

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

**2022 Special 301 Review
Identification of Countries
Under Section 182 of the
Trade Act of 1974
Request for Public Comment
86 FR 70885 - 86 (December 13, 2021)**

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INTRODUCTION

The International AntiCounterfeiting Coalition, Inc. (“IACC”), is pleased to submit these recommendations to the Office of the United States Trade Representative (“USTR”), pursuant to the request published in the Federal Register on December 13, 2021, seeking written comments 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 manufacturers, trade associations, and professional firms, spanning a broad cross-section of industries; our members represent thousands of 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 policymakers 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. Further, rights-holders continue to face obstacles to acquiring and effectively enforcing IP rights that require direct intervention by governments at home and abroad. These challenges continue to evolve, and we welcome the assistance of the U.S. government 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 manufactured 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 the global marketplace for legitimate manufacturers and retailers.

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 do not represent 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 the concerns highlighted by IACC members involve long-standing issues that have been raised in previous years' filings.

Our comments this year cover 37 countries and span 5 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 fourteen for the Watch List. While we make no formal recommendation for the placement of the remaining 13 countries, it is hoped that those comments will serve to inform the interagency team's determinations when considered within the broader context of comments provided by other relevant parties.

We thank you for the opportunity to share our experiences.

PRIORITY WATCH LIST RECOMMENDATIONS

ASIA-PACIFIC REGION

CHINA

As in past years, China remained – unanimously among respondents – the single highest priority for rights-holders during the past year. Despite the country’s development of a fairly robust IP regime; the size of the market, the range of obstacles faced by IP owners in enforcing their rights, and indeed, the sheer volume of counterfeit goods produced in China for domestic consumption and export around the world provide for an exceedingly challenging environment. Many of the concerns highlighted by IACC members this year – onerous thresholds for criminal prosecutions, a formalistic approach to administrative enforcement and prosecution of offenses, and the prevalence of bad faith trademark registrations, for example – mirror those reported in prior years’ submissions to USTR. In light of the variety and severity of concerns cataloged by rights-holders during this year’s consultations, we support China’s retention on the Priority Watch List in 2022.

Legislation

In late 2020, the Standing Committee of the National People’s Congress (NPCSC) passed an amendment to the Criminal Law Amendment (XI), which subsequently took effect on March 1, 2021. Rights-holders expressed their pleasure with some of the provisions enacted, including an increase in the maximum authorized prison sentences for counterfeiting offenses, and expanded authority to pursue criminal counterfeiting charges in the context of services.

IACC members have raised concerns, however, regarding the amendment of Article 214, which has led to substantial confusion related to the thresholds for investigation and prosecution. Previously measured in terms of illegal “income,” the amended law focuses instead on illegal “gains;” as a result, law enforcement personnel and the Chinese courts are said to be struggling with how best to calculate the severity of offenses. We’ve received reports, for example, of police in some localities requiring proof of significantly higher income levels than were previously in place, so that they can ensure a strong basis for asserting that the minimum profit threshold has been met. Brands have also described a growing reluctance on the part of law enforcement personnel to pursue actions against some targets that may be “close calls” under the new metric, with police encouraging rights-holders to pursue administrative enforcement instead. We would welcome further clarification to ensure that criminal prosecution (and the associated deterrence brought to bear by criminal enforcement) remains a viable tool for pursuing counterfeiting at all levels.

Rights-holders also continue to closely monitor legislative and regulatory developments impacting the protection of IP rights online. Last year, the IACC and a number of our member brands provided comments to the State Administration for Market Regulation (SAMR) in connection with proposed revisions to the E-Commerce Law, highlighting both a desire for greater clarity and more effective and efficient measures to tackle the rampant sales of counterfeits seen online. The scope and severity of the challenges faced by IACC member brands in the online market were recently highlighted in our October 2021 submission to USTR, in which three China-based e-commerce platforms – DHgate, Pinduoduo, and WeChat/Weixin – were nominated as “Notorious Markets.”

Rights-holders have expressed support for the imposition of more concrete “know your customer” obligations for e-commerce intermediaries, as well as provisions that would facilitate more robust collaboration between rights-holders and service providers who have a shared responsibility for ensuring the safety and legitimacy of the online market. Stakeholders also acknowledged a desire for greater emphasis on the evolving online landscape, in recognition of counterfeiters’ increasing activity via Chinese social media channels.

Enforcement

IACC members were largely complimentary of administrative and criminal enforcement authorities in China during this year’s consultations. The Public Security Bureau (PSB) was singled out for praise, with one brand applauding their consistent partnership and support in carrying out “hundreds of criminal raids of factories and distributors” each year, and citing a number of successful “online-to-offline” investigations to uncover and dismantle the supply chains (including manufacturing and storage facilities) that support online sales of counterfeits through standalone websites, e-commerce platforms, and social media channels. IACC members have invested a great deal of effort over the past two decades to develop collaborative relationships with – and importantly, the trust of – their law enforcement counterparts.

And while the enforcement landscape has certainly improved over the years, rights-holders continue to face a variety of challenges in the market. Protectionism remains a problem – a fact that has been highlighted in the IACC’s Notorious Markets comments for a number of years in connection with several tech malls located in Shenzhen, which are widely seen as “untouchable.” Recent reports have also highlighted the reluctance, or in some cases outright refusal, of authorities in Shantou to cooperate on raids of manufacturing and storage facilities.

Rights-holders have raised further concerns with regard to inconsistent procedures for case valuation and enforcement bodies’ overly-formalistic approach to applying the law, in assessing offense levels.

China’s over-reliance on administrative remedies – broadly viewed as insufficiently deterrent by rights-holders – has been a consistent complaint voiced by the IACC’s annual Special 301 submissions over countless years. Rights-holders continue to bemoan the

relatively small fines and perfunctory admonishments handed out to violators, who all too frequently resume their illicit activity with minimal interruption. Unsurprisingly, many brands report high levels of recidivism as a result of the nominal penalties imposed; and as reported in previous years, counterfeiters have become adept at skirting criminal prosecutions by limiting the volume of goods on hand. Because administrative authorities' reportedly often fail to thoroughly examine relevant business records that might reveal the true extent of an offender's illicit activity, counterfeiters that might otherwise be subjected to criminal prosecution often face far less stringent administrative penalties. By way of example, one respondent described a case in which the public prosecutor in the Louhu district (Shenzhen) considered evidence of online sales in assessing its suitability for criminal prosecution, but contrasted it with comparable cases in Nanshan and Futian where evidence of online sales was excluded from the evaluation. Clear guidance in this area would be welcomed, as the current framework has resulted in a great deal of uncertainty for brands.

Member brands have also voiced frustrations regarding administrative authorities' exoneration of infringers who feign ignorance of illegal sales by proffering documentation of a "legitimate source" for the goods. Authorities are often willing to accept such assertions at face value, abandoning any actions against the target, and instructing the relevant rights-holder to pursue the party who supplied the goods to the original target. Frequently, the documentation provided by the target of enforcement is entirely fraudulent, leaving the IP owner with no practical recourse. And even where the "legitimate source" can be identified, the rights-holder is placed in the position of starting its enforcement process against the new target from scratch, unnecessarily expending additional resources, often in a different jurisdiction.

As noted previously, IACC members' comments regarding criminal enforcement authorities remained largely positive over the past year, and we wish to recognize those efforts. The benefits of criminal enforcement remain constrained however by the above-discussed thresholds for investigation and prosecution. And while numerous member brands have reported progress in connection with online-to-offline investigations, these actions are at times hindered by a need for more clearly defined protocols for gathering and assessing electronic evidence of sales volumes and other relevant business records. The uptick in online trafficking seen during the COVID pandemic underscores the need to adapt investigative procedures to account for the practical realities of the e-commerce landscape.

It is still far too easy for online counterfeiters in China to remain anonymous and escape liability, particularly if they market and sell to international consumers outside of China. While several brands reported positive results stemming from collaborations with some major e-commerce platforms in the country, cooperation from others in the online ecosystem has been far slower to materialize. Operators of stand-alone websites that offer retail and wholesale counterfeits for sale are protected from identity disclosure by the national ISPs. Chinese banks, meanwhile, have been largely unwilling to disclose information concerning, or to freeze assets in accounts connected to, offenders. Without the ability to sue anonymous counterfeiters in China, or to effectively target violators' ill-gotten gains, bad actors will continue to operate online with relative impunity.

Rights-holders also registered concerns regarding a mandate issued last July by the Supreme People's Procuratorate and the Ministry of Public Security, directing courts to impose less stringent sentencing for crimes that would typically result in a custodial term of less than three years, and favoring offenders' release on bail rather than arrest and confinement. Following this change, one brand noted a drastic decrease (of approximately 50%) in the number of their counterfeiting cases that led to custodial sentences. These moves could significantly diminish the deterrent impact of criminal enforcement in China.

Civil enforcement remains challenging for many of the same reasons. China's judiciary has grown increasingly sophisticated and has developed a wealth of expertise in handling IP cases, as reflected by the number of brands reporting positive outcomes and well-reasoned judgments in their dealings with the judiciary. Enforcing those judgments though, remains exceedingly difficult due to China's relatively weak systems for asset preservation and collection of awards. Otherwise "successful" litigations all too often end with judgment-proof defendants, as the offenders have effectively concealed their assets, precluding any recovery of costs or damages.

While the Chinese government has historically touted its annual IP-related seizures in the export context, the incredible volume of such goods that evade Customs' detection is apparent from a cursory review of the seizure statistics reported by U.S. Customs and Border Protection, the European Union, and other jurisdictions around the world. China is, and will continue to be, the single greatest source of counterfeit goods in the global marketplace absent significantly greater efforts to stop those products from exiting the country.

Of particular concern is the small consignment context – low-value shipments via international mail and express carriers – that have drastically increased in recent years, straining the resources available even in those countries with the greatest capacity to target and interdict illicit products at the border. EMS remains the preferred method for China-based counterfeiters' shipping to consumers abroad, and the Chinese government has demonstrated neither the will nor the ability to effectively rein in that activity. The implementation of simple, commonsense procedures to ensure the accuracy of shippers' identity and contact information (including verification of return addresses) and the accuracy of descriptions of goods being shipped, would be a welcome step towards acknowledging and addressing this mode of trafficking.

Bad Faith Trademarks

As detailed in prior years' submissions, despite some steps taken by the Chinese government in recent years to address long-standing concerns of rights-holders, IACC members continue to report only modest progress with respect to bad faith trademark registrations. One respondent, for example, reported that it is currently engaged in more than five hundred pending actions (including both oppositions and invalidation

proceedings) against individuals who've applied for or obtained registrations for marks in bad faith.

