

SECTION II. COUNTRY REPORTS

PRIORITY WATCH LIST

China

China remains on the Priority Watch List and subject to Section 306 monitoring. China's enforcement of IPR, as well as its implementation of its WTO obligations, remains top priorities for the United States. China made constructive commitments related to intellectual property generally, and software legalization specifically, during the December 2010 Joint Commission on Commerce and Trade (JCCT) meeting, and during President Hu's visit to Washington in January 2011. The United States is focused on seeing significant and measureable progress on these commitments in the coming year.

The U.S. Government has been following closely the efforts under China's Special Campaign. If China makes permanent the temporary leadership structure created to manage the Special Campaign, including the key role for the Vice Premier, it could drive lasting improvements in IPR enforcement. The U.S. Government has also been following the development of China's indigenous innovation and other intellectual property-related industrial policies and is paying particularly close attention to China's policies that require or encourage U.S. parties to transfer their IPR to Chinese parties or to Chinese subsidiaries of U.S. firms. Innovation will produce greater societal and global gains when market participants, irrespective of their nationality or the places where they may own or develop intellectual property, are able to enjoy the fruits of their investments without the danger that their efforts, including in developing and commercializing intellectual property, will be undermined, or shared with others who did not undertake the initial risk. The United States encourages China to adopt policies that eliminate improper government intervention in intellectual property licensing and other lawful contractual business arrangements, and that welcome exports to and investments in China, irrespective of where the intellectual property in the products and services is owned or developed.

Special Campaign

In October 2010, Premier Wen Jiabao announced the launch of the "Program for Special Campaign on Combating IPR Infringement and Manufacture and Sales of Counterfeiting and Shoddy Commodities" (Special Campaign).

The Special Campaign was originally slated to end in March 2011, but has been extended for another three months. Enforcement efforts in the Special Campaign are aimed at a broad range of intellectual property violations: IPR infringement over the Internet, such as through illegal downloads of music and movies; sale of pirated CDs and DVDs; infringing software; and trademark infringement, particularly related to counterfeit mobile phones, auto parts, bulk commodity exports, and pharmaceuticals. China's agencies are to summarize and report on lessons learned at the end of the Special Campaign. The Special Campaign is led by Vice Premier Wang Qishan, who chairs a national "leading group" that was established at the campaign's start. The leading group consists of 26 member agencies, and the leading coordinating office is based in China's Ministry of Commerce. Reports from industry stakeholders indicate that the high-level leadership structure of the Special

Campaign appears to have resulted in improved coordination among various IPR enforcement authorities in China at the central, provincial, and local levels.

The Special Campaign has produced regulatory and judicial changes, as well as strengthened enforcement activities. In late November 2010, the State Council issued the “Notice on Further Strengthening the Management of the Software Assets of Central Administrative Entities and Public Institutions,” obligating, for the first time in China, central government budget allocations for legitimate software purchases. It further required that government asset management include software, and that only legitimate software be used in central government networks. Furthermore, on January 11, 2011, the Supreme People’s Court, the Supreme People’s Procuratorate, and the Ministry of Public Security jointly issued a document entitled, “Opinions on Handling Several Issues in IP Criminal Cases,” which appears to modify the proof requirements in copyright infringement cases involving multiple copies of works.

Anecdotally, individual companies and industry trade associations report some increases in investigative and enforcement activity, particularly in the online environment, where China’s media have reported more than 200 website closures and suspensions of online business licenses. Trade associations state that their members are seeing increased enforcement activity in luxury- and branded-goods sectors. Over the past few months, local and provincial branches of China’s Administration for Industry and Commerce (AIC) claim to have conducted 1,372 raids involving more than 700,000 law enforcement personnel, logging 5,000 trademark violations in 16,000 cases valued at over \$15 million. Pharmaceutical manufacturers report positive results from the Special Campaign, which has focused in part on public health and safety. According to rights holders in this sector, law enforcement has been reaching out to individual companies, investigating leads early on, and bringing criminal prosecutions against infringers. Rights holders detect more diligence and promptness on the part of Chinese authorities in developing criminal counterfeit pharmaceutical cases. Anecdotal accounts also suggest that Chinese police may be pursuing production networks and distribution channels, and seizing counterfeit products as well as manufacturing equipment.

