded Costa Rica, placing it on the Watch List. USTR noted Costa Rica's "concerted government strategy for improving the enforcement of intellectual property rights [including]. . . appoint[ing] specialized prosecutors, intensify[ing] training activity for officials involved in enforcement, and implement[ing] a decree focused on legitimizing software used by government agencies." In their 2003 Special 301 Announcement, however, USTR pointed out several deficiencies, including "two amendments to improve penalties and enforcement infrastructures [that are] pending and an executive decree on data exclusivity [that] has yet to be signed." These failures, along with other problems such as delays in judicial proceedings and lack of official investigators, necessitated Costa Rica's continued placement on the Watch List.

In 2002, \$13.2 million worth of Costa Rican goods entered the U.S. under the GSP, accounting for 0.4% of its total exports to the U.S. Under the CBI, Costa Rica had \$660 million worth of goods enter the U.S. in 2002, accounting for 21% of its total exports to the U.S. In 2002, \$494.2 million worth of Costa Rican goods entered the U.S. under the CBTPA. During the first 11 months of 2003, \$389 million worth of Costa Rican goods entered the U.S. under the CBTPA. During the first 11 months of 2003, \$49.4 million worth of Costa Rican goods (or 1.6% of Costa Rica's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 322% increase from the same period in 2002. During the first 11 months of 2003, \$609.2 million worth of Costa Rican goods entered the U.S. under the CBI, representing an increase of 0.2% from the same period in 2002.

## CROATIA

Croatia is currently on the Watch List. On October 10, 2002, USTR announced that it was conducting several out-of-cycle reviews (OCRs), including one on Croatia. The results of that review are not yet available. In both its 2002 and 2003 Special 301 submissions, IIPA identified piracy and copyright enforcement-related problems in Croatia, but did not make a formal 301 ranking recommendation. In its 2003 Special 301 Report, USTR noted that “Croatia’s otherwise strong protection and enforcement of intellectual property rights . . . is undermined by inadequate protections in the patent area and delayed judicial decision-making.” They urged Croatia to ratify and implement the 1998 bilateral Memorandum of Understanding Concerning Intellectual Property Rights and to maintain criminal copyright enforcement. In the meantime, Croatia was placed on the Watch List.

Croatia currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide “adequate and effective means under its laws for foreign nations to secure, to exercise, and to enforce exclusive rights in intellectual property, including . . . copyrights.” In 2002, \$36.2 million worth of Croatian goods entered the U.S. under the duty-free GSP code (or 25% of its total exports to the U.S.). During the first 11 months of 2003, \$61 million worth of Croatian goods entered the U.S. under the duty-free GSP code (or 36.2% of its total imports from January to November), representing a 94% increase over the same period from the prior year.

## CYPRUS

Cyprus does not currently appear on any of the USTR lists. Cyprus was on the Special 301 Watch List from 1991 through 1994. In 1993, because of widespread piracy and an untenable delay in the effective date of amendments to the Cypriot copyright law, IIPA filed a petition with USTR, requesting that Cyprus lose its beneficiary country status under the Generalized System of Preferences (GSP) program. On September 21, 1993, USTR announced that it would conduct an “expedited review” against Cyprus; at that time, Ambassador Cantor warned that “[s]uspending criminal copyright penalties is unprecedented, and we view it with utmost seriousness.” Three months later, on December 22, 1993, Ambassador Kantor announced his decision to suspend GSP benefits to Cyprus, but he deferred the suspension because Cyprus intended to implement amendments to its copyright law on January 1, 1994. On June 30, 1994, USTR terminated the GSP review because there was a significant improvement in enforcement efforts which resulted in increases in sales of legitimate product and a decrease in piracy after the criminal penalties entered into effect.

In April 1995, Cyprus was placed on the Special Mention list, primarily due to improvements in copyright enforcement. In the April 1996 Special 301 Announcements, USTR acknowledged that while Cyprus had made progress in its copyright enforcement efforts, the administration would be monitoring efforts by the Cypriot government to continue to act aggressively against piracy of software and of video and audio recordings. In keeping Cyprus on the Special Mention list in 1997, USTR notified Cyprus that USTR expected that the Government of Cyprus would act expeditiously to implement fully its TRIPS obligations. In 1998, IIPA recommended the placement of Cyprus on the Other Observations list (formerly known as the “Special Mention list”). Cyprus has not been on a USTR list since 1997.

## CZECH REPUBLIC

The Czech Republic does not currently appear on any of the USTR lists. In April 1990, the former state of Czechoslovakia was one of the first Eastern European countries to sign a bilateral trade agreement with the U.S. which incorporated intellectual property rights commitments. Revisions to the 1965 Copyright Act were adopted effective June 1, 1990, adding protection for computer programs and increasing the term of protection for audiovisual works and sound recordings. When the Czech Republic split from the former

Czechoslovakia on January 1, 1993, it acknowledged its successor interest to the trade agreement, as well as to the text and effect of the copyright law and its treaty relations.

In early 1996, further amendments to the law were made that improved protection, in particular, for computer programs and sound recordings. The Czech Republic appeared on the Special 301 Special Mention list for the first time in 1997, after IIPA recommended that the Czech Republic be placed on the Watch List because of its poor enforcement record. Since 1998, IIPA has recommended that the Czech Republic be placed on the Watch List. USTR has agreed, and the Czech Republic was on the Watch List in 1998, 1999, and 2000. USTR also noted in its May 1, 2000 Special 301 Announcement the possible initiation of a future WTO dispute settlement case against the Czech Republic for noncompliance with TRIPS obligations. In 2002, IIPA recommended that the Czech Republic be added to the Watch List, pointing to serious concerns about enforcement, particularly border enforcement. This lack of strong border enforcement means that the Czech Republic continues to be a source of, or a transshipment point for, pirate materials. The Czech Republic currently does not appear on any 301 list, although IIPA called for its addition to the Watch List in 2002 and 2003.

The Czech Republic currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide “adequate and effective” copyright protection. In 2002, \$299.2 million worth of Czech goods entered the United States under the duty-free GSP code, accounting for 24.3% of its total exports to the U.S. During the first 11 months of 2003, \$263.8 million worth of Czech goods (or 20.8% of the Czech Republic’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 2.8% decrease from the same period in 2002.

## **DOMINICAN REPUBLIC**

IIPA recommends that the Dominican Republic be elevated to the Priority Watch List. See IIPA’s 2004 Dominican Republic country report at <http://www.iipa.com/rbc/2004/2004SPEC301DOMREP.pdf>. The Dominican Republic is currently on the Watch List, to where it was downgraded in 2003 from the Priority Watch List.

Special 301 is not the only trade forum in which the copyright industries have engaged the Dominican Republic. In June 1999, IIPA filed a GSP/CBI petition against the Dominican Republic for its failure to provide adequate and effective copyright protection and enforcement to U.S. copyright owners, a key criteria of both programs. IIPA’s petition was accepted by USTR in February 2000 and hearings were held in May 2000 and again in October 2003. The review remains ongoing. In fact, the current review is the second GSP IPR review brought by the copyright industry. In June 1992, the Motion Picture Association (MPA) filed a GSP petition against the Dominican Republic for its failure to afford adequate and effective copyright protection to U.S. copyright owners of motion pictures due to the unauthorized retransmission of U.S. films and television programming by broadcasters and cable system operators. USTR accepted that petition, and in 1993 the Dominican Republic took a number of initial steps to address those serious problems. Although piracy remained a serious concern, the Dominican government made promises for improvement, and MPA withdrew its GSP petition in September 1994.

With respect to Special 301 placements, USTR placed the Dominican Republic on the Special 301 Other Observations list in 1996 to encourage it to address the shortcomings in its intellectual property regime. In its 1997 Special 301 decisions, USTR elevated the Dominican Republic to the Watch List because of persistent piracy problems, especially involving broadcast and cable piracy. In February 1998, IIPA recommended elevating the Dominican Republic to the Priority Watch List for its continued and persistent failure to improve enforcement to address widespread piracy and to engage in legal reform. In 1998, USTR followed IIPA’s recommendation, and elevated the Dominican Republic to the Priority Watch List.

The Dominican Republic has remained on the Priority Watch List every year since then. In the April 30, 2001 Special 301 Announcement, USTR noted that “[t]here have been substantial improvements in the copyright area, especially with the passage of TRIPS-conforming law and the impressive efforts on the part of the National Copyright Office (ONDA). Nonetheless, there continues to be concern with respect to the enforcement of the new copyright law, and enforcement coordination between ONDA and the police remains poor.” In 2002, IIPA recommended that the Dominican Republic stay on the Priority Watch List in order that there be continued progress on effective implementation and enforcement of the copyright law. In its April 30, 2002 Special 301 Announcement, USTR kept the Dominican Republic on the Priority Watch List, noting enforcement difficulties and the “widespread sale of pirated materials.” USTR’s 2003 Special 301 Announcement revealed that the Government of the Dominican Republic (GODR) took several important steps in 2002-2003. As part of its aggressive campaign against piracy, the GODR “initiated inspections of two television stations and submitted evidence of piracy to the Attorney General for prosecution, and initiated action against a third station.” Furthermore, GODR appointed an intellectual property rights committee to review the patent law and bring it into compliance with TRIPS. The changes made by the committee were then announced in an executive decree. These steps were sufficiently progressive for USTR to move the Dominican Republic from the Priority Watch List to the Watch List.

Regarding preferential trade benefits, in 2002, \$16.4 million worth of Dominican goods entered the U.S. under the duty-free GSP code, accounting for 0.4% of its total exports to the U.S. During the first 11 months of 2003, \$66.1 million worth of Dominican goods (or 1.6% of the Dominican Republic’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 366.1% increase from the same period in the prior year. In 2002, \$895 million entered under the CBI, accounting for 21.5% of its total exports to the U.S. During the first 11 months of 2003, \$777.3 million worth of Dominican goods entered under the CBI, representing a 6% decrease over the same period in the prior year. In 2002, \$1.8 billion worth of Dominican goods entered under the CBTPA. During the first 11 months of 2003, \$1.6 billion worth of Dominican goods entered under the CBTPA, representing a 1.9% decrease over the same period in the prior year.

## ECUADOR

IIPA recommends that Ecuador stay on the Watch List, where it was placed in 2003. See IIPA’s 2004 Special 301 Ecuador country report at <http://www.iipa.com/rbc/2004/2004SPEC301ECUADOR.pdf>. Ecuador appeared on the Special 301 Watch Lists in 1992 and 1993, before being removed from the list in 1993, when it signed a bilateral intellectual property rights agreement with the U.S., which was negotiated in conjunction with a bilateral investment treaty. Ecuador reappeared on the Watch List in 1996. In February 1997, IIPA recommended that USTR commence a World Trade Organization dispute settlement case against Ecuador for its failure to fully implement the terms of its WTO accession protocol by July 31, 1996. In April 1997, USTR stated that it would initiate a WTO case against Ecuador, and it elevated Ecuador to the Priority Watch List with an out-of-cycle review later in 1997. By the time of that out-of-cycle review, Ecuador had reversed its previous position regarding its accession, which was encouraging to the U.S.

In February 1998, IIPA recommended that USTR keep Ecuador on the Priority Watch List to monitor its implementation and enforcement of then-pending copyright legislation in fulfillment of its multilateral and bilateral obligations. USTR agreed, scheduled an out-of-cycle review, and kept Ecuador on the same list in February 1999. Ecuador was placed on the Watch List in 1999 and 2000. In the May 1, 2000 Special 301 Announcement, USTR noted that “serious enforcement problems remain, with piracy levels still high, difficulty getting court orders enforced by the national police and the customs service...” In 2002, IIPA recommended that Ecuador be returned to the Watch List, to monitor the implementation and enforcement of the country’s copyright legislation in fulfillment of its multilateral obligations and bilateral commitments. The 2003 USTR Special 301 Announcement noted the “lessening of intellectual property protection in Ecuador, with a decrease in enforcement efforts.” Most of USTR’s concerns were directed

at patent issues, but one major copyright problem highlighted involved a poorly drafted provision in the Education Law appears to allow free software to educational institutions. Due to their concerns, USTR moved Ecuador back to the Watch List in 2003.

Ecuador currently participates in both the Generalized System of Preferences (GSP) program and the Andean Trade Preferences Act (ATPA), U.S. trade programs that offer preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of these programs is that the country provide “adequate and effective protection of intellectual property rights.” In 2002, \$74.6 million worth of goods from Ecuador entered the U.S. under the duty-free GSP code, accounting for 3.5% of its total exports to the U.S. During the first 11 months of 2003, \$44 million worth of Ecuadorian goods (or 1.8% of Ecuador’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 36.9% decrease over the same period in the previous year. In 2002, \$177.7 million worth of goods entered under ATPA, accounting for 8.4% of its total exports to the U.S. In the first 11 months of 2003, \$1.4 billion entered under the ATPA, representing a 1,914% increase from the same period in 2002.

## EGYPT

IIPA recommends that Egypt be elevated to the Priority Watch List. See IIPA’s 2004 Egypt country report at <http://www.iipa.com/rbc/2004/2004SPEC301EGYPT.pdf>. Egypt is currently on the Watch List. As early as 1985, IIPA targeted Egypt as a major copyright offender, and because of its leadership role in the Middle East, pressed it to adopt a model law for the region. Seven years later, after long and frustrating delays, USTR placed Egypt on the Priority Watch List (in April 1992) and Egypt finally passed amendments to its law (in June 1992). These amendments fell short of internationally accepted standards. In April 1993, Egypt was kept on the Priority Watch List and an out-of-cycle review (OCR) was scheduled for December 1993. In June 1993, because Egypt had not made corrective amendments to its law, IIPA filed a petition, which was accepted by USTR in October 1993, to remove Egypt as a beneficiary of the Generalized System of Preferences (GSP) program. As a result of 1994 amendments, Egypt was moved to the Watch List on April 30, 1994, and another OCR was scheduled for October 1994. On July 1, 1994, the GSP investigation was successfully concluded, but Egypt was retained on the Watch List as a result of the OCR in October 1994. Egypt remained on the Watch List in 1995 and 1996 as a result of inadequacies in its patent regime, and in 1997, largely because of patent concerns, Egypt was elevated to the Priority Watch List. In 1998, IIPA recommended that Egypt be placed on the Watch List because of wavering copyright enforcement and the imposition of low, non-deterrent penalties for infringement.

From 1998 through 2001, USTR kept Egypt on the Priority Watch List, noting inadequate protection for pharmaceutical patents, lax enforcement on unchecked copyright piracy, and unclear protection for pre-existing sound recordings. In the April 30, 2001 Special 301 Announcement, USTR noted deficiencies in Egypt’s copyright law which appeared inconsistent with the country’s TRIPS obligations. In addition, USTR voiced concern regarding “Egypt’s approval of fraudulent licenses to distributors of pirated copyright works, which facilitated pirate operations while hampering legitimate producers.” In 2002 and 2003, IIPA recommended that Egypt remain on the Priority Watch List, citing deficiencies in the draft copyright and patent laws, as well as lax enforcement and unchecked copyright piracy. In 2002, Egypt remained on the Priority Watch List, but in the 2003 USTR Special 301 Announcement, emphasized Egypt was lowered to the Watch List for passage of a new IPR Code and improvements in patent protection (although USTR noted the new IPR Code contains many “TRIPS inconsistencies” USTR found that Egypt also “made some progress in combating piracy of records and music, books and business software applications.”

Egypt currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide “adequate and effective” copyright protection. In 2002,

\$23.5 million worth of Egyptian goods entered the U.S. under the duty-free GSP code, accounting for 1.8% of its total exports to the U.S. During the first 11 months of 2003, \$28.5 million worth of Egyptian goods (or 2.7% of Egypt's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 33.3% increase over the same period in 2002.

## EL SALVADOR

El Salvador does not currently appear on any of the USTR lists. El Salvador was first placed on the Special 301 Watch List in 1992, where it remained for several years. While legal reform of the copyright law and various criminal codes was achieved, effective copyright enforcement was not achieved (in contrast, there was some progress on trademark matters). In 1996, IIPA recommended to USTR that El Salvador be elevated to the Priority Watch List; USTR chose to keep El Salvador on the Watch List. In 1997, El Salvador was removed from all Special 301 lists. In March 1999, El Salvador signed a bilateral investment treaty with the United States, which the U.S. Senate ratified in late 2000. In April 2000, USTR did not place El Salvador on any of the 301 lists but did conduct an out-of-cycle review to assess that government's efforts to improve enforcement procedures and promote the use of authorized software in all government industries. Based on some progress made at that time, El Salvador remained off all 301 lists. El Salvador was not placed on any list in either 2001 or 2002. In 2002, IIPA had recommended that El Salvador be placed on the Watch List, noting the country's defects in civil and criminal enforcement, and the legislature's efforts to eliminate criminal enforcement altogether.

Years ago, the copyright industries also attempted to invoke other trade remedies to resolve the problems of high levels of piracy and poor enforcement in El Salvador. IIPA filed a June 1993 petition with USTR, requesting it to initiate an investigation of El Salvador's copyright practices under the statutory provisions of the Generalized System of Preferences (GSP) program and the Caribbean Basin Economic Recovery Act (CBERA or CBI), both of which include discretionary criteria that the country provide "adequate and effective means under its laws for foreign nations to secure, to exercise, and to enforce exclusive rights in intellectual property, including . . . copyrights." IIPA's 1993 GSP/CBI petition was not accepted.

In terms of preferential trade benefits, in 2002, \$12.1 million worth of Salvadoran goods entered the U.S. under the duty-free GSP code, accounting for 0.6% of its total exports to the U.S. During the first 11 months of 2003, \$15.4 million worth of Salvadoran goods (or 0.8% of El Salvador's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 50.2% decrease over the same period in the previous year. In 2002, \$85.9 million worth of Salvadoran goods entered the U.S. under the CBI. During the first 11 months of 2003, \$68.5 million worth of Salvadoran goods entered the U.S. under the CBI, representing a 15.3% decrease over the same period in the previous year. In 2002, \$1.1 billion worth of Salvadoran goods entered the U.S. under the CBTPA. During the first 11 months of 2003, \$1 billion worth of Salvadoran goods entered the U.S. under the CBTPA, representing a 5.4% increase from the same period in the previous year.

## ESTONIA

IIPA recommends that Estonia be added to the Watch List in 2004. See IIPA's 2004 Estonia country report at <http://www.iipa.com/rbc/2004/2004SPEC301ESTONIA.pdf>. Estonia does not currently appear on any of the USTR lists. In 1998, Estonia appeared on the USTR Special 301 list for the first time when USTR placed it on the Other Observations list. In both 1999 and 2000, IIPA recommended placement of Estonia on the Watch List because of significant deficiencies in the Estonian legal regime, the significant enforcement problems (particularly at street markets and the border), and the growing piracy problem across many industries (and the disruption it has caused in other countries). In 2002 and 2003, IIPA recommended that Estonia be placed on the Watch List, pointing to the country's piracy problem and the absence of deterrent penalties. Estonia has not been placed on any USTR 301 list since 1998.

