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United States General Accounting Office

Fact Sheet for the Honorable  
Frank R. Lautenberg, U.S. Senate

July 1994

# INTELLECTUAL PROPERTY RIGHTS

## U.S. Trade Representative Investigations of Foreign Country Practices



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United States  
General Accounting Office  
Washington, D.C. 20548

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General Government Division

B-257532

July 7, 1994

The Honorable Frank R. Lautenberg  
United States Senate

Dear Senator Lautenberg:

As you requested, this fact sheet provides information on investigations conducted by the U.S. Trade Representative (USTR) under Section 301 of the 1974 Trade Act (19 U.S.C. 2411), as amended, concerning foreign countries' protection of intellectual property rights. The three primary forms of intellectual property protection in worldwide use are patents, copyrights, and trademarks. As agreed with you, we are reporting on (1) the countries that USTR has identified since 1989 as having inadequate levels of intellectual property protection; and (2) the number of Section 301 cases that were initiated by USTR since the passage of the 1974 Trade Act, in response to U.S. industry petitions regarding foreign countries' inadequate protection of intellectual property rights.

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## Background

Section 301 of the Trade Act of 1974, as amended, serves as the administration's principal mechanism for addressing unfair foreign trade practices. Section 301 gives the President broad powers to enforce U.S. rights under bilateral and multilateral trade agreements and to seek to eliminate acts, policies, or practices of foreign governments that burden or restrict U.S. commerce. Furthermore, Section 301 authorizes the President to take all appropriate and feasible action, including retaliating against an unfair foreign government trade practice or invoking the dispute settlement procedures in international trade agreements, if negotiations to eliminate the objectionable practice are unsuccessful. Section 301 investigations can be either initiated by USTR or pursued by USTR in response to the filing of a petition by a person, firm, or association.

The Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418) amended the Trade Act of 1974 to include what has been commonly called the "Special 301" provision.<sup>1</sup> Special 301 requires USTR to identify on an annual basis (1) those foreign countries that deny adequate and effective protection for intellectual property rights, or deny fair and equitable market access to United States persons that rely on intellectual property protection; and (2) those countries under (1) above determined by USTR to be "priority foreign countries." The legislation states that countries so designated are to be countries that "have the most onerous or

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<sup>1</sup>This provision is codified in 19 U.S.C. 2242.

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egregious acts, policies, or practices.” It adds that the policies or practices of those designated countries must have “the greatest adverse impact (actual or potential) on the relevant U.S. products” and that the countries must not be negotiating in good faith or making progress in negotiations to provide adequate and effective protection.

Section 302(b) of the amended Trade Act of 1974 (19 U.S.C. 2412(b)) directs USTR to initiate a Section 301 investigation within 30 days after identification of a “priority foreign country” with respect to any act, policy or practice of that country that was the basis of the identification. USTR is not required to initiate an investigation if USTR determines that such an investigation would be detrimental to U.S. economic interests or if the country is already the subject of another Section 301 investigation. After a “priority foreign country” investigation is initiated, the procedural and other requirements of Section 301 authority generally apply, except that the investigation and resulting determinations must be concluded on an accelerated time frame. USTR is required to determine within 6 months if there are unfair trade practices and if any retaliatory measures will be imposed. Investigations may be extended for up to 9 months if complex or complicated issues are involved.

Under this statutory scheme, USTR has discretion in deciding whether to retaliate against countries identified as having inadequate protection of intellectual property rights. USTR completed the first Special 301 review of foreign countries’ protection of intellectual property rights in April 1989.

As a means of increasing the effectiveness of the Special 301 provision, USTR has divided into two categories those countries perceived to deny adequate and effective intellectual property protection or market access, but whose problems are not as severe as priority foreign countries: the “priority watch list” and the “watch list.” Countries placed on the priority watch list are those that USTR considers to have made less progress in strengthening protection for intellectual property rights than those on the watch list. Placement on the priority watch list indicates that countries have practices that meet some or all of the statutory criteria for placement on the priority foreign country list but that these countries are making progress in negotiations to improve their protection of intellectual property rights.

The “watch list” is reserved for countries that have better intellectual property rights protection than those countries placed on the priority watch list but that USTR believes still need to be monitored.

According to USTR officials, in 1994 USTR listed certain countries as meriting “special mention.”<sup>2</sup> These countries have made progress in improving their level of intellectual property protection but USTR believes they still need to be monitored. USTR also included countries in which problems with intellectual property protection were beginning to become more serious.

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<sup>2</sup>In 1994, USTR cited Brazil, Canada, Germany, Honduras, Israel, Panama, Paraguay, Russia, and Singapore as meriting “special mention.”