However, some companies and trade associations report mixed results and remain skeptical about whether current activity levels will be maintained once the Special Campaign ends. As an example, the software industry reports no discernable increase in legitimate software sales to date, and no significant changes in software-related enforcement activity. This is despite China’s assertion in its Special Campaign plans that software legalization is a high priority. For this sector, it appears that this latest campaign is not yet having a positive effect. One company noted that most of the Chinese government’s efforts to purchase legal software have been focused on low-end and pirated domestic software.

Online Piracy

Piracy over the Internet in China continues to be a source of concern and injury to the copyright industries and the United States. It is estimated that there are 457 million Internet users in China, as compared with 223 million in the United States; when coupled with reports that 99% of all music downloads in China are illegal, the concerns of industry are understandable. However, there appear to be early signs of progress in this area. As a result of the Special Campaign, several websites and portals, including VeryCD, qishi.com and 5474.com have been shut down, and three of the operators of these last two sites were arrested and sentenced to prison terms that ranged from three to five years,

along with fines levied between the equivalent of \$30,000 and \$228,000. The most progress seems to be occurring with respect to video distribution: Youku.com and Toudu.com have entered into licensing agreements with major U.S. studios to stream their movies and television programming, thereby starting to shift their business models from offering pirated content to providing legitimately licensed content. The United States is also encouraged by media reports that Baidu, recently listed for the fifth year in a row in the USTR Notorious Markets report, will be launching a licensed music search service soon. At this moment it appears that a licensing agreement has only been reached with Chinese rights holders. The United States urges Baidu to reach a similar agreement with U.S. rights holders, and eliminate all pirated music from their site. Recent reports also indicate that Baidu has removed 2.8 million items from an online library after Chinese authors complained it was distributing their works without permission. However, the publishing industry continues to report problems involving unauthorized distribution of electronic journals in libraries.

Counterfeiting Issues

China's global manufacturing capacity also extends to all phases of the production and global distribution of counterfeit goods. According to industry reports, the range of goods counterfeited in China includes apparel and footwear, mobile phones, pharmaceuticals and medical equipment, herbal remedies, wine and liquor, other beverages, agricultural chemicals, electronic components, computer and networking equipment, software and related products, batteries, cigarettes, cosmetics, home appliances, cement, and auto parts, as well as merchandise based on copyrighted works. Many of these activities can be traced back to Guangdong Province. Traditional counterfeit markets, such as the Silk Market in Beijing or wholesale markets like Yiwu City, are no longer the only places where these counterfeits are pervasive. Increasingly, the use of online sales platforms and global express delivery services are facilitating international distribution of these counterfeit goods.

With respect to Internet distribution, the past year has seen some positive developments, in part due to the Special Campaign. These developments include new measures issued by the State Administration of Industry and Commerce (SAIC) that require ISPs to verify the identity of online traders and to take "necessary measures to protect registered trademarks." Local AICs have also demonstrated greater willingness to intervene directly against online advertisements of fake products. Recently, one of the largest online platforms for sales of counterfeit goods, Taobao, launched a new initiative to examine advertising and sale activities using its platform, and to provide leads to Chinese law enforcement authorities regarding infringing activities. In this connection, the fashion industry reports that it has been approached by Chinese enforcement authorities seeking information to support criminal prosecutions against online traders caught with large quantities of counterfeit products in their warehouses. The United States urges other online platforms, especially those cited in the "Notorious Markets" report, to follow Taobao's lead to increase cooperation with Chinese police and U.S. rights holders. The United States also encourages Chinese enforcement agencies to reach out not only to the larger foreign enterprises, but also to small and medium enterprises that are also being injured by counterfeit goods.

Despite these positive developments, including the raids that have taken place under the Special Campaign, the United States is troubled by China's May 2010 prosecution guidelines that tripled the threshold for investigating and prosecuting trade in counterfeit products. High thresholds for initiating criminal actions have always been a significant barrier to effective enforcement against the sale of counterfeits. Raising these thresholds introduces new problems into an already difficult

enforcement environment in which administrative fines lack deterrent effect and are viewed merely as a cost of doing business. The United States urges the Chinese government to make the manufacturing of counterfeit goods a crime regardless of value. However, if China maintains these thresholds, it could mitigate the effects of doing so by valuing the counterfeit goods based on the retail price of those goods, and by including the costs of components sold together with the product, such as bottles and packaging, in the determination of whether the threshold is met.

