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INTELLECTUAL PROPERTY

Enhanced Planning by U.S. Personnel Overseas Could Strengthen Efforts



GAO

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Highlights of [GAO-09-863](#), a report to congressional requesters

Why GAO Did This Study

Intellectual property (IP) protection and enforcement is inadequate in parts of the world, resulting in significant losses to U.S. industry and increased public health and safety risks. GAO was asked to evaluate U.S. government efforts to enhance protection and enforcement of IP overseas. Using a case study approach, this report (1) describes the key IP protection and enforcement issues at four posts in China, India, and Thailand; (2) assesses the extent to which the U.S. Patent and Trademark Office (USPTO) IP attachés and the Department of Justice (DOJ) IP Law Enforcement Coordinator (IPLEC) effectively collaborate with other agencies at the posts; and (3) evaluates the extent to which each of the posts has undertaken interagency planning in collaborating on its IP-related activities. GAO examined U.S. government documents and interviewed headquarters and post agency officials as well as U.S. private-sector and host-country representatives.

What GAO Recommends

GAO recommends that the Secretary of State direct post leadership to work with the USPTO IP attachés in countries with such attachés to: develop annual IP interagency post work plans with input from relevant agencies that set objectives and identify activities for addressing the key IP issues identified by the U.S. government. The Department of State and USPTO agreed with GAO's recommendation.

[View GAO-09-863](#) or [key components](#). For more information, contact Loren Yager at (202) 512-4128 or yagerl@gao.gov.

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What GAO Found

The U.S. government has identified weak enforcement as a key IP issue in the three case study countries; however, weaknesses also persist in their IP laws and regulations. According to the U.S. government, enforcement of existing IP laws and regulations and adjudication of suspected infringements are limited and inconsistent, and penalties are not typically sufficient to serve as an effective deterrent. U.S. government documents and U.S. officials we interviewed cited several factors that contribute to this limited and inconsistent enforcement, including flawed enforcement procedures; a lack of technical skills and knowledge of IP among police, prosecutors, and judges; a lack of resources dedicated to IP enforcement efforts; and the absence of broad-based domestic support for strong IP enforcement.

The USPTO IP attachés were generally effective in collaborating with other agencies at the four posts, primarily by acting as IP focal points, while the DOJ IPLEC collaborated with both post agencies and agency headquarters via IP forums. The IP attachés shared common characteristics that made them effective, such as IP expertise, the ability to work full time on IP, and having roles and responsibilities for which there was general agreement among post agencies and leadership. At two posts, several agency officials stated that the IP attachés were instrumental in establishing and maintaining interagency IP working groups to share ideas and coordinate on activities, enabling the agencies to speak with one voice on IP. The IPLEC collaborated through country and regional IP forums that provided technical assistance to foreign law enforcement agencies and judges on IP law enforcement issues and facilitated a network among U.S. and foreign government officials for sharing information on IP criminal investigations. The IPLEC also collaborated on case work for an array of mostly non-IP criminal activities, including money laundering, fraud, human trafficking, and child exploitation, in fulfilling his other duties as DOJ attaché.

While the four posts have adopted several practices to collaborate effectively on IP, three out of the four have not adopted interagency plans to address key IP issues. Current policy guidance on IP at the posts, such as the annual Special 301 report and embassy mission strategic plans, is high level and not generally used for planning agencies' day-to-day IP efforts. Posts could potentially enhance collaboration by developing joint strategies to translate the key IP issues identified by the U.S. government into specific objectives and activities. One post, the U.S. embassy in New Delhi, has developed a joint strategy in the form of an interagency IP work plan with specific objectives and prescribed activities for addressing key IP issues. Joint strategies can help agencies prioritize existing efforts, avoid duplication of efforts, formulate a common IP message to foreign governments, and maintain focus on IP given competing issues and personnel changes at posts.

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Abbreviations

ASEAN	Association of Southeast Asian Nations
CBP	Customs and Border Protection
Commerce	Department of Commerce
DHS	Department of Homeland Security
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
FCS	Foreign Commercial Service
FDA	Food and Drug Administration
HHS	Department of Health and Human Services
ICE	Immigration and Customs Enforcement
IP	intellectual property
IPCEN	Intellectual Property Crimes Enforcement Network
IPLEC	Intellectual Property Law Enforcement Coordinator
MSP	Mission Strategic Plan
State	Department of State
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
USAID	United States Agency for International Development
USDA	United States Department of Agriculture
USPTO	United States Patent and Trademark Office
USTR	Office of the United States Trade Representative
WTO	World Trade Organization

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United States Government Accountability Office
Washington, DC 20548

September 30, 2009

The Honorable John Conyers, Jr.
Chairman
The Honorable Lamar S. Smith
Ranking Member
Committee on the Judiciary
House of Representatives

The Honorable Howard L. Berman
House of Representatives

The Honorable Howard Coble
House of Representatives

Intellectual property (IP)¹ is an important component of the U.S. economy, and the United States is an acknowledged global leader in its creation. The protection and enforcement of IP rights is inadequate in some parts of the world, making U.S. goods subject to substantial counterfeiting and piracy activity abroad. Transnational IP crimes have been increasing, with infringers attracted by high-profit potential, ease of market entry, and relatively low risk of detection and prosecution. U.S. government efforts to protect and enforce IP rights overseas are crucial to preventing significant losses to U.S. industry and IP rights owners resulting from the trade in counterfeit and pirated goods. Additionally, many IP-violating products, such as counterfeit pharmaceuticals, have the potential to threaten public health and safety in the United States and abroad. However, federal IP protection and enforcement is complex and cuts across a wide range of functions and U.S. agencies. Federal agencies are placing new emphasis on IP protection—improving countries' IP laws and regulations—and on enforcement of those laws and regulations. For instance, the U.S. Patent and Trademark Office (USPTO) created eight IP attaché positions and the Department of Justice (DOJ) created two Intellectual Property Law Enforcement Coordinator (IPLEC) positions in U.S. embassies overseas.

¹IP is a category of legal rights that grant owners certain exclusive rights to intangible assets or products of the human intellect, such as inventions; literary and artistic works; and symbols, names, images, and designs.

Congress is concerned about the effectiveness of U.S. government efforts to protect and enforce IP rights overseas and recently passed the Prioritizing Resources and Organization for Intellectual Property Act of 2008.² Title III of that legislation created a new interagency intellectual property enforcement advisory committee composed of representatives of specified departments and agencies involved in IP enforcement. It authorizes the President to appoint an Intellectual Property Enforcement Coordinator position within the Executive Office of the President to chair the new advisory committee. Among other things, the new Coordinator is to lead the committee in the development of a joint strategic plan to reduce counterfeiting and other types of IP infringement, and to assist in the implementation of the joint strategic plan when requested by advisory committee members.

At your request, to help the new Coordinator assess the resources available to promote and protect IP rights overseas, we issued a report in February 2009 that describes the federal agencies that have personnel posted overseas who conduct activities related to IP enforcement and protection and their respective roles and responsibilities.³ As the second part of that same request, this report examines U.S. government efforts to enhance protection and enforcement of IP overseas by focusing on four posts in three countries: Beijing and Guangzhou, China; New Delhi, India; and Bangkok, Thailand.⁴ The U.S. government has identified each of these countries as having significant IP problems and each is an area of focus for U.S. IP efforts overseas. Specifically, this report (1) describes the key IP protection and enforcement issues that the U.S. government has identified in China, India, and Thailand; (2) assesses the extent to which the USPTO IP attachés and the DOJ IPLEC effectively collaborated with other agencies at posts in China, India, and Thailand to improve IP protection and enforcement; and (3) evaluates the extent to which each of the four posts has undertaken interagency planning in collaborating on their IP-related activities.

²Prioritizing Resources and Organization for Intellectual Property Act, 2008 (Pub. L. No. 110-403).

³See GAO, *Overseas U.S. Government Personnel Involved in Efforts to Protect and Enforce Intellectual Property Rights*, [GAO-09-402R](#) (Washington, D.C.: Feb. 26, 2009).

⁴The posts in Beijing, New Delhi, and Bangkok are U.S. embassies; the post in Guangzhou is a U.S. consulate.

To address these objectives, we interviewed U.S. government officials and obtained and reviewed documentation on overseas U.S. government personnel and their IP activities from the Departments of Commerce (Commerce), Health and Human Services (HHS), Homeland Security (DHS), Justice (DOJ), and State (State), and from the Office of the U.S. Trade Representative (USTR). We also collected and analyzed documentation from these agencies that discussed key IP protection and enforcement issues around the world and that identified those countries where the U.S. government believes IP problems are most acute, including the Special 301 reports for 2008 and 2009. We also reviewed other documents discussing key IP issues, including the 2008 and 2009 National Trade Estimate Report on Foreign Trade Barriers, talking points from presentations, internal U.S. government IP newsletters, agency reports to their headquarters offices, and materials produced to assist U.S. businesses. Our discussion on foreign laws and regulations is based primarily on interviews with U.S. officials and U.S. government documentation. Determining that a case study approach was the best way to focus our work, we selected three case study countries using a set of criteria that included: the extent to which the U.S. government has identified the country and its region as having significant IP problems, the types and range of IP problems that exist in the country, and the presence of U.S. government personnel posted in the country involved in IP activities, including USPTO IP attachés; CBP, ICE, and FBI attachés; and DOJ personnel, particularly the IPLEC in Asia. Based upon our criteria, we conducted fieldwork at posts in Beijing and Guangzhou, China; Bangkok, Thailand; and New Delhi, India, in March 2009.

