



June 13, 2001

GSP Subcommittee
Trade Policy Staff Committee
Office of the U.S. Trade Representative
1724 F Street NW, Room F220
Washington, DC 20508

Re: Request for Review of the Intellectual Property Rights Practices of Lebanon in the 2001 Annual GSP Country Eligibility Practices Review, 66 Fed. Reg. 19278 (April 13, 2001)

To the Subcommittee:

The Trade Policy Staff Committee (TPSC) of the Office of the United States Trade Representative (USTR) published in the April 13, 2001 Federal Register a notice announcing the 2001 Annual Generalized System of Preferences (GSP) Country Eligibility Practices Review. USTR indicated that "Interested parties may submit petitions to have the GSP status of any eligible beneficiary developing country revised with respect to any of the designation criteria listed in sections 502(b) or 502(c) of the Trade Act (19 U.S.C. 2462(b) and (c))." See 66 Fed. Reg. at 19279.

The International Intellectual Property Alliance (IIPA) hereby submits its request that the eligibility of Lebanon as a GSP beneficiary developing country be reviewed, and that its GSP benefits be suspended or withdrawn, in whole or in part, if requisite improvements are not made by Lebanon to remedy the deficiencies (outlined below) which have adversely affected U.S. copyright owners. In 1999, the U.S. imported \$22.1 million in products from Lebanon under the GSP program; this represented approximately 38% of Lebanon's total exports to the U.S., according to U.S. government statistics. In 2000, the U.S. imported \$29.6 million in products from Lebanon under the GSP program; this represented approximately 38.9% of Lebanon's total exports to the U.S., according to U.S. government statistics.

IIPA filed a Request for Review of the Intellectual Property Rights Practices of Lebanon in the 1999 Annual GSP Country Eligibility Practices Review; our petition, however, was not accepted for review. In that filing, we noted three major deficiencies in Lebanon's protection of copyright that caused economic harm to U.S. right holders: (1) the copyright law in Lebanon contains deficiencies that render legal protection inadequate and ineffective; (2) suspension of criminal remedies against pirate cable TV operators makes protection of U.S. audiovisual works inadequate and ineffective; and (3) enforcement efforts against piracy in Lebanon are totally inadequate and ineffective. After the filing of that petition (June 16, 1999), then President Lahoud vetoed the amendment suspending criminal remedies against pirate cable TV operators. In the ensuing two years, those criminal remedies have never been carried out against pirate cable TV operators, the law remains deficient, and enforcement is nearly non-existent. Because of continued inadequate and ineffective copyright protection and enforcement in Lebanon, U.S. copyright owners suffer economic harm, necessitating our second GSP filing in three years. The complete filing from 1999 can be found at our website, at http://www.iipa.com/gsp/1999_Jun16_cmts_lebanon.html.

Petitioner and its Interest: International Intellectual Property Alliance (IIPA)

IIPA is a coalition of seven trade associations that collectively represent the U.S. copyright-based industries -- the motion picture, music and recording, business and entertainment software, and book publishing industries. IIPA's member associations are the Association of American Publishers (AAP), AFMA (formerly the American Film Marketing Association), Business Software Alliance (BSA), Interactive Digital Software Association (IDSA), the Motion Picture Association of America (MPAA), National Music Publishers' Association (NMPA) and the Recording Industry Association of America (RIAA).

These associations represent almost 1,500 U.S. companies producing and distributing copyright-protected materials throughout the world -- all types of computer software including business applications and entertainment software (such as videogame CDs and cartridges, personal home computer CDs, and multimedia products); motion pictures, television programs, and home videocassettes; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications, and journals (in both electronic and print media).

These U.S. copyright-based industries represent the leading edge of the world's high technology, entertainment and publishing industries. According to the most recent edition of the report, Copyright Industries in the U.S. Economy: The 2000 Report, prepared for IIPA by Economists, Inc., these core copyright industries accounted for \$457.2 billion in value added to the U.S. economy, or approximately 4.94% of the Gross Domestic Product (GDP) in 1999 (the last year for which complete data is available). The total copyright industries accounted in 1999 for \$677.9 billion in value added, or approximately 7.33% of GDP. The core copyright industries' share of the GDP grew

more than twice as fast as the remainder of the U.S. economy between 1977 and 1999 (7.2% vs. 3.1%). Employment in the core copyright industries grew at close to three times the employment growth in the economy as a whole between 1977 and 1999 (3.24% vs. 1.6%). 7.6 million workers were employed by the total copyright industries, about 5.7% of the total U.S. work force, in 1999. The core copyright industries accounted for an estimated \$79.65 billion in foreign sales and exports in 1999, a 15.1% gain over the \$69.21 billion generated in 1998. The Copyright Industries in the U.S. Economy report has been made widely available to officials working on country and IPR issues at USTR, and throughout other agencies, including the State Department, the Commerce Department, the U.S. Patent and Trademark Office, and the U.S. Copyright Office. The Executive Summary of this report is available on IIPA's website, at http://www.iipa.com/copyright_us_economy.html.

