

**Submission of the
International Anti-Counterfeiting Coalition
to the
United States Trade Representative**

**2019 Special 301 Review
Identification of Countries Under Section 182 of the
Trade Act of 1974
Request for Public Comment
83 Fed. Reg. 67468 - 70 (December 28, 2018)**

February 7, 2019

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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 28, 2018, 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 more than 200 corporations, trade associations, and professional firms, spanning a broad cross-section of industries. IACC members include many of the world’s best-known brands in the apparel, automotive, electronics, entertainment, luxury goods, pharmaceutical, software, and other consumer product sectors.

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

To that end, the IACC worked with both foreign government officials and the private sector throughout the past year to identify, and to seek remedies to, legislative deficiencies and practical impediments to IP enforcement. The IACC has also led the development of voluntary collaborative programs on a global scale to address key priorities in the online space, including its RogueBlock, IACC MarketSafe, and MarketSafe Expansion programs. The role of governments in encouraging these types of collaborative approaches remains vital. Further, rights-holders continue to face concerns that require direct intervention by governments at home and abroad. The challenges faced by rights-holders continue to evolve, and we welcome 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 legitimate manufacturers and retailers impacted by the global trade in counterfeit and pirated goods.

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

Our comments this year cover more than 35 countries and spanning six continents – facts which should serve to underscore the truly global scope of the problems faced by rights-holders. Twelve countries are recommended for inclusion at the Priority Watch List level, and an additional 15 for the Watch List. While we make no formal recommendation for the placement of the remaining 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.

Trademark Counterfeiting: Global Overview and Priority Issues

Before proceeding with more detailed comments pertaining to individual countries, we wish to draw the attention of USTR to several key issues that have been highlighted by IACC members throughout this year's consultations as matters of global concern with regard to the trafficking of counterfeit goods.

Information Sharing and Strong Partnerships Between the Public and Private Sectors

Data is the lifeblood of effective investigations and enforcement in the IP space. Rights-holders and their counterparts in the public sector spend immeasurable resources in terms of both time and manpower to identify individuals and sophisticated networks engaged in trafficking, locations of storage and retail outlets, distribution channels, and other intelligence necessary to disrupt, dismantle, and demonetize illicit trade. Traditionally, these efforts have been most effective when IP owners, customs officers, and other law enforcement officials have been empowered to work collaboratively, sharing information and leveraging the strengths of each. Our own Congress underscored its support for this approach with its inclusion of provisions in the Trade Facilitation and Trade Enforcement Act of 2016 intended to ensure the ability of industry and government partners to undertake such collaboration. The Administration, likewise, endorsed this model via an Executive Order in March of 2017.

We strongly encourage governments around the world to adopt such a collaborative approach,

and to view rights-holders as partners in addressing the illicit trafficking that affects not only the brands themselves, but also the safety of their citizens, the strength of the global economy, and the foundation for future innovation. Regrettably, in many jurisdictions, this has not been the norm; in some countries, the attitude towards private sector involvement has been indifferent, if not hostile.

As counterfeiting operations become increasingly sophisticated, often leveraging the legitimate services of third-parties to facilitate their illegal trade, such engagement and the sharing of information regarding known bad actors is becoming even more important. We strongly encourage our trading partners around the world to take a close look at their existing laws, policies, and procedures to identify where improved public-private partnership might enhance their IP enforcement regimes.

Trafficking of Counterfeits Via E-Commerce and Small Consignments

Until relatively recently, ocean-going container vessels played perhaps the most significant role in facilitating the trafficking of counterfeit goods around the world. Counterfeiters operating out of jurisdictions with cheap labor and lax enforcement regimes sought to transport those goods as cheaply as possible to consumer markets around the world, making use of a largely traditional supply chain of wholesalers, distributors, and retailers to reach end-consumers. In more recent years however, we've seen a drastic shift in the ways counterfeit goods move from the point of production to customers. With ever-expanding internet penetration, the rise of online shopping and the development of e-commerce platforms, we've seen a steady increase in the volume of counterfeit seizures by CBP in the express consignment and postal shipping environments. In the most recently published statistics from U.S. Customs and Border Protection, these small consignments accounted for 89% of seized shipments, and 47% of total seizures by value.¹

Once far-removed from their actual customers, the rise of e-commerce model has enabled counterfeiters to tap in directly to the global consumer market, while making the task of IP enforcement substantially more difficult. In most jurisdictions, the legal framework has lagged far behind the technological advancements, allowing counterfeiters to operate with effective immunity. Customs officials, not only in the US, but around the world, have been inundated with increasing number of shipments to process and target for enforcement. And when they're successful, they often have little to show for their efforts – perhaps a few counterfeit items taken out of the stream of commerce, the name and address of an individual who sent the package (that may or may not be accurate, and who may or may not be the sender of thousands of similar packages), and a potential defendant far beyond any practical threat of prosecution.

This new reality underscores the above-discussed need for greater collaboration and information sharing between the public and private sectors, and between national enforcement agencies. Because while the e-commerce model of trafficking presents many challenges for enforcement, it also necessitates counterfeiters' use of a variety of service providers – whether e-commerce platforms, web hosting, online advertising, payment processing, or shipping

¹ U.S. Customs and Border Protection, "Fiscal Year 2017 IPR Seizure Statistics" (2018).
<https://www.cbp.gov/document/stats/fy-2017-ipr-seizure-statistics>.

services – each of which can provide or make use of actionable intelligence developed by other legitimate businesses. Governments should participate in, and encourage, cross-industry collaboration to implement more effective tools to fight the trafficking of counterfeit goods. And where necessary, statutory and regulatory regimes should be modernized to ensure that such collaboration is possible.

Transshipment and the Exploitation of Free Trade Zones to Facilitate the Trafficking of Counterfeit Goods

The trafficking of counterfeit goods is largely a cross-border concern; with some notable exceptions, the nations primarily responsible for manufacturing illicit counterfeits produce those goods for export and sale in other markets. As those source countries are well-known, traffickers often seek to disguise the true source of their shipments. Most frequently, this is accomplished by transshipping the goods through one or more intermediary ports before their arrival at their final destination, or by shipping unfinished goods or components for assembly, labeling, and packaging within a Free Trade Zone prior to re-exporting them to another market. Enforcement in the first instance is often hindered by national customs regimes that do not specifically prohibit the transshipment of contraband such as counterfeits. Because the goods – even where they clearly infringe a trademark – are deemed not to have entered into commerce, such shipments are often allowed to pass through without detention or seizure. At best, this permissive attitude towards transshipment simply punts on the opportunity to remove counterfeits from the distribution chain; at worst, it can serve as a massive backdoor to enable distribution in the transit country, or absent notification to the destination country for targeting and interdiction, reach end consumers there. Regrettably, the United States has been one of relatively few jurisdictions to explicitly prohibit transshipments; this must change.

Similarly, rights-holders' concerns regarding the exploitation of FTZs to facilitate trademark counterfeiting have been raised for numerous years. Free Trade Zones can serve as an effective tool for economic development and trade promotion, but too often they have been leveraged by counterfeiters for nefarious ends. Each year in our Special 301 consultations, we hear from rights-holders about their difficulties in seeking enforcement actions against criminal operations within FTZs. In many jurisdictions, police and administrative bodies lack clarity with regard to their authority to take action against operations within the FTZs, or they are hampered by confusing and contradictory regulations or policies promulgated by the oversight authorities. Put simply, FTZs are not a new invention, nor were they ever intended to be havens for criminal activity. Reasonable steps must be taken to ensure their proper operation and administration, including the provision of clear authority for enforcement officials to enter, inspect, and enforce applicable IP laws.

Consumer Awareness Regarding the Dangers Posed by Counterfeit Goods

The problem of counterfeiting in the United States, and around the world, is one of both supply and demand. While customs and law enforcement officials work tirelessly to keep illicit goods out of the consumer marketplace, the incredible volume of the counterfeit trade renders any solution to the problem impractical if our focus is on detection and enforcement alone. Significantly decreasing the demand for counterfeit goods is a vital component to any long-term solution.

While consumer awareness of the dangers associated with counterfeiting and piracy has certainly increased over the course of the past decade, that increased awareness appears to have had no significant discernible effect on the market for counterfeit goods. We believe this is likely due to the fact that most consumers have only a tenuous grasp of the broader implications of buying counterfeits, as well as the fact that consumers are often simply unable to determine whether goods are authentic or counterfeit (this is particularly so in the e-commerce environment).

The IACC, and countless other industry groups have developed consumer education campaigns in an attempt to increase public awareness, but this remains an area in which governments can play a vital role. We applaud the work that has been done in the area of consumer awareness by the U.S. government and many others. Throughout this year's Special 301 consultations, we've received feedback noting the need for continued and greater efforts in many jurisdictions, however.

Effective Deterrence Via Criminal Sanctions

Perhaps one reason that the consumer public fails to fully understand the severity of the harms, both public and private, that result from the trafficking of counterfeit goods is due to the failure of many governments to treat it as a serious offense. Whether a result of countries' over-reliance on administrative penalties, high statutory thresholds that effectively preclude criminal prosecution, or the imposition of nominal fines that are easily offset by the profits counterfeiters are able to reap from their illicit activity; many countries' legal regimes appear to place little emphasis on deterrence. Or as is often reported, deterrent penalties, while available, are not actually imposed by the judicial officials tasked with doing so.

Lax enforcement, when combined with lenient punishments, is a recipe that is sure to undermine respect for the rule of law, and to diminish citizens' – and foreign investors' – faith in whatever other public pronouncements or actions are taken by their government in support of IP. An occasional modest fine, or the confiscation of a small amount of counterfeit inventory is unlikely to discourage any illegal operation from re-emerging after the dust has settled. This is particularly so for those operating on a commercial scale, or who have previously been on the receiving end of such penalties and failed to legitimize. Absent an increased willingness on the part of many countries to impose meaningful criminal sanctions for IP offenses, the environment for creators and innovators in those jurisdictions is unlikely to improve.

COUNTRY REPORTS

PRIORITY WATCH LIST RECOMMENDATIONS

ASIA-PACIFIC REGION

CHINA

The People's Republic of China remained the country of greatest concern for intellectual property owners during the past year – a fact that will surely come as no surprise to USTR – due to both the variety and severity of challenges faced by rights-holders. Respondents across the entire spectrum of the IACC's membership cited issues ranging from manufacturing for domestic sale and export, brick and mortar and online retail sales, legislative deficiencies, a lack of transparency in enforcement procedures, difficulties in acquiring rights, insufficient penalties and an over-reliance on administrative measures, and local protectionism, among others. While respondents – particularly those who've had a significant presence in-country for many years – have noted an overall improvement with regard to anti-counterfeiting issues over the course of the past decade, China, undoubtedly, remains the greatest challenge to companies' brand protection efforts. Further, many of the concerns raised by rights-holders during this year's consultations remain unchanged from those highlighted in our comments to USTR last year, and many years prior.

China remains the engine that drives counterfeiting around the globe, supplying the counterfeit products available in brick and mortar and informal markets, standalone websites, and e-commerce platforms cited elsewhere in these comments and in our recent submission² as part of USTR's Notorious Markets Review. Chinese exports account for an estimated 86% of counterfeit goods sold worldwide³, and approximately 87% of IP-related seizures by U.S. Customs and Border Protection ("CBP") and 78% in terms of the value of such seizures by CBP.⁴ Its illicit manufacturing output has also long been viewed as a barrier to brands' entry into the legitimate Chinese domestic market with its more than one billion consumers. For counterfeits of all types – electronics, apparel and luxury goods, footwear, pharmaceuticals, automotive

² International AntiCounterfeiting Coalition, "Submission to the United States Trade Representative – 2018 Special 301 Notorious Markets Review" (2018).

https://www.iacc.org/advocacy/IACC_2018%20Notorious%20Markets%20OCR.pdf.

³ United States Chamber of Commerce, "Measuring the Magnitude of Global Counterfeiting" (2016).

<https://www.uschamber.com/sites/default/files/documents/files/measuringthemagnitudeofglobalcounterfeitin g.pdf>.

⁴ "Fiscal Year 2017 IPR Seizure Statistics," supra note 1.

parts, or even art exhibits⁵ – it seems that all roads lead to China. Accordingly, and for the additional reasons set forth in these comments, the IACC recommends China’s retention on the Special 301 Priority Watch List in 2019.

As noted in past years’ submissions, IACC members noted continuing frustration regarding their experiences in registering their marks in China. Chief among rights-holders’ concerns is the long-standing problem of trademark squatting, an issue exacerbated by China’s first-to-file system. We also continue to hear of refusals to register marks with inconsistent or poorly reasoned explanations, inadequate analyses, and improperly applied legal standards.

The Chinese authorities’ over-reliance on administrative enforcement and remedies has been a perennial complaint of trademark owners, who cite the minimal deterrence resulting from administrative fines and product seizures. Some respondents reported a slowing of administrative actions during the past year due to authorities’ restructuring. The lack of deterrence noted above is underscored by reports of IACC members’ encounters with repeat offenders. Though we’ve received positive reports regarding authorities’ increasing expertise and sophistication, there remains a large disparity between the assistance available in the so-called “first tier” cities and the remainder of the country; enforcement in smaller cities is said to remain very difficult, particularly as sellers take efforts to keep minimal inventory on-hand at any given time. Protectionism also remains a concern in smaller cities.

Significantly greater numbers of referrals for criminal investigation are needed, though as noted in past submissions, such referrals are limited by China’s thresholds for criminal prosecution and the ways in which the thresholds are put into practice. Evidence of past sales is often rejected, and as noted above, counterfeit vendors have become adept at managing their operations to minimize the risk of criminal exposure by limiting their inventory. Rights-holders have also decried a lack of transparency and certainty in authorities’ valuation of counterfeits, as highlighted in our 2018 submission.

