

**Submission of the
International AntiCounterfeiting Coalition
to the
United States Trade Representative**

**2024 Special 301 Review
Identification of Countries
Under Section 182 of the
Trade Act of 1974
Request for Public Comment
88 FR 84869 – 70 (December 6, 2023)**

January 30, 2024

TABLE OF CONTENTS

Introduction	1
--------------	---

I. Current Priority Watch List Jurisdictions

Chile	3
China	3
India	5
Indonesia	7
Russia	8

II. Current Watch List Jurisdictions

Brazil	9
Canada	11
Colombia	12
Ecuador	13
Egypt	13
Mexico	14
Pakistan	16
Paraguay	16
Peru	18
Thailand	18
Turkey	20
Vietnam	21

III. Additional Jurisdictions for Consideration - Watch List Recommendation

Iraq	22
Kenya	23
Kuwait	23
Malaysia	24
Nigeria	25
Oman	26
Panama	26
Philippines	27
Saudi Arabia	28
South Africa	29
United Arab Emirates	30

IV. Other Observations / No Formal Recommendation for Placement

Bangladesh	31
Cambodia	32
Georgia	32
Hong Kong	33
Jamaica	33
Singapore	34
Ukraine	34

INTRODUCTION

The International AntiCounterfeiting Coalition, Inc. (“IACC”), is pleased to submit these recommendations to the Office of the United States Trade Representative (“USTR”), pursuant to the request published in the Federal Register on December 6, 2023, seeking written comments from the public concerning the acts, policies, and practices of foreign countries relevant to the determination by the USTR, in cooperation with its interagency partners in the Special 301 review (“Special 301”), under Section 182 of the Omnibus Trade and Competitiveness Act of 1988, 19 USC § 2242, of countries that deny adequate and effective protection of intellectual property rights (“IPR”) or deny fair and equitable market access to U.S. persons who rely on intellectual property protection.

The IACC is the world’s oldest and largest organization dedicated exclusively to combatting trademark counterfeiting and copyright piracy. Founded in 1979, and based in Washington, D.C., the IACC represents manufacturers, trade associations, and professional firms, spanning a broad cross-section of industries; our members manufacture and distribute thousands of brands in the apparel, automotive, electronics, entertainment, luxury goods, pharmaceutical, software, and other consumer product sectors.

Central to the IACC’s mission is the education of both the general public and policymakers regarding the severity and scope of the harms caused by intellectual property crimes – not only to legitimate manufacturers and retailers, but also to consumers and governments worldwide. The IACC seeks to address these threats by promoting the adoption of legislative and regulatory regimes to effectively protect intellectual property rights, and to encourage the application of resources sufficient to implement and enforce those regimes.

To that end, the IACC worked with both foreign government officials and the private sector throughout the past year to identify, and to seek remedies to, legislative deficiencies and practical impediments to IP enforcement. The IACC has also led the development of voluntary collaborative programs on a global scale to address key priorities in the online space, including its RogueBlock and IACC MarketSafe programs. The role of governments in encouraging these types of collaborative approaches remains vital. Further, rights-holders continue to face obstacles to acquiring and effectively enforcing IP rights, requiring the direct intervention by governments at home and abroad. These challenges continue to evolve, and we welcome the assistance of the U.S. government in resolving both the new concerns highlighted in this year’s comments, and those which have been reported in past years’ submissions.

Whether measured in terms of lost sales to legitimate manufacturers, tax revenues and duties that go unpaid to governments, decreased employment, or diminished investment in capital improvements and research and development; counterfeiting is a significant drain on the U.S. and global economy. Further, the production and distribution of goods manufactured in an entirely unregulated supply chain, where the makers have every incentive to cut corners by using cheap, substandard components, and no incentive to

abide by accepted standards of consumer health and safety, presents a clear threat to the health and well-being of consumers, and to the integrity of our national security infrastructure. We look forward to working with you to ensure the safety of consumers and the vitality of the global marketplace for legitimate manufacturers and retailers.

As in past years, the comments submitted by the IACC are drawn from a variety of sources including surveys of and roundtable discussions with member companies, interviews with local experts in the identified countries of concern, research of publicly-available sources, and data generated by the IACC through its own programs and direct engagement with foreign governments. It should be noted, however, that the countries and issues discussed herein do not represent an exhaustive list of rights-holders' concerns, but merely a snapshot of current and ongoing issues faced by rights-holders around the world, to which the IACC wishes to draw special attention. It is expected that the majority of the countries and issues raised in this filing will come as no surprise to USTR and the interagency team, as many of the concerns highlighted by IACC members involve long-standing issues that have been raised in previous years' filings.

Our comments this year cover thirty-five countries and span 5 continents, underscoring the truly global scope of the problems faced by rights-holders. Section I of our comments includes feedback in connection with five countries that were identified as Priority Watch List countries in last year's Special 301 report. Section II includes comments pertaining to twelve countries named as Watch List countries during last year's process. Section III highlights eleven additional countries which, although not currently designated as Watch List or Priority Watch List countries, the IACC requests USTR consider including on the Watch List in 2024. Finally, Section IV of our submission offers comments in connection with seven jurisdictions that are not currently listed in the Special 301 Report, and for which the IACC makes no formal recommendation with respect to their inclusion. It is hoped that those comments will serve to inform the U.S. Government's ongoing work throughout the coming year.

We thank you for the opportunity to share our experiences.

I. Current Priority Watch List Jurisdictions

CHILE

Chile was retained on the Priority Watch List in 2023, with USTR citing “serious concerns regarding long-standing implementation issues” in connection with the country’s obligations pursuant to the United States-Chile Free Trade Agreement, deficiencies in the statutory framework for the protection and enforcement of copyrighted works, insufficient levels of intellectual property enforcement, and a variety of other concerns.

While the IACC did not provide comments on Chile during last year’s Special 301 cycle, our members concurred with USTR’s PWL determination.

Rights-holders welcomed the enactment of legislation in 2022 aimed at rooting out organized networks responsible for large-scale distribution of counterfeit and pirated goods; but while some respondents have described an apparent increase in the overall level of enforcement following that enactment, the trafficking of counterfeit goods remains widespread. IACC member brands stressed the need for additional resourcing for Chile’s enforcement bodies. Addressing recidivism, likewise, remains a priority, and numerous brands cited a need for the imposition of more deterrent sentencing, including orders of restitution to meaningfully compensate victims and demonetize illicit distribution operations.

We are encouraged by reports that the Chilean government has indicated an interest in further assessing the sufficiency of its statutory and regulatory regimes for IP enforcement, and rights-holders would welcome further engagement towards that end. At present however, the IACC supports Chile’s continued placement on the Priority Watch List.

CHINA

While China has made commendable progress over the past two decades in the development and modernization of its legal regime for IP protection and enforcement, as well as with respect to the expertise demonstrated by both enforcement authorities and the judiciary, that progress has been insufficient to rein in the pervasive manufacturing and distribution of counterfeit goods. As in past years, IACC member brands continue to describe their interactions with Chinese authorities in positive terms. The fact remains however, that China is the single greatest source of counterfeit products on offer in physical markets around the world, as well as through e-commerce channels.

Most of the concerns reported by member brands during this year’s consultations are already well-known to USTR; many involve long-standing issues that have been documented in numerous past filings. These include an over-reliance on administrative

remedies and high thresholds to criminal prosecutions, local protectionism, insufficient coordination and transparency, the need for meaningful enforcement against manufacturers and high-level distributors who fuel the counterfeit trade, and the imposition of truly deterrent penalties for counterfeiting offenses.

The IACC concurred with USTR's placement of China on the Priority Watch List last year, and we recommend its retention on the Priority Watch List again this year.

Respondents' feedback concerning enforcement within the Chinese market remained largely unchanged. Both criminal and administrative enforcement bodies are said to be very active; IACC member brands describe them as "helpful" and "willing to assist," with some offering commendations for enforcement personnel's professionalism and expertise. As noted above however, the current level of enforcement has not meaningfully reduced the visibility of counterfeits in the domestic marketplace, nor has it diminished the volume of China-sourced fakes flooding the global marketplace. The Chinese enforcement regime has historically relied on administrative actions as a first-resort, reserving criminal investigations and prosecutions for offenses deemed more serious. But China's implementation of criminal enforcement thresholds has been shown over the years to be easily gamed by offenders to minimize the risk to their operations. The methods employed by enforcement authorities to calculate the seriousness of offenses are seen by many as ambiguous and incomplete (e.g., authorities often refuse to consider evidence of past illicit sales). As a result, significant criminal operations are often treated as only minor offenders. Outside of China's largest cities, local protectionism also remains a significant impediment to enforcement.

Some brands also continue to express dismay over the costs associated with enforcement; for some – particularly SMEs who are increasingly targeted by counterfeiters – those costs may be entirely prohibitive. Rights-holders typically bear the costs associated with the storage of seized goods prior to trial, along with the cost of destroying the goods upon resolution of the proceedings. Trademark owners would welcome the adoption of procedures that have become the norm in other jurisdictions, to allow for a preliminary determination of the goods' authenticity and expedited destruction of any contraband (excluding a sample to be retained as evidence for trial). Such a policy would significantly decrease the costs of storage currently borne by the rights-holders. And while brands may have the ability to seek civil damages in compensation for the costs incurred, the additional time, expense, and uncertainty of such litigation discourages many from doing so.

