EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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For Immediate Release Contact: Jay Ziegler

April 1, 1999 Helaine Klasky

Amy Stilwell

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USTR RELEASES 1999 INVENTORY OF TRADE BARRIERS

The Office of the U.S. Trade Representative today released the fourteenth annual U.S. report on foreign trade barriers, *The 1999 National Trade Estimate Report on Foreign Trade Barriers* (NTE), surveying significant foreign barriers to U.S. exports.

"Our goal is the creation of an open and fair world economy which will allow American working people, farm and ranch families, and businesses to find opportunity and prosper," said United States Trade Representative Charlene Barshefsky. "Since 1993, we have gone a long way toward the goal; but as this report shows, we still have a great deal of work ahead."

The NTE report is a comprehensive list of unfair trade practices and barriers to American exports of goods, services and farm products. It covers 54 major trading partners in each region of the world, and reveals policies restricting exports of goods and services, deficiencies in intellectual property protection, investment barriers and other topics. (Highlights of the sections covering our six largest trade partners are below.) The NTE also notes many examples where our trading partners have reduced or eliminated trade barriers described in earlier NTE reports.

This report serves as a source of information for Americans interested in trade policy, and as a

foundation for the U.S. Trade Representative's efforts to reduce and eliminate unfair trade practices worldwide through negotiation of agreements and action to enforce agreements.

Since 1993, the Clinton Administration has negotiated over 275 trade agreements, designed to create growth and job opportunities in the United States and support worldwide economic growth and prosperity by reducing and ultimately eliminating such practices. In the same period, USTR has taken enforcement action against these practices on more than 90 occasions, including filing of 44 complaints at the WTO since its creation in 1995, more than any other WTO member.

"We have come a long way since the release of the first National Trade Estimate in 1985, said Ambassador Charlene Barshefsky. "As we prepare to host the Third WTO Ministerial Conference this November and begin a new round of international trade negotiations, my hope is that this year's NTE report will help all Americans interested in trade to work together to develop a strategy that meets our country's needs in a new century."

Highlights of the 1999 NTE Report

Canada: Canada, our single largest trading partner, has been opened to a significant degree by the U.S. - Canada Free Trade Agreement and the North America Free Trade Agreement. For example, Canada imposes no duties on U.S. goods with the exception of certain agricultural items subject to supply management. U.S. exports to Canada have increased 55 percent since the NAFTA was enacted. Nevertheless, impediments to U.S. goods and services remain. These include certain aspects of the Canadian agriculture regime such as the Canadian Wheat Board, Canada's policy toward so-called "cultural" industries (magazine publishing, and broadcasting), and failure to provide adequate copyright and patent protection.

China: China's interlocking and pernicious market access barriers with respect to goods, services, and agriculture are a serious concern. China's tariffs remain high, particularly when compared to those of other major participants in the global trading system, and restrictive licensing, investment, and distribution practices make it difficult for exporters to penetrate Chinese wholesale and consumer markets. In agriculture, China's barriers to imports of U.S. citrus, meat, and Pacific Northwest wheat are a very serious concern -- sanitary and phytosanitary (SPS) measures serve as hidden barriers in these and nearly all other areas. Investment and distribution licensing restrictions make it virtually impossible for services exporters, from telecommunications to financial services, to participate in China's market. We continue to aggressively monitor and enforce bilateral agreements in textiles and intellectual property rights. We are encouraged by recent progress in implementing the new software directive to enforce anti-piracy provisions within the Chinese government. While we have seen important progress in reducing software, video, and cd-rom piracy in China, additional efforts must be undertaken to address the retailing of pirated intellectual property. We are actively engaged in negotiations toward China's accession to the World Trade Organization on commercially meaningful terms.

Europe Union: Our economic relationship with Europe remains the largest and most complex in the world. While the vast majority of our hundreds of billions of dollars in annual two-way trade and

investment flows without hindrance, and many potential trade conflicts are resolved through U.S.-European discussions and negotiations, during the past year a number of trade issues continued to fester, including several highly contentious disputes. The European Union's (EU) failure to implement a WTO-consistent banana regime by the WTO-mandated date of January 1, 1999, and its probable failure to comply with the WTO rulings on beef hormones by the WTO deadline May 13, 1999 not only have hurt U.S. exports but have undermined the credibility of the WTO dispute settlement system. The EU's protectionist agriculture policies are likely to continue to cause disputes, unless addressed in upcoming multilateral trade negotiations. Other pressing trade problems with the EU have involved rule-making or standards-setting procedures, which often lack transparency and sometimes serve as protectionist measures. For example, the EU approval process for genetically modified foodstuffs appears to be unnecessarily lengthy and arbitrary; if not corrected, hundreds of millions of dollars of U.S. agricultural exports could be stopped. Likewise, the EU's regulation on aircraft "hushkits" could adversely affect U.S. aircraft sales. Significant subsidies provided to various EU industries, including aircraft, also have created trade conflicts.

Japan: The Administration continues to attach top priority to opening Japan's markets to U.S. goods and services, emphasizing the need for implementation of fiscal stimulus and reform of Japan's financial sector, as well as comprehensive deregulation and market-opening measures. The Administration has successfully concluded 35 trade agreements with Japan since 1993, including, among the most recent, the 1998 Civil Aviation agreement, which is expected to increase U.S. aviation service-related exports by $1 billion annually, and a Joint Status Report under the Enhanced Initiative on Deregulation and Competition Policy issued in May 1998. The U.S. will continue to press Japan to implement further concrete deregulation measures in telecommunications, medical devices and pharmaceuticals, housing, financial services energy, competition policy, distribution, transparency, and other government practices under the Enhanced Initiative. The United States expects improvements in the U.S. exports of agricultural products to Japan as a result of the decision in the WTO that Japan's unfairly burdensome and non-transparent requirements on varietal testing have no scientific basis. The Administration will continue to aggressively monitor and enforce our existing trade agreements including insurance, autos and auto parts, flat glass, and government procurement including computers and construction. Further, the Administration continues to actively review any evidence of anti-competitive activity or market access barriers in the steel sector.

Korea: Korea is one of the United States' major trading partners but has been described as one of the toughest markets in the world for doing business. In response to the Asian financial crisis, the Kim Dae Jung administration has implemented structural reforms aimed at putting the Korean economy on a more open, market-oriented basis. Resistance to key trade reforms remains, however, and many issues have arisen on Korea's compliance with its international obligations. In 1999, the U.S. Government initiated WTO dispute settlement action on Korea's barriers to the import and distribution of beef, and on its failure to meet Korea's obligations under the WTO Government Procurement Agreement on airport procurement. We have also raised serious concerns about the trade-impeding effects of Korea's treatment of foreign, research-based pharmaceuticals and the consistency of this treatment with Korea's international obligations. Finally, we have long-standing concerns about the Korean government's involvement and support for the Korean steel industry. President Kim's government has stated its intention to address these concerns, and progress has been made, including through an August 1998 exchange of letters on the sale and operation of Hanbo Steel. The United States and Korea now are engaged in a results-oriented comprehensive dialogue on broader U.S. steel-related concerns. We will continue our aggressive efforts on these and other U.S.-Korea trade issues, including implementation of the Memorandum of Understanding on trade in motor vehicles signed with the United States in October of 1998.

Mexico: Our exports to Mexico are up 90 percent since the NAFTA was enacted, and the average tariff

on U.S. goods entering Mexico has been reduced to approximately 2 percent from the pre-NAFTA average of over 10 percent. Despite this progress, however, we retain serious concerns in the areas of technical barriers to trade, barriers to certain agricultural goods, cross border services in telecommunications, and the enforcement of intellectual property rights.

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Note: The NTE Report will be available on USTR's Website at www.ustr.gov under "reports."

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For Immediate Release Contact: Jay Ziegler

April 6, 1999 Helaine Klasky

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WTO FINDS EU BANANA REGIME HURTS U.S. TRADE

The United States welcomed today's World Trade Organization (WTO) decision affirming the U.S. position in the long-running dispute over the European Union's (EU) banana regime. The WTO arbitrators found that the WTO-inconsistent regime has caused $191.4 million in lost U.S. exports of goods and services on an annual basis.

"We are pleased that the WTO arbitrators concur with our position that the EU banana regime is WTO-inconsistent and continues to damage the U.S. economy. This decision is an important victory for the WTO dispute settlement process and sends a clear message that the WTO cannot be used to engage in endless litigation," said Ambassador Barshefsky. "This is the fifth time in six years that an international trade panel has found the EU's banana policies to be in violation of international trade rules. The EU's deliberate refusal to comply with WTO rulings leaves us no choice but to exercise our right to suspend concessions."

As a result of the arbitrators' decision and the EU's ongoing failure to implement a WTO-consistent banana regime, the United States will exercise its WTO right to suspend tariff concessions on a list of

selected European products equivalent in value to the loss in U.S. exports caused by the EU's banana regime, as determined by the arbitrators. The final list of products to be subject to the increased duties and details regarding the suspension of tariff concessions and the imposition increased duties will be published in the *Federal Register* within the next few days.

"We sincerely hope that this WTO ruling will finally convince the EU to adopt a WTO-consistent banana regime immediately, which continues to be our preference," continued Ambassador Barshesfky. "The EU now has yet another opportunity to demonstrate that it is willing to respect the rules of world trade and thereby bolster confidence in the WTO as a forum for redressing trade barriers. If the EU does not seize this opportunity, its commitment to the multilateral trading system must be seriously questioned."

"As before, we are prepared to work with the EU on a new banana regime that meets the requirements of the WTO and allows banana producing countries in the Caribbean to continue to export bananas, stressed Ambassador Barshesfky." However, it is up to the EU to decide whether it is willing to finally meet its WTO obligations."

Background

The U.S. action to suspend concessions follows a period of over six years during which the United States worked to convince the EU to comply with the rules of the GATT and WTO. Between 1993 and 1998, the EU banana regime was deemed to be inconsistent with the rules of the international trading system by GATT and WTO panels, and by the WTO Appellate Body. The EU responded by making cosmetic changes to the banana regime that only perpetuated its WTO-inconsistent aspects and discrimination against U.S. companies and Latin American countries.

The WTO deadline for the EU to adopt a WTO-consistent banana regime was January 1, 1999. In light of the EU's failure to implement the WTO rulings by this deadline, the United States requested authorization from the WTO to increase duties on selected European products. At that time, the EU exercised its rights under WTO procedure to request arbitration on the value of the trade to be affected by the increase in duties.

The WTO-mandated deadline for the completion of the arbitration proceedings was March 2. The arbitrators issued an "initial decision" on March 2, but requested that each party submit additional information by March 15 and indicated that they would issue a final decision soon after receiving these responses.

On March 3, 1999, USTR announced that the U.S. Customs Service would begin withholding liquidation and reviewing the sufficiency of bonds on imports of selected European products. The purpose of this announcement was to ensure that, on the date of the arbitrator's final decision, the U.S. would be in the same position to take action as it would have been had the arbitrators issued their decision by the March 2 deadline.

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Remarks of Ambassador Peter Scher

Special Trade Negotiator

April 6, 1999

The United States and the European Union (EU), as the world's two largest economies, have special responsibilities to support and strengthen the rules-based trading system. Both of us must live within the rules of the WTO which we worked so hard to establish. We must set the right example for other countries to abide by these rules. Otherwise, the WTO rules will not be respected, and the WTO will lose the credibility to halt protectionism.

This is the reason we have been clear about obeying the rules ourselves. We have lost four WTO cases, and have been willing to implement findings against us. We expect the EU to do the same. And, if it is not willing to fulfill its WTO obligations, the EU must pay the consequences of its failure.

In the banana case, we have used the WTO process as it was intended. And the WTO arbitrators, like two GATT panels and two WTO panels before them, confirmed today what we have been saying for nearly one year: that the EU remains in violation of its WTO obligations by maintaining a discriminatory banana regime. And further, that this regime continues to damage the U.S. economy in the amount of nearly $200 million, specifically $191.4 million.

Therefore, the U.S. will impose 100 percent duties on nearly $200 million worth of products imported from the EU. The final list of products which will be subject to the increased duties and details regarding the suspension of tariff concessions and the imposition of increased duties will be published in the *Federal Register* in the next few days.

We do not want to be taking this action. We would have preferred that the EU had worked with us to resolve this six-year old dispute. And let me stress that the United States remains open to a negotiated resolution. Our conditions remain simple - a WTO-consistent regime, and one that enables vulnerable Caribbean countries to continue to export their bananas.

However, if the EU chooses to maintain policies that perpetuate the discrimination of the past six years, even after this judgment, the failure will be the EU's failure, not the WTO's. We have been patient as the EU refused to acknowledge the clear WTO-inconsistency of its regime. We have been patient as it tried to deflect its guilt with cries of U.S. "unilateralism." We have been patient as it used every procedural tactic possible to delay compliance. But their time has run out.

The panel has rejected the EU's claim's of compliance. The panel has rejected their procedural claims and has clearly rejected the EU's interpretation of the WTO rules.

The United States has paid the cost of the EU's discrimination for six years. Now they must pay the price.

We hope the EU will finally choose the path of compliance. The WTO would be strengthened if the EU demonstrates that it can overcome the narrow interests that have so far prevented it from adopting a WTO-consistent banana system.

The purpose of the WTO rules is to provide nations the justification for taking difficult decisions for the good of the world trading system. This is how we all stop protectionism in its tracks. This is how trade can flourish and nations can prosper.

The choice is with the EU.

One final point - - The arbitrators specifically rejected the EU's argument that the U.S. did not have the right to suspend concessions until after the EU proceeded under Article 21.5 - the panel said, "we disagree." The panel said that the U.S. position achieves the multi-lateral objectives of the WTO. We view this as a major victory for the WTO dispute settlement process.

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For Immediate Release Contact: Jay Ziegler

April 7, 1999 Helaine Klasky

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CHINA ISSUES NEW DIRECTIVE TO FIGHT SOFTWARE PIRACY

United States Trade Representative Charlene Barshefsky welcomed an important new action taken by the Government of China to better protect exports of U.S. computer software, one of the United States' most important export products. The Government of China has issued a new high-level directive to all Chinese Government entities directing that they use only legitimate computer software and that such software be used only as authorized.

"This is a milestone in China's efforts to increase intellectual property protection," stated Ambassador Barshefsky. "The Chinese Government's action, which is consistent with our landmark 1995 bilateral IPR agreement, sets an important example for the Chinese private sector and for other national governments as well. The Chinese decree is particularly significant given the size and rapid expansion of the Chinese market for personal computers, now the world's fifth largest."

The State Council of the Chinese Government - the highest executive authority in the Peoples Republic of China - issued this decree mandating legal software usage by all ministries, commissions and agencies of the Chinese Government. The decree specifically calls on all "provinces, autonomous regions, and municipalities; all ministries and agencies directly under the State Council" to implement in a "serious and thorough manner" a directive which had been previously issued by China's State Copyright

Administration prohibiting the use within government of illegally duplicated software.

"Success of this new decree will depend upon its full implementation," continued Ambassador Barshefsky. "We sincerely hope that the Chinese Government will implement this decree actively and in a fully transparent manner."

On October 1, 1998 President Clinton issued an Executive Order directing all U.S. government agencies to ensure that legitimate software is used and that it be used only as authorized. In announcing issuance of the new Executive Order, Vice President Gore called on Ambassador Barshefsky to encourage foreign governments to enact similar protections for computer software used within their governments. USTR has been joined by the Department of Commerce in urging the Chinese Government to do likewise. Ambassador Barshefsky applauds Secretary Daley's personal efforts in pressing this issue with the Chinese.

In addition to China, Paraguay, Thailand, Turkey, Philippines, Korea and Jordan have issued similar decrees in recent months. USTR continues to work with other governments to increase the protection of intellectual property.

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For Immediate Release Contact: Jay Ziegler

April 7, 1999 Helaine Klasky

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WTO Panel Finds Indian Import Restrictions Violate WTO Rules

United States Trade Representative Charlene Barshefsky today announced that a dispute settlement panel of the World Trade Organization has issued a report finding that India's quantitative restrictions on imports violate the WTO Agreement. The panel's final report, which was released today, rejects India's claim that its balance-of-payments situation justifies import restrictions.

Commenting on the panel's decision, Ambassador Barshefsky said, "The panel report confirms that countries must act responsibly in utilizing WTO procedures, such as the balance-of-payments provisions, that restrict access to their markets. It is time for India to adhere to its WTO obligations and open its market by removing these measures. Such measures would stimulate investment, competition, and economic activity in India. I am pleased that the panel has ruled that these restrictions must go."

This panel decision sets several important precedents. It rejects arguments that India has made for many years, such as the argument that BOP measures are immune from review by WTO dispute settlement panels. The decision also makes clear that countries which have instituted restrictions for

balance-of-payments purposes must eliminate the restrictions when their balance-of-payments position no longer justifies such measures. The decision also provides market access opportunities in sectors such as agriculture and consumer goods that have been closed to foreign products.

Background

India has restricted or prohibited imports of industrial, textile and agricultural products. India has claimed its extremely restrictive import regime was justified under the balance-of-payments (BOP) provisions of the GATT. India maintains a "Negative List" of products whose imports are banned, unless an importer gets a case-by-case license from the Indian government. The Negative List includes almost all consumer goods, including food, clothing and household appliances. India also channels import s of some agricultural products through state trading monopolies or "canalizing agencies." In addition, a government requirement banning imports by anyone except "actual users" prevents any imports for resale.

The import restrictions challenged by the United States in this case affect consumer goods and other agricultural, textile and petroleum-related products. They are the largest barrier to increasing U.S. exports to India. In addition, the Indian restrictions also particularly hurt trade from India's developing country trading partners, since they shut out developing country products and tropical products which would be very competitive in the Indian market.

Moreover, with respect to India's domestic economic situation, the elimination of this restrictive licensing regime will permit the growth and competition that will raise economic welfare levels and stimulate entrepreneurial activity in the Indian private sector that began with the reforms earlier this decade.

The panel report notes that during India's 1997 consultation with the WTO Balance of Payments Committee, the International Monetary Fund (IMF) stated that India no longer had a balance-of-payments problem that justified these restrictions. After attempts to settle the case through negotiations were unsuccessful, the United States challenged the restrictions before a WTO panel.

The Office of the United States Trade Representative has worked closely during this WTO litigation with officials of the U.S. Departments of Commerce, Agriculture and the Treasury to achieve this result.

The panel report is available on the WTO website at http://www.wto.org.

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For Immediate Release Contact: Jay Ziegler

April 8, 1999 Helaine Klasky

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Statement of Ambassador Charlene Barshefsky Regarding Broad Market Access Gains Resulting from China WTO Negotiations

United States Trade Representative Charlene Barshefsky announced today that U.S. and Chinese negotiators have secured broad progress toward an expansive market access agreement with China. Additionally, while certain issues remain to be resolved, China has made commitments to adopt rules enforceable in the World Trade Organization (WTO) related to such issues as technology transfer and offsets, subsidies, product safeguards and state enterprises. In addition, China agreed that the U.S. can continue to apply its special antidumping rules to China. Finally, China has agreed immediately to an SPS package that will immediately end its ban of Pacific northwest wheat, U.S. meat and citrus.

Ambassador Barshefsky outlined the importance of progress achieved to date as follows:

"President Clinton and Premier Zhu referred to the complexity of WTO accession negotiations which include far-reaching market access commitments as well as commitments to important rules of commerce. Indeed, the scope of issues involved in these negotiations is unparalleled outside of a multilateral Round. There are more than 5,000 tariff line items and complex interlocking issues from national treatment to distribution rights which we have addressed here to ensure fair treatment and enforceable rights for U.S. goods, services, and agricultural providers. The Leaders noted that we have

reached agreement concerning market access for agricultural and industrial goods as well as a wide range of services sectors, but that certain differences remain to be resolved in banking, including auto finance, securities, and audio-visual services.

"We also resolved bilateral issues to ensure U.S. access to the Chinese market for U.S. citrus, meat products, and Pacific Northwest wheat. This is an important and immediate area of progress for our agricultural industries, which we hope will lead to beneficial results in other areas.

"The President and the Premier also referenced agreement on a variety of important rules, including trading rights, technology transfer and offsets, treatment of state enterprises, and subsidies. Both Leaders acknowledged that certain differences remain to be resolved on a mechanism on implementation, the duration of provisions governing dumping and product safeguards, and rules governing textiles trade. We will now focus on resolving remaining issues as soon as possible in support of our common goal of admitting the People's Republic of China to the World Trade Organization on strong commercial terms by the year 2000.

"The market access commitments we are locking-in today include China's full participation in the three global agreements negotiated in the WTO since the Uruguay Round: the Information Technology Agreement (ITA) - where China has committed to eliminate tariffs across the vast range of covered technology products in a three-year timetable; the Basic Telecommunications Services Agreement and the Financial Services Agreement. In addition, China has agreed to participate in the "APEC Sectoral Liberalization Initiative" which is now before the WTO and covers $1.5 trillion in traded goods.

"While much hard work remains to complete China's accession to the WTO, including addressing specific areas which we believe are critical to U.S. interests, these market access terms reflect the Administration's commitment to a comprehensive, far-reaching commercially-meaningful agreement.

