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INTELLECTUAL PROPERTY

U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain



G A O

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Highlights of [GAO-04-912](#), a report to congressional requesters

Why GAO Did This Study

Although the U.S. government provides broad protection for intellectual property, intellectual property protection in parts of the world is inadequate. As a result, U.S. goods are subject to piracy and counterfeiting in many countries. A number of U.S. agencies are engaged in efforts to improve protection of U.S. intellectual property abroad. This report describes U.S. agencies' efforts, the mechanisms used to coordinate these efforts, and the impact of these efforts and the challenges they face.

What GAO Recommends

GAO is not recommending executive action. However, the Congress may wish to review the National Intellectual Property Law Enforcement Coordination Council's authority, operating structure, membership, and mission.

www.gao.gov/cgi-bin/getrpt?GAO-04-912.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Loren Yager at (202) 512-4128 or yagerl@gao.gov.

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What GAO Found

U.S. agencies undertake policy initiatives, training and assistance activities, and law enforcement actions in an effort to improve protection of U.S. intellectual property abroad. Policy initiatives include assessing global intellectual property challenges and identifying countries with the most significant problems—an annual interagency process known as the “Special 301” review—and negotiating agreements that address intellectual property. In addition, many agencies engage in training and assistance activities, such as providing training for foreign officials. Finally, a small number of agencies carry out law enforcement actions, such as criminal investigations involving foreign parties and seizures of counterfeit merchandise.

Agencies use several mechanisms to coordinate their efforts, although the mechanisms' usefulness varies. Formal interagency meetings—part of the U.S. government's annual Special 301 review—allow agencies to discuss intellectual property policy concerns and are seen by government and industry sources as rigorous and effective. In addition, a voluntary interagency training coordination group meets about once a month to discuss and coordinate training activities. However, the National Intellectual Property Law Enforcement Coordination Council, established to coordinate domestic and international intellectual property law enforcement, has struggled to find a clear mission, has undertaken few activities, and is generally viewed as having little impact.

U.S. efforts have contributed to strengthened intellectual property legislation overseas, but enforcement in many countries remains weak. The Special 301 review is widely seen as effective, but the impact of actions such as diplomatic efforts and training activities can be hard to measure. U.S. industry has been supportive of U.S. actions. However, future U.S. efforts face significant challenges. For example, competing U.S. policy objectives take precedence over protecting intellectual property in certain regions. Further, other countries' domestic policy objectives can affect their “political will” to address U.S. concerns. Finally, many economic factors, as well as the involvement of organized crime, hinder U.S. and foreign governments' efforts to protect U.S. intellectual property abroad.

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Abbreviations

AGOA	African Growth and Opportunity Act
ATPA	Andean Trade Preference Act
CBI	Caribbean Basin Initiative
CD	compact disc
DHS	Department of Homeland Security
DVD	digital video disc
FTA	free trade agreement
FBI	Federal Bureau of Investigation
GSP	Generalized System of Preferences
IPR	intellectual property rights
ITAC	Industry Trade Advisory Committee
MLAT	mutual legal assistance treaty
NIPLECC	National Intellectual Property Law Enforcement Coordination Council
PFC	priority foreign country
TPRG	Trade Policy Review Group
TPSC	Trade Policy Staff Committee
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property
USAID	U.S. Agency for International Development
USITC	U.S. International Trade Commission
USPTO	U.S. Patent and Trademark Office
USTR	Office of the U.S. Trade Representative
WCO	World Customs Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

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United States Government Accountability Office
Washington, D.C. 20548

September 8, 2004

The Honorable Tom Davis
Chairman
Committee on Government Reform
House of Representatives

The Honorable Donald Manzullo
Chairman
Committee on Small Business
House of Representatives

The Honorable Henry J. Hyde
Chairman
Committee on International Relations
House of Representatives

The United States dominates the creation and export of intellectual property—creations of the mind.¹ The U.S. government provides broad protection for intellectual property through means such as copyrights, patents, and trademarks. However, protection of intellectual property in many parts of the world is inadequate, and as a result, U.S. goods are subject to substantial counterfeiting and piracy in many countries. A recent report by the Office of the U.S. Trade Representative (USTR) on the state of intellectual property protection in foreign countries concluded that counterfeiting has become a massive, sophisticated global business involving the manufacture and sale of counterfeit versions of everything from shampoos, razors, and batteries to cigarettes, alcoholic beverages, and automobile parts, as well as medicine and health care products. The report also gave special attention to the growing problem of piracy of optical media goods (e.g., CDs, DVDs).

Numerous U.S. agencies are addressing such problems by seeking better intellectual property protection overseas. To understand more fully how U.S. agencies have performed in this regard, you asked us to identify and

¹The United States exports intellectual property in both goods and services. In 2002, the United States earned more than \$44 billion in royalties and license fees overseas, higher than any other country in the world. Royalties and license fees in this case are from the authorized overseas use of intangible, nonproduced, nonfinancial assets and proprietary rights (such as patents, copyrights, and trademarks), and the use of produced originals or prototypes (such as manuscripts and cinematographic works).

review their activities. This report addresses (1) the specific efforts that U.S. agencies have undertaken to pursue improved intellectual property protection in other nations; (2) the impact, and industry views, of these efforts; (3) the means used to coordinate these efforts; and (4) the challenges that these efforts face in generating their intended impact.

To answer these questions, we analyzed key U.S. government intellectual property reports and reviewed information from databases such as the State Department's intellectual property training database and the Department of Homeland Security's online database of intellectual property goods seized. We found some limitations in these databases, though the data were sufficiently reliable to provide broad information. Further, despite our request, we were unable to obtain complete data on use of a prominent trade preference program. We met with officials from the Departments of State, Commerce, Justice, and Homeland Security as well as USTR, the U.S. Patent and Trademark Office (USPTO), the Library of Congress's Copyright Office (a legislative branch office), the Federal Bureau of Investigation (FBI), the U.S. Agency for International Development (USAID), and the U.S. International Trade Commission (USITC). We also met with officials from key intellectual property industry groups and reviewed reports they had prepared. In addition, we attended a private-sector intellectual property rights enforcement conference and a U.S. government training session. We reviewed economic models used to estimate trade damages due to intellectual property losses in Ukraine, which has been subject to U.S. trade sanctions since 2002. We also traveled to four countries where serious problems regarding the protection of intellectual property have been reported—Brazil, China, Russia, and Ukraine—and the U.S. government is taking measures to address these problems. (See app. IV-VII for detailed information on these countries.) We met with U.S. embassy and foreign government officials as well as representatives of U.S. companies and industry groups operating in those countries. We collected and reviewed U.S. government and industry documents in all four nations. We conducted our work from June 2003 through July 2004, in accordance with generally accepted government auditing standards. (See app. I for more detailed information on our scope and methodology.)

Results in Brief

U.S. agencies' efforts to improve protection of U.S. intellectual property in foreign nations fall into three categories—policy initiatives, training and assistance activities, and law enforcement actions. USTR leads U.S. policy initiatives with an annual assessment known as the “Special 301” review,

which results in an annual report detailing global intellectual property challenges and identifying countries with the most significant problems. This report involves input from many U.S. agencies and industry. Other policy initiatives include requiring adequate intellectual property protection as part of trade preference programs and negotiating agreements that address intellectual property. In addition to conducting policy initiatives, most agencies involved in intellectual property issues overseas also engage in training and assistance activities. For example, USPTO and the Department of Justice, among others, provide overseas and U.S.-based training for foreign officials on matters related to intellectual property enforcement. Further, although counterterrorism is the overriding U.S. law enforcement concern, U.S. agencies such as the Departments of Justice and Homeland Security conduct law enforcement activities regarding intellectual property rights (IPR). These efforts include investigations involving foreign parties, seizures of counterfeit merchandise exported from other countries, and prosecutions of individuals involved in pirating protected merchandise.

U.S. efforts have contributed to strengthened foreign IPR laws and international IPR obligations, and, while enforcement overseas remains weak, U.S. industry groups are generally supportive of U.S. efforts. These efforts are viewed as aggressive, and the Special 301 review has been cited repeatedly by government and industry sources as a useful tool in encouraging improvements. However, the precise impact of many specific U.S. government activities, such as diplomatic efforts and training activities, can be difficult to measure. Further, enforcement of intellectual property rights in many countries remains weak, despite U.S. efforts. Nonetheless, U.S. industries recognize the many actions taken by the U.S. government, and industry groups that we contacted both in the United States and overseas were generally supportive of the efforts of U.S. agencies to pursue improved intellectual property protection overseas.

Several mechanisms exist to coordinate U.S. agencies' efforts to protect U.S. intellectual property overseas, although the level of activity and usefulness of these mechanisms vary. For example, on the policy side, formal interagency meetings are required each year as part of the U.S. government's annual Special 301 review. This active process allows numerous agencies to share their views on global intellectual property problems, incorporate industry input, consider other policy considerations, and reach consensus regarding which countries should be publicly cited as having IPR problems. Government and industry sources view this effort as effective and thorough. In addition, an interagency training coordination group with broad public and private sector representation meets approximately once per month to discuss and coordinate public and private sector training activities. According to several private sector and agency officials who participate, the group has increased information sharing and provides a forum for coordination. Conversely, the National Intellectual Property Law Enforcement Coordination Council (NIPLECC),² which was established to coordinate domestic and international intellectual property law enforcement among U.S. federal and foreign entities, has struggled to find a clear mission, has undertaken few activities, and is perceived by private sector and some U.S. agency officials as having little impact. Apart from these formal coordination bodies, regular, informal communication and coordination regarding IPR-related overseas activities occurs among agencies in the United States and in overseas embassies. Numerous policy agency officials emphasized to us that this type of informal interaction, particularly among interagency staff in Washington, D.C., is central to pursuing U.S. intellectual property goals overseas. Coordination between policy and law enforcement agencies is less systematic.

U.S. efforts to improve intellectual property protection overseas face challenges. Competing U.S. policy objectives may take priority over protecting intellectual property in certain countries. In addition, the impact of U.S. activities overseas is affected by countries' domestic policy objectives and economic interests, which may complement or conflict with U.S. objectives. U.S. efforts are more likely to achieve their intended impacts if intellectual property protection has domestic support in foreign countries, and, conversely, U.S. efforts are less likely to be effective absent such support. Although U.S. policies can affect a country's incentives with

²NIPLECC was mandated under Section 653 of the Treasury and General Government Appropriations Act, 2000, Public Law 106-58 (15 U.S.C. section 1128).

mechanisms such as trade preference programs or trade sanctions, such tools may be insufficient to overcome existing priorities in foreign countries. In addition, many economic factors, as well as the involvement of organized crime, pose additional challenges to U.S. and foreign governments' efforts, even in countries where the political will for protecting intellectual property exists. These economic factors include low barriers to entering into the production of counterfeit or pirated goods, potential high profits for producers of such goods, and large price differentials between legitimate and fake products for consumers. The optical media sector has been subject to these factors, which have been further exacerbated by recent technological advances that allow for high-quality mass production and mobile operations.

In this report, we suggest that the Congress review the National Intellectual Property Law Enforcement Coordination Council's authority, operating structure, membership, and mission.

We provided a draft of this report to the Departments of State, Commerce, Justice, Homeland Security and to USTR, USPTO, the Copyright Office, the FBI, USAID, and USITC. We received technical comments from the Departments of State, Justice, and Homeland Security, USTR, the Copyright Office, and USITC. We incorporated these comments into the report as appropriate. We also received formal comment letters from the Department of Commerce (which includes comments from USPTO), the Department of Homeland Security, and USAID. Reproductions of these letters, as well as our responses to the letters, can be found in app. VIII-X. USAID raised concerns regarding our findings on the agency's contribution to an online IPR training database. No agency disagreed with our overall findings and conclusions, though all suggested several wording changes and/or additions to improve the report's completeness and accuracy. The FBI provided no comments on the draft report.

Background

Intellectual property is a category of intangible rights that protect commercially valuable products of the human intellect, such as inventions; literary and artistic works; and symbols, names, images, and designs used in commerce. U.S. protection of intellectual property has a long history: Article 1 of the U.S. Constitution grants the Congress the power “to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Copyrights, patents, and trademarks are the most common forms of protective rights for intellectual property.³ Protection is granted by guaranteeing proprietors limited exclusive rights to whatever economic reward the market may provide for their creations and products. Ensuring the protection of IPR encourages the introduction of innovative products and creative works to the public.

Intellectual property is an important component of the U.S. economy, and the United States is an acknowledged global leader in the creation of intellectual property. According to USTR, “Americans are the world’s leading innovators, and our ideas and intellectual property are a key ingredient to our competitiveness and prosperity.” However, industries estimate annual losses stemming from violations of intellectual property

³A copyright provides protection for literary and artistic works such as books, musical compositions, and cinematographic works (movies). A copyright is a property right in an original work of authorship that arises automatically upon creation of such a work and belongs, in the first instance, to the author. A patent protects an invention by giving the inventor the right to exclude others from making, using, or selling a new, useful, nonobvious invention during a specific term. Trademarks are words, phrases, logos, or other graphic symbols used by manufacturers or merchants to identify their goods and distinguish them from others. Other types of intellectual property include trade secrets, industrial designs, and geographical indications. Geographical indications are names used to identify products with quality, reputation or other characteristics attributable to the origin of the product. According to a USTR official, examples of geographical indications are cognac, Idaho potatoes, Roquefort, and bourbon. USTR officials noted that while some countries have separate geographical indication protection systems, the United States protects geographical indications through its trademark system.

rights overseas are substantial.⁴ Further, counterfeiting of products such as pharmaceuticals and food items fuels public health and safety concerns.⁵ USTR's Special 301 annual reports on the adequacy and effectiveness of intellectual property protection around the world demonstrate that, from a U.S. perspective, intellectual property protection is weak in developed as well as developing countries and that the willingness of countries to address intellectual property issues varies greatly. U.S. laws have been passed that address the need for strong intellectual property protection overseas and provide remedies to be applied against countries that do not provide adequate or effective protection. For example, the Omnibus Trade and Competitiveness Act of 1988 allows the U.S. government to impose trade sanctions against such countries.

Eight federal agencies, the FBI, and the USPTO undertake the primary U.S. government activities to protect and enforce U.S. intellectual property rights overseas. These agencies are the Departments of Commerce, State, Justice, and Homeland Security; USTR; the Copyright Office; USAID; and USITC.⁶ The U.S. government also participates in international organizations that address intellectual property issues, such as the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), and the World Customs Organization (WCO).

⁴There are various loss estimates due to counterfeiting and piracy. For example, the International Intellectual Property Association estimated that losses due to piracy of U.S. copyrighted materials around the world have reached \$20 to \$22 billion annually (not including Internet piracy). According to the 2003 Department of Homeland Security statistics on seizures, the majority of goods seized at U.S. ports of entry were counterfeit goods, worth more than \$90 million. USTR reported in its 2003 Special 301 report that losses to U.S. companies due to piracy and counterfeiting amounted to \$200 to \$250 billion, although we could not find the original source of this number (the closest figure we could identify came from the Counterfeiting Intelligence Bureau of the International Chamber of Commerce, which estimated worldwide losses in 1995 due to counterfeiting at \$250 billion, 5 percent of the world's merchandise trade). Industry representatives we spoke with acknowledged the difficulties in accurately estimating the losses, but pointed out that the enormity of the problems is hard to dispute.

⁵For example, the Department of Homeland Security received an allegation concerning the smuggling of counterfeit vodka into the United States. Recognizing potential health and safety concerns, the department immediately investigated the case and subsequently seized counterfeit vodka in Florida and Massachusetts.

⁶Although the FBI is part of the Department of Justice and the USPTO is part of the Department of Commerce, their roles will be discussed separately because of their distinct responsibilities.

U.S. Agencies Undertake Three Types of IPR Efforts

The efforts of multiple U.S. agencies to protect U.S. intellectual property overseas fall into three general categories—policy initiatives, training and technical assistance, and U.S. law enforcement actions. USTR leads most U.S. policy activities, in particular the Special 301 review of intellectual property protection abroad. Most agencies involved in efforts to protect U.S. IPR overseas conduct training and technical assistance activities. However, the number of agencies involved in U.S. law enforcement actions is more limited, and the nature of these activities differs from other U.S. government actions related to intellectual property protection.

USTR Leads Policy Efforts

U.S. policy initiatives to increase intellectual property protection around the world are primarily led by USTR, in coordination with the Departments of State and Commerce, USPTO, and the Copyright Office, among other agencies. These efforts are wide ranging and include the annual Special 301 review of intellectual property protection abroad, use of trade preference programs for developing countries, negotiation of agreements that address intellectual property, and several other activities.

Special 301 Review Is Central U.S. Policy Effort

A centerpiece of policy activities is the annual Special 301 process.⁷ “Special 301” refers to certain provisions of the Trade Act of 1974, as amended,⁸ that require USTR to annually identify foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons who rely on intellectual property protection. USTR identifies these countries with substantial assistance from industry and U.S. agencies and publishes the results of its reviews in an annual report. Once a pool of such countries has been determined, the USTR, in coordination with numerous agencies, is required to decide which, if any, of these countries should be designated as a

⁷For purposes of presentation, we are classifying USTR’s actions and activities as U.S. “policy efforts” rather than as law enforcement actions. We recognize, and USTR officials emphasized to us, that certain efforts, such as conducting Special 301 reviews, ensuring compliance with trade agreements, and taking IPR cases to the WTO for dispute settlement, can be classified as enforcement actions. However, for our presentation, we have placed government activities that can lead to U.S. court or administrative hearings, and that can involve criminal activity, together as law enforcement actions, and we have grouped the more discretionary activities of USTR and other agencies together as “policy efforts.”

⁸As amended by the 1988 Omnibus Trade And Competitiveness Act (P.L. 100-418).

Priority Foreign Country (PFC).⁹ If a trading partner is identified as a PFC, 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 PFC. Such an investigation can lead to actions such as negotiating separate intellectual property understandings or agreements between the United States and the PFC or implementing trade sanctions by the U.S. government against the PFC if no satisfactory outcome is reached. In its annual Special 301 report, USTR also lists countries with notable but less serious intellectual property protection problems as, in order of decreasing severity, “Priority Watch List” countries and “Watch List” countries.¹⁰ Unlike PFCs, countries cited on these lists are not subject to automatic consideration for investigation.