While the counterfeit goods are seized in the course of raids, that is not typically the case with equipment used to produce those goods. To ensure that such enforcement actions are truly effective in stopping the manufacturing of counterfeit goods, the equipment used to manufacture those goods must also be seized and destroyed. If such equipment is not seized and destroyed, counterfeiters can resume their operations as soon as law enforcement officers have left their premises. It is also important to permit direct acceptance of serious IPR cases by the Public Security Bureau (PSB). While administrative agencies such as the local AICs can seize counterfeits, only the PSB has the power to search and arrest. A follow-on action to the Special Campaign would be to grant the PSB authority to accept all manufacturing cases directly. Lastly, since Guangdong Province is the source of most counterfeits, a coordinated, province-wide effort should be undertaken to address this problem. It should be noted that when the Asian Games were held in Guangzhou in November 2010, officials not only conducted robust enforcement of IPR with respect to that event, but also undertook additional crackdowns on counterfeit goods and optical disk outlets. This same political will should be continued and expanded throughout the whole province.

Patents Used in Chinese National Standards

In recent years, concerns have arisen regarding China's proposed treatment of patented technology in connection with domestic standards development processes. First, in late 2004, concerns arose after the Standardization Commission of China (SAC) issued draft *Provisional Regulations for National Standards Relating to Patents (Provisional Regulations)* and key Chinese government officials made public statements that appeared to contemplate compulsory licensing of patented technologies that are used in national standards in China.

In November 2009, SAC circulated a new draft of the *Provisional Regulations* for public comment. This draft measure would implement China's vision for a standards development process and establish the general principle that mandatory national standards should not incorporate patented technologies. However, the draft measures provide that when mandatory national standards incorporate patented technologies, there is the possibility of a compulsory license if a patent holder does not grant a royalty-free license. This differs from the typical practice of accredited standards developing organizations in other countries, which require disclosure of intellectual property in the standards development process and support "reasonable and nondiscriminatory" (RAND) licensing policies with respect to intellectual property that is incorporated into a standard. RAND policies require concerned patent rights holders to make any intellectual property incorporated into the standards that these bodies develop available to all interested parties on RAND terms. Within the standards development process, licensing terms are typically negotiated between the right holder and parties interested in implementing the standards.

Second, in 2006, China's Electronic Standardization Institute (CESI), released draft intellectual property policy rules for standards-setting organizations (SSOs). These draft rules envisage Chinese

government involvement in standards-setting processes, and include a requirement that SSOs obtain government approval for patent claims. Such government involvement could be exercised in a way that affects private party transactions and could raise concerns under certain circumstances.

In January 2010, the China National Institute of Standardization (CNIS) solicited public comments on its notice entitled, “Disposal Rules for the Inclusion of Patents in National Standards.” The “Disposal Rules” are the supporting documents for SAC’s Provisional Regulations. In October 2010, CNIS finished the second draft of the Provisional Regulations, “Special Procedure on Standards Making—Inclusion of Patents in National Standards,” and submitted them to SAC for review.

U.S. companies have expressed serious concerns regarding these proposals. The United States will continue to monitor how China treats intellectual property through its SSOs, including in connection with the development and finalization of CESI’s rules, as well as the development of SAC’s revised Provisional Regulations. In addition, the United States will discuss these issues with China in the JCCT IPR Working Group, where both sides have agreed to discuss related issues with participants from all relevant Chinese and U.S. agencies.

Indigenous Innovation

Chinese government agencies, including at national, provincial, and local levels, frequently release documents, including regulations, rules and regulatory documents (*e.g.*, opinions, notices, circulars) that seek to promote China’s development as into an innovative, IP-intensive economy. The United States recognizes the critical role of innovation in development and in improving living standards in the United States and China. However, the United States has also expressed concerns to China regarding its innovation-related policies and other industrial policies that discriminate against or otherwise disadvantage U.S. exports or U.S. investors and their investments. Chinese regulations, rules and other regulatory documents frequently call for technology transfer, and in certain cases, condition, or propose to condition, eligibility for government benefits or preferences on intellectual property being owned or developed in China, or being licensed, in some cases exclusively, to a Chinese party. Such arrangements may not ordinarily be commercially optimal but for the conditions or incentives established by the government. Government intervention in the commercial decisions of enterprises regarding intellectual property ownership, development, registration or licensing is not consistent with international practice, and may raise concerns relative to China’s WTO obligations. The United States encourages China to abandon policies and practices that involve the government in enterprises’ licensing and other contractual arrangements.