"This agreement is commercially-meaningful in four different ways:

- "First, it is comprehensive. It covers agriculture, industrial goods and services. It covers unfair trade practices including tariffs, quotas, other non-tariff measures, non-scientific agricultural standards, discriminatory regulatory processes, lack of transparency, export subsidies and other barriers to trade. It will address the tariffs and other barriers China applies at the border; the limits China places on sales, customer service and maintenance within the domestic market; China's unwarranted sanitary and phytosanitary standards; and limits on the rights of service providers to set up businesses in China.

- "Second, it grants no special favors. It requires China to reduce its trade barriers to levels comparable to those of major trade partners, including industrial countries. For example, Chinese tariffs will fall to an average of 7.1% in our priority areas - well below the rates most developing countries apply and comparable to those of major industrial trade partners.

- "Third, it is enforceable. The commitments China has made in all areas are specific, measurable, and will be fully enforceable.

- "Fourth, it delivers market-based reforms fast. Immediately upon accession, China will make substantial cuts in agricultural and industrial tariffs; begin opening sectors from insurance to telecommunications to professional services to foreign service providers. The phase-in of further broad concessions in all these areas will be limited to five years in the vast majority of cases and in many cases between one and three years.

"If followed by good-faith work by China on the Protocol, textiles trade and other concerns, this agreement will create a far more open, fair, and rules-based Chinese market, advance broader U.S. values of transparency and the rule of law; and serve our long-term strategic interest by anchoring China more firmly, both in the Asia-Pacific and world economies."

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For Immediate Release Contact: Jay Ziegler

April 9, 1999 Helaine Klasky

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USTR ANNOUNCES FINAL PRODUCT LIST IN BANANAS DISPUTE

The United States Trade Representative (USTR) today announced the final list of products on which the United States will impose 100 percent *ad valorem* duties in response to a decision by World Trade Organization (WTO) arbitrators that the European Union (EU) has failed to implement a WTO-consistent banana regime. The WTO arbitrators determined that the EU banana regime results in a significant loss in U.S. exports of goods and services and that the United States is entitled to suspend tariff concessions covering trade in an amount of $191.4 million per year. The USTR will publish the determination imposing the 100 percent duties in the *Federal Register* and intends to make the imposition of such duties effective March 3, 1999.

LIST OF PRODUCTS

The imposition of 100% duties will apply to products that are both: (1) classified in the subheadings of the Harmonized Tariff Schedule of the United States listed below; and (2) the product of Austria, Belgium, Finland, France, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, Portugal, Spain, Sweden, or the United Kingdom. Note that 100% duties will not apply to HTS 85167000, electrothermic coffee or tea makers, for domestic purposes, that are the product of Italy. The product descriptions in the table below are provided for the convenience of the reader and are not intended to delimit in any way the scope of the products, which is to be determined by the HTS number.

HTS No.	Product Description
33073050	Bath preparations, other than bath salts
42022215	Handbags, with or without shoulder straps or without handle, with outer surface of sheeting of plastics
42023210	Articles of a kind normally carried in the pocket or handbag, with outer surface of reinforced or laminated plastics
48055000	Uncoated felt paper and paperboard in rolls or sheets
48192000	Folding cartons, boxes and cases of noncorrugated paper or paperboard
49119120	Lithographs on paper or paperboard, not over 0.51 mm in thickness, printed not over 20 years at time of importation
63022190	Bed linen, not knit or crochet, printed, of cotton, not containing any embroidery, lace, braid, edging, trimming, piping or applique work, not napped
85072080	Lead-acid storage batteries other than of a kind used for starting piston engines or as the primary source of power for electric vehicles
85167100	Electrothermic coffee or tea makers, for domestic purposes (Except Italy)

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For Immediate Release Contact: Jay Ziegler

April 10, 1999 Helaine Klasky

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U.S. - CHINA SIGN BILATERAL AGRICULTURE AGREEMENT

United States Trade Representative Charlene Barshefsky welcomed the successful conclusion of the Agreement on U.S.-China Agricultural Cooperation, lifting long-standing prohibitions on the export of U.S. citrus, grain, beef and poultry to China. Together with Chinese Minister for Foreign Trade and Economic Cooperation Shi Guangsheng, Ambassador Barshefsky today signed this unprecedented agreement.

Ambassador Barshefsky stated, "This agreement removes unfair trade barriers to U.S. wheat, meat, citrus and poultry and signifies a new era in our bilateral agricultural relationship, one that is based on sound science and the mutual benefits of open markets. U.S. farmers, ranchers, and consumers will benefit substantially from this agreement."

Secretary Glickman stated, "This agreement is a fundamental breakthrough for American agriculture. Over the years we estimate that Chinese trade restrictions have cost America's competitive producers billions of dollars in sales. China's agreement to lift these longstanding and contentious barriers to our grain, citrus, and meat could have significant benefits in terms of greatly expanded exports of these products to the vast market."

With this agreement, the United States and China will launch an agricultural partnership for the 21st century. The Agreement highlights our core objectives: resolving trade barriers, increasing technical cooperation and scientific exchanges, and further developing our agricultural sectors. The agreement is expected to dramatically increase U.S. exports to China as well as to increase the cooperation between the U.S. and China in biotechnology, aquaculture, and other technical areas of assistance.

Background:

The Agreement includes lifting the ban on the export of citrus from Arizona, California, Florida and Texas, allowing the U.S. to develop legitimate commercial channels for U.S. citrus exports to China, which will reduce risk and permit exporters to market their product legally. Removal of the phytosanitary restrictions will translate into a direct increase in exports of U.S. citrus.

China's ban on citrus has been a longstanding irritant in our bilateral relationship. This agreement will allow us to export U.S. citrus based on U.S. national standards. The export program will be phased in over an interim period of two years, in terms of which counties in Florida and California can participate. During this period, the approved counties will be able to ship citrus that is produced in areas that are free of fruit flies and from areas outside of a 20 kilometer zone around fruit fly outbreaks. After two years, fruit from all counties can be shipped based on the U.S. National Program Guidelines.

China has agreed to recognize the U.S. certification system for meat and poultry, a move that will allow U.S. products immediate access to all segments of the Chinese market. Previously, meat and poultry could only be imported by two entities for use in some hotels and restaurants. As with citrus, this agreement will allow exporters to develop legal, commercial relationships for U.S. meat and poultry.

China has banned imports of U.S. wheat and other grains from the Pacific Northwest for over 26 years for scientifically unjustified reasons. In signing this agreement, China has acknowledged that TCK smut does not pose a risk to China's domestic wheat production, and will allow the import of U.S. wheat and other grain that is at or below a specific tolerance for TCK (30,000 spores per 50 grams).

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For Immediate Release Contact: Jay Ziegler

April 19, 1999 Helaine Klasky

Amy Stilwell

(202) 395-3230

USTR Barshefsky Committed to Resolving Beef Hormone Dispute

Ambassador Charlene Barshefsky and Secretary Glickman met separately with Sir Leon Brittan today to discuss a number of issues, including the European Union (EU) ban on U.S. meat from cattle treated with hormones. Ambassador Barshefsky and Secretary Glickman informed Sir Leon that the United States remains committed to resolving this long-standing dispute.

"We expect the EU to come into compliance with its WTO obligations by lifting its illegal ban on imports of U.S. meat. We are prepared to label U.S. meat to enable European consumers to make their own choice. And, we are willing to discuss a temporary compensation package to provide the EU reasonable time to change its laws. But, the key question is whether the EU will respect the clear and unambiguous WTO ruling to lift its ban on U.S. meat," said United States Trade Representative Ambassador Barshefsky.

Background

After decades of study by the international scientific community, including by European scientists, the

WTO concluded in January 1998 that there is no evidence of health risk to support the EU's ban on meat from animals treated with the growth promotants approved in the United States. The WTO granted the EU 15 months to come into compliance with these rulings, until May 13, 1999. The EU has not taken any steps to come into compliance with the WTO rulings.

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99 - 38

For Immediate Release Contact: Jay Ziegler

April 19, 1999 Helaine Klasky

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WTO AUTHORIZES U.S. RETALIATION

Today the WTO Dispute Settlement Body (DSB) formally authorized the United States to suspend concessions covering trade in an amount of $191.4 million because of the injury to U.S. economic interests caused by the European Union's (EU) failure to implement a WTO-consistent banana regime. The United States Trade Representative (USTR) published the list of products on which 100 percent *ad valorem* duties apply in the *Federal Register* today. A WTO Arbitral award issued on April 6 paved the way for the final DSB action today.

"This action validates what the United States has been saying for the past year - the EU has not complied with its obligations and this failure is damaging to the United States. Our action today redresses the longstanding imbalance in WTO rights and obligations and sends a clear message to the EU that protectionism has a price. We urge the EU to comply fully with the many WTO rulings against it on this issue," said the United States Trade Representative Charlene Barshefsky.

Background

On April 6, 1999, the WTO Arbitrators concluded that the United States is being harmed by the EC's current banana regime (put into effect in January 1999) in the amount of $191.4 million annually and could accordingly suspend EC trade concessions equivalent to that amount. In drawing their conclusions, the Arbitrators reiterated key sections of the1996-97 WTO Panel and Appellate Body reports to demonstrate how the EC's current banana regime is continuing the same discrimination against the United States and Latin America found in the previous EC banana regime (in effect between 1993 and 1998) in violation of the General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS). Their findings regarding continuing discrimination are virtually the same as those found in the April 6, 1999, Panel Report in the separate dispute settlement proceeding brought by Ecuador.

On procedures, the Arbitrators explicitly rejected the EC position that the United States had to undergo additional dispute settlement procedures under Article 21.5 of the Dispute Settlement Understanding, as had Ecuador, before requesting WTO authorization to retaliate against EC exports. The Arbitrators observed that countries that did not want to suspend concessions could make use of Article 21.5 procedures; those that wished to suspend concessions could use Article 22.6 procedures. The Arbitrators considered that their task of determining the amount of damage to the United States required them to examine the WTO-consistency of the EC regime in effect since January 1999 and that this approach achieved the multilateral goals of the WTO rules.

Under WTO rules, the increased duties may stay in effect until the banana dispute is resolved or the EC can show that it has adopted a WTO-consistent banana regime.

A more complete summary of the April WTO rulings against the EU's banana regime can be found on the USTR Web page.

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For Immediate Release Contact: Jay Ziegler

April 22, 1999 Helaine Klasky

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(202) 395-3230

AMBASSADOR BARSHEFSKY APPLAUDS CONFIRMATION OF SUSAN G. ESSERMAN AS DEPUTY U.S. TRADE REPRESENTATIVE

United States Trade Representative Charlene Barshefsky today announced the Senate confirmation of Susan G. Esserman as Deputy United States Trade Representative with the rank of Ambassador. Ms. Esserman has served as General Counsel to the Office of the United States Trade Representative since April 1997. Prior to serving as General Counsel at USTR, Ms. Esserman served as Acting General Counsel in the Department of Commerce, and as Assistant Secretary for Import Administration, a position in which she was unanimously confirmed by the United States Senate.

"I want to thank the members of the United States Senate for their strong endorsement of Susan Esserman to serve as Deputy U.S. Trade Representative," said Ambassador Barshefsky. "Susan Esserman is a highly valued member of our team and brings a strong background in international trade policy and enforcement to this position. She has served as an extraordinarily effective General Counsel at USTR, and I look forward to working with her in her new role as Deputy USTR as we continue our efforts to open global markets and eliminate unfair trade barriers."

As Deputy USTR, Ms. Esserman will have responsibility for developing the U.S. agenda for the WTO Ministerial to be held in Seattle in November 1999, which will launch new global negotiations to expand opportunities for U.S. manufacturing, service, and agriculture industries and workers.

Ms. Esserman's portfolio will encompass the development of trade policy and negotiations in the World Trade Organization and other multilateral fora, as well as Europe, Russia and the Newly Independent States of the Former Soviet Union, the Middle East and Africa. In addition to serving in two senior posts at the United States Department of Commerce, Ms. Esserman was an attorney in private practice for 15 years, specializing in international trade matters.

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EMBARGOED UNTIL 1:00PM EST.

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For Immediate Release Contact: Jay Ziegler

April 30, 1999 Helaine Klasky

Amy Stilwell

(202) 395-3230

EMBARGOED UNTIL 1:00PM EST.

USTR Sets Priorities for Global Trade Expansion and Enforcement

United States Trade Representative Charlene Barshefsky today announced the simultaneous release of the annual "Super 301," "Special 301" and "Title VII" reports -- setting the Administration's trade expansion priorities for the next year and identifying specific enforcement concerns. Ambassador Barshefsky announced that as a result of this year's review under these mechanisms, the United States would invoke WTO dispute settlement procedures in seven cases, affecting manufacturing, agriculture, intellectual property rights, and government procurement. Ambassador Barshefsky also announced today the initiation of an investigation under section 301 of the Trade Act of 1974 regarding Canadian Government measures affecting tourism.

Ambassador Barshefsky indicated that a clear priority in the months ahead, leading up to the launch of the new multilateral round, is to ensure wider compliance with the commitments made in the Uruguay Round. "As we move toward the launch of a new round of global trade negotiations at the WTO's Third Ministerial Conference in Seattle this November, it is critical that our trading partners fully implement their Uruguay Round commitments in all sectors," stated Ambassador Barshefsky. "Today's initiation of Section 301 and WTO enforcement actions underscores the determination of the United States to ensure that it receives the full benefit of its Uruguay Round agreements."

Ambassador Barshefsky will chair the WTO's Third Ministerial Conference in Seattle, Washington, on November 30 - December 3, 1999, which will be comprised of the trade ministers of over 150 countries. The principal focus of the conference will be the launching of a new round of global trade negotiations. The negotiations will include a new round of commitments in services trade, a new phase in agricultural policy reform and market opening undertakings, and other topics to be agreed upon at the Ministerial Conference, including a new round industrial tariff-and non-tariff negotiations.

The three reports released today place a high priority on compliance with WTO commitments that entered into effect in January 1995; compliance with WTO commitments that are subject to transition periods or phase-in provisions, many of which will enter into effect by January 1, 2000; and compliance with rulings resulting from WTO dispute settlement proceedings in a timely and complete manner.

"All of these tools -- Super 301, Special 301, and Title VII -- enable us to enforce the commitments undertaken around the world to increase market access for U.S. goods and services," explained Ambassador Barshefsky. "Taking action against those foreign government practices that conflict with existing international obligations enables the United States to open markets to U.S. exports consistent with current obligations and, at the same time, identify U.S. priorities for our future trade negotiations."

"The seven dispute settlement cases we are announcing today address compliance with WTO obligations affecting both the manufacturing and agricultural sectors, and include claims related to subsidies, investment measures, discriminatory government procurement practices, and inadequate protection of intellectual property rights," said Ambassador Barshefsky. "These actions underscore the Administration's commitment to ensuring full compliance of existing WTO obligations.

"In every instance, we have focused on the course that will deliver the most effective market opening results. With respect to Japan, for example, serious concerns remain in such areas as steel, insurance, flat glass, autos and auto parts and government procurement practices related to computers and construction. We are actively engaged with Japan in each of these areas and meaningful progress will be necessary in order to avoid further trade frictions."

The new cases announced today are:

- ***EU - Avionics***: The United States will request WTO consultations with the EU regarding subsidies granted by France for the development of a new flight management system adapted to Airbus aircraft. This subsidy program was created with the stated objective of displacing U.S.-sourced flight management systems, constituting an actionable subsidy under the WTO Agreement on Subsidies and Countervailing Measures.

- ***EU - Geographical Indications***: The United States will request WTO consultations with the EU regarding its regulation governing the protection of geographical indications for agricultural products and foodstuffs, which denies national treatment with respect to certain procedures concerning the registration of geographical indications, and which also does not provide appropriate protection to trademarks. The United States believes that this regulation violates EU obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

- ***India - Autos:*** The United States will request WTO consultations with India regarding measures affecting the automobile sector that the United States considers are inconsistent with the WTO Agreement on Trade-Related Investment Measures.

- ***Korea - Airport Construction Procurement:*** The United States has initiated dispute settlement procedures challenging certain Korean government procurement practices in the area of airport construction. These practices, including domestic partnering requirements, the absence of access to challenge procedures, and discriminatory license requirements, appear inconsistent with Korea's obligations under the Agreement on Government Procurement (GPA). While Korea contends that airport construction is not covered under its GPA obligations, the United States maintains otherwise. Consultations held on March 17, 1999, failed to resolve this matter.

- ***Korea - Beef***: The United States is proceeding to a WTO dispute settlement panel regarding Korea's beef import and distribution system. Korea maintains a segregated retail distribution system for imported beef that denies national treatment to beef from the United States. In addition, Korea impedes market access for imported beef through the maintenance of minimum price levels and widespread controls on importation and distribution. The United States regards these measures as inconsistent with the GATT 1994, the WTO Agreement on Agriculture, and the Agreement on Import Licensing Procedures. Consultations between the United States and Korea in March 1999 failed to resolve this dispute.

- ***Canada - Patent Protection:*** The TRIPS Agreement requires that Canada provide a patent term of 20 years from the date of filing. It also requires that Canada extend such protection to all patents in existence on January 1, 1996. However, Canada provides a 20-year patent term only to those patents filed on or after October 1, 1989; earlier patents receive only 17 years of protection from the date that the patent was granted. The United States will request WTO consultations regarding this provision of Canadian law.

- ***Argentina - Patent Protection:*** The United States will request WTO consultations regarding Argentina's failure to comply with its obligation to provide exclusive marketing rights under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), and its diminution in the level of protection provided to undisclosed test data submitted for marketing approval for agricultural chemicals in Argentina.

The United States is also prepared to request consultations with those countries that engage in customs practices which, contrary to the WTO Customs Valuation Agreement, undermine the benefits of market access commitments. USTR is closely examining reports of non-compliance with the Valuation Agreement, particularly in those countries with current obligations, such as Brazil, India, and Mexico.

In addition to pursuing these WTO cases, the Administration will initiate a Section 301 investigation regarding Canada's measures affecting tourism in the U.S.-Canada border region. For example, Ontario's measures generally prohibit a U.S. fisherman from keeping fish caught on lakes lying across the Minnesota-Ontario border if the U.S. fisherman does not spend the night in an Ontario commercial establishment or otherwise contribute to the Ontario tourist industry. These measures discriminate in

favor of Canadian tourist establishments.

The decision to take WTO and Section 301 action was made in the context of the annual reviews and reports to the Congress under three key provisions of U.S. trade law:

- Super 301 - re-instituted by President Clinton on March 31, 1999 by Executive Order 13116 - enables the USTR to review U.S. trade expansion priorities and focus U.S. resources on eliminating significant unfair trade practices facing U.S. exports. This year's report identifies as key priorities the launch of the new round of global trade negotiations and strategic enforcement of bilateral, regional, and multilateral obligations of our trading partners. In addition to the efforts underway to secure implementation of existing commitments through dispute settlement and other WTO mechanisms, the report highlights this Administration's aggressive use of domestic U.S. trade law to open foreign markets and ensure fair treatment for our goods and services. Although this year's report does not identify a priority foreign country practice, it does identify a number of practices of significant concern, which the Administration will closely monitor in the months ahead..

- Special 301 - Section 182 of the Trade Act of 1974, as amended -- requires the USTR to identify annually foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection. As a result of this year's Special 301 review, Ambassador Barshefsky announced the following actions: initiating WTO dispute settlement procedures against Argentina, the EU, and Canada; scheduling a special out-of-cycle review in December 1999 of all developing countries' implementation of their obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement); monitoring China and Paraguay under Section 306 of the Trade Act of 1974, as amended; scheduling an out-of-cycle review of Malaysia in September 1999; placing 17 trading partners on the Special 301 Priority Watch List; and placing 37 trading partners on the Watch List.

- Title VII - also reinstated by Executive Order 13116 on March 31, 1999 - gives the USTR the means to address discriminatory government procurement practices. This year's report addresses Korea's procurement practices in airport construction as discriminating against U.S. products and services. Other countries whose procurement practices raise concern include Japan (in the areas of construction and computers) and Germany (in the heavy electrical industry). The report also highlights U.S.-led efforts to conclude a multilateral agreement on transparency in government procurement by the Third WTO Ministerial scheduled later this year, streamline the WTO Government Procurement Agreement so that it will be more accessible to developing countries, and combat international bribery and corruption.

A fourth trade law provision, section 1377 of the Omnibus Trade and Competitiveness Act of 1988, requires the USTR to conduct an annual review of foreign countries' compliance with telecommunications trade agreements. This year's review -- completed on March 30, 1999 -- focused on compliance with the WTO Basic Telecommunications Agreement by WTO Members, particularly the European Union, Mexico, Japan and Germany. The review indicated that the WTO agreement has increased market access for U.S. telecommunications companies in foreign markets, but that ongoing enforcement of the agreement is needed to ensure continued growth in world-wide competition for telecommunications services. *See* USTR News Release 99-29.

