Case Number: 2010-1024-F

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DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001. draft	Protocol Proposal. [pages 5, 12, 13] (3 pages)	c. 05/1999	P1/b(1)
002. draft	Duplicate of 001. (3 pages)	c. 05/1999	P1/b(1)

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Clinton Presidential Records
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China (April to August 1999, Post Zhu Visit) [2]

2010-1024-F
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RESTRICTION CODES

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Freedom of Information Act - [5 U.S.C. 552(b)]

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ZIEGLER_JAY@ustr.gov
05/07/99 09:02:00 AM

Record Type: Record

To: Lael Brainard@eop, Malcolm R. Lee@eop, Richard L. Siewert@eop

cc:
Subject: CHINA WTO TALKING POINTS (5/7)

Q: The Chinese have indicated that commitments which the U.S. has publicly presented to not reflect their actual commitments. What is the status of these negotiations?
A: We know, and the Chinese Government knows the basis upon which a WTO accession deal can be concluded. Public comments are a predictable element of the negotiating process. The set of commitments China made during the Zhu visit must remain intact for WTO accession to proceed. We have made this very clear in our discussions.

Q: Are you concerned that the Chinese comments may indicate that they are now unable to match the offers they put forward during the Premier's visit?
A: We have clearly outlined the issues which must be addressed to conclude a deal. The issues that we outlined during the Premier's visit -- market access concerns related to securities, banking, and audio-visual, and Protocol issues (dumping and import safeguards) -- are the basis of our on-going discussions.

Q: Do you believe the outcome of these negotiations -- once thought to be all but a formality -- are now in jeopardy?
A: The issues that were not concluded during the Premier's visit are important issues. In a negotiation of the scope and complexity of China's WTO accession -- indeed any accession negotiation -- nothing is agreed until everything is completed. It is quite common for bargaining and public maneuvering to continue throughout the process. There is likely to be further posturing in the weeks ahead. At the same time, we will also seek improvements in China's services offer.

ZIEGLER_JAY@ustr.gov
05/10/99 09:50:00 AM

Record Type: Record

To: D Holly Hammonds@eop, Malcolm R. Lee@eop, Richard L. Siewert@eop

cc:
Subject: CHINA WTO POINTS

Q: Doesn't this turn of events (bombing of Chinese Embassy in Belgrade), undermine WTO negotiations with China?
A: It is not for us to make that determination. We hope to continue to have a constructive dialogue with the Government of China to resolve areas of remaining differences. We believe that it is in China's interest, the interests of the international community, the WTO's interest, and our interest to advance talks expeditiously.

Q: The New York Times story today indicates that China has pulled trade concessions back in recent negotiations. What is the status of the WTO negotiations?
A: There is always an ebb and flow in negotiations, and public posturing for advantage is one part of that process. The focus of our negotiations with the Chinese has been in those areas where we identified differences during the Premier's visit (market access in banking, securities, and audio visual, and remaining Protocol issues including dumping, and import surge protection). We will need to see further progess in China's services offers in order to conclude this negotiation.

Q: But has China withdrawn offers in areas the U.S. felt had been agreed as indicated by the European Union?
A: Europe has its bilateral negotiations with China. We have a separate bilateral negotiation. It is not surprising that there may be different issues and offers in their negotiations than ours. As to any particular matters, we do not give these reports much credence.

Q: Do you still intend to send Robert Cassidy to lead a negotiating team next week?
A: We will be in consultation with Chinese officials and the State Department in devloping plans for further talks.

D - Check

5/7/99

LAST NAME	FIRST NAME	PARTY	STATE	MEN 97	MEN 98	MEN 99 Whip	Whip #	Dept	Whip Comments
Baird	Brian	D	WA	N/A	N/A	CH			
Baldwin	Tammy	D	WI	N/A	N/A	CH			
Berkley	Shelley	D	NV	N/A	N/A	CH			
Bishop	Sanford	D	GA	N	N	CH			
Brown	Corrine	D	FL	N	Y	CH			
Brown	Sherrod	D	OH	Y	N	CH			
Capuano	Michael	D	MA	N/A	N/A	CH			
Clayton	Eva	D	NC	N	N	CH			
Condit	Gary	D	CA	N	N	CH			
Crowley	Joseph	D	NY	N/A	N/A	CH			
Davis	Danny	D	IL	N	Y	CH			
Ford	Harold	D	TN	Y	N/V	CH			
Gephardt	Richard	D	MO	N	N	CH			
Gonzalez	Charlie	D	TX	N/A	N/A	CH			
Goode	Virgil	D	VA	N	N	CH			
Gordon	Bart	D	TN	N	Y	CH			
Hill	Baron	D	IN	N/A	N/A	CH			
Hilliard	Earl	D	AL	N	Y	CH			

LAST NAME	FIRST NAME	PARTY	STATE	MFN 97	MFN 98	MFN 99 Whip	Whip #	Dept	Whip Comments
Hoeffel	Joseph M.	D	PA	N/A	N/A	CH			
Holt	Rush	D	NJ	N/A	N/A	CH			
Inslee	Jay	D	WA	N/A	N/A	CH			
Jones	Stephanie Tubbs	D	OH	N/A	N/A	CH			
Larson	John	D	CT	N/A	N/A	CH			
Lee	Barbara	D	CA	N/A	N	CH			
Lucas	Ken	D	KY	N/A	N/A	CH			
Markey	Edward	D	MA	N	N	CH			
McCarthy	Karen	D	MO	N	Y	CH			
McIntyre	Michael	D	NC	N	N	CH			
McNulty	Michael	D	NY	Y	N/V	CH			
Meeks	Gregory	D	NY	N/A	Y	CH			
Minge	David	D	MN	Y	Y	CH			
Moore	Dennis	D	KS	N/A	N/A	CH			
Napolitano	Grace	D	CA	N/A	N/A	CH			
Pelosi	Nancy	D	CA	N	N	CH			
Phelps	David	D	IL	N/A	N/A	CH			
Rahall	Nick	D	WV	N	Y	CH			

LAST NAME	FIRST NAME	PARTY	STATE	MFN 97	MFN 98	MFN 99 Whip	Whip#	Dept	Whip Comments
Rothman	Steve	D	NJ	N	N	CH			
Roybal-Allard	Lucille	D	CA	Y	Y	CH			
Sabo	Martin	D	MN	N	Y	CH			
Sandlin	Max	D	TX	Y	Y	CH			
Sawyer	Thomas	D	OH	Y	N	CH			
Schakowsky	Jan	D	IL	N/A	N/A	CH			
Serrano	Jose	D	NY	N	Y	CH			
Shows	Ronnie	D	MI	N/A	N/A	CH			
Stabenow	Debbie	D	MI	Y	Y	CH			
Thompson	Bennie	D	MS	N	N	CH			
Thompson	Mike	D	CA	N/A	N/A	CH			
Udall	Mark	D	CO	N/A	N/A	CH			
Udall	Tom	D	NM	N/A	N/A	CH			
Watt	Melvin	D	NC	N	Y	CH			
Weiner	Anthony	D	NY	N/A	N/A	CH			
Wu	David	D	OR	N/A	N/A	CH			

MEMBERS R - Clerk 5/7/99

LAST NAME	FIRST NAME	PARTY	STATE	MFN 97	MFN 98	MFN 99 Whip	Whip #	Dept	Whip Comments
Biggert	Judy	R	IL	N/A	N/A	CH			
Bono	Mary	R	CA	N/A	Y	CH			
Chambliss	Saxby	R	GA	N	N	CH			
Chenoweth	Helen	R	ID	N	N	CH			
Cubin	Barbara	R	WY	N	Y	CH			
DeMint	Jim	R	SC	N/A	N/A	CH			
Dickey	Jay	R	AR	N	N	CH			
Duncan	John	R	TN	N	N	CH			
Everett	Terry	R	AL	N	N	CH			
Fletcher	Ernie	R	KY	N/A	N/A	CH			
Fossella	Vito	R	NY	N/A	Y	CH			
Gallegly	Elton	R	CA	Y	N	CH			
Gillmor	Paul	R	OH	N	Y	CH			
Green	Mark	R	WI	N/A	N/A	CH			
Hayes	Robin	R	NC	N/A	N/A	CH			
Hostettler	John	R	IN	N	N	CH			
Isakson	Johnny	R	GA	N/A	N/A	CH			
Jenkins	William	R	TN	Y	N	CH			

LAST NAME	FIRST NAME	PARTY	STATE	MFN 97	MFN 98	MFN 99 Whip	Whip #	Dept	Whip Comments
Kuykendall	Steve	R	CA	N/A	N/A	CH			
Lewis	Ron	R	KY	N	Y	CH			
McInnis	Scott	R	CO	N	Y	CH			
Miller	Gary	R	CA	N/A	N/A	CH			
Ney	Bob	R	OH	Y	N	CH			
Ose	Doug	R	CA	N/A	N/A	CH			
Pickering	Charles "Chip"	R	MS	N	N	CH			
Pombo	Richard	R	CA	N	N	CH			
Reynolds	Thomas	R	NY	N/A	N/A	CH			
Riley	Bob	R	AL	N	N	CH			
Rohrabacher	Dana	R	CA	N	Y	CH			
Royce	Edward	R	CA	N	N	CH			
Ryan	Paul	R	WI	N/A	N/A	CH			
Ryun	Jim	R	KS	Y	Y	CH			
Salmon	Matthew	R	AZ	Y	N	CH			
Sanford	Mark	R	SC	N	Y	CH			
Saxton	Jim	R	NJ	Y	N	CH			
Schaffer	Bob	R	CO	N	Y	CH			

LAST NAME	FIRST NAME	PARTY	STATE	MFN 97	MFN 98	MFN 99 Whip	Whip #	Dept	Whip Comments
Sensenbrenner	Jim	R	WI	N	N/V	CH			
Sherwood	Donald	R	PA	N/A	N/A	CH			
Simpson	Mike	R	ID	N/A	N/A	CH			
Smith	Nick	R	MI	N	Y	CH			
Sununu	John	R	NH	Y	N	CH			
Sweeney	John	R	NY	N/A	N/A	CH			
Tancredo	Tom	R	CO	N/A	N/A	CH			
Terry	Lee	R	NE	N/A	N/A	CH			
Toomey	Pat	R	PA	N/A	N/A	CH			
Upton	Fred	R	MI	N	Y	CH			
Walden	Greg	R	OR	N/A	N/A	CH			
Watts	J.C.	R	OK	N	Y	CH			
Wilson	Heather	R	NM	N/A	Y	CH			
Young	C.W. Bill	R	FL	Y	N/V	CH			
Young	Don	R	AK	Y	N	CH			

MEMORANDUM

TO: Gene Sperling
Lael Brainard
Holly Hammonds

FR: Matt Schaefer

RE: Background Materials for May 7th Valenti Meeting

DT: May 6, 1999

You will meet with Jack Valenti of the Motion Picture Assocation of America (MPAA) Friday May 7th at 11:00 AM.

He would like to discuss the following issues with you:

1. China WTO Accession
2. WTO Negotiations (to be launched at Seattle Ministerial)
3. Intellectual Property Rights Protection Problems in Brazil
4. Optical Media Problems in Asia, especially Malaysia
5. Korea Screen Quota & Bilateral Investment Treaty Negotiation

Background materials on all five issues gathered by Lori Hendricks and myself are attached. A brief overview of issues #2-5 follows below. (I understand that you will be briefed further on China WTO issues by others).

WTO Negotiations: Services, Intellectual Property, E-Commerce

A new round of negotiations will be launched at the Seattle WTO Ministerial meeting Nov. 30-Dec.3. This new round of negotiations will include negotiations on services as called for by the "built-in" agenda of the prior Uruguay Round negotiations. Audiovisual (e.g. film) is a services sector.

