

**[Billing Code 3190-W0]**

**Office of the United States Trade Representative**

**2010 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment and Announcement of Public Hearing**

**Agency:** Office of the United States Trade Representative

**Action:** Request for written submissions from the public and announcement of public hearing.

**Summary:** Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. § 2242) requires the United States Trade Representative (USTR) to identify 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 provisions of Section 182 are commonly referred to as the “Special 301” provisions of the Trade Act.). The USTR is required to determine which, if any, of these countries should be identified as Priority Foreign Countries. Acts, policies, or practices that are the basis of a country’s identification as a Priority Foreign Country can be subject to the procedures set out in sections 301-305 of the Trade Act.

In addition, USTR has created a “Priority Watch List” and “Watch List” to assist the Administration in pursuing the goals of the Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on

intellectual property. Trading partners placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

USTR chairs an interagency team that reviews information from many sources, and that consults with and makes recommendations to the USTR on issues arising under Special 301. Written submissions from interested persons are a key source of information for the Special 301 review process. In 2010, USTR through the Special 301 Committee will conduct a public hearing as part of the review process.

USTR is hereby requesting written submissions from the public concerning foreign countries' acts, policies, or practices that are relevant to the decision on whether a particular trading partner should be identified as a priority foreign country under Section 182 of the Trade Act or placed on the Priority Watch List or Watch List. Interested parties, including foreign governments, who want to testify at the public hearing must submit a request to testify at the hearing and a short hearing statement. The deadlines for these procedures are set out below.

**DATES:**

The schedule for the 2010 Special 301 review is set forth below.

**Tuesday, February 16, 2010 (by 5:00 p.m.)** – For interested parties, except for foreign governments: Submit written comments, requests to testify at the Special 301 Public Hearing, and hearing statements.

**Tuesday, February 23, 2010 (by 5:00 p.m.)** – For foreign governments: Submit written comments, requests to testify at the Special 301 Public Hearing, and hearing statements.

**Wednesday, March 3, 2010, and additional days from March 4-8, 2010** as necessary – Special 301 Committee Public Hearing for interested parties, including representatives of foreign governments, will be held at the United States International Trade Commission, 500 E St. S.W., Washington, D.C. 20436.

**On or about April 30, 2010** -- In accordance with statutory requirements, USTR will publish the 2010 Special 301 Report on or about April 30, 2010.

**Address:** All written comments, requests to testify, and hearing statements should be sent electronically via <http://www.regulations.gov>, docket number USTR-2010-0003. Submissions should contain the term “2010 Special 301 Review” in the “Type comment & Upload file” field on [www.regulations.gov](http://www.regulations.gov).

**For further information contact:** Jennifer Choe Groves, Senior Director for Intellectual Property and Innovation and Chair of the Special 301 Committee, Office of the United States Trade Representative, at (202) 395-4510. Further information about Special 301 can be located at [www.ustr.gov](http://www.ustr.gov).

**Supplementary Information:**

**1. Background**

USTR requests that interested persons identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to

U.S. persons who rely on intellectual property protection. USTR requests that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention. Submissions may report positive or negative developments with respect to these sub-national entities.

Section 182 contains a special rule regarding actions of Canada affecting United States cultural industries. The USTR must identify any act, policy or practice of Canada that affects cultural industries, is adopted or expanded after December 17, 1992, and is actionable under Article 2106 of the North American Free Trade Agreement (NAFTA). USTR must make the above-referenced identifications within 30 days after publication of the National Trade Estimate (NTE) report, *i.e.*, approximately April 30, 2010.

## **2. Public Comments**

### **a. Written Comments**

The Special 301 Committee invites written submissions from the public concerning foreign countries' acts, policies, or practices that are relevant to the decision whether a particular trading partner should be identified under Section 182 of the Trade Act. As noted above, interested parties, except for foreign governments, must submit written comments by February 16, 2010 at 5:00 p.m. Interested foreign governments must submit written comments by February 23, 2010 at 5:00 p.m.

### **b. Requirements for Comments**

Written comments should include a description of the problems experienced by the submitter and the effect of the acts, policies, and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of

the acts, policies, and practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be in English. All comments should be sent electronically via <http://www.regulations.gov>, docket number USTR-2010-0003.

To submit comments to <http://www.regulations.gov>, find the docket by entering the number USTR-2010-0003 in the "Enter Keyword or ID" window at the <http://www.regulations.gov> home page and click "Search." The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a comment." (For further information on using the <http://www.regulations.gov> website, please consult the resources provided on the website by clicking on "How to Use This Site" on the left side of the home page).

The <http://www.regulations.gov> site provides the option of providing comments by filling in a "Type comment & Upload file" field, or by attaching a document. It is USTR's preference that comments be provided in an attached document. If a document is attached, please type "2010 Special 301 Review" in the "Type comment & Upload file" field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the "Comments" field.

### **3. Public Hearing**

#### **a. Notice of Public Hearing**

The Special 301 Committee will hold a public hearing at the United States International Trade Commission, 500 E St. S.W., Washington, D.C. 20436 for interested parties, including representatives of foreign governments, beginning on March 3 and continuing through March 4-8 (as necessary). The hearing will be open to the public, and a transcript of the hearing will be made available on [www.ustr.gov](http://www.ustr.gov).

#### **b. Submission of Requests to Testify at the Public Hearing and Hearing Statements**

All interested parties, except foreign governments, wishing to testify at the hearing must submit, by 5:00 p.m. on February 16, 2010, a “Notice of Intent to Testify” and “Hearing Statement” to <http://www.regulations.gov> (following the procedures set forth in “Requirements for Comments” above), the name of the witness, name of the organization (if applicable), address, telephone number, fax number, and e-mail address. Oral testimony before the Special 301 Committee will be limited to one five-minute presentation in English. A five-minute period will be allowed for questions from the Special 301 Committee. If those testifying wish to submit a longer “Hearing Statement” for the record, it must accompany the “Notice of Intent to Testify” to be submitted on February 16, 2010.

All interested foreign governments who wish to testify at the hearing must submit, by 5:00 p.m. on February 23, 2010, a “Notice of Intent to Testify” to <http://www.regulations.gov> (following the procedures set forth in “Requirements for Comments” above), the name of the witness, name of the organization (if applicable), address, telephone number, fax number, and e-mail address. Oral testimony before the Special 301 Committee will be limited to one five-

minute presentation in English. A five-minute period will be allowed for questions from the Special 301 Committee. If foreign governments testifying wish to submit a “Hearing Statement” for the record, it must be submitted by February 23, 2010.

#### **4. Business Confidential Information**

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such, the submission must be marked “BUSINESS CONFIDENTIAL” at the top and bottom of the cover page and each succeeding page, and the submission should indicate, via brackets, the specific information that is confidential. Additionally, “Business Confidential” should be included in the “Type comment & Upload file” field. Anyone submitting a comment containing business confidential information must also submit as a separate submission a non-confidential version of the confidential submission, indicating where confidential information has been redacted. The non-confidential summary will be placed in the docket and open to public inspection.

#### **5. Inspection of Comments, Notices, and Hearing Statements**

USTR will maintain a docket on the 2010 Special 301 Review, accessible to the public. The public file will include non-confidential comments, notices of intent to testify, and hearing statements received by USTR from the public, including foreign governments, with respect to the 2010 Special 301 Review. Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from

public inspection in accordance with 15 CFR 2006.15. Comments may be viewed on the <http://www.regulations.gov> website by entering docket number USTR-2010-0003 in the search field on the home page.

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Stanford K. McCoy

Assistant U.S. Trade Representative for Intellectual Property and Innovation