

**Submission of the
International AntiCounterfeiting Coalition
to the
United States Trade Representative**

**2018 Special 301 Review
Identification of Countries Under Section 182 of the
Trade Act of 1974
Request for Public Comment
82 Fed. Reg. 61363 - 64 (December 27, 2017)**

February 8, 2018

TABLE OF CONTENTS

Introduction	1
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Priority Watch List Recommendations

China	3
India	7
Indonesia	8
Kuwait	9
Russia	10
Ukraine	13
Argentina	14
Brazil	15
Canada	18
Mexico	20

Watch List Recommendations

Malaysia	24
Thailand	25
Vietnam	26
Egypt	27
Kingdom of Saudi Arabia	28
Nigeria	29
Turkey	31
United Arab Emirates	32
Bolivia	34
Colombia	35
Ecuador	35
Paraguay	37
Peru	38

Other Observations / No Recommendation

Hong Kong	39
Japan	40
Singapore	41
Bahrain	42
Jordan	43
Lebanon	43
Morocco	44
Northern Cyprus	44
Qatar	44
South Africa	45
United Kingdom	46
Chile	46
Uruguay	47

INTRODUCTION

The International AntiCounterfeiting Coalition, Inc. (“IACC”) submits these recommendations to the Office of the United States Trade Representative (“USTR”), pursuant to a request for written submissions from the public concerning the acts, policies, and practices of foreign countries relevant to the determination by the USTR, in cooperation with its interagency partners in the Special 301 review (“Special 301”), under Section 182 of the Omnibus Trade and Competitiveness Act of 1988, 19 USC § 2242, of 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 IACC is the world’s oldest and largest organization dedicated exclusively to combating trademark counterfeiting and copyright piracy. Founded in 1979, and based in Washington, D.C., the IACC represents approximately 250 corporations, trade associations, and professional firms, spanning a broad cross-section of industries. IACC members include many of the world’s best-known brands in the apparel, automotive, electronics, entertainment, luxury goods, pharmaceutical, software, and other consumer product sectors.

Central to the IACC’s mission is the education of both the general public and policy makers regarding the severity and scope of the harms caused by intellectual property crimes – not only to legitimate manufacturers and retailers, but also to consumers and governments worldwide. The IACC seeks to address these threats by promoting the adoption of legislative and regulatory regimes to effectively protect intellectual property rights, and to encourage the application of resources sufficient to implement and enforce those regimes.

To that end, the IACC worked with both foreign government officials and the private sector throughout the past year to identify, and to seek remedies to, legislative deficiencies and practical impediments to IP enforcement. The IACC has also led the development of voluntary collaborative programs on a global scale to address key priorities in the online space, including its RogueBlock and IACC MarketSafe programs. The role of governments in encouraging these types of collaborative approaches remains vital though. Further, rights-holders continue to face concerns that require direct intervention by governments at home and abroad. The challenges faced by rights-holders continue to evolve, and we welcome USTR’s assistance in resolving both the new concerns highlighted in this year’s comments, and those which have been reported in past years’ submissions.

Whether measured in terms of lost sales to legitimate manufacturers, tax revenues and duties that go unpaid to governments, decreased employment, or diminished investment in capital improvements and research and development; counterfeiting is a significant

drain on the U.S. and global economy. Further, the production and distribution of goods produced in an entirely unregulated supply chain, where the makers have every incentive to cut corners by using cheap, substandard components, and no incentive to abide by accepted standards of consumer health and safety, presents a clear threat to the health and well-being of consumers, and to the integrity of our national security infrastructure. We look forward to working with you to ensure the safety of consumers and the vitality of legitimate manufacturers and retailers impacted by the global trade in counterfeit and pirated goods.

As in past years, the comments submitted by the IACC are drawn from a variety of sources including surveys of member companies, interviews with local experts in the identified countries of concern, research of publicly-available sources, and data generated by the IACC through its own programs and direct engagement with foreign governments. It should be noted, however, that the countries and issues discussed herein are not an exhaustive list of rights-holders' concerns, but merely a snapshot of current and ongoing issues faced by rights-holders around the world, to which the IACC wishes to draw special attention. It is expected that the majority of the countries and issues raised in this filing will come as no surprise to USTR and the interagency team, as many of those highlighted by IACC members are long-standing concerns that have been raised in previous years' filings.

Our comments this year cover more than 35 countries, spanning five continents, underscoring the truly global scope of the problems faced by rights-holders. Ten countries are recommended for inclusion at the Priority Watch List level, and an additional 13 for the Watch List. We also provide comments on several countries for which we make no formal recommendation with regard to placement.

We thank you for the opportunity to share our experiences.

PRIORITY WATCH LIST RECOMMENDATIONS

ASIA-PACIFIC & SOUTH ASIA

CHINA

It will surely come as no surprise to USTR that the People's Republic of China ("China" or "PRC") remains the country of highest priority for IACC members this year, as in countless years past. China remains the single-greatest source of counterfeit goods sold in the United States and around the world, a fact borne out by public seizure statistics reported by U.S. Customs & Border Protection ("CBP") and the European Union. Rights-holders across all product sectors report broad-ranging concerns including manufacturing, exports, retail sales in the domestic market, and a growing online trade servicing both the domestic and international markets. Those concerns are amplified by deficiencies in China's substantive law and practical impediments to deterrent enforcement (including a continued over-reliance on administrative remedies). Despite some progress in recent years, counterfeiting continues on a massive scale in China, impacting every industry, and serving as an impediment to market access and legitimate competition.

China-sourced counterfeits provide the inventory that drives illicit brick-and-mortar markets throughout the world; and increasingly, China-based websites, marketplaces, and intermediaries, enable the online sale and distribution of counterfeit goods and pirated content. Accordingly, and for the additional reasons set forth in these comments, the IACC recommends China's retention on the Special 301 Priority Watch List in 2018.

A foundational consideration for any brand is its ability to assert its rights – to register its marks. We were troubled to hear reports this year from IACC member brands who continue to face significant challenges at this fundamental level. Members described several negative experiences related to application refusals with illogical and inconsistent bases, inadequate analysis, and improper application of legal standards. While the China Trademark Office ("CTMO") has seen drastic growth in the number of trademark applications filed in recent years, rights-holders urge the provision of greater resources and training for examiners to ensure that brands are not deprived of the opportunity to assert their rights from the very start. Once those rights have been established, rights-holders may then turn to the issue of enforcement.

The availability of criminal penalties for intellectual property offenses, including imprisonment and significant fines, is vitally important because of the significant deterrent impact that such penalties carry. The application of criminal penalties also

sends a clear signal to the public that the government considers the underlying acts to be serious offenses. Rights-holders have long raised concerns about the Chinese government's over-reliance on administrative enforcement actions, which typically result in modest fines. The nominal financial impact of such fines offers little discouragement against recidivism. The trafficking of counterfeit goods is an illicit business, but a business nonetheless. So long as the profits from their illegal enterprise exceed the losses, whether in terms of financial losses or other penalties, there can be no expectation that counterfeiters' illegal activity will cease.

Generally speaking, counterfeiting operations in China are not subject to criminal enforcement unless the relevant party is shown to exceed a given threshold (currently, around the equivalent of \$8,000). These thresholds alone would serve as a significant obstacle to criminal enforcement, but in practice, the hurdle is even greater because of the ways in which Chinese authorities have interpreted and implemented them. Police and prosecutors are often reluctant to accept sales records or similar business documents as evidence of the volume of counterfeiters' illegal business. Instead, they frequently rely only upon an offender's inventory present at the time of their enforcement action. Counterfeiting operations have been seen to take full advantage of this practice by limiting the amount of merchandise on-hand at any given location and time. Rights-holders have likewise pointed to refusals to consider "unfinished" products and components, records of online sales of the same or similar products by the same individuals, and other such evidence of the sales volume or overall scale of an operation when determining whether the threshold for criminal charges has been met. IACC members have also raised concerns regarding practices of the Pricing Bureau with respect to the valuation of counterfeit goods. We've received reports that the Pricing Bureau in Shenzhen refuses to assign a value to counterfeit products for which an authentic counterpart is not currently offered for sale by the rights-holder (e.g., an older or discontinued model of a product), even where a comparable authentic good is otherwise available in the market (e.g., via the resale market or other third parties). As a result, significant quantities of counterfeit goods seized during an enforcement raid may not be included when determining whether the criminal threshold has been met. Not surprisingly, this overall approach tends to result in far fewer criminal prosecutions than would otherwise be expected. We would welcome action by the Chinese government both to reduce the current thresholds, and to provide clearer guidance on the referral of cases to criminal authorities, ensuring that aggregate sales and evidence are considered.

Rights-holders offered mixed reviews of their interactions with criminal enforcement bodies during the past year, with some citing improvements in their willingness to conduct raids and undertake investigations, particularly on larger cases spanning provincial borders and involving coordination among different Public Security Bureaus ("PSBs"). They've also pointed to improvements in partnering with PSBs and online

platforms to act against larger-scale counterfeiting operations with both online and brick and mortar components. Others however have noted that there is a wide disparity among the willingness and effectiveness of police agencies to investigate cases and take actions. Local PSBs in Guangzhou and Shenzhen were singled out for a lack of consistency, with cases failing to progress efficiently or simply being rejected outright. A lack of necessary resources and training are believed by some to be a root cause of these negative experiences. Protectionism likewise remains a concern in certain cities, limiting opportunities for both criminal enforcement and civil actions.

Similar complaints have been raised regarding the judiciary. While some courts have gained a reputation in recent years for increasing expertise in their handling of IP cases and their recognition of the seriousness of counterfeiting and piracy offenses, in many parts of the country this is not the case. Sentences remain insufficient to deter recidivism, and courts have shown disinterest in acting to enforce settlement agreements where convicted offenders have resumed their operations. The lack of supervision and oversight during pre-trial release and post-conviction probation sentences was also raised by rights-holders as an invitation to recidivism.

Though rights-holders may have little other recourse due to the constraints on criminal enforcement discussed herein, administrative enforcement remains a challenge. AICs and MSBs are described as often unwilling to take enforcement actions on behalf of rights-holders. But where such action has been taken, the issuance of warning citations or nominal fines have done little to discourage counterfeiters over the past decade, particularly as sellers have learned to game the system and minimize their risk of more serious criminal charges.

As reported in recent years, the trafficking of counterfeit goods online has become an increasing concern in the PRC, perhaps more troubling because enforcement agencies and prosecutors are seen as failing to evolve and keep pace with the changing business models. During raids, PSB officers often do not collect or capture electronic evidence or files that demonstrate the scale and scope of the target's online business operations (and as noted before, often focus solely on the physical goods located on-site). Some rights-holders have reported good success in partnering with major online marketplaces to prosecute major cases against large counterfeiting operations and their manufacturing and distribution networks. Other selling platforms have been much less willing to work with rights-holders however, and as a general matter, it remains far too easy for online counterfeiters to remain anonymous and escape liability, particularly if they market and sell to international customers outside of China. The identities of operators of standalone websites trafficking in counterfeit goods are shielded from disclosure by national ISPs, and the inability to pursue anonymous counterfeiters allows those individuals to operate with impunity. More must be done to ensure that rights-holders and law enforcement

can efficiently gain access to accurate identifying information for individuals whether on standalone sites or large platforms. More frequently, counterfeit sales have been seen moving to major social media sites, in part due to favorable privacy positions available to them. Public prosecutors and law enforcement have not had much success in building cases against large-scale operations on such platforms.

Rights-holders continue to closely monitor the development of China's draft e-commerce law. Of particular concern is the apparent deference that the draft law shows to online sellers who dispute takedown requests for product listings that a brand has identified as infringing. Unless amended, the result of such a policy could be to significantly increase the availability of counterfeits online, to the detriment of legitimate manufacturers, retailers, and consumers. Shifting the burden to rights-holders would greatly increase the costs of enforcement, and in many cases, have the practical effect of precluding enforcement altogether.

