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# Statement of the U.S. Chamber of Commerce

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**ON:** USTR Special 301 Report

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

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

**DATE:** February 28, 2017

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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 THE UNITED STATES TRADE REPRESENTATIVE  
on behalf of the  
U.S. CHAMBER OF COMMERCE  
Tuesday, February 28, 2017**

Good morning. My name is Patrick Kilbride, executive director for international intellectual property at the U.S. Chamber of Commerce's Global Intellectual Property Center (GIPC).

Thank you for the opportunity to testify and for USTR's ongoing efforts to promote strong intellectual property (IP) standards worldwide.

The GIPC, on behalf of the U.S. Chamber of Commerce, appreciated the opportunity to submit comments on this year's Special 301 Review.

Our submission seeks to highlight both systemic and country-specific challenges.

The countries included were selected based on factors including market size, geopolitical significance, and specific intellectual property issues posed by that country.

### **CHAMBER INDEX**

The Chamber's 301 comments were informed by the fifth edition of the U.S. Chamber's International IP Index, which was released on February 8, 2017. A copy of the Index was submitted in support of our submission for the record of this 301 Review.

The Index is an empirical assessment of the strengths and weaknesses of the IP environments in 45 developmentally and geographically diverse countries, collectively representing almost 90% of global gross domestic product.

By benchmarking countries against 35 indicators in six categories – Patents; Copyrights; Trademarks; Trade Secrets and Market Access; Enforcement; and International Treaties – the Index is intended to create a roadmap for countries wishing to implement IP policies that facilitate the creation of knowledge-intensive jobs, domestic R&D, and access to innovative products, services, and technologies, among other things.

In addition to the country reports, this fifth edition of the Index also includes analysis of how existing or proposed trade agreements measure up to the benchmarks included in the Index.

Examining first the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, and second, the final text, as negotiated, of the Trans-Pacific Partnership (TPP) Agreement, the report finds that while both models represent significant progress for many countries, both fall well short of the standards either represented by the Index or already in practice in many of the world's most innovative nations.

Supporting the principle that IP enforcement is not a concession that countries make to one another, but rather an investment in economic development and growth, the Index also includes a robust set of statistical correlations that provide further evidence of the direct link between the strength of a country's IP environment and its ability to achieve important socioeconomic outcomes.

Primary findings suggest direct positive correlations between IP strength and a host of benefits—such as innovative output, access to innovation—that apply to economies of all sizes, regions, and levels of development.

## **HIGHLIGHTS OF GIPC SUBMISSION**

### **Global Trends**

This year for the first time, the Chamber has identified key positive and negative global trends in the IP marketplace as part of its Special 301 submission.

These trends reflect the on-the-ground experiences of our member companies in the world's key markets.

### **Positive Trends**

First, on the positive end, we are happy to see the United States and European Union solidify their commitments to **protect against trade secrets theft**.

Pacific Rim countries demonstrated a willingness to embrace basic trade secrets protections in the TPP negotiations, while ministers at the Asia Pacific Economic Cooperation (APEC) Forum endorsed a set of best practices aimed at strengthening enforcement against trade secrets misappropriation.

In another positive development, we have witnessed over the last few years significant developments in the establishment and utilization of **specialized IP courts**, most notably in China, but also in Pakistan, the United Arab Emirates, and Sweden.

We are also quite pleased that 2016 marked the accession by numerous countries—including Argentina, Chile, Colombia, Mexico, Peru, the Philippines, and Vietnam—to the **Patent Prosecution Highways (PPH)**, which helps countries leverage international partnerships in examining patent applications.

## **Negative Trends**

We'd like to see more of this kind of cooperation, but unfortunately, some negative trends also marked the international IP system in 2016.

Notably, industry is encountering government discrimination against foreign content and is experiencing more and onerous requirements for local production, procurement, and manufacturing. These **forced localization requirements** are especially troublesome in Ecuador, Indonesia, Nigeria, Russia, and South Africa.