We are aware, and appreciative of the fact that China undertook a targeted "action plan" directed at this activity last year, but based on rights-holder feedback, it is clear that more concrete improvements are necessary. We would welcome USTR's engagement to encourage the adoption of additional measures to address this growing problem. The scope and scale of this impediment to effective IP protection necessitates a holistic approach, beginning with ensuring consistent and high-quality initial examination practices and increasing the efficiency of opposition and invalidation proceedings.

In light of the concerns detailed herein, and those described in previous submissions which remain to be fully addressed, we support China's retention on the Priority Watch List this year.

INDIA

The frustrations voiced by representatives across a variety of product sectors during this year's Special 301 consultations shared a common theme – delays. Delays in trademark prosecution, in carrying out raids, and in the courts, continue diminish the effectiveness of IP protection in the country. While rights-holders have commented positively regarding the cooperation and assistance received from Indian law enforcement, structural impediments continue to hamper anti-counterfeiting efforts and minimize deterrence. In light of the continuing difficulties faced by rights-holders, and the need for further progress on a number of long-standing concerns, we support India's retention on the Priority Watch list in 2022.

IACC members have been pleased with the consistent improvement seen in recent years among Indian law enforcement. Though some brands cited occasional difficulties in obtaining law enforcement assistance, the current landscape stands in sharp contrast to reports from just a few years back. Law enforcement personnel throughout the country have demonstrated greater expertise in handling IP-related cases and an increased interest in working with rights-holders to address their concerns. And while past submissions noted significant disparities with respect to the level of enforcement seen throughout the country, that variation is far less pronounced today; IACC members reported positive enforcement outcomes highlighting the cooperation of enforcement bodies in cities where such assistance was not previously forthcoming. There appears to be greater buy-in among both leadership and operational personnel across India.

Respondents renewed calls for a more strategic approach to enforcement however, noting that raids often result in product seizures and some arrests, but fail to generate significant follow-on activity to uncover the broader supply and distribution networks associated with a target. Increased intelligence sharing among enforcement agencies and the private sector could lead to the identification of such higher-level targets, resulting in a greater

impact within the market. IACC members stated that, at present, they often receive only limited information from their law enforcement counterparts following raids; even then, information is sometimes disclosed only when the IP owner takes the initiative of following up with the police.

As has been the case in jurisdictions throughout the world, IACC members across every product sector are viewing the online market in India with growing concern. In its submission to USTR late last year, the IACC nominated IndiaMart for inclusion on the forthcoming Notorious Markets List; past submissions have also highlighted other platforms of concern.

And as discussed in numerous prior submissions, judicial backlogs often result in several years passing before cases are ultimately resolved. In the interim, there may be little practical impact on offenders, diminishing deterrence and contributing to recidivism. Rights-holders have encouraged the development of specialized courts or a fast-track system to help alleviate the backlogs. We are aware of the announcement by the Delhi High Court regarding the creation of a new Intellectual Property Division, and are hopeful that this will represent a positive step towards resolving rights-holders' long-standing concerns. IACC members will continue to monitor this situation in the coming year.

Similar to the trajectory described for internal market enforcement; IACC members have noted modest, though relatively consistent, improvement with respect to India's border enforcement regime over the past few years. We continued to receive positive comments during this year's consultations, with brands detailing improvements both in terms of the volume and quality of seizures. Some respondents remain frustrated however by what they view as excessive costs associated with border enforcement. Under the current framework in India, rights-holders are required to provide a bond to Customs in connection with seizures effected by the agency; the amount of the bond required is tied to the value of the goods at issue. While this is not, in itself, unusual, some brands reported that Customs' valuation of the goods can be excessive, leading to higher bond requirements than are reasonably necessary. Rights-holders' larger concern though is that the resolution of these customs cases can take years, tying up ever-increasing amounts of rights-holders' enforcement budgets and creating additional administrative burdens. Some have suggested the adoption of a "continuous bond" system, under which IP owners would post a single bond for a specified amount, which could be replenished, as necessary.

While rights-holders wish to recognize the progress that has been made in recent years, the consensus view of respondents this year was that IP protection remains a relatively low priority for the Indian government. Chronic backlogs both within the courts and at the trademark office have persisted for years, yet meaningful progress in dealing with such issues has failed to materialize. Systemic issues likewise continue to frustrate IACC members' ability to acquire and effectively enforce their rights in the market. We would welcome additional efforts to address the concerns highlighted in these comments and in past submissions.

INDONESIA

IACC members' comments with respect to Indonesia remained, unfortunately, largely unchanged since our recommendation last year that the country be retained on USTR's Priority Watch List.

While the current legal framework was generally described as "adequate" and as providing sufficient authority for Indonesian enforcement bodies to conduct effective IPR actions, brands reported a lack of proactive efforts by law enforcement, and in some cases a lack of receptiveness to accept rights-holders' referrals. Some rights-holders described being encouraged to pursue IP complaints through civil actions rather than seek criminal prosecution; others noted that criminal enforcement authorities lacked adequate resources to investigate and prosecute offenders. Rights-holders, likewise, continue to raise concerns with respect to apparent corruption, detailed in past years' submissions. Absent improvements in the criminal enforcement regime, brands expressed pessimistic views about the potential for significantly reducing the volume of counterfeits on offer in the local market and on e-commerce platforms operating in Indonesia.

Despite recent amendments, Indonesia's border enforcement regime remains a source of consternation for many rights-holders. Enforcement at the border is viewed as "costly" and "exceedingly difficult" due in part to excessive bonding requirements, tight deadlines for obtaining assistance from the Indonesian courts, and discriminatory treatment of foreign-domiciled businesses. Some brands have also raised concerns regarding the transparency of enforcement actions.

Under the current procedures, rights-holders must visit the relevant port of entry to conduct an in-person authentication of detained goods within 48 hours of a notification by authorities. If the goods are determined to be counterfeit, the brand must commence civil proceedings against the importer within four days, after which they have an additional ten days to conclude the matter in court (or to settle the case). The narrow windows for pursuing such remedies have reportedly been complicated by a lack of assistance from Customs (e.g., obtaining information relevant to the shipment and importer) and a lack of cooperation from targeted importers (e.g., failure to participate in court proceedings or to engage in settlement negotiations). The process is also seen as unnecessarily expensive, given the requirement that rights-holders furnish a bond for each seizure (roughly, US\$7,000), even in cases involving small consignments with a low value. A final matter, raised in previous filings with USTR, involves the "local business entity" requirement for recording IP rights with Customs. Foreign-domiciled companies continue to be effectively precluded from recording their trademarks in Indonesia.

Indonesia's border enforcement regime could be significantly enhanced by: (1) empowering Customs to make a final determination on the admissibility of suspected counterfeits, without the involvement of the judiciary (except in the case of an appeal from that decision by Customs); (2) implementing a continuous bond system to reduce the cost and administrative burden of border enforcement; (3) developing an expedited process to handle smaller mail and express delivery consignments of illicit goods; and (4)

eliminating barriers to more effective collaboration with rights-holders such as the requirement that a company be domiciled in Indonesia as a prerequisite to recordation.

Some respondents have reported a significant uptick in the volume of online trafficking via standalone websites, and e-commerce and social media platforms since the start of the COVID-19 pandemic, while also questioning the sufficiency of existing laws to address those concerns. In our most recent Notorious Markets filing with USTR, the IACC nominated two Indonesian platforms – Bukalapak and Tokopedia – for inclusion on the forthcoming list. And while we have been pleased by recent outreach from those platforms and the willingness they’ve expressed to partner on the development and implementation of enhanced brand protection tools, additional direct engagement with rights-holders by the Indonesian government would also be welcomed. The signing of an MOU by the government and a number of major e-commerce platforms is viewed as a positive first step, but we believe that intellectual property owners should play a central role in any efforts by the Indonesian authorities to address online trafficking.

It is recommended that the Indonesian government reevaluate existing laws to require greater accountability and transparency from users seeking to register accounts and transact business on online platforms, and to impose greater responsibility on the part of online platforms to assist rights holders in identifying bad actors operating on their platforms for further enforcement action.

Given the difficulties described by rights-holders in obtaining effective assistance in the criminal and border enforcement contexts, some brands feel that they have little recourse other than pursuing civil litigation to enforce their rights in Indonesia. Unfortunately, such actions are often costly, and lack the long-term deterrent effect needed to significantly improve the environment for IP.

Though we do wish to acknowledge the Indonesian government’s increased recognition of the problems faced by rights-holders, and some indications that IP protection is becoming a greater priority; we have yet to see the type of concrete progress on long-standing issues that would justify Indonesia’s removal from the Priority Watch List in 2022.

EUROPE – MIDDLE EAST – AFRICA REGION

RUSSIA

Despite the introduction of Anti-Piracy legislation in 2015, IP owners continue to face many of the same problems that have been reported for a number of years. The lack of a UDRP-type process is seen as a significant obstacle to pursuing infringers, as online intermediaries are often uncooperative and refuse to remove pirated content or listings for counterfeit items pursuant to a notice and takedown process. As a result, civil litigation is often seen as rights-holders' only recourse. Civil actions though fail to provide a lasting impact; even where such cases are successfully concluded, court orders are limited to imposing sanctions against the specific defendants and websites at issue. Unsurprisingly, offenders have frequently reorganized and re-established their operations with only minimal interruptions.

Rights-holders did report modest improvements with respect to enforcement in the physical market, and IACC brands noted increased engagement with law enforcement authorities. This has led to an increase in the number and quality of raids undertaken. Counterfeit goods remain widely available in the domestic market however, and some well-known and notorious markets highlighted in previous submissions to USTR, continue to be seen as “off limits” for enforcement.

Customs enforcement also reportedly remains somewhat inconsistent in Russia, though some respondents highlighted greater levels of engagement and increased seizures over the past year. The inability to enforce design rights at the border – protection that is increasingly common in other jurisdictions – remains a frustration though. Rights-holders also continue to raise concerns about the adequacy of enforcement in the Eurasian Customs Union; the limited enforcement seen at the borders of Kazakhstan and Kyrgyzstan offers an attractive transit route for China-based counterfeiters seeking to move goods into the Russian market.

Given the range of concerns that IACC members continue to face in the Russian market, we support its retention on the Priority Watch List in 2022.

SAUDI ARABIA

The IACC received mixed reports concerning the experiences of rights-holders in Saudi Arabia during this year's consultations. While some noted progress on enforcement, and optimism in connection with steps to improve coordination under the leadership of the Saudi Intellectual Property Authority, a number of long-standing concerns remain pronounced.

Rights-holders described positive engagements with the Anti-Counterfeiting and Fraud Department within the Ministry of Commerce (AFCD/MoC), leading to a number of raids against retailers and higher-level distributors throughout the country. Enforcement authorities are said to be responsive and keen to support rights-holders' efforts, though the actions taken often lack necessary deterrence. As detailed by one respondent, "... typically, a first offense is met with the seizure of any contraband on-site, and the target's acknowledgement of the violation and commitment not to offend again." While enforcement authorities are empowered to close business establishments engaged in illegal trafficking, such remedies are rarely invoked except in the case of multiple re-offenders. Not surprisingly, the lax penalties imposed are seen as providing minimal lasting deterrence.