We would likewise welcome the Chinese government's encouragement of intermediaries in other sectors to work in a more collaborative fashion with law enforcement and rights-holders. Chinese banks and payment service providers have resisted doing so to identify and freeze counterfeiters' ill-gotten funds. And the distribution of counterfeit goods to consumers around the world is largely unfettered; online sellers' shipper of choice remains EMS China due to lax policies to ensure accurate descriptions of package contents, valid return addresses, and the like. This same lack of reasonable and appropriate controls has likewise been highlighted as a contributing factor to the current opioid epidemic.

At several important national events throughout 2017, President Xi Jinping repeatedly emphasized the need for strengthening the protection of IP rights. It was a welcome message, and our comments have outlined a number of ways in which the PRC could translate that message into concrete actions. Unfortunately, rights-holders have also provided reported several reports which raise questions about the government's political will to take those necessary steps. As discussed herein, increasing reports of protectionism are concerning; as is government officials' seeming reluctance to tackle some of the more complex counterfeiting issues in the market, such as the operation of entirely fake retail stores. We are hopeful that the government's actions in 2018 will more fully align with its rhetoric.

While China has taken significant steps to improve its IPR regime in recent years, the scope and size of the counterfeiting and piracy problems there remains unacceptably severe, and many long-standing concerns have, to date, not been sufficiently addressed. Notwithstanding the progress that China has demonstrated in some respects, it remains

the country of greatest concern for IACC members in 2018. Accordingly, we support its retention on the Priority Watch List.

INDIA

As noted in last year's comments, rights-holders surveyed by the IACC continue to report significant concerns regarding their acquisition of trademark rights in India. Problems cited largely mirrored the complaints heard with respect to registration in China – inconsistencies and poorly-reasoned refusals of registrations, as well as excessive delays in the issuance of registrations that were approved. Significant delays associated with cancellation and opposition proceedings likewise continue to be a source of consternation. As discussed in our comments above on these issues in China, the inability to obtain trademark registrations in the first place has a significant impact that resonates throughout the entire business cycle. It may cause delays to entering the market and preclude the ability to undertake any meaningful enforcement actions in the country. The situation can be even more difficult in cases involving global brands with marks that are already well-known to consumers, as low-priced counterfeits may be available before their authentic counterparts have ever reached the market.

In 2017, India was retained on the Special 301 Priority Watch List, citing a wide range of rights-holders' concerns. During this year's process, IACC members from multiple product sectors continued to raise many of the same issues previously highlighted by USTR including high levels of counterfeit manufacturing and retail sales of counterfeit and pirated goods, trademark infringement, and ongoing problems related to border controls, the judiciary, market access, and criminal, civil, and administrative enforcement of their rights.

While some members spoke positively of their interactions with law enforcement, support from the local police authorities varies widely across the country. Members spoke positively of the police's willingness to pursue offenders and to conduct raids but noted that they're hampered by chronic under-resourcing. That lack of resources is viewed as contributing to IP-related offenses being given less priority than other types of crime. In addition, police are said to focus their efforts mainly on the case at hand, rather than investing in longer-term investigations to identify and prosecute higher-level offenders such as manufacturers and large-scale distribution networks. Given the volume of the trafficking seen in India, a "big picture" approach is key to substantial improvement; that necessary progress is unlikely to materialize through retail level enforcement actions.

Improving Customs enforcement remained a priority for rights-holders over the past year, and while we have heard reports of increased seizures in 2017, there remains

significant room for improvement. Rights-holders have expressed their pleasure with Customs officers' willingness to engage with industry and to receive training – there's clearly a desire to do more in this area – but border control efforts remain relatively weak overall. Further investment in targeting and continued training in product authentication could pay significant dividends in decreasing the widespread availability of counterfeits in the Indian market.

In recent years, rights-holders have noted marginal improvements to India's enforcement regime, but that progress must also be seen within the judiciary. Enforcement personnel must have confidence that their efforts are not wasted. Rights-holders describe the judicial system as "significantly over capacity," while also citing the inflexible and overly-bureaucratic nature of the litigation process in the country. Resolving cases can be an exceedingly protracted and resource-intensive process, which in turn increases the associated costs to rights-holders. The Indian government is seen to recognize the many challenges faced by rights-holders and has discussed numerous avenues for reforming the legal system, but tangible progress has been slow to materialize.

India remains a challenging place for rights-holders, and while we're encouraged by some reported improvements over the past year, we recommend its retention on the Priority Watch List in 2018.

INDONESIA

Indonesia was retained on the Special 301 Priority Watch List in 2017 due to a number of challenges faced by rights-holders including inadequate IP protection and enforcement, and a host of obstacles to fair market access. In consultations with IACC members during this year's Special 301 process, rights-holders continued to report many of these same concerns. Despite some noted increases in the number and efficiency of criminal raids, the overall environment for IP owners in Indonesia remains very difficult. Border controls, a large-scale retail trade in counterfeit goods, poor coordination and resourcing, and official corruption were cited as rights-holders' greatest concerns. Based on this feedback, the IACC supports Indonesia's continued retention at the Priority Watch List level.

In each of the past two years, rights-holders have reported increases in the number of raids conducted by police, but those efforts have been insufficient to significantly impact the volume of counterfeits in the domestic market and their availability to local consumers and tourists alike. Regrettably, rights-holders continue to report poor coordination between the police and the Attorney General's Chambers; the reported increases in enforcement actions have not been met with a concurrent rise in

prosecutions. As a result, the sole penalty faced by counterfeiters may be the confiscation of their illicit goods. This is hardly sufficient to deter repeat offenses. As noted in last year's submission, the lack of prosecutions is also viewed as harming the morale of law enforcement and diminishing interest in further actions.

In its 2017 Special 301 report, USTR rightly highlighted deficiencies in Indonesia's border enforcement regime. The lack of effective border controls continues to contribute to the ease with which foreign-manufactured counterfeits enter the local market, and to the exploitation of the country's ports as a transshipment point for illicit goods destined for other markets.

Rights-holders likewise remain troubled by corruption within law enforcement, which is viewed as perhaps the most significant obstacle to effective enforcement. The Indonesian government must underscore the importance of IP protection and enforcement by ensuring that police are sufficiently resourced, properly trained, and empowered to take the necessary action. And that action must be carried through by prosecutors and the courts. Unfortunately, we've seen no indication of the political will required to take those steps. Accordingly, the IACC supports Indonesia's retention on the Priority Watch List in 2018.

EUROPE, MIDDLE EAST, and AFRICA

KUWAIT

Kuwait topped the list of IACC members' priority countries in the Middle East this year, with rights-holders citing a wide variety of concerns – many of which were discussed at length in USTR's 2017 report. Counterfeit goods remain widely available in the domestic market due to a combination of lax enforcement at and within Kuwait's borders, protectionism, legislative deficiencies, and an insufficient application of resources or political will to address these concerns. The severity of problems identified by rights-holders remains high.

As stated by one rights-holder, the problems they face in Kuwait begin at the border. A lack of coordination between Customs, the Trademark Office and the Commercial Registry and the absence of a trademark recordation system contribute to Customs' lack of knowledge about rights-holders, and the paucity of notifications received by rights-holders concerning detentions of counterfeit goods. Two major brands responding to this year's survey reported no seizures at all in Kuwait during the past year. Despite rights-holders' efforts at engagement and at conducting trainings, Customs is described as generally uncooperative. Deficiencies in training and expertise could be offset if Kuwaiti

Customs adopted a more collaborative approach with their private sector counterparts, but such a shift does not appear to be forthcoming.

Within the market, enforcement is described as sporadic, and likewise hampered by insufficient training on IP crime for enforcement personnel. The officers of the Criminal Investigation Department and Commercial Control Department inspectors lack necessary resources to effectively carry out their IP enforcement functions, and a lack of coordination between the various enforcement bodies is seen to contribute to significant delays in the enforcement process, resulting in numerous actions being abandoned, despite clear evidence of infringement. Where raids do take place, rights-holders have raised concerns regarding transparency due to slow and often incomplete reporting of seizures. We also continue to receive troubling reports of protectionism, as authorities are described as extremely reluctant to take any action against Kuwaiti nationals, even in clear-cut cases involving the trafficking of counterfeits.

The above-referenced lack of communication between the Trademark Office and the Commercial Registry has also reportedly led to brands' marks being improperly registered by local businesses, and in turn leading to conflicting claims of rights to product and business names, confusing consumers as to the true source of goods in the market.

Turning to the Judiciary, rights-holders report a need for significantly greater training to develop expertise on intellectual property issues. Where cases have been brought, they have progressed slowly, and the penalties imposed do not reflect the serious nature of the offenses. Members also note an overly-formalistic approach to authentication; the lab of the Ministry of the Interior and Kuwaiti Courts often require rights-holders to provide genuine samples for comparison and reference, rather than permitting the submission of authentication reports from impacted brands.

The scope and severity of the problems faced by rights-holders requires a holistic approach by the government of Kuwait. Significantly greater resources must be applied in order to diminish the widespread availability of counterfeits in the market. Greater training and coordination among enforcement agencies is vital. All of this demands a greater expression of political will by the government to acknowledge and address these concerns in cooperation with rights-holders.

RUSSIA

Russia has been highlighted as a priority in IACC's Special 301 submissions, dating back more than a decade. Despite some progress, the country's IP regime continues to pose significant challenges for rights-holders across a wide variety of product sectors. A

number of long-standing issues related to enforcement, border controls, legislative reform, and other factors contribute to the widespread availability of counterfeit and pirated goods in Russia. Online trafficking remains a key concern for both trademark and copyright owners, and consumer attitudes towards participating in the illicit economy remain troubling. Though rights-holders noted with optimism some positive steps taken by the Russian government over the past year, much more progress is needed. Accordingly, the IACC recommends, as it has for over a decade, Russia's retention on the Priority Watch List in 2018.

The Russian statutory regime was the subject of mixed reviews from IACC members during this year's consultations. Some members commented positively on reforms in recent years including Part IV of the Civil Code, opining that these legislative reforms have been largely positive and made the environment more business friendly. Others have noted however that the challenges their companies have traditionally faced in Russia tended to be more a result of lax enforcement of the laws, than they were due to the laws themselves. Despite the introduction of new anti-piracy legislation in 2015, rights-holders report minimal impact on their ability to enforce their rights online, and Russian ISPs are said to be generally unwilling to assist with such issues. Other rights-holders highlighted the government's revision of Article 180 of the Criminal Code as a well-intentioned reform that has led to negative results in practice. That reform was intended to bring about stricter punishments for organized groups involved in trafficking. The practical effect though appears to have been a more permissive attitude towards smaller or first-time offenders.

Enforcement was, similarly, an area in which we received both positive and negative feedback during this year's process. Members cited an apparent increase in the overall level of enforcement and commented positively on increases in administrative fines for IP offenses; monetary penalties for the illegal importation of counterfeit goods is said to have increased three to five times in recent years. The Moscow Economic Police were commended for positive collaboration with rights-holders in taking action against retail shops, and some reported an increased willingness of police to accept case referrals based on rights-holders' preliminary investigations, and to undertake raids against well-known outlets for counterfeits that were previously viewed as untouchable. That said, given historical concerns about the level of enforcement in Russia, there remains significant room for improvement. Enforcement personnel in some areas remain unwilling to work with rights-holders, or simply appear uninterested in pursuing IP offenses. Additional training could be helpful in easing these concerns, and we'd welcome additional action by the government to underscore the importance of IP protection. One rights-holder noted a dramatic increase in the number of seizures of counterfeit products by Customs during the past year, which they attribute to their engagement of Customs officers and training at key ports.

As noted above, online issues remained a priority for rights-holders in 2017, but enforcement remains hampered by a lack of cooperation from intermediaries (including ISPs), the lack of a UDRP-like process, and a reluctance by police to pursue online infringement and counterfeiting. As a result, civil litigation is often the only avenue available to victims, but that approach is both expensive and viewed as having only a minimal impact. Because of the limited authority available to courts in imposing injunctions, targeted sites typically reappear quickly under different ownership. Greater flexibility for the judiciary in crafting such orders, or a more efficient way of expanding the application of injunctions without the expense and time of relitigating the issue would be useful in addressing these concerns.