Estonia currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide “adequate and effective” copyright protection. In 2002, \$15.3 million worth of Estonian imports to the United States benefited from the GSP program, accounting for 8.9% of its total exports to the U.S. During the first 11 months of 2003, \$27.9 million worth of Estonian goods (or 17.7% of Estonia’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 105% increase over the same period in the previous year.

## GEORGIA

IIPA highlights copyright concerns in Georgia in its Special Mention section this year. See IIPA’s 2004 Georgia country report at <http://www.iipa.com/rbc/2004/2004SPEC301GEORGIA.pdf>. Georgia does not currently appear on any of the USTR lists. In 1995 and 1997, IIPA requested that USTR add the nations of the Commonwealth of Independent States (CIS) collectively, excluding the Russian Federation, to the Special 301 Watch List because almost none of the CIS countries had met their bilateral IPR obligations, piracy was rampant, enforcement inadequate, and copyright law reform urgently needed. In 2000, IIPA recommended that ten of the CIS countries be placed on the Special 301 Watch List Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, and Uzbekistan). In the May 30, 2000 Special 301 Announcement, USTR placed seven CIS countries on the Special 301 Watch List for the first time, but not Georgia. In the April 30, 2001 Special 301 Announcement, USTR noted that it would conduct an out-of-cycle review of Georgia in December 2001. On February 12, 2002, USTR announced the result of its out-of-cycle review of Georgia. Though USTR decided not to place Georgia on any list, it noted continued deficiencies in copyright protection and enforcement “such as the lack of *ex officio* authority. . . for customs and criminal authorities, as well as the lack of civil *ex parte* search and seizure procedures conducted without notice to the alleged infringers.” In its February 15, 2002 submission, IIPA recommended that Georgia be placed on the Watch List, pointing to that country’s continued piracy and enforcement problems.

Georgia began participating in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries, in 2001. One of the discretionary criteria of this program is that the country provide “adequate and effective” copyright protection. In 2002, \$7.3 million worth of Georgian goods entered the U.S. (or 43% of Georgia’s total exports to the U.S.). During the first 11 months of 2003, \$10.6 million worth of Georgian goods (or 17.7% of Georgia’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 45.2% increase over the same period a year before.

## GERMANY

Germany does not currently appear on any of the USTR lists. Germany was placed on the Special 301 Watch List from 1991 to 1992. Though it was removed from any list in 1993, Germany was placed on the Other Observations list from 1994 to 1998, primarily due to heavy U.S. trade losses attributable to business software and audiovisual piracy. In those years, IIPA’s Special 301 submissions focused on the problems with Germany’s enforcement against end-user software piracy and its inadequate legal framework, especially the discriminatory failure to prohibit the unauthorized fixation, and subsequent reproduction and distribution, of live performances of U.S. artists (the “bootlegging” issue). The latter set of issues was resolved by the enactment of copyright law amendments in 1995.

In 1998, IIPA recommended the placement of Germany on the Watch List because of serious problems in the audiovisual industry (namely, the manufacturing and distribution throughout Europe of “smart cards” and “descrambling” devices) and in the software industries, where some jurisdictions were still denying *ex parte* search orders. In keeping Germany on the Other Observations list in 1998, Ambassador Barshefsky noted progress made in 1997 with respect to the availability of civil *ex parte* search orders, but shared the

Alliance's concerns "regarding a major audiovisual piracy problem and the role of German firms in the manufacturing and/or exporting throughout Europe of pirated 'smart cards' and other 'de-scrambling' devices used to steal encrypted satellite, cable and broadcast transmissions, particularly of U.S. motion pictures." The IIPA recommended in our 1999 Special 301 Report that Germany be kept on the Other Observations list. Germany has not appeared on any USTR list since 1998.

## **GREECE**

Greece does not currently appear on any of the USTR lists. Greece was on the Watch List from 1989 to 1994 and was elevated to the Priority Watch List in 1995, where it remained until 2000. The United States filed a TRIPS case against Greece in 1997. In May 1998, Greece passed an amendment to the Broadcast Law that finally began to improve the longstanding problem of TV piracy. The same month, USTR announced the commencement of WTO dispute settlement consultations. In the April 30, 2001 Special 301 Announcement, USTR noted, "Greece has passed new legislation providing for the immediate closure of television stations that infringe upon intellectual property rights, and estimated levels of television piracy in Greece have fallen significantly as a result." However, the announcement points out that "[p]iracy rates for audio-visual works, video games and business software. . . remain high." Greece was removed from the Priority Watch List and placed on the Watch List in 2001. In 2002, USTR kept Greece on the Watch List, noting persistent problems with "optical disk piracy and unauthorized book photocopying." USTR also noted Greece's "lack of deterrent penalties imposed on pirates and inefficient judicial action," as well as the continued problem of unauthorized use of software in government offices.

## **GUATEMALA**

IIPA highlights copyright concerns in Guatemala in its Special Mention section this year. See IIPA's 2004 Guatemala country report at <http://www.iipa.com/rbc/2004/2004GUATEMALA.pdf>. Guatemala has been on the Watch List since 2001. After seven years on the Special 301 Watch List (1992-1998), USTR elevated Guatemala to the Priority Watch List in 1999 and 2000. In its April 30, 2001 Special 301 Announcement, USTR noted that despite amendments to the 1998 Copyright Act, "criminal penalties in cases of infringement of intellectual property, and the provision providing for statutory damages was removed." Guatemala was placed on the Watch List in 2001. In 2002, IIPA recommended that Guatemala remain on the Watch List, noting that much is needed before the country will meet its multilateral and bilateral intellectual property rights obligations. In its April 30, 2002 Special 301 Announcement, placing Guatemala on the Watch List, USTR noted with approval the June 2001 appointment of a special prosecutor for intellectual property rights. Despite this, USTR pointed to continued high piracy levels, most notably with regard to business software, that have not been met by adequate enforcement. The 2003 USTR Special 301 Announcement retained Guatemala on the Watch List, noting that decreased criminal penalties and ineffective legal remedies in civil actions remain serious problems.

Because of continuing problems with enforcement and the deficiencies in the 2000 copyright legislation, IIPA filed a GSP/CBI petition in August 2000, requesting a review of Guatemala's IPR practices because of its failure to provide adequate and effective protection of U.S. copyrighted works. Unfortunately, the U.S. government rejected IIPA's petition, likely because Congress had extended new trade benefits to Costa Rica under the U.S.-Caribbean Trade Partnership Act (CBTPA), which requires eligible countries to have very high levels of IPR protection. In 2002, \$20.4 million worth of Guatemalan goods entered the U.S. under the duty-free GSP code, accounting for 0.7% of its total exports to the U.S. During the first 11 months of 2003, \$38.4 million worth of Guatemalan goods (or 1.4% of Guatemala's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 129.5% increase from the same period in the previous year. In 2002, \$344.4 million worth of Guatemalan goods entered the U.S. under the CBI, accounting for 12.4% of its total exports to the U.S. During the first 11 months of 2003, \$274.2 million worth of Guatemalan goods entered under the CBI, representing an 8.8%

decrease (or 10.2% of Guatemala's total exports to the U.S. from January to November). In 2002, \$699.7 million worth of Guatemalan goods entered under the CBTPA, accounting for 25.1% of its total exports to the U.S. During the first 11 months of 2003, \$699.1 million entered under the CBTPA, representing 25.9% of Guatemala's total exports to the U.S. for the same period in 2002.

## HONG KONG

IIPA highlights copyright concerns in Hong Kong in its Special Mention section this year. See IIPA's 2004 Hong Kong country report at <http://www.iipa.com/rbc/2004/2004SPEC301HONGKONG.pdf>. Hong Kong does not currently appear on any of the USTR lists. Hong Kong first appeared in IIPA's Special 301 recommendations in 1995, when we called for Special Mention status (equivalent to USTR's Other Observations category) in order to focus attention on the increased flow of pirated materials from China into Hong Kong, and to encourage enactment of tougher penalties for commercial piracy operations. By 1996, as this pirate flow across the Chinese border became a flood, IIPA recommended placement on the Watch List to encourage Hong Kong to devote more resources to copyright enforcement and to aggressively deploy new legal tools against piracy. USTR decided to list Hong Kong in the Other Observations category, and maintained it there after an out-of-cycle review that concluded in December 1996. In its 1997 filing, citing a flood of digital piracy in the Hong Kong market, and increasing evidence that some of it was originating within the territory, IIPA urged USTR to elevate Hong Kong to the Priority Watch List.

Because of the then-worsening piracy situation, USTR placed Hong Kong on the Watch List on April 30, 1997, and maintained it there in a January 16, 1998 out-of-cycle review announcement, concluding that "the piracy situation in Hong Kong has not improved." In 1998, IIPA noted that despite Hong Kong's efforts, the digital piracy problem was out of control; the territory had changed from being an importer of pirate optical media product to being a major producer and exporter, trends that justified keeping Hong Kong on the Watch List. USTR, calling for full implementation of new anti-piracy legislation, effective enforcement, and a significant reduction in piracy rates, kept Hong Kong on the Watch List. Hong Kong was removed from the Watch List after a February 1999 out-of-cycle review, but Ambassador Barshefsky added a September 1999 out-of-cycle review to assess Hong Kong's intellectual property progress.

On December 17, 1999, USTR announced that as a result of the September out-of-cycle review, Hong Kong would remain off the Special 301 Watch List because "Hong Kong has undertaken significant enforcement actions since April [1999] to address the problem of piracy, but significant follow-up efforts are needed as piracy problems continue. USTR will monitor action by Hong Kong authorities to reclassify piracy as an organized and serious crime, to extend the mandate of the special anti-piracy task force beyond December 1999, and to prosecute corporate policy and the illegal loading of software by dealers onto computer hard drives." Hong Kong has not appeared on any Special 301 lists since 1998.

## HUNGARY

IIPA recommends that Hungary stay on the Watch List, where it was placed in 2003 by USTR. See IIPA's 2004 Hungary country report at <http://www.iipa.com/rbc/2004/2004SPEC301HUNGARY.pdf>. On September 24, 1993, the U.S. and Hungary entered into a comprehensive bilateral Intellectual Property Rights Agreement, which obligated Hungary to make significant improvements in its copyright laws. In 1994 and again in 1997, Hungary adopted amendments to update its copyright law and to make it compatible with the TRIPS Agreement. In 1994, 1995 and 1996, Hungary did not appear on any Special 301 lists. In 1997, IIPA recommended that Hungary be placed on the Special Mention list because of its enforcement and legal framework deficiencies. USTR did place Hungary on the Special Mention list in 1997 and 1998 at the urging of copyright owners because of the lack of effective enforcement. Hungary implemented extensive changes to its copyright law in June 1999; these changes became effective on September 1, 1999. The amendments were intended to bring the Hungarian law into compliance with the

TRIPS Agreement as well as the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, and to comply with several of the European Union Directives, such as the Term Directive.

In 2001, USTR elevated Hungary to the Priority Watch List, from its Watch List designation in 1999 and 2000, largely as a result of its failure to provide adequate protection of “confidential test data submitted by pharmaceutical companies seeking marketing approval.” In 2002, IIPA recommended that Hungary be placed on the Watch List, noting the country’s need to comply with TRIPS by remedying its criminal enforcement problems. USTR kept Hungary on the Priority Watch List in 2002, noting in its April 30 Announcement that despite progress bringing its legislation into compliance with TRIPS and the U.S.-Hungary bilateral IPR agreement, enforcement and piracy remain problems. USTR’s 2003 Special 301 Announcement noted Hungary’s positive steps, primarily in the area of patent protection, but also that the country “has made important strides in modernizing its legal regime for copyright over the last several years, including extensive revisions to its criminal code.” This progress allowed Hungary to move from the Priority Watch List to the Watch List in 2003.

Hungary currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide “adequate and effective” copyright protection. In 2002, \$366.3 million worth of Hungarian goods entered the U.S. under the duty-free GSP code, accounting for 13.9% of its total U.S. imports. During the first 11 months of 2003, \$366.2 million worth of Hungarian goods (or 14.6% of Hungary’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 7.1% increase over the same period in 2002.

## INDIA

IIPA recommends that India remain on the Priority Watch List. See IIPA’s 2004 India country report at <http://www.iipa.com/rbc/2004/2004SPEC301/INDIA.pdf>. India has been on the Priority Watch List since 1989 and was named a Priority Foreign Country in 1991. Its practices in the patent, trademark and copyright area, as well as market access for motion pictures, were declared by USTR as “unfair” on March 4, 1992, and a Section 301 investigation was launched against India at that time. The motion picture market access problems were substantially resolved by the end of 1992, but patent and copyright enforcement problems persisted. These kept India a Priority Foreign Country until June 30, 1994, when it was moved to the Priority Watch List after it adopted significant amendments to its copyright law. USTR subjected India to a special out-of-cycle review (OCR) in January 1995 and its position on the Priority Watch List was retained. In 1996, IIPA recommended that India remain on the Priority Watch List as its enforcement program began to take shape; USTR agreed.

In 1997, IIPA recommended that India be moved to the Watch List as a result of continued encouraging raiding activity. However, USTR disagreed and in April 1997 kept India on the Priority Watch List, in part because of copyright issues, but also because of serious patent protection shortcomings. In 1997, USTR initiated a WTO dispute settlement case against India on patent protection matters. In September 1997, the WTO panel agreed with the U.S. claim that India failed to implement its obligation under TRIPS to establish a “mailbox” system to receive patent applications, and on related matters. This case was the first intellectual property rights dispute to go through the WTO panel process. India appealed the case, lost, and in April 1999 enacted legislation to address the WTO settlement.

In our 1999 and 2000 Special 301 filing, IIPA again recommended that India be placed on the Watch List in light of the progress on copyright issues. In both years USTR maintained India on the Priority Watch List. In the April 30, 2001 Special 301 Announcement, USTR kept India on the Priority Watch List, largely for failures in its patent system. The announcement noted that India’s copyright law was “generally strong,” though “poor enforcement allows rampant piracy.” In 2002, IIPA recommended that India remain on the Priority Watch List, noting the country’s high piracy rate and an overcrowded and ineffective court system that prevents conclusion of even the simplest criminal cases. In its April 30, 2002 Special 301

Announcement, USTR kept India on the Priority Watch List, citing patent protection problems as well as copyright legislation and enforcement deficiencies. USTR's 2003 Special 301 Announcement, noted little change, commenting, "piracy of copyrighted works remains a problem . . . and protection of foreign trademarks remains difficult." Export of counterfeit goods to other countries was also cited as a major problem. These deficiencies necessitated India's continued placement on the Priority Watch List.

India currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide "adequate and effective" copyright protection. In 2002, \$2 billion worth of Indian goods entered the U.S. under the duty-free GSP code, accounting for 17.3% of its total exports to the U.S. During the first 11 months of 2003, \$2.4 billion worth of Indian goods (or 20% of India's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 30.8% increase over the same period in 2002.

## INDONESIA

IIPA recommends that Indonesia stay on the Priority Watch List, where it has remained since 2001. See IIPA's 2004 Indonesia country report at <http://www.iipa.com/rbc/2004/2004SPEC301INDONESIA.pdf>. IIPA has closely monitored developments in Indonesia since 1985, when, in its first submission to USTR on piracy, IIPA named Indonesia as Asia's second worst pirate country. In 1987, following a petition by IIPA to revoke Indonesia's GSP benefits, Indonesia adopted an improved copyright law and, in 1989, entered into a bilateral copyright agreement whereby U.S. works and sound recordings acquired protection under Indonesian law. Although government initiatives virtually wiped out audio piracy in 1988 and made great progress against videocassette piracy in 1991 and 1992, Indonesia remained on the Watch List continuously from 1989 through 1995, because piracy of U.S. books and computer software soared over the years, and extensive market access barriers hampered the entry of U.S. companies into the Indonesian market. These continuing problems led USTR, on IIPA's recommendation, to elevate Indonesia to the Priority Watch List in 1996, where it remained through 1999.

In 2000, IIPA recommended that Indonesia be lowered to the Watch List "[i]n recognition of the adverse conditions under which market liberalization, anti-piracy, and copyright law reform efforts must proceed in Indonesia." USTR agreed, and Indonesia appeared on the Watch List in 2000. In 2001, IIPA recommended that Indonesia be elevated back up to the Priority Watch List, due to the continuing domination of piracy in the market, and the emergence of optical disc piracy in Indonesia. USTR agreed, noting in its April 30, 2001 Special 301 Announcement that "[p]iracy levels in Indonesia's enormous market for copyright and trademark goods are among the highest in the world." The announcement pointed out that "[i]t is becoming increasingly apparent that, as other countries in the region intensify their fight against copyright infringement, audio and video pirates are finding refuge in Indonesia." In 2002, IIPA once again recommended that Indonesia remain on the Priority Watch List, noting its concern over rising optical disc pirate production in the country, and its defunct court system. USTR kept Indonesia on the Priority Watch List, noting "a troubling increase in illegal production lines for optical media and pirated books far beyond Indonesia's domestic consumption capacity," and a "judicial system [that] continues to frustrate right holders with years of delay and a pronounced lack of deterrent penalties." In 2003, IIPA once again recommended, and USTR agreed, that Indonesia should remain on the Priority Watch List. In its announcement, USTR noted, "overall protection of intellectual property rights remains weak."

Indonesia currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide "adequate and effective protection for intellectual property rights." In 2002, \$1.5 billion worth of Indonesian goods entered the U.S. under the duty-free GSP code, accounting for 15.7% of its total exports to the U.S. During the first 11 months of 2003, \$1.3 billion worth of Indonesian goods (or 14.3% of Indonesia's total exports to the U.S. from January to November)

entered the U.S. under the duty-free GSP code, representing a 9.8% decrease over the same period in 2002.

## IRELAND

Ireland does not currently appear on any of the USTR lists. Ireland first appeared on a Special 301 list in 1996 when USTR accorded it Special Mention status for patent law deficiencies. IIPA recommended Ireland for the Watch List in its February 1997 filing and highlighted at that time its significant enforcement deficiencies and high levels of piracy, particularly in the software and video areas. IIPA also included Ireland in its Priority Practices section in that February 1997 submission because its outmoded law (and its enforcement regime) were hopelessly out of compliance with its TRIPS obligations, which became effective in Ireland on January 1, 1996. USTR agreed with IIPA's recommendation and placed Ireland on the Watch List in April 1997. Simultaneously, Ambassador Barshefsky announced that USTR would commence a TRIPS case in the near future. During 1997, following a series of bilateral negotiations with Ireland, it became clear that the Irish government had no intention of introducing and adopting a TRIPS-compatible law within any reasonable time. As a result, USTR commenced the TRIPS case on January 9, 1998.