As of late 2021, responsibility for IP enforcement has started to transition to SAIP. Rights-holders are hopeful that the level of engagement and activity will remain consistent, but have little practical feedback to offer thus far. Some respondents raised concerns over coordination during the transition and a need for the SAIP to develop greater expertise within the agency's ranks; we will continue to monitor this situation.

IACC members would welcome greater opportunities to work in collaboration with the counterparts in law enforcement to conduct more "deep dives" against offenders – particularly in cases involving recidivism. In contrast to the "seize and cite" approach that's often seen in Saudi Arabia, respondents believe that more comprehensive investigations could help uncover larger networks, lead to more significant charges and impactful penalties, and send a clear signal that the government takes IP offenses seriously.

Rights-holders also reiterated concerns raised in prior years' filings regarding the need for greater transparency in connection with the final disposition of seized counterfeits. We continued to receive input from member brands during this year's process involving a lack of communication and the involvement of relevant rights-holders to verify the destruction of infringing goods. A more transparent approach would be helpful in building trust among impacted brands.

Members' experiences with respect to border enforcement in Saudi Arabia varied widely over the past year. One respondent, for example, praised Saudi Customs' efforts, citing the highest volume of seizures involving their brands throughout the entire Middle East region. We've also received positive feedback applauding Customs' willingness to share intelligence gleaned from seizures to aid in follow-up investigations. In contrast, another brand reported no counterfeit seizures involving their brand, despite significant volumes of counterfeit items seen in the local market.

Overall, we are pleased by the increased steps taken by the Saudi government in recent years to address a number of long-standing concerns. More must be done however to ensure that the laws, policies, and procedures implemented to protect intellectual property rights are supported by consistent enforcement and meaningful penalties that provide a significant deterrent. Until such additional progress is seen, we continue to support Saudi Arabia's retention on the Priority Watch List.

TURKEY

IACC members' feedback regarding Turkey has remained largely unchanged in recent years, as rights-holders again stressed the need for significant improvements to the country's border enforcement regime, the frustration of enforcement efforts by prosecutors who appear antagonistic to rights-holders' concerns, and continued difficulties in obtaining positive outcomes in the Turkish courts.

For a number of years, member brands have highlighted their struggles in obtaining effective enforcement assistance at the border. Despite Turkey's emergence as hub for the manufacturing and finishing of counterfeit goods, and as a transit point for counterfeit goods produced elsewhere, rights-holders continue to see Turkish Customs as largely uninterested in cracking down on illicit trafficking. Counterfeits sourced from Turkey continue to flood the European market, and member brands continue to cite Turkey as the country of origin for high-volume seizures by customs agencies in other countries. One respondent cited a three-fold increase in seizures by Bulgarian Customs, involving counterfeits transported by truck across Turkey's northern border.

Enforcement within the Turkish market remains frustrating as well. Despite consistent support and assistance from the Anti-Smuggling Police and the IP Crime Police, respondents bemoaned the lengthy process and onerous requirements for documentation, as well as "seemingly ever-changing requirements" imposed by prosecutors, when seeking search warrants. Whereas Customs has been said to be indifferent to rights-holders' requests for assistance, prosecutors are seen by some respondents as outright hostile to their requests. As noted in past submissions, brands are typically required to provide extensive evidence of undercover purchases (with receipts), but prosecutors may also impose value thresholds or other practical impediments prior to authorizing a raid. These requirements would perhaps be seen as less problematic if not for the arbitrary nature in which they're imposed. We would welcome the promulgation of clear guidance detailing more uniform standards for the issuance of warrants in connection with IP enforcement.

Where (criminal or civil) enforcement actions do proceed to trial, IACC members also continue to register concerns with the judiciary's reliance on so-called expert opinions. As detailed in comments previously submitted to USTR, these court-appointed experts are often entirely lacking in the sort of expertise necessary to accurately distinguish between authentic and increasingly sophisticated counterfeits. Regrettably, their testimony is often deemed credible and definitive, even when it contradicts the forensic analysis conducted by brands' in-house personnel.

Though some respondents commented positively on court-appointed experts' increased receptiveness to receiving education and training on product identification techniques, which has led to more positive outcomes, the consensus view of rights-holders is that the current procedures are unnecessary and lead to greater uncertainty of case outcomes.

Cases involving intellectual property, as reported in the past, also continue to proceed slowly in the eyes of rights-holders; and even in cases where convictions are obtained, the

penalties imposed remain relatively lenient. The overall level of deterrence is low, and recidivism is commonplace.

We would welcome further steps by the Turkish government to ensure the application of necessary resources to enforcement personnel at and within the country's borders, to clarify legal requirements for the issuance of search warrants, and to prioritize criminal prosecutions of counterfeiting offenses. IACC members are growing increasingly concerned by what is viewed as a significant deterioration of the country's IP regime in recent years; urgent action is essential. Accordingly, we recommend Turkey's elevation to the Priority Watch List in 2022.

UKRAINE

IACC members have recommended Ukraine's placement on the Special 301 Priority Watch List for countless years due to holistic concerns ranging from lax enforcement within the market and at the country's borders, and an exceedingly challenging online landscape, among other issues detailed in past years' submissions. In recent years, as Ukraine has sought to expand ties with Western markets, those prospective partner nations (and stakeholders in the private sector) have underscored the urgent need to address long-standing deficiencies in the country's IP regime as a means to ensuring a stable and trusted market, and to fostering foreign investment in the country. As a result of this engagement, the Ukrainian government has commenced a number of ongoing organizational and process related changes. Though the ultimate impact of these initiatives remains to be seen, respondents during this year's consultations expressed some optimism that long-sought improvements may soon materialize.

On a positive note, we were pleased to hear some member brands report an increase in the number of IP-related seizures by Customs over the past year. The customs detention process remains onerous however, and the need to involve Ukraine's administrative courts is said to diminish its effectiveness. This is particularly true when the targeted importer objects to a seizure. Rights-holders have no official standing in the court process, resulting in the need for constant communication and oversight to ensure that cases proceed smoothly and without unnecessary delays. The lack of standing issue was cited as a reason that courts will not seek input or assistance from the relevant rights-holders, relying instead on the opinions of court-appointed "experts." IP owners' experience with such experts in Ukraine has largely mirrored those detailed in our comments concerning Turkey. Too often, they lack the training and expertise required to make objective and accurate authentications.

Even where rights-holders and their counterparts at Customs are able to successfully navigate the system, and to reach a favorable judgment, this does not always equate to a favorable outcome. Indeed, we have received troubling reports involving decisions to forgo the destruction of seized goods in favor of government-authorized "liquidation." The sale of such items will undoubtedly lead to their reintroduction into the consumer

market, exposing both the rights-holder and consumers to the very harms that the seizure was meant to avert.

Members' comments with respect to market enforcement – both physical and online – remained largely unchanged since last year. Counterfeit goods remain widely available, enforcement is exceedingly difficult (particularly so, online), and the country is widely-regarded as a “safe haven” for online infringers. We are aware of plans to establish a new IP Enforcement Police team in 2022, and we are hopeful that the new unit will enable further progress towards addressing the entrenched challenges faced by rights-holders in the country.

One final concern raised by member brands involved difficulties in pursuing merchants engaged in “brand misuse,” i.e., leveraging initial interest confusion to facilitate a variety of “bait and switch” or related schemes by deceptively using rights-holders' trademarks / logos / signage / marketing materials to lure customers in. Under current law, quantifying damages related to such activity is extremely difficult, resulting in uncertainty as to proof of sufficient damages to satisfy criminal liability thresholds. This often limits a brand's recourse to administrative sanctions which fail to provide any credible deterrence.

While we were pleased by reports of progress in Ukraine over the past year, the environment for IP remains incredibly challenging. We would welcome further opportunities for engagement as the Ukrainian government moves forward with reforms to its legal and enforcement regimes, but at present, we continue to support Ukraine's retention on the Priority Watch List.

AMERICAS REGION

BRAZIL

Brazil remained among IACC members' priority concerns in 2021, and, along with Mexico, the country of highest concern in all of Latin America. The IACC has detailed long-standing challenges faced by rights-holders with respect to market and border enforcement, inefficient handling of cases by the Brazilian courts, and deficiencies in the country's legal regime in numerous past submissions. In light of the continuation of those issues, and increasing concerns with respect to rampant online trafficking in counterfeits, we support Brazil's placement on the Priority Watch List in 2022.

The need for more, and more impactful, enforcement measures has been a consistent theme among IACC comments filed in past years. Respondents during this year's consultations reiterated those concerns, noting that despite the widespread availability of counterfeits in the local marketplace – including at many well-known and notorious outlets – IP enforcement is not a priority for most law enforcement agencies in the country. Though we received some positive feedback concerning engagement with specialized IP units in Brasilia, the Mayor's office in Sao Paulo, and Brazil's federal tax authorities, the consensus among rights-holders was that the country's enforcement bodies are often unreceptive to brands' requests for assistance. Trademark owners also underscored the need for greater coordination between enforcement agencies to identify larger distribution networks. At present, IP enforcement is said by some respondents to be carried out under a "seize and cite" approach – counterfeit goods are confiscated and punishments for offenders are typically limited to monetary fines.

Rights-holders also cited concerns with respect to the infiltration of the government procurement process by counterfeits. One respondent cited the recent execution of nine search warrants by the Brazilian federal police's organized crime and anti-corruption division in connection with the sale of counterfeit items to government agencies, including the National Health Care Agency. Another wished to call attention to a recently adjudicated case (originally filed in 2013), in which the defendant was convicted on charges related to the supply of counterfeit goods to various government agencies. Though the offender, who had been awarded over two hundred contracts through the government bid process over a three-year period, was sentenced to three years' imprisonment, that punishment was ultimately reduced to a fine of approximately \$1,800 and the performance of community service.

Under existing law, government agencies that receive counterfeit products resulting from a public tender are required to file a police complaint and issue sanctions against the counterfeiter, including banning the individual from participation in future bids. In rights-holders' experience, this law is not being followed, and violators rarely face significant consequences for such offenses.

Rights-holders' concerns related to online trafficking have grown more pronounced over the past year; those assessments are also corroborated by an increased volume of

submissions through the IACC's RogueBlock program related to websites operating out of Brazil and serviced by Brazilian financial providers. In late 2021, the IACC cited continued widespread sales of counterfeit and pirated good, impacting a variety of product sectors, in its recommendation that Mercado Libre be listed as a Notorious Market in USTR's forthcoming report. To its credit, the Brazilian government has finalized the implementation of a self-regulatory "Best Practices Guide" with guidance for marketplaces and online platforms to prevent and combat the sale/distribution of counterfeit products online. To date however, rights-holders have reported little in the way of measurable improvements in the online market.