In addition to online trafficking facilitated by Russia-based websites, Russian consumers are increasingly turning to websites and marketplaces abroad to purchase counterfeit and pirated goods. This has resulted in a significant increase in the volume of small-parcels of counterfeits entering the country via international mail, which Russian Customs is reportedly unable, or unwilling, to seize. When such shipments are discovered, they are typically returned to the sender – an unacceptable approach, for obvious reasons. The only recourse available to rights-holders – assuming that they’re aware of the shipments at all – is to file a civil action to seize the goods. As discussed above, this is not a feasible model of enforcement, as the costs of litigation far exceed the value of the individual shipments.

While members have commented positively regarding increased expertise among the judiciary, and particularly at the appellate level, the penalties imposed in both the criminal and civil realm remain too low, or too easily subverted as described above, to serve as a meaningful deterrent. We would welcome additional action by the government to underscore the seriousness of IP crimes, and were happy to learn that President Putin has called for the establishment of a working group dedicated to the protection of rights-holders. Another clear indicator of the government’s sincerity would be to crack down on official corruption which remains rampant, and a significant concern for rights-holders. Further, the Putin administration should invest in efforts to increase public awareness regarding the range of harms implicit in the counterfeit trade as a means to decreasing the demand for such products.

In light of the range and severity of concerns faced by rights-holders in Russia, the IACC supports its retention on the Special 301 Priority Watch List this year.

UKRAINE

Rights-holders have faced considerable challenges in Ukraine for many years, resulting in the country's designation as a Priority Foreign Country in 2013, along with numerous recent appearances at the Priority Watch List level. These difficulties continued in 2017, with IACC members reporting many of the same concerns heard in past years, including legislative deficiencies, lax enforcement at and within the borders, and non-deterrent penalties. Despite government commitments to improve the environment for IPR, concrete progress has been slow to materialize, likely due in part to the range of political, economic, and social upheavals in the country. Regrettably, member brands describe Ukraine as a relative safe haven for counterfeiters operating online and in the brick-and-mortar context.

Perhaps foremost among the concerns raised by rights-holders in Ukraine is the country's Customs enforcement regime. Counterfeit goods are said to enter relatively freely, and Customs officers are very ineffective at targeting and interdicting those shipments. Where detention notices have been received, they typically involve small volumes of goods, and under procedures adopted in 2016, the onus for enforcement falls almost entirely on the rights-holder. Upon notification that a detention has been made, rights-holders must file an action with the court, and to obtain a judgment confirming the goods as counterfeit. Absent an order from the court, the goods will be released. Given the slow pace at which the courts are said to operate though, effecting seizures remains a practical impossibility. Even with the availability of extensions from the court, the process is expensive and time-consuming. This procedure also appears to conflict with Ukraine's Customs Code, which provides for Customs authorities to seize and destroy counterfeit goods on the basis of a determination by a state expert. Rights-holders have reported though that even when they have been able to avail themselves of the opportunity to obtain an expert's determination, their efforts have been hampered by the timeframe imposed, they've been discouraged by the cost (estimated at between \$1,500 - \$2,000), or they've found the purported expert to lack the requisite expertise to make an accurate determination.

Customs officials in Ukraine have also reportedly adopted a procedure for small parcels and international postal shipments similar to that reported in Russia. Counterfeit goods entering the country by that mode of transport are simply returned to the sender rather than seized and destroyed. We are also unaware of any efforts to capture data related to such shipments for subsequent targeting or enforcement.

Despite efforts to increase engagement and training with the police, Cyber-Police, Customs, State Fiscal Service, and General Prosecutor's Office, rights-holders report little, if any progress. Though the various authorities have repeatedly expressed interest

in doing more to assist rights-holders, there has been little action to match their rhetoric, and no tangible results. As noted in prior submissions, the government's lack of transparency remains a concern.

Rights-holders continue to report the widespread availability of counterfeit goods in both the traditional retail market and online. And as noted in prior years, the concerns online mirror many of the issues seen in Russia, particularly with regard to the lack of cooperation from intermediaries.

Finally, trademark owners have again noted difficulties in quantifying damages, whether in relatively straightforward counterfeiting and piracy cases, or for more general infringements and deceptive trademark practices (e.g., misuse of trademarks in advertisements and store signage). This in turn leads to a lack of clarity regarding whether sufficient harm can be shown to meet minimum thresholds for criminal enforcement. As a result, administrative enforcement – and its associated minimal penalties – remains the rule, providing little meaningful deterrence.

In light of the range and severity of the problems that rights-holders continue to face in Ukraine, we support its retention on the Priority Watch List in 2018.

THE AMERICAS

ARGENTINA

It is perhaps an understatement to say that 2017 was an eventful year for intellectual property enforcement in Argentina, with a number of high-profile incidents including the arrest of Jorge Castillo, the so-called “King of La Salada,” as well as a major ongoing investigation of corruption within the country's Customs agency. Rights-holders have reported a number of positive actions throughout the past year, though many serious concerns remain.

We are pleased to have received reports of significantly increased activity among both federal and local law enforcement agencies over the past year, including the arrests of many involved with illegal activity at La Salada, and the above-mentioned internal investigation which led to the seizure of over 3,000 illegally imported containers. Customs seizures are increasing but remain below those volumes seen at their peak in 2012. Ex officio actions by law enforcement have also reportedly increased. While this activity is viewed with optimism, rights-holders have adopted a wait-and-see approach; previous large-scale enforcement operations as recent as 2015 have not been sufficient to remedy long-standing concerns in Argentina, and much work remains to be done.

As noted in recent years, counterfeiting and piracy online have become an increasing concern. Legislation relating to ISP liability is currently under consideration, and rights-holders have expressed concerns about provisions of that bill which preclude ISP liability related to any content uploaded or generated by a third-party, except where the ISP has been ordered to block or remove the content and fails to act. ISPs would have no general obligation to monitor third-party content, but also would have no obligation to take action with actual notice of a clear infringement.

Among other legislative concerns raised by rights-holders, we are aware of ongoing work to undertake a comprehensive reform of the Criminal Code, including criminal IP provisions, and will be closely monitoring that work in the coming year. One area which is ripe for improvement is the imposition of deterrent penalties for IP offenses. Despite reports of increased enforcement in 2017, and of higher damage awards in civil cases, the penalties imposed in IP cases often remain far too low to serve as a deterrent. Rights-holders would also welcome the reintroduction and enactment of legislation to address long-standing concerns related to landlord liability.

As noted in other jurisdictions, online sales from websites operating abroad to consumers in Argentina have resulted in a significant increase in the volume of counterfeit goods arriving at the border via small parcels. We urge Customs to engage with express consignment carriers as well as the public mail service to develop strategies to address this influx of illicit shipments.

Concerns related to corruption remained pronounced in 2017, though clearly the administration is taking steps to address those issues. We are aware of the arrest of two officers of the Buenos Aires Police, and one from the Federal Police on corruption charges. These instances, and those related to the Customs investigation have encouraged rights-holders that the government takes the matter seriously.

Though we are pleased with the efforts demonstrated by the Argentine government over the past year, a number of the efforts discussed herein are works in progress, and we await more concrete developments. Accordingly, we support its retention on the Priority Watch List in 2018.

BRAZIL

IACC members continue to report a broad range of severe concerns in Brazil. Despite concerted efforts by rights-holders to draw attention to the host of legislative deficiencies, market access barriers, insufficient enforcement, and corruption that they contend with in the Brazilian market, the illicit trafficking of counterfeit and pirated goods remains

unacceptably high. In each of the past two years, we have recommended Brazil's elevation to the Priority Watch List level; based on member feedback this year, we make the same recommendation in 2018.

Rights-holders' concerns in Brazil begin at the most fundamental level – the acquisition of rights, market access, and the country's statutory framework for dealing with counterfeits. With regard to the first issue, IACC members report continuing, and significant, delays at the Brazilian Trademark Office (“BTO”). Both registration and opposition procedures are described overly burdensome. The BTO has been faced with a backlog of applications, and despite recent efforts to address that problem with the hiring of new examiners, IP owners report little progress. The influx of new examiners is also pointed to as an underlying cause of sometimes poor and/or inconsistent decisions. Better training to improve reliability and predictability of those decisions, and to increase the efficiency of their procedures is vital. Brands from a number of sectors also continue to report difficulties entering the market due to high tariffs that are intended to protect local manufacturing. Often however, the tariffs are seen less as an aid to local manufacturing than as an incentive to smugglers who supply the black market with counterfeit and diverted versions of legitimate products. And as reported in prior years' submissions, Brazil's statutory regime does little to discourage the importation and sale of illicit goods. Under the current provisions of Article 190 – Law 9.279/96, the penalties for counterfeiting-related crimes are limited to a fine, or detention of one to three months. Custodial sentences remain rare though, and as a practical matter, offenders are likely to receive a small, and certainly non-deterrent, fine. For over a decade, rights-holders have urged the enactment of Bill 333/1999 to bring the penalties for counterfeiting offenses in line with those available for copyright violations – two to four years imprisonment, plus a fine – but those calls have fallen on deaf ears. Rights-holders have no expectation that convicted offenders will be discouraged from resuming their illegal activity under the current statutory regime.

Despite the statutory constraints, IACC members continue to seek opportunities to work with the various enforcement bodies throughout Brazil. Unfortunately, those efforts remain exceedingly difficult. As the largest market, and a hotspot for the distribution of counterfeit goods, Sao Paulo has long been a focus of rights-holders' efforts. Under the city's former mayor Fernando Haddad however, the local government's anti-counterfeiting and anti-piracy efforts were deprioritized, allowing sellers of counterfeit goods to operate largely with impunity, especially in well-known and notorious markets like the 25 de Marco street and Bras region. Rights-holders turned to civil actions and saw some success; in 2016 a Public Civil Action was filed against the Sao Paulo City Hall on behalf of the National Council to Combat Piracy and the Brand Protection Group, seeking to revoke the license of the company responsible for leasing space to tenants of the Shopping 25 de Marco's main building. This was followed by raids this past summer

by the Federal Revenue Service and Public Prosecutors, resulting in the seizure of tens of thousands of counterfeits, along with the temporary closure of the mall. Rights-holders' optimism has faded somewhat since then, as they report that no charges have been pursued against the owners / landlords, and that the sale of counterfeits has returned with the mall's reopening. Corruption within the Sao Paulo Police is said to be the worst in all of Brazil and must be rooted out.

Elsewhere in the country, rights-holders report similar concerns. With regard to Rio, we've also heard significant concerns involving corruption within the police department, along with very few raids. As a result, there's an apparent decrease in confidence with the specialized police unit in Rio, and brands are relying more on the public prosecutors in their stead. In Brasilia, the specialized police unit that was previously tasked with IP enforcement has been shut down entirely; rights-holders do report continuing operations of a similar unit in Recife however.

While Customs seizures have reportedly increased, particularly in the south of the country, overall seizures at the border remain very low when viewed in the context of the size of Brazil's market and the availability of counterfeits to consumers. An emphasis on enforcement at the tri-border region and more deterrent penalties are critical to making progress on this front.

Though some respondents spoke positively about their interactions with the Brazilian judiciary, as noted previously, judges have limited discretion in imposing deterrent sentences under the existing law. They're likewise hampered by the lack of statutory or treble damages in civil matters. Some rights-holders also continue to take issue with the pace of litigation, citing judicial inefficiencies which lead to increased costs, an issue made more problematic by the low level of damages generally expected by brands.

Though we'd reported pleasure last year at reports of increased activity by the National Council Against Piracy and Intellectual Property Crimes ("CNCP"), the opposite appears true this year. Respondents indicated that they were aware of no meetings of the group, and no substantive actions undertaken.

Participants in this year's process underscored the continuing severity of the issues they face in Brazil, and their growing concerns related to corruption as the most significant factors underlying our Priority Watch List recommendation. We urge the Brazilian government – both at the federal and local levels – to take the steps necessary to address the concerns raised this year, and for many years, in these comments.