IDENTIFICATION OF TRADE EXPANSION PRIORITIES PURSUANT TO EXECUTIVE ORDER 13116

April 30, 1999

Last month, the United States Trade Representative (USTR) released the President's 1999 Trade Policy Agenda and the 1999 National Trade Estimate Report on Foreign Trade Barriers (NTE Report). This report builds on the prior two reports and is submitted pursuant to Executive Order 13116 of March 31, 1999. The "Super 301" provisions of the Executive Order direct the USTR to review U.S. trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent.

- *TRADE EXPANSION PRIORITIES AND PRIORITY FOREIGN COUNTRY PRACTICES*

In preparing this report, USTR has reviewed the 1999 Trade Policy Agenda to identify U.S. trade expansion priorities and the 1999 NTE Report and public comments submitted to USTR to assess foreign country practices that we seek to eliminate. Based on this review, USTR has determined that the U.S. trade expansion priorities include the launching of a new, multilateral round of global trade negotiations; ensuring that WTO Members fully implement existing commitments; ongoing strategic enforcement of U.S. rights under bilateral, regional, and multilateral trade agreements and under U.S. trade laws; and integrating China and other economies into the world trading system. The USTR is not identifying any "priority foreign country practices" within the meaning of the Executive Order at this time, but does find that a number of practices warrant the initiation of WTO dispute settlement proceedings or other actions in the context of our bilateral trade relationships.

- ***The Third Ministerial Conference and the New Round***

Ambassador Charlene Barshefsky, the United States Trade Representative, will chair the WTO's Third Ministerial Conference in Seattle, Washington, November 30 - December 3, 1999. The event, which will be the largest trade meeting ever held in the United States, will set the agenda for the WTO for the next decade and launch a new round of global trade negotiations. The Administration has engaged in an extensive consultative process to develop this agenda, involving the broadest range of citizens concerned about trade. Broadly speaking, the agenda will: set a negotiating agenda and work program; provide for institutional reform, including transparency, and ensure that the WTO will continue to be a forum for on-going trade liberalization and reform, by delivering results at Seattle.

At the meeting, Trade Ministers from around the world will focus on the important issues facing the trading system and the new economy of the 21st century. As a starting point, the United States

joins other nations in emphasizing the important issue of implementation of existing agreements -- from agriculture to textiles. As we approach January 1, 2000, the majority of transition periods in the Agreements on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Trade-Related Investment Measures (TRIMS), and Customs Valuation will expire for most developing countries. Ensuring compliance with these Agreements will be an important feature of our work as we shape the WTO's forward agenda.

Beyond implementation, the negotiations, to begin in early 2000, will be comprised of a new round of liberalization commitments in services trade, a new phase in agriculture policy reform and market-opening undertakings, and other negotiations on topics to be agreed at the meeting, possibly a new round of industrial tariff and non-tariff negotiations. Certain Members have also identified foreign direct investment and competition policy as possible topics for negotiation. The important relationship of trade and the environment, as identified in President Clinton's May 1998 address before the WTO, is an area that will require further work in the WTO, as will forging the consensus on addressing trade and labor.

Launching the round will also require attention to institutional improvements within the WTO to facilitate trade, to improve the participation of less developed economies in the world economy, and to coordinate effectively with other international bodies such as the IMF and World Bank. The United States seeks to strengthen public confidence in the WTO as an institution by improving its transparency and openness, particularly in WTO dispute settlement proceedings, including the review of the system that is to be completed before the Seattle meeting. Civil society must be able to contribute to the work of the WTO, to ensure both that the WTO hears many points of view including those from business, labor, environmental, consumer and other groups, and that its work will rest on the broadest possible consensus.

Finally, the U.S. vision for the new round requires that we set an agenda that accommodates rapid technological developments and addresses the broadest range of concerns. The Ministerial, and the time prior to the meeting itself, provide the United States the opportunity to showcase the relevance of the WTO to the information revolution, the development of electronic commerce, and other rapidly changing, high-technology fields. We seek to reach agreements expanding the product coverage in the landmark Information Technology Agreement (ITA) and expand on the 1998 Ministerial Declaration on Electronic Commerce which calls on WTO Members to refrain from imposing customs duties on electronic transmissions. We also intend to strengthen the system to contribute to the Administration's wider policy of eradicating the potential for bribery and corruption and promoting economic efficiency, by completing an agreement on transparency in government procurement at the Seattle meeting. Expanding market access opportunities, including through early agreements to liberalize tariffs in sectors first identified in APEC (i.e., chemicals, energy and environment-related goods, medical and scientific equipment, forest products, fish, gems and jewelry, and toys), remains a priority.

B. *Implementation of Existing WTO Commitments*

Full implementation of existing WTO agreements is critical to ensuring that the United States achieves the full benefit of what it bargained for in the Uruguay Round of multilateral trade negotiations, as well as to maintaining public confidence in an open trading system and building public support for the new round of negotiations. There are five critical aspects of WTO

implementation: compliance with WTO commitments that entered into effect in January 1995; compliance with WTO commitments that are subject to transition periods or phase-in provisions, many of which will enter into effect by January 1, 2000; acceptance of the protocols on basic telecommunications services and financial services and implementation of the corresponding commitments; compliance with accession protocols; and compliance with the rulings resulting from WTO dispute settlement proceedings in a timely and complete manner.

The primary means of enforcing WTO commitments that have entered into effect is the WTO dispute settlement mechanism, which is discussed in further detail below. In the coming months, one of USTR's top priorities will be to focus on Members' preparations for the phase-in by January 1, 2000 of commitments in three critical areas:

- ***Intellectual Property Protection* -- WTO developing country members are required to implement most of their commitments under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) by the end of this year. We are monitoring this closely and are prepared to both assist countries in developing laws and enforcement mechanisms at their request and invoke dispute settlement procedures in the event members fail to meet their obligations.**
- ***Customs Valuation* -- More than 50 countries are required to fully implement the obligations of the Agreement on Customs Valuation - a critical obligation in realizing market access. Full and effective implementation of this Agreement will head off disputes in the future. The United States is also concerned about implementation of existing customs valuation obligations, which is discussed in further detail below.**
- ***Trade Related Investment Measures (TRIMs)* -- December 31, 1999, is the deadline established in the TRIMs Agreement for developing countries to eliminate measures which they notified as inconsistent with the TRIMs Agreement. Throughout the remainder of 1999, the United States will be monitoring steps taken by those countries due to come into compliance by this deadline, and will be prepared to bring dispute settlement cases for measures which have not been removed by the agreed deadline.**

In addition, USTR will work bilaterally and within the Council for Trade in Services to ensure the full implementation of Members' commitments under the Fourth Protocol to the General Agreement on Trade in Services (GATS), i.e., the Basic Telecom Agreement, which entered into force on February 5, 1998, and the Fifth Protocol to the GATS, i.e., the Financial Services Agreement, which entered into force on March 1, 1999. The United States will continue to insist that all countries that failed to meet the deadline for acceptance of these two agreements bring their commitments into force as soon as possible. For the Basic Telecom Agreement, those countries are: Brazil, Dominica, Guatemala, Papua New Guinea, and the Philippines. For the Financial Services Agreement, those countries are: Australia, Bolivia, Brazil, Bulgaria, Costa Rica, Dominican Republic, El Salvador, Luxembourg, Ghana, Honduras, Jamaica, Kenya, Nigeria, Nicaragua, the Philippines, Poland, Slovenia, and Uruguay.

USTR will continue to use WTO committees and bilateral mechanisms to address implementation issues. For example, the United States will work through the WTO Committee on Agriculture to seek compliance with the various obligations under the Agriculture Agreement, including those on tariff-rate quotas, domestic support and export subsidies. Likewise, the United States will be vigilant in its enforcement of textile quotas and implementation of textile market access

requirements overseas. Preventing circumvention is a high priority as well. Last year, we reached an important new agreement with Hong Kong on measures to improve information-sharing and strengthen cooperation to prevent circumvention, and we are working with Macau, China and others on similar initiatives.

In addition, we will continue to work with other WTO Members under the aegis of the Committee on Antidumping Practices and its Ad Hoc Group on Implementation to secure better adherence to WTO rules and procedures governing the conduct of antidumping investigations and administrative reviews. The increased use of these remedies by a growing number of WTO Members with different legal systems and levels of experience poses special challenges to U.S. exporters. The United States expects strict compliance with the WTO Antidumping Agreement's substantive obligations, as well as its rules which guarantee transparency and due process, so that these remedies can remain a fair yet effective complement to ongoing trade liberalization.

C. *Strategic Enforcement of WTO Rights and U.S. Trade Laws*

One of this Administration's top trade expansion priorities is vigorous monitoring and enforcement of trade agreements, which includes the active use of the WTO dispute settlement process and strategic application of U.S. trade laws.

- ***WTO Dispute Settlement Process***

Since the WTO's creation in 1995, the United States has filed more complaints - 44 to date - than any other WTO Member and has participated as a third party in a number of other cases. Our overall record of success is very strong. We have prevailed in 22 of the 24 U.S. complaints acted upon so far, either by successful settlement or panel victory. These favorable rulings and settlements have involved an array of sectors within the fields of manufacturing, agriculture, services, and intellectual property.

a. *WTO Disputes*

As a result of this year's review of its trade expansion priorities, and its monitoring of compliance with U.S. trade agreements, the Administration will take the following actions to enforce U.S. rights under those agreements:

EU-Avionics. The United States will request WTO consultations with the European Union (EU) on French government subsidies for avionics equipment under the WTO Agreement on Subsidies and Countervailing Measures. In an effort to displace U.S.-sourced flight management systems, the French government, with European Commission approval, has agreed to grant 140 million French francs (approximately 40 percent of the projected costs) between 1997-1999 for a project involving Sextant Avionique of France and Smiths Industries of the United Kingdom to jointly

develop a new flight management system adapted to Airbus aircraft. The aid takes the form of a "reimbursable advance payment" to be repaid on a percentage of sales of the new system; however no repayment is required if the program is unsuccessful.

India- Auto TRIMs. The United States will request WTO consultations with India on its new auto policy. Last year, India implemented new measures governing investments in the automotive industry. All new and existing firms wishing to operate auto manufacturing investments in India are required to sign a standardized agreement with the Government of India that contains local content and foreign exchange balancing requirements. The Indian program would inhibit the free flow of trade and investment and is inconsistent with India's obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). According to the American Automobile Manufacturers Association (AAMA) the approximate size of the vehicle market in India in 1998 was 604,000 units. A large portion of vehicles sold in India are produced locally. Auto parts sales into India are also reduced by these measures.

Korea - Barriers to the Import and Distribution of Foreign Beef. In response to a 1989 GATT panel ruling, Korea agreed to phase out its import restrictions on beef. However, Korea simply replaced its ban with a temporary quota and comprehensive restrictions on the ability to import and distribute beef, including a requirement that imported beef be sold in separate retail establishments. These and other barriers prevented U.S. exporters from fully utilizing the 1997 and 1998 minimum market access commitments Korea had made for beef. In 1998, the underfill of Korea's beef import quota was approximately 60 percent.

The U.S. Government has worked to establish a market-driven beef import system in Korea by seeking the elimination of Korean Government measures that impede the entry and distribution of foreign beef. In September and November 1998, the U.S. and Korean Governments held two rounds of talks, and convened again in January 1999, in an attempt to conclude an agreement providing for liberalized beef trade. In the absence of an agreement, the United States requested WTO dispute settlement consultations on February 1, 1999. On April 28, the United States requested the establishment of a WTO dispute settlement panel on Korea's beef import and distribution system after WTO consultations held on March 11 and 12 failed to resolve the U.S. concerns.

Customs Practices: The benefits of market access commitments are undermined when countries engage in certain customs practices, such as the use of minimum reference prices to determine the customs value of an imported good. The WTO Customs Valuation Agreement (CVA) stipulates that the transaction price is the primary basis for customs valuation determinations, and the U.S. Government is working to ensure that countries comply fully with their obligations under the CVA. We are actively pursuing the issue of reference prices in the WTO Committee on Customs Valuation and are closely examining reports of non-compliance with CVA commitments, particularly in those countries with current obligations, such as Brazil, India and Mexico. We are soliciting additional information on these practices and, as appropriate, will subsequently pursue dispute settlement consultations with the relevant countries that do not satisfactorily address these concerns.

b. *Dispute Settlement Rules*

USTR's review of trade expansion priorities has shown that, while the WTO dispute settlement system generally works well, improvements in the rules governing compliance with panel and Appellate Body reports are necessary. The EU's failure to implement a WTO-consistent banana regime following WTO dispute settlement proceedings, and its impending failure to eliminate its import ban on meat produced with hormones, illustrate how a Member that fails to implement WTO dispute settlement rulings can continue causing harm to U.S. exporters for an extended period of time. The United States is seeking improvements in the rules governing implementation of panel and Appellate Body reports in the context of this year's review of the WTO Dispute Settlement Understanding (DSU), and there is ongoing review regarding other possibilities for improvement.

In the interim, we will continue to exercise our rights to suspend concessions with respect to the trade of a Member that fails to implement WTO recommendations. On April 19, the United States suspended concessions in the amount of $191.4 million against the EU because of its failure to implement a WTO-consistent banana regime. USTR is now preparing to take similar action against EU imports if the EU does not implement WTO findings against its meat import ban by May 13, 1999, which is the deadline for implementation in that dispute.

2. *U.S. Trade Laws*

The U.S. trade laws are a vitally important means of ensuring respect for U.S. rights and interests in trade. We will continue to challenge aggressively market access barriers abroad using Section 301, Special 301, Section 1377, Super 301 and Title VII[1] to open foreign markets and ensure fair treatment for our goods and services, protect U.S. intellectual property rights, and ensure compliance with telecommunications agreements. These provisions work in tandem with dispute settlement procedures, and also assist us in completing and enforcing agreements with trading partners that are not WTO Members or in areas not covered by WTO rules. In addition, this Administration is fully committed to using U.S. antidumping, countervailing duty, and safeguards laws and will insist that America's trading partners play by the rules.

Section 301: **On April 29, USTR initiated an investigation under Section 301 of the Trade Act of 1974, as amended, regarding Canadian regulations affecting tourism in the U.S.-Canada border region. Measures maintained by the Province of Ontario generally prohibit U.S. fishermen from keeping the fish they catch on lakes lying across the Minnesota-Ontario border if the U.S. fisherman does not spend the night in an Ontario commercial establishment or otherwise contribute to the Ontario tourist industry. Canadian federal measures impose work permit requirements on U.S. fishing guides who conduct tours on those lakes. These measures discriminate in favor of Canadian tourist establishments.**

Special 301**: Through the Special 301 process, USTR systematically monitors levels of intellectual property protection around the world. Each year, USTR identifies those foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection. As a result of the 1999 Special 301 review, USTR placed 17 trading partners on the "Priority Watch List" and 37 trading partners on the "Watch List", and announced the initiation of WTO dispute settlement**

proceedings involving Argentina, Canada and the European Union. *See* USTR Announces Results of Special 301 Review, released April 30, 1999, for further information concerning the protection of U.S. intellectual property rights.

***Section 1377*: This year's review, which was completed on March 30, 1999, focused on compliance with the WTO Basic Telecommunications Agreement by WTO Members, particularly the EU, Mexico, Japan and Germany. The review indicated that the WTO agreement has increased market access for U.S. telecommunications companies in foreign markets, but that ongoing enforcement of the agreement is needed to ensure continued growth in world-wide competition for telecommunications services. *See* USTR Press Release 99-29, March 30, 1999 for further information on this year's 1377 review.**

***Title VII*: The Title VII report gives USTR the means to identify foreign countries that have failed to comply with their obligations under the WTO Agreement on Government Procurement ("GPA"), Chapter 10 of NAFTA, or other agreements relating to government procurement; or otherwise discriminated against U.S. products and services when making government purchases. In addition, USTR is directed to consider a number of other factors in making its determination of whether to identify a country in the Title VII report. The Title VII report, released simultaneously with this report and the Special 301 report, builds upon the information found in the President's 1999 Trade Policy Agenda and the 1999 NTE Report on Foreign Trade Barriers so as to be more flexible and effective in achieving its goal of eliminating unfair procurement practices. In the past, Title VII has been a useful and effective tool in challenging foreign governments' procurement barriers. For details on this year's report, *see* Title VII report, released on April 30, 1999.**

***Steel*: It is critically important that we promote free and fair trade abroad and that we effectively enforce our trade laws in order to give Americans the confidence needed to keep our markets open. In response to the substantial increase in U.S. steel imports beginning in April 1998, the Administration responded with a comprehensive and effective set of actions which were outlined in the President's Steel Report to the Congress of January 7, 1999. Thanks to these measures, steel imports began to drop after November 1998. The Administration is committed to aggressively enforcing U.S. trade law to address the adverse impact that unfairly traded steel imports have on U.S. steel companies and U.S. jobs. In the report, the Administration stated its willingness, if needed, to self-initiate trade cases with respect to steel imports from Japan -- the single largest source of the import surge -- if imports did not return to appropriate pre-crisis levels. With respect to the antidumping cases filed by U.S. industry and workers concerning imports of carbon flat-rolled products, the Commerce Department expedited these investigations and, with respect to imports from Japan and Russia, invoked the critical circumstances provision with a view to retroactive application of the antidumping margins. Additionally, the Administration invoked, for the first time, the market disruption article of the 1992 U.S.-Russia Trade Agreement to negotiate a restraint agreement on imports into the United States from Russia of all steel products not already subject to restraints or dumping orders.**

The Administration also expanded discussions on steel issues with Korea, the third largest source of the 1998 steel import surge, with the objective of substantial progress toward eliminating Korean government involvement in the steel sector. U.S. industry has long-standing concerns with the Korean government's support for Korean steel producers, for example, through directed lending, which has resulted in uneconomic steel capacity expansions in Korea. For example, the

U.S. and Korean governments conducted an exchange of letters in August 1998 and April 1999 regarding steel.

These actions, grounded in U.S. trade law and fully consistent with U.S. international obligations, resulted in a sharp reduction of unfairly traded steel imports beginning in December 1998. Active import monitoring is underway with a view to prompt application of U.S. trade laws should injurious import growth resume.

D. *Integrating Other Economies into the WTO System*

The WTO is engaged in accession negotiations with 30 separate economies, including China, Chinese Taipei, Russia, Ukraine, and Vietnam. Their accession to the WTO will make the trading system nearly universal. It will remove a source of distortion and frustration in trade for the United States and will give the newly-acceding members a greater stake in stability and prosperity beyond their borders -- thus strengthening peace in the next century. To support both domestic reform and the rules of the trading system, these countries must be brought into the WTO on commercially meaningful terms. The result must be enforceable commitments to open markets in goods, services and agricultural products; transparent, non-discriminatory regulatory systems; and effective national treatment at the border and in the domestic economy.

In the months to come, we will negotiate intensely with all acceding economies, including China -- the largest prospective WTO Member. We have made important progress with China in the past two years, particularly during the visit of Premier Zhu Rongji in April 1999, and intensive negotiations are continuing.

E. *Bilateral/Regional Trade Expansion Priorities and Trade Practices of Concern*

1. *Africa*

President Clinton's *Partnership for Economic Growth and Opportunity in Africa*, announced and adopted in 1997, established a vigorous U.S. trade policy approach toward sub-Saharan Africa. The key objectives of the Partnership Initiative include: support for economic reforms underway in the region; enhanced U.S.-sub-Saharan African trade and investment ties; support for Africa's full integration into the multilateral trading system; and support for sustainable economic development. The Partnership Initiative also aims to strengthen U.S. economic engagement with countries of sub-Saharan Africa.

USTR is also committed to facilitating greater African integration into the global economy by helping African nations and their regional organizations develop greater capacity to expand trade and investment protection. At the recently concluded U.S.-Africa Ministerial in Washington D.C., the USTR underscored the resolve of the United States and Africa to build capacity to promote

broader participation by African countries in the multilateral trading system. Specifically, the United States agreed to continue technical assistance workshops in Africa on the WTO. The United States and African participants also agreed on the need for multilateral institutions to more effectively coordinate and cooperate with the WTO on trade and investment issues affecting African countries and to support African Economic Community (AEC) permanent observer status in the WTO, pending the decision of the WTO on modalities for observership. African and U.S. representatives will establish a mechanism for regular consultations on WTO and related matters, in Geneva and Washington, as preparation for the WTO Ministerial advances.

USTR recently hosted roundtables with African Trade Ministers on mechanisms to strengthen U.S.-Africa cooperation in the WTO and in the GSP Program and U.S. market access requirements. In 1997, USTR enhanced the Generalized System of Preferences Program (GSP) by adding over 1,700 new tariff lines for least developed countries, 29 of which are in Africa. True to President Clinton's vision, USTR's unprecedented engagement with African countries has resulted in trade agreements, incentives for reform and regional integration, and initiatives to enhance Africa's participation in the global trading system.