The U.S. creative industries represent one of the few sectors of the U.S. economy that regularly contributes to a positive balance of trade. It is essential to the continued growth and future competitiveness of these industries that our trading partners provide free and open markets and high levels of protection to the copyrights on which this trade depends. Inexpensive and accessible reproduction technologies make it possible for U.S. copyrighted works to be pirated – stolen – in other countries, including in Lebanon. The copyright industries represented in IIPA lose an estimated \$20-22 billion annually due to piracy outside the United States. These staggering losses, if not halted, could reverse this path of growth in these sectors, threaten the high wage employment that these industries bring to the U.S. economy, and damage U.S. competitiveness. To combat the problems of inadequate legislation and ineffective IPR enforcement in developing countries, the U.S. copyright-based industries joined with the Administration and Congress to fashion new legislation and negotiating tools. IIPA and its members have supported various trade tools with IPR provisions over the years, including the GSP Program, Special 301, Section 301, the Caribbean Basin Economic Recovery Act, the Andean Trade Preferences Act, the U.S.-Caribbean Trade Partnership Act and the African Growth Opportunity Act.

Action Requested by Petitioner

Pursuant to the Trade Act of 1974, as amended (19 U.S.C. 2461 et seq.), IIPA, on behalf of its seven trade association members, hereby petitions the President to review the eligibility of Lebanon as a GSP beneficiary developing country, and if requisite improvements are not made swiftly by Lebanon, then IIPA requests the President to suspend or withdraw GSP benefits of Lebanon, in whole or in part, for its failure to provide adequate and effective copyright protection for U.S. copyright owners.

Legal Authority for this Petition and Discussion of the IPR Criteria in the GSP Statute

A full discussion of the legal authority for this petition, and the specific IPR provisions and legislative history of the GSP programs is found in Appendix A. To

summarize, in the GSP Renewal Act of 1984, Congress specified conditions that GSP beneficiary countries must meet in order to gain and maintain their preferential trading status. In particular, one of these express conditions (which Congress also delineated as one "purpose" of the GSP Program) was to encourage developing countries "to provide effective means under which foreign nationals may secure, exercise, and enforce exclusive intellectual property rights."¹ The legislation required the President to apply mandatory and discretionary criteria with respect to IPR protection as a condition to a country achieving "beneficiary" status under the GSP Program. When the GSP Program was reauthorized in August 1996, the language of the IPR discretionary criterion for GSP eligibility in Section 502(c)(5) was simplified slightly and now requires the President to "take into account the extent to which such country is providing adequate and effective protection of intellectual property rights."²

Lebanon Fails to Provide "Adequate and Effective Protection" of U.S. Copyrights

To the best of petitioner's knowledge, much of the information describing the deficiencies in Lebanon's copyright enforcement regime has been presented previously to members of various U.S. governmental interagency groups, including the Special 301 interagency group, several members of the GSP Subcommittee, as well as the Trade Policy Staff Committee, in the context of USTR's Annual Special 301 Review. On February 16, 2001, IIPA presented its annual Special 301 submission to Assistant USTR for Services, Investment and Intellectual Property Joseph Papovich; this submission was widely distributed among the interagency for its internal consideration in the 2001 Special 301 Annual Review. IIPA's Lebanon country report is available on our website, at <http://www.iipa.com/countryreports.html>. The entire 2001 Special 301 report is also available on our website, at <http://www.iipa.com/special301.html>.

USTR continues to highlight inadequacies in the copyright law and enforcement in Lebanon. For example, in his April 30, 2001 Special 301 announcement, Ambassador Robert Zoellick elevated Lebanon to the "Priority Watch List" and remarked:

Cable piracy is a particular problem in Lebanon. There are over 1,000 cable operators in the country, many of whom retransmit domestic and foreign programming without authorization from right-holders. Piracy of video and audio cassettes is common, and virtually the entire market for video games is illegitimate. Software and book piracy is equally widespread. Unauthorized software is used not only by small companies, but also by major banks, trading companies and much of the government. Lebanese censorship authorities have seized some inbound pirated videotapes at the border and police are raiding video shops. Other elements in the Lebanese Government, however, are not as

¹ See Section 501(b)(9)(B) of the GSP Renewal Act of 1984.

²GSP Renewal Act of 1996, Title I, Subtitle J, of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188 (codified at 19 U.S.C. 2462(c)(5)).

diligent about intellectual property protection. Police enforcement efforts are thwarted by a clogged judicial system apparently incapable of handling intellectual property cases. Further, there is very little enforcement against software piracy, even though the industry makes the effort to inform the government about particular companies that use unauthorized software We will continue to press Lebanon to address its severe copyright protection problems.³

