



The Work of USTR - Intellectual Property

Office of the U.S. Trade Representative Fact Sheet

In this work, we consult closely with Congress on our priorities and strategies; we use domestic trade law; regional initiatives in Europe, Asia (APEC), Latin America (FTAA) and Africa; existing institutions, notably the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO). Our goal is to control piracy through strong laws and effective enforcement worldwide, and to ensure that protection remains effective as technology develops in the future. It is complex work: effective protection of inventions in the pharmaceutical area, protection of copyrighted works like software, music, and movies, and protection of the trademark reputation of our firms requires a coordinated effort involving not only trade officials but entire governments. Effective protection of intellectual property rights involves customs, courts, prosecutors and police, commitment by senior political officials; and a general recognition that to copy is to steal and to deprive finance ministries of revenue. But although it is complex and the work is never done, the effort, over the years, has been quite successful.

Our major policy tools are both bilateral and multilateral:

Bilateral Initiatives and Special 301

First, we intercede directly in countries where piracy is especially prevalent or governments are exceptionally tolerant of piracy. Among our most effective tools in this effort is the annual "Special 301" review mandated by Congress in the 1988 Trade Act.

This tool has vastly improved intellectual property standards around the world. Publication of the Special 301 list warns a country of our concerns. And it warns potential investors in that country that their intellectual property rights are not likely to be satisfactorily protected. The listing process itself has often helped win improvements in enforcement. In many cases, these actions lead to permanent improvement in the situation. At times, however, we must use the sanction authority granted to us for worst case offenders. Another bilateral tool is preferential tariff benefit treatment, such as the Generalized System of Preferences, the Caribbean Basin Initiative and Andean Trade Preferences Act. These programs provide tariff-free treatment to certain products of beneficiary countries, subject to certain conditions, including adequate and effective protection of intellectual property rights. The threat of loss of these benefits has proven to be an effective point of leverage with some of our trading partners.

Our other bilateral tools include the inclusion of IPR provisions in our science and technology agreements and our Bilateral Investment Treaties. But perhaps the most important of the remaining tools is our ability to offer technical assistance. We put considerable resources into helping other countries draft good intellectual property laws; the U.S. Patent and Trademark Office and the Copyright Office have been critical in this regard. We also work with the FBI, Department of Justice and Customs Services to provide assistance in IPR enforcement as possible within resource limitations.

Regional and Multilateral Trade Initiatives

Bilateral negotiations are and will remain central to our efforts to improve intellectual property standards worldwide. However, as time has passed, our trading partners have begun to see the effect of stronger standards at home - that is, that strong intellectual

property standards allow nations to develop their own high-tech and artistic industries and to attract foreign investment.

This allowed us to make a fundamental advance with the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) at the creation of the WTO in 1995. This was an historic achievement: it required all WTO members to pass and enforce copyright, patent and trademark laws, and gave us a strong dispute settlement mechanism to protect our rights. Thus we created a set of standards enforceable between governments and subject not only to our own trade laws but to multilateral rules. The TRIPS Agreement granted developing countries until January 1, 2000 to implement most provisions of the Agreement, and granted least developed countries until 2006. We have pressed all countries to meet their obligations, and wherever possible, to accelerate implementation of these obligations. In the interim, we have been aggressive and successful in using WTO dispute settlement procedures to assert our rights, beginning with our initiation of the first TRIPS-related dispute settlement case against Japan in 1996.

We also make use of regional arrangements to promote and extend protection of intellectual property. The North American Free Trade Agreement (NAFTA), currently the world's largest and most comprehensive free trade agreement, contains specific obligations requiring high levels of protection for owners of patents, copyrights, trademarks, trade secrets, and integrated circuit designs. Ongoing negotiations toward a Free Trade Area of the Americas (FTAA) are scheduled to conclude no later than the year 2005. Intellectual property is one of the nine FTAA negotiating groups; the objective of that group is to ensure adequate and effective of intellectual property rights throughout the FTAA that fully reflect changes in technology. On the other side of the globe, we are working with our partners in the Asia Pacific Economic Cooperation forum (APEC) to advance intellectual property goals in conjunction with the group's broader agenda of market opening and trade expansion.

Accessions to the WTO

Our negotiations on the accession of over 30 economies to the WTO offer us a major opportunity to improve intellectual property standards worldwide. These economies make up a total population of 1.6 billion, and include a number of the countries in which our intellectual property industries have experienced very significant piracy problems over the years. In each case, we require full implementation of TRIPS obligations as a condition of entry into the WTO, without transition.

TRIPS in the "Built-in Agenda" and Future WTO Rounds

Under the WTO's "built-in agenda," we are conducting a thorough review in TRIPS Council of developing-country implementation of TRIPS obligations. Given the significant number of developing countries that will be reviewed, it is already clear that this work will continue through the end of 2001.

Like other WTO Members, we foresee the possibility of improvements to the TRIPS Agreement, in due course. Among other things, we believe that it will be important in a future Round to examine and ensure that standards and principles concerning the availability, scope, use and enforcement of intellectual property rights are adequate, effective, and are keeping pace with rapidly changing technology, including further development of the Internet and digital technologies. We also expect that, once Members have the benefit of the experience gained through full implementation of the Agreement, we will want to examine and ensure that Members have fully attained the commercial benefits which were intended to be conferred by the TRIPS Agreement.