Between 1994 and 2004, the U.S. government designated three countries as PFCs—China, Paraguay, and Ukraine—as a result of intellectual property reviews (see table 1).¹¹ China was initially designated as a PFC in 1994 owing to acute copyright piracy, trademark infringements, and poor enforcement. Paraguay was designated as a PFC in 1998 owing to high levels of piracy and counterfeiting resulting from an absence of effective enforcement, its status as a major point of transshipment for pirated or counterfeit products to other South American countries, and its inadequate IPR laws. The U.S. government negotiated separate bilateral intellectual property agreements with both countries to address these problems. These agreements are subject to annual monitoring, with progress cited in each year’s Special 301 report.

⁹PFCs are those countries that (1) have the most onerous and egregious acts, policies, and practices with the greatest adverse impact (actual or potential) on the relevant U.S. products and (2) are not engaged in good-faith negotiations or making significant progress in negotiations to address these problems.

¹⁰Countries are put on the Priority Watch List for not providing an adequate level of intellectual property protection or enforcement, or market access for persons relying on intellectual property protection. Watch List countries have intellectual property problems that merit bilateral attention.

¹¹Intellectual property reviews can be part of an annual or “out-of-cycle” Special 301 review, with the latter initiated by USTR in instances where the need to investigate a country’s IPR practices falls outside the regular, annual review cycle. China, Paraguay, and Ukraine were designated as PFCs at times that fell outside the regular Special 301 process.

Table 1: Countries Designated as Priority Foreign Countries (PFCs) or Named to the Priority Watch List Five or More Times during 1994-2004 Special 301 Reviews

	Years designated as a Priority Foreign Country	Number of times cited on the Priority Watch List	Number of times cited on the Watch List
China	1994, 1996	--	1
Paraguay	1998	1	1
Ukraine	2001-2004	2	1
Argentina	--	9	1
Dominican Republic	--	5	3
Egypt	--	7	4
European Union	--	11	--
Greece	--	6	3
India	--	10	--
Indonesia	--	8	3
Israel	--	5	3
Korea	--	6	5
Russia	--	8	2
Turkey	--	8	3

Source: GAO, based on USTR annual Special 301 reports, 1994-2004.

Notes: China and Paraguay are no longer specifically designated as PFCs or placed on the Priority Watch List because they are subject to monitoring under separate agreements.

Argentina, India, and China were cited as potential PFCs in the 1994 Special 301 report; China was designated as a PFC later that year, while Argentina and India were never designated as PFCs.

Ukraine, where optical media piracy was prevalent, was designated a PFC in 2001.¹² No mutual solution was found, and in January 2002, the U.S. government imposed trade sanctions in the form of prohibitive tariffs (100 percent) aimed at stopping \$75 million worth of certain imports from Ukraine over time.¹³ These sanctions negatively affected Ukraine's exports to the United States. U.S. data show that overall imports from Ukraine experienced a dramatic 70 percent decline from 2000 to 2003. U.S. trade data also show that U.S. imports of the items facing punitive tariffs (with one exception) declined by \$57 million from 2000 to 2003. Since 2001, Ukraine has remained the sole PFC and the sanctions have remained in place. In early 2002, according to Department of State officials, Ukraine passed an optical disc licensing law—a key U.S. factor in originally designating Ukraine as a PFC. Further, the Ukrainian government reportedly closed plants that were pirating optical media products. However, the U.S. government remains concerned that the optical disc law is inadequate.

Although it designated only three countries as PFCs between 1994 and 2004, the U.S. government has cited numerous countries—approximately 15 per year recently—on its Special 301 Priority Watch List. Of particular note, the European Union has been placed on this list every year since 1994, while India and Argentina have been on the list for 10 and 9 years, respectively, during that period.

¹²Ukraine was cited as failing to comply with the “U.S.-Ukraine Joint Action Plan to Combat Optical Media Piracy in Ukraine” agreed to by the presidents of both countries in 2000. Although the Ukrainian government implemented an optical media disc licensing law in early 2002, U.S. government and industry officials viewed the law as inadequate.

¹³USTR estimated the loss to the U.S. current account (the current account has three separate components): (1) net export of goods and services, (2) investment income from assets abroad, and (3) net unilateral transfers) due to piracy in music CDs and software in Ukraine and held two public hearings on the choice of tariff lines subject to 100 percent ad valorem duties to minimize the damage to domestic producers and consumers. The affected products fall into 10 general categories: mineral fuels and oils; inorganic chemicals; fertilizer; tanning or dyeing extracts; paper and paperboard; footwear; pearls and semiprecious stones; copper; aluminum; nuclear reactors and boilers.

By virtue of membership in the WTO, the United States and other countries commit themselves not to take WTO-inconsistent unilateral action against possible trade violations involving IPR protections covered by the WTO but to instead seek recourse under the WTO's dispute settlement system and its rules and procedures. This may impact any U.S. government decision regarding whether to retaliate against WTO members unilaterally with sanctions under the Special 301 process when those countries' IPR problems are viewed as serious.¹⁴

U.S. Policy Efforts Include Generalized System of Preferences and Other Trade Preference Programs

U.S. IPR policy efforts also include use of the Generalized System of Preferences (GSP) and other trade preference programs administered by USTR. The GSP is a unilateral program intended to promote development through trade, rather than through traditional aid programs, by eliminating tariffs on certain imports from eligible developing countries. The GSP was originally authorized by the Trade Act of 1974; when it was reauthorized by the Trade and Tariff Act of 1984, new "country practice" eligibility criteria were added, including a requirement that beneficiary countries provide adequate and effective IPR protection. Petitions to withdraw GSP benefits from countries that do not meet this criterion can be filed as part of an annual GSP review and are typically filed by industry interests. Petitions are considered through an interagency process led by USTR, with input from the Departments of State and Commerce, among others. In administering the GSP program, USTR has led reviews of the IPR regimes of numerous countries and has removed benefits from some beneficiary countries because of IPR problems.¹⁵ Ukraine lost its GSP benefits in August 2001 (approximately 6 months before the imposition of sanctions that stemmed from Ukraine's designation as a PFC under the Special 301 process) because of inadequate protection for optical media, and these benefits have not been reinstated.

¹⁴Special 301 was amended in the 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.

¹⁵While we requested a comprehensive listing of countries assessed and GSP benefits removed due to IPR problems, USTR was unable to provide us with such data because this information is not regularly collected.

Adequate and effective IPR protection is required by other trade preference programs, including the Andean Trade Preference Act (ATPA), which provides benefits for Bolivia, Colombia, Ecuador, and Peru; the African Growth and Opportunity Act (AGOA); and the Caribbean Basin Initiative (CBI). USTR reviews IPR protection provided under these trade preference programs, and, according to USTR officials, GSP, which includes numerous developing countries,¹⁶ has been used more actively (in terms of reviews and actual removal of benefits) than ATPA, CBI, and AGOA. In fact, according to USTR officials, benefits have never been removed under ATPA or AGOA owing to IPR concerns. However, USTR officials emphasized that these programs and their provisions for intellectual property protection have been used effectively nevertheless. For example, one USTR official noted that in response to U.S. government concerns regarding whether Colombia was meeting ATPA eligibility criteria, the Colombian government implemented measures to, among other things, ensure the legitimate use and licensing of software by government agencies. USTR also pointed out that in Mauritius, an unresolved trademark counterfeiting concern for U.S. industry was specifically raised with the government of Mauritius as a follow-up to the annual review of the country's eligibility for preferences under AGOA. Following bilateral discussions, this counterfeiting concern was addressed and resolved.

U.S. Government Engages in IPR-related Trade Negotiations

Since 1990, the U.S. government has negotiated 25 IPR-specific agreements or understandings with foreign governments. USTR noted that USPTO and other agencies are responsible for leading negotiating efforts for such agreements (and the Copyright Office participates in negotiations as an adviser). According to USTR officials, IPR-specific agreements are sometimes negotiated in response to particular problems in certain countries and are monitored when a relevant issue arises. USTR has also negotiated an additional 23 bilateral trade agreements—primarily with countries of the former Soviet Union or Eastern Europe—that contain IPR provisions (see app. II for a listing of these agreements).¹⁷

¹⁶According to USTR, 134 countries and nonindependent locations are GSP beneficiaries. A review is currently underway to determine whether to designate Iraq as a GSP beneficiary country.

¹⁷This listing includes only negotiated agreements that have entered into force.

In addition, the U.S. government, primarily USTR and USPTO (with input from the Copyright Office) participated actively in negotiating the WTO's Agreement on Trade-Related Aspects of Intellectual Property (TRIPS), which came into force in 1995 and broadly governs the multilateral protection of IPR. TRIPS established new or improved standards of protection in various areas of intellectual property¹⁸ and provides for enforcement measures.¹⁹ Most of the U.S. government's IPR-specific bilateral agreements and understandings were signed prior to the implementation of TRIPS or before the other country involved in each agreement joined, or acceded to, the WTO and was thus bound by TRIPS commitments. As a result, according to a USTR official, some U.S. bilateral agreements have become less relevant since TRIPS was implemented.²⁰

¹⁸These areas include copyrights, patents, trademarks, trade secrets, layout designs of integrated circuits, industrial designs, and geographical indications. For more information, see GAO, *The General Agreement on Tariffs and Trade: Uruguay Round Final Act Should Produce Overall U.S. Economic Gains*, [GAO/GGD-94-83b](#) (Washington, D.C.: July 1994).

¹⁹TRIPS provides that countries must ensure that enforcement procedures are in place that permit effective actions against any act of infringement of IPR covered by TRIPS, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringement.

²⁰Two of the countries with which the United States has specific IPR agreements or understandings are not members of the WTO (Bahamas and Vietnam). Nine of the countries with which the United States has negotiated broader bilateral agreements that include intellectual property provisions since 1990 are not members of the WTO, (Azerbaijan, Belarus, Cambodia, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, Vietnam) though most are seeking to accede.

One of USTR's priorities in recent years has been negotiating free trade agreements (FTAs). Since 2000, USTR has completed negotiations for FTAs with Australia, Bahrain, Central America,²¹ Chile, Jordan, Morocco, and Singapore.²² According to officials at USTR, these agreements offer protection beyond that required in TRIPS, including, for example, adherence to new WIPO Internet treaties, a longer minimum time period for copyright protection, additional penalties for circumventing technological measures controlling access to copyrighted materials, transparent procedures for protection of trademarks, stronger protection for well-known marks, patent protection for plants and animals, protection against arbitrary revocation of patents, new provisions dealing with domain name disputes, and increased enforcement measures. A formal private sector advisory committee that advises the U.S. government on IPR issues²³ has provided feedback to the U.S. government on free-trade agreement negotiations, including reports on the impact of free-trade agreements on IPR industries in the United States.²⁴

U.S. Government Participates in International Organizations That Address IPR

The U.S. government is actively involved in the activities of the WTO, WIPO, and WCO that address IPR issues. The U.S. government participates in the WTO primarily through the efforts of the USTR offices in Washington, D.C., and Geneva and participates in WIPO activities through the Department of State's Mission to the United Nations in Geneva and through the Copyright Office and the USPTO. The Department of Homeland Security (DHS) works with the WCO on border enforcement issues.

²¹Participants in the Central America Free Trade Agreement (CAFTA) are the United States, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic.

²²Of these seven FTAs, only Chile, Jordan and Singapore have entered into force; negotiations have been completed for Australia, Bahrain, CAFTA and Morocco, but these agreements have not yet entered into force. Prior to 2000, two other FTAs had entered into force: the U.S.-Israel FTA (entered into force in 1985) and the North American Free Trade Agreement between the United States, Canada, and Mexico (entered into force in 1994).

²³Congress established the private sector advisory committee system on trade in Section 135 of the Trade Act of 1974 (19 U.S.C. section 2155). This system is administered by USTR and the Department of Commerce. The IPR committee, comprising representatives of law firms, associations, and companies, is 1 of 16 Industry Trade Advisory Committees that provide their industry-specific perspectives to the U.S. government.

²⁴The U.S. government also works to strengthen the protection and enforcement of intellectual property in trade and investment framework agreement negotiations with several countries in regions such as the Middle East and Asia.

The WTO, an international organization with 147 member states, is involved with IPR primarily through its administration of TRIPS. In addition to bringing formal TRIPS disputes to the WTO (discussed in the following section on strengthened foreign IPR laws), the U.S. government participates in the WTO's TRIPS Council. The council, which is comprised of all WTO members, is responsible for monitoring the operation of the TRIPS agreement and can be used by members as a forum for mutual consultation about TRIPS implementation. Recently the council has addressed issues such as TRIPS and public health.²⁵ A WTO IPR official stated that the U.S. government is the most active "pro-IPR" delegate during council activities. The U.S. government is also a major contributor to reviews of WTO members' overall country trade policies; these reviews are intended to facilitate the smooth functioning of the multilateral trading system by enhancing the transparency of members' trade policies.²⁶ All WTO member countries are reviewed, and the frequency of each country's review varies according to its share of world trade. According to a USTR official in Geneva, IPR is often a central topic of discussion during the trade policy reviews, and the U.S. government poses questions regarding a country's compliance with TRIPS when relevant. The United States also provides input as countries take steps to accede to the WTO, and, according to the USTR official, IPR is always a primary issue during this process. As of June 2004, 26 countries were working toward WTO accession.

The Department of State, the Copyright Office, and USPTO actively participate in the activities of WIPO, a specialized United Nations agency with 180 member states that promotes the use and protection of intellectual property. Of particular note, WIPO is responsible for the creation of two "Internet treaties" that entered into force in 2002.²⁷ In

²⁵In 2003, WTO members reached an agreement that waived a TRIPS article and thereby allows countries that produce generic pharmaceutical products (via a process called "compulsory licensing") to export them to countries that are unable to produce necessary pharmaceutical items. These exports are allowed to address certain circumstances, including grave public health problems resulting from HIV/AIDS, tuberculosis, and malaria.

²⁶These reviews are referred to as the "Trade Policy Review Mechanism."

²⁷The WIPO Copyright Treaty brings copyright law in line with the digital age and entered into force on March 6, 2002. The WIPO Performances and Phonograms Treaty safeguards the interests of producers of phonograms or sound recordings as well as those of performers whose performances are fixed in phonograms; it entered into force on May 20, 2002. These treaties help raise the minimum standards of intellectual property protection around the world, particularly with respect to Internet-based delivery of copyrighted works.

addition, WIPO administers the 1970 Patent Cooperation Treaty (PCT), which makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an “international” patent application. According to a WIPO Vice Director General, the State Department’s U.S. Mission in Geneva and USPTO work closely with WIPO, and the U.S. government has actively participated in WIPO activities and monitored the use of WIPO’s budget.²⁸ The Copyright Office also participates in various activities of the WIPO General Assembly and WIPO committees and groups, including the WIPO Standing Committee on Copyright and Related Rights. USPTO has participated in WIPO efforts such as the negotiation of the Internet treaties (the Copyright Office was also involved in this effort) and also conducts joint USPTO-WIPO training events.

In addition, DHS works with the WCO regarding IPR protection. DHS participates in the WCO’s IPR Strategic Group, which was developed as a joint venture with international business sponsors to help member customs administrations to improve the efficiency and effectiveness of their IPR border enforcement programs. The IPR Strategic Group meets quarterly to coordinate its activities, discuss current issues on IPR border enforcement, and advise member customs administrations regarding implementation of border measures under TRIPS. Further, a DHS official emphasized that DHS has been involved in drafting WCO model IPR legislation and strategic plans geared towards global IPR protection and otherwise helping foreign countries develop the tools necessary for effective border enforcement programs.

²⁸A State Department official in Geneva noted that one of State’s key efforts in WIPO has been to urge WIPO to reduce PCT fees (the equivalent of “user fees” for those parties filing for international patents, most of whom are American) to better reflect the costs of administering the patent cooperation system, rather than use the fees to subsidize the general operations of the organization. This official noted that during the establishment of WIPO’s 2004-2005 budget, State worked with WIPO staff and member country representatives to avoid a proposed increase in PCT fees and was even able to achieve a decrease in fees.

U.S. Officials Undertake Diplomatic Efforts to Protect Intellectual Property

In countries where IPR problems persist, U.S. government officials maintain a regular dialogue with foreign government representatives. In addition to the bilateral discussions that are held as a result of the Special 301 process and other specific initiatives, U.S. officials address IPR as part of regular bilateral relations. We also noted that U.S. government officials at U.S. embassies overseas take the initiative, in coordination with U.S. agencies in Washington, D.C., to pursue IPR with foreign officials. For example, according to officials at the U.S. Embassy in Moscow, the economic section holds interagency IPR coordination meetings and has met regularly with the Russian ministry responsible for IPR issues to discuss U.S. concerns. In Ukraine, State Department officials told us that they communicate regularly with the Ukraine government as part of a dialogue regarding the actions needed for the removal of Special 301 sanctions. U.S. embassies also undertake various public awareness activities and campaigns aimed at increasing support for intellectual property in the general public as well as among specific populations, such as law enforcement personnel, in foreign countries.²⁹ Further, staff from the Departments of State and Commerce at U.S. embassies interact with U.S. companies overseas and work to assist them with commercial problems, including IPR concerns, and have at times raised specific industry concerns with foreign officials.³⁰ Finally, a Justice official told us that during the past 2 years, Justice attorneys engaged high-level law enforcement officials in China, Brazil, and Poland in an effort to bolster coordination on cross-border IPR cases.

Diplomatic efforts addressing IPR have also included actions by senior U.S. government officials. For example, a senior official at the Commerce Department met in 2004 with the Brazilian minister responsible for industrial property issues, such as patents and trademarks, to discuss collaboration and technical assistance opportunities. In China, the U.S. Ambassador places a great emphasis on IPR and has organized an interagency task force that will work to implement an IPR Action Plan. In

²⁹According to the Department of State, Public Diplomacy and Cultural Exchange offices work to create a more hospitable environment for IPR in foreign countries by, among other activities, hosting educational programs, publishing materials, and working with local press to get coverage of IPR issues.

³⁰For example, according to a Department of Commerce official, in 2003, U.S. Embassy staff in Mexico worked with industry to raise issues related to proposed legislation that provided for overly broad compulsory licensing of pharmaceutical products and did not provide appropriate royalty compensation. According to this official, several months after this joint effort began, the Mexican Congress passed an acceptable bill.

addition, presidential-level communication regarding IPR has occurred with some countries. For instance, according to Department of State sources, the Presidents of the United States and Russia discussed IPR, among other issues, when they met in September 2003. Further, USTR officials told us that the Presidents of the United States and Paraguay had IPR as an agenda item when they met in the fall of 2003.

