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Judge Paul Michel (Ret.), Board Member
Judge Kathleen O'Malley (Ret.), Board Member
Frank Cullen, Executive Director

March 3, 2025

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

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

Dear Chairman Smith and Ranking Member Sánchez:

On behalf of the Council for Innovation Promotion (C4IP), a bipartisan coalition dedicated to promoting strong and effective intellectual property rights, we encourage you to exercise careful oversight of the United States Trade Representative's upcoming Special 301 Report.

Historically, this congressionally mandated annual report has served as a vital tool for identifying foreign laws, policies, and practices that undermine U.S. intellectual property rights and market access, in turn harming American businesses.¹ Previous reports, from both Republican and Democratic administrations, actively monitored and criticized policies — such as unnecessary compulsory (i.e. forced) licensing — that devalued American IP.²³

By publicly exposing violations, the report helps American diplomats push our trading partners to enact reforms — which in turn protect and grow American jobs in IP-intensive industries, which now support over 47 million workers.⁴

[1] United States Trade Representative, *Special 301 Report*, (2016), <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2016/special-301-report>.

[2] Ambassador Michael B.G. Froman, United States Trade Representative, *2015 Special 301 Report*, 28 (2015), <https://ustr.gov/sites/default/files/2015-Special-301-Report-FINAL.pdf>.

[3] Ambassador Robert Lighthizer, United States Trade Representative, *2020 Special 301 Report*, 13 (2020), https://ustr.gov/sites/default/files/2020_Special_301_Report.pdf.

[4] Andrew A. Toole, Ph.D., Chief Economist, Richard D. Miller, Ph.D., Economist, and Nicholas Rada, Ph.D., Deputy Chief Economist, *Intellectual property and the U.S. economy: Third edition*, U.S. Patent and Trademark Office, 4 (2019), <https://www.uspto.gov/sites/default/files/documents/uspto-ip-us-economy-third-edition.pdf>.

Since 2021, however, the report has increasingly departed from its legal mandate. More recent reports have refrained from highlighting concerns about compulsory licensing practices, likely emboldening some nations to expand their use beyond emergency circumstances.⁵⁶⁷⁸⁹

The annual report has also ceased to address several other crucial global IP challenges. For example, trading partners increasingly employ restrictive patentability criteria that prevent U.S. companies from securing patents on valuable improvements to existing technologies, particularly in the pharmaceutical sector.¹⁰ In addition, market access barriers have proliferated, with foreign governments implementing non-market-based pricing systems and discriminatory policies that fail to appropriately value American innovations.¹¹

These changes have made the Special 301 Report less useful as a diplomatic tool to support U.S. innovation. The report's tenor has signaled to trading partners that they will face minimal consequences for violating Americans' IP rights.

The deteriorating quality of the Special 301 Report is not surprising, given that USTR itself recently advocated for policies that undermine IP rights and future innovation. Most notably, in 2021, USTR supported waiving certain IP protections for COVID-19 vaccines.¹² Despite strong evidence to the contrary, USTR believed at that time that IP waivers were necessary to end the pandemic.¹³ They were not.

[5] Ambassador Katherine Tai, United States Trade Representative, *2021 Special 301 Report*, (2021), [https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20(final).pdf).

[6] Ambassador Katherine Tai, United States Trade Representative, *2022 Special 301 Report*, (2022), <http://ustr.gov/sites/default/files/IssueAreas/IP/2022%20Special%20301%20Report.pdf>.

[7] Ambassador Katherine Tai, United States Trade Representative, *2023 Special 301 Report*, (2023) <https://ustr.gov/sites/default/files/2023-04/2023%20Special%20301%20Report.pdf>.

[8] Ambassador Katherine Tai, United States Trade Representative, *2024 Special 301 Report*, (2024), <https://ustr.gov/sites/default/files/2024%20Special%20301%20Report.pdf>.

[9] Ed Silverman, *Colombia issues a compulsory license for an HIV medicine and 'plants a flag for global health equity'*, STAT, (April 24, 2024), <https://www.statnews.com/pharmalot/2024/04/24/hiv-gsk-pfizer-viiv-colombia-compulsory-license-medicines-patents/>.

