

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

**2020 Special 301 Review
Identification of Countries Under Section 182 of the
Trade Act of 1974
Request for Public Comment
84 FR 70613 - 15 (December 23, 2019)**

February 6, 2020

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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 23, 2019, 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.¹ 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 twenty-four countries and spanning five continents – facts which should serve to underscore the truly global scope of the problems faced by rights-holders. Thirteen countries are recommended for inclusion at the Priority Watch List level, and an additional nine 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.

¹ It is worth noting that seizures of counterfeit goods deemed to pose a heightened risk to consumers' health and safety now account for greater than 10% of U.S. Customs and Border Protection's total IPR-related seizures. See, United States Customs and Border Protection, "Intellectual Property Rights – Fiscal Year 2018 Seizure Statistics." Available at: https://www.cbp.gov/sites/default/files/assets/documents/2019-Aug/IPR_Annual-Report-FY-2018.pdf.

PRIORITY WATCH LIST RECOMMENDATIONS

ASIA-PACIFIC REGION

CHINA

2019 Recommendation: Priority Watch List

In making its recommendation last year, the IACC cited China's continued status as the primary source of manufacturing for counterfeit goods sold in the United States and around the world. In addition, long-standing concerns related to perceived deficiencies in the country's legislative and enforcement regimes – including its continued over-reliance upon non-deterrent administrative remedies factored in to the IACC's recommendation.

2020 Recommendation: Priority Watch List

2020 Rights-holder Input:

The People's Republic of China has, for many years, been the top priority for rights-holders small and large, across all product sectors. That continued to be the case during this year's consultations. And despite noted improvements with regard to China's legal and enforcement regimes during the past two decades, the overall volume of counterfeit goods manufactured in and exported from China remains staggering. In its most recently published IPR seizure statistics, U.S. Customs and Border Protection reported that China (mainland and Hong Kong) accounts for 87% of its total seizures – nearly 30,000 shipments – at U.S. ports.² In terms of value, those counterfeit shipments approached nearly \$1 billion in Fiscal Year 2018.³ While those figures themselves are disconcerting, perhaps more so is the fact that those seizures represent only a fraction of the Chinese-manufactured counterfeits that reach U.S. consumers each year.

Most of the concerns highlighted by IACC members during the past year should come as no surprise to USTR, and indeed, many of these are long-standing issues discussed in previous submissions. China's perceived over-reliance on administrative remedies is a perennial concern, as are related issues such as high thresholds for criminal investigation and prosecution, and policies related to product valuation. Online sales of counterfeits –

² FY 2018 IP Seizure Statistics, *supra* note 1.

³ *Id.*

both within the domestic market and to consumers abroad – are a priority. And though some IACC members have reported positive developments in China over the past year, the overall situation remains severe.

Administrative Enforcement

Historically, administrative enforcement has been Chinese authorities' default approach to anti-counterfeiting; a fact long decried by trademark owners. Violations are frequently met with nominal fines and the seizure of illicit products, but such penalties are widely viewed as providing little deterrence. “We can't seize our way out of this problem,” and “Fines are little more than a cost of doing business,” have become truisms in the world of anti-counterfeiting; IACC members' experience in China over many years bears out those facts. Unfortunately, the thresholds adopted for the criminal prosecution of counterfeiting offenses, and the practical application of those thresholds, often preclude the pursuit of criminal charges.

As noted in prior years' submissions, counterfeiters are well aware of the criminal thresholds, and have become adept at gaming the system by limiting the volume of inventory on-hand at retail outlets and storage facilities, and by taking steps to conceal the volume of their sales. Even where such evidence is available though, IACC members have often reported an unwillingness on the part of some enforcement authorities and prosecutors to collect or accept evidence of prior sales, e.g., business records found at the time of a raid, or of past online sales of the same products by the offender. As a result, even many large trafficking operations may fail to meet the requirements for criminal prosecution.

A related concern – also noted in last year's submission- is a lack of consistency among enforcement bodies in assessing the value of illicit goods. The decisions made by Pricing Bureaus are described as “seemingly arbitrary” by some rights-holders, and the methodologies applied are said to lack transparency. In some instances, for example, where an item bears a counterfeit mark but has no authentic counterpart in the marketplace, it might be excluded entirely when determining the aggregate value of the offending goods. This may occur where a counterfeit mark has been applied to a product never manufactured by the trademark owner (e.g., a style or colorway never produced by the rights-holder), for discontinued items no longer available for purchase, or for “unfinished” components in the violator's inventory. While some members report modest improvements on this issue, we would welcome a more uniform and transparent approach to valuation.

Online Trafficking

As detailed in prior years' submissions, online sales of counterfeit goods via e-commerce platforms, standalone websites, and increasingly, social media platforms, are a top priority for IACC members across every product sector. Rights-holders have noted a strong correlation between the growth of e-commerce and the sharp rise in CBP's annual

seizure figures for small packages in the international mail and express consignment environments. In Fiscal Year 2018, mail and express consignment shipments accounted for over 30,000 seizures (over 90% of CBP's total seizures by volume) valued at nearly \$750 million (more than half of CBP's total seizures by value). Though CBP has not published a comprehensive breakdown detailing the country of origin for its small parcel seizures; common-sense and ample evidence point to China.⁴ The nexus between China and the counterfeit goods found online has also become readily apparent in the course of enforcement activities undertaken by the IACC and our members. Illicit sites referred for investigation through our RogueBlock program frequently carry indicia of China-based operations, including contact information, the acceptance of payments via bank transfers to Chinese financial institutions, or publicly available domain registrant or web-hosting information pointing to Chinese companies and individuals. Many such sites also prominently advertise that customers' orders will be shipped via China EMS.

Respondents have described a number of challenges with regard to enforcement as the online trafficking of counterfeit goods has evolved in recent years. One IACC member noted an apparent trend – also described in last year's submission – of counterfeiters moving away from larger e-commerce platforms, migrating to social media sites or lesser-known outlets that have not prioritized IP enforcement and/or have failed to scale their enforcement efforts to effectively deal with bad actors. Chinese enforcement agencies and prosecutors are said to be experiencing some growing pains in response to the rapidly evolving online models, and at times appear uncertain as to how to build and pursue cases against offenders in this new landscape.

Despite these challenges, it's important to recognize that “online counterfeiting” does not exist in a vacuum. Every illicit product offered up to an unwitting consumer online was produced by a manufacturing facility. It's stored in warehouse somewhere, waiting to be packed and shipped. While the “storefront” may be virtual, it's tied to the real world in a number of ways. We were pleased this year to hear additional reports from IACC members regarding the positive outcomes and progress that they've seen in terms of connecting their online investigations to “offline” enforcement actions. We're aware of a number of cases throughout the past year involving collaboration between rights-holders, Chinese e-commerce platforms, and government enforcement bodies to investigate and prosecute large-scale counterfeiting operations by tracing online sales back to their real-world infrastructure. As a leader in the development of cross-industry collaborative enforcement programs, we welcome such initiatives, and are hopeful that they will become the norm. To that end, we would encourage a greater willingness on the part of Chinese financial institutions⁵, logistics providers, and online intermediaries including

⁴ To illustrate, CBP reported 33,810 total seizures in Fiscal Year 2018, including 1,535 in the cargo or “other” shipping environments, and 31,275 in the mail and express environments. Even if we assume that each of the 1,535 shipments in the former categories involved shipments from China (including Hong Kong), we can calculate that approximately 90% of CBP's mail and express shipment seizures originated there as well.

⁵ Historically, Chinese banks have been reluctant to share information regarding individuals or entities making use of their services, even where clear evidence has been presented to demonstrate illegal activity.

ISPs to facilitate and participate in such collaborative efforts.

IACC members are continuing to closely follow a number of legislative developments impacting this area – most notably implementation of the country’s E-Commerce Law which took effect last January, and the new Trademark Law adopted late last year; not to mention the recent Phase One trade deal with the United States. As noted in last year’s submission, IACC members had previously expressed concerns that the E-Commerce Law would lead to increased costs and burdens associated with enforcement, and could impede cooperative efforts between rights-holders and e-commerce platforms. We would welcome further clarification and guidance from the Chinese government with regard to the intended application of the law’s provisions. Concerning the more recently enacted Trademark Law, rights-holders commented positively with respect to provisions intended to address bad faith trademark registrations, which have been a major source of frustration for years. Some however have pointed to potentially significant gaps in the legislation. Article 60 part 2, for example, appears to shield an individual from liability related to counterfeiting “if a party is unaware of the infringing nature of the goods, is able to prove that the products were obtained by legitimate means, and can provide information on the suppliers of the products.” Rights-holders note that fake receipts and forged authorization letters are rampant in China; such “evidence” may easily be provided by a party claiming an innocent mistake, and serve as a “get out of jail (or more likely, administrative fine) free card.”

Protectionism

In contrast to the positive comments noted above, we continue to receive troubling reports from IACC members describing protectionism and a general lack of cooperation and assistance in some parts of China. As reported in our prior Notorious Markets filing, Huanqiangbei in Shenzhen is emblematic of such complaints; rights-holders have reported no improvement there since the issue was raised initially.