Most Agencies Conduct IPR Training and Assistance Activities

Most of the agencies involved in efforts to promote or protect IPR overseas engage in some training or technical assistance activities. Key activities to develop and promote enhanced IPR protection in foreign countries are undertaken by the Departments of Commerce, Homeland Security, Justice, and State; the FBI; USPTO; the Copyright Office; and USAID. These agencies also participate in an IPR Training Coordination Group.

Training events sponsored by U.S. agencies to promote the enforcement of intellectual property rights have included enforcement programs for foreign police and customs officials, workshops on legal reform, and joint government-industry events. According to a State Department official, U.S. government agencies, including USPTO,³¹ the Department of Commerce's Commercial Law Development Program, the Departments of Justice and Homeland Security have conducted intellectual property training for a number of countries concerning bilateral and multilateral intellectual property commitments, including enforcement, during the past few years. For example, intellectual property training has been conducted by a number of agencies over the last year in Poland, China, Morocco, Italy, Jordan, Turkey, and Mexico. We attended a joint USPTO-WIPO training event in October 2003 in Washington, D.C., that covered U.S. and WTO patent, copyright, and trademark laws and enforcement. About 35 participants from numerous countries, ranging from supreme court judges to members of national police forces, attended the event. An official at the State Department observed that the Special 301 report is an important factor in determining training priorities. Other agency officials noted additional factors determining training priorities, including embassy input, cost, and requirements of trade and investment agreements. Although

³¹The Department of Commerce's Office of the Inspector General issued a report in 2000 that discussed USPTO's international training efforts, *Patent and Trademark Office: Efforts to Protect U.S. Intellectual Property Rights Overseas Should Be Strengthened*, Final Audit Report No. BTD-11747 (Washington, D.C.: August 2000).

regularly sponsored by a single agency, individual training events often involve participants from other agencies and the private sector.

In addition to sponsoring seminars and short-term programs, agencies sponsor longer-term programs for developing improved intellectual property protection in other countries. For example, USAID funded two multiyear programs, the first of which began in 1996, aimed at improving the intellectual property regime in Egypt through public awareness campaigns, training, and technical assistance in developing intellectual property legislation and establishing a modern patent and trademark office. USAID has also sponsored longer-term bilateral programs that are aimed at promoting biotechnology and address relevant IPR issues such as plant variety protection. Private sector officials in Brazil told us that they believed the longer-term programs sponsored by USAID elsewhere would be helpful in Brazil. In addition to USAID, other U.S. agencies that sponsor training also provide other types of technical assistance in support of intellectual property rights. For example, the Copyright Office and USPTO revise and provide comments on proposed IPR legislation.³² Training and technical assistance activities that focus more broadly on institution building, biotechnology, organized crime, and other law enforcement issues may also support improved intellectual property enforcement.³³

Select Agencies Engage in U.S. IPR Law Enforcement Efforts

A small number of agencies are involved in enforcing U.S. intellectual property laws. Working in an environment where counterterrorism is the central priority, the FBI and the Departments of Justice and Homeland Security take actions that include engaging in multicountry investigations involving intellectual property violations and seizing goods that violate intellectual property rights at U.S. ports of entry. In addition, the USITC is responsible for some enforcement activities involving patents and trademarks.

³²Because so many agencies and offices within agencies initiate training and technical assistance activities that may be relevant to IPR, it is difficult to fully account for all of them.

³³For example, USDA sponsors programs supporting the development of biotechnology overseas that can include an IPR component.

U.S. Agencies Investigate IPR Violations

Although officials at the FBI, DHS, and Justice have emphasized that counterterrorism is the overriding law enforcement priority, these agencies nonetheless undertake IPR investigations that involve foreign connections. For example, the Department of Justice has an office that directly addresses international IPR problems.³⁴ Justice has been involved with international investigation and prosecution efforts and, according to a Justice official, has become more aggressive in recent years. For example, Justice and the FBI recently coordinated an undercover IPR investigation, with the involvement of foreign law enforcement agencies. The investigation focused on individuals and organizations, known as “warez” release groups, that specialize in the Internet distribution of pirated materials. In April 2004, these investigations resulted in 120 simultaneous searches worldwide (80 in the United States) by law enforcement entities from 10 foreign countries³⁵ and the United States in an effort known as “Operation Fastlink.”³⁶

³⁴The Computer Crime and Intellectual Property Section (CCIPS) addresses intellectual property issues (copyright, trademark, and trade secrets) within the Department of Justice’s Criminal Division. In April 2004, CCIPS appointed an International Coordinator for Intellectual Property—an action that, in addition to bolstering international prosecutorial efforts, is intended to improve coordination between policy and law enforcement agencies. CCIPS works to determine how it can provide assistance to improve law enforcement in priority countries. Aside from investigations and prosecutions, CCIPS efforts include training and diplomatic efforts to build cooperative relations between U.S. and foreign law enforcement officials.

³⁵These foreign countries were Belgium, Denmark, France, Germany, Hungary, Israel, the Netherlands, Singapore, Sweden, and Great Britain and Northern Ireland. According to a Justice official, law enforcement officials in Spain subsequently took action against related targets in that country. For more information on this and other investigations, see GAO, *File Sharing: Selected Universities Report Taking Action to Reduce Copyright Infringement*, GAO-04-503 (Washington, D.C.: May 28, 2004).

³⁶In another notable instance, referred to as “Operation Buccaneer,” CCIPS and DHS worked with local law enforcement from five countries (the United Kingdom, Australia, Norway, Sweden, and Finland) to simultaneously execute more than 65 searches worldwide in December 2001 in connection with IPR crimes. As a result of these efforts, 4 people were convicted in the United Kingdom, 4 were convicted in Finland, and 27 were convicted in the United States. For this case, Justice attorneys and DHS agents traveled to the United Kingdom during the past 3 years to support prosecution efforts. In what would be the first extradition for online copyright piracy, the Department of Justice is seeking extradition of an Australian to the United States for prosecution in this case. DHS also noted that Operation Buccaneer led to a spin-off investigation in April 2003, initiated by DHS, known as Operation TENS/Safehaven.

Law enforcement officials told us that IPR-related investigations with an international component can be instigated by, for example, industry complaints to agency headquarters or field offices. Investigations are pursued if criminal activity is suspected. U.S. officials noted that foreign law enforcement action may be encouraged by the U.S. government if an investigation results in evidence demonstrating that someone has violated U.S. law and if evidence in furtherance of the crime is located overseas. A Justice official added that international investigations are pursued when there is reason to believe that foreign authorities will take action and that additional impact, such as raising public awareness about IPR crimes, can be achieved. Evidence can be developed through investigative cooperation between U.S. and foreign law enforcement. In addition, the Justice official emphasized that the department also supports prosecutorial efforts in foreign countries. International cooperation between the United States and other countries can be facilitated through Mutual Legal Assistance Treaties (MLATs), which are designed to facilitate the exchange of information and evidence for use in criminal investigations and prosecutions.³⁷ MLATs include the power to summon witnesses, compel production of documents and other real evidence, issue search warrants, and serve process. A Justice official emphasized that informal international cooperation can also be extremely productive.

Although investigations can result in international actions such as those cited above, law enforcement officials from the FBI told us that they cannot determine the number of past or present IPR cases with an international component because they do not track or categorize cases according to this factor. DHS officials emphasized that a key component of their enforcement authority is a “border nexus.” Investigations have an international component established when counterfeit goods are brought into the United States, and DHS officials noted that it is a rare exception when DHS IPR investigations do not have an international component. However, DHS does not track cases by a specific foreign connection. The overall number of IPR-oriented investigations that have been pursued by foreign authorities as a result of DHS efforts is unknown.

³⁷According to a Department of State document, there are over 50 MLATs in force.

Department of Homeland
Security Seizes Items Violating
IPR

DHS seizures of goods that violated IPR totaled more than \$90 million in fiscal year 2003. While the types of imported products seized have varied little from year to year (in recent years, products such as cigarettes, wearing apparel, watches, and media products—CDs, DVDs, and tapes—have been key products), the value of seizures for some of these products has varied greatly. For example, in fiscal year 1999, the value of seized media products—for example, CDs, DVDs, and tapes—was, at nearly \$40 million, notably higher than the value of any other product; by 2003, the value of seized counterfeit cigarettes, at more than \$40 million, was by far the highest, while media products accounted for less than \$10 million in seizures. Seizures of IPR-infringing goods have involved imports primarily from Asia. In fiscal year 2003, goods from China accounted for about two-thirds of the value of all IPR seizures, many of them shipments of cigarettes.³⁸ Other seized goods from Asia that year originated in Hong Kong and Korea. DHS has highlighted particular recent seizures, such as an estimated \$500,000 in electrically heated coffee mugs bearing counterfeit Underwriters Laboratories (UL) labels and an estimated \$644,000 in pirated video game CDs.³⁹ A DHS official pointed out that providing protection against IPR-infringing imported goods for some U.S. companies—entertainment companies in particular—can be difficult, because companies often fail to record their trademarks and copyrights with DHS.

U.S. International Trade
Commission Conducts Section
337 Investigations

The USITC investigates and adjudicates Section 337 cases,⁴⁰ which involve allegations of certain unfair practices in import trade, generally related to patent or registered trademark infringement. Although the cases must

³⁸According to a DHS official, the following factors account for the enormous increase in counterfeit cigarettes seizures over the past few years: (1) profit margin; (2) increased availability and knowledge of where to obtain counterfeit cigarettes (especially from China); (3) manufacture and packaging that makes the counterfeit cigarettes look as though they were produced in the United States; and (4) easier marketing and sale of the counterfeit products to unsuspecting consumers.

³⁹One additional area of note regarding counterfeit seizures involves pharmaceutical products. DHS, in cooperation with the Department of Health and Human Services' Food and Drug Administration, conducts "blitz" exams in an effort to target, identify, and stop counterfeit and potentially unsafe prescription drugs from entering the United States from foreign countries via mail and common carriers. Such efforts have been undertaken over the past year in locations such as Florida, New York, and California and have identified, in some instances, drugs that appeared to be counterfeit. For more information on federal efforts regarding prescription drugs imports, see GAO, *Prescription Drugs: Preliminary Observations on Efforts to Enforce the Prohibitions on Personal Importation*, [GAO-04-839T](#) (Washington, D.C.: July 22, 2004).

⁴⁰Section 337 of the Tariff Act of 1930 as amended (19 U.S.C. section 1337).

involve merchandise originating overseas, both complainants and respondents can be from any country as long as the complainant owns and exploits an intellectual property right in the United States. U.S. administrative law judges are responsible for hearing cases and issuing an initial decision, which is then reviewed and issued, modified, or rejected by the USITC. If a violation has occurred, remedies include directing DHS officials to exclude infringing articles from entering the United States. The USITC may issue cease-and-desist orders to the violating parties. Violations of cease-and-desist orders can result in civil penalties. As of June 2004, exclusion orders remained in effect for 51 concluded Section 337 investigations, excluding from U.S. entry goods such as certain toothbrushes, memory chips, and video game accessories that were found to violate a U.S. intellectual property right.

U.S. Efforts Have Contributed to Improved Foreign IPR Laws, but Enforcement Overseas Remains Weak; Industry Supports U.S. Efforts

U.S. efforts have contributed to strengthened foreign IPR laws and international IPR obligations, and, while enforcement overseas remains weak, U.S. industry groups are generally supportive of U.S. efforts. U.S. actions are viewed as aggressive, and Special 301 is characterized as a useful tool in encouraging improvements overseas. However, the specific impact of many U.S. activities, such as diplomatic efforts or training and technical assistance, can be difficult to measure. Further, despite the progress that has been achieved, enforcement of IPR in many countries remains weak and, as a result, has become a U.S. government priority. Although U.S. industries recognize that problems remain, they acknowledge the many actions taken by the U.S. government, and industry representatives that we contacted in the United States and abroad were generally supportive of the U.S. efforts to pursue intellectual property protection overseas.

U.S. Efforts Have Contributed to Strengthened Foreign IPR Laws

Several representatives of major intellectual property industry associations stated that the United States is the most aggressive promoter of intellectual property rights in the world; an IPR official at the WTO concurred with this assessment, as did foreign officials. The efforts of U.S. agencies have contributed to the establishment of strengthened intellectual property legislation in many foreign countries.

The United States has realized progress through bilateral efforts. For example, the Special 301 review has been cited by industry as facilitating the introduction or strengthening of IPR laws around the world over the

past 15 years. In the 2004 Special 301 report, USTR noted that Poland and the Philippines had recently passed optical disc legislation aimed at combating optical media piracy; the 2003 Special 301 report had cited both countries for a lack of such legislation. Special 301 is cited by USTR and industry as an effective tool in alerting a country that it has trade problems with the United States, which is a key trading partner for numerous nations. Industry and USTR officials pointed out that countries are eager to avoid being publicly classified as problem nations. Further, according to U.S. government officials, incremental “invisible” changes take place behind the scenes as countries take actions to improve their standing on the Special 301 listing prior to its publication. USTR notes that legislative improvements have been widespread but also cites other accomplishments, such as raids against pirates and counterfeiters in Poland and Taiwan, resulting from U.S. attention and the Special 301 process.

However, Special 301 can have an alienating effect when countries believe they have made substantial improvements in their IPR regimes but the report still cites them as key problem countries. According to some officials we spoke with in Brazil and Ukraine, this happened in their countries. For example, although Ukrainian government officials we spoke with stated their desire to further respond to U.S. concerns, they expressed the view that the sanctions have run their course. They also said that the Ukrainian government cannot understand why Ukraine was targeted for sanctions while other countries where U.S. industry losses are higher have not been targeted. A USTR official responsible for IPR issues informed us that Ukraine was sanctioned because of IPR problems that the U.S. government views as serious.

Additional bilateral measures are cited as successful in encouraging new improvements overseas in the framework for IPR protection. For example, following a 1998 U.S. executive order directing U.S. government agencies to ensure the legitimate use of software, USTR then addressed this issue with foreign governments and has reportedly achieved progress in addressing this violation of IPR. According to USTR, more than 20 foreign governments have issued decrees mandating that government ministries use only authorized software. As another example, the negotiation of FTAs has been cited by government and IPR industry officials as a useful tool, particularly as such agreements require IPR protections, including protection for digital products, beyond what is required in TRIPS. However, because most FTAs have been negotiated within the past 5 years, their long-term impact remains to be seen.

U.S. efforts through multilateral forums have also had positive effects. For example, as a result of TRIPS obligations—which the U.S. government was instrumental in negotiating—many developing countries have improved their statutory systems for the protection of intellectual property. For example, China revised its intellectual property laws and regulations to meet its WTO TRIPS commitments. Further, in Ukraine and Russia, government officials told us that improvements to their IPR legislation was part of a movement to accede to the WTO. U.S. agencies have assisted other developing countries in drafting TRIPS-compliant laws.

In addition, a WTO member country can bring disputes over TRIPS compliance to the WTO through that organization’s dispute settlement mechanism. The U.S. government has exercised this right and brought more TRIPS cases to the WTO for resolution than any other WTO member. Since 1996, the United States has brought a total of 12 TRIPS-related cases against 11 countries⁴¹ and the European Community (EC) to the WTO (see app. III for a listing of these cases). Of these cases, 8 were resolved before going through the entire dispute settlement process by mutually agreed solutions between the parties—the preferred outcome, according to a USTR official. In nearly all of these cases, U.S. concerns were addressed via changes in laws or regulations by the other party. Only 2 have resulted in the issuance of a final decision, or panel report, both of which were favorable rulings for the United States.⁴² In a case involving Argentina, consultations between the countries are ongoing and the case has been partially settled, and another case regarding an EC regulation protecting geographical indications is currently in panel proceedings.⁴³

Impact of Many Activities Can Be Difficult to Measure

Despite the fact that persistent U.S. efforts have contributed to positive developments, it can be difficult to precisely measure the impact of specific U.S. activities such as policy efforts or training assistance programs. U.S. activities are not conducted in isolation, but are part of the spectrum of political considerations in a foreign country. Although regular efforts such

⁴¹Argentina, Brazil, Canada, Denmark, Greece, Ireland, India, Japan, Pakistan, Portugal, and Sweden.

⁴²India-U.S. Patent Protection of Pharmaceutical Products, WT/DS 50/R (Jan. 16, 1998), as modified by WT/DS 50/AB/R; Canada-Term of Patent Protection, WT/DS 170/R (Oct. 12, 2000), upheld at WT/DS 170/AB/R.

⁴³Conversely, several IPR cases against the United States have been brought to the WTO.

as the annual Special 301 review or diplomatic contact may create incentives for countries to improve intellectual property protection, other factors, such as countries' own political interests, may contribute to or hinder improvements. Therefore, it can be difficult to measure changes resulting from U.S. efforts alone. For example, China revised its intellectual property laws as a result of its accession to WTO. Although China had for some time been under pressure from the United States to improve its intellectual property protection, revisions to its intellectual property legislation were also called for by its newly acquired WTO commitments. Thus, it is nearly impossible to attribute any of these developments to particular factors or to precisely measure the influence of individual factors on China's decision to reform. Further, officials at the U.S. Embassy in Moscow have emphasized that the regular U.S. focus on IPR issues has raised the profile of the issue with the Russian government—a positive development. However, once again, it is difficult to determine the specific current and future effects of this development on intellectual property protection. Nonetheless, despite these limitations, several agency officials we spoke with said that these activities are important and contribute to incremental changes in IPR protection (such as legislative improvements to Russia's copyright law that were enacted in July 2004). A Commerce official also noted that regular contacts by U.S. government officials with their foreign counterparts have apparently helped some individual U.S. companies seeking to defend patent or trademark rights overseas by reminding foreign officials that their administrative proceedings for such protection are under U.S. scrutiny.

Regarding training activities, officials at agencies that provide regular training reported using post-training questionnaires by attendees to evaluate the trainings, but several noted that beyond these efforts, assessing the impact of trainings is challenging. An official at USPTO stated that although he does not believe it is possible to quantify fully the impact of USPTO training programs, accumulated anecdotal evidence from embassies and the private sector has led the office to believe that the activities are useful and have resulted in improvements in IPR enforcement. USPTO recently began sending impact evaluation questionnaires to training attendees 1 year after the training, to try to gather more information on long-term impact. However, a low response rate has thus far limited the effectiveness of this effort. Officials from the Departments of State and Commerce also pointed out anecdotal evidence that training and technical assistance activities are having a positive impact on the protection of intellectual property overseas. Although some industry officials raised criticisms or offered suggestions for improving training,

including using technology to offer more long-distance training and encouraging greater USAID involvement in coordination efforts, many were supportive of U.S. training efforts.