In early February 1998, following the commitment of the Irish government to "accelerate its implementation of comprehensive copyright reform legislation," USTR decided not to bring the case before a dispute settlement panel, though it reserved the right to do so if the timetables were not met. Ireland remained on the Watch List in 1998, 1999 and 2000. USTR noted in the May 1, 2000 Special 301 Announcement that "Ireland's commitment to enact comprehensive copyright legislation has not been met. We understand recent progress has been made toward finalizing this legislation and expect it will be enacted by Parliament before its summer recess." Ireland enacted new IPR legislation in June 2000. The Alliance made no recommendation concerning Ireland in its 2001 Special 301 submission. Consequently, USTR did not place Ireland on any list during 2001. Ireland has not appeared on any list since 2000.

## ISRAEL

IIPA recommends that Israel be elevated to the Priority Watch List. See IIPA's 2004 Israel country report at <http://www.iipa.com/rbc/2004/2004SPEC301ISRAEL.pdf>. Israel is currently on the Watch List. IIPA first reported serious piracy problems in Israel in 1993. At that time, IIPA noted the need for copyright law modernization and urged USTR to place Israel on the Special 301 Watch List. No action was taken by USTR until 1994, when Israel was placed on USTR's Special Mention status, where it remained in 1995 and 1996. In 1997, USTR elevated Israel to the Watch List, noting the "rapidly growing rate of audio CD piracy for export" and the lack of a strong legal framework or effective enforcement to combat piracy.

In 1998, because of an antiquated copyright law, large-volume pirate optical disc production, lack of cooperation of Israeli government authorities in raids and enforcement, and the increasing influence of organized criminal elements in the manufacturing, distribution and export of pirated optical discs, videos and software, IIPA recommended that USTR place Israel on the Priority Watch List. USTR agreed, noting in its April 2001 Special 301 Announcement that "Israel's domestic market for copyright goods remains dominated by pirated music, video and software CDs," and "Israel is part of an enormous transshipment network for pirated versions of Russian-language software, as well as audio and video CDs and cassettes." In 2002, IIPA once again recommended that Israel remain on the Priority Watch List, and USTR agreed, noting that despite progress achieved in 2001, problems such as "the lack of a clear definition for end user piracy of business software as a crime, court procedural delays, and inadequate compensatory and deterrent civil damages." In 2003, IIPA once again recommended that Israel remain on the Priority Watch List due to "its failure to criminalize and enforce against the unlicensed used of software in a business setting . . . in violation of TRIPS," while also noting that piratical production of optical discs for export had abated. USTR lowered Israel to the Watch List, noting passage of a law that

increased criminal penalties for piracy and strengthened the ability of Israeli authorities and courts to prosecute and punish copyright crimes.

## ITALY

IIPA recommends that Italy remain on the Watch List, where it has been since 2001. See IIPA's 2004 Italy country report at <http://www.iipa.com/rbc/2004/2004SPEC301ITALY.pdf>. Italy was listed on USTR's Watch List throughout most of the 1990s, primarily due to enforcement shortcomings that allowed piracy (especially of U.S. motion pictures, sound recordings/music, and computer software) to reach levels unmatched in any other western European country. By February 1998, Italy had still not passed the Anti-Piracy Bill and IIPA recommended its elevation to the Priority Watch List, from the Watch List, where it had been listed since 1989. USTR agreed, and Italy was on the Priority Watch List in 1998 and 1999. In February 2000, USTR kept Italy on the Priority Watch List, and added a September out-of-cycle review (OCR). USTR also noted the possible initiation of a future WTO dispute settlement case against Italy for noncompliance with TRIPS obligations.

In recognition of the July 2000 passage of the Anti-Piracy Bill, USTR announced in November 2000 that Italy would be moved from the Priority Watch List to the Watch List. In the 2001 Special 301 submission, the IIPA recommended that Italy be placed on the Watch List with an out-of-cycle review based on concerns that Italian authorities may not adequately implement the new Anti-Piracy Law. USTR kept Italy on the Watch List in 2001, noting in its April 30, 2001 Special 301 Announcement its own concern about full implementation of Italy's Anti-Piracy Law. In 2002, IIPA recommended that Italy be maintained on the Watch List, noting enforcement problems and a need for judicial reform. USTR again placed Italy on the Watch List in 2002, noting that "Italy still has not clarified the Anti-Piracy Bill's implementing regulations for business software." In its 2003 Special 301 Announcement, USTR described further problems with Italy's new laws: "Notwithstanding new government procedures to exempt business software that were enacted on January 25, 2003 . . . Italy continues to enforce a problematic program requiring copyright owners to pay for and apply a government-approved sticker on genuine copyrighted works." Italy therefore remained on the Watch List in 2003.

## JAMAICA

Jamaica has been on the Watch List since 1998. The 2003 USTR Special 301 Announcement stated that "Jamaica's trademark and copyright regimes are generally consistent with international standards and enforcement efforts over the last year have been commendable." It remains on the Watch List, however, because of lack of parliamentary action to bring patent and industrial design laws into conformity with international standards.

Jamaica currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country/territory provides "adequate and effective protection of intellectual property rights." In 2002, \$1 million worth of Jamaican imports to the United States benefited from the GSP program, accounting for 0.3% of its total exports to the U.S. During the first 11 months of 2003, \$1.7 million worth of Jamaican goods (or 0.5% of Jamaica's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 91.3% increase from the same period in the previous year. Under the Caribbean Basin Initiative (CBI), which has similar IPR criteria, \$84.2 million worth of Jamaican goods entered the U.S., accounting for 22.6% of total exports to the U.S. in 2002. During the first 11 months of 2003, \$77 million worth of Panamanian goods (or 20.3% of Panama's total exports to the U.S. from January to November) entered under the CBI, representing a 2% increase over the same period in the previous year. Under the Caribbean Basin Trade Partnership Act (CBTPA), which has IPR criteria similar to CBI and GSP, \$109.9 million worth of Jamaican goods entered

the U.S. in 2002. During the first 11 months of 2003, \$85.1 million worth of Jamaican goods (or 22.5% of Jamaica's total exports to the U.S. from January to November) entered the U.S. under the CBTPA.

## JORDAN

Jordan does not currently appear on any of the USTR lists. USTR first placed Jordan on the Special Mention list in 1995, where it remained in 1996 due to its inadequate intellectual property laws. USTR elevated Jordan to the Watch List in 1997, noting a law that "falls far short of international standards in most respects" and rampant piracy due to a lack of "effective enforcement mechanisms." In 1998, IIPA recommended that Jordan be elevated to the Priority Watch List because of the "glacial pace" of Jordan's efforts to pass the draft copyright law amendments and Jordan's total failure to implement and enforce the copyright law. USTR decided to keep Jordan on the Watch List, in part because of Jordan's April 1998 "Action Plan" designed to bring it into conformity with TRIPS within two years. Despite passing the long-awaited copyright amendments in late 1998, in April 1999, Jordan remained on the Watch List because of what USTR described as limited progress in the implementation of the 1998 Action Plan and patent-protection deficiencies. After Jordan took the initiative of passing further amendments, thereby bringing its law very close to TRIPS compliance, and joining the Berne Convention, Jordan was removed from the Watch List on December 10, 1999 after an out-of-cycle review. On April 11, 2000, Jordan joined the World Trade Organization, thereby making it bound by the provisions of the TRIPS agreement. Six months later, Jordan signed a historic Free Trade Agreement with the United States. Jordan has not appeared on any Special 301 list since 1999.

Jordan currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide "adequate and effective protection of intellectual property rights." In 2002, \$6 million worth of Jordan's imports to the United States benefited from the GSP program, accounting for 1.5% of its total exports to the U.S. During the first 11 months of 2003, \$26.9 million worth of Jordanian goods (or 4.4% of Jordan's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing an increase of 428.6% from the same period in 2002.

## KAZAKHSTAN

IIPA recommends that Kazakhstan remain on the Watch List, where it has been since 2000. See IIPA's 2004 Kazakhstan country report at <http://www.iipa.com/rbc/2004/2004SPEC301KAZAKHSTAN.pdf>. In 1995 and 1997, IIPA requested that USTR add the nations of the Commonwealth of Independent States (CIS) collectively, excluding the Russian Federation, to the Special 301 Watch List because almost none of the CIS countries had met their bilateral IPR obligations, piracy was rampant, enforcement inadequate, and copyright law reform urgently needed. In both 1998 and 1999, IIPA made individual filings focusing on concerns in Belarus, Ukraine and Kazakhstan, the countries with the most serious IPR problems (although problems persist in other former republics) in addition to the filing made for Russia. In 1998 Kazakhstan was placed on the Other Observations list, and the next year, Kazakhstan was removed from the Special 301 list. In 2000, IIPA recommended that ten of the CIS countries be placed on the Special 301 Watch List (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, and Uzbekistan). In the May 30, 2000 Special 301 Announcement, USTR placed Kazakhstan on the Special 301 Watch List.

In June 1999, IIPA filed a petition with USTR requesting that the country eligibility of Armenia, Belarus, Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, Ukraine, and Uzbekistan under the Generalized System of Preferences (GSP) trade program be reviewed for its failure to provide adequate and effective copyright protection and enforcement for U.S. copyright owners, as required under the GSP. In February 2000, the administration announced that it accepted IIPA's petition for review of Armenia,

Kazakhstan, Moldova, Ukraine, and Uzbekistan. On May 12, 2000, the U.S. government held public hearings on the GSP petitions regarding these five countries. The U.S. government again held hearings with respect to Kazakhstan on October 7, 2003. The U.S. government has not yet decided whether to withdraw or to suspend GSP benefits in Kazakhstan. In 2002, \$166 million worth of Kazakhstan's imports to the United States benefited from the GSP program, accounting for 49.7% of its total exports to the U.S. During the first 11 months of 2003, \$147.9 million worth of Kazakh goods (or 42.2% of Kazakhstan's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, accounting for a 4.9% decrease from the previous year.

In 2001, IIPA recommended and USTR agreed to keep Kazakhstan on the Watch List. In its April 30, 2001 Special 301 Announcement, USTR noted that Kazakhstan "does not clearly provide retroactive protection for works or sound recordings under its copyright law. In addition there is weak enforcement of intellectual property rights in Kazakhstan." In 2002, IIPA recommended that Kazakhstan remain on the Watch List, noting, as with the other CIS countries, problems with legal reform and enforcement. USTR kept Kazakhstan on the Watch List in 2002, citing the remaining steps the country must take in order to fulfill its obligations under the 1992 U.S.-Kazakhstan Trade Agreement. The 2003 USTR Special 301 Announcement took a similar view and maintained Kazakhstan's status on the Watch List, pointing out their lack of full retroactive protection for works or sound recordings, weak enforcement, and potentially non-deterrent Criminal Code provisions with their very high burden of proof.

## KUWAIT

IIPA recommends that Kuwait be elevated to the Priority Watch List. See IIPA's 2004 Kuwait country report at <http://www.iipa.com/rbc/2004/2004SPEC301KUWAIT.pdf>. Kuwait has been on the Watch List since 2000. USTR first placed Kuwait on the Special 301 Special Mention list in 1995. In April 1996, USTR elevated Kuwait to the Watch List, where it remained through 1997, noting that Kuwait had been slow in adopting copyright legislation and that unauthorized duplication of software, particularly in government agencies, remained a major problem. In IIPA's 1998 Special 301 filing on Kuwait, IIPA recommended that USTR elevate Kuwait to the Priority Watch List because of growing losses due to piracy and the Kuwaiti government's continued failure to enact a copyright law. USTR agreed, stating that "the pace of work thus far has not been sufficient to complete the needed steps by January 1, 2000." Again in 1999, IIPA recommended that Kuwait remain on the Priority Watch List and that Kuwait be designated as a Priority Foreign Country if it failed to pass a new copyright law. USTR kept Kuwait on the Priority Watch List in 1999, agreeing to conduct a December out-of-cycle review to decide whether to designate Kuwait. As a result of the enactment of a new copyright law in December 1999, Kuwait averted being designated. In 2000, IIPA recommended keeping Kuwait on the Priority Watch List since the law passed was TRIPS-incompatible and the government took no enforcement actions. USTR decided to lower Kuwait to the Watch List in 2000 in recognition of passage of the copyright law. In 2001 through 2003, IIPA has never wavered in recommending that Kuwait be elevated to the Priority Watch List, since the 1999 law is TRIPS-deficient, enforcement efforts have never taken off, and piracy rates remain the highest in the region. USTR, while noting "continuing problems with copyright piracy" (2002) and that Kuwait needed "to pass long-promised amendments to Kuwait's 1999 Copyright Law, increase[e] the effectiveness of enforcement procedures, strengthe[n] an existing interagency process, and improve[e] judicial capacity to penalize present offenders and deter future ones" (2003) has kept Kuwait on the Watch List.

## KYRGYZ REPUBLIC

IIPA highlights copyright concerns in the Kyrgyz Republic in its Special Mention section this year. See IIPA's 2004 Kyrgyz Republic country report at <http://www.iipa.com/rbc/2004/2004SPEC301KYRGYZREPUBLIC.pdf>. The Kyrgyz Republic does not currently appear on any of the USTR lists. In 1995 and 1997, IIPA requested that the USTR add the

nations of the Commonwealth of Independent States (CIS) collectively, excluding the Russian Federation, to the Special 301 Watch List because almost none of the CIS countries had met their bilateral IPR obligations, piracy was rampant, enforcement inadequate, and copyright law reform urgently needed. In 2000, IIPA recommended that ten of the CIS countries be placed on the Special 301 Watch List (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, and Uzbekistan). In the May 30, 2000 Special 301 Announcement, USTR did not put the Kyrgyz Republic on any list. In the April 30, 2001 Special 301 Announcement, USTR noted that it would conduct an out-of-cycle review on the Kyrgyz Republic. On February 12, 2002, USTR announced the result of its out-of-cycle review of the Kyrgyz Republic. Though USTR decided not to place the Kyrgyz Republic on any list, it noted continued deficiencies in copyright protection and enforcement “such as the lack of ex officio authority. . . for customs and criminal authorities, as well as the lack of civil ex parte search and seizure procedures conducted without notice to the alleged infringers.” In 2002, IIPA recommended that the Kyrgyz Republic remain on the Watch List, noting, as with the other CIS countries, problems with legal reform and enforcement. The Kyrgyz Republic did not appear on any list in 2002.

In June 1999, IIPA filed a petition with USTR requesting that the country eligibility of Armenia, Belarus, Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, Ukraine, and Uzbekistan under the Generalized System of Preferences (GSP) trade program be reviewed for its failure to provide adequate and effective copyright protection and enforcement for U.S. copyright owners, as required under the GSP. In late 1999, the Kyrgyz Republic acceded to the World Trade Organization. In February 2000, the Administration announced that it accepted IIPA’s petition for review of Armenia, Kazakhstan, Moldova, Ukraine, and Uzbekistan and rejected the petition for review of the Kyrgyz Republic. In 2002, \$1 million in Kyrgyz imports to the United States benefited from the GSP program, accounting for 21.1% of its total exports to the U.S. During the first 11 months of 2003, \$780,568 of Kyrgyz goods (or 8.7% of the Kyrgyz Republic’s total exports to the U.S. from January to November) entered the U.S. under the GSP duty-free code, representing a 18.4% increase over the same period in 2002.

## LAOS

Laos has never appeared on a USTR list. In its 2003 submission, IIPA noted Laos as a Special Mention country, citing optical disc piracy concerns. This year in its Special Mention section (<http://www.iipa.com/rbc/2004/2004SPEC301LAOS.pdf>), IIPA highlights legislative and enforcement deficiencies, particularly the lack of an optical disc regulation, which, if passed, would help insulate Laos from potential migration of optical disc plants from neighboring countries.

## LATVIA

IIPA recommends that Latvia remain on the Watch List, where it has been since 2000. See IIPA’s 2004 Latvia country report at <http://www.iipa.com/rbc/2004/2004SPEC301LATVIA.pdf>. IIPA first filed a Special 301 report on Latvia in 2000, when we recommended that Latvia be added to the Watch List for serious deficiencies in the copyright law, criminal code and implementation of the new customs code. USTR accepted our recommendation, and placed Latvia on the Watch List for the first time in 2000. Latvia remained on the Watch List in 2001. In its April 30, 2001 Special 301 Announcement, USTR noted that “[l]arge volumes of pirated products are transshipped through Latvia from Russia and Ukraine.” Local enforcement is poor and “[l]egislation is needed to improve the ability of law enforcement and judicial authorities to combat this piracy, such as providing for adequate civil *ex parte* search remedies.” Again citing Latvia as a major transshipment point for large volumes of pirated products, USTR kept the country on the Watch List in 2002. The USTR 2003 Special 301 Announcement noted that there was some positive movement in 2002, including raids on sellers of pirated optical media. Latvia stayed on the Watch List, however, because of the continuing transshipments and the fact that “police, customs officials, prosecutors and judicial authorities have not placed sufficient emphasis on combating piracy.”

Latvia currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide “adequate and effective” copyright protection. In 2002, \$11.2 million worth of Latvia’s imports to the United States benefited from the GSP program, accounting for 5.8% of its total exports to the U.S. During the first 11 months of 2003, \$10.3 million worth of Latvian goods (or 2.8% of Latvia’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 0.7% decrease over the same period in the previous year.

## LEBANON

IIPA recommends that Lebanon remain on the Priority Watch List, where it has been since 2001. See IIPA’s 2004 Lebanon country report at <http://www.iipa.com/rbc/2004/2004SPEC301LEBANON.pdf>. Isolated from normal world trade patterns due to years of civil strife, Lebanon did not appear in IIPA reports until 1995, when IIPA first recommended placement on the Special Mention list because of its high levels of piracy and outmoded copyright law. IIPA’s 1996 filing recommended a Watch List placement, stressing pervasive TV piracy, an ineffective judicial system, and lack of any progress toward copyright and broadcast law reform. In 1997, IIPA recommended once again that Lebanon be placed on the Special 301 Watch List, noting a video market dominated by piracy, increasing book and software piracy, an immobilized copyright reform process, and backlogged and inefficient courts that continued to pose major impediments to effective enforcement of copyright infringement across the board.

In 1998, IIPA again called on USTR to place Lebanon on the Watch List for failure to pass a new copyright law, and for uncertainty over whether the law would include a Berne- and TRIPS-incompatible “compulsory license” on computer software. USTR agreed for the first time to place Lebanon in its Other Observations category, noting “widespread copyright piracy and an inadequate law,” and that “[u]nauthorized use of software is pervasive among private firms and government ministries.” USTR’s Ambassador Barshefsky called on the Lebanese government “to pass a TRIPS-consistent copyright law, to take effective measures to eliminate use of unauthorized copies of software in government offices, and [to] reduce the rate of video piracy.”