2. *Asia - Pacific*

The Clinton Administration has developed a wide-ranging program of bilateral, regional and multilateral initiatives to reduce barriers to U.S. exports of goods, services, and investment in the Asia-Pacific region. The major trade policy priorities for this important economic region are:

- to harness the momentum for reform generated by the financial crisis to promote economic recovery and the type of trade policy changes that the United States has consistently advocated: enhanced market access, transparency, economic deregulation and investment decisions based upon market disciplines. Such trade policies complement firmly the goals of financial market stabilization, as evidenced by the strong emphasis on structural reform in the International Financial Institution (IFI)'s programs. The United States is actively pursuing these objectives both through bilateral and multilateral channels, in particular, the Asia Pacific Economic Cooperation (APEC) forum;

- to realize the commitment of APEC members to long-term trade and investment liberalization through improved assessment and implementation of individual and collective APEC action plans and special initiatives such as EVSL (Early Voluntary Sectoral Liberalization); and

- to secure full implementation of WTO obligations by APEC members. This aspect of USTR's work will assume heightened importance over the coming year given the obligation of developing countries to fully implement the WTO agreements on TRIPS, TRIMs, and Customs Valuation as of January 1, 2000. This requirement should greatly strengthen our efforts to address inadequate protection of intellectual property rights, trade-distorting investment requirements, and inefficient and corrupt customs practices which have been pervasive problems throughout the region.

Priority issues for three of our largest trading partners in the region -- China, Japan, and Korea --

are outlined in the relevant sections below.

3. *Canada*

Agriculture: **Even though Canada is our largest trading partner and our second largest agricultural market, Canada continues to have restrictive policies limiting market access to key U.S. agricultural products. In 1998, the United States exported over $7 billion while importing $7.7 billion of agricultural products. In December 1998, we took an important step toward reducing these restrictions by concluding an initial bilateral market access package opening opportunities for American grain farmers, cattle ranchers and other agricultural producers. We are closely monitoring implementation of the December agreement and have already witnessed improved access for cattle and rail shipments of wheat. For example, over 51,000 head of cattle moved into Canada in the first three months of 1999, compared to only 1,000 head of cattle in all of 1998. In addition, over 225,000 tons of wheat and barley were transshipped through Canada on the rail system. Nevertheless, Canada still maintains a number of policies that restrict access of U.S. agricultural products, including grain. We pressed the government of Canada in March 1999 concerning unequal access to Canadian grain handling facilities and the Canadian Wheat Board, excessive monitoring by the Canadian Grains Commission on wheat imports, and unequal access to rail cars and rail rates. We are continuing frequent discussions with Canada on these and other related issues to provide U.S. producers improved market access for agricultural products. We hope these issues will be resolved in the near term.**

Magazines**: USTR continues to seek a negotiated settlement with Canada on its continued discriminatory practices against U.S. magazines. In 1997, the United States successfully challenged Canada's protectionist magazine regime in the World Trade Organization. By the WTO deadline, October 1998, Canada terminated its longstanding ban on split-run imports, eliminated the 1995 special excise tax on split-runs, and modified its discriminatory postal rates and postal subsidies for magazines. However, Canada introduced Bill C-55, which simply accomplishes the same result as the import ban and excise tax -- keeping U.S. and other foreign-produced split run magazines from competing in the Canadian market. If negotiators are unsuccessful in resolving this dispute and Bill C-55 is enacted, the United States will take action of an equivalent commercial effect to protect its interests.**

4. *China*

China remains a major focus of our bilateral trade initiatives. We are actively monitoring China's implementation of our trade agreements on intellectual property rights, textiles, and market access. Obtaining strengthened protection and enforcement of trademarks, copyrights and other intellectual property rights (IPRs), enhanced market access and national treatment for products that depend on intellectual property, such as pharmaceuticals and motion pictures, are key objectives. In addition, we are addressing issues relating to market access and investment in the telecommunications and direct marketing sectors. We will follow-up on recent progress on resolving sanitary and phytosanitary (SPS) issues with China to ensure that China's government fully implements our market opening agreements, which will allow U.S. exports of meat, citrus fruit, and Pacific Northwest wheat.

While we are working bilaterally to open up particular sectors of China's market, we are also working in the multilateral context to achieve broad-ranging reform of China's trade regime through negotiations on China's accession to the WTO. Recently, we have made significant progress on the market access aspects of these negotiations, including on agriculture, services, and industrial goods. Reaching agreement on these issues as well as on application of WTO rules to China will mark an important step forward in China's overall accession process.

5. ***Europe***

With the U.S.-EU trade and investment relationship being the largest and most complex in the world, the United States is very committed to strengthening trade relations with the EU. USTR will address problems in our trade relations both bilaterally and through the new multilateral negotiating round President Clinton has proposed. The United States hopes to make progress through the Transatlantic Economic Partnership (TEP) initiative begun last year. The TEP Action Plan calls for bilateral U.S.-EU consultations and/or negotiations in several specific issue areas: technical trade barriers, agriculture (including biotechnology and food safety), intellectual property, government procurement, services, electronic commerce, environment, labor and advancing shared values such as transparency, environmental protection, and participation for civil society. The initiative also encompasses enhanced U.S.-EU cooperation on multilateral trade issues. USTR also is working to ensure the protection of U.S. interests as the EU expands to include Central and Eastern European nations.

Nevertheless, the United States has a number of serious concerns regarding certain EU activities related to trade. Our decision to request WTO consultations with the EU on its action affecting U.S. flight management systems (the "avionics case") underscores U.S. determination to challenge the EU's use of those measures which advance, in a manner inconsistent with trade rules, EU commercial interests at the expense of those of its trading partners. The United States also has serious concern with the continued lack of a transparent and timely EU approval process for foodstuffs containing genetically modified organisms (GMOs). The United States hopes to work in coming weeks and months with the European Commission and EU Member States to address this problem, but will take action if the uncertainty and arbitrariness reflected in recent EU actions in this area continue to undermine U.S. exports.

The United States also remains extremely concerned about the EU's failure to implement WTO dispute settlement rulings regarding its discriminatory bananas and beef hormones regimes. EU inaction undermines the credibility of the WTO dispute settlement mechanism and sends a disturbing message about the EU's willingness to abide by the commitments it has undertaken. In light of the five rulings in the past six years against the EU's banana import policy, most recently on April 6, the United States expects the EU to implement a WTO-consistent banana program as soon as possible. The United States also expects the EU to lift its WTO-inconsistent ban on meat produced with growth hormones by the May 13 deadline granted to the EU to comply with the WTO panel findings against its hormones policy. The United States has engaged in discussions with the European Commission regarding implementation of the EU's WTO obligations in both instances.

6. ***Japan***

The United States attaches utmost importance to opening Japan's markets to U.S. goods and services. To this end, the Clinton Administration has consistently emphasized the need for major structural reform and deregulation to open Japan's economy to competition; monitoring and enforcing existing trade agreements covering key sectors; the negotiation of new trade agreements; and addressing concerns through regional and multilateral fora. The Administration remains determined to press Japan to take the necessary steps to dismantle the numerous trade and regulatory barriers that have sheltered the Japanese economy from foreign competition for far too long.

***Insurance*: The United States and Japan concluded bilateral insurance agreements in 1994 and 1996 designed to open to competition the world's second largest insurance market, with annual premium revenues of $329 billion in JFY 1997. In December 1997, Japan agreed to bind certain key commitments from these agreements under the WTO Financial Services Agreement.**

The bilateral agreements have had some positive impact. For example, in September 1997 the Ministry of Finance granted the first ever license for direct marketing of risk-differentiated automobile insurance to a U.S. firm. Nevertheless, the Administration is seriously concerned that Japan has not fully implemented all of the specific deregulation actions called for under our bilateral insurance agreements, including reform of its rating organizations and timely approval of product applications. In addition, the United States is extremely concerned with the diminution of the "third sector" safeguards caused by increased activity on the part of Japanese insurance firms and subsidiaries in this market segment critical to U.S. insurers. Since all of the primary sector deregulation criteria had not yet been fulfilled, USTR announced on July 1, 1998, that the United States does not support the initiation of the two-and-one-half year clock regarding termination of the third sector safeguards. The Administration is prepared to utilize all of the tools at our disposal to ensure the full benefits to U.S. industry from our bilateral Insurance Agreement.

The U.S. underscored its concerns regarding both primary and third sector issues at consultations with Japan under the bilateral agreements held on April 16 in Washington. These consultations also included a constructive regulator-to-regulator exchange between representatives of the National Association of Insurance Commissioners and select state insurance commissioners, and Japan's Financial Supervisory Agency. It is essential that both governments expeditiously resolve outstanding issues. The U.S. has proposed that the next insurance talks take place in Tokyo this summer.

***Autos and Auto Parts*: The United States and Japan concluded an agreement in 1995 to eliminate market access barriers and significantly expand sales opportunities in the automotive sector. Although initial results in many areas were satisfactory, recent progress toward achieving the Agreement's key objectives has been disappointing. Sales in Japan of autos produced by the Big Three in North America declined 34.5 percent in 1998, after declining 20 percent in 1997. Exports of U.S.-made auto parts to Japan fell 7.5 percent in 1998, the first drop since 1991, and the continued fall off in new orders of U.S. auto parts by Japanese manufacturers suggest that this decline is likely to continue. These trends are the result of a variety of factors, including Japan's recession, which has inhibited consumer spending and business investment and weakened the yen, and continuing market access and regulatory issues.**

To address these concerns, the U.S. Government presented Japan at the annual review of the Automotive Agreement in October 1998 with 11 proposals, including measures to strengthen and improve access to dealerships, the main distribution channel to Japan's automotive market. The U.S. Government also urged Japan to eliminate unnecessary regulations in the auto parts aftermarket that limit the ability of independent garages to compete for high-profit vehicle inspection and repair business. While Japan has agreed to implement some of these proposals, the U.S. Government will continue to urge Japan at all levels to take concrete steps to achieve additional progress under the Agreement. In addition, the United States will continue to monitor developments regarding Japan's new fuel economy regulations to ensure that this rulemaking process is fully transparent and that foreign vehicle manufacturers receive treatment no less favorable than that offered to domestic manufacturers, recognizing the important environmental concerns that underlie these regulations.

***Flat Glass*: The 1995 U.S.-Japan Flat Glass Agreement has helped American firms to a limited extent, but the basic problem remains the same: U.S. glass manufacturers still have a minuscule share of the Japanese flat glass market, despite the fact that Japanese companies and distributors readily acknowledge the competitiveness of U.S. glass. While Japan committed in the agreement to take measures to facilitate access by foreign companies to the Japanese glass distribution system, major Japanese distributors still do not carry foreign glass in meaningful quantities. The three dominant Japanese producers continue to exert tight control of the domestic glass distribution system in many ways, including majority ownership of glass distributors, equity and financing ties, employee exchanges, and purchasing quotas. Indeed, there is evidence that their control is increasing, as they use Japan's tight credit market to impose closer financial ties on the most important glass distributors.**

Japan recently agreed with the United States to examine these issues in surveys of the sector by the Japan Fair Trade Commission (JFTC) and the Ministry of International Trade and Industry. The former will be particularly important in this regard, and it is therefore imperative that the JFTC scrutinize the core problems in a thorough and credible way. Japan has also agreed to U.S. proposals to hold government-industry consultations on access to and the state of Japan's flat glass market this Spring and to allow U.S. Government representatives to attend the Japanese Government's periodic meetings with flat glass distributors to remind them of the objectives and provisions of the agreement. This progress notwithstanding, the principal impediments to genuine market access in the flat glass sector remain. The United States will continue to urge Japan to take actions to remove these barriers.

7. *Korea*

Korea is one of the United States' major trading partners but has been described as one of the toughest markets in the world for doing business. In response to its financial crisis, the Kim Dae Jung administration has implemented structural reforms aimed at putting the Korean economy on a more open, market-oriented basis. Resistance to key trade reforms remains, however, and many issues have arisen on Korea's compliance with its international obligations.

The Administration is focused on eliminating Korean barriers to entry and distribution of U.S. products using U.S. trade law, WTO dispute settlement procedures, negotiation and enforcement of bilateral trade agreements, and close coordination with other countries. In addition, the Administration will, through an interagency process, closely monitor Korea's implementation of its trade-related stabilization commitments.

Over the past year, the Administration has made solid progress toward opening the Korean market to U.S. goods. In October 1998, we successfully concluded a Memorandum of Understanding (MOU) with the Government of the Republic of Korea to improve market access for foreign motor vehicles. Under this MOU, Korea agreed to (1) bind in the WTO its 80 percent applied tariff rate at 8 percent; (2) lower some of its motor-vehicle-related taxes and to eliminate others; (3) adopt a self-certification system by 2002; (4) streamline its standards and certification procedures; (5) establish a new financing mechanism to make it easier to purchase motor vehicles in Korea; and (6) continue to actively and expeditiously address instances of anti-import activity and to promote actively a better understanding of free trade and open competition. This MOU was negotiated after Korea's motor vehicle trade barriers were named as a "priority foreign country practice" in the 1997 Super 301 report and USTR initiated a section 301 investigation of such barriers. On October 20, 1998, with the conclusion of the MOU, the USTR decided to terminate this investigation and to monitor Korea's implementation of the measures in the MOU to eliminate those barriers. The first formal review of Korea's implementation of the 1998 MOU was held on April 29 and 30, 1999. The Administration will continue to work closely with the Korean Government to ensure that the provisions in the 1998 MOU are fully and faithfully implemented in a manner that substantially increases market access for foreign motor vehicles in Korea and establishes conditions so that the Korean motor vehicle sector operates according to market principles.

In addition, the Deputy U.S. Trade Representative concluded an exchange of letters in August 1998 on the operation and sale of Hanbo Steel, and the U.S. Government initiated comprehensive discussions with Korea on broader steel issues of concern to U.S. industry. In April 1999, the Deputy U.S. Trade Representative concluded another letter exchange with the Korean Government to address issues of concern and interest to U.S. industry relating to POSCO, Hanbo, and competition in the Korean steel sector generally.

In July 1998, a WTO dispute settlement panel ruled in favor of the United States and the European Communities (EC) by finding Korea's taxes on alcoholic beverages to be discriminatory. In January 1999, the WTO Appellate Body upheld this panel decision, and the panel and Appellate Body reports were adopted on February 17, 1999. The United States and the EC have requested arbitration to determine the length of the period within which Korea will come into compliance with the reports.

***Pharmaceuticals*: One of the top trade expansion priorities on the U.S.-Korea trade agenda is Korea's treatment of foreign, research-based pharmaceuticals. Korea does not now provide imported drugs with national treatment with respect to listing and pricing on the Korean national health insurance reimbursement schedule, and the current reimbursement system discourages hospitals and other large end-users from buying imported drugs. Dispensers of imported products also must comply with additional administrative procedures for reimbursement. U.S. pharmaceutical producers face other market access barriers in Korea including non-science-based requirements for clinical testing. In addition, the United States has raised concerns about Korea's regime for protecting test data against unfair commercial use. Finally, lack of coordination**

between Korean health authorities and Korean IPR authorities allows manufacturers of patent infringing products to gain approval for the launch of their products into the Korean market to the commercial detriment of the holders of the patents.

In response to high-level bilateral consultations and a letter from the Deputy U.S. Trade Representative, the Korean Government has indicated that it is taking steps to address some of the U.S. Government's and industry's concerns about treatment of foreign pharmaceuticals. The Administration will continue its active efforts to further advance progress on our pharmaceuticals trade issues until U.S. concerns are fully and satisfactorily addressed. Specifically, the U.S. Government will engage the Korean Government on U.S.-Korea pharmaceuticals-related trade issues and a Bilateral Investment Treaty (BIT), in an out-of-cycle Special 301 review on TRIPS consistency, and in other fora.

8. ***Mexico***

Since 1994, trade with Mexico has largely been governed by the North American Free Trade Agreement (NAFTA). Mexico is also a WTO Member. As a result, U.S. trade and investment relations with Mexico are subject to a set of comprehensive disciplines setting high standards of openness and providing for effective resolution of disputes covered by these agreements. By any measure, NAFTA has contributed to the increased trade between the United States and Mexico. During NAFTA's first five years, U.S. merchandise exports to Mexico increased by 90 percent, with imports from Mexico increasing by 137 percent. As is to be expected from such a large trading relationship, the United States does continue to have concerns about Mexico's trade practices in some areas. The most important of these concern Mexico's enforcement of its intellectual property laws, telecommunications policy, and market access for high fructose corn syrup.

Mexico has committed to implement and enforce advanced levels of intellectual property protection and has just enacted new legislation to this effect. However, as noted in USTR's Special 301 Report issued today, piracy and counterfeiting remain major problems, with current enforcement action inadequate to deter piracy. Mexico has been added to the Special 301 Watch List.

Regarding telecommunications, the United States is concerned that ongoing regulatory processes are non-transparent and potentially ineffective. USTR's Section 1377 Report, released on March 30, expressed doubts about Mexico's implementation of its commitments under the WTO agreement with respect to international services and interconnection rates. The Mexican government has said it will review its international service and interconnection/universal service regulations in 1999. USTR will conduct an out-of-cycle examination by July 30 regarding the progress of Mexico's ongoing regulatory process, and expects that Mexico will respond favorably to the requests from all the new entrants to permit International Simple Resale (ISR) immediately. At that time USTR will take appropriate action including, if warranted, the initiation of WTO dispute settlement proceedings, to assure that new competitors in the market are treated fairly.

The United States continues to raise its concerns regarding the Mexican Government's application

of antidumping measures on U.S. exports of high fructose corn syrup (HFCS). A dispute settlement panel was established by the World Trade Organization in November 1998 and hearings were held in April 1999. A decision is expected late this year. U.S. exporters are also challenging Mexico's measure under the Chapter 19 provisions of the NAFTA and last year filed a Section 301 petition with USTR, alleging that the policies and practices of the Government of Mexico are unreasonable and deny fair and equitable market opportunities for U.S. exporters. USTR accepted the petition for review on May 15, 1998.

9. *Middle East*

Building upon our Free Trade Agreement with Israel, the United States has inaugurated a program that aims to bolster the peace process, while advancing American interests. Starting with a framework of bilateral trade and investment consultations in the region and a newly inaugurated industrial zones program, the United Sates will help the Middle Eastern countries work toward a shared goal of increased intra-regional trade. Most recently, the USTR expanded the first Jordan-Israel Qualifying Industrial Zone, designated another, and completed a Trade and Investment Framework Agreement with Jordan.

10. *Western Hemisphere*

The Miami and Santiago Summits of the Americas called on us to complete work on a Free Trade Area of the Americas no later than the year 2005. This year, also in accordance with Summit directions, the United States intends to achieve concrete progress toward the FTAA in the work of our nine Negotiating Groups (market access, agriculture, services, investment, government procurement, intellectual property, anti-dumping and countervailing duties, competition policy, and dispute settlement) and through business facilitation measures. In addition, the FTAA has initiated a private sector-public sector experts group on electronic commerce to advise the ministers on how electronic commerce can benefit the countries of this hemisphere, especially in the context of the FTAA negotiations. The ministers also have established a government committee on the participation of civil society, which has solicited the views of the different sectors of society concerning the FTAA and will analyze them for the consideration by the ministers at the next FTAA ministerial in Toronto in November 1999.

At the same time, the Clinton Administration will seek approval from Congress for an expanded and improved Caribbean Basin Initiative with duty-free treatment for products currently excluded from the program. The Administration seeks to use the program to promote the adoption by beneficiary countries of sound trade and investment policy reforms that will prepare them for the obligations and responsibilities of the FTAA.

1. These provisions can be found in: Sections 301-310 of the Trade Act of 1974 ("Section 301"); Section 182 of the Trade Act of 1974 ("Special 301"); and Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 ("Section 1377"). The procedures set forth in Section 310 of the Trade Act of 1974 ("Super 301") and Title VII of the Omnibus Trade and Competitiveness Act of 1988 ("Title VII") were re-instituted by Executive Order 13116 of March 31, 1999.

Office of the United States Trade Representative

Washington, D.C.

April 30, 1999

ANNUAL REPORT ON DISCRIMINATION IN FOREIGN GOVERNMENT PROCUREMENT

I. Legal Authority

On March 31, 1999, the President signed Executive Order 13116, which largely reinstitutes the provisions of Title VII of the Omnibus Trade and Competitiveness Act of 1988 ("Title VII"), as amended. Under the Executive Order, the United States Trade Representative ("USTR") is required to submit to the Congress by April 30 of each year a report identifying foreign countries:

1) that have failed to comply with their obligations under the WTO Agreement on Government Procurement ("GPA"), Chapter 10 of the North American Free Trade Agreement, or other agreements relating to government procurement to which that country and the United States are parties; or

2) that maintain, in government procurement, a significant pattern or practice of discrimination against U.S. products or services which results in identifiable harm to U.S. businesses, when those countries' products or services are acquired in significant amounts by the U.S. Government.

Within 90 days of the submission of the report, USTR must initiate under section 301 of the Trade Act of 1974, as amended, an investigation with respect to any country identified in the report, unless USTR determines that a satisfactory resolution of the matter has been achieved. If the matter is not resolved during that period and USTR determines that the rights of the United States under an international procurement agreement are being violated, or that any discriminatory procurement practices exist, the Executive Order requires USTR, *inter alia*, to initiate formal dispute settlement proceedings under the international agreement in question or revoke any waivers for purchasing requirements granted to the discriminating foreign country.