Destruction of Counterfeits / Instrumentalities

The seizure and destruction of counterfeit goods remains a significant part of the punishment imposed on counterfeiters, particularly in the context of administrative enforcement. And while rights-holders have typically noted improvement over the years with regard to China’s destruction of counterfeits (and the transparency of those dispositions), ensuring the appropriate disposal of instrumentalities of those offenses remains a top priority. Machines, tools, dies, and other equipment involved in the production of counterfeit goods, or otherwise used to facilitate counterfeiters’ illicit

They have likewise frequently refused to take steps such as freezing assets in an account to facilitate rights-holders’ opportunities to collect on judgments obtained abroad.

activities, must not be permitted to remain with (or to be returned to) the offenders. We strongly encourage Chinese authorities to adopt consistent policies and procedures to ensure the transparent destruction of such items as a means to preventing recidivism.

Consumer Safety

As noted above, the incredible volume of counterfeit goods entering the U.S. market from China are increasingly viewed as a substantial threat to consumers' health and safety. By way of example, during a November 2019 White House meeting, the President expressed concern about the public health dangers arising from counterfeits that have been seen taking the place of electronic nicotine devices (ENDs) and vaping products no longer offered for sale in the U.S. There is significant evidence that many such black market products imported from China – including flavors appealing to youth – become readily accessible to youth via the illicit market. Stepped up enforcement is necessary to ensure the health and safety of U.S. consumers, and to effectively combat access to and use by youth, of regulated products.

Notorious Markets

As detailed in our 2019 submission in connection with USTR's Notorious Markets Review, IACC members recommended USTR's retention of the Huaqiangbei (HQB) Electronics Markets on the Notorious Markets List. The IACC further recommended consideration of the China-based WeChat in light of members' feedback.

Positive Developments

We were pleased to hear a number of reports from IACC members this year noting increasingly positive interactions with their counterparts in Chinese law enforcement. Comments received regarding several Public Security Bureau offices were particularly noteworthy, citing their consistent support in carrying out raids, in addition to their participation in, and facilitation of, collaborative operations with e-commerce platforms mentioned above. The Zhongshan PSB and Guangdong Provincial PSB were singled out for praise by one respondent during this year's consultations, who wished to recognize their efforts in working for over two years to develop a huge case against a manufacturing and exporting operation involving several brands, and resulting in the seizure of millions of counterfeit items. China Customs received similar compliments for its collaboration with rights-holders. China's Judiciary was likewise cited for its growing expertise in handling IP matters; members pointed to the imposition of multi-year sentences and fines in the millions of RMBs following criminal convictions.

INDIA

2019 Recommendation: Priority Watch List

In 2019, the IACC recommended India's placement on the Priority Watch List, citing rights-holders' continued concerns involving judicial delays, difficulties obtaining trademark registrations, border control issues, and an overall enforcement regime insufficient to deter to the high volume of counterfeit sales within the market.

2020 Recommendation: Priority Watch List

2020 Rights-holder Input:

On the whole, IACC members' feedback concerning India remained largely unchanged over the past year.

Scope and Scale of the Counterfeiting Problem

In the most recent IPR seizure statistics available from U.S. Customs and Border Protection, India was reported as the fourth-largest source of counterfeit goods interdicted at U.S. ports, in terms of the overall number of seizures (1% of total); and the third largest by value, with total seizures approaching \$20 million in Fiscal year 2018.⁶ While those seizures pale in comparison to those arriving from China, it is worth noting that the value of goods seized arriving from India was more than double that reported in the prior year. The retail sale of counterfeit goods within India likewise continues to impact a broad range of industry sectors, and is facilitated by significant domestic distribution networks.

Enforcement

Rights-holders continue to report positive interactions and support from police agencies throughout the country, a fact attributed to growing expertise in handling IP cases, and a greater understanding of the importance of IP to the economy and consumer safety. This has resulted in a number of successful raids and seizures of significant volumes of counterfeit product, involving both retail-level targets as well as larger distributors and manufacturing operations. Rights-holders have made concerted efforts in recent years to provide necessary training and support to law enforcement; they also noted a "healthy competition" among police agencies in various states. The consistency reported is a welcomed contrast to reports in years prior where rights-holders bemoaned a lack of support in many parts of the country. IACC members do however continue to report the need for a more strategic approach to enforcement that places a greater emphasis on

⁶ FY 2018 IP Seizure Statistics, supra note 1.

higher-level targets. Transparency could also be improved, as rights-holders have noted a reluctance on the part of enforcement agencies to share intelligence that might be leveraged for further investigation or civil actions.

Customs enforcement remains a challenge, though some brands have reported progress (and more frequent notifications of seizures). As noted above, there remain concerns regarding counterfeit exports, given the increased seizures seen here in U.S. ports. Further training and resourcing of Indian Customs is seen as essential for reducing both the volume of counterfeits in the domestic market and the flow of counterfeit goods from India to third countries.

Judiciary

India's court system continues to be viewed as unnecessarily slow and overly-bureaucratic. The resolution of cases is seen to take far longer than is reasonable; and rights-holders have long encouraged the development of specialized courts, or at minimum a fast-track docket to increase the courts' efficiency in handling IP matters.

Trademark Registration

IACC members reiterated their calls for substantial reforms with regard to India's trademark registration system, citing continuing difficulties in obtaining registrations in a timely manner. As discussed in past years' submissions; such delays are viewed as a significant obstacle to obtaining effective enforcement assistance, particularly where rights-holders are seeking to introduce new product lines.

INDONESIA

2019 Recommendation: Priority Watch List

Despite some positive comments from IACC members during last year's process, we recommended Indonesia's retention on the Priority Watch List. Rights-holders cited numerous concerns related to the country's border enforcement regime, disparate treatment of foreign rights-holders, and a lack of transparency and consistency in the enforcement of their rights, as well as significant problems with official corruption.

2020 Recommendation: Priority Watch List

2020 Rights-holder Input:

IACC members continued to report significant concerns with regard to Indonesia's IP regime during this year's consultations, largely reiterating those issues raised in last year's comments to USTR, and noting the general lack of progress in addressing the same. The overall level of enforcement at and within Indonesia's borders, minimal prosecutions, and corruption were cited as priorities during this year's process.

Border Enforcement

As noted in last year's comments, Indonesia's Customs regime is viewed as placing substantial and unnecessary burdens on IP owners seeking to enforce their rights. Bonding requirements imposed upon rights-holders are often excessive, and discourage enforcement actions involving smaller shipments. Recent changes to the country's customs procedures are said to have led to decreased transparency; and timelines for seeking assistance and resolving matters in the courts have increased the difficulty of obtaining meaningful enforcement. As noted last year, Indonesia's "local business entity" requirement for customs records appears to create a significant obstacle to foreign companies' access to effective assistance.

Enforcement in the Market

IACC members reported an apparent decrease in the overall level of enforcement within Indonesia over the past year – a troubling fact in light previously raised concerns as to the sufficiency of such activity. Though some rights-holders have had positive interactions with the police, corruption is cited as increasing concern. As noted in prior years' submissions, police have been unwilling to take action against certain targets despite clear and undisputed evidence of counterfeit trafficking, planned raids have been derailed as a result of leaks, and prosecutors have been unwilling to pursue charges even in some clear-cut cases. As described by one respondent, "the legal framework is not the problem in Indonesia," it's a lack of willingness to execute and apply those laws in a consistent manner. Given the lack of progress reported, and by some reports the worsening of the situation over the past year, we recommend Indonesia's retention on the

Priority Watch List.

Notorious Markets

The IACC recommended Bukalapak.com and Tokopedia.com – both based in Indonesia – for inclusion on USTR’s Notorious Markets List in 2019.

EUROPE – MIDDLE EAST – AFRICA REGION

KUWAIT

2019 Recommendation: Priority Watch List

The IACC recommended Kuwait's inclusion on the Priority Watch List in 2019, due to continued reports from rights-holders citing low levels of enforcement, a widespread perception of local protectionism, and an apparent lack of political will to address long-standing concerns related to IP.

2020 Recommendation: Priority Watch List

2020 Rights-holder Input:

We were disappointed to hear reports from IACC members during this year's consultations that the enforcement of IP rights in Kuwait remains, as one put it, "virtually nonexistent." The range of problems highlighted in previous years' submissions continued throughout 2019, and despite efforts at engagement, there appears to be little interest in addressing rights-holders numerous long-standing concerns in the country.

Enforcement

While IP owners continue to file complaints and seek assistance from Kuwaiti authorities, those efforts rarely bring about action. In many instances, respondents report that responsible authorities have sought to refer them to other agencies for assistance, who then likewise refer their complaints to others. This apparent unwillingness to take ownership or responsibility for IP enforcement matters is a significant frustration.

Rights-holders likewise report a general lack of cooperation in those instances when raids do take place; brands' representatives have been excluded from participating in any manner, or to accompany enforcement personnel to provide assistance in authenticating suspected counterfeits. As a result, any pushback from counterfeiters who might claim that their wares are legitimate may go without any rebuttal.

As noted in last year's filing, when enforcement actions have been carried out, offenders are frequently allowed to retain possession of the counterfeit goods while awaiting prosecution. It is unclear if this is due to insufficient resources on the part of the government to provide necessary storage space and inventorying of the goods, but that practice has obvious consequences with respect to the provision of evidence and offenders' opportunity to continue sales in the local market.

Border enforcement is similarly described as "severely lacking" and "largely ineffective,"

and a significant contributing factor to the availability of counterfeit products in Kuwait.