In each location, we met with those U.S. government personnel from Commerce, HHS, DHS, DOJ, State, USTR, and the Department of Agriculture (USDA) that were present at the post and performed IP-related functions. We held these meetings to learn about the types of IP activities they undertake, the factors that drive their work, and how the USPTO IP attachés and the DOJ IPLEC collaborated with their counterparts at the post and in headquarters, with the private sector, and with their host government. We also met with representatives from various industry associations and individual companies in each location to obtain their perspectives on the key IP issues in the country and to learn about how they seek to protect their IP, including through collaboration with the U.S. government and the host government. Finally, in each location, we met with foreign government officials to learn about the challenges they face in improving IP protection and enforcement and to obtain their perspectives on the effectiveness of their collaboration with the U.S. government on IP issues. We also obtained and reviewed documents from each post that

outlined IP problems in the countries, strategies and plans for addressing the problems, and the types of IP-related activities that are being undertaken. Using the information from our interviews and the documentation we collected at each post, we evaluated the extent to which the USPTO attachés and DOJ's IPLEC have adopted good practices to collaborate with other agencies at the posts on promoting IP protection using the following GAO criteria: agreeing upon agency roles and responsibilities; establishing compatible policies, procedures, and other means to operate across agency boundaries; identifying and addressing needs by leveraging resources; and establishing mutually reinforcing or joint strategies.⁵ We broke out the last criteria—establishing mutually reinforcing or joint strategies—to evaluate the extent to which the posts have undertaken interagency planning to guide their IP collaboration efforts. This report covers only the IP attachés' activities in the three case study countries—China, India, and Thailand—and not their regional responsibilities. Because we utilized a case study approach, our findings cannot be generalized and do not necessarily apply to countries or posts other than those we visited. We solicited comments from all the key agencies discussed in the report and incorporated their comments as appropriate.

We conducted this performance audit from August 2008 through September 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Generally, individual countries grant and enforce IP rights. Intellectual property is any innovation, commercial or artistic, or any unique name, symbol, logo, or design used commercially. Intellectual property rights protect the interests of the creators of these works by giving them property rights over their creations.

- *Patent*: Exclusive rights granted to inventions for a fixed period of time, whether products or processes, in all fields of technology, provided they

⁵See GAO, *Results-Oriented Government: Practices That Can Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: October 2005).

are new, not obvious (involve an inventive step), and have utility (are capable of industrial application).

- *Copyright*: A set of exclusive rights subsisting in original works of authorship fixed in any tangible medium of expression now known or later developed, for a fixed period of time. For example, works may be literary, musical, or artistic.
- *Trademark*: Any sign or any combination of signs capable of distinguishing the source of goods or services is capable of constituting a trademark. Such signs, in particular, words including personal names, letters, numerals, figurative elements and combinations of colors as well as any combination of such signs are eligible for registration as trademarks.
- *Trade secret*: Any type of valuable information, including a formula, pattern, compilation, program device, method, technique, or process that gains commercial value from not being generally known or readily obtainable; and for which the owner has made reasonable efforts to keep secret.
- *Geographical indication*: Indications that identify a good as originating in a country, region, or locality, where a given quality, reputation, or other characteristic of the good is essentially attributable to its geographic origin.

“Pirated copyright goods” means any goods that are copies made without the consent of the right holder or person duly authorized by the right holder. “Counterfeit goods” means any goods, including packaging, bearing, without authorization, a trademark that is identical to a trademark validly registered for those goods, or that cannot be distinguished in its essential aspects from such a trademark, and that thereby infringes the rights of the owner of the trademark in question.⁶

While determining the exact magnitude of the problem is difficult, industry groups suggest that counterfeiting and piracy are on the rise and that an increasingly broad range of products, from auto parts to razor blades, and from vital medicines to infant formula, are subject to counterfeit

⁶For the terms—intellectual property, patent, copyright, trademark, trade secret, geographical indication, pirated copyright goods, and counterfeit goods—we used definitions provided by USPTO.

production. High profits and low risk have drawn in organized criminal networks and technology has facilitated the manufacture and distribution of counterfeit and pirated products, resulting in a global illicit market that competes with genuine products. Although the public is often not aware of the issues and consequences surrounding IP theft, many counterfeit products raise serious public health and safety concerns, and the annual losses that companies face from IP violations are substantial.

Legal protection of IP varies greatly around the world, and several countries, including China, India, and Thailand are havens for the production and sale of counterfeit and pirated goods. Under its annual Special 301 process,⁷ the United States has designated China, India, and Thailand as Priority Watch List countries, meaning that they are not providing an adequate level of IP protection or enforcement, or market access for persons relying on IP protection. Priority Watch List countries are the focus of increased bilateral attention regarding IP issues. China, India, and Thailand are also members of the World Trade Organization (WTO) and must comply with the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which provides minimum standards for IP protection and enforcement.⁸

Seven federal agencies, and entities within them, undertake the primary U.S. government activities in support of IP rights overseas. These agencies are: Commerce, State, DOJ, DHS, HHS, USTR, and the U.S. Agency for International Development (USAID).⁹ Key entities include Customs and

⁷"Special 301" refers to certain provisions of the Trade Act of 1974, as amended by the 1988 Omnibus Trade and Competitiveness Act (Pub. L. 100-418), that require USTR to annually identify foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons who rely on intellectual property protection. USTR identifies these countries with substantial input from interested persons and in consultation with U.S. agencies, and publishes the results of its reviews in an annual report.

⁸TRIPS came into force as part of the WTO in 1995. Under TRIPS, all WTO member countries are obligated to establish laws and regulations that meet a minimum standard for protecting copyrights, trademarks, patents, and other forms of IP rights. It also provides for enforcement measures for members. Developed countries were required to implement the TRIPS Agreement fully as of January 1, 1996. Developing countries were given a transition period for many obligations until January 1, 2000. Least-developed countries were granted a longer transition period, until January 1, 2006, with a possibility of a further extension. Additionally, for pharmaceutical patent obligations, least-developed countries have until January 1, 2016.

⁹The U.S. Copyright Office and the International Trade Commission also play roles in IP protection, but do not have personnel overseas.

Border Protection (CBP), the Food and Drug Administration (FDA),¹⁰ Immigration and Customs Enforcement (ICE), the Federal Bureau of Investigation (FBI), the International Trade Administration (ITA) and USPTO.¹¹

USPTO and DOJ recently established positions overseas that have IP protection and enforcement as their primary mission, in order to enhance U.S. efforts. USPTO created its IP attaché program to address country-specific and regional IP problems in key parts of the world.¹² USPTO's first IP attaché was posted in Beijing, China, in 2004. USPTO added an attaché in Beijing, China, in 2006; and an attaché in Guangzhou, China, in 2007. During 2006 and 2007, USPTO also expanded the program to five other countries: Egypt, Thailand, Russia, Brazil, and India. Since then, the Egypt position has been eliminated and a new position in Doha, Qatar, is in the planning stages. Table 1 shows the current IP attaché positions, their country and post locations, and their geographic areas of coverage. The IP attachés work on a range of IP activities in coordination with other federal agencies, U.S. industry, and foreign counterparts.¹³

¹⁰FDA's primary mission is to ensure public health and safety. It has both regulatory and law enforcement authorities and responsibilities. FDA's Office of Criminal Investigations pursues counterfeit product investigations in furtherance of the agency's public health mission.

¹¹USDA can at times also be involved in IP issues. For example, USDA sponsors programs supporting the development of biotechnology overseas that can include an IP component.

¹²Although the IP attaché program is managed by USPTO, the attachés are posted overseas as Foreign Commercial Service officers and report to the Senior Commercial Officer at their respective posts. For each attaché position, USPTO has entered into a memorandum of understanding with the International Trade Administration's U.S. & Foreign Commercial Service, to outline certain roles and responsibilities associated with the position.

¹³According to USPTO, the IP attachés are tasked with advocating U.S. government IP policy, interests and initiatives; assisting U.S. businesses on IP protection and enforcement; improving IP protection and enforcement by conducting training activities with host governments; advising officials from other U.S. agencies on the host government's IP system; advising representatives of the host government or region on U.S. intellectual property law and policy; helping to secure strong IP provisions in international agreements and host country laws, and working to monitor the implementation of these provisions; and performing limited commercial service duties as necessary, such as representing the commercial service at host government functions and advising U.S. companies on the local IP environment.

Table 1: Number of IP Attaché Positions, Country and Post Locations, and Geographic Areas of Coverage, as of July 2009

Country	Post	Number of positions	Geographic area of coverage
China	Guangzhou	1	Most of southeastern China, including Fujian, Guangdong, and Guangxi Provinces, and Hainan Island.
China	Beijing	2	All of China excluding the parts of southeastern China listed above.
Thailand	Bangkok	1	Southeast Asia and Association of Southeast Asian Nations (ASEAN-Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, and Vietnam).
India	New Delhi	1	South Asia (India, Pakistan, Bangladesh, Nepal, Bhutan, Sri Lanka, and the Maldives).
Brazil	Rio de Janeiro	1	Central and South America, Mexico, and the Caribbean.
Russia	Moscow	1	Russia.
Qatar (in planning stages)	Doha	1	Middle East and North Africa.

Source: USPTO.

At the time of our audit work overseas in March 2009, both IP attaché positions in Beijing were vacant, with the two IP attachés departing in August and November of 2008, respectively. According to USPTO, the IP attaché in Guangzhou helped manage the office in Beijing in the absence of an IP attaché there; and from December 2008 through August 2009, on a regular basis, USPTO headquarters sent attorneys with expertise and experience on China IP matters from the Office of IP Policy and Enforcement to Beijing on short-term assignments to manage the office. In March 2009, USPTO officials told us that a candidate had been selected to fill one of the vacant attaché positions. The new attaché arrived in early September 2009. USPTO stated that it intends to fill the other vacancy in Beijing and will be putting out a vacancy announcement in the near future.