The Uruguay Round negotiations included a good deal of acrimony (particularly between the EU and US) over the audiovisual sector. In the end, the EU along with many other countries refused to list the audiovisual sector in their schedule appended to the General Agreement on Trade in Services (GATS). Indeed, only 12 countries made any commitments in the sector by the end of the Uruguay Round in early 1994. These results disappointed the MPAA and California federal and state elected officials. Seven new WTO members have made commitments since that time. However, that means a grand total of 19 out of 134 WTO member countries have made commitments in this sector.

The MPAA would like to improve upon these results during the next round of negotiations but in a non-confrontational manner. Specifically, the MPAA approach is to:

- Set realistic goals for the negotiations (They are not expecting a wholesale rollback of foreign trade restriction in this sector. Rather, at a minimum, they want countries to undertake a "standstill obligation" against new protectionism and then gradually proceed to chip away at the existing barriers).

- Identify international support for increased trade (For instance, garner support among exporters of non-Hollywood films and investors in cinemas, so that the issue is not framed as Hollywood versus European culture).

- Identify "cultural protection" subsidies they would be prepared to tolerate in foreign countries.

- Work at a technical (non-political) level to better define the "audiovisual" sector so that countries do not worry so much about unintended consequences.

With respect to the Trade-Related Intellectual Property (TRIPs) Agreement, the MPAA is focusing on implementation by developing countries rather than any changes to agreement (although eventually they would like TRIPS to incorporate the latest World Intellectual Property Organization (WIPO) Conventions). The phase-in period for many developing countries to implement TRIPs expires in January 2000. Ensuring implementation by developing countries is one of the top Administration priorities with respect to intellectual property rights and USTR will conduct a special out-of-cycle review in Dec. 2000 to assess progress made in this regard.

Lastly, MPAA supports an extension of the May 1998 WTO Ministerial Decision prohibiting new duties on e-commerce. Such an extension is one of our potential ministerial deliverables.

Brazil Intellectual Property Rights Protection

Brazil is the film industry's (and indeed almost all copyright industries') largest South American market. Estimated trade losses due to motion picture piracy stood at $125 million in 1998. The MPAA considers USTR's annual report on foreign country intellectual property regimes (called "Special 301 report") one of the most important tools in improving intellectual property rights protection abroad. The Special 301 report places countries in one of three categories: priority foreign country (PFC), priority watch list (PWL) and watch list (WL). In the report just released April 30, Brazil was placed back on the WL for failing to take further steps, primarily on the enforcement side, to combat copyright piracy. (INTECON/NEC participated in the Special 301 process and supported placing Brazil back on the WL). Brazil was previously removed from the WL in May 1998, primarily in recognition of improved legislation (as opposed to enforcement). Continued enforcement problems include:

- Failure to impose deterrent criminal penalties
- Ineffective border measures (failure to stop pirated materials from entering)
- Ineffective seizures of infringing goods and materials
- Delays in criminal cases
- Lack of attention and coordination among enforcement agencies.

Optical Disc Piracy in Asia, particularly Malaysia

The major production centers of pirated optical discs (primarily video compact discs (VCDs)) are Malaysia, Hong Kong, Macau, and Taiwan (with Malaysia being the primary concern of the MPAA). These pirated discs are produced and sold within Asia just days after a film's release here in the U.S. and this business is alluring because of high profit margins (30 cents to produce and sells for $10). Production capacity of optical discs in Asia is estimated at 3.3 billion/year, only a small percentage of which fills legal orders.

In the latest Special 301 report, USTR announced that it would conduct an "out-of-cycle review" of Malaysia in September 1999 (Malaysia is not currently on the WL). MPAA issued a press release supporting this approach.

MPAA wants Malaysia to go after both the illegal production facilities and the illegal street vendors and believes that necessary regulations to solve the problem must include:

- registration requirements for the machinery
- right of inspection
- mandatory use of identification codes on all optical discs
- stiff penalties for violation of registration requirements
- seized machinery and equipment should be forfeited

Korea: Screen Quotas & Bilateral Investment Treaty Negotiations

Korea reserves 40% of the year (146 days) in theaters for Korean films yet the domestic film industry can only legitimately meet demand for 25% of the year. Accordingly, theaters sit empty for roughly 15% of the year and there is little investment in the theater sector. MPAA seeks an elimination or aggressive, phased reduction of the quota. MPAA also wants to cooperate with the Korean film industry in mutually beneficially initiatives – such as spurring new investment in multiplexes, deals to invest in film production and distribution, and technical training.

Senator Helms does not want the U.S.-Korean BIT transmitted to the Senate for "advice and consent" until the Korean quotas are removed. He has written Secretary Albright and Ambassador Barshefsky on this matter.

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CHINA: FILM ISSUES IN WTO NEGOTIATIONS

Motion Picture Imports -

MPA bottom line: Import of films under revenue sharing conditions shall be increased by 7 films per year in the first year and an addition 7 – 8 films/year in the second year.

Motion Picture Distribution –

It would be desirable if the PRC would commit to allowing two or more Chinese companies to distribute foreign films in China.

Video Distribution Services – (includes sale or rental of home video entertainment.)

If the Chinese have agreed to contractual joint ventures, which would imply the possibility of majority ownership, that would be wonderful. We could also live with a minority ownership stake.

Construction, renovation, ownership and control of cinemas -

China's offer to allow majority ownership in three years to construct and renovate cinemas in China with management contracts for operating the cinemas from year one is wonderful – but not very meaningful, unless China also increases market access for foreign films.

Tariffs -

MPA would like China to either clarify that valuation will be based on value of carrier medium, OR lower tariffs on film to zero. The zero duty for optical media works is a valuable commitment which we hope won't evaporate when China alligns its tariff schedule to the ITA.

N.B. This paper was designed for dialogue with our own companies and with independent film producers. Nevertheless, it should provide some insights as to how we are approaching these negotiations. Bonnie R.

GATS 2000:
ISSUES FOR THE FILM INDUSTRY

WTO negotiations to liberalize trade in services will begin in 2000. Preparations are underway now.

Starting Points:

- The film industry contributes to economic growth in many markets. International co-productions and on-location filming provide opportunities for direct partnership among creators of different countries. Exhibition of filmed entertainment benefits local exhibitors, local broadcasters, local cable companies, and other locally-owned platforms for distributing filmed entertainment worldwide, not just in the United States.

- Multilateral agreements must provide balanced results; no country's vital interests should be undermined by the results.

- It should be possible to find ways to recognize the issues uniquely important to the creative film community, including its cultural dimension, while at the same time operating within an internationally agreed framework of trade rules.

Elements of a Successful Negotiation in GATS 2000

1. **Setting Realistic Goals.** The Uruguay Round of trade negotiations, which ended in 1993, achieved "standstill" commitments in most sectors. "Standstill" commitments ensure that countries will not introduce new barriers to trade; countries remain free to introduce new law or regulations, as long as these new measures do not decrease access for foreign services suppliers. The filmed entertainment industry's goals should, likewise, be focussed on establishing a "floor." It would be unrealistic to expect near-term, whole-scale rollback of current barriers. Some "rollback" of existing barriers should be possible where there is support among some local industries for addressing existing barriers, or where there is interest among several countries for liberalizing barriers in a third country.

2. **Identifying International Support for Increasing Trade in Filmed Entertainment and Related Sectors:** The "audiovisual sector" has been incorrectly pegged as an service sector where increasing trade would benefit the US industry, but not benefit service providers from other countries. This is an incorrect perception. For example, liberalizing theatrical screen quotas in Korea, which reserves 40% of year for exhibition

of Korean films, would benefit the US film production and distribution industry, as well as every other film exporter. Exporters of smaller films that have lower advertising budgets probably suffer disproportionally from this type of barrier, since the major Hollywood "blockbusters" are likely to be the first foreign films that are booked after the local quotas are filled. Smaller films are most likely to have the hardest time getting screen time. In addition, this barrier harms international investors in cinema multiplexes, as well as harming the local cinema owners. (Screen quotas also hurt the Korean film production industry, since they depress upkeep, modernization and development of new theaters – but the Korean film industry does not share the belief that screen quotas are counterproductive.)

Similarly, local uplink requirements for satellite broadcast, or similar restrictions that hamper the creation of regional satellite broadcast platforms, are of direct concern to the companies that provide international satellite television services. However, such barriers also harm the filmed entertainment production community by retarding the growth of our customers. Therefore, the filmed entertainment industry should be prepared to support efforts to remove barriers beyond those that are narrowly considered audiovisual production and distribution barriers. We must help identify our shared goals and then mobilize our customers and industry allies to enlist the help of their governments.

3. **Treating the vital interests of national film industries with sensitivity.** Issues such as domestic film subsidies are extremely important to many national film industries. Some industries view these national support systems as their sole guarantee of survival. While some forms of subsidies may distort trade or harm some segments of the US industry, such as the independent film producers, others may have a negligible effect. We need to determine what kinds of subsidies we are prepared to tolerate.

4. **Defining the issue.** The "audiovisual services" sector is very badly defined in the list of services sectors. If the services sub-sectors are defined more accurately, countries may be more willing to take commitments in non-sensitive sectors without worrying about unintended consequences. A technical discussion on classification issues could get the ball rolling in a neutral manner without prejudice to any country's willingness to make commitments at the end of the day.

BACKGROUND:

<u>The General Agreement On Trade In Services (GATS)</u>

The GATS provides a framework of rules governing trade in services. It consists of two main components: general rules (such as the most-favored-nation principle, transparency, and rules concerning domestic regulations), and sector-specific market access commitments (covering measures like quotas and national treatment obligations). There is no formally recognized "cultural exception" in the WTO.

In principle, the general rules apply to all services sectors, although countries are free to negotiate reservations to the rules to maintain existing barriers or even to preserve the ability to introduce new barriers. Such reservations were commonly taken in most sectors, such as construction, accounting, or advertising. At the end of the last round, most countries had agreed with respect to a broad range of service that they would not increase the level of trade barriers. Actual rollback of trade barriers was a relatively rare phenomenon. (In the financial services and basic telecom negotiations that were held after the end of the last round, more progress was made in liberalizing existing barriers.)

The difference between the results in other sectors and the results for audiovisual services was that few countries agreed to <u>any</u> commitments, not even to freeze in place their existing level of barriers. At the end of 1993, only 12 countries had made any commitments in this sector (none of them European.) In the past 4 years, seven new members of the WTO have taken some market access commitments on audiovisual services.

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EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON, D.C.
20508

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APRIL 30, 1999

CONTACT: JAY ZIEGLER
HELAINE KLASKY
AMY STILWELL
(202) 395-3230

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."

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.

Watch List

* * *

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.

BRAZIL

Both the levels of piracy and estimated losses due to piracy of sound recordings, music, entertainment software and motion pictures increased in Brazil in 1998. Concurrently, several international piracy trends converged on Brazil. Pirated optical media product, primarily manufactured in southeast Asia, crossed the porous Brazilian borders, devastating the local markets. For example, the legitimate music and recording market was shaken for four months in a row in early 1998 when it suffered a 30% decline in sales, compared to the same period in 1997. Organized crime elements, both within Brazil and outside, exercised control over the production and distribution of infringing copyrighted products. The isolated efforts of Brazilian police, which did conduct a substantial number of raids, were to no avail. No dent was made in lowering piracy levels. Very few cases of criminal copyright infringement ever made it to the decision stage before a Brazilian judge. For example, the motion picture industry has obtained only one criminal conviction in the last two years, and this sentence was for community service. In response to all these trends, it is apparent that Brazil lacks an articulated strategy that coordinates the efforts of the police, prosecutors, judiciary, and other administrative authorities such as customs, tax officials, and local police authorities.

