



May 25, 2004

Mr. Steven Falken
Executive Director for GSP
Chairman, GSP Subcommittee
Office of the U.S. Trade Representative
1724 F Street NW, Room F-220
Washington, DC 20508

Re: Lebanon GSP Petition for Review, Case No. 016-CP-02

To the GSP Subcommittee:

As the U.S. government nears its decisions regarding the 2003 GSP country eligibility review, IIPA takes this opportunity to explain our position regarding Lebanon. In sum, we recommend the immediate suspension and/or withdrawal of Lebanon's GSP benefits for its failure to meet the IPR obligations under this trade program.

On October 7, 2003, IIPA testified regarding the deficiencies of Lebanon's protection of copyright that warrant immediate suspension or withdrawal of Lebanon's GSP benefits. In addition, on February 14, 2004, IIPA provided this Subcommittee with a copy of IIPA's February 2004 Special 301 report on Lebanon to supplement to the public GSP file on this investigation of Lebanon's intellectual property rights practices under the GSP trade program. That report contains numerous details related to the problems our industries encounter in Lebanon.

In our October 7 testimony, IIPA reported the following main points regarding the piracy situation in Lebanon:

-  **Cable piracy destroys the local market for audiovisual materials:** Over 1,000 pirate cable operators serve 60% of Lebanon's population with pirate programming. The problem continued to grow in 2003. In part as a result of cable piracy, movie theater total sales dropped an astonishing 27% in 2002 and the legitimate video market is almost non-existent now.



Letter to GSP Committee Regarding Petition to Review Lebanon GSP

Case: 016-CP-02

May 25, 2004

Page 2 of 4

- ✚ **Retail piracy of CDs, VCDs, DVDs, CD-ROMs remains blatant:** Retail piracy continues of business and entertainment software, sound recordings, and published materials, leaving piracy levels for these products at almost 70% or above. Piracy levels for audiovisual materials stand at 80% which is unacceptably high by any standard.
- ✚ **Unregulated CD production continues:** One unregulated CD plant continues to produce massive numbers of discs per month. The government has done nothing to shut down this massive source of piracy.
- ✚ **Book piracy continues:** Among other piracy problems, there also remains some book piracy – including export piracy of scientific, medical and technical materials outside Lebanon to other countries in the Middle East and in the Gulf.

IIPA also made the following points regarding the enforcement situation:

- ✚ **Lebanon responsible for lack of adequate devotion of resources to fight piracy:** Staffing and resources of key ministries remain inadequate to get the job done in Lebanon. The key question is who is to take responsibility for this lapse. The government of Lebanon claims that it is up to WTO, WIPO and bilateral trade partners to provide the will and resources to fight piracy. We strongly disagree – it is up to Lebanon to adequately and effectively protect copyright. The Lebanese government clearly lacks the appropriate will to devote the needed resources to effectively enforce copyright.
- ✚ **Irregular practices in enforcement lead to non-deterrent results:** Raids in 2002 resulted in finding much pirate product, but police often left pirate product with the raided stores as “judicial custodians,” and only recently started to seize product. Such irregular practices are not effective in fighting piracy
- ✚ **Cases against pirates lead to non-deterrent results:** Cases proceeding to criminal count are marred by delays, procedural handles and non-deterrent results. For example, while one conviction in 2002 resulted in a one-month jail sentence, which was the first jail sentence ever in Lebanon for copyright piracy, the sentence has never been served. In addition, most fines are non-deterrent. Meanwhile, civil cases languish, and those decided have led to laughably low damages. For example, in some cases, no damages were awarded for harm done in the past, and were only awarded if the pirate engaged in repeat acts of infringement.



Letter to GSP Committee Regarding Petition to Review Lebanon GSP
Case: 016-CP-02
May 25, 2004
Page 3 of 4

Finally, regarding the 1999 Copyright Law, we pointed out the following:

- ✚ **Article 25 is incompatible with international copyright norms:** Article 25 violates standards of the Berne Convention and TRIPS. Even an assessment of the World Intellectual Property Organization found that this article is in violation of TRIPS. The article allows university and public libraries to make and lend one unauthorized copy of any piece of software for lending to students. Under the provision, abuses will lead to the free copying of every software program onto every student's computer in Lebanon. Implementing regulations in 1999 were not helpful, and led to a 3 year free ride for software usages. Amendments in 2002 do narrow the scope of the provision somewhat, but the article still violates the standards of Berne and TRIPS. The article simply must be deleted.
- ✚ There are other deficiencies that must be fixed for Lebanon to create a legal framework that is compatible with international norms.

Regarding developments during 2003, USTR, in its May 3 Special 301 announcement, in keeping Lebanon on the Priority Watch List, noted some “steps” it said the Lebanese Government had taken “to begin to address longstanding IPR problems.” Unfortunately, these “steps” indicated did not have any correlation to lowering piracy levels, providing deterrence in the market, or otherwise adequately dealing with the major piracy problems noted above. USTR mentioned a “crackdown on illegal cable operators.” It is true that there was a conviction against cable pirates, but this was a case that did not involve U.S. right holders. It remains the case that U.S. right holders are being severely damaged by cable piracy, and the Government has done little to resolve the many instances of cable piracy involving U.S. right holders. Second, USTR mentioned “a large-scale raid on pirated DVDs.” IIPA is aware that some raids were taken in 2003, and that in May 2004, when industry representatives met with the Minister of Economy and Trade (Mr. Fadi Makki), some “cosmetic” raids were taken which temporarily rid the market of some street vendors and eradicated the market of some pirate product from retail shops. Nonetheless, it is important to note that the Minister demonstrated no willingness to engage in taking *ex officio* raids, without which the piracy problem cannot be solved. USTR further noted “increased *ex officio* inspections along the borders.” We are aware of a large seizure by Customs in Lebanon – a positive development – but again, these have had little effect on lowering piracy levels, which remain almost at or above 70% for all industry sectors reporting them.



Letter to GSP Committee Regarding Petition to Review Lebanon GSP
Case: 016-CP-02
May 25, 2004
Page 4 of 4

For the reasons outlined in our Special 301 report and our belief that significant progress on the copyright-related issues involved in this GSP investigation has not been made, IIPA recommends the immediate suspension and/or withdrawal of Lebanon's GSP benefits.

Sincerely,

Michael Schlesinger
Vice President and Associate General Counsel
International Intellectual Property Alliance

cc: Cathy Novelli (USTR)
Ned Saums (USTR)
Brian Peck (USTR)
Mark Wu (USTR)
Jon Rosenbaum (USTR)
James Mendenhall (USTR)
Paul Aceto (State)
Patrick Quigley (State)
Allison Areias (State)
Amy Schedlbauer (State)
Molly Williamson (Commerce)
Jennifer Boger (Commerce)
Kristine Schlegelmilch (Commerce)
Linda Lourie (PTO)
JoEllen Urban (PTO)
Steve Tepp (USCO)
Marla Poor (USCO)
Christopher Johnson (USITC)