

Internet Appendix

for

Fake Products, Real Effects:

Evidence from Special 301 Actions

Appendix A. Recent Special 301 Reports and Their Aftermaths

In 2005, the USTR listed Brazil as a PWL. Despite some improvements in the Brazilian IP system (e.g., the adoption of a National Action Plan by Brazil's National Council to Combat Piracy and Intellectual Property Crimes, as well as successes in enforcement along its border with Paraguay), the USTR was very concerned about counterfeit products in Brazil. In particular, piracy rates for optical media (i.e., CDs, CVDs, DVDs, etc.) on the internet were increasing, with estimated annual losses to U.S. firms exceeding \$931 million. The USTR stated that this was mostly due to the influx of pirated and counterfeit goods, particularly in the Manaus Free Trade Zone in northern Brazil. The USTR also underlined that it expected tangible progress due to the newly adopted National Action Plan, which would target counterfeit products in not only the optical media sector but also all other sectors.

In 2006, the USTR acknowledged that Brazil had made significant progress on copyright enforcement, specifically "by adopting a National Action Plan to enforce copyrights and reduce piracy, drafting IPR legislation, increasing seizures and prosecutions, and developing strong public awareness campaigns to fight piracy," and in 2007, Brazil was dropped from the Priority Watch List category to the Watch List category, as Brazil's National Anti-Piracy Council was "increasingly recognized as a model of public-private collaboration in the area of IP enforcement." Moreover, the Brazilian government's National Action Plan to address piracy and IP crimes produced "continuing positive results, particularly through effective police actions." Although piracy and counterfeiting still existed and criminal prosecutions often lagged police actions, Brazil merited recognition for launching its vigorous efforts very rapidly.

Countries placed on Special 301 lists, like Brazil, are the focus of increased bilateral attention concerning specific problem areas. The USTR develops "action plans" for each foreign country that it has identified for placement on Special 301 lists and that has remained on a list for at least one year. The action plans include benchmarks to assist the foreign country to achieve, or make significant progress toward

achieving, adequate and effective anti-counterfeiting enforcement and fair and equitable market access for U.S. persons and corporations relying on IP protection. The USTR also provides to the Senate Finance Committee and to the House Ways and Means Committee a description of the action plans developed for listed countries and any actions taken under such plans. For those countries for which an action plan has been developed, the U.S. President may take appropriate action if the country has not substantially complied with the benchmarks set forth in the action plan.

In 2001, for example, the USTR listed Ukraine as a PFC and stated that for more than two years the U.S. government had been “urging the Ukrainian Government to close down the pirates’ CD production facilities and enact legislation to adequately protect copyrights.” Despite many promises, including high-level commitments made in June 2000, the Ukrainian government was still “unwilling or unable to curtail the activities of the pirates.” As a result, the U.S. government withdrew benefits from Ukraine under the Generalized System of Preferences (GSP) in August 2001 and imposed \$75 million in annual sanctions against Ukrainian imports on January 23, 2002, based on the repeated failure of Ukraine to comply with the June 2000 Joint Action Plan.¹ It took a couple of years for Ukraine to respond and fully implement the required changes in its IP system. In August 2005, in response to Ukraine’s passage of important amendments to its Laser-readable Disc Law (“OD amendments”) to combat optical disc pirate production, the U.S. terminated the \$75 million trade sanctions.

Some U.S. trading partners are aware of this counterfeit exposure and economic impact, but they drag their feet to respond to USTR warnings. The lack of prompt and complete action has, for example, allowed uninterrupted, long-term, and large-scale pirated manufacturing of New Balance, Reebok, and Nike

¹ The Generalized System of Preferences is a U.S. trade program designed to promote economic growth in the developing world by providing preferential duty-free entry for up to 4,800 products from 129 designated beneficiary countries and territories. GSP was instituted on January 1, 1976, by the Trade Act of 1974.

counterfeits in China's Fujian Province. The Chinese city of Yiwu was long known to be an important distribution center for small commercial goods, including, for example, wristbands infringing the LIVESTRONG trademark of the Lance Armstrong Foundation. USTRThe USTR has repeatedly warned the Polish government, prosecutors, and judicial authorities over the past decade about Warsaw Stadium, which operated as a major center for the distribution of pirated products.

Even worse, some governments have actively used counterfeit products over the past few decades. The government of the Dominican Republic, for example, allowed pirated software usage in government offices for an extended period. It didn't announce a plan to ensure that the government would use only licensed software until 2011. The government of Costa Rica announced a similar plan in 2010, and as the USTR put it in a 2014 Special 301 Report, "the progress has been limited until recently, and actual results remain unknown."