Title VII has been a useful and effective tool in challenging foreign governments' procurement barriers. The reinstitution of Title VII procedures through Executive Order 13116 sends a strong signal that the President is committed to protecting U.S. interests in international procurement markets.

II. Identification of Foreign Countries and their Discriminatory Procurement Practices

From 1991 to 1996, USTR conducted six annual reviews under Title VII. During that time, six identifications were formally made, while numerous potentially discriminatory government procurement practices were noted. USTR achieved satisfactory resolution with respect to eight discriminatory or potentially discriminatory practices, including a GATT dispute settlement proceeding, with regard to the procurement of an electronic toll booth collection system in Norway, in which the panel found in favor of the United States.

Two other Title VII determinations remain outstanding: In 1992, USTR identified the European Union ("EU") as engaging in discriminatory procurement practices of government-owned telecommunications in certain member states; the United States imposed sanctions in 1993, which are still in place today. Also, in 1996, USTR identified Germany for discriminating in the heavy electrical equipment sector and for its failure to adequately implement its obligations under the 1993 U.S.-EU Memorandum of Understanding on Government Procurement. As a result, Germany agreed to seek legislative changes to end its discriminatory practices and the United States agreed to temporarily suspend sanctions (see below for an update).

After consulting with other executive agencies and U.S. businesses, USTR has determined not to identify any countries under Title VII, because the practices of concern are either being addressed under another trade dispute mechanism, do not meet the criteria for identification, or are currently under scrutiny as a result of previous identifications. The Administration will continue to carefully monitor these practices in making its determinations next year, and the United States will move forward with WTO dispute settlement proceedings to challenge Korea's government procurement practices in the construction of the Inchon International Airport.

A. Korea

As a party to the GPA, the procurement market for the Republic of Korea (ROK) was estimated at approximately $3.8 billion in 1998. Of this, about $1.3 billion was subject to international tendering procedures in accordance with GPA rules. In addition to purchases of goods and services, it is estimated that Korea awarded construction contracts valued at $6.1 billion in 1998.

Presently, Korea is constructing the Inchon International Airport ("IIA"). Valued at $6 billion, IIA is one of the largest public works projects in Asia, and the largest underway in Korea. Although the airport is about half completed, procurements over the next several years will be worth billions of dollars, including those for (1) meteorological radar, (2) Satellite Navigation System (CNS/ATM), (3) control facilities for parking, (4) a cargo x-ray system, and (5) a passenger x-ray system. It is important that U.S. firms have fair access to these contracts.

During negotiations for Korea's accession to the GPA in 1991-92, the United States obtained Korea's commitment that the entities responsible for airport construction would be subject to GPA disciplines. However, soon after negotiations were concluded, Korea created another entity -- the Korea Airport Construction Authority ("KOACA") -- to manage procurement for IIA construction. In February of 1999, the Korean Government made another change to its airport procuring authority by changing KOACA into the Inchon International Airport Corporation (IIAC). Korea now asserts that, because KOACA and/or IIAC are not expressly listed as a covered entity in its GPA schedule of concessions, procurement for the IIA is not covered by the GPA.

In seeking to participate in the IIA project, U.S. suppliers have repeatedly faced discriminatory tendering practices that hamper their ability to compete effectively for related procurement contracts. These Korean Government practices include the following:

- •requiring that a firm hold four Korean licenses, including a manufacturing license, in order to be eligible to bid as a prime contractor, thereby precluding foreign firms that do not have a license to manufacture in Korea from bidding as a prime contractor;
- •requiring that foreign firms participate in a bid only as consortium members or subcontractors to local firms acting as the prime contractors; and
- •failing to provide effective procedures to enable suppliers to challenge alleged breaches of the GPA arising in the context of individual procurements.

U.S. Government officials sought to resolve these matters through representations to the Korean Government in bilateral and multilateral fora. Because Korea did not confirm that procurement for airport construction is subject to the GPA, on February 16, 1999, the United States requested consultations with Korea under WTO dispute settlement procedures. Consultations were held on March 17, 1999. The U.S. Government will take further steps necessary to resolve this matter.

B. Japan

The United States and Japan have concluded bilateral Government Procurement Agreements covering six key sectors: telecommunications, computers, construction, supercomputers, medical technology, and satellites. While Japan's implementation of some of these agreements, such as the Medical Technology Agreement, has led to significant improvement in market access for U.S. firms, results to date under other agreements, such as the Computer, Construction, Telecommunications, and Supercomputer Agreements, have been highly disappointing. The Administration remains seriously concerned that the objectives of these agreements, which focus on the improvement of foreign firms' access to and expansion of sales in the Japanese public procurement market, are not being met. Further, in light of the Japanese Government's increased fiscal spending in public works and "21st century technologies," we believe that U.S. firms should have a fair opportunity to compete for these procurements in line with the obligations contained in our bilateral agreements. The United States has made clear our concerns to the Japanese Government with respect to those areas where we believe Japanese implementation could be improved. In addition, the U.S. Government has offered new proposals for generating progress in several areas, while proposing various ways in which the agreements can be made more effective. Our success to date in pursuing this agenda, however, has been limited, and further action is necessary in order to ensure that foreign firms have fair, open, and transparent access to Japanese markets. Particularly problematic are Japanese Government procurement practices related to computer goods and services and

public works projects.

Japan - Market Access for Computer Products and Services: U.S. computer makers, global leaders in technology and performance, have long had a disproportionately low share of the Japanese public sector market as compared with their strong showing in the Japanese private sector. To address this fact, the United States and Japan concluded a bilateral agreement on government procurement of computers (covering computer hardware, software, and services) in 1992. Under this agreement, the Japanese Government agreed to institute changes to its procurement system based on the principles of non-discrimination, transparency, and fair and open competition, with the aim of expanding government purchases of foreign computer products and services. However, there is still much to be done in this sector to increase transparency, openness, and fairness. In addition, while there has been some sporadic increases in Japanese public procurement of foreign computer products and services, the overall aim of the agreement has not been met on a sustained basis.

The U.S. Government continues to receive reports from U.S. industry of problems in Japanese Government procurement of computers, including unequal access to information, persistence of unreasonably low bids, and a lack of strong efforts by the Japanese Government to ensure that sole-sourcing procurements by government entities decrease significantly, as called for in our bilateral agreement. U.S. industry has also noted that even where bidding is open, Japanese purchasing agencies often evaluate bids in a way that encourages excessively low-priced bids. These factors have created an environment whereby U.S. computer companies enjoy only limited access to the Japanese Government procurement markets. An important result of these problems has been a steady, long-term decrease in the foreign share of the Japanese public sector Personal Computer ("PC") market since 1992 and a significant decline in the foreign share of the Japanese public sector mainframe and mid-range computer market in the last two years for which there is data. The next annual review of this agreement, covering 1997 data, is scheduled for May in Tokyo. Despite signs that there may have been an increase in Japanese Government purchases of foreign mainframe and mid-range computers in 1997, continuing poor performance of state-of-the-art foreign-made PCs, and the fact that foreign firms have continued to hold approximately 35 percent of Japan's overall private sector computer market over the last several years, are evidence that significant non-competitive forces are still at work in the Japanese public sector computer market. As a result, the U.S. Government remains committed to fully address discriminatory and non-transparent practices in this sector.

In light of the poor results under the agreement to date, lingering concerns over fairness and transparency, and rapid changes in technology in this sector, last August the U.S. Government presented the Japanese Government with a set of proposals devised to improve implementation of the agreement and bring its provisions into line with advances in technology. These include taking specific steps to further improve the bid evaluation process to give greater weight to technological innovation and other key non-price factors.

To date, the U.S. Government has been extremely disappointed with the Japanese Government's reluctance to seriously consider these proposals, particularly since the result would be a more competitive procurement system and better value for Japanese Government entities. The U.S. Government continues to urge Japan to undertake further steps to ensure that the provisions of this agreement are fully implemented and that its objectives are met.

Japan - Market Access for Construction: American firms are well-known for their top-notch expertise

in design/consulting and construction projects. Despite two bilateral agreements intended to enhance access to Japan's public works market, American companies continue to fare poorly and the objectives of the agreements are not being achieved. The 1991 Major Projects Arrangement is intended to familiarize foreign firms with Japan's public works market while the main purpose of the 1994 Public Works Agreement is to make bidding and contracting procedures more transparent and objective. The U.S. Government is seriously concerned by the fact that, at the June 1998 annual review, it was recognized that U.S. firms had won only $50 million in contracts over the preceding year -- less than one percent of Japan's $250 billion public works market and only half of the $100 million in contracts won the year before.

The United States has focused on two key areas that require serious attention in this sector -- Japanese restrictions on the formation of joint ventures for construction projects and the very low number of design/consulting procurements open to foreign firms. Regarding joint venture formation for construction projects, the United States has pressed Japan to eliminate the "three-company rule," under which the Japanese Government limits to three the number of firms that can participate in a joint venture. In addition, the United States has asked Japan to allow companies, rather than procuring entities, to determine whether or not a supplier can bid as a solo bidder or as a member of a joint venture. To date, Japan has rejected these requests. The United States will continue to urge Japan to eliminate these restrictions, thereby promoting greater competition in this sector.

With regard to the low number of design/consulting procurements open to foreign firms, Japan's Construction Ministry recently has undertaken initiatives in response to U.S. concerns. These initiatives include allowing design/consulting firms greater freedom to partner on projects; combining design contracts in a way that would lead to greater coverage of procurements by the agreements, thereby increasing opportunities for foreign firms; and contracting out all future design work (instead of conducting design "in-house"). The United States is encouraging other ministries to follow the Construction Ministry's lead and is monitoring closely these initiatives to see if they result in progress under the agreements.

The U.S. Government continues to urge Japan to take immediate, concrete steps in both the design/consulting and construction areas that will lead to increased business opportunities for American companies. The United States has made clear our expectation that progress be made before the next annual review of the public works agreements, which is tentatively scheduled for July 1999.

C. Germany

In April 1996, USTR identified Germany in the Title VII report for its failure to comply with market access procurement requirements in the heavy electrical equipment sector. The identification was based on irregularities in the procurement process for two separate steam turbine generator projects. In particular, the Title VII Report noted a "pervasive institutional problem" with respect to Germany's implementation of a remedies system for challenging procurement decisions. The imposition of trade sanctions, however, was delayed until September 30, 1996, because consultations with Germany suggested a resolution might be possible given additional time. On October 1, 1996, then-Acting USTR Barshefsky announced that the German Government had agreed to take steps to ensure open competition in the German heavy electrical equipment market, including reform of the government procurement remedies system as well as outreach, monitoring, and consultation measures. The United States did not, however, terminate the Title VII action at that time because legislation implementing reform of the

procurement remedies system needed to be enacted.

In May 1998, the German parliament passed legislation requiring significant reforms in the German procurement system, including reforms with respect to bid challenge procedures. This legislation was signed and entered into effect on January 1, 1999. The Administration has advised the German Government that it will review the status of this Title VII identification on the basis of practical experience demonstrating the effective implementation of this legislation.

III. Transparency in Government Procurement

Active support for early conclusion of a WTO Agreement on Transparency in Government Procurement is a key element of the Administration's ongoing efforts to promote the development of transparent procurement environments throughout the world. Drawing largely on proposals made by the United States, WTO Ministers agreed at the 1996 Singapore Ministerial Conference to establish the WTO Working Group on Transparency in Government Procurement. The Working Group's mandate is to: (1) conduct a study on transparency in government procurement practices; and (2) based on this study, develop elements for a multilateral agreement on transparency in government procurement.

Conclusion of a WTO agreement on transparency in government procurement will serve a wide range of important U.S. interests. It will help to establish a more stable and predictable business environment for U.S. exporters, even in markets where governments maintain "buy national" or other purchasing restrictions. It will also build on the "good governance" reforms that a growing number of countries have adopted in response to the international financial crisis, and the deeper structural impediments to efficient long-term growth and development.

In 1997 and 1998, the Working Group's initial study of WTO Members' general procurement policies and objectives revealed broad international agreement on many key principles. Based on this work and subsequent consultations, the Working Group is poised to move forward with negotiations on the elements of a transparency agreement. Those elements will likely include:

- Information on National Legislation and Procedures;
- Information on Procurement Opportunities;
- Information on Tendering and Qualification Procedures;
- Transparency of Decisions on Qualification;
- Transparency of Decisions on Contract Awards; and
- Domestic Review Procedures.

The United States and its Quad partners have urged that the Working Group seek to conclude these

negotiations by the Third WTO Ministerial Conference, in late 1999.

IV. International Government Procurement Agreements

A. The WTO Agreement on Government Procurement ("GPA")

The GPA, which entered into force on January 1, 1996, is a "plurilateral" agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO's single undertaking, and its membership is limited to the 26 WTO members that signed the Agreement in Marrakesh or that subsequently acceded to it. The current Members are the United States, the member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom), Aruba, Canada, Hong Kong, Israel, Japan, Liechtenstein, Norway, the Republic of Korea, Singapore, and Switzerland. Chinese Taipei, Iceland, and Panama are in the process of negotiating accession to the GPA, although by the terms of the GPA, Chinese Taipei must become a WTO member prior to GPA accession. In their protocols of accession to the WTO, Bulgaria, the Kyrgyz Republic, Latvia, Mongolia, and Slovenia have committed to pursue GPA accession.

In its report to the 1996 Singapore Ministerial Conference, the Committee on Government Procurement, which monitors the GPA, stated its intention to undertake an "early review" of the GPA starting in 1997. The review would be aimed at the implementation of Article XXIV:7(b) and (c) of the GPA, which call for further negotiations to achieve the following objectives:

- simplification and improvement of the GPA, including, where appropriate, adaptation to advances in the area of information technology and streamlined procurement methods;
- expansion of coverage of the GPA; and
- elimination of discriminatory measures and practices which distort open procurement practices.

GPA Members have agreed that one of their principal objectives for the review of the Agreement is to promote expanded membership of the GPA by making the Agreement more accessible to non-members.

In the course of the review, many Members have also noted the importance of ensuring that the GPA's rules accommodate the use by governments of new information technologies and other innovations in government procurement procedures. Many governments now use electronic forms of publication for procurement notices and other documents to improve dissemination capabilities and lower costs for both suppliers and governments. The United States believes that the GPA must accommodate such improvements in the operation of procurement systems. The United States and other Members have also recognized the potential for simplifying the Agreement's statistical reporting requirements, an issue that is of particular interest to members' sub-central procurement authorities and to other countries that may potentially be interested in acceding to the GPA.

The GPA establishes a procedure for monitoring members' implementing legislation. The United States has used this procedure to better understand and comment on procurement practices of concern to U.S. suppliers, such as the practices of Korea's airport construction authorities and the application of the EU "Utilities Directive."

B. Chapter 10 of the North American Free Trade Agreement ("NAFTA")

In Chapter 10 of the NAFTA, signatories agreed to open the majority of non-defense related federal procurement opportunities to competition from all North American suppliers. Because Mexico is not a member of the GPA, its participation in the NAFTA marked the first time that Mexico had committed to eliminate discriminatory government procurement practices. While differences exist between NAFTA Chapter 10 and the GPA (e.g., with respect to thresholds and sub-federal coverage), the principles of non-discrimination, fair and open competition, and transparency are established with equal force in both agreements.

In October 1998, agreement was reached by the delegations of Canada, Mexico, and the United States to the NAFTA Working Group on Government Procurement with respect to the subject of electronic transmission, pursuant to Article 1024(5) of the NAFTA. Particularly, the delegations agreed that the NAFTA Parties may publish invitations to participate for all procurements in either paper or electronic format, or both.

Recently, the Administration has received complaints from U.S. exporters that Mexico is not adhering to the NAFTA requirement that the time limit for the receipt of tenders must be open for a minimum time period that is consistent with Article 1012, which allows suppliers to prepare and submit meaningful tenders. Generally, the period for the receipt of tenders is to be no less than 40 days from the date of publication of a Request for Proposal. A 1997 study commissioned by Canada indicated that this problem is pervasive in Mexican procurement procedures subject to the NAFTA. In the NAFTA Negotiating Group on Government Procurement, the United States has joined Canada in seeking clarification on this issue and in urging Mexico to ensure that its procurement authorities comply with the relevant NAFTA commitments.

C. Free Trade Area of the Americas ("FTAA")

The United States is presently involved in discussions for creating a new free trade area, the FTAA. As an active participant in the Negotiating Group on Government Procurement, and as the discussions involving government procurement is in the very early stages, the United States is generally interested in (1) concluding a text embodying the principles of transparency and due process in government procurement, leading to a recommendation for agreement at the October 1999 FTAA Ministerial meeting to implement the results of this work by December 1999; (2) achieving agreement on a set of commitments which will ensure non-discrimination in government procurement within a scope to be negotiated, to be implemented as part of the conclusion of the FTAA; and (3) achieving agreement on the basic elements of a common procurement reporting system.

V. Other Trade-Distorting Practices

A. Bribery and Corruption

Among the most consistent complaints the Administration receives from U.S. industry and labor representatives is that bribery and corruption compromise U.S. market access in many foreign markets. This is particularly true for big ticket infrastructure projects for which preparation of a bid package alone can cost millions of dollars. U.S. firms often find that they are bidding on projects with little or no certainty as to whether the offered technology and price are going to be the primary considerations in the award of contracts. Despite their concerns, however, many U.S. firms have in the past been hesitant about coming forward publicly with cases in which they have seen bribery and corruption influence contract awards, because of fears that they may experience a commercial backlash with respect to future contracts.

These circumstances call for government-to-government initiatives to root out bribery and corruption in international procurement markets. The Administration is aggressively pursuing this objective in a wide range of international fora. The recent entry into force of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which obligates its 34 parties to impose criminal sanctions on the offering and payment of bribes in procurement markets and other international commercial transactions, represents a major step forward. The United States and 33 other countries have signed the OECD Convention.

Furthermore, twenty-five members of the Organization of American States ("OAS"), including the United States, have signed the OAS Inter-American Convention Against Corruption, which obligates its parties to impose criminal sanctions, and provides for international legal cooperation in combating corrupt practices in international business transactions. The Administration looks forward to early ratification of the OAS Convention.

B. Offsets in Defense Trade

When purchasing defense systems from U.S. defense prime contractors, many U.S. trading partners require compensation in the form of offsets as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services. Offsets include mandatory co-production, licensed production, subcontractor production, technology transfer, countertrade, and foreign investment. Offsets may be directly related to the weapon system being exported, or they may take the form of compensation unrelated to the exported item, such as foreign investment or countertrade.

Prime contractors view offset arrangements as a necessity for success in the international marketplace. However, offset requirements cause prime contractors to select subcontractors based on their being

located in the country requiring the offset versus best value, thereby adversely affecting potential U.S. subcontractors. Originally designed to enhance allied national security, offsets increasingly have become economic development tools for the countries that demand them. Furthermore, there has been a recent trend to fulfill offset requirements with non-defense products versus defense products.

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

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EMBARGOED UNTIL 1:00 P.M. EST

USTR ANNOUNCES RESULTS OF SPECIAL 301 ANNUAL REVIEW

United States Trade Representative Charlene Barshefsky today announced the results of the 1999 "Special 301" annual review which examines in detail the adequacy and effectiveness of intellectual property protection in over 70 countries. Ambassador Barshefsky also announced that she will, as a result of this year's Special 301 review, initiate WTO consultations with Argentina, Canada and the European Union. This brings to 13 the number of intellectual property-related WTO complaints filed by the United States since 1996. The Special 301 report also addresses developments, and concerns in such countries as Israel, Malaysia, South Africa, Ukraine, India, Hong Kong, Brazil, Mexico, Korea and Bulgaria.

"This year's review emphasized three critically important issues: proper and timely implementation of the WTO TRIPS Agreement, cracking down on pirated production of "optical media" such as CDs, VCDs, DVDs, and CD-ROMs, and ensuring that government ministries only use authorized software," stated Ambassador Barshefsky. "We have made significant progress on each of these issues over the past year, but the unacceptably high rate of piracy around the world of U.S. intellectual property requires on-going vigilance."

1999 Special 301 Decisions

Under the Special 301 provisions of the Trade Act of 1974, as amended, Ambassador Barshefsky today identified 57 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon intellectual property protection.

In today's action, the United States Trade Representative designated Paraguay and China for "Section 306 monitoring" to ensure both countries comply with the commitments made to the United States under bilateral intellectual property agreements.

Ambassador Barshefsky also announced placement of 16 trading partners on the "Priority Watch List": Israel, Ukraine, Macau, Argentina, Peru, Egypt, the European Union, Greece, India, Indonesia, Russia, Turkey, Italy, Dominican Republic, Guatemala, and Kuwait. She also placed 37 trading partners on the "Watch List." In addition, out-of-cycle reviews will be conducted of Malaysia, Hong Kong, Israel, Kuwait, South Africa, Colombia, Poland, the Czech Republic, and Korea.

In addition, Ambassador Barshefsky today announced that an out-of-cycle review will be conducted in September 1999 to assess Malaysia's progress toward substantially reducing pirated optical media production and export.