Intellectual property enforcement at the border likewise continues to be a challenge. Seizures remain far lower than would typically be expected from a market the size of Brazil, and the volume of seizures leads to even greater frustration among rights-holders given the prevalence of counterfeit merchandise seen in the physical and online markets in the country. An increased emphasis on border enforcement – particularly in hot spots such as the tri-border region, is critical to addressing these concerns.

Brazil's court system also remains a source of frustration for IACC members, which was described by respondents as inefficient and slow-moving. Criminal cases are said to average four years to conclude, while civil suits are even more protracted. Penalties in IP-related cases also lack deterrence – partly attributed to the lack of statutory or treble damages – though some point to a need for greater training for prosecutors and judges and an increased recognition of the severity of harms caused by illicit trafficking.

In light of these continuing concerns, the IACC recommends Brazil's elevation to the Priority Watch List in 2022.

CANADA

Rights-holders were hopeful that the enactment of the Combating Counterfeit Products Act, and later, the conclusion of the USMCA negotiations, signaled a change in Canada's approach to reining in the pervasive trafficking of counterfeit goods in and through the country. Disappointingly, the hoped-for progress has yet to materialize. Despite occasional upticks in enforcement in recent years, such as that seen when the Pacific Mall in Ontario was named to USTR's Notorious Markets List in 2017, sustained improvements have failed to take root, and the environment has quickly returned to the former status quo.

IACC members continue to bemoan the small number of seizures reported each year by the Canada Border Services Agency, a lack of interest and engagement on the part of law enforcement, and an absence of political will at all levels of government to address rights-holders' concerns. As characterized by one respondent in this year's consultations, "The Canadian government simply does not take IP theft seriously. They have failed to provide enforcement personnel with the resources or the authority to effectively deal with illicit

trafficking. And until that changes, we have little expectation that the situation will improve.”

Historically, IACC members’ greatest frustrations have involved Canada’s lack of effective border controls. CBSA’s annual IP-related seizure figures, even considering some recent increases, remain abysmal. And while border agents now have expanded authority to detain shipments ex officio for IP violations, the process for doing so remains unwieldy. Even those member brands who have availed themselves of CBSA’s “Request for Assistance” recordation program continue to report few or no seizures. Meanwhile those who have seen products detained decried the unnecessary expense and delays associated with concluding a seizure. In contrast to their counterparts in the U.S., CBSA lacks the authority to make an administrative determination that suspect goods are counterfeit, and their entry prohibited. As a result, impacted brands must file a case in federal court in order to perfect the seizure, needlessly incurring legal and storage costs, even where the seizure is undisputed. This holds true whether CBSA has detained a single counterfeit item or a container-load (though seizures in that latter category are nearly unheard of in Canada).

Rights-holders expressed significant disappointment with the level of enforcement within the Canadian market as well. While some respondents offered praise for the efforts of, and engagement by, local law enforcement agencies around the country, those officers typically lack the resources to make a significant impact on the counterfeit trade. Support from federal authorities such as the RCMP has remained lacking for several years. Local law enforcement has undoubtedly also been frustrated by the fact that there is often little to show for their efforts at the end of the day, because the penalties imposed by Canadian courts generally fail to reflect the serious nature of the offenses.

Online enforcement, too, remains extremely challenging in Canada; standalone rogue websites and popular e-commerce platforms are seen as rife with counterfeits. There is little interest, and even less action, taken by Canadian authorities to decrease this activity. Unfortunately, the tools available for direct action by rights-holders are also extremely limited given the unavailability of statutory and treble damages in civil actions.

Given the longstanding and intractable nature of the problems that continue to plague rights-holders in Canada, and the consistent lack of improvement seen over the course of many years, the IACC recommends Canada’s elevation to the Priority Watch List in 2022.

MEXICO

IACC members were nearly unanimous in the view that the protection and enforcement of IP rights in Mexico has continued to deteriorate over the past year. Respondents’ feedback during this year’s consultations exhibited an overarching theme – the Mexican government simply does not view IP enforcement as a priority. That lack of priority is seen in many forms, including the under-resourcing of enforcement bodies, diminished

engagement between policy makers and the private sector, and the overall lack of deterrence provided under the country's existing framework. The concerns voiced by rights-holders during this year's process will likely come as no surprise to USTR, nor to the Mexican government; most have been raised, repeatedly, over the past several years. Given the severity of rights-holders' concerns, and the lack of progress in addressing these long-standing concerns, we recommend Mexico's elevation to the Priority Watch List in 2022.

IP enforcement remained exceedingly challenging over the past year; and while some member brands noted positive working relationships and support from enforcement personnel, others continued to struggle with what we've termed in the past, Mexico's overly-formalistic approach to enforcement. Criminal, administrative, and border protection enforcement personnel have clearly defined roles and authorities, and effective enforcement often hinges on those agencies' coordination. When coordination is lacking however, and it frequently is, protecting one's IP rights becomes untenable, if not impossible.

A relevant example, also raised in past submissions, is the often-arduous task of obtaining a seizure of counterfeit goods by Customs authorities at the Mexican border. Customs continues to lack ex officio authority to detain counterfeit products at the border; in order to do so, Customs must obtain an order from either a federal court, IMPI, or the Attorney General's Office. Given the time-sensitive nature of the importation and clearance process, coordination and communication between the various stakeholders is vital; unfortunately, it's also frequently reported to be lacking. Rights-holders have long supported the extension of ex officio authority to Customs officers which should allow for a more streamlined process and greater numbers of seizures.

In the border enforcement context, rights-holders also decried Customs' continued lack of authority to seize goods transshipped through the country. Mexican ports are increasingly providing a gateway for the introduction of counterfeit goods into the United States and throughout the Americas. Customs needs the ability to stop, inspect and seize these shipments. Despite these challenges, IACC member brands commented positively on their interactions with Customs, viewing the deficiencies in the border enforcement regime as structural in nature, rather than indicative of Customs officers' enthusiasm and commitment.

Rights-holders noted a decrease in criminal enforcement and prosecutions over the past year, attributable at least in part to pandemic-related shutdowns. Support from the PGR is said to be rebounding, but requires greater rights-holder involvement (whereas prosecutors were more proactive in prior years). With respect to the latter point, this may be due to a reported reduction in the number of prosecutors dedicated to the investigation and prosecution of IP enforcement. As in other jurisdictions, the use of court-appointed "expert witnesses" (discussed at length in past filings) to provide product authentication opinions remains problematic. And these concerns are all compounded by the relatively weak, non-deterrent sentences typically imposed in IP-related cases.

As a final matter, we were troubled to hear reports during this year's consultations highlighting an apparent increase in the trafficking of counterfeit goods with clear consumer health and safety implications. In 2021, the Observatorio Nacional Ciudadano, issued a report detailing the prevalence of counterfeit crop protection chemicals in Mexico (estimated to be as high as 15-20%). Other high risk product sectors, including cosmetics, wine & spirits, and electronics are widely impacted as well, both in physical markets and, increasingly, online.

Given the lack of progress reported on long-standing rights-holder concerns, the deteriorating enforcement environment, and the broad perception that the Mexican government lacks the political will to address the problems detailed in these, and prior years', submissions; we support Mexico's elevation to the Priority Watch List in 2022.

WATCH LIST RECOMMENDATIONS

ASIA-PACIFIC REGION

MALAYSIA

IACC members continued to report a variety of concerns related to the protection and enforcement of their rights in Malaysia during the past year.

Despite generally positive views of Malaysia's enforcement bodies – particularly the Ministry of Domestic Trade, Cooperatives and Consumerism (MDTCC), which was cited for its consistent engagement and support for rights-holders' efforts – member brands across a range of product sectors expressed dismay at the widespread availability of counterfeit goods in both brick-and-mortar and online marketplaces. Most respondents attributed this to an over-reliance upon administrative remedies which, although expeditious, tend to lack significant deterrence.

Even large-scale retail and distribution offenses are said to often be met with little more than fines; enforcement raids rarely lead to criminal referrals for prosecution, and where they have, those cases are often protracted affairs, taking years to resolve. Criminal prosecutions have been frustrated by a number of factors; the need for greater training with respect to evidence collection and investigation of IP offenses for enforcement personnel, and a lack of expertise among the ranks of the Public Prosecutors were highlighted most frequently in members' feedback during this year's consultations. Others highlighted a perception that prosecutors and the judiciary do not consider IP offenses to be serious crimes, leading to perfunctory trials that ultimately result in modest penalties (even in cases involving recidivism).

Rights-holders' concerns related to Malaysia's border enforcement regime have been detailed in numerous past submissions, and member feedback this year remained consistent with those previous reports. Rights-holders have repeatedly called for the development of an IP recordation system to facilitate cooperation between Customs authorities, the MDTCC, and rights-holders. Regrettably, no such tool has been implemented; and not surprisingly, illicit imports and transshipment through Malaysia remain commonplace. As the border control regime currently operates, Customs officials are expected to engage the assistance of the MDTCC whenever suspicious consignments are found. In practice, however, rights-holders have found coordination between the agencies lacking. As a result, and in the absence of the effective assistance that could be facilitated by the implementation of a recordation process; it should come as no surprise that many brands have reported no Customs seizures in 2021.

IACC members have reported significant increases in the volume of counterfeit goods available online, but enforcement in this context also remains extremely challenging. Though the MDTCC has shown willingness to assist rights-holders in conducting

takedowns, few brands view this as a lasting or efficient enforcement option. To date however, we've seen little willingness on the part of the Malaysian authorities to explore statutory or regulatory solutions, or even industry-led voluntary best practices, to rein in these illicit sales. We would welcome a more pro-active approach to combating online trafficking.

Similar to the issues highlighted in our comments on Brazil, we would like to draw USTR's attention to rights-holders' concerns regarding the infiltration of counterfeiters into Malaysia's public procurement process. Following the discovery of several instances in which procurement clerks had purchased counterfeit goods from government suppliers, some brands have offered (at no cost to the government) to assist in authenticating such goods; receptivity to those offers has been limited though, and rights-holders would welcome more robust collaboration with their government counterparts in this vein.

We welcome USTR's attention to the issues highlighted in these, and past years', comments. At present though, and pending substantive progress on those concerns, the IACC supports Malaysia's placement on the Special 301 Watch List in 2022.

PHILIPPINES

IACC members have registered concerns regarding the IP protection and enforcement regime in the Philippines for a number of years. And despite efforts to address pervasive counterfeit sales – particularly at well-known outlets such as the Greenhills Shopping Center, which has been included on USTR's Notorious Markets List for several years – rights-holders continue to be frustrated by the widespread availability of counterfeits in the market. In addition to such traditional hotspots, rights-holders also report significant growth in online trafficking, as well as long-standing deficiencies in the country's border enforcement regime.