Given China's above-noted status as the world's top supplier of counterfeit goods, it will come as no surprise to USTR that the country's border enforcement regime continues to be a top concern of rights-holders across every product sector. As with China's administrative and criminal enforcement bodies, China Customs received praise from IACC members who describe them as "active," and "open to collaboration with the private sector." Some though bemoaned inconsistency in the level of activity and openness across ports. One brand characterized their experience as a sort of "one-way collaboration," stating that while Customs has been receptive to training opportunities and willing to act on intelligence provided by rights-holders, Customs is often reluctant to proactively seek

out rights-holders assistance, and unwilling or unable to share details regarding counterfeiters' identities or the extent of their operations. This lack of transparency is viewed by some respondents as precluding more effective partnership. Border enforcement is also said to be hindered by gaps in China's regulation and oversight of shipping intermediaries. Rights-holders urge the implementation of strong "Know Your Customer" rules for customs brokers, freight forwarders, warehousing operations, and shipping entities such as EMS China, to enable the identification and pursuit of bad actors who at present are often able to operate with effective anonymity and impunity.

As has been the case globally, the trafficking of counterfeit goods in e-commerce channels also remains a top priority. Popular e-commerce platforms in China are inundated with offers of counterfeit goods, and brands' experience in seeking to enforce against those sales varies widely from platform to platform. Some respondents voiced concerns regarding a lack of clarity in connection with Chinese privacy laws, which they view as impeding more robust cooperation with partners in the e-commerce sector. We're also hearing growing concerns from rights-holders related to the so-called "hidden links" strategy that has been adopted by some counterfeiters, enabling them to avoid detection even where online marketplaces have implemented sophisticated technological tools to detect and remediate illicit sales. Another emerging concern – particularly for smaller brands with less global recognition – is the difficulty faced in enforcing against patent-infringing knock-offs (i.e., products that infringe their design or utility patents, but do not make use of the original brand's registered trademarks). Many e-commerce platforms are reluctant to take action on the basis of patent infringement claims, citing the often technical nature of patent infringement analyses. Rights-holders would welcome opportunities to engage with the Chinese government (and China-based e-commerce platforms) to find a fair and expeditious path to resolving such disputes.

Given the range and severity of these and other concerns highlighted by rights-holders over the past year, we support China's retention on the Priority Watch List in 2024.

INDIA

The IACC recommended India's retention on the Priority Watch List in 2023, and applauded USTR's decision to do so. Based on feedback received from IACC members during this year's consultations, highlighting a need for further progress on a variety of long-standing issues, we again support India's placement on the Priority Watch List in 2024.

Rights-holders across numerous product sectors continue to report high-levels of counterfeit goods present in the local market, while expressing their desire for the implementation of more effective border measures, greater efficiency in the country's judicial system to address chronic backlogs, and further steps to rein in growing online trafficking.

Respondents offered mixed appraisals of Indian Customs over the past year. Though viewed by some as more engaged on IP and anti-counterfeiting issues than in past years, a word commonly used by IACC members to describe Customs was “under-performing.” As reported in prior submissions, rights-holders would expect to see far higher volumes of seizures in both the import and export context, given the overall size of the Indian market. Brands continue to voice frustrations regarding their desire for a more collaborative border enforcement regime, noting authorities’ reluctance to share intelligence with rights-holders, and inconsistent communication regarding detentions, seizures, and the disposition of targeted shipments. Complaints related to the costs associated with customs enforcement – both with respect to bonding requirements and long timelines for resolutions – were also common.

In contrast, IACC members’ feedback concerning Indian law enforcement personnel tended to be far more positive – continuing a trend reported in our comments over the course of several years. There appears to be consistent support and buy-in for anti-counterfeiting work among both the leadership and rank-and-file officers, which has led to numerous raids. As noted in past submissions however, a more strategic approach to enforcement, aimed at identifying and remediating higher-level distributors and manufacturers would be welcomed by rights-holders. Too often, raids are seen as an end in themselves; greater efforts to leverage evidence and intelligence for follow-on investigations could lead to more impactful long-term results.

For countless years, rights-holders have decried the excessive timelines for pursuing cases in the Indian judicial system. The backlogs experienced by brands all but assured that even where effective assistance from law enforcement was available, offenders would be unlikely to face any real consequences, and rights-holders would be unlikely to be made whole, until several years later. This year’s consultations brought more positive feedback from participants than in the past, with some brands crediting the creation of the Intellectual Property Division of the High Court for more efficient case resolutions. But despite those promising reports of improvement, most of the participants in this year’s process continue to experience significant delays.

While IACC members registered growing concerns regarding the trafficking of counterfeit goods online in India, they welcomed news of a recent High Court decision that may offer some clarity with respect to the extent of safe harbor provisions under Indian law and the responsibilities owed by e-commerce entities. We are continuing to review this case to fully assess its potential impact on the illicit online trade in India.

While India continues to make progress in its efforts to address the significant and long-standing challenges faced by intellectual property owners, based on the feedback we’ve received this year, we support its retention on the Priority Watch List again in 2024.

INDONESIA

Indonesia has been cited by IACC members as one of the most challenging jurisdictions for protecting their rights in recent years, due to low levels of enforcement, widespread sales of counterfeit and pirated goods impacting numerous product sectors, lax border enforcement, and a host of other concerns. For several years, we have recommended Indonesia's placement on the Priority Watch List, and we do so again this year.

The lack of effective enforcement of IP rights by Indonesian authorities – whether in well-known physical markets, online platforms, or at the border – remained the most frequently voiced frustrations among respondents during this year's Special 301 cycle. Despite repeated calls for greater action, rights-holders describe law enforcement personnel as disengaged, disinterested, and uncommunicative. This is blamed, to some extent, on the government's consistent failure to provide enforcement bodies with necessary funding and resources to effectively carry out their mandate, as well as its failure to prioritize IP enforcement. These factors are seen as contributing to excessive lead times for investigations and raids, while also increasing opportunities for corruption, which has been a perennial concern of respondents. Representatives from the pharmaceutical and medical device sector further underscored the lack of coordination and cooperation among relevant government agencies (e.g., the Coordinating Ministry for Politics, Law and Security, Directorate General for Intellectual Property (DGIP), and the National Agency for Drug and Food Control. The lack of a coordinated and collaborative approach is also reported in the context of external engagement – many brands report an apparent unwillingness or inability to effectively communicate or coordinate with partners in the private sector; greater transparency and a commitment to sharing intelligence with relevant stakeholders would be welcomed.

Respondents' comments concerning enforcement at the border were no more positive. For years, brands have described the Indonesian border enforcement regime as “highly onerous,” due to an overly-restrictive customs recordation process, tight timelines for actions, the imposition of excessive bond requirements as a condition of enforcement, and a lack of proactive enforcement by Customs. These and other impediments contribute to the low level of border seizures, despite the significant volume of counterfeits known to be flowing into, out of, and through the country's ports.

Rights-holders across a variety of product sectors reported a significant increase in the volume of illicit trafficking online throughout the COVID-19 pandemic; that increased activity has persisted even with the reopening of many traditional brick-and-mortar outlets. Though the Indonesian government has reportedly been increasing its engagement with various online platforms with an aim of tackling online sales of counterfeits, to date IACC member brands have reported little, if any, substantive progress, and major e-commerce sites remain rife with fake goods.

Rights-holders will be closely monitoring the implementation of Regulation No. 31 of 2023 (on Provisions on Business Licensing, Advertisement, Development, and Supervision of Business Actors in Electronic Systems Trading), which came into force during the latter half of the year. The regulation provides for significant new restrictions

on the activities of foreign merchants and e-commerce operators, including prohibitions on social commerce platforms' facilitation of payments, and also imposes obligations on e-commerce platforms to monitor the compliance of foreign merchants. Though it is far too early to gauge the impact of the new regulation, some respondents expressed optimism that it could lead to reduction in online trafficking.

While the Indonesian government has, in recent years, voiced its commitment to addressing rights-holders' concerns; to date, that rhetoric has not been accompanied by meaningful actions or any measurable decrease in the level of counterfeiting seen in the country. Accordingly, we again support Indonesia's retention on the Priority Watch List.

RUSSIA

While Russia has always been a challenging jurisdiction for intellectual property owners; those challenges have been further complicated by the Russian invasion of Ukraine in early 2022, the international response to the invasion in the form of economic sanctions, and Russia's own response to those sanctions. The terms "uncertain" and "limbo" were frequently heard in respondents' descriptions of their experiences in the country over the past year; few expressed optimism for a return to normalcy until after such time as the hostilities have concluded.

Rights-holders' primary concerns with respect to the Russian market have focused on enforcement; at present however, retaliation and the disparate treatment of rights-holders from "unfriendly" nations, including the United States, are front-of-mind for most IACC members. Enforcement in the internal market appears to have substantially decreased over the past two years, with a concurrent reduction in prosecutions. Some respondents have also highlighted apparent retaliation in the Russian courts, citing appellate reversals of lower court victories in which the court directly referenced the changing political landscape in its reasoning for overturning the lower court's decision. In addition, Russian statutes were amended in 2022 to allow for the unrestricted importation of parallel imports – a move apparently designed to penalize American and European companies. The sort of targeted retaliatory actions described by rights-holders during this year's consultations, along with the general de-prioritization of IP enforcement by the Russian government have resulted in a more permissive environment for counterfeiting and piracy that is likely to adversely impact rights-holders for years to come, and even after the war with Ukraine has concluded.