In contrast however, the Market Supervision Bureau’s Beijing Dongcheng branch was singled out for praise as a result of its efforts in conducting a series of raids against counterfeit retailers, leading to a 9 million RMB fine – equal to three times the store’s annual profits. Unfortunately, such results are not the norm; warnings and nominal fines are more typical of rights-holders’ experiences with the administrative enforcement regime in China.

The frustration related to obtaining criminal investigations and prosecutions is compounded in light of some of the positive comments from rights-holders regarding the judiciary, prosecutors, and Public Security Bureaus, noting continued improvements among former groups, fewer suspended sentences, and higher penalties levied against repeat offenders. The PSBs were similarly described as very supportive in conducting criminal raids of manufacturing and distribution facilities, and increasingly interested in cross-border and online enforcement.

⁵ Sarah Cascone, “A Chinese Company is Staging Fake Kusama and Murakami Exhibitions, and the Artists are Extremely Unhappy About It,” (2018). <https://news.artnet.com/art-world/yayoi-kusama-takashi-murakami-forgeries-china-1379893>.

The availability of criminal penalties for intellectual property offenses, including imprisonment and significant fines, continues to be viewed as a vital component to China’s IP regime for both the deterrent impact that such penalties carry and the clear signal that such actions send to the public that the government considers the underlying acts to be serious offenses.

Given the previously discussed shift in recent years from the traditional brick and mortar distribution model to e-commerce, it is no surprise that online protection and enforcement have become a central focus of rights-holders in China. As sales have moved online however, reports from IACC members indicate that enforcement authorities have been less quick to adapt to the new paradigm. Whether counterfeiters have developed a unified operation for production, sales, and distribution, or sellers continue to use a more segmented business model where manufacturers and sellers operate largely independent of one another, it is essential that necessary evidence regarding the volume of sales and the scale of the illegal activity is collected and documented. As noted in last year’s submission, the Public Security Bureaus and Public Prosecutors often fail to collect relevant business records or to seize potentially useful electronic evidence from hard drives and other available sources that might demonstrate the size of an operation. Their reliance upon seizures of illicit products on-hand at the time of a raid adversely impact the effectiveness of enforcement actions where that inventory does not exceed criminal thresholds. As previously discussed, even relatively unsophisticated operations appear to be cognizant of the thresholds and may attempt to skirt criminal prosecution by limiting the amount of contraband at a given site. Though there are some reported exceptions – the Public Prosecutors in the Louhu district of Shenzhen have been reported to consider evidence of online sales when evaluating a case, for example – often, such evidence is ignored; prosecutors in Nanshan and Futian, have been cited as refusing to consider evidence of online sales.

Sales of counterfeits via e-commerce platforms remain a concern for most brands, though respondents’ reported experiences over the past year have varied broadly. The IACC recently provided detailed comments as part of USTR’s Special 301 OCR for Notorious Markets, highlighting many of the concerns. A number of IACC members have noted however that counterfeit sales appear to be trending, at least to some extent, away from the larger e-commerce platforms towards smaller, lesser-known platforms as well as social media outlets. The online space continues to evolve rapidly resulting in numerous challenges to both rights-holders and Chinese enforcement bodies.

It is hoped that China’s newly-minted E-Commerce Law, which took effect on January 1, 2019, will provide some relief to rights-holders, though most have indicated that they’re taking a “wait and see” approach while awaiting its full implementation. While the new law was in development for a number of years, some rights-holders remain concerned that the burden of enforcement will remain disproportionately on IP owners, and that rather than offering a more efficient means of policing their rights, will necessitate litigation increasing costs and unnecessarily spending resources. And although the IACC was pleased that the Chinese government solicited input from stakeholders during the drafting process, there remains a perception that the process was more opaque than necessary.

Online sellers – especially those operating independently of e-commerce platforms – rely upon a range of third-party service providers to facilitate their illicit businesses. Among those infrastructure and logistics requirements are payment processing facilities to receive payment for their goods, and delivery services to get those goods to end consumers. While the IACC has

developed excellent relationships with the payment sector, including the major credit card and money transfer networks through the development and operation of our RogueBlock program, rights-holders have typically noted a less cooperative relationship with merchant banks (i.e., those financial institutions that have a direct relationship with merchants) in China, citing their reluctance to support investigations and legal action against bad actors, or to terminate relationships with those parties when identified. Concerns have also been raised with regard to Chinese banks' onboarding and pro-active monitoring of their associated merchants. We firmly believe that a follow-the-money approach to enforcement can be an effective tool in combating the trafficking of counterfeit goods, but that approach requires willing participation by all of the parties involved.

As noted previously, the majority of seizures by U.S. Customs and Border Protection now take place in the international mail and express consignment environment. Sellers of counterfeits seek to exploit the incredible volume of packages as a way of hiding in plain sight, while also taking advantage of the favorable pricing terms available due to China's classification under the Universal Postal Union. In rights-holders' experience, individuals selling counterfeit goods online frequently advertise that orders will be fulfilled via China EMS, displaying the logo on their sites, and via mentions in the sites' FAQ sections. Customs officials, whether in the U.S. or elsewhere in the world, are heavily reliant upon targeting to identify illicit shipments for interdiction, but doing so requires that they have accurate information in advance to do so. Requiring individuals to provide accurate and verifiable information about commercial shipments⁶ at the time they're deposited for delivery is a necessity. The IACC is also supportive of the Administration's calls for a re-evaluation of the Universal Postal Union's classification and treatment of such shipments which are viewed by many as an unfair and unnecessary subsidy that minimizes the costs to, and lines the pockets of, counterfeiters. We would welcome the Chinese government's adoption of policies, and where necessary legislative amendments, to facilitate and encourage more robust cooperation between rights-holders, intermediaries, and law enforcement to address these ongoing concerns.

While China has taken significant steps to improve its IPR regime in recent years, the scope and size of the counterfeiting and piracy problems there remains unacceptably severe, and many long-standing concerns have, to date, not been sufficiently addressed. Notwithstanding the progress that China has demonstrated in some respects, it remains the country of greatest concern for IACC members in 2019. Accordingly, we support its retention on the Priority Watch List.

⁶ Though some may argue that these should not typically be considered "commercial" in light of the minimal size or value of the individual shipments, the aggregate volume and value involved here can hardly be considered otherwise.

INDIA

In each of the past four years, the IACC has recommended India's inclusion on the Priority Watch List, citing rights-holders' concerns ranging from difficulties obtaining trademark registrations, high levels of counterfeits available in the retail market across numerous industries, and a lack of adequate enforcement both at and within the country's borders. While we were pleased to hear reports of improvement in some of these areas, India remains an extremely challenging jurisdiction for intellectual property owners. For the reasons detailed herein, we support India's continued placement at the Priority Watch List level.

As noted in previous years' submissions, trademark registration is described by many as an arduous process, with rights-holders reporting significant and unnecessary delays, as well as unreasonable, or poorly-reasoned, refusals to register. As the foundation of much of the brand protection work undertaken in India, these delays continue to frustrate rights-holders' entrance into the market and hinder their abilities to effectively assert their rights.

In the past, IACC members have also often noted dissatisfaction with Indian police agencies. As described with regard to China, this was due in large part to a perceived inconsistency from city to city across the country with regard to the level of interest, expertise, and professionalism among local authorities. For that reason, we were very pleased to hear reports from members this year praising an overall improvement in police support and responsiveness, even in those areas of the country that had proven challenging in past years. A number of brands have made concerted efforts in recent years to provide necessary training to officers and to build improved relationships throughout the country. There is also a reported increase in buy-in from high-level officials, whose support has been crucial in raising the priority of IP enforcement. The overall level of enforcement appears to be increasing, with higher numbers of raids against retail-level offenders as well as some wholesalers. Some respondents decried an apparent emphasis on quantity rather than quality however, suggesting that a more cohesive strategy and "big picture" approach is necessary. Rights-holders reported that often times raids result in the seizure of counterfeit items, but that instrumentalities of the crime such as production equipment are left behind, allowing offenders the opportunity to resume their illegal business. More collaboration and the sharing of intelligence both before and after raids would also be beneficial and could provide opportunities to move up the supply chain, in turn allowing for a more efficient use of the available resources. Rights-holders further noted that most raids are carried out by local authorities, which can complicate efforts to address larger, more complex networks; better coordination among enforcement agencies would be useful in addressing these concerns. In addition, and as described below, the inefficiency of India's courts, and some formalities such as the requirement to obtain an infringement opinion from the Register of Trademarks prior to police action are seen as significant impediments to effective enforcement.

Border enforcement has also been cited historically as a priority concern of rights-holders, and remained so over the past year despite a noted increase in the size and frequency of seizures by Customs. One perennial concern for respondents has involved the cost and timeliness of the adjudication of seizures; as the bond values required are often exceedingly high (in some cases, surpassing the value of the goods), and the resolution of such matters taking years in some cases, the cost to IP owners are viewed by some as excessive. Respondents further note that while interdictions at the border do appear to have increased over the past few years, the volume of counterfeit goods available in India's retail market are indicative of the significant

room for improvement that remains. To that end, brand owners have participated in numerous programs to offer training to Customs officers, and have been pleased with the officers' apparent interest and the level of participation. They would welcome additional steps to facilitate the expedited and transparent destruction of seized counterfeits as a means to minimizing the cost of enforcement.

Past submissions by the IACC have highlighted concerns related to India's judicial system, describing it as "significantly over-capacity" and "overly-bureaucratic." Regrettably, IACC members reported little evidence of progress on these concerns in 2018; civil litigation and criminal prosecution remain protracted affairs. Despite some positive court decisions during the past year related to online platforms' liability, and a growing expertise among the courts regarding IP issues – particularly in New Delhi – court proceedings remain slow-moving affairs. The focus on retail-level enforcement is seen by some as a contributing factor, as it can result in a large number of low-value cases crowding court dockets; taking the time to investigate and develop larger cases against higher-level offenders might offer a greater impact. Rights-holders have also proposed the establishment of a "fast track," specialist IP court to provide for greater expertise and expedient resolutions.

Overall, despite some reported improvements, the challenges faced by rights-holders in India remain severe. And although a variety of reforms to the country's legal and enforcement regimes have been under debate for several years, concrete improvements have been slow to materialize. Accordingly, we recommend India's retention on the Priority Watch List in 2018.

INDONESIA

Indonesia was retained on the Special 301 Priority Watch List in 2018. In light of the feedback received from rights-holders during this year's consultations, including continuing concerns about the country's border enforcement regime, minimal prosecutions of IP-related offenses, and significant problems related to official corruption, the IACC strongly encourages USTR to retain Indonesia on this year's Priority Watch List.

Indonesia's geography contributes to long-standing concerns related to the importation and transshipment of counterfeit goods. And while some rights-holders remained hopeful that the country's new Customs regime, implemented in June of last year, would alleviate some of those concerns; nearly a year later, confusion and consternation appear to have displaced those hopes. Members have cited a general lack of clarity with regard to the new provisions and procedures, including whether they're even permitted to avail themselves of the new process. One respondent stated that they'd been informed that recordation of trademarks and copyrights is limited exclusively to those intellectual property owners with a local business entity domiciled in Indonesia. Lacking such a local affiliate, they have been unable to move forward with the process. Brands have also described the documentation requirements as onerous, and greatly exceeding what has been the norm in other jurisdictions.

Others have raised significant concerns regarding the expense and formality of the process, as designed. Our understanding is that rights-holders are required to apply for seizure of the goods with the court, then upon notification of detention, must visit the port to examine the

goods and determine whether they are counterfeit. If the goods are determined to be counterfeit, the IP owner must commence civil proceedings against the importer in the High Court of Indonesia within four days, after which, they have an additional ten days during which they must settle with the importer or conclude the case. It remains unclear whether the authorities will reveal the importer's identity, or how the matter will proceed if the importer fails to appear in court. Rights-holders are also required to furnish a bond equivalent to \$7,000 for each seizure; no timeline has been promulgated as to when that bond will be returned. There is also no expedited procedure in place for smaller shipments, effectively barring enforcement in cases where the value of the illicit shipment does not exceed the cost of bringing an action. Needless to say, the new procedures have resulted in greater distress regarding Indonesia's border control regime than relief.

As noted in previous filings, many rights-holders report positive interactions with the police in Indonesia, including raids, but those encouraging comments are contrasted by additional reports of corruption, protectionism, and a lack of prosecutions. Brands have cited repeated incidents of leaks to targets of upcoming raids, and in some cases have had to resort to seeking assistance from police in other states to minimize the risk of such disclosures. Respondents also reported incidents in which, following successful raids, police or other government officials have intervened on behalf of the counterfeiter, resulting in the return of the seized product. These difficulties are compounded by a general lack of resources made available to the police, and an overall perception of IP crime as a low priority of the government. Given these concerns, we support Indonesia's retention on the Priority Watch List in 2019.

EUROPE-MIDDLE EAST-AFRICA

KUWAIT

IACC members have reported no significant progress with regard to the environment for IP since last year, when Kuwait was included on USTR's Priority Watch List. The availability of counterfeits in the domestic retail market remains high, and enforcement is viewed as largely non-existent. Rights-holders have cited a range of ongoing concerns in the country and an apparent unwillingness of the government to either acknowledge the problems or take strides to abate them. Accordingly, we recommend Kuwait's retention on the Priority Watch List in 2019.

While the statutory framework for IP protection in Kuwait is reflective of the GCC region as a whole, rights-holders report that in practice the legal regime is not implemented or enforced. Though some Customs officials have participated in IP training events, border enforcement is generally viewed as being very weak and little priority is given to enforcing against the importation of counterfeit goods. Reports of detentions or seizures are said to be exceedingly rare.

Within the borders, enforcement is also described as "apathetic." One rights-holder detailed their interactions with local enforcement authorities, who have consistently instructed them to

simply, “file a criminal complaint.” Despite filing numerous such complaints, no investigations or raids were said to materialize. When a status update was requested, none was forthcoming. The Ministry of Commerce is likewise reported to conduct few raids, but even where those have taken place, they generally fail to result in prosecutions, and little if any information about the results of the actions is made available to the relevant rights-holders.