Lebanon was kept on the Watch List in 2000 largely because of the continued international deficiencies in the copyright law, pervasive piracy and inefficient enforcement against piracy. In the 2001 Special 301 submission, the IIPA recommended that Lebanon be elevated to the Priority Watch List due to a lack of enforcement against copyright piracy. USTR agreed, and elevated Lebanon to the Priority Watch List, citing continuing piracy problems, particularly cable piracy. In June of 2001, the IIPA filed a request for review of Lebanon’s GSP benefits for its failure to protect the intellectual property rights of U.S. copyright owners. USTR accepted this request on September 3, 2003, and the review remains ongoing. In 2002 and 2003, IIPA continued to recommend that Lebanon remain on the Priority Watch List (and in 2002, requested that USTR conduct an out-of-cycle review to ascertain whether sufficient progress was being made in the fight against cable piracy and pervasive retail piracy; USTR did not accept the recommendation for the OCR). USTR decided to keep Lebanon on the Priority Watch List in 2002, noting the country’s “severe copyright piracy problem and the lack of a comprehensive governmental commitment to eliminate piracy and foster legitimate business.” USTR also retained Lebanon on the Priority Watch List in 2003, noting that while “some raids of pirate stores and operations occurred in 2002, leading to the first sentencing of a software pirate,” otherwise there was very little progress; USTR also noted an “overly broad software exception for certain educational uses.”

On September 3, 2003, the United States Trade Representative “accepted for review” a Petition filed by the IIPA with the U.S. government as part of its “Country Eligibility Practices Review” of the Generalized System of Preferences (GSP) trade program. To qualify for benefits under the GSP Program, namely, duty-free imports of many important Lebanese products into the U.S., USTR must be satisfied that Lebanon meets certain discretionary criteria, including whether it provides “adequate and effective protection of intellectual property rights.” IIPA’s Petition noted three major deficiencies in Lebanon’s

protection of copyright that caused economic harm to U.S. right holders that result in Lebanon failing to meet the GSP standard of providing “adequate and effective” copyright protection in practice: (1) deficiencies in the copyright law in Lebanon that render legal protection inadequate and ineffective; (2) the failure to enforce criminal remedies against pirate cable TV operators, making protection of U.S. audiovisual works inadequate and ineffective; and (3) enforcement efforts against piracy in Lebanon that are inadequate and ineffective.

USTR, in its 2003 Special 301 decision in May, reiterated the concern of the U.S. government regarding “Lebanon’s severe copyright piracy problem and the lack of a comprehensive government commitment to eliminate piracy and foster legitimate business.” The decision continues:

Despite the entry into force in 1999 of a new copyright law, there has been little action by Lebanon against piracy. Some raids of pirate store and operations occurred in 2002, leading to the first sentencing of a software pirate and financial penalties in other cases. However, pervasive cable piracy continues to undermine legitimate theatrical, video, and television service providers. Overall Lebanon had made little progress in 2002 in addressing its significant IPR deficiencies. The United States urges the Lebanese Government to press forward with its recent proposal to draft a law regulating the cable television industry and to mount an aggressive campaign against pirates. End-user piracy of computer software is widespread among large companies, banks, trading companies, and most government ministries. Also troubling is an overly broad software exception for certain educational uses in the new copyright law that seriously undermines the viability of this market for legitimate products. Book piracy also remains a serious problem...A committed and vigorous program to enforcement intellectual property rights, particularly copyright protection, is essential to the success of the Lebanese Government’s efforts to reform its economy, increase trade and foreign direct investment and prepare for accession to the WTO.

If Lebanon does not take concrete steps toward eradicating piracy in 2004, its trade benefits under GSP could be suspended. During the first 11 months of 2003, Lebanon imported almost \$28.2 million of products into the United States without duty, or almost 33.6% of its total imports into the U.S.<sup>1</sup>

## LITHUANIA

IIPA recommends that Lithuania stay on the Watch List, where it has been since 2000. See IIPA’s 2004 Lithuania country report at <http://www.iipa.com/rbc/2004/2004SPEC301LITHUANIA.pdf>. IIPA first filed a Special 301 report on Lithuania in 2000, when we recommended that Lithuania be added to the Watch List because of serious concerns over copyright enforcement at all levels, including criminal, civil, administrative and border measures. USTR agreed, and Lithuania was placed on the Special 301 Watch List for the first time in 2000. In the 2001 Special 301 submission, the IIPA recommended that Lithuania be added to the Priority Watch List due to a lack of on-the-ground enforcement and exploitation of this weakness by pirates to the detriment of other markets in Latvia, Estonia, and Poland, for example. In the April 30, 2001 Special 301 Announcement, USTR placed Lithuania on the Watch List and announced that it would conduct an out-of-cycle review “to assess Lithuania’s enforcement efforts.” On October 31, 2001 USTR announced the outcome of its out-of-cycle review of Lithuania. USTR kept Lithuania on the Watch List “because of serious on-the-ground enforcement failures.” In 2002, IIPA recommended that Lithuania remain on the Watch List, noting the continued lack of effective enforcement and high piracy rates. In its April 30, 2002 Special 301 Announcement, USTR kept Lithuania on the Watch List, citing the country’s weak enforcement, position as a major transshipment point, that “the country remains flooded with pirated

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<sup>1</sup> During 2002, Lebanon imported almost \$22.7 million of products into the United States without duty, or almost 37.7% of its total imports into the U.S.

copyright materials, including large volumes of optical media products.” The USTR 2003 Special 301 Announcement also cites the transshipment problem, and noted that the lack of adequate and effective enforcement continues to be the most persistent IPR problem in Lithuania, and kept it on the Watch List in 2003.

Lithuania currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide “adequate and effective means under its laws for foreign nations to secure, to exercise, and to enforce exclusive rights in intellectual property, including . . . copyrights.” In 2002, \$4.3 million worth of Lithuania’s imports to the United States benefited from the GSP program, accounting for 1.4% of its total exports to the U.S. During the first 11 months of 2003, \$5.5 million worth of Lithuanian goods (or 1.6% of Lithuania’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 52.4% increase from the same period in 2002.

## MACAU

Macau does not currently appear on any of the USTR lists. Macau did not appear on a Special 301 list until 1998. IIPA’s 1998 filing described it as one of the world’s leading sources of digital copyright piracy for export, thanks to a proliferation of pirate optical media production facilities, and recommended placement on the Priority Watch List. USTR agreed, citing an “explosion of illegal CD, CD-ROM and VCD manufacturing,” and calling for better copyright enforcement and implementation of import and export licensing of optical media production equipment and finished product. Macau remained on the Priority Watch List in 1999. In May 2000, in recognition of what USTR described as “reasonable progress in attacking the piracy problems that led to its placement on the Special 301 Priority Watch List,” Macau was lowered to the Watch List and USTR added an out-of-cycle review. In December 2000, USTR announced that Macau would remain on the Watch List, despite concerns that the “enforcement of the strong new intellectual property laws is not as vigorous as it needs to be.” In the 2001 Special 301 submission, the IIPA recommended that Macau be kept on the Watch List and an out-of-cycle review (OCR) be conducted “to evaluate Macau’s enforcement progress.” In its April 30, 2001 Special 301 Announcement, USTR kept Macau on the Watch List, noting a concern with “Macau’s failure to convict and sentence manufacturers of infringing intellectual property products.” Macau was removed from the Watch List in April 2002.

## MALAYSIA

IIPA recommends that Malaysia remain on the Watch List (where it has remained since 2002), and that an out-of-cycle review (OCR) be conducted. See IIPA’s 2004 Malaysia country report at <http://www.iipa.com/rbc/2004/2004SPEC301MALAYSIA.pdf>. IIPA first identified Malaysia in 1985 as a country with a serious piracy problem, and supported the bilateral negotiations that led to Malaysia’s adopting a comprehensive copyright law in 1987, and joining the Berne Convention in 1990, thus extending protection to U.S. works. In 1994, IIPA filed a “Special Comment” on Malaysia calling for judicial reforms so that deterrent sentences could be imposed on copyright pirates. In 1999, IIPA filed an “Open Recommendation” report on Malaysia focusing on optical media piracy and calling for the adoption and implementation of a comprehensive regulatory system for the import, export and operation of optical media production equipment and materials; sustained and consistent anti-piracy enforcement policies; and the prompt and consistent imposition of deterrent penalties on commercial pirates by Malaysian courts. In the April 30, 1999 Special 301 Announcement, USTR announced that an out-of-cycle review (OCR) of Malaysia would be conducted in September 1999. As a result of the OCR, USTR announced in December 1999 that Malaysia would not appear on any Special 301 lists but would be monitored for both TRIPS compliance and the passage of a comprehensive optical disc law. Because Malaysia was slow to

enact and implement legislation to deal with the optical disc piracy problem, USTR placed Malaysia on the Priority Watch List in 2000.

In 2001, IIPA recommended and USTR agreed to keep Malaysia on the Priority Watch List, and USTR also decided to conduct an out-of-cycle review (OCR) to assess Malaysia's enforcement efforts and implementation of its new Optical Disc Act. On October 31, 2001, USTR kept Malaysia on the Priority Watch List as a result of the out-of-cycle review. In 2002, IIPA recommended that Malaysia be lowered to the Watch List, but provided a series of target actions the government needed to take to sustain progress achieved in 2001; IIPA also recommended that USTR conduct an out-of-cycle review to re-examine Malaysia's 301 status based on the degree of fulfillment of the target actions. USTR placed Malaysia on the Watch List in 2002, citing that country's serious optical media piracy problem, and stating, "there is concern that Malaysia has not established a climate of deterrence." USTR continued: "[w]ithout criminal prosecutions and the imposition of serious criminal sentences, there is no true deterrence to piracy in Malaysia." In 2003, IIPA recommended that Malaysia be retained on the Watch List, and that an out-of-cycle review be conducted, noting "lack of deterrent sentencing results in organized criminals remaining free to produce and export product with impunity around the globe." The USTR 2003 Special 301 Announcement, keeping Malaysia on the Watch List in 2003, noted that "[p]rosecution is a weak link, and the judicial process remains slow," while also noting that the Malaysian government intensified anti-piracy efforts in 2002, leading to closures of some unlicensed manufacturers of optical discs.

## **MEXICO**

For the last few years, the U.S. and Mexican governments have engaged in a series of periodic bilateral meetings to engage on intellectual property rights issues ranging from criminal enforcement (raids and prosecutions), administrative enforcement, judicial reform, tax inspections, border enforcement, governmental legalization of business software, and further copyright law reform efforts, and related IPR matters. High-level government engagement, by both governments, on copyright matters is required, and IIPA requested such in public letters sent to the U.S. government in March 2002 and April 2003.

Mexico did not appear on any Special 301 lists since 1999. In 1998 and 1999, IIPA urged that Mexico be placed on the Priority Watch List but the U.S., against the recommendations of USTR, kept Mexico on the Other Observations list despite Mexico's failure to resolve any of the identified problems. In 1999, Mexico was finally placed on the Watch List. In its April 30, 1999 announcement, USTR noted that "piracy and counterfeiting remain problems [despite Mexico's commitment] to implement and enforce high levels of intellectual property protection consistent with its international obligations." In its April 30, 2002 Special 301 Announcement, USTR did not place Mexico on any list, but did state that it would conduct an out-of-cycle review (OCR) "to assess where there has been an improvement in enforcement efforts . . . specifically whether raids against intellectual property piracy operations have led to prosecutions and convictions." In its 2003 Special 301 Announcement, USTR decided to add Mexico to the Watch List, citing "lax enforcement against copyright and piracy and trademark counterfeiting," difficulties for foreign firms attempting to enforce trademark rights in Mexico, the failure of raids to leads to prosecutions and convictions and copyright amendments that do not meet international obligations.

## **MOLDOVA**

IIPA highlights copyright concerns in Moldova in its Special Mention section this year. See IIPA's 2004 Moldova country report at <http://www.iipa.com/rbc/2004/2004SPEC301MOLDOVA.pdf>. Moldova does not currently appear on any of the USTR lists. In 1995 and 1997, IIPA requested that USTR add the nations of the Commonwealth of Independent States (CIS) collectively, excluding the Russian Federation, to the Special 301 Watch List because nearly all of the CIS countries had failed to meet their bilateral IPR obligations, piracy was rampant, enforcement inadequate, and copyright law reform urgently needed. In 2000, IIPA recommended that ten of the CIS countries be placed on the Special 301 Watch List

(Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, and Uzbekistan). In the May 30, 2000 Special 301 Watch List, USTR placed seven CIS countries on the Special 301 Watch List, including Moldova. Though IIPA recommended that it be placed on the Watch List in 2002, Moldova has not appeared on any list since 2000.

In June 1999, IIPA filed a petition with USTR requesting that the country eligibility of Armenia, Belarus, Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, Ukraine, and Uzbekistan under the Generalized System of Preferences (GSP) trade program be reviewed for its failure to provide adequate and effective copyright protection and enforcement for U.S. copyright owners, as required under the GSP. In February 2000, the administration announced that it accepted IIPA's petition for review of Armenia, Kazakhstan, Moldova, Ukraine, and Uzbekistan. On May 12, 2000, the U.S. government held public hearings on the GSP petitions regarding these five countries. On October 23, 2000, the IIPA requested that its petition on Moldova be withdrawn, as a result of cooperation with that government on legal reforms following the filing of the petition. The U.S. government accepted that action and the GSP review of Moldova ended. In 2002, \$100,773 worth of Moldavian imports to the United States benefited from the GSP program, representing 0.3% of its total exports to the U.S. During the first 11 months of 2003, \$439,402 worth of Moldavian goods (or 1.1% of Moldova's total exports to the U.S. from January to November) entered the U.S. under the GSP duty-free code, representing a increase of 336% over the same period in 2002.

## **NEW ZEALAND**

New Zealand does not currently appear on any of the USTR lists. New Zealand appeared on the Special 301 Watch List in 1991 and 1992. In 1998, at the urging of IIPA, USTR initiated an out-of-cycle review in response to New Zealand's sudden decision to abolish the right to control unauthorized ("parallel") imports for all copyright owners. This erosion of intellectual property protection, combined with what USTR described as an "enforcement regime [that] does not effectively deter piracy," led USTR to follow IIPA's 1999 recommendation and place New Zealand on the 1999 Watch List. New Zealand did not appear on any Special 301 lists in 2000. In the April 30, 2001 Special 301 Announcement, USTR noted it had placed New Zealand on the Watch List for a failure to introduce promised legislation banning parallel imports on "newly-released copyright products." By the time USTR made its designations for 2002, New Zealand had still not introduced this legislation. Therefore, in the April 30, 2002 Special 301 Announcement, USTR kept New Zealand on the Watch List.

## **NICARAGUA**

Nicaragua does not currently appear on any of the USTR lists. In April 1997, USTR added Nicaragua to the Special 301 Other Observations list. In January 1998, Nicaragua and the U.S. signed a bilateral intellectual property rights agreement obligating Nicaragua to provide a higher level of protection than the TRIPS Agreement by July 1999. In her May 1, 1998 announcement keeping Nicaragua on the Other Observations list, Ambassador Barshefsky noted, "piracy of video recordings, unauthorized video and sound recordings, and U.S. satellite signals by local cable television operators remains widespread. The copyright law does not explicitly protect computer software. . . . We look to Nicaragua to update its legal structure, to reduce piracy rates affecting all forms of intellectual property, and to bring its IP regime into compliance with the obligations of the IPR agreement quickly." Nicaragua has not appeared on a 301 list since 1998.

As a beneficiary country of the Caribbean Basin Initiative, Nicaragua must provide "adequate and effective means under its laws for foreign nations to secure, to exercise, and to enforce exclusive rights in intellectual property, including . . . copyrights." In 2002, \$85.1 million worth of Nicaraguan imports to the United States benefited from the CBI program, accounting for 12.6% of its total exports to the U.S. During the first 11 months of 2003, \$84.8 million worth of Nicaraguan goods entered the U.S. under the CBI,

representing a 9.7% increase from the same period last year. Nicaragua also receives benefits under the Caribbean Basin Trade Partnership Act, which contains very high levels of IPR obligations. In 2002, \$127.7 million worth of Nicaraguan goods benefited from the CBTPA program, accounting for 18.9% of Nicaragua's total exports to the U.S. During the first 11 months of 2003, \$135.2 million worth of Nicaraguan goods benefited from the CBTPA program.

## OMAN

Oman does not currently appear on any of the USTR lists. IIPA reported on Oman for the first time in 1995, urging that Oman be placed on the Special Mention list (equivalent to USTR's Other Observations category) because it had no copyright law and was a potential haven for piracy in the Persian Gulf region. USTR agreed, and thereafter raised Oman to the Watch List in 1996, describing the country's intellectual property protection regime as "minimal and stagnant." In 1997, USTR decided to keep Oman on the Watch List, noting that efforts to modernize Oman's copyright law were "progressing slowly."

In 1998 and 1999, IIPA recommended that Oman be kept on the Watch List, as Oman's market was "dominated by piracy," and was "a haven for pirates fleeing less hospitable neighboring states," and in 2000, IIPA recommended keeping Oman on the Watch List primarily for failure to stop piracy of business software. USTR agreed all three years. On May 21, 2000, Oman enacted copyright legislation as one of the final pieces in Oman's WTO accession process (Oman joined the WTO in November 2000). In the 2001 Special 301 submission, the IIPA recommended that Oman be placed on the Watch List, to ensure the market would be cleaned up, and encourage enforcement against corporate end-user piracy of business software. USTR decided to remove Oman from the Watch List, and they remained off the list in 2002 (IIPA did not file a report on Oman in 2002).

Oman currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide "adequate and effective protection of intellectual property rights." In 2002, \$30.2 million worth of Oman's imports to the United States benefited from the GSP program, accounting for 7.8% of its total exports to the U.S. During the first 11 months of 2003, \$37.3 million worth of Oman's goods (or 6.5% of Oman's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing an increase of 38.6% from the same period in 2002.

## PAKISTAN

IIPA recommends that Pakistan be designated as a Priority Foreign Country. See IIPA's 2004 Pakistan country report at <http://www.iipa.com/rbc/2004/2004SPEC301PAKISTAN.pdf>. Pakistan has been on the Special 301 Watch List since 1989. In 1997 and 1998, USTR kept Pakistan on the Watch List, noting that piracy of computer software, videos, and books remained widespread. In 1999, IIPA recommended that Pakistan remain on the Watch List, and noted for the first time the sudden arrival of CD manufacturing capability. USTR kept Pakistan on the Watch List, noting the CD plants and Pakistan's TRIPS-incompatible law.

In 2000, IIPA recommended, and USTR agreed, to keep Pakistan on the Watch List, again noting the increasing pirate CD production problem. In 2001, IIPA recommended and again USTR agreed to keep Pakistan on the Watch List. In the April 30, 2001 Special 301 Announcement, USTR noted that despite new legislation, "[t]he sharp growth in optical media piracy, however, offsets the promising developments in legal infrastructure." In June of 2001, the IIPA filed a request for review of Pakistan's GSP benefits for its failure to protect the intellectual property rights of U.S. copyright owners. IIPA's petition remains pending. In 2002 and again in 2003, IIPA recommended that Pakistan be elevated to the Priority Watch List, noting the alarming rise of pirate optical disc production. USTR, in keeping Pakistan on the Watch

List both years, recognized Pakistan's position as "one of the world's largest exporters of pirate CDs and optical media" (2002). USTR's 2003 Special 301 Announcement described Pakistan as the "fourth largest source of counterfeit and piratical goods seized by the U.S. Customs Service" in 2002, and notes again the substantial increase in optical media production in 2002.