Historically, there have always been some targets considered "untouchable" in Russia – particularly where those targets were politically-connected, or involved organized criminal networks – but rights-holders increasingly report that enforcement officials are unwilling to pursue even smaller, previously unprotected operations. And while some brands continue to report sporadic enforcement actions, both at the border and in the internal market, respondents have noted a drastic decrease in enforcement against piracy and sales of counterfeit goods online. Online intermediaries and those in the e-commerce

space are said to be increasingly unresponsive and uncooperative, showing minimal concern about potential liability.

In light of the consistently negative feedback received during this year's consultations with IACC members, we support Russia's retention on the Special 301 Priority Watch List again in 2024.

II. Current Watch List Jurisdictions

BRAZIL

The IACC has recommended Brazil's placement on the Special 301 Watch List or Priority Watch List for countless years – a reflection of rights-holders' long-standing concerns regarding the sufficiency of the country's statutory regime for the protection of IP, its failure to impose deterrent penalties for counterfeiting offenses, insufficient border measures that contribute to the trafficking of counterfeit and pirated goods both domestically and to additional markets in the broader region, and a host of other issues. Alongside Mexico, Brazil remained the highest priority for trademark owners during this year's Special 301 consultations. In light of the feedback received by our members, we would support USTR's retention of Brazil on the Watch List in 2024.

As described by one participant in this year's discussions, the difficulties faced by rights-holders spring from a combination of factors. First, the overall level of enforcement is insufficient; despite occasional large-scale raids, accompanied by significant seizures, distributors of counterfeits appear relatively unconcerned that their operations will be targeted by the authorities. And when they are, the penalties imposed under Brazilian law are viewed as "inconsequential" – particularly when a case involves a low-level or first-time offender. The penalties imposed in such cases are frequently limited to small fines or non-custodial sentences. Further, inefficiencies in the judicial system all but guarantee that any consequences will not be felt for quite some time. Not surprisingly, many brands view their efforts as a "largely whack-a-mole affair," in which the same markets are repeatedly raided and temporarily shuttered, only to have the illicit traffic re-emerge shortly after the market re-opens.

Though IACC members noted some bright spots in enforcement – e.g., some reported success working with the Federal Tax authorities, with the Mayor's office in Sao Paulo, or with specialized IP units in Brasilia – there remains a wide disparity with respect to the effectiveness and engagement of law enforcement entities across the country. In some locales, corruption is also cited by rights-holders as a significant impediment to enforcement in counterfeiting hot spots (most notably in Sao Paulo, where brands have reported being forced, on occasion, to seek assistance from federal law enforcement due to concerns about corruption within the ranks of local law enforcement).

As highlighted in some other jurisdictions, IACC members would welcome greater transparency on the part of their public-sector counterparts, and a greater willingness to share intelligence gleaned from raids and seizures. Given historical resourcing limitations, a more collaborative approach to enforcement could enable greater levels of “self-help” by IP owners in their pursuit of civil remedies, while also providing greater levels of assistance to law enforcement personnel in their pursuit of criminal actions.

Participants in this year’s consultations expressed a consensus view that Brazilian Customs continues to under-perform; IP-related seizures are described as “relatively low,” particularly given the size of the market. Some respondents pointed to the high tariffs adopted by the Brazilian government as a contributing factor. While nominally intended to encourage local manufacturing, some view them as incentivizing illicit importations of cheap counterfeits into the Brazilian market. For many years, the IACC has stressed the need for more concerted efforts and greater collaboration in the Tri-Border region to combat the ingrained smuggling operations and pervasive influence of organized crime, to little avail.

Online enforcement, too, remains a significant concern of rights-holders, with little reported improvement in recent years. Counterfeit goods remain widely, and openly, available on both major e-commerce platforms and standalone websites in the country. Despite some work on the part of the government to develop best practices for addressing these issues, most brands reported little apparent change in the situation.

One final issue of concern that stakeholders in the pharmaceutical sector wished to highlight, involves the growing role played by Brazilian insurance providers in connection with the importation of medicines to supply the domestic market. Though intended to address shortfalls in the accessibility of certain drugs / treatments, numerous reported incidents underscore the risks associated with this approach, given both the lack of expertise and lack of effective controls to ensure the products’ authenticity and quality. The sourcing of these goods from Turkey – which has well-documented deficiencies in its pharmaceutical supply chain – raises further concerns about these imports and the potential implications for patient safety.

In consideration of rights-holders’ feedback during this year’s consultations, and the reported lack of substantive progress on many long-standing issues raised in past submissions, the IACC continues to support Brazil’s placement on the Special 301 Watch List in 2024.

CANADA

Rights-holders voiced significant frustration with respect to the environment for IP protection and enforcement in Canada, consistent with comments submitted by the IACC in numerous past years. Simply put, many rights-holders view Canada as demonstrating little interest in addressing long-standing deficiencies in the country's border enforcement and internal enforcement regimes. Some respondents noted that, regrettably, they have begun decreasing investment in their brand protection programs in Canada, due to the minimal results that have materialized as a result of their past investments.

The level of disappointment felt by rights-holders was on full display during a recent roundtable discussion with IACC members. "Law enforcement shows little interest in investigating IP crimes, and our referrals are often met with a suggestion that we simply pursue civil remedies." "We have not received a single notification from CBSA regarding a detention or seizure involving our marks." "Canada has far more resources at its disposal than many other countries, but others are doing far more [with respect to IP enforcement], with far less." "IP enforcement is clearly not a priority for the Canadian government." These sentiments are nothing new; we've heard variations on them for a number of years, and unfortunately, we see no reason to believe that those opinions will change in the near term.

Some participants in this year's consultations reported increased levels of activity by Canada Border Services Agency in the Prairie region of the country, which was undoubtedly welcomed; but also underscored concerns with respect to the country's larger, higher-volume ports such as Vancouver, Prince Rupert, Halifax and others where enforcement remains below expected levels. In more recent months however, detentions and seizures are said to have decreased across the board.

Pacific Mall – which was nominated by the IACC, and again named as a Notorious Market in USTR's most recent out-of-cycle review – continues to be a point of consternation for rights-holders. Illicit sales continue unabated across numerous outlets operating within the mall, and rights-holders have been unable to obtain support from either mall management or local law enforcement. Similarly, the Downsview Merchants Market is cited as a growing hot spot with dozens of high-volume sellers who continue to operate with impunity.

The enforcement landscape also continues to be hindered by legislative deficiencies, perhaps most notably a lack of statutory damages for counterfeiting offenses, and by inefficient procedures which greatly increase the costs associated with enforcement. To that latter point, rights-holders would welcome the implementation of an expedited path to seizure and destruction of contraband to minimize storage costs while awaiting the final resolution of interdictions.

Over the past 12 – 18 months, respondents in the pharmaceutical and medical device sectors described a troubling expansion of organized criminal networks in the trafficking of counterfeit goods within their respective product sectors. Those reports are especially

concerning in light of the U.S. Food & Drug Administration’s decision to approve a plan by the State of Florida to import drugs from Canada, and numerous other states seeking to implement similar importation regimes. The potential infiltration of the pharmaceutical supply chain, as legitimate pharmacies attempt to meet growing demand, and as consumers avail themselves of less scrupulous outlets poses a significant threat to patients’ health and safety.

Given the long-standing, and continuing, obstacles to effective IP enforcement in Canada, the IACC supports its retention on the Special 301 Watch List in 2024.

COLOMBIA

IACC members offered mixed assessments regarding their experiences in Colombia over the past year. While some noted modest increases with respect to enforcement in the internal market and the frequency of border seizures, most continued to report the widespread availability of counterfeits in both traditional brick-and-mortar outlets and ever-increasing online trafficking. And while domestic production of counterfeits was not reported as a significant concern by most product sectors, the pervasiveness of illicit goods on offer points to continued deficiencies in the country’s border enforcement regime.

Even those respondents who reported better than average levels of enforcement underscored concerns related to the slow-moving nature of investigations and raids, as well as the associated costs. Several offered examples of investigations stretching on for several months – in at least one case, over a year – before law enforcement moved forward with a raid on the targeted operations. During these protracted operations, the relevant brands incur significant costs in support of law enforcement efforts. These long lead-times have also been reported to contribute to unsuccessful actions as leads and evidence go stale, and potential witnesses or targets abscond. Some IP owners continue to express concerns that the long delays they’ve experienced are tied to local protectionism – particularly when cases involve some of Colombia’s well-known hot-spots such as Unilago and San Andresito, where counterfeiters appear to operate with high-visibility and little concern of prosecution.

When cases do proceed, Colombia’s judicial process is said to move at an extremely slow pace. One respondent reported that they have rarely seen their cases resolved in less than two years, and that in most cases the norm for a final resolution is closer to five years.

We urge the Colombian government to significantly improve the efficiency of their IP enforcement regime.

In light of the feedback received during this year’s consultations, we continue to recommend Colombia’s placement on the Special 301 Watch List in 2024.