Protectionism is viewed as a significant in Kuwait, both with regard to enforcement actions and prosecutions; Kuwaiti nationals “appear to be immune” from investigation or prosecution.

In the relatively rare instances in which rights-holders have seen prosecutions move forward, the judicial process is said to take years due to the courts’ overly-complex and bureaucratic procedures.

For each of these reasons, Kuwait remains an exceedingly challenging jurisdiction for IP owners. Regrettably, the Kuwaiti government has demonstrated little interest in tackling these concerns. The end result is a widespread trade in counterfeits, with little recourse available to rights-holders. As such, we recommend Kuwait be retained on the Priority Watch List in 2019.

RUSSIA

The IACC recommends Russia’s continued inclusion at the Priority Watch List level in 2019. Despite some reported progress in the enforcement of IP rights, the sale of counterfeit goods both by brick and mortar retailers and online remains widespread, and a number of obstacles to effective enforcement have persisted. Many of the concerns raised by IACC members during this year’s consultations date back a number of years, and have been highlighted in past submissions to USTR.

Following the Russian government’s announcement over a decade ago of its intention to undertake a comprehensive revision of its statutory framework for intellectual property, the IACC and numerous other industry groups stressed that while the legal regime itself was important, rights-holders’ greatest concerns lay with its lack of enforcement. Enforcement remained the primary focus of our members’ input during this year’s consultations; rights-holders’ comments underscore that while some progress has been made during Russia’s decade-plus residency on the Priority Watch List, a number of difficulties remain.

As noted above, counterfeit goods remain pervasive in brick and mortar shops across Russia, despite a reported increase in police activity against retail-level offenders. Members did report their pleasure at increased expertise and willingness on the part of some police to pursue offenders in well-known centers for illicit trade, including some previously viewed as “untouchable.” One respondent noted their first ever successful raid with police at Moscow’s Gorbushkin Dvor mall in 2018. The reported progress remains uneven however, with numerous brands continuing to describe difficulties in obtaining assistance outside of major cities. Corruption was likewise cited as an ongoing concern by some members who detailed experiences in which investigations were dropped for no apparent reason and without any explanation. And while one member cited an increased interest among police in pursuing more large-scale distribution and production operations, such investigations have been slow to gain

traction, taking in excess of a year to move forward with a raid. Others continue to report an apparent de-prioritization of criminal enforcement absent the involvement of organized criminal networks; in short, many offenders face no significant threat of criminal prosecution.

Civil litigation remains an option for rights-holders, and a number of brands commented positively on courts' demonstrated expertise and well-reasoned decisions. However, respondents also reported that cases continue to move slowly, and given their relative expense and time-consuming nature, are often not a preferred route for enforcement. As discussed below, the courts may also be constrained from providing the sort of relief necessary to permit a lasting impact.

Customs enforcement represents a significant challenge to rights-holders, despite some reported increases in the volume of seizures in 2018. As in the United States, Russia has seen an increase in the attempted importation of counterfeits via small international mail consignments. Regrettably, we continue to receive reports regarding Customs authorities' adoption of a "return to sender" policy of re-exporting such shipments. As a practical matter, such a procedure not only fails to remove those goods from the stream of commerce, but also deprives rights-holders of vital intelligence that might be used to aid their enforcement efforts in the country of origin.

Online enforcement has also been a key priority in Russia for many years; it continued to be so in 2018. Domain-related disputes are hindered by the lack of a UDRP-like measure, and sales of counterfeit goods via standalone websites and on e-commerce platforms are said to be rampant. Though some brands have had success in pursuing these online counterfeiters via civil litigation, such victories are often short-lived. Russian courts' authority to impose sanctions against such offenders are limited in scope, and sites that have been successfully targeted often reappear at a new domain, with a new name, registered under purportedly new owners. Expanding courts' authority to permit the blocking of such reconstituted sites would substantially improve the long-term effectiveness of civil actions.

While we were pleased by members' reports of progress in Russia over the past year, the harm to legitimate businesses represented by the trade in counterfeits remains severe. Greater priority at the highest levels of the Russian government is essential to resolving the many long-standing issues faced by rights-holders. Until more concrete progress is seen however, we will support Russia's retention on the Special 301 Priority Watch List.

UKRAINE

In our Special 301 consultations with rights-holders, IACC members expressed high-levels of exasperation at the continued lack of progress on long-standing concerns related to IP protection. In summary, there has been no tangible improvement since last year's submission to USTR, and little expectation that the situation will change any time soon in light of the apparent lack of priority in addressing the concerns raised. While government officials have for many years expressed an interest in tackling these issues, their rhetoric has not been matched by their actions.

Respondents reported largely negative interactions with a variety of enforcement bodies, including: the Police, the Cyber-Police, Customs, the State Fiscal Service, and the General Prosecutor’s Office. Despite high levels of counterfeit goods openly for sale in the domestic market, most notably in Kiev and in Odessa’s Seventh-Kilometer Market, enforcement actions are said to be rare. Efforts are further hindered by Kafkaesque procedures imposed – one brand commented, for example, that they’ve been instructed by police officials that they may only proceed with a raid after having first given offenders fifteen days’ notice. Unsurprisingly, the infringing items on offer at the time that notice was provided were nowhere to be found two weeks later. Customs seizures are similarly impeded, as brands are required to obtain a court order for the seizure and destruction of shipments within ten days of detention. Even with the availability of an additional ten-day extension (at the court’s discretion), rights-holders view this as a practical impossibility due to the slow-moving court system. Alternatively, rights-holders may avail themselves of the opportunity to seek an infringement opinion from a state expert within the same ten-days (plus ten-days) window, at a cost of roughly \$1,500 - \$2,000. The receipt of detention notifications from Customs are themselves exceedingly rare however, and are reported typically to involve relatively small shipments; meanwhile counterfeits pervade the retail marketplace. Small parcel shipments imported via mail are subject to the same “return to sender” procedures as discussed with regard to Russian Customs, resulting in the same undesirable results.

In light of the range and severity of the problems that rights-holders continue to face in Ukraine, we support its retention on the Priority Watch List in 2019.

AMERICAS

ARGENTINA

Respondents’ comments regarding Argentina were largely mixed in this year’s consultations, with rights-holders noting an apparent increase in the government’s will to address long-standing concerns, as well as an uptick in enforcement, while also highlighting continued issues related to customs enforcement, online enforcement, resourcing, and non-deterrent penalties. As a key market in Latin America, rights-holders are closely watching the country’s progress. Given the pervasiveness of counterfeits in the domestic market and the range of issues for which additional progress is needed, the IACC supports Argentina’s retention on the Priority Watch List in 2019.

Argentina’s statutory regime continues to evolve, and was the source of numerous comments from IP owners. Rights-holders pointed to a new law on corporate criminal liability as a source for optimism. The law introduces criminal penalties for corporations in certain bribery-related offenses, and it’s thought that the law could be a useful tool in addressing illicit trade cases involving corruption. A draft bill amending the Criminal Code also includes provisions that would create a standalone offense for “organizing third party sales of counterfeit goods,” that rights-holders believe could facilitate actions against landlords of illicit markets. On the other hand, respondents stressed the need for action by the legislature to regulate digital trade, and

to better protect IP online. A draft bill on ISP liability has been submitted for consideration, requiring judicial notice as a prerequisite to holding ISPs accountable for third-party content. That legislation would likely complicate online enforcement efforts.

With regard to criminal enforcement, some respondents were complimentary of the federal police and Gendarmerie, as well as some city police, citing an increase in the number of enforcement actions and the volume of goods seized. There has been greater apparent interest in receiving training from rights-holders, as well as for more coordinated operations, such as Operacion Temple, organized by AMERIPOL. Rights-holders further noted an increase in the volume of counterfeits moving through small consignments, as seen in many other jurisdictions, and encourage greater engagement on IP issues with the mail services.

Customs enforcement remains a significant, and perhaps the greatest, concern raised by rights-holders. Customs was described as a “reluctant partner,” often unwilling to share information with relevant brands, lacking transparency in their enforcement functions, and at times appearing uninterested in rights-holders’ assistance. Brands also contend that the level of seizures made by Customs is inadequate, and reported long delays in obtaining the destruction of seized shipments. Argentinian Customs is viewed as a key component to addressing many long-standing problems both in the country and in the broader region, due to the breadth of their jurisdiction, their comparatively greater resources, and their nationwide presence. Respondents also noted Customs’ authority to act against goods in transit as a potentially significant tool in combating cross-border trafficking in the region.

Reports concerning prosecutors and judges in Argentina were largely positive, though the majority of respondents highlighted the lack of deterrent penalties under existing laws as a hindrance to their work.

On the whole, we are pleased to report some progress over the past year in Argentina, and we’re heartened by government officials’ apparent increased will to address the problems faced by IP owners. That determination must be matched by the provision of resources necessary for enforcement personnel to do their jobs though, and by empowering them with the appropriate statutory and regulatory authority to meet the challenges they face. Given the significant issues that remain to be addressed, we support Argentina’s retention on the Priority Watch List this year.

BRAZIL

For more than a decade, the IACC has recommended Brazil’s inclusion at either the Watch List or Priority Watch List level, a result of Coalition members’ consistent and significant concerns regarding the country’s treatment of IP. The problems cited by rights-holders are holistic, and include local production, border controls, widespread retail sales in both brick and mortar and online environments, market access barriers, legislative deficiencies, nondeterrent penalties, and significant concerns with corruption. In light of the persistent concerns faced by rights-holders over this tenure, the IACC recommends Brazil’s elevation to the Priority Watch List in 2019.

Brazil's statutory framework with regard to the trafficking of counterfeit goods remains a significant obstacle to effective enforcement, as noted in prior years' submissions. Article 190 – Law 9.279/96, offers relatively modest penalties for counterfeiting offenses, including nominal fines, or detention of one to three months. Custodial sentences are said to be rare, and rights-holders also point to the lack of statutory or treble damages to underscore the lack of deterrence. Further, it diminishes any incentive for offenders to cooperate with rights-holders or law enforcement in investigating related crimes. For years, IP owners have urged the enactment of Bill 333/1999 to bring the penalties for counterfeiting offenses in line with those available for copyright violations – two to four years imprisonment, plus a fine. Rights-holders likewise point to the Internet Act, n. 12.965/14 as illustrative of the challenges faced in the online context, as the law requires a court order for the removal of online advertisements, increasing the expense and hindering the efficiency of enforcement on the internet. Others are monitoring the implementation of Law No. 13709/2018 (regarding data privacy), citing concerns that it could negatively impact the identification of bad actors online.

Enforcement is viewed as costly, and hindered by a lack of expertise on the part of law enforcement, formalism on the part of the courts, and in some areas corruption and political interference. One respondent described their difficulty obtaining an injunction due to the insistence of the court that each targeted defendant be identified at filing. The case, involving a large (physical) marketplace, involved approximately 200 individuals. Corruption is viewed as a significant problem in some areas, perhaps most notably in Sao Paulo. Brands have reported instances in which federal officers from other regions have been brought in to assist with raids in Sao Paulo to prevent local targets from being tipped off in advance. These concerns are compounded by the low penalties discussed above; even where raids have been successfully carried out, neither rights-holders or counterfeiters appear to expect significant consequences. To that point, in 2017, the Federal Tax Authorities executed a raid at Rua 25 de Marco, one of Brazil's largest markets. Tens of thousands of counterfeit goods were seized during the operation, yet we're aware of no charges being brought against the market owners / landlords. The market has since resumed operations, and counterfeit goods continue to be sold openly. In the online context, the apparent continued – and rapid – growth of online trafficking is disconcerting to rights-holders.

Some brands reported a slight increase in Customs seizures in 2018, while also noting that despite those seizures counterfeit goods remain widely available in the domestic market. Border enforcement efforts are said to be hampered by insufficient manpower and resources; seizures may have in fact been significantly greater absent Customs strikes. IACC members also raised the need for more and closer collaboration with Customs personnel; obtaining information regarding seizures, including intelligence related to the identities of importers, is described as difficult. Better cooperation might permit deeper investigations into counterfeit distribution channels and allow for more impactful actions.

2018 did bring the arrival of specialized courts to deal with IP matters in Brazil, and rights-holders were largely positive in their comments about those courts, noting more efficient handling of cases and greater understanding of the issues. In contrast, rights-holders' past experiences with Brazilian courts have been characterized by inefficient procedures and slowly-progressing cases that may take years to resolve. As noted above however, the courts -whether specialized or not – are constrained by the remedies authorized by Brazil's laws. More efficiently rendering a nondeterrent sentence will not be widely viewed as significant progress.

There is an expectation that there will be some changes within Brazil's National Council to Combat Piracy and a continued increase in that group's engagement; we would welcome this. As noted in last year's submission, the CNCP appeared to have been largely dormant in 2017; last year though, the group facilitated a dialogue to promote cooperation by platforms with the aim of reducing the sale of counterfeits in e-commerce, something that is sorely needed. We believe the CNCP can play an important role as a champion for IP in Brazil.

In light of the significant, and long-standing issues faced by rights-holders in Brazil, we renew our recommendation for Brazil's inclusion on the Priority Watch List this year.

CANADA

The IACC applauded Canada's elevation to the Priority Watch List in 2018, an action we had urged in recent years, largely due to the country's long-standing failure to prioritize intellectual property enforcement. Despite positive developments over the past year in relation to the negotiation and agreement on the new U.S.-Mexico-Canada Agreement ("USMCA"), we've been roundly disappointed by the lack of progress seen with regard to enforcement in 2018. Whether at the country's borders or within them, the enforcement of IP rights appears to remain an afterthought at most. Legislative improvements and political rhetoric about the importance of protecting and encouraging creators and innovators carry little weight when no actions are taken to put them into practice. Sadly, that has been the experience of most rights-holders in Canada. Accordingly, we support Canada's retention on the Priority Watch List in 2019.

