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BEFORE THE
SUBCOMMITTEE ON COURTS, THE INTERNET
AND INTELLECTUAL PROPERTY

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Chairman Smith, Ranking Member Berman and members of the Committee, thank you for the opportunity to address the important issue of international protection and enforcement of intellectual property rights (IPR).

As you are aware, protecting IPR is one of the most complex issues of our trade agenda. Since the advent of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) nearly 10 years ago, globalization and new technologies have made it easier for thieves to steal, copy and sell everything from auto parts, medicines and sports equipment to intangible products that could be downloaded online such as software, music and films. While, there have been some signs of improvement this past year, much work remains to be done.

Stopping counterfeiting and piracy and protecting our right holders is a top priority of this Administration. Ambassador Portman has made clear that IPR protection is a major priority for USTR. As a key component for U.S. economic growth and job creation, intellectual property protection supports the livelihood of so many American employers and employees in every region of the country. It is also a consumer health and safety concern when cheap imitation and unregulated goods are used, often unknown to consumers, to repair mechanical products, treat sicknesses or serve as protective gear in sports events, among other daily activities. My remarks will focus on China and Russia, but also provide an overview of our other activities.

China

The protection and enforcement of IPR remains a top issue in our bilateral trade relationship. It is an issue that has been raised at the highest levels of government with the Chinese by Ambassador Portman, most recently during his visit to China last month, and by President Bush during meetings with Chinese President Hu in both September and November. These meetings produced a statement commitment from President Hu on the need to “protect the legitimate rights and interests of all international intellectual property rights owners, including those in the United States,” and was a welcome indication that China recognizes the seriousness of our concerns.

The Special 301 Out-of-Cycle Review

Each year, USTR issues the “Special 301” Report cataloging the IPR problems of the world’s worst offenders – a list that contains dozens of countries. China is a regular member of this list. In 2004, because of our level of concern at China’s continued lack of progress with respect to enforcing intellectual property rights, USTR initiated a more intensive review of China’s IPR regime, known as an “Out-of-Cycle” Review.

On April 29, USTR reported the results of that review. We concluded that China’s efforts to had significant gaps particularly in deterring rampant piracy and counterfeiting. We announced four new actions we would take to address these concerns:

1. Investigate potential WTO dispute settlement cases

In order to evaluate whether the United States should file a complaint against China in the WTO’s dispute settlement process, USTR works closely with industry to gather detailed information on potential cases. Cases at the WTO require extensive research and data collection and are subject to an appeals process. The resources required to collect information on potential cases must come from industry, and some companies, including those represented on this panel today, have been working diligently to produce an accurate account of IP enforcement in China.

We appreciate greatly the Chairman’s support of this public-private partnership in requesting additional resources from industry at our last hearing on this issue. China does not share the same level of transparency regarding enforcement actions as the United States, and collecting information is a resource-intensive and time consuming process. Our timetable for determining whether or not a WTO case against China is warranted is dependent on the effectiveness of these efforts.

2. Elevate China to the Priority Watch List in the 2005 Special 301 Report

China’s placement on the Priority Watch List (PWL) indicates our significant level of concern that particular problems exist in that country with respect to IPR protection, enforcement and market access. This ranking sends a global signal to our trading partners and to companies seeking to do business in China. It also sends a strong message to China that these concerns have to be addressed.

3. Intensify requests through the JCCT IPR Working Group

Since April, we have held two meetings of the U.S.-China Joint Commission on Commerce and Trade (JCCT) Working Group Intellectual Property Rights involving senior levels of government as well as expert-to-expert exchanges between U.S. and Chinese IPR officials from all relevant policy and law enforcement agencies. These meetings, held May 25-27 and November 8-9, have proven invaluable at producing a common understanding of the

problems and issues plaguing our IPR trade relationship, and establishing the linkages necessary to resolve them.