Enforcement Overseas Remains Weak

Despite improvements in intellectual property laws, the enforcement of intellectual property rights remains weak in many countries, and U.S. government and industry sources note that improving enforcement overseas is now a key priority. USTR's most recent Special 301 report states that "although several countries have taken positive steps to improve their IPR regimes, the lack of IPR protection and enforcement continues to be a global problem." For example, although the Chinese government has improved its statutory IPR regime, USTR remains concerned about enforcement in that country. According to USTR, counterfeiting and piracy remain rampant in China and increasing amounts of counterfeit and pirated products are being exported from China. USTR's 2004 Special 301 report states that "[a]ddressing weak IPR protection and enforcement in China is one of the Administration's top priorities." Further, Brazil has adopted modern copyright legislation that appears to be generally consistent with TRIPS, but it has not undertaken adequate enforcement actions, according to USTR's 2003 Special 301 Report. In addition, as noted above, although Ukraine has shut down offending domestic optical media production facilities, pirated products continue to pervade Ukraine, and, according to USTR's 2004 Special 301 Report, Ukraine is also a major trans-shipment point and storage location for illegal optical media produced in Russia and elsewhere as a result of weak border enforcement efforts (see fig. 1). An industry official pointed out that addressing foreign enforcement problems is a difficult issue for the U.S. government.

Figure 1: Pirated DVDs from Brazil, China, and Ukraine



Source: GAO.

Although U.S. law enforcement does undertake international cooperative activities to enforce intellectual property rights overseas, executing these efforts can prove difficult. For example, according to DHS and Justice officials, U.S. efforts to investigate IPR violations overseas are complicated by a lack of jurisdiction as well as by the fact that U.S. officials must convince foreign officials to take action. Further, a DHS official noted that in some cases, activities defined as criminal in the United States are not viewed as an infringement by other countries, and U.S. law enforcement agencies can therefore do nothing. In particular, this official cited China as a country that has not cooperated in investigating IPR violations. However, according to DHS, recently the Chinese government assisted DHS in an undercover IPR criminal investigation (targeting a major international counterfeiting network that distributed counterfeit motion pictures worldwide) that resulted in multiple arrests and seizures.⁴⁴

⁴⁴A DHS official noted that in some instances, companies are successful in pursuing investigative and enforcement actions on their own with foreign officials. We found evidence of such successful cooperation in Ukraine, where Procter & Gamble (P&G) worked jointly with local officials to conduct product tests at local markets, resulting in a decrease in counterfeiting of P&G products. According to a P&G official in the Ukraine, within 3 years the extent of estimated counterfeit products in the market place went from 40 percent for shampoos and 20 percent for detergents down to essentially no counterfeit products.

While less constrained than law enforcement, training and technical assistance activities may also be unable to achieve the desired improvements in IPR enforcement in some cases, even when considerable U.S. assistance is provided. For example, despite USAID's long-term commitment to strengthening IPR protection in Egypt with training and technical assistance programs, Egypt was elevated to the Priority Watch List in the 2004 Special 301 report and IPR enforcement problems clearly persist.

Industry Generally Supports U.S. Efforts, Despite Worsening Problems in Some Areas

Despite the weakness of IPR enforcement in many countries, industry groups representing intellectual property concerns for U.S. industries we contacted were generally supportive of U.S. government efforts to protect U.S. intellectual property overseas. Numerous industry representatives in the U.S. and overseas expressed satisfaction with a number of U.S. activities as well as with their interactions and collaborations with U.S. agencies and embassies in support of IPR. Industry representatives have been particularly supportive of the Special 301 process, and many credited it for IPR improvements worldwide. According to an official from a key industry association, Special 301 "is a great statutory tool, it leads to strong and effective interagency coordination, and it gets results." Industry associations overseas and in the U.S. support the Special 301 process with information based on their experiences in foreign countries. An entertainment software industry official stated that the U.S. government has "consistently demonstrated their strong and continuing commitment to creators...pressing for the highest attainable standards of protection for intellectual property rights....One especially valuable tool has been the Special 301 review process." Other representatives have advocated increased use of leverage provided by trade preference programs, particularly the GSP program.

Industry association officials in the United States and private sector officials in Brazil, Russia, and Ukraine also expressed support for U.S. IPR training activities, despite limited evidence of long-term impact. Industry associations regularly collaborate with U.S. agencies to sponsor and participate in training events for foreign officials. A number of government and law enforcement officials in our case study countries commented that training and seminars sponsored by the U.S. government were valuable as forums for learning about IPR. Others, including private sector officials, commented on the importance of training as an opportunity for networking with other officials and industry representatives concerned with IPR enforcement. Nonetheless, some industry officials acknowledged that U.S.

actions cannot always overcome challenges presented by political and economic factors in other countries.

Industry support occurs in an environment where, despite improvements such as strengthened foreign IPR legislation, the situation may be worsening overall for some intellectual property sectors. For example, according to copyright industry estimates, losses due to piracy grew markedly in recent years. The entertainment and business software sectors, for example, which are very supportive of USTR and other agencies, face an environment where their optical media products are increasingly easy to reproduce, and digitized products can be distributed around the world quickly and easily via the Internet. According to an intellectual property association representative, counterfeiting trademarks has also become more pervasive in recent years. Counterfeiting affects more than just luxury goods; it also affects various industrial goods.

Several Mechanisms Coordinate IPR Efforts, but Their Usefulness Varies

Several interagency mechanisms exist to coordinate overseas intellectual property policy initiatives, development and assistance activities, and law enforcement efforts, although these mechanisms' level of activity and usefulness varies. The mechanisms include interagency coordination on trade (IPR) issues; the IPR Training Coordination Group, which maintains a database of training activities; the National Intellectual Property Law Enforcement Coordination Council; and the National IPR Coordination Center. Apart from formal coordination bodies, regular, informal communication and coordination regarding intellectual property issues also occurs among policy agencies in the United States and in overseas embassies and is viewed as important to the coordination process.

Formal Interagency Coordination Mechanism Viewed as Working Well

According to government and industry officials, an interagency trade policy mechanism established by Congress has operated effectively in reviewing IPR issues (see fig. 2). In 1962, the Congress established the mechanism to assist USTR in developing policy on trade and trade-related investment, and the annual Special 301 review is conducted with this tool.⁴⁵ Three tiers of committees constitute the principal mechanism for developing and coordinating U.S. government positions on international trade, including IPR. The Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), administered and chaired by USTR, are the subcabinet interagency trade policy coordination groups that participate in trade policy development.⁴⁶ More than 80 working-level subcommittees are responsible for providing specialized support for the TPSC.

One of the specialized subcommittees is central to conducting the annual Special 301 review and determining the results of the review. During the 2004 review, which began early in the year, the Special 301 subcommittee met formally seven times, according to a USTR official.⁴⁷ The subcommittee reviewed responses to a *Federal Register* request for information about intellectual property problems around the world; it also reviewed responses to a cable sent to every U.S. embassy soliciting specific information on IPR issues. IPR industry associations provided lengthy, detailed submissions to the U.S. government during the Special 301 review; such submissions identify IPR problems in countries around the world and are an important component in making a determination as to which countries will be cited in the final report. After reaching its own decisions on country placement, the subcommittee submitted its proposal to the Trade Policy Staff Committee. The TPSC met twice and submitted its recommendations to the TPRG for final approval. The TPRG reached a

⁴⁵The Trade Expansion Act of 1962.

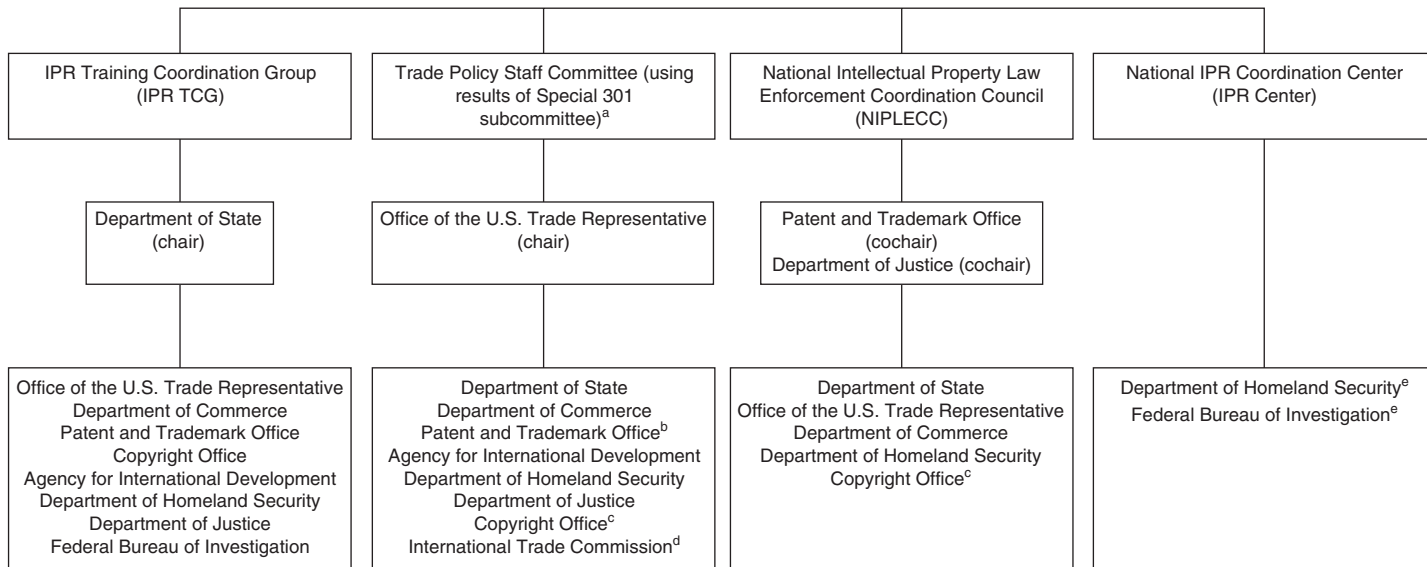
⁴⁶According to a USTR official, the final decision has been elevated to the Cabinet level on more than one occasion when particularly sensitive issues were involved; past reviews involving China, India, and Brazil were addressed at the Cabinet level.

⁴⁷Twenty-one executive branch government bodies are invited to participate in this interagency process: the Council of Economic Advisors; the Council on Environmental Quality; the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Homeland Security, Interior, Justice, Labor, State, Transportation, and Treasury; the Environmental Protection Agency; the Agency for International Development; the National Economic Council; the National Security Council; the Office of Management and Budget; USTR (Chair); and the International Trade Commission (non-voting member). The Copyright Office is also consulted during the annual Special 301 interagency review.

final decision via e-mail, and the results of this decision were announced with the publication of the Special 301 report on May 3, 2004. The entire process for 2004 is considered typical of how the annual process is usually conducted. In addition, this subcommittee can meet at other times to address IPR issues as appropriate.

According to U.S. government and industry officials, this interagency process is rigorous and effective. A USTR official stated that the Special 301 subcommittee is very active, and subcommittee leadership demonstrates a willingness to revisit issues raised by other agencies and reconsider positions. A Commerce official told us that the Special 301 review is one of the best tools for interagency coordination in the government and that the review involves a “phenomenal” amount of communication. A Copyright Office official noted that coordination during the review is frequent and effective. A representative for copyright industries also told us that the process works well and is a solid interagency effort.

Figure 2: U.S. Agency Participation in Coordination Mechanisms



Source: GAO.

^aWhile 22 government bodies are invited to participate in this effort, we are only listing those agencies included in our report.

^bThe U.S. Patent and Trademark Office does not vote separate and apart from the Department of Commerce.

^cConsulted.

^dNot a voting member.

^eThe two agencies share joint leadership of the center.

IPR Training Coordination Group Facilitates Collaboration, though Database Is Incomplete

The IPR Training Coordination Group, intended to inform its participants about IPR training activities and facilitate collaboration, developed a database to record and track training events, but we found that the database was incomplete. This voluntary, working-level group comprises representatives of U.S. agencies and industry associations involved in IPR programs and training and technical assistance efforts overseas or for foreign officials. Meetings are held approximately every 4 to 6 weeks and are well attended by government and private sector representatives. The State Department leads the group and supplies members with agendas and meeting minutes. Training Coordination Group meetings in 2003 and 2004 have included discussions on training “best practices,” responding to country requests for assistance, and improving IPR awareness among embassy staff. According to several agency and private sector participants, the group is a useful mechanism that keeps participants informed of the IPR activities of other agencies or associations and provides a forum for coordination.

Since it does not independently control budgetary resources, the group is not responsible for sponsoring or evaluating specific U.S. government training events. One agency official noted that, partly owing to the lack of funding coordination, the training group serves more as a forum to inform others regarding already-developed training plans than as a group to actively coordinate training activities across agencies. Officials at the Department of Commerce’s Commercial Law Development Program and USPTO commented that available funds, more than actual country needs, often determine what training they are able to offer. A private sector official also voiced this concern, and several agency and industry officials commented that more training opportunities were needed.⁴⁸ A Justice

⁴⁸According to a State Department official, the Bureau of International Narcotics and Law Enforcement at the Department of State is planning to spend \$2.5 million on intellectual property law enforcement training this fiscal year, a substantial increase from the estimated \$250,000 spent on intellectual property and cybercrime training in 2003. The State Department has been working with other bureaus and agencies to collect training proposals and review where and how the new funding should be spent.

official also noted that if there were more active interagency consultations, training could be better targeted to countries that need criminal enforcement training.

The Training Coordination Group helped develop a public training database,⁴⁹ which it uses as a resource to identify planned activities and track past efforts. However, although the database has improved in recent years to include more training events and better information, it remains incomplete. Officials from the Copyright Office and USPTO stated that the database should contain records of all of their training efforts, but officials from other agencies, including the Departments of Commerce, State, and Justice, and the FBI, acknowledged that it might not record all the training events they have conducted. Although the group's meetings help to keep the database updated by identifying upcoming training offered by members that have not been entered into the database, training activities that are not raised at the meeting or that are sponsored by embassies or an agency not in attendance may be overlooked. In addition, USAID submits training information only once per year at the conclusion of its own data-gathering exercise. Since USAID is a major sponsor of training activities—in 2002, according to the database, USAID sponsored or cosponsored nearly one-third of the total training events—the lack of timely information is notable. Several members expressed frustration that USAID does not contribute to the database regularly and inform the group about training occurring through its missions. USAID officials noted that the decentralization of their agency makes it difficult for them to address these concerns, because individual missions plan and implement training and technical assistance activities independently.

Council to Coordinate IPR Enforcement Has Had Little Impact

The National Intellectual Property Law Enforcement Coordination Council (NIPLECC), created by the Congress in 1999 to coordinate domestic and international intellectual property law enforcement among U.S. federal and foreign entities, seems to have had little impact. NIPLECC consists of (1) the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office; (2) the Assistant Attorney General, Criminal Division; (3) the Under Secretary of State for Economic and Agricultural Affairs; (4) the Deputy United States Trade Representative; (5) the Commissioner of Customs; and (6) the Under

⁴⁹The database can be viewed at <http://www.training.ipr.gov>.

Secretary of Commerce for International Trade. NIPLECC is also required to consult with the Register of Copyrights on law enforcement matters relating to copyright and related rights and matters. NIPLECC's authorizing legislation did not include the FBI as a member of NIPLECC, despite its pivotal role in law enforcement. However, according to representatives of the FBI, USPTO, and Justice, the FBI should be a member. NIPLECC, which has no independent staff or budget, is cochaired by USPTO and Justice. In the council's nearly 4 years of existence, its primary output has been three annual reports to the Congress, which are required by statute.

In its first year, according to the first annual report, NIPLECC met four times to begin shaping its agenda. It also consulted with industry and accepted written comments from the public related to what matters the council should address and how it should structure council-industry cooperation. It drafted a working paper detailing draft goals and proposed activities for the council. Goals and activities identified in the first report were "draft" only, because of the imminent change in administration. Although left open for further consideration, the matters raised in this report were not specifically addressed in any subsequent NIPLECC reports.

NIPLECC's second annual report states that the council's mission includes "law enforcement liaison, training coordination, industry and other outreach and increasing public awareness."⁵⁰ In particular, the report says, the council "determined that efforts should focus on a campaign of public awareness, at home and internationally, addressing the importance of protecting intellectual property rights." However, other than a one-page executive summary of NIPLECC's basic mission, the body of the second annual report consists entirely of individual agencies' submissions on their activities and details no activities undertaken by the council. NIPLECC met twice in the year between the first and second reports.

⁵⁰*National Intellectual Property Law Enforcement Coordination Council Report, 2001-2002.*

The third annual report also states that “efforts should focus on a campaign of public awareness, at home and internationally, addressing the importance of intellectual property rights.”⁵¹ Although this is identical to the language in the previous year’s report, there is little development of the theme, and no evidence of actual progress over the course of the previous year. Like the previous year’s report, other than a single-page executive summary, the body of the report consists of individual agency submissions detailing agency efforts, not the activities or intentions of the council. The report does not provide any detail about how NIPLECC has, in its third year, coordinated domestic and international intellectual property law enforcement among federal and foreign entities.

Under its authorizing legislation, NIPLECC has a broad mandate. According to interviews with industry officials and officials from NIPLECC member agencies, and as evidenced by its own legislation and reports, NIPLECC continues to struggle to define its purpose and has as yet had little discernable impact. Indeed, officials from more than half of the member agencies offered criticisms of the NIPLECC, remarking that it is unfocused, ineffective, and “unwieldy.” In official comments to the council’s 2003 annual report, major IPR industry associations expressed a sense that NIPLECC is not undertaking any independent activities or effecting any impact. One industry association representative stated that there is a need for law enforcement to be made more central to U.S. IPR efforts and said that although he believes the council was created to deal with this issue, it has “totally failed.” The lack of communication regarding enforcement results in part from complications such as concerns regarding the sharing of sensitive law enforcement information and from the different missions of the various agencies involved in intellectual property actions overseas. According to an official from USPTO, NIPLECC is hampered primarily by its lack of independent staff and funding. He noted, for example, a proposed NIPLECC initiative for a domestic and international public awareness campaign that has not been implemented owing to insufficient funds. According to a USTR official, NIPLECC needs to define a clear role in coordinating government policy. A Justice official stressed that, when considering coordination, it is important to avoid creating an additional layer of bureaucracy that may detract from efforts devoted to each agency’s primary mission. This official also commented that while NIPLECC’s stated purpose of enhancing interagency enforcement

⁵¹*National Intellectual Property Law Enforcement Coordination Council Report, 2003.*

coordination has not been achieved, the shortcomings of NIPLECC should not suggest an absence of effective interagency coordination elsewhere.

