

Intellectual Property and U.S. Trade Policy:

Trade Law and Trade Policy Tools

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IPR AND TRADE POLICY: USTR'S ROLE

- ❑ Negotiates U.S. trade agreements with foreign partners
 - ❑ Represents the U.S. at the WTO
 - ❑ Coordinates development of U.S. trade policy Monitors and enforces partners' compliance with trade agreement obligations, including IPR
 - ❑ Conducts litigation of most U.S. trade disputes
 - ❑ Policy tools include trade law, trade agreements, preference programs, trade diplomacy
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Tools Under U.S. Trade Law

- “Special 301” – Section 182 of the 1974 Trade Act
 - USTR annually identifies “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 IP protection.”
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Tools Under U.S. Trade Law

- Special 301, cont'd:
 - Annual report/listing issued in late April
 - Degrees of concern:
 - Priority Foreign Country designation
 - Priority Watch List
 - Watch List
 - Section 306 Monitoring
 - 2009 report examined 77 countries; listed 46 countries
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Tools Under U.S. Trade Law

- Special 301 – cont'd.
 - Review based extensively on public comments
 - Input from U.S. Embassies, numerous USG agencies taken into account
 - “Out-of-cycle reviews” often pursued
 - Review process often offers opportunity to engage in problem-solving
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Trade Agreements - WTO

□ TRIPS Agreement

- Establishes minimum standards of protection for major categories of IPR, and for IPR enforcement
- WTO “TRIPS Council” oversees implementation of the Agreement
- Current discussion of IP/health issues, GI’s, patent/biodiversity issues, enforcement
- TRIPS provisions are subject to WTO dispute settlement rules

□ WTO Accession Negotiations

Trade Agreements - FTAs

- ❑ U.S. FTAs include comprehensive, state-of-the-art IPR provisions, including with respect to enforcement
 - ❑ IP chapters are subject to FTA dispute settlement provisions
 - ❑ IP provisions applicable on a most-favored nation basis
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Trade Agreements

- FTAs contain disciplines covering:
 - General Provisions (treaty obligations)
 - Trademarks/Geographical Indications
 - Copyrights and Related Rights
 - Patents
 - Regulated Products (data exclusivity)
 - Enforcement
 - Public health
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Anti-Counterfeiting Trade Agreement

- Initiative announced October 2007
 - Leadership agreement promoting:
 - High standards of legal provisions
 - Best practices in IP enforcement
 - Improved international coordination
 - U.S., Japan, EU, Mexico, Switzerland, Korea, Australia, Canada, others
 - Negotiations ongoing
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Trade Preference Programs

- ❑ Generalized System of Preferences
 - ❑ Regional programs (Africa, Andean region, Caribbean)
 - ❑ Eligibility for preferences is based, in part, on “adequate and effective” IP protection in beneficiary countries
 - ❑ Petitioning mechanism to request review of country eligibility
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Trade Diplomacy

- ❑ Trade and Investment Framework Agreements - TIFAs
 - ❑ Other consultation mechanisms (US-China JCCT, US-India Forum)
 - ❑ G8, OECD, APEC initiatives
 - ❑ State/Commerce global advocacy and information-gathering
 - ❑ Trade-related technical assistance
 - ❑ Public-private partnerships
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