DOJ placed two federal prosecutors with IP expertise to serve as IPLECs, in Bangkok, Thailand, and Sofia, Bulgaria, in January 2006 and November

2007, respectively.¹⁴ The IPLECs are tasked with advancing the criminal enforcement of laws in their respective regions through a combination of training, technical assistance, and outreach.¹⁵ The IPLEC in Thailand also serves as a DOJ attaché and thus, according to DOJ officials, performs case work, including investigations on IP. Although IP is a central part of the mission of the IPLEC in Thailand, as DOJ attaché, this person is also responsible for a range of DOJ functions beyond IP.¹⁶

In addition to the IP attachés and the IPLECs, there are a variety of other types of U.S. government personnel posted overseas who perform IP functions. For instance, State economic, political, and public affairs officers may be involved in IP activities at posts. ICE and CBP attachés may also be involved. Other personnel such as FBI legal attachés, Commerce's Foreign Commercial Service (FCS) officers, FDA investigators and technical experts, and USDA Foreign Agricultural Service officers are among the other U.S. government personnel that may be involved in IP activities at posts.

As described in our February 2009 report, the various U.S. personnel posted overseas conduct a range of activities related to IP enforcement and protection within their agencies' respective roles and responsibilities. These responsibilities generally include advancing U.S. IP policy, dialoguing with foreign counterparts on IP, providing training and technical assistance, supporting U.S. companies, facilitating enforcement

¹⁴The IPLEC in Bangkok, Thailand, covers the ASEAN countries, China, and India. The IPLEC in Sofia, Bulgaria, covers over 20 nations in Central and Eastern Europe and has provided guidance to officials in Ukraine and Russia.

¹⁵According to DOJ officials, the IPLEC in Asia is expected to develop relationships with foreign law enforcement agencies and prosecutors in the area, provide legal and technical assistance to foreign law enforcement agencies on IP, coordinate investigations and prosecutions of IP offenders located in the region, and assist federal prosecutors in the United States working on IP cases involving Asia; and examine IP crime trends in the region. According to State officials, the IPLEC in Sofia is funded wholly by the Department of State and therefore has a different mission in that the IPLEC is not authorized to do criminal case work. Specifically, the activities of the Sofia IPLEC include a greater amount of IP enforcement training and technical assistance to foreign officials, and guidance to U.S. government officers in the region on IP training issues than the IPLEC in Bangkok.

¹⁶According to DOJ officials, the DOJ attachés work with U.S. and foreign law enforcement officials, prosecutors, and judges on a range of criminal cases and investigations, including those related to IP violations. DOJ officials stated that among other things, attachés are responsible for collecting evidence, locating fugitives, and working to extradite suspects. DOJ officials also stated that a key part of the attachés' job is to build relationships with their foreign counterparts and provide advice and assistance on investigative matters.

of IP laws and regulations, and conducting public awareness campaigns. Table 2 elaborates on these responsibilities and the types of activities they entail, and provides examples of how such activities are undertaken by U.S. personnel in China, India, and Thailand.

Table 2: Types of IP-Related Activities Undertaken by U.S. Personnel in China, India, and Thailand

Primary IP responsibilities of U.S. government personnel overseas	Types of activities	Examples of specific activities undertaken by U.S. personnel in China, India, and Thailand
Advancing U.S. IP policy	<ul style="list-style-type: none"> • Negotiating new bilateral and multilateral IP agreements. • Monitoring foreign countries' implementation of existing IP agreements. • Assessing and reporting on weaknesses in foreign countries' IP protection and enforcement regimes. 	<ul style="list-style-type: none"> • In all three countries, submitted reports on the status of IP in their host country as part of the annual Special 301 process.
Dialoguing with foreign counterparts on IP issues	<ul style="list-style-type: none"> • Participating in bilateral working groups. • Participating in international organizations such as the World Customs Organization or the World Trade Organization. • Conducting ongoing discussions with foreign counterparts. 	<ul style="list-style-type: none"> • In China, helped plan for and participate in the Joint Commission on Commerce and Trade. • In Thailand, helped create an IP Crimes Enforcement Network to encourage collaboration and information sharing among law enforcement officials in the region.
Providing training and technical assistance for foreign counterparts	<ul style="list-style-type: none"> • Holding seminars and workshops for foreign counterparts to instruct them on IP protection and enforcement matters. • Advising foreign governments on the drafting of strengthened IP laws and regulations. • Educating foreign counterparts on the U.S. system for protecting and enforcing IP. • Conducting longer-term programs to build capacity among foreign counterparts to protect and enforce IP laws. 	<ul style="list-style-type: none"> • In India, worked with the host government to establish alternative dispute resolution centers to help reduce the backlogs in the court system that result in lengthy delays in cases including those related to IP. • In China, conducted training sessions for local judges that featured presentations on IP cases by visiting U.S. judges.
Supporting U.S. companies	<ul style="list-style-type: none"> • Counseling individual companies on options available to protect their intellectual property overseas. • Producing materials to educate companies on the steps they need to take to protect their IP in countries. • Conducting seminars and workshops to educate companies on the steps they need to take to protect their IP in countries. • Raising U.S. industry IP concerns with foreign governments. 	<ul style="list-style-type: none"> • In all three countries, helped develop IP Toolkits to assist businesses to protect their IP. • In India, met with visiting U.S. trade delegations to provide information on the status of IP protection in the country. • In China, submitted letters to the host government when U.S. companies' cases have stalled in the court system.

Primary IP responsibilities of U.S. government personnel overseas	Types of activities	Examples of specific activities undertaken by U.S. personnel in China, India, and Thailand
Facilitating enforcement of IP laws and regulations	<ul style="list-style-type: none"> Gathering information in support of U.S. based IP investigations. Working with foreign law enforcement officials to generate investigative leads concerning suspected IP violators. Assisting foreign law enforcement officials conduct operations against IP violators. Helping foreign counterparts target shipments suspected to contain IP-violating goods. Preparing international litigation against countries violating IP agreements. 	<ul style="list-style-type: none"> In China, helped gather information on weaknesses in China's IP regime in support of the U.S. government's WTO dispute against China. In China, helped coordinate a joint investigation between U.S. and Chinese law enforcement officials involving counterfeit software. In Thailand, worked with the national government to extradite a pharmaceutical counterfeiter to the U.S. for prosecution.
Promoting public awareness of IP issues	<ul style="list-style-type: none"> Working to increase awareness of the harms associated with IP-violating goods among the public in foreign countries. Educating foreign companies on how strong IP protections in their countries benefit them. 	<ul style="list-style-type: none"> In Thailand, hosted a concert featuring domestic artists to raise awareness of the importance of IP for such artists. In China, helped organize a student contest to write a public service message on movie piracy and held a media event to recognize the winner.

Source: GAO analysis of agency data.

While Weak Enforcement Is a Key IP Issue, Weaknesses also Persist in IP Laws and Regulations

The U.S. government has identified weak enforcement as a key IP issue in the three case study countries; however, weaknesses also persist in their IP laws and regulations. According to the U.S. government, enforcement of existing IP laws and regulations and adjudication of suspected infringements are limited and inconsistent and penalties are not typically sufficient to serve as an effective deterrent. U.S. government documents and U.S. officials we interviewed cited several factors that contribute to this limited and inconsistent enforcement including flawed enforcement procedures; a lack of technical skills and knowledge of IP among police, prosecutors, and judges; a lack of resources dedicated to IP enforcement efforts; and the absence of broad-based domestic support for strong IP enforcement. While acknowledging progress in recent years, the U.S. government also continues to cite various weaknesses in the three countries' IP laws and regulations that need to be addressed.

Limited and Inconsistent IP Enforcement Is Influenced by a Variety of Factors

The U.S. government has identified weak enforcement as a key IP issue in China, India, and Thailand.¹⁷ According to the U.S. government, the extent to which existing IP laws and regulations are enforced and pursued through the courts in the three case study countries is limited and inconsistent. According to various U.S. officials we interviewed overseas, enforcement tends to be particularly weak and inconsistent outside of major commercial centers. For instance, some U.S. officials in China noted that cases of IP enforcement are much more common in large cities such as Beijing and Shanghai than in other parts of the country. In India, U.S. officials noted that IP enforcement is weak in much of the country with significant variations in the level of enforcement among India's 28 states.