Indigenous Innovation and Product Accreditation for Government Procurement Preferences

In late 2009, three Chinese agencies -- the Ministry of Science and Technology (MOST), the Ministry of Finance (MOF) and the National Development and Reform Commission (NDRC) -- announced a National Indigenous Innovation Product Accreditation System, that would, among other things, condition government procurement preferences on certain criteria, including several specifically relating to intellectual property. For example: (1) An applicant’s products would need to have “Chinese intellectual property and proprietary brands;” (2) An applicant would need to be a Chinese enterprise, institution or citizen owning such intellectual property lawfully; (3) An applicant’s use, handling and secondary development of such intellectual property would need to be totally independent of overseas organizations or individuals; and (4) An applicant would be required to own the trademark of eligible products, and the trademark’s original place of registration would need to be in China, and also be independent of overseas brands.

After the United States and other countries raised significant concerns, the issuing agencies proposed amendments for public comment to some, but not all, of the intellectual property-related requirements, in April 2010. For example, China proposed to eliminate a requirement relating to trademarks. However, the requirement relating to Chinese enterprise ownership of the intellectual property was only proposed to be changed to require a grant or transfer of intellectual property, e.g., through a license, irrespective of whether the owner preferred not to license its intellectual property to a Chinese entity. In addition, China did not propose to amend a provision relating to the requirement for eligible products to contain “Chinese intellectual property and proprietary brands.”

The United States and other governments, as well as international business associations, made their comments and concerns known regarding these and other aspects of the National Indigenous Innovation Product Accreditation System. The U.S. Government also requested that the Chinese government invalidate the many Chinese provincial and municipal indigenous innovation product accreditation measures that conditioned accreditation for government procurement preferences on – for example – the location of the development or ownership of intellectual property. In addition, the U.S. Government requested that China’s draft *Regulations Implementing the Government Procurement Law*, which had been published by China’s Ministry of Finance in proposed form for public comment, be amended to remove the requirement in proposed Article 9 to formulate indigenous innovation product lists for government procurement preferences, mandates and other purposes.

The United States raised these concerns at the May 2010 Strategic and Economic Dialogue. China agreed to ensure that its innovation policies will be consistent with the following principles: non-discrimination; support for market competition and open international trade and investment; strong enforcement of intellectual property rights; and, consistent with WTO rules, leaving to agreement between individual enterprises the terms and conditions of technology transfer, production processes and other proprietary information. China and the United States also agreed to create an Innovation Dialogue involving all relevant U.S. and Chinese agencies, which meets at the Minister-led and experts’ level to discuss, *inter alia*, Chinese innovation and technology transfer policies.

Additionally, at the 2010 JCCT, in 2010 meetings of the JCCT IPR Working Group, and at the summit meeting in January 2011 between President Obama and President Hu Jintao, the United States raised its concerns regarding China’s indigenous innovation product accreditation system. Notably, President Hu stated that “China will not link its innovation policies to the provision of government procurement preferences.” This is a very important commitment, and the United States looks forward to full implementation of this commitment in all Chinese central, provincial and municipal laws, regulations, rules and regulatory documents that link innovation policies to the provision of government procurement preferences.

Indigenous Innovation and Place of Intellectual Property Ownership or Development

During the 2010 JCCT process, including in a meeting of the JCCT IPR Working Group and at the JCCT plenary meeting, the United States requested that China not condition government preferences on the location of intellectual property ownership and development. The United States recognized that the requirement for “Chinese intellectual property and proprietary brands” in the Indigenous Innovation Product Accreditation System was also a factor referenced in important Chinese

government statements and other Chinese measures. For example, the October 2010 State Council *Decision on Accelerating the Cultivation and Development of Strategic Emerging Industries* states that, “China shall boost the cultivation and development of strategic emerging industry and hold the core technologies and intellectual property as well as enhance independent growth capability.” In addition, the *Measures for Administration of Recognition of Innovative and High-Tech Enterprises*, *Guo Ke Fa Huo [2008] No. 172*, adopted in final form without opportunity for public comment by MOST, MOF and the State Administration of Taxation, provide for certain tax benefits for qualifying enterprises. One of the eligibility criteria is that “Enterprises registered in China . . . have independent intellectual property rights over the core technology of major products through independent research and development, transfer, recipient, mergers and acquisitions within three years or through exclusive licensing over five years.”

At the 2010 JCCT, China agreed not to “adopt or maintain measures that make the location of the development or ownership of intellectual property a direct or indirect condition for eligibility for government procurement preferences for products and services. China and the United States will continue to discuss whether this principle applies to other government measures.”

