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**GIPC**

Global Intellectual Property Center  
U.S. CHAMBER OF COMMERCE

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# Statement of the U.S. Chamber's Global Intellectual Property Center

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**ON:** USTR Special 301 Report

**TO:** Office of United States Trade Representative

**BY:** U.S. Chamber of Commerce

**DATE:** February 24, 2014

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The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96% of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

**Statement  
to the  
OFFICE OF UNITED STATES TRADE REPRESENTATIVE  
on behalf of the  
U.S. CHAMBER OF COMMERCE  
Monday, February 24, 2014**

Good morning. I am Jasper MacSllarrow, executive director Intellectual Property at the U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC).

Thank you for the opportunity to testify and for your continued efforts to promote the importance of intellectual property worldwide.

The GIPC, in cooperation with the Chamber's International Division, welcomed the opportunity to submit joint comments on this year's Special 301 Review.

Our submission highlights key improvements as well as challenges with regards to IP systems in nine markets.

### **IMPORTANCE OF IP AND GIPC INDEX**

It is important to note the critical role IP plays in creating jobs and spurring innovation. According to the U.S. Department of Commerce, U.S. IP industries account for

- \$5 trillion of the nation's GDP
- 60 percent of exports
- and 40 million jobs

In short, IP drives knowledge economies.

Robust IP rules and effective enforcement systems are an essential measure of the climate for companies that wish to conduct business with foreign countries.

To that end, the Chamber recently released the 2014 edition of the International IP Index, which maps the IP environment of 25 countries around the world, using 30 indicators.

The Index covers patents, trademarks, copyrights, trade secrets, enforcement, and ratification of international treaties.

The indicators used were developed in consultation with an academic researcher and industry sectors. The Index measures specific provisions that industry sees as crucial to creating and maintaining an innovative business environment. It also includes global best practices, defined by a number of international treaties.

We have submitted a copy of the GIPC Index with our Special 301 submission for the record and referred to it where appropriate throughout the submission.

## **HIGHLIGHTS OF GIPC SUBMISSION**

### **Global Trends**

Now, I would like to discuss a few global trends on the protection, and in many cases, the erosion of IP rights:

Firstly, we are seeing an increase in laws and regulations that undermine IP rights, which is detrimental to innovation and economic growth.

Examples include India's issuance of its first compulsory license to allow for the generic manufacturing of a patented anti-cancer drug and Australia's legislation that stripped trademark owners of their ability to use their brand on tobacco products.

Such actions establish a dangerous precedent for the protection of IP for all industries.

Second is the importance of bilateral and regional trade agreements. The Chamber supports the negotiation, conclusion, and enforcement of all trade agreements that advance global IP standards, in particular the ongoing Trans-Pacific Partnership (TPP) negotiations.

Thirdly, while the Internet has developed into the greatest marketplace of goods and ideas, online IP theft is massive and growing. It is critical that law enforcement has the tools, resources, and will to fight theft in both the online and physical environments.

Fourth is the need to improve enforcement efforts and resources in the U.S. and overseas. In addition, it is important that the United States continues to work with foreign governments to promote bilateral enforcement efforts.

And lastly, the Chamber is also particularly concerned about the transshipment of illicit goods, including counterfeit products, and the process by which these goods are destroyed once seized.

### **Country Assessments**

In addition to these global trends, the GIPC submission also highlights specific country assessments. Over the past year, a number of countries have taken steps toward improving their IP systems by securing effective and transparent IP rules. For example:

- Canada recently concluded negotiations with the European Union on the Comprehensive Economic and Trade Agreement (CETA). Should the provisions of CETA successfully be implemented, Canada's IP environment would improve significantly.
- In China, we continue to see progress made to protect IP rights through certain amendments to their copyright, trademark, and patent laws, and in the recently concluded judicial interpretation on Internet liability.
- Russia's new notice-and-takedown provision with regard to the responsibilities of "information intermediaries" indicates progress in protecting copyrights.
- Malaysia introduced significant changes to its copyright laws, as well.

While a number of countries have taken positive steps toward improving their IP environments, some countries have taken steps backward that will stifle innovation and arrest the ability of creators and inventors to have their IP protected. Some examples are:

#### ***India***

Both the inaugural GIPC Index, which was produced in 2012, and the 2014 edition found that **India** ranked last overall behind Brazil and Russia, and well below China. In the past two years, the Indian government has demonstrated a pattern of behavior that caused a rapid deterioration of the IP environment, making India an outlier in the international community.