1. Enforcement Efforts in Lebanon Are Inadequate and Ineffective to Combat High Levels of Piracy.

Little action has been taken by the Lebanese government to go after piracy, even when the pirates are well known and the law is completely clear as to their activities' illegality. For example, to date, only two enforcement actions against software piracy have been brought by the Lebanese government. In January 2000, for example, the Central Detectives Division conducted a raid against a reseller in Beirut and seized only two copies of pirate product. Another similar action came only after a two-week delay and yielded not one piece of pirate product, fueling suspicions that the raid target was tipped off. In another action, the pirate reseller of software was working at 4 p.m., after working hours, so inspectors could not be called upon (Ministry of Economy and Trade inspectors finish their work day at 2 p.m.). At the same time, no action has been taken against five companies using illegal software, for which the business software industry filed petitions with the Ministry of Economy in December 1999, despite extensive follow-up. Industry has in the past provided the Minister of Economy and Trade with an appropriate "target list" for investigators (in the IPPA), but the Minister has indicated an unwillingness to commence enforcement, even stating in the press his belief that Lebanon "should wait at least two years before a serious anti-piracy campaign can take place."⁴ As another example of the Lebanese government's unwillingness to enforce copyright, industry has asked for experts to accompany inspectors in order to identify pirate product; the government has said this is not possible without a legislative amendment. Even when the copyright law was being debated, public statements in the legislature revealed that lawmakers voting for the bill did not expect that it would actually be enforced. As a result, distributors and users of illegal copyrighted goods do not feel deterred from engaging in piratical activities, and feel safe that they will not be the subjects of enforcement actions under the copyright law.

Regarding cable piracy, seven criminal cases against some of the most egregious pirate operators were filed more than a year-and-a-half ago (November 1999), but all of these cases remain pending before the misdemeanor court of Beirut. Only 9 of 21 requests made in 2000 for *ex parte* civil injunctions against pirate cable

³ Recent Postings 01-22, Office of the United States Trade Representative, "USTR Releases the Super 301, Special 301 and Title VII Reports which Emphasize Enforcement Priorities," April 30, 2001, found at <http://www.ustr.gov/enforcement/special.pdf>.

⁴ Daily Star, May 21, 2001 (quoting Minister of Economy and Trade Basel Fleihan).

operators have resulted in any remedy. Unfortunately, the courts hearing these cases fined the pirates a mere 300,000 LL (US\$200) per film or television program transmitted, certainly not a deterrent to these operators – indeed, these fines can simply be cast off as a cost of doing this illegal business.

The experience has been somewhat better with the Censorship Police. Several actions taken by the Censorship Police have resulted in unauthorized videocassettes destined for import into Lebanon being seized at or near the border. In addition, the police are working diligently to seize pirate cassettes from video shops. While much more needs to be done, this avenue of enforcement (unlike the traditional avenues for copyright infringement, or, for example, the Ministry of Economy and Trade, which is primarily responsible for fighting piracy in Lebanon) is proving worthwhile to the motion picture industry.

2. Judicial System is Severely Backlogged and Inefficient.

The most significant impediment to enforcement in Lebanon is a severely backlogged and inefficient court system. Postponements, even of urgent matters, are the norm, and criminal cases can take years to reach judgment. Although the police have carried out the first criminal raids against pirate resellers and one end user of software, no court actions (and therefore no decisions) have resulted. The motion picture industry commenced some civil actions and lodged several private criminal complaints with the Public Prosecutor (in 1999), so several cable pirates were caught in the act of illegal retransmissions and have agreed in writing not to retransmit copyright owners' broadcasts. However, no cable pirate has ever been fined or sentenced to a day in jail for these commercial piratical activities. Both the civil and the criminal cases are moving at a snail's pace, with the defendants employing delay tactics monitoring these and other cases very closely to assess whether Lebanon is fulfilling its promise to implement and enforce the copyright law. There are no courts specializing in IP matters. *Ex officio* public criminal actions against copyright infringers, prosecutable by public authorities, have never been taken in Lebanon, meaning that private criminal complaints must be filed to seek copyright enforcement.

3. Cable Piracy Continues to Threaten Legitimate Market for Copyright Owners.

There are an estimated 1,300 cable operators serving over 50% of the Lebanese population. These operators retransmit domestic and foreign terrestrial and satellite programming without authorization to their subscribers (estimated to number about 460,000) for an average monthly fee of U.S.\$10.00. Occasionally, these systems also use videocassettes to broadcast directly to their subscribers, including the broadcasting of recent popular movies and TV shows. Each cable operator retransmits an average of 40 to 50 different television channels. Included among those channels is a minimum of four movie channels that broadcast motion pictures 24 hours a day.

Films are frequently retransmitted by these pirate cable operators prior to their legitimate broadcast by television stations in Lebanon.

Cable piracy in Lebanon seriously damages the legitimate theatrical, television and video markets in Lebanon. In 2000, ticket sales in the theatrical market went down by approximately 50% compared to 1999. Local broadcast television stations have started canceling long-standing licenses with copyright owners because they cannot compete with the pirates. The legitimate video market has been almost entirely decimated by the various forms of piracy in Lebanon. Earlier in 2000, a survey on the economic impact of cable piracy estimated that the Lebanese government is losing about U.S.\$38 million a year due to cable piracy.