The United States also looks forward to expanding this commitment to clarify that the location of development or ownership shall not be a condition for eligibility for other forms of government preferences as well.

The United States believes that continued bilateral dialogue and cooperation can lead to further progress in these and other areas. The United States will continue to put serious efforts into its joint work with China on IPR enforcement and protection strategies, innovation policies, and the range of other important IPR-related matters in this bilateral economic relationship, including through the JCCT and other fora.

Russia

Russia has taken significant steps in the past year to improve IPR protection and enforcement, and the United States commends this important progress. Because of ongoing concerns, particularly with respect to piracy over the Internet and enforcement generally, Russia remains on the Priority Watch List. Russia is therefore encouraged to work with the United States to set metrics, including through the establishment of an action plan, to resolve these issues.

The United States welcomes Russia’s enactment, as part of the WTO accession process, of four important IPR laws. These achievements complete the legislative commitments it made in the 2006 Bilateral Agreement on Protection and Enforcement of Intellectual Property Rights (2006 Bilateral Agreement on IPR). In 2010, Russia passed: (1) amendments to Part IV of the Civil Code (governing intellectual property generally); (2) enactment of the Federal Law on Customs Regulation granting *ex officio* authority to customs officials; (3) amendments to the Law on Activity Licensing, which ensures that infringers cannot renew optical media production licenses; and (4) amendments to the Law on Circulation of Medicines to protect undisclosed test or other undisclosed data generated to obtain marketing approval.

In addition to these legislative reform efforts, Russia has had additional success with respect to reducing hard goods counterfeiting and piracy. The pharmaceutical and software industries, for example, report a reduction in the number of counterfeit medicines and optical discs available in

markets, including in large markets such as the Gorbushka market and the Rubin Trade Center in Moscow. Despite these improvements, the United States is concerned that hard goods counterfeiting and piracy continue to be widespread, particularly for the motion picture, television and entertainment software industries.

Another important step Russia took was to close down operations of all optical disc plants engaging in production of pirated media located on Russian state-owned restricted access regime enterprises (RARE) sites, pursuant to the 2006 Bilateral Agreement on IPR. According to industry reports, however, warehouses storing pirated CDs and DVDs remain on several government-controlled military-industrial sites. This leaves Russian enforcement agencies and rights holders with limited opportunities to conduct successful raids against such warehouses.

The United States recommends that Russia take steps to address these and other IPR concerns. The United States is concerned that, with respect to piracy over the Internet, significant gaps exist in Russian law and enforcement efforts. This creates obstacles to Russia's ability to keep pace with changing technology. To deal with websites hosting illegal material, the United States encourages Russia to pass notice and take down legislation that addresses all forms of piracy over the Internet and provides for the swift removal of infringing content. In addition, numerous pay-per-download websites as well as cyberlockers, BitTorrent sites, and unauthorized music services, including services affiliated with social networking sites such as vKontakte, reside in Russia. The United States urges Russia to engage in vigorous, sustained, and measureable takedown and enforcement actions, including criminal enforcement actions with deterrent penalties, against existing as well as future infringing sites. Furthermore, intensified criminal investigations and criminal convictions against operators of illegal Internet sites are needed. The United States also urges Russia to assign specially trained personnel and other appropriate resources to a specialized law enforcement unit within Department K of the Ministry of Internal Affairs (MVD) in order to prioritize and improve its enforcement efforts with respect to piracy over the Internet. This unit should work closely with rights holders' representatives to target and to take action against priority infringing websites.

The United States therefore urges Russia to strengthen its overall enforcement efforts, including criminal enforcement efforts, against piracy and counterfeiting. Enforcement continues to vary greatly among regions. According to MVD, the number of raids, and the extent of cooperation with rights holders, decreased in 2010. While Russian police continue to carry out end-user raids against businesses using pirated products, there are indications that such raids are sometimes done on a selective basis. Even where raids are conducted in a sustained and vigorous manner, prosecutions and convictions do not necessarily follow. The United States urges Russia's enforcement officials to increase the number of IPR-related investigations, and prosecutors to seek deterrent penalties in judicial proceedings. The United States encourages Russia to pass legislation establishing a specialized IPR court. The United States looks forward to working together with Russia on continuing education opportunities for judges with respect to IPR.

Concerns have also been raised about Russia's accreditation process for collecting societies. Additionally, recent litigation with respect to the single collecting society accredited to collect royalties on behalf of all performers and record companies (*i.e.*, the All-Russia Organization for Intellectual Property (VOIS)) has introduced uncertainty regarding VOIS's status and the status of the accreditation process generally. The United States looks forward to working with Russia on these and other issues.