Cooperation through the working group meetings has led to a number of commitments by senior level Chinese officials, most notably at the July JCCT meeting where China agreed, among other things, to: (1) increase criminal prosecutions for IPR violations relative to the total number of IPR administrative enforcement cases, (2) reduce exports of infringing goods by issuing regulations to ensure the timely transfer of cases for criminal investigation, (3) improve national police coordination by establishing a leading group in the Ministry of Public Security responsible for overall research, planning and coordination of all IPR criminal enforcement to ensure a focused and coordinated nationwide enforcement effort, (4) enhance cooperation on law enforcement matters with the United States by immediately establishing a bilateral IPR law enforcement working group focusing on the reduction of cross-border infringement activities, (5) expand an ongoing initiative to aggressively counter piracy of movies and audio-visual products, (6) ensure that all central, provincial and local government offices are using only licensed software by the end of 2005 and that state-owned enterprises are using only licensed software in 2006, (7) fight software end-user piracy by declaring that it is considered to constitute “harm to the public interest” and therefore is subject to administrative penalties nationwide, (8) establish an IPR ombudsman in the Chinese embassy in Washington to assist U.S. companies, particularly small- and medium-sized companies, experiencing IPR problems, (9) rid trade fairs of fake goods, (10) join the WIPO Internet-related treaties in 2006, and (11) clarify the December 2004 Judicial Interpretation to make clear that its criminal thresholds apply to sound recordings and that exporters are subject to independent criminal liability.

4. TRIPS Transparency Provision

On October 26, we filed a formal request under Article 63.3 of the TRIPS Agreement to seek information on China’s intellectual property enforcement efforts. In an example of our work to enhance international cooperation on this issue, we were joined by Japan and Switzerland, who submitted simultaneous similar requests. These transparency requests seek detailed information from China on its reported IPR enforcement efforts. China’s response to these requests, anticipated in early 2006, will be a test of whether it is serious about resolving the rampant IPR infringement found throughout its country.

Other Efforts

As a means of encouraging greater public-private sector dialogue on IPR matters, we have also been working to support activities of other agencies. These efforts are too numerous to list today, but I want to mention in particular the State Department series of Ambassador’s Roundtables that bring U.S. and Chinese government officials together to discuss the most pressing IPR matters of the day with industry representatives. These dialogues have proven useful at promoting dialogue and a degree of transparency into China’s IPR regime.

Russia

Enforcement in both the copyright and trademark sectors continues to be a significant problem in Russia. As a result, Russia was designated a PWL country in the Special 301 Report and an Out of Cycle Review for Russia is being conducted this year to monitor progress. We are also continuing interagency review of a petition filed by the U.S. copyright industries to withdraw some or all of Russia's GSP benefits. A GSP hearing was held on November 30th at which members of the US copyright industries testified in support of their position to withdraw some or all of Russia's benefits. USTR is considering this GSP petition.

USTR Efforts

USTR and other agencies have been and will continue to be very engaged with the Russian Government at all levels to develop an effective IPR regime and strengthen enforcement in Russia. We have an ongoing bilateral working group with the Russian Federal Service on Intellectual Property, Patents, and Trademarks (Rospatent), the agency responsible for most IPR matters in Russia, which has convened many times to discuss a wide range of IPR issues. Bilateral discussions, most recently in Moscow in October, have focused on Russia's enforcement regime, legislative deficiencies – including the need for a comprehensive regulatory regime on optical media production, and Internet piracy.

We are also working on IPR issues in the context of Russia's WTO accession negotiations. We have continuing concerns that Russia's current IPR regime does not meet WTO requirements related to protection of undisclosed pharmaceutical testing data, geographic indications and enforcement. We are raising these and other concerns in the accession negotiations and have made it clear to the Russian Government that progress on IPR will be necessary to complete the accession process.

Our work has brought about some improvements, particularly with respect to the content of Russia's laws, but much more will need to be done in order to reduce the level of piracy and counterfeiting. As part of its effort to bring Russia's IPR regime into compliance with the obligations of the TRIPS Agreement, Russia amended its Copyright Law in 2004 to provide protection for pre-existing works and sound recordings. Russia has amended a number of other laws as well, including its laws on patents and protection of computer software and databases. Although these amendments demonstrate Russia's commitment to strengthening its IPR laws, further improvements in Russia's laws are necessary.