CANADA

As was the case in this year's consultations with regard to Mexico and Brazil, rights-holders expressed great frustration not simply over the range of difficulties they face enforcing their rights in the country, but also over the years they've waited for progress on those issues to match the Canadian government's professed commitment to ensuring an efficient and effective IP regime. For well over a decade, the IACC has recommended Canada's inclusion at the level of Watch List or above, citing statutory deficiencies, border control concerns, a lack of engagement by law enforcement, and a variety of other concerns. During that time, progress in some areas has frequently been matched, or in some cases outweighed by regression on other issues. Too often, the reported issues remain unchanged year over year. The Canadian government's action on IP has yet to match its rhetoric, and that includes investing the necessary financial resources and manpower to effectively combat the trafficking of counterfeit and pirated goods both at and within the country's borders. The government's inaction comes at the expense of intellectual property owners across all sectors. In light of the feedback received from rights-holders this year, the IACC recommends Canada's elevation to the Priority Watch List level.

Upon its taking effect in 2015, rights-holders welcomed the arrival of the Combatting Counterfeit Goods Act ("CCGA") which, among other things, provided a statutory basis for criminal trademark counterfeiting. The new authority appears to have done little to encourage criminal investigations and prosecutions however. As noted in last year's comments, trademark owners continue to report a lack of priority for IP cases. Rights-holders have long bemoaned the reorganization that was undertaken by RCMP several years ago which left a significant vacuum in Canada's IP enforcement regime, and which has yet to be filled.

IACC members highlighted an overall lack of enforcement as the single greatest problem that they face in Canada. By way of example, rights-holders reported that they were unaware of any counterfeiting cases (on their own behalf or otherwise) that were pursued by the Royal Canadian Mounted Police ("RCMP") in 2017. Similarly, we've seen no reports of criminal enforcement at any flea market throughout the entire country during 2017 – including the St. Eustache Flea Market, north of Montreal, Quebec, alleged to be a major location for the obtaining of counterfeit consumer products for resale by retailers. Nor have there been any reports of criminal enforcement at any shopping mall, including at the Pacific Mall, in the Greater Toronto area, which was included on USTR's most recent Notorious Markets List. Further, we are aware of only one criminal case in Canada involving counterfeit consumer goods during the past year, and that case did not result in a prosecution.

This is not to say that Canadian law enforcement is uninterested in pursuing IP-related cases. Rights-holders have seen significant interest among front-line officers in pursuing counterfeiting and piracy cases, recognizing the frequent intersection between IP crimes, organized crime and gang activity, consumer fraud, and public safety concerns. Despite that interest though, the Canadian government has not prioritized IP enforcement, has neglected to provide enforcement agencies with the necessary resources to undertake those actions, and has failed to provide a workable framework for cooperation and collaboration among its enforcement bodies. That final point is of particular concern, as there is an apparent lack of clarity or understanding by Canadian law enforcement as to their respective roles in dealing with intellectual property crimes. When municipal/local law enforcement are contacted they often take the position that IP crime is the responsibility of the RCMP. While that may have been the case years ago the fact is that the RCMP has abandoned IP crime and has not proceeded with IP enforcement for approximately the past four years. This has resulted in not only local law enforcement being confused but also CBSA who, in many instances, still contact the RCMP to see if they will proceed with a criminal investigation (which they do not and have not for the above-mentioned four-year period).

The Combatting Counterfeit Goods Act, likewise, brought about new authority for the Canada Border Services Agency, including ex officio powers to detain counterfeit goods at the border. Regrettably, that new authority has not been accompanied by increased seizures; some respondents report even fewer seizures today than prior to the new law's enactment. Rights-holders have expressed their greatest concerns with regard to the process which was developed to implement the new customs authority. The CCGA was drafted, and has been implemented, with an eye toward revenue-neutrality. In short, the Canadian government has provided a framework for border enforcement, but the costs associated with availing oneself of CBSA's efforts to interdict counterfeits at the border are borne by the rights-holder rather than the government or by the importer of the illicit goods.

As implemented, CBSA has created a "Request for Assistance" process, similar to U.S. Customs & Border Protection's trademark recordation process, allowing rights-holders to register their marks with the agency. Unlike the system in place in the United States however, Canada provides no administrative authority to the CBSA to assess on its own whether goods that it has detained are in fact counterfeit and therefore subject to seizure. Instead, CBSA provides a notification of its detention, at which point the burden is shifted entirely to the rights-holder to file an action with the courts to effect a seizure of the goods. The costs associated with that litigation, as well as the costs associated with the storage (and subsequent destruction) of the goods are borne by the rights-holder. Not surprisingly, rights-holders tend to view the process as unnecessarily expensive and time-consuming. Some have been less charitable, describing it as a "pay for play" model of

border enforcement. If the rights-holder fails to file a complaint within the requisite timeframe, the suspect goods are released for entry. The burden of costs becomes even more pronounced as more and more often, counterfeiters have taken to importing their illicit goods via small parcels, and rights-holders are likely to be forced to file ever greater numbers of actions to address the volume of traffic. Regardless of the procedural considerations, the overall volume of seizures remains troublingly low given the size of the Canadian market, and the level of counterfeits which continue to be seen in retail markets throughout the country. Canada must commit to investing significantly greater resources in CBSA and to empowering the agency to deal with counterfeits in a more efficient manner if it hopes to decrease the volume of counterfeit goods entering the country.

Given the above-discussed obstacles to criminal enforcement, and CBSA's lack of authority to resolve border enforcement matters administratively, civil enforcement is often the only legitimate option available to rights-holders. And while respondents feedback regarding the judiciary was generally positive, civil litigation can be a time-consuming and expensive foundation for a brand protection program. Given the lack of statutory or treble damages in such cases – another long-standing complaint of rights-holders – which limits brands' potential recovery at trial, litigation is simply not viable in many cases.

As described in last year's comments, there is a sense among rights-holders that the Canadian government lacks the political will to effectively address their perennial concerns. That view has not changed over the past year, nor in the three years since the enactment of the Combatting Counterfeit Goods Act. In light of the above, we recommend Canada's inclusion at the Priority Watch List level in 2018.

MEXICO

The IACC has recommended Mexico's inclusion on the Special 301 Watch List for over a decade, citing numerous concerns related to the country's statutory and enforcement regimes. Regrettably, progress in Mexico has been slow to materialize, if it has at all, on a broad range of issues. Due to this lack of substantive improvement on a variety of IP-related issues, and members' growing frustration at the perceived lack of priority shown by the Mexican government in addressing these matters, we recommend Mexico's elevation to the Priority Watch List in 2018.

The Mexican criminal system was amended in 2008, with an intent of simplifying processes and improving the overall efficiency of the system; nationwide implementation of these reforms was anticipated by June 2016. These reforms were focused in large part

on expediting case procedures to allow for more prompt resolutions, and with an aim to improving recovery by victims rather than focusing on punitive imprisonment of offenders. Criminal proceedings remain overly formalistic though, and a number of difficulties have been experienced during the implementation of the above reforms.

Mexico's formalism has long been noted as a concern by rights-holders, particularly with regard to its impact on enforcement, with rigidly-defined roles and authority for various actors within the system – the seizure of goods by Mexican Customs provides an example of this in action. Mexican Customs has no statutory authority to seize infringing or counterfeit goods on their own initiative; that action requires an order either from the Mexican Trademark Office or from a prosecutor. That lack of *ex officio* power – both with respect to imports, and goods in-transit through Mexico – has been raised as a priority concern of the IACC for many years. Customs' limited authority in this regard would create difficulties under the best of circumstances, and even under the traditional model of large-scale imports of counterfeits via cargo containers. Customs must typically release goods for entry within five days of their inspection, while the time required to obtain an order of seizure often significantly exceeds this; in some cases, we've received reports of orders for seizure being sent to Customs over a month after the goods have been released. Such large-scale shipments are becoming less frequent however, as Mexico has seen a trend towards importing counterfeit goods via small consignments, similar to that seen in the United States and elsewhere. The process for seeking to seize such smaller shipments may be even more onerous. Again, the bureaucracy impedes action by Customs.

Rights-holders report that the Specialized IP Unit of the Attorney General's Office has announced that it would no longer receive complaints related to courier packages, citing that its mandate was to address larger cases involving amounts of approximately 1 million Mexican Pesos. Those claims are instead now sent to another section of the Attorney General's Office for review and referral to the relevant State offices, often resulting in weeks of delay. Disputes over the proper procedures for maintaining and verifying the chain of custody for packages that may be examined by Customs and other law enforcement officers have resulted in prosecutors refusing to proceed with cases, as they're unable to confirm that evidence presented to them is reliable. This has occurred despite guidance in the National Criminal Process Code providing that, "when during the chain of custody process, the evidence, instruments, objects of crime were altered, they will not lose their value as evidence unless the authority verifies that they have being modified in such a way that they are not efficient to prove whatever fact," and judicial precedent confirmed that criteria. The Attorney General's Office should clarify the government's position on this matter, given the significance of its impact on effective enforcement.

Customs enforcement has also been hindered in Mexico by a failure to enforce existing laws related to the obligations of customs brokers who whether willingly, through negligence, or otherwise, are complicit in the illegal importation of counterfeit goods. Customs brokers are not liable criminally for the importation of counterfeit products, but they do have an obligation to declare accurate and truthful information in connection with the shipments that they facilitate. In this regard, Mexican Customs Law sanctions customs brokers that provide an inaccurate name or address of an importer, with penalties including the revocation of their permit to operate as a broker. Rights-holders would also support the adoption of a clear requirement that customs brokers, and other similar intermediaries such as freight forwarders, cooperate with rights-holders by disclosing relevant identification and other data of their customers who have been found to be illegally importing counterfeit goods. Rights-holders report relatively few cases in Mexico seeking to enforce the current provisions.

Recidivism remains common in Mexico, due in part to the above-described formalism, as well as the non-deterrent level of penalties, and lapses in coordination between Customs authorities and prosecutors to ensure that repeat offenders are properly identified, and that prosecutions and the imposition of significant penalties are pursued.

Within the domestic market, rights-holders offer mixed reviews of the state of enforcement. While members commented positively on the efforts of the Federal Police to organize raids, including a significant raid carried out at the notorious market of Tepito, sales of counterfeit goods remain rampant. Cooperation from law enforcement agencies is said to vary widely across the country, but frequently described as slow and at times wholly unresponsive. Penalties remain far too low to discourage repeat offenses.

Rights-holders also note concerns about the use of government “IP experts” to provide formal determinations in counterfeiting cases. Some report negative experiences with clearly erroneous determinations by the appointed experts, leading to concerns about corruption within the system. These concerns are similarly noted with regard to the use of experts by Mexican Customs. The examination procedure that has been adopted has also been viewed as problematic, as rights-holders are typically requested to provide a genuine sample for reference use by the expert. Respondents note that the criminal offense of counterfeiting is defined by Mexican statutes in terms of the copying of a mark without substantial modifications, so any such comparison should focus on the mark alone, rather than a holistic comparison of the authentic and suspect goods.

Proceedings are made more costly and time-consuming than necessary with the continued application of requirements that trademark owners provide original copies of trademark registrations to demonstrate ownership; such information is readily available via government-managed databases and registries.

With regard to copyright-related matters, rights-holders continue to seek the full implementation of the WIPO digital treaties, including provisions related to technological protection measures. The adoption of implementing legislation is essential to ensure the availability of the rights afforded under those treaties, given reports of an outstanding lack of knowledge from prosecutors and judges in this area, and in recognition of the wholesale changes that have occurred in the copyright enforcement landscape in recent decades.

A final concern raised by rights-holders involves Mexico's recently introduced opposition procedures. While a positive step, the procedures adopted fail to recognize "bad faith" as a basis for challenging a registration. Bad faith registrations are a growing problem not only in Mexico, but around the world, and providing such a basis could preclude more expensive and time-consuming disputes that will necessarily arise if bad faith applications are allowed to issue.

Given the broad range of issues that require attention in Mexico, and the long-standing nature of many such concerns without much-needed progress, we recommend its elevation to the Priority Watch List in 2018.