The concerns voiced by rights-holders during this year's consultations remain relatively unchanged from those that the IACC has detailed for countless years, and with which USTR is very familiar. For much of the past decade, we've advocated for action in a few key areas: legislative authority to empower Canadian enforcement bodies – namely, ex officio powers and authority for the Canada Border Services Agency ("CBSA") to act against goods in-transit; criminal provisions to address the trafficking of counterfeit goods; a coordinated strategy among Canadian law enforcement agencies as a means of reducing counterfeits in the marketplace, increasing the number of criminal actions prosecuted, and imposing deterrent penalties to discourage recidivism. We viewed the enactment of the Combatting Counterfeit Products Act, which took effect in 2015, as a positive step by the Canadian government, with the proviso that it was implemented accordingly. Four years later, the progress we'd hoped for has failed to materialize.

Over the past four years, from January 2015 – December 2018, CBSA has stopped a total of 73 shipments at the country's borders for suspected IP violations. Of those, thirteen cases involved IP rights that had not been registered with CBSA via its "Request for Assistance" process; three additional cases were found to be shipments of authentic goods. Of the 57 remaining cases, 33 rights-holders pursued litigation. The procedures adopted in Canada do not permit for an administrative determination by the customs authorities that goods are counterfeit, as is available in the United States; and rights-holders must file with the courts to pursue action against a detained shipment, whether it involves a single counterfeit item, or a container-load. Not surprisingly, rights-holders are unlikely to pursue litigation where the

volume of goods is low, given the costs associated with doing so, particularly in light of the fact that Canadian law does not provide for statutory or treble damages. One rights-holder, reported that it had received only a single notification from CBSA in 2018, totaling fewer than 500 pieces. In such cases, litigation is simply not economically feasible. Of the 33 cases that were initiated, three reached a successful verdict, fourteen were settled out of court, five resulted in the importers' abandonment of the goods, eleven remain pending.

Given the minimal number of border interventions, it should come as no surprise that counterfeit goods remain widely available in the Canadian retail market, a fact underscored by the inclusion of the Pacific Mall on USTR's Notorious Markets List in 2018. Regrettably, rights-holders report little in the way of assistance from Canadian law enforcement that might ease those concerns. As noted in previous years, the Royal Canadian Mounted Police, once a valued partner to rights-holders, has remained largely inactive in recent years. Local police agencies are described as similarly disengaged, lacking both the resources to address these problems and the high-level support required to make IP enforcement a priority. We are aware of some actions taken at the Pacific Mall in the wake of its appearance last year on the Notorious Markets List. Based on information we've received though, it appears that only seven locations were raided by the York Regional Police, and that the actions focused entirely on vendors of counterfeit luxury goods. The York Regional Police and the Toronto Police Service were subsequently provided with information regarding the relocation and resumption of operations by the same entities; to date, no follow-up actions have been taken against the offenders. The view of many rights-holders is that Canadian law enforcement is simply not interested in criminal enforcement of IP offenses, urging rights-holders to pursue civil remedies instead. As noted above, given the unavailability of statutory and treble damages, along with the expense associated with litigation, and the uncertainty of outcomes given the Canadian courts' propensity to impose light penalties, the civil route may not be feasible in many cases. As a practical matter however, it is often the only option.

In light of all of these continuing concerns, and the lack of progress seen last year, and in many years prior, we recommend Canada's retention on the Priority Watch List in 2019.

CHILE

IACC members' comments with regard to their experiences in Chile remained mixed in this year's consultations; but despite reports of largely positive interactions with enforcement personnel and indications of increased priority by the government, numerous challenges remain. Penalties available for counterfeiting offenses lack deterrence, enforcement agencies remain under-resourced, and rights-holders cite growing concerns related to online trafficking of counterfeits. Coupled with perennial border control issues and a large retail trade, the IACC supports Chile's retention on the Priority Watch List in 2019.

The Chilean government introduced legislation in October of last year to amend its Industrial Property Law, an initiative that rights-holders will surely follow closely. The proposal includes, among other features, new criminal trademark provisions, and provisions intended to address a number of concerns with regard to the country's registration procedures. Rights-holders would welcome action by the government to address growing concerns in the digital context as

well.

Any action with regard to Chile's statutory regime however must be matched with increased enforcement. Rights-holders have had positive experiences with the BRIDEPI specialized police IP unit, and are encouraged by reports of the development of a similar unit within the Carabineros. Despite apparently increased interest among the police, customs, and public prosecutors – members reported increased seizures, as well as participating in training events, and large-scale projects organized by INTERPOL and AMERIPOL – enforcement efforts are greatly hampered by the absence of effective deterrence. Even where cases proceed to conviction, the end result is most typically a nominal fine; custodial sentences for offenses related to counterfeiting are exceedingly rare. As a result, few see any long-term disincentive to recidivism.

Customs enforcement remains a priority, most notably in northern areas including Iquique and Arica, given the view of Chile as a gateway into other South American markets. An existing treaty with Bolivia is seen as exacerbating the trafficking of counterfeits into that country and precluding effective enforcement by Chilean Customs. Customs has taken steps to improve cooperation, testing its Sistema de Administracion de Marcas (“SAM”) recordation program last year, with a full roll-out expected in 2019.

While the government has demonstrated increasing commitment to addressing many long-term issues, both in terms of its legislative initiatives, and the creation of a new Ministry of Science and Technology which is said to focus on incentivizing and protecting innovation, a great many concerns remain. We encourage the Chilean government to continue building upon the progress that has been seen in the past year, but support Chile's placement on the Priority Watch List in 2019.

COLOMBIA

In last year's submission to USTR, the IACC reported rights-holders' frustrations at both the level of enforcement in Colombia, and the lack of priority on the part of the government to address the long-standing issues in the country. Unfortunately, the feedback received from IACC members during this year's consultations remained substantially unchanged from recent years past.

Overall, the level of enforcement remains poor. Enforcement officials are described as relatively disengaged, refusing to act even against well-known and notorious markets such as Unilago, San Andresitos, and others. Counterfeit goods remain widely available throughout Colombia and are sold openly with little apparent concern about seizures or prosecution. Despite efforts of rights-holders to engage their counterparts, enforcement remains a low priority; and those cases that are initiated proceed slowly, often being abandoned prior to conclusion. One respondent reported that they were unaware of any criminal cases in 2018 involving the trafficking of counterfeit pharmaceuticals. At best, the current situation is indicative of a lack of political priority, and at worst, it's evidence of protectionism.

Online trafficking and border controls are growing sources of concern in Colombia. With regard to the latter issue, rights-holders note that despite some increased seizures, the volume

of counterfeits in the market – most of which are believed to be produced abroad – remains exceedingly high. Needless to say, the frustration reported in last year’s submission has not been abated. Given these circumstances, and the lack of meaningful progress in 2018, no change in Colombia’s placement is recommended at this time.

MEXICO

Mexico remained a high priority for IACC members in 2018, due to a range of challenges faced by rights-holders related to both the legal and enforcement regimes in the country. Though rights-holders watched the negotiations of the USMCA with great interest, and were pleased with the inclusion of provisions related to the enforcement of IP rights by Customs authorities, substantial progress continues to be needed on many issues. As in last year’s submission, we recommend Mexico’s elevation to the Priority Watch List in 2019.

Mexico’s criminal system has undergone significant reform throughout the past decade, as the government has implemented amendments adopted in 2008. While these changes have resulted in a better platform to bring cases before criminal judges and an increased focus on the recovery of damages, additional work is necessary to educate the judiciary regarding the importance of intellectual property rights and the application of the rule of law in these cases. Absent such progress, counterfeiters are unlikely to fear prosecution for IP offenses. As noted last year, criminal proceedings continue to be viewed by rights-holders as overly formalistic; that formalism also extends to Mexico’s enforcement regime, leading to inefficiencies and increased costs.

In addition to the overly-formalistic approach previously noted above, rights-holders continue to cite a number of obstacles to effective enforcement in Mexico. Counterfeit goods are widely available in the retail market, and the trade is particularly ingrained in some well-established markets. Raids in some such areas are exceedingly challenging, requiring large numbers of personnel. Corruption has arisen as a concern, with rights-holders citing instances of disclosures to raid targets in advance, and at least one instance in which prosecutors in Leon and San Francisco de Rincon have been connected to infringers.

Customs enforcement has been a perennial concern, in part due to restrictions on the agency’s authority to act against goods *ex officio*, or against goods in transit. For many years, the Attorney General’s Office has maintained that criminal actions based in IP are not permitted against in-transit shipments, and although IMPI has opened the door to permit enforcement, rights-holders report that the process for doing so can be prohibitively expensive, due in part to the bond requirements imposed. There is some optimism that the implementation of relevant provisions included in the USMCA will aid in the resolution of these issues. Rights-holders also expressed frustration at the lack of assistance available from customs intermediaries such as freight forwarders, who typically are not forthcoming with information about the identify of their clients, even after a seizure has been made. A legal requirement to disclose relevant information would be welcomed.

While some report increased recoveries in cases brought since the adoption of reforms, other challenges remain. Recent years have seen a reduction in the number of prosecutors dedicated

to IP, which has in turn led to reduced seizures and fewer criminal actions. Penalties are widely viewed as non-deterrent, increasing concerns about recidivism and the long-term impact of enforcement. Rights-holders also continue to raise concerns regarding the use of government “IP experts” to provide formal determinations in counterfeiting cases. This requirement is based on a long-standing tradition set forth by the Federal Attorney General Office under a guidance paper that remains restricted from public access (despite lobbying efforts from various bar associations and the chambers of commerce to review its contents and revise its implementation). Some report negative experiences with clearly erroneous determinations by the appointed experts, leading to concerns about corruption within the system. These concerns are similarly noted with regard to the use of experts by Mexican Customs.

Respondents are closely monitoring the new Administration’s actions with regard to IP in general, and to the many long-standing concerns raised herein. With the new Administration have come a new Head of the Mexican Patent and Trademark Office and the Federal Attorney General’s Office. These appointments bring both a sense of uncertainty and expectation on a number of levels. Both Mr. Juan Tovar Lozano, new Director General of the Mexican Patent and Trademark Office and Mr. Alejandro Gertz Manero, as the appointed Attorney General, have held positions in the public sector for a number of years; however, their knowledge of intellectual property rights, its enforcement and related public policies remain unknown thus far. Likewise, while a number of the senior and mid-level officers in these agencies remain in place, changes in personnel should not be discounted, and may require additional trainings and advocacy from U.S. agencies to ensure progress.

Given the broad range of issues that continue require attention in Mexico, and the long-standing nature of many such concerns, we recommend Mexico’s elevation to the Priority Watch List in 2019.

WATCH LIST RECOMMENDATIONS

ASIA-PACIFIC

MALAYSIA

The IACC has recommended Malaysia for inclusion on the Special 301 Watch List in each of the past three years, and again recommends its placement in 2019. Though rights-holders continue to compliment the Ministry of Domestic Trade Cooperative and Consumerism (“MDTCC”) for its commitment to carrying out enforcement actions, and for the agency’s collaborative approach to IP enforcement, IP owners remain frustrated by the follow-through on raids that have taken place, citing poor outcomes in criminal cases, non-deterrent penalties, and a lack of transparency in the process. Customs enforcement, likewise, remains a significant concern in Malaysia. In light of the feedback received by rights-holders during this year’s consultations, we continue to support Malaysia’s retention on the Watch List this year.

Perhaps the most common concern raised by rights-holders during this year’s discussions concerned Malaysia’s continued lack of a Customs recordation system for IPR. Recordation is widely viewed as a cornerstone of an effective customs regime; it serves as both a tool to improve expertise and efficiency, while also fostering closer cooperation between customs officers and their counterparts in the private sector. We reiterate our past calls for the adoption of such a system by Malaysian authorities.

Customs enforcement is further hampered by the onerous provisions related to border measures adopted under the Trade Marks Act 1976 (“TMA 1976”), under which rights-holders are required to provide specific details related to imported shipments of counterfeit goods, including the date and time of the importation, and the name and number of the ship and container carrying the products. As a practical matter, such information is often simply not available. The high threshold for action prioritizes trade facilitation at the expense of trade enforcement, even where Customs officials have access to actionable, though perhaps incomplete, intelligence. As a result, even major brands have reported minimal seizure numbers in 2018. An intelligence-based targeting approach to trade enforcement that does not place the burden so heavily on rights-holders could help to address these concerns. Rights-holders also continue to call for better coordination between Malaysian Customs and their counterparts at the MDTCC. Though existing procedures call for Customs to refer suspicious consignments to the MDTCC for further investigation, in practice, this rarely seems to take place.

As noted above, within the domestic market, rights-holders have been largely complimentary of the efforts of the MDTCC in undertaking raids and pursuing counterfeiters. They are described as “active,” and “responsive,” even in outstation posts beyond major population centers such as Kuala Lumpur. Resourcing remains a concern however, given the volume of the counterfeit trade within Malaysia. Coordinating the necessary manpower to conduct raids – particularly raids involving multiple locations – can be difficult at times. Enforcement is also

viewed as increasingly challenging due to the growing sophistication of counterfeiting operations. One brand noted positive results from participating in the MDTCC's so-called "Basket of Brands" program which permits the agency to seize counterfeits of registered brands of their own accord during day to day operations, or as part of raids taken on behalf of other rights-holders. Online enforcement is also a growing concern on marketplaces such as Lazada, Shopee, and Carousell, as well as on various social media platforms. Investigations into online targets are said to progress more slowly than those involving physical targets; additional resources and specialized cyber-enforcement units could be useful in dealing with these issues.

While the overall level of enforcement has been a bright spot in Malaysia's IP regime, rights-holders reported a number of concerns in the period following raids. Among these are a lack of transparency regarding punitive actions (including fines imposed on offenders) and the destruction of seized items. Prosecutions are also said to progress too slowly, and public prosecutors and judges often lack experience and expertise in dealing with IP cases, which can lead to poor outcomes. One respondent cited an overly-formalistic approach by the courts characterized by unnecessary bureaucracy and arbitrary requirements. For example, a power of attorney document provided by one brand was rejected despite being signed by an executive (with authority to do so), because the individual was not a member of the board of directors or CEO of the company. We would encourage additional training for prosecutors and the judiciary to allow for more prompt, and predictable, outcomes.