Brazil is the largest market in the Southern Hemisphere for almost every U.S. copyright industry sector. And it is in Brazil that our industries suffer the largest amount of losses due to copyright piracy in the entire hemisphere — over <u>$821 million</u> in 1998, a tremendous increase from 1997, primarily due to the increase in CD piracy afflicting the music and recording industries. Over the years, the Brazilian government has made numerous promises to U.S. government officials to address the core problems of high piracy and inadequate enforcement. And yet, there has been little concrete action by Brazil to tackle this untenable situation. In fact, recent efforts to revise the procedures in criminal cases have resulted in more defendants in copyright infringement cases being released instead of serving their sentences. A proposal to rewrite the entire criminal code would decrease the level of criminal penalties for copyright infringement, clearly a step in the wrong direction. Already, most sentences are at levels which can hardly be considered deterrent; judges apply the minimal penalties, which usually result in the offenders receiving suspended sentences or probation. Meanwhile, as our industries continue to expand their local presence, increase their anti-piracy investigations and ignite public awareness campaigns, the scope of the problem only worsens.

Given the devastation to the legitimate Brazilian market for copyright products caused by piracy and the Brazilian government's failure to take any concrete measures which effectively deter copyright piracy, IIPA believes that the facts present a compelling case for Brazil to be placed on the Priority Watch List this year.

ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY : 1995 - 1998

INDUSTRY	1998		1997		1996		1995	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	125.0	40%	110.0	30%	100.0	35%	90.0	38%
Sound Recordings/Musical Compositions[1]	290.0	AC 95% CD30%	110.0	80%	80.0	50%	70.0	45%
Computer Programs: Business Applications[2]	283.2	59%	315.7	62%	366.7	70%	307.6	74%
Computer Programs: Entertainment Software	103.2	89%	99.1	87%	92.5	82%	82.5	80%
Books	20.0	NA	26.0	NA	27.0	NA	30.0	NA
TOTALS	821.4		660.8		666.2		580.1	

HISTORY

Bilateral discussions between Brazil and the U.S. on intellectual property have been ongoing for most of this decade. On April 30, 1993, the U.S. Trade Representative designated Brazil as a Priority Foreign Country. A Section 301 investigation on Brazil's intellectual property practices and the provision of fair and equitable market access commenced on May 28, 1993, and was extended through February 1994.

[1] As reported in IIPA's 1998 Special 301 submission, RIAA's estimated losses in 1997 were due to audiocassette piracy only. For 1998, the Recording Industry Association of America (RIAA) reports that audiocassette piracy blankets 95% of the market, causing $110 million in estimated losses. Piracy of music CDs in Brazil afflicts 30% of the market, amounting to $180 million in estimated losses.

[2] 1998 business applications statistics are preliminary. In IIPA's 1998 Special 301 submission, BSA indicated that its 1997 estimates of $299.0 million and 61% were preliminary, and in mid-1998, BSA revised and finalized the 1997 estimates at $315.7 million and 62%.

The Section 301 case concluded when the Brazilian Government committed to take certain concrete steps to improve its IPR regime, including the early implementation of TRIPS, improving protection for computer software, addressing certain tax issues affecting computer software, and improving copyright enforcement in general. As a result of this Diplomatic Agreement in February, 1994, Ambassador Kantor placed Brazil on the Special Mention list on April 30, 1994.

In 1995, USTR elevated Brazil to the Priority Watch List because it had not taken any substantial steps to meet the terms of the Agreement. In April 1996, Ambassador Barshefsky moved Brazil down to the Watch List because of its passage of a modern patent law. USTR noted at that time, however, that "the Administration looks to Brazil to fulfill its longstanding commitments to enact outstanding legislation on computer software and semi-conductor layout designs, and to introduce much-needed amendments to its copyright law." Much to the disappointment of IIPA and our members, there was no public mention of piracy or enforcement, despite private assurances that piracy and inadequate enforcement remained on the bilateral agenda.

Because the copyright and software legislation had not passed and enforcement remained poor, IIPA urged in 1997 that Brazil be elevated to the Priority Watch List. On April 30, 1997, Ambassador Barshefsky announced that her concerns were that "Brazil has not enacted modern intellectual property laws to protect computer software, copyright and integrated circuits," and therefore kept Brazil on the Watch List with an "out of cycle review." USTR kept Brazil on the Watch List after that review, noting with concern that Brazil has not enacted legislation to protect computer programs and copyright, but was encouraged by recent legislative developments, and "expect[s] that Brazil will make progress toward successfully resolving these issues before the April [1998] review."[3] Meanwhile, the local recording industry, in high-level meetings, continued to warn Brazilian officials that the street vendors and "sacoleiros" would soon switch from selling pirate audiocassettes to selling pirated CD products. This warning became a reality in early 1998.

In February 1998, President Cardoso signed the long-fought-for amendments to both the Copyright Law and the Software Law. After acknowledging these legislative successes, IIPA recommended in 1998 that Brazil remain on the Watch List because IIPA and its members remained extremely concerned about inadequate enforcement and the rising losses due to high levels of copyright piracy.

On May 1, 1998, Ambassador Barshefsky removed Brazil from the Special 301 lists, in recognition of its legislative accomplishments. She also added, "However, Brazil must take

[3]Press Release, Office of the U.S. Trade Representative, January 16, 1998.

further significant steps to combat piracy."[4] A U.S. trade/IPR delegation traveled to Rio de Janeiro and Sao Paulo in July 1998 and discussed progress on various intellectual property issues, including copyright enforcement. IIPA also understands that there have been contacts made between U.S. and Brazilian justice and customs officials in the latter part of 1998. Recent U.S. Congressional delegations traveling to Brazil have also raised these copyright enforcement problems with senior Brazilian officials.

Brazil currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program which offers preferential trade benefits to eligible beneficiary countries. Part of the discretionary criteria of this program is that the country provide "adequate and effective means under its laws for foreign nations to secure, to exercise, and to enforce exclusive rights in intellectual property, including ... copyrights." In 1997, Brazil received $2.1 billion in preferential trade benefits under GSP, or 44% of its imports to the U.S. For the first 10 months of 1998, over $1.8 billion in GSP imports from Brazil entered the U.S., approximately 40% of total imports.

PIRACY AND ENFORCEMENT

The "further significant steps" to combat piracy outlined by Ambassador Barshefsky have not yet been taken by the Brazilian government. In fact, CD piracy, especially affecting the sound recording industry, has exploded over the past year. We are not aware of any substantial improvements over the past year within the Brazilian enforcement infrastructure which have reduced the levels of piracy within that country. Below is a summary of the types of enforcement deficiencies which the copyright industries continue to face in Brazil. Many of these area also violations of Brazil's bilateral commitments to the U.S., and/or of the TRIPS obligations which become effective for Brazil on January 1, 2000:

- Failure to impose deterrent criminal penalties: A major problem has been the low penalties imposed in the few criminal copyright infringement cases which have been decided by the courts. This problem may be alleviated if the Penal Code is reformed to index penalties for inflation and if the courts actually impose deterrent levels of penalties in copyright cases. Regulations aimed at reducing the backlog of court cases further undermine and weaken deterrence. Courts usually suspend jail terms for first offenses, thus returning defendants to the streets to return to their illicit activities. During 1998, throughout the entire country, the courts issued only six judgments in criminal copyright infringement cases, five for the recording industry and one for the motion picture industry; all imposed the lowest penalties possible. In the single video piracy case, the judge imposed a sentence of community service, where the defendant was ordered to show films to poor children. In another case which is still in the

[4] Press Release, Office of the U.S. Trade Representative, May 1, 1998.

preliminary stages, the prosecutor responsible for a video piracy case – where the defendant was caught red-handed with 152 VCRs – is threatening to drop the case for "lack of evidence."

- Ineffective border measures. Because of the lack of coordination of the actions of the Brazilian customs and federal police, border controls are lax and must be tightened to stop the massive amounts of pirated and counterfeit product (including piratical CDs, audiocassettes, videocassettes and videogames) which enter Brazil from Paraguay, particularly at the cities of Foz do Iguazu, Corumba, Campos Grande and Maringa. Bolivia and Uruguay are also growing sources of counterfeit production for the Brazilian market. Brazil promised the U.S. years ago that it would work with the Paraguayan Government on border issues, but only recently have enforcement efforts been observed at the Brazilian border. Other ports of entry for infringing product include the main airports and the seaports such as Santos, Paranagua and Manaus. While coordination efforts may be underway, they have not resulted in any tangible improvements on-the-ground.

- Ineffective seizures of infringing goods and materials: In some cases, police do not seize all the evidence (infringing goods and materials) found at a raid site. This situation could be improved if the Penal Code were amended to clearly provide such authority.

- Delays in criminal cases: Industries report that court delays in criminal copyright infringement cases can take as long as two to three years in the courts of first instance. Not surprisingly, there is a tremendous backlog of cases in the Brazilian courts. In addition, the police often keep the case files in their offices for seven or eight months before sending them forward to the prosecutor's office to file the criminal case.

- Lack of attention and coordination among enforcement agencies. There seems to be a general lack of interest in effective enforcement of the copyright law throughout the enforcement system, including judges, prosecutors and customs officials. While police efforts have been moderately successful at the raiding level, they too are becoming discouraged because the actions they take rarely reach conclusion in the courts. There is a lack of clear and direct instructions from the highest levels, requesting that the various enforcement authorities (such as Receita Federal, Itamarty, Policia Federal, Policia Civil, Alfandega) to act on their own initiative. While certain studies to examine the piracy problem may have been conducted internally to the Brazilian government, no centralized, comprehensive government plan exists to address piracy, to the best of our knowledge.

Furthermore, the level of police attention to piracy varies throughout the country. In some regions, certain industries achieve adequate cooperation with police officials. Prosecutorial attention to copyright offenses is inconsistent, especially in the provinces. Importantly, most of the enforcement efforts are commenced by investigations conducted by the copyright industries themselves, and are not the result of any major Brazilian government initiatives. The police, prosecutors and judges have demonstrated a lack of understanding of IPR issues in many instances.

- Delays in civil cases: Civil cases can take up to a year to come to trial. However, most defendants appeal, and this process can take up to three years before a judgment is issued by the relevant superior court, with some notable exceptions.

- High costs in civil cases: Judges continue to set high bonds in piracy cases brought by foreign plaintiffs as a condition to granting search and seizure orders. In one software piracy case, the judge set a bond of $55,000, which led to a decision to cancel this action. The high cost unreasonably deters right holders recourse to these procedures.

As detailed below, CD piracy exploded in Brazil in 1998, leading to dramatic increases in losses for U.S. recording companies, music publishers, film companies, book publishers, and publishers of entertainment software and business software. Part of the problem involves the international distribution of optical media product, emanating primarily from production facilities in southeast Asia. Such optical media distribution networks are under the control of organized criminal elements including Chinese, Taiwanese, Paraguayan, Bolivian, Panamanian and Brazilian nationals. Chinese and Korean groups control the pirate CD distribution in Sao Paulo. These groups are known to bribe the police in order to facilitate distribution. Another problem involves the organized crime element of Brazilian nationals who are involved in retail sales of pirated products within Brazil.

MOTION PICTURES

For the second year in a row, estimated trade losses due to motion picture piracy have risen significantly, and are now at $125 million for 1998. The estimated level of video piracy jumped from 30% in 1997 to 40% in 1998. Half of the pirated material in video clubs is copied back-to-back from the legitimate product which the clubs purchase, while the other half is purchased from clandestine duplication laboratories. Small duplication facilities, attached to or near these video clubs, maintain on the average three to six VCRs.

