

problem: (1) Non-compliance with the GATT Agreement on Government Procurement; (2) the type of discrimination encountered, including information regarding the date and nature of affected procurement(s); (3) policies or practices which are discriminatory, not transparent or anti-competitive (where possible, include copies of discriminatory laws, policies or regulations), and (4) the extent to which the problem has impeded the ability of U.S. suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when they are seeking to sell goods or services to the U.S. Government; (5) examples of failure to maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement.

Finally, each submission should: (1) If applicable, identify provisions of the GATT Government Procurement Agreement which are not being observed by the country identified or describe how the country identified has maintained a significant and persistent pattern or practice of discrimination in government procurement of non-Code-Covered goods or services; (2) identify the specific impact of the discriminatory policy or practice on U.S. businesses (including an estimate of the value of market opportunities lost and, if any, the cost of preparing bids which are rejected during the course of a procurement evaluation for discriminatory reasons), and (3) describe the extent to which the products or services of the country identified are acquired in significant amounts by the U.S. Government.

**Frederick L. Montgomery,**

*Chairman, Trade Policy Staff Committee.*

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[Docket No. 301-92]

**Determination of Action Concerning the People's Republic of China's Protection of Intellectual Property and Provision of Market Access to Persons Who Rely on Intellectual Property Protection**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of determination pursuant to sections 301 and 304 of the Trade Act of 1974, as amended (Trade Act), 19 U.S.C. 2414.

**SUMMARY:** Pursuant to section 304(a)(1)(A)(ii) of the Trade Act, the United States Trade Representative

(USTR) has determined that certain acts, policies and practices of the Chinese government with respect to the enforcement of intellectual property rights and the provision of market access to persons who rely on intellectual property protection are unreasonable and constitute a burden or restriction on U.S. commerce. Pursuant to section 304(a)(1)(B) and section 301(b), the USTR has determined that trade action is appropriate and that sanctions are appropriate. The sanctions will take the form of increasing duties on products listed in the attached Annex originating in China to 100 percent ad valorem.

**EFFECTIVE DATE:** USTR's determination as to actionability and the specific action to be taken was made on February 4, 1995. The increased duties will be assessed upon all products of China identified in the Annex to this notice that are entered, or withdrawn from warehouse for consumption, on or after February 26, 1995.

**ADDRESSES:** Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20606.

**FOR FURTHER INFORMATION CONTACT:** Deborah Lehr, Director for China and Mongolian Affairs (202) 395-5050, Joseph Papovich, Deputy Assistant USTR for Intellectual Property (202) 395-6864, or Thomas Robertson, Assistant General Counsel (202) 395-6800.

**SUPPLEMENTARY INFORMATION:** On June 30, 1994, China was identified as a priority foreign country under the "special 301" provisions of the Trade Act for its failure to enforce intellectual property rights or to provide fair and equitable market access to persons who rely on intellectual property protection. On the same day, the USTR initiated an investigation of those acts, policies and practices of China that were the basis for its identification as a priority foreign country. See 59 FR 35558 (July 12, 1994).

The effectiveness of China's enforcement regime is hampered by, among other things, internally inconsistent laws; a lack of transparency in the enforcement structure; a lack of protection for existing works; gaps in responsibility in the enforcement structure; a lack of consistent application of the laws throughout the central, provincial and local governments; a lack of funding, training and education; possible conflicts of interest; burdensome and discriminatory agency requirements that restrict foreign access to trademark protection; overly-broad compulsory licensing provisions; a failure of

enforcement authorities to coordinate; and the absence of an effective border control mechanism.

In the area of market access, the most serious problems with the Chinese system are found in the areas of audio-visual products, sound recordings, and published written materials. Particular concerns include a hidden system of internal quotas, a lack of transparency, a lack of consistency in application, monopoly control over the importation and distribution of products embodying intellectual property, and a prohibition on the production or distribution of products embodying intellectual property that is not related to the content of those products.

**Extension of Investigation, Proposed Determinations, and Public Comment**

On January 5, 1995, the USTR published a notice that the six-month statutory deadline for the close of this investigation had been extended until February 4, 1995, in light of the complex and complicated nature of the issues involved. See 60 FR 1829, 1830 (January 5, 1995). In that notice, the USTR also published a proposed determination of action and request for public comment concerning the proposed action. The USTR proposed to determine that China's failure to enforce intellectual property laws or to provide market access to persons who rely on intellectual property protection is unreasonable and discriminatory and constitutes a burden or restriction on U.S. commerce. If that determination were finally made, the USTR also proposed to increase duties on certain products of China in an amount equivalent to the damage caused by the Chinese acts, policies and practices which formed the basis of the investigation. The USTR published, as an annex to the notice, a list of products from which specific products could be selected for the imposition of increased duties.

In response to the January 5, 1995, **Federal Register** notice, the USTR and the section 301 Committee receive approximately 198 sets of written comments and heard the oral testimony of 53 witnesses at public hearings held on January 24-25, 1995. The comments primarily focused on the appropriateness of subjecting the products listed in the proposed retaliation list to an increase in duties, the levels at which duties on particular products should be set, and the degree to which an increase in duties on particular products might have an adverse effect on U.S. consumers, workers and industries.