With a recent change in the government, rights-holders will be watching closely with regard to the priority given to addressing many of these long-standing concerns and others, e.g., Malaysia's accession to the Madrid Protocol. We are hopeful that the new government will indeed take steps to demonstrate its commitment to IP protection, and to providing the necessary resources to carry that commitment through. For now, we support Malaysia's retention at the Watch List level.

PHILIPPINES

In 2014, the USTR removed the Philippines from the Special 301 Watch List, citing the government's progress on a series of legislative and regulatory reforms, though also noting that significant challenges remained. Five years later, rights-holders continue to face significant challenges in the country. As detailed by respondents during this year's process, holistic improvements are required with regard to the country's enforcement regime. Accordingly, we encourage the Philippines' placement on the Watch List in 2019.

Rights-holders have consistently raised concerns regarding the effectiveness of the country's border measures, as evidenced by the volume of counterfeit goods available in numerous well-known marketplaces such as Greenhill Shopping Mall, the 168 Mall, 11/88 and 999 malls in Manila. As noted in several other jurisdictions, Customs is largely unwilling to take any action absent rights-holders provision of specific intelligence regarding a shipment, which is rarely practicable. Where seizures do take place, the processing of those actions have been said to be haphazard in their accounting for the goods, in some instances taking place without a proper inventory of the seized goods (which in turn feeds into concerns about the transparent destruction of those counterfeits or their potential return to the marketplace). As described by

one brand, “Customs appear to be more interested in publicizing the seizure,” than in the seizure itself.

As counterfeit goods continue to flow into the country, rights-holders are forced to rely on internal enforcement bodies. Historically, most rights-holders have noted successful engagements and positive interactions with the National Bureau of Investigation (“NBI”) and the Intellectual Property Office of the Philippines (“IPO-PHL”). Interactions with the Police however are an entirely different matter, as corruption is said to be “endemic,” and tip-offs regarding forthcoming raids are common. Enforcement is likewise hindered by agencies’ lack of ex officio authority and difficulties in obtaining search and seizure warrants. One reason cited for the latter issue pertains to the high thresholds for obtaining such orders, which typically require a test purchase in advance. These difficulties are compounded in the context of the above-mentioned malls where test purchases are required from numerous vendors and due to the fact that landlord liability provisions have not been extended to trademark offenses. Enforcement is typically seen as concluded upon the completion of a raid, with little in the way of follow-up investigation; cases are simply handed off to prosecutors. Criminal prosecutions are rarely pursued however, and rights-holders’ only resort may be private prosecution to seek destruction of the goods at issue.

While the Philippines has made considerable progress in developing the expertise of its judiciary to handle IP cases, criminal and civil proceedings remain slow, and are reported to often take years to resolve. Some brands noted cases from 2013 that remain pending in the courts. Not only do such protracted processes delay the imposition of penalties against violators, they greatly increase costs to rights-holders associated with the storage of evidence. Corruption, including the solicitation of bribes by prosecutors to handle cases more expediently, is cited as a concern. Penalties also remain a concern, with brands reporting that the cost of enforcement typically outweighs the perceived benefit.

In light of rights-holders’ feedback regarding the continued and significant challenges faced in the Philippines, we recommend the country’s return to the Watch List this year.

SINGAPORE

In each of the past three years, the IACC has included comments regarding Singapore’s role a significant hub for the transshipment of counterfeit goods, and highlighting the country’s customs regime which seems to some as if designed to discourage border enforcement altogether. Since first raising these concerns in 2016, we’ve seen no noticeable improvement in the situation. Accordingly, we recommend Singapore’s placement on the Special 301 Watch List in 2019.

As noted in previous submissions, Singapore’s customs regime permits the detention of suspected counterfeits for no more than two days absent a court order, while also imposing exceedingly high bond requirements on rights-holders – a minimum of S\$20,000 (approximately USD\$14,000) – as security for each shipment. Upon objection to a seizure by the importer, a rights-holder must move the dispute to the courts to pursue civil proceedings. In combination, these burdens preclude any practical enforcement by brands.

Coordination between Customs and the IPR Branch of the Police continues to be cited as a concern as well; police rarely pursue criminal investigations despite IP owners' requests. Likewise, long-standing complaints regarding enforcement in Singapore's Free Trade Zones persist, hampered by the courts' unwillingness to issue search warrants.

Each of these issues has been raised for several years in the context of Special 301, and directly by rights-holders with the government in Singapore, to no avail. As such, we ask the USTR to include Singapore on this year's Watch List.

THAILAND

Thailand was moved from the Priority Watch List to the Watch List in December of 2017, following an Out-of-Cycle Review by USTR, and retained on the Watch List in 2018. Rights-holders offered mixed reviews of the country during this year's process citing uneven and inconsistent progress in some regards, and the continuation or deterioration in other areas. Accordingly, we recommend Thailand's retention on the Watch List again in 2019.

The Thai legislative framework is generally viewed in a positive light. Many see it as one of the stronger statutory regimes in the region, and one IP owner specifically singled out for praise Thailand's adoption of legislation relating to landlord liability. As noted elsewhere however, strong laws are only one piece of the puzzle. In the case of landlord liability, there has been no apparent desire to make use of those provisions to take meaningful action against high-level actors, particularly operators of large, well-known markets in Bangkok. Another respondent noted Thailand's implementation of a new customs regulation that, although well-intended, has had a negative impact. The provision, related to verification by rights-holders of detained shipments, has resulted in a flood of Customs examination requests (often involving authentic product), creating a heavy burden on rights-holders.

Inquiries to member brands regarding enforcement in the Thai market resulted in diverse views, with some noting modest improvements in the number of raids, though the majority describing continuing problems highlighted in past years' submissions. A lack of sufficient resources, especially outside of major cities, and long-standing concerns related to corruption remain priorities. One member reported having to regularly resort to working with Bangkok police to conduct raids in other areas due to consistent problems with local corruption. Though such actions were considered a necessity, they're also a source of tension with local enforcement agencies. Problems with corruption are also viewed as significant within the Economic Crimes Suppression Division of the Police, which is one of the de facto enforcement authorities for IP matters. The Department of Provincial Administration began undertaking IP enforcement in 2018, and while they're said to do that job well, they're also under-resourced, which limits their activities to larger cities. Enforcement is also seen as focusing heavily on lower-level offenders, limiting the impact of investigations, while also permitting troubling growth in domestic manufacturing of counterfeit goods. Some members report improved understanding about the importance of IP protection among prosecutors and the judiciary, which has led to an increase in the level of fines assessed against counterfeiters. However, the prosecution of low-level targets necessarily results in relatively low penalties which have little impact on large-scale operations.

Given the range and severity of the concerns raised by rights-holders, we recommend Thailand's retention on the Special 301 Watch List in 2019.

VIETNAM

Vietnam has appeared in the IACC's Special 301 recommendations consistently over the past decade, a result of perennial concerns of rights-holders including online and brick and mortar sales, border enforcement challenges, insufficient levels of enforcement, and concerns related to official corruption. Though we've received promising reports of progress on some of these issues, the overall situation in the country remains challenging. For the reasons discussed below, we recommend Vietnam's retention on the Special 301 Watch List in 2019.

Historically, a major concern raised by IACC members in Vietnam concerns the high volume of counterfeit goods flowing across the country's northern border from China. We were pleased therefore to hear reports of increased levels of enforcement by Vietnam Customs, as well as the Market Surveillance Agency, resulting in regular seizures and raids along the Vietnam-China border. Another bright spot is that Customs is no longer requiring IP owners to carry out inspection procedures at the Vietnam Intellectual Property Research Institute, decreasing associated costs and increasing efficiency. Rights-holders also noted an increased interest and participation by Customs and law enforcement for industry-sponsored training on IP protection and enforcement.

Another long-standing issue for rights-holders has been the perceived over-reliance upon administrative enforcement in Vietnam, to the exclusion of criminal prosecutions. The new Penal Code (No. 100/2015/QH13, dated November 27, 2015), took effect on January 1, 2018, and there is some optimism that the new law will help to assuage those longtime concerns. The new provisions allow for the application of criminal charges in cases involving counterfeit goods valued at VND 200 million (approximately \$9,000) for an individual, or VND 300 million (approximately \$13,000) for a legal entity. Rights-holders are hopeful that the new law will provide a more concrete basis for criminal proceedings moving forward, though some have already reported challenges related to the appropriate valuation of goods, as seen in other jurisdictions with statutory thresholds.

Rights-holders are continuing to monitor the impact of reorganizational efforts taken by the Vietnamese government with the establishment of the General Department of Market Management, which began operating in October of last year. The reorganization is hoped to strengthen anti-counterfeiting enforcement. At present, overall enforcement operations around Vietnam are seen as inconsistent, with most brands reporting better results in the north of the country. Rights-holders note greater concerns in the south, with regard to corruption, and with a lack of willingness to pursue some large and well-known operators.

Online enforcement in Vietnam has been a growing concern for rights-holders across product categories. While respondents reported positive interactions with the Ministry of Science and Technology, in terms of its actions to disable websites upon conclusive evidence of sales of counterfeits, the online market appears to be growing more quickly than enforcement is able to keep up.

We've also received positive comments about the Vietnamese judiciary, though IACC members' views regarding public prosecutors were less positive, citing detailed several cases in which prosecutorial mishandling led to poor outcomes. Additional training to ensure prosecutors attain the necessary expertise in presenting IP cases would be welcomed.

Vietnam has clearly demonstrated some much-needed progress in recent years, and the government has taken a number of steps to show its increased commitment to IPR. While we support Vietnam's retention on the Watch List this year, we would welcome opportunities for increased engagement and cooperation to resolve issues raised herein.

EUROPE-MIDDLE EAST-AFRICA

EGYPT

IACC members remain frustrated by the difficulties experienced in seeking to enforce their rights in Egypt, citing a range of concerns including insufficient enforcement at and within the country's borders, a consistent lack of resources for those enforcement agencies, insufficient transparency, and non-deterrent remedies for violations. While the government has expressed its belief that stronger IP protection is an essential component of increased economic development, there appears to be little follow-through on that rhetoric to date. For these reasons, and because of the lack of substantial progress on those issues raised in past submissions, we support Egypt's continued placement on the Watch List in 2019.

Respondents reported no noticeable change in Egypt with regard to the overall level of enforcement in 2018. While the internal trade Police continue to conduct raids against sellers in the local market, follow-up is, at times, seen as non-existent. This is particularly concerning in light of their practice of allowing offenders to retain custody of the counterfeit goods that were the subject of the raid in the first place. Typically, a report is taken in which the goods and quantities are recorded, but the goods are not seized. Cases are then transferred to Egypt's Commercial Courts, but some rights-holders report lapses in the current system resulting in those cases simply disappearing, with no further action taken against the sellers. At minimum, confiscation of the goods would serve to prevent the products' sale to the public, and to safely preserve the evidence for trial. When cases do proceed, prosecution times are said to typically take many months to conclude, though in some instances they stretch on inexplicably for years. The penalties imposed for counterfeiting offenses generally include fines (custodial sentences are rarely imposed), along with the destruction of any seized items. That latter issue is a sore spot for some, as "destruction" may be permitted by the removal of the relevant trademarks, to the exclusion of the related goods, potentially leading to subsequent relabeling for sale.

Rights-holders likewise raise concerns related to a general lack of transparency with regard to their interactions with law enforcement and customs officials; cooperation could be significantly improved. Customs seizures are also viewed as relatively low, although respondents noted some recent procedural changes which were made in an effort to improve

Customs' inspection process. Brands are continuing to monitor the situation, but report little progress thus far on that front.

Given the nature of the concerns raised by rights-holders, and the consistent issue of inadequate resourcing of enforcement bodies, we believe that closer cooperation between law enforcement, customs, and rights-holders could greatly improve the situation in Egypt. Doing so, however, will require concerted efforts to open lines of communication between each of the parties involved.

Given the reported lack of reported progress during the past year, we support Egypt's retention on the Watch List in 2019.

KINGDOM OF SAUDI ARABIA

The Kingdom of Saudi Arabia ("KSA" or "Saudi Arabia") is widely viewed as one of the most important markets in the Middle East in terms of IP protection and enforcement. We have been pleased by a number of positive reports from member brands during this year's process regarding their interactions with Saudi authorities, as well as reported increases in the number of counterfeit seizures. Some rights-holders highlighted the recently-launched Saudi Intellectual Property Authority as an indicator of increased government priority on IP-related matters, and expressed optimism for the new agency's potential to bring about an improved landscape for rights-holders. While we support Saudi Arabia's retention on the Watch List at this time, its continued progress or backsliding should be closely monitored.

Rights-holders' comments regarding Saudi Customs were largely positive during our consultations, with various members singling out the agency's efforts to share information regarding detained shipments, along with an overall increase in the number of seizures reported. They are viewed as one of the most active customs organizations in the region, and although some brands noted inconsistencies between ports, positive interactions were noted with regard to those in Riyadh, Jeddah, Dammam, and at the Saudi / UAE land border in Al Batha.

Though largely positive, respondents' comments concerning the Ministry of Commerce and Investment were somewhat mixed, with some suggesting that the MOCI continues to focus too much of its efforts on retail-level offenders, and encouraging greater efforts to pursue higher level targets. And while some brands reported increased seizures of their products in the market, others noted a sharp decline in those figures. We've also heard troubling reports of a tendency to permit offenders to retain custody of counterfeit items following raids, similar to that reported in Egypt.

With regard to both Customs and the MOCI, transparency and communication remain high priorities. An example of rights-holders' concerns in this area involves the lack of a centralized reporting structure for detained shipments; any inspector can report to any vendor / rights-holder on a given matter. This is viewed by some as opening the door to bribery and corruption, as some brands reported receiving notices from third-party investigators or law firms – in connection with a solicitation for the brand's business – rather than directly from Customs personnel. Some rights-holders have also complained of a lack of detailed descriptions of goods

seized, and other relevant information, both from Customs and MOCI. While these issues may ultimately rest upon efforts to handle matters more quickly in light of limited resources, a more systematic approach and procedure is seen as a better way to foster effective collaboration.

Most respondents reported little practical experience with the courts in Saudi Arabia, although those who did described the process as rather slow, and stating that “it might take years to get a court decision.” Whether in the courts, or through administrative procedures, penalties are viewed as insufficiently deterrent.

Though we support Saudi Arabia’s retention on the Watch List, the input received during this year’s consultations provides some hope for optimism. We look forward to learning more about the SIPA’s plans to address the concerns raised herein and in past year’s submissions, and welcome the opportunity to provide our input as they move ahead with those efforts.

SPAIN

Spain was removed from the Special 301 Watch List several years ago, while the USTR opened an Out-of-Cycle Review of the country in 2013, to assess efforts and progress related to a number of long-standing rights-holder concerns. While the OCR was closed in 2017 noting progress on addressing legislative deficiencies and the government’s increased effectiveness in protecting IP, we support its return to the Watch List in 2019, in light of significant enforcement concerns. Many of the problems faced by rights-holders were addressed in our recent comments to USTR pursuant to the annual Notorious Markets Review in which we recommended the designation of the entire city of Barcelona as a notorious market, due in large part to the overwhelming number of street vendors trafficking in counterfeit and other illicit goods. The concerns highlighted in that filing remain severe, and rights-holders have reported no apparent progress. It is worth noting that a group of forty-two associations representing over 5,000 members including retailers, restaurants, and licensed street vendors presented a request to the local government requesting the enforcement of existing regulations that prohibit operations of unlicensed vendors. Despite such broad-based efforts, no substantive actions have been taken. Worse yet, the city government has reportedly instructed the police to do nothing, viewing it as a social problem, rather than a criminal one. That “social problem” in fact appears to be growing, as we’re receiving additional reports highlighting increases in similar activity in other parts of the country, including the capital of Madrid. These issues demand an urgent response.

In addition to these previously reported concerns, rights-holders also wish to highlight continuing problems with regard to Spain’s customs enforcement regime. Respondents cited low numbers of seizures in both maritime ports and at Barajas Airport, including growing concerns with regard to enforcement against small parcels and Customs’ lack of an effective procedure to address the rising volume of counterfeits in e-commerce arriving via mail or express consignment. Seizures by Customs and law enforcement are also said to be limited by the lack of available warehousing and storage space, and courts’ failures to take advantage of procedures for the expedited destruction of goods confirmed to be fake, choosing instead to await the conclusion of legal proceedings.

Finally, we’ve received troubling reports of a prosecutions not being pursued or defendants being acquitted on the basis that “consumers would not be reasonably believe that the goods

were authentic, based on their poor quality, low price, channel of distribution, or similar factors.” These reports, and the concerns detailed above raise significant concerns regarding the government’s commitment to protecting IP, and the current state of Spain’s IP regime. Accordingly, we recommend Spain’s placement on the Special 301 Watch List in 2019.

TURKEY

For the eleventh consecutive year, the IACC is recommending Turkey’s inclusion on the Special 301 Watch List. Throughout the past decade, rights-holders have raised a variety of concerns ranging from pervasive sales within the local market, the exploitation of porous border enforcement allowing imports to serve the local market and to facilitate transshipments into the European Union, deficiencies in the legislative regime for IP, and countless other issues. Progress in any number of these areas has been limited in past years by periodic political instability. We have been pleased though by our members comments during this year’s process highlighting some very positive steps by the Turkish government. While we continue to support Turkey’s inclusion on the Watch List this year, we sincerely hope that the reported progress continues in 2019, and that additional efforts will be made with regard to other long-standing issues in the country.

Turkey’s legislative regime, previously a great source of dismay on the part of rights-holders following the expiration of prior law in 2008, is viewed positively for the most part. The new IP Law which came into effect in 2017 provided clarity with regard to the availability of criminal sanctions for importing or exporting counterfeit goods, which prosecutors are said to be making use of. A separate provision allows for a simplified procedure for the destruction of counterfeit goods, even prior to final judgment, although we’ve received word that some prosecutors and judges are reluctant to make use of this authority; doing so should aid in minimizing storage costs. A similar provision is expected to be included in a proposed revision to the Customs Law.

Customs enforcement remains a priority concern for rights-holders, and although some brands have reported an uptick in the number of seizures they’ve received, on the whole Customs is not viewed as particularly effective, as evidenced by the volume of counterfeits widely available in the Turkish market. One challenge detailed by respondents involves the lack of consistent practices and procedures across various authorities. Establishing a more uniform approach would ensure that brands would not have to tailor their efforts in response to local practice. While Customs officials are reported to be more willing to share information, including photos of detained goods, with rights-holders; they remain very reluctant to share more detailed information regarding the importer or exporter, carrier and route information, or other data that might aid brands in promptly authenticating suspect goods (or further investigating the distribution network).

Enforcement within the market remains challenging for many brands, though we’ve received extremely positive comments regarding the Anti-Smuggling Police and the IP Crime Police. Both are described as very supportive, and they’ve conducted many high-profile raids during the past year. Enforcement in Turkey is hindered to some extent however by the lack of

authority provided to the police, e.g., with regard to surveillance and intelligence gathering, and difficulties in obtaining search and seizure warrants. As described by several brands, prosecutors and judges are very reluctant to issue search warrants. Though the reasonable doubt standard is said to apply, in practice, rights-holders report being subjected to excessive demands of proof. The issues experienced with prosecutors and the judiciary may be a result of less experienced individuals currently in those roles. As discussed in past submissions, a large number of government attorneys and judges were removed from office during the country's political turmoil in recent years. Whatever the reason, it is one of the most frequently cited obstacles to enforcement in Turkey.

In addition, rights-holders continue to express frustration with the mandatory use of court-appointed experts in counterfeiting cases. Simply put, many of these experts lack the expertise necessary to provide a relevant opinion. In one instance, a brand described their experience in which the court-appointed expert issued an opinion that the goods in question were not counterfeit, concluding so entirely on the basis of a visual comparison between the products at issue and pictures from the brand's website. The court accepted that "expert" opinion, apparently not considering the entire point of a counterfeit is that it appears like the authentic product. The prosecution was subsequently dropped. Courts' reliance upon expert opinions of this kind undermine the legitimacy of the entire process, and we'd encourage the Turkish government to reconsider this policy as it seeks to improve its IPR regime.

Though Turkey has demonstrated some progress in addressing some of the concerns raised by rights-holders in recent years, further progress is necessary. We will continue to monitor the implementation of recently adopted legislative reforms, and those that are forthcoming; and we'd encourage the government to provide greater leadership to ensure the uniform application of its legal regime throughout the country. For now, we continue to recommend Turkey's inclusion on the Special 301 Watch List.

UNITED ARAB EMIRATES

Rights-holders' comments with regard to the United Arab Emirates have remained largely unchanged since we first recommended their placement on the Special 301 Watch List in 2013. Enforcement – particularly deficiencies in the Emirates' border measures – have been, and remain, top priorities. Regrettably, progress has been slow to materialize since our earliest recommendations, and many of the comments below mirror concerns that have been raised for several years. Accordingly, we support the UAE's retention on the Watch List again this year.

A common thread throughout past years' submissions has been the lack of any truly deterrent penalties for IP violations in the Emirates, which many view as a result of the prioritization of trade at the expense of effective enforcement. In 2016 however, a new IP Law was enacted, allowing for significantly greater penalties for counterfeiting offenses, from roughly \$4,200 to a new maximum of approximately \$300,000. This was welcome news, as most counterfeiters likely viewed the previous fines as a cost of doing business in the Emirates, and a rather nominal cost at that. Over two years later though, rights-holders report that the increased penalties have yet to be implemented, and fines remain on the order of 5000 – 15000 AED. We're unaware of any concrete timeline for implementation of the new provisions, but little progress is likely to be seen until that takes place.

Enforcement authority in the Emirates is divided between the Police, the Department of Economic Development (“DED”), and Customs, within each of the Emirates. Working with each of the bodies presents certain challenges. For example, criminal enforcement with the Police is generally viewed as the most effective means of enforcement, and typically results in the development of more intelligence regarding an offender and its operations; but also tends to take longer and involves more significant costs to the rights-holder. Administrative enforcement with the DEDs involve less expense and are typically resolved more quickly, but administrative authorities are often less willing to share information about the enforcement target. Despite the above-discussed concerns regarding the practical availability of penalties in the UAE, the concerted efforts of rights-holders, the Police, and the DEDs appear to be having some impact, as we’ve received reports that some counterfeiters have begun moving away from traditional hotspots of Dubai and Abu Dhabi to lower profile locations in Umm Al-Quwain and Ajman. In addition, some counterfeiting operations are said to have moved operations to residential properties and Free Trade Zones to evade enforcement by the DEDs.

Historically rights-holders have received the greatest support from the DEDs, while also enjoying largely positive relationships with the Police. Customs enforcement has traditionally presented the greatest challenge to rights-holders, with officials viewed as uninterested in IP enforcement to a large degree. During this year’s consultations, rights-holders noted a significant decline over the past year with regard to engagement by the DEDs however, though increased action on the part of the Police. Enforcement by Customs remained problematic, with most rights-holders continuing to report few, if any, seizures. The lack of Customs seizures, especially in light of the frequent seizures effected by other enforcement agencies, along with Customs’ policy of re-exporting counterfeit shipments were the most frequently voiced complaints heard this year. That latter policy is compounded by the fact that rights-holder rarely seem to receive notice of the re-exportation until after it has taken place, and Customs’ unwillingness to share intelligence regarding the exporter, importer, or related data points with rights-holders. One rights-holder did report being offered the opportunity to avoid re-exportation of an infringing shipment, but only if the brand was willing to cover all of the costs associated with recycling the goods.

Enforcement within the UAE’s numerous Free Trade Zones has been a long-time concern, due in part to jurisdictional disputes and segmented authority of the enforcement agencies. During 2018, we’ve heard reports of some modest improvements in this regard, both due to increased action by the Police, and the signing of MOUs between the Police and DEDs allowing the latter to undertake actions within some FTZs – most notably with regard to the Dragon Mart and Dubai Investment Park Free Trade Zones. Unfortunately, the FTZs of greatest concern, the Jebel Ali Free Port and the Dubai Airport Free Zone, remain off limits to the DED.

Most respondents indicated that they’ve rarely pursued litigation in the UAE’s courts, in part due to the fact that the damages recovered were unlikely to exceed the cost of bringing an action in the first place. One rights-holder who had pursued infringers civilly noted that the process was greatly protracted.

In addition to the above-described issues, we’ve also received comments indicating frustration with the trademark registration process in the UAE. One example was provided of a registration that took several years to issue, effectively precluding any opportunity for enforcement in the meantime. These problems are seen as particularly acute in the context of

design protection. Further, increased administrative fees have been cited as discouraging enforcement via opposition and cancellation proceedings.

There are a number of actions that the government of the UAE could take to significantly improve the environment for IP protection and enforcement in the country, including the full and expeditious implementation of the fines authorized by the 2016 law, insisting that Customs take active measures to ensure that trade facilitation is not accomplished at the expense of effective enforcement, and providing a framework for enhanced cooperation between the enforcement agencies both within individual Emirates and among the several to facilitate enforcement in Free Trade Zones. We are aware that the UAE government has conducted some outreach to rights-holders seeking input on steps that could be taken in advance of EXPO 2020, and while we agree that such input is warranted, we expect much of the feedback received will reflect the recommendations contained herein, and that has been raised by rights-holders for a number of years.

AMERICAS

BOLIVIA

Despite some modest progress reported by rights-holders during the past year, IP owners continue to experience a number of challenges in the country. A primary concern voiced by respondents was the inadequacy of the Bolivian legislative regime to effectively protect their rights. Ineffective border controls and enforcement within the local market likewise remain serious problems, a result of both insufficient training and lacking authority. Given these and other ongoing concerns, we support Bolivia's retention on the Watch List this year.

While some IACC members noted a marked improvement in the numbers of container seizures by Customs last year, along with the subsequent destruction of those goods, counterfeit goods across a wide range of product categories remain widely available in the domestic market. As described previously, much of this illicit traffic is the result of imports through ports in northern Chile; the adoption of policies to enable enforcement in-transit to Bolivia could reduce those flows. Significantly greater enforcement efforts are required both at and within Bolivia's borders, as is better coordination between Customs and SENAPI (the Bolivian Trademark Office) which is the competent authority for anti-counterfeiting enforcement. Training is cited as a key priority; the relevant authorities are described as inexperienced and lacking the necessary expertise to properly investigate and adjudicate most issues faced by trademark owners. Though one brand representative commented positively regarding SENAPI's resolution of a case that included an order for compensation, and their ability to pursue civil actions resulting in a case-law precedent for damages – an important development – enforcement in Bolivia often holds little promise of recovery for rights-holders.

Regrettably, the Bolivian government is described as largely disinterested in IP protection, and has failed to demonstrate a commitment to addressing the widespread sales of counterfeit goods to Bolivian consumers. Accordingly, we recommend Bolivia's retention on the Special

ECUADOR

IACC members' comments with regard to Ecuador have remained largely unchanged since last year, and are driven largely by legislation adopted by the country in December 2016. As noted in last year's submission, the new law severely limits Customs' authority to detain and seize counterfeit shipments, unduly shifting the burden of enforcement almost entirely upon rights-holders. In order to effect an interdiction of an illicit shipment under the new regime, trademark owners are required to provide precise shipping details to Customs, including the ship and container. As a practical matter, this is a near-impossibility in most cases, and as a result, counterfeit goods continue to stream into the country largely unimpeded. In the rare instances where that level of intelligence is available in advance, the law requires the relevant rights-holder to petition Customs to make the seizure, and within ten days to file a court or administrative action to have the seizure confirmed. This approach is seen as incredibly untenable, and results in significantly greater – and unnecessary – costs to the rights-holder.