Excellent quality counterfeit videos, sold by clandestine duplication and distribution organizations, also are common throughout Brazil. These organizations use screening cassettes and laser discs released in the U.S. as masters for illegal duplication. Typically pirate video titles produced by these labs are on the market before or at the same time as the local theatrical release of the title. To counter the use of counterfeit security stamps by these organizations, the Brazilian Video Union (UBV) adopted a new security stamp in 1994. As of year-end 1998, UBV members will adopt a completely new and uniform labeling of the tapes, including security marks. According to the UBV, there are about 8,000 video outlets in Brazil, many of which are registered with the UBV, and some participating in the Video

Legal program, by which they agree not to stock pirate videos and to allow inspection of their inventories.

Street markets in Brazil are filled with pirate video cassettes. Many of the illegal videos sold by street vendors in São Paulo and Rio de Janeiro come across the border from Paraguay. Street vendors now change locations frequently and display only a small part of their inventory, keeping the bulk of it concealed under tables, in vans parked nearby, and even in nearby apartments. It has been very difficult to get the police to take actions against street vendors of pirate videos.

Unauthorized public performance of motion pictures is a smaller piracy problem in Brazil. Small theaters in the interior of the country exhibit films using rented video cassettes; apartment buildings and hotels retransmit unauthorized material over closed circuit systems; and videos are shown to the public by clubs, associations and schools. In most cases, warning letters from the UBV have been sufficient to stop these practices. The new copyright legislation in 1998 clarified the prohibition against such exhibitions.

Enforcement efforts during 1998 did not match the pace achieved in 1997. During 1998, 38 laboratories were dismantled, and 326 VCRs were seized. The Motion Picture Association (MPA) initiated 1,643 investigations, conducted 1,827 raids and seized 243,581 pirate videos. MPA investigations uncovered three large duplication centers in the São Paulo area. In October 1998, MPA conducted its <u>largest</u> raid <u>ever</u> in Brazil on a video duplication center, which used a private residence as its front. This raid, run in conjunction with the UBV and the police in the City of Santo Andre, resulted in the seizure of 152 VCRs and fake security stickers. Much to the shock of MPA counsel, the prosecutor is now threatening to drop this case, citing "lack of evidence."

Out of these investigations and raids, MPA reports that 235 criminal investigations were initiated in 1998. Of these 235 cases, 97 were suspended, 51 were dismissed, and one case was decided. Most of the 51 cases dismissals occurred either because the accused was found not to have the criminal intent to engage in copyright infringement or because the experts' reports were not conclusive enough to identify the seized tapes as piratical. The 97 cases were suspended under Law No. 9099, which provides for the suspension of sentences for first-time offenders. Of these cases, the maximum compensation awarded was R$4,654 (about US$2,580) for 179 pirate tapes (less than $15 per tape). These 1998 cases represent a sharp drop from the level of court actions which occurred in 1997 when MPA reported that 645 legal actions were initiated, resulting in 52 court decisions and 16 out-of-court settlements. The main reason is that criminal actions in the State of Bahia and Pernambuco were completely ignored by local prosecutors in 1998 and were entirely dropped.

In all of Brazil in 1998, only one judicial decision for copyright infringement involving audiovisual works was reached, and the sentence was community service. As a result, for the <u>second</u> year in a row, <u>not one</u> infringer of audiovisual works has received a sentence of imprisonment. Judges have been suspending the cases under Law No. 9099 and ordering compensation which varies from providing a few pounds of food for public distribution to a penalty of $20 per tape (or less) to be paid to the MPA member companies. This low level of penalties does not come close to meeting the TRIPS Article 61 standard of providing for deterrent "criminal procedures and penalties to be applied" in cases of commercial piracy.

Case backlogs constitute a serious enforcement problem, caused by burdensome substantive and procedural formalities in the law and a general lack of resources. Enforcement efforts sometimes fail due to the lack of sufficient skilled government agents to investigate violations and due to technical deficiencies in the handling and examination of evidence.

SOUND RECORDINGS AND MUSICAL COMPOSITIONS

Alarming increases in the levels of CD piracy in Brazil over the past year are threatening to destroy the world's sixth largest market for sound recordings and music. Brazil's audiocassette market has been completely lost to pirates for years, and 1998 showed no reversal in that pattern. Cassette piracy now accounts for 95% of the cassette market, with the legal industry selling 500,000 audiocassettes and the pirates selling approximately 60 million units in 1998. Estimated losses due to audiocassette piracy are $110 million. Audio CD piracy is also on the rise, blanketing about 30% of the Brazilian market and causing about $180 million in estimated trade losses. In all, the sound recording and music industries suffered $290 million in estimated losses due to piracy in Brazil in 1998.

The main reason for the rapid increase in CD piracy is the lack of action by the Brazilian government against distribution centers and against street vendors, who switched from selling pirate audiocassettes to pirate CDs (which have a higher profit margin than cassette piracy). In addition, the regional CD problem caused by neighboring Paraguay, and its links to southeast Asia, have not improved over the past year. Rising CD piracy has caused commercial sales of legitimate product in Brazil to fall 20% in 1998 compared to 1997. For four months in early 1998, the legal recording market sales dropped 30%, compared to the same period in 1997. This decline is stunning compared to industry forecasts for 20% positive sales growth for 1998 in Brazil.

For years, the pervasive audiocassette piracy has basically destroyed the legitimate Brazilian market. In the southern cities and in the interior, the pirate cassette market is still strong. It is important to note that almost 75% of this pirate product in Brazil affects Brazilian repertoire. The pirate market switched very rapidly from audiocassettes to CDs, as street vendors, flea markets and "sacoleiros" crossing from Paraguay into Brazil increasingly sold CD product. This phenomenon is obvious in major cities like São Paulo, Salvador, Curitiba, Recife, Fortaleza, Rio de Janeiro, and even in Brasilia, where more and more street vendors now sell pirate CDs. In fact, industry and police anti-piracy efforts in São Paulo have caused the street vendors to react and create new strategies to avoid raids. These vendors now are

OPTICAL DISC PIRACY IN ASIA PACIFIC

ISSUE

Optical disc piracy in Asia has reached epidemic proportions, causing substantial losses to U.S. copyright interests. It is imperative that governments in the region find the will and means to tackle this problem head on. **The first priorities should be to shut down illegal manufacturing facilities and establish registration of plants.**

BACKGROUND

Optical disc piracy, including pirate video compact discs (VCD), is growing at an alarming rate in Asia and it is having a very direct and damaging impact on U.S. film producers. Within a matter of days after a film is released theatrically in the United States, pirates produce VCDs of the film and sell them in markets across Asia and beyond. The U.S. film industry is also very concerned about the threat of piracy to other optical disc formats, including Super VCD (SVCD) and Digital Versatile Disc (DVD).

China started out as the major source of pirate VCD manufacturing. Active enforcement by the China government in 1997 drove illicit production facilities to other markets in Asia. **Today, the major pirate production centers are Hong Kong, Macaü, Taiwan, and Malaysia.** Suspect production facilities exist in virtually every Asian country and, as enforcement strengthens in one country, pirate production is moved to a "safer" venue. The export of pirate VCDs from these markets is thriving, with product even being sold over the internet. Pirate product bound for Latin America has been seized in Europe and is also now seen in Europe, the Middle East and Africa.

Optical disc piracy is particularly alluring because of the high profit margins. Pirates can produce a VCD for as little as 30 U.S. cents and sell it for as much as US$10.00. From the pirate's perspective, the potential rewards far outweigh the perceived risk of being caught. As a result, there is a tremendous overcapacity in production in the region and the markets are being flooded with pirate VCDs.

To illustrate, there are at least 312 optical disc production facilities in the Asia Pacific region and this number is growing at an rapid rate. Some of the facilities have one "line" for manufacturing but many have multiple lines. Each line is able to produce an average of 3.5 million discs a year.

If each facility has an average of 3 lines (the average in Hong Kong based on plant registrations), production capacity is 3.3 billion a year. This dwarfs legal orders. The production capacity of registered optical disc plants in Hong Kong alone is over 700 million in a market with a population of 6.3 million.

Recent seizures also illustrate the size of the problem. A total of 3.4 million pirate VCDs were seized in MPA raids in the Asia Pacific region during the month of August, bringing VCD seizures in the region for the year to over 32 million. This is less that 1% of the estimated production capacity for the region. The value of optical disc manufacturing equipment seized in just one raid totaled US$60 million. The VCD format now dominates the Asian piracy market. By comparison, MPA seized approximately 320,000 videotapes in the same period. The scale and scope of pirate optical disc production would suggest that organized crime is involved.

RECOMMENDATIONS

The conditions in each country are different but there are some universal steps which must be taken to attack optical disc piracy.

1) First and foremost, the leadership in each government needs to understand how serious this problem is and demonstrate the political resolve to deal with it.

2) Each country must tightly regulate and monitor the manufacture of optical discs. The regulations should include registration requirements, the right of inspection, mandatory use of identification codes on all optical discs, and stiff penalties for violations of registration requirements, including copyright violations. Seized machinery and equipment should be forfeited.

3) Each country should control the import of optical disc manufacturing equipment and the raw materials (polycarbonate) needed to produce these discs.

4) Customs should seal off the borders to the import and export of pirated optical discs.

5) Courts should handle cases expeditiously and should be encouraged to impose deterrent sentencing on those who are convicted. Information on enforcement and prosecution should be readily available.

MPA SUPPORTS USTR'S DECISION TO CONTINUE MONITORING MALAYSIA

Greece and Italy Remain on Priority Watch List, Brazil on Watch List

Contact: Rich Taylor
Phuong Huynh
(202) 293-1966

FOR IMMEDIATE RELEASE

Washington, D.C...Friday, April 30, 1999...As Special 301 remains "the most important tool in the fight against piracy," Jack Valenti, Chairman and Chief Executive Officer of the Motion Picture Association (MPA) commended the United States Trade Representative's latest Special 301 report. Valenti supports USTR's announcement to delay a decision on Malaysia's Special 301 ranking in order to monitor further the efforts of the Malaysian Government to reduce pirated optical disc production and export. An out-of-cycle review will be conducted in September 1999.

"We are grateful for USTR's assistance in initiating a dialogue with the Malaysian Government about the importance of controlling the serious optical media piracy problems there," said Valenti. "The Government has taken some important first steps by conducting factory and retail raids, but there is still much more to be done. The Malaysian Government must become more proactive in fighting piracy, using all the resources at its disposal in all stages of the legal process including stern enforcement and conviction."

Valenti noted that the Malaysian Government has conducted 6 factory raids to date. There are at least 22 known optical media production facilities with 90 illegal production lines for optical discs (CD, CD-ROM, VCD and DVD.) The combined output of the lines overwhelmingly exceeds local demand. As a result, pirated products produced in Malaysia are exported to all parts of the world. Valenti called on the Government to continue the raids on a regular basis and to confiscate any equipment involved in illegal production. "The authorities must shut down these illegal production plants," said Valenti.

In addition to mass production of illegal products, piracy is pervasive on the streets. Night street markets are saturated with pirated optical discs openly available for sale. A recent survey of one popular street reveals that at least 79 stalls were selling pirated optical media products. Valenti said, "The simplest evidence of Malaysia's sincerity and commitment to eradicate piracy is to clear the streets of these vendors."