Russia must undertake stronger enforcement measures. Actions also need to be directed to improve its border protection measures, and to impose effective criminal penalties. In addition, Russia needs effective optical disc plant inspection and enforcement mechanisms, including to shut down the plants and destroy the equipment used, and a concerted effort to combat internet piracy if it is to begin to address our concerns.

In the past few months, the Russian government has demonstrated an increasing understanding of the seriousness of the IPR piracy problem in Russia. For example, Russia has launched a new enforcement initiative with raids on production facilities in restricted areas, retail sweeps, and the

opening of a case against a pirate Internet music site. We are monitoring the situation to see whether Russia sustains this effort.

We are pushing hard on each of these elements. We have seen some recent indications of progress but will continue to push and have made clear that we need concrete results.

Other USTR Activities - Tools and Measures to Combat Piracy and Strengthen Enforcement

USTR has taken a comprehensive, multi-faceted approach to address the complexity of IPR theft occurring across the globe. We have been vigorously employing all tools and resources at our disposal to bring pressure to bear on countries to reform their intellectual property regimes, and we will continue to do so.

Special 301/Section 301

As we do in April of each year, USTR issued the Special 301 Report cataloging the IPR problems in dozens of countries worldwide. A country's ranking in the report sends a message to the world and potential investors about a country's commitment to IPR protection. The Special 301 has been a successful in encouraging countries to institute reforms or come forward with reform proposals to avoid elevation on the list. For example:

- Korea – After elevating Korea to PWL last year, Korea took significant steps this year to strengthen protection and enforcement of IPR such as, introducing legislation that will explicitly protect sound recordings transmitted over the Internet (using both peer-to-peer and web casting services); implementing regulations to address film piracy; and increasing enforcement activities against institutions using illegal software.
- Taiwan – In response to our out-of-cycle review last year, Taiwan's legislature approved a number of amendments to its copyright law that provide greater protection for copyrighted works and increase penalties for infringers. In addition, Taiwan authorities made permanent an IPR-specific task force that has increased the frequency and effectiveness of raids against manufacturers, distributors, and sellers of pirated products.

Mention in the Special 301 Report sometimes compels authorities to take immediate enforcement action. For example, Pakistan undertook significant IPR enforcement actions Immediately after last year's 301 report in which it was placed on the Priority Watch List. Specifically, Pakistan shut down, six well known plants that had been churning out millions of pirated optical disks and instituted surprise raids to check the plants on an ongoing basis. We are monitoring to ensure that the plants stay clean. As another example of progress motivated by the Special 301 report, in an effort to improve its standing on the 301 list, the Philippines recently passed legislation on optical discs, and we are currently monitoring the enforcement of that law through an out-of-cycle review

Trade Agreements

Our FTAs contain comprehensive obligations on civil, criminal and customs enforcement. For example, provisions that provide for tighter border controls, and expeditious *ex parte* searches to gather evidence, higher damage awards, deterrent criminal sanctions and increased authority for criminal enforcement. As a result, we have made implementation process of our FTAs a priority on par with their development and negotiation.

In the past year, we have worked closely with Australia and Singapore to ensure that their implementing legislation meets their FTA obligations to protect and enforce IPR. Currently, we are working closely with Morocco, Bahran and CAFTA on similar efforts, and have added action plans for the implementation of FTAs in our current negotiations. We will continue to work closely with our trading partners and our industry on implementation of the FTAs.

Since the Bipartisan Trade Promotion Authority Act of 2002, we have completed and received Congressional approval of FTAs with Australia, Chile, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Morocco, Nicaragua and Singapore, have concluded negotiations with Bahrain and Oman, and have launched FTA negotiations with several more countries - Panama, Thailand, Colombia, Ecuador and Peru , the United Arab Emirates, and the South African Customs Union countries). We will remain vigilant – with support and cooperation from our embassies and industry – to quickly respond to concerns over the possible lack of compliance or enforcement of FTA obligations that may arise in the future.