4. Other forms of Retail Piracy Overwhelm the Market in Lebanon, Creating a "Pirate Haven."

Piracy pervades the retail markets in major commercial centers in Lebanon. While the blatant sale of pirated goods initially decreased after the copyright law went into effect, the lack of any serious and committed enforcement follow-up by the Lebanese government resulted in the renewed and flagrant sale of pirate product everywhere. Illegal copyrighted materials are sold openly at fixed-location retail shops and trade shows, and pirate CDs, software CD-ROMs, videogames, books and locally/regionally manufactured tapes are ubiquitous. Anecdotes reported to us indicate that industry complaints to Ministry of Economy and Trade and to the police regarding retail piracy are not taken seriously at all – the police often respond that as the pirate retailers/distributors paid the relevant tax, there is 'nothing they can do.' In other instances, raid targets have clearly been tipped off as to impending raids, and in one case we know of, the Ministry of Economy and Trade's inspectors decided to cease a raid after the raided reseller became angry. A sampling of the market reveals that:

- Pirate versions of virtually any business software, entertainment software, sound recording, or published interactive software (i.e., encyclopedias on CD-ROM) can readily be purchased for U.S.\$7 or less. Pirate video games are ubiquitous, with no enforcement in sight. Console-based videogames are 99% pirate, while personal computer videogames are 98% pirate in Lebanon (roughly 70% of each of which are imported, mainly from Asia, while 30% are domestically produced). Silver counterfeit CDs complete with packaging and manuals are available on the streets of Lebanon. These come in compilation-CD format and single discs.
- The level of unauthorized software used in business settings remains among the highest in the Middle East. End-user piracy of business applications is pervasive in the largest banks, trading companies and many government ministries.

- The legitimate video market is almost completely defunct. Pre-theatrical and pre-video release piracy sourced from off-screen copies and parallel imported laser discs is widespread. Copies of new U.S. cinema releases are on the market within days of their U.S. theatrical release. The home video market is estimated to be 80% pirate.
- Music cassette piracy harms the industry, with Syria supplying many of the pirate cassettes.
- Book piracy took root during the 1980s, and remains a serious problem. Pirate photocopying and pirate publications are still the norm on college campuses. Pirate scientific, technical and medical and other English-language materials continue to flow out of Lebanon into Jordan, Saudi Arabia and the United Arab Emirates, among other countries. The legitimate university community has recently made some efforts to have students use only legitimate textbooks.

5. Optical Media Piracy in Lebanon Threatens to Transform Lebanon Into an 'Export Pirate' Country.

We know of one CD plant operating in Beirut, Lebanon unregulated. Local demand for CDs is very small (for example, it is 500,000 for sound recordings), so the existence of this plant that reportedly has one line in operation and does not use Source Identification (SID) code is of great concern, as it alone has the capacity to produce more than the legitimate domestic demand in Lebanon. The Lebanese government has no effective measures in place against CD and CD-ROM piracy, for example, it has no optical media plant control measures, including the ability to track the movement of optical media production equipment, as well as the raw materials (including optical grade and other polycarbonate), nor does it compel the use of Source Identification (SID) codes in order successfully to halt the production of pirate CDs and CD-ROMs. In addition, Lebanese authorities have failed to contact unregulated plants to ensure that they are engaged in the production of authorized product and seize infringing copies and machinery, and no criminal penalties have ever been imposed to deter the organized manufacturing and distribution of pirate product.

6. The Copyright Law in Lebanon Contains Deficiencies That Render Legal Protection Inadequate and Ineffective

The Copyright Law of Lebanon (which entered into force on June 14, 1999)⁵ remains deficient with respect to international standards in various respects. Lebanon is a member of both the Berne Convention for the Protection of Literary and Artistic Works (Rome [1928] Act), as well as the International (Rome) Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961). Lebanon should accede to the Paris Act of 1971 of the Berne Convention as well as the Geneva (phonograms) Convention.

- Article 25 cannot comport with Article 9(2) of the Berne Convention (1971) and Article 13 of TRIPS. Specifically, Article 25(1) authorizes “not-for-profit” educational institutions and public libraries to make copies of original computer programs they have acquired and to lend such copies to students for free. Such copies are made without the copyright owner’s authorization and without compensation. The last sentence of Article 25(1) provides, “ [t]he student shall have the right to make one copy for his personal use.” This clause does not state whether the student must first have a license to use the software before being allowed to make a copy. It is not clear if this provision is intended to allow a student to make a copy of any computer program regardless of whether he is entitled to use of such program, and regardless of whether the program in question is itself original or is already a copy. Such a provision could be interpreted to allow the making of limitless copies from a single piece of original software. This exception violates Berne (1971) and TRIPS because it is not limited to “certain special cases,” it “conflicts with a normal exploitation of the work,” and it “unreasonably prejudices the legitimate interests of right holders,” by threatening to eliminate completely a market that many copyright owners already serve on extremely generous terms (the educational market). While many modern copyright laws include specific exceptions for the copying of computer programs under narrowly defined circumstances, Article 25 sweeps far more broadly than comparable provisions of either kind, to the detriment of copyright owners. Implementing regulations for Article 25 were issued on November 25, 1999, setting conditions for educational institutions and public libraries to avail themselves of the exception. However, they do not cure the provision’s inconsistency with well-established international legal standards. For example, condition 8 requires educational institutions and public libraries to “program” the copy made so that it does not function if it is copied. Such “programming” could be interpreted to be an unauthorized alteration of the work, which itself would be an infringement of copyright or moral rights! Moreover, we are not aware of any readily available process to limit copying in this manner, thus