Algeria

Algeria remains on the Priority Watch List. The United States remains deeply concerned about an Algerian law that bans numerous imported pharmaceutical products and medical devices in favor of local production. Additional matters that also give rise to concerns include the lack of protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. The pharmaceutical industry continues to express concern about the weak level of patent protection that Algeria accords. In addition, copyright piracy and trademark counterfeiting remain widespread and enforcement efforts remain insufficient. The United States will continue to work with Algeria to address these and other issues.

Argentina

Argentina remains on the Priority Watch List. The Government of Argentina has taken a number of positive and encouraging steps that the United States welcomes. Argentina stepped up its enforcement efforts in 2010, and industry continues to report encouraging cooperation with police officers regarding raids. Other positive developments include the Attorney General's issuance of new guidance on IPR crimes, which should improve coordination among enforcement agencies and lead to more aggressive treatment of criminal IPR cases. Argentina also took steps to address its patent backlog, although additional work is required. However, serious problems persist, including widespread availability of pirated and counterfeit goods, an inefficient judicial system, and a failure to adjudicate civil and criminal cases and impose deterrent level sentences. While efforts by the Argentine Center for the Administration of Photocopying Rights (CADRA) and major libraries have led to a decrease in book piracy, overall levels of copyright piracy continue to present a problem, as reflected, for example, in a reported growth in piracy over the Internet. The United States encourages Argentina to provide for protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test and other data generated to obtain marketing approvals for pharmaceutical products, and to provide an effective system to address patent issues expeditiously in connection with applications to market pharmaceutical products. The United States looks forward to continuing to work with Argentina to address these and other concerns.

Canada

Canada remains on the Priority Watch List. The United States continues to urge Canada to implement its previous commitments to improve its legal framework for IPR protection and enforcement. Unfortunately, Canadian efforts in 2010 to enact long-awaited copyright legislation were unsuccessful. The United States encourages Canada to make the enactment of copyright legislation that addresses the challenges of piracy over the Internet, including by fully implementing the WIPO Internet Treaties, a priority for its new government. The United States encourages Canada to provide for deterrent-level sentences to be imposed for IPR violations, as well as to strengthen enforcement efforts, including at the border. Canada should provide its Customs officials with *ex officio* authority to effectively stop the transit of counterfeit and pirated products through its territory. U.S. stakeholders have also expressed strong concerns about Canada's administrative process for reviewing the regulatory approval of pharmaceutical products, as well as limitations in Canada's trademark regime. The United States appreciates the high level of cooperation between the

Canadian and U.S. Governments, and looks forward to continuing engagement on these important issues.

Chile

Chile remains on the Priority Watch List. The United States welcomes the Piñera Administration's significant commitment to address outstanding IPR issues under the United States-Chile Free Trade Agreement (FTA) in 2011. Positive steps taken in 2010 include the launch of a Ministerial-level interagency committee on IPR with a mandate to examine these issues, and the implementation of the new copyright legislation. In addition, Chile ratified the Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellites (Brussels Convention) and the Trademark Law Treaty. The United States encourages Chile to take further action by acceding to, and ratifying, the International Convention for the Protection of New Varieties of Plants. The United States also encourages Chile to implement its commitment to provide an effective system to address patent issues expeditiously in connection with applications to market pharmaceutical products, to implement protections against the circumvention of technological protection measures, to implement protection for encrypted program-carrying satellite signals, and to ensure that administrative and judicial procedures and deterrent remedies are made available to rights holders. The United States also urges Chile to provide adequate protection against unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approvals for pharmaceutical products, and to amend its Internet service provider liability regime to permit effective action against any act of infringement of copyright and related rights. The United States commends Chile's efforts and looks forward to continued engagement with Chile to resolve these and other matters.