While the three countries have taken some steps to demonstrate an increased emphasis on IP enforcement, various U.S. officials in the three countries stated that there continues to be an uneven commitment to such efforts. A range of U.S. officials and private-sector representatives we met with made the point that all three countries are increasingly looking to be centers of innovation and that there is a growing awareness that domestic production of IP is important for their economic development. As this process occurs, various U.S. officials and private-sector representatives we interviewed believe that the three countries will have a greater incentive for strong IP enforcement. At this point though, various U.S. officials and private-sector representatives noted that the three countries' continue to not be fully committed to strong and sustained enforcement efforts. For instance, in the 2009 Special 301 Report, the U.S. government reported that during the 2008 Beijing Olympics, China took unprecedented steps to crackdown on the unauthorized retransmission of broadcasts and other infringing activities over the Internet; however, the report also noted the need for China to demonstrate this type of resolve more generally in combating piracy and counterfeiting on the Internet. Additionally, the U.S. government reported in the 2009 Special 301 Report that an innovative agreement brokered by the Beijing municipal courts between IP rights holders and the landlord of a commercial center that was a well-known

¹⁷The Special 301 process serves as the U.S. government's primary mechanism for identifying IP issues around the world. As Priority Watch List countries, China, India, and Thailand are each discussed individually in the 2009 Special 301 report. The U.S. government also discusses IP issues in the three countries in other globally-focused documents such as the 2009 National Trade Estimate Report on Foreign Trade Barriers and in country-specific documents such as the IP Toolkits produced by the U.S. embassies in each location. Key IP issues are also identified by the U.S. government in the context of bilateral dialogues such as the U.S./China Joint Commission on Commerce and Trade and the U.S./India Trade Policy Forum.

source for an array of violating goods has not been enforced despite initial optimism. In India, 23 states have created specialized IP units within their police forces, but U.S. officials we interviewed stated that only a few of these units are currently operational. Furthermore, the officials noted that even these specialized units have other priorities, with IP not always being at the top of the list. Thailand has set up a specialized IP court, but the U.S. embassy in Thailand has reported that the court is not living up to its full potential with most convictions resulting in minimal sentences, such as small fines or required community service. The U.S. embassy in Thailand has also reported that Thai authorities have labeled parts of Bangkok and other Thai cities that are well-known retail centers for infringing products as “red zones;” however, the embassy noted that since the designations, there have not been any sustained efforts to reduce the availability of pirated and counterfeit goods in these zones.

U.S. government documents and U.S. officials we interviewed cited several factors that contribute to this limited and inconsistent enforcement. Some of these factors are unique to IP enforcement, while others are symptoms of larger, systemic problems that the countries face. These factors include:

Flawed Enforcement Procedures

The U.S. government has identified a variety of problems with the countries’ IP enforcement procedures and subsequent judicial proceedings that limit the effectiveness of actions against infringers. For instance, several U.S. officials in China stated that high thresholds for criminal violations mean that most cases are handled using administrative enforcement actions, rather than criminal prosecutions that have the potential to result in more serious punishments for violators. With an administrative enforcement action, the violator is ordered to stop performing the infringing activity and is levied a fine. The 2009 Special 301 report states that administrative fines are not consistently levied in China and are too low to be an effective deterrent for infringers with most seeing the fines simply as part of the cost of doing business. In the 2009 National Trade Estimate Report on Foreign Trade Barriers, the U.S. government reported that documentary and procedural requirements in India have created impediments to the prosecution of IP violators. The 2009 National Trade Estimate Report on Foreign Trade Barriers also stated that in Thailand, police are at times reluctant to involve themselves in raids due to limited legal protections, even when acting in an official capacity.

Lack of Technical Skills and Knowledge of IP among Police, Prosecutors, and Judges

Enforcement is also hampered by a lack of technical skills and knowledge of IP among police, prosecutors, and judges in the three countries. For example, a U.S. law enforcement official we interviewed in India stated that a lack of basic technical skills and awareness of investigative

techniques limits the Indian police's ability to successfully conduct IP enforcement actions. Additionally, the U.S. embassy in India has noted that many government prosecutors lack even a basic awareness of IP rights. In Thailand, a representative from the private sector said that Thai police are uncertain as to what to do after they have conducted a raid and are reluctant to do the necessary paperwork that is required to turn a strong case over to a prosecutor. In China, U.S. officials stated that historically, Chinese judges were not required to have law degrees, with many judicial appointees being former army officers. While some U.S. officials we interviewed noted that China has increased the requirements for judges in recent years, the officials said that there continues to be a great deal of inconsistency in judges' knowledge level and competency. One representative from the private sector noted as an example that there is a need for more IP case law to be published in China since many judges have little awareness of previous IP cases and cannot capitalize on precedent to guide them in their decisions.

Limited Resources for IP Enforcement

The three countries are also faced with limited resources that challenge their ability to dedicate sufficient time and energy to IP enforcement, particularly given other competing priorities. For example, the U.S. embassy in Thailand has reported that the Thai police generally lack the resources to undertake enforcement actions apart from those cases initiated by rights holders, with the Thai police typically relying on rights holders to perform the majority of investigative work and evidence collection. Additionally, the embassy has noted that rights holders are generally required to pay the costs of such raids. As a consequence, rights holders often find it cost-prohibitive to seek out police action in areas much beyond Bangkok. In India, the U.S. embassy has reported that the courts are extremely backlogged with it taking years before cases are resolved; however, U.S. officials noted that India has taken some steps to reduce the backlog of IP cases in the criminal courts in Delhi and Bangalore. In China, the U.S. government has noted that the National Copyright Administration, which is responsible for administrative enforcement actions against copyright violators, does not have sufficient personnel to carry out such actions on a wide scale.

Lack of Domestic Support for IP Enforcement

Support for strong IP enforcement among politicians and government officials, domestic industry, and the general public is also lacking in the three countries. For instance, a U.S. official we interviewed noted that in India there has been a long history of anti-IP rights sentiment among many in the government. According to U.S. embassy officials, this attitude has started to change among some senior Indian officials in the last few years; however, the U.S. embassy in India has reported that it has not yet

translated into concrete action at the national level. In Thailand, a U.S. official noted that political instability over the last few years has made it challenging to get the Thai government to focus on IP enforcement at the national level. Increased enforcement is also at times viewed as contributing to economic harm and as being counter to local interests. For instance, in the 2009 Special 301 Report, the U.S. government reported that some Chinese officials are encouraging more lenient enforcement of IP laws due to concerns about the financial crisis and the potential loss of jobs. U.S. government officials also stated that while companies in all three countries are increasingly looking to be innovators and create their own intellectual property, domestic industry has not always been a strong voice for IP enforcement and has at times seen it as being counter to their interests. For instance, a U.S. official and a private-sector representative in India noted that India's generic pharmaceutical industry has often been at odds with international innovating companies over strong enforcement of IP patent rights. Finally, various U.S. officials we interviewed stated that members of the general public in the three countries are not always supportive of strong IP enforcement. For instance, a U.S. official we met with in China noted that a view expressed by some Chinese citizens is that IP is simply a tool to help the rich get richer at the expense of ordinary citizens.

Weaknesses in IP Laws and Regulations Persist despite Some Improvements

The U.S. government generally believes that all three countries have made progress in strengthening their IP laws and regulations in recent years. For instance, U.S. officials have noted that at this point, all three countries have made progress bringing their laws into compliance with the WTO's TRIPS agreement. The U.S. government has also cited other positive developments. For instance, China has established rules that now require computers sold in the country to be pre-installed with licensed operating system software in an effort to reduce purchases of pirated software. In 2008, India passed a law strengthening penalties for spurious and adulterated pharmaceuticals. Additionally, India has approved initiating action for accession to the Madrid Protocol¹⁸ and has passed a bill to

¹⁸The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) is an international agreement that permits a trademark owner to seek registration in any of the countries that have joined the Madrid Protocol by filing a single application. This application is referred to as an international application. The World Intellectual Property Organization administers the international registration system. The resulting "international registration" serves as a means for seeking protection in member countries, each of which applies its own rules and laws to determine whether or not the mark may be protected in its jurisdiction.

amend provisions of its trademark law to reflect this accession. Thailand has implemented provisions of its 2007 Film and Video Act that target the unauthorized sale of DVDs.

While acknowledging progress, the U.S. government has identified additional improvements that need to be made in each country's legal regime for IP. Although there are key differences in the legal systems in place in each country, there are many commonalities among the issues raised by the U.S. government across the three countries. Issues raised by the U.S. government include:

Copyrights

The U.S. government has cited various weaknesses in the three countries' legal protections for copyrighted works. For instance, India and Thailand have not yet joined the World Intellectual Property Organization's Copyright Treaty or its Performances and Phonograms Treaty.¹⁹ These two treaties, which are commonly referred to as the World Intellectual Property Organization Internet Treaties, are designed to protect digital works and works distributed over the Internet. The U.S. government cites Thailand and India's accession to these treaties and the revision of their copyright laws to implement the treaties as key steps that the two countries must take to ensure adequate protections for copyrighted works given advances in technology. Another key area of concern the U.S. government has in all three countries relates to the production of optical disks, such as CDs and DVDs. For instance, one U.S. official at the embassy in Thailand noted the need for Thailand to amend its Optical Disk Manufacturing Act to increase the government's power to shut down operations where illegal infringements are occurring. In its WTO case against China, the U.S. government alleged that China's Copyright Law did not protect copyrighted works, such as movies, that did not meet China's content review standards. The U.S. government contended that this blanket denial of protection limited certain rights holders' ability to pursue enforcement actions to prevent infringing copies from being produced in China and distributed there or exported to other markets. The WTO subsequently ruled in favor of the United States on this issue, finding that this denial of protection was impermissible under TRIPS.

¹⁹The World Intellectual Property Organization, which was established in 1967, is a specialized United Nations agency that promotes the use and protection of IP. Both the Copyright Treaty and the Performances and Phonograms Treaty were established by World Intellectual Property Organization in 1996.

Patents

The U.S. government has also raised several issues with the laws governing patent protections in the three countries. For instance, while the U.S. government has credited India for several positive changes made as part of the revisions to its patent law in 2005, it has also raised concerns that many pharmaceutical companies' applications for incremental patents are not patentable under the revised law. According to a U.S. official in India, this is problematic because much of the pharmaceutical innovation that occurs today is incremental in nature and builds upon existing patents. U.S. officials also cited problems with the structure of India's system for challenging patent applications. According to these officials, under India's current system, patents cannot be granted until all challenges made by parties are resolved and India's patent law and implementing regulations do not set a specific time frame in which such challenges can be brought against a patent application. Thus, parties can file sequential challenges to significantly delay patent approvals.