Judiciary

Some of rights-holders' harshest criticisms this year were directed at the Kuwaiti judiciary, which is said to lack necessary experience in handling IP cases, though perhaps not surprisingly in light of the above-described enforcement regime. IACC members bemoaned the "overly complex and bureaucratic" proceedings that have led to even relatively simple cases taking years to conclude, while also stressing concerns about the courts' handling and evaluation of evidence. One respondent offered as an example a judge's determination that counterfeit products obtained via test purchases, accompanied by invoices from the defendant, did not constitute sufficient evidence of the individual's wrongdoing.

Given the continuing hardships reported by rights-holders over the past year, and the lack of any reported progress in addressing those concerns raised in previous submissions; we recommend Kuwait's retention on the Special 301 Priority Watch List this year.

RUSSIA

2019 Recommendation: Priority Watch List

The IACC has consistently recommended Russia's inclusion on the Priority Watch List throughout the past two decades. Our 2019 recommendations cited pervasive sales of counterfeits in both online and brick and mortar environments, continued challenges related to the country's border enforcement regime, and the need for more criminal prosecutions.

2020 Recommendation: Priority Watch List

2020 Rights-holder Input:

As a significant market for rights-holders' sales of legitimate products, and a significant source of concern with regard to illicit sales of counterfeits, Russia has made annual appearances in the IACC's Special 301 recommendations throughout the past two decades. And while IACC members have highlighted occasional bright spots over the years, including improved interactions with regional police authorities noted during this year's consultations, the consensus view is that counterfeiting and piracy remain severe.

Retail sales of counterfeit and pirated goods, in brick and mortar shops, in well-known notorious markets, and online, continue to be described as widespread, both in terms of overall volume and the range of industries affected by the illicit trade.

Legal Regime

The Russian legal regime with respect to IPR is generally viewed in a positive light, however, IACC members continue to report a number of provisions that negatively impact the protection and enforcement of their rights in the country. By way of example, one respondent pointed to regulations pertaining to the destruction of seized counterfeit goods. At present, the IP owner is not invited to participate in or witness the destruction of the relevant goods, and authorities are under no obligation to notify rights-holders about the destruction. This lack of transparency is troubling, particularly given past reports of corruption. The adoption of a more open procedure, allowing for the verified destruction of seized goods would greatly assuage IP owners' concerns about the potential for contraband re-entering the market.

Rights-holders also continue to voice concerns with regard to the application of Russia's Anti-Piracy legislation, adopted in 2015. As discussed below, online trafficking remains rampant, and ISPs are generally seen as reluctant to assist with enforcement efforts. As a result, IP owners are often left with few options aside from civil litigation – an expensive and often protracted process that is largely viewed as untenable given the scale of illegal activity online.

Members have also highlighted recent changes related to criminal proceedings for trademark violations, which have led to an unwillingness on the part of the police to pursue criminal actions absent a specific request from a rights-holder.

Market Enforcement

IACC members offered mixed reviews with regard to their interactions with enforcement authorities in Russia. As noted above, we've received positive reports concerning the overall interest and willingness to carry out raids. Police outside of major metropolitan areas were singled out for their increased activity, in contrast to past reports in which IP owners had described a perceived lack of buy-in.

Some rights-holders have also described an increased focus on large-scale targets, including illegal production and storage facilities. That focus has, unfortunately, appeared to come at a cost; retail-level enforcement is reported to be a decreased priority, and the pursuit of larger targets has required significant lead times – up to a year – in order to gather evidence deemed sufficient to carry out a raid. While we support these efforts to more effectively cut off the supply of counterfeits in the market, there is a need for more efficient case development and management. Thus far, the approach does not appear to have resulted in a significant reduction of inventory available to the retail trade.

We were also disappointed to hear reports this year concerning back-sliding in the case of some of Russia's well-known, notorious markets, e.g., Gorbushkin Dvor. In last year's comments we referenced some brands' successful actions at the once "untouchable" venue; this year's consultations indicated that further progress has failed to materialize.

Border Enforcement

Enforcement by Russian Customs was also a subject of mixed comments from IACC members this year. On the positive side, rights-holders cited increases in both the number and size of seizures of counterfeit goods. Customs has also shown an increased willingness to engage with rights-holders on IP enforcement and training matters. Regrettably though, many of the issues reported in past years' comments have persisted throughout 2019, most notably with regard to Customs' treatment of international mail shipments.

As highlighted in our prior submission, Russia has adopted a "return to sender" policy for small consignments of counterfeit goods. Much like here at home, Russian Customs has experienced a significant increase in such shipments, taxing the available resources for IP enforcement. A more effective approach – i.e., one that will remove the illicit goods from the distribution chain while also capturing data about the relevant sender and receiver to be leveraged for targeting – should be adopted.

Online Enforcement

It will come as no surprise to USTR that online enforcement was the one area highlighted by IACC members as most in need of improvement. As seen in countless other jurisdictions in recent years, the sale and distribution of counterfeit and pirated goods in e-commerce has grown to account for a significant portion of the challenges seen by rights-holders in the Russian market. Content piracy is described as “rampant,” particularly on social media platforms such as VK and OK. As discussed above, rights-holders report negligible assistance from online intermediaries such as ISPs, even in clear-cut cases. Russia’s lack of an effective UDRP-like process or other effective measures for combating online trafficking also continues to be a source of consternation for rights-holders. Even where brands and content owners have undertaken successful actions against a target site, they frequently report its rapid migration and resumption of business at a new location – it is the epitome of a “whack-a-mole” process. These problems are, in turn, exacerbated by a lack of prosecutions and the imposition of nominal penalties which do little to discourage recidivism.

We would welcome action within the private sector, and support from the government, as necessary, to ensure the adoption and implementation of best practices in the e-commerce sector including with respect to prompt action against infringing products and content, onboarding of merchants, and cooperation on online to offline enforcement efforts.

Judiciary

In recent years, rights-holders have commented positively regarding Russia’s judiciary, noting a demonstrated expertise on IP issues, and their issuance of well-reasoned decisions. As one might expect however, litigation remains a costly and time-consuming enforcement tool; and rights-holders have reported a reluctance among some courts to award substantial damages. Likewise, in the criminal context, courts have often been unwilling to impose significant penalties, and have at times simply dismissed the criminal charges in exchange for the payment of a compensatory fine.

Notorious Markets

In our most recent filing with USTR, the IACC supported the placement of the Gorbushkin Dvor Mall on the forthcoming Notorious Markets List. Though one member reported their first successful enforcement action at that venue, the mall continues to be widely viewed as “untouchable” and counterfeit sales remain widespread.

We recommend Russia’s retention on the Special 301 Priority Watch List in 2020.

SAUDI ARABIA

2019 Recommendation: Watch List

Despite some positive comments from rights-holders during the 2019 process, the IACC recommended that Saudi Arabia be retained on the Watch List. That recommendation was largely tied to a perceived need for greater transparency by Saudi authorities, and for the adoption of a more systematic approach to enforcement, increased collaboration between the public and private sectors, and a greater emphasis on deterrent penalties.

2020 Recommendation: Priority Watch List

2020 Rights-holder Input:

IACC members reported some improvement in Saudi Arabia during the past year, citing positive engagement with Saudi Customs authorities as well as the Anti-Counterfeiting and Fraud Department within the Ministry of Commerce and Investment. With regard to trademark enforcement, both agencies tend to be viewed as among the more active in the region. One member reported continued success in working with Customs officers in Jeddah, Dammam, Riyadh, and Al Batha, while also noting the willingness of authorities to share intelligence gleaned from those seizures. Unfortunately, however, the penalties imposed for counterfeiting violations in Saudi Arabia remain a source of concern. Enforcement actions often result in a seizure of contraband, and an offender's acknowledgment of the violation and agreement to cease further illegal activity. Not surprisingly, rights-holders have reported problems with recidivism.

IACC members also reiterated past concerns related to the lack of transparency in the destruction and disposal process when counterfeit goods have been seized, whether by Customs or other enforcement bodies.

Despite some of the encouraging reports we've heard this year, we are aware of the severe concerns faced by rights-holders in other relevant sectors, including those highlighted by USTR last year in elevating Saudi Arabia to the Priority Watch List. And while we are pleased to be able to offer some positive comments on behalf of trademark owners, absent reports of significant, substantive improvement in those other areas, we support Saudi Arabia's retention on the Priority Watch List. We welcome the opportunity for further engagement with the Saudi Intellectual Property Authority to address rights-holders' ongoing concerns and to support its efforts towards improving the protection and enforcement of IPR as part of the Vision 2030 plan.

TURKEY

2019 Recommendation: Watch List

Though rights-holders noted some progress on long-standing concerns in Turkey during last year's process, IACC members continued to report significant challenges with regard to enforcement, both at and within the country's borders. As a result, the IACC recommended Turkey's retention on the Watch List in our 2019 submission to USTR.

2020 Recommendation: Priority Watch List

2020 Rights-holder Input:

In recent years, IACC members have reported consistent improvements among border and internal market agencies for IP enforcement; rights-holders singled out the police in the country's larger cities such as Istanbul, Ankara, and Izmir for their growing expertise and enthusiasm in carrying out raids and investigations. Unfortunately, respondents also continue to highlight a variety of obstacles to enforcement that cannot be overcome by that enthusiasm.