Enforcement – whether in the internal market, online, or at the border – has been hampered by a lack of follow-through. Where rights-holders and governments around the world are often heard to say that, “The problem of counterfeiting is not one that we can seize our way out of ...,” in the view of some respondents, that appears to be precisely the approach adopted in the Philippines. As described by one brand, “Customs appears to be more interested in publicizing their enforcement activities than in the practical impact of those efforts. Seizures are seen as an end in themselves, rather than as the starting point of an investigation that might uncover the source of the goods and obviate the need for seizures in the future.” Rights-holders underscored the need for a shift in thinking towards that latter approach. Others described a reluctance on the part of Customs to act

against incoming shipments, absent specific and detailed intelligence which is often not readily available.

With respect to in-market enforcement, some brands have reported positive engagement with police, but described concerns analogous to those heard in the context of border enforcement. Too often, raid actions lead to seizures, but little in the way of follow-on investigations or prosecutions. Some brands recounted being encouraged to pursue private criminal prosecutions rather than to rely on public prosecutors. Indeed, despite the costs and protracted nature of such actions, some member brands expressed the view that private actions were the only practical option for ensuring that seized items were destroyed and did not subsequently find their way back into the marketplace.

As in countless other jurisdictions, online sales of counterfeit goods are a growing concern in the Philippines. Unfortunately, we've seen little proactive enforcement aimed at decreasing this trafficking; online intermediaries are also reportedly less receptive to engaging with rights-holders or the government to address these problems. We would encourage the government of the Philippines to examine its existing legal framework, and to adopt amendments necessary to ensure greater accountability and transparency in the online context, and to encourage and facilitate greater cooperation among private-sector stakeholders to address these growing concerns.

In light of rights-holders' holistic concerns with the current environment for the enforcement of IPR, we recommend USTR's placement of the Philippines on the Special 301 Watch List this year.

THAILAND

After several years in which we've received concerning feedback about decreased levels of enforcement, we were pleased to hear about reported improvements in Thailand over the past year. Law enforcement agencies in the country are said to be increasingly receptive to IACC members' referrals, and the Royal Thai Police and Thai Department of Intellectual Property were cited by rights-holders for their willingness to support raids and investigations. While member brands appreciate law enforcement's engagement, respondents would also encourage greater proactive efforts.

As noted in past years, however, and similar to concerns voiced with respect to India, there is a widespread view that enforcement in Thailand focuses too heavily on lower-level offenders. There is a need for more in-depth investigations to uncover manufacturing and distribution operations, with an aim towards disrupting the organized networks that continue to enable sales by brick and mortar and online sellers operating in the country. Citing concerns about compliance with Thailand's privacy laws, some Thai law enforcement agencies have reportedly been reluctant to share information about

targets uncovered during raids and investigations. A more collaborative approach to investigations would assist rights-holders in pursuing more high-level targets.

Online trafficking in Thailand is a source of growing concern, and right-holders described significant difficulties in pursuing targets who are said to have little difficulty maintaining anonymity and avoiding detection. Cooperation from e-commerce platforms and other online intermediaries has been inconsistent to date. IACC members are closely monitoring developments following the Thai government's signing of an MOU with a number of online platforms, and it is hoped that such efforts will lead to greater progress in addressing the problems currently faced by rights-holders. We would also welcome further efforts, including a review of existing statutes and regulations, to ensure greater transparency and cooperation in identifying bad actors online.

Respondents have also highlighted a trend of increased production, sales, and exports of infringing, though not strictly counterfeit, goods; with illicit manufacturers making minor alterations to well-known trademarks and logos in an effort to free-ride on brands' fame and reputation while evading enforcement. Some view this as an indicator of the growing sophistication of such operations, as the RTP and DIP have been generally unwilling to pursue such producers. As a result, rights-holders are left with few options aside from pursuing litigation for civil infringement – a process that remains costly and time-consuming.

With respect to border enforcement, respondents were generally positive in their feedback regarding Thai Customs; member brands expressed pleasure with the agency's willingness to share relevant intelligence and to participate in IP-related training programs. The availability of an IP recordation process is also seen as encouraging public-private collaboration to combat illicit trafficking. Despite these positive reports however, some brands continue to report relatively low or in some cases no seizures. Such reports are troubling given the appearance of Thai-sourced counterfeits and infringing goods seen in other markets throughout the region.

Brands also commented positively regarding the handling of cases by Thailand's dedicated IP Court, but remained concerned about the level of penalties imposed on offenders. Though this is likely, in part, due to the above-mentioned focus on lower-level violations, more deterrent sentences should be levied, and equally important, publicized. At present, penalties are often limited to fines and the seizure of contraband; custodial sentences are regularly suspended.

It is a common practice in Thailand, following the adjudication of a counterfeiting case, for the government to host a ceremony where rights-holders and the public can witness the destruction of the infringing goods. Respondents applauded the government's transparency afforded by these events, and their usefulness in helping to raise public awareness about the harms inherent in the counterfeiting trade. However, member brands also highlighted the fact that the relevant rights-holder, rather than the offender, is typically expected to bear the costs of storage while cases remain pending, and for destruction following cases' resolution. We would encourage the courts to impose those

costs on the counterfeiter instead, as a component of sentencing; doing so would also provide increased deterrence against recidivism.

As a final matter, we wish to reiterate the concerns highlighted in past years' submissions regarding significant delays in prosecuting applications and obtaining registrations from the Trademark Office. While we've continued to receive such reports over the past year, we are aware of steps taken by the government to address these delays. We will continue to monitor these concerns in the coming year, and would welcome further updates from the Thai government on their progress in this area.

While we were pleased to receive more positive feedback regarding rights-holders' experiences in Thailand over the past year, and recent direct outreach from the Thai government regarding their work on IP, given the significant challenges that brands continue to face in the country, we support Thailand's retention on the Special 301 Watch List in 2022.

VIETNAM

Respondents' feedback concerning Vietnam was largely unchanged from that detailed in last year's submission to USTR. While we have heard positive reports noting an apparent increase in the government's emphasis on IPR protection, some long-standing obstacles to effective enforcement remain. Chief among these is a perceived over-reliance on administrative enforcement, which carries lower penalties and fails to provide sufficient deterrence to repeat offenses. Not surprisingly, addressing recidivism was cited as a priority.

We were pleased to hear of the continuation of a previously reported trend involving stepped-up seizures and raids by Vietnam Customs and the Market Surveillance Agency along the Vietnam-China border. The importation of China-sourced counterfeits remains prevalent though, and such goods continue to flood local markets.

Online trafficking of counterfeits also continues to increase year-over-year, despite some steps taken to date by Vietnamese authorities. More proactive measures to curb this proliferation are essential, and will undoubtedly require greater involvement and cooperation from online intermediaries to ensure that bad actors can be verifiably identified and prevented from exploiting legitimate e-commerce outlets to facilitate their illicit sales. Rights-holders were complimentary of the work being done by the Ministry of Science and Technology, as well as the Market Control Board, in combating this online trafficking, but noted that counterfeits remain widely available and highly-visible on e-commerce platforms, standalone websites, and increasingly through social media channels.

We would welcome further engagement by the Vietnamese government to address both the long-standing and emerging challenges faced by rights-holders; but in light of the feedback received during this year's consultations, we support Vietnam's retention on the Watch List in 2022.

EUROPE – MIDDLE EAST – AFRICA REGION

EGYPT

IACC members continued to face significant challenges in Egypt during the past year, most of which were attributed to the government’s perceived lack of priority in addressing widespread sales of counterfeit goods. As discussed in our 2021 Special 301 submission, enforcement remains plagued by delays, enforcement agencies were described as “chronically under-resourced” and lacking necessary expertise on IP matters, and the impact of enforcement efforts was regularly called into question given the lack of deterrent penalties provided in counterfeiting cases.

Rights-holders reiterated past concerns involving the significant lag-time between reported violations and the execution of raids. Leaked information about pending enforcement actions has at times enabled offenders to move or conceal their counterfeit inventory. The need for such actions by counterfeiters was called into question by some respondents though, as “in situ seizures” are reportedly the norm; counterfeit items are rarely physically removed from offenders’ place of business to a secure storage facility, and the practical consequences for violations are often limited to nominal fines even in the case of repeat offenses. Member brands also decried the lack of transparency seen in connection with raids – relevant rights-holders are generally not permitted to enter or observe during enforcement actions, and documentation (photographs, inventories, etc.) provided by enforcement personnel was often described as inadequate. A lack of transparency with respect to the destruction of seized product was also reported.

As detailed in past years, border enforcement remains problematic with most reporting few interdictions.

Given the lack of progress reported on these and other issues, we support Egypt’s retention on the Watch List in 2022.

KUWAIT

Kuwait was retained on the Special 301 Watch List in 2021, with USTR citing a number of long-standing concerns including the need for greater transparency in the enforcement process, significant delays in the resolution of court cases, non-deterrent penalties for IP offenses seen as contributing to high rates of recidivism, and a need for greater engagement by the government with impacted rights-holders. Regrettably, despite some positive steps taken over the past year, rights-holders remained frustrated by many of these same issues during this year’s consultations. Accordingly, we support Kuwait’s retention on the Watch List again in 2022.

While IACC members continue to express concerns with regard to the sufficiency of Kuwait's legal and regulatory regimes, the need for more, and more impactful, enforcement remained rights-holders' top priority. Despite consistent advocacy and outreach by the private sector and industry bodies, enforcement agencies were often described by respondents as "disengaged" and "disinterested." In past years, member brands have bemoaned the lack of communication by their government counterparts, noting the lack of updates regarding the progress or resolution of cases. Complaints filed by rights-holders seemed to stagnate, or worse yet, "disappear into a bureaucratic black hole." The investigation and prosecution of IP offenses was typically seen as a low priority, and as a result, enforcement personnel were often seen as unwilling to take ownership of cases.

As discussed in prior submissions, Kuwaiti authorities typically do not seize counterfeit items found in the possession of enforcement targets, but rather allow the individual to retain the goods (with instructions not to sell / conceal / destroy the items prior to adjudication). Coupled with the extensive delays in adjudication reported by members, and questions raised with respect to the oversight and management of enforcement activities, the failure to physically seize the relevant goods and remove them from the market is a significant concern for many rights-holders.

We have received some more optimistic reports from member brands during the past year, largely centered on the launch of a new online service for filing IP complaints with the Ministry of Commerce. Though still in the initial stages of operation, we're hopeful that this initiative is an indicator of the Kuwaiti government's increasing recognition of the need to modernize and significantly enhance the efficiency of enforcement operations. We will be watching the development of this new system closely, and encourage the government of Kuwait to seriously consider feedback offered by rights-holders as more brands have an opportunity to avail themselves of the new tool. At present, the service is not accessible from outside of Kuwait, restricting its adoption, and making the testing and assessment of the tool more difficult. We believe this initiative offers real promise for improved communication, collaboration, and intelligence sharing between stakeholders and the Kuwaiti authorities, and would welcome steps to make the system more accessible.

