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USTR Announces Annual Special 301 Review

By Kathleen M. Murphy and Luke J. Karamyalil

On December 28, 2018, the United States Trade Representative (USTR) [announced](#), in the Federal Register, its annual Special 301 Review. Each year, pursuant to the Trade Act of 1974, the USTR is required to identify countries that deny adequate and effective IP protections, or fair and equitable market access to U.S. persons who rely on IP protection. Based on the outcome of this review, the USTR may designate a country as a Priority Foreign Country (PFC) if the country engages in the most onerous and egregious acts, policies, and procedures that deny adequate IP protection, has the greatest adverse impact on U.S. products, and is not entering into good faith bilateral or multilateral negotiations to protect IP rights. Procedures set out in Sections 301 to 305 of the Trade Act can be imposed on a particular PFC. Further, this review will allow the USTR to place certain countries on an agency created “Priority Watch List” or “Watch List,” with the former determined to have serious IP rights deficiencies that will garner close scrutiny in the years to come.

To reach these determinations, the USTR’s Special 301 Subcommittee will rely on information from multiple sources, including written comments and public testimony regarding IP issues in foreign countries. Interested parties who wish to submit written comments and/or give public testimony should be aware of the following dates:

- February 7, 2019: Deadline for submission of written comments, hearing statements, and notices of intent to appear at the public hearing.
- February 21, 2019: Deadline for submission of written comments, hearing statements, and notices of intent to appear at the hearing from foreign governments.
- February 27, 2019: The Special 301 Subcommittee will hold a public hearing in Washington, D.C. If necessary, the hearing may continue on the next

business day.

- March 5, 2019: Deadline for submission of post-hearing written comments from persons who testified at the public hearing.
- On or about April 26, 2019: The USTR will publish the 2019 Special 301 Report within 30 days of the publication of the National Trade Estimate.

Written comments should provide necessary information to identify the effect of a particular country’s acts, policies, and practices. To that end, written comments should include:

- Specific references to laws, regulations, policy statements, including innovation policies, executive, presidential, or other orders, and administrative, court, or other determinations that should factor in the review;
- If relevant, particular regions, provinces, states or other subdivisions of a country in which an act, policy or practice is believed to warrant special attention; and
- Data, loss estimates, and other information regarding the economic impact on the U.S., any U.S. industry, and the U.S. workforce. Comments that include quantitative loss claims should include the method used to calculate the estimated losses.

Companies that have identified IP issues in foreign countries are encouraged to participate in the Special 301 review process. As the dates detailed above are fast approaching, it is important that companies organize quickly to submit comments and to prepare for the public hearing.

For further information, please contact the members of the Customs and International Trade Team listed below.

Customs and International Trade Team

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