[10] Ambassador Robert Lighthizer, United States Trade Representative, *2020 Special 301 Report*, 5-6 (2020), https://ustr.gov/sites/default/files/2020_Special_301_Report.pdf.

[11] The Council of Economic Advisers, *Reforming Biopharmaceutical Pricing at Home and Abroad*, 10-15 (2018), <https://trumpwhitehouse.archives.gov/wp-content/uploads/2017/11/CEA-Rx-White-Paper-Final2.pdf>.

[12] Ambassador Katherine Tai, United States Trade Representative, *2022 Special 301 Report*, (2022), <http://ustr.gov/sites/default/files/IssueAreas/IP/2022%20Special%20301%20Report.pdf>.

[13] Ambassador Katherine Tai, United States Trade Representative, *Statement from Ambassador Katherine Tai on the Covid-19 Trips Waiver*, (May 5, 2021), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/may/statement-ambassador-katherine-tai-covid-19-trips-waiver>.

While the waiver ultimately was not used, it raised serious questions about whether IP will be protected during future crises, thereby compromising R&D investments in pandemic preparedness.¹⁴ This damaging precedent resulted in zero additional shots in arms.

We respectfully urge Congress to exercise its oversight authority to ensure that USTR fulfills its congressional mandate in the Special 301 Report. Specifically, USTR must:

- Resume analyzing and highlighting compulsory licensing abuses and other IP violations.
- Meaningfully engage with Congress regarding action plans for Priority Watch List countries.
- Resume active, forceful criticism of countries that violate international IP standards.

The United States has long recognized that strong and reliable IP rights drive innovation and economic growth. Especially given heightened strategic competition with China, USTR must be prepared to champion U.S. national security interests, which depend on strong and reliable IP rights. Restoring the Special 301 Report's effectiveness is essential to maintaining American leadership in innovation. We believe that active congressional oversight can help USTR resume its proper focus.

C4IP welcomes any questions you may have about this matter. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Frank Cullen', is positioned below the text 'Sincerely,'.

Frank Cullen
Executive Director
Council for Innovation Promotion (C4IP)

cc:

Rep. Vern Buchanan, Member, House Ways and Means Subcommittee on Trade
Rep. Darin LaHood, Member, House Ways and Means Subcommittee on Trade
Rep. Jodey Arrington, Member, House Ways and Means Subcommittee on Trade

[14] Eric M. Solovy, *The TRIPS Waiver for COVID-19 Vaccines, and Its Potential Expansion: Assessing the Impact on Global IP Protection and Public Health*, Center for Intellectual Property x Innovation Policy, (December 2022), <https://cip2.gmu.edu/wp-content/uploads/sites/31/2022/12/GMU-C-IP2-Solovy-PolicyBrief-TRIPS.pdf#page=8>.

Rep. Carol Miller, Member, House Ways and Means Subcommittee on Trade
Rep. Lloyd Smucker, Member, House Ways and Means Subcommittee on Trade
Rep. Greg Murphy, Member, House Ways and Means Subcommittee on Trade
Rep. Greg Steube, Member, House Ways and Means Subcommittee on Trade
Rep. Michelle Fischbach, Member, House Ways and Means Subcommittee on Trade
Rep. Claudia Tenney, Member, House Ways and Means Subcommittee on Trade
Rep. Blake Moore, Member, House Ways and Means Subcommittee on Trade
Rep. Beth Van Duyne, Member, House Ways and Means Subcommittee on Trade
Rep. Jimmy Panetta, Member, House Ways and Means Subcommittee on Trade
Rep. Suzan DelBene, Member, House Ways and Means Subcommittee on Trade
Rep. Don Beyer, Member, House Ways and Means Subcommittee on Trade
Rep. Terri Sewell, Member, House Ways and Means Subcommittee on Trade
Rep. Brad Schneider, Member, House Ways and Means Subcommittee on Trade
Rep. Lloyd Doggett, Member, House Ways and Means Subcommittee on Trade
Rep. John Larson, Member, House Ways and Means Subcommittee on Trade
Rep. Brendan Boyle, Member, House Ways and Means Subcommittee on Trade