For the time being, however, the protection and enforcement of IP rights in Kuwait remains incredibly challenging. Given the ongoing concerns described herein, and the need for further progress on issues detailed in prior submissions, we support Kuwait's retention on the Watch List in 2022.

SPAIN

The IACC has raised concerns regarding the environment for IP in Spain several times in recent years, including a past recommendation that the city of Barcelona be designated a Notorious Market – in response to the city and federal governments' failure to act against rampant counterfeit sales throughout the city. Crackdowns in 2019 led to a reported

decrease in the level of trafficking in Barcelona and other popular tourist destinations, and the local retail trade appears to have been further impacted by the curtailment of travel coinciding with ongoing pandemic. And while rights-holders remain vigilant against a reversion to the prior state of affairs as “lockdowns” are relaxed, we have been pleased by reports of increased activity by the police during recent months.

Regrettably, member feedback regarding Spanish Customs has been far less positive. Rights-holders described the agency as “uncooperative” and unsupportive of private sector enforcement efforts, and largely uninterested in pursuing counterfeiters proactively. Spanish ports serve as a critical entry point to the broader European market, and the need for a robust border enforcement regime is underscored by the uptick in the manufacturing of counterfeits across the North African region, noted in prior years’ submissions.

IACC members also highlighted significant concerns with respect to Spain’s court system – citing both “notoriously slow” and protracted proceedings and “wildly disparate” and “unpredictable” rulings from the judiciary, particularly in the criminal context. In one instance, a member brand pointed to its involvement in a criminal case that has lingered in the courts for more than two decades. In another case involving a labeling / finishing operation, a Spanish court ruled that the relevant brand had not suffered any damages because the “unfinished” goods had not entered the market. Adding insult to injury, the same court held that the rights-holder should be liable for damages (court costs and attorneys’ fees) incurred by counterfeiting operation in connection with its defense of the charges. Outcomes such as those described serve as an impediment to IP owners’ assertion of their legitimate rights, as a discouragement to the investment of manpower and resources by law enforcement, and as a tacit encouragement to the criminal organizations engaged in the production and trafficking of counterfeit goods.

Rights-holders’ pursuit of justice in the Spanish courts is likewise said to be hindered by disinterest (or perhaps, disillusionment, given the above) in pursuing IP offenses. Trademark owners described often having to engage local counsel to “mirror” their government counterparts to ensure that cases proceed as they should, stating that, absent such active oversight, prosecutors have frequently opted to abandon cases involving counterfeits, unilaterally dropping the charges, and returning evidence of the offenses (i.e., counterfeit inventory previously seized) to the defendants.

Specialized training for both prosecutors and the judiciary and a clear commitment by the Spanish government to prioritize the protection and enforcement of IP, are seen as vital to ameliorating rights-holders concerns.

Given the feedback received from IACC members during this year’s consultations, we recommend Spain’s return to the Special 301 Watch List this year.

UNITED ARAB EMIRATES

IACC members have raised concerns about the effectiveness of the Emirates' IP regime in submissions to USTR for a number of years. Despite some positive steps towards improving the UAE's legal and enforcement framework, including the long-awaited implementation of the new IP law which allows for a significant increase in the available penalties for counterfeiting offenses, rights-holders remain frustrated by the apparent intractability of many long-standing challenges experienced in the country. While member brands expressed hope that the new law will lead to much-needed progress, to date, no real impact has been reported.

As detailed in prior years' comments, rights-holders continued to enjoy robust assistance from and collaborative relationships with the Department of Economic Development in each of the Emirates. Their consistent cooperation is credited with contributing to the clean-up of past hot-spots for the counterfeit trade including DragonMart in Dubai and the China Mall in Ajman. The Police have, likewise, been praised for their responsiveness to complaints and their willingness to pursue raids against large-scale targets involved in trafficking throughout the country. While recidivism has been cited as a significant concern in the past, we're hopeful that enforcement personnel will leverage the newly-available penalties provided by the amended IP law to deter repeat offenders more effectively.

One area in which improvements would be welcomed concerns authorities' "localized" approach to enforcement. Rights-holders report that, too often, authorities view raids as an end in themselves, and fail to undertake a more in-depth investigation of enforcement targets. The examination and analysis of targets' business records and related documentation could provide valuable intelligence useful in identifying higher-level suppliers and manufactures, both in the Emirates and abroad. IACC members expressed a great deal of interest in working more closely with their counterparts to build larger and more impactful investigations.

As detailed in past years, rights-holders' feedback with respect to UAE Customs was far less positive. Member brands reported minimal seizures, a fact that continues to baffle given the UAE's status as one of the world's busiest shipping hubs, and the prevalence of counterfeit goods seen (and seized by the Police and DEDs) in the local market. As described by one respondent, "Customs enforcement in the UAE is seen as one of the most under-performing areas of our entire brand protection program." Proactive interdictions by Customs are said to be "unheard of," while some brands also report an unwillingness on the part of Customs authorities to receive intelligence or training that might be helpful in securing the country's borders against illicit trafficking.

Rights-holders continue to experience challenges in connection with the re-exportation of counterfeit shipments. Re-exportation often takes place without any notification to the relevant IP owner, and without the provision of information that might enable their pursuit of bad actors in the source jurisdiction.

Similarly, IACC members continue to face difficulties pursuing offenders in the UAE's 45 Free Zones. Despite some positive developments in recent years, such as the signing of MOUs that enabled DED enforcement actions (in the Dubai Investment Park Free Zone, e.g.), respondents stated that some of those Free Zones of greatest concern, including the Jebel Ali Free Port and Dubai Airport Free Zone, are still effectively off-limits to enforcement.

In light of these substantial and ongoing concerns voiced by rights-holders during this and previous years' consultations, we recommend UAE's placement on the Special 301 Watch List in 2022.

AMERICAS REGION

BOLIVIA

Bolivia was retained on the Special 301 Watch List last year, with USTR citing a variety of issues with the country's IP regime ranging from an outdated legal framework to insufficient resourcing of enforcement bodies, lax criminal enforcement, and other concerns, coupled with piracy rates "among the highest in Latin America" and "rampant counterfeiting." Though USTR optimistically noted the new Bolivian government's expressed interest in engaging with the United States on IP issues, IACC members' feedback during this year's process made clear that concrete improvements have failed to materialize thus far.

Rights-holders continue to stress the need for expanded enforcement authority, better coordination among government bodies (particularly with respect to SENAPI and Bolivian Customs), and for a significant increase in the volume of criminal prosecutions and the imposition of meaningful, deterrent sentences for IP crimes.

Given the lack of reported progress during 2021, we support Bolivia's retention on the Special 301 Watch List this year.

COLOMBIA

As stated by one IACC member during this year's consultations, "The biggest issue in Colombia, and in most of Latin America, is that there is no deterrence. And the reason there is no deterrence, is that IP violations are simply not taken seriously." The lack of political priority for addressing the widespread trafficking seen in Colombia is reflected throughout the enforcement regime – criminal raids are low; customs seizures are low; and despite the availability of substantial penalties for IP violations under Colombian law, the sentences typically handed down by the country's courts are low. As a result, counterfeiters operate with minimal risk of prosecution and little likelihood that they'll face significant consequences if they are prosecuted.

As in past years, IACC members reported inconsistent support from Colombian law enforcement. While there were certainly bright spots reported during the past year, e.g., Operación Primavera in June (focusing on illicit pharmaceuticals) and Operación Cristales in August (targeting counterfeit and adulterated alcoholic beverages), rights-holders characterized such operations as few and far between. Some respondents reported no criminal raids involving their brands throughout all of 2021, despite open sales in well-known markets, and their proactive efforts to develop and present cases to their public sector counterparts.

Similarly, while some were complimentary of the Fiscal and Customs Police (POLFA), the consensus view among respondent brands was that border interdictions remain incredibly low, given the size of the market and the volume of counterfeits seen in brick and mortar and online markets.

Brands, likewise, continue to raise concerns about protectionism which is seen as allowing trafficking to thrive in well-known markets such as Unilago and San Andresito.

As noted at the outset, even where cases do proceed to prosecution, the lack of deterrent sentencing is viewed as a huge obstacle to effective enforcement. Though significant penalties, including imprisonment for up to 8 years, are available under Colombia's existing legal framework, they are rarely imposed. Given the lack of deterrence, the reports we've received regarding high rates of recidivism should come as no surprise.

Absent concrete steps by the Colombian government to resolve rights-holders concerns and to demonstrate a clear commitment to improving the environment for IP, we support the country's retention on the Watch List in 2022.

ECUADOR

IACC members' feedback regarding the situation in Ecuador remained largely unchanged from that reported in prior years' submissions. Chief among those frustrations is the country's border enforcement regime, which in the wake of the enactment of a 2016 law severely limiting Customs' authority to detain or seize counterfeit goods at the border, is described by some rights-holders as "non-existent."

The current framework requires IP owners to provide precise details (e.g., information identifying the ship and container to be targeted) prior to petitioning Customs to seize the goods. In most cases, such requirements effectively preclude any enforcement action at the border. And in the rare instance that such information is available, and a seizure can be effected, the process is further complicated by the need to file a court or administrative action to perfect the seizure. These additional hurdles significantly increase the cost and decrease the efficiency of the process.

We strongly concur with USTR's assessment from last year's report, urging the Ecuadoran government to empower Customs with ex officio authority to seize illicit imports and goods in-transit.

We also continue to hear troubling reports in connection with in-market enforcement of IP rights. Ecuadoran authorities are described as "slow to act," leading to delays in executing raids, which in turn diminish the success of those actions. Some respondents also detailed an unwillingness on the part of authorities to involve rights-holders in the enforcement process, restricting access to targeted locations, and rejecting offers of support in connection with product authentication or evaluating evidence. Rights-holders

expressed frustration at the documentation of raids and collection of evidence, and have cited these as a hindrance to effective prosecutions.

The lack of available resources for the storage of counterfeits has also resulted in a common scenario of strictly nominal seizures. As has become more common in a number of jurisdictions, contraband is simply cataloged and left in the possession of the offender, rather than being confiscated and held in a secure facility. The lack of transparency with regard to the disposition of such goods remains problematic.

Respondents during this year's consultations consistently stressed the need for the government of Ecuador to empower enforcement bodies with the legal authority and practical tools necessary to combat illicit trafficking at and within the borders, and to provide those agencies with a level of resourcing consistent with their mandate. To date, we've seen no meaningful progress towards doing so. Accordingly, we support Ecuador's retention on the Watch List in 2022.

