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## **OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

### **2013 SPECIAL 301 REVIEW: IDENTIFICATION OF COUNTRIES UNDER SECTION 182 OF THE TRADE ACT OF 1974: REQUEST FOR PUBLIC COMMENT AND ANNOUNCEMENT OF PUBLIC HEARING**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for written submissions from the public and announcement of public hearing.

**SUMMARY:** Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242) requires the United States Trade Representative (Trade Representative) to identify countries that deny adequate and effective protection of intellectual property rights (IPR) or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (The provisions of Section 182 are commonly referred to as the “Special 301” provisions of the Trade Act.) The Trade Act requires the Trade Representative to determine which, if any, of these countries to identify as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country's identification as a Priority Foreign Country can be subject to the procedures set out in sections 301-305 of the Trade Act.

In addition, the Office of the United States Trade Representative (USTR) has created a “Priority Watch List” and “Watch List” to assist the Administration in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection,

enforcement, or market access for persons that rely on intellectual property protection. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs an interagency team that reviews information from many sources, and that consults with and makes recommendations to the Trade Representative on issues arising under Special 301. Written submissions from interested persons are a key source of information for the Special 301 review process. In 2013, USTR again will conduct a public hearing as part of the review process.

USTR is hereby requesting written submissions from the public concerning foreign countries' acts, policies, or practices that are relevant to deciding whether a particular trading partner should be identified as a priority foreign country under Section 182 of the Trade Act or placed on the Priority Watch List or Watch List. Interested parties, including foreign governments, wishing to testify at the public hearing must follow the procedures set out below for filing a notice of intent to testify. The deadlines for these procedures are set out below.

**DATES:** The schedule for the 2013 Special 301 review is set forth below.

Friday, February 8, 2013--For interested parties, except for foreign governments: Submit written comments, requests to testify at the Special 301 Public Hearing, and hearing statements.

Friday, February 15, 2013--For foreign governments: Submit written comments, requests to testify at the Special 301 Public Hearing, and hearing statements.

Wednesday, February 20, 2013--Special 301 Committee Public Hearing for interested parties, including representatives of foreign governments, will be held at the offices of USTR, 1724 F Street, NW, Washington, DC 20508. Any change in the date or location of the hearing will be announced on <http://www.ustr.gov>.

On or about April 30, 2013--In accordance with statutory requirements, USTR will publish the 2013 Special 301 Report.

**ADDRESSES:** All written comments, requests to testify, and hearing statements should be sent electronically via <http://www.regulations.gov>, docket number USTR-2012-0022. Submissions should contain the term “2013 Special 301 Review” in the “Type comment” field on <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Paula Karol Pinha, Director for Intellectual Property and Innovation, Office of the United States Trade Representative, at (202) 395-5419. Further information about Special 301 can be found at <http://www.ustr.gov>.

## **SUPPLEMENTARY INFORMATION:**

### **1. Background**

USTR requests that interested persons identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. USTR further requests that submissions include specific references to laws, regulations, policy statements, executive,

presidential or other orders, administrative, court or other determinations, and any other measures relevant to the issues raised in the written submission or hearing testimony. USTR also requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention.

Section 182 contains a special rule regarding actions of Canada affecting U.S. cultural industries. Section 182 requires the Trade Representative to identify any act, policy or practice of Canada that affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). Section 182 requires the Trade Representative to identify any such acts, policies or practices within 30 days after publication of the National Trade Estimate (NTE) report, i.e., approximately April 30, 2013.

## **2. Public Comments**

### *a. Written Comments*

The Special 301 Committee invites written submissions from the public concerning foreign countries' acts, policies, or practices that are relevant to deciding whether a particular trading partner should be identified under Section 182 of the Trade Act. As noted above, interested parties, except for foreign governments, must submit any written comments by February 8, 2013. Interested foreign governments must submit any written comments by February 15, 2013.

### *b. Requirements for Comments*

Written comments should include a description of the problems that the submitter has experienced and the effect of the acts, policies, and practices on U.S. industry. Comments should be as detailed as possible and provide all necessary information for identifying and assessing the effect of the acts, policies, and practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be in English. All comments should be sent electronically via <http://www.regulations.gov>, docket number USTR-2012-0022.

To submit comments to <http://www.regulations.gov>, find the docket by entering the number USTR-2012-0022 in the “Enter Keyword or ID” window at the <http://www.regulations.gov> home page and click “Search.” The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting “Notice” under “Document Type” on the left side of the search-results page, and click on the link entitled “Comment Now!.” (For further information on using the <http://www.regulations.gov> Web site, please consult the resources provided on the Web site by clicking on “How to Use This Site” on the left side of the home page).

The <http://www.regulations.gov> site provides the option of providing comments by filling in a “Type comment” field, or by attaching a document. It is USTR's preference that comments be provided in an attached document. If a document is attached, please type “2013 Special 301 Review” in the “Type comment” field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) formats. If the submission is in an application format other than Microsoft Word or Adobe Acrobat (.pdf), please indicate the name of the relevant application in the “Type comment” field.

### **3. Public Hearing**

#### *a. Notice of Public Hearing*

The Special 301 Committee will hold a public hearing at the offices of USTR, 1724 F Street, NW, Washington, DC 20508 for interested parties, including representatives of foreign governments, on February 20, 2013. The hearing will be open to the public, and a transcript of the hearing will be made available on <http://www.ustr.gov>. Any change in the date or location of the hearing will be announced on <http://www.ustr.gov>.

#### *b. Submission of Requests to Testify at the Public Hearing and Hearing Statements*

Oral testimony before the Special 301 Committee must be in person and will be limited to one five-minute presentation in English. Questions from the Special 301 Committee may follow oral testimony.

All interested parties, except foreign governments, wishing to testify at the hearing must submit, by February 8, 2013, a “Notice of Intent to Testify” and “Hearing Statement” to <http://www.regulations.gov> (following the procedures set forth in “Requirements for Comments” above). The Notice of Intent to Testify must include the name of the witness, name of the organization (if applicable), address, telephone number, fax number, and e-mail address. A short Hearing Statement must accompany the Notice of Intent to Testify.

All interested foreign governments that wish to testify at the hearing must submit, by February 15, 2013, a “Notice of Intent to Testify” to <http://www.regulations.gov> (following the procedures set forth in “Requirements for Comments” above). The Notice of Intent to Testify must include the name of the witness, name of the organization (if applicable), address,

telephone number, fax number, and e-mail address. A short Hearing Statement may accompany the Notice of Intent to Testify.

#### **4. Business Confidential Information**

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such, the submission must be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, “Business Confidential” should be included in the “Type comment” field. Anyone submitting a comment containing business confidential information must also submit, as a separate submission, a non-confidential version of the confidential submission, indicating where confidential information has been redacted. The non-confidential summary will be placed in the docket and open to public inspection.

#### **5. Inspection of Comments**

USTR will maintain a docket on the 2013 Special 301 Review, accessible to the public. The public file will include non-confidential comments, notices of intent to testify, and hearing statements received by USTR from the public, including foreign governments, with respect to the 2013 Special 301 Review. Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Comments may be viewed on the

<http://www.regulations.gov> Web site by entering docket number USTR-2012-0022 in the search field on the home page.

**Stanford K. McCoy**, *Assistant U.S. Trade Representative for Intellectual Property and Innovation.*

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