Legal Regime

The Turkish government adopted a number of changes to the country's laws related to IPR, which took effect in 2017. Rights-holders have noted some key issues though which are worthy of further attention. Article 30 of the Industrial Property Code, e.g., lacks an explicit prohibition against transshipment of counterfeit goods, and the lack of clarity has reportedly led to some instances in which action against known shipments of counterfeits were not pursued. This could be easily remedied by amending Article 30, or with a formal legal ruling of its applicability to goods in transit. Given Turkey's status as a transit point for goods entering Europe, such action should be a priority.

Article 163 of the IP Code also introduced a "fast track" process for destruction of seized counterfeit goods, which could substantially reduce the costs associated with storing the same while the parties await trial. Unfortunately, we've received numerous reports indicating courts' reluctance to make use of those provisions; unnecessarily adding to the expenses involved in litigation. We would welcome clear guidance to the courts on exercising its authority under Article 163.

IACC members have also reported challenges related to the implementation of simplified procedures for the seizure and destruction of counterfeit goods by Customs. As adopted, where Customs has identified a counterfeit shipment, it has the authority to forfeit and destroy the goods under an expedited process – but only with the agreement of the relevant parties. In many cases, the shipper / exporter cannot be reached (or fails to

respond to inquiries from Customs, for obvious reasons), foreclosing the use of the simplified procedure. We would encourage the amendment of the procedure to provide for deemed consent based on a failure to respond to notice from Customs. Such an amendment could result in significantly greater efficiency, particularly with regard to small consignments.

Enforcement

As noted previously, IACC members' comments with regard to Turkey's enforcement bodies were largely positive. While we did receive some reports of apparent protectionism in smaller cities, police in major metropolitan areas received numerous compliments, as did Customs personnel and the Anti-Smuggling Police. Several members reported major seizures throughout 2019, with some totaling hundreds of thousands of units of product. Police are still constrained by limitations on their authority to proactively investigate offenses, but they've received consistent plaudits, nonetheless.

Rights-holders were less effusive in their comments regarding the judiciary's role in enforcement however, with many viewing the courts as the single greatest obstacle to effective IP enforcement. As discussed in prior years' submissions, Turkey experienced significant turnover following a period of political instability, after which many experienced judges and prosecutors were removed from their positions or reassigned. Since that time, we've received increasing numbers of reports noting difficulties in obtaining criminal raid warrants – such complaints were more pronounced over the past year. The absence of any substantive changes to the law which might explain these issues has led to speculation regarding the cause. Some point to a lack of experience with IP matters and necessary training, while others have voiced concerns over possible corruption. Whatever the cause though, the delays in obtaining warrants and the refusals to grant warrants appear to be increasing. Even where rights-holders have filed requests in connection with notarized test purchases and expert testimony confirming that the products are counterfeit, courts have often refused to grant a search warrant. Urgent attention is necessary to address this problem; and it is largely due to the concerns expressed by IACC members over this issue that we recommend Turkey's elevation to the Priority Watch List this year.

Notorious Markets

In our most recent Notorious Markets filing, the IACC highlighted the Tahtakale District of Istanbul as a priority concern. Previous submissions have also identified the Grand Bazaar and the surrounding areas as a hotspot for retail sales of counterfeits across multiple product sectors.

UKRAINE

2019 Recommendation: Priority Watch List

The IACC recommended Ukraine's inclusion on the Priority Watch List last year in response to rights-holders' reports of continued, and growing, frustrations with the country's IP enforcement regime. The trafficking of counterfeits was described as widespread in the country, a fact attributed to low levels of engagement and apparent disinterest among law enforcement, as well as to a variety of procedural impediments that prevent IP owners from effectively asserting their rights.

2020 Recommendation: Priority Watch List

2020 Rights-holder Input:

Legal Regime

IACC members have raised a variety of concerns in past years regarding the sufficiency of Ukraine's legal framework for protecting and enforcing IP rights. While rights-holders expressed some optimism with regard to the adoption of the Law of Ukraine No. 202-IX in October of last year, citing in particular its potential for improving procedures governing registration of rights with Customs, and facilitating engagement and assistance among the public and private sectors; a number of significant problems remain.

Rights-holders have asserted that Ukraine's Criminal Code falls short of minimum requirements established by the TRIPS Agreement and the UA-EU Association Agreement to provide sanctions including imprisonment for criminal IP violations, as well as confiscation and destruction of goods and materials that infringe intellectual property. Those remedies are not currently available under Articles 176, 177, 203-1, and 229 of the Criminal Code. As a result, the existing law is seen to lack necessary deterrence, and counterfeit products confiscated as a result of enforcement actions routinely end up back in the local market.

Respondents also point to the high thresholds for criminal liability as an obstacle to effective enforcement of IP rights, while also noting a disconnect in that the minimum fines provided under the Criminal Code are lower than the threshold for establishing a criminal offense in the first place. As such, the penalties imposed are unlikely to serve a preventative or punitive function.

IACC members further noted a lack of clarity and consistency with regard to the intended application of National Standard No. 4, related to the "Assessment of Proprietary Rights of Intellectual Property," in the calculation of damages.

Enforcement

Rights-holders' interactions with law enforcement in Ukraine have, historically, been described in roundly negative terms. And while we were pleased to hear more positive feedback from members during this year's process, including compliments about a perceived increase in engagement and willingness on the part of enforcement bodies to investigate IP matters; enforcement in Ukraine remains extremely challenging. This is no doubt, partly due to the obstacles presented by the above-noted deficiencies within the country's legal regime; however, rights-holders also expressed a consensus view of the need for better training for personnel tasked with enforcement both at the border and within the domestic market.

The recently adopted Customs legislation has yet to bring about substantial improvements in border enforcement, and IACC members generally report that they're rarely notified of any seizures involving their IPR. This remains a high priority given the widespread availability of all manner of counterfeits in the local market, most of which are thought to be sourced abroad, rather than manufactured in-country. The statutory problems cited above are also seen to discourage enforcement, given the lack of criminal prosecutions and nominal penalties imposed. These in turn diminish opportunities for the judiciary to gain valuable expertise in handling IP-related cases.

Online piracy and counterfeit sales – highlighted in past years' filings - likewise, remain a priority concern, with rights-holders echoing many of the same problems detailed in our comments regarding Russia.

Notorious Markets

Odessa's Seventh Kilometer Market was recommended for the Notorious Markets List, at the behest of IACC members in our most recent submission to USTR.

In light of all of the above, we recommend Ukraine's placement on the Priority Watch List in 2020.

AMERICAS REGION

ARGENTINA

2019 Recommendation: Priority Watch List

While noting an apparent uptick in enforcement during 2018, IACC members continued to report significant concerns in Argentina with regard to customs enforcement, insufficient resourcing, non-deterrent penalties, and online trafficking of counterfeit goods. As a result, the IACC recommended Argentina's placement on the Priority Watch List in last year's filing with USTR.

2020 Recommendation: Priority Watch List

2020 Rights-holder Input:

Though some IACC members had expressed some optimism for significant improvement in our 2019 comments, we were greatly troubled by the comments received during this year's process. Respondents have continued to describe a broad range of concerns in Argentina, including manufacturing and finishing of counterfeits, ineffective border controls, widespread retail sales in both the online and brick and mortar context, insufficient levels of enforcement, nondeterrent penalties, and the need for greater transparency. The variety of problems described by rights-holders creates severe difficulties for the protection and enforcement of IP rights.

Though IACC members offered some praise for the efforts of the federal police and Gendarmerie last year, there has been an apparent decrease in priority for enforcement, following last October's elections. One respondent cited a report from the Argentinian Chamber of Commerce noting a 114% increase in the number vendors offering illegal products for sale during a recent market survey. Such a drastic increase is obviously cause for considerable dismay among rights-holders.

Rights-holders' concerns about Argentinian Customs – described by one rights-holder last year as a “reluctant partner” – remain largely unchanged. Brands continue to decry the agency's lack of transparency, noting relatively few seizures, and even fewer notifications. While public-private collaboration has served as a cornerstone of enforcement and become the norm in many jurisdictions, Customs continues to be unwilling to share information with rights-holders in many cases. This lack of communication is seen as greatly diminishing the effectiveness of border enforcement efforts, and precludes brands from providing assistance to their counterparts in the public sector.

Given rights-holders' continued reports regarding a broad range of obstacles to effective

IP enforcement, including those reports of significantly increased trafficking within the market, we support Argentina's retention on the Priority Watch List this year.

Notorious Markets

Our most recent submission to USTR recommended the inclusion of La Salada and Mercado Libre on the forthcoming Notorious Markets List.

BRAZIL

2019 Recommendation: Priority Watch List

The IACC recommended that Brazil be placed on the Priority Watch List in 2019 due to a perceived lack of progress in addressing a broad range of rights-holder concerns discussed in past years' Special 301 comments. Among the most significant issues raised in connection with that recommendation were legislative deficiencies, exceedingly low and non-deterrent penalties for counterfeiting offenses, and pervasive sales both online and in the brick and mortar context.

2020 Recommendation: Priority Watch List

2020 Rights-holder Input:

The IACC has recommended Brazil's inclusion at either the Watch List or Priority Watch List level, for more than a decade, citing a variety of long-standing rights-holder concerns. Despite some improvements noted by Coalition members during this year's Special 301 consultations, the overall environment in the country remains severe. As such, we again recommend Brazil's elevation to the Priority Watch List in 2020.