WATCH LIST RECOMMENDATIONS

ASIA-PACIFIC & SOUTH ASIA

MALAYSIA

In last year's Special 301 report, USTR commented positively on progress made in Malaysia, singling out both the Special Anti-Piracy Task Force for its efforts in deterring and preventing networks that distribute counterfeit goods, as well as the Ministry of Domestic Trade Cooperative and Consumerism ("MDTCC") Special Internet Forensic Unit's work to address illicit activity online. During this year's consultations however, rights-holders have noted that despite the government's work to steadily increase the size of the enforcement division of the MDTCC, the increased resources have not resulted in any significant improvements in the outcome of IP enforcement actions. These concerns are due, in part, to the limited number of criminal prosecutions following enforcement actions; such prosecutions remain exceedingly rare. Penalties also lack deterrence, resulting in a high number of repeat offenders who demonstrate little concern about their likelihood of prosecution. The administrative enforcement process is, likewise, viewed as ineffective due to the minimal penalties imposed.

Rights-holders continue to experience significant difficulties with regard to border enforcement in Malaysia. Some major brands reported almost no seizures, despite high volumes of counterfeits available in the local market; cooperation between Customs and the private sector is hampered by the lack of a trademark recordation system. We've likewise heard concerns about the lack of coordination between Malaysian Customs and the enforcement division of the MDTCC; Customs is expected to engage the MDTCC's assistance whenever a consignment of suspected counterfeit goods is uncovered, but such referrals appear to happen rarely.

In last year's submission, we reported a member's consternation related to a series of significant raids involving large-scale sellers of counterfeits that had taken place nearly two years prior, but which had resulted in no follow-on prosecutions. In the year since that filing, no progress has been seen on that case. The relevant shops continue to operate, and none of the responsible parties have faced prosecution.

While the Malaysian government has taken positive steps in recent years to demonstrate its commitment to fighting IP crime – including the application of increased manpower and resources, and the development of specialized units to deal with long-standing problems – we strongly believe that significantly greater progress could be achieved. Increasing the number of criminal prosecutions is vital and would serve as a clear signal

to importers and sellers of counterfeits – and to Malaysian consumers – of the seriousness of IP offenses. The adoption of a trademark recordation system could likewise pay significant dividends in improved cooperation between Customs authorities and rights-holders. Finally, greater coordination between Customs and the MDTCC is essential to ensuring the identification of targets for investigation who have for too long operated with relative impunity. We would welcome the Malaysian government’s leadership in addressing these concerns. We recommend Malaysia’s retention on the Watch List this year.

THAILAND

Thailand was retained on the Priority Watch List in 2017 but following the conclusion of an Out-of-Cycle Review, USTR announced its movement to the Special 301 Watch List. The Thai government has taken some positive steps over the past year, including the creation of the National Committee on Intellectual Property Policy, as a means to improving interagency coordination, while also highlighting its political will to address a wide variety of long-standing concerns. In light of those efforts, and additional commitments made by the government to continue its improvement, the IACC agrees with the decision to remove Thailand from the Priority Watch List. However, rights-holders will be watching closely to ensure that the Thai government follows through on those commitments and makes strides in several other areas identified in previous submissions.

Thailand was commended by rights-holders for its generally strong legislative framework with respect to anti-counterfeiting; complaints tend to focus more on the practical application of those laws, rather than on the laws themselves. One concern, also raised in past years, relates to the lack of prosecutorial discretion available under Thai law, which results undue burdens on the court system and a sense that “all cases are created equally.” Greater discretion would allow both police and prosecutors to focus greater resources on larger operations and more serious offenses that could have a more significant impact in terms of deterrence. In addition, respondents during this year’s process continue to point to provisions in the law that allow for a mandatory sentence reduction in cases where offenders plead guilty, minimizing the practical impact of convictions. The frequent suspension of sentences has a similar effect.

While the Thai government has taken some steps to address registration backlogs for trademarks, and has joined the Madrid Protocol, rights-holders still report significant delays at the Trademark Office and would welcome additional actions to remedy these issues. Similar to the reports concerning India, the excessive pendency times for

trademark applications have in some cases served as a major obstacle to the enforcement of IACC members' rights, particularly in those cases involving globally-famous marks already well-known to Thai consumers.

While we commend Thailand for the steps taken to date, and as noted in the Out-of-Cycle Review, greater efforts are required. As such, we recommend Thailand's retention on the Watch List in 2018.

VIETNAM

Rights-holders continued to experience challenges to the enforcement of intellectual property in Vietnam over the past year. Despite some positive developments, counterfeit goods remain readily available in both physical and online markets. On a positive note, members have noted improved border enforcement – a priority raised for many years, and increases in government support and priority. Conversely, rights-holders expressed dismay at apparent corruption, a need for more prosecutions, and more stringent penalties – particularly in terms of administrative enforcement actions. We recommend Vietnam's retention on the Watch List in 2018.

Members singled out the National Office of Intellectual Property, in the Ministry of Science and Technology for praise, noting their strong support of rights-holders' criminal and civil enforcement efforts. The deputy head of the agency, Le Ngoc Lam, has been quoted in the press highlighting the importance of such efforts; such public statements are essential to both the public's and government and law enforcement officials' awareness of the importance of IP protection.

The need for increased efforts by Vietnamese Customs, including improved coordination with the country's Chinese counterparts, was raised as a key priority in the IACC's comments in past years. We've been pleased by progress on this front, with positive feedback from rights-holders in each of the past two years' consultations. Members again reported increased border seizures during this year's discussions.

Online enforcement in Vietnam has become increasingly important to rights-holders in recent years, and while members have commented positively on their interactions with, and the responsiveness of, the Ministry of Science and Technology in addressing their concerns online, more must be done to address the pervasiveness of stand-alone websites and online platforms trafficking in counterfeit goods.

Despite this positive feedback, rights-holders remain frustrated at the lack of progress seen on a number of other issues highlighted in past years' comments. Among the most

serious of those are the continued reports of corruption with the Market Management Bureau and Economic Police, which has been tied to compromised raids and an overall lack of prosecutions. An over-reliance on administrative enforcement, with its characteristically low penalties, is also viewed as a continuing obstacle to significantly improved enforcement. Addressing the problems of corruption and ensuring that more cases are referred for criminal sanctions could have a positive impact throughout the marketplace, particularly given rights-holders' consistently positive views of the judiciary's expertise in handling IP-related cases.

EUROPE, MIDDLE EAST, AFRICA

EGYPT

Egypt was retained on USTR's Special 301 Watch List in 2017, due to a wide range of concerns related to the country's protection and enforcement of IP rights. IACC members continued to report that many of the issues raised previously remained problems during the past year. Though the Egyptian government has expressed a willingness to do more in the area of IP, enforcement bodies remain underfunded, penalties low, court proceedings are described as slow-moving, and enforcement efforts are hampered by outdated legislation.

Some rights-holders have noted an apparent increase in raids undertaken by the internal trade police, but under existing law, counterfeit goods are typically left in the custody of the vendor rather than seized by enforcement officials. Due to a lack of transparency and delays in adjudication, which in some instances is said to take years, the goods are more likely to be sold than to be removed from the stream of commerce. Enforcement efforts are also said to be hindered by the low penalties imposed on offenders – typically non-deterrent fines, and the lack of verifiable destruction of counterfeit goods. Rights-holders noted cases in which courts have permitted the simple removal of counterfeit marks, and the subsequent release of the unbranded goods, opening the door for relabeling after the fact. Enforcement online is not viewed as being a priority of the government, though such trafficking appears to be increasing. Corruption is also viewed as a significant obstacle to enforcement, as rights-holders report instances of enforcement actions being compromised due to leaks.

Concerns related to a lack of transparency were also heard with regard to customs enforcement; Egyptian Customs is said to rarely report detentions of goods, and rights-holders do not have a clear picture with regard to the volume of products interdicted. We are aware of some recent changes in Customs' procedures which were undertaken to improve inspections, and which are reported to have resulted in detentions at the ports

in Alexandria and Port Said. Rights-holders would welcome further efforts by Customs in this regard, and more robust collaboration with the private sector.

On a positive note, the Egyptian government is said to be receptive to the idea of improving IP protection as a means to attracting foreign investment. Addressing the priority concerns raised in these comments would be a useful start to doing so. Given the current lack of resources available though, Egypt remains a very challenging market for IP owners. Accordingly, we support Egypt's retention on the Watch List in 2018.

KINGDOM OF SAUDI ARABIA

The Kingdom of Saudi Arabia ("KSA" or "Saudi Arabia") is one of the largest and most important consumer markets across the Middle East, and as such, holds strategic importance to rights-holders across all product sectors. While IACC members continued to report significant concerns in the region, we have received positive feedback regarding the level of enforcement – particularly with regard to efforts by Customs in addressing counterfeit imports. Though we are pleased by the reported progress, greater resources and transparency would be welcome, as would a more strategic approach to enforcement. We applaud the improvements made to date but recommend Saudi Arabia's retention on the Watch List in the coming year. We look forward to working with the Saudi government to continue building on the advancements that have been made in recent years.

Saudi Arabian Customs was described by one respondent as perhaps the most active customs organization in the Middle East region; they further noted that Customs' efforts had resulted in a greater volume of seizures of counterfeits for their company than they saw anywhere else in the region. Customs seizures are said to be up across a number of ports, including Riyadh, Jeddah, Dammam, and at the Saudi / UAE land border in Al Batha. Such reports are encouraging, as they indicate wholesale buy-in from Customs personnel throughout the country, rather than concerted efforts at a single entry point.

Members also shared positive feedback regarding Customs' notifications of rights-holders about detentions and seizures, and about their prompt destruction of counterfeit goods. Rights-holders do note however the need for greater transparency, and for the provision of more detailed information about those enforcement actions. In some cases, affected brands receive only very limited notices including some sample pictures of the goods involved. Additional reporting regarding the identity of the importer, the quantity of the goods, and other relevant data included in entry documents could enable more thorough investigations up the distribution chain. The call for improved transparency also underlies concerns over Customs' lack of a central reporting mechanism for seizures,

which can contribute to lapses in communication, while also opening the door for corruption. Finally, we've received reports of possible instances of re-exportation of detained counterfeits – an issue that has caused concerns for several years in the UAE; we strongly discourage the adoption of such a process in Saudi Arabia.

Despite the reported increases in seizures, counterfeit goods remain readily available in Saudi Arabia. We've received mixed responses concerning market enforcement by the Anti-Counterfeiting and Fraud Department with the Ministry of Commerce and Investment (“ACFD/MOCI”), with some members describing them as engaged and happy to support enforcement efforts, citing a number of raids against retailers and wholesalers. Conversely, we've also received reports from some members of a sharp decrease in market raids. Respondents concurred however that the ACFD/MOCI should focus greater efforts on higher-level offenders and wholesalers who supply the broader market. Closer coordination with rights-holders to identify “hot spots” for more regular and targeted enforcement sweeps would likewise be helpful. To facilitate these actions however, greater resources for Saudi enforcement personnel are essential; some areas remain understaffed and simply lack the manpower at present to make IP enforcement a priority.

Increases in enforcement should be also be met with penalties that truly deter recidivism. Unfortunately, the penalties imposed by Saudi authorities do not typically fall into this category. Administrative enforcement often simply results in the seizure of counterfeit inventory, and the destruction of goods. In some cases, members report that vendors are served with notice of their offense, but that the goods are left in the offender's custody pending destruction, permitting the continued sale of the illicit goods in the interim. Nominal fines may be assessed, but brands report that vendors' shops are rarely closed by the ACFD/MOCI, even in the cases of repeated offenses. We encourage the Saudi government to build upon the positive results that have been reported to date but support Saudi Arabia's retention on the Watch List in 2018.

NIGERIA

Nigeria remains a high priority for IACC members, but rights-holders report many ongoing concerns in the country, many of which have been discussed at length in prior years' submissions. In recent years, Nigeria has become both a target destination market and a preferred transit route for counterfeit and pirated products. Despite some progress in the country, Nigeria's IP enforcement regime is viewed as weak, and could benefit from both legislative amendments and the implementation of a more coordinated approach to enforcement. Rights-holders also urge a more concerted effort by the government in

raising public awareness and stamping out corruption which has hindered effective enforcement in the past.

