

Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any other person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-94-34 and should be submitted by April 27, 2001.

## VII. Conclusion

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>70</sup> that the amended proposed rule change (SR-NYSE-94-34) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>71</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-8508 Filed 4-5-01; 8:45 am]

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-121]

### Identification of Priority Foreign Country; Initiation of Section 302 Investigation; Proposed Determinations and Action; and Request for Public Comment: Intellectual Property Laws and Practices of the Government of Ukraine

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

**ACTION:** Notice of identification of priority foreign country; notice of initiation of investigation; proposed determination and action; request for written comments; invitation to participate in public hearing.

**SUMMARY:** Pursuant to section 182(c)(1)(B) of the Trade Act of 1974, as amended (the Trade Act), the United States Trade Representative (Trade Representative) has identified Ukraine as a priority foreign country due to its denial of adequate and effective protection of intellectual property

rights. Pursuant to section 302(b)(2) of the Trade Act, the Trade Representative has also initiated a section 302 investigation of the acts, policies and practices of the Government of Ukraine that resulted in the identification of Ukraine as a priority foreign country. The Office of the United States Trade Representative (USTR) proposes determinations that these acts, policies and practices are actionable under section 301(b) and that the appropriate response includes a full or partial suspension of duty-free treatment accorded to products of Ukraine under the Generalized System of Preferences (GSP). USTR invites interested persons to submit written comments and to participate in a public hearing concerning the proposed determinations and action.

**DATES:** The identification was made, and the investigation was initiated, on March 12, 2001. Requests to appear at the public hearing are due April 13, 2001; written testimony is due April 20, 2001; a public hearing will be held on April 27, 2001; and written comments and rebuttal comments are due by May 7, 2001.

**ADDRESSES:** Requests, comments, and testimony should be submitted to Sybia Harrison, Staff Assistant to the Section 301 Committee, ATTN: Docket 301-121, Office of the United States Trade Representative, 1724 F Street, NW, Room 217, Washington, DC 20508. The public hearing will be held in the main hearing room of the United States International Trade Commission, 500 E Street, SW, Washington, DC 20436.

**FOR FURTHER INFORMATION CONTACT:** Kira Alvarez, Director for Intellectual Property, (202) 395-6864; Richard Driscoll, Director for Central Europe and Ukraine, (202) 395-5190; William Busis, Associate General Counsel, (202) 395-3150; or Stephen Kho, Assistant General Counsel, (202) 395-3581. Inquiries regarding participation in the hearing or the submission of comments should be directed to Sybia Harrison, Staff Assistant to the Section 301 Committee, (202) 395-3419.

#### SUPPLEMENTARY INFORMATION:

#### Section 182 of the Trade Act

Section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242), authorizes the Trade Representative to identify foreign countries that deny adequate and effective protection of intellectual property rights or that deny fair and equitable market access to persons that rely on intellectual property protection. Procedures under section 182 are commonly referred to as "Special 301."

Under section 182(d)(2) of the Trade Act, a foreign country is considered to be denying adequate and effective protection of intellectual property rights if it denies adequate and effective means under its laws for persons who are not citizens or nationals of the country to secure, exercise, and enforce rights relating to patents, process patents, registered trademarks, copyrights and mask works. Under section 182(b), countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as "priority foreign countries," unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this manner, USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country; and the history of efforts of the United States to achieve adequate and effective protection and enforcement of intellectual property rights. In making these determinations, USTR consults with the Register of Copyrights, the Commissioner of Patents and Trademarks, and other appropriate officials of the Federal Government, and takes into account information from other sources such as information submitted by interested persons.

#### Identification of Ukraine as a Priority Foreign Country

Enterprises in Ukraine are engaged in the large-scale production and export of unauthorized optical media (such as CDs, CD-Rs, DVDs, and V-CDs). The Recording Industry Association of America alleges that for each of the last two years, Ukraine has produced and exported between 30 and 40 million pirated CDs. Ukraine reportedly has the annual capacity to produce up to 70 million CDs, while annual domestic demand is only in the range of 1 to 5 million CDs. In short, Ukraine has become a world leader in pirated optical media production.