We were pleased to hear reports over the past year of the reinvigoration of Brazil's National Council Against Piracy and Intellectual Property Crimes (CNCP) – a public/private body created within the Ministry of Justice. 2019 saw significantly increased activity by the organization, a welcome change from some prior years' submissions. We strongly believe that the CNCP can play a vital role in helping to address the many problems faced by IP owners throughout the country, leveraging the expertise, authority, and resources of the government and the private sector. We're particularly pleased by reports of ongoing work focusing on best practices for e-commerce intermediaries. As we've seen in our work, the partnership of the financial sector and e-commerce platforms can lead to significant benefits for rights-holders, consumers, and the market more broadly.

We're likewise happy to have heard a number of compliments regarding efforts undertaken by the Mayor's Office in Sao Paulo, in coordination with Customs, Federal Revenue authorities, and the State Police to combat illegal sales in downtown Sao Paulo. The task force created by those government partners is said to have seized huge volumes of counterfeit goods, while also pushing to close (and keep closed) numerous well-known distribution centers. On the whole, IACC members have reported significant increases in the number of criminal raids and seizures over the past year.

In spite of these positive reports though, rights-holders note that counterfeits continue to be widely available in the Brazilian market, and there remain numerous obstacles to long-term, holistic improvements. In a number of past submissions, we've highlighted the need for legislative action to permit the imposition of significantly greater penalties for

counterfeiting offenses; that need persists. Indeed, this is not the first time we've seen the Brazilian government step up its enforcement actions in Sao Paulo, or elsewhere. And each time it has done so, the markets have eventually reopened – often operated by the same landlords, and often hosting the same merchants, selling the same illicit goods. Rights-holders, by and large, are convinced that the lack of truly deterrent – and lasting – penalties lies at the heart of this cycle.

Border enforcement also remains a significant concern. While some IACC members reported major seizures during the past year, including at least one totaling over half a million pieces; overall, Customs is seen as under-performing. Given the size and population of the country, the overall volume of trade, and the prevalence of counterfeits in the market; higher seizures would be expected. Rights-holders stress the need to allocate additional resources in the tri-border region to effectively combat smuggling in that well-known hot-spot.

For these reasons, as well as a general lack of progress on several other concerns raised in last year's submission, we renew our recommendation for Brazil's inclusion on the Priority Watch List in 2020.

Notorious Markets

Rights-holders have consistently supported the inclusion of Sao Paulo's Rua 25 de Marco outlets on USTR's annual Notorious Markets List.

CANADA

2019 Recommendation: Priority Watch List

Despite positive developments in 2018, including commitments made with respect to the U.S.-Mexico-Canada Agreement (USMCA), rights-holders reported little, if any, improvement with regard to IP enforcement in Canada in the lead up to last year's Special 301 submission. The lack of seizures by Canada Border Services Agency, and the open sales of counterfeit goods that continued in well-known retail outlets, were cited in support of the IACC's recommendation that Canada be retained on the Priority Watch List last year.

2020 Recommendation: Priority Watch List

2020 Rights-holder Input:

Canada was moved to the Watch List last year, presumably in recognition of commitments made by its government in relation to the new USMCA. Rights-holders though have unfortunately reported little, if any, progress on the numerous challenges they face in the Canadian market, as detailed in past IACC submissions. Retail sales of counterfeit goods remain widespread, border enforcement is viewed as severely lacking, and rights-holders continue to report minimal assistance from Canadian enforcement personnel or the courts. Accordingly, we would support Canada's return to the Priority Watch List in 2020.

Canadian officials expressed apparent surprise at the placement of the Toronto area's Pacific Mall on USTR's Notorious Markets List in 2018. That response underscored a clear disconnect in the view of many rights-holders who have expressed their frustration for many years at the lack of enforcement, relatively few prosecutions, minimal seizures by Customs, and the general lack of priority that the Canadian government has appeared to place on IP protection and enforcement. Each of those factors has played a role in permitting the growth in counterfeit sales across Canada. The publication of the Notorious Markets Report did lead to a temporary increase in enforcement activity, and while we noted improvements at the Pacific Mall in our most recent Notorious Markets filing, countless other outlets continue to operate throughout the country with seeming impunity. We've seen little urgency on the part of Canadian authorities to address that activity.

Border enforcement remains a major concern among rights-holders, as seizures remain exceedingly low. Rights-holders were hopeful that, in the wake of legislation enacted several years ago granting ex officio authority to the Canada Border Services Agency, seizures would greatly increase. Thus far, those increases have failed to materialize. We've received some reports indicating that CBSA has made fewer than 150 detentions based on IP violations during the past year; and one major brand further noted that in the five years since the Combatting Counterfeit Products Act became law, they've averaged fewer than 10 product seizures per year in Canada. CBSA is widely viewed as under-

resourced to effectively combat the flow of counterfeit goods into the country. And as discussed in last year's submission, the agency's lack of authority to make an administrative determination that a shipment of goods is counterfeit further diminishes the efficiency of the enforcement process, and significantly increases the costs of enforcement for rights-holders, including with respect to the storage and destruction of detained goods. We've also received reports that efforts are underway to develop a strategy to enable action against counterfeit and pirated goods in-transit through Canada – a long-standing concern for IP owners. For such a strategy to be effective, the Canadian government must provide Customs officials with additional resources, improved authority, and more efficient procedures.

Given the lack of priority for enforcement, the burden of protecting IPR often falls entirely on the rights-holders themselves. The lack of statutory or treble damages for civil matters though, coupled with the cost of litigation, effectively limits brands' abilities to enforce their rights.

In light of these ongoing and severe impediments to IP enforcement in Canada, we recommend Canada's return to the Priority Watch List in 2020.

Notorious Markets

The IACC's 2019 submission recommended USTR's addition of Quebec's St. Eustache Flea Market to the forthcoming Notorious Markets List. We made no formal recommendation with regard to the retention or removal of the Pacific Mall from the list, following some rights-holders' reports of improvements at that venue.

CHILE

2019 Recommendation: Priority Watch List

The IACC supported Chile's retention on the Priority Watch List in 2019, citing rights-holders' reports of increased online trafficking, non-deterrent penalties, and long-standing concerns regarding the country's border enforcement measures.

2020 Recommendation: Priority Watch List

2020 Rights-holder Input:

Customs enforcement remained a top priority for IACC members over the past year. Rights-holders continue to report significant concerns related to the trafficking of counterfeits through Chilean ports en route to other South American markets; as reported in last year's comments, those concerns are more pronounced in the north of the country.

While we did receive some promising reports of the government's increased interest in dealing with illicit trafficking, the civil unrest which arose last October has drawn resources and attention elsewhere. As a result, enforcement is not viewed as a priority at present. Rights-holders complimented police and customs officials for improved efforts earlier in the year, while stressing a continued need for greater resourcing. As noted in past submissions, the penalties available for counterfeiting offenses are said to lack deterrence, contributing to widespread retail sales in brick and mortar markets and online. In that latter context, rights-holders have called upon e-commerce platforms operating in the region to take a more proactive approach to enforcement, and to adopt best practices for onboarding sellers and educating consumers. The government's facilitation of further discussions in this area would be welcomed.

We support Chile's retention on the Priority Watch List in 2020.

MEXICO

2019 Recommendation: Priority Watch List

The IACC recommended Mexico's placement on the Priority Watch List in last year's comments to USTR, in consideration of a variety of long-standing obstacles to effective enforcement. Past submissions have discussed an overly-formalistic approach to IP enforcement, resulting in unnecessarily protracted and expensive processes.

2020 Recommendation: Priority Watch List

2020 Rights-holder Input:

Mexico remained a high priority for respondents during this year's consultations, with rights-holders reporting little progress on a variety of long-standing concerns. Despite reports from some IACC members regarding an increased ability to recover damages following the implementation of the "Accusatory" Criminal system in 2016, a reported uptick in administrative enforcement activity by IMPI, and some optimism arising out of the Mexican commitments pursuant to the USMCA; the overwhelming majority of the feedback we've received this year focused on concerns that have been raised in numerous past submissions. The Mexican approach to IP enforcement continues to be seen as overly-formalistic and resource-intensive; enforcement bodies are viewed as lacking necessary resources and legal authority to effectively and efficiently carry out their duties; penalties lack sufficient deterrence; and corruption remains a concern. As a result, counterfeit sales in the domestic market are far too prevalent, and trafficking through the country to other markets is a regular occurrence.

As in countless past submissions, IACC members highlighted Customs enforcement as an urgent concern, with most comments focusing on two issues – Customs' (lack of) ex officio authority to act against counterfeit shipments, and the somewhat related issue of their authority to act against transshipments of illicit goods through Mexico. Customs officials are required in such cases to coordinate with and seek assistance from the Attorney General's Office (PGR) or the Ministry for Industrial Property (IMPI). A more efficient approach, and one that has been advocated for by rights-holders for years, would empower Customs officials to take action on their own authority. Rights-holders have reported numerous instances in which shipments that should rightfully have been seized were allowed to enter (or transit) due to poor coordination between the agencies.

IP owners also continue to decry Mexico's use of "expert" opinions in making determinations regarding suspected counterfeits' authenticity. As discussed in prior filings, the appointed experts often appear to lack any relevant expertise, and frequently provide no clear explanation regarding how they've reached their conclusions. Simply put, there is no party more well-qualified to authenticate a given product than the manufacturer itself; so, when a government "expert" reaches a different conclusion, many view the process with skepticism and suspect corruption may play a role.