The policy implemented in Ecuador is characteristic of an apparent trend noted in other jurisdictions, including Malaysia, under which customs agencies appear to be seeking to avoid the responsibilities of IP enforcement at the border while providing themselves with cover under the guise of a lack of effective assistance from rights-holders. It also adopts elements seen in jurisdictions such as Indonesia and Canada, under which the onus is placed on the rights-holder to initiate litigation upon any seizure by customs officials. Ideally, we believe Customs should be empowered not only to effect seizures *ex officio*, and as a result of pro-active targeting and enforcement, but also to administratively adjudicate such issues. Absent that authority, or a desire to take such action, there's no logical explanation as to why, following a seizure, the burden of proof should fall upon the rights-holder rather than the importer of the goods. Until action is taken to change this approach, border enforcement in Ecuador will remain a practical impossibility at worst, and unnecessarily expensive at best.

We therefore reiterate our comments submitted to USTR in 2018, and support Ecuador's retention on the Special 301 Watch List this year.

GUATEMALA

The IACC supports Guatemala's retention on the Special 301 Watch List, due to continued and growing concerns about the country's role as a major source of production for counterfeit goods, most notably in the apparel sector. Despite efforts by brands throughout the past year which included training programs for Police and Customs officials, the approach to enforcement in Guatemala appears haphazard at times. Members report occasional raids against relatively minor targets involved in the retail and wholesale trade, including in Quetzaltenango and Sacatepequez. Efforts in obtaining similar actions against higher-priority production facilities in San Francisco El Alto, viewed as the manufacturing center for counterfeit garments, have failed to materialize, however. Respondents cite protectionism and

concerns related to social order as likely causes – the large counterfeiting operations are believed to provide a major source of employment. Rights-holders have also cited delays in the judiciary’s handling of cases as a significant concern; those delays and the associated costs often lead IP owners to pursue settlement agreements as a means of resolving disputes. As has been seen in other jurisdictions though, protracted civil litigation and criminal prosecution can become advantageous to the offenders, who may be happy to draw out any resolution, comfortable in their expectation that any eventual penalties will be relatively minor. Greater efforts are required across the board if the Guatemalan government truly wishes to improve its protection and enforcement of intellectual property in the coming year.

PARAGUAY

Paraguay was removed from the USTR’s Special 301 Watch List in 2015, following some notable progress by the country to address a variety of long-standing concerns that once led to its designation as a Priority Foreign Country. And while we’re thankful that the situation in Paraguay is vastly improved when compared with two decades ago, rights-holders continue to face a variety of challenges in the country. It should come as no surprise that the greatest concerns are centered around Ciudad del Este, although the difficulties experienced by our members are certainly not restricted to that widely-known hotspot. Inadequate resourcing, a burgeoning online trade, corruption, and lenient penalties were broadly cited by respondents, in addition to long-standing issues with the country’s border measures. We support Paraguay’s return to the Watch List in 2019.

Despite the problems faced in the country, we have heard some positive comments regarding the increasing familiarity and expertise among customs officials in Paraguay, and with regard to prosecutors and judges – IP cases in Paraguay are regularly dealt with by specialists with training on such matters. Unfortunately, such positive comments are not uniform throughout the country. Protectionism and corruption have been witnessed, particularly in Ciudad del Este, resulting in failed enforcement actions and large-scale counterfeiting operations avoiding prosecution entirely. Some brand representatives have suggested drastic measures including the dissolution of local offices and courts in Ciudad del Este and establishing courts with national jurisdiction in Asuncion where such cases could be transferred. Even in other parts of the country however, costs of litigation are often said to exceed any expected recovery; and in the criminal context, custodial sentences remain rare and fines are seen to lack deterrent effect. In practice, offenders often face no risk of criminal prosecution for a first or second IP offense, and those who do regularly fail to appear before the court to face charges after being released pending trial.

Customs seizures remain relatively low, given the high volume of counterfeit goods flowing into and through Paraguay. Rights-holder also continue to decry cumbersome border enforcement procedures; their representatives typically have to appear in person at the port to inspect and authenticate goods, and subsequently coordinate with prosecutors to pursue a criminal complaint and effectuate a seizure of the goods. Transparency is also said to be lacking, both in terms of notifications regarding suspect shipments, and with regard to the destruction of those goods. Significantly increasing seizures should be made a priority.

In light of these continuing challenges, we recommend Paraguay's return to the Watch List in 2019.

PERU

Peru was retained on the Special 301 Watch List in 2018; that decision was supported by the IACC, due to reports of widespread retail sales of counterfeit goods, a lack of deterrent penalties, border control concerns, and other challenges faced by rights-holders in the country. We've been pleased to hear a number of positive comments from IACC members during this year's consultations regarding the adoption of improved legislation, greater assistance from authorities in investigating and pursuing IP offenses, and greater commitment on the part of the government to address some long-standing issues. Though we recommend that USTR retain Peru on the Watch List at this time, we are hopeful that the progress seen over the past year will continue in 2019. We expect rights-holders will be closely monitoring the implementation of some of the more recent developments which, if carried forward, may justify its re-evaluation.

One bright spot highlighted by members for 2018 was the signing of a memorandum of understanding between the Patent and Trademark Office and the World Intellectual Property Office ("WIPO") for the development of a National Intellectual Property Policy. Under that agreement, WIPO is expected to offer advice and technical support to the Peruvian PTO, which we're hopeful will lead to a comprehensive evaluation of Peru's current regime for IP protection and enforcement; in turn, setting the stage for an improved comprehensive framework. The collaboration is viewed as a potential remedy for rights-holders' concerns regarding the lack of uniformity and consistency seen among enforcement agencies, prosecutors, and judges across the country. Rights-holders also reported with some optimism regarding the adoption of two legislative decrees (No. 1391 and 1397) related to administrative procedures for IP related to injunctive relief and expanded discretion in the consideration of penalties. The follow-through and implementation of each of these will be closely watched in the coming year.

Rights-holders, however, also continue to face many of the same challenges that we have cited in past years' submissions. Chief among these are the lack of deterrent penalties for IP offenses, and the need for better communication and collaboration by Customs with rights-holders. With regard to the former issue, counterfeit goods are widely and openly sold, particularly in a number of well-known informal markets. And while some brands have reported an increase in the number of enforcement actions, the prosecution of those crimes is said to rarely result in any significant penalties, including jail time. This tends to reinforce the widespread view of consumers, and of the counterfeiters, that such offenses are not serious. Customs enforcement is also seen as largely reactive, and officials are said to lack sufficient training necessary to implement an effective border enforcement regime. Some rights-holders have reported improved results after conducting training programs, but to a large extent, IP enforcement is not seen as a high priority.

As noted in regard to a number of other jurisdictions, online trafficking is an increasing problem, and demands both the implementation of a more robust framework for enforcement, and additional training for the relevant authorities.

Though we are pleased by the reported progress seen in Peru during the past year, the IACC supports its continued placement on the Watch List in 2019.

OTHER OBSERVATIONS

ASIA-PACIFIC

AUSTRALIA

Australia continues to review its IP regime, and new amendments have taken effect in recent years, including the Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Bill 2018, which received Royal Assent last August. The new enactments provide much improved clarity with regard to issues of parallel importation and reduced the period for commencing a non-use removal application from five years to three years. The government will continue its review of the country's IP laws in 2019, and rights-holders will be watching the process closely.

Rights-holders wished to highlight the development of TM-Link, an international trademark database developed by IP Australia in collaboration with the Swinburne University of Technology, that makes use of a neural network to identify equivalent trademarks across multiple jurisdictions, including Australia, the United States, Canada, New Zealand, and the European Union. The database includes more than 10 million marks and continues to grow; rights-holders view it as a potentially powerful tool for multi-jurisdictional trademark searching and clearance.

The adoption of a new Customs Regulation in April of 2015, allowing the automatic forfeiture of counterfeit goods to the Australian Border Force, is seen as providing significant benefits to Australia's border enforcement regime, and provides a positive contrast to some of the measures adopted in countries such as Malaysia, Indonesia, and Canada. We strongly encourage other countries to take effective steps to empower their enforcement agencies.

Despite all of these positives however, rights-holders report that IP offenses appear to remain a low priority for law enforcement, and cite continued concerns regarding the non-deterrent penalty levels typically assessed by Australian courts, even in cases involving recidivism. We would welcome further efforts to address these concerns.

HONG KONG

IACC members continue to compliment both the quality and level of efforts carried out by Hong Kong Customs & Excise ("HKC&E"). In addition, we've received positive reports from rights-holders regarding efforts under way within the judiciary to establish a specialist list of judges to whom IP cases in the Court of First Instance would be directed. Further, the Intellectual Property Department, in collaboration with HKC&E and industry representatives have collaborated to develop a Youth Ambassador Against Internet Piracy Scheme. We view this as a positive step to improve public awareness for the importance of IP and its contributions to

the society as a whole.

Rights-holders wish however to reiterate significant concerns highlighted in our submissions in recent years regarding the high-volume of counterfeit shipments from China that transit Hong Kong, the lack of enforcement undertaken against such shipments, and the need for greater cooperation in identifying the responsible parties. As described in our comments in each of the past three years, Hong Kong consistently ranks behind mainland China as the second-largest source of counterfeit goods seized entering the United States. Those seizures credited to Hong Kong though are largely the result of transshipments from the mainland facilitated by Hong Kong-based freight forwarders.

As discussed in previous submissions, this process allows the true exporters to remain largely anonymous, as the freight forwarders have been uncooperative with rights-holders' requests to disclose the identities of their customers, often claiming that the information is confidential, and denying any knowledge that the shipments contained counterfeit goods. For their part, HKC&E have not been forthcoming with information regarding the true source of the goods, or assisting rights-holders in tracing them back to their origin. We reiterate our calls for the adoption of strong "Know Your Customer" regulations to ensure that shipping intermediaries collect and maintain basic information regarding their clients, and establishing a duty to cooperate with investigators (and rights-holders) where such shipments have been detained or seized. We've seen no progress on this front during the past year.

JAPAN

IACC members again wish to call attention to the "personal use" importation loophole in Japan's customs regime – a source of concern among rights-holders for a number of years. As discussed in previous submissions, Japanese customs takes a permissive approach to the importation of counterfeit goods, whether carried into the country directly by an individual as luggage / cargo, or via mail / express consignment. In light of shifting trends in counterfeit distribution towards a "direct to consumer" / e-commerce model, Japanese Customs' ability to seize counterfeits as they enter the country from abroad en route to consumers is severely diminished by the policy. Accordingly, we reiterate our requests for action on this issue by the Japanese government, and encourage the adoption of procedures that empower Customs to more effectively protect Japanese consumers and legitimate businesses from counterfeit imports.

NEW ZEALAND

New Zealand's IP enforcement regime is focused almost entirely at the country's borders, and rights-holders have reported limited or no cooperation from police agencies in response to requests for assistance within the domestic market. This limited approach unnecessarily places the entire burden of enforcement on a single agency (New Zealand Customs), which is, regrettably, not sufficiently empowered or resourced to deal with the counterfeit trade on its own. Under their current processes, Customs personnel undertake initial investigations of suspect shipments prior to contacting relevant rights-holders for assistance. Notice of

detentions are often received months after the initial action, resulting in unnecessary delays and hindering further actions.

We will be closely monitoring New Zealand's implementations of new obligations undertaken pursuant to the country's joining the Trans-Pacific Partnership. Additional resources and training would be desirable though, as would a more holistic approach that might alleviate some of the enforcement burden, and permit effective action against the counterfeit trade within the domestic market.

We've also recently received word that the government of New Zealand is considering amendments to Section 36 of the Commerce Act. The current provisions include an IP exception to the Commerce Act's provisions on anti-competitive behavior. Some rights-holders have raised concerns that the removal of that exception could negatively impact their ability to enforce their IP rights. We encourage the U.S. government to monitor these developments to ensure that any actions taken do not adversely impact IP owners' legitimate interests.

EUROPE-MIDDLE EAST-AFRICA

BAHRAIN

For the first time in 2018, the IACC provided comments on Bahrain to the USTR in our Special 301 submission, though without recommendation for placement on the Watch List. We've received somewhat mixed reports from rights-holders regarding the country this year, and while we make no recommendation for Bahrain's placement on the Watch List, we do wish to draw attention to both the positive and negative experiences of rights-holders there.

IP enforcement falls largely upon Bahraini Customs at the border, and in the internal market by the Ministry of Industry, Tourism, and Commerce, the latter of which encompasses both the Trademark Office and the country's Consumer Protection Agency. Rights-holders' interactions with Customs are described in largely positive terms, though some have noted concerns related to transparency and the timely and accurate reporting of detentions and seizures. Where difficulties have arrived, they're attributed primarily to under-resourcing. There are two main Customs centers serving the country, King Fahad Causeway and Port Khalifa. The high volume of traffic at the Causeway, the main route between Bahrain and Saudi Arabia is said to sometimes overwhelm the authorities who must act quickly to avoid impeding legitimate trade. Respondents report a demonstrated commitment to enforcing against counterfeits despite resource limitations, and commented positively regarding participation in routine training sessions scheduled by brands at the Customs Training Institute. As noted in last year's submission, the Bahraini police are seldom involved in anti-counterfeiting activities; the MOC remains the primary enforcement arm in-country. We would welcome action by the government to involve the police to a greater extent, which would ease some of the burden that currently falls upon the MOC.

Respondents' views with regard to the court system were disparate, with some citing judges' willingness to require importers to cover costs associated with plaintiffs' expert fees and

destruction of counterfeits, but others noting cases in which damages have not been awarded at all, raising concerns about deterrence. We would welcome the opportunity to engage with the Bahraini government on how it might best address the issues raised by rights-holders this year.