India

India remains on the Priority Watch List. India continued to make incremental progress in 2010 to address its IPR legislative, administrative, and enforcement issues. Improvements in 2010 included the introduction of a Copyright Amendment Bill, which may assist in addressing some aspects of the widespread piracy of copyrighted materials on the Internet. However, the bill may not fully implement the WIPO Internet Treaties. The United States encourages India to revise and enact these amendments, and to thereby bring India's copyright law into line with international standards. India has also developed a national IPR policy which should help focus the government's efforts to address widespread piracy and counterfeiting, including counterfeit medicines, effectively. Some industries also report improved cooperation with enforcement officials of certain state governments. Nevertheless, India continues to have a weak legal framework, and ineffective overall IPR enforcement persists. The United States encourages India to take action on its draft optical disc law and generally to combat widespread optical disc piracy. The United States also recommends that India improve its IPR regime by providing for stronger patent protection. Particular concerns have been raised regarding provisions of India's Patent Law that prohibit patents on certain chemical forms absent a showing of increased efficacy, thereby possibly limiting the patentability of potentially beneficial innovations, such as temperature-stable forms of a drug or new means of drug delivery. India should also take additional steps to address its patent application backlog and to streamline its patent opposition proceedings. The United States encourages India to provide an effective system for protecting against unfair commercial use, as well as unauthorized disclosure, of undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agricultural chemical

products. Finally, the United States recommends that India take steps to improve the efficiency of judicial proceedings, and strengthen its criminal enforcement regime, by encouraging the imposition of deterrent-level sentences for IPR violations and by giving prosecution of IPR offenses greater priority. The United States looks forward to increased engagement with India to address these and other matters in the coming year.

Indonesia

Indonesia remains on the Priority Watch List. Indonesia continued its enforcement efforts and enhanced its cooperation with rights holders in 2010. For example, rights holders report that Indonesia has adopted helpful practices and policies with respect to cable piracy. However, enforcement efforts were insufficient to keep pace with Indonesia's piracy and counterfeiting problem, including with respect to the widespread availability of counterfeit pharmaceutical products and other counterfeit hard goods. The United States urges Indonesia to improve its enforcement efforts, to address problems that its prosecutorial and judicial systems confront, to provide deterrent penalties for IPR violations, and to encourage courts to impose those penalties. While the number of criminal IPR cases handled by the Attorney General appears to have increased during the past year, investigatory and prosecution efforts remain limited. The United States encourages Indonesia to provide an effective system for protecting against unfair commercial use, as well as unauthorized disclosure, of undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. The United States also urges Indonesia to address its serious market access barriers for IPR-intensive products. These barriers include measures imposing requirements that restrict the importation of medicines by foreign pharmaceutical companies, a troubling change to its customs valuation methodology for imported motion pictures, and continuing market access restrictions in the entertainment industry. The United States will continue to engage with Indonesia on these and other issues.

Israel

Israel remains on the Priority Watch List. While Israel has taken steps towards implementing an Understanding on IPR it concluded with the United States in 2010, further action is needed. The United States stands ready to work closely with the government of Israel in 2011 to achieve full implementation of the Understanding.

The United States and Israel reached the Understanding, which concerns several longstanding issues regarding Israel's regime for pharmaceutical products, on February 18, 2010. As part of the Understanding, Israel committed to strengthen its laws on protection of pharmaceutical test data and patent term extension, and to publish patent applications promptly after the expiration of a period of eighteen months from the time an application is filed. The Understanding provided, among other things, that Israel would submit legislation regarding these matters within 180 days of the conclusion of the Understanding. The United States agreed to move Israel to the Watch List once Israel submitted appropriate legislation to the Knesset, and to remove Israel from all Special 301 lists once the government enacted legislation that implemented Israel's obligations fully.

Israel has submitted legislation to the Knesset regarding the protection of pharmaceutical test data. The United States commends Israel for taking that important step, and looks forward to enactment of that legislation. To date, however, Israel has not submitted legislation to the Knesset regarding patent term extension or patent publication. The United States encourages Israel to submit bills to

the Knesset that fully implement the Understanding as soon as possible. Pursuant to the Understanding, once Israel submits appropriate legislation to the Knesset regarding those matters, the United States will move Israel to the Watch List.

Separately, the United States encourages Israel to accede to and implement the WIPO Internet Treaties. Doing so would strengthen Israel's IPR regime, and would afford rights holders with additional effective enforcement remedies against infringement that occurs over the Internet.

The United States also encourages Israel to amend its copyright law to provide for statutory damages. In addition, the United State urges Israel to confirm that enterprises are criminally liable for end-user software piracy; it is currently unclear whether enterprises that engage in this activity are subject to prosecution. The United States encourages Israel to enforce judicial decisions requiring cable operators to compensate copyright holders for the unauthorized retransmissions of television broadcast signals containing their works, and to establish a fair remuneration structure for future retransmissions. The United States will continue to work with Israel to resolve these and other matters.