Reports indicate that approximately 90 optical media (CD, CD-ROM, VCD, and DVD) production lines are operating in Malaysia. The combined production capacity of these lines far exceeds local demand plus legitimate exports. Pirate products believed to have originated in Malaysia have been identified throughout the Asia-Pacific region, North America, South America, and Europe, and pirate products are sold openly in public markets in Malaysia.

Malaysia has recently undertaken a series of constructive steps including the creation of an interagency task force to develop and implement a regulatory regime for optical media production, development of manufacturing and retail level enforcement efforts, and revised affidavit requirements. Malaysia has also prioritized efforts to deter unlicenced use of software by end-users. The United States will monitor progress to ensure that Malaysia's efforts produce a concrete reduction in piracy rates.

As a result of the decisive steps taken by Hong Kong in 1998, we removed Hong Kong from the Watch List during a February 1999 out-of-cycle review. However, piracy rates, which are some of the highest in the world, have not been significantly reduced. Hong Kong has only just begun to address the situation since that review. The U.S. remains deeply concerned that Hong Kong has not devoted adequate resources to address the piracy problem. We note that just today Hong Kong announced that some additional resources are being temporarily dedicated to its anti-piracy effort and that they will launch a public campaign to convince corporations to buy legitimate software. We urge Hong Kong to demonstrate its commitment to intellectual property protection by dedicating additional manpower to the effort on a permanent basis and to substantially reduce piracy rates in the near term. We are encouraged by the promulgation of a concept paper to solicit public support for new efforts to fight copyright piracy, and look forward to seeing additional reforms implemented swiftly. We will assess Hong Kong's progress on these issues in an out-of-cycle review in September.

While on-going piracy and counterfeiting problems persist in many countries, progress has occurred in such countries as India, Bulgaria, Jordan, Mexico, China, Sweden, Korea, and Ireland. An attachment to this release, entitled Developments in Intellectual Property Rights, identifies the specific gains in these countries and others.

Details of Ambassador Barshefsky's Special 301 decisions are provided in the attached Fact Sheet.

Implementation of the WTO TRIPS Agreement

One of the most significant achievements of the Uruguay Round was negotiation of the Trade- Related Aspects of Intellectual Property Rights Agreement (TRIPS), which requires all WTO Members to provide certain standards of protection for patents, copyrights, trademarks, trade secrets, and other forms of intellectual property. The Agreement also requires countries to provide effective enforcement of these rights. In addition, the TRIPS Agreement is the first multilateral intellectual property agreement that is enforceable between governments, allowing them to resolve disputes through the WTO's dispute settlement provisions.

While developed countries are already required to fully implement TRIPS, developing countries were given a five year transition period -- until January 2000 -- to implement most of the Agreement's provisions. With respect to the protection of pharmaceuticals and agriculture chemicals, an even longer transition was provided. Ensuring that developing countries come into full compliance with the Agreement before the end of these transition periods is one of this Administration's highest priorities with respect to intellectual property rights.

Many countries have taken significant steps toward implementation of their TRIPS obligations over the past year. However, highlighting the importance of the obligation on developing countries to implement TRIPS by January 1, 2000, Ambassador Barshefsky made the following announcement:

"The United States Government expects these countries to meet their obligations. In December 1999, USTR will conduct a special out-of-cycle review to assess the progress made by developing countries toward full implementation of their TRIPS obligations. The United States will announce at the conclusion of this review in early January the actions it will take to address situations where WTO Members have failed to implement their obligations on January 1, 2000, including the possible initiation of additional dispute settlement cases."

In the interim, the United States will continue to consult with developing countries and to provide technical assistance bilaterally and in conjunction with multilateral organizations to assist members in meeting their obligations, as it had done since the Uruguay Round was concluded.

Controlling Optical Media Production

Several countries have implemented new measures, have taken important steps toward adopting, or have committed to adopt much needed controls on optical media production over the past year, including Hong Kong, Macau, Bulgaria, and Malaysia. However, other countries that are in need of such controls, including Israel, Taiwan and Ukraine, have made insufficient progress. In contrast, the Government of Bulgaria has made dramatic progress in virtually eliminating the production of pirated optical media within its borders. Ambassador Barshefsky took special note of Bulgaria's progress by stating,

"The Government of Bulgaria has demonstrated its firm commitment to effective enforcement of its intellectual property laws and serves as a model for other economies which are at risk of developing unwanted production capacity of pirated optical media. In recognition of these efforts I am announcing today that Bulgaria is hereby removed from all Special 301 lists. In contrast, I look to Israel, Malaysia, Taiwan, and the Ukraine, among others, to implement and enforce similar controls without further delay. I also look to Hong Kong and Macau to step up significantly enforcement of their existing regimes."

Government Use of Software

In October 1998, Vice President Al Gore announced a new Executive Order directing U.S. Government agencies to maintain appropriate, effective procedures to ensure legitimate use of software. The President also directed USTR to undertake an initiative over the following 12 months to work with other governments, particularly those in need of modernizing their software management systems or about which concerns have been expressed regarding inappropriate government use.

USTR has achieved considerable progress under this initiative since October. China, Paraguay, Colombia, the Phillippines and Jordan have all issued decrees mandating the use of only authorized software by government ministries. Ambassador Barshefsky noted, "I am pleased that these governments have recognized the importance of setting an example in this area. We look forward to the establishment of effective and transparent procedures to implement these decisions and call upon other governments to take this very important step prior to the conclusion of the Special 301 review in April 2000.

Ambassdor Barshefsky concluded by saying, "The progress we have achieved as a direct result of this year's Special 301 annual review underscores the fact that Special 301 remains one of the most effective instruments in our trade policy arsenal."

WTO Dispute Settlement

As in previous years, Ambassador Barshefsky again is using the occasion of the annual Special 301 announcement to announce the initiation of WTO dispute settlement proceedings against countries not meeting their obligations under the TRIPS Agreement. Ambassador Barshefsky today announced the initiation of WTO dispute settlement proceedings against Argentina, Canada and the EU.

Argentina

Argentina does not currently provide patent protection for pharmaceuticals, and is therefore required under Article 70.9 of TRIPS to provide exclusive marketing rights to pharmaceutical products as a transitional form of protection for products that meet certain conditions. While Argentina has in place a system for granting exclusive marketing rights, recent court decisions in Argentina make clear that those rights are subject to a severe limitation that is not consistent with Argentina's international obligations. Argentina also appears to be in violation of the TRIPS Agreement for revoking regulations in 1998 that had provided 10 years of protection for confidential test data for agricultural chemical products. TRIPS requires WTO Members to provide data protection for such products, and further requires that Members enjoying a transition period ensure that any changes in their laws regulations, and practice during that transition period do not result in a lesser degree of consistency with the provisions of the Agreement.

Canada

The TRIPS Agreement requires that WTO members provide a patent term of 20 years from the date that the patent application was filed. This term must apply to all patents in force on January 1, 1996. Canadian law provides a 20-year patent term only for those patents filed on or after October 1, 1989; earlier patents receive only 17 years of protection from the date that the patent was granted. Canada therefore fails to provide a full 20-year patent term to a significant number of patents in violation of Articles 33 and 70.2 of the TRIPS Agreement.

The European Union

The EU regulation governing the protection of geographical indications for agricultural products and foodstuffs denies national treatment with respect to certain procedures concerning the registration of geographical indications. Furthermore, the regulation does not provide appropriate protection for trademarks. USTR is concerned that U.S. companies' trademarks thus are not properly protected.

The initiation of these three cases will bring to 13 the number of IPR-related WTO complaints initiated by the United States.

In addition, Ambassador Barshefsky announced her concern regarding Egypt and Uruguay's compliance with Article 70.9 of the TRIPS Agreement, and her intention to initiate dispute settlement proceedings against these countries should they fail to swiftly establish a transparent regulatory system for granting exclusive marketing rights in a manner consistent with TRIPS requirements.

Previously-filed WTO TRIPS Cases

Over the past year, significant results have been achieved in several of the dispute settlement cases previously announced by Ambassador Barshefsky. In 1997, Ambassador Barshefsky announced initiation of WTO dispute settlement proceedings against Sweden, Ireland and Denmark. In 1998, Ambassador Barshefsky initiated dispute settlement proceedings against Greece and the European Union concerning rampant television piracy in Greece and their failure to comply with the enforcement provisions of the TRIPS Agreement.

On November 25, 1999, Sweden passed legislation amending its intellectual property laws to provide provisional remedies in civil enforcement proceedings. This type of remedy is particularly important for enforcement efforts in the software industry. On December 2, 1998, the United States and Sweden formally notified the WTO that they had reached a mutually satisfactory resolution to the U.S. complaint.

The cases against Ireland, Denmark, Greece and the EU are still pending, although progress has been achieved over the past year. In February 1998, Ireland committed to accelerate its work on a new comprehensive copyright law, and in July 1998 passed expedited legislation addressing two pressing enforcement issues. Denmark is presently considering options for amending its law to strengthen provisional remedies available to intellectual property right holders. In Greece, the rate of television piracy declined in 1998, and in September, Greece enacted legislation that provides an additional administrative enforcement procedure against copyright infringement by television stations. Ambassador Barshefsky stated, "We urge the Government of Greece to implement its new enforcement procedure in a strong and consistent manner, and to take steps to improve the handling of intellectual property cases in the court system in order to resolve this dispute."

Ambassador Barshefsky also expressed satisfaction today with the recent conclusion of the United States' dispute settlement proceedings against India. In December 1997, the WTO Appellate Body upheld a panel ruling in favor of the United States in this case involving patent protection for pharmaceuticals and agricultural chemicals. India's deadline for compliance was April 19, 1999. Earlier this year, the Government of India promulgated a temporary ordinance to meet its obligations, and then last month, it enacted permanent legislation entitled the Patents (Amendment) Act 1999. Through these mechanisms, the Government of India has established a mechanism for the filing of so-called "mailbox" patent applications, and a system for granting exclusive marketing rights for pharmaceutical and

agricultural chemical products. The United States has expressed serious concerns regarding certain features of the new Indian law regarding exclusive marketing rights; however, in light of the discretionary nature of some of the problematic provisions of the new law, as well as the significant steps that India has taken or pledged to take to mitigate the impact of others, the USTR has concluded that no further action is appropriate at this time. Should any of the problematic provisions in the Indian law be invoked to the detriment of U.S. right holders in the future, the United States retains its rights to take further action.

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FACT SHEET

"SPECIAL 301" ON INTELLECTUAL PROPERTY RIGHTS

ACTIONS TAKEN

United States Trade Representative Charlene Barshefsky today announced the Administration's decision with respect to this year's review under the so-called "Special 301" provisions of the Trade Act of 1974, as amended.

This decision reflects the Administration's continued commitment to aggressive enforcement of intellectual property rights. Intellectual property protection standards and enforcement have improved in part as a result of implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). In addition, actions announced today reflect progress made over the course of 1999 in resolving many long-standing problems.

The decision announced by Ambassador Barshefsky includes the following specific actions:

- •initiating WTO dispute settlement procedures against **Argentina, Canada and the EU.**

- •scheduling a special **out-of-cycle review of all developing countries' TRIPS implementation** in December 1999.
- •monitoring **China** and **Paraguay** under Section 306 of the Trade Act of 1974, as amended. This means that USTR will be in a position to move directly to trade sanctions if there is slippage in either country's enforcement of bilateral IPR agreements.
- •placing 16 trading partners on the Special 301 Priority Watch List including **Israel, Ukraine, Macau, Peru, Argentina, Egypt, the European Union, Greece, India, Indonesia, Russia, Turkey, Italy, Dominican Republic, Guatemala and Kuwait**.
- •scheduling "out-of-cycle" reviews of **Israel and Kuwait** in December.
- placing 37 trading partners on the Watch List, and scheduling out-of-cycle reviews of **South Africa, Colombia, Poland, the Czech Republic, and Korea.**
- •scheduling an out-of-cycle review of **Malaysia** and **Hong Kong** in September 1999.

Other WTO dispute settlement proceedings and out-of-cycle reviews will be initiated if necessary.

STATUTORY AUTHORITY

The "Special 301" provisions of the Trade Act of 1974, as amended, require the USTR to identify foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection. Special 301 was amended in the Uruguay Round Agreements Act to clarify that a country can be found to deny adequate and effective intellectual property protection even if it is in compliance with its obligations under the TRIPS Agreement. It was also amended to direct the USTR to take into account a country's prior status under "Special 301," the history of U.S. efforts to achieve stronger intellectual property protection, and the country's response to such efforts.

Once this pool of countries has been determined, the USTR is required to decide which, if any, of these countries should be designated Priority Foreign Countries. Priority Foreign Countries are those countries that:

(1) have the most onerous and egregious acts, policies and practices which have the greatest adverse impact (actual or potential) on the relevant U.S. products; and,

(2) are not engaged in good faith negotiations or making significant progress in negotiations to address these problems.

If a trading partner is identified as a Priority Foreign Country, the USTR must decide within 30 days whether to initiate an investigation of those acts, policies and practices that were the basis for identifying the country as a Priority Foreign Country. A Special 301 investigation is similar to an investigation initiated in response to an industry Section 301 petition, except that the maximum time for an investigation under Special 301 is shorter in some circumstances.

Today's Special 301 announcement follows a lengthy information gathering and negotiation process. The interagency Trade Policy Staff Committee that advises the USTR on implementation of Special 301 obtains information from the private sector, American embassies, the United States' trading partners, and the National Trade Estimates report.

This Administration is determined to ensure the adequate and effective protection of intellectual property rights and fair and equitable market access for U.S. products. The measures announced today result from close consultations with affected industry groups and Congressional leaders, and demonstrate the Administration's commitment to utilize all available avenues to pursue resolution of intellectual property rights issues. In issuing the announcement, Ambassador Barshefsky is expressing the Administration's resolve to take consistently strong actions under the Special 301 provisions of the Trade Act.

DESCRIPTION BY COUNTRY OF EXISTING SITUATION AND MEASURES TAKEN

SECTION 306 MONITORING

Paraguay: Paraguay and the United States signed a comprehensive Memorandum of Understanding (MOU) and Enforcement Action Plan on November 17, 1998. Ambassador Barshefsky successfully conclude the section 301 investigation of Paraguay's intellectual property practices on the basis of this

agreement, in conjunction with the passage of trademark and copyright laws and Paraguayan efforts to improve enforcement. The U.S. Government will continue to monitor Paraguay's compliance with the MOU under section 306 of the Trade Act. We are seriously concerned that limited progress has been made on implementation of the MOU despite the efforts of certain Government officials. As a result, we agreed it was necessary to extend the MOU's "Special Enforcement Period" by six months to September 15,1999, during bilateral consultations on March 11. Some steps to improve Paraguay's intellectual property regime have been taken, but much remains to be done. We look to the newly-installed Paraguayan Administration to rapidly and fully implement the November 1998 MOU, most immediately by ensuring that copyright enforcement is designated as a "public crime" and by taking significant and effective enforcement actions to protect intellectual property rights, both within Paraguay and at its borders.

China: Based on the 1995 and 1996 bilateral IPR agreements and extensive follow-up work with Chinese officials, China now has a functioning system capable of protecting intellectual property rights. China has made progress on software end-user piracy including the recent issuance of a State Council directive to all government ministries mandating that only legitimate software be used in government and quasi-government agencies. Enforcement of intellectual property rights has become part of China's nationwide anti-crime campaign; the Chinese police and court system have become involved in combating IPR piracy. The production of pirated copyrighted works has dropped dramatically. China expects to enact a new copyright law this year. Reform of the trademark and patent law are expected to follow. China needs to comply with international standards such as those in the WTO Agreement on Trade-Related Aspects of Intellectual Property and other international IPR Agreements.

Various problems remain. American companies report that retail piracy and counterfeit goods remain widespread in China. The structure of IPR administration and enforcement in China remains opaque. Enforcement at the provincial level is sporadic. Corruption remains a problem and convictions only occasionally result in jail time. Enforced quotas on imported U.S. films, end-user piracy of business software, trademark infringement, and problems in obtaining administrative protection for pharmaceuticals are persistent problems. Progress on market access issues, while improved over last year, remains disappointing and significant improvements need to be made bilaterally and in the WTO accession negotiations.

PRIORITY WATCH LIST

Argentina: Argentina's patent regime denies adequate and effective protection to U.S. right holders, particularly in the pharmaceutical industry, which in 1997 led to a withdrawal of benefits for approximately 50 percent of Argentina's exports under the Generalized System of Preferences (GSP) program. The Argentine patent regime, which contains onerous compulsory licensing provisions and fails to adequately protect test data, does not yet meet the WTO TRIPS standard of protection established for developing countries, and will not provide pharmaceutical patent protection until November 2000. Argentina's level of protection for intellectual property has deteriorated in certain areas over the past year. Agrochemicals, which enjoy patent protection under Argentine law, received protection of confidential test data until August 1998, when a new government regulation eliminated the 10-year exclusivity period. Further, the Argentine Government has failed to provide effective exclusive marketing rights to qualifying pharmaceutical products in accordance with current TRIPS obligations. We have consistently urged the Government of Argentina to comply with its international commitments in this regard, and it has failed to respond. We therefore are requesting WTO consultations on these

matters and urge the Argentine Government to bring its intellectual property regime into compliance with its WTO obligations. The passage in late 1998 of a bill criminalizing software piracy was a positive step, and we look to the Argentine Government to ensure its effective implementation and that its copyright regime meets TRIPS standards no later than January 1, 2000.

Dominican Republic: The piracy of computer software, video and audio tapes, and compact disc technologies, as well as TV piracy is widespread, although the Dominican Copyright Office has been more active during the past year in enforcing existing laws. The 1911 Patent Law provides for broad exclusions of subject matter from patentability, and includes onerous local working requirements. Current law is also inadequate with respect to term of protection. The Fernandez Government has submitted new intellectual property legislation that, as presently written, will contravene several TRIPS provisions, such as those pertaining to compulsory licenses. The Ministry of Health is still granting marketing approvals for products that infringe pharmaceutical patents. The Dominican Republic must bring its legal regime into conformity with TRIPS by January 1, 2000. As a major beneficiary of the Caribbean Basin Economic Recovery Act (CBERA) and the Generalized System of Preferences (GSP), it is incumbent upon the Government of the Dominican Republic to provide adequate and effective protection for intellectual property.

Egypt: Egypt's patent law excludes pharmaceutical products from patentability, contains overly broad compulsory licensing provisions, and does not provide a term of protection consistent with TRIPS requirements. The government has stated its intention to delay pharmaceutical patent protection until the year 2005, availing itself of the TRIPS transitional period for certain developing countries, but it must bring its patent law into conformity with other TRIPS obligations by January 1, 2000. Although the United States is concerned about Egypt's compliance with its TRIPS obligation to provide exclusive marketing rights for pharmaceutical and agricultural chemical products, the Government of Egypt recently provided assurances that it will take the steps necessary to fully implement this obligation in the coming weeks. Copyright piracy and trademark infringement are rampant. Although police and Ministry of Culture officials have increased anti-piracy activities over the past year, enforcement of copyright and trademark laws remains inadequate. We urge the Government of Egypt to work more closely with right-holders to ensure effective enforcement of existing laws and to bring its patent regime into conformity with international obligations as soon as possible.

The European Union: Ambassador Barshefsky today announced her intention to request WTO dispute settlement consultations with the European Union regarding its regulation concerning geographical indications for foodstuffs and agricultural products. Concerns have been expressed that this regulation denies national treatment and does not adequately protect trademarks. The EU continues to deny national treatment to U.S. intellectual property right holders in other areas as well. For example, the reciprocity requirement in the data base directive continues to be of concern. Restrictions in certain member states also deny market access opportunities for U.S. right holders. Other intellectual property issues of concern to the United States are being addressed in the context of the U.S. - EU TransAtlantic Economic Partnership discussions.

Greece: High rates of copyright piracy and trademark counterfeiting continue to be of serious concern. In 1998 Ambassador Barshefsky announced the initiation of WTO dispute settlement consultations with Greece and the European Union regarding the high rates of television piracy in Greece. Those consultations are on-going. The Government of Greece has taken steps toward addressing this problem, including the passage of additional legislation and the recent closure of two television stations. However, Greek TV stations continue to broadcast U.S.-owned motion pictures and television programming without authorization. U.S. right holders continue to be unable to find effective relief in the courts,

where television piracy cases are generally accorded the lowest priority by prosecutors and judges. We look to Greece and the European Union to recognize their obligations and to move quickly to end piracy of U.S. copyrighted works.

Guatemala: Guatemala is being elevated to the Priority Watch List because it has failed to enforce adequately existing laws, claims that copyright infringement remains a "private action," and has a legal regime that does not meet international standards. Although it is making some efforts to modernize its intellectual property regime, Guatemala's continuing failure to enforce its laws must be remedied. There has been virtually no enforcement by the government of the new Copyright Law, and piracy remains widespread. Although the software industry has successfully brought some civil actions against resellers of pirated software, distribution and use of illegally copied software - including use by government agencies - is commonplace. Piracy of signals by cable system operators continues. Guatemala's 1986 patent law is out of date and falls far short of international standards. Guatemala's trademark law provides insufficient protection for owners of well-known marks. We call on the Government of Guatemala to effectively enforce its laws and bring its legal regime into conformity with TRIPS no later than January 1, 2000. As a major beneficiary of the Caribbean Basin Economic Recovery Act (CBERA) and the Generalized System of Preferences (GSP), it is incumbent upon the Government of Guatemala to provide adequate and effective protection for intellectual property.