⁵ The law provides, on its face, a firm basis for copyright protection for U.S. works and sound recordings, including protection of life plus 70 years (70 years of publication in the case of cinematographic works and works authored by legal entities), criminal penalties for copyright infringement, confiscation of illegal products and equipment, the closure of outlets and businesses engaged in pirate activities, and a Berne-compatible evidentiary presumption of copyright ownership. The law also grants right holders the ability to authorize or prohibit the communication of their works to the public (Article 15), and prohibits the installation and use of descrambling devices (Articles 87 and 88).

making the requirement unworkable as a practical matter. Ultimately, Lebanon must delete Article 25 to comply with international treaty obligations (Berne, Paris [1971] text, TRIPS, WIPO Copyright Treaty).

- There is no express distribution or rental right for sound recordings (which would violate TRIPS Article 14).
- There is no direct point of attachment for U.S. sound recordings (Article 36) (although point of attachment for U.S. sound recordings can be achieved by simultaneous publication in the U.S. and any Rome Convention Member).
- There are overly broad exceptions to protection (Articles 23, 25-30, 32-34).
- It is unclear in the law whether works and sound recordings are protected with full retroactive protection in line with international treaties (Berne and TRIPS).
- There is a mandatory deposit requirement, including onerous costs and documentary burdens; implementing regulations should clarify that this deposit requirement does not apply to foreign works or sound recordings.

7. Because of Inadequate and Ineffective Copyright Protection and Enforcement in Lebanon, U.S. Copyright Owners Suffer Economic Harm.

Total losses to the U.S. copyright-based industries in Lebanon were estimated at \$14.8 million in 2000, with levels of video, business software and entertainment software piracy all remaining well above 50%. Attached as Appendix B is the methodology used by IIPA members to calculate estimated losses due to copyright piracy and piracy levels. This methodology was also submitted to USTR in IIPA's 2001 Special 301 submission, and can be found at http://www.iipa.com/pdf/2001_SPEC301METHODOLOGY.pdf.

ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1995 - 2000

INDUSTRY	2000		1999		1998		1997		1996		1995	
	Loss	Level										
Motion Pictures	8.0	60%	8.0	60%	8.0	80%	8.0	80%	19.0	99%	43.7	100%
Sound Recordings / Musical Compositions ⁶	2.0	45%	2.0	45%	2.0	40%	1.0	40%	1.0	30%	NA	NA
Business Software Applications ⁷	1.3	83%	1.6	88%	0.9	93%	1.4	79%	1.4	76%	0.9	79%
Entertainment Software ⁸	1.5	96%	0.5	70%	0.6	70%	NA	NA	NA	NA	NA	NA
Books	2.0	NA	2.5	NA	2.5	NA	2.0	NA	2.0	NA	1.5	NA
TOTALS	14.8		14.6		14.0		12.4		23.4		46.1	

CONCLUSION

For the reasons stated in this submission, IIPA requests that the GSP Subcommittee initiate a review the GSP country eligibility of Lebanon for its failure to provide adequate and effective copyright protection for U.S. copyright owners.

⁶ Loss figures represent U.S. losses only. Piracy levels represent the total level (including Indian, Arabic and international). The piracy level for international repertoire in 2000 was higher, at 68% (an increase over the 60% piracy level for international repertoire for 1999).

⁷ BSA estimates for 2001 have been finalized and appear above. In IIPA's February 2001 Special 301 submission, BSA reported that its 2000 estimates of \$1.5 million and 87% were preliminary. BSA's estimates above reflect losses experienced by U.S. copyright owners, and does not include losses which may occur along the rest of the retail chain. This explains the difference between the estimated losses reported in the GSP and Special 301 context, and those global estimated losses that BSA reports in its separate publications. For example, BSA reports in its Sixth Annual BSA Global Software Piracy Study (May 2001) that the estimated global losses due to business software piracy in Lebanon were \$1.6 million for 2000.

⁸ IDSA estimates for 2000 are preliminary.

If requisite improvements are not made in Lebanon to remedy these deficiencies in the near future, then IIPA requests that the U.S. suspend its eligibility or withdraw GSP benefits of Lebanon, in whole or in part.