WTO

Protection and enforcement of IPR is an issue we raise in every WTO accession negotiation. For example, with respect to Ukraine's accession to the WTO, we have been working with the Ukrainian Government on numerous IPR issues, including the implementation of its new optical disc legislation passed last summer, stopping the export and import of pirated and counterfeit products from and into Ukraine, and improving protection of pharmaceutical test data from unfair commercial use. Ukraine has demonstrated significant commitment to improving its IPR regime, in the context of our negotiations on WTO accession as well as in order to improve its standing on the 301 list and to restore its GSP benefits.

Preference Programs

USTR also administers the Generalized System of Preferences (GSP) program and other tariff preference programs. The “carrot” of preserving GSP benefits is an effective incentive for countries to protect IPR. In fact, the filing of a GSP review petition or the initiation of a GSP review has in some cases produced positive results. For example, in response to an extended GSP review of Brazil this past year, the Government of Brazil adopted a new National Action Plan to enforce copyrights and reduce piracy. The Brazilian Government appears to be moving in the right direction and is now committing significant fiscal and personnel resources to anti-piracy efforts. The recent efforts to integrate the enforcement efforts and informational exchange channels of the Federal Police, Federal Highway Patrol, and Internal Revenue Service, are evidence that the Plan is being implemented. Over the past two months hundreds of thousands

of pirated products have been seized and destroyed, and dozens of individuals have been arrested.

The Strategy Targeting Organized Piracy (STOP!) Initiative

In April and June, USTR led a delegation represented by most of the federal agencies participating in STOP! on an international outreach effort to explore how to increase cooperation to combat the growing global trade in pirated and counterfeit goods. The delegation met with counterparts in Asia (Singapore, Hong Kong, Japan, and Korea) and Europe (Germany, the European Commission, France, and the United Kingdom), and also met with Canada and Mexico in Washington, as well as with representatives of the private sector. In addition to providing a unified message concerning United States efforts to enforce against international IPR theft, the delegation put forward a series of proposals for increasing cooperation with our trading partners. In the coming months, outreach will continue to other like-minded countries.

The STOP! initiative is yielding results. It has brought new forms of federal assistance to American companies across the country, increased law enforcement resources to stop pirates and counterfeiters, and developed an international law enforcement network to increase criminal enforcement abroad. STOP! objectives have also been endorsed in numerous multilateral fora including the G-8, Organization for Economic Cooperation and Development, and the Asia-Pacific Economic Cooperation (APEC) to address issues ranging from improved enforcement to public awareness to commercial supply chain integrity.

Efforts to translate the APEC endorsements into a package of deliverables that improve IPR enforcement are underway. Leading this effort is the U.S., Japan, Korea sponsored APEC Anti-Counterfeiting and Piracy Initiative which was joined by Japan and Korea and endorsed by at the recent APEC Economic Leaders on November 18th and 19th.. This initiative includes a series of model guidelines to help member economies develop appropriate domestic measures to reduce trade in counterfeit and pirated goods and online piracy, and increase cooperation to strengthen capacity building activities that will aid in to fight against this illicit trade.

Conclusion

Dealing with the problem of counterfeiting and piracy requires a comprehensive, intensive and sustained effort. Stopping this illicit trade requires a comprehensive, intensive and sustained effort. We recognize there are many challenges to overcome. We will press forward with the tools and resources provided us in addressing these concerns with the goal of improving the situation for American owners of IPRs worldwide. We have made progress, but enormous challenges remain. We will continue to work with other federal agencies, coordinate with our stakeholders and reach out to our trade partners to develop mechanisms to comprehensively combat IPR theft through all means at our disposal. Stopping the trade in fakes and making the environment more welcoming to our right holders is a top priority.

I look forward to working with you and your staffs to continue to devise solutions for dealing with this critical matter.

Thank you.