GUATEMALA

As detailed in the IACC's submission to USTR last year, rights-holders have grown increasingly concerned with the environment for IP protection in Guatemala. IACC members participating in this year's consultations reiterated the deficiencies previously identified, including poor coordination among law enforcement and widespread copyright piracy and commercial-scale sales of counterfeit goods. Rights-holders in the apparel sector continue to raise alarms regarding significant increases in the local manufacturing of counterfeit goods in the country. Guatemala-sourced counterfeits are also increasingly found in other jurisdictions throughout Latin America, raising concerns over both the sufficiency of domestic enforcement and border controls.

Representatives from a variety of product sectors also described a widespread reluctance on the part of law enforcement and customs officials to assist with enforcement. Case referrals to the police and prosecutors are regularly ignored, or quickly abandoned, even where the relevant brand offers voluminous and verified intelligence regarding counterfeit production or distribution operations. One member brand in the pharmaceutical sector bemoaned the fact that its own significant investments in brand protection in Guatemala over several years have led to only a single arrest.

Given the lack of any reported improvement over the past year, we support the Guatemala's retention on the Watch List this year.

PARAGUAY

Paraguay has made perennial appearances in the IACC's Special 301 submissions over the past two decades, and despite some reports of progress in recent years, the market continues to fall short rights-holders' expectations. The country has long been viewed as a major gateway to Latin America for counterfeits, given historic concerns regarding border controls, insufficient levels of enforcement in the internal market, and entrenched organized criminal activity and corruption in the region of Ciudad del Este. These challenges have been exacerbated by an outdated legal regime, inconsistent (or as described by some, "entirely lacking") coordination between relevant government bodies, and a lack of meaningful penalties that might deter the widespread trafficking of counterfeit goods in and through the country. Rights-holders expressed some hope that the Memorandum of Understanding signed by Paraguay and the United States would encourage substantial progress on these and other long-standing impediments to IP protection, but such results have been slow to materialize, leading to growing disappointment and frustration.

Despite reports from some brands noting a welcome increase in enforcement actions over the past year, on the whole, IP enforcement remains difficult. Respondents decried the lack of proactive measures taken by criminal and administrative authorities and regulatory bodies; raids and seizures are often seen as unlikely to occur absent rights-holders' own extensive preliminary investigations. And even when presented with well-developed intelligence packages, enforcement officials are often unwilling to pursue those targets.

IACC members had likewise hoped for significant improvements with respect to coordination among enforcement bodies following the establishment of the National Center of Intellectual Property in 2019. Rights-holders' assessments to date however have been mixed. While some described positive interactions including efforts to facilitate enforcement operations and raise public awareness, others have lamented the organization as "severely under-resourced given the task set before it." We would welcome additional measures to increase the Center's reach and authority.

As noted at the outset, border enforcement of IP rights continues to be a major concern in Paraguay. The process is seen unnecessarily cumbersome, and unnecessarily time- and cost-intensive. Improved targeting and increasing the efficiency of the interdiction process remain priorities. On the whole, seizures remain far below expected levels and the effectiveness of the existing regime is called into question by the pervasiveness of counterfeits in the domestic market.

Rights-holders expressed concern over some recent actions by the Paraguayan government which are believed likely to exacerbate an already difficult enforcement environment. Among these are the enactment of law 6379, which is said to diminish the jurisdiction of Paraguay's IP Specialized judges. IACC members have typically reported more well-reasoned, consistent, and predictable outcomes, as well as more efficient case management by the specialized judiciary. We've also heard reports regarding funding cuts for the General Prosecutions Office, raising concerns about the adequacy of resourcing

for the IP Specialized Unit. Such actions by the government raise doubts as to its priority for addressing the long-standing challenges faced by IP owners in the country.

In light of the continuing need for progress on a variety of rights-holders' concerns, we support Paraguay's retention on the Watch List in 2022.

PERU

IACC members commented positively regarding the engagement and assistance received over the past year in Peru, singling out the Public Ministry and the National Police for praise. Law enforcement personnel – particularly in the capital of Lima – were described as “professional” and “responsive,” as well as “quick to organize and execute raids,” all of which has led to significant seizures in the domestic market. Law enforcement is, unfortunately, also said to be chronically under-resourced, limiting the impact of their efforts. As a result, the manufacturing and distribution of counterfeit goods in Peru remains widespread.

Respondents expressed great frustration though, that the activity of Peruvian law enforcement is not always matched by other components of the enforcement apparatus. Criminal prosecutions and civil litigation are said to be extremely slow moving; one rights-holder cited a counterfeiting case involving its brand which has been pending for over five years with no resolution. These challenges are also widely considered to be an issue of resourcing though; at present, there are only two courts in Lima charged with handling IP crimes, and only four specialized prosecutors to handle IP offenses. The prosecutors and the courts are, understandably, overwhelmed. Unfortunately, the limited capacity has been seen to contribute not only to slow-moving cases, but also to the effective termination of many cases following the raids and seizures by police, with no charges filed and no practical consequences for the offender other than a loss of inventory. Rights-holders have begun voicing concerns that the lack of follow-through on cases initiated by the police will ultimately discourage law enforcement from pursuing IP crimes in the first place.

Absent the provision of significantly greater resources that might enable the more expedient resolution of criminal cases – along with the imposition of meaningful penalties for counterfeiting offenses – rights-holders remain pessimistic about the prospects for holistic improvements in the environment for IP. Accordingly, we support Peru's continued placement on the Watch List this year.

OTHER OBSERVATIONS

ASIA-PACIFIC REGION

BANGLADESH

In our filing with USTR last year, the IACC recommended that Bangladesh be placed on the Special 301 Watch List, with members from the apparel, footwear, and luxury goods sectors reporting a dramatic increase in the manufacturing of counterfeit goods for local consumption and export to other markets. More recent input from rights-holders indicates that the situation has continued to deteriorate over the past year, while the country's government is said to show little apparent interest in addressing rights-holders' concerns.

Bangladesh has a well-established garment industry that has historically been a significant contributor to the legitimate supply chain, but many factories are said to have been hard-hit by decreased demand coinciding with the ongoing pandemic. Perhaps not surprisingly, counterfeiting networks have sought to take advantage of the country's excess capacity and skilled workforce to produce illicit goods.

Enforcement activity within the domestic market and at the border is described in bleak terms: "unworkable," "risky," and "non-existent," which contributes to the high volumes of Bangladesh-sourced counterfeits seized in other countries. While some rights-holders noted a desire for legislative reform to improve the country's statutory regime, the most significant contributing factor to the present situation is said to be a lack of political will to pursue bad actors or to prioritize IP protection. Garment manufacturing and exports are a key contributor to Bangladesh's economy as a whole; and the government is viewed as unwilling to crack down on illicit production, as doing so would likely have an adverse impact on employment. Some respondents also repeated previously noted concerns of protectionism and corruption, citing ties between known manufacturers of counterfeits and government officials.

We welcome USTR's attention to these growing concerns in the coming year.

CAMBODIA

Brands in the apparel sector reiterated the concerns highlighted in our 2021 submission to USTR; as in the case in Bangladesh, the situation has reportedly continued to deteriorate over the past year. With a skilled and low-cost workforce, Cambodia is seen by counterfeiters as an attractive locale for illicit manufacturing. This should perhaps come as no surprise, given the lax enforcement infrastructure in Cambodia, and the government's reported unwillingness to address, or even acknowledge, the significant increase in illicit manufacturing in the country over the past two years.

Though we continue to monitor the situation, Cambodia is viewed by many as a massive problem in the making, with no workable options available to address the production and trafficking of counterfeit goods.

HONG KONG

IACC members have repeatedly voiced concerns in recent years with respect to Hong Kong's enforcement of intellectual property rights, noting that despite positive working relationships with enforcement agencies, IP protection has been hampered by inefficiency and formality.

In Fiscal Year 2020, Hong Kong was identified as the country of origin for 35% of all IPR-related seizures effected by U.S. Customs and Border Protection. It is widely understood that the overwhelming majority of this traffic originates from mainland China, passing through Hong Kong enroute to the United States and other international consumer markets. Counterfeiters have become increasingly adept at leveraging legal, regulatory, and enforcement gaps to facilitate illicit shipments, and that is widely seen in the case of Hong Kong.

Hong Kong-based shipping intermediaries have displayed little, if any, willingness to aid investigations voluntarily; Hong Kong Customs & Excise, meanwhile, has demonstrated little interest in holding those parties accountable for the role that they play in the global trafficking of counterfeit goods. IACC members have consistently urged the adoption of reasonable "know your customer" requirements and disclosure obligations on intermediaries. To date however, we've seen no indications of support for such measures from HKC&E.

IACC members also wish to draw further attention to a practice established by HKC&E in cases involving criminal arrests. Under the current procedures, rights-holders are required to examine and authenticate every item seized by the authorities. In the case of large-scale seizures, doing so may take weeks or more to conclude, leading to unnecessary costs and delays. We would welcome a change to these procedures to allow for the examination of a representative sample of the goods seized, which would unquestionably enable a more efficient resolution to the benefit of all parties involved.

SINGAPORE

IACC members continued to report a high level of dissatisfaction with Singapore's border enforcement regime throughout the past year. A key shipping hub in the region, Singapore's customs framework is described by some as "designed to promote trade facilitation at the expense of enforcement." The nation lacks a trademark recordation

system, diminishing the ability of Customs personnel to seek, or rights-holders to provide, assistance in connection with illicit imports or transshipments. In addition, existing legislation provides for a maximum detention of suspected counterfeits not to exceed 48 hours, and further requires onerous bonding requirements (S\$20,000, or approximately US\$14,000) for each notified seizure. Both of these factors create a substantial impediment to customs enforcement. Rights-holders similarly bemoaned the excessive costs associated with border enforcement where the implicated importer objects to a seizure. IP owners' sole recourse in such situations is to institute civil proceedings, which may be untenable except in cases involving very large quantities.

Respondents also described an apparent lack of coordination between Singapore Customs and the IPR Branch of the Police as a factor contributing to the limited number of criminal investigations undertaken subsequent to large-scale seizures. And while the judiciary in Singapore was highly regarded for its expertise and handling of IP cases, we have received concerning reports regarding refusals to grant search warrants against targets in Free Trade Zones.

The deficiencies recounted in connection with Singapore's border enforcement regime are all the more frustrating in light of the Intellectual Property Office's announcement, in 2014, of public consultations on enhancing the country's border measures. Several years later, rights-holders have seen little concrete progress on these issues.

Outside the realm of customs enforcement, rights-holders would also urge the government of Singapore to undertake essential legislative and regulatory reforms to address the significant growth seen in connection with the trafficking of counterfeit goods online. In our most recent filing with USTR, the IACC nominated Singapore-based Shopee as a Notorious Market, citing high volumes of counterfeit goods on offer, along with onerous takedown procedures and a lack of effective seller vetting.