The U.S. embassies in India and Thailand also noted concerns with patent linkage issues in the two countries.²⁰ For instance, a U.S. official in India stated that India's Ministry of Health has been at odds with India's Patent Office and has granted approvals for generic drugs to be brought onto the market while the innovating drugs were still eligible for exclusive marketing rights under the terms of the patent granted by the Patent Office. Similar issues exist in Thailand where the U.S. embassy has reported that there is not a formal system in place to prevent generic producers from being given approval to bring their products to market while the originals are still under patent.

In addition, the U.S. government has raised concerns or sought clarification regarding China, India, and Thailand's protections against the unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. For instance, the 2009 National Trade Estimate Report on Foreign Trade Barriers reports that Indian law does not provide for effective protection against the unfair commercial use of test or other data that companies have submitted in order to get government approval for their pharmaceutical and agricultural chemical products.

²⁰Under a patent linkage system, the regulatory authority responsible for granting marketing approvals for pharmaceuticals may not grant marketing approval for a generic version of a drug without the permission of the patent holder, if a valid patent is still in effect.

The U.S. government has also raised concerns or sought clarification regarding compulsory licensing in China, India, and Thailand.²¹ For example, Thailand has issued several compulsory licenses in recent years on pharmaceutical products, although no new licenses have been issued in 2009. The Thai government maintains that its actions did not violate its WTO commitments and the U.S. government has acknowledged Thailand's right to issue compulsory licenses; however, the U.S. government has raised concerns regarding the transparency of the process and has noted industry complaints regarding the Thai government's unwillingness to negotiate in good faith with rights holders before issuing the licenses. In the 2009 Special 301 Report, the U.S. government noted concerns with the scope and role of compulsory licensing under China's revised patent law, which will go into effect on October 1, 2009.

Trademarks

Recently, the U.S. government has raised fewer concerns with the three countries' existing trademark laws and regulations than with those protecting other types of intellectual property; however, the U.S. continues to identify certain issues. For instance, the U.S. embassy in Thailand has reported that Thailand has not implemented the Madrid Protocol on Trademarks, which allows trademark owners the ability to apply for trademark protection in all of the Protocol's signatory countries through the filing of a single application in their own national trademark offices. In China, the U.S. government has reported that there are no requirements to provide evidence of prior use or ownership when filing a trademark application, resulting in "trademark squatting" whereby third parties are able to register popular foreign trademarks for their own use.

Market Barriers

The U.S. government has also cited certain market barriers, in China in particular, as being key areas of concern, since it believes that some of these barriers create incentives for piracy and counterfeiting. For instance, the 2009 Special 301 Report and U.S. officials we interviewed stated that China's restrictions on the number of foreign films allowed to enter its market every year minimize access to legitimate versions of films, which in turn drives up the demand for pirated versions. The U.S. government has also noted in the 2009 Special 301 Report that China needs to add, on a regular basis, new drugs to its national formulary, which determines which medicines consumers will be able to legally access.

²¹The WTO Secretariat defines compulsory licensing as when a government allows someone else to produce a patented product or process without the consent of the patent owner.

The IP Attachés Generally Collaborated Effectively with Others at the Posts; the IPLEC Collaborated Via IP Forums

The USPTO IP attachés were generally effective in collaborating with other agencies at the four posts primarily by acting as IP focal points, establishing IP working groups, and leveraging resources through joint activities. The DOJ IPLEC collaborated on IP with post and agency headquarters personnel via country and regional forums such as training U.S. and foreign, police, prosecutors, and customs officials on enforcement practices. While the IPLEC collaborated with FBI and ICE officials at the posts and with DOJ headquarters on criminal casework, the cases mostly involved non-IP criminal activities under the IPLEC's dual role as DOJ attaché.

Posts Have Adopted Several Practices That Can Enhance Collaboration

GAO has found that while collaboration among federal agencies can take different forms, practices that generally enhance collaboration include agreeing upon agency roles and responsibilities; establishing compatible policies, procedures, and other means to operate across agency boundaries; and identifying and addressing needs by leveraging resources.²² We found several instances where the IP attachés demonstrated these practices in collaborating with other agencies at the posts: agreeing on roles; establishing policies and procedures; and leveraging resources. (The practice of “establishing mutually reinforcing or joint strategies” is discussed later in this report under our third objective regarding interagency planning.)

Agreeing on Roles Contributed to the IP Attachés' Effectiveness as Focal Points

Several agency officials in each of the four posts noted common factors that were important to enabling the IP attachés to serve as effective focal points. First, agreement on roles and responsibilities of the IP attachés particularly vis-à-vis the State economic section and post leadership, while challenging, was achieved in most posts. Prior to the creation of the attaché position at the four posts, State economic officers had primary responsibility for IP; now, they are the most involved in IP issues after the IP attachés. Thus, it was important that State officials and the IP attaché at each post agree on their respective roles. State economic officers in Guangzhou and Beijing raised some challenges regarding such agreement, but they and the IP attachés have successfully worked out their appropriate roles on IP, including dealing with the Chinese government.

²²GAO, *Results-Oriented Government: Practices That Can Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: October 2005).

For example, in Guangzhou, the economic officer said that he gathered information and applied diplomacy to convince the Chinese to improve their IP protection and that IP attaché played a similar role, but also offered the host government practical means, such as technical assistance. The economic officer in Beijing said it took some work, but he was able to balance his role with the subject matter expertise of the attaché, for example, deciding when the IP attaché should use his expertise to support the economic officer's diplomatic efforts and when the IP attaché should work directly with the Chinese government. However, at the post in Thailand, the lack of consensus between the IP attaché and the economic section and post leadership on the attaché's role negatively affected collaboration. For instance, a State economic officer expressed the view that the IP attaché should primarily provide training and technical assistance on IP and should have little involvement in policy and diplomacy matters as the economic section was the primary U.S. face to the Thai government on IP. According to USPTO officials, the regional role of the IP attaché may have contributed to the perception that the attaché was not intended to be the IP focal point at the post. Although the IP attaché was able to promote IP protection and enforcement through technical assistance programs, the attaché wanted to be more fully included in the embassy's IP policy considerations, such as more opportunities to provide her expertise during all phases of the Special 301 process. As a result, one private-sector representative and another U.S. agency official at the post with whom we spoke expressed confusion about who to contact on IP at the embassy.

Another element that contributed to the IP attachés' ability to serve as effective focal points was that they imparted their subject matter expertise. For example, IP attachés pro-actively shared their IP expertise among the other agencies such as providing updates on IP laws and regulations, which had increased awareness of the issue at the posts. A Foreign Agricultural Service official in Bangkok said that with the IP attaché's expertise, he was able to identify and address IP violations of agricultural products. He gave an example where an agricultural cooperator contacted him about the packaging and labeling of one of its products being copied and sold on host country grocery shelves. The Foreign Agricultural Service official said that without the IP attaché's help, he would have sent a sample to Washington where it likely would have been considered a labeling issue rather than the more accurate designation of counterfeiting.

In addition, the IP attachés had the advantage of working full time on IP. Several agency officials from all four posts said that they had multiple

responsibilities required by their broad portfolios, and some officials in some posts said they spent relatively little time on IP. In particular, the officials from the law enforcement agencies, such as ICE and FBI, at the posts where they had a presence, stated that IP was not a top priority given all the other issues they address such as counterterrorism and internet fraud. A State economic officer in Beijing said that the IP attaché compelled agency officials at the post to make time for IP despite other competing demands, while a State economic officer in New Delhi said that having the IP attaché take the lead on IP had been very helpful and an ICE official said that the arrival of the IP attaché had energized the same post on IP issues.

Finally, agency officials cited working with other agencies as a team and fostering trust and support among U.S. agency and host country government counterparts as key elements contributing to the attachés' successful role as focal points. For instance, two agency officials at one post said that the IP attaché was a team player who really encouraged communication on IP with the agencies at the posts. At another post, an agency official said that the IP attaché was very effective in building relationships with the host government, which, in turn, gave other U.S. agencies entrée to state their case on IP with the host government officials.

Some IP Attachés Created IP Working Groups as Mechanisms for Collaboration

At the embassies in New Delhi and Beijing, the IP attachés played a key role in creating interagency IP working groups soon after their arrival. Several agency officials at these two posts said that the multiple duties, heavy demands in terms of official visitors, and the large number of personnel at the post made it difficult to rely solely on informal communications to address IP. Accordingly, the IP attachés facilitated the formation of IP working groups for agencies to meet and share information on IP and update each other on their respective IP activities. The meetings were usually led by the IP attaché and might include attendees from USTR, the State economic section, the Foreign Agricultural Service, and the FCS as well as enforcement agencies such as ICE, CBP, FBI, and DOJ, depending on the agencies located at the two posts.

Several agency officials in New Delhi and Beijing said that the working groups provided several advantages. For instance, the working group meetings allowed agencies to learn, on a regular basis, of each other's upcoming activities on IP, hear about news and trends in IP, and complement each other's efforts such as arranging to attend each other's training programs to lend their particular expertise. One agency official said that when she first arrived at the post in Beijing, the working group

helped her get up to speed on the IP issues and priorities and take advantage of opportunities to raise them in her meetings with the host government.