Pakistan currently participates in the U.S. GSP program offering duty-free imports of certain products into the U.S. from developing countries. In order to qualify for such unilaterally granted trade preferences, USTR must be satisfied that Pakistan meets certain discretionary criteria, including whether it provides "adequate and effective protection of intellectual property rights." At the same time as Pakistan caused losses to the U.S. due to piracy and kept its law in violation of international treaty obligations, Pakistan imported \$89.9 million worth of products into the United States without duty in 2002 (3.9% of its total exports to the U.S.), and \$84.6 million worth of products (or 3.6% of Pakistan's total exports to the U.S. from January to November) into the United States without duty during the first 11 months of 2003.

## **PALESTINIAN AUTHORITY**

The Palestinian Authority does not currently appear on any of the USTR lists. IIPA filed its first Special 301 comments on the Palestinian Authority in 1999, over concerns about the rapid growth of optical media and video piracy in the West Bank and Gaza Strip. IIPA recommended that USTR signal its engagement with the Palestinian Authority by placing it on the Watch List. In addition to recommending a Watch List designation in 1999, IIPA also recommended that USTR conduct an out-of-cycle review (OCR) to monitor the anti-piracy and legal measures undertaken by the Authority. The Palestinian Authority did not appear on any Special 301 lists in 1999. In 2000, raising increasing concerns over pirate production for export, IIPA recommended that the Palestinian Authority be placed on the Priority Watch List. On May 1, 2000, USTR announced that it would conduct an OCR of the Palestinian Authority. The scheduled review has not yet occurred, due to unrest in the area. In 2001, noting continuing unrest, the IIPA recommended that USTR conduct an OCR of the area when conditions permit. USTR did not place the Palestinian Authority on any list in 2001 or 2002.

The West Bank currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country/territory provides "adequate and effective protection of intellectual property rights." In 2002, \$142,124 of products imported from the West Bank benefited from the GSP program, representing 54.8% of the Palestinian Authority's total exports to the U.S. During the first 11 months of 2003, \$254,551 of products (or 59.2% of the Palestinian Authority's total exports to the U.S. from January to November) imported from the West Bank benefited from the GSP program, representing a 90.4% increase over the same period in 2002.

## **PANAMA**

Panama does not currently appear on any of the USTR lists. Panama was placed on the Special 301 Special Mention list (now known as Other Observations) in 1994 and again in 1996. In October 1996, USTR initiated a review of Panama's intellectual property rights regime under the Generalized System of Preference (GSP) program. IIPA participated in the GSP hearings in November 1996, during which the Panamanian government acknowledged that its system for protecting intellectual property had not been fully implemented, although some enforcement actions were beginning to be taken. On April 30, 1997, USTR elevated Panama to the Watch List and scheduled an out-of-cycle review (OCR) to assess Panama's efforts to "improv[e] its intellectual property laws and their enforcement." As a result of this out-of-cycle review in October 1997, USTR decided to remove Panama from the Watch List, given "visible progress" made since its placement on that list. In 1998, Panama was elevated to the Other Observations list amid USTR's concerns that "inadequate enforcement continues to be a major problem." Because of

progress made in Panama during that year, USTR terminated the GSP review on October 26, 1998. Panama has not appeared on any Special 301 list since 1998.

In 2002, \$2.5 million worth of Panamanian imports to the United States benefited from the GSP program, accounting for 0.8% of its total exports to the U.S. During the first 11 months of 2003, \$4.9 million worth of Panamanian goods (or 1.9% of Panama's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 142.2% increase from the same period in the previous year. Under the Caribbean Basin Initiative (CBI), which has similar IPR criteria, \$37.7 million worth of Panamanian goods entered the U.S., accounting for 12.8% of total exports to the U.S. in 2002. During the first 11 months of 2003, \$32 million worth of Panamanian goods (or 12.2% of Panama's total exports to the U.S. from January to November) entered under the CBI, representing a 11.5% decrease over the same period in the previous year. Under the Caribbean Basin Trade Partnership Act (CBTPA), which has IPR criteria similar to CBI and GSP, \$3.9 million worth of Panamanian goods entered the U.S. in 2002. During the first 11 months of 2003, \$3.5 million worth of Panamanian goods (or 1.3% of Panama's total exports to the U.S. from January to November) entered the U.S. under the CBTPA.

## PARAGUAY

IIPA recommends that Paraguay continue to be subject to Section 306 monitoring, where it has been on the USTR 301 lists since 1999. See IIPA's 2004 Paraguay country report at <http://www.iipa.com/rbc/2004/2004SPEC301PARAGUAY.pdf>. The bilateral history of engagement between the U.S. and Paraguay has been a lengthy and intricate one. In 1992, IIPA reported that Paraguay was the central point for the production, export, and transshipment of pirate audiocassettes throughout South America. By that time, the recording industry had already spent several years working to improve the on-the-ground enforcement situation in Paraguay. In April 1992, USTR placed Paraguay on the Watch List. In early 1993, Paraguayan officials made a political commitment to end the widespread piracy of sound recordings. By April 1993, because Paraguay had substantially reduced the level of piracy of sound recordings and music, Ambassador Kantor removed Paraguay from the Watch List. In early 1994, despite some positive enforcement efforts made by Paraguayan authorities, the recording industry reported a recurrence of the pre-1993 problems involving the export of pirated product at the Brazilian border. In 1994 and 1995, USTR kept Paraguay on the Special Mention list, despite industry recommendations to elevate back to the Watch List. In 1996, IIPA recommended a Priority Watch List placement because of increasing piracy problems in Paraguay, especially at the border. USTR elevated Paraguay to the Watch List on April 30, 1996. During an out-of-cycle review (OCR) in October 1996, USTR kept Paraguay on the Special 301 Watch List, noting "the Government of Paraguay must take strong, coordinated, government-wide action to institute effective enforcement systems."

In early 1997, IIPA recommended that USTR designate Paraguay as a Priority Foreign Country because of the longstanding problems of piracy, ineffective enforcement and an inadequate copyright law. In April 1997, USTR elevated Paraguay to the Priority Watch List, noting that "despite efforts of concerned government officials, piracy and counterfeiting in Paraguay have reached alarming levels and much more needs to be done." In late 1997, USTR conducted an OCR of Paraguay's Special 301 status. Because Paraguay simply failed to meet the standards laid out in that review, USTR designated Paraguay as a Priority Foreign Country on January 16, 1998. A Section 301 investigation commenced on February 17, 1998. During the investigation, U.S. and Paraguayan officials met several times for consultations. The U.S. had hoped for dramatic progress in many areas by July 1998, but this did not happen. Some accomplishments were achieved, however. On April 23, 1998, the Attorney General (Fiscal General) issued a circular to his prosecutors, urging them to apply the maximum penalties in cases of piracy, and requesting that they report on pending IPR proceedings. While this is a useful instruction, no copyright cases have reached the sentencing stage in Paraguay.

On November 17, 1998, USTR announced that a comprehensive bilateral intellectual property agreement with Paraguay was concluded which "will significantly improve intellectual property protection for

copyrights, patents and trademarks and ensure continued progress in the fight against piracy and counterfeiting in Paraguay.” By signing the Memorandum of Understanding and Enforcement Action Plan, USTR decided not to take further trade action at that time and terminated both the Section 301 investigation as well as its review of Paraguay’s IPR practices under the Generalized System of Preference, which had commenced in October 1996 as part of the 1995 GSP Annual Review. In IIPA’s 1999 and 2000 Special 301 filings, IIPA supported USTR’s continued Section 306 monitoring despite concerns that Paraguay had already missed most of the interim deadlines of the November 1998 MOU/Action Plan, and that Paraguayan courts had not yet issued a sentence in a copyright infringement case.

In 2001, IIPA continued to support USTR’s Section 306 monitoring of Paraguay. USTR’s April 30, 2001 Special 301 Announcement noted inadequate implementation of the MOU and that “Paraguay continues to be a regional center for piracy and counterfeiting and a transshipment point to the larger markets bordering Paraguay, particularly Brazil, where the sales of pirated copyright products in optical media and other formats have been of particular concern.” In 2002, IIPA recommended that Paraguay remain subject to Section 306 monitoring. USTR agreed, noting in its April 30, 2002 announcement Paraguay’s failure “to implement vigorous border enforcement measure, as agreed to in the MOU,” and that “pirate optical media production has been dispersed to smaller enterprises, in order to evade law enforcement efforts.” Paraguay remained subject to Section 306 monitoring in 2002. The Memorandum of Understanding expired in January 2003, but USTR and Paraguay have agreed to extend its provisions until it can be renegotiated. The 2003 USTR Special 301 Announcement notes the lack of improvement in Paraguay, including “poor internal enforcement and weak border enforcement.” Paraguay therefore continues to be subject to Section 306 monitoring in 2003. In December 2003, a second IPR MOU was signed by both governments.

Paraguay currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide “adequate and effective protection of intellectual property rights.” In 2002, \$12.2 million worth of Paraguayan imports to the United States benefited from the GSP program, accounting for 28.8% of its total exports to the U.S. During the first 11 months of 2003, \$14.4 million worth of Paraguayan goods (or 31.4% of Paraguay’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP program, representing a 25.7% increase from the same period last year.

## **PEOPLE’S REPUBLIC OF CHINA**

IIPA recommends that China continue to be subject to Section 306 monitoring, as it has been since 1997. See IIPA’s 2004 People’s Republic of China country report at <http://www.iipa.com/rbc/2004/2004SPEC301CHINA.pdf>. After USTR placed China on the Priority Watch List in both 1989 and 1990 to encourage it to commence a law reform process, China passed a new copyright law in September 1990 (effective June 1, 1991). That law was incompatible with the Berne Convention and had numerous other defects, and as a result of these inadequacies as well as high and growing losses due to copyright piracy, USTR named China a Priority Foreign Country in April 1991. In January 1992, China and the U.S. settled the resulting Section 301 action by entering into a Memorandum of Understanding (MOU). This MOU committed China to adopt Berne-compatible regulations to its copyright law and to join the Berne Convention (which China did, effective October 15, 1992) and the Geneva Phonograms Convention (which it also did, effective June 1, 1993). U.S. works became fully eligible for protection in April 1992 under the 1992 MOU, and China was consequently placed on the Watch List in April 1992.

On September 30, 1992, China’s Berne-compatible regulations went into effect (but only applied to foreign works, leaving domestic Chinese copyright and related rights owners with less protection for their works, performances and sound recordings than that enjoyed by foreign right holders). China remained

on the Watch List in 1993, with IIPA and USTR pushing for passage of legislation to make copyright piracy a criminal offense, as well as to beef up enforcement measures. On November 30, 1993, Ambassador Kantor elevated China to the Priority Watch List due to China's failure to enforce its laws. In February 1994, IIPA reported significantly increased trade losses, up to \$823 million for 1993. Due to the absence of criminal penalties and a total lack of enforcement, USTR once again named China as a Priority Foreign Country in June 1994, though the National People's Congress, through a "Decision" of the Standing Committee, adopted criminal penalties for copyright piracy in July 1994. It was not until 1995 that the "Decision" was implemented by a set of "Interpretations" issued by the Supreme People's Court. However, because the "Decision" appeared not to have the full effect of a "Law" (which was not adopted until March 1997, effective October 1997), the criminal provisions were rarely used and deterrence suffered accordingly. Meanwhile, U.S. trade losses continued to mount. On February 4, 1995, the U.S. government announced \$1.08 billion in retaliatory tariffs to compensate for trade losses due to copyright piracy in China. Imposition of these tariffs was narrowly averted by the U.S.-China IPR Agreement on February 26, 1995. As a result of this agreement, the second Section 301 case against China was terminated, China was made subject to monitoring under Section 306, and, on April 30, 1995, USTR moved China to the Watch List.

While some progress was made during 1995 to set up the enforcement infrastructure promised in the 1995 agreement, its principal provisions (those dealing with CD factories, with imposing deterrent penalties and with eliminating onerous market access barriers) remained largely unfulfilled. This led IIPA, in February 1996, once again to urge that China be named a Priority Foreign Country and that the previously terminated Special 301 investigation be reopened. USTR took these actions on April 30, 1996 and a retaliation list, comprising over \$2 billion worth of products, was published on May 15, 1996. This was followed by protracted and often heated discussions, which led to the closure of 15 CD factories, other enforcement actions by Chinese authorities, and the announcement of certain market-opening measures. Finally, on June 17, 1996, the U.S. and China agreed on a set of announcements which averted the imposition of trade sanctions, and which led to the Section 301 action once more being terminated. This left China subject to monitoring of its compliance with the 1995 and 1996 agreements under Section 306 of the U.S. Trade Act as it remains today. The U.S. government, led by USTR, has continued since then to meet regularly with Chinese authorities to monitor compliance with China's agreements. In 2001, China amended its copyright law and joined the World Trade Organization, stating it would implement its obligations under the TRIPS Agreement, from the time of its joining the WTO.

Since 1998, IIPA has continued to recommend, and USTR has agreed, that China continue to be subject to Section 306 monitoring to ensure its compliance with the 1995 IPR Agreement and the 1996 Action Plan.

## PERU

IIPA recommends that Peru remain on the Watch List, where it has been since 2001. See IIPA's 2004 Peru country report at <http://www.iipa.com/rbc/2004/2004SPEC301PERU.pdf>. USTR first placed Peru on the Special 301 Watch List in 1992, where it remained for seven years. In February 1995, IIPA was greatly concerned about the inadequate copyright law and poor enforcement efforts in Peru and filed a petition to deny preferential trade benefits under both the Generalized System of Preferences (GSP) program and the Andean Trade Preferences Act (ATPA). Peru amended its copyright law in 1996 and established an administrative agency to handle copyright enforcement. As a result of such progress, these petitions were not accepted by USTR. USTR's April 1996 Special 301 Announcement noted that some progress had been taken by INDECOPI (a quasi-governmental agency), but urged the government "to intensify its anti-piracy efforts, particularly to combat sound recordings and book piracy." USTR kept Peru on the Watch List in both 1997 and 1998. In both 1999 and 2000, IIPA recommended, and USTR agreed, that Peru should be elevated to the Priority Watch List.

In 2001, IIPA recommended that Peru be put on the Watch List in recognition of noticeable progress INDECOPI has made on copyright issues. USTR agreed, placing Peru on the Watch List for 2001. In the April 30, 2001 Special 301 Announcement, USTR noted that “the government of Peru took several positive steps in cooperating with U.S. industry on intellectual property protection.” The announcement points out that “[d]espite these efforts, however, criminal enforcement remains a problem.” In 2002, IIPA recommended that USTR keep Peru on the Watch List, noting high piracy levels, weak enforcement, and a failure to require government agencies to use licensed software. Peru remained on the Watch List. USTR’s 2003 Special 301 Announcement noted that Peru “took some steps to destroy pirated and counterfeit products” in 2002, but “piracy rates for all copyright industries remained high, in particular for sound recordings.” Lack of prosecutions and deterrent sentences remain serious problems, so Peru remained on the Watch List in 2003.

Peru currently participates in both the Generalized System of Preferences (GSP) program and the Andean Trade Preferences Act (ATPA), U.S. trade programs that offer preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of these programs is that the country provide “adequate and effective protection of intellectual property rights.” In 2002, \$165.5 million worth of Peru’s imports to the United States benefited from the GSP program, accounting for 8.5% of its total exports to the U.S. During the first 11 months of 2003, \$100.3 million worth of Peruvian goods (or 4.7% of Peru’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing an decrease of 36% over the same period in 2002. An additional \$381.8 million worth of Peruvian products benefited from the ATPA in 2002, accounting for 19.6% of total exports to the United States. In the first 11 months of 2003, an additional \$1.1 billion worth of Peruvian goods entered the U.S. under ATPA, representing a 271% increase in ATPA benefits from the same period in 2002.

## PHILIPPINES

IIPA recommends that the Philippines remain on the Priority Watch List, where it has been situated since 2001, and that an out-of-cycle review (OCR) be conducted. See IIPA’s 2004 Philippines country report at <http://www.iipa.com/rbc/2004/2004SPEC301PHILIPPINES.pdf>. The Philippines has been on USTR’s list for well over a decade, and IIPA has a long history of involvement with copyright issues there. In 1992 and 1993, IIPA recommended that USTR identify the Philippines as a Priority Foreign Country, given the almost complete lack of attention by the Philippine government toward enacting copyright reform and improving enforcement. In 1992, USTR elevated the Philippines from the Watch List to the Priority Watch List. On April 6, 1993, the Philippine government exchanged letters with the U.S. government, committing the Philippines to provide strong intellectual property rights protection and improved enforcement. As a result of that agreement, USTR dropped the Philippines from the Priority Watch List to the Watch List in 1993.

In June 1997, the Philippines enacted a comprehensive modernization of its copyright law (effective January 1, 1998). In 1998, IIPA, asking USTR to keep the Philippines on the Watch List, commended the government on the law, but noted ongoing problems with enforcement and the need to clarify omissions and ambiguities in the new law. USTR agreed to keep the Philippines on the Watch List in 1998 and 1999. In 2000, IIPA called for the Philippines to be elevated to the Priority Watch List, noting that optical disc pirate production had taken root in the country and that fundamental improvements in the investigative, prosecutorial and judicial systems were needed. In its May 1, 2000 Special 301 Announcement, USTR maintained the Philippines on the Watch List, but also noted the possible initiation of a future WTO dispute settlement case against the Philippines for noncompliance with TRIPS obligations.

Noting increased pirate production and cross-border distribution, the IIPA recommended in 2001 that the Philippines be placed on the Priority Watch List “to underscore U.S. insistence that these long-standing and serious problems be effectively tackled.” USTR agreed and placed the Philippines on the Priority Watch List in 2001. In the April 30, 2001 Special 301 Announcement, USTR noted concern that “the

Philippines has the potential of becoming a center of pirate optical media production in Asia.” In 2002, IIPA recommended, and USTR agreed, to keep the Philippines on the Priority Watch List and conduct an out-of-cycle review (OCR) due to rampant pirate optical disc production and to review whether the Philippines had passed and implemented an optical disc law. In 2003, IIPA recommended, and USTR agreed, to keep the Philippines on the Priority Watch List. The 2003 USTR Special 301 Announcement noted that optical media piracy had increased to the point where the Philippines was a net exporter of pirated optical media.

The Philippines currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide “adequate and effective protection of intellectual property rights.” In 2002, \$707.7 million worth of Philippine imports to the United States benefited from the GSP program, accounting for 6.5% of its total exports to the U.S. During the first 11 months of 2003, \$824.8 million worth of Philippine goods (or 8.9% of the Philippines’ total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing an increase of 27.7% from the same period in 2002.