We would welcome USTR's attention to these matters in the coming year.

SOUTH KOREA

IACC members wished to draw USTR's attention to what are seen as onerous registration requirements in South Korea, which significantly disadvantage brands who've established a high-level of distinctiveness and global fame in their marks.

Decisions by the South Korean IP Office demonstrate a significant divergence from the standards adopted by registration authorities in other countries to gauge distinctiveness and descriptiveness. The approach taken in South Korea has effectively precluded some brands from obtaining trademark registrations, despite the same marks having proceeded to registration in countless other jurisdictions.

EUROPE – MIDDLE EAST – AFRICA REGION

ITALY

IACC members have detailed growing concerns over the deteriorating environment for IP protection in Italy during each of the past three years of our Special 301 consultations. Among the most significant factors contributing to the challenges faced by member brands is the country's over-reliance on administrative enforcement – the most notable example of which can be seen in the region of Puglia.

As detailed in a 2021 report published by the Italian government, administrative actions in Puglia accounted for over 9% of the country's total volume of counterfeit seizures in 2019, ranking behind only Campania and Lazio. In the criminal context though, seizures in Puglia totaled only 1.6% of country-wide seizures, behind eight other regions. Despite unambiguous evidence of significant illicit trafficking, counterfeiters operating in Puglia face little threat of criminal sanctions, and in turn, face little deterrence. Given the disparity in the reported enforcement figures, it appears to some rights-holders that local authorities are aware of the problems, but remain unwilling to take necessary steps to address them.

These difficulties are further compounded by the perfunctory review of trademark applications by the Italian IP Office, which does not examine filings on relative grounds. Criminals continue to exploit these lax examination practices to obtain bad faith registrations for confusingly similar trademarks, leading legitimate manufacturers to incur substantial costs challenging those registrations. In the interim, bad faith registrants have been found to use "their" marks to facilitate the importation of fraudulent goods through Italian ports for sale in the local market and elsewhere in the European Union. In combination with the EU's partially-integrated trademark system, the harm associated with the issuance of bad faith registrations often expands far beyond Italy's borders.

Italy remains a primary import hub for counterfeit goods sourced from abroad, and the deficiencies in the country's enforcement and IP prosecution regimes serve to further complicate an already difficult environment.

We would welcome USTR's engagement with the Italian government to rectify rights-holders' concerns.

KENYA

IACC members highlighted growing concerns regarding the trafficking of counterfeit goods in and through Kenya during the past year, largely driven by a need for greater resources and the desire for a more streamlined, efficient IP enforcement regime.

Counterfeit sales in the domestic market continue to impact a variety of product categories, including sectors that present high risks to consumers' health and safety, such as crop protection chemicals and pharmaceuticals. Staffing shortages – both in terms of resources for monitoring the internal market, and a lack of personnel and material resources to conduct examinations at the border – are seen as a major obstacle to effectively combating the counterfeit trade. The situation has also been reportedly exacerbated by temporary legislation that specifically prevented enforcement within the Central Business District of Nairobi.

Despite these difficulties, IACC members were roundly positive in describing their interactions with enforcement authorities in Kenya, most notably among the police and the country's Anti-Counterfeit Authority (ACA), which are described as “working hard on combating counterfeiting,” willing to undertake proactive enforcement, and open to collaboration. A consistent frustration among rights-holders however, and undoubtedly among Kenya's enforcement bodies, is the lack of follow-on from the initial stages of enforcement. Administrative and judicial proceedings remain slow-moving, adding to the costs borne by rights-holders (e.g., costs related to the storage of counterfeit items while awaiting resolution of court proceedings), and the penalties imposed – often nominal fines and no custodial sentences – are seen as lacking deterrence. That lack of deterrence, in turn, contributes to high rates of recidivism seen in Kenya.

Rights-holders welcomed the announcement of Anti-Counterfeit (Recordation) Regulations in 2021; though the new regulations are not yet fully implemented, we view this as a positive step towards improving cooperation between enforcement authorities and the private sector, particularly in connection with border enforcement efforts.

We would similarly encourage greater coordination among government agencies, both as a means to pursuing larger, more impactful cases, by leveraging public health, consumer protection, and tax authorities to address the variety of societal harms implicated by the counterfeit trade.

In light of the feedback received from IACC members through this year's consultations, we'd welcome increased attention to the situation in Kenya during the coming year.

NIGERIA

Respondents during this year's Special 301 consultations offered considerable praise for their Nigerian counterparts in law enforcement, describing the Police as “hard working and supportive,” while also noting the buy-in witnessed at both the leadership and operational levels. Unfortunately, the efforts of law enforcement are consistently hampered by the country's outdated laws, non-deterrent penalties, insufficient resourcing, and the need for more – and more experienced – judges and prosecutors to effectively manage the volume of IP cases in the country's judicial system.

With respect to those problems identified by rights-holders, the need for more substantial penalties was perhaps the highest priority among respondents. At present, most cases are said to result in relatively small fines, even in cases involving recidivism. The imposition of custodial sentences, and substantially increased fines could provide greater deterrence and help to alleviate the caseloads currently experienced in the courts. In that same vein, the assessment of higher fines could provide a source of additional funding to ensure the availability of much-needed materiel and human resources to Nigeria's enforcement bodies.

We would welcome USTR's attention to these continuing challenges to the effective enforcement of IP rights in Nigeria in 2022.

OMAN

Stakeholders reported growing frustrations in Oman over the past year, largely centered on the overall lack of enforcement activity in the country, and political will to address widespread counterfeit trafficking that has been described as "utterly non-existent."

Rights-holders pointed to a lack of clarity in Oman's statutory framework for protecting trademarks, and the need to modernize the country's legislation to effectively combat illicit trafficking. These concerns have reportedly led to inconsistent application by Omani authorities, a permissive approach by law enforcement and apparent unwillingness to pursue clear infringements, and a general uncertainty as to the availability of any recovery of damages or costs associated with pursuing counterfeiters in the market.

IACC members commented positively on the engagement of their U.S. government counterparts, including the USPTO's IP Attaché in the region, in addressing these matters. Despite those efforts however, rights-holders described the Ministry of Commerce and the police in Oman to be largely unreceptive to IP concerns. Reports of counterfeiting activity have received little attention, and appear to be a low priority for relevant enforcement bodies.

Not surprisingly, in light of such reports, counterfeits remain widely available in the market. Rights-holders have expressed a generally pessimistic view with regard to the likelihood of improvement, and would welcome USTR's further engagement with the Omani government to encourage a holistic change in its approach to protecting and enforcing IP rights in the country.

SAN MARINO

Though we make no formal recommendation for its placement on the Special 301 Watch List this year, some IACC members wished to highlight their growing concerns over the past two years in San Marino.

As discussed in this and prior years' filings, counterfeiters have grown increasingly sophisticated in their attempts to identify and exploit gaps in IP protection and enforcement, with an aim towards concealing (and in some cases, legitimizing) their illicit activity. The issues reported by IACC members during this year's consultations illustrate this approach.

Criminal counterfeiters are said to be increasingly establishing legal entities in San Marino, leveraging the country's restrictive privacy laws to shield their illegal activities. Rights-holders have experienced significant obstacles to investigating and pursuing enforcement against organized criminal networks operating out of the country; they're frequently denied access to financial transaction information, business records, shipping documentation and other relevant data essential to demonstrating the scope and scale of counterfeiting activity. The government's limited investment in terms of enforcement resources is also seen as a significant hurdle to effective enforcement in the country.

Rights-holders also reported concerns regarding the registration of trademark rights in San Marino. Under-resourcing of the Patent and Trademark Office is seen as contributing to the adoption of insufficient examination procedures. The lack of examination on relative grounds has emboldened counterfeiters, who regularly exploit the office's perfunctory examination practices to obtain registrations in bad faith, which may then be leveraged as "proof" of the counterfeiters' own rights in the mark when seeking to establish online storefronts or when shipping goods to international markets. This approach appears to be aimed directly at undermining cooperative efforts between established brands and stakeholders in other commercial sectors by enabling counterfeiters to spuriously claim the existence of disputed ownership of the mark in question.

We would welcome USTR's attention to these issues.

UNITED KINGDOM

Rights-holders' feedback regarding the United Kingdom remained largely unchanged from that reported in several recent years' filings.

Brands continued to be broadly complimentary of the efforts shown by Trading Standards, and the Police Intellectual Property Crimes Unite (PIPCU), while also sharing the opinion that both organizations are hampered in their performance by a consistent lack of funding and personnel. The PIPCU team is still quite small, and further investment by the government is needed to allow the team to cover a wider area and manage a greater caseload. Rights-holders likewise recognized the broad range of responsibilities undertaken by Trading Standards, which may inhibit the development of greater expertise on, and attention to, IP-related matters.

Member brands also continued to report inconsistent support from UK Customs, citing few seizure notifications and, at times, erratic case management. As in past years, this was attributed in part to the agency's competing priorities including immigration, anti-terrorism, and other segments of illicit trade enforcement.

IACC members have noted growing concerns over the potential impact of staffing and funding cuts which could cause the situation to deteriorate further.

We would welcome USTR's attention to these concerns in 2022.

AMERICAS REGION

NICARAGUA

Though not included in last year's comments to USTR (or in USTR's own final report), we wish to highlight increasing concerns among IACC members in Nicaragua over the past year. Rights-holders, particularly those in the apparel sector, noted significant increases in seizures of Nicaraguan-sourced counterfeits throughout Latin America 2021, continuing a trend first reported during our 2020 Special 301 consultations. Respondents fear that the situation in Nicaragua will continue to worsen, and cited a number of contributing factors, including the country's abolition of the IPR prosecutor's office.

Some IACC member brands raised alarms in connection with the government's encouragement of Chinese investment in the development and operation of manufacturing facilities in the country. When taken in connection with the government's lax approach to IP enforcement, rights-holders reported a perception that the Nicaraguan government is simply willing to "look the other way" in exchange for increased foreign investment. Indeed, the current environment for IP enforcement was characterized by some as "not so much lax, but antagonistic," with reports that law enforcement and prosecutors were actively discouraged from pursuing counterfeiters.

We would welcome USTR's attention to these concerns in the coming year.

PANAMA

IACC members reiterated the concerns voiced during last year's process regarding significant decreases in the level of IP enforcement activity in Panama, which was once viewed as one of the most effective enforcement regimes in all of Latin America.

Both border seizures and criminal raids have reported decreased for a number of years, despite repeated attempts by rights-holders to engage with their colleagues in law enforcement and Customs.

Panama remains a vital hub for global and regional trade, and the continuing (and worsening) environment for intellectual property has become cause for growing alarm. We urge the Panamanian government to prioritize the enforcement of IP and to reclaim its status as a regional leader in the fight against counterfeiting.