Despite NIPLECC's difficulties thus far, we heard some positive comments regarding this group. For example, an official from USPTO noted that the IPR training database web site resulted from NIPLECC efforts. Further, an official from the State Department commented that NIPLECC has had some "trickle-down" effects, such as helping to prioritize the funding and development of the intellectual property database at the State Department. Although NIPLECC principals meet infrequently and NIPLECC has undertaken few concrete activities, this official noted that NIPLECC is the only forum for bringing enforcement, policy, and foreign affairs agencies together at a high level to discuss intellectual property issues. A USPTO official stated that NIPLECC has potential, but needs to be "energized."

National IPR Coordination Center Is Not Widely Used by Industry

The National IPR Coordination Center (the IPR Center) in Washington, D.C., a joint effort between DHS and the FBI, began limited operations in 2000.⁵² According to a DHS official, the coordination between DHS, the FBI, and industry and trade associations makes the IPR Center unique. The IPR Center is intended to serve as a focal point for the collection of intelligence involving copyright and trademark infringement, signal theft, and theft of trade secrets. Center staff analyze intelligence that is collected through industry referrals of complaints (allegations of IPR infringements) and, if criminal activity is suspected, provide the information for use by FBI and DHS field components. The FBI at the IPR Center holds quarterly meetings with 11 priority industry groups to discuss pressing issues on violations within the specific jurisdiction of the FBI. Since its creation, the IPR Center has received 300 to 400 referrals, according to an IPR Center official. The center is also involved in training and outreach activities. For example, according to IPR Center staff, between May 2003 and April 2004, personnel from the center participated in more than 16 IPR training seminars and conducted 22 outreach events.

⁵²The IPR Center arose from the work of the National Security Council's Special Coordination Group on Intellectual Property Rights and Trade-Related Crime. This group was formed in order to implement Presidential Decision Directive 42 concerning international crime. In 1999, a consensus of the group members resulted in a multi-agency plan to improve the U.S. government's efforts in IPR enforcement, and the IPR Center was created.

The IPR Center is not widely used by industry. An FBI official associated with the IPR Center estimated that about 10 percent of all FBI industry referrals come through the center rather than going directly to FBI field offices. DHS officials noted that “industry is not knocking the door down” and that the IPR Center is perceived as underutilized. An FBI official noted that the IPR Center is functional but that it generally provides training, outreach, and intelligence to the field rather than serving as a primary clearinghouse for referral collection and review. The IPR Center got off to a slow start partly because, according to an FBI official, after the events of September 11, 2001, many IPR Center staff were reassigned, and the center did not become operational until 2002. The IPR Center is authorized for 24 total staff (16 from DHS and 8 from the FBI); as of July 2004, 20 staff (13 DHS, 7 FBI) were “on board” at the center, according to an IPR Center official. This official noted that the center’s use has been limited by the fact that big companies have their own investigative resources, and not all small companies are familiar with the IPR Center.⁵³

Informal Coordination Is Considered Important among Policy Agencies

In addition to the formal coordination efforts described, policy agency officials noted the importance of informal but regular communication among staff at the various agencies involved in the promotion or protection of intellectual property overseas. Several officials at various policy-oriented agencies, such as USTR and the Department of Commerce, noted that the intellectual property community was small and that all involved were very familiar with the relevant policy officials at other agencies in Washington, D.C. One U.S. government official said, “No one is shy about picking up the phone.” Further, State Department officials at U.S. embassies also regularly communicate with Washington, D.C. agencies regarding IPR matters and U.S. government actions. Agency officials noted that this type of coordination is central to pursuing U.S. intellectual property goals overseas.

Although communication between policy and law enforcement agencies can occur through forums such as the NIPLECC, these agencies do not share specific information about law enforcement activities systematically. According to an FBI official, once a criminal investigation begins, case

⁵³An official from the National Association of Manufacturers, an industry group whose membership consists primarily of small or medium-sized companies, told us that member companies do not use the IPR Center because they are unaware of this resource. An official from another industry group stated that the center has not been particularly useful to date.

information stays within the law enforcement agencies and is not shared. A Justice official emphasized that criminal enforcement is fundamentally different from the activities of policy agencies and that restrictions exist on Justice's ability to share investigation information, even with other U.S. agencies. Law enforcement agencies share investigation information with other agencies on an "as-needed" basis, and a USTR official said that there is no systematic means for obtaining information on law enforcement cases with international implications. An official at USPTO commented that coordination between policy and law enforcement agencies should be "tighter" and that both policy and law enforcement could benefit from improved communication. For example, in helping other countries draft IPR laws, policy officials could benefit from information on potential law enforcement obstacles identified by law enforcement officials.

Officials at the Department of State and USTR identified some formal and informal ways that law enforcement information may be incorporated into policy discussions and activities. They noted that enforcement agencies such as Justice and DHS participate in the formal Special 301 review and that officials at embassies or policy agencies consult and make use of the publicly available DHS seizure data on IPR-violating products.⁵⁴ For example, a USTR official told us that USTR had raised seizures at U.S. borders in bilateral discussions with the Chinese. Discussions addressed time-series trends, both on an absolute and percentage basis, for the overall seizure figures available from DHS. This official noted that the agency will generally raise seizure figures with a foreign country if that country is a major violator, has consistently remained near the top of the list of

⁵⁴The DHS seizure data are available at http://www.cbp.gov/xp/cgov/import/commercial_enforcement/ipr/seizure/.

violators, and/or has increasingly been the source of seized goods.⁵⁵ In addition, a Justice official noted that the department increasingly engages in policy activities, such as the Special 301 annual review and the negotiation of free trade agreements, as well as training efforts, to improve coordination between policy and law enforcement agencies and to strengthen international IPR enforcement.

U.S. Government Faces Challenges to Further Progress

The impact of U.S. activities is challenged by numerous factors. For example, internally, competing U.S. policy objectives can affect how much the U.S. government can accomplish. Beyond internal factors, the willingness of a foreign country to cooperate in improving its IPR is affected by that country's domestic policy objectives and economic interests, which may complement or conflict with U.S. objectives. In addition, many economic factors, including low barriers to entering the counterfeiting and piracy business and large price differences between legitimate and fake goods as well as problems such as organized crime, pose challenges to U.S. and foreign governments' efforts, even in countries where the political will for protecting intellectual property exists.

U.S. Government Faces Internal Constraints

Because intellectual property protection is one among many objectives that the U.S. government pursues overseas, it is viewed in the context of broader U.S. foreign policy interests where other objectives may receive a higher priority at certain times in certain countries. Industry officials with whom GAO met noted, for example, their belief that policy priorities related to national security were limiting the extent to which the United States undertook activities or applied diplomatic pressure related to IPR issues in some countries. Officials at the Department of Justice and the FBI also commented that counterterrorism, not IPR, is currently the key

⁵⁵Regarding the level of specificity provided when raising seizure figures with foreign governments, a USTR official stated that it is not typical to address the details of a case. USTR has not raised specific seizure cases or asked a foreign government to take action against specific violators. Whether the details necessary to provide such information are available depends on the information that was collected by DHS at the time of the seizure. USTR will defer to DHS to provide the appropriate level of information when discussing seizures with foreign governments. A DHS official noted that the Trade Secrets Act (18 USC section 1905) precludes sharing information about specific imports, even where there is criminal activity. The Trade Secrets Act makes it a criminal offense for an employee of the United States, or one of its agencies, to disclose trade secrets and certain other forms of confidential commercial and financial information except where such disclosure is "authorized by law."

priority for law enforcement. Further, although industry is supportive of U.S. efforts, many industry representatives commented that U.S. agencies need to increase the resources available to better address IPR issues overseas.

Lack of Support in Foreign Countries Can Limit U.S. Efforts' Impact

The impact of U.S. activities is affected by a country's own domestic policy objectives and economic interests, which may complement or conflict with U.S. objectives. U.S. efforts are more likely to be effective in encouraging government action or achieving impact in a foreign country if support for intellectual property protection exists there. Groups in a foreign country whose interests align with that of the United States can bolster U.S. efforts. For example, combating music piracy in Brazil has gained political attention and support because Brazil has a viable domestic music industry and thus has domestic interests that have become victims of widespread piracy. Further, according to a police official in Rio de Janeiro, efforts to crack down on street vendors are motivated by the loss of tax revenues from the informal economy. The unintended effect of these local Brazilian efforts has been a crackdown on counterfeiting activities because the informal economy is often involved in selling pirated and counterfeit goods on the streets. Likewise, the Chinese government has been working with a U.S. pharmaceutical company on medicines safety training to reduce the amount of fake medicines produced in China (see fig. 3).

Figure 3: Counterfeit and Legitimate Chinese Pharmaceutical Products



Source: GAO.

However, U.S. efforts are less likely to achieve impact if no such domestic support exists in other nations. Although U.S. options such as removing trade preference program benefits, considering trade sanctions, or visibly publicizing weaknesses in foreign IPR protection can provide incentives for increased protection of IPR, such policies may not be sufficient alone to counter existing incentives in foreign countries. In addition, officials in some countries view providing strong intellectual property protection as an impediment to development. A Commission on Intellectual Property Rights (established by the British government) report points out that strong IPR can allow foreign firms selling to developing countries to drive out domestic competition by obtaining patent protection and to service the market through imports rather than domestic manufacture, or that strong intellectual property protection increases the costs of essential medicines and agricultural inputs, affecting poor people and farmers particularly negatively. A lack of “political will” to enact IPR protections makes it difficult for the U.S. government to achieve impact in locations where a foreign government maintains such positions.

Economic Factors and Involvement of Organized Crime Pose Additional Challenges

Many economic factors complicate and challenge U.S. and foreign governments’ efforts, even in countries where the political will for protecting intellectual property exists. These factors include low barriers to entering the counterfeiting and piracy business and potentially high profits for producers. For example, one industry pointed out that it is much more profitable to buy and resell software than to sell cocaine. In addition, the low prices of fake products are attractive to consumers. The economic incentives can be especially acute in countries where people have limited income. Moreover, technological advances allowing for high-quality inexpensive and accessible reproduction and distribution in some industries have exacerbated the problem. Further, many government and industry officials also believe the chance of getting caught for counterfeiting and piracy, as well as the penalties even if caught, are too low. For example, FBI officials pointed out that domestic enforcement of intellectual property laws has been weak, and consequently the level of deterrence has been inadequate. These officials said that criminal prosecutions and serious financial penalties are necessary to deter intellectual property violations.

The increasing involvement of organized crime in the production and distribution of pirated products further complicates enforcement efforts. Federal and foreign law enforcement officials have linked intellectual property crime to national and transnational organized criminal operations.

According to the Secretary General of Interpol, intellectual property crime is now dominated by criminal organizations, and law enforcement authorities have identified some direct and some alleged links between intellectual property crime and paramilitary and terrorist groups.⁵⁶ Justice Department officials noted that they are aware of the allegations linking intellectual property crime and terrorist funding and that they are actively exploring all potential avenues of terrorist financing, including through intellectual property crime. However, to date, U.S. law enforcement has not found solid evidence that intellectual property has been or is being pirated in the United States by or for the benefit of terrorists. The involvement of organized crime increases the sophistication of counterfeiting operations, as well as the challenges and threats to law enforcement officials confronting the violations. Moreover, according to officials in Brazil, organized criminal activity surrounding intellectual property crime is linked with official corruption, which can pose an additional obstacle to U.S. and foreign efforts to promote enhanced enforcement.

Many of these challenges are evident in the optical media industry, which includes music, movies, software, and games. Even in countries where interests exist to protect domestic industries, such as the domestic music industry in Brazil or the domestic movie industry in China, economic and law enforcement challenges can be difficult to overcome. For example, the cost of reproduction technology and copying digital media is low, making piracy an attractive employment opportunity, especially in a country where formal employment is hard to obtain. According to the Business Software Alliance, a CD recorder is relatively inexpensive (less than \$1,000). The huge price differentials between pirated CDs and legitimate copies also create incentives on the consumer side. For example, when we visited a market in Brazil, we observed that the price for a legitimate DVD was approximately ten times the price for a pirated DVD. Even if consumers are willing to pay extra to purchase the legitimate product, they may not do so if the price differences are too great for similar products. We found that music companies have experimented with lowering the price of legitimate CDs in Russia and Ukraine.⁵⁷ A music industry representative in Ukraine told us that this strategy is intended to make legitimate products really

⁵⁶In July 2003, the House Committee on International Relations held a hearing entitled “Intellectual Property Crimes: Are Proceeds From Counterfeited Goods Funding Terrorism?” The Secretary General of Interpol testified at this hearing.

⁵⁷According to one music industry official, this effort is targeted throughout the entire former Soviet Union except for the Baltic states.

affordable to consumers. However, whether this program is successful in gaining market share and reducing sales of pirated CDs is unclear. During our visit to a large Russian marketplace, a vendor encouraged us to purchase a pirated CD despite the fact that she also had the same CD for sale under the legitimate reduced-price program. Further, the potentially high profit makes optical media piracy an attractive venture for organized criminal groups. Industry and government officials have noted criminal involvement in optical media piracy and the resulting law enforcement challenges.

Recent technological advances have also exacerbated optical media piracy. The mobility of the equipment makes it easy to transport it to another location, further complicating enforcement efforts. Industry and government officials described this phenomenon as the “whack-a-mole” problem,⁵⁸ noting that when progress is made in one country, piracy operations often simply move to a neighboring location. According to a Ukraine official, many production facilities moved to Russia after Ukraine started closing down CD plants. These economic incentives and technological developments have resulted in particularly high rates of piracy in the optical media sector. Likewise, the Internet provides a means to transmit and sell illegal software or music on a global scale. According to an industry representative, the ability of Internet pirates to hide their identities or operate from remote jurisdictions often makes it difficult for IPR holders to find them and hold them accountable.

Conclusions

To seek improved protection of U.S. intellectual property in foreign countries, U.S. agencies make use of a wide array of tools and opportunities, ranging from routine discussions with foreign government officials, to trade sanctions, to training and technical assistance, to presidential-level dialogue. The U.S. government has demonstrated a commitment to addressing IPR issues in foreign countries using multiple agencies and U.S. embassies overseas. However, law enforcement actions are more restricted than other U.S. activities, owing to factors such as a lack of jurisdiction overseas to enforce U.S. law. U.S. agencies and industry

⁵⁸“Whack-a-mole” refers to an amusement park game where a “mole” is hit with a mallet into a hole on the board only to immediately resurface from another hole. Industry and government officials regularly use this analogy to describe the phenomenon of IPR problems migrating from a country that takes actions to fight such problems to another country that is less vigilant.

communicate regularly, and industry provides important support for various agency activities.

Although the results of U.S. efforts to secure improved intellectual property protection overseas often cannot be precisely identified, the U.S. government is clearly and consistently engaged in this area and has had a positive impact. Agency and industry officials have cited the Special 301 review most frequently as the U.S. government tool that has facilitated IPR improvements overseas. The effects of U.S. actions are most evident in strengthened foreign IPR legislation and new international obligations. Industry clearly supports U.S. efforts, recognizing that they have contributed to improvements such as strengthened IPR laws overseas. U.S. efforts are now focused on enforcement, since effective enforcement is often the weak link in intellectual property protection overseas and the situation is deteriorating for some industries.

Several IPR coordination mechanisms exist, with the interagency coordination that occurs during the Special 301 process standing out as the most significant and active. Of note, the Training Coordination Group is a completely voluntary effort and is generally cited as a positive development. Further, the database created by this group is useful, although it remains incomplete. Conversely, the mechanism for coordinating intellectual property law enforcement, NIPLECC, has accomplished little that is concrete. Currently, little compelling information demonstrates a unique role for this group, bringing into question its effectiveness. In addition, it does not include the FBI, a primary law enforcement agency. Members, including NIPLECC leadership, have repeatedly acknowledged that the group continues to struggle to find an appropriate mission.

As agencies continue to pursue IPR improvements overseas, they will face daunting challenges. These challenges include the need to create political will overseas, recent technological advancements that facilitate the production and distribution of counterfeit and pirated goods, and powerful economic incentives for both producers and consumers, particularly in developing countries. Further, as the U.S. government focuses increasingly on enforcement, it will face different and complex factors, such as organized crime, that may prove quite difficult to address.

Matter for Congressional Consideration

Because the authorizing legislation for the National Intellectual Property Law Enforcement Coordination Council (NIPLECC) does not clearly define the council's mission, NIPLECC has struggled to establish its purpose and unique role. If the Congress wishes to maintain NIPLECC and take action to increase its effectiveness, the Congress may wish to consider reviewing the council's authority, operating structure, membership, and mission. Such consideration could help the NIPLECC identify appropriate activities and operate more effectively to coordinate intellectual property law enforcement issues.

Agency Comments

We received technical comments from USTR, the Departments of State, Justice, and Homeland Security, the Copyright Office, and USITC. We incorporated these comments into the report as appropriate. We also received formal comment letters from the Department of Commerce (which includes comments from USPTO), the Department of Homeland Security, and USAID. USAID raised concerns regarding our findings on the agency's contribution to an online IPR training database. No agency disagreed with our overall findings and conclusions, though all suggested several wording changes and/or additions to improve the report's completeness and accuracy. The FBI provided no comments on the draft report.

As arranged with your offices, unless you publicly announce the contents earlier, we plan no further distribution of this report until 30 days after the date of this letter. At that time, we will send copies of this report to other interested committees. We will also provide copies to the Secretaries of State, Commerce, and Homeland Security; the Attorney General; the U.S. Trade Representative; the Director of the Federal Bureau of Investigation; the Director of the U.S. Patent and Trademark Office; the Register of Copyrights; the Administrator of the U.S. Agency for International Development; and the Chairman of the U.S. International Trade Commission. We will make copies available to other interested parties upon request.

If you or your staff have any questions regarding this report, please call me at (202) 512-4128. Other GAO contacts and staff acknowledgments are listed in appendix XI.

A handwritten signature in black ink that reads "Loren Yager". The signature is written in a cursive style with a large initial "L" and "Y".

