



February 11, 2025

The Honorable Adrian Smith
Chair, House Committee on Ways & Means Subcommittee on Trade
1139 Longworth House Office Building
Washington, D.C. 20515

The Honorable Linda Sanchez
Ranking Member, House Committee on Ways & Means Subcommittee on Trade
1139 Longworth House Office Building
Washington, D.C. 20515

Dear Chair Smith and Ranking Member Sanchez:

I'm writing on behalf of the Center for American Principles ("CAP") to encourage action on an urgent threat to our nation's prosperity: foreign violators of U.S. intellectual property (IP) rights.

CAP is a 501(c)(4) advocacy group that seeks to protect the values of free enterprise, limited government, and the rule of law.¹ Safeguarding the integrity of America's IP system is central to that aim.

The threat of foreign IP theft has grown more acute in recent years, as the previous administration, and specifically the Office of the United States Trade Representative (USTR), consistently failed to stand up for the IP protections that power the American economy.

The USTR's lax enforcement was perhaps most apparent in its misuse of the Special 301 Report, which it is statutorily required to produce each year. The purpose of the report is to single out foreign nations that "deny adequate and effective protection of intellectual property rights" or "deny fair and equitable market access to United States persons that rely upon intellectual property protection."²

The report is one of the most valuable means the agency has to identify and condemn foreign IP infringement. Historically, the USTR has used it to criticize IP violators in unequivocal terms.

¹ <https://www.centerforamericanprinciples.org/>

² <https://uscode.house.gov/view.xhtml?req=granuleid:USC-2007-title19-section2242&num=0&edition=2007>

Unfortunately, the last four reports were much less aggressive in holding foreign governments to account.

For example, reports before 2021 usually took a strong stand against the improper use of compulsory licensing, whereby foreign governments grant their domestic firms the right to violate patents without the patent-holders' consent.³ Yet the latest 301 Report says that the United States "respects its trading partners' rights to grant compulsory licenses," and fails to call out the many trading partners utilizing, or threatening to issue, compulsory licenses in a manner inconsistent with international norms.⁴

This reversal in the USTR position was characteristic of an administration that systematically weakened IP enforcement over the past four years. In 2022, for instance, the Biden administration signed off on a World Trade Organization policy waiving IP rights for Covid-19 vaccines, choosing to ignore protections under a treaty known as the Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPS.⁵ This decision effectively gifted valuable American IP to a long list of countries, including serial patent violators like India.⁶

Another threat to U.S. intellectual property abroad is foreign governments' use of restrictive patentability requirements, rules that unreasonably limit which technologies can be patented. As the 2020 Special 301 Report said, "U.S. innovators face challenges, including restrictive patentability criteria, that undermine opportunities for export growth in countries such as Argentina, India, and Indonesia."⁷ This problem is ongoing. And yet, the latest report hardly mentions these unfair practices or the threat they pose to the U.S. biopharmaceutical industry.⁸

Nor did that report push back on the erroneous notion that gutting IP rights across sectors will solve global development problems. To the contrary, decades of evidence shows that disregarding IP rights squashes the kind of innovation we need to achieve energy breakthroughs.

A vast swath of the American economy depends on IP protections, which include copyright, trademarks, trade secrets, and patents. They safeguard industries as wide-ranging as software, the life sciences, manufacturing, entertainment, and retail. All told, IP-intensive industries support 62.5 million American jobs and account for 41% of the nation's gross domestic product.⁹

With so much at stake, the USTR's refusal to censure, or in some cases even acknowledge, egregious instances of global IP theft is simply unacceptable. A comprehensive and accurate Special 301 Report strengthens global IP enforcement, bolsters our economy, and supports innovation to the benefit of the entire world. But for it to fulfill its purpose, it must return to a more forceful defense of our IP system.

³ https://www.wto.org/english/tratop_e/trips_e/public_health_faq_e.htm

⁴ <https://ustr.gov/issue-areas/intellectual-property/special-301/2024-special-301-report>, p. 35

⁵ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W15R2.pdf&Open=True>

⁶ <https://crsreports.congress.gov/product/pdf/R/R47231>

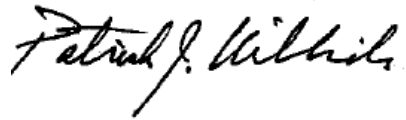
⁷ https://ustr.gov/sites/default/files/2020_Special_301_Report.pdf, p. 6

⁸ <https://ustr.gov/issue-areas/intellectual-property/special-301/2024-special-301-report>

⁹ <https://www.uspto.gov/ip-policy/economic-research/intellectual-property-and-us-economy>

Restoring the integrity of the Special 301 Report will be an essential ingredient in the success of the newly announced "America First Trade Policy," which seeks to leverage annual assessments of unfair intellectual property practices abroad to reinvigorate U.S. leadership in promoting strong international IP protections.¹⁰ At this dawn of a new administration, I urge you to work with the USTR to reestablish the Special 301 Report as the valuable tool it can be.

Sincerely,

A handwritten signature in black ink, reading "Patrick J. Kilbride". The signature is written in a cursive, slightly slanted style.

Patrick Kilbride
Policy Fellow
Center for American Principles

¹⁰ <https://www.whitehouse.gov/presidential-actions/2025/01/america-first-trade-policy/>