Even if the pirates are identified and arrested, the judicial system fails to demonstrate any enforcement. Prosecution is erratic, and prosecutors continually fail to aggressively push cases through the system. "In all of 1998, there was not one single conviction of a movie copyright thief," noted Valenti. Moreover, although Malaysia has impressive maximum penalties on record for copyright theft, no judge has exacted harsh punishment on any pirate be it a retailer, distributor or plant owner. No pirates have ever served jail sentences nor received heavy fines. "The lack of adequate enforcement in the judicial system undermines Malaysia's commitment to put pirates away," said Valenti. "I challenge the Government to show a steadfast determination to rid the country of piracy."

USTR again named Greece and Italy to the Priority Watch List. Greece was cited for its failure to take necessary enforcement measures to stop unlicensed TV stations from pirating American filmed entertainment. Italy was singled out for its failure to date to pass the Anti-Piracy Bill, which would increase criminal penalties against prosecuted pirates.

Brazil returned to the Watch List due to its large and growing piracy problems and its failure to provide effective criminal enforcement in the judicial system. The Brazilian Government shows no significant improvements toward deterring pirates. The courts do not impose strict sentences and the criminal cases are often backlogged.

Valenti continued to praise the efforts of U.S. Trade Representative Charlene Barshefsky, who is "zealous in her conviction to protect America's intellectual property, her most prized trade possession."

# # #

MALAYSIA

IIPA files this submission to provide a factual basis for USTR action on Malaysia, and makes no recommendation as to Special 301 status at this time.

The Malaysian government is to be commended for making a strong effort in the field of end-user business software piracy. However, Malaysia, which has not appeared on a Special 301 list since early in this decade, is losing its market to digital piracy. Pirate optical media mastering and replication operations, fleeing crackdowns elsewhere in the region, are moving to Malaysia. As a result, pirate CDs, VCDs, and CD-ROMs flood the country's domestic market, and Malaysia has become one of the world's leading exporters of these illegal optical media products throughout Asia and , increasingly, to other markets worldwide. Meanwhile, although raids against pirate retailers, distributors and even manufacturers are frequent, production equipment is routinely returned to the pirates, and judicial verdicts, when they finally arrive, have no deterrent value. Reversing this trend requires the adoption and implementation of a comprehensive regulatory system for the import, export and operation of optical media production equipment and raw materials; sustained and consistent anti-piracy enforcement policies by a broad range of Malaysian government entities; and the prompt and consistent imposition of deterrent penalties on commercial pirates by the Malaysian courts. Malaysian government discussions with industry on optical media production regulation and other critical issues are presently underway and there are indications that the Malaysian government may be prepared to take active steps to tackle the country's piracy problem.

ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY : 1998

INDUSTRY	1998	
	Loss	Level
Motion Pictures	40.0	80%
Sound Recordings/Musical Compositions	13.0	70%
Computer Programs: Entertainment Software	135.2	99%
Books	8.0	NA
TOTALS	196.2	

HISTORY

IIPA first identified Malaysia in 1985 as a country with a serious piracy problem, and supported the bilateral negotiations that led to Malaysia adopting a comprehensive copyright law in 1987, and joining the Berne Convention in 1990, thus extending protection to U.S. works. Malaysia has not appeared on any Special 301 list since it was removed from the Watch List in 1991. IIPA has not filed a report on Malaysia since 1994, when it prepared a "Special Comment" on Malaysia calling for judicial reforms so that deterrent sentences could be imposed on copyright pirates.

PIRACY AND ENFORCEMENT

GENERAL OBSERVATIONS

Two shortcomings in the Malaysian regime of enforcement against copyright piracy hurt all industries whose protected material is embodied in optical media formats. First, Malaysia has become a virtual safe haven for the production of pirate optical media products (including audio CDs, video CDs, DVDs, and CD-ROMs), and a launching pad for exporting these pirate products around the world. Second, while Malaysian enforcement authorities conduct an active program of raiding retailers and other vendors of pirate products within the country, the courts have failed to impose any deterrent penalties on pirates.

As authorities crack down on pirate optical media facilities in China, Hong Kong, Macau, and other jurisdictions, Malaysia becomes an increasingly attractive destination for the organized criminal enterprises that are suspected to be running these factories and distributing their output worldwide. There are now up to 90 optical disc replication lines operating in Malaysia (including two mastering facilities), with an estimated annual production capacity of 315 million units, a figure that far exceeds the legitimate demand for optical media products either for domestic production or for authorized export. Malaysian authorities have conducted virtually no effective enforcement against these optical media facilities. Through tax incentives and other means, the Malaysian government has aggressively promoted the development of optical media production in Malaysia, which had only one such facility as recently as 1996[1]; but Malaysian authorities have thus far failed to take adequate measures to ensure that these facilities operate in a manner consistent with Malaysia's copyright laws.

Malaysian authorities have undertaken some highly publicized enforcement actions against pirate optical media facilities; but, as discussed in more detail below, these actions have lacked any deterrent effect. They may have interrupted pirate production briefly at a few facilities, but they have stopped it nowhere, and they have not taken any action to date to stanch the flow of pirate optical media products being exported from Malaysia on a continuous basis. The solution requires the adoption and strict implementation of a rigorous registration system for the import and export of optical media production equipment and raw materials (polycarbonate), and of a comprehensive licensing system for the operation of such facilities in Malaysia, including obligations to employ source identification (SID) codes on all mastering and replication equipment, strict accounting for polycarbonate supplies, full transparency of all orders for mastering and replication services, and surprise spot inspections to assure compliance. The criminal syndicates involved in pirate optical media production and distribution are fleeing jurisdictions (such as Hong Kong) which have put such regulatory systems into place; they are flocking to jurisdictions that have thus far declined to do so, and Malaysia is evidently at the top of the list of favored destinations. Until such a regime, backed by deterrent penalties which are actually imposed, is adopted in Malaysia, the chances of reversing the downward spiral into a pirate-dominated market are slim. . We note that discussions between government officials and industry representatives focusing on issues of optical media piracy have recently been convened and are ongoing at the time of this submission.

There has never been any shortage of raids on Malaysia's ubiquitous vendors of pirate CDs, VCDs, CD-ROMs and other optical media product or other infringing materials. What has been almost non-existent is the imposition of deterrent penalties by the courts on participants in this nationwide pirate bazaar. As described in more detail below, the judicial process is slow, and convictions are rare. Even when a defendant is convicted, he is sent on

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[1] "MIDA withdrawing licence of errant CD manufacturers," Business Times (Malaysia), June 17, 1998.

his way with a minimal fine. Anti-piracy enforcement amounts to at most a nuisance to the business of Malaysian pirates; the quantities of product seized, while impressive on paper, are quickly replaced by new inventory. Recent court decisions threaten to slow down even further the pace of prosecution and increase its costs for right holders. In short, Malaysia's enforcement system against optical disk piracy has become dysfunctional. Vigorous and sustained enforcement of copyright, censorship, licensing, revenue and customs laws are all urgently needed. These should be backed up by courts that demonstrate their willingness to impose deterrent sentences on commercial pirates, as Malaysia will soon be under an explicit international obligation to do (TRIPS Articles 41 and 61).

MOTION PICTURES

Malaysia is fast becoming one of the world's leading producers and exporters of pirate video compact disks (VCDs). Within a few days after a U.S. motion picture open in theaters in the United States — and in some cases, even before such theatrical release — VCD copies are widely available on the streets of Malaysia, long before the title is legitimately available in any video format anywhere in the world. Sold openly in pirate bazaars throughout the country, notably Petaling Street in Kuala Lumpur and Holiday Plaza in Johore Baru, at prices as low as US$2, pirate VCDs escape Malaysia's strict censorship laws; thus, once legitimate (censored) product arrives in the market, it is not only later and more expensive than the pirate VCDs, it is also less attractive to many consumers. Pirate markets operate without fear of police enforcement; Holiday Plaza merchants even offer delivery services to Singapore for volume purchasers. Not surprisingly, all legitimate distribution channels for U.S. motion pictures — theatrical exhibition, home video, and broadcast — are devastated by the flood of pirate product. Video piracy rates are estimated at 80% (up from 65%), meaning that pirate copies outnumber legitimate copies of U.S. films on video in Malaysia by a ratio of four to one. Losses to the U.S. motion picture industry during 1998 are estimated at $40 million, up from $32 million in 1997.

The impact of uncontrolled VCD piracy in Malaysia spreads well beyond the country's borders. The vast majority of the pirate VCD product that is so prevalent in Singapore originates in Malaysia. Malaysia is also the primary source of pirate VCDs in the Indonesian market. In the Philippines, Malaysian salesmen take orders for pirate VCD titles to be manufactured in Malaysia for delivery in Cebu. Pirate VCD product from Malaysia has also been seized in Taiwan, India, South Africa, Canada, and in the U.K. and other European countries. Pirate DVDs shipped from Malaysia have been seized in France. Pirate Malaysian discs intercepted in Italy were destined for Paraguay, the jumping off point for pirate distribution throughout Latin America. Indeed, distributors in any country in the world can easily order pirate VCDs from a number of World Wide Web sites based in Malaysia. In short, VCD piracy originating in Malaysia is polluting markets all around the globe.

Malaysian authorities are well aware of the presence of pirate optical media plants in their country, and over the past two years have even conducted six highly publicized raids against them, some of them employing helicopters and armored personnel carriers and resulting in dozens of arrests. But the bottom line is that these enforcement steps have been completely ineffective. Only the first of the raids — carried out in March 1997 — has resulted in the forfeiture of any optical media production equipment; in that case, the plant's proprietor was fined RM 75,000 [US$31,000] (or less than RM 2 [US$0.80] per pirate VCD seized), but was allowed to retain his operating license.[2] In the next four cases, production equipment, seized with great fanfare, was returned to the pirate on bond, and the plants are back in operation today. In the most recent and most notorious case, enforcement agents conducting a July 31 raid on two pirate plants in Kepong, although authorized under the law to seize production equipment, refused to do so, a decision later defended by the Minister of Domestic Trade and Consumer Affairs as "proper in the current economic climate."[3]

Enforcement has been no more effective against distributors and retailers of pirate product. Malaysian authorities carried out a total of 798 raids against audio-visual piracy in 1998 and seized more than 1.1 million pirate VCDs. Not a single criminal conviction has yet resulted from these raids. The system has produced some convictions in cases arising from raids conducted in previous years, but never any deterrent penalties. For instance, in the 400 cases arising from raids carried out in the first six months of 1997, not a single defendant was sentenced to any jail term. Among the 91 cases in this sample (other than the VCD factory case cited above) in which more than 100 pirate VCDs were seized, the highest total fine (against two defendants) was RM6000 (US $1600), which works out to barely 1 ringgit (US$0.26) for each of the 5871 VCD's seized from the pirate distribution center in that case. All other cases resulted in lower fines, when the defendant bothered to show up at all.

Uncensored and unauthorized video titles are not only sold openly in Malaysia, they are also publicly performed in mini-theaters in some parts of the country. Although the violations are notorious — some mini-theaters in East Malaysia even advertise the illegal showings of banned films in local newspapers — the authorities do almost nothing to stop them. The Board of Film Censors lacks resources and motivation, and in any event can levy only a small fine for sale or performance of uncensored material. FINAS, the National Film Development Corporation, which licenses both video outlets and theaters in Malaysia, never suspends or revokes those licenses, even of establishments that repeatedly violate copyright.

Over the years, the Malaysian government has made a number of commitments to step up the fight against video piracy: by stationing a permanent police post in Petaling Street and

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[2]Currency conversions in this sentence based on 1997 rates.

[3]"Minister defends decision not to seize CD machines," New Straits Times, August 8, 1998.