Pakistan

Pakistan remains on the Priority Watch List. Progress in the enforcement of IPR in 2010 included improved cooperation between the copyright industry and enforcement authorities, as well as more vigorous enforcement against optical disc and book piracy. However, widespread copyright piracy (including book piracy and piracy of software programs in enterprises), as well as trademark counterfeiting, persist. The United States encourages Pakistan to provide *ex officio* authority to its enforcement officials, and to provide for deterrent-level penalties for IPR violations. Further work is needed to reform Pakistan's copyright law. The United States is encouraged that Pakistan's Intellectual Property Office has endorsed reform of the Copyright Ordinance, to conform that Ordinance to international standards. In addition, the United States continues to encourage Pakistan to provide an effective system for protecting against unfair commercial use, as well as unauthorized disclosure, of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products, and to provide an effective system to address patent issues expeditiously in connection with applications to market pharmaceutical products. The United States will continue to work with Pakistan on these and other issues.

Thailand

Thailand remains on the Priority Watch List. The United States is encouraged that senior level officials of the Royal Thai Government have shown a continuing commitment to improving IPR protection and enforcement. The United States is likewise encouraged that the government has implemented the Creative Economy initiative. In connection with that initiative, the government announced several public awareness and educational projects regarding IPR, and established a National Committee on Creative Economy. The United States also welcomes the formation of the Thai-U.S. Creative Partnership; intellectual property is an important component of many of the issues that this partnership will address. However, Thailand failed to make substantial progress on several key pieces of legislation that remain pending, including legislation to address landlord liability, legislation regarding unauthorized camcording of motion pictures in theaters, and legislation to provide Thai Customs officials with the authority to seize suspect goods absent a formal complaint by a rights holder. In addition, Thailand has also not enacted amendments to the Copyright Act that,

among other things, would implement the WIPO Internet Treaties. While IPR public awareness and education has improved, enforcement efforts remain weak and non-deterrent. Piracy and counterfeiting, including illegal downloading of pirated works from the Internet, and the theft of cable and satellite signals, remain rampant in Thailand, and the motion picture industry has reported a significant increase in unauthorized camcording of motion pictures in theaters. The United States continues to encourage Thailand to engage in a meaningful and transparent manner with all relevant stakeholders, including owners of IPR, as it considers ways to address Thailand's public health challenges while maintaining a patent system that promotes investment, research, and innovation. In addition, the United States reiterates its support for the 2001 Doha Declaration on the TRIPS Agreement and Public Health, as described in Section I of this report. The United States encourages Thailand to make progress on its IPR initiatives and looks forward to working with Thailand on these and other matters.

Venezuela

Venezuela remains on the Priority Watch List. The protection and enforcement of IPR in Venezuela continued to deteriorate in 2010. The reinstatement of the 1955 Industrial Property Law, which followed Venezuela's 2006 withdrawal from the Andean Community, eliminated protections for certain formerly patentable inventions and created uncertainty about the status of protection for trademarks registered under the Andean Community law. Additionally, copyright piracy, including piracy over the Internet, as well as trademark counterfeiting, remain widespread. On a positive note, Venezuela passed a Law on Crime and Contraband in 2010, which imposes penalties for smuggling violations and provides for the seizure of goods that infringe IPR. This includes providing an effective system for protecting against unfair commercial use, as well as unauthorized disclosure, of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. Overall, the United States urges Venezuela to make significant improvements to its regime for IPR protection and enforcement.

WATCH LIST

Belarus

Belarus remains on the Watch List. The United States continues to be concerned about the delayed implementation of the IPR commitments Belarus made under the United States-Belarus Trade Relations Agreement of 1993. Belarus took some positive steps in 2010 by amending its Law on Trademarks to protect trademarks on the Internet, and by developing a National Strategy for Intellectual Property. However, enforcement efforts continue to be weak and ineffective and counterfeit and pirated goods continue to be widely available. Belarus should provide enforcement officials with authority to effectively investigate cases, seize infringing goods, and prosecute IPR cases without waiting for a right holder to file a complaint. Furthermore, Belarusian law does not provide adequate scope for *ex parte* searches. The United States encourages Belarus to amend its copyright law to implement the obligations of the WIPO Internet Treaties. The Russia-Belarus-Kazakhstan Customs Union entered into force in July 2010, and the United States will be monitoring the implementation of provisions granting *ex officio* authority to Customs officials and the creation of a unified trademark database to determine if this results in improved protection