ECUADOR

IACC members continue to report a variety of challenges to effectively protecting their intellectual property in Ecuador, with respondents during this year's consultations citing the need for greater resourcing of enforcement agencies, a need for greater expertise among the country's judiciary, insufficient border enforcement measures, and a lack of effective coordination between relevant stakeholders as priority concerns.

As noted in past years, Ecuador's IP Office is significantly underfunded, and would benefit greatly from modernization. Outdated hardware and software are said to have contributed to frequent downtime and delays, along with stale and inaccurate registration information in its database; these issues continue to impact the registration and enforcement of rights, while also contributing to backlogs at the IP Office.

Rights-holders welcomed Ecuador's amendment of its IP laws in 2021 which enabled Customs to resume its seizure of counterfeit and infringing shipments for the first time since 2016, when that authority had been drastically curtailed. Despite the 2021 enactment however, border enforcement of IP rights remains extremely challenging, and most respondents cited few (and in some cases, no) Customs seizures over the past year. The implementation of a customs recordation regime is seen as essential to enhancing communication and coordination between Customs, rights-holders, and the IP Office, as a means to addressing these issues. Brands also expressed their desire that Ecuador abandon its present requirement that a court-designated "expert" authenticate suspected counterfeits. The current process leads to unnecessary delays and expense, while introducing uncertainty and opportunities for corruption into the process. Simply put, no court-appointed "expert" offers a level of expertise on par with the actual manufacturer of the authentic goods.

Enforcement in the internal market is similarly said to suffer from a lack of resources and coordination, along with a need for greater prioritization of efforts. Some participants in this year's discussions stated their disappointment over the perceived lack of responsiveness to rights-holders' engagement efforts, and the overall lack of enforcement activity.

Given the continuation of each of these concerns, and others reported in prior years' submissions, the IACC recommends Ecuador's retention on the Watch List in 2024.

EGYPT

IACC members' feedback with respect to Egypt has remained largely consistent in recent years. While the country is generally viewed as having a more well-developed enforcement regime than many other jurisdictions within the region, and most rights-holders commented positively on their interactions with enforcement authorities, counterfeit goods remain widely available in the internal market. Some participants in this year's process described an apparent reluctance on the part of law enforcement to

pursue raids against large-scale operations, which was attributed to resource limitations and a lack of expertise on IP matters. Brands expressed their interest in working with government partners in Egypt to facilitate capacity building and training opportunities.

Rights-holders were nearly unanimous this year in naming their top priority as “increasing the effectiveness and efficiency of Egypt’s border enforcement regime.” Member brands described an “almost entire lack of customs seizures” – a fact that is said to be even more frustrating given the volume of counterfeits seen on offer in both brick-and-mortar outlets, and increasingly through online channels. Despite the implementation in 2021 of new mechanisms to facilitate seizures at the border, the process continues to be described as overly-bureaucratic and inconsistent, and remains difficult in the absence of a recordation system. Some stakeholders also report that where Customs has seized counterfeit versions of their products, in some instances, those goods have been subsequently sold at public auction, eliminating any benefits of enforcement while also undermining efforts to raise public awareness about the harms associated with counterfeits. These concerns related to Egypt’s border enforcement regime are especially troubling given a number of reports received from IACC members regarding increased trafficking from and through Egypt to other countries in the Middle East and Africa.

Rights-holders in the healthcare sector have also reported a significant increase in the trafficking of illicit pharmaceuticals by unlicensed, “online pharmacy” sites. We are currently seeking additional information regarding the severity of these issues.

We welcome the assistance of USTR in addressing these concerns, but at present, continue to recommend Egypt’s placement on the Special 301 Watch List in 2024.

MEXICO

Mexico has made appearances in the IACC’s annual Special 301 submissions to USTR for over two decades – a testament to both the importance with which IACC members have long viewed the market, and the intractable nature of the challenges that they face there. Indeed, USTR is undoubtedly familiar with many of the issues raised by rights-holders during this year’s consultations, as they’ve been highlighted in countless years past.

There is a broad consensus among stakeholders that IP protection and enforcement in Mexico has been de-prioritized under the Obrador administration, and that lack of priority is seen throughout the IP landscape. By all reports, the volume and intensity of enforcement actions has greatly decreased over the past few years, both at and within Mexico’s borders. The Mexican Institute of Industrial Property (IMPI) and the Attorney General’s Office (FGR) – once viewed as valued partners of the private sector in protecting intellectual property – have become increasingly unresponsive and uncooperative.

Respondents reported few, if any, criminal investigations undertaken in the past year, and the FGR officials are said to insist that brands provide detailed information

concerning potential targets before they'll agree to investigate. One brand characterized those requirements as "impossible thresholds, that all but preclude any action." IACC members also report that the Specialized Unit in charge of investigating IP crimes (UEIDDAPI) has not been cooperative in executing seizures or raids. Efforts to engage with FGR delegations in the provinces have had limited success, likely due to a lack of training or experience in IP matters among the personnel in those offices.

With respect to administrative actions, the government's failure to adequately fund IMPI's operations has resulted in growing backlogs and significant delays; requests for assistance on matters that aren't already pending may simply be ignored. And despite historically being considered by many as beyond reproach, for the first time in memory, some respondents voiced concerns about potential corruption within the agency (which they attribute to the lack of resourcing).

As reported in past years, Customs enforcement also remains a priority concern. Unfortunately, rights-holders have reported a significant decrease, both in terms of activity and with respect to the level of communication and cooperation seen from their colleagues in the public sector, following the transition of border enforcement responsibilities to its current military oversight. Border enforcement has historically been hindered by Customs' limited authority to seize goods ex officio, or to act against transshipments, and its reliance on IMPI and the FGR to formalize seizures. Given the above-discussed issues related to deprioritization and lack of resourcing for those agencies, many brands have indicated that seizures have drastically decreased.

Rights-holders continue to seek alternative routes of enforcement, such as through the Tax Administration Service (SAT) and its General Administration for Foreign Trade Audit (AGACE), but such efforts have had only limited success, and the AGACE is reportedly unwilling to share relevant information related to the volume of goods seized, or pictures documenting the seizure.

Given the feedback received from IACC members during this year's consultations, we support – at minimum – Mexico's retention on the Watch List in 2024. If, however, in the full context of feedback received from other stakeholders, USTR believes that Mexico should be elevated to the Priority Watch List, we would have no objections to such a determination.

PAKISTAN

The IACC was pleased to hear more positive feedback from members concerning their experiences in Pakistan over the past year. USTR, similarly, noted progress in the country in terms of its engagement on capacity building and increased levels of enforcement in its most recent Special 301 Report, while highlighting the need for additional progress on a host of issues.

Pakistan's border enforcement efforts received mixed assessments during this year's consultations, with some reporting "a lot of activity" but others reporting "zero customs cases over the past twelve months." This may be attributable to officers' a lack of familiarity with some brands, and underscores the need for additional training from and engagement with private sector stakeholders. Several brands noted an apparent increase in counterfeit imports arriving from China, with some raising concerns that Pakistan is becoming a more significant player in counterfeit distribution. One respondent highlighted a significant seizure of counterfeit product in Chile that had arrived from Pakistan after transiting through Panama. Equally concerning are reports of significant increases with respect to domestic manufacturing of counterfeits for both domestic consumption and export to other markets. Rights-holders suggested that increased information sharing and collaboration on enforcement actions could pay significant dividends moving forward.

In our comments last year, we raised concerns regarding a trade agreement between Pakistan and Afghanistan, provisions of which were said to effectively preclude seizures of shipments on the basis of IP violations. We were pleased to receive reports this year indicating that Pakistan is now excluding certain categories of products (including goods which may raise consumer health or safety concerns) from that policy, which has led to increased seizures of counterfeits in those sectors.

While we were happy to receive some positive news regarding Pakistan's continued efforts to address long-standing challenges to IP protection, we support the country's retention on the Watch List in 2024.

PARAGUAY

IACC members from nearly every product sector continued to report significant concerns with respect to Paraguay's protection and enforcement of intellectual property over the past year. As detailed in prior years' submissions, the effectiveness of the Paraguayan IP regime is greatly hindered by an outdated statutory regime, lax border measures, insufficient resourcing of enforcement authorities, engrained corruption, and a perceived view among the judiciary (and the government more broadly) that counterfeiting and piracy are not "serious" crimes.

Paraguay's main IP protection law – Law N° 1328/98 (DERECHO DE AUTOR Y DERECHOS CONEXOS) – was enacted over two decades ago; and while intellectual property crime has undergone a drastic evolution in the interim, Paraguay's legal framework has remained largely unchanged. As a result, rights-holders widely view the current framework as ineffective, overly lenient, and insufficient to deter recidivism. The situation in Paraguay is further exacerbated by the application of Paraguayan Law N° 1.286/98 of the Criminal Procedure Code, under which prosecutors may forego criminal charges for offenses that are deemed less serious or that are not seen to implicate the public interest. As a result, counterfeiting and piracy offenses are, in many cases, not prosecuted at all. IACC member brands report however, that even when cases do proceed, defendants often fail to appear following their arrest and release pre-trial. And where offenders do stand trial, the penalties imposed remain exceedingly light. Respondents during this year expressed displeasure with the judiciary's handling of IP-related cases, describing them as “lacking subject matter expertise” and “failing to recognize the seriousness of those offenses and their broader impact on both the economy and the public at large.”