Holiday Plaza, by taking action against landlords who lease space to known pirates, by clearing public spaces of pirate vendors, and by undertaking sustained, repeated enforcement actions against pirates. None of these things has ever happened. Instead, in recent months, the enforcement situation has only deteriorated; the Ministry of Domestic Trade and Consumer Affairs (MDTCA), the primary enforcement agency, has run fewer raids, and finally none. Only the involvement of the Royal Malaysian Police allowed raids against VCD pirates to continue for a time; now they have ceased altogether.

To complete the bleak picture, a December 1998 decision of the Sessions Court in the Sun Movie case has thrown yet another roadblock in the path of enforcement of copyright for U.S. motion pictures. This decision adopts a strict reading of Section 42 of Malaysia's Copyright Act, and held that an affidavit on ownership and subsistence of copyright must be executed by a responsible officer of the company claiming copyright before it will be given prima facie effect. This overturns the long-standing practice of accepting the affidavit of the local representative of the company. The prosecution has refused to appeal this decision and MDTCA has threatened to drop all pending cases unless affidavits from corporate officers are substituted for those already submitted. The Sun Movie decision, by requiring the execution and transmittal of affidavits by U.S.-based officers of motion picture studios, will increase the cost and exacerbate the delays endemic in the Malaysian court system, and raises the specter that copyright owners will be forced to fly their corporate officers across the Pacific to provide live testimony on the essentially uncontested issue that copyright subsists in commercially released motion pictures and that the studio in question truly owns the copyright. These developments raise serious questions of whether the Malaysian enforcement procedures are becoming "unnecessarily complicated or costly," as prohibited by Article 41 of TRIPS.

SOUND RECORDINGS AND MUSICAL COMPOSITIONS

The recording industry has also felt the impact on the Malaysian market of rampant optical media piracy. The Recording Industry Association of Malaysia has estimated that legitimate sales plummeted 50% last year, and that pirates hold half of the overall Malaysian market. The plethora of outlets for illegal copies of recordings has caused one-fifth of the legitimate music outlets to close.[4] The Recording Industry Association of America (RIAA) estimates losses to the U.S. recording industry at $13 million in 1998, reflecting a piracy level of 70% with respect to international repertoire.

Malaysia has become one of the hubs of a worldwide audio piracy distribution system, with Malaysian-produced pirate CDs seized last year in London, Brazil, Australia, and many

[4]Farrah Mustapa, "Call for probe into raid on VCD plants," New Straits Times, August 4, 1998.

KOREA – Screen Quota

SUMMARY: American motion picture distributors are unfairly crippled in their effort to have motion pictures shown in Korean cinemas. Under Korean law, cinemas must reserve nearly a third of screen time for local film. This restriction not only limits the access of American filmmakers to the Korean market, but has also discouraged foreign investment in cinema building in Korea at a time when the country is in need of outside investment. For years the American motion picture industry has directly discussed this problem with officials of the Republic of Korea, to no avail. Thus, US industry is seeking support from the US Government to convince the Korean Government to reduce this trade barrier.

BACKGROUND: Under Article 19 of Korea's Motion Picture Promotion Implementing Decree, Korean cinemas are required to show Korean films 146 days of every year on each screen. The Ministry of Information has the authority to lower the screen quota, at its discretion, by 20 days, to 126 days, and cinema owners may earn a further 20 day reduction in the quota by showing local films during four lucrative holiday periods, or by participating in an on-line ticketing network. Notwithstanding these reductions, the minimum screen quota remains at 106 days per year.

The intended purpose of the screen quota is to provide support for local filmmakers. In reality, however, an obligation to screen movies does little to support local production. Consumers cannot be forced to attend exhibitions of "quota" films, and the commercial sector – exhibitors and distributors alike – indirectly bear the costs of the obligatory screening of movies that have little or no commercial appeal.

American film distributors, through their trade association, the Motion Picture Association, have voiced concern over this restriction for years in a series of filings with the United States Trade Representative, in meetings with Korean officials, and through countless visits to Seoul to meet with all involved parties. Korean officials have been intransigent, and the restriction remains in place.

Further exacerbating the effect of the quota, the MPA has learned that a number of international exhibition companies are interested in constructing new, modern, multiplex cinemas in Korea, but have delayed or postponed their plans as a result of the screen quota. The screen quota, which forces exhibitors to screen unprofitable films, lowers the financial return on investments in cinemas, making such ventures less profitable, or not profitable at all. Not only does the Korean economy need investment in general, but the cinema sector is in need of new construction. Furthermore, new cinema construction would increase the number of screens in Korea, and provide more opportunities for Korean filmmakers to have their works shown.

One solution to this problem would be to completely and immediately eliminate the screen quota. An alternate solution would be for the Korean Government to commit to an aggressive, phased reduction of the quota, lowering it over a short period of time to a minimal level of 50 to 60 days without conditions.

Politically, the Koreans will have to offer some comfort to their domestic film production industry, who are convinced that they will not survive without quotas. MPA has recommended to Korea that they consider providing a higher level of direct subsidies to the local industry using all the proceeds from the box office tax that is collected for the Cultural Fund. MPA has also offered cooperation to the Korean film industry and expressed willingness to host a delegation of Korean industry representatives to visit Los Angeles.

KOREA - U.S. COOPERATION IN FILM INDUSTRY

The Motion Picture Association and its member companies are willing to cooperate with the Korean film industry. MPA has some ideas, but needs to hear from the Korean industry what kinds of technical assistance, training, exposure to new technologies, or other types of cooperation would be of greatest interest.

Possible Areas of Cooperation:

1) Investment in Multiplexes: Investors from the United States, Australia and other countries are prepared to invest at least $500 million in Korea in multiplex cinemas with state-of-the-art sound and projection systems and comfortable seating. In the United Kingdom, France, Italy, Germany, Spain, and Mexico, attendance has increased with the building of new multiplex theaters, creating more viewing opportunities for local producers.

2) Commercial Cooperation: Three MPA member companies have already entered into deals with production companies to invest in film production and to handle theatrical distribution for Korean films in Korea. Twentieth Century Fox alone has entered into deals with two Korean production companies, CinemaService and Hapdong, to invest in 11 movies, of which 6 are already under production. Other companies, including Sony Entertainment have committed to finance several productions in exchange for distribution rights. Disney's Buena Vista Korea handled theatrical distribution of the Korean film "***Fragrance of a Man***" produced by Dooincom, last year. Such cooperation is likely to continue, as Korean and U.S. companies develop good working relations.

3) Technical Training in Korea: Various types of technical assistance and training would be possible.

The U.S. side would:

- arrange for an American film director or other industry expert to come to Korea for several weeks to provide master classes for Korean film industry personnel;
- stage script-writing seminars in Korea to teach the importance of dramatic narrative;
- develop seminars to increase marketing efficiency;
- arrange for some talented Korean film markers to study in the U.S.A;
- facilitate visits of delegations of Korean film producers to U.S. state-of-the-art production facilities.

The Korean industry would be asked to:

- identify a specific area or field in which they wanted instruction;
- nominate Korean film industry professionals to participate in the program;
- for training in Korea, cover some of the expert's in-country expenses and/or provide logistical support.

4) Technical Cooperation in Cinema Equipment Technology a special seminar in Korea could be arranged by the International Theatrical Equipment Association on technological developments in cinema equipment, such as electronic ticketing or film projection technology. A Korean delegation would also be welcome to attend the 1 1/2 day seminar on new technologies in early December in Hong Kong that precedes the annual CineAsia trade show.

United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

April 28, 1999

The Honorable Madeleine K. Albright
U.S. Secretary of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Madam Secretary:

The State Department and the Office of the United States Trade Representative have been active in the negotiation of two bilateral investments treaties, which are expected to be transmitted soon to the Senate for its advice and consent to ratification. Various American businesses have alerted me to existing investment and trade disputes with two of the potential treaty partners -- Korea and Croatia.

The U.S. Motion Picture Association has informed me that U.S. motion picture companies are restricted from business in Korea by a quota requiring Korean films be shown in theaters at least 146 days each year. It certainly would be odd for the United States to proceed with consideration of a treaty with Korea that establishes basic investment standards, including a requirement that national and foreign businesses be treated the same, when Korea remains in violation of this key treaty commitment.

The Euro Broadcasting Corporation (a Delaware corporation) has contacted me regarding the failure of a local network in Croatia to pay more than $3 million in fees it owes a U.S. company that supplied the network with copyrighted programming. In addition the network continues to broadcast the U.S. programming in violation of the licensing covering the program. Again, I hope this violation of basic commitments set out in the proposed investment treaty with Croatia will be resolved before the Senate is asked to consider the treaty.

Madam Secretary, I will work with you and U.S. Trade Representative Charlene Barshefsky to eliminate these trade restrictions prior to consideration of any investment treaties with these countries by the Senate Foreign Relations Committee.

Sincerely,

Jesse Helms

JESSE HELMS

cc: The Honorable Charlene Barshefsky

Korean Film Production

Year	# of Local Films
1998	34
1997	59
1996	65
1995	64
1994	65
1993	66

Film Admissions

Year	Local Admissions	Total Admissions	Local as % of Total Admissions
1997	10,000,000	43,000,000	23%
1996	9,769,429	42,268,250	23%
1995	9,443,319	45,130,424	21%
1994	9,933,762	48,353,326	21%
1993	7,689,345	48,230,788	16%

Screens in Korea

Year	Total # Screens	Screens in Seoul
1997	502	125
1996	511	123
1995	577	132
1994	629	151
1993	640	152

Number of Screens in Asia-Pacific

	# Screens 1993	# Screens 1997	Percent Change 1993-1997
Japan	1,734	1,884	+ 9%
Malaysia	221	358	+ 53%
Singapore	76	155	+ 104%
Thailand	247	360	+ 46%
Taiwan	524	633	+ 21%
Australia	924	1,422	+ 54%
New Zealand	210	269	+ 28%
Korea*	640	502	- 22%

* Korea is the only territory in the list which has a screen quota.

MARKET ACCESS AND PROTOCOL COMMITMENTS

I. PROCESS OF CHINA'S WTO ACCESSION

China's WTO accession represents an opportunity to address a broad range of unfair trade practices, trade barriers, discriminatory regulatory processes, lack of transparency, and other policies which limit American participation in the Chinese market or unfairly affect American trade. The broad set of commitments China has made today, and the substantial negotiations which remain to be held, will advance American interests in a fundamental way, and complement broader policies intended to move China toward internationally accepted standards of conduct.

China's accession process includes bilateral negotiations including market access (with the United States and other trade partners); bilateral negotiations toward a "Protocol" (i.e., rules) addressing U.S. concerns on issues including dumping, safeguards, and others; and multilateral negotiations on those and the remaining Protocol issues. WTO accession is thus a complex and multi-faceted process. This fact sheet covers the market access; a second (attached) covers the Protocol commitments.

Broadly speaking, the market access commitments China has made will bring China at or above existing WTO standards on issues and sectors of major concern to the U.S.. They address each layer of Chinese trade barriers to American exports. For example, at present, an American good faces not only high tariffs and at times quotas, but a web of other barriers which, if unaddressed, could make tariff reductions meaningless. These include application of unscientific sanitary and phytosanitary standards in agriculture, non-tariff barriers to industrial goods, restrictions on distribution and trading rights, and discrimination against imports and foreign-invested companies.

In each case, the U.S. has achieved commitments that address the principal barriers to American products; are highly specific and fully enforceable; are phased-in over a relatively short period of time, with increased market access in every area as of day one of China's ultimate accession; do not offer China special treatment; and meet or exceed commitments made by many present WTO members. The commitments include:

- Significant market access benefits effective immediately on China's accession.
- Full market access for U.S. firms to distribute their products throughout China.
- Tariff reductions immediately upon accession, with further phase-ins over reasonable periods of time to levels below those of most U.S. trade partners.
- Bindings for all tariffs -- i.e., China will be unable to raise tariffs again after accession.
- Elimination of quantitative restrictions.