The importance of the IP working group and the role of the attaché in Beijing was demonstrated when the working group became inactive after the attaché left the post in August 2008 and the position became vacant. Two agency officials at the post said that presently without these meetings, there was less focus on IP at the post. One of these two officials said that although agency officials had actively exchanged emails since the attaché's departure, a more formal collaborative process would be useful to ensure that the embassy spoke with one voice on IP. In addition, the same official said that the meetings were particularly important to maintain connection with the enforcement side, which he said tends to be more reluctant to share information with other agencies at the post. At the consulate in Guangzhou, one agency official said that he had participated in the embassy's working group meetings in Beijing by phone until they were discontinued with the departure of the IP attaché; he hoped that the embassy working group meetings would be resumed when the IP attaché vacancy was filled, saying that the meetings kept him informed of IP events at the capital.

In Thailand, IP issues are covered in two regular, large interagency meetings at the post: the Economic Cluster and the Law Enforcement Working Group. In addition, according to the IP attaché, for the past couple of years, the attaché held periodic informal meetings on IP with officials from State, DOJ, and DHS to discuss IP issues. The IP attaché said that although participants' regional responsibilities and travel schedules prevented regularly scheduled meetings, this group met at least 10 times from October 2006 to the end of 2008. In late 2008, the IP attaché worked with the Deputy Chief of Mission to establish a more formal IP working group. The first meeting of the IP working group was in January 2009, chaired by the Deputy Chief of Mission, and coordinated by the IP attaché. As of June 2009, USPTO had instituted a new requirement that the IP attachés and State Department embassy staff in all the posts where IP

attachés are posted form an “IPR[ights] task force” that meets on a regular basis.²³

The IP Attachés also Leveraged Resources through Joint Activities

The IP attachés complemented the efforts of other agencies to enhance IP protection and enforcement at all four posts by leveraging resources through joint IP activities with other agency officials. For example, the IP attachés helped FCS’ efforts to assist and encourage individuals to do business in the country by providing advice on how to avoid IP problems, and answering IP-related questions. For example, the attaché explained host country IP regulations to U.S. companies in order to avoid customs related delays, and produced educational materials on IP for industry trade shows. In China, an FCS official and the IP attaché from Guangzhou said these efforts helped avoid situations that would lead to more WTO dispute settlement cases down the road. An FCS official in New Delhi said that the IP attaché has worked to remove the silos between FCS and USPTO at post, such as providing FCS clients with information on the IP situation in India.

Economic officers in two posts provided examples of where the IP attachés expertise enhanced the officers’ access to and relationship with host country officials on IP. For instance, the economic officer in New Delhi said that the IP attaché had used his expertise to build trust and rapport with the host government on IP issues and complement the economic officer’s diplomacy with details on potential solutions.

Another economic officer in Guangzhou said that he worked closely with the IP attaché on a daily basis to sell the idea that IP rights and their enforcement was important and that the attaché facilitated this joint effort by cutting through the bureaucratic layers in the host government.

A public affairs officer in Guangzhou said that he had worked with the IP attaché on a series of public affairs events and that the attaché has also met with other stakeholders such as academics, students, and industry groups on IP that provided the public affairs officer with new contacts for

²³In its June 2009 Operating Plan, USPTO required that “USPTO and State Department staff form an informal ‘IPR[ights] Task Force’ that meets on a regular basis, possibly at least once a month. The task force will help to better delineate the roles and responsibilities of and cooperation between the Economic Officer and the IPR[ights] Attaché. The regular meetings of the task force could cover the following topics: (1) reporting on IPR[ights]-related meetings and activities; (2) input of IPR[ights] Attachés in the Special 301 Review process; and (3) IPR[ights] Attaché collaboration and coordination on the posts’ mission strategic plans.”

his work. He said that the IP attaché had been very successful in amplifying the issue by making sure that IP was being discussed in the media. The public affairs officer in Bangkok said that the IP attaché provided talking points on IP for the U.S. ambassador at media events. Also in Bangkok, the IP attaché worked with CBP counterparts on customs enforcement training.

The IPLEC Collaborated on IP with Post and Headquarters Personnel through Forums, and Primarily Addressed Non-IP Casework

The IPLEC collaborated on IP primarily through IP forums with other U.S. agency officials posted in several countries in the region, including Thailand and to a lesser extent China and India, as well as with agency headquarters personnel. With regard to case work, his primary focus was on his responsibilities as the DOJ attaché in which he works with U.S. and foreign law enforcement officials, prosecutors, and judges on an array of mostly non-IP criminal cases and investigations in the region that involve, among other things, money laundering, fraud, human trafficking, and child exploitation.²⁴

The IPLEC Collaborated on IP with Post and Headquarters Agencies through IP Forums

The IPLEC collaborated with other post and headquarters officials via regional and country IP forums. According to the IPLEC, an important part of his collaborative efforts was creating an IP Crimes Enforcement Network (IPCEN), establishing a network of law enforcement officials in the region. To facilitate the IPCEN, the IPLEC hosted a 4-day and a 3-day, regional IPCEN conference, held in 2007 and 2009, respectively, in Bangkok, Thailand. The 2007 conference was co-organized by USPTO, DOJ, and ASEAN;²⁵ and the 2009 conference by USPTO and DOJ.²⁶ Both conferences were funded by the State's Bureau for International Narcotics

²⁴According to DOJ officials, the agency did not have funding to post an additional person overseas in Thailand, but capitalized on the fact that the newly appointed DOJ Attaché already in Bangkok was an experienced IP crimes prosecutor. Thus, DOJ took advantage of the existing resource and designated this person as the IPLEC. The IPLEC in Thailand continues to have attaché duties that extend beyond IP.

²⁵The ASEAN member countries include Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, and Vietnam.

²⁶Attendees at the 2007 IPCEN came from the United States, China, Australia, Brunei, Cambodia, Indonesia, Japan, Laos, Malaysia, the Philippines, Singapore, South Korea, Thailand, and Vietnam. Countries represented at the 2009 IPCEN came from the United States, Australia, Hong Kong, Indonesia, Japan, Macao, Malaysia, Singapore, South Korea, and Thailand.

and Law Enforcement Affairs.²⁷ The goals of the two IPCEN conferences were to work directly with police, prosecutors, and customs officials attending from the United States and numerous countries in the region to share best practices on fighting IP crimes. The IPCEN conferences were also meant to create a vehicle through which participants could develop relationships and opportunities for sharing information on transnational IP criminal investigations. In addition, the IPCEN conferences were meant to strengthen communication channels in the law enforcement community and promote coordinated, multinational prosecutions of the most serious IP offenders.

In hosting the IPCEN conferences, the IPLEC collaborated with enforcement agencies at posts in the region, including CBP, ICE, and FBI.²⁸ In addition, the Deputy Chief of Mission in Bangkok spoke at both conferences, and the IP attaché from Thailand assisted in arranging both IPCEN conferences and spoke at the conference in 2007. The IP attachés from China and India were not involved in either conference. In addition, an official from USPTO headquarters was a moderator in 2009. Non-U.S. government speakers at the conferences included law enforcement officials and investigators from several countries including China, South Korea, Australia, and Japan, and some ASEAN countries as well as U.S. rights holders from a range of industries.²⁹

In addition to the IPCENs, the IPLEC said he also collaborated with post law enforcement personnel, including from CBP, ICE, and FBI and with

²⁷The Bureau for International Narcotics and Law Enforcement Affairs' training and technical assistance program facilitates U.S. government assistance to, and cooperation with, key foreign nations on matters involving cyber crime, critical information infrastructure protection, and IP crime. Bureau for International Narcotics and Law Enforcement Affairs programs combat IP violations by building capacity among foreign border and customs officials, investigators, law enforcement officials, prosecutors, and judges to detect, investigate, prosecute, and prevent IP crimes.

²⁸The 2007 IPCEN speakers included an FBI legal attaché and a CBP attaché from Bangkok, and an assistant ICE attaché from Beijing. The 2009 IPCEN included an assistant ICE attaché and an FBI legal attaché from Bangkok, an assistant ICE attaché from Beijing, an ICE attaché from Hong Kong, and an ICE attaché and FBI legal attaché from Seoul, South Korea.

²⁹Examples of topics at the IPCENs included effective strategies for prosecuting internet-based piracy, illegal production of optical discs, and retail piracy; developing positive relations between investigators and prosecutors; effective border enforcement strategies; and presentations on the perspectives of several countries regarding effective IP rights criminal enforcement strategies.

headquarters officials from DOJ and USPTO on more than 50 IP programs (2006-2009), providing legal and technical assistance to foreign law enforcement agencies and judges on IP law enforcement issues in multiple countries in the ASEAN region. Examples included IP workshops and seminars for U.S. and foreign judges, prosecutors, and investigators, and for U.S. business groups.

With regard to collaboration with State officials and IP attachés at the posts, the IPLEC said that he sometimes attended host government meetings with the State economic officers in Bangkok and also attended several Bangkok IP working group meetings. However, he said that while he had attended some IP programs sponsored by the IP attachés earlier in his tenure in Bangkok, more recently he had not collaborated regularly with the IP attachés in Bangkok, Guangzhou, Beijing, or New Delhi. The IPLEC collaborated frequently with USPTO headquarters, specifically with an official from the Office of Intellectual Property Policy and Enforcement, which organized most IP events in the region from 2006 to 2009. This USPTO official, who worked closely with the IPLEC, commented that the IPLEC's expertise as a prosecutor added depth and perspective to the programs. The IPLEC said that he had collaborated less with the IP attachés due to his many responsibilities working on regional forums and his role as a DOJ attaché, commenting that he was one person in a large region and that they had a broader set of concerns on IP than his more narrow focus on law enforcement. The IP attachés in Bangkok, New Delhi, and Guangzhou said that they viewed the IPLEC as a valuable resource and that, ideally, they would like to take advantage of his expertise more often, but found him busy with other priorities. One IP attaché commented that the IPLEC was "stretched thin" and another observed that he had a "full plate" due to the wide region and many issues he covered in addition to IP.