Given the lax treatment of counterfeiting offenses, it is perhaps unsurprising that rights-holders have continued to report an uptick in domestic production and finishing operations – particularly in Ciudad del Este, which has made perennial appearances on USTR's Notorious Markets List.

Border enforcement remained a top priority of respondents during this year's consultations. Brand representatives decried the expense involved, as well as the practical hurdles involved in formalizing a seizure once goods have been detained at the border. Those challenges are evidenced by the low volume of counterfeits seized by Paraguayan Customs – even some major brands reported no seizures over the past 18 – 24 months, despite the significant volumes of counterfeit merchandise seen on offer in the domestic market.

Despite these challenges, many IACC members commented positively on their interactions with Paraguayan authorities. The Economic Crimes Unit of the National Police was cited for their consistent support on IP investigations, and the National Directorate for Intellectual Property (DINAPI) was also singled out for its efforts. Both organizations continue to be constrained by resource limitations which have historically diminished their potential impact. One commenter though described a “marked improvement in authorities' willingness and ability to bring criminal actions and carry out raids,” which is said to have led to several large-scale seizures. Others, however, reiterated concerns raised in past submissions involving what has been described as “endemic” corruption, and is said to continue to adversely affect brands' abilities to effectively protect their intellectual property. We will be closely monitoring these concerns in the coming year.

Given the feedback received from IACC member brands during this year's consultations, we recommend Paraguay's retention on the Special 301 Watch List in 2024.

PERU

IACC members' feedback concerning Peru remained largely unchanged over the past year, with rights-holders continuing to highlight concerns related to a lack of resources and a need for greater levels of expertise among prosecutors and the judiciary.

As noted in last year's comments, the National Institute for the Defense of Competition and the Protection of Intellectual Property (INDECOPI) is regarded positively, and remains active. As in other jurisdictions however, rights-holders underscore the need for increased criminal enforcement, citing the lack of deterrence resulting from administrative enforcement. Some question whether the benefits of administrative enforcement outweigh the costs, given the fees involved in pursuing such actions (particularly in light of the uptick in small consignments in recent years).

The National Police were also recognized as "engaged partners" by some respondents, but as noted above, their effectiveness is limited by a chronic lack of resources. The lack of funding and manpower is said to contribute to an apparent increase in domestic manufacturing of counterfeit goods, as criminals have minimal expectations that their operations will be disrupted by investigations or prosecutions.

With respect to border enforcement, member brands – particularly in the apparel sector – voiced growing consternation over significant increases in the exportation of Peruvian-manufactured counterfeits to other markets in the region. As noted in last year's submission, greater cooperation between Customs and the Copyright / Trademark Offices, and more timely coordination with rights-holders would be welcomed.

Insufficient resourcing also continues to hamper the effectiveness of prosecutions. IACC members report that the Public Prosecutor's Office currently employs only four prosecutors specialized in IP crimes, while also noting growing backlogs at the prosecutors' office for Special Industrial Protection Crimes.

Given the continuing concerns highlighted by IACC member brands during this year's cycle, we recommend Peru's retention on the Special 301 Watch List in 2024.

THAILAND

The IACC concurred with USTR's decision to retain Thailand on the Special 301 Watch List in 2023, largely due to the continued prevalence of counterfeits in both the brick-and-mortar and online spaces, and despite some reports of an apparent increase in priority for IP protection. Many of the concerns registered by rights-holders last year, and in prior years, persisted throughout 2023 though; and the consensus view among participants during this year's consultations was that Thailand should remain on the Watch List in 2024.

IACC members' assessments of enforcement personnel remained largely positive in 2023 – the Royal Thai Police and Thai Customs were both singled out for their efforts. Brands described their partners in enforcement as “committed” and “receptive,” and generally reported positive working relationships. As discussed in previous submissions, however, rights-holders would welcome the adoption of a more strategic approach to enforcement aimed at long-term impact and broader deterrence. The enforcement of IP rights in Thailand continues to focus disproportionately on low-level, retail-scale offenses; a greater emphasis on building investigations targeting high-level distributors and manufacturing operations would be welcome. And while enforcement personnel are generally receptive to receiving training and intelligence from private sector partners, they are often seen as reluctant to engage in such information sharing in the opposite direction. As one respondent opined, “... adopting a more collaborative approach to partner with rights-holders, and focusing more attention further up the supply chain would undoubtedly lead to a decrease in the visibility of counterfeit goods at the retail end of the distribution chain as well.” At present though, brands have seen little appetite within the ranks of the Economic Crimes Suppression Division for such a shift.

We were pleased to hear a number of positive comments this year concerning Thailand's border enforcement regime, most notably with respect to Thai Customs' implementation of its new recordation database (established in mid-2022). Though IACC members expressed concerns last year in connection with a requirement that they re-register their marks that had been previously recorded (rather than simply importing the information from the legacy system), the new system is reportedly working well thus far. Rights-holders have also been pleased with the increased efficiency of seizures, as Customs has been willing to effect seizures without the intervention of rights-holders in cases where the relevant importer or exporter has not objected to a detention.

Trafficking of counterfeit and pirated goods online, as in most other jurisdictions, is a growing concern; rights-holders reported a significant increase in online trafficking throughout the COVID pandemic, and that increased volume continues to be seen on e-commerce platforms and social media platforms, as well as through standalone websites. While we are aware that the Thai government has signed memorandums of understanding with a number of online platforms, rights-holders stated that they've seen little practical impact from those MOUs, with some arguing that they lack specificity regarding the government's expectations of the intermediaries. We would encourage the Thai government to review its current statutory and regulatory frameworks to ensure greater accountability and to clarify the duties incumbent on e-commerce entities to safeguard consumers and legitimate businesses in the online market.

We look forward to continuing engagement with the Thai government during the coming year, but at this time support Thailand's retention on the Special 301 Watch List in 2024.

TURKEY

IACC members supported Turkey's retention on the Special 301 Watch List in 2023, due to the country's status as both a significant source of manufacturing of counterfeit goods and as a major transit hub for the distribution of counterfeits produced abroad and entering into European and Middle Eastern markets. These concerns continued throughout 2023, and despite some reports of increased levels of enforcement over the past twelve months, many rights-holders see the situation in Turkey as becoming increasingly dire, arguing that the country's enforcement efforts are failing to keep pace with ever greater levels of illicit traffic.

While respondents cited consistent support from the Gendarmerie, IP Crime Police, and Anti-Smuggling Police, highlighting a number of large-scale seizures and arrests, many of the member companies who shared positive outcomes questioned whether there has been any apparent decrease in the availability of counterfeit goods in the local market. Likewise, enforcement activity elsewhere in the region indicates that counterfeit goods of all manner continue to move from and through Turkey to other consumer markets.

As in past years, one of the greatest sources of frustration reported by IP owners has involved the continued difficulty in obtaining search and seizure orders. Prosecutors' onerous requests for detailed information and evidence remain a significant hurdle (and sometimes an absolute bar) to pursuing enforcement. Rights-holders would welcome greater clarity and consistency in the process.

Customs enforcement, likewise, remained a priority for the full cohort of brands who participated in this year's process. Interdictions at the border remain, in the view of many, significantly lower than expected given the prevalence of counterfeits in the local market, and Turkey's consistent appearances as one of the top countries of provenance for counterfeits seized at the U.S. and European borders.

Online enforcement was likewise cited as an urgent concern by IACC members during our consultations, particularly among those in the healthcare sectors, many of whom raised alarms over significant increases in rogue online "pharmacies" offering all manner of fake pharmaceuticals. Investigations point to China as a major source of the counterfeit medicines, via Belarus.

Historically, many rights-holders have questioned the sufficiency of penalties imposed by Turkish courts in connection with intellectual property offenses. Several brands reiterated that point during this year's cycle, arguing that increased enforcement (whether in the domestic market, at the border, or online) is unlikely to bring about long-term improvements in the IP landscape, absent a greater willingness on the part of the government to treat counterfeiting and piracy as serious offenses and to ensure that they are punished accordingly.

Given the continued concerns reported by IACC members this year, we would recommend – at minimum – Turkey's retention on the Watch List in 2024. If warranted, based on

additional stakeholder feedback received by USTR during this year’s cycle, we would not oppose Turkey’s elevation to the Priority Watch List.

VIETNAM

Vietnam has been described by IACC members as a “crucial” market in Southeast Asia, “and increasingly so from a global perspective.” We were pleased to hear positive feedback this year regarding the Vietnamese government’s increased emphasis on IP enforcement, as reflected by an uptick in reported raids and seizures. One pharmaceutical brand reported that its largest seizure globally in 2023 took place in Vietnam. Rights-holders also detailed increased engagement with enforcement partners (including both police and Customs) underscored by more frequent requests for training on product identification / authentication and best practices for IP enforcement. Vietnam Customs and the Market Surveillance Agency have shown increased activity resulting in a number of successful raids in the north of the country and along its border with China. Despite this positive feedback though, rights-holders were near-unanimous in their view that much work remains to be done to address widespread counterfeit sales in the domestic market and a seemingly endless flood of fakes arriving from China.

Corruption continues to be cited as a significant obstacle to progress in cleaning up the domestic market, as brands reported numerous instances of raids being compromised as a result of leaks and tip-offs to intended targets. As noted in past submissions, these concerns appear to be most pronounced in the southern parts of the country, including Ho Chi Minh City.

