



December 3, 2004

Via Email: FR0440@ustr.gov

H.J. Rosenbaum

Acting Executive Director GSP; Acting Chairman

GSP Subcommittee

Office of the U.S. Trade Representative; USTR Annex

724 F St., NW., Room F-220

Washington, DC 20508

Re: Comments on Azerbaijan GSP Eligibility Review

To the GSP Subcommittee:

On November 5, 2004, the Trade Policy Staff Committee (TPSC) of the Office of the United States Trade Representative (USTR) published a notice in the Federal Register announcing the initiation of a review to consider the designation of Azerbaijan as a beneficiary developing country under the Generalized System of Preferences (GSP) trade program. USTR indicated that interested parties “are invited to submit comments regarding the eligibility of Azerbaijan for designation as a GSP beneficiary developing country.” See 69 Fed. Reg. 64,621 (2004).

The International Intellectual Property Alliance (IIPA) hereby submits its request that Azerbaijan not be designated as a GSP beneficiary developing country because of its failure to provide “adequate and effective” copyright protection as required by the GSP statute. In sum, Azerbaijan has not made the requisite improvements to remedy the numerous copyright law and enforcement deficiencies (as detailed in the IIPA’s 2004 Special 301 Report) which have adversely affected U.S. copyright owners and which contravene the United States-Azerbaijan Bilateral Trade Agreement (in force, April 21, 1995) granting Normal Trade Relations (NTR) to Azerbaijan. In fact, Azerbaijan is more than ten years overdue in meeting these bilateral obligations.

About the International Intellectual Property Alliance

The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. The IIPA’s six member trade associations¹ in turn

¹ IIPA’s members are: the Association of American Publishers (AAP), the Business Software Alliance (BSA), Entertainment Software Association (ESA), Independent Film & Television Alliance (IFTA), the Motion Picture Association of America (MPAA), and the Recording Industry Association of America (RIAA).

represent 1,300 U.S. companies producing and distributing materials protected by copyright laws throughout the world – all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media).

The U.S. copyright-based industries are one of the fastest growing and most dynamic sectors of the U.S. economy. The U.S. copyright industries contribute over 6% of the gross domestic product to the total U.S. economy in 2002, the latest year for which statistics are available.² IIPA's goal in foreign countries is to establish legal and enforcement regimes for copyright that not only deter piracy, but that also foster technological and cultural development in these countries, and encourage local investment and employment. Inexpensive and accessible reproduction technologies, however, make it easy for copyrighted materials to be pirated in other countries. Losses due to piracy of U.S. copyrighted materials around the world are conservatively estimated to reach \$25-\$30 billion annually (not including Internet piracy).

Action Requested by IIPA

The IPR discretionary criterion for GSP eligibility in Section 502(c)(5) of the Trade Act of 1974, as amended, requires the President to “take into account the extent to which such country is providing adequate and effective protection of intellectual property rights.”³

Azerbaijan completely fails to meet this GSP IPR criterion. For example (and as discussed further in the attached 2004 IIPA report on the country), Azerbaijan does not provide protection for pre-existing works or sound recordings as required by the obligation in its Bilateral Trade Agreement (and also by Berne Convention and the WTO TRIPS Agreement). Also unclear is whether Azerbaijani law provides civil *ex parte* search provisions (another WTO TRIPS requirement). IIPA is on-the-record as opposing Azerbaijan's accession to the WTO until these significant legal shortcomings are corrected.

Furthermore, the Azerbaijani Criminal Code (2000) creates an unwarranted threshold in the fight against copyright piracy because it sets a vague standard for police and prosecutors to commence action. Neither the Criminal Code nor the Criminal Procedures Code provides police with the proper *ex officio* authority to commence criminal copyright cases. There is no meaningful police, customs, or prosecutorial activity. For example, the level of music piracy is estimated at about 83%; trade losses for 2003 were estimated at \$12.2 million. It is estimated by the recording industry that in total 10.3 million cassettes and 2.6 million CDs were sold in Azerbaijan in 2003 and of these, 8.4 million cassettes and 2.3 million CDs were pirated copies.

² In October 2004, the IIPA released its latest economic report entitled *Copyright Industries in the U.S. Economy: The 2004 Report*, which details the economic impact and contributions of U.S. copyright industries to U.S. Gross Domestic Product, employment, and trade. In 2002, the U.S. “core” copyright industries accounted for an estimated 6% of U.S. Gross Domestic Product (GDP), or \$626.6 billion, and employed 4% of U.S. workers in 2002 or 5.48 million persons. Also in 2002, the U.S. copyright industries achieved foreign sales and exports estimated at \$89.26 billion, leading other major industry sectors such as: chemicals and related products, motor vehicles, equipment and parts, and aircraft and aircraft parts. For more information on this report and the IIPA, visit www.iipa.com.

³ 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)).

Conclusion

For the reasons stated herein with respect to the significant shortcomings regarding the Azerbaijan's copyright law, IIPA strongly recommends that Azerbaijan not receive designation as a GSP beneficiary country.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric J. Schwartz". The signature is fluid and cursive, with the first name "Eric" being the most prominent part.

Eric J. Schwartz
Vice President and Special Counsel
International Intellectual Property Alliance