BULGARIA

IACC members again raised concerns regarding their ability to effectively and consistently enforce their intellectual property rights in Bulgaria. As an initial matter, rights-holders have highlighted the fact that Bulgaria has not yet implemented EU Directive 2015/2436 relating to trademark laws. Rather, the Bulgarian IP Office suggested that an entirely new Trademark Act be developed; a draft is reportedly under consideration, and may be considered in 2019. According to information provided by respondents, the new law is not expected to substantially alter the approach to enforcement of IP. This undertaking is a source of concern however, as it has been noted that Bulgaria has thus far failed to provide the adequate legal tools required by Article 11 of the Enforcement Directive in relation to Art. 8 (3) of Directive 2001/29/EC, allowing IP owners to obtain permanent injunctions against all types of intermediaries whose services are used for infringements. Rights-holders will be closely monitoring any actions taken on these matters.

Rights-holders have noted a decline in Customs seizures since peaking in 2017, raising fears that IPR enforcement is being considered a lower priority. Further, we've received word of restructuring within the Customs Agency related to the Department on Customs Intelligence and Investigation, and which might negatively impact border enforcement efforts. Police actions remain the primary avenue for enforcement, and are generally viewed as efficient and cost-effective. Brands have noted a need for improved coordination and a greater willingness to pursue deeper investigations to identify larger targets and organized networks operating within the country. And while we've received promising reports related to an increasing level of expertise among the judiciary, the level of penalties remains too low to effectively deter offenses.

Despite the significant losses for the economy caused by counterfeiting, IP enforcement does not appear to be a key priority of the Government. Efforts are sporadic and there does not seem to be a serious commitment or a state policy on how to deal with the problem.

Ideally, rights-holders would like to see an increased demonstration of priority on IP enforcement by the government, and a more coordinated and strategic approach to addressing the trafficking of counterfeits. With regard to that latter item, we believe significant progress could be achieved through the adoption of a fusion-center model, along the lines of the National IPR Coordination Center in the U.S., to facilitate the sharing of intelligence among the relevant enforcement bodies. We will continue to monitor the Bulgarian government's ongoing work on its legislative and enforcement regimes, and welcome the opportunity to provide feedback or input on those efforts.

MAURITIUS

The IACC received largely positive comments this year concerning rights-holders' experience in Mauritius, and we're happy to share these reports with USTR. The government led by Mr. Jugnauth has demonstrated a strong interest in modernizing the country's approach to IP protection and enforcement, despite facing some resistance in those efforts. Draft legislation has been presented, under which Mauritius would join the Madrid and Hague systems, as well as the Patent Cooperation Treaty. Unfortunately, this effort has failed to gain significant traction; the resistance is believed to be largely due to fears of local attorneys and IP agents about the adoption of the Madrid system (and its potential impact on their own business). We remain hopeful that the government will press forward with the initiative. The government has also shown a willingness to take prompt action to address legislative deficiencies, as evidenced in the aftermath of a 2017 judicial decision that precluded orders of destruction for infringing goods. The Attorney General quickly moved to amend the law to permit such actions.

Rights-holders also reported positive results in working with the Anti-Piracy Unit of the police and with Mauritian Customs, noting both agencies' collaborative approach to anti-counterfeiting enforcement. Customs enforcement efforts have been hindered at times by resource constraints, though IP owners have been impressed by the thorough nature of Customs' work. Enforcement may be additionally constrained by legal requirements to initiate legal proceedings against (or to reach a settlement with) the infringer within ten days of Customs' detention. A preferred approach would shift the burden to the infringer, and to allow for an expeditious determination by Customs, followed by the destruction of the goods, where they are found to be counterfeit.

One area in which improvement would be desirable concerns the country's approach to enforcement in the Mauritius Freeport Zone. The Mauritius Revenue Authority, which includes Customs, has very limited powers to act in the free zone, and is currently unable to carry out IPR inspections. This represents a significant gap in the enforcement regime, particularly given the country's role as a distribution hub in the region. We would strongly encourage action by the government to address this priority issue in the coming year.

MOROCCO

Rights-holders continue to report considerable challenges to IP enforcement in Morocco. Customs enforcement is viewed as insufficient, and there has been a noted increase in the smuggling of counterfeit goods between Morocco and Mauritania. Respondents described poor planning of enforcement actions by the local police as well as the Royal Gendarmerie. Though the police are empowered to act *ex officio*, such actions are said to be rare. Coordination and intelligence sharing between the enforcement bodies could likewise be improved significantly. And while cases brought before the commercial courts are reported to result in satisfactory judgments, consistent with the applicable laws, criminal prosecutions typically lead to nominal fines, and take longer than necessary to conclude. Respondents were aware of no IP enforcement activities within the country's Free Zones, and noted increasing interest among Chinese counterfeiting operations in using the Free Zones to facilitate illicit trafficking. All of

these factors have led rights-holders to conclude that the government places a low priority on protecting intellectual property.

MOZAMBIQUE

Rights-holders described a variety of challenges to protecting and enforcing their rights in Mozambique, including legislative deficiencies, inadequate border measures, and an overly formalistic approach to enforcement. While it is possible to obtain enforcement under Mozambique's Industrial Property Act, the effectiveness of those efforts is seen to be hindered by the lack of specific legislation dedicated to the trafficking of counterfeit goods. One major deficiency cited by respondents was the lack of a requirement that counterfeit goods be destroyed following seizures, resulting in counterfeits regularly being donated for distribution within the community (and without sufficient testing or remedial steps taken to prevent their return to the market). Customs has also been reported to have "disposed" of seized counterfeits by placing them for sale via government auction. We strongly oppose these approaches.

Some rights-holders have reported difficulties stemming from overly complicated procedures and formalism that tend to unnecessarily delay effective action. By way of example, law enforcement lacks ex officio authority to detain or seize goods without a search warrant. Prior to seeking a search warrant though, law enforcement's response to rights-holders' complaints typically involves a preliminary investigation to determine whether there is sufficient cause to obtain a search warrant. That process may take months to complete, and the substantial delays may in turn preclude further action entirely, as the goods have disappeared before such action can be taken.

Customs enforcement is a priority concern, as Mozambique has become a key source for goods intended for the South African market; the Komatipoort/Lebombo border post in Mpumalanga and Kosi Bay in Northern KZN are viewed as particularly important in this regard. Customs is described as largely reactive however, making few seizures, and generally reluctant to share information with rights-holders. Despite training programs conducted by IP owners, little improvement has been seen.

SOUTH AFRICA

South Africa was included in the IACC's submission to USTR last year, its first appearance in several years, with rights-holders' reporting growing concerns with regard to the state of IP enforcement in the country, and of the government's will to address those issues. Many of those same comments were heard during this year's consultations from additional rights-holders underscoring both the strategic importance of the South Africa to regional trade and IP owners' priority of tackling the challenges faced there.

The relevant law in South Africa, the Counterfeit Goods Act no. 37 of 1997, is generally viewed as adequate, and offers both civil and criminal remedies; and enforcement personnel at the South Africa Police Service ("SAPS") and at Customs are largely viewed as cooperative, though

significantly under-resourced. The enforcement of the Counterfeit Goods act and other relevant provisions is hindered by that latter concern which is seen to diminish the follow-through on enforcement necessary to ensure implementation of an effective IP regime. Rights-holders also cite a lack of uniformity in operations across the various provinces and the need for more consistency in procedures throughout the country. Some have noted inconsistent cooperation between SAPS and Customs which has led to a lack of post-seizure investigations; problems with corruption remain a concern as well.

Border enforcement is a major priority for IP owners, both in terms of imports and transshipments to other countries in the region. One respondent described instances of counterfeiters seeking to exploit Customs' limitations on enforcing against goods in-transit, shipping illicit goods through South Africa to other markets, and then smuggling the goods back into South Africa through ports where enforcement was perceived as weaker. IACC members reported the highest level of detentions at OR Tambo Airport; Durban Harbour is said to be the main point of entry for counterfeits, though rights-holders have seen a steady decline in seizures there by the Border Police and Customs. While Customs was previously active with regard to in-market operations, those resources appear to have been reallocated to the detriment of rights-holders' interests.

Cape Town, Durban, and Johannesburg remain the primary hot-spots for counterfeit distribution and sales. As described in prior submissions, the "vertical flea markets" that have cropped up in the Johannesburg Central Business District present a substantial obstacle to enforcement. Some describe them as fortresses for counterfeiters; enforcement actions on those locations are exceedingly difficult, and it is not uncommon for enforcement personnel or brand representatives to come under assault during raids. The SAPS have adopted creative approaches to in-market enforcement at times, serving counterfeiters with detention notices based on suspicions of Custom contraventions, and allowing for the seizure of relevant goods absent the provision of import documentation, proof of duties paid, and the like. Unfortunately, those forfeited goods may be made available for sale via public auction. Brands may prevent such sales by filing an affidavit confirming that the goods are counterfeit, but that process can be costly, and may not be available in practice if the brand is not promptly notified of the situation.

Improved cooperation among South Africa's enforcement bodies and a more strategic approach to enforcement are essential to improving the situation in South Africa. Such improvement is unlikely however, absent the allocation of significantly greater resources to provide Customs and the SAPS with the tools they require. We welcome USTR's attention to these ongoing concerns in the coming year.

UNITED KINGDOM

In last year's submission, the IACC reported increasing concerns among rights-holders regarding the level of enforcement, and perhaps more importantly, the government's commitment to protecting and enforcing intellectual property rights. That assessment carried over into this year's consultations, and is particularly worrying in light of ongoing trade negotiations between our countries and the looming Brexit. Historically, the United Kingdom has been one of our strongest allies on IP, a fact that's no doubt attributable to the country's

renowned cultural industries and reputation for high-quality goods produced by globally-recognized brands. Regrettably, the UK's status as a leader on IP is increasingly being called into question. We encourage USTR to closely monitor the issues raised herein; in moving forward with the US-UK Trade Agreement negotiations, intellectual property must remain a high priority.

Respondents widely reported their disappointments this year regarding a continuation of last year's noted decline in enforcement in the UK, both at and within the borders. Customs enforcement was cited as ineffective, as rights-holders registered relatively low seizures contrasted by widespread availability of counterfeits in the British market. There are a number of factors seen to contribute to this current state, among them a lack of sufficient resources, difficulties experienced in implementing the "simplified procedure," and the government's de-prioritization of IP enforcement in favor of other matters. With regard to that final concern, rights-holders recognize that Customs agencies around the world are tasked with a number of competing priorities such as immigration and counter-terrorism operations, and understand that some of these missions will demand greater expenditures of resources. The feedback received by rights-holders this year however highlighted a more problematic concern. Specifically, the government of the UK has reportedly directed Customs to focus their efforts to a large extent on revenue generation rather than harm reduction. As a result, Customs (and law enforcement) have shifted resources to focus on alcohol and tobacco smuggling, and similar activity at the borders that are viewed as having a more direct impact on the generation of tax revenue in the market. Similar reports have also been heard with regard to other EU member states. The reduction and reallocation of resources to Customs has exacerbated concerns with regard to local warehousing and fulfilment operations that are more widely used to service online counterfeit retail operations. Large shipments arriving from China are said to be stopped rarely, arriving at fulfillment houses without meaningful inspection, and those facilities are rarely targeted for raids.

As discussed last year, rights-holders have become heavily reliant upon the UK's Trading Standards bodies to undertake enforcement within the domestic market. And while some report positive experiences, a wide disparity is seen in the effectiveness and engagement of those agencies throughout the country. Manchester Trading Standards was singled out for praise by one brand, pointing to their effective use of the Law and Property Act to target landlords who permitted the use of their properties for illegal activities; those efforts have contributed greatly to tackling ingrained problems in the Strangeways area of Manchester. Trading Standards authorities in other areas – there are nearly 200 throughout the country – vary widely in their level of engagement. This is perhaps unsurprising given their broad mandate. Rights-holders' ability to rely upon Trading Standards for assistance is also increasingly called into doubt as the agencies continue to be the target of budget cuts. Those cuts in turn raise serious questions about the government's overall commitment to IP enforcement. Within the domestic market, rights-holders may also turn to the Police Intellectual Property Crimes Unit ("PIPCU"), which sits within the City of London Police and has a national remit to investigate complex IP crime. The cases taken on by PIPCU however typically involve significant lead times and may take months to investigate before any decision is made to move forward with prosecution. Insufficient resourcing may also be a contributing factor to such protracted efforts. Whatever the reason though, rights-holders may invest substantial resources on a case, but in the end be left with few options other than pursuing private actions.

With Brexit forthcoming, there is a great deal of uncertainty and concurrent speculation as to the potential impact on IP enforcement. One respondent noted a possible bright spot in the “hard border” scenario being the fact that the UK would cease to be an entry point for further distribution into EU markets, perhaps alleviating some of the volume burden that currently falls on Customs, and allowing for greater focus on enforcement against counterfeit imports. Any potential benefit however may be offset by increases in imports from EU member states that currently pass freely into the country though, so this remains speculative and should be closely watched.

We appreciate USTR’s continued efforts in ensuring the high priority of intellectual property protection in our trade relationship with the United Kingdom, and we look forward to working with you to underscore the importance of effective and deterrent enforcement as negotiations on the Trade Agreement move forward.

AMERICAS

HONDURAS

Though we make no recommendation with regard to placement on the Special 301 Watch List, IACC members would like to draw attention to continuing concerns in Honduras. Progress in the country is described as slow, but we are pleased by more positive developments over the past year, including better cooperation with IP officials. Rights-holders have made great efforts in recent years to increase engagement, offer necessary training, and to develop closer relationships with their counterparts in the Police, Customs-IRS/Fiscal Unit, and the IPR DA, who was appointed two years ago. These efforts are beginning to bear results, in the form of additional market sweeps and seizures. In contrast to neighboring Guatemala, Honduras is not widely viewed as a major source for illicit manufacturing, though other problems persist, and further progress is said to be hindered by declining resources. Rights-holders will continue to monitor the situation in 2019, and hope to see the adoption of a more proactive approach by the country’s IP enforcement bodies.

Respectfully submitted,



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