Respondents also recommended additional capacity building programs targeted at the judiciary and prosecutors to improve case management, increase the overall efficiency of prosecutions, and stress the importance of deterrent penalties as part of the “long-term” strategy for reining in illicit trafficking.

Online sales of counterfeit goods are cited as a growing problem in nearly every product sector, and brands continue to struggle with the relative anonymity afforded to sellers on e-commerce and social media platforms. While the Ministry of Science and Technology and Market Control Board are said to be helpful in addressing some of the trafficking, online counterfeit sales in Vietnam – as in most jurisdictions – are growing at a rapid pace. The IACC will be closely monitoring activity by the Vietnamese government in this area – particularly its work on the “Anti-Counterfeiting and Consumer Protection in E-Commerce by 2025 Plan,” which may offer new tools for anti-counterfeiting and consumer protection.

While we wish to acknowledge the progress that has been made by Vietnam in recent years, we continue to support its placement on the Watch List in 2024.

III. Additional Jurisdictions for Consideration/Watch List Recommendation

IRAQ

IACC members in the wine and spirits sector highlighted growing concerns in Iraq during this year's Special 301 consultations, detailing a variety of issues related to manufacturing, distribution, and "finishing" in the country. While investigations remain ongoing, major distilled spirits brands have identified significant production operations in the Iraqi Kurdistan region, as well as high volume imports of both components and finished products entering the country via routes from both Turkey and Jordan. Iraq also appears to be serving as a corridor for further distribution to other markets in the region including Iran. To date, efforts to address this trafficking have shown limited success, due in part to Iraq's porous borders and lack of effective customs controls. Respondents have, however, reported some success in working with customs officials in Turkey to detain and seize illicit shipments; those actions have also led to the development of valuable intelligence regarding the extent of the trafficking operations.

Erbil has been identified as a focal point of counterfeit production and sales; rights-holders described widespread availability in that vicinity, with one survey showing counterfeit products accounting for approximately 15% of the market. Sulaymaniyah is also believed to be a hot spot for production, and sales of the illicit goods are said to be prevalent in Baghdad.

The activity seen in Iraq is a growing concern, in part, due to the increasing expertise of counterfeiting operations which has led to more convincing packaging and labeling making it nearly impossible for consumers to distinguish between the legitimate and counterfeit goods on offer. The issue is further exacerbated by low levels of consumer awareness regarding both the prevalence of, and the threats posed by, counterfeit spirits.

Enforcement efforts are also said to be stymied by local corruption, inefficient handling of cases, and slow-moving judicial processes.

We would welcome USTR's assistance in addressing these growing concerns, and recommend Iraq's placement on the Special 301 Watch List in 2024.

KENYA

The IACC has provided comments concerning Kenya during each of the past two Special 301 cycles, including a Watch List recommendation in January of 2023. Rights-holder feedback during this year's consultations reiterated many of the same concerns previously voiced by member companies, and highlighting the continued deterioration of the country's regime for IP protection and enforcement. Accordingly, we again recommend Kenya's placement on the Special 301 Watch List in 2024.

Until relatively recently, IACC members active in the Kenyan market were largely effusive in their characterization of Kenya's anti-counterfeiting efforts, citing the diligent work and cooperative relationships that the private sector had established with the country's Anti-Counterfeiting Agency (ACA). That is, perhaps, why many respondents have been so disheartened by the holistic decline that they've witnessed over the past few years.

Enforcement – both in the local market and at the border – has, in the terms of one brand, “completely evaporated.” In contrast to their past experience, they reported no border seizures in the past year, and saw only a handful of seizures otherwise. Others, who previously lauded the ACA for its collaborative approach and regular communication, now find that their requests for information and assistance go unanswered more often than not. And even for so-called “low-hanging fruit” cases, where brands are able to provide advanced notice of incoming shipments of counterfeit goods, rights-holders have repeatedly seen containers released with no explanation.

It is widely suspected that the dramatic turnaround that has been witnessed over the past two to three years is due in large part to budget cuts which have severely constrained the ACA's capacity. Others blame widespread corruption, and some attribute the current situation to a simple lack of political will among the country's leadership.

We would welcome USTR's attention to rights-holders' increasingly urgent concerns in Kenya, and again request the country's placement on the Watch List in 2024.

KUWAIT

IACC members have highlighted a variety of enforcement related concerns in Kuwait during recent years' Special 301 consultations. During this year's process, rights-holders continued to express frustrations over what many view as very limited enforcement, both in the internal market and at the country's borders. Most respondents continued to report very few border seizures over the past year; and in the internal market, enforcement agencies have been described as largely uninterested in pursuing cases, and unwilling to take ownership of cases when they've been filed. Communication regarding the status of cases is said to be sporadic, despite the adoption of a new online portal by the Ministry of Commerce in late-2021. While that service was intended to facilitate the submission of complaints and enable more timely updates and information sharing, most respondents

familiar with the system have reported only limited benefits, due in part to a lack of accessibility outside of Kuwait.

IP owners also reiterated a number of other concerns discussed in past submissions, including a lack of transparency in enforcement (as rights-holders' representatives are typically not permitted to witness raids). Those policies are also seen as precluding opportunities for additional training on authentication in a practical setting, and the failure to make use of brands' expertise may contribute to over- or under-enforcement.

As noted with respect to some other jurisdictions, "seized" goods are frequently left in the custody of the offender, creating uncertainty with respect to their disposition.

The low levels of enforcement in Kuwait, and the few cases resulting, are seen as contributing to the lack of experience in IP issues among the judiciary. Not surprisingly, those rights-holders who do report experience in the courts voiced the need for greater efficiency in the management of intellectual property matters which are often unnecessarily protracted affairs.

Given rights-holders continuing concerns in the country, we recommend Kuwait's return to the Watch List in 2024.

MALAYSIA

By all accounts, the environment for IP protection and enforcement in Malaysia remained incredibly challenging in 2023. Border enforcement, as in many past years, continues to be a source of great frustration to rights-holders, with many respondents during this year's consultations reporting exceedingly low seizure numbers and a consistent lack of engagement by Malaysian Customs. These issues are attributed, in part, to the country's lack of an effective trademark recordation system, and to insufficient coordination between Customs and the Ministry of Domestic Trade and Consumer Affairs (MDTCA).

Respondents offered mixed reviews with respect to enforcement in the internal market; some noted that while they've been able to obtain assistance in the execution of raids on a fairly regular basis, the effectiveness of those actions has been limited due to insufficient follow-up by enforcement personnel to ensure the documentation and preservation of evidence, and with respect to coordination with Public Prosecutors. One major brand stated that they've "rarely seen cases make it to prosecution, and those that do often take years to reach that stage." The administrative resolution of offenses – typically leading to only warnings and nominal fines – is providing insufficient deterrence against recidivism. Additional training on best practices for handling IP cases (both for enforcement personnel and prosecutors) is encouraged.

Rights-holders also continue to cite corruption as a significant hindrance to enforcement, offering examples of a number of planned criminal raids which were thwarted as a result of targets being tipped-off in advance.

Online sales of counterfeit goods have significantly increased in recent years, and are said to impact a variety of product sectors. As in a number of other jurisdictions, rights-holders saw a significant uptick following the onset of the COVID pandemic, and those increases appear to have persisted. More, and more effective, proactive measures are needed to address this trafficking, but to date, most member brands have reported little appetite on the part of the Malaysian government for addressing these concerns. Some respondents also noted a lack of receptivity on the part of major e-commerce providers in Malaysia to collaborate with IP owners and/or the government to combat illicit sales; greater leadership from the government is necessary to ensure the safety and legitimacy of the online market.

At present, many respondents do not feel that intellectual property protection is a priority for the Malaysian government, and that lack of priority continues to be seen throughout the country's enforcement framework. We would welcome greater efforts to address these, and other long-standing concerns raised in prior years' submissions, but at this time recommend Malaysia's placement on the Special 301 Watch List in 2024.

NIGERIA

IACC members continued to report a variety of challenges in Nigeria over the past year, highlighting concerns related to the country's statutory framework, lacking coordination among enforcement bodies, instances of corruption, and insufficient resourcing and support for law enforcement officers.

Anti-counterfeiting enforcement in Nigeria is largely reliant upon the Trademarks Act and the Merchandising Marks Act, and while both allow law enforcement authorities to conduct searches and raids, and to seize counterfeit items, the penalties available under those laws remain too low to create significant deterrence. Rights-holders would welcome the enactment of updated laws that recognize the practical realities of modern IP crime, including provisions for statutory damages. The Standards Organization of Nigeria has made similar calls in the past to modernize the country's legal regime, but we've seen little movement in this area to date.

While brands tended to comment positively regarding their interactions with rank-and-file officers of the Nigerian Police, describing them as "hard working" and "supportive in combating counterfeiting; some shared the view that senior management / leadership fail to provide adequate support, and have not sufficiently empowered their officers to carry out their duties in terms of resourcing and training opportunities. This can lead to decreased morale and eroding support for anti-counterfeiting efforts.