## **POLAND**

IIPA recommends that Poland remain on the Priority Watch List and that an out-of-cycle review (OCR) be conducted later in 2004. See IIPA’s 2004 Poland country report at <http://www.iipa.com/rbc/2004/2004SPEC301POLAND.pdf>. To recap Poland’s Special 301 placement in recent years, in its May 1, 2000 Special 301 Announcement, USTR elevated Poland to the Priority Watch List, from the Watch List where it had been listed since 1994, for its failure to bring its copyright regime in line with TRIPS obligations and Business Economic Relations Agreement, and noted the possibility of the initiation of a TRIPS case against Poland. In June 2000, Poland finally enacted TRIPS-compliant amendments to the copyright law. USTR responded by moving Poland to the Watch List in a November out-of-cycle review, noting that “it is critical that Poland also addresses remaining intellectual property problems, including weak enforcement against piracy and counterfeiting.” In 2001, IIPA recommended that Poland remain on the Watch List, but that USTR conduct an out-of-cycle review “to ensure that progress continues in Poland on both enforcement and legislative reform.” IIPA recommended that the out-of-cycle review “focus on distinct and tangible improvements made in halting the activities involved in the sale and distribution of piratical materials at the Warsaw Stadium.” Though USTR did not conduct an out-of-cycle review (OCR), in the October 31, 2001 Special 301 “out of cycle” decision announcement, continued concern over the large amounts of pirate products in the Warsaw Stadium was noted by USTR. The announcement urged Polish authorities to act immediately to halt the sale of pirated products in and through the stadium. In 2002, IIPA recommended that Poland be placed on the Watch List. USTR agreed, again pointing to the Warsaw Stadium as a glaring example of Poland’s failure to provide adequate enforcement of intellectual property rights. In order to monitor Poland’s enforcement efforts, USTR stated in the April 30, 2002 Special 301 Announcement that it would conduct an OCR. On October 30, 2002, IIPA filed recommendations for several on-going OCRs, including Poland. The results of that review have not yet been made available. The 2003 USTR Special 301 Announcement commented that the situation in Poland (including the Warsaw Stadium market) has not changed, and placed Poland on the Priority Watch List.

In addition to Special 301 oversight, Poland’s intellectual property rights practices have also been the subject of a review under the Generalized System of Preferences (GSP) program. IIPA filed a petition with USTR on June 1, 1993, asking that Poland lose its eligibility to receive preferential trade benefits under the GSP program. On July 24, 1995, Ambassador Kantor announced that he was extending Poland’s GSP review until February 1996 “in the expectation that, by that time, Poland will have taken the steps required to provide adequate protection to U.S. sound recordings.” Although this issue was not satisfactorily resolved, USTR terminated its GSP review of Poland on October 4, 1996. Given continuing legal deficiencies in Poland’s copyright law, IIPA filed a GSP petition with USTR to do a review of Poland

for its failure to provide adequate and effective copyright protection for U.S. copyright owners. The administration did not accept IIPA's petition. In 2002, \$328.8 million worth of Poland's imports to the United States benefited from the GSP program, accounting for 30% of its total imports. During the first 11 months of 2003, \$334.1 million worth of Polish goods (or 27.9% of Poland's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing an increase of 9.9% from the same period in 2002.

## **QATAR**

Qatar does not currently appear on any of the USTR lists. IIPA first reported on Qatar in 1995, when it recommended that Qatar be placed on Other Observations because of its lack of any copyright law or enforcement effort. USTR agreed, and placed it there in 1995 and 1996, noting that it expected Qatar to take steps to address shortcomings in its intellectual property regime. In 1997, USTR once again kept Qatar on the Other Observations list, noting that no enforcement had yet taken place. In 1998, IIPA recommended that Qatar be elevated to the Watch List, so that USTR could signal its engagement with Qatar over high piracy levels for all kinds of copyrighted products and an inadequate law, making Qatar a potential "haven of piracy." USTR agreed, and in raising Qatar to the Watch List in 1998, USTR called upon Qatar to legalize the software used in government offices, improve copyright enforcement, and implement its TRIPS obligations. As recommended by IIPA, Qatar remained on the Watch List in 1999 and 2000 because of its failure to enact TRIPS-consistent legislation and serious enforcement problems. IIPA recommended that Qatar remain on the Watch List in 2001 for failure to adequately address the piracy of business software and other copyrighted products. USTR did not place Qatar on any list in 2001. In 2002, IIPA again recommended that Qatar be returned to the Watch List, to address serious software piracy issues, and in recognition that Qatar had failed to pass promised copyright legislation in 2001. In April 2002, USTR decided to place Qatar back on the Watch List, for failure to sign and implement the copyright law. On October 10, 2002, USTR announced that several countries, including Qatar, were currently undergoing out-of-cycle reviews. Those reviews were not conducted.

## **ROMANIA**

IIPA recommends that Romania stay on the Watch List, where it has been placed since 1999. See IIPA's 2004 Romania country report at <http://www.iipa.com/rbc/2004/2004SPEC301ROMANIA.pdf>. In a Side Letter to the 1992 trade agreement with the U.S., the Romanian government committed to take several actions to improve intellectual property rights, including adhering to the Berne Convention (1971 text) and the Geneva Phonograms Convention. Romania agreed to submit for enactment, no later than December 31, 1993, legislation necessary to carry out its obligations and to make "best efforts" to implement legislation by that date. In 1995, after Romania failed to meet these goals and deadlines, IIPA recommended that Romania be added to the Watch List, and USTR agreed. In 1996, USTR moved Romania to Special Mention following adoption of its new copyright law in February 1996. Romania remained as a Special Mention country in USTR designations in 1997 and 1998 because of its lax enforcement and the bilateral agreement shortcomings. Since 1999, IIPA has recommended that Romania be elevated to the Watch List as a result of unacceptable piracy rates, its non-TRIPS-compliant regime, and to encourage the commitment of resources to effective enforcement of its copyright law. USTR has consistently agreed. Romania is making legal reforms, including its February 2001 deposit of the WIPO Copyright Treaty (WCT) and the WIPO Performance and Phonograms Treaty (WPPT). The USTR 2003 Special 301 Announcement noted that Romania "increased raids and seizures of materials in 2002," but "poor border enforcement, the low priority level given to piracy . . . and the lack of resources dedicated to the issue" are continuing problems.

Romania currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide "adequate and effective" copyright protection. In 2002,

\$102.8 million worth of Romania's imports to the United States benefited from the GSP program, accounting for 14.8% of its total exports to the U.S. During the first 11 months of 2003, \$103 million worth of Romanian goods (or 15.3% of Romania's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 7.8% increase over the same period in 2002.

## **RUSSIA**

IIPA recommends that Russia remain on the Priority Watch List, a status it has held since 1997, and that an out-of-cycle review (OCR) be conducted. See IIPA's 2004 Russia country report at <http://www.iipa.com/rbc/2004/2004SPEC301RUSSIA.pdf>. In its 1995 submission, frustrated by the lack of progress in criminalizing piracy, IIPA recommended Russia for the Priority Watch List. USTR moved Russia from the Special Mention category in 1994 to the Watch List for 1995. Also in 1995, IIPA petitioned to remove Russia's status as a "beneficiary developing country" under the Generalized System of Preferences (GSP) program. The GSP program expired on July 31, 1995 and was not renewed again until October 1996. During this hiatus, IIPA's petition was, in effect, not accepted. In February 1996, IIPA urged that Russia be named a Priority Foreign Country. USTR kept it on the Watch List, subject to an out-of-cycle review (OCR), which occurred in December 1996. USTR again decided to keep Russia on the Watch List at that time (because of the expected passage of the criminal law amendments).

In our February 1997 submission, IIPA again pressed for a Priority Foreign Country designation if by April 1997 Russia had not taken a series of steps, including commencement of major enforcement actions, and the introduction of legislation providing full retroactive protection for both pre-1995 sound recordings and pre-1973 works. Some more aggressive enforcement actions were undertaken during this period, but there was no movement on even drafting a bill (or decree) on retroactive protection and little optimism that this would soon occur. Shortly following its submission, IIPA again petitioned USTR to deny Russia duty free trade benefits under the GSP program, for its clear failure to provide "adequate and effective" protection for U.S. copyrighted works. USTR moved Russia up to the Priority Watch List in its April 1997 announcement and later again denied IIPA's GSP petition.

During the first year (1997) following adoption of the new criminal provisions making piracy a crime with real penalties, there was some progress in the enforcement area. In particular, raids commenced and some administrative actions were concluded; two criminal convictions with very low penalties were reported, only later to be voided by a government amnesty at the beginning of 1998. There was no progress at all with the legislative agenda concerning retroactivity or correcting other enforcement deficiencies. From 1998 through 2002, IIPA recommended that Russia remain on the Priority Watch List because of massive piracy losses, a rapidly growing optical media piracy problem, virtually no enforcement or deterrent system, and some deficiencies in the IPR regime, particularly around retroactive protection for sound recordings. USTR has followed IIPA's recommendation, and Russia has remained on the Priority Watch List ever since 1997. The USTR 2003 Special 301 Report notes that Russia made considerable progress over the last year in revising intellectual property laws, but still needs amendments to the copyright laws in order to be compliant with TRIPS. Increasing piracy of optical media and ineffective enforcement of intellectual property laws remain serious problems, so Russia was kept on the Priority Watch List in 2003.

In August 2000, IIPA filed a petition with USTR requesting that the country eligibility of Russia under the Generalized System of Preferences (GSP) trade program be reviewed for its failure to provide adequate and effective copyright protection and enforcement for U.S. copyright owners, as required under the GSP. In January 2001, the Administration announced that it accepted IIPA's petition. The U.S. government has not yet decided whether to withdraw or suspend GSP benefits in Russia. In its April 30, 2001, Special 301 Announcement, USTR noted certain deficiencies in Russia's copyright law making it incompatible with the 1991 bilateral trade agreement and TRIPS. In its 2002 announcement, USTR noted provisions in

Russia's enforcement regime that "appear to be inconsistent with the TRIPS Agreement and the intellectual property rights provisions of the 1992 U.S.-Russian Federation Trade Agreement."<sup>2</sup> USTR also pointed to other problems such as weak enforcement and "[l]ack of an effective OD law." In 2002, \$380.7 million worth of Russia's imports to the United States benefited from the GSP program, accounting for 5.7% of its total exports to the U.S. During the first 11 months of 2003, \$376.6 million worth of Russian goods (or 4.9% of Russia's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 9.8% increase from the same period in 2002.

## **SAUDI ARABIA**

IIPA recommends that Saudi Arabia remain on the Watch List where it has been since 1996, and that an out-of-cycle review (OCR) be conducted. See IIPA's 2004 Saudi Arabia country report at <http://www.iipa.com/rbc/2004/2004SPEC301SAUDIARABIA.pdf>. Saudi Arabia was on the Priority Watch List from 1993 to 1995. In April 1995, USTR kept Saudi Arabia on the Priority Watch List and added an out-of-cycle review (OCR) for October 1995. On November 13, 1995, USTR decided to keep Saudi Arabia on this list, and looked to the Saudi government to "increase its enforcement actions against pirate activity and to take action against the illegal use of computer software, particularly by large end-users in Saudi Arabia." In April 1996, Saudi Arabia was lowered to the Watch List in recognition of end-of-1995 enforcement actions taken by the Ministry of Information. It remained on the Watch List in 1997. In 1998 and 1999, IIPA recommended, and USTR agreed, that Saudi Arabia should remain on the Watch List, noting that copyright enforcement efforts by the Saudi government had improved over 1997, but raising several concerns, including lack of "transparency" and failure to impose "strong deterrent penalties."

In 2000 and 2001, IIPA recommended that Saudi Arabia be elevated to the Priority Watch List, for continued piracy, lack of effective and deterrent enforcement actions, and a TRIPS-incompatible copyright law. In both 2000 and 2001, USTR kept Saudi Arabia on the Watch List, but noted that "the level of activity undertaken by enforcement officials has been insufficient to deter piracy" in its 2000 announcement, and "[e]nforcement actions against copyright infringement are not carried out with sufficient regularity and are not accompanied by the appropriate level of publicity and sentences to reduce the level of piracy" in its 2001 announcement. In 2002 and 2003, IIPA recommended that Saudi Arabia remain on the Watch List, noting increasing enforcement, but many of the same structural difficulties, including lack of transparency. USTR agreed. In its 2003 Special 301 Announcement, USTR commented that "Saudi Arabia has made great strides in fighting copyright piracy . . . over the past year" and is working to revise its intellectual property laws, but "the United States remains concerned about continued high losses experienced by U.S. copyright . . . industries."

## **SERBIA AND MONTENEGRO**

Serbia and Montenegro have never appeared on a USTR Special 301 list. This year, in its Special Mention section ([http://www.iipa.com/rbc/2004/2004SPEC301SERB\\_MONT.pdf](http://www.iipa.com/rbc/2004/2004SPEC301SERB_MONT.pdf)), IIPA highlights certain legislative and enforcement deficiencies, specifically with respect to the business software and recording industries.

## **SINGAPORE**

IIPA highlights copyright concerns in Singapore in its Special Mention section this year. See IIPA's 2004 Singapore country report at <http://www.iipa.com/rbc/2004/2004SPEC301SINGAPORE.pdf>. Singapore

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<sup>2</sup> This agreement, originally concluded with the Soviet Union in May 1990, was re-signed on behalf of the Russian Federation by President Yeltsin in June 1992 and put into force at that time by granting MFN treatment to Russia. The agreement was also the model for trade agreements signed with all the other countries of the CIS during the next two years.

does not currently appear on any of the USTR lists. Singapore, notorious as the “world capital of piracy” until the late 1980s, changed course and rigorously enforced its 1987 copyright law for several years thereafter. In 1994, IIPA recommended that Singapore be placed on the Watch List, reporting that Singapore had become a major transshipment point for pirated copyrighted works, and that its government virtually refused to pursue criminal prosecutions against flagrant software piracy. USTR decided to place Singapore in its Other Observations category. In 1995, USTR elevated Singapore to the Watch List, citing weakened patent protection, and it remained there in 1996 and 1997, primarily because of its failure to bring its copyright laws up to the standards of the TRIPS Agreement. In 1998, IIPA called for Singapore to be elevated to the Priority Watch List, stressing that Singapore’s unique “self-policing” system was inadequate to deal with rising levels of digital piracy, and that further legislative improvements, and better regulation of optical media production facilities, were urgently needed. Agreeing that the “self-policing” policy was “outdated and ineffective,” USTR decided to keep Singapore on the Watch List for 1998, citing evidence of more active government enforcement against piracy, as well as the progress made toward achieving TRIPS-consistent copyright law.

In 1999 and 2000, IIPA recommended and USTR agreed that Singapore remain on the Watch List. In the May 1, 2000 Special 301 Announcement, USTR noted that while “[o]verall piracy rates in Singapore decreased slightly during 1999 the open retail availability of pirated CDs, VCDs and CD-ROMs in notorious shopping malls and at stalls continues to be a serious problem.” IIPA made no recommendation regarding Singapore in 2001 or 2002; USTR did not place Singapore on any list in either of those years.

## **SLOVAKIA**

Slovakia is currently on the Watch List, where it has been since 2001. Slovakia was originally placed on the Watch List because of concerns in the area of patent protection. The 2003 USTR Special 301 Announcement also noted that “home CD-burning is on the rise and pirate CDs continue to be available on the public market in Eastern Slovakia.”

## **SOUTH AFRICA**

South Africa does not currently appear on any of the USTR lists. USTR placed South Africa on the Special 301 Watch List in 1995. After South Africa made progress on trademark issues, USTR provisionally removed it from the Watch List in April 1996, placing it in USTR’s Other Observations category. USTR conducted an out-of-cycle review (OCR) in September 1996 to confirm that legislative changes that South Africa had committed to implement were being carried out, and that other measures had been taken to resolve outstanding concerns regarding trademarks. As a result of this review, South Africa was taken off the Special 301 list. In 1997, IIPA recommended that South Africa be placed on the Other Observations list because of resurgent book piracy and TRIPS deficiencies in South Africa’s copyright law. USTR included South Africa in the 1997 National Trade Estimate (NTE) release, noting “substantial software losses, book piracy, and satellite signal piracy.” In addition, USTR recognized that “[e]nforcement remains a problem in part because of a lack of availability of enforcement resources.”

In 1998, USTR placed South Africa on the Watch List because of continuing problems in the patent system, “TRIPS deficiencies,” and U.S. copyright industry estimates that losses due to copyright piracy increased by 26% between 1996 and 1997. In 1999, IIPA recommended, and USTR agreed, that South Africa remain on the Watch List. In her April 30, 1999 announcement, Ambassador Barshefsky added a September 1999 out-of-cycle review, noting that “the U.S. copyright industry estimates that trade losses due to piracy of copyrighted works increased more than 35 percent between 1997 and 1998.” As a result of a health initiative related to pharmaceutical patents, USTR decided to remove South Africa from the Special 301 lists in late 1999, and despite IIPA recommendations in 2000, 2001, and 2002 to place South Africa on the Watch List, South Africa has not appeared on any Special 301 list since its removal in late 1999.

South Africa currently participates in the U.S. GSP program offering duty-free imports of certain products into the U.S. from developing countries. In order to qualify for such unilaterally granted trade preferences, USTR must be satisfied that South Africa meets certain discretionary criteria, including whether it provides “adequate and effective protection of intellectual property rights.” In 2002, \$553 million worth of South Africa’s exports to the United States benefited from the GSP program, accounting for 13.1% of its total exports to the U.S. During the first 11 months of 2003, \$610.7 million worth of South Africa’s exports to the United States (or 13.7% of South Africa’s total exports to the U.S. from January to November) benefited from the GSP program, representing an increase of 24.5% over the same period in 2002. South Africa also participates in the African Growth Opportunity Act (AGOA), another trade program which contains a basic intellectual property rights protection component. In 2002, \$789.6 million worth of South Africa’s exports to the United States benefited from the AGOA program, accounting for 18.6% of its total exports to the U.S. During the first 11 months of 2003, \$900.3 million worth of South Africa’s exports (or 20.2% of the country’s total exports to the U.S.) benefited from the AGOA program, representing a 25.6% increase over the same period in the previous year.

## **SOUTH KOREA**

IIPA recommends that South Korea be elevated to the Priority Watch List, as opposed to its current status on the Watch List. See IIPA’s 2004 South Korea country report at <http://www.iipa.com/rbc/2004/2004SPEC301KOREA.pdf>. South Korea made its first appearance on the Priority Watch List in 1989, and remained there, except for 1990 and 1991, until 1997, when it was moved down to the Watch List. South Korea made considerable progress in bringing enforcement in the video, audio and book areas up to commendable levels after 1993, but software piracy remained a serious concern, and the book piracy situation deteriorated. IIPA’s reports in the mid-1990s also focused on TRIPS compliance issues, and market access barriers affecting the motion picture and computer software industries. USTR’s decision in 1996 to maintain South Korea on the Priority Watch List noted software end-user piracy and the “failure to provide full retroactive protection for pre-1957 works as required under the TRIPS Agreement” as major problems. In 1997, USTR lowered South Korea to the Watch List because of its continued progress in the fight against piracy. In 1998 and 1999, IIPA recommended that South Korea remain on the Watch List, highlighting the persistence of software piracy, the lack of full protection for pre-1957 works, and a lack of transparency in some aspects of the enforcement system. USTR kept South Korea on the Watch List both years.