Respectfully submitted,

Eric H. Smith
President
International Intellectual Property Alliance

Enclosures

APPENDIX A

Statutory Basis for the Country Eligibility Practice Review of the Intellectual Property Rights Practices of LEBANON under the Criteria of the Generalized System of Preferences (GSP) Program

The Generalized System of Preferences (GSP) program of the United States provides unilateral, non-reciprocal, preferential duty-free entry for over 4,650 articles from approximately 140 countries and territories designated beneficiary countries and territories for the purpose of aiding their economic development through preferential market access. The GSP program was instituted on January 1, 1976, and authorized under Title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.) for a 10-year period. Since 1997, an additional 1,770 items are eligible for GSP treatment for specified least developing beneficiary developing countries.

The GSP program has been renewed several times since its establishment. Most recently, in 1999 Congress reauthorized the GSP program through September 30, 2001.⁹ What was unique about this extension was that, for the first time in several years, Congress extended the GSP Program for more than a single year. IIPA has supported a multi-year extension of this program to support the use of the GSP program as a tool to protect the interests of U.S. copyright owners around the world.

Provisions tying intellectual property protection to trade benefits were first added to the Trade and Tariff Act of 1984 [hereinafter "TTA 1984"]. Title V of the TTA 1984, known as the GSP Renewal Act of 1984,¹⁰ renewed the GSP Program and specifically required the President to consider intellectual property protection in determining whether to designate a developing country as eligible for GSP benefits. While there has been a minor change in the statutory language between the GSP Renewal Act of 1984 and the GSP Renewal Act of 1996, the GSP provisions as related to IPR remain essentially the same as in 1984. The legislative history of the 1984 Renewal Act is particularly instructive on the important link between GSP benefits and strong IPR protection.

⁹ See Extension of Duty-Free Treatment under Generalized System of Preferences, Section 508 of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. No. 106-170 (codified at 19 U.S.C. 2465).

¹⁰ See the Generalized System of Preferences Renewal Act of 1984, Title V, Pub. L. No. 98-573 (1984) (codified at 19 U.S.C. 2461-2465).

The GSP Renewal Act of 1984

In the GSP Renewal Act of 1984, Congress specified conditions that GSP beneficiary countries must meet in order to gain and maintain their preferential trading status. In particular, one of these express conditions (which Congress also delineated as one “purpose” of the GSP Program) was to encourage developing countries “to provide effective means under which foreign nationals may secure, exercise, and enforce exclusive intellectual property rights.”¹¹

The legislation required the President to apply mandatory and discretionary criteria with respect to IPR protection as a condition to a country achieving “beneficiary” status under the GSP Program. The mandatory criterion prohibited the designation of a country from becoming a “beneficiary developing country” if, for example, “such country has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens.” See Section 503(b)(4) of the GSP Renewal Act of 1984, now codified at 19 U.S.C. 2462(b)(2)(D).

The GSP Renewal Act of 1984 added as a discretionary criterion, in determining whether to designate a developing country as eligible to receive GSP duty-free trade treatment, that

the President shall take into account ... the extent to which [each] country is providing adequate and effective means under its laws for foreign nations to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights.

Section 503(c)(5) of the GSP Renewal Act of 1984, codified at 19 U.S.C. 2462(c)(5). The Senate Finance Committee Report explained that:

To determine whether a country provides “adequate and effective means,” the President should consider the extent of statutory protection for intellectual property (including the scope and duration of such protection), the remedies available to aggrieved parties, the willingness and ability of the government to enforce intellectual property rights on behalf of foreign nationals, the ability of foreign nationals effectively to enforce their intellectual property rights on their own behalf and whether the country’s system of law imposes formalities or similar requirements that, in practice, are an obstacle to meaningful protection.

¹¹See Section 501(b)(9)(B) of the GSP Renewal Act of 1984.

S. Rep. No.98-485, 98th Cong., 2d Sess. At 11 (1984). The Senate Report also noted:

In delegating this discretionary authority to the President, it is the intent of the Committee that the President will vigorously exercise the authority to withdraw, to suspend or to limit GSP eligibility for non-complying countries

Where valid and reasonable complaints are raised by U.S. firms concerning a beneficiary country's market access policy or protection of intellectual property rights, for example, it is expected that such interests will be given prominent attention by the President in deciding whether to modify duty-free treatment for that country.

Id. at 12-13 (emphasis added). The House Ways and Means Committee stated that "countries wishing to reap the benefits of preferential duty-free access to the U.S. market must fulfill international responsibilities" in the intellectual property area. House Rep. No. 98-1090, 98th Cong., 2d Sess. at 12 (1984).

The IPR criteria are a condition, not only for obtaining GSP benefits in the first place, but also for retaining them. The 1984 Act authorized the President to "withdraw, suspend, or limit the application of the duty-free treatment accorded under Section 501 of this title with respect to any article or any country" and requires the President, when taking any such action, to "consider the factors set forth in Sections 501 and 502(c)." TTA 1984 Section 505(a)(1); TA 1974 Section 504(a)(1), as amended; 19 U.S.C. 2464(a)(1) (emphasis added). The Act also created a system of "general reviews" to ensure that these statutory criteria are met. TTA 1984 Section 505(b); TA 1974 Section 504(c)(2)(A), as amended; 19 U.S.C. 2464(c)(2)(A); see also 15 C.F.R. 2007.3.