Nigeria has no specific anti-counterfeiting law, at least not one of general application that covers all types of goods. As such, the fight against counterfeits often requires the creative application of various laws that affect rights holders in one way or another. This may include a combination of civil court action, criminal court action, or engagement of various regulatory or administrative bodies. The end result reported by respondents is that brand protection efforts in the country are often overly-complicated and unnecessarily costly to rights-holders.

IACC members welcomed the development of a trademark recordation system, but have reported that, in practice, it operates as a largely informal notification system; a more formal process would be beneficial. Rights-holders also commented positively on the collaboration between the National Customs Service and other agencies, including the Standards Organization of Nigeria and the Nigeria Copyright Commission, with regard to carrying out joint inspections of goods at the border. These sorts of collaborative approaches are viewed as a key to overcoming frequent resourcing concerns as the volume of goods flowing across Nigeria's borders increases. The establishment of the independent Customs Intelligence Unit is also indicative of the more strategic approach to enforcement that should have longer-term benefits to addressing the trafficking of counterfeit and pirated goods. Despite these positive steps, and efforts by rights-holders to engage with their counterparts in enforcement, rights-holders note an apparent increase in the volume of counterfeits seen in the domestic market in recent years. Increased resources, and an increased priority on IP enforcement are both seen as necessary for significant progress to materialize.

As noted in past submissions, rights-holders continue to raise concerns about the expertise of the judiciary, describing lengthy judicial processes and undue delays to adjudication that unnecessarily increase the cost of enforcement; as well as the imposition of non-deterrent penalties that do not reflect an appreciation for the seriousness of offenses. The low level of penalties is likewise seen as contributing to the widespread perception among consumers – and of some enforcement personnel - that counterfeiting is not a serious concern. We would welcome greater efforts to change that perception among the judiciary, enforcement agencies and the public. While we are heartened by some of the reports of progress we've heard, we recommend Nigeria's retention on the Watch List in 2018.

TURKEY

The IACC has provided comments on Turkey during the Special 301 process each year over the past decade. As a manufacturing source for counterfeits, a large retail market, and a major route into the European Union for illicit goods produced elsewhere, the country remains a key priority for members across a variety of product sectors.

As noted in last year's submission, a new Industrial Property Law took effect in January 2017, and was met with some optimism by rights-holders for its clarifications on some long-standing issues. For example, the new law explicitly includes importation and exportation of counterfeits among the criminal articles, which should be helpful in seeking the criminal prosecution of a broader range of offenses. Members also point to an ongoing effort to amend Turkey's Customs Law, and it is expected that the law will include provisions that will aid in expediting destruction proceedings with Turkish Customs.

Some of the hoped-for progress on the IP front has been negatively impacted by political events over the last 18 months, and in some cases rights-holders have reported a rollback of progress seen in prior years. This is perhaps most pronounced among the judiciary, where a number of the more well-trained judges and prosecutors with experience in IP have been removed from office, purportedly due to their opposition to the Erdogan regime. Such reports are troubling for rights-holders as a lack of expertise is often seen to contribute to the imposition of lower penalties, and a general decrease in the efficiency of actions in the court system. In contrast to more positive feedback received last year, some report greater difficulties in obtaining search warrants, with some judges again being said to impose impractical evidentiary requirements before issuing a warrant.

Customs enforcement remains both a priority, and a significant source of frustration for rights-holders. Border inspections are carried out inconsistently, and officials often lack the necessary training to effectively target and interdict illicit shipments. As a result, Customs' seizures at the border remain low, and certainly are not reflective of the overall volume of counterfeits in the market. Where border seizures have been effected, rights-holders generally credit the work of the Smuggling Unit of the Police rather than the Customs authorities.

The difficulties seen with regard to border enforcement are attributed by rights-holders to a lack of uniform policies throughout the country which results in a lack of clarity among IP owners concerning what steps they must proactively take in order to obtain assistance for any given port of entry. Brands also cite a chronic under-resourcing of Customs, as well as high turnover of staff that exacerbates concerns about the sufficiency of training for front-line officers.

As with Customs, rights-holders' interactions with police directorates are complicated the lack of uniformity among the policies and procedures implemented from district to district, and from city to city. As a result, developing a comprehensive brand protection program to engage with law enforcement, or simply obtaining routine assistance can be difficult.

Based on the input of respondents during this year's consultations, it appears that Turkey has taken a step back from the progress noted in our comments last February. Accordingly, we support Turkey's retention on the Watch List in 2018.

UNITED ARAB EMIRATES

The IACC has recommended the inclusion of the United Arab Emirates at the Watch List level in each of the past five years, due in large part to wide-ranging concerns related to the effectiveness of the Emirates' Customs enforcement, and the UAE's growth as the apparent transit hub of choice for the shipment of counterfeit goods from Asia into consumer markets around the world. Rights-holders remain troubled by the apparent disinterest shown by the UAE in fighting this growing reputation as a global shipping hub for counterfeit goods. While feedback about criminal and administrative enforcement agencies remains largely positive, its Customs enforcement – particularly with regard to transshipments – continues to be a point of great consternation. In light of members' feedback, we recommend the United Arab Emirates' placement on the Watch List in 2018.

The enforcement of intellectual property rights in the UAE falls under the jurisdiction of three main agencies: criminal enforcement is conducted in-market by the Police (Economic Crimes Sections), administrative enforcement is undertaken by various Departments of Economic Development ("DEDs"), and border enforcement remains the responsibility of Customs.

Respondents' comments regarding their interactions with the police have been generally positive. The police forces are described as generally supportive of rights-holders' efforts, and while sometimes slow to react, they are willing to take necessary actions against traders and wholesalers in the domestic market. They've likewise been cited for their receptiveness to receiving intelligence from, and for their cooperation with, rights-holders. Enforcement remains costly and challenging due to the often-protracted resolution of cases, during which time rights-holders may be liable for the continued storage of evidence and subsequent destruction costs.

We've received similarly positive feedback about the DEDs, who are typically viewed as more agile and efficient in their approach. Rights-holders face similar logistical impediments with regard to the costs associated with seizing counterfeits, and some have reported a lack of transparency with regard to the verified destruction of illicit goods. Concerns were also raised this year regarding the re-exportation of, and donation of, counterfeits seized by the DEDs. In addition, we've received reports of an imminent reduction in the maximum fines levied against offenders by the Sharjah DED, which has historically been one of the most aggressive in its approach to counterfeiters.

As noted above though, rights-holders most significant complaints arise in the context of customs enforcement in the UAE. Despite positive interactions and support from Customs in the past, this cooperation has largely dissipated in more recent years. One respondent described their current experience with Customs, describing them as "an absent partner." The UAE offers excellent port facilities and flexible procedures that has made it a global hub for legitimate trade, but its lax enforcement has also contributed to its popularity with individuals and organizations trafficking in illicit goods as well. This is particularly the case in free trade zones such as Jebel Ali, which is gaining a reputation as a "safe hub" for contraband traders and smugglers, enabling the importation, storage, sale, and even manufacturing and finishing of counterfeit goods. Though rights-holders have had past success in working with the Dubai Police to initiate enforcement actions in the free zone, that cooperation has since dried up; rights-holders attribute the current state of affairs to disputes between Customs and the police with regard to jurisdiction within the free zone. We are aware of MOUs between the DEDs and Dubai Police allowing the DED to take enforcement actions against counterfeiters located in the Dragon Mart and Dubai Investment Park Free Zones, which is a positive development, but the two free zones of greatest concern - Jebel Ali Free Port and the Dubai Airport Free Zone – are still off-limits to the DED. We are hopeful that new MOUs can be signed this year to address this issue. Finally, IACC members have noted that authentication and enforcement trainings, and intelligence sharing, between Dubai Customs and private-sector rights-holders which were once commonplace, have now been largely discontinued.

Perhaps the greatest source of frustration for rights-holders though involves Customs' frequent practice of re-exportation of counterfeit goods, in lieu of seizing and destroying them. The re-exportation often takes place with no advanced notice to the rights-holder, precluding any meaningful opportunity for enforcement. The Anti-Commercial Fraud Law No. 19 of 2016 draws a distinction between substandard or fraudulent goods which may be subject to re-export and counterfeit goods, which must be destroyed; but respondents report that some Emirates have not implemented the law, and / or continue the practice citing other authority. Rights-

holders' concerns related to re-exportation have been raised for many years in prior submissions, yet little in the way of concrete progress appears forthcoming.

As noted in last year's comments, the Judiciary's handling of IP cases remains problematic, with slow-moving processes typically resulting in non-deterrent fines that foster recidivism. Though a new law was enacted by the UAE in December of 2016 authorizing the imposition of significantly greater fines than had previously been available, we've yet to see it implemented by the Emirates, and in fact, as noted above, there appears to be a movement in the opposite direction.

Finally, the inefficiencies reported regarding the court system are also said to extend to members' efforts to acquire rights in the UAE, with trademark and design protection registrations taking years to issue, negatively impacting the ability to enforce companies' rights in the market or at the border. Administrative fees have also increased significantly, resulting in more costly opposition and cancellation proceedings.

In light of the above, we support the placement of the United Arab Emirates on the Special 301 Watch List in 2018.

THE AMERICAS

BOLIVIA

Rights-holders comments concerning Bolivia remained largely unchanged over the past year. IP owners from a variety of sectors continue to report significant issues involving the manufacture, retail sales, and export of counterfeit and pirated goods, along with growing concerns online as well. Despite reported increases in the number of seizures at the border by Customs, and seizures of goods in the domestic market, counterfeit goods remain widely available. Concerns about the lack of coordination between Bolivian Customs and SENAPI persist, and both the overall level of enforcement and the lack of sufficiently deterrent penalties remain problematic. Significantly greater political will is necessary if the Bolivian government hopes to bring about more positive results; unfortunately, we've seen little evidence that the government considers IP enforcement to be a priority. Accordingly, we recommend Bolivia's retention on the Watch List this year.

COLOMBIA

Rights-holders remained dismayed at the overall lack of enforcement seen in Colombia over the past year. IACC members from a variety of product sectors report the continuing widespread availability of counterfeits in the domestic market, including in notorious markets such as Bogota's Unilago, San Andresitos, San Jose, and Downtown Bogota. Little is done however to address even these well-known outlets. Counterfeiters display minimal concern that their operations will be subjected to scrutiny, let alone raided; IP enforcement simply does not appear to be a priority.

Rights-holders remain frustrated by the situation, citing examples of their investment of significant efforts to support investigations which law enforcement chooses not to pursue, or which are dropped after a time with no explanation. Even cases involving potential threats to consumers' health and safety are reportedly unable to hold the interest of enforcement personnel.

In sum, members participating in this year's consultations have reported no meaningful progress in Colombia; no change in its status on the Watch List is recommended at this time.

ECUADOR

Ecuador was retained on the Special 301 Watch List in 2017, due to ongoing concerns raised by rights-holders related to a pervasive retail trade of counterfeit goods, reports of corruption, border control deficiencies, non-deterrent penalties, and an overall view of decreases in enforcement. IACC members specifically singled out the entrance into force of Ecuador's new Intellectual Property Law in December of 2016 as a cause of significant concern. In the view of IACC members, the amendments to the law made an already challenging enforcement environment even more difficult. Rights-holders reiterated those concerns in this year's consultations; Ecuador should remain on the Watch List until steps are taken to improve the environment for enforcement.

With regard to the new legislation, rights-holders' greatest concerns are related to its impact on border enforcement, and more directly, with the high burden placed on IP owners in obtaining effective assistance from the Customs authorities. The new law requires that brand owners identify the importer of goods in advance, and to provide detailed shipping information to Customs (e.g., the name of the inbound ship, container number) for counterfeit shipments, before the rights-holder can petition Customs to seize the illicit goods. As a practical consideration, providing this level of specificity is a near impossibility. The effect of this policy has been to reduce an already low volume of

seizures by Ecuadoran Customs. In the rare case where rights-holders have been able to provide the required information in advance, they must first petition Customs to make the seizure, and then follow that action with further court or administrative action within ten days, in order to have the seizure confirmed. The entire process is seen as needlessly duplicative, overly-complicated, and unnecessarily expensive. In the words of one respondent, the new law has “effectively gutted” Ecuador’s border enforcement regime and “seems as if it was designed to foster the availability of counterfeits in the local market.”