And although some IACC members have reported increased penalties in cases involving counterfeits of their products, overall levels of enforcement have been seen to decrease. Rights-holders have pointed to the adoption of new criteria by the PGR for authorizing raids, as well as changes to procedures of that office's IP Specialized Unit as one factor involved. They also point to the federal government's austerity measures which have resulted in budget cuts for the relevant authorities.

We are aware of some legislative proposals under consideration in the Senate which may have a positive impact on enforcement, and rights-holders will be closely monitoring Mexico's implementation of its USMCA commitments. At present however, we would recommend Mexico's placement on the Priority Watch List until such time as concrete actions have been fully realized.

Notorious Markets

The IACC, and numerous others, have consistently recommended USTR's placement of El Tepito on the Notorious Markets List.

WATCH LIST RECOMMENDATIONS

ASIA-PACIFIC REGION

MALAYSIA

2019 Recommendation: Watch List

The IACC's Watch List recommendation for Malaysia during last year's process was driven primarily by reported concerns involving the country's border control regime and the need for greater follow-through on enforcement efforts.

2020 Recommendation: Watch List

2020 Rights-holder Input:

IACC members' concerns in Malaysia continue to be driven by the lack of effective border enforcement, a need for improved coordination of efforts among government agencies tasked with IP protection, and the failure of Malaysian prosecutors and courts to effectively resolve cases involving counterfeiting and piracy.

Scope and Scale of Counterfeiting

Rights-holders from a variety of product sectors continue to report the widespread availability of counterfeit goods in Malaysia's domestic market. Despite some positive comments highlighting market enforcement authorities' efforts in conducting raids, weak customs enforcement results in foreign manufactured counterfeits being readily accessible by consumers. We also wish to note that U.S. Customs' IPR-related seizures of goods originating from (or transiting) Malaysia more than doubled between FY2017 and FY2018. Malaysian imports accounted for over \$4.6 million in seizures, 9th overall among U.S. trading partners.⁷

Legislation

Malaysia's new Trademark Act of 2019 came into force in December of last year, adopting several changes to the country's existing regime for handling trademark violations, including expanded remedies in infringement suits. While it is too early to make any

⁷ FY 2018 IP Seizure Statistics, supra note 1.

judgment of the new law's effectiveness, IACC members will be closely monitoring its implementation and practical impact on the protection and enforcement of their IP rights.

Enforcement

The enforcement of intellectual property rights in Malaysia is widely viewed as being hampered by a lack of effective cooperation between Customs officials, the Ministry of Domestic Trade Cooperative and Consumerism, the Public Prosecutors, and the courts. As noted in previous submissions, Malaysian Customs is seen to lack necessary authority, resources, and expertise in enforcing IP rights, yet even when confronted with suspicious consignments, they often reportedly fail to seek assistance from the MDTCC. As a result, rights-holders continue to describe border seizures as a rarity; and counterfeit goods flow into the local market or on to third countries largely unabated. Border enforcement is further impeded by the lack of an effective trademark recordation system to aid customs officials or to facilitate assistance from relevant brands.

And while raids within the market continue to be executed on a routine basis, the seizures that take place are rarely concluded with a successful prosecution. Rights-holders have cited examples of cases being summarily thrown out of court without the offender even being required to present a defense. Prosecutors are in need of substantially greater training, and should coordinate more closely with enforcement personnel to ensure that sufficient evidence is collected and properly documented to vigorously pursue IP crimes. Rights-holders further noted that even when carried out to their conclusion, the penalties imposed against counterfeiters often amount to little more than the seizure of counterfeit inventory and nominal fines.

Enforcement actions also continue to suffer from unnecessary delays; certain Enforcement Division offices are reported to impose a one-week notice period prior to a raid. Delays in pursuing actions also contribute to tip-offs to potential targets which thwart the effectiveness of efforts.

We are aware that the MDTCC has developed a new "standard operating procedure" for the handling of IP complaints in late 2019, and rights-holders are hopeful that these will lead to more consistent enforcement operations and outcomes.

Some IACC members have commented positively on the agency's "Basket of Brands" program, which has led to a more proactive approach by enforcement authorities. They note however that their participation typically requires that a representative conduct a physical examination and authentication of the seized goods. In many cases, the seizures involve very small quantities; the costs associated with participation are seen by some as exceeding the benefits received.

Despite some positive feedback from rights-holders, and the legislative actions taken over the past year, a greater priority on IP protection and enforcement is essential to tackling many of the long-standing concerns highlighted by IACC members this year, and in past

submissions. We welcome the opportunity for further engagement, but we continue to recommend Malaysia's placement on the Watch List in 2020.

PHILIPPINES

2019 Recommendation: Watch List

While IACC members reported positive interactions with the National Bureau of Investigation and the Intellectual Property Office of the Philippines, they raised serious concerns regarding the continued operation of well-known and notorious markets, a lack of effective assistance from (and in some instances, corruption within) police and prosecutors' offices, as well as long-standing problems related to border enforcement.

2020 Recommendation: Watch List

2020 Rights-holder Input:

IACC members have continued to report numerous challenges with regard to the protection and enforcement of their rights in the Philippines, since the country's removal from the Special 301 Watch List in 2014. As highlighted in past submissions, there is a need for holistic improvement across the entire enforcement regime. Regrettably, we've continued to hear many of the same reports from rights-holders during this year's process as were registered in years past.

For a number of years, IACC members have consistently noted concerns with regard to the Philippines' border enforcement regime. While the country's geography contributes to the difficulty in combatting illicit trade, Customs is said to have adopted policies that diminish its potential effectiveness. To wit, respondents commented that pro-active enforcement by Customs is largely nonexistent; officials are reportedly only willing to act upon the receipt of specific intelligence regarding an incoming shipment. As a practical matter, such information is often unavailable. We would welcome a more pro-active approach that leverages information gleaned from past interdictions to target shipments arriving from, or en route to, known violators, or which involve other "red flag" indicia of illegality. Rights-holders are willing and able to provide assistance where necessary, but at present the burden for enforcement falls far too heavily on the private sector. Some respondents also continue to complain that where seizures have been effected, there is a lack of transparency and consistency in how those goods are treated. Proper cataloging and verified destruction of the seized goods is essential to ensuring that illicit products are kept out of the market.

Enforcement within the Filipino market is likewise described as haphazard, with little follow-up after raids have been conducted. Members reiterated concerns raised in past years related to corruption within the police force, citing tip-offs of upcoming raids as a significant hindrance to meaningfully exercising their rights.

Given the above-discussed lack of follow-through on raids and border seizures, it should come as no surprise that respondents also decried an overall lack of prosecutions. As a result, rights-holders' only recourse may be to commence private criminal proceedings,

though that process is viewed as unnecessarily expensive, time-consuming, and largely inefficient. In past submissions, we've highlighted cases that stretched on for years without resolution, or which ultimately led to only modest, nondeterrent penalties being imposed by the courts.

Overall, IACC members reported no substantive improvement in 2019, and as such, we continue to recommend the Philippines' return to the Watch List this year.

Notorious Markets

The IACC requested that USTR return Manila's Greenhills Shopping Center to the Notorious Markets List in 2019.

SINGAPORE

2019 Recommendation: Watch List

The IACC recommended Singapore's inclusion on the Special 301 Watch List last year, citing rights-holders' continuing concerns with the country's border enforcement regime – described as both overly burdensome and as a significant impediment to any practical enforcement. For several years, we've pointed to Singapore's status as a major hub for transshipment.

2020 Recommendation: Watch List

2020 Rights-holder Input:

As noted in prior submissions, the primary concerns raised by rights-holders are tied to the country's customs enforcement regime. Both in terms of the expenses involved and the procedural constraints imposed, border enforcement in Singapore is widely viewed as a practical impossibility by many IACC members. With regard to the issue of the financial burden imposed on trademark owners, the concern is even more pronounced in the case of small- and medium-sized enterprises who may lack the resources available to larger multinationals. Singapore continues to play a role as a significant transshipment hub for the trafficking of counterfeits both within the region and further afield.

In last year's filing, we highlighted the stringent timelines for taking action – shipments may be detained for no more than two days in the absence of a court order. Obtaining such a detention further requires rights-holders to post a bond of at least S\$20,000 as security for the shipment. If the relevant party objects to the detention of the goods, the matter must be referred to the courts, given Customs' lack of authority to make a final administrative determination of a violation. As a result, the cost of seeking enforcement is exceedingly, and unnecessarily, high.

IACC members likewise continue to report the need for better coordination between Singapore's Customs authorities and the Police's IPR Branch. The latter is said to rarely pursue investigations in response to Customs' actions, particularly in cases involving trafficking to and through Singapore's Free Trade Zones.

Despite rights-holders' efforts to raise these and other concerns with the government in recent years, including during public consultations in late 2014, we've seen little in the way of substantive progress. Accordingly, we recommend Singapore's inclusion on the Watch List this year.

Notorious Markets

Based on member feedback, the IACC recommended USTR's inclusion of the Singapore-based Carousell e-commerce platform in our most recent Notorious Markets filing.

THAILAND

2019 Recommendation: Watch List

The IACC recommended Thailand's retention at the Watch List level last year, citing a need for both the application of greater resources overall with respect to enforcement, and for a more strategic application of those resources. To that latter point, IACC members noted although the country had recently adopted legislation relating to landlord liability, there was an apparent reluctance on the part of the government to leverage that authority. As a result, widespread sales were said to continue unabated even in well-known outlets in Bangkok.