India: Notwithstanding the recent resolution of the U.S. WTO case filed against India regarding certain types of transitional patent protection for pharmaceutical and agricultural chemical products, India's patent and trademark laws continue to fall well short of meeting TRIPS standards and providing adequate and effective protection. India has a modern copyright law; however, the Indian Government has failed to take sufficient enforcement actions to control high levels of piracy of videos, video CDs, cable systems, computer software and sound recordings. The United States urges the Government of India to amend its patent and trademark laws to comply fully with TRIPS requirements, and to make progress toward addressing the enforcement situation before next year's review.

Indonesia: Indonesia has not made sufficient progress to address the lack of adequate and effective protection for intellectual property rights and therefore remains on the Special 301 Priority Watch List. Indonesian copyright and patent laws do not provide minimum levels of IPR protection consistent with TRIPS obligations. While we welcome improvements in enforcement over the past year, the Indonesian government has failed to take sufficient actions against the piracy of computer software, video compact discs, books, and infringement of pharmaceutical patents. The United States urges Indonesia to make IPR protection a priority and to demonstrate concrete progress toward addressing this situation in the short term.

Israel: Israel's copyright law is inadequate, enforcement and penalties are ineffective, and optical media piracy is rampant. Pirate sound recordings, video games and computer programs now overwhelm Israel's legitimate domestic markets. Israel has become a distribution hub in a multi-country network for pirated optical media product, much of which is manufactured in Israel. February 1999 amendments to the Pharmacists Law diminish pharmaceutical patent protection by permitting the parallel importation of pharmaceuticals and sanction the unfair commercial use of test data. The United States Government and U.S. research-based pharmaceutical industry actively oppose this change. In June 1998, the United States Government requested that the Government of Israel adopt an Action Plan which includes passage of the new copyright bill and stepped up efforts to combat piracy. The plan includes introduction of effective CD plant controls, including the use of source identification codes; raids and seizures; organization of a special police unit; improved customs activity; and the implementation of tough criminal penalties. Although Israel has agreed to most elements of the Action Plan, it has made little progress towards implementing the plan. We remain extremely concerned about the state of intellectual property protection in Israel, particularly with regard to the lack of enforcement, and will conduct an

out-of-cycle review in December to evaluate Israel's progress on enforcement and in meeting its TRIPS obligations which become effective January 1, 2000.

Italy is being retained on the Priority Watch List due to the Government of Italy's continued failure to enact anti-piracy legislation that includes TRIPS-consistent penalties sufficient to provide an effective deterrent to piracy and counterfeiting. Ambassador Barshefsky, and other senior Administration officials, have stressed repeatedly that the U.S. looked to the GOI to pass such legislation prior to this year's annual review. We are especially concerned that Italy has failed to pass this important legislation because Italy has some of the lowest criminal penalties in Europe and one of the highest rates of piracy. Piracy and counterfeiting of American intellectual property in Italy continue to be relatively widespread practices, particularly with regard to piracy of video, sound recordings and computer software. While noting that Italy has increased enforcement actions in the past year, we remain concerned that TRIPS-consistent remedies against end-user software piracy may not be available in Italy.

Kuwait has not yet complied fully with the requirements of the TRIPS Agreement in a number of areas. Kuwait's failure to enact the pending draft copyright law leaves it as the worst pirate market in the Gulf region, and the only WTO country without a copyright law. Copyright enforcement remains a serious problem as authorities have not vigorously enforced the 1995 ministerial decree against copyright violations. Kuwait's patent law is deficient with respect to the term of protection, protection for pharmaceutical and agricultural products and compulsory licensing. However, Kuwait issued a decree in December 1998 to ban the registration of unauthorized copies of drugs still under patent in the country of origin. The decree takes effect June 1999. Kuwait's trademark law also falls short of TRIPS especially with regard to the lack of protection for unregistered well-known marks. We urge Kuwait to take the necessary steps to bring its intellectual property laws into full compliance with TRIPS by the January 1, 2000 deadline. We will conduct an out-of-cycle review of Kuwait's progress toward addressing these concerns in December 1999.

Macau: Macau has taken positive steps to address the problem of optical disk piracy. It has strengthened the legal regime and has increased raids and enforcement efforts. There is strong evidence that Macau remains a major source of pirated material and there is little evidence that Macau's legal and enforcement actions have been effective in reducing piracy significantly. Lack of transparency in enforcement efforts and a slow moving judiciary are particular problems. We urge Macau to step up its enforcement efforts in the areas of prosecution, border control, and licensing and inspections. We also call on Macau to enact a new copyright law, which has been under consideration for the last two years.

Peru: The Government of Peru provides both administrative and criminal avenues for enforcement. While each of these has been useful to rights holders up to a point, each has its inadequacies. The Appellate Tribunal of the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI) has been unwilling to impose deterrent penalties and has in the past year been slow to reach decisions. Meanwhile, insufficient customs, police and judicial action have been a problem in such areas as sound recordings. The U.S. Government has signaled its concern with the functioning of INDECOPI's Appellate Tribunal, but the response has not been satisfactory. Therefore, Peru is being moved to Priority Watch List.

Russia: The Government of Russia has not made sufficient progress to address the lack of adequate and effective protection for intellectual property since last year's review and therefore remains on the Special 301 Priority Watch List. Russia has a relatively comprehensive legal regime, with some significant

exceptions, notably its failure to provide copyright protection for pre-existing works, and the absence of Customs authority to examine and seize suspected infringing goods or works. Russia has proposed comprehensive legislation to amend the Customs Code, as well as amendments to the Criminal and Administrative Procedure Codes to further strengthen the IP regime. Nevertheless, the U.S. government remains seriously concerned by renewed discussion of a new detailed and lengthy Civil Code (Part III) in the area of intellectual property. This could undermine progress made to date towards TRIPS compliance and WTO Accession and reduce already weak IP enforcement. While police investigations of IP cases have increased substantially, this has not carried forward into expanded prosecutions and imposition of deterrent penalties. More needs to be done. The U.S. views positively the recent results of the Bilateral Intellectual Property Working Group and ongoing law enforcement technical assistance, and looks forward to continued cooperation and progress through these mechanisms.

Turkey: In the past year, Turkey made limited progress on fulfilling six benchmarks identified in the Special 301 process two years ago. The Copyright Law and the Cinema, Video and Music Works Law have not been amended to provide retroactive copyright protection and to include deterrent penalties against pirates. Despite stepped up law enforcement activity over the past year, in those cases where court verdicts have resulted in convictions, sentences involved only minimal penalties and no prison terms. As a result, enforcement of existing laws is ineffective and copyright piracy remains widespread. We commend the Turkish government's actions to ensure that pharmaceutical patent protection was implemented on January 1, 1999. We hope that a new project to create specialized courts to review copyright, patent and trademark infringements will move forward this year, enabling Turkish jurists to effectively apply existing laws. Turkey's intellectual property laws do not fully comply with its TRIPs obligations, which must be met by January 1, 2000. Until the government amends its laws and adequately addresses the copyright enforcement issue, Turkey's benefits under the Generalized System of Preferences (GSP) will not be augmented.

Ukraine: Ukraine is being elevated to the Priority Watch List because copyright piracy is extensive, enforcement is minimal and pirate optical media producers have taken advantage of weaknesses in Ukraine's legislative and enforcement regime to produce and export large quantities of unauthorized CDs and CD-ROMs throughout the region and to other parts of the world. Significant levels of piracy of audiovisual works, computer programs and sound recordings are causing substantial losses to U.S. industry. Moreover, Ukraine does not grant protection to U.S. works created prior to1973, does not protect U.S. sound recordings, and has not implemented adequate and effective penalties for commercial piracy despite its international treaty obligations and its obligations under the 1992 U.S.-Ukraine bilateral trade agreement. Ukraine still lacks both deterrent civil and criminal penalties for infringement of intellectual property, and the customs service lacks border authority over suspected infringing goods or pirated works. We look to Ukraine to bring its intellectual property laws into full compliance with its international obligations and our bilateral agreement, and into full compliance with TRIPS no later than the date of its accession to the WTO.

WATCH LIST

Australia: In general, Australia has provided sound intellectual property protection. However, the United States is seriously concerned with the minimalist approach Australia has taken toward intellectual property protection in recent years, especially with respect to certain decisions taken over the last year that clearly erode the level of copyright protection available in Australia. In 1998, Australia passed legislation to abolish the importation right for sound recordings over the strong objection of right

holders, Australian recording artists, and the United States Government. Regrettably, Australia is also now considering abolishing the importation right for other copyrighted works including software, electronic games and gaming equipment. More recently, the Australian government has announced that it will introduce legislation that allows for software decompilation under certain conditions. Serious concerns have been expressed about the scope of this proposal and its potential to result in significant copyright infringement. The proposal should be amended to guard against that eventuality. Finally, in April 1998 Australia implemented a regime to protect test data submitted to regulatory authorities for marketing approval of pharmaceuticals as required by the TRIPS Agreement. In March 1999, Australia also implemented a regime to protect test data of agricultural chemical and veterinary medicines but for only 5 years. However, these regimes only provide protection for new chemical compounds. The United States remains concerned that no protection is provided for new uses and new formulations for existing compounds.

Belarus: Copyright piracy in Belarus remains extensive and enforcement efforts are insufficient. Although Belarus has made progress in developing its intellectual property rights (IPR) regime through a strengthened copyright law, it fails to provide protection for U.S. sound recordings and has not yet become a signatory to the Geneva Phonograms Convention. In addition, there are no criminal penalties for commercial-scale copyright and trademark infringement. The United States urges the Belarussian government to implement effective enforcement measures, including criminal penalties for IP infringement, in a TRIPS-consistent manner.

Bolivia: Bolivia is being placed back on the Watch List this year. Bolivia's protection of intellectual property has not significantly improved over the last year. Further, when the U.S. and Bolivia concluded a bilateral investment treaty on April 17, 1998, the Bolivian Government committed to bring itself into compliance with TRIPS within one year. As a result of its commitments, Bolivia was moved from the Watch List to Other Observations in the 1998 Special 301 review. However, Bolivia has not achieved TRIPS compliance by the April 17, 1999 deadline.

Brazil: While Brazil continues to make progress toward enacting TRIPS-consistent laws, deficiencies remain and the lack of effective enforcement is a serious and growing concern. Also of concern is the notable backlog of pending patent applications. Brazil has taken some steps to address the backlog and has developed a strategy for the institutional reform of the patent office (INPI). We encourage the Government of Brazil to swiftly pursue the needed reform of this institution to allow for further backlog reductions. We also look to the Brazilian Government to bring the local working requirement included in its patent law in line with TRIPS requirements. 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. Piracy rates have continued to climb over the past year, and the sound recording industry saw its losses double in 1998. We have particular concerns with proposed legal reforms that could reduce criminal penalties for intellectual property crimes and remove police authority to engage in *ex officio* searches and seizures on their own initiative. We look to the Government of Brazil to take decisive action to reduce piracy rates, focusing on the major markets currently being devastated by piracy. We also look to the Brazilian Government to ensure full implementation of all TRIPS obligations, including enforcement obligations, no later than January 1, 2000.

Canada: Ambassador Barshefsky announced her intention to initiate WTO dispute settlement consultations with Canada regarding its failure to grant a full twenty-year patent term to certain patents as required by the TRIPS Agreement. In 1997, the Government of Canada adopted amendments to its copyright law that discriminate against the interests of some U.S. copyright holders. Canada has

established a public performance right for record producers and performers. It also has established a levy on blank audio recording media, the revenues from which are intended to compensate performers and producers for the performance and unauthorized home-taping of their works in Canada. The United States remains extremely concerned that U.S. performers and producers are denied national treatment with respect to these provisions and will closely monitor their implementation and any future reform of Canada's copyright laws.

Chile: While generally strong, Chile's intellectual property laws are not yet consistent with TRIPS standards. For example, the term of patent protection falls short of the 20-year standard mandated by TRIPS, the trademark law is deficient in a number of areas and computer software is not clearly protected as a "literary work." We understand that the Chilean Government intends to address the outstanding problems prior to January 1, 2000. Inadequate enforcement of copyrights and trademarks remains a serious concern, as does the large backlog of pending patent applications. We look to the Government of Chile to make great strides in eliminating this backlog and to bring its legal regime into compliance with TRIPS in 1999.

Colombia has ratified, but not yet fully implemented TRIPS, and does not yet provide adequate and effective intellectual property protection. Although Colombia has made efforts to improve copyright enforcement, piracy is widespread with music piracy having worsened and counterfeit CDs flooding the market. Colombia has still to resolve the major issue USTR highlighted in its December out-of-cycle review - - failure to license legitimate pay television operators and pursue pirate operators. However, Colombia's Attorney General has reportedly begun legal action against 108 community television operators, and the failed November 1998 cable-TV licensing process is scheduled for completion in July 1999. President Pastrana recently took the welcome step of issuing a directive to all government and educational institutions to protect copyrighted material and use of software. We urge Colombia to improve its enforcement efforts and bring its laws into full TRIPS compliance by January 1, 2000. We will conduct an out-of-cycle review of Colombia's progress toward addressing these concerns in September 1999.

Costa Rica: Costa Rica will remain on the Watch List. Enforcement of copyright law has become a major problem for U.S. industry. The Costa Rican Government has failed to take sufficient enforcement actions against motion picture and sound recording piracy. Poor and cumbersome enforcement procedures have also adversely affected the U.S. business software industry, particularly in San Jose. In addition to copyright protection problems, Costa Rican patent law is deficient in several key areas. Patents are granted for a non-extendable 12-year term from the date of the grant (for pharmaceuticals, agricultural chemicals, fertilizers, and beverage/ food products, the term is only one year). A new patent law is being drafted to bring Costa Rica in line with its obligations under the WTO TRIPS Agreement. We look to Costa Rica to implement its TRIPS obligations no later than January 1, 2000. As a major beneficiary of the Caribbean Basin Economic Recovery Act, it is incumbent upon the Government of Costa Rica to offer adequate and effective protection for intellectual property.

Czech Republic: The Czech Republic has not made sufficient progress to address the lack of adequate and effective protection for intellectual property rights since last year's Special 301 review. Czech law does not provide an effective ex parte search procedure necessary to guarantee that evidence is not destroyed before commencement of civil litigation over alleged copyright infringement. This procedure is mandated by TRIPS Article 50. Retroactive protection for works and sound recordings, also required under TRIPS, is absent from Czech law. Moreover, there has been insufficient improvement over the last year in the enforcement of rights that do currently exist under Czech law. The U.S. is concerned that the situation has the potential to worsen, especially with respect to optical media (CD, CD-ROM, and

DVDs) piracy, if courts, prosecutors and police continue to fail in providing effective deterrent enforcement. We look to the Czech Republic to improve its enforcement structure and will conduct an out-of-cycle review of the Czech Republic's progress toward addressing these concerns in September 1999.

Denmark: In 1997, the United States initiated WTO dispute settlement proceedings against Denmark because of concern that Denmark had not implemented the TRIPS obligation requiring provisional remedies, including ex parte procedures in civil enforcement proceedings. Courts must be granted the ability to order unannounced raids in appropriate cases to determine whether infringement is taking place and to preserve evidence of infringements as well as the ability to order that allegedly infringing activities be stopped pending the outcome of a civil infringement case. The availability of provisional relief in the context of civil proceedings is of particular importance to the software industry, as well as other industries dependent upon intellectual property protection. After numerous consultations with the United States, the Government of Denmark agreed to form a special committee to consider amending Danish law to provide this type of remedy. The work of the committee appears to be proceeding in the right direction, and we urge the Government of Denmark to move as expeditiously as possible to adopt appropriate legislative changes in 1999.

Ecuador: Ecuador enacted major legislation in May 1998 that met a number of TRIPS requirements. Ecuador recently established an IPR institute, the IEPI. Although it is not yet fully functional, the IEPI has begun enforcement actions against IP pirates. While the Government of Ecuador issued some pharmaceutical pipeline patents in the spring of 1998, there has been no recent progress in that area. Dealers' Act cases continued to be brought and to progress in the courts against U.S. companies, despite the September 1997 repeal of this Act. Its application prevents U.S. and other foreign suppliers from terminating distributorship contracts without mutual consent and judicial approval even if there was a unilateral termination clause in the contract. We also remain concerned about the lack of clarity regarding protection for confidential data submitted to government authorities for marketing approval.

Hungary: Hungary has been placed on the Special 301 Watch List because intellectual property protection has been inadequate and substantive gaps remain in the current copyright and patent laws that are not TRIPS consistent. Hungary needs to provide retroactive protection for pre-existing sound recordings. Also, prosecution against copyright piracy has been slow and has not posed an effective deterrent. Hungary needs to provide adequate legal protection for confidential test data and to refine its law on pipeline protection for pharmaceutical patents. The United States government urges the Hungarian government to address these deficiencies and use the time remaining prior to the deadline of January 1, 2000 to bring itself into full compliance with the obligations of the TRIPS agreement.

Ireland: In 1997, the United States initiated dispute settlement proceedings against Ireland because Ireland has not yet amended its copyright law to comply with its TRIPS obligations. Developed country obligations under the TRIPS Agreement came into effect in January 1996. After numerous consultations with the United States, Ireland committed in February 1998 to accelerate its implementation of comprehensive copyright reform legislation, and agreed to pass a separate bill, on an expedited basis, to address two particularly pressing enforcement issues. Consistent with this agreement, Ireland enacted legislation in July 1998 raising criminal penalties for copyright infringement and addressing other enforcement issues. The process of completing comprehensive copyright legislation is progressing, but is behind schedule. We look to the Government of Ireland to enact revised legislation no later than July 1999.

Jamaica: Jamaica needs to implement its obligation under the bilateral IPR agreement signed with the U.S. in 1994. In August 1996 the Jamaican Government informed us that implementing legislation was moving through the legislative process and expected it to be approved by the end of August 1996. In April 1999, the Government passed legislation on copyrights, layout-designs and trademarks. However, legislation on patents has not been passed. With respect to enforcement, the judicial system, is slow and needs improvements.

Japan: While Japan has taken actions in recent years to improve its intellectual property regime shortcomings remain. With regard to copyrights, the United States remains concerned about both end-user piracy and protection of broadcast digital works in Japan. Japan could usefully improve its protection of copyrighted material by imposing statutory damages for copyright infringement, and by a explicit commitment to the use of legitimate software in government agencies. Second, the lack of protection of both trade secrets and confidential patent information in Japanese court proceedings is of concern. Third, with regard to patents, we remain concerned about the fact that strict requirements regarding proof of use by infringers are overly burdensome to patent owners. Finally, on trademarks, we are monitoring the implementation of amendments to Japan's Trademark Law and Unfair Competition Law to see if they remedy Japan's historically weak protection of well-known international trademarks. Japan has committed to taking a number of actions, including the ratification of the two WIPO copyright treaties and a strengthening of Japan's Patent Law, which should result in greater protection of intellectual property in Japan.

Jordan has taken steps to meet the deficiencies in its intellectual property regime which were identified in its April 1998 IPR action plan, but progress to date has been limited. In April 1999, Jordan acceded to the Berne Convention for the Protection of Literary and Artistic Works. With this step, U.S. copyrighted works have obtained a measure of protection in Jordan for the first time. Nonetheless, remaining deficiencies in the copyright area must be remedied to fully comply with TRIPS, and accession to the Geneva Phonograms Convention should be expedited in order to ensure full protection for U.S. recorded works. We remain particularly concerned by the lack of patent protection for pharmaceutical products. Between January 1996 and December 1998, Jordanian companies applied for or registered 70 unauthorized copies of internationally patented pharmaceutical products, more than half of which are of U.S. origin. U.S. pharmaceutical companies lose between USD 25 and 50 million annually due to Jordanian pirate production, much of which is exported to other countries in the region. Amendments to patent and trademark laws have not yet been introduced to parliament, and current drafts fall short of TRIPS standards. We call upon the new government to strengthen protection of intellectual property in Jordan.

Korea: Korea's intellectual property law does not meet the standards set out in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Most notably, Korea does not provide for TRIPS-consistent protection for pre-existing works and sound recordings. In addition, the United States has raised concerns with the level of patent protection for pharmaceuticals and the protection of data in Korea, as well as with Korea's market access restrictions on pharmaceutical products and on motion pictures and cable TV programming. The Korean Government has indicated that is making changes to address some of the intellectual property issues raised by the United States. The Administration will continue to work with the Korean Government to ensure that all of our intellectual property concerns are fully addressed, specifically in negotiations on a Bilateral Investment Treaty (BIT), in the out-of-cycle review of TRIPS consistency in December, and in other fora. The U.S. Government has indicated that the TRIPS-consistency issues that have arisen with Korea must be resolved at the time of signing of a BIT.