The IACC has been a strong advocate for the adoption of ex officio authority for customs and enforcement personnel for many years. Ecuador’s legislation represents a move in the opposite direction, placing the onus for initial action on the rights-holder alone, even where Customs may be better positioned to target and interdict inbound shipments, or to determine that a particular ship, container, or its documentation seems amiss. Rights-holders have welcomed opportunities to engage with border enforcement personnel, to offer training and advice from their own experience to aid Customs authorities, and to offer additional assistance when necessary and appropriate. Public-private partnership in IP enforcement creates, essentially, a feedback loop. As more counterfeit shipments are intercepted, more intelligence is generated, helping rights-holders to better identify and track the sources of the goods. That information is in turn provided to enforcement personnel to aid in targeting and interdictions, generating more intelligence. But the approach taken in Ecuador turns that process on its head. With fewer seizures, rights-holders are less likely to have current, detailed information on exporters and shippers of counterfeit goods – the type of information now required by Customs. The result is ever fewer seizures, and fewer leads. We strongly urge the Ecuadoran government to reconsider this approach.

While border enforcement remains rights-holders’ greatest priority in Ecuador, numerous others are raised once the counterfeit goods have entered the local market. Members continue to report concerns regarding the insufficient resourcing of law enforcement, contributing to the availability of counterfeits to consumers, growing reports related to the online trafficking of counterfeits, and a general perception that the government lacks sufficient political will to address these problems. As a result, the IACC recommends Ecuador’s retention on the Watch List in 2018.

PARAGUAY

IACC members have been closely monitoring the situation in Paraguay since its removal from the Special 301 Watch List in 2015. Despite some progress with regard to the level of enforcement, and improvements to the country's customs regime; significant concerns remain, including an apparent increase in the trafficking of counterfeit goods online, and troubling reports of corruption and continued large-scale trafficking in Ciudad del Este.

While some members indicated success in obtaining seizures, and prompt destruction of seized goods, during the past year, low penalties remain problematic in Paraguay. Prosecutions typically result in no more than nominal fines and sentences of community service that are wholly insufficient to deter future violations.

Customs enforcement remains a priority concern for rights-holders in Paraguay. Despite the adoption of a customs recordation system, and some growing expertise among Customs personnel, examinations in the ports are said to proceed slowly. The overall process for Customs seizures is described as both costly and cumbersome. Rights-holders note that their local counsel is often required to travel to the port in person to coordinate with Customs and is often given limited time within which to authenticate suspect goods to prevent their release. Some members report continuing concerns related to the expertise of Prosecutors tasked with filing criminal actions necessary to effectuate seizures. There is also a lack of transparency throughout the process; brands often receive no confirmation that the seized goods have been destroyed. Overall, seizures of counterfeits are seen as far too low, given the volume of goods seen in the local market (or arriving in neighboring markets from Paraguay).

The situation in Ciudad del Este remains, however, rights-holders greatest concern in Paraguay. While we have heard reports of progress elsewhere in the country during recent years, the markets in Ciudad del Este continue to operate freely, and to serve as a supplier for vendors throughout Paraguay, Brazil, and Argentina. Law enforcement and prosecutors in the region appear unwilling or unable to address the ingrained trafficking that takes place there. Perhaps most troubling are reports of pervasive corruption in the region. One member detailed a large-scale criminal investigation in Ciudad del Este last year that was derailed at the last minute; the circumstances surrounding the failed action strongly point to leaks from within the prosecutor's office or the courts. This, and similar incidents, has served to greatly discourage rights-holders from investing in major enforcement initiatives, as there is little expectation that they'll prove fruitful. Rights-holders view the situation in Ciudad del Este as indicative of a lack of political will within the government to address the entrenched concerns that have plagued that region for years.

In light of these growing problems, the IACC recommends Paraguay's return to the Special 301 Watch List in 2018.

PERU

The USTR retained Peru on the Special 301 Watch List in 2017, while noting some progress on issues raised in past years. IACC members continue to press for progress on a range of issues related primarily to enforcement, the imposition of deterrent penalties, and Peru's often formalistic approach to IP enforcement. We would welcome further engagement with the Peruvian government on these issues during the coming year, but recommend Peru's continued placement on the Watch List.

Rights-holders continue to report widespread retail sales of counterfeit goods, most notably in well-known informal markets such as Polvos Azules, Polvos Morados, and Gamarra. Progress in addressing the sale of counterfeits in those markets is said to be hindered by two main factors: low penalties that fail to deter illegal sales, and an overly formalistic approach to enforcement. As an example of this latter concern, rights-holders note that despite the statutory authority to act *ex officio*, the authorities typically refuse to exercise that power, but instead request that the affected brands file a claim before moving forward. Respondents also pointed to cases in which authorities refused to proceed against goods due to trivial differences between the marks at issue and their authentic counterparts. Enforcement personnel's or prosecutors' insistence that counterfeit marks be identical, as opposed to "nearly indistinguishable" appears to leave the door open for counterfeiters to trade on the goodwill of well-known marks by incorporating minute differences in their knock-offs. At minimum, this has been reported to lead to significant delays in obtaining relief. With regard to the former, rights-holders report that damages awarded in criminal cases remain low. They also note that the administrative authorities lack the ability to enforce the payment of damages to injured companies, requiring victims to initiate a separate judicial process resulting in additional time and expense.

As reported in last year's comments, Peru's border control regime remains a priority for rights-holders, as does the need for additional training and resources across the criminal and administrative authorities. In light of these ongoing concerns, we support Peru's retention on the Special 301 Watch List in 2018.

OTHER OBSERVATIONS / NO RECOMMENDATION MADE

ASIA-PACIFIC & SOUTH ASIA

HONG KONG

IACC members continued to express concerns regarding high levels of transshipment through Hong Kong during this year's consultations; this marks the third consecutive year that we've received such input, with no reported improvement. Hong Kong has been perennially ranked as the second largest source of intellectual property-related seizures entering the United States, both in terms of volume and value. It has likewise been cited as a major source by other jurisdictions around the world. This status is due to Hong Kong's use as a transshipment hub for exports from the People's Republic of China to major consumer markets including the United States, the European Union, Japan, and Korea.

The concerns raised by rights-holders this year remain unchanged from those heard in prior years. The use of Hong Kong-based freight forwarders allows Chinese exporters of counterfeit goods to ship their illicit wares with relative anonymity; the freight forwarders have been uncooperative with rights-holders' requests to disclose the identities of their customers and claim ignorance that the goods being transported are counterfeit. And because the freight forwarders typically become the exporter of record for the goods, and Hong Kong viewed as the country of origin, global Customs officials are less likely to target the shipments for interdiction than if they were viewed as originating from the PRC. The IACC encourages the adoption of strong "Know Your Customer" regulations to ensure that shipping intermediaries collect and maintain basic information regarding their clients, and that they have a duty to cooperate with investigators where a shipment has been detained or seized. These simple changes could result in a dramatic increase in the interdiction of counterfeit goods sourced from the PRC and allow for the development of valuable intelligence about the ultimate sources of such goods. Regrettably, we have seen no political will to impose these types of requirements.

Aside from this issue, IACC members comment positively regarding their engagements with Hong Kong Customs and Excise ("HKC&E"), noting their professionalism and willingness to collaborate with both rights-holders and their Customs and law enforcement counterparts in other jurisdictions.

JAPAN

In each of the past two years, IACC members have expressed growing concerns with regard to customs enforcement and online enforcement in Japan. Though the Japanese IPR regime is generally viewed as strong, the issues raised represent a serious deficiency with regard to effective IP protection in the country.

Rights-holders have previously highlighted Japanese Customs' permissive interpretation of a "personal use" exception to the country's prohibition on the importation of counterfeit goods. Though a very narrow exception for the importation of counterfeit goods exists under U.S. law, in Japan's case, Customs' practice allows the exception to swallow the rule. Under U.S. law, an individual may claim a personal use exemption for a single item within a class of goods, personally carried in their luggage upon entering the country. Japanese Customs appears to place no such limitations on the quantity or value of the goods at issue or the frequency with which the exception can be invoked, nor does it require that the goods be personally brought into the country. As a result, small parcel shipments of counterfeits – typically imports from offshore rogue websites – are unlikely to be seized. Where those goods are detained, Japanese consumers may simply assert that the goods are being imported for their personal use in order to obtain their release. The implications for legitimate retailers, as well as the potential risks for consumer safety from these illicit imports is self-evident. We would welcome engagement with Japanese Customs to address this policy.

Rights-holders again raised concerns regarding Japan's compliance with Article 46 of the TRIPS Agreement. That provision states that "the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of the goods into the channels of commerce." IACC members report however that Japanese Customs regularly permits importers to remove counterfeit marks from infringing goods, or to remove goods from counterfeit packaging (or to mark over / cover the marks), as a condition of release, rather than seizing the counterfeits and removing them from the stream of commerce. While certainly an inconvenience to the counterfeit importer in terms of additional costs to relabel and repackage the goods, this procedure does not constitute effective or deterrent enforcement.

Rights-holders also continue to report concerns – first noted in our 2016 comments to USTR - related to the enforcement of their rights on major retail platforms online. Many Japanese platforms are said to have implemented overly-formalistic and restrictive policies for takedowns of infringing goods and content. Takedown requests based on the use of the brands' own copyrighted images – often stolen from the brands' legitimate online shops and catalogs – are often rejected out of hand. Rights-holders have also come to expect exceedingly high thresholds for proving their claims before any action will be

taken, in some cases requesting specific (and proprietary) information regarding how the rights-holder is able to determine that the goods on offer are counterfeit. Some platforms simply refuse to act on claims based on some forms of intellectual property, including industrial designs and trade dress. Online enforcement on Japanese platforms is often a more protracted and resource-intensive affair than rights-holders experience in many other jurisdictions, including many well-known platforms elsewhere in Asia.

SINGAPORE

As noted in prior years' submissions, Singapore remains a significant hub for the transshipment of counterfeit goods. IACC members continue to report deficiencies in the country's border enforcement regime, poor coordination between enforcement agencies, and a lack of political will to address those problems.

Singapore's legislative regime is tilted heavily in favor of trade facilitation, at the expense of enforcement. Under the Trade Marks Act, suspected counterfeits may only be detained for a maximum of two days without a court order. IP owners seeking to enforce their rights are required to pay a minimum of S\$20,000 as security for each shipment. These excessive security requirements serve as a practical impediment in many cases, even for large, well-resourced brands. As a practical consideration, if the owner of the goods objects to the seizure, civil litigation is the only available recourse. The expense involved with acting against shipments passing through Singapore precludes the implementation of an effective enforcement program.

Members also continue to report a general lack of coordination between enforcement authorities, noting that the IPR Branch of the Police appears to only rarely launch criminal investigations, even in response to large Customs seizures, or at the request of rights-holders. Enforcement in Singapore's free zones likewise remains a source of concern for rights-holders. Past IACC submissions have noted courts' unwillingness to issue search warrants for illicit goods imported into Singapore's free trade zones, and there has been no reported improvement during the past year.

Despite many recommendations provided by rights-holders in response to a public consultation undertaken in 2014, rights-holders have seen little in the way of action by the government to implement that feedback, or to improve Singapore's border enforcement regime.

EUROPE, MIDDLE EAST, AFRICA

BAHRAIN

The IACC received reports from multiple rights-holders concerning Bahrain for the first time during this year's consultations, coinciding with apparent increasing concerns across the region of the Middle East. Rights-holders specifically cited the need for greater engagement by police in the country, noting that the vast majority of enforcement is currently undertaken by Customs officials and by the Ministry of Industry and Commerce. While some expressed positive sentiments regarding their interactions with Customs and the MoIC, both agencies are viewed as under-resourced. Small retail shops operate throughout the market, and most enforcement focusing on these outlets results in only nominal impact on the illicit market. More must be done to cut off the imports and distribution that supplies these vendors.