The IPLEC also Collaborated on Criminal Case Work, but Mostly Non-IP Related

With regard to case work, the IPLEC said he collaborated with other law enforcement agencies at the posts on a daily basis, including the FBI and ICE attachés in Thailand and other ASEAN countries, but primarily on non-IP cases in his role as DOJ attaché. The IPLEC also said he collaborated with the CBP attachés, though somewhat less. The FBI attaché in Thailand told us that he works with the IPLEC on a regular basis on various non-IP extradition cases, but knew of no recent IP cases. According to the IPLEC, since his arrival in Bangkok, there has been one IP case involving the extradition of a criminal from Thailand, in March

2008, for counterfeit pharmaceuticals, the first ever related to pharmaceuticals in the region.³⁰ According to DOJ officials, extraditions based on IP offenses are very rare. The IPLEC assists U.S. prosecutors and investigative agencies develop cases by facilitating evidence and extradition requests as well as communication between U.S. authorities and foreign law enforcement.

The IPLEC said that one focus of the IPCENs was to promote collaboration among U.S. and regional law enforcement authorities on IP cases. The IPLEC said that feedback from IPCEN attendees has been positive in terms of case-related communication. However, according to DOJ officials, the IPCEN network does not have a means to track any resulting sharing of evidence and other information, or resulting joint investigative efforts on IP cases. Ultimately, the IPLEC said that he would like to continue working on IP cases with his foreign counterparts, but finding areas where their interests coincide with those of the United States is challenging.³¹ The IPLEC further explained that although targeted prosecution of the most egregious IP offenders could result in higher sentences and have the greatest deterrent effect, countries such as Thailand have sought to improve the perception of their enforcement efforts by bringing a large number of low-value cases to trial.

The IPLEC maintained that his two roles, IPLEC and DOJ attaché, were complementary in that wearing the DOJ attaché hat gave him more credibility as the IPLEC to push countries to investigate and prosecute IP criminals. First, host country officials could see that as a prosecutor he understood that IP was one among many large-scale crimes in the region and that addressing them, given scarce resources, was a challenge. Second, other types of criminal cases have been known to generate IP cases, as IP is often intertwined with money laundering, fraud and other criminal activities. He said that his main goal as both IPLEC and DOJ attaché is to convince countries to target their criminal investigations on the most egregious transnational cases, ideally for IP crimes, but

³⁰According to DOJ, a 40-year old citizen of the Republic of the Philippines was sentenced to prison for his role in a scheme to manufacture, import and distribute counterfeit pharmaceutical drugs in the United States. Charged by criminal complaint in June 2006, this individual was the first foreign national to be extradited to the United States for conspiring to import and distribute counterfeit pharmaceuticals.

³¹According to DOJ officials, the types of activities pursued as criminal cases in Thailand are different than some of the larger cross-border cases the United States has handled elsewhere.

realistically not restricted to them, which in the long run would result in reducing piracy and counterfeiting along with other crimes.

Three of the Four Posts Do Not Have Interagency Plans Addressing the Key IP Issues

While the four posts have adopted several practices to collaborate effectively on IP, only one has adopted an interagency plan to address key IP issues. Existing post guidance on IP is high level and does not generally guide agencies' day-to-day efforts to reach IP goals. Agencies can plan by using joint strategies that translate high level goals into specific objectives and activities. At one post, agencies collaborated to develop a joint strategy in the form of an interagency IP work plan that has established specific IP objectives and helped agencies at the working level identify and implement IP activities that address the key IP issues identified by the United States. Joint strategies can help agencies prioritize among existing IP efforts, avoid duplication of IP efforts, convey a common message on IP to foreign governments, and maintain focus on IP given numerous competing issues and periodic changes in key IP personnel at the posts.

Post Guidance on IP Lacks Specificity to Guide IP Efforts

Agencies at the posts are provided high-level guidance on IP issues, including guidance from U.S. headquarters' interagency mechanisms and post-wide plans in which IP is included among other relevant issues. Individual agencies may also have their own IP guidance for a country. However, overall, existing guidance is generally either too high level to be applied to agencies' day-to-day IP efforts to achieve IP goals or not shared widely among the agencies at the posts.

The Special 301 Process, Bilateral Forums, and Mission Strategic Plans Provide High Level Guidance

The annual Special 301 report provides the posts guidance on key IP issues, although there are significant differences in the level of detail provided for each country. For instance the section on China in the Special 301 report has in recent years been longer than the sections for India and Thailand. USTR headquarters officials reported that in addition to the report, USTR sends cables to posts identifying IP priorities for their host countries. However, U.S. officials we interviewed at the four posts did not generally report that they utilized either the final Special 301 report or subsequent cables to guide them in conducting their IP activities on a day-to-day basis. As part of the Special 301 process, posts are also responsible for submitting a cable that outlines their perspectives on the key IP issues in their host countries. At the posts we visited, this effort was led by the State economic section with assistance from the IP attachés and input from other agencies. While these submissions identify a wide range of issues in each country, posts did not report that they utilized this interagency effort at the post level as a foundation from which to establish specific IP objectives to guide their IP efforts.

The outcomes of bilateral forums such as the U.S./China Joint Commission on Commerce and Trade³² and the U.S./India Trade Policy Forum³³ also provide high-level guidance to posts on IP issues that the U.S. government is seeking to collaboratively address with its foreign counterparts. For instance, in the context of the Trade Policy Forum, the United States and India agreed to work together to build enforcement agencies' awareness of IP laws and systems in each country by, among other things, exchanging information on best practices and undertaking capacity building programs. While some U.S. officials we met with at the posts noted that these forums help establish U.S. policy goals for IP, as with the Special 301 process, post officials did not generally report relying on the outcomes of these forums to drive their IP activities on a day-to-day basis.

Each U.S. embassy in the three countries also has a fiscal year 2010 Mission Strategic Plan (MSP) that discusses IP.³⁴ While the mention of IP in the MSPs indicates that the embassy leadership in that country views IP as a priority, MSPs are designed to set general goals for posts rather than provide extensive guidance on particular issues. Thus, the MSPs are not meant to guide agencies' day-to-day IP efforts. For example, India's MSP has a general statement about supporting improved protection of intellectual property to attract more foreign direct investment and one IP-related performance target that relates to a reduction in the software piracy rate. To the extent that IP is discussed in the three countries' MSPs, it is primarily within the sections on economic issues rather than in the sections on law enforcement. Only the MSP for Thailand mentions IP as a law enforcement issue. Even there, the discussion is limited to a broad statement about IP violations being one of a list of crimes that the mission will combat in partnership with the Thai government and does not include any specific categories of violations or potential strategies related to criminal IP enforcement in the law enforcement section of the plan.

³²The U.S./China Joint Commission on Commerce and Trade was established in 1983 as a high-level government-to-government forum for discussing trade and investment issues. Commerce and USTR lead the U.S. government delegation to the Commission.

³³The U.S./India Trade Policy Forum was established in 2005 and is the principal trade dialogue between the two countries. USTR leads the U.S. government delegation to the Forum.

³⁴MSPs cover a 3-year period. Embassies' fiscal year 2010 plans cover fiscal years 2008 through 2010.

USPTO Has IP Plans, but These Are Not Widely Shared with Other Agencies

While other agencies may have broader plans that discuss IP, USPTO is the only agency we identified that has developed its own IP-specific plans for each of the three countries. USPTO's headquarters-based country teams have developed IP plans for China, India, and an ASEAN regional plan that covers several countries, including Thailand. Additionally, the India, Thailand, and Guangzhou IP attachés have developed individual IP work plans for their areas of responsibility. However, USPTO officials stated that these plans tend to serve primarily as internal guidance and are not widely shared with officials from other U.S. agencies. Some USPTO headquarters officials we interviewed acknowledged that there would be benefits to having the IP attachés work with other relevant agencies on a post-wide IP plan at each location where there is an IP attaché. The officials stated that this would help ensure that agencies' IP activities at the posts are in alignment with agreed upon long-term objectives and that there is a clear assignment of responsibilities. Additionally, the officials noted that such buy-in is essential since USPTO does not have the authority to direct the U.S. agenda at a post, with the ambassador having final say on the priorities. At the time of our review, however, USPTO had decided to give the attachés the discretion to determine whether or not to work with agencies at the post to develop such a plan, rather than making it a requirement. A USPTO headquarters official stated that this allowed the attachés greater flexibility in deciding how best to work with other agencies at post.

One Post Has a Joint Strategy in the Form of an Interagency Work Plan to Guide Agencies' Efforts on IP

GAO has found that agencies can enhance collaboration by establishing mutually reinforcing or joint strategies that articulate clear objectives and align activities, core processes, and resources to achieve a common outcome.³⁵ While the four posts have adopted several practices to collaborate on IP, only one has adopted such a joint strategy.

The U.S. embassy in New Delhi has developed a joint strategy in the form of an interagency IP work plan that translates key IP issues into a clear set of objectives and provides details on the post's planned IP activities. The IP attaché in New Delhi led the effort to draft the plan under the auspices of the IP working group. Completed in December 2008, the plan incorporated input from several agencies at the embassy, including USPTO, CBP, ICE, FCS, and the State economic section. The interagency

³⁵GAO, *Results-Oriented Government: Practices That Can Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: October 2005).

work plan lists specific IP objectives that the working group intends to work towards in India, such as the implementation of an optical disk law and the implementation of a meaningful system for protecting undisclosed data against unfair commercial use. The plan also identifies specific day-to-day activities in support of each objective that the IP working group hopes to undertake. For instance, it discusses meetings that the post intends to hold with various Indian ministries, outreach it plans to perform with the private sector, IP training it plans to provide, and data it plans to collect to bolster the U.S. position on certain IP issues.