2020 Recommendation: Watch List

2020 Rights-holder Input:

Rights-Acquisition

Trademark registration is a threshold consideration for trademark enforcement; unfortunately, IACC members have reported significant delays in the Thai Trademark Office's examination of applications and the issuance of registrations. One member cited "dozens of applications" that have remained pending in excess of five years. To date, they've been provided no reasonable explanation for the protracted examination process. In the absence of a registration, rights-holders are effectively precluded from enforcing their legal rights. This issue is particularly concerning for brands seeking to enter the market for the first time, or seeking to expand their product lines and offerings into new sectors. Urgent attention is necessary to ensure that applications are examined in a timely manner, and registrations issued without unwarranted delays.

Legal / Enforcement Regime

IACC members have consistently commented in recent years that their primary concerns in Thailand fall not with the country's legal regime – which is typically described as one of the strongest for IP protection in the region – but with the implementation and enforcement of those laws. As noted in last year's submission, the government does not appear to prioritize enforcement; a fact borne out by the persistence and pervasiveness of counterfeit sales in the domestic market. The sale of counterfeits in well-known markets remained a concern in 2019, and respondents indicate that where the Economic Crimes Suppression Division (the de facto enforcement authority for IP-related crimes) has taken action, the focus has fallen primarily upon low-level offenders. As discussed in last year's comments, it is essential that a more strategic approach be taken. To that end, we'd encourage the Thai authorities to pursue higher-level targets, making use of landlord liability legislation that was enacted in recent years.

Given the lack of substantive progress reported by IACC members since last year's filing,

we recommend Thailand's retention on the Special 301 Watch List in 2020.

VIETNAM

2019 Recommendation: Watch List

Despite some notable progress by Vietnam in a number of areas – perhaps most significantly in terms of the country’s border enforcement regime and amendments to the Penal Code – IACC members continued to report a number of difficulties during last year’s process. In light of increasing concerns related to the online trafficking of counterfeit and pirated goods, a perceived need for greater training among prosecutors tasked with handling IP cases, and the widespread availability of counterfeit goods in the domestic market; the IACC recommended Vietnam’s retention on the Special 301 Watch List last year.

2020 Recommendation: Watch List

2020 Rights-holder Input:

Scope and Scale of Counterfeiting

IACC members have reported a wide range of concerns in Vietnam, leading to consistent recommendations for the country’s placement on the Special 301 Watch List throughout the past decade. Many of these concerns – most notably retail sales in the local market, an overreliance on administrative enforcement, and challenges tied to customs enforcement – were raised again during this year’s consultations. We wish to draw special attention this year to the significant increase in IPR-related seizures by U.S. Customs and Border Protection originating from Vietnam. Over \$5 million worth of counterfeit goods were seized en route to U.S. consumers, more than double the Fiscal Year 2017; the seventh largest total among U.S. trading partners.⁸

Enforcement

We were pleased to receive positive reports from rights-holders regarding both Vietnam Customs and the Market Surveillance Agency in the north of the country, continuing a trend noted in prior submissions. Illicit imports from China have long served to supply the Vietnamese market with cheap counterfeit inventory, but increased seizures and raids have aided in reducing that volume. Further south, however, Respondents’ comments were less positive, also continuing a trend noted in past filings. Members continue to raise concerns regarding corruption that has led to planned raids being compromised in Ho Chi Minh City.

The perceived overreliance upon administrative enforcement has been a perennial concern in Vietnam. As discussed in our comments herein regarding China, such actions are largely viewed as providing minimal deterrence to offenders. This concern is brought

⁸ FY 2018 IP Seizure Statistics, *supra* note 1.

into focus by rights-holders' positive comments about the Vietnamese judiciary, which is generally viewed as strong in its handling of counterfeiting matters, and willing to impose significant penalties where appropriate. Better coordination among the Economic Police and prosecutors is seen as an essential component to increasing the volume of criminal prosecutions, and in turn, the overall deterrence of anti-counterfeiting efforts.

Rights-holders also report growing concerns related to the online trafficking of counterfeits, though they comment positively with regard to the Ministry of Science and Technology's responsiveness to complaints about rogue sites.

Positive Feedback

As a final matter, we wish to highlight rights-holders' appreciation for the Vietnamese government's greater emphasis on IP protection, as evidenced by the increased enforcement activity in the north of the country, more consistent engagement with rights-holders for training, and responsiveness to private sector concerns. The IACC had the pleasure of participating in a program jointly sponsored by the U.S. Patent & Trademark Office and the Vietnamese government last year in Ho Chi Minh City, with delegates from around the region. Our Vietnamese hosts expressed great interest and commitment to improving their IP regime, and collaborating with the U.S., other governments in the region, and private sector stakeholders. Though we recommend Vietnam's retention on the Watch List in 2020, we are encouraged by the progress that has been made in recent years, and are optimistic that further improvements will be seen moving forward.

EUROPE – MIDDLE EAST – AFRICA REGION

UNITED ARAB EMIRATES

2019 Recommendation: Watch List

IACC members have identified a range of deficiencies in the Emirates' IP regime – most notably with regard to customs enforcement (including against goods in-transit and within the UAE's free trade zones) – for several years. In 2019, we again recommended the UAE's inclusion on the Special 301 Watch List citing those concerns, along with a need to impose significantly greater penalties to ensure deterrence and combat recidivism.

2020 Recommendation: Watch List

2020 Rights-holder Input:

While we were hopeful that USTR's placement on the Special 301 Watch List last year, and the Emirates' preparations for EXPO 2020 might finally lead to action on many of the long-standing problems faced by IP owners in the country; rights-holders have consistently reported a lack of any significant progress during the past year. Indeed, the concerns we heard from members during this year's process remained almost completely unchanged from those highlighted in our 2019 submission.

Enforcement remains the top priority, most notably with regard to the UAE's customs regime. The Emirates have established themselves as a global trading hub, but regrettably, enforcement against the massive volumes of counterfeit goods transiting the country and its numerous free zones remains a low priority. Despite competent and professional assistance from the Police and the Department of Economic Development, the UAE is viewed as one of the most significant global hubs for the trafficking of counterfeit goods. Rights-holders report comparatively few seizures by Customs in relation to the overall volume of trade, coupled with an unwillingness to take effective action against illicit shipments where they have been identified. The policy of "re-exportation" has long been a point of contention by impacted brands, particularly in light of the lack of transparency with which that policy has been implemented. IACC members continue to cite examples in which detained goods have been re-exported without notification or any meaningful opportunity for intervention. Customs' reluctance to share relevant information about such shipments further serves to impede IP owners' efforts to trace the goods back to their point of origin.

As noted above, and in past filings, enforcement within the UAE's free trade zones remains exceedingly difficult. While rights-holders had responded favorably to the signing of a Memorandum of Understanding between the Sharjah DED and the Police

aimed at addressing some of these concerns, we've been informed that such cooperation has effectively ceased.

As detailed in prior years' submissions, effective enforcement is also hindered by the UAE's failure to impose deterrent penalties for counterfeiting offenses. Though a 2016 enactment opened the door to significantly increased fines (of up to approximately US\$300,000), that authority has not been exercised. Penalties are typically limited to a seizure of the violative goods, along with fines said to fall in the range of US\$4,000 - \$5,000, even in large cases involving thousands of seized products. Absent more substantial penalties, counterfeiters will have little incentive to abandon their illegal activities.

Comments regarding the Emirates' court system were similarly unchanged, with proceedings said to be unnecessarily protracted, resulting in legal costs that were likely to exceed any award of damages.

Notorious Markets

Our most recent Notorious Markets filing identified Dubai's Dragon Mart and Ajman Mall, as well as the Deira District for consideration by USTR.

AMERICAS REGION

COLOMBIA

2019 Recommendation: Priority Watch List

In 2019, we recommended Colombia's placement on the Priority Watch List. That recommendation was tied to growing concerns in the online market, along with previously highlighted issues in the brick and mortar retail context – most notably in well-known markets such as Unilago and San Andresitos. Rights-holders likewise noted the government's failure to prioritize IP enforcement, as evidenced by the rarity of criminal prosecutions.

2020 Recommendation: Watch List

2020 Rights-holder Input:

IACC members' comments relating to Colombia remain largely unchanged since last year's submissions. Though we have received positive feedback from one brand regarding a joint action by the Attorney General's Office and the federal police (with the assistance of U.S. law enforcement), which led to a large-scale seizure of counterfeit products; on the whole enforcement remains uneven. The lack of effective enforcement, coupled with apparent protectionism, has allowed several notorious markets such as Unilago, San Andresito, and San Jose, to flourish. Retail sales of counterfeit goods continue openly and generally unabated, and there appears to be little interest on the part of the government in addressing those hot spots. Rights-holders described difficulty in obtaining buy-in from law enforcement to pursue criminal investigations, even where the rights-holder was able to provide significant evidence of illegal activity.

Border enforcement likewise remains a priority; most respondents reported relatively low customs seizures, but one need only look around the above-mentioned markets for evidence of the volume of counterfeit imports in Colombia.

We support Colombia's retention on the Watch List in 2020.

ECUADOR

2019 Recommendation: Watch List

IACC members reported no significant changes in their experiences in Ecuador during last year's Special 301 process. Previously identified concerns with regard to the country's legislative deficiencies and customs enforcement regime persisted; as a result, we recommended Ecuador's retention on the Watch List.