Though Customs and administrative actions are often resolved in favor of the trademark owners, such resolutions are also often protracted affairs. The Ministry of Industry and Commerce is reported to have only 2 inspectors tasked with a range of issues including IP. Greater resources would allow for specialization and the development of greater expertise and efficiency. And while the judiciary was complimented by some for rendering verdicts consistent with the facts and law, court actions are also said to be unnecessarily lengthy, and the penalties imposed generally insufficient to deter future violations.

IACC members expressed some concerns regarding a lack of transparency during the enforcement process, as their agents are often prohibited from accompanying law enforcement personnel on raids and restricted from entering customs facilities to document seizures. And despite promises from enforcement personnel, rights-holders are often unable to obtain copies of raid and seizure reports. Though enforcement agencies are reported to coordinate well within the government, greater collaboration with external stakeholders would be welcome.

Members have been pleased with the work of the Customs Training Institute, which hosts regular events with brand owners to increase Customs' expertise on IP-related issues. That investment should pay dividends moving forward. Rights-holders remain concerned however about the ease with which counterfeit goods appear to pass through Bahrain in the Kingdom of Saudi Arabia; more coordination between the two countries is also warranted.

Though we make no recommendation for Bahrain's placement on the Special 301 list, we will continue to monitor the situation there, and throughout the region in the coming year.

JORDAN

Rights-holders' concerns in Jordan focused primarily on customs enforcement during this year's consultations, noting a range of obstacles to effective border enforcement. Foremost among these is Jordanian Customs' lack of authority to seize and destroy counterfeit goods without rights-holders' first filing an action with the courts. While Customs has adopted a recordation system that has aided in the number of shipments targeted and detained, the Customs Department is only authorized to detain suspected counterfeit goods, and suspend their release for a limited time, providing notification to the relevant rights-holder. As seen in jurisdictions such as Canada however, the onus then shifts to the rights-holder, who must file a lawsuit within eight days if it wishes to pursue the matter. Absent the rights-holder's successful intervention, the goods will be released, and the importer will face no consequences.

With regard to penalties, both criminal actions filed with the competent courts and administrative actions filed, e.g., with the Jordan Institution for Standards and Metrology ("JISMO"), are typically seen to result in very low penalties, and often result in the seizure and destruction of the goods. Thus, counterfeiters' risk only the potential loss of inventory; brands report that damage awards are not typically forthcoming. Such penalties carry little hope of deterrence. With regard to administrative actions, respondents reported that JISMO does not provide information regarding the specific nature of the punishments imposed, and the lack of transparency for such decisions remains troubling. Further compounding these concerns is the fact that the injured rights-holder is often responsible for the costs incurred by the government in destroying the seized goods.

While the IACC makes no recommendation regarding Jordan's placement on the Special 301 Watch List, we would encourage prompt action by the Jordanian government in addressing these concerns.

LEBANON

Rights-holders continue to express frustration with the lack of progress seen on a range of issues in Lebanon during the past year. Among the many issues cited are a general lack of transparency in dealings between enforcement agencies and IP owners, continuing legislative deficiencies, and a perceived lack of political will to prioritize IP enforcement. Lebanon's relevant laws are described as outdated, and an obstacle to effective enforcement. One example offered by a member concerns enforcement agencies' lack of authority to seize counterfeit goods; following raids, the goods are typically left in the custody of the offender. Rights-holders also point to offenses commonly being "resolved"

by requiring the mere removal of counterfeit marks, opening the door to simple re-labeling or packaging of goods.

Border enforcement remains difficult, with members noting that Customs personnel do not view counterfeiting as a priority, and that they are often unwilling to engage with rights-holders. Customs rarely provides notices of detentions, and manages cases in a non-transparent manner, rarely requesting the assistance of affected brands, and in turn, unable to benefit from rights-holders' own experience and expertise. Greater political will is necessary to implement necessary legislative reforms and to prioritize IP protection and enforcement if sufficient progress is to be made.

MOROCCO

Rights-holders reported growing concerns with regard to customs enforcement in Morocco over the course of the past year. Despite the widespread availability of counterfeits in the local market, and repeated efforts at engagement with Moroccan Customs, there has been a steep decrease in detentions and seizures in the country. Customs officials have been non-responsive to rights-holders' requests for assistance, refusing to act when presented with intelligence or evidence developed by brands, and generally unreceptive to training or other assistance.

NORTHERN CYPRUS

IACC members wish to draw attention to ongoing issues faced in the Turkish Republic of Northern Cyprus. Recognized by Turkey only, Northern Cyprus has become a host to many retail stores selling to tourists with impunity. Police enforcement is negligible, and as a result of that lack of support, shop owners have little fear of consequences. Courts are described as slow-moving, with a judiciary inexperienced in intellectual property matters. Border enforcement is, practically speaking, non-existent. The retail outlets in Northern Cyprus are supplied by goods sourced from, or through, Turkey.

QATAR

Rights-holders have sought to increase engagement in Qatar in advance of the upcoming 2022 World Cup, during which the country will play host to huge tourist crowds from around the world. Such major events are frequently accompanied by a significant

increase in retail sales of counterfeits by both brick and mortar stores and in informal markets. While the government has expressed interest in the issue, including action by the Ministry of Business and Trade to establish an IPR department, additional training and infrastructure are necessary to establish and implement best practices.

Currently, the police are said to play little or no role in the government's anti-counterfeiting program, and Customs are similarly uninvolved; this should be remedied as quickly as practicable, and the government should ensure the application of necessary resources applied.

SOUTH AFRICA

IACC members provided comments regarding South Africa for the first time in several years during our Special 301 consultations, citing growing concerns in the country. Though we make no formal recommendation for inclusion on USTR's Watch List, we wish to convey those member concerns.

Respondents are troubled by provisions of the country's Counterfeit Goods Act which permit the importation of counterfeit products for "private or domestic use." The reasons discussed in our above comments relating to similar provisions in Japan are likewise applicable here.

Though South African Customs has been helpful in seizing illicit imports, current procedures limit the disclosure of information concerning the offender until the relevant rights-holder has filed an affidavit, rather than as part of the notice of detention, resulting in unnecessary costs and delays. And while brands report some success in their interactions with law enforcement and Customs, corruption and an overall lack of resources remain problematic across enforcement agencies. In response to the former concern, both Police and Customs have created Anti-Corruption Units, though with limited success in mitigating the problem.

Criminal proceedings are described as unnecessarily protracted; additional training for enforcement personnel, prosecutors, and the judiciary would be helpful.

Rights-holders also report a growing problem of "vertical flea markets," with counterfeit vendors operating out of units within high-rise buildings, that have presented a significant challenge to law enforcement.

UNITED KINGDOM

Though one of the world's leading economies, rights-holder report growing difficulties in enforcing their rights in the United Kingdom. Chief among those concerns is a noted decrease in the number of seizure notifications received from Customs, despite widespread availability of counterfeit goods in the country's retail markets. Recent European Union statistics show a decrease in seizures of over 80% in the UK between 2015 and 2016. Seizures likewise remain low compared to other EU member states. These difficulties are thought to be related to both a lack of resources for front-line Customs officers and a decreased priority for IPR enforcement in favor of immigration and other core duties of the agency.

IPR owners have had some success working with the UK's Trading Standards, but those efforts too are hindered by those authorities' disparate mandates, as well as resourcing limitations. We've also received information regarding imminent budget cuts that are likely to significantly cut that already limited funding. The expected result is that rights-holders will be forced to rely far more on private criminal prosecutions, greatly increasing their own costs.

In light of the above, rights-holders are growing increasingly concerned with their prospects for enforcement in a country that has long been a leader in the fight against counterfeiting and piracy.

THE AMERICAS

CHILE

While the IACC makes no recommendation concerning Chile's placement on this year's Special 301 Report, we do wish to highlight members' comments concerning the country. We've received positive comments related to the enactment of the new Criminal Procedural Code, specifically with regard to its creation of specialized police units allowing the Public Prosecutor to gather evidence following an investigation, which should encourage greater numbers of criminal prosecutions. Rights-holders also pointed to a bill currently under discussion in Congress (project No. 8907-03), through which a number of amendments to the Industrial Property Law are expected. Among those amendments are expanded authority for the Public Prosecutor to initiate actions ex officio. Respondents note however that there remains a need for greater coordination among the various agencies to ensure more meaningful investigations and prosecutions

of IP crimes. Further, rights-holders commented that the sentences for IP-related offenses continue to lack deterrence; offenders rarely receive custodial sentences.

URUGUAY

While the overwhelming majority of our comments focus on the difficulties faced by rights-holders in jurisdictions around the world, IACC members wish to recognize positive developments as well. To that end, rights-holders sought to recognize ongoing efforts over the past year in Uruguay. Despite a decrease in Customs' seizures of containers transshipped through the country en route to other markets, overall seizures reportedly increased in 2017. Rights-holders highlighted positive engagement with Customs, the GRIA (Customs Intelligence Unit), and police agencies, noting their willingness to work with IP owners and participation in training opportunities offered by brands and various associations. Members have attributed the decrease in transshipment related seizures to the overall level of enforcement, as counterfeiters have sought new routes to markets outside of Uruguay.

Members also wish to highlight a positive legislative development, permitting the destruction of seized counterfeits following a preliminary determination by the courts, which should lead to reduced storage costs. The courts in Uruguay were also well-regarded, with respondents noting their willingness to impose deterrent sentences, including imprisonment, for IP crimes. One rights-holder, as an example, recounted a case resolved last year involving online sales of counterfeit goods, resulting in a felony conviction and an eight-month jail sentence.

The Uruguayan government is applauded for its efforts in ensuring that IP crimes are considered a priority, and treated as serious offenses by enforcement personnel, prosecutors and the judiciary.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Travis D. Johnson', written in a cursive style.

Travis D. Johnson
Vice President - Legislative Affairs, Senior Counsel

IACC SPECIAL 301 RECOMMENDATIONS, 2008 – 2018

	08	09	10	11	12	13	14	15	16	17	18
Argentina										PWL	PWL
Bahrain											OO
Bolivia									WL	WL	WL
Botswana							SM				
Brazil	WL	WL	WL	WL	WL	WL	WL	WL	PWL	PWL	PWL
Bulgaria										WL	
Cambodia										OO	
Canada	WL	WL	PWL	PWL	PWL	PWL	WL/OCR	WL/OCR	WL	WL	PWL
Chile											OO
China	PFC/306	PFC	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL
Colombia							SM	WL	WL	WL	WL
Czech Repub.	WL	WL									
Dom. Repub.										OO	
Ecuador											WL
Egypt											WL
Greece										WL	
Guatemala										OO	
Honduras										OO	
Hong Kong									SM	OO	OO
India							SM	PWL	PWL	PWL	PWL
Indonesia							SM	PWL	PWL	PWL	PWL
Italy				WL	WL			SM			
Japan									SM	OO	OO
Jordan											OO
Kazakhstan										OO	
Kenya							SM	WL	WL	WL	
Korea	OO										

Kuwait											PWL
Lebanon											OO
Malaysia							SM	SM	WL	WL	WL
Mexico	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL	PWL
Morocco											OO
Mozambique							SM	WL			
Namibia							SM				
Nigeria							SM	WL	WL	WL	WL
Northern Cyprus											OO
Pakistan							SM				
Paraguay	306	306	306	306	306	306	WL/306	SM	SM	OO	WL
Peru										WL	WL
Philippines	WL	WL	WL	PWL	WL	WL	WL	SM	SM	OO	
Qatar											OO
Romania										WL	
Russia	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL
Saudi Arabia					WL				SM	WL	WL
Singapore									SM	OO	OO
South Africa			WL				SM				OO
Spain			WL	WL	WL			SM			
Thailand								PWL	PWL	PWL	WL
Turkey	OO	WL	WL	WL	WL	WL	WL	WL	WL	WL	WL
Ukraine								SM	PWL	PWL	PWL
UAE	OO					WL	WL	WL	WL	WL	WL
United Kingdom											OO
Uruguay											OO
Vietnam	WL	WL		WL	WL	WL		WL	WL	WL	WL