- Resolution of outstanding problems with sanitary and phytosanitary standards for key agricultural products, effective immediately.

- Participation in the three major multilateral agreements negotiated since the Uruguay Round: the Information Technology Agreement; the Agreement on Basic Telecommunications; and the Financial Services Agreement.

- Commitments to more open service sectors which cover the broad range of sectors, including distribution, value-added telecommunications, insurance, computer and business services, environmental services, franchising and direct sales, legal and accounting, sound recordings, and entertainment software.

China's specific commitments in the three strategic areas of agriculture, industrial goods, and services are discussed below.

I. AGRICULTURE MARKET ACCESS

The agricultural market access commitments include measures to address the following problems: trading rights, distribution, high tariffs; quotas; application of unscientific SPS standards; the reliance on state trading companies; and export subsidies.

Taken as a whole, these commitments move China toward a system based almost entirely on tariffs, with extremely low tariff rates (1-3%) in most bulk commodities. More specifically, it reduces tariffs to levels below those of most American trade partners, with the greatest reductions in the areas of top priority to U.S. producers; binds tariff concessions; eliminates quantitative restrictions on imports; requires use of science-based SPS standards; reduces the role of state trading enterprises for key commodities; and eliminates export subsidies.

A. TARIFF REDUCTIONS

China will reduce tariffs immediately on accession, and when fully phased in will result in tariff levels comparable with or better than those of many of our other major trading partners (including developed country trading partners).

Average Rates – Overall, China will reduce its overall average tariff for agricultural products to 17%. The tariff reduction will be greater for U.S. priority products. In these sectors the average tariff will drop to 14.5%.

Phase-in Periods -- All tariff cuts will be implemented by 2004, the date when all other WTO members will have implemented their Uruguay Round tariff cuts.

All agricultural tariffs will be bound (cannot be increased). Specific examples include:

Soybeans – a 3% tariff will be bound on accession.

Meats -- Tariff reductions include:

	Present	2004
Beef	45%	12%
Pork	20%	12%
Poultry	20%	10%

Fruits -- Tariffs reductions include:

	Present	2004
Citrus	40%	12%
Grapes	40%	13%
Apples	30%	10%

Almonds	30%	10%

Wine -- Tariffs on wine will be reduced by 70%, from 65% to 20%.

Dairy – Tariff reductions in dairy include:

	Present	2004
Cheese	50%	12%
Ice Cream	45%	19%

B. TARIFF RATE QUOTA SYSTEM FOR BULK COMMODITIES

China's commitments follow WTO standards in eliminating all quantitative restrictions. In particularly sensitive sectors, China will adopt tariff-rate quotas (i.e. a system in which imports up to the quota level are charged a minimal tariff -- usually 1-3% -- and imports above that level a high tariff). This system provides a very strong incentive for state enterprises to purchase bulk commodities at world market rates.

The total levels of these TRQs are substantially above present import levels on accession, and provide for future growth. In all cases, we sought to maximize likelihood that the full quota would be used and ensure opportunity for private traders to participate, both by allocating an initial share of the quota to private traders and providing for reallocation of quota from state enterprises to private traders if state enterprises do not buy the full TRQ amount.

Results in U.S. priority sectors are as follows:

Soybean Oil – TRQ eliminated by 2006. The TRQ will start at 1.7 million metric tons, rising to 3.3 million tons by 2005. Private sector trade will begin at 50% and rise to 90%.

Wheat – Quota on accession is 7.3 million metric tons, rising to 9.3 million metric tons. (Compares to present Chinese import level of less than 2 million metric tons.) Private sector will initially receive 10% of this quota, with reallocation of any unused state enterprise portion available later in the calendar year.

Corn – Quota on accession is 4.5 million metric tons, rising to 7.2 million metric tons. (Compares to present import level of 250,000 metric tons.) Private sector will initially receive 25% of this TRQ, rising to 40% by 2004, with reallocation of any unused state enterprise portion available later in the calendar year.

Rice – Quota on accession is 2.6 million metric tons, rising to 5.3 million metric tons. Half of this will cover short and medium grain rice, where the U.S. is most competitive. 50% of this TRQ will go to the private sector. (Compares to present import level of

250,000 metric tons.)

Cotton – Quota on accession is 743,000 metric tons, rising to 894,000 tons by 2004. (Compares to present import levels of 200,000 metric tons.) Private sector will have 67% of this TRQ.

Barley – No TRQ, and reduction of tariffs to 9%.

Other products in which TRQs will be applied are products in which the U.S. has little or no trade interest. These include wool, sugar, palm oil and rapeseed oil.

B. SANITARY AND PHYTOSANITARY (SPS) RESTRICTIONS:

China agrees that sanitary and phytosanitary disputes should be settled scientifically.

BILATERAL AGREEMENTS ON WHEAT, CITRUS AND MEAT

China has also agreed to lift immediately, with the signature of three bilateral agreements, (concluded in parallel with the market access agreement but effective immediately on signature) unjustified SPS bans on wheat, citrus fruits and meat. These bilateral agreements resolve longstanding disputes between the U.S. and China and can lead to rapid export growth. Furthermore, they provide a strong indication that China is willing to implement the obligations of the WTO SPS agreement.

Meat – China will open its market to U.S. pork, beef and poultry by agreeing to accept USDA certification for meat safety for U.S. exports.

Citrus – China will open its market to U.S. oranges, grapefruit and other citrus fruits, eliminating a current ban and establishing a science-based phytosanitary system. Industry estimates that trade will reach $1.2 billion in a year, an increase of $700 million over current imports through informal channels.

Wheat – China will eliminate restrictions on imports of wheat from the Pacific Northwest imposed because of unjustified concerns about TCK smut.

D. EXPORT SUBSIDIES

China has committed not to provide any export subsidies for agricultural products. This is particularly important for corn, cotton and rice. It also provides a strong foundation for the next WTO Round, in which total elimination of agricultural export subsidies worldwide is a major U.S. goal, already articulated by the Vice President.

II. MARKET ACCESS FOR INDUSTRIAL PRODUCTS

With respect to market access for industrial goods, China has agreed to allow freedom for U.S. firms to import, export and distribute their goods within China; significant tariff reductions to bring tariff levels to levels comparable with major trading partners and below those of most developing countries; binding of all tariff concessions; and phase-out of all quantitative restrictions on imports.

Some areas of particular interest to the U.S. include Chinese participation in a number of existing international zero-tariff agreements (including the Information Technology Agreement) as well as individual sectors including, but not limited, to autos, wood and wood products, chemicals, fishery products and others. As in agriculture, most results in industrial goods compare favorably to those of other major trading partners, particularly those in developing countries.

A. TRADING RIGHTS AND DISTRIBUTION

Trading rights and distribution are the major priority of the manufacturing sector. At present, China severely restricts trading rights (the right to import and export) and distribution (wholesaling, retailing, maintenance and repair, transportation, etc.) As in agriculture, such restrictions give China a layer of protection against imports which if unaddressed would make tariff concessions of little value.

The U.S. thus has sought and won agreement for elimination of these restrictions. China will provide, for the first time, full trading rights and distribution rights to U.S. firms. These will be progressively phased in over three years. Even for its most sensitive and protected industries, such as chemical fertilizers, crude oil and processed petroleum, China will provide for trading rights and distribution. Distribution services are discussed in more detail in the following section on services trade.

B. OVERALL INDUSTRIAL TARIFF REDUCTIONS

China also agreed to provide significant tariff reductions which would be bound.

Rates – China will reduce average tariffs from the 24.6% average in 1997 to 9.44%. The average tariff for our priority products will be even lower, reaching 7.1%. This is a 56% cut from applied rates in 1998 and a 71% cut since the beginning of market access negotiations in 1994.

All Tariffs Bound -- China will bind its entire tariff schedule, meaning it will accept a legal commitment not to raise tariffs in the future above the bound level. Very few countries have done this; many retain rights to raise tariffs significantly above the rates they now apply.

Phase-in -- Two thirds of tariff cuts will be implemented by 2003. The balance will be phased in by 2005, with a limited number of exceptions.

C. TARIFF REDUCTIONS IN US PRIORITY AREAS

As noted above, China's tariff cuts are larger in U.S. priority areas. Some provisions in areas of special interest to the U.S. include:

High Technology – China will implement the Information Technology Agreement (ITA). This will reduce tariffs from present levels averaging 13.3% to zero for semiconductors, computers, computer equipment, telecommunications equipment and other information technology products. Most of these tariff eliminations will be phased in by 2003 with some exceptions until 2005. All other ITA participants will have implemented tariff cuts by 2005.

Autos: In the auto sector, China will reduce tariffs from the current 80-100% levels to 25% in 2005, with the cuts phased in equally each year. Auto parts tariffs will fall to an average of 10%.

*** Note – in this sector, tariff restrictions are augmented by quotas under China's industrial policy for autos. These quotas will be progressively eliminated, with the point of departure China's level of imports before creation of the auto industrial policy. See below under "Quotas and Non-Tariff Measures". In addition, auto retail rights will be provided for the first time (see services section.)

APEC Sectors -- China has agreed to implementing the early voluntary sectoral liberalization initiative of APEC now under consideration in the WTO, when the WTO accepts these sectors for implementation. This would eliminate tariffs on forest products (wood and paper), environmental goods and services, energy and energy equipment, chemical harmonization, fish, toys, gems and jewelry, and medical equipment and scientific instruments.

Wood & Paper: China will reduce tariffs from present levels of 12-18% for wood and 15-25% for paper generally to levels between 5% and 7.5%. This is a sector in which tariff concessions, along with distribution and trading rights, can expand sales rapidly.

Chemicals: China has committed to the lion's share of chemical harmonization -- reducing its tariffs to the levels of other WTO members -- for 70% of chemicals, generally at 5.5% and 6.5%. (At present China's tariffs range up to 35%.) A key reduction is in soda ash, to 5.5%. Tariffs on cosmetics, pharmaceuticals, film, and certain plastics will also be cut substantially below current levels.

Fish – China will reduce tariffs from over 20% to 10% on products of importance to the

United States.

Distilled spirits – China will reduce tariffs from 61% to 10%.

D. QUOTAS AND OTHER NON-TARIFF MEASURES

WTO rules bar quotas and other quantitative restrictions. China has agreed to eliminate these restrictions immediately on accession for top U.S. priorities and with phase-ins limited to five years for others.

Quotas: China will eliminate existing quotas upon accession for the top U.S. priorities (e.g. some fertilizers and optic fiber cable). It will phase-out remaining quotas, generally by 2002, but no later than 2005.

Quotas will grow from current trade level at a 15% annual rate in order to ensure that market access increases progressively, and reduces the effect of quantitative restrictions.

Auto quotas will be phased out by 2005, in the interim, the base level quota will be $6 billion (the level prior to China's industrial auto policy), and this will grow by 15% annually until elimination.

III. SERVICES

China today is among the markets most closed to services exports anywhere in the world. Our goals in services thus included negotiation of commitments in a broad array of services sectors; ensuring Chinese accession to the two major existing multilateral services agreements on Basic Telecommunications and Financial Services; and creating a base from which to negotiate future improvements for access to the Chinese services market in the next WTO Round.