Lebanon passed a modern copyright law earlier this year; however, we remain seriously concerned by TRIPS-inconsistent provisions that undermine protection of software by providing overly broad educational exemptions and other fair use provisions. Copyright piracy is widespread and unauthorized use of software remains pervasive among private firms and government ministries. Lebanon has also failed to take sufficient enforcement actions against copyright book, computer software and optical media piracy. Concerns remain that Lebanon is considering allowing the registration of generic copies of drugs still protected by patents. In the coming year, we urge Lebanon to address these concerns and look forward to implementation of pending patent and trademark legislation with the expectation it will bring Lebanon into conformity with international standards.

Mexico: Mexico has committed to implement and enforce high levels of intellectual property protection consistent with its international obligations. Nevertheless, piracy and counterfeiting remain problems. As has been the case in recent years, despite a significant number of raids in 1998, only a small percentage resulted in court decisions and the levels of penalties assessed when court decisions are made are inadequate to deter future piracy. However, we were encouraged by the Government of Mexico's announcement of an initiative to combat piracy last year; and the passage of legislation yesterday of additional anti-piracy legislation. We look to the Government of Mexico now to devote the resources necessary and efforts necessary to fully enforce the new anti-piracy initiative.

New Zealand: New Zealand generally provides sound intellectual property protection, however, recent decisions to erode the level of copyright protection available to right holders in New Zealand are of serious concern. On May 16, 1998 the New Zealand government passed an amendment to the Copyright Act abolishing the importation right for all copyrighted works, including sound recordings, books, movies, and software. Shortly after this decision was announced, Ambassador Barshefsky expressed her concern with this decision and the fact that is was made with little consultations with interested parties in announcing an out-of-cycle review last year. This unfortunate decision is further aggravated by the fact that New Zealand's enforcement regime does not effectively deter piracy. We commend the Government of New Zealand for actively reviewing the necessary improvements to its anti-piracy laws and urge New Zealand to take swift action to implement the full scope of measures recommended.

Oman has taken notable steps during the past year towards TRIPS compliance and stepped up enforcement against copyright piracy. However, Oman's copyright law has a number of shortcomings. Protection of foreign works not registered in Oman remains in question, protection for software is pending, and additional changes to the copyright law, including extending the terms of protection and providing a point of attachment for foreign works, need be made to bring it into full TRIPS compliance. Oman's continuing lack of patent protection for pharmaceutical products remains of particular concern. We urge Oman to continue the positive progress being made in the enforcement area and in bringing its intellectual property regime into compliance with TRIPS as part of its WTO accession process.

Pakistan took the steps necessary in 1997 to implement its patent mailbox obligations under the TRIPS Agreement; however, other problems remain. Pakistan lacks patent protection for pharmaceutical products and the term of protection under its patent law for processes is not consistent with TRIPS. Copyright piracy in Pakistan remains widespread. Business and entertainment software rates are extremely high and the reprinting of books (especially computer books, business titles and medical texts) without authorization continues to be a significant problem. The Government has taken steps to strengthen enforcement efforts regarding copyrighted works, but the fines applied to infringers have

been too low to provide a credible deterrent. However, some improvement in Pakistan's anti-piracy program has been noted in 1998. For example, piracy rates for videos have declined as a result of strengthened law enforcement and some video outlets are taking steps to offer legitimate products. There are reports that three optical media production plants have recently been established in Pakistan. We look to the Government of Pakistan guard against the production of unauthorized optical media, and to take the steps necessary to fully comply with the TRIPS Agreement no later than January 1, 2000.

The Philippines: Since enactment of a comprehensive IPR code in 1997, the Philippines has taken insufficient steps to clarify ambiguities in the law and to ensure consistency with TRIPS obligations. Although implementing regulations related to the code have been promulgated in some areas, no substantive regulations pertaining to copyright protection have been issued. Other deficiencies not addressed by regulations include the absence of ex parte search and seizure authority, onerous technology licensing restrictions, and an overly broad exception for the decompilation of computer programs. Progress toward more effective policy-making and enforcement has been hampered by hiring delays and resource constraints. Nationwide enforcement efforts are inconsistent and rarely result in deterrent penalties, however the Bureau of Customs has recently undertaken an aggressive and encouraging enforcement program. The Philippines has yet to enact legislation to implement TRIPS obligations in the areas of integrated circuit design, although work is ongoing. The Philippines is also considering a proposal which would conflict with TRIPS trademark obligations by restricting the use of brand names on pharmaceutical products. Unlike other parts of Asia, optical disc production is a relatively recent occurrence in the Philippines. The United States, therefore, strongly urges the Philippine government to adopt an effective regulatory system in order to deter digital piracy before the problem takes root, as it has elsewhere in the region.

Poland: The Government of Poland has not made sufficient progress to address the lack of adequate and effective protection for intellectual property. Pirated optical media (CDs, DVDs, CD-ROMS) are widespread in the Polish market, and production and distribution of pirated optical disc media appear to be a growing problem. Industry estimates that losses to copyright piracy increased by $26 million between 1997 and 1998. Polish copyright law does not appear to provide a clear point of attachment for foreign sound recordings, the absence of which would violate its existing international obligations. Furthermore, there is no protection for pre-1974 sound recordings, as required by the TRIPS Agreement. With regard to patents, Polish law does not conform to TRIPS requirements on protection for confidential test data. We look to Poland to address these shortcomings quickly and to strengthen enforcement generally. We will conduct an out-of-cycle review in December 1999 to evaluate Poland's progress in these areas and in meeting its TRIPS obligations which become effective January 1, 2000.

Qatar: has not made sufficient progress to address the lack of adequate and effective protection for intellectual property rights since last year's review and will remain on the Special 301 Watch List. Qatar has failed to adopt TRIPS consistent legislation in the area of copyright or patents. We remain particularly concerned about the lack of patent protection for pharmaceutical products. We recognize progress made in the last year by Qatar to reduce copyright piracy, except in the area of business software where piracy rates remain unacceptably high. We call on Qatar to legalize software used by government agencies, improve copyright enforcement, and to take concrete steps to fully meet its TRIPS obligations prior to the January 1, 2000 deadline.

Romania: The Government of Romania has not made sufficient progress in the protection of copyrights and other intellectual property since last year's review, and is being elevated to the Watch List. Romania has made little progress over several years to improve the enforcement of intellectual property rights. Rates of piracy of sound recordings, audiovisual works, television and computer programs have all

increased. U.S. pharmaceutical patent owners have been adversely affected by inadequate protection of patents and proprietary data. The United States urges the Romanian Government to address these deficiencies and use the time remaining prior to the deadline of January 1, 2000 to bring itself into full compliance with the obligations of the TRIPS Agreement.

Saudi Arabia: Saudi Arabia's laws, regulations, and procedures fall short of international standards in a number of key areas. While the Saudi Government has embarked on a revision of its intellectual property laws as part of its WTO accession, the most significant need is for better enforcement of its laws. There was, however, some improvement in enforcement in 1998, particularly with regard to software, audio materials, and videos. However, software piracy remains a problem and the Government needs to control the unauthorized use of software in its offices. We urge the Government of Saudi Arabia to bring its IPR regime into compliance with TRIPS as part of its WTO accession process, greatly improve the operation of its patent office so that patents are issued, publicize its enforcement activities in order to provide a greater deterrent effect, and adopt a directive prohibiting the illegal use of software in government agencies.

Singapore: Singapore took a number of steps during 1998 to enhance intellectual property protection, including accession to the Berne Convention, and the enactment of geographic indications and integrated circuits legislation which is intended to implement fully Singapore's TRIPS obligations a year ahead of the mandatory deadline. Nevertheless, overall piracy rates increased since last year. One shortcoming of Singapore's intellectual property regime is the maintenance of a voluntary code of conduct for optical disc producers which lacks an effective enforcement mechanism available to rights holders. Although it appears that most or all of the infringing discs sold in Singapore are smuggled into the country, effective border measures have not been taken to address the importation and transhipment of infringing goods through Singapore. A fundamental deficiency in Singapore's regime is the "self-policing" approach to IPR enforcement which shifts to rights owners the primary burden and expense of investigating and prosecuting infringement. This system is inadequate to cope with the growing problem of optical disc piracy, as illustrated by the increased levels of retail piracy. Although Singapore has initiated a consumer awareness initiative in order to reduce demand for pirated goods, the government's failure to address the open marketing and sale of substantial volumes of pirated materials in well-known malls sends conflicting signals about the government's genuine intentions.

South Africa: South Africa's Medicines Act appears to grant the Health Minister ill defined authority to issue compulsory licenses, authorize parallel imports, and potentially otherwise abrogate patent rights. Implementation of the law has been suspended pending the resolution of a constitutional challenge in the South African courts. Undisclosed test data is also not adequately protected under South African law. During the past year, South African representatives have led a faction of nation's in the World Health Organization (WHO) in calling for a reduction in the level of protection provided for pharmaceuticals in TRIPS. Copyright piracy and trademark counterfeiting is widespread and the U.S. copyright industry estimates that trade losses due to piracy of copyrighted works increased more than 35 percent between 1997 and 1998. However, the South African Government recently took the welcome step of adopting a implementing strategy to its 1997 Counterfeit Goods Act which could strengthen enforcement. We call on the Government of South Africa to bring its IPR regime into full compliance with TRIPS before the January 1, 2000 deadline, ensure that all Government offices use only legitimate software, and clarify that the powers granted in the Medicines Act are consistent with its international obligations and will not be used to weaken or abrogate pharmaceutical patent protection. We will continue to address these issues with the South African Government and will conduct an out-of-cycle review of South Africa's progress towards addressing these concerns in September 1999.

In Spain, while copyright piracy is generally low in most product areas, the business software industry continues to face some of the highest levels of piracy in Europe. Illegal copying of business application software for internal use remains pervasive, and continues to account for the majority of losses to industry in Spain stemming from piracy. Though Spanish government enforcement activities increased substantially in 1998, the slow pace of both civil and criminal court proceedings has diluted the impact of the increased raids. In particular, we note continued obstacles to timely prosecution of piracy in Spanish courts and inadequate penalties. Enforcement efforts are also hindered by the lack of sufficient criminal penalties to prove a real deterrent for software piracy. We look to the Spanish government to take concrete steps to curb piracy of business software and to implement adequate procedures to ensure that Government ministries only use authorized software.

Sweden: Swedish law permits official institutions such as Government Ministries and the Parliament to provide copies to the public of documents that are filed with them, even though such documents may be unpublished and protected by copyright law. As a result of the leadership demonstrated by certain concerned government officials who have attempted to address the situation in a mutually satisfactory manner, draft legislation that would ultimately correct the problem was published for public comment in early 1999. We look to the Government of Sweden to swiftly bring this legislation into force and resolve this bilateral irritant without further delay. Should Sweden to make substantial progress in the near term toward resolving this issue, Sweden's Special 301 status will be reviewed in that context. As a result of legislation that entered into force on January 1, 1999, the U.S. and Sweden announced the resolution of the WTO dispute settlement case initiated by the United States in 1997 regarding provisional relief in civil enforcement proceedings.

Taiwan: There are indications that Taiwan has begun to address the problems is has experienced regarding the protection of intellectual property rights, but serious deficiencies remain. The Taiwan Semiconductor Industry Association is to be commended for developing a computer chip marking scheme that will make it possible to trace Taiwan made chips found in pirate video games and other applications. While a serious effort has been made to increase raids on suspected pirates especially in retail-level piracy, the Taiwan enforcement system is time-consuming and cumbersome. Trials often drag on endlessly, or end with penalties that provide little deterrence. There has been little evidence to suggest that existing legal requirements and enforcement actions are reducing the extent to which Taiwan is a source of pirate optical media. Taiwan mandates the use of source identification codes (SID) to identify the producer of optical discs, but enforcement of this requirement has been lax. Pirated material from Taiwan continues to surface in the United States, Central and South America. We urge Taiwan to significantly tighten its controls on optical media production in order to intercept the infringing products at the source. Finally, we urge Taiwan to ensure that foreign companies pursuing infringement cases in the Taiwan courts get fair and expeditious hearings, as well as fair treatment from Taiwan agencies.

Thailand's IPR record over the past year has been inconsistent. While the government agreed to implement an IPR Action Plan embodying a number of priority reforms - including enactment of a world class patent law, issuance of a decree requiring government agencies to use only legitimately licensed software, and reorganization of the interagency mechanism charged with coordination of IPR policy and enforcement - copyright piracy rates continue to increase. Criminal convictions by the specialized IPR court have been handed down; however, these decisions have been overturned on appeal and no individual has ever served a criminal sentence for IPR infringement. The Thai government has also resisted prosecuting infringers for violations of customs and revenue laws, in addition to the copyright law. Thai officials are conducting more frequent retail raids at select malls. While this is a positive step, we encourage Thailand to focus enforcement efforts throughout the country and to also target production facilities including the growing number of optical disc plants. Thai proposals to institute a voluntary regulatory system to dissuade OD piracy lacks an effective enforcement mechanism

and will not address the growing problem of copyright piracy. The inability of enforcement authorities to conduct retail or plant raids during off-hours and weekends further undermines the government's ability to combat the problem. The United States calls on the Thai government to make the priorities outlined in the Action Plan -- including TRIPS implementation, creation of a comprehensive plant and retail enforcement strategy, and effective regulation of OD plants -- its top priorities.

The UAE has made major progress in substantially reducing copyright piracy rates across the board and particularly with regard to reducing software piracy. However, there has only been limited progress toward amending the 1992 patent law which does not provide protection for pharmaceutical products. Moreover, the need for "pipeline" protection of new products in the research and development cycle is critical. This concern is heightened by reports that UAE authorities continue to allow the copying of European and American patented pharmaceutical products. While decisions in several recent court cases have created uncertainty regarding the applicability of copyright protection for foreign works, UAE authorities are addressing these concerns and moving forward with copyright amendments to correct the situation and bring the UAE into compliance with TRIPS. We urge the UAE to provide patent protection for pharmaceutical products and to ensure that its intellectual property regime is TRIPS compliant before the January 1, 2000 TRIPS deadline.

Uruguay: Reform of outdated patent and copyright legislation, needed to bring these laws into compliance with Uruguay's international obligations, has been underway for years. Notably, the current copyright law fails to explicitly extend copyright protection to computer software as required by TRIPS. The draft patent law before the Uruguayan Parliament contains critical flaws, such as establishing an overly broad compulsory licensing regime, omitting protection for test data, and a lack of pipeline patent protection. We strongly urge the Uruguayan Government to address these shortcomings and to accelerate its efforts to enact TRIPS-consistent legislation prior to January 1, 2000. Further, we are concerned that Uruguay may not be in full compliance with its existing TRIPS obligations with respect to Article 70.9 regarding exclusive marketing rights. The Government of Uruguay has committed to provide us with additional information regarding its implementation of this article in early May, at which time we will assess whether to proceed with a case at the WTO.

Venezuela: While Venezuela has made some progress toward effective protection of intellectual property rights, significant problems remain. The Venezuelan Government has made some noteworthy efforts at enforcement, but has not devoted the resources commensurate with the problem. In some recent cases U.S. holders of prominent patents and trademarks have had to challenge marketing approvals and registrations by imitators. On the whole, piracy levels have not improved significantly. Therefore, Venezuela will remain on the Watch List this year.

Vietnam: The Government is still in the formative stages of drafting, enacting and enforcing intellectual property laws. Copyright piracy is the most pressing problem, though there is also some unchecked trademark counterfeiting. Vietnam provides protection for pharmaceutical and agricultural chemical products, but its law is not fully consistent with international standards. On December 27, 1998, the bilateral copyright agreement between the United States and Vietnam entered into force, following the issuance of implementing regulations by Vietnam. The agreement grants U.S. works copyright protection in Vietnam for the first time. We look to the Government of Vietnam to enforce its new copyright regime vigorously to reduce piracy levels measurably, and to take steps to ensure that all Government offices use only legitimate software. We also expect the Government of Vietnam to address intellectual property rights issues in the contexts of negotiations on a bilateral trade agreement and its accession to the WTO, where compliance with TRIPS without transition will be required before the date of accession.

Attachment

Developments in Intellectual Property Rights

1998

May

- Jordan agreed to implement a negotiated Action Plan to ensure improvements in its enforcement and legal regimes.
- Oman's Copyright Enforcement Regulations became effective May 2, resulting in declining levels of pirated videos and sound recordings.
- •The Ecuadorean Congress passed, and the President signed, a comprehensive law significantly improving the legal basis for protecting intellectual property rights, including patents, trademarks, and copyrights.
- •Romania joined the Geneva Phonograms Convention and passed the Transitory Pipeline Protection Law.
- •The Government of Macau adopted regulations to control the import, export and distribution of optical media production equipment and finished products in May.

June

- Egypt's Ministry of Culture took on its first software piracy end-user case, and prosecuted several dozen end-user cases by the end of 1998.

July

- •Ireland enacted legislation addressing two pressing copyright enforcement issues. The bill significantly raised the level of criminal penalties for copyright infringement and established stronger presumptions of copyright ownership and subsistence.
- •Taiwan on July 15 published and implemented a new set of Export Monitoring System Regulations aimed at improving the interception of pirated video game and computer software exports.

August

- •Paraguay enacted a new trademark law that provides specific protection for well-known trademarks.
- •The Government of Hong Kong enacted in August the Prevention of Copyright Piracy Ordinance which controls the import, export and distribution of optical media production equipment and finished products.

September

- The Jordanian Prime Minister issued an Announcement on September 8, calling on all Jordanian Government Ministries and official public institutions to acquire authorized copies of computer programs, videotapes, cassettes, audio recordings, original copies of books and reference materials.
- •Singapore acceded to the Berne Convention.

October

- •The amendments to the Jordanian copyright law went into effect on October 1. These amendments increased penalties for copyright infringement, and increased the duration of protection for certain works to international standards.
- The Council of Ministers of Qatar ordered that the Copyright Bureau be moved to the Department of Commercial Affairs at the Ministry of Finance, Economy, and Commerce to improve the enforcement of Qatar's copyright law.
- The National Council of the United Arab Emirates approved proposed amendments to the UAE copyright law eliminating TRIPS-inconsistent copyright formalities.
- •The Government of Singapore passed a new trademark bill.

- •The Argentinian Chamber of Representatives approved the Copyright Software Protection Law providing specific protection for computer software. Passage of the law had an immediate impact on the market; industry reports that many bootleggers and hard-disk loaders have shut down their activities.

November

- •Sweden enacted legislative changes to provide *ex parte* relief for copyright owners, allowing the United States and Sweden to resolve the issue and successfully conclude WTO dispute settlement consultations.
- •The United States and Paraguay signed a Memorandum of Understanding and Enforcement Action Plan successfully concluding the U.S. Special 301 investigation into Paraguay's intellectual property laws and practices.
- •To further combat the problem of imported copies of legitimate products, Venezuela passed a new customs law that gives authorities the right to seize pirated goods at the border.

December

- The Government of Kuwait signed a decree on December 22 banning the registration of copies of pharmaceutical products still under patent protection.
- •The U.S.-Vietnam Copyright Agreement entered into force on December 23, giving U.S. works legal protection in Vietnam.
- •India acceding to the Paris Convention for the Protection of Industrial Property and the Patent Cooperation Treaty (PCT), which became effective on December 7.
- •Slovenia issued an executive order on protection of end-user software.

1999

January

- •Estonia enacted new copyright and customs legislation and amended its code of criminal procedures to strengthen IPR protection.

- •Turkey extended patent protection to pharmaceuticals.

February

- The Government of Colombia issued a Presidential directive on government use of software on February 25.

March

- The Kuwaiti Cabinet approved the draft copyright law on March 21.
- The Government of Lebanon passed amendments to its Copyright Law, including adequate protection for computer programs, stiffer penalties for infringement, a term of protection of life of the author plus seventy years, confiscation of illegal products and equipment, and Berne-compatible evidentiary presumption of copyright ownership.
- •The United States and Honduras concluded negotiations on a bilateral IPR agreement.
- The Economic Minister of the Palestinian Authority on March 10 brokered an agreement between Israeli music industry representatives and the owner of a pirate CD plant in Hebron to end illicit production in the Palestinian-controlled area.
- •The Taiwan Semiconductor Industry Association put forward a proposal for marking semiconductor chips manufactured in Taiwan with source identification (SID) Codes.

April

- •The Government of China issued a high-level decree requiring the use of only legitimate software by government ministries.
- •The Government of India enacted legislation and drafted implementing regulations establishing mailbox and exclusive marketing rights systems for pharmaceutical and agricultural chemical products.
- •Malaysia undertook a series of constructive steps toward developing and implementing a regulatory regime to control pirate optical media production, and to strengthen manufacturing and retail level enforcement efforts.
- •Jordan signed the instrument of ratification of the Berne Convention, giving U.S. copyrighted

works legal protection in Jordan.

- •Mexico passed new anti-piracy legislation which is a key part of its overall enforcement intiative announced in 1998.
- •Hong Kong announced the formation of a new task force, staffed by an additional 100 customs officers, to strengthen enforcement efforts against copyright piracy.