IIPA requests that this GSP Subcommittee follow the explicit intent of Congress, and advise the President to "vigorously exercise" his authority to withdraw, suspend or limit GSP eligibility of Lebanon for its non-compliance with the statutory criterion on IPR in the GSP Program.

The GSP Renewal Act of 1996

When the GSP Program was reauthorized in August 1996, the language of the IPR discretionary criterion for GSP eligibility in Section 502(c)(5) was simplified slightly and now requires the President to "take into account the extent to which such country is providing adequate and effective protection of intellectual property rights."¹² The expired law specified (as discussed above) that each beneficiary country provide "adequate and effective means under its laws for foreign nationals to secure, to exercise and to enforce exclusive rights in intellectual property, including patents,

¹² GSP Renewal Act of 1996, Title I, Subtitle J, of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188 (codified at 19 U.S.C. 2462(c)(5)).

trademarks, and copyrights.” Otherwise, the GSP Renewal Act contains identical IPR provisions, including “mandatory” criteria denying GSP status to countries that directly or indirectly expropriate U.S. property (including intellectual property), and authorizing the President to withdraw, suspend or limit GSP privileges based on failure to meet the IPR criteria.

APPENDIX B

Methodology Used to Estimate Trade Losses due to Copyright Piracy And Levels of Piracy

Estimated trade losses due to piracy are calculated by member associations of the International Intellectual Property Alliance (IIPA). Since it is impossible to gauge losses for every form of piracy, we believe that our reported estimates for 2001 actually underestimate the losses due to piracy experienced by the U.S. copyright-based industries.

Piracy levels are also estimated by IIPA member associations and represent the share of a country's market that consists of pirate materials. Piracy levels together with losses provide a clearer picture of the piracy problem in different countries. Low levels of piracy are a good indication of the effectiveness of a country's copyright law and enforcement practices. IIPA and its member associations focus their efforts on countries where piracy is rampant due to inadequate or non-existent copyright laws and/or lack of enforcement.

BUSINESS SOFTWARE APPLICATIONS

The Business Software Alliance (BSA)'s calculation method compares two sets of data -- the *demand* for new software applications, and the legal *supply* of new software applications.

Demand: PC shipments for the major countries are estimated from proprietary and confidential data supplied by software publishers. The data is compared and combined to form a consensus estimate, which benefits from the detailed market research available to these member companies.

Two dimensions break the shipments into four groups. Splitting the PC shipments between Home and Non-Home purchasers represents the market segments of each country. The PC shipments are also compared to the change in the installed base of existing PCs. The part of PC shipments which represents growth of the installed base is called "new shipments" and is separated from the "replacement shipments" which represent new PCs that are replacing older PCs.

A scale of the installed base of PCs by country compared to the number of white-collar workers was developed. PC penetration statistics are a general measure of the level of technological acceptance within a country. The level of penetration, for a variety of reasons, varies widely from country-to-country. This level is then ranked and each country is assigned to one of five maturity classes.

The number of software applications installed per PC shipment is provided by member companies, and the following ratios for the four shipment groups are developed:

Home-New Shipments
Non-Home - New Shipments
Home - Replacement Shipments
Non-Home - Replacement Shipments

For each shipment group, ratios are developed for each of five maturity classes. U.S. historical trends are used to estimate the effects of lagged technological development by maturity class.

Piracy rates can vary among applications. Grouping the software applications into three Tiers and using specific ratios for each Tier further refined the ratios. The Tiers were General Productivity Applications, Professional Applications, and Utilities. These were chosen because they represent different target markets, different price levels, and it is believed, different piracy rates.

Software applications installed per PC shipped are researched and estimated using these dimensions:

1. Home vs. Non-Home
2. New PCs vs. Replacement PCs
3. Level of Technological Development
4. Software Application Tier

From this work, a total software applications installed estimate was calculated for each country.

Supply: Data was collected by country and by 26 business software applications. Shipment data was limited in some instances, hence, uplift factors were used to estimate U.S. and world-wide shipments.

Piracy Estimates: The difference between software applications installed (demand) and software applications legally shipped (supply) equals the estimate of software applications pirated. The piracy rate is defined as the amount of software piracy as a percent of total software installed in each country.

Dollar Losses: The legal and pirated software revenue was calculated by using the average price per application. This is a wholesale price estimate weighted by the amount of shipments within each software application category.

To develop the wholesale dollar losses for U.S. software publishers, the wholesale dollar losses due to piracy were reduced by the ratio of the software shipped by U.S. software publishers as a percent of software shipped by all software publishers.

ENTERTAINMENT SOFTWARE

The Interactive Digital Software Association (IDSA) draws piracy rates from numerous estimates provided by member and non-member company representatives, distributors and enforcement personnel based on local market conditions. Separate estimates of piracy rate pertaining to console- and PC-based software are calculated, and then averaged into a single piracy rate based on the prevalence of each platform in the market.