In 2000, IIPA recommended that South Korea again be elevated to the Priority Watch List because of unacceptable enforcement policies against institutional end-user software pirates, legislative action weakening the protection for computer programs, and an increase in piracy of audiovisual products, sound recordings, and books. USTR agreed, and placed South Korea on the Priority Watch List in May 2000. After a December out-of-cycle review, South Korea remained on the Priority Watch List. In 2001, IIPA recommended that South Korea remain on the Priority Watch List due to continued business software and increasingly sophisticated book piracy, ineffective administrative and criminal enforcement, as well as a lack of any deterrent value for enforcement actions. USTR kept South Korea on the Priority Watch List in 2001, noting that despite increased copyright enforcement programs, it was still too early to determine whether or not they had any effect. Though IIPA recommended that South Korea remain on the Priority Watch List in 2002, USTR lowered the country to the Watch List. In its April 30, 2002 Special 301 Announcement USTR noted positive steps toward increasing South Korea’s intellectual property protections, including creation of a special enforcement unit, and preparation of draft legislation on “exclusive transmission rights for sound recordings and performances.” USTR’s 2003 Special 301 Announcement revealed, however, that these steps fell short of the specific pledges the Korean government made to the United States to improve IPR protection and enforcement. In addition, new problems have arisen regarding “alleged infringement of a U.S. industry’s IP in the creation/promulgation of a new telecommunications standard (WIPI)” and “pirates’ ability to obtain rights to register and distribute U.S. films in the Korean market.” Other existing problems have yet to be resolved, including

“protection of temporary copies, reciprocity provisions regarding database protection, . . . *ex parte* relief, [and] the lack of full retroactive protection of pre-existing copyrighted works.” For 2003, South Korea was kept on the Watch List, but USTR outlined several areas in which the country must take action in order to avoid being elevated to the Priority Watch List. As a result, USTR announced that it would conduct an out-of-cycle review in the Fall. Having concluded the out-of-cycle review in December of 2003, USTR announced in January of 2004 that it had elevated South Korea to the Priority Watch List, noting that “growth of online music piracy has caused serious economic damage to both domestic and foreign recording companies, and continued piracy of U.S. motion pictures in Korea has resulted in millions of dollars in lost revenues for U.S. and Korean copyright holders.”

## SPAIN

IIPA recommends that Spain be added to the Special 301 Watch List in 2004. See IIPA’s 2004 Spain country report at <http://www.iipa.com/rbc/2004/2004SPEC301SPAIN.pdf>. Spain does not currently appear on any USTR lists. Spain first appeared on USTR’s Special 301 Watch List from 1989 through 1994. In IIPA’s 1994 Special 301 filing, the business software industry hoped that Spain’s implementation of the E.U. Software Directive would improve enforcement efforts. After some initial success in obtaining raids on end-users after that legislation was enacted, action by the courts had slowed to the point where it became clear that renewed attention to the problem was required. In 1998, IIPA recommended that Spain be placed on the Special 301 Watch List, primarily due to continuing high levels of piracy and losses experienced by the software industries. On May 1, 1998, Ambassador Barshefsky placed Spain on the Special 301 list of Other Observations. While noting the high levels of business software piracy in Spain, the Ambassador added, “The United States is concerned that judicial proceedings are frequently delayed and that penalties assessed against infringers are inadequate to serve as a deterrent against piracy.” However, in 1999 IIPA recommended that Spain be placed on the Special 301 Watch List due to one of the highest levels of piracy of business software in Europe. USTR agreed and elevated Spain to the Watch List for the first time since 1994. In 2000, IIPA again recommended that Spain remain on the Watch List for one of the highest levels of piracy for business software in the European Union. USTR agreed, and kept Spain on the Watch List in 2000. Though IIPA did not make any formal recommendation for Spain in 2002, it did note certain copyright issues in its Special 301 cover letter to USTR that year.

## TAIWAN

IIPA recommends that Taiwan remain on the Priority Watch List, where it has been situated since 2003, and that an out-of-cycle review (OCR) be conducted. See IIPA’s 2004 Taiwan country report at <http://www.iipa.com/rbc/2004/2004SPEC301TAIWAN.pdf>. Taiwan was the subject of the IIPA’s first report on worldwide piracy in 1985. U.S. efforts to reduce the massive levels of piracy in Taiwan began in earnest in 1988-89 with the negotiation of a new bilateral treaty governing copyright protection. Concerns surged in the early 1990s over new pirate CD manufacture and export from Taiwan, escalating cable piracy, and mushrooming export levels of pirated software. U.S. trade losses reached an unprecedented \$370.0 million in 1991, and almost doubled in 1992, when Taiwan was named by USTR as a Priority Foreign Country. However, under the threat of retaliation, Taiwan adopted a new copyright law in May 1992, and finally signed a comprehensive Memorandum of Understanding (MOU) containing specific and wide-ranging commitments to improve copyright protection.

While some steps had been taken by April 1993 to implement the MOU, numerous commitments remained unfulfilled such that USTR decided to keep Taiwan on the Priority Watch List pending compliance with an “immediate action plan” that included a requirement that it finally adopt its long-pending cable law, legitimize the cable industry and reduce piracy. In 1993, Taiwan passed its cable law, implemented an export control system to block the export of counterfeit software and pirated CDs, and finally began to mete out serious fines and jail terms to convicted pirates. These improvements, and

sharp reductions in piracy losses, led IIPA to recommend that Taiwan be moved to the Watch List in 1994. USTR agreed, and kept Taiwan in the same position in 1995.

In 1996, IIPA pointed to the prominent Taiwanese role in massive software piracy networks encompassing “Greater China” as a growing problem that Taiwan needed to address. Just before USTR’s Special 301 Announcement in April 1996, Taiwan adopted an 18-point “Action Plan” that pledged improvements in tackling the “Greater China” piracy problem as well as other enforcement issues, including reform of the Export Monitoring System (EMS). Because this plan had the potential for continuing the “significant strides” Taiwan had made in improving IPR enforcement, USTR decided that Taiwan should be moved from the Watch List to Special Mention, with an out-of-cycle review (OCR) to be conducted in October 1996. On November 12, 1996, USTR announced that Taiwan’s “considerable success” in implementing the Action Plan justified removing it from Special 301 lists. In 1997, IIPA noted that some issues addressed in the April 1996 Action Plan, such as bootleg audio products and the Export Monitoring System, had yet to be fully resolved, while other issues, such as the ongoing cross-straits networks for production and worldwide export of pirated videogames, were not adequately addressed by the Action Plan. While USTR decided to keep Taiwan off the Special 301 list, it continued to monitor the situation in Taiwan, reporting on Taiwan in the 1997 National Trade Estimate (NTE) report.

In 1998, IIPA recommended that Taiwan be elevated to the Watch List, noting that Taiwan remained a “node” in a web of “Greater China” piracy of entertainment video games; CD, CD-ROM, CD-R, and audio bootleg piracy remained problems, as did various structural deficiencies including the failure of the EMS to curtail exports of pirate videogames and components, and unreasonable documentary requirements imposed on plaintiffs by the Taiwanese courts (including the requirement that powers of attorney be signed by the CEO of a corporation). USTR, in specially mentioning Taiwan, stated that Taiwan had made “recent assurances” and that USTR would “closely monitor implementation of the specific measures over the next several months.” The result of that monitoring was to place Taiwan on the Watch List on August 11, 1998, because of “continuing concerns about enforcement of intellectual property rights in Taiwan.” In 1999, IIPA recommended, and USTR agreed, to keep Taiwan on the Watch List.

In 2000, IIPA recommended that Taiwan remain on the Special 301 Watch List, with an out-of-cycle review to continue monitoring progress. With trade losses growing to over \$314 million by 1999, doubling video piracy levels and rapidly increasing piracy rates for sound recordings, musical works, business and entertainment software, the Alliance voiced its concern for the worsening situation that would affect the entire Greater China region. USTR agreed, and retained Taiwan on the Watch List in 2000.

In 2001, IIPA recommended that Taiwan be elevated to the Special 301 Priority Watch List due to the failure to enact and effectively implement comprehensive regulations to control and curtail the illegal manufacture of optical media goods in Taiwan, and the failure of the Taiwan government authorities to shut down known commercial pirates and curtail growing online piracy. USTR agreed, placing Taiwan on the Priority Watch List in 2001. On October 31, 2001, Taiwan passed the Optical Media Management Statute. It brings under the control of the Ministry of Economic Affairs (MOEA) a system of granting permits to persons/entities engaged in the production of “prerecorded optical discs”; otherwise regulating production of stampers/masters (through SID Code and other requirements); and requiring transparency (i.e., a reporting requirement) with respect to production of “blank” media.

IIPA recommended that Taiwan remain on the Priority Watch List in 2002, pointing to extremely high piracy rates and a pirate trade in optical media that remains at epidemic proportions. In its 2002 announcement, USTR stated that “the lax protection of IPR in Taiwan remains very serious.” Calling the country “one of the largest sources of pirated optical media products in the world,” USTR kept Taiwan on the Priority Watch List in 2002. IIPA also recommended that an out-of-cycle review be conducted to determine whether Taiwan has made serious progress in combating its significant optical media piracy problem through legislative and enforcement efforts. The 2003 USTR Special 301 Announcement described the numerous steps Taiwan took in 2002 – their “Action Year for IPR.” Positive measures

included expanding an interagency task force to 220 people, opening warehouses to store seized pirated goods and manufacturing equipment, and introducing an amended copyright law to strengthen IPR protection and bring Taiwan into compliance with TRIPS and other international IPR standards. These steps, however, have not produced any noticeable results, and “piracy and counterfeiting levels remain unacceptably high.” USTR therefore kept Taiwan on the Priority Watch List in 2003.

## TAJIKISTAN

IIPA recommends that Tajikistan remain on the Watch List, where it has stayed since 2000. See IIPA’s 2004 CIS country report at <http://www.iipa.com/rbc/2004/2004SPEC301CIS.pdf>. In 1995 and 1997, IIPA requested that USTR add the nations of the Commonwealth of Independent States (CIS) collectively, excluding the Russian Federation, to the Special 301 Watch List because nearly all of the CIS countries had failed to meet their bilateral IPR obligations, piracy was rampant, enforcement inadequate, and copyright law reform urgently needed. In 2000, IIPA recommended that ten of the CIS countries be placed on the Special 301 Watch List (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, and Uzbekistan). In the May 30, 2000 Special 301 Announcement, USTR placed seven CIS countries, including Tajikistan, on the Special 301 Watch List.

In 2001, IIPA recommended, and USTR agreed, that Tajikistan be kept on the Watch List. In its April 30, 2001 Special 301 Announcement, USTR noted Tajikistan’s failure “to fulfill all of its intellectual property commitments under the 1993 U.S.-Tajikistan Trade Agreement,” citing failure to adhere to the Geneva Phonograms Convention as well as “weak enforcement of intellectual property rights” and failure to implement criminal provisions for IPR violations as required by the bilateral agreement. For these reasons, as well as the lack of protection for foreign sound recordings and retroactive protection for works or sound recordings, IIPA again recommended and USTR again kept Tajikistan on the Watch List in both 2002 and 2003.

## THAILAND

IIPA recommends Thailand be elevated to the Priority Watch List in 2004. See IIPA’s 2004 Thailand country report at <http://www.iipa.com/rbc/2004/2004SPEC301THAILAND.pdf>. Thailand is currently on the Watch List. IIPA first identified Thailand in 1985 as one of the countries with the worst piracy records in the world. In January 1989, following a petition filed by IIPA in 1987, President Reagan revoked Thailand’s preferential trade benefits under the Generalized System of Preferences (GSP) program for its failure to provide “adequate and effective” copyright protection and enforcement. In April 1992, Thailand was named a Priority Foreign Country under Special 301. In spring 1993, under the threat of trade retaliation, the Thai government initiated strong enforcement actions and raids, primarily in the audio and video areas. The Thai government also began drafting a revised copyright law, and in August 1993, Thailand pledged to the U.S. to continue aggressive raiding, amend the copyright law to bring it up to Berne and TRIPS standards, and create a specialized intellectual property rights (IPR) court empowered to give improved remedies. On the basis of these commitments, USTR removed Thailand from its status as a Priority Foreign Country and placed it on the Priority Watch List. In November 1994, after Thailand enacted its new copyright law, USTR moved Thailand from the Priority Watch List to the Watch List, where it has remained ever since.

GSP benefits were partially restored in August 1995, and the specialized IPR Court was authorized in 1996, although it did not begin operations until December 1997. 1998’s IIPA filing focused on lack of progress in reducing persistently high piracy rates since the enactment of the new copyright law, but noted the potential for the new court to advance this goal by imposing deterrent penalties on commercial pirates, and recommended that Thailand remain on the Watch List. USTR agreed, pledging to monitor the activities of the new court to see if tough sentencing would reduce piracy rates. Subsequently, in June 1998, the U.S. restored virtually all Thailand’s GSP benefits, as the Thai government committed to an

ambitious action plan for better enforcement against piracy. IIPA's 1999, 2000, and 2001 filings stressed the growing role of Thailand as a source of pirate optical media production and export, and the need for the IPR court to impose deterrent penalties on commercial pirates. In June 2001, six copyright-based associations submitted a request that the eligibility of Thailand as a GSP beneficiary country be reviewed, and that its benefits be suspended or withdrawn if Thailand fails to remedy the deficiencies which adversely affect U.S. copyright owners. In May 2003, the petition was withdrawn. The U.S. government has since that time heavily engaged with Thailand in securing needed regulations to control pirate optical discs and ramped up enforcement efforts.

In 2002, IIPA recommended that Thailand remain on the Watch List, and requested that USTR conduct an out-of-cycle review, noting, among other problems, exponential growth in its capacity for production of optical media. USTR agreed, noting in its April 30, 2002 announcement that "the significant and growing problems of optical media production and end-user piracy of business software remain largely unaddressed." That review was not conducted. In 2003, IIPA recommended that Thailand be elevated to the Priority Watch List, citing increased concerns over rampant optical disc piracy for export. In the 2003 USTR Special 301 Announcement, in which Thailand was retained on the Watch List, USTR noted the United States' concern about "the explosion of copyright piracy within [Thailand's] borders," and noted that optical media piracy, signal theft and cable piracy all continued to increase.

Thailand currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide "adequate and effective protection of intellectual property rights." In 2002, \$2.3 billion in Thailand's exports to the United States benefited from the GSP program, accounting for 15.6% of its total exports to the U.S. During the first 11 months of 2003, \$2.5 billion worth of Thai goods (or 17.9% of Thailand's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing an increase of 16.7% over the same period in the previous year.

## TURKEY

IIPA recommends that Turkey stay on the Watch List, where it has been located since 2001. See IIPA's 2004 Turkey country report at <http://www.iipa.com/rbc/2004/2004SPEC301TURKEY.pdf>. Turkey has been a regular on the Special 301 lists, and its intellectual property rights legislation and practices are currently under scrutiny as part of an ongoing investigation under the Generalized System of Preferences (GSP) program. There has been sporadic progress on copyright issues during this decade-long engagement. Turkey has been on the Special 301 Watch List (1990-1991, 2001-2002) and the Priority Watch List (1992-2000). In IIPA's 1993, 1995 and 1996 Special 301 submissions, IIPA recommended that Turkey be designated a Priority Foreign Country for its failure to enact copyright reform and its lack of enforcement efforts to combat high levels of piracy, but these recommendations were not accepted by USTR.

In 1997, USTR outlined six benchmarks for progress in Turkey, which included: (1) taking effective enforcement actions to their conclusions to address widespread piracy; (2) passing copyright and patent law amendments to bring Turkey into compliance with its TRIPS and Berne obligations; (3) amending the Cinema, Video and Music Works Law to include higher, non-suspendable fines and jail terms; (4) issuing a directive to all government agencies to legalize software, (5) starting a public anti-piracy campaign about the software end-use problem and continuing training of enforcement officials so that the levels of piracy decline; and (6) equalizing taxes on the showing of foreign and domestic films. Progress in meeting these benchmarks has been slow; for example, USTR noted in its May 1, 2000 Special 301 Announcement that "Turkey has not yet addressed all of the benchmarks set out in the 1997 review," and that enforcement efforts remain ineffective.

In 2001, IIPA recommended that Turkey remain on the Priority Watch List. However, USTR downgraded Turkey to the Watch List in April 2001, noting that “the Turkish Parliament passed amendments to the Copyright Law designed to bring Turkey into compliance with its TRIPS obligations.” In 2002, IIPA recommended that Turkey be elevated to the Priority Watch List, noting a worsening situation for most copyright industry sectors, specifically the abject failure of the “banderole” system and poor enforcement. Even though USTR again kept Turkey on the Watch List in April 2002, it acknowledged that “[j]ack of effective IPR protection in Turkey is a serious concern,” that “broadcasting regulations issued last year by the Ministry of Culture undermine the intent of the 2001 copyright law,” and that “[p]iracy levels remain extremely high and government efforts to control piracy, specifically the ‘banderole’ system, have failed.” In 2003, in acknowledgment of resolutions to the broadcast regulation issue and the false licensee issue, IIPA recommended that Turkey remain on the Watch List. USTR, agreed, and in its May 1 announcement, USTR noted “some positive movement” on these issues.

In addition to the Special 301 process, the copyright industries and the U.S. government have used the GSP program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries based on discretionary criteria, such as the provision of “adequate and effective” copyright protection, to evaluate Turkey’s progress on copyright matters. On June 1, 1993, IIPA filed a petition urging the President to withdraw Turkey’s eligible beneficiary status under the GSP program for its failure to provide “adequate and effective protection” to U.S. copyrights. USTR accepted IIPA’s petition. USTR announced on January 16, 1998, that it would not consider any requests to expand the scope of preferential trade benefits Turkey receives under the GSP program; USTR noted there “Turkey’s future benefits under the Generalized System of Preferences (GSP) will depend on progress on the remaining benchmarks [outlined by USTR in 1997].” Competitive need waivers under the GSP program were granted back to Turkey in 2002. The GSP case against Turkey remained pending for almost 8 years. Finally, in 2003, IIPA was notified formally that the GSP investigation was closed in 2001. In 2002, \$472.4 million worth of Turkey’s exports to the United States benefited from the GSP program, accounting for 13.4% of its total exports to the U.S. During the first 11 months of 2003, \$649.3 million worth of Turkish goods (or 18.7% of Turkey’s total exports to the U.S. from January to November) entered the U.S. under GSP, representing an increase of 52.2% over the same period in the previous year.