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According to USTR officials, USTR receives advice from several sources in determining which countries will receive one of the various Special 301 designations. First, each year USTR places a notice in the Federal Register requesting public comment regarding those countries that have perceived weaknesses in their intellectual property protection. According to USTR officials, on average USTR receives about 20 submissions a year, mostly from U.S. industry, responding to the notices in the Federal Register. USTR also receives input from the interagency Trade Policy Staff Committee, the U.S. Patent and Trademark Office, and the U.S. Copyright Office.<sup>3</sup>

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## Results in Brief

Between 1989 and 1993, five countries—the People’s Republic of China, India, Thailand, Taiwan, and Brazil—were designated “priority foreign countries” by USTR (see app. I). No countries were designated as priority foreign countries in 1989 or 1990. Of the five countries, India and Thailand have been on the list each year in which there was a designation. While no priority foreign countries were designated during the 1994 annual Special 301 review, Argentina, China, and India have been placed on notice by USTR that their status will be reviewed on June 30, 1994. According to USTR officials, they will be designated as priority foreign countries if they have not made satisfactory progress in their level of intellectual property protection.

Between 1989 and 1994, USTR placed 38 countries on either the priority watch list or the watch list (see app. II).

In addition, there have been four Section 301 intellectual property-related cases since the inception of the Trade Act of 1974 that were initiated by USTR in response to petitions filed by industry associations. Appendix III provides information on the specific cases, the losses estimated by the industry groups that filed the petitions, and the resolution of the cases.

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## Scope and Methodology

To determine which countries were on the various Special 301 lists, we analyzed USTR press releases and annual reports issued from 1989 to the present. To obtain information on Section 301 cases pertaining to intellectual property issues that were initiated by industry-filed petitions, we examined the petitions filed by industry at USTR from 1975 to the present. We interviewed USTR officials regarding the process they follow for placing countries on the various lists.

On June 15, 1994, we discussed a draft of this fact sheet with the Deputy Assistant U.S. Trade Representative for Intellectual Property. He generally agreed with the information presented. He provided some technical comments that we have incorporated into this fact sheet. Specifically, he provided additional information on Section 301 cases that were initiated in response to industry-filed petitions and clarifications of the definitions of

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<sup>3</sup>The Trade Policy Staff Committee is an interagency committee of 16 government agencies including USTR, the Departments of State, Commerce, Agriculture, and the Treasury; the Office of Management and Budget; and representatives from the Council of Economic Advisers.

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the priority watch list and the watch list. Furthermore, he had suggestions regarding our depiction of the priority watch list and the watch list.

We did our work from May 1994 through June 1994 in accordance with generally accepted government auditing standards.

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We are providing copies of this fact sheet to the U.S. Trade Representative and interested congressional committees. We will also make copies available to others upon request.

Please contact me on (202) 512-4812 if you have any questions concerning this fact sheet. The information for this fact sheet was developed by Elizabeth J. Sirois, Assistant Director; and Jean-Paul Reveyoso, Evaluator-in-Charge.

Sincerely yours,

A handwritten signature in black ink that reads "Allan I. Mendelowitz". The signature is written in a cursive style with a large, stylized 'M' at the end.

Allan I. Mendelowitz, Managing Director  
International Trade, Finance,  
and Competitiveness



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## Abbreviations

GSP	Generalized System of Preferences
MPEA	Motion Picture Exporters Association of America
PMA	Pharmaceutical Manufacturers Association
USTR	United States Trade Representative



# United States Trade Representative (USTR)-Designated Priority Foreign Countries, 1991-93

Year	Country	Unfair trade practice	Resolution of case
1991	People's Republic of China	Lack of protection of intellectual property and enforcement of intellectual property laws.	China signed a memorandum of understanding with the United States in January 1992 regarding the protection of intellectual property rights.
1991	India	Lack of protection of intellectual property and adequate access for audiovisual works.	In February 1992, USTR concluded that India's lack of protection of intellectual property was unreasonable and burdened or restricted U.S. commerce.
1991	Thailand	Inadequate copyright enforcement and patent law.	Because Thailand was already the subject of an ongoing Section 301 investigation, no new investigation was initiated in 1991. In January 1989, the President had removed \$644 million in duty-free entry of goods from Thailand under the Generalized System of Preferences (GSP) program. Since 1989, no further sanctions have been applied against Thailand; however, to date Thailand's GSP benefits have not been restored.
1992	India	Continued problems from previous year.	In April 1992, the President suspended duty-free entry privileges under GSP from India for \$60 million in trade. This suspension applied principally to pharmaceuticals, chemicals, and related products. Benefits on certain chemicals added to GSP in June 1992 were also withheld from India, increasing the trade for which GSP is suspended to about \$80 million.

