

## **BACKGROUND ON SPECIAL 301**

The “Special 301” provisions of the Trade Act of 1974, as amended, require USTR to identify foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection. Special 301 was amended in the 1994 Uruguay Round Agreements Act to clarify that a country can be found to deny adequate and effective intellectual property protection even if it is in compliance with its obligations under the TRIPS Agreement. It was also amended to direct USTR to take into account a country's prior status under “Special 301,” the history of U.S. efforts to achieve stronger intellectual property protection, and the country’s response to such efforts.

Once the foreign countries are identified, the USTR is required to decide which, if any, should be designated a Priority Foreign Country, which is one that:

- (1) has the most onerous and egregious acts, policies, and practices which have the greatest adverse impact (actual or potential) on the relevant U.S. products; and
- (2) is not engaged in good faith negotiations or making significant progress in negotiations to address these problems.

If a trading partner is identified as a Priority Foreign Country, USTR must decide within 30 days whether to initiate an investigation of those acts, policies, and practices that were the basis for identifying the country as a Priority Foreign Country. A Special 301 investigation is similar to an investigation initiated in response to an industry Section 301 petition, in some circumstances.

In addition to identifying Priority Foreign Countries as required by statute, USTR also uses the Special 301 Report to identify "Priority Watch List" and "Watch List" countries or economies. Trading partners who fall under the Priority Watch List are those that do not provide an adequate level of IPR protection or enforcement, or market access for persons relying on intellectual property protection. Trading partners on the Watch List merit bilateral attention to address IPR problems. Certain other countries with serious IP-related problems are subject to another part of the statute, Section 306 monitoring, because of previous bilateral agreements reached with the United States to address specific problems raised in earlier reports.

The interagency Trade Policy Staff Committee that advises USTR on the implementation of Special 301 obtains information from the private sector, U.S. embassies, the United States' trading partners, and the National Trade Estimates report.