

# Intellectual Property and U.S. Trade Policy:

## Trade Law and Trade Policy Tools

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# IPR AND TRADE POLICY: USTR'S ROLE

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- ❑ Negotiates U.S. trade agreements with foreign partners
  - ❑ Represents the U.S. at the WTO
  - ❑ Coordinates development of U.S. trade policy Monitors and enforces partners' compliance with trade agreement obligations, including IPR
  - ❑ Conducts litigation of most U.S. trade disputes
  - ❑ Policy tools include trade law, trade agreements, preference programs, trade diplomacy
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# Tools Under U.S. Trade Law

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- “Special 301” – Section 182 of the 1974 Trade Act
    - USTR annually identifies “those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on IP protection.”
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# Tools Under U.S. Trade Law

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- Special 301, cont'd:
    - Annual report/listing issued in late April
    - Degrees of concern:
      - Priority Foreign Country designation
      - Priority Watch List
      - Watch List
      - Section 306 Monitoring
    - 2009 report examined 77 countries; listed 46 countries
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# Tools Under U.S. Trade Law

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- Special 301 – cont'd.
    - Review based extensively on public comments
    - Input from U.S. Embassies, numerous USG agencies taken into account
    - “Out-of-cycle reviews” often pursued
    - Review process often offers opportunity to engage in problem-solving
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# Trade Agreements - WTO

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## □ TRIPS Agreement

- Establishes minimum standards of protection for major categories of IPR, and for IPR enforcement
- WTO “TRIPS Council” oversees implementation of the Agreement
- Current discussion of IP/health issues, GI’s, patent/biodiversity issues, enforcement
- TRIPS provisions are subject to WTO dispute settlement rules

## □ WTO Accession Negotiations

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# Trade Agreements - FTAs

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- ❑ U.S. FTAs include comprehensive, state-of-the-art IPR provisions, including with respect to enforcement
  - ❑ IP chapters are subject to FTA dispute settlement provisions
  - ❑ IP provisions applicable on a most-favored nation basis
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# Trade Agreements

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- FTAs contain disciplines covering:
    - General Provisions (treaty obligations)
    - Trademarks/Geographical Indications
    - Copyrights and Related Rights
    - Patents
    - Regulated Products (data exclusivity)
    - Enforcement
    - Public health
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# Anti-Counterfeiting Trade Agreement

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- Initiative announced October 2007
  - Leadership agreement promoting:
    - High standards of legal provisions
    - Best practices in IP enforcement
    - Improved international coordination
  - U.S., Japan, EU, Mexico, Switzerland, Korea, Australia, Canada, others
  - Negotiations ongoing
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# Trade Preference Programs

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- ❑ Generalized System of Preferences
  - ❑ Regional programs (Africa, Andean region, Caribbean)
  - ❑ Eligibility for preferences is based, in part, on “adequate and effective” IP protection in beneficiary countries
  - ❑ Petitioning mechanism to request review of country eligibility
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# Trade Diplomacy

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- ❑ Trade and Investment Framework Agreements - TIFAs
  - ❑ Other consultation mechanisms (US-China JCCT, US-India Forum)
  - ❑ G8, OECD, APEC initiatives
  - ❑ State/Commerce global advocacy and information-gathering
  - ❑ Trade-related technical assistance
  - ❑ Public-private partnerships
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