(continued)

<b>Year</b>	<b>Country</b>	<b>Unfair trade practice</b>	<b>Resolution of case</b>
1992	Taiwan	Inadequate and ineffective protection of intellectual property.	In June 1992, Taiwan agreed to improve levels of protection for patents, copyrights, trade secrets, layout designs of integrated circuits, and industrial designs. Taiwan was removed from the priority foreign country list following this agreement.
1992	Thailand	Continued problems from prior years.	See 1991.
1993	Brazil	Failure to adequately and effectively protect patents, copyrights, and trade secrets.	In February 1994, the Section 301 investigation of Brazil was terminated, and Brazil was removed from the priority foreign country list due to Brazil's decision to amend its industrial property law and improve intellectual property protection.
1993	India	Failure to effectively protect intellectual property rights.	See 1992.
1993	Thailand	Serious concerns regarding copyright enforcement and deficiencies in a recently enacted patent law.	See 1991.

Source: USTR.

# Countries Placed on the Priority Watch List and the Watch List by USTR, 1989-94

	1989	1990	1991	1992	1993	1994
Priority watch list	Brazil China India Saudi Arabia Mexico South Korea Taiwan Thailand	Brazil China India Thailand	Australia Brazil European Union	Australia Brazil Egypt European Union Hungary Philippines Poland South Korea Turkey	Argentina Australia China Egypt European Union Hungary Poland Saudi Arabia South Korea Taiwan Turkey	European Union Japan Saudi Arabia South Korean Thailand Turkey
Watch list	Argentina Canada Chile Colombia Egypt Greece Indonesia Italy Japan Malaysia Pakistan Philippines Portugal Spain Turkey Venezuela Yugoslavia	Argentina Canada Chile Colombia Egypt Greece Indonesia Italy Japan Malaysia Pakistan Philippines Saudi Arabia South Korea Spain Taiwan Turkey Venezuela Yugoslavia	Argentina Canada Chile Colombia Cyprus Egypt Germany Greece Hungary Indonesia Italy Japan New Zealand Pakistan Saudi Arabia South Korea Spain Taiwan Turkey United Arab Emirates Venezuela Yugoslavia	Argentina Canada Chile China Colombia Cyprus Ecuador El Salvador Germany Greece Guatemala Indonesia Italy Japan New Zealand Pakistan Paraguay Peru Saudi Arabia Spain United Arab Emirates Venezuela	Chile Colombia Cyprus Ecuador El Salvador Greece Guatemala Indonesia Italy Japan Pakistan Peru Philippines Spain United Arab Emirates Venezuela	Australia Chile Colombia Cyprus Egypt El Salvador Greece Guatemala Indonesia Italy Pakistan Peru Philippines Poland Spain Taiwan United Arab Emirates Venezuela

Source: USTR.