Trade loss figures reported (in both the IIPA's February 2001 Special 301 Report and this GSP petition) are preliminary and are based only on partial data samples. These figures are likely to underestimate those to be reported upon completion of our review.

This year's dollar loss figures rely in part on estimates provided by member companies. These estimates are generated using proprietary methodologies that integrate market data of dedicated platform and PC entertainment software in both compact disc and cartridge formats and hardware shipments. These methodologies take into account market conditions including but not limited to the installed base of a given platform (console, PC-based, handheld, etc.) and actual distribution and sales figures.

Dollar loss figures also incorporate inferences from seizure statistics that result from border and other enforcement actions in the countries of production, export and import. These losses are attributed to the country of production where such is known. This aspect of the methodology relies on conservative estimates about the total number of piratical goods produced based on the numbers seized.

The methodology also assumes that piratical goods in the marketplace displace to some degree legitimate product sales. In these instances, displaced sales are multiplied by the wholesale price of legitimate articles rather than the retail price of the pirate goods.

MOTION PICTURES

Many factors affect the nature and effect of piracy in particular markets, including the level of development of various media in a particular market and the windows between release of a product into various media (theatrical, video, pay television, and free television). Piracy in one form can spill over and affect revenues in other media forms. Judgment based on in-depth knowledge of particular markets plays an important role in estimating losses country by country.

Video: As used in the document the term encompasses movies provided in video cassette as well as in all optical disc formats. Losses are estimated using one of the following methods:

1. For developed markets:
 - a. The number of stores that rent pirate videos and the number of shops and vendors that sell pirate videos are multiplied by the average number of pirate videos rented or sold per shop or vendor each year;
 - b. The resulting total number of pirate videos sold and rented each year in the country is then multiplied by the percent of those pirate videos that would have been sold or rented legitimately and adjusted to reflect the US producers' share of the market.

2. For partially developed markets:
 - a. The number of legitimate videos sold or rented in the country each year is subtracted from the estimated total number of videos sold or rented in the country annually to estimate the number of pirate videos sold or rented annually in the country;
 - b. The resulting total number of pirate videos sold and rented each year in the country is then multiplied by the percent of those pirate videos that would have been sold or rented legitimately and adjusted to reflect the US producers' share of the market.

3. For fully pirate markets:

The estimated number of pirate videos of U.S. motion pictures sold or rented in the country each year is adjusted to reflect the wholesale price of legitimate videos which equals losses due to video piracy.

TV, Cable and Satellite: Losses are estimated using the following method:

1. The number of TV and cable systems that transmit U.S. motion pictures without authorization is multiplied by the average number of U.S. motion pictures transmitted without authorization by each system each year;
2. The resulting total number of illegal transmissions is multiplied by the average number of viewers per transmission;
3. The number of viewers of these illegal transmissions is allocated among those who would have gone to a theatrical exhibition or who would have rented or purchased a legitimate video. The number of legitimate transmissions of the motion picture that would have been made is also estimated;

4. These figures are multiplied by the producers' share of the theatrical exhibition price, the wholesale share of the video cost or the license fee per legitimate transmission, as appropriate, to estimate the lost revenue from the illegal transmissions.

Public Performance: Losses are estimated using the following method:

1. The number of vehicles and hotels that exhibit videos without authorization is multiplied by the average number of viewers per illegal showing and the number of showings per year;
2. The resulting total number of viewers of unauthorized public performances is allocated among those who would have gone to a theatrical exhibition or who would have rented or purchased a legitimate video. The number of legitimate TV and cable transmissions that would have been made of the motion pictures is also estimated;
3. These figures are multiplied by the producers' share of the theatrical exhibition price, the wholesale share of the video cost or the license fee per legitimate TV, cable and satellite transmissions, as appropriate, to estimate the lost revenue from the illegal performances.

SOUND RECORDINGS AND MUSICAL COMPOSITIONS

RIAA generally bases its estimates on local surveys of the market conditions in each country. The numbers produced by the music industry generally reflect the value of sales of pirate product rather than industry losses, and therefore undervalue the real harm to the interests of record companies, music publishers, performers, musicians, songwriters and composers.

Where RIAA has sufficient information relating to known manufacture of pirate recordings that emanate from a third country, this loss data will be included in the loss number for the country of manufacture rather than the country of sale.

In certain instances where appropriate, RIAA employs economic data to project the likely import or sale of legitimate sound recordings, rather than merely reporting pirate sales. In these instances, projected unit displacement is multiplied by the wholesale price of legitimate articles in that market rather than the retail price of the pirate goods.

BOOKS

The book publishing industry relies on local representatives and consultants to determine losses. These experts base their estimates on the availability of pirate books, especially those found near educational institutions, book stores and outdoor book

stalls. A limitation here is that experts can only gauge losses based on the pirated books that are sold; it is impossible to track losses for books which are pirated but not available for public purchase. The trade loss estimates are calculated at pirate prices which are generally (but not always) below the prices which would be charged for legitimate books. Also included are conservative estimates of losses due to unauthorized systematic photocopying of books.