Respondents also continue to voice concerns heard in previous years regarding the protracted adjudication timelines and relatively low penalties imposed for IP-related offenses. As stated by one brand, “The judges often do not appreciate the gravity of the offense, and we’ve seen widely disparate sentencing for comparable offenses.” Most agreed that additional training would be useful in helping to improve expertise among the judiciary with an aim of increasing the predictability of outcomes and ensuring that IP crimes are penalized with an appropriate level of severity to deter recidivism.

Based on IACC member feedback during this year’s consultations, we ask that USTR consider placing Nigeria on the Special 301 Watch List in 2024.

OMAN

IACC members continued to express high levels of concern over the state of IP protection and enforcement in Oman during this year’s consultations. As reported in each of the past two years, the country is described by rights-holders as a “black hole” for intellectual property rights, with little interest demonstrated by law enforcement, the Ministry of Commerce, or leadership within the government to address illicit trafficking.

Brands noted that despite the assistance of the USPTO’s Regional IP Attaché for the Middle East and others in the U.S. government, the Omani government has remained unresponsive to stakeholders’ repeated attempts to engage on matters related to IP. Meanwhile, the distribution of counterfeits continues unabated, undermining the market for legitimate manufacturers and retailers. Despite pervasive and open sales of counterfeit goods in the market, IACC members stated bluntly, “We do not see any enforcement activities in Oman.”

The lack of any apparent commitment or political will by the government to address rights-holders’ significant and long-standing concerns has led to growing frustration among numerous brands, and merits USTR’s consideration for placement on the Special 301 Watch List in 2024.

PANAMA

The frustrations voiced by IACC members concerning Panama during this year’s consultations were perhaps more pronounced due to the fact that – until relatively recently – the country was viewed as one of the most effective and collaborative partners for IP enforcement in the entire region. As detailed in past submissions however, rights-holders’ views have dimmed significantly over the past several years.

Brands who previously reported robust cooperation from Panamanian authorities, particularly their public sector counterparts in Customs who were described by some as the “gold standard” for border enforcement in Latin America, have seen the level of enforcement activity (and concurrently, the volume of counterfeit seizures) drastically diminished. Panama remains a major transit hub for the distribution of counterfeit goods to other markets in the region, and a vital corridor for trade globally. Inexplicably though, Customs has become “thoroughly disengaged;” member brands reported few proactive seizures despite the agency’s ex officio authority, and rights-holders’ attempts to engage (whether in connection with specific enforcement matters or on opportunities for training) often go unanswered. Similar concerns were also heard with regard to DIPAFRONT and the SAT. Rights-holders strongly encourage the implementation of a customs recordation system to facilitate internal coordination and external engagement with IP owners.

Panama continues to trend in the wrong direction on IP enforcement, and the IACC would support its placement on the Watch List in 2024.

PHILIPPINES

Rights-holders’ feedback regarding the Philippines during this year’s Special 301 consultations remained largely consistent with that heard in several recent cycles.

As in past years, IACC members highlighted deficiencies in the country’s border enforcement regime, describing it as “largely reactive,” “overly-reliant on rights-holders’ provision of intelligence,” and even then, “often haphazard in its enforcement.” The lack of consistent, proactive targeting of incoming shipments, and insufficient follow-on investigations when seizures are effected continues to trouble brands across numerous product sectors.

Similar complaints were heard with respect to the police; raids and seizures are often seen as an end in themselves, rather than as a first step in investigating and prosecuting increasingly organized trafficking operations. These deficiencies, and a lack of coordination with prosecutors, have resulted in most respondents seeing relatively few criminal prosecutions; and rights-holders continue to report that prosecutors often encourage them to simply pursue private actions, rather than moving forward on their own initiative. The costs and protracted nature associated with such proceedings are onerous, though at times remain the only practical option for removing counterfeits from the marketplace and ensuring their destruction. Given the feedback above, it is perhaps unsurprising that recidivism is also said to be rampant.

As in countless other jurisdictions, online counterfeit sales are a growing problem in the Philippines, and brands strongly encourage the government to undertake an assessment

of current laws and regulations to address the proliferation of sales through e-commerce and social media platforms.

While the government of the Philippines has, at times, been vocal about its commitment to fostering a positive environment for intellectual property in the country, many argue that its actions have failed to match its rhetoric. Significantly greater priority for IP protection is necessary; demonstrating that priority will require the application of greater resources, rooting out corruption in the enforcement apparatus, and adopting a more proactive and collaborative approach.

In light of the feedback received this year, however, the IACC supports the Philippines' return to the Special 301 Watch List in 2024.

SAUDI ARABIA

IACC members expressed growing frustrations concerning the protection and enforcement of their rights in Saudi Arabia, mostly centered on significantly decreased levels of enforcement since the Saudi Arabia IP Authority (SAIP) assumed responsibilities for managing the registration, and enforcement of IP in the country. While many remain optimistic that centralizing the oversight of IP matters will ultimately result in long-term benefits, rights-holders are, undoubtedly, growing impatient for such progress to materialize. As stated by one brand during this year's consultations, "We are past the point where we can reasonably refer to the situation as 'growing pains.'"

Regrettably, the transitioning of responsibilities to SAIP resulted in a significant loss of expertise and historical knowledge, which in turn has led to substantial decreases in seizures at the border and in the level of enforcement in the internal market. The concerns cited by rights-holders in the context of customs enforcement are particularly troubling given Saudi Arabia's prior status as one of the top-performing border enforcement regimes in the region.

Another issue frequently cited by respondents during the current 301 cycle concerns the agency's direct engagement, and the desire for more regular and open communication with stakeholders. Not surprisingly, many rights-holders had established collaborative relationships with their counterparts at Saudi Customs, the MOCI, and the Police over many years of working on enforcement matters. We would welcome more concerted efforts to rebuild those open lines of communication with SAIP. More direct collaboration should also aid in bringing the overall efficiency of enforcement back in-line with previous levels.

Rights-holders also repeated calls for the implementation of clear policies to facilitate post-raid information sharing and seizure reports – at present, these are not being shared. Such intelligence sharing would not only offer benefits in terms of supporting

follow-on investigations by the private sector, but also provide clear metrics by which the SAIP could demonstrate progress (or identify areas in need of improvement).

In consideration of these concerns, and those voiced in numerous prior submissions, we support Saudi Arabia's inclusion on the Special 301 Watch List this year.

SOUTH AFRICA

IACC members' feedback with respect to South Africa remained largely unchanged over the past year. The protection and enforcement of IP rights in the country continues to be hindered by an "antiquated statutory framework," and a "lack of effective coordination between enforcement bodies," among other concerns.

Most respondents viewed the issues that they face in South Africa as a "top-down" problem – there is simply little apparent interest or political will on the part of the government to take steps necessary to bringing about substantive improvement in the IP landscape. The general perception is that IP crime continues to be considered a nuisance rather than a serious threat to the economy or to the health and safety of South African consumers. As a result, brands report little movement with respect to their past calls to update the country's outdated statutes, to invest in more effective border measures, or to furnish enforcement bodies with much-needed resources.

To that latter point, the South African Revenue Service (SARS) and the South African Police Service (SAPS) remain chronically undermanned and underfunded. As described by rights-holders during prior years' consultations, the lack of support that the agencies receive may be contributing to decreased morale and a growing disinterest in pursuing IP criminals. Though some brands continue to report consistent support from the agencies, most noted year-over-year decreases in the number of raids carried out, and the volume of counterfeit product seized in 2023; this is especially concerning as it continues a downward trend reported in recent years.

As one of the largest economies on the continent, and home to one of its busiest ports, South Africa should be a leader when it comes to fostering legitimate trade – that includes the development and implementation of a world-class IP enforcement regime. That is clearly not the reputation it holds among rights-holders at present. We would welcome USTR's attention to these concerns in the coming year, and support South Africa's placement on the Watch List in 2024.

UNITED ARAB EMIRATES

Rights-holders' experiences in the United Arab Emirates during the last year, and in countless years past, were characterized as a case of extremes. On the one hand, enforcement within the domestic market is often described in glowing terms. The Police and the Departments of Economic Development (DED, the administrative authorities) have been lauded for years as dedicated, hard-working, and committed to combatting intellectual property crimes. Indeed, many respondents describe them as perhaps the most engaged and effective enforcement agencies in the region. Both the Police and DEDs have been instrumental in cleaning up Dragon Mart in Dubai and the China Mall in Ajman, which were both historic hotbeds of counterfeiting activity. Rights-holders cited the authorities in Dubai, Ajman, and Sharjah for additional praise, and noted the consistent cooperation between the criminal and administrative authorities.

Rights-holders' feedback regarding the Emirates' Customs authorities, however, offers a stark contrast. "Disengaged," "unresponsive," "uncooperative," "opaque," and "ineffective," were all terms heard to describe the UAE's customs agencies during this year's consultations.

Home of some of the largest, busiest, and most strategically-important ports in the world, the Emirates' customs regime has, unfortunately, gained a reputation among many brands as prioritizing trade facilitation almost entirely at the expense of trade enforcement. As a result, the UAE has become one of the most significant transit hubs for the distribution of counterfeit goods to markets around the globe. The country's free trade zones – including Jebel Ali Free Zone and the Dubai Airport Free Zone – are focal points of the illicit activity, providing warehousing as well as "finishing" facilities for the assembly of components and packaging of illicit goods, and serving as distribution centers for goods en route to Europe, Africa, and elsewhere in the Middle East. Rights-holders describe enforcement within the free zones as "nearly impossible, even for large brands with significant resources."