As the plan had been in place for a relatively short period of time when we conducted our fieldwork in New Delhi, in March 2009, the IP working group had not yet assessed progress that had been made. Agency officials told us that they intended to revisit the plan at the 6-month point, assess progress, and determine what revisions, if any, were needed. As of the end of July 2009, the IP attaché reported that he had met with the State economic section to discuss updates to the plan and that the full IP working group would discuss the plan at an upcoming meeting in August with intentions to finalize the revisions shortly after that. In revising the plan, he said that he expected that the working group would maintain the original objectives in the plan, which are long term in nature, but that there would likely be some minor modifications to the approach outlined for meeting them.

Using Joint Strategies to Collaborate on IP at the Posts Can Have Several Benefits

While agencies at the four posts have undertaken IP activities that are relevant and support U.S. interests, joint strategies such as interagency work plans can potentially assist posts in prioritizing among their various demands and help ensure that their activities are part of a strategic approach to address key IP issues identified by the U.S. government. Various U.S. officials and private-sector representatives stated that the level of IP activity has increased at the posts in recent years in large part due to the arrival of the IP attachés and the attention they bring to IP issues. However, agency officials generally noted that on a day-to-day basis their activities were not undertaken as part of the implementation of particular plans to address key IP issues. For example, one agency official in China stated that his strategy for IP was to simply “juggle” issues as they arose.

The development of interagency work plans can also help to encourage sustained attention to key IP activities. Some agency officials noted that the long-term nature of many IP efforts—such as implementing optical disk laws, developing public outreach to convince consumers of the

importance of IP rights, or building the relationships with foreign law enforcement officials necessary to conduct joint IP investigations—require sustained and focused attention over time. In the absence of such sustained attention, the impacts of U.S. efforts can be diminished. For instance, an official at one post noted that he had observed a cycle where the post would exert pressure on the host country’s police to more aggressively enforce IP laws, and enforcement would increase; however, after a time, pressure would ease and previous enforcement levels would return. An official in Beijing noted the challenges to staying focused on particular issues at such a large post. Whereas, a written plan has helped the embassy stay on target and not lose focus on IP issues, according to an official in New Delhi. A different official in New Delhi stated that the plan would allow the post to keep up momentum on IP and helped ensure that all the relevant agencies were engaged. Post-level plans can also minimize the reduction in focus on IP as agency officials transfer in and out of posts. For instance, one U.S. official in Beijing noted that the IP attaché had driven the post’s day-to-day IP activities, and that when he left the post, there was no plan to consult to help ensure that agencies continued to focus on key IP issues. In addition, new personnel can consult joint strategies to help them more quickly contribute to IP issues.

Given the cross-cutting nature of IP, interagency post work plans may also assist agencies in identifying opportunities to avoid redundant activities or divergent messages, particularly given the multiple agencies at each of the posts we visited that play some role in IP activities. For example, we identified over 10 agencies or agency sections that perform IP-related work at the embassy in Beijing. An agency official in Beijing stated that there was not a cohesive embassy strategy on IP, with agencies tending to pursue their individual projects. In addition, we found evidence of disagreement among agencies in Thailand regarding the appropriate strategy for working with the host government and upon what issues to focus. An agency official in Thailand stated that an IP work plan for the post would help ensure that agencies at the post were knowledgeable about what was happening on IP and would reduce the risk of duplicative efforts or inconsistent messages to the host government. An agency official in India stated that, through the work plan, the post hoped to maintain a common message on IP.

Conclusion

Improving IP protection and enforcement overseas is challenging because IP issues are complex and multifaceted. Many IP issues are symptoms of broader problems the countries face such as weak government institutions or the lack of a strong historical respect for the rule of law. Addressing the

many challenges associated with improving countries' IP laws and regulations and strengthening their enforcement efforts requires extensive knowledge of a country's IP regime and the ability to influence a complex web of policies and procedures under an array of legislative, administrative, and judicial authorities. The best ways for the United States to motivate change are not always obvious, particularly while seeking to preserve good relations and pursue other foreign policy goals. Adding to the complexity, multiple U.S. agencies are involved in IP and most of their overseas personnel do not consider IP their primary mission because they have numerous and more pressing responsibilities.

U.S. agencies at the four posts are generally collaborating effectively and have adopted certain key practices to enhance and sustain collaboration, with the exception of developing joint strategies such as interagency IP work plans. Such plans can further improve collaboration and maximize the effectiveness of U.S. government IP efforts at posts by bringing agencies together to develop and commit to specific objectives and activities that address the key IP issues. Interagency IP work plans increase the likelihood that interagency efforts will be sustained throughout the inevitable shifts in key IP personnel at overseas posts, and despite the competing demands placed on many agencies for which IP is not their main mission. By acting as focal points, IP attachés have already spearheaded collaboration among the agencies by facilitating joint U.S. agency IP efforts and, in some cases, generating mechanisms like IP working groups for sharing ideas and planning IP events. Recognizing the importance of such mechanisms, USPTO has recently required that all posts with IP attachés form such working groups. However, currently, neither the IP attachés nor any other post agency official has the responsibility for facilitating post-wide planning on IP. Instead, planning to address the key IP issues is dependent on the individual initiative of post personnel and, thus, to date has been limited to only one of the four posts.

Recommendation for Executive Action

To more effectively ensure that activities at U.S. posts with USPTO IP attachés consistently address the key IP protection and enforcement issues identified by the U.S. government, we recommend that the Secretary of State direct post leadership in countries with USPTO IP attachés to work with the USPTO IP attachés to take the following action:

- Develop annual IP interagency work plans to be used by the post IP working groups with input from relevant agencies, which set objectives and identify activities for addressing key IP protection and enforcement issues defined by the U.S. government, taking into account the range of

expertise of responsible agencies, available resources, and agency specific IP goals.

Agency Comments and Our Evaluation

We provided a draft of this report to the Secretaries of Commerce, Health and Human Services, Homeland Security, and State; the Attorney General; the U.S. Trade Representative; and the Director of the U.S. Patent and Trademark Office. We received written comments from the Department of State Assistant Secretary and Chief Financial Officer, the Department of Commerce Acting Under Secretary for International Trade, and the Acting Chief Financial Officer of the U.S. Patent and Trademark Office, which are reprinted in appendices II through IV. The Department of State and the U.S. Patent and Trademark Office officials concurred with our recommendation. The Departments of State, Commerce, Justice, and Health and Human Services; the U.S. Patent and Trademark Office; and the Office of the U.S. Trade Representative chose to provide technical comments. We modified the report where appropriate. The Secretary of Homeland Security chose not to provide comments.

We are sending copies of this report to appropriate congressional committees and the Secretaries of Commerce, Health and Human Services, Homeland Security, and State; the Attorney General; the U.S. Trade Representative; and the Director of the U.S. Patent and Trademark Office. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff has any questions about this report, please contact me at (202) 512-4347 or yagerl@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.



Loren Yager
Director, International Affairs and Trade

Appendix I: Scope and Methodology

To address Congress' concern about U.S. government efforts to protect and enforce intellectual property (IP) rights overseas and assist the new advisory committee headed by the Intellectual Property Enforcement Coordinator, recently created by the Congress, this report evaluates U.S. government efforts to enhance protection and enforcement of IP overseas in three countries at four posts, including posts in Beijing and Guangzhou, China; New Delhi, India; and Bangkok, Thailand. Specifically, this report (1) describes the key IP protection and enforcement issues that the U.S. government has identified in China, India, and Thailand; (2) assesses the extent to which the U.S. Patent and Trademark Office (USPTO) IP attachés and the Department of Justice (DOJ) Intellectual Property Law Enforcement Coordinator (IPLEC) effectively collaborated with other agencies at posts in China, India, and Thailand to improve IP protection and enforcement; and (3) evaluates the extent to which each of the four posts has undertaken interagency planning in collaborating on their IP-related activities.

Overall, to determine the scope of our work, we obtained documentation and interviewed cognizant officials from the Departments of Commerce (Commerce), Health and Human Services (HHS), Homeland Security (DHS), Justice (DOJ), and State (State); and from the Office of the U.S. Trade Representative (USTR). We reviewed documentation on overseas U.S. government personnel and their IP activities, including which countries had personnel dedicated to IP issues. We collected and analyzed documentation that discussed key IP protection and enforcement issues around the world and that identified those countries where the U.S. government believes IP problems are most acute, such as documents related to the Special 301 process, and other agency assessments of countries' IP laws and regulations. We determined that our scope would focus on IP efforts at the embassy/post level and that we would utilize a case study approach, focusing on selected countries. To select the case study countries, we used a set of criteria that included: the extent to which the U.S. government has identified the country and its region as having significant IP problems, the types and range of IP problems that exist in the country, and the presence of U.S. government personnel posted in the country involved in IP activities, including USPTO IP attachés and coverage by a DOJ IPLEC. Based upon our criteria, we chose China, India, and Thailand. We then conducted fieldwork in Beijing and Guangzhou, China; Bangkok, Thailand; and New Delhi, India; in March 2009. Because we utilized a case study approach, our findings cannot be generalized and do not necessarily apply to countries or posts other than those we visited.

To address all three objectives, we met with U.S. government personnel in all four locations who perform IP-related functions to learn about the types of activities they undertake, the factors that drive their work, and how they collaborate with their counterparts at the post and in headquarters, with the private sector