China's commitments on services, while we have some further work to do, are comparable to those of most WTO members. They include commitments in all major service categories (with further talks planned on banking, securities and audiovisual), reasonable transitions to eliminate most foreign equity restrictions (especially in sectors where the U.S. has a strong commercial interest), agreed to accede to the Basic Telecommunications and Financial Services Agreements, and full "grandfathering" of current market access for U.S. service providers. Specific commitments are as follows:

A. GRANDFATHERING

China will grandfather all existing current market access and activities in all services sectors. Many companies enjoy benefits given by provincial and central authorities. All these will be protected, even if China's commitments in its services schedule provide for approval by Central Government authority. This will protect existing American distribution services, financial services, professional and other service providers in China, including those operating under contractual or shareholder agreements or a license, from restrictions as Chinese commitments phase in.

B. DISTRIBUTION

In China today, foreign firms have no right to distribute products other than those they make in China, or to own or manage distribution networks, wholesaling outlets or warehouses. China also now frequently issues businesses licenses which limit the ability of American firms to conduct marketing, after-sales service, maintenance and repair and customer support. As the section on industrial goods noted, this is a severe barrier to goods exports as well as to services exports.

China's commitments address all these issues. They reflect a comprehensive commitment on distribution, including wholesaling, direct sales, retailing, maintenance and repair, and transportation. Thus Americans will be able to distribute imported products as well as those made in China, offering significant opportunity to expand U.S. exports of goods. As noted above, China will phase out all restrictions on distribution services within three years. Even in its most sensitive and protected sectors, China has agreed to provide distribution rights in five years for chemical fertilizer, crude oil, and processed petroleum products.

Services Auxiliary to Distribution

Chinese commitments in services auxiliary to distribution include express delivery services, rental and leasing, air courier, freight forwarding, storage and warehousing, advertising, technical testing and analysis, and packing services. All restrictions will be phased-out in 3 to 4 years, at which time U.S. service suppliers will be able to set up 100% wholly-owned subsidiaries.

C. TELECOMMUNICATIONS

China now severely restricts sales of telecommunications services and bars foreign investment. China's commitments mark its first agreement ever to open its telecommunications sector, both to the scope of services and to direct investment in telecommunications businesses. Through these commitments, China will become a member of the Basic Telecommunications Agreement. Specific commitments include:

Regulatory Principles -- China now allows its telecommunications bureaucracies very wide discretion to apply arbitrary and discriminatory standards. China will now agree to implement the pro-competitive regulatory principles embodied in the Basic Telecommunications Agreement (including cost-based pricing, interconnection rights and independent regulatory authority), and agreed to technology-neutral scheduling, which means foreign suppliers can use any technology they choose to provide telecommunications services.

Scope of Services -- China will phase out all geographic restrictions for:

paging, value added, and closed user groups: 4 years
mobile/cellular: 5 years
domestic wireline services: 6 years.

China's key telecommunications services corridor in Beijing, Shanghai and Guangzhou, which represents approximately 75% of all domestic traffic, will open immediately on accession in all telecommunications services.

Investment -- Under present circumstances, China allows no foreign investment in telecommunications services. With this agreement, China will allow 49% foreign investment in all services, and will allow 51% foreign ownership for value added and paging services in 4 years.

D. INSURANCE

In insurance, China now restricts foreign companies to Shanghai and Guangzhou. Only two U.S. firms are permitted to participate even in these markets. Thus we sought to eliminate geographic and numerical limitations -- that is, to ensure that foreign insurance companies can operate in each part of China and without artificial limitations on their activities or number of companies -- and end restrictions on foreign investment. The results include:

Prudential Criteria – China agrees to award licenses solely on the basis of prudential criteria, with no economic needs test or quantitative limits on the number of licenses issued.

Geographic Limitations -- China will permit foreign property and casualty firms to insure large-scale risks nationwide immediately upon accession, and will eliminate all geographic limitations for future licenses over five years, allowing access to the key cities of priority U.S. interest in two to three years.

Scope – China will expand the scope of activities for foreign insurers to include group, health and pension lines of insurance, which represent about 85% of total premiums, phased in over five years.

New Licenses -- China has recently issued four licenses, including two to American companies.

Investment -- China agreed to allow majority ownership, remove onerous joint venture requirements on foreign life insurers, and phase out internal branching restrictions. Life insurers may now choose their own joint venture partners (as opposed to the present policy, under which partners are chosen for insurers by Chinese authorities), will allow 50% ownership on accession, and will phase in the right to 51% share in a joint venture in one year. For non-life and reinsurance, China will allow 51% ownership on accession and form wholly owned subsidiaries in 2 years.

E. BANKING

In the banking sector, China imposes severe geographic restrictions -- for example, only nine foreign banks can conduct business in local currency, and these only in the Shanghai Pudong area. Our negotiations sought full rights for foreign banks to handle both local and foreign currency business transactions (the latter obviously a major factor in opening markets to U.S. goods exports as well as services); the rights to serve Chinese as well as foreign customers; and liberalize investment. This sector remains under discussion.

F. SECURITIES

This sector remains under discussion.

G. PROFESSIONAL SERVICES

In the professional services, China currently tightly restricts operation of foreign law firms and accounting firms. With respect to these areas, we sought commitments in all significant areas, including both the right to offer services and the right to invest, and binding commitments on the already liberal policies respecting architecture and engineering.

China offers broad coverage for legal, accountancy, taxation, management consultancy, architecture, engineering, urban planning, medical and dental, computer-related services. It will permit foreign majority control except for practicing Chinese law (an exception common to many WTO members.) For accountancy, China has agreed to eliminate a mandatory localization requirement and will now allow unrestricted access to its market to professionals licensed as CPAs in China. China has agreed to apply national treatment in issuing CPA licenses and follow transparent procedures.

H. AUDIOVISUAL

Presently, China severely restricts distribution of sound recordings, videos, movies, books and magazines, and does not allow foreign ownership, construction or operation of cinemas. While this area remains under discussion, China's commitments cover the right to distribute video and sound recordings; and cinema ownership and operation. They include:

> **Video and Sound Recordings** -- China will allow 49% foreign participation for the distribution of video and sound recordings.
>
> **Cinemas** -- China will allow majority ownership in 3 years for construction, renovation, ownership and operation of cinemas.

I. TRAVEL AND TOURISM

Finally, China until now has imposed a number of restrictions on travel and other tourist-related services. Notably, foreign firms are limited to 11 areas in China, and cannot establish full-service travel agencies. Our goal here was a set of commitments comparable to or better than the relatively high level of commitments made by WTO members. Results include:

Hotels -- China will allow unrestricted access to the Chinese market for hotel operators with the ability to set up 100% foreign owned hotels in 3 years, with majority ownership allowed upon accession.

Travel Services -- Foreign travel operators can provide the full range of travel agency services. For travel agency services, China will allow access to government resorts as well as Beijing, Shanghai, Guangzhou, and Xian.

IV. PROTOCOL AND WORKING PARTY REPORT COMMITMENTS

Commitments in China's WTO Protocol and Working Party Report establish rights and obligations enforceable through WTO dispute settlement procedures. We have agreed on key provisions relating to antidumping and subsidies, protection against import surges, technology transfer requirements and offsets as well as practices of state-owned and state-invested enterprises. While we must still address the duration of some of these provisions and resolve other issues, agreement on the substance of these rules is of special importance to U.S. workers and business. We will also continue work on textile issues and a mechanism to ensure full implementation of commitments.

China will be presenting agreed provisions to the WTO Working Party for incorporation into the accession Protocol and Working Party Report. We will also be addressing the many other rules-related issues, such as specific provisions on China's standards, customs valuation, and national treatment in this multilateral process.

SPECIFIC PROVISIONS

During the negotiations, China has agreed that it will, upon accession, make the following commitments:

A. INVESTMENT AND TECHNOLOGY TRANSFER

First, it will take a set of specific measures to ensure fair treatment for businesses operating in China. This will include eliminating policies to block foreign firms doing business in China from importing inputs for production (i.e., auto firms operating in China would be able to import American-made parts). Measures here include:

- comply with the TRIMs Agreement upon accession, without any developing country transition period;
- eliminate and cease enforcing trade and foreign exchange balancing requirements;
- eliminate and cease enforcing local content requirements;
- refuse to enforce contracts imposing these requirements; and
- only impose or enforce laws or other provisions relating to the transfer of technology or other know-how, if they are in accordance with the WTO agreements on protection of intellectual property rights and trade-related investment measures.

These provisions will also help protect American firms against forced technology transfers, as China has also agreed that, upon accession, it **will not** condition investment approvals, import licenses, or any other import approval process on performance requirements of any kind, including:

- local content requirements,
- offsets,
- transfer of technology, or
- requirements to conduct research and development in China.

These are significant commitments that go a long way in addressing concerns about the terms and conditions of investment in China, and the government's role in what should be commercial decisions.

B. ANTIDUMPING AND SUBSIDIES METHODOLOGY

Second, the Protocol ensures guarantees that American firms and workers will have strong protection against unfair trade practices including dumping and subsidies.

Here, the U.S. and China have agreed that we will be able to maintain our current antidumping methodology (treating China as a non-market economy) in future anti-dumping cases. Moreover, when we apply our countervailing duty law to China we will be able to take the special characteristics of China's economy into account when we identify and measure any subsidy benefit that may exist. While the duration of this provision remains under discussion, reaching agreement on the substance provides necessary assurance to U.S. industries that they can have effective protection against unfairly traded imports.

These provisions recognize both the ongoing reform program in China and that special difficulties may exist in making necessary determinations under the antidumping and countervailing duty laws.

C. PRODUCT SPECIFIC SAFEGUARD

Third, the Protocol ensures that American domestic firms will have strong protection against unpredicted surges of imports.

To do this, the Product-Specific Safeguard provision sets up a special mechanism to address increased imports that cause or threaten to cause market disruption to a U.S. industry.

China is a major exporting country that enjoys open access to U.S. markets. This mechanism, which is in addition to other WTO Safeguard provisions, differs from traditional safeguards in that it permits

- China to address imports that are a significant cause of material injury through measures such as voluntary restraints.

- the United States to apply restraints unilaterally based on standards that are lower than those in the WTO Safeguards Agreement.

While the duration of this provision is still under discussion, this safeguard provides an effective and expeditious means to address injurious import surges.

D. STATE-OWNED AND STATE-INVESTED ENTERPRISES

Fourth, the Protocol will allow us to address China's unusually high degree of state involvement in the economy.

State-owned and state-invested enterprises have a greater role in China's economy than in any other major economy. As part of its WTO accession, China needs to ensure that these enterprises act on a commercial basis. Moreover, we need to ensure that we can apply WTO rules to these enterprises in a meaningful fashion.

China has agreed that it will ensure that state-owned and state-invested enterprises will:

- make purchases and sales based solely on commercial considerations, such as price, quality, availability and marketability;

- provide U.S. firms with the opportunity to compete for sales and purchases on non-discriminatory terms and conditions.

China has also agreed that it will not influence these commercial decisions (either directly or indirectly) except in a WTO consistent manner.

With respect to applying WTO rules to state-owned and state-invested enterprises, we have clarified in several ways that these firms are subject to WTO disciplines.

- Purchases of goods or services by these state-owned and state-invested enterprises are not government procurement and thus are subject to WTO rules.

- We have clarified the status of state-owned and state-invested enterprises under the WTO Agreement on Subsidies and Countervailing Measures. This will help ensure that we can effectively apply our trade law to these enterprises when it is appropriate to do so.

E. CONCLUSION

These provisions will ensure that American workers and companies can take full advantage of both U.S. law and WTO rules in their dealings with China. While much remains to be done, bilaterally and multilaterally, on reaching agreement on all of the Protocol issues, China's commitments on these important Protocol and Working Party provisions are an important step in the WTO accession process.