One member brand reported that it had not obtained a single seizure at the hands of Customs in over a decade. Another stated that while it had been notified that seizures had taken place, those notifications were significantly delayed, and they were unable to obtain any information or documentation related to the seizure itself or the ultimate disposition of the goods at issue. Those who did report some confirmed seizures commented negatively on the costs incurred. Ultimately, some respondents say the blame for the present state affairs lies less with Customs than with leadership higher up in the government. As characterized by one commenter, "Customs views its job as revenue generation, because that is precisely the priority set by the government. If Customs stops too many shipments, they'll undoubtedly be instructed to ease up on enforcement activity."

While rights-holders continue to rely heavily on the efforts of the Police and DEDs, many shared concerns that the impact of those efforts is greatly diminished by the judiciary's failure to impose deterrent sentences in most cases. Despite the implementation of new laws authorizing increased penalties for the sale of counterfeit goods, the relevant

authorities are said to be reluctant to impose harsher sentences; most counterfeiting violations are met with only nominal fines. Cases involving foreign nationals are rarely said to result in significant actions such as deportation, and business license suspensions / revocations are likewise said to be uncommon in counterfeiting cases.

Given the feedback received from IACC members during this year's consultations, we recommend that the United Arab Emirates be added to the Special 301 Watch List in 2024.

IV. Other Observations / No Formal Recommendation for Placement

BANGLADESH

IACC members – primarily those in the apparel sector – have described growing alarm over a significant increase in the production and exports of counterfeit merchandise during recent years' Special 301 consultations; those concerns were voiced again during this year's process. Troublingly, we've also heard a number of reports regarding the production and distribution of counterfeit pharmaceuticals in the country over the past twelve months, raising concerns that the overall IP situation is worsening over time.

While we made no formal recommendation for its placement on the Special 301 Watch List in our filing with USTR last year, and likewise make no such recommendation again this year, we strongly encourage greater engagement with the government of Bangladesh to address these issues, and we would welcome USTR's assistance in doing so.

Though enforcement actions and seizures in-country are relatively limited, customs seizures of shipments originating from Bangladesh by enforcement agencies in the Philippines, Malaysia, and jurisdictions across the Middle East have been increasingly reported by IACC member companies. To date, we've seen minimal action from the government aimed at reining in the illicit production and distribution; IP protection does not appear to be a significant priority.

In a continuation of a trend noted in last year's comments, respondents report the increased visibility of Bangladesh-based sellers on e-commerce and social media platforms in the region.

Enhancing the country's efforts to protect IP would provide a strong incentive for greater levels of foreign investment that will be vital to its economic development as the country moves from LDC to "developing" status in the coming years.

We look forward to additional dialogue with that aim.

CAMBODIA

Rights-holders' feedback regarding Cambodia remained largely unchanged from that heard over the past two to three years. Similar to what has been reported in connection with Bangladesh, IACC members in the apparel sector saw a significant increase in the volume of counterfeit production and trafficking in Cambodia during the COVID pandemic, and those issues have continued, largely unabated, over the past year. Efforts to address the illicit trafficking have been hampered by insufficient levels of enforcement, both at and within the country's borders, protectionism, a lack of transparency, and a host of other concerns. Counterfeit apparel remains widely available in the domestic market, and continues to be sold openly; manufacturers and distributors show minimal concern that they will be targeted for enforcement.

Some brands did report slight improvements with respect to enforcement over the past year, though raids are said to remain infrequent, and have typically resulted in only low volume seizures. Respondents were unaware of any cases that resulted in criminal prosecution or the imposition of significant penalties. One IACC member singled out Cambodia's Consumer Protection Agency as deserving of recognition for its assistance in protecting their IP, but remained frustrated by the costs associated with enforcement, including those related to storage and destruction of seized items, which they have been required to bear. Ideally, such costs would be assessed to the offender rather than the victim.

One rights-holder highlighted ongoing investigations that it is undertaking, in an effort to develop more detailed intelligence regarding the sourcing of counterfeit goods on offer. In a number of recent instances, sellers who were served with cease-and-desist letters offered nearly identical accounts of obtaining their inventory from sources in Vietnam and Thailand. We would encourage greater coordination between Cambodian border enforcement personnel and their colleagues in those neighboring jurisdictions to target cross-border trafficking operations.

GEORGIA

IACC members – most notably those in the food and beverage sector – registered growing concerns with respect to Georgia during this year's consultations. The country has become a significant global source for counterfeit wine and spirits, and stakeholders have identified distribution routes leading from facilities in Georgia to a variety of markets in the European Union, southern European markets, and in the Middle East. In its most recent report concerning IPR-related seizures, the EU identified Georgia as the source of 86% of alcoholic beverage seizures.

While much of the illicit product appears to be manufactured in Armenia, with apparent connections to Russian organized criminal groups, Georgia is seen as playing a key role in its distribution to end-consumer markets.

HONG KONG

As noted in numerous past submissions, counterfeiters based in mainland China often transship their illicit wares, making use of Hong Kong-based freight forwarders as their exporters of record to minimize risks of detection and to effectively mask the true source of shipments. In respondents' experience, these freight forwarding companies are generally uncooperative, refusing to provide any information about their clients on the basis of privacy and confidentiality obligations, or simply feigning ignorance.

In addition, Hong Kong Customs & Excise typically will not disclose, expeditiously, exporter and importer information (e.g., from airway bills and shipping documents) following seizures. Its failure to do so hinders, and in many cases precludes, follow-up investigations by impacted rights-holders, independently or in cooperation with other Hong Kong law enforcement agencies. Most other countries with advanced IP enforcement regimes routinely provide this information.

The adoption of clear "know your customer" requirements and the imposition on shipping intermediaries of a duty to disclose relevant information in connection with IP-related investigations, detentions, or seizures could dramatically enhance trade enforcement in Hong Kong.

Likewise, the adoption of clear timelines for HKC&E's disclosure / reporting of relevant information to rights-holders to facilitate follow-on investigations would be welcomed.

JAMAICA

Though we make no recommendation for its placement on the Special 301 Watch List this year, we do wish to highlight IACC members' growing concerns with respect to the trafficking of counterfeit goods in and through Jamaica. A number of brands, including those in the personal care and fast moving consumer goods sectors, shared a variety of frustrations in that market, and would welcome USTR's support in raising these concerns with the Jamaican government in 2024.

Many of the issues described by member brands appear to be tied to a lack of sufficient resourcing, a lack of efficiency, and a lack of transparency. Improvements to Jamaica's border enforcement regime are considered vital, given the country's status as both an end-market and a transit point for counterfeit goods bound for other nations in the Caribbean

region. At present, the customs process is viewed by many as extremely costly (e.g., brands report being required to pay a non-refundable fee of approximately \$5,000 for cargo inspections), extremely protracted, with seizure actions sometimes taking years to conclude, and opaque. Jamaican Customs has been hindered in their efforts by a lack of necessary resources – particularly with respect to storage space and destruction capacity – limiting its ability to deal with the large volume of counterfeits that arrive at its ports.

IACC members would welcome greater engagement with Jamaican authorities aimed at increasing collaboration on IP matters, and with respect to capacity building in connection with best practices for enforcement.

SINGAPORE

IACC members continue to highlight concerns regarding Singapore’s border enforcement regime, and the onerous process for obtaining assistance from Singapore Customs. As discussed in prior years’ submissions, the current framework does not allow for recordation of IP rights, which could both streamline the enforcement process and facilitate more efficient communication between Customs and private sector stakeholders. Increasing efficiency is vital, given the tight timelines for action once a shipment has been detained. Brands have only 48 hours to pay the security deposit required by Customs, and in cases where an importer / exporter objects to the detention, must also institute civil proceedings, or else the shipment will be released.

Brands also reiterated the need for greater cooperation between Customs and the IPR Branch of the Police, attributing a lack of coordination for the fact that criminal investigations are often not pursued even in cases involving significant seizures.

Singapore is a key global shipping hub, and a transit point for huge volumes of counterfeit goods. We would welcome further engagement aimed at increasing the priority of IP enforcement and implementing practical enhancements to the country’s border enforcement framework.

UKRAINE

USTR suspended its Special 301 review of Ukraine following Russia’s invasion of the country in February 2022. The IACC supported the continuation of that suspension last year, and does so again this year. We do wish though to share some feedback offered by IACC member companies regarding their experiences and engagement with Ukraine over the past year.

Despite the ongoing conflict, respondents have offered praise for continuing support offered by Ukrainian law enforcement agencies to combat the distribution of illicit

medicines, and the domestic production of counterfeit drugs. Even while contending with the incredibly difficult circumstances brought about by the invasion, substantial law enforcement operations continued during late 2022 and throughout 2023 resulting in the seizure of large quantities of falsified medicines. Law enforcement continues to demonstrate a willingness to cooperate with rights-holders in pursuing counterfeit investigations.

In late-summer / early-fall of 2023, prosecutors and law enforcement officials from Ukraine joined government officials from Bulgaria and Romania, as well as private sector participants at a roundtable event in Romania, hosted by the U.S. Department of Justice.

While there is yet much work to be done to address long-standing issues that pre-date the ongoing war, rights-holders expressed their admiration for the commitment shown by Ukrainian authorities over the past year.