2020 Recommendation: Watch List

2020 Rights-holder Input:

IACC members again wish to draw attention to Ecuador's 2016 legislative enactment which continues to effectively preclude customs seizures. As noted in prior years' submissions, trademark owners are required to provide Customs with precise shipping details regarding counterfeit shipments in order to obtain border enforcement assistance. Because doing so is often a practical impossibility, rights-holders have seen border seizures diminish greatly.

Customs should be empowered to effect seizures ex officio, and should undertake proactive targeting to identify, detain, and seize counterfeits in cooperation with rights-holders. The current system shifts the burden of enforcement entirely upon IP owners.

We support Ecuador's retention on the Special 301 Watch List this year.

PARAGUAY

2019 Recommendation: Watch List

Paraguay has made consistent appearances in the IACC's annual Special 301 submissions over the past two decades. In last year's comments, we noted a variety of challenges faced by rights-holders including long-standing border enforcement deficiencies, a burgeoning online trade, and troubling reports of corruption.

2020 Recommendation: Watch List

2020 Rights-holder Input:

IACC members again support Paraguay's placement on the Special 301 Watch List in 2020, noting a range of concerns including the country's border control regime and a lack of deterrent penalties.

Customs enforcement in Paraguay has been described as "both cumbersome and costly" by rights-holders. Under the process that's currently in place, upon notification by Customs of a shipment suspected of being counterfeit, a rights-holder's representative (typically, local counsel) is required to travel to the port in question to conduct an examination of the products and determine their authenticity. If the goods are determined to be counterfeit, further action is required to coordinate with a prosecutor to file a criminal complaint which is necessary to effectuate a seizure. All of this must be accomplished within tight deadlines, or else the goods must be released. A simplified administrative process for the seizure and forfeiture of counterfeit shipments would help to alleviate some of the burdens imposed by the present system.

Rights-holders also continue to report relatively few seizures in Paraguay, despite the large volume of trade passing through the country, including significant numbers of shipments in-transit to other countries in South America. One major brand reported fewer than ten seizures in the past year, though large volumes of counterfeits have been found on offer in the domestic market by that same rights-holder.

We are pleased to report that some IACC have seen a significant increase in the numbers criminal raids carried out, resulting in a numerous large seizures. Unfortunately, the impact of such actions is often limited to those seizures. Counterfeiters rarely face significant risk of prosecution except in the case of repeat offenders, and we continue to hear reports of offenders who have been granted pre-trial release, who simply fail to show up for their day in court. Those who do are said to receive fairly lenient sentences, typically small fines, that do little to discourage recidivism.

Given the persistence of these concerns, and others raised by rights-holders in previous years, we recommend Paraguay's retention on the Watch List in 2020.

Notorious Markets

Ciudad del Este remains a hot-spot for illicit trafficking of all kinds, including counterfeit goods. The IACC's most recent filing with USTR recommended its inclusion on the Notorious Markets List.

OTHER OBSERVATIONS

ASIA-PACIFIC REGION

HONG KONG

2019 Recommendation: Comments Provided Without Recommendation for Placement

Despite largely positive views held by rights-holders with regard to Hong Kong's IP enforcement authorities; IACC members have sought to highlight the enormous volume of counterfeit goods flowing through Hong Kong en route to the United States. The transit through Hong Kong of counterfeit goods produced in mainland China remains a perennial concern.

2020 Recommendation: Comments Provided Without Recommendation for Placement

2020 Rights-holder Input:

During Fiscal Year 2018, U.S. Customs and Border Protection seized nearly 14,000 shipments, valued at over \$440 million, arriving at U.S. ports from Hong Kong.⁹ And while rights-holders have, over the years, praised Hong Kong Customs and Excise (HKC&E) for their support, expertise, and professionalism; there is no discounting the role that Hong Kong plays with regard to the trafficking of counterfeit goods into the United States and to other global markets.

It is widely recognized that these counterfeit imports arriving from Hong Kong are, in fact, goods that were manufactured in mainland China, and which simply transit through Hong Kong. Rights-holders urge the authorities in Hong Kong to take a more active role in enforcement; it must not simply act as a passive conduit for those shipments. To that end, we would encourage the adoption of explicit requirements for the collection, validation, and maintenance of data by freight forwarders, customs brokers, and other shipping intermediaries, similar to those "Know Your Customer" requirements that have been adopted in the United States. Properly implemented, such requirements could provide invaluable intelligence to be used by law enforcement to pursue criminal and administrative actions, by HKC&E and their counterparts abroad for targeting, and by

⁹ FY 2018 IP Seizure Statistics, supra note 1.

rights-holders themselves to pursue civil remedies. We strongly believe that shipping and logistics providers can and should play a significant role in safeguarding legitimate trade.

As a more general matter, we would welcome the more robust disclosure of information, e.g., information regarding exporters and importers on airway bills and shipping documents, to aid in enforcement and targeting. Though such data are often known to the authorities, it's rarely if ever disclosed to relevant rights-holders, significantly hindering follow-up investigations and efforts to identify larger networks of counterfeiters.

A final concern raised by IACC members during this year's process involves a rather Byzantine requirement imposed upon rights-holders in order to effect a seizure. As reported by rights-holders; rather than permitting the examination of a representative sample of seized goods, HKC&E mandates IP owners' verification that each item in a seized shipment is, in fact, counterfeit. Such a requirement needlessly expends rights-holders' limited brand protection resources. In the case of large-scale seizures, it can delay the ultimate resolution of the enforcement action by weeks or even months; those delays in turn result in excessive storage costs. The examination of a representative sample of goods is a common practice all over the world, and we're hopeful that HKC&E will work with the IP rights owners to develop a reasonable alternative to their current practice.

EUROPE – MIDDLE EAST – AFRICA REGION

SOUTH AFRICA

2019 Recommendation: Comments Provided Without Recommendation for Placement

Though we made no formal recommendation for South Africa’s placement last year, the IACC’s comments noted a range of concerns including large-scale distribution operations in major cities, the need for improved border enforcement, and the application of sufficient resources by the government needed to enable such improvement.

2020 Recommendation: Comments Provided Without Recommendation for Placement

2020 Rights-holder Input:

IACC members continue to monitor efforts in South Africa to combat widespread sales of counterfeit goods. As discussed in prior submissions, retail-level trafficking remains a concern for rights-holders across a broad range of product sectors, including in well-known markets and so-called “vertical flea markets” established in high-rise buildings. Despite these issues, we’re pleased to report that rights-holders have generally commented positively with regard to the efforts of the South Africa Police Services (SAPS) and Customs officials. Members highlighted the SAPS’ HAWKS unit and Customs officials at O.R. Tambo International Airport for praise, noting that the latter was responsible for approximately 90% of their detentions of counterfeits in South Africa.

The overall environment for IP in South Africa remains challenging, however. One clear example of the difficulties experienced was on full display last August, as enforcement personnel and rights-holder representatives came under attack while attempting to execute a large-scale raid in Johannesburg. Merchants, and others connected with the market targeted for enforcement, assailed law enforcement and investigative personnel with rocks, bottles, and petrol bombs, resulting in significant injuries before they were forced to withdraw from the area. Disappointingly, the organized response appears to have been enabled by leaks from within the police department to the enforcement targets. And while officers were able to later return and successfully execute a raid of the market that resulted in significant seizures, several police officers were subsequently arrested for attempted to resell some of the seized inventory back to merchants. This sort of corruption not only diminishes the effectiveness of enforcement efforts, but also undermines the trust of the community and of the private sector.

Rights-holders also cited a lack of consistency among South African courts as a hindrance to their enforcement efforts. Magistrate courts tasked with determining the sufficiency of cause to authorize a warrant are said to impose disparate standards across different jurisdictions. Though IPR owners have sought to work with police and various

magistrates to develop template warrants and applications to satisfy local requirements, a uniform approach would be preferable.

The need for more deterrent sentencing was likewise a common concern expressed by rights-holders. Judges are reportedly reluctant to impose custodial sentences, and frequently impose nominal fines in the range of R2000 to R5000 (approximately US\$140 – US\$360), for most IP-related offenses. In underscoring the deterrent impact of imprisonment however, one IACC member pointed to the immediate and drastic decrease in counterfeiting activity that they'd witnessed following a 4-year prison sentence imposed by the Manguzi Magistrates Court in response to two defendants' guilty pleas for dealing in counterfeit goods. While we certainly recognize that a custodial sentence may not be warranted in every case, we would encourage South African courts to exercise their authority to impose such sentences where appropriate, especially in light of the broader deterrent value of such.

The South African government has been more vocal regarding the need for greater efforts to protect IP rights throughout the past year, exemplified by the Minister of Police's "declaration of war against the sale of fake products" and last year's INTERPOL International IP Crime Conference, which was sponsored, in part, by the IACC. We welcome that commitment, but we further encourage the government to take additional steps to put those words into action. Enforcement agencies in South Africa have shown enthusiasm about protecting IP, but greater resources are necessary to enable them to carry out that mission. We look forward to further engagement in the coming year, and welcome their collaboration in addressing rights-holders' concerns.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Travis D. Johnson', with a stylized flourish at the end.

Travis D. Johnson
Vice President – Legislative Affairs, Sr. Counsel
The International AntiCounterfeiting Coalition