For over two years, the United States Government has requested that the Ukrainian Government close down the pirate CD production facilities and enact legislation to adequately protect copyrights. The Ukrainian Government has been unwilling to curtail such activities or to enact necessary legislation. During the annual Special 301 review in April 2000, the interagency Trade Policy Staff

<sup>70</sup> 15 U.S.C. 78s(b)(2).

<sup>71</sup> 17 CFR 200.30-3(a)(12).

Committee recommended that "Ukraine would be designated a priority foreign country on August 1, 2000 unless the Government of the Ukraine makes substantial progress in eliminating production of pirated optical media in its territory."

At a summit held in June 2000, the President of Ukraine endorsed a U.S.-Ukraine Joint Action Plan to Combat Optical Media Piracy. The three key components of the Joint Action Plan are (1) to suspend the pirate activities while putting necessary legislation in place, (2) to provide copyright protection to foreign sound recordings, and (3) to adopt a strict optical media licensing regime. Given these commitments, the United States deferred a decision on priority foreign country identification until November 2000. The United States subsequently extended the decision date until March 1, 2001 in order to allow Ukraine sufficient time to implement its anti-piracy commitments.

As of March 1, 2001, however, the Ukrainian Government failed to make any significant progress in meeting the critical components of the Joint Action Plan. Enterprises in Ukraine continue to produce and export unauthorized CDs on a large scale, and necessary legislation on the enforcement of intellectual property rights remains unenacted.

As a result, on March 12, 2001 the Trade Representative identified Ukraine as a priority foreign country under section 182 of the Trade Act. The identification was based on (1) deficiencies in Ukraine's acts, policies and practices regarding the protection of intellectual property rights, including the lack of effective action enforcing intellectual property rights, as evidenced by the alarming levels of compact disc piracy within the country; and (2) the failure of the Government of Ukraine to enact adequate and effective intellectual property legislation addressed to enforcement and optical media piracy.

### Section 301 Investigation and Consultations

Under Section 302(b)(2) of the Trade Act (19 U.S.C. 2412(b)(2)), the Trade Representative shall initiate an investigation under Chapter 1 of Title III of the Trade Act (commonly referred to as "section 301") with respect to any act, policy or practice that was the basis of the identification of a country as a priority foreign country under section 182 of the Trade Act, unless such acts, policies and practices are already subject to investigation or action under section 301, or unless the investigation

is not in the national economic interest. Neither exception applies.

Accordingly, simultaneously with the identification of Ukraine as a priority foreign country, on March 12, 2001 the Trade Representative initiated an investigation to determine whether the acts, policies, and practices of Ukraine that resulted in the priority foreign country identification are actionable under section 301(b) of the Trade Act. Matters actionable under section 301(b) include acts, policies, or practices of a foreign country that are unreasonable and burden or restrict U.S. commerce. Under section 301(d)(3)(B)(i)(II) of the Trade Act, unreasonable acts, policies or practices include any act, policy or practice which denies fair and equitable provision of adequate and effective protection of intellectual property rights.

As provided under section 303(a) of the Trade Act, by letter dated March 12, 2001 USTR requested consultations with the Government of Ukraine regarding the issues under investigation. USTR will seek information and advice from appropriate representatives provided for under section 135 of the Trade Act in preparing the U.S. presentations for such consultations.

### Proposed Determinations and Action

Based on the acts, policies and practices of the Government of Ukraine that resulted in the identification of Ukraine as a priority foreign country under section 182 of the Trade Act, USTR proposes determinations under sections 304(a)(1)(A) and 301(b) of the Trade Act that the acts, policies, and practices of Ukraine with respect to the protection of intellectual property rights are unreasonable and burden or restrict United States commerce, and that action by the United States is appropriate.

Section 301(b)(2) of the Trade Act authorizes the Trade Representative to take all appropriate and feasible action authorized under section 301(c) to obtain the elimination of the actionable acts, policies, or practices. Section 301(c)(1)(B) authorizes the Trade Representative to impose duties or other import restrictions on the goods of the foreign country subject to the investigation. Section 301(c)(1)(C) provides that in a case in which the act, policy, or practice of the foreign country also fails to meet the eligibility requirements for duty-free treatment under the GSP, the Trade Representative may withdraw, limit or suspend such treatment. The GSP includes an eligibility requirement concerning the extent to which the foreign country provides adequate and effective protection of intellectual property rights

(section 502(c)(5) of the Trade Act (19 U.S.C. 2462(c)(5))).