Loren Yager
Director, International Affairs and Trade

Objectives, Scope, and Methodology

The Chairmen of the House Committees on Government Reform, International Relations, and Small Business requested that we review U.S. government efforts to improve intellectual property protection overseas. This report addresses (1) the specific efforts that U.S. agencies have undertaken; (2) the impact, and industry views, of these actions; (3) the means used to coordinate these efforts; and (4) the challenges that these efforts face in generating their intended impact.

To describe agencies' efforts, as well as the impact of these efforts, we analyzed key U.S. government intellectual property reports, such as the annual "Special 301" reports for the years 1994 through 2004, and reviewed information available from databases such as the State Department's intellectual property training database and the Department of Homeland Security's online database of counterfeit goods seizures. To assess the reliability of the online Department of Homeland Security seizure data (www.cbp.gov/xp/cgov/import/commercial_enforcement/ipr/seizure/), we interviewed the officials responsible for collecting the data and performed reliability checks on the data. Although we found that the agency had implemented a number of checks and controls to ensure the data's reliability, we also noted some limitations in the precision of the estimates. However, we determined that the data were sufficiently reliable to provide a broad indication of the major products seized and the main country from which the seized imports originated. Our review of the reliability of the State Department's training database is described below as part of our work to review agency coordination. While we requested a comprehensive listing of countries assessed and GSP benefits removed due to IPR problems, USTR was unable to provide us with such data because this information is not regularly collected.

We met with officials from the Departments of State, Commerce, Justice, and Homeland Security; the Office of the U.S. Trade Representative (USTR); the U.S. Patent and Trademark Office (USPTO); the Copyright Office; the Federal Bureau of Investigation (FBI); the U.S. International Trade Commission (USITC); and the U.S. Agency for International Development (USAID). We also met with officials from the following industry groups that address intellectual property issues: the International Intellectual Property Alliance, the International AntiCounterfeiting Coalition, the Motion Picture Association of America, the Recording Industry Association of America, the Entertainment Software Association, the Association of American Publishers, the Software and Information Industry Association, the International Trademark Association, the Pharmaceutical Research and Manufacturers of America, and the National

Association of Manufacturers. We reviewed reports and testimonies that such groups had prepared. In addition, we attended a private sector intellectual property rights enforcement conference and a U.S. government training session sponsored by USPTO and the World Intellectual Property Organization (WIPO). We met with officials from the World Trade Organization (WTO) and WIPO in Geneva, Switzerland, to discuss their interactions with U.S. agency officials.

We reviewed literature modeling trade damages due to intellectual property violations and, in particular, examined the models used to estimate such losses in Ukraine, which has been subject to U.S. trade sanctions since 2002. We met with officials to discuss the methodologies and processes employed in the Ukraine sanction case. To identify the impact of trade sanctions against Ukraine, we studied the U.S. overall imports from Ukraine as well as imports of commodities on the sanction list from Ukraine from 2000 to 2003.

Finally, to verify information provided to us by industry and agency officials and obtain detailed examples of U.S. government actions overseas and the results of those actions, we traveled to four countries where serious IPR problems have been identified—Brazil, China, Russia, and Ukraine—and where the U.S. government has taken measures to address these problems. We met with U.S. embassy and foreign government officials and with U.S. companies and industry groups operating in those countries. To choose the case study countries, we evaluated countries according to a number of criteria that we established, including the extent of U.S. government involvement; the economic significance of the country and seriousness of the intellectual property problem; the coverage of key intellectual property areas (patent, copyright, and trademark) and industries (e.g., optical media, pharmaceuticals); and agency and industry association recommendations. We collected and reviewed U.S. government and industry documents in these countries.

To describe and assess the coordination mechanisms for U.S. efforts to address intellectual property rights (IPR) overseas, we identified formal coordination efforts (mandated by law, created by executive decision, or occurring and documented on a regular basis) and reviewed documents describing agency participation, mission, and activities. We interviewed officials from agencies participating in the Special 301 subcommittee of the Trade Policy Staff Committee, the National Intellectual Property Law Enforcement Coordination Council, the IPR Training Coordination Group, and the IPR Center. While USTR did provide GAO with a list of agencies

that participated in Special 301 subcommittee meetings during the 2004 review, USTR officials requested that we not cite this information in our report on the grounds that this information is sensitive. USTR asked that we instead list all the agencies that are invited to participate in the TPSC process, though agency officials acknowledged that, based upon their own priorities, not all agencies actually participate. We also met with officials from intellectual property industry groups who participate in the IPR Training Coordination Group and who are familiar with the other agency coordination efforts. We attended a meeting of the IPR Training Coordination Group to witness its operations, and we visited the IPR Center. To further examine the coordination of agency training efforts, we conducted a data reliability assessment of the IPR Training Database (www.training.ipr.gov) to determine whether it contained an accurate and complete record of past and planned training events. To assess the completeness and reliability of the training data in the database, we spoke with officials at the Department of State about the management of the database and with officials at the agencies about the entering of the data in the database. We also conducted basic tests of the data's reliability, including checking to see whether agencies input information related to training events in the database and information appeared accurate. We assessed the reliability of these data to determine how useful they are to the agencies that provide IPR training, not because we wanted to include them in this report. As noted on pages 34 and 35, we determined that these data had some problems of timeliness and completeness, which limited their usefulness. Finally, we compared the data with documents containing similar information, provided by some of the agencies, to check the data's consistency. To identify other forms of coordination, we spoke with U.S. agency officials about informal coordination and communication apart from the formal coordination bodies cited above.

To identify the challenges that agencies' activities face in generating their intended impact, we spoke with private sector and embassy personnel in the case study countries about political and economic circumstances relevant to intellectual property protection and the impact of these circumstances on U.S. activities. We also spoke with law enforcement personnel at the Departments of Justice and Homeland Security, the FBI, and foreign law enforcement agencies in Washington, D.C., and our case study countries about the challenges they face in combating intellectual property crime overseas. We visited markets in our case study countries where counterfeit and pirated merchandise is sold to compare local prices for legitimate and counterfeit products and to confirm (at times with industry experts present) that counterfeit goods are widely and easily

available. We reviewed embassy cables, agency and industry reports, and congressional testimony provided by agency, industry, and overseas law enforcement officials documenting obstacles to progress in IPR protection around the world. We reviewed studies and gathered information at our interviews on the arguments for and against IPR protection in developing countries.

In addition to the general discussion, we chose the optical media sector to illustrate the challenges facing antipiracy efforts. To identify the challenges, we interviewed industry representatives from the optical media sector both in the United States and overseas regarding their experiences in fighting piracy. We reviewed Special 301 reports and industry submissions to study the optical media piracy levels over the years. In Brazil, Russia, and Ukraine, we recorded the prices of legal and illegal music CDs, movies, and software at local markets.

We used U.S. overall imports and import of the products on the sanction list from Ukraine. The source of the overall import data is the U.S. Bureau of the Census, and the source of the import data of the products on the sanction list is the Trade Policy Information System (TPIS), a Web site operated by the Department of Commerce. In order to assess the reliability of the overall import data, we (1) reviewed “U.S. Merchandise Trade Statistics: A Quality Profile” by the Bureau of the Census and (2) discussed the data with the Chief Statistician at GAO. We determined the data to be sufficiently reliable for our purpose, which was to track the changes in U.S. overall imports from Ukraine from 2000 through 2003. In order to assess the reliability of the data from TPIS, we did internal checks on the data and checked the data against a Bureau of the Census publication. We determined the data to be sufficiently reliable for our purpose, which was to track changes in U.S. imports from Ukraine of the goods on the sanction list.

We conducted our work in Washington, D.C.; Geneva, Switzerland; Brasilia, Rio de Janeiro, and Sao Paulo, Brazil; Beijing, China; Moscow, Russia; and Kiev, Ukraine, from June 2003 through July 2004, in accordance with generally accepted government auditing standards.

Trade Agreements Negotiated Since 1990 That Address IPR, and the WTO Membership Status for Countries Involved

Trade agreements^a	Year	WTO status
IPR agreements/understandings		
Bahamas Letter of Understanding on the Copyright Act and Regulations	2000	N
Bulgaria IPR Agreement	1994	1996
Croatia IPR MOU	1998	2000
Ecuador IPR Agreement	1993	1996
Hungary IPR Agreement	1993	1995
India IPR Agreement	1993	1995
Jamaica IPR Agreement	1994	1995
Japan Mutual Understanding on IPR	1994	1995
Japan Mutual Understanding on IPR	1994	1995
Korea Exchange of Letters on Pipeline Protection	1990	1995
Korea Exchange of Letters on Data Protection	2002	1995
Nicaragua IPR Agreement	1997	1995
Paraguay IPR MOU	1998	1995
PRC MOU on IP Protection	1992	2001
PRC Agreement on IP Protection	1995	2001
PRC Report on Measures to Enforce IP Protection	1996	2001
Peru IPR MOU	1997	1995
Philippines Protection and Enforcement of IPR	1993	1995
Sri Lanka IPR Agreement	1991	1995
Taiwan – Agreement on IP Protection	1992	2002
Taiwan – Agreement on IP Protection (Trademark)	1993	2002
Taiwan – Agreement on IP Protection (Copyright)	1993	2002
Thailand IPR Agreement	1991	1995
Trinidad and Tobago IPR Agreement	1994	1995
Vietnam Establishment of Copyright Relations Agreement	1997	N
Trade agreements with IPR provisions		
Albania Trade Relations Agreement	1992	2000
Armenia Trade Relations Agreement	1992	2003
Azerbaijan Trade Relations Agreement	1995	N
Belarus Trade Relations Agreement	1993	N
Bulgaria Agreement on Trade Relations	1991	1996
Cambodia Trade Relations and IPR Agreement	1996	N
Czech Republic Trade Relations Agreement	1990	1995

Appendix II
Trade Agreements Negotiated Since 1990
That Address IPR, and the WTO Membership
Status for Countries Involved

(Continued From Previous Page)

Trade agreements ^a	Year	WTO status
Trade agreements with IPR provisions		
Georgia Trade Relations Agreement	1993	2000
Kazakhstan Trade Relations Agreement	1993	N
Kyrgyzstan Trade Relations Agreement	1992	1998
Latvia Trade and IPR Agreement	1995	1999
Moldova Agreement on Trade Relations	1992	2001
Mongolia Trade Relations Agreement	1991	1997
Panama Trade Relations Agreement	1994	1997
Poland Business and Economic Treaty	1994	1995
Romania Agreement on Trade Relations	1992	1995
Russia Trade Relations Agreement	1992	N
Slovakia Trade Relations Agreement	1990	1995
Tajikistan Trade Relations Agreement	1993	N
Turkmenistan Agreement on Trade Relations	1993	N
Ukraine Trade Relations Agreement	1992	N
Uzbekistan Trade Relations Agreement	1994	N
Vietnam Trade Relations Agreement	2001	N
Free trade agreements (FTAs)		
Chile FTA	2003	1995
Jordan FTA	2001	2000
North American FTA (Mexico and Canada)	1994	1995
Singapore FTA	2003	1995

Legend:

- IPR intellectual property rights
- MOU memorandum of understanding
- PRC People's Republic of China
- N Not a member of the WTO

Source: GAO, based on Department of Commerce and USTR data.

^aIncludes only in-force agreements

WTO TRIPS Dispute Settlement Cases Brought by the U.S. Government

Since the implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) in 1996, the United States has brought a total of 12 TRIPS-related cases against 11 countries and the European Community (EC) to the WTO through that organization's dispute settlement mechanism (see below). Of these, 8 cases were resolved by mutually agreed solutions. In nearly all of these cases, U.S. concerns were addressed via changes in laws or regulations by the other party. Only 2 (involving Canada and India) have resulted in the issuance of a panel report, both of which were favorable rulings for the United States.¹ Consultations are ongoing in one additional case, against Argentina, and this case has been partially settled. One case, involving an EC regulation protecting geographical indications, has gone beyond consultations and is in WTO dispute settlement panel proceedings.

1. Argentina: pharmaceutical patents
— *Brought by U.S.*, [DS171](#) and [DS196](#)
Case originally brought by the United States in May 1999. Consultations ongoing, although 8 of 10 originally disputed issues have been resolved.
2. Brazil: “local working” of patents and compulsory licensing
— *Brought by U.S.*, [DS199](#)
Case originally brought by the United States in June 2000. Settled between the parties in July 2001. Brazil agreed to hold talks with the United States prior to using the disputed article against a U.S. company.
3. Canada: term of patent protection
— *Brought by U.S.*, [DS170](#)
Case originally brought by the United States in May 1999. Panel report issued in May 2000 decided for the United States, (WT/DS170/R) later upheld by Appellate Body report. According to USTR, Canada announced implementation of a revised patent law on July 24, 2001.
4. Denmark: enforcement, provisional measures, civil proceedings
— *Brought by U.S.*, [DS83](#)
Case originally brought by United States in May 1997. Settled between the parties in June 2001. In March 2001, Denmark passed legislation granting the relevant judicial authorities the authority to order

¹India-U.S. Patent Protection of Pharmaceutical Products, WT/DS 50/R (Jan. 16, 1998), as modified by WT/DS 50/AB/R; Canada-Term of Patent Protection, WT/DS 170/R (Oct. 12, 2000), upheld at WT/DS 170/AB/R.

provisional measures in the context of civil proceedings involving the enforcement of intellectual property rights.

5. EC: trademarks and geographical indications
— *Brought by U.S.*, [DS174](#)
Case originally brought by U.S. in June 1999. WTO panel proceedings are ongoing.
6. Greece and EC: motion pictures, TV, enforcement
— *Brought by U.S.*, [DS124](#) and [DS125](#)
Case originally brought by the United States in May 1998. Greece passed a law in October 1998 that provided an additional enforcement remedy for copyright holders whose rights were infringed upon by TV stations in Greece. Based on the implementation of this law, the case was settled between the parties in March 2001.
7. India: patents, “mailbox,” exclusive marketing
— *Brought by EC*, [DS79](#)
— *Brought by U.S.*, [DS50](#)
Case originally brought by the United States in July 1996. Panel report issued in September 1997 decided for the United States (WT/DS50/R).
8. Ireland and EC: copyright and neighbouring rights
— *Brought by U.S.*, [DS82](#) and [DS115](#)
Case originally brought by the United States in May 1997. Settled between the parties in November 2000. Ireland passed a law and amended its copyright law in ways that satisfied U.S. concerns.
9. Japan: sound recordings intellectual property protection
— *Brought by EC* [DS42](#)
— *Brought by U.S.*, [DS28](#)
Case originally brought by the United States in February 1996. Settled between the parties in January 1997. Japan passed amendments to its copyright law that satisfied U.S. concerns.
10. Pakistan: patents, “mailbox,” exclusive marketing
— *Brought by U.S.*, [DS36](#)
Case originally brought by the United States in May 1996. Settled between the parties in February 1997. Pakistan issued rulings with respect to the filing and recognition of patents that satisfied U.S. concerns.

Appendix III
WTO TRIPS Dispute Settlement Cases
Brought by the U.S. Government

11. Portugal: term of patent protection

— *Brought by U.S.*, DS37

Case originally brought by the United States in May 1996. Settled between the parties in October 1996. Portugal issued a law addressing terms of patent protection in a way that satisfied U.S. concerns.

12. Sweden: enforcement, provisional measures, civil proceedings

— *Brought by U.S.*, DS86

Case originally brought by the United States in June 1997. Settled between the parties in December 1998. In November 1998, Sweden passed legislation granting the relevant judicial authorities the authority to order provisional measures in the context of civil proceedings involving the enforcement of intellectual property rights.

Country Case Study: Brazil

The State of IPR in Brazil

Brazil is generally credited with having adequate laws to protect intellectual property, but the enforcement of these laws remains a problem. Officials we interviewed in Brazil identified several reasons for the weak enforcement, including insufficient and poorly trained police and a judiciary hampered by a lack of resources, inefficiencies and, in some cases, corruption. Most broadly, they cited the weak economy and lack of formal sector employment as reasons for the widespread sale and consumption of counterfeit goods. One Brazilian official commented that the current intellectual property protection system has generated large price gaps between legitimate and illegitimate products, making it very difficult to combat illegitimate products. However, private sector officials also pointed to high tax rates on certain goods as a reason for counterfeiting. Regardless, the sale of counterfeit merchandise abounds. One market in Sao Paulo that we visited covered many city blocks and was saturated with counterfeit products. For example, we identified counterfeit U.S. products such as Nike shoes, Calvin Klein perfume, and DVDs of varying quality. The market not only sold counterfeit products to the individual consumer, but many vendors also served as “counterfeit wholesalers” who offered even cheaper prices for purchasing counterfeit sunglasses in bulk, for example. According to industry representatives, this market also has ties to organized crime.

Private and public sector officials identified two significant challenges to Brazil’s improving its intellectual property protection: establishing better border protection, particularly from Paraguay—a major source of counterfeit goods—and a better-functioning National Industrial Property Institute (INPI). The acting president of INPI acknowledged that, owing to insufficient personnel, money, and space, INPI is not functioning well and has an extremely long backlog of patent and trademark applications. Two private sector representatives commented that U.S. assistance to INPI could be very valuable. It can currently take as long as 9 years to get a patent approved. Patent problems have been exacerbated by an ongoing conflict between INPI and the Ministry of Health over the authority to grant pharmaceutical patents. A pharmaceutical industry association report claims that the current system, which requires the Ministry of Health to approve all pharmaceutical patents, is in violation of TRIPS.

U.S. Government Actions to Address Brazil’s IPR Problems

The U.S. government has been involved in various activities to promote better enforcement of intellectual property rights in Brazil. Brazil has been cited on the Special 301 Priority Watch List since 2002 and is currently

undergoing a review to determine whether it should remain eligible for Generalized System of Preferences (GSP) benefits. In recent years, Brazilian officials have participated in training offered by USPTO in Washington, D.C., and have studied intellectual property issues in depth in the United States as participants in U.S.-sponsored programs. The Departments of State, Justice, and Homeland Security have also sponsored or participated in training events or seminars on different intellectual property issues. The Department of State's public affairs division has also worked on public awareness events and seminars.

Officials from industry associations representing American companies, as well as officials from individual companies we met with, stated that they are generally satisfied with U.S. efforts to promote the protection of IPR in Brazil. Many had regular contact with embassy personnel to discuss intellectual property issues, and several had collaborated with U.S. agencies to develop and present seminars or training events in Brazil that they believed were useful tools for promoting IPR. The private sector officials we spoke with made some suggestions for improving U.S.-sponsored assistance, including consulting with the private sector earlier to identify appropriate candidates for training. However, private and public sector officials commented regularly on the usefulness of training activities provided by the United States, and many expressed a desire for more of these services. In particular, several officials expressed a hope that the United States would provide training and technical assistance to INPI. In February 2004, a senior Department of Commerce official discussed collaboration and technical assistance matters with a Brazilian minister, and USPTO staff recently traveled to Brazil to provide training at INPI.

Overall, the direct impact of U.S. efforts was difficult to determine, but U.S. involvement regarding IPR in Brazil was widely recognized. Several industry and Brazilian officials we spoke with were familiar with the Special 301 report; many in the private sector had contributed to it via different mechanisms. One industry official commented that the Special 301 process is helpful in convincing the Brazilian authorities of the importance of intellectual property protection. Others were less certain about whether the report had any impact. A Brazilian minister stated that the United States is the biggest proponent of IPR, although he did not believe that any particular U.S. program had had a direct impact on Brazilian intellectual property laws or enforcement. Others, however, believed that pressure from the U.S. government lent more credibility to the private sector's efforts and may have contributed to changes in Brazilian intellectual property laws.

Changes in Brazil's IPR Protection

Most private sector officials we spoke with agreed that the government's interest in combating intellectual property crime has recently increased. They noted that developments have included the work of the Congressional Investigative Commission on Piracy (CPI) in the Brazilian Congress and newly formed special police groups to combat piracy. In addition, President Lula signed a law last year amending the penal code with respect to copyright violations; minimum sentences were increased to 2 years and now include a fine and provide for the seizure and destruction of counterfeit goods. However, these increased sanctions do not apply to software violations. According to an official with the Brazilian special police, the Brazilian government was moved to prosecute piracy more vigorously because government officials realized that the growing informal economy was resulting in the loss of tax revenue and jobs. However, a Brazilian state prosecutor and the CPI cited corruption and the involvement of organized crime in intellectual property violations as challenges to enforcement efforts.

Country Case Study: China

The State of IPR in China

China's protection of IPR has improved in recent years but remains an ongoing concern for the U.S. government and the business community. Upon accession to the WTO in December 2001, China was obligated to adhere to the terms of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). According to the U.S. Trade Representative's (USTR) 2003 review of China's compliance with its WTO commitments, IPR enforcement was ineffective, and IPR infringement continued to be a serious problem in China. USTR reported that lack of coordination among Chinese government ministries and agencies, local protectionism and corruption, high thresholds for criminal prosecution, lack of training, and weak punishments hampered enforcement of IPR.

Piracy rates in China continue to be excessively high and affect products from a wide range of industries. According to a 2003 report by China's State Council's Development Research Center, the market value of counterfeit goods in China is between \$19 billion and \$24 billion. Various U.S. copyright holders also reported that estimated U.S. losses due to the piracy of copyrighted materials have continued to exceed \$1.8 billion annually. Pirated products in China include films, music, publishing, software, pharmaceuticals, chemicals, information technology, consumer goods, electric equipment, automotive parts, and industrial products, among many others. According to the International Intellectual Property Alliance, a coalition of U.S. trade associations, piracy levels for optical discs are at 90 percent and higher, almost completely dominating China's local market. Furthermore, a U.S. trade association reported that the pharmaceutical industry not only loses roughly 10 to 15 percent of annual revenue in China to counterfeit products, but counterfeit pharmaceutical products also pose serious health risks.

U.S. Government Actions to Address China's IPR Problems

Since the first annual Special 301 review in 1989, USTR has initiated several Special 301 investigations on China's IPR protection. However, since the conclusion of a bilateral IPR agreement with China in 1996, China has not been subject to a Special 301 investigation but has instead been subject to monitoring under Section 306.¹ In 2004, USTR reviewed China's implementation under Section 306 and announced that China would be

¹Section 306 (19 U.S.C. section 2416), requires that USTR monitor the implementation of each measure undertaken, or agreement that is entered into, by a foreign country under the Special 301 review.

subject to an out-of-cycle review in 2005. In addition to addressing China's IPR protection through these statutory mechanisms, the U.S. government has been involved in various efforts to protect IPR in China. The U.S. government's activities in China are part of an interagency effort involving several agencies, including USTR, State, Commerce, Justice, Homeland Security, USPTO, and the Copyright Office. In 2003, U.S. interagency actions in China to protect IPR included (1) engaging the Chinese government at various levels on IPR issues; (2) providing training and technical assistance for Chinese ministries, agencies, and other government entities on various aspects of IPR protection; and (3) providing outreach and assistance to U.S. businesses. Most private sector representatives we met with in China said that they are generally satisfied with the U.S. government's efforts in China but noted areas for potential improvement.

In 2003, U.S. government engagement with China on IPR issues ranged from high-level consultations with Chinese ministries to letters, demarches, and informal meetings between staff-level U.S. officials and their counterparts in the Chinese government. U.S. officials noted that during various visits to China in 2003, the Secretaries of Commerce and Treasury and the U.S. Trade Representative, as well as several subcabinet level officials, urged their Chinese counterparts to develop greater IPR protection. U.S. officials said that these efforts were part of an overall strategy to ensure that IPR protection was receiving attention at the highest levels of China's government. U.S. officials also noted that the U.S. Ambassador to China has placed significant emphasis on IPR protection. In 2002 and 2003, the U.S. government held an Ambassador's Roundtable on IPR in China that brought together representatives from key U.S. and Chinese agencies, as well as U.S. and Chinese private sector representatives. U.S. officials said that China Vice Premier Wu's involvement in the 2003 roundtable was an indication that IPR was receiving attention at high levels of China's government. One U.S. official stated that addressing pervasive systemic problems in China, such as lack of IPR protection, is "nearly impossible unless it stays on the radar at the highest levels" of the Chinese government.

A second key component of U.S. government efforts to ensure greater protection of IPR in China involved providing numerous training programs and technical assistance to Chinese ministries and agencies. U.S. government outreach and capacity-building efforts included sponsoring speakers, seminars, and training on specific technical aspects of IPR protection to raise the profile and increase technical expertise among

Chinese officials. The U.S. government targeted other programs to address the lack of criminalization of IPR violations in China. For example, an interagency U.S. government team (Justice, DHS, and Commerce) conducted a three-city capacity-building seminar in October 2003 on criminalization and enforcement. The program was cosponsored by the Chinese Procuratorate, the Chinese government's prosecutorial arm. U.S. government officials noted that the program was unique because the seminar brought together officials from Chinese criminal enforcement agencies, including customs officials, criminal investigators, and prosecutors, as well as officials from administrative enforcement agencies. In March 2004, the Copyright Office hosted a week-long program for a delegation of Chinese copyright officials that provided technical assistance and training on copyright-related issues, including the enforcement of copyright laws, as well as outreach and relationship-building.

The U.S. government has also provided outreach regarding IPR protection to U.S. businesses in China, and Commerce has played a lead role in this effort. For example, in late 2002, Commerce established a Trade Facilitation Office in Beijing to, among other things, provide outreach, advocacy, and assistance to U.S. businesses on market access issues, including IPR protection. Additionally, Foreign Commercial Service officers in China work with U.S. firms to identify and resolve cases of IPR infringement. Commerce officials indicated that increasing private sector awareness and involvement in IPR issues are essential to furthering IPR protection in China.

GAO's 2004 analysis of selected companies' views on China's implementation of its WTO commitments reported that respondents ranked IPR protection as one of the three most important areas of China's WTO commitments but that most respondents thought China had implemented IPR reforms only to some or little extent.² In general, other industry association and individual company representatives whom we interviewed in China were satisfied with the range of U.S. government efforts to protect IPR in China. Several industry representatives noted that they had regular contact with officials from various U.S. agencies in China and that the staff assigned to IPR issues were generally responsive to their firm's or industry's needs. Private sector representatives stated that the U.S. government's capacity-building efforts were one of the most effective

²GAO, *World Trade Organization: U.S. Companies' Views on China's Implementation of Its Commitments*, GAO-04-508 (Washington, D.C.: Mar. 24, 2004).

ways to promote IPR protection in China. Some representatives noted that Chinese government entities are generally very receptive to these types of training and information-sharing programs. However, some private sector representatives also said that the U.S. agencies could better target the programs to the appropriate Chinese audiences and follow up more to ensure that China implements the knowledge and practices disseminated through the training programs. Most private sector representatives we met with also said that the U.S. government efforts in China were generally well coordinated, but they indicated that they were not always able to determine which U.S. agency was leading the effort on a specific issue.

Changes in China's IPR Protection

Although Chinese laws are now, in principle, largely compliant with the strict letter of the TRIPS agreement, U.S. government and other industry groups note that there are significant gaps in the law and enforcement policies that pose serious questions regarding China's satisfaction of the TRIPS standards of effective and deterrent enforcement. In 2003, USTR found that China's compliance with the TRIPS agreement had been largely satisfactory, although some improvements still needed to be made. Before its accession to the WTO, China had completed amendments to its patent law, trademark law, and copyright law, along with regulations for the patent law. Within several months after its accession, China issued regulations for the trademark law and copyright law. China also issued various sets of implementing rules, and it issued regulations and implementing rules covering specific subject areas, such as integrated circuits, computer software, and pharmaceuticals.

China has taken some steps in administrative, criminal, and civil enforcement against IPR violators. According to USTR's review, the central government promotes periodic anticounterfeiting and antipiracy campaigns as part of its administrative enforcement, and these campaigns result in a high number of seizures of infringing materials. However, USTR notes that the campaigns are largely ineffective; because cases brought by the administrative authorities usually result in extremely low fines, criminal enforcement has virtually no deterrent effect on infringers. China's authorities have pursued criminal prosecutions in a small number of cases, but the Chinese government lacks the transparency needed to determine the penalties imposed on infringers. Last, China has seen an increased use of civil actions being brought for monetary damages or injunctive relief. This suggests an increasing sophistication on the part of China's IPR courts, as China continues to make efforts to upgrade its judicial system.

However, U.S. companies complain that the courts do not always enforce China's IPR laws and regulations consistently and fairly.

Despite the overall lack of IPR enforcement in China, IPR protection is receiving attention at high levels of the Chinese government. Notably, in October 2003, the government created an IPR Leading Group, headed by a vice premier, to address IPR protection in China. Several U.S. government officials and private sector representatives told us that high-level involvement by Vice Premier Wu would be critical to the success of future developments in IPR protection in China. In April 2004, the United States pressed IPR issues with China during a formal, cabinet-level consultative forum with China called the Joint Commission of Commerce and Trade (JCCT). In describing the results of the April 2004 JCCT meeting, USTR reported that China had agreed to undertake a number of near-term actions to address IPR protection. China's action plan included increasing penalties for IPR infringement and launching a public awareness campaign on IPR protection. Additionally, China and the United States agreed to form an IPR working group under the JCCT to monitor China's progress in implementing its action plan.

Country Case Study: Russia

The State of IPR in Russia

Although the Russian government has demonstrated a growing recognition of the seriousness of IPR problems in the country and has taken some actions, serious problems persist. Counterfeiting and piracy are common (see fig. 4). For example, a Microsoft official told us that approximately 80 percent of business software is estimated as pirated in Russia, and that the Russian government is a “huge” user of pirated software. Further, the pharmaceutical industry estimates that up to 12 percent of drugs on the market in Russia are counterfeit. Of particular note to the U.S. government, piracy of optical media (e.g., CDs, DVDs, etc.) in Russia is rampant. According to an official from the Russian Anti-Piracy Organization, as much as 95 percent of optical media products produced in Russia are pirated. U.S. concern focuses on the production of pirated U.S. optical media products by some or all of the 30 optical media production facilities in Russia, 17 of which are located on Russian government-owned former defense sites where it has been difficult for inspection officials to gain access (though, according to an embassy official, access has recently improved). According to a U.S. embassy official, Russian demand for optical media products is estimated at 18 million units per year, but Russian production is estimated to be 300 million units. U.S. Embassy and private sector officials believe that the excess pirated products are exported to other countries. Industry estimates losses of over \$1 billion annually as a result of this illegal activity.

Figure 4: Counterfeit and Legitimate Russian Detergent



Source: GAO.

Russia has made many improvements to its IPR legislation, but the U.S. government maintains that more changes are needed. For example, the 2004 Special 301 report states that the Russian government is still working to amend its laws on protection of undisclosed information—in particular, protection for undisclosed test data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals. Further, U.S. industry and Russian officials view Russia’s IPR enforcement as inadequate and cite this as the largest deterrent to effective IPR protection in Russia. For example, the 2004 Special 301 report emphasizes that border enforcement is considered weak and that Russian courts do not have the authority in criminal cases to order forfeiture and destruction of machinery and materials used to make pirated and counterfeit products. Further, one Russian law enforcement official told us that since IPR crimes are not viewed as posing much of a social threat, IPR enforcement is “pushed to the background” by Russian prosecutors.

U.S. Government Actions to Address Russia's IPR Problems

The U.S. government has taken several actions in Washington, D.C., and Moscow to address its concerns over Russia's failure to fully protect IPR. Russia has been placed on USTR's Special 301 Priority Watch List for the past 8 years (1997 through 2004). Further, a review of Russia's eligibility under the Generalized System of Preferences (GSP) is underway owing to concerns over serious IPR problems in the country.

The U.S. government has actively raised IPR issues with the Russian government, including at the highest levels. According to the Department of State, at a United States–Russia summit in September 2003, President Bush raised IPR concerns with Russian President Putin. Further, in Moscow, the U.S. Ambassador to Russia considers IPR an embassy priority and has sent letters to Russian government officials and published articles in the Russian press that outline U.S. government concerns.

Many agencies resident in the U.S. Embassy in Moscow are engaged in IPR issues. The Department of State's Economic Section is the Embassy office with primary responsibility for IPR issues. This office collaborates closely with USTR and holds interagency embassy meetings to coordinate on IPR efforts. In addition to interagency communication through these meetings, each agency is also engaged in separate efforts. For example, the Economic Section has met regularly with Russian government officials to discuss IPR issues. Justice has held two training events on IPR criminal law enforcement in 2004, and has two more events planned for this year, while the Embassy's Public Affairs Office is involved with IPR enforcement exchange and training grants. Further, the Department of Commerce's Foreign Commercial Service works with U.S. companies on IPR issues and sponsored a 2003 seminar on pharmaceutical issues, including IPR-related topics. According to a Justice official, U.S. law enforcement agencies are making efforts to build relationships with their Russian counterparts.

Industry representatives whom we interviewed in Moscow expressed support for U.S. government efforts to improve intellectual property protection, particularly the U.S. Ambassador's efforts to increase the visibility of IPR problems. An official from one IPR association in Moscow noted, with respect to USTR's efforts in Russia, "No other country in the world is so protective of its copyright industries." Industry representatives noted that the U.S. government has played an important role in realizing IPR improvements in Russia, although the Russian government is also clearly motivated to strengthen intellectual property protections as part of its preparation for joining the World Trade Organization. Further, U.S.

Embassy staff believe that they have been successful in ensuring that IPR is now firmly on the “radar screen” of the Russian government.

Changes in Russia’s IPR Protection

According to U.S. sources, numerous IPR laws have been enacted. For example, the Department of State has noted that the Russian government has passed new laws on patents, trademarks, industrial designs, and integrated circuits and has amended its copyright law. Further, U.S. and Russian sources note that Russia has improved its customs and criminal codes. Moreover, in 2002, the Russian government established a high-level commission, chaired by the prime minister, specifically to address intellectual property problems (although, despite a recognized desire to address IPR enforcement, the commission has reportedly not accomplished a great deal in terms of concrete achievements).

In addition to these promising improvements, there have been some signs that enforcement is improving, if slowly. For example, the Russian government issued a decree banning the sale of audio and video products by Russian street vendors, and the U.S. Embassy has reported that subsequently several kiosks known to sell pirated goods were closed. Industry associations have reported that law enforcement agencies are generally willing to cooperate on joint raids, and in 2003 several large seizures were made as a result of such raids. Further, in February 2004 the Russian Anti-Piracy Organization reported that police raids involving optical media products took place almost daily all over Russia and were covered widely on national TV channels. In addition, according to the U.S. Embassy, the consumer products industry reports progress in reducing the amount of counterfeit consumer goods on the Russian market, and one major U.S. producer even claims that it has virtually eliminated counterfeiting of all its consumer goods lines. Finally, according to a U.S. Embassy official, the first prison sentence was handed down during the summer of 2004 for an IPR violator who had been manufacturing and distributing pirated DVDs.

U.S. and Russian officials have identified several problems that the Russian government faces in implementing effective IPR protection in the future. Issues identified include: (1) the price of legitimate products is too high for the majority of Russians, who have very modest incomes; (2) Russian citizens and government officials are still learning about the concept of private IPR—a Russian Ministry of Press official pointed out that until the dissolution of the Soviet Union, all creations belonged to the state, and the general public and the government didn’t understand the concept of private

IPR; and (3) corruption and organized crime make the effective enforcement of IPR laws difficult.

Country Case Study: Ukraine

The State of IPR in Ukraine

Ukraine has been the subject of intense industry and U.S. government concern since 1998 owing primarily to the establishment of pirate optical media plants that produced music, video discs, and software for the Ukraine market and for export to other countries. This followed the crackdown on pirate plants in Bulgaria in 1998 that resulted in many of these manufacturers relocating to Ukraine. Regarding Ukraine, USTR cites U.S. music industry losses of \$210 million in revenues in 1999, while the Motion Picture Association reported losses of \$40 million.¹ The international recording industry association estimated that the production capacity of optical media material was around 70 million units per year and the demand within Ukraine for legitimate CD was fewer than 1 million units in 2000. Further the audio and video consumer market in Ukraine has consisted overwhelmingly of pirated media. For example, in 2000, the international recording industry association estimated that 95 percent of products on the market were pirated. Further, USTR and industry cite significant counterfeiting of name brand products, pharmaceuticals, and agricultural chemicals.

By 2004, IPR in Ukraine has shown improvement in several areas, although the digital media sold in the consumer retail market remain predominantly pirated. The production of such digital media in local plants has ended however, according to U.S. government and industry officials in Kiev. Further, U.S. officials noted Ukraine's accession to key WIPO conventions and improvements in intellectual property law that represents progress in fulfilling TRIPS requirements as part of Ukraine's WTO accession process.

Remaining areas of concern regarding U.S. IPR are inadequacies in the existing optical media licensing law and the fact that Ukraine remains a key transit country for pirated products. Other areas of concern are the prevalence of pirated digital media products in the consumer retail markets, lack of law enforcement actions, and the use of illegal software by government agencies (although this situation has also improved). U.S. industry and government now seek certain amendments to intellectual property laws and better enforcement efforts, including border controls to prevent counterfeit and pirated products from entering the Ukrainian domestic retail market.