# Section 301 Intellectual Property-Related Cases Initiated as a Result of Industry-Filed Petitions, 1987-91

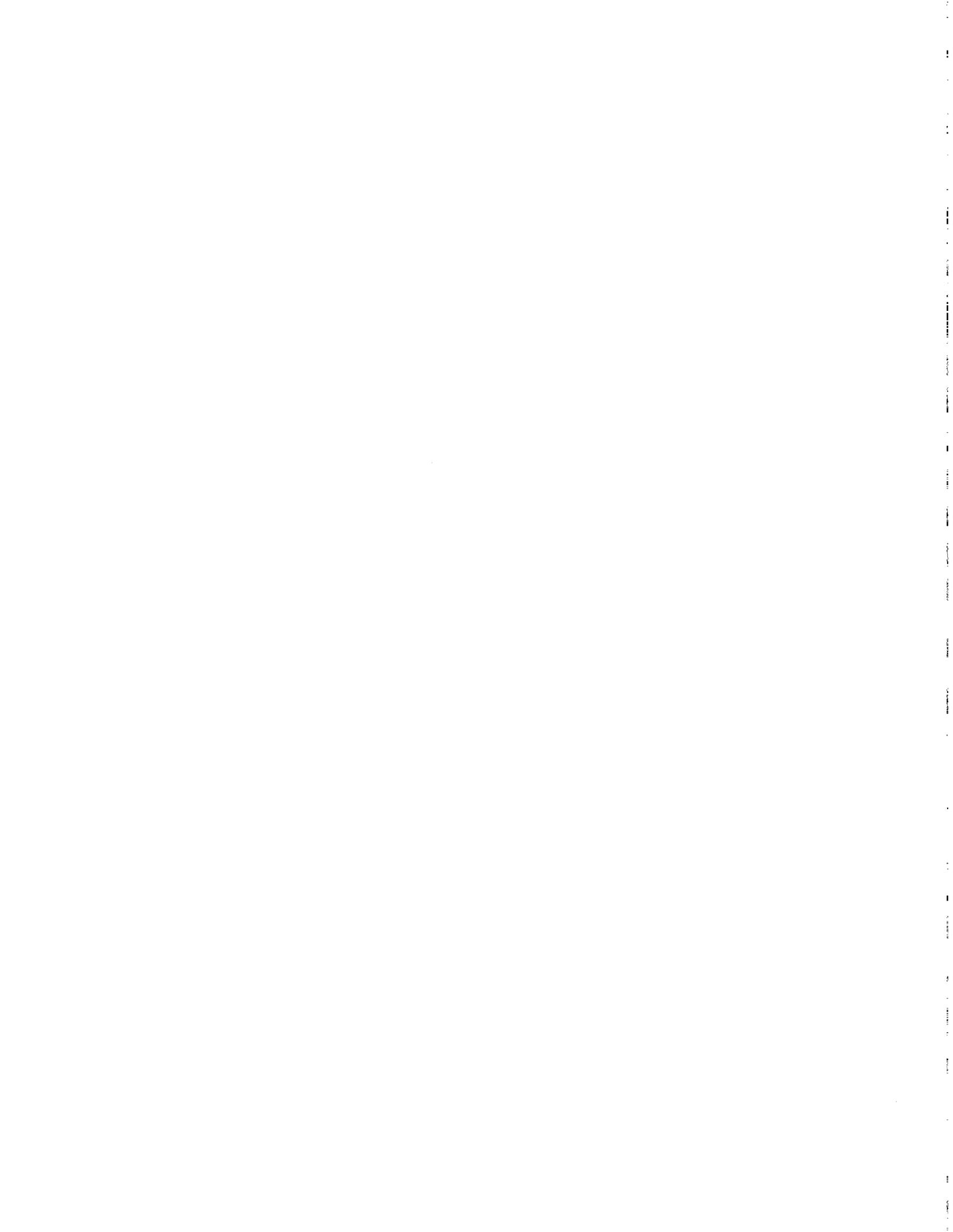
Section 301 case	Estimated U.S. industry losses <sup>a</sup>	Resolution of case
In July 1987, USTR initiated an investigation of Brazil in response to a petition filed by the Pharmaceutical Manufacturers Association (PMA). PMA alleged a lack of patent protection for pharmaceutical products.	\$40 million-\$50 million	In July 1988, the President determined that Brazil's policy was an unreasonable burden on U.S. commerce. In October 1988, the President used Section 301 authority to impose tariff increases of up to 100 percent on \$39 million of Brazilian goods.
In September 1988, USTR initiated an investigation of Argentina in response to a petition filed by PMA alleging denial of patent protection for pharmaceuticals, and discriminatory product registration practices.	\$200 million	In September 1989, PMA withdrew its petition in response to Argentina's willingness to modify its pharmaceutical product registration procedures and to constructively address the issue of patent protection for pharmaceutical products.
In December 1990, USTR initiated an investigation of Thailand's acts, policies, and practices pertaining to copyright enforcement in response to a petition filed by the International Intellectual Property Alliance.	\$70 million-\$100 million	In December 1991, USTR determined that Thailand's lack of enforcement of copyrights was an unreasonable burden on or restriction of U.S. trade. The investigation was terminated following Thailand's commitment to improve enforcement and combat piracy.
In March 1991, USTR initiated an investigation of Thailand following the filing of a petition by PMA alleging that the Government of Thailand does not provide adequate and effective protection for pharmaceutical products.	\$45 million-\$60 million	In March 1992, USTR determined that the Government of Thailand's policies and practices related to patent protection were unreasonable and burdened U.S. commerce. Since 1989, Thailand has been denied full benefits under GSP.

Note 1: We did not include Section 301 intellectual property rights cases that were self-initiated by USTR. We also did not include petitions filed by industry associations that did not result in a Section 301 investigation.

Note 2: In December 1983, the Motion Picture Exporters Association of America (MPEA) filed a petition with USTR alleging that Taiwan discriminated against foreign film distributors. In January 1984, USTR initiated a Section 301 investigation, but MPEA withdrew its petition in April 1984 causing USTR to terminate the investigation. According to USTR officials, this investigation was initiated due to concerns about market access and not the protection of intellectual property rights. However, USTR officials said that under current Section 301 provisions, this case would be investigated because it concerns market access for products needing intellectual property protection.

<sup>a</sup>Loss estimates were provided by the industry associations that filed the petitions. USTR did not verify the accuracy of these estimates.

Source: USTR.



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