Furthermore, certain governments have taken or are pursuing actions that use or promote the use of **compulsory licensing** (CL) in a manner that is inconsistent with global rules and norms. Indonesia's new Patent Law enables the use of CL's as a discriminatory tool while Colombia and Russia inappropriately use compulsory licenses as a bargaining tool in negotiations with suppliers.

The Chamber and its members are also very concerned about the proliferation of **illicit streaming devices** (ISDs), which are primarily manufactured in China. ISDs are media boxes, set-top boxes, or other devices that allow users, through the use of piracy applications (apps), to stream, download, or otherwise access unauthorized content from the Internet.

## **Bilateral, Regional, and Multilateral Trade**

The World Trade Organization's Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is now more than 20 years old, yet implementation of many aspects of the agreement has been delayed repeatedly for a significant portion of the WTO's membership.

Moreover, as the analysis in the Chamber's Index shows TRIPS represents a minimum standard for countries that wish to be participants in the global innovation economy.

Trade agreements are, and will likely continue to be, important vehicles for building consensus around policy commitments to strengthen intellectual property standards internationally.

Analysis of the TPP in comparison to the Chamber Index and the TRIPS Agreement demonstrate the important role trade agreements can play in elevating standards to a far more productive level.

Plurilateral agreements such as the TPP can have special significance due to their enlarged country scope, with its implied precedential value. The agreed-upon TPP text, along with other FTAs that include high-standard TPP chapters, is a benchmark against which IP chapters in future trade agreements of all countries will be assessed.

At the same time, shortcomings in certain material aspects of the TPP text due to the nature of a 12-nation compromise point to the relative advantages of bilateral agreements in achieving the highest possible standards.

It takes many years to build political support for and negotiate trade agreements and it is therefore critical to optimize the outcomes from these rare opportunities to win meaningful international commitments to strengthen IP.

It is also critical that the U.S. Government work together with other nations to prevent against backsliding on IP multilaterally.

With increasing awareness of the economic impacts of IP, special interests and activists have a growing desire to set, influence, or curtail global IP standards through a wide range of multilateral institutions.

Some of these institutions lack the background, competency, or mandate to make IP policy, lending to a confused policy environment and an often misinformed global dialogue.

Notably, the UN Secretary General's High Level Panel on Access to Medicines took a controversial premise not based in fact and administered recommendations which cut to the heart of the global IP system.

Though the UN General Assembly, Secretary General, and at this point the World Health Organization have not endorsed the report, activists continue to venue-shop to implement its recommendations.

Further, the UN Development Program this past year issued “Guidelines for the Examination of Patent Applications relating to Pharmaceuticals,” which reportedly informed policy decisions in Indonesia and South Africa.

Discussion of international IP standards should appropriately be the jurisdiction of those organizations with the established member-state mandate, including the World Trade Organization (WTO), World Intellectual Property Organization (WIPO), and to limited extent the World Health Organization (WHO).

Even in these institutions, challenges remain. In WIPO, certain interests continue to push for a focus on exceptions and limitations to IP, while mystifyingly thwarting capacity building efforts that are critical to WIPO’s mission.

In the WHO, the passage of the Framework for Engagement with Non-State Actors (FENSA) represents a worrying obstacle to successfully implementing the very public-private partnerships that are helping solve global health challenges.

American leadership in multilateral organizations is essential to creating a global environment which rejects these negative policies and instead supports innovation and access to new technologies through strong IP rights.

## **CONCLUSION**

To conclude, the countries and challenges discussed today are merely a representative sample of challenges faced by industry in reducing barriers to market access.

Our full Special 301 submission, together with the U.S. Chamber International IP Index, offer a more comprehensive look at the IP trade barriers and specific country concerns. I would ask that the Index be incorporated by reference in the record of this proceeding.

We look forward to working with you and our trading partners to secure meaningful improvements to IP that create jobs, support innovation, create access to technology, and protect consumers in the United States and around the world.

Thank you.