¹The U.S. government placed prohibitive tariffs on \$75 million worth of Ukraine exports in 2002 after it estimated the loss independently.

U.S. Government Actions to Address Ukraine's IPR problems

The U.S. government has undertaken concerted action in Washington and Kiev to address its concerns regarding the state of intellectual property protection in Ukraine. With the emergence of serious music and audio-visual piracy, Ukraine was placed on USTR's Special 301 Watch list in 1998. Ukraine was elevated to USTR's Special 301 Priority Watch list for 2 years, in 1999 and 2000. In June 2000, during President Clinton's state visit to Kiev, he and President Kuchma endorsed a U.S.-Ukrainian joint action plan to combat optical media piracy. However, slow and insufficient response by Ukraine led to its designation as a Priority Foreign Country in 2001 and to the imposition of punitive economic sanctions (100 percent duties) against Ukrainian exports to the United States valued at \$75 million in 2002. The Priority Foreign Country designation remains in place. The sanctions affect a number of Ukrainian exports, including metal products, footwear, and chemicals. In addition, a U.S. government review of Ukraine's eligibility for preferential tariffs under the GSP program was undertaken, and Ukraine's benefits under this program were suspended in August 2001. GSP benefits have not been reinstated.

In Kiev, intellectual property issues remain a priority for the U.S. Embassy, including the U.S. Ambassador. A State Department economic officer has been assigned responsibility as the focal point for such issues and has been supported in this role by the actions of other U.S. agencies. The Commercial Law Center, funded by USAID, and the Commercial Law Development Program of the U.S. Department of Commerce have provided technical advice to Ukraine as it crafted intellectual property laws.² A U.S. private sector association reported that it had worked closely with USAID on projects related to commercial law development. Ukrainian legislative officials reported that training opportunities and technical assistance provided by the United States had facilitated the creation of IP legislation. Training is also focused on enforcement, including training of a Ukrainian judicial official by USPTO in Washington, D.C., during 2003. The State Department has trained police and plans further police training in Ukraine during 2004. Further, Department of Commerce officials maintain contact with U.S. firms and collect information on intellectual property issues for State and USTR.

²Representatives of the Ukrainian legislature told us that there had been a problem coordinating U.S. government legal advice to the Ukraine. The legislature had to reconcile differences in the legal approach of the two U.S.-funded entities in a second reading of amendments to IPR legislation.

Changes in Ukraine's IPR Protection

Ukraine has made improvements in its legal regime for IPR protection. According to Ukrainian officials, Ukraine passed a new criminal code with criminal liability for IPR violations, as well as a new copyright law. Ukrainian officials report that the laws are now TRIPS compliant. U.S. government documents show that Ukraine implemented an optical disk law in 2002, although it was deemed "unsatisfactory," and sanctions remain in place based on Ukraine's failure to enact and enforce adequate optical disk media licensing legislation.

In addition, Ukraine has pursued enforcement measures to combat counterfeiting, although enforcement overall is still considered weak. USTR reported that administrative and legal pressure by the Ukrainian government led to the closure of all but one of the major pirate CD plants. Some pirate plants moved to neighboring countries. According to U.S. and private sector officials in Kiev, remaining optical plants have switched to legitimate production. However, pirated optical media are still prevalent in Ukraine, imported from Russia and elsewhere, with little effort to remove them from the market. In a visit to the Petrovska Market in Kiev, we found a well-organized series of buildings where vendors sold movies, music, software, and computer games from open-air stands. The price for a pirated music CD was \$1.50, compared to legitimate CDs that were sold for almost \$20 in a music store located near the market.

According to USTR, Ukraine is a major trans-shipment point and storage location for illegal optical media produced in Russia and elsewhere. A Ukrainian law enforcement official reported that the number of IPR crimes detected has risen from 115 in 2001 to 374 in 2003. He noted that to date, judges have been reluctant to impose jail time, but had used fines that are small compared to the economic damages. A U.S. government official also reported that the fines are too small to be an effective deterrent.

While one U.S. company told us about the lack of Ukrainian government actions regarding specific IPR enforcement issues, a large U.S. consumers goods company told us that consumer protection officials and tax police had worked with it to reduce counterfeit levels of one product line from approximately 40 percent in 1999 to close to zero percent 16 months later. The company provided 11 laboratory vans as well as personnel that could accompany police to open markets and run on-the-spot tests of products.

Comments from the Department of Commerce

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

August 20, 2004

Mr. Loren Yager
Director
International Affairs and Trade
U.S. General Accounting Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. Yager:

The Department of Commerce appreciates the opportunity to review the draft report entitled "Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain." We found the report very comprehensive and our comments are provided as an enclosure.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Evans".

Donald L. Evans

Enclosure

**U.S. Department of Commerce Comments Regarding Draft Report (GAO-04-912)
“Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas.”**

We found the report to contain a good summary of the activities undertaken by a number of U.S. Government agencies to strengthen intellectual property rights (IPR) laws in certain countries that are perceived as not adequately protecting intellectual property. Since much of the information in the report is anecdotal, it is difficult to conclude how much our government’s activities have impacted IPR protection in those countries. Nevertheless, we believe that your report documents that progress is being made. Further progress will be likely when countries recognize the value of their own intellectual property and of the commercialization of their own technologies.

General Comments

See comment 1.

We would advise that the terms “counterfeiting” and “piracy” be used in their more technical sense. GAO uses the term “counterfeiting” to refer to all types of infringements or IPR violations, even when discussing optical media (e.g., see page 4, “the growing problem of counterfeiting of optical media”). It would be more technically precise when discussing violations of intellectual property rights, to use the term “counterfeiting” in connection with commercial scale trademark-related infringements of a good or product, and “piracy” only when discussing the commercial-scale infringement of copyright-protected works. It would be more technically accurate to use the terms “trademark counterfeiting” and “copyright piracy.”

See comment 2.

The report states that U.S. Government IPR activities can be grouped in three categories: policy initiatives; training and assistance activities, and law enforcement. While “advocacy” can be included in the category of “training and assistance,” we believe that advocacy deserves separate mention. In our meetings with GAO staff, we provided a number of real life success stories resulting from DOC overseas staff working to champion specific IPR issues. DOC/ITA’s Foreign Commercial Service provides services directly to constituents, which result in tangible benefits for American firms and brands.

See comment 3.

This report underestimates the scope of IPR protection and enforcement work carried out as a part of our regular interactions with trading partners. While FTAs and BTAs are mentioned and are certainly important and high profile, a significant component of U.S. Government work also involves discussions under Trade and Investment Framework Agreements and Bilateral Investment Treaties, as well as other bilateral and regional trade mechanisms, such as APEC-IPEG activities.

See comment 4.

The Department’s International Trade Administration (ITA) participated in at least two meetings with the GAO staff; still, ITA’s role is not recognized in the draft report.

The following are GAO's comments on the Department of Commerce's letter dated August 20, 2004.

GAO's Comments

1. We have reviewed the report to ensure that the term "counterfeiting" is used to refer to commercial-scale trademark-related infringements of a good or product and the term "piracy" is used to refer to commercial-scale infringements of copyright-protected works.
2. While we do not discuss "advocacy" separately in this report, this type of effort has been addressed in the policy initiatives section of the report, specifically in the discussion entitled "U.S. Officials Undertake Diplomatic Efforts to Protect Intellectual Property" (see p. 18). We note that U.S. government officials overseas, including officials from the Department of Commerce, work with U.S. companies and foreign governments to address specific IPR problems. We have also included a particular example involving Department of Commerce efforts to resolve problematic issues related to proposed Mexican legislation that involved the pharmaceutical industry. We have also added another reference to advocacy efforts on page 27.
3. We chose to emphasize IPR-specific agreements, bilateral trade agreements, and free trade agreements in our report (discussion entitled "U.S. Government Engages in IPR-Related Trade Negotiations") because USTR officials consistently cited these agreements as central components of their IPR efforts. However, we do note the negotiation of trade and investment framework agreements in footnote 24 of the report.
4. The efforts of the Department of Commerce's International Trade Administration (ITA) are cited in our report. The report does not specifically list the ITA, as we intentionally kept the discussion for all government entities at the "departmental" level (with a few exceptions for entities that have distinct responsibilities, such as the FBI and USPTO) without mentioning the numerous bureaus and offices involved for each department. This approach was adopted to keep the report as clear as possible for the reader. While the report does not specifically attribute Commerce's IPR efforts to ITA, several examples of Commerce's efforts that are listed in the report are, in fact, ITA activities. For example, in addition to the activities cited in point 2 above, Commerce (meaning ITA) is also mentioned as a participant in annual GSP and Special 301 reviews (see pp. 12 and 32), and as a

Appendix VIII
Comments from the Department of
Commerce

participant in IPR efforts in the report's China, Russia, and Ukraine appendixes. Further, we have specified that Commerce (meaning ITA), along with USTR, is the administrator for the private sector trade advisory committee system (p. 15).

Comments from the Department of Homeland Security

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

August 24, 2004

Loren Yager
Director, International Affairs and Trade
U.S. Government Accountability Office
441 G St., NW
Washington, DC 20548

Dear Ms. Yager:

RE: GAO-04-912, Intellectual Property: U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain (GAO Job Code 320199)

Thank you for the opportunity to review your draft report. The Department of Homeland Security (DHS) appreciates the work done in this draft report to identify approaches to safeguard intellectual property rights overseas. We are providing general comments for your use in preparing the final report. Additionally, this assumes that GAO will incorporate DHS's technical comments that were provided under separate cover and discussed by telephone.

We propose that the final report reflect Customs and Border Protection's (CBP) work with the World Customs Organization (WCO) regarding Intellectual Property Rights (IPR) protection. CBP participates in the WCO IPR Strategic Group as a member of the group's Executive Committee, which is responsible for steering the group's activities. The WCO IPR Strategic Group was developed as a joint venture with international business sponsors to help member customs administrations to improve the efficiency and effectiveness of their IPR border enforcement programs.

The WCO IPR Strategic Group provides an overview of the global counterfeiting phenomenon from the customs administrations' perspectives and a full range of services for the exclusive benefit of its members and sponsors including collection of intelligence and data regarding IPR violations globally. The group meets quarterly to coordinate its activities, to discuss current issues in IPR border enforcement, and to advise member customs administrations regarding implementation of border measures under Trade-Related Aspects of Intellectual Property Rights (TRIPs). In addition, the WCO IPR Technical Assistance Group sponsors and conducts technical assistance, including training, fellowship programs, practical exercises, and IPR management consultant services to WCO member administrations.

www.dhs.gov

See comment 1.

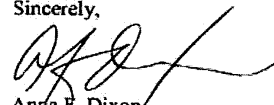
Appendix IX
Comments from the Department of Homeland
Security

Most importantly, through the WCO, DHS's CBP has led the effort in drafting WCO model IPR legislation and strategic plans geared towards global IPR protection and otherwise helping foreign countries develop the tools necessary for effective border enforcement programs.

CBP also contributes to efforts aimed at strengthening international IPR protection through its work with the APEC Sub-Committee on Customs Procedures and the World Intellectual Property Organization (WIPO). In addition, CBP routinely provides IPR training to foreign governments on a bilateral basis through programs sponsored by the Departments of Commerce and State. Through its International Visitors Program CBP routinely consults with foreign government officials and academics regarding border enforcement of IPR. In addition, CBP frequently meets with industry and trade associations interested in protection of IPR. IPR Center feedback from industry recipients of outreach presentations, that included a variety of IPR manufacturing industries, has been both positive and productive. Additionally, there has been a significant increase in requests for the IPR Center to provide additional outreach presentations.

Although the draft recognizes that DHS participates in bilateral and multi-lateral discussions and negotiations regarding IPR enforcement, it ignores the fact that DHS's CBP is the expert on border enforcement of IPR as regards foreign governments as well as other U.S. Government agencies. The importance of border enforcement cannot be overstated as it offers the most efficient means of identifying and disposing of infringing articles. CBP routinely provides experts on border measures for training programs sponsored by various U.S. and international agencies and organizations.

Sincerely,



Anna F. Dixon
Director, Departmental
GAO/OIG Liaison

See comment 2.

The following are GAO's comments on the Department of Homeland Security's letter dated August 24, 2004.

GAO's Comments

1. We have added a paragraph citing the Department of Homeland Security's work with the World Customs Organization (see p. 17).
2. We added language on p. 22 of the report that notes that a key component of DHS authority is a "border nexus."

Comments from the U.S. Agency for International Development

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



U.S. AGENCY FOR
INTERNATIONAL
DEVELOPMENT

August 19, 2004

Loren Yager
Director
International Affairs and Trade
U.S. General Accounting Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Yager:

I am pleased to provide the U.S. Agency for International Development's (USAID) formal response on the draft GAO report entitled INTELLECTUAL PROPERTY—U.S. Efforts Have Contributed to Strengthened Laws Overseas, but Challenges Remain (September 2004).

We have reviewed the draft report and appreciate the time and effort of your team. There are, however, several points raised in the report concerning USAID's involvement in promoting the enforcement of intellectual property rights on which we have provided comments in the enclosed document.

Thank you for the opportunity to respond to the GAO draft report and for the courtesies extended by your staff in the conduct of this review.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Wisecarver".

Steven Wisecarver
Deputy Assistant Administrator
Bureau for Management

Enclosure: a/s

1300 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20523

**USAID Comments on GAO Draft Report Entitled: INTELLECTUAL
PROPERTY – U.S. Efforts Have Contributed to Strengthened Laws Overseas but
Challenges Remain (September 2004)**

There are several points raised in the report concerning USAID's involvement in promoting the enforcement of intellectual property rights on which we would like to elaborate further.

See comment 1.

First is the report's assertion that USAID is one of several U.S. Government agencies "primarily responsible for U.S. Government activities to protect and enforce U.S. intellectual property rights overseas." While many IPR technical assistance activities that are funded through USAID have the effect of protecting and enforcing U.S. intellectual property rights, this is not a primary responsibility of our agency. USAID is a development agency, and the IPR training and technical assistance we provide is done to help partner countries comply with existing international agreements that serve to promote economic growth.

For example, USAID has helped numerous countries harmonize their foreign trade regimes in order to enable them to both join the World Trade Organization (WTO) and to comply with WTO obligations. In order to accomplish this, many of our WTO accession assistance projects have included training and support for counterpart countries to comply with the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPs agreement). This training and support, it should be noted, is primarily directed at promoting economic growth through improved IPR regimes in the countries we work in. As mentioned above, this may also have the benefit of helping American owners to enforce their IPR in such countries.

See comment 2.

Second, the report raises concerns regarding the frequency of USAID's contributions to the voluntary IPR Training database, which is managed by the U.S. Department of State. To ensure that our projects are calibrated to local needs, USAID field units (such as country missions and field offices) program and manage the bulk of our trade capacity building projects in the field. Consequently, the USAID staff attending IPR Training Coordination Group meetings in Washington generally does not have decision-making authority regarding the commitment of funds spent on IPR technical assistance activities. Their role is to liaise and facilitate communication between members of the Group and USAID funding units.

See comment 3.

Third, the GAO report appears to dismiss the fact that USAID provides significant and comprehensive information on all USG-sponsored IPR technical assistance activities on an annual basis. USAID conducts a Trade Capacity Building

(TCB) survey once per year, typically completing this massive information gathering exercise by August 31. The USAID TCB survey is sent to all U.S. government agencies and departments active in trade capacity building activities abroad, including the Departments of State, Justice, and Commerce, the US Patent and Trademark Office (USPTO), and USAID field units. Data collected from USAID's TCB Survey is analyzed to avoid double counting and then formatted for uploading onto the USAID TCB database.

The problem of double-counting should not be lightly dismissed. For example, much of USAID's funding for IPR activities is actually passed to other USG agencies and departments through interagency agreements and other funding vehicles. These agencies may then channel USAID-sourced funds to yet other agencies. For example, the Commercial Law Development Program of the U.S. Department of Commerce is a large recipient of USAID funds; CLDP in turn frequently channels such funds to USPTO to conduct assistance activities on its behalf.

The TCB database may be accessed by all USG agencies, and it is located at the following web link: <http://gesdb.cdie.org/tcb/index.html>. Once this data is collected, IPR training activities are culled and submitted for inclusion in the IPR Training database managed by the State Department. (The creators of the IPR Training database consulted with USAID's managers of the TCB database in order to make the information between the two databases more easily transferable.)

While USAID only collects this data once a year, the data is rich, comprehensive, and timely. The USAID TCB survey gathers information on funding levels that each USG respondent is obligating for IPR training activities for the current fiscal year. Thus, the ongoing survey for August 2004 is gathering data for FY 2004 USG obligations related to IPR and other activities. Since most activities that are funded in FY 2004 will actually be implemented during FY 2005, the survey results are timely and distinctly relevant for members of the IPR Training Coordination Group in projecting planned spending on IPR on a country and agency basis.

Finally, should members of the IPR Training Coordination Group desire specific and even more up-to-the moment information about the status of IPR training activities in specific countries, USAID liaisons can work to obtain this information.

The following are GAO's comments on the U.S. Agency for International Development's letter dated August 19, 2004.

GAO's Comments

1. We agree with USAID's point that IPR protection and enforcement are not the primary responsibility of the agency. USAID and the other 9 U.S. government entities mentioned in the report have broader missions. Rather, we state that USAID and the other U.S. government entities undertake the primary U.S. government activities to improve the protection and enforcement of U.S. intellectual property overseas.
2. As we noted in the report, the decentralized structure of USAID, whereby individual country missions plan and implement training, makes it difficult for Washington-based officials to contribute timely information to the public training database or to inform the Training Coordination Group about USAID's training efforts. Further, several members of the Training Coordination Group are frustrated with the extent of USAID's information sharing.
3. As we note in the report, USAID submits information annually following the conclusion of its own data-gathering exercise. However, this data-gathering exercise, which contributes to the USAID trade capacity building database, does not provide information needed by the Training Coordination Group, such as dates of training or contact information, that would improve coordination.

GAO Contacts and Staff Acknowledgments

GAO Contacts

Emil Friberg, (202) 512-8990
Leslie Holen, (415) 904-2277

Acknowledgments

In addition to those named above, Sharla Draemel, Ming Chen, Martin de Alteriis, Matt Helm, Ernie Jackson, Victoria Lin, and Reid Lowe made key contributions to this report.

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