Some governments passed legislation to reduce counterfeit products, but the laws were not fully enforced due to a variety of barriers. In Ecuador, for example, enforcement of copyrights has been a significant problem, especially with respect to sound recordings, computer software, and illegal commercial photocopying of books. Even though Ecuador's current substantive copyright legislation has been modernized in line with its international obligations, Ecuador's judicial system remains deficient because the courts appear unwilling to enforce the law. In Greece, there have been widespread unauthorized broadcasts of protected films and TV programs by unlicensed television stations. Greek TV stations continued for a long period of time to broadcast U.S.-owned motion pictures and television programming without authorization. U.S. rights holders were unable to find effective relief in the courts, as television piracy cases are generally accorded the lowest priority by Greek prosecutors and judges. Lastly, the Russian government has taken several positive steps over the past decade, such as amending the Russian criminal code for copyright piracy and stopping the distribution of pirated products in Moscow's Savelovskiy

Market. It is, however, known to be unable to stop the operations of optical disc plants located on Russian state-owned restricted access regime enterprises (RARE) sites, as warehouses storing pirated CDs and DVDs remain on several government-controlled military-industrial sites. This situation leaves Russian enforcement agencies and rights holders with limited opportunities to conduct successful raids against such warehouses.²

² For more information on these raids, refer to USTR Special 301 Reports since 1998, which are published online at the USTR web page: <https://ustr.gov/issue-areas/intellectual-property/Special-301>.

Table A.I. Anti-Counterfeiting Enforcement and Components of Brand Inventiveness

This table reports regressions of selected imagery attributes on enforcement against counterfeiting activities around the globe. In Columns 1–4, we run regressions using the following specification:

$$Y_{i,j,t} = \alpha + \beta_1 * \text{PRIORITY_WATCHLIST}_{j,t} + \beta_2 * \text{WATCHLIST}_{j,t} + \text{Fixed Effects} + \varepsilon_{i,j,t},$$

where $Y_{i,j,t}$ includes BAV measures PROGRESSIVE, DYNAMIC, INNOVATIVE for firm i in year t in country j . We also use the first principal vector spanning these column vectors as our fourth dependent variable. $\text{PRIORITY_WATCHLIST}_{j,t}$ is equal to one if country j is listed as a Priority Watch List country by the USTR; and $\text{WATCHLIST}_{j,t}$ is equal to one if country j is listed as a Watch List country by the USTR. In Columns 4–8, we run regressions using the following specification:

$$\Delta Y_{i,j,t} = \alpha + \beta_1 * \text{STRONGER_ACE}_{j,t} + \beta_2 * \text{WEAKER_ACE}_{j,t} + \text{Fixed Effects} + \varepsilon_{i,j,t},$$

where $\Delta Y_{i,j,t}$ denotes changes in the above BAV measures of firm i from year $t-1$ to year t in country j ; $\text{STRONGER_ACE}_{j,t}$ is equal to one if there is a positive change in anti-counterfeiting enforcement in country j from year $t-1$ to year t , as reflected in USTR Special 301 Reports (i.e., country status changes from Priority Watch List to Watch List, from Watch List to Not Listed, or from Priority Watch List to Not Listed); $\text{WEAKER_ACE}_{j,t}$ is equal to one if there is a negative change in anti-counterfeiting enforcement in country j from year $t-1$ to year t , as reflected in USTR Special 301 Reports (i.e., country status changes from Watch List to Priority Watch List, from Not Listed to Watch List, or from Not Listed to Priority Watch List). Firms are publicly listed corporations from the BAV universe, spanning all BAV surveys carried out around the globe between 1993 and 2014. ***, **, or * indicate that the coefficient estimate is significantly different from zero at the 1%, 5%, or 10% level, respectively.

	PCA_BASED_			
	INVENTIVENESS	PROGRESSIVE	DYNAMIC	INNOVATIVE
	1	2	3	4
PRIORITY_WATCHLIST _{j,t}	-0.12*** (-4.37)	-1.49** (-2.38)	-2.86*** (-4.33)	-1.53** (-2.34)
WATCHLIST _{j,t}	-0.05** (-2.37)	-0.61 (-1.16)	-1.25** (-2.38)	-0.73 (-1.38)
STRONGER_ACE _{j,t}				
WEAKER_ACE _{j,t}				
Firm–Year FE	Yes	Yes	Yes	Yes
Firm–Country FE	Yes	Yes	Yes	Yes
Observations	28,541	28,541	28,541	28,541
<i>R</i> ²	0.835	0.773	0.744	0.748

	Δ PCA_BASED_ INVENTIVENESS	Δ PROGRESSIVE	Δ DYNAMIC	Δ INNOVATIVE
	5	6	7	8
PRIORITY_WATCHLIST _{j,t}				
WATCHLIST _{j,t}				
STRONGER_ACE _{j,t}	0.05*** (2.86)	1.31*** (3.41)	1.04** (2.54)	0.01 (0.01)
WEAKER_ACE _{j,t}	-0.01 (-0.77)	-0.13 (-0.32)	-0.27 (-0.70)	-0.24 (-0.57)
Firm–Year FE	Yes	Yes	Yes	Yes
Firm–Country FE	Yes	Yes	Yes	Yes
Observations	26,031	26,031	26,031	26,031
R ²	0.236	0.221	0.232	0.227