## **TURKMENISTAN**

IIPA recommends that Turkmenistan remain on the Watch List, where it has been since 2000. See IIPA’s 2004 CIS country report at <http://www.iipa.com/rbc/2004/2004SPEC301CIS.pdf>. In 1995 and 1997, IIPA requested that USTR add the nations of the Commonwealth of Independent States (CIS) collectively, excluding the Russian Federation, to the Special 301 Watch List because nearly all of the CIS countries had failed to meet their bilateral IPR obligations, piracy was rampant, enforcement inadequate, and copyright law reform urgently needed. In 2000, IIPA recommended that ten of the CIS countries be placed on the Special 301 Watch List (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, and Uzbekistan). In the May 30, 2000 Special 301 Announcement, USTR placed seven CIS countries on the Special 301 Watch List for the first time, including Turkmenistan.

In 2001, USTR kept Turkmenistan on the Watch List. In the 2001 Special 301 submission. In its 2001 Special 301 submission, IIPA suggested again that 10 of the 12 CIS countries individually (excluding Russia and Ukraine for much more serious piracy problems) be listed, and for filing purposes only, grouped them together due to the similarity of copyright concerns each country faces. These deficiencies include the lack of legislative implementation of the bilateral trade agreements, failure to comply with the WTO TRIPS Agreement, and the failure to adopt optical media production and distribution controls. In its April 30, 2001 Special 301 Announcement, USTR noted Turkmenistan’s failure to provide “protection for U.S. and other foreign sound recordings, nor does it provide protection of pre-existing works or sound recordings under its copyright law.” Echoing the previous year’s submission, IIPA recommended that Turkmenistan remain on the Watch List in 2002. USTR agreed, again pointing to the country’s lack of

protection for certain sound recordings and pre-existing works and sound recordings. USTR announced the same decision in 2003, adding, "the Customs Code does not provide the proper authority to seize material at the border," which is a necessity for proper border enforcement.

## UKRAINE

IIPA recommends that Ukraine remain a Priority Foreign Country, as it has been since 2001. See IIPA's 2004 Ukraine country report at <http://www.iipa.com/rbc/2004/2004SPEC301UKRAINE.pdf>. In both 1998 and 1999, IIPA made individual filings focusing on concerns in Ukraine, Belarus and Kazakhstan, the CIS countries with the most serious IPR problems (although problems persist in other former republics) in addition to the filing made for Russia. In 1998, both Belarus and Kazakhstan were placed on the Other Observations list, and Ukraine was on the Watch List. The next year, Belarus was elevated to the Watch List, Kazakhstan was removed from Special 301 list, and Ukraine was elevated to the Priority Watch List. In 2000, IIPA recommended that all of the CIS countries be placed on the Special 301 Watch List. In the May 30, 2000 Special 301 Announcement, USTR placed seven CIS countries on the Special 301 Watch List for the first time: Armenia, Azerbaijan, Kazakhstan, Moldova, Tajikistan, Turkmenistan and Uzbekistan. Belarus and Kazakhstan are also on the Special 301 Watch List in 2000. Russia and Ukraine were placed on the Priority Watch List.

In 2000, Ukraine became Central and Eastern Europe's number one pirate CD-producing country. Fueled by serious reform and on-the-ground enforcement deficiencies, IIPA recommended that USTR designate Ukraine as a Priority Foreign Country. USTR placed Ukraine on the Priority Watch List, with the caveat that it was prepared to designate Ukraine as a Priority Foreign Country if sufficient action were not taken to curb pirate production by August 1, 2000. When Presidents Clinton and Kuchma endorsed a Joint Action Plan to address the piracy problem in June 2000, USTR announced that it would defer a decision on whether to identify Ukraine as a Priority Foreign Country.

In June 1999, IIPA filed a petition with USTR requesting that the country eligibility of Armenia, Belarus, Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, Ukraine, and Uzbekistan under the Generalized System of Preferences (GSP) trade program be reviewed for its failure to provide adequate and effective copyright protection and enforcement for U.S. copyright owners, as required under the GSP. In February 2000, the administration announced that it accepted IIPA's petition for review of Armenia, Kazakhstan, Moldova, Ukraine, and Uzbekistan. On May 12, 2000, the U.S. government held public hearings on the GSP petitions regarding these five countries. Hearings were again held with respect to Kazakhstan and Uzbekistan on October 7, 2003. On October 23, 2000, the IIPA requested that its petition on Moldova be withdrawn, as a result of cooperation with the government of Moldova on legal reforms following the filing of the petition. The U.S. government accepted that action and the GSP review of Moldova ended. The U.S. government has not yet decided whether to withdraw or suspend GSP benefits in Armenia, Kazakhstan, or Uzbekistan. GSP benefits have been withdrawn from Belarus, but for reasons unrelated to intellectual property matters.

In 2001, IIPA recommended that USTR designate Ukraine as a Priority Foreign Country, due to its continued position as the largest producer and exporter of illegal optical media disks in Central and Eastern Europe. USTR agreed, designating Ukraine as a Priority Foreign Country, on March 12, 2001 for its failure to implement the Joint Action Plan agreed to by then-President Clinton and President Kuchma in Kiev on June 1, 2000. The designation in March commenced a formal investigation of the IPR protection and enforcement failures in Ukraine, consistent with Special 301 legal requirements. On December 20, 2001 that investigation formally ended and the U.S. government announced the imposition of trade sanctions amounting to \$75 million, effective on January 23, 2002 as the result of the continued failure on the part of the government of Ukraine to meet its obligations under the Joint Action Plan, namely to properly regulate optical media production.

The imposition of sanctions in January were in addition to the complete withdrawal of trade benefits to Ukraine under the General System of Preferences program; that suspension was announced on August 10, 2001, effective September 24, 2001. In its April 30, 2001 Special 301 Announcement, USTR noted Ukraine's "persistent failure to take effective action against significant levels of optical media piracy and to implement intellectual property laws that provide adequate and effective protection." In February of 2002, Ukraine enacted a deficient law intended to regulate optical media production and distribution (Optical Disc Licensing Bill #8278-1), hoping to avoid sizable, looming trade sanctions. The U.S. government properly reacted to that bill, calling it an insufficient measure and refusing to forestall the trade sanctions or to re-institute the GSP benefits. On January 17, 2002, USTR announced that it would begin implementing trade sanctions against Ukraine on January 23.

In 2002, IIPA recommended that Ukraine remain a Priority Foreign Country for its failure to adopt an effective optical media regulation and its continued failure to implement the Joint Action Plan of June 1, 2000. USTR designated Ukraine a Priority Foreign Country in 2002, pointing to the country's significant optical disc piracy problem. Although production of pirated media has declined, USTR extended Ukraine's status as a Priority Foreign Country in 2003, noting that "any positive movement on copyright is still overshadowed by the continued lack of adequate OD media protection." In 2001, \$37.8 million worth of Ukrainian imports to the United States benefited from the GSP program, accounting for 5.8% of its total exports to the U.S. There are no GSP figures for Ukraine in 2002, as the benefits were withdrawn due to Ukraine's continued failure to provide adequate and effective copyright protection.

## UNITED ARAB EMIRATES

THE UAE does not currently appear on any USTR lists. The UAE was on the USTR Watch List from 1991, after being named by IIPA as a major pirate exporter of audiocassettes in the Gulf Region. Although the UAE passed a copyright law in 1992, piracy losses continued to rise until September 1, 1994, when the Ministry of Information and Culture (MOIC) began its enforcement campaign following a moratorium to permit shops and manufacturers to sell off existing pirate stock. By early 1995, audio piracy had been virtually wiped out, and video piracy sharply reduced, but little had been done to clear pirate software from the market. Because of software piracy and the continuing need for the UAE to bring its copyright law into compliance with international standards, USTR kept the UAE on the Watch List after an out-of-cycle review (OCR) in November 1995. In April 1996, Ambassador Barshefsky maintained the UAE on the Watch List, noting continued deficiencies in the copyright law. In 1997, the UAE was kept on the Watch List by USTR, who noted that efforts to reduce software piracy had "not been sufficient to reduce the level of illegal activity."

In 1998, IIPA, in recommending that the UAE be kept on the Watch List, noted that the UAE authorities had taken sufficient enforcement actions to reduce piracy rates for nearly all the copyright industries, but that a court decision (Shama Delux) potentially jeopardized the protection of all foreign works in the UAE. Ambassador Barshefsky, in announcing USTR's 1998 decision to keep the UAE on the Watch List, called upon the government "to clarify that U.S. copyrighted works are protected," and to ensure that the copyright law is "TRIPS-consistent before the end of the transition period for developing countries."

In 1999, IIPA recommended that USTR drop the UAE to the Other Observations list, to acknowledge the progress of the UAE government in "fighting piracy through a sustained enforcement campaign." Ambassador Barshefsky kept the UAE on the Watch List for certain deficiencies in the patent area, but finally dropped the UAE from the Special 301 lists because of significant progress in eradicating piracy in 2000. USTR placed UAE on the Watch List in 2001 for concerns over adequate and effective intellectual property protection unrelated to copyright. IIPA made no recommendation for UAE in 2002, nor did USTR place the country on any list in that year.

## URUGUAY

IIPA highlights copyright concerns in Uruguay in its Special Mention section this year. See IIPA's 2004 Uruguay country report at <http://www.iipa.com/rbc/2004/2004SPEC301URUGUAY.pdf>. Uruguay currently is placed on the Watch List. USTR placed Uruguay on the Other Observations list in 1996 and again in 1997 to encourage Uruguay to "accelerate its efforts to enact TRIPS-consistent legislation and to continue its IPR enforcement efforts." In July 1998, the President of Uruguay, Dr. Julio Marie Sanguinetti, met with Ambassador Barshefsky to discuss regional issues and intellectual property issues in his country. Reportedly the President responded positively to the Ambassador's entreaties to press for passage of the long-pending copyright bill, indicating that he will work with the Uruguayan legislature to pass a good law. Unfortunately, passage of this bill has not yet been achieved and the most current draft legislation is still problematic, and not TRIPS-compliant. USTR kept Uruguay on the Watch List in 1999 and 2000.

In 2001, IIPA recommended that Uruguay be elevated to the Priority Watch List due to the long delay in passing much-needed copyright legislation, the continued high levels of piracy, and inadequate enforcement. IIPA also recommended that USTR conduct an out-of-cycle review to monitor Uruguay's advances on these copyright issues. In its April 30, 2001 Special 301 Announcement, USTR elevated Uruguay to the Priority Watch List, noting Uruguay's failure to update its copyright law: "Uruguay's draft copyright legislation has become entangled in legislative wrangling and currently contains numerous shortcomings even in its draft form, most notably the separation from the comprehensive copyright bill of software protection into a stand-alone bill." In June 2001, the IIPA filed a request for review of the intellectual property practices of Uruguay. USTR has not yet decided whether to accept the request. In 2002, IIPA recommended that Uruguay remain on the Priority Watch List, noting the country's failure to pass much-needed copyright legislation and ineffective criminal and civil enforcement against high levels of copyright piracy. USTR kept Uruguay on the Priority Watch List in 2002, noting that "inadequate civil remedies and lax border enforcement have caused high piracy rates to persist, and have allowed Uruguay to become a major transshipment point for pirated products." In 2002, Uruguay amended its copyright law, and the new law went into effect January 2003. The 2003 USTR Special 301 Announcement noted that the new amendments "represent an improvement . . . and contain many provisions that upgrade the prior Uruguayan copyright scheme." These changes convinced USTR to downgrade Uruguay to the Watch List in 2003, but they noted that enforcement and transshipment are problems that still need to be addressed.

Uruguay currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provide "adequate and effective" copyright protection. In August 2001, IIPA filed a petition to review Uruguay's eligibility to maintain GSP benefits. In January of 2003, Uruguay enacted amendments to its copyright law after a decade of debate. Noting that such action was a major achievement, notwithstanding the fact that the amended law fell short in several key areas, IIPA requested to withdraw its GSP petition against Uruguay. In the fall of 2003, USTR acknowledged that it would not act on this GSP petition. In 2002, \$68.2 million worth of Uruguay's exports to the United States benefited from the GSP program, accounting for nearly 35.8% of its total exports to the U.S. During the first 11 months of 2003, \$48.6 million worth of Uruguayan goods (or 21.9% of Uruguay's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 22.5% decrease from the same period in 2002.

## UZBEKISTAN

IIPA recommends that Uzbekistan retain its position on the Watch List, where it has remained since 2000. See IIPA's 2004 CIS country report at <http://www.iipa.com/rbc/2004/2004SPEC301CIS.pdf>. In 1995 and 1997, IIPA requested that USTR add the nations of the Commonwealth of Independent States (CIS)

collectively, excluding the Russian Federation, to the Special 301 Watch List because almost none of the CIS countries had met their bilateral IPR obligations, piracy was rampant, enforcement inadequate, and copyright law reform urgently needed. In 2000, IIPA recommended that ten of the CIS countries be placed on the Special 301 Watch List (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Moldova, Tajikistan, Turkmenistan, and Uzbekistan). In the May 30, 2000 Special 301 Announcement, USTR placed seven CIS countries on the Special 301 Watch List, including Uzbekistan. In June 1999, IIPA filed a petition with USTR requesting that the country eligibility of Armenia, Belarus, Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, Ukraine, and Uzbekistan under the Generalized System of Preferences (GSP) trade program be reviewed for failure to provide adequate and effective copyright protection and enforcement for U.S. copyright owners, as required under the GSP. In February 2000, the administration announced that it accepted IIPA's petition for review of Armenia, Kazakhstan, Moldova, Ukraine, and Uzbekistan. On May 12, 2000, the U.S. government held public hearings on the GSP petitions regarding these five countries. Again, on October 7, 2003, the U.S. government held hearings with respect to Uzbekistan. The U.S. government has not yet decided on whether to withdraw or suspend GSP benefits in Uzbekistan.

In 2001, IIPA recommended and USTR agreed to place Uzbekistan on the Watch List. In the 2001 Special 301 submission, IIPA suggested again that 10 of the 12 CIS countries individually (excluding Russia and Ukraine for much more serious piracy problems) be listed, and for filing purposes only, grouped them together due to the similarity of copyright concerns each country faces. These deficiencies include the lack of legislative implementation of the bilateral trade agreements, failure to comply with the WTO TRIPS Agreement, and the failure to adopt optical media production and distribution controls. IIPA again recommended that Uzbekistan remain on the Watch List in 2002. USTR agreed, noting in its April 30, 2002 Special 301 Announcement the many steps that Uzbekistan still must take in order to fulfill its obligations under the 1994 U.S.-Uzbekistan Trade Agreement: "[s]pecifically, Uzbekistan is not yet a party to the Berne Convention or the Geneva Phonograms Convention. Uzbekistan is not providing any protection or rights to U.S. and other foreign sound recordings, and it does not clearly provide retroactive protection for works or sound recordings under its copyright law." USTR's 2003 Special 301 Announcement cited the same problems, added that the Customs Code does not give proper authority to seize material at the border, and kept Uzbekistan on the Watch List.

In 2002, \$11.1 million worth of Uzbek exports to the United States benefited from the GSP program, accounting for 14.4% of its total exports to the U.S. During the first 11 months of 2003, \$2.2 million worth of Uzbek exports to the United States (or 3% of Uzbekistan's total exports to the U.S. from January to November) benefited from the GSP program, representing an decrease of 79.8% from the same period in 2002.

## **VENEZUELA**

Venezuela is currently on the Watch List, and has been remained there since 1989. In an effort to spur government action to take copyright reform and reduce the high levels of piracy, IIPA filed a petition on June 1, 1993 asking that Venezuela's eligibility to receive preferential trade benefits under the Generalized System of Preferences (GSP) program be reviewed. After the Venezuelan Congress passed the new copyright law in August 1993, USTR accepted IIPA's request to withdraw the petition, and no formal GSP review was initiated. In 2002, \$581.8 million worth of Venezuela's exports to the United States benefited from the GSP program, accounting for 4.1% of its total exports to the U.S. During the first 11 months of 2003, \$561.3 million worth of Venezuelan goods (or 3.8% of Venezuela's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 5.3% decrease from the same period in the previous year.

In 1999 and 2000, Venezuela remained on the Watch List, as recommended by IIPA. In 2001, IIPA recommended that Venezuela remain on the Watch List. USTR agreed, noting in its April 30, 2001 Special 301 Announcement that "Venezuela continues to present a mixed record of success with respect

to its protection of intellectual property rights, although in some respects it is gradually moving in the right direction.” IIPA recommended that Venezuela remain on the Watch List in 2002, citing continued high piracy rates, lengthy judicial delays, and the failure to impose deterrent penalties. In its April 30, 2002 Special 301 Announcement, USTR kept Venezuela on the Watch List, noting that “limited resources and a lack of IPR enforcement by Venezuela customs have hampered the government’s efforts to lower copyright piracy levels.” USTR’s 2003 Special 301 Announcement commented that Venezuela’s commitment to protection of intellectual property rights appeared to be decreasing in 2002. Piracy and counterfeiting increased, while deterrence and prosecution levels stayed low. USTR kept Venezuela on the Watch List in 2003, adding that it intended to review the country’s progress later in the year.

## VIETNAM

IIPA highlights copyright concerns in Vietnam in its Special Mention section this year. See IIPA’s 2004 Vietnam country report at <http://www.iipa.com/rbc/2004/2004SPEC301VIETNAM.pdf>. Vietnam is currently on the Watch List. Vietnam first appeared on the Special 301 list in 1995 in the Other Observations category, after IIPA reported that its market was completely dominated by piracy. In 1997, IIPA renewed its call for Priority Watch List status, citing the troubling trend of government involvement in audiovisual piracy, and the failure to take any meaningful steps toward protection of U.S. works in Vietnam. On the eve of USTR’s 1997 Special 301 decision, the U.S. and Vietnam announced the conclusion of a bilateral copyright agreement providing such a point of legal attachment. Ambassador Barshefsky called this “an important step in bringing Vietnam’s copyright system into line with international standards,” but because of the serious and growing piracy problem in Vietnam, she placed the country on the Special 301 Watch List. IIPA renewed its Priority Watch List recommendation in 1998, because the bilateral copyright agreement had not been implemented, piracy levels remained at or near 100 percent, and the Vietnamese government appeared to be consolidating its role in audio-visual piracy. USTR decided to keep Vietnam on the Watch List, calling copyright piracy “the most pressing problem” to be faced, and scheduling an out-of-cycle review (OCR) for December 1998. That OCR was subsequently postponed, and on December 27, 1998, the U.S.-Vietnam Bilateral Copyright Agreement went into force.

In 1999, IIPA recommended that Vietnam remain on the Watch List so that USTR could effectively monitor and support government efforts to implement the commitments of the Bilateral Copyright Agreement. USTR agreed, and Vietnam maintained its position on the Watch List. In 2000 and 2001, USTR agreed with IIPA’s assessment of continuing IPR problems in Vietnam, and retained Vietnam on the Watch List in both years. In 2002, USTR kept Vietnam on the Watch List, noting that “[e]nforcement of intellectual property rights. . . in Vietnam remains weak, and violations of IPR are rampant.” Vietnam remained on the Watch List in 2003 as well; the 2003 USTR Special 301 Announcement commented that “Vietnam has increased the number of administrative and law enforcement actions against IPR violations, but effective enforcement remains the exception rather than the norm.”