And as the GIPC Index suggests, the IP issues in India are affecting a variety of industries.

Within the bio-pharmaceutical industry, there have been a number of policy, regulatory, and legal decisions to revoke and deny patents. Notably, these patents are recognized elsewhere in the world, positioning India as the international outlier..

India has an extensive copyright industry, producing more feature films than any other country in the world. However, the government's copyright legislation passed last year fails to adequately protect Indian and international creators and innovators. While the copyright legislation was much needed this legislation contains many deficiencies that fall well short of the intended purpose of the legislation, which was to implement the WIPO Copyright Treaty.

India is also a bad actor in multilateral negotiations. India is not participating in ongoing negotiations to update the WTO Information Technology Agreement.

At WIPO, India stalls discussions, openly accuses rights holders of abuse, focuses exclusively on exceptions and limitations, and has not signed treaties on copyrights.

It has called for compulsory licenses for clean technologies before the United Nations and pushes other middle income countries to support its anti-IP agenda at these institutions.

It's important to note that the Chamber submissions have not previously recommended specific rankings of countries on the Special 301 report, but only highlighted the concerns. However, given the rapidly deteriorating climate in India, we urge USTR to designate India as a Priority Foreign Country in the 2014 Special 301 Report.

### ***Brazil***

In Brazil, we are concerned that the Brazilian National Health Surveillance Agency is acting beyond its congressional mandate when reviewing patent requirements in applications filed with the Brazilian National Industrial Property Institute. We also note that there are several bills related to the Internet and copyright protections that are being considered in Brazil. It is imperative that these initiatives not erode or limit the ability of rights holders to protect their IP.

### ***Canada***

Canada's inadequate level of IP protection and enforcement continues to be worrisome. Our submission highlights recent decisions by the Canadian Federal Courts that have imposed an onerous test for utility, which is inconsistent with its legal precedent and international obligations. While we commend Canada for its passage of Bill C-11, we urge Canada to do more to combat IP theft, particularly online.

### ***China***

We continue to have serious concerns about the size and scope of IP infringement in China, despite reported efforts by government agencies to clamp down on these problems. We also strongly urge the Chinese government to advance the development of new medicines, including through the establishment of effective regulatory data protection.

### ***European Union***

We are concerned that the current proposed policies of the European Medicines Agency provide unrestricted access to and publish the clinical trial data and other confidential business information contained in regulatory submissions for marketing approval. These practices harm patient privacy, undermine the integrity of the regulatory system and undermine incentives for innovation by allowing competitors to gain unfair commercial advantage over innovators. Such practices are also not consistent with the EU's obligation under the TRIPS Agreement.

### ***Mexico***

Our submission notes that Mexico's ability to combat the transshipment of pirated and counterfeit goods through its borders would be significantly enhanced by providing ex officio authority to its customs officials. We also urge Mexico to provide clarity that the June 2012 data protection guidelines also cover biologic medicines and to fully implement the WIPO Internet Treaties.

### ***Russia***

While Russia has made positive steps in 2010 by providing six years of regulatory data protection, there has been no implementation observed to date. Copyright piracy also continues to be a significant problem in Russia. Russia needs to amend its laws to provide effective copyright enforcement on the Internet, including modifying the Civil Code to create clear liability for acts that induce or promote infringement.

### ***Ukraine***

Although there are laws and regulations in place that protect IP in Ukraine, implementation of these laws has been inconsistent. Piracy rates in Ukraine are among the highest in Europe. In order to curb this growing problem, we encourage USTR to work with Ukraine to increase enforcement in the markets identified in USTR's Notorious Markets report.

### ***South Africa***

While the Chamber welcomes some aspects of South Africa's Draft National Policy on Intellectual Property, there are also elements that cause serious concern for industry.

For example, the currently considered proposal states that developing countries can adopt IP policies that limit the extent of patenting and facilitate the introduction of generic competition.

Further, the pharmaceutical patentability requirements included in the draft policy closely resemble that of Section 3(d) of India's Patent Act. Due to the rapid deterioration in India's IP environment, the Chamber finds this troublesome.

We urge the U.S. Government to work with the South African Government to reconsider the existing clauses in the Draft Policy, which would restrict, if not eliminate, forms of incremental innovation.

Adequate and effective protection and enforcement of IP is vital to America's economy. We look forward to working with you and our trading partners to secure meaningful IP policy improvements that produce economic benefits in the U.S. and throughout the world.

Thank you for your time today.