Under sections 304(a)(1)(B) and 301(c)(1)(C) of the Trade Act, USTR proposes a determination that appropriate and feasible action includes the suspension of duty-free treatment accorded under GSP to some or all products of Ukraine. As a further step, USTR may also consider increased duties or other import restrictions on Ukrainian goods. Ukraine's leading exports to the United States are steel, chemical products, aircraft and parts, textile products, fertilizers and aluminum. Before the imposition of increased duties or other import restrictions on Ukrainian goods under section 301(c)(1)(B) of the Trade Act, however, USTR would expect to publish a second notice requesting comments with regard to the possible imposition of increased duties or other import restrictions on a specific list of products. At this time, the only product-specific comments requested by USTR are comments concerning the possible suspension of GSP benefits.

### Written Comments and Public Hearing

In accordance with section 304(b) of the Trade Act, USTR invites interested persons to provide comments on the matters under investigation and the proposed determinations. The requested comments include comments on: (i) The acts, policies and practices of the Government of Ukraine that are the subject of this investigation; (ii) the amount of burden or restriction on U.S. commerce caused by these acts, policies and practices; (iii) whether the acts, policies and practices of Ukraine are actionable under section 301(b); and (iv) appropriate action under section 301 which could be taken in response. As noted, USTR proposes that appropriate action under section 301 should include the full or partial suspension of GSP duty-free treatment for products of Ukraine. USTR requests that comments on the proposed action address the degree to which suspension of GSP duty-free treatment on particular products of Ukraine might have an adverse effect on U.S. businesses—including small-and medium-sized businesses—and on consumers.

Written comments are due by May 7, 2001. A public hearing addressed to these same issues will be held on April 27, 2001 in the main hearing room of the United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. Interested persons wishing to testify orally at the hearings must provide a written request by April 13, 2001 to Sybia Harrison, Staff Assistant to the Section 301

Committee, ATTN: Docket 301-121, Office of the United States Trade Representative, 1724 F Street, NW., Room 217, Washington, DC 20508. Requests to testify must include the following information: (1) Name, address, telephone number, fax number, and firm or affiliation of the person wishing to testify; and (2) a brief summary of the comments to be presented. After the Chairman of the Section 301 Committee considers the request to present oral testimony, Ms. Harrison will notify the applicant of the time of his or her testimony. In addition, persons presenting oral testimony must submit their complete written testimony by April 20, 2001. In order to allow each interested party an opportunity to contest the information provided by other parties at the hearing, USTR will accept written rebuttal comments, which must be filed by May 7, 2001. Rebuttal comments should be limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearing and should be as concise as possible. All written comments must state clearly the position taken, describe with particularity the supporting rationale, be in English, and be provided in twenty copies to: Sybia Harrison, Staff Assistant to the Section 301 Committee, ATTN: Docket 301-121, Office of the United States Trade Representative, 1724 F Street, NW., Room 217, Washington, DC 20508.

Comments will be placed in a file (Docket 301-121) open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of the 20 copies, and must be accompanied by a non-confidential summary of the confidential information. The non-confidential summary shall be placed in the file that is open to public inspection. An appointment to review the docket may be made by calling Brenda Webb at (202) 395-6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, and is located in Room 3, First Floor, Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508.

**William Busis,**

*Chairman, Section 301 Committee.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**FAA Approval of Noise Compatibility Program, Port Columbus International Airport, Columbus, OH**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Columbus Municipal Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On January 3, 2000, the FAA determined that the noise exposure maps submitted by the Columbus Municipal Airport Authority under Part 150 were in compliance with applicable requirements. On January 10, 2001, the FAA approved the Port Columbus International Airport noise compatibility program. All of the recommendations of the program were approved. A total of twenty-two (22) measures were included in the Columbus Municipal Airport Authority recommended program. Of the twenty-two measures, five (5) are listed as "Noise abatement Plan Measures", eleven (11) are listed as "Land Use Management Plan", and six (6) are listed as "Program Management Measures." The FAA has approved all twenty-two (22) measures.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Port Columbus International Airport noise compatibility program is January 10, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mary Jagiello, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO-670.1, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (734) 487-7296. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for Port Columbus International Airport, effective January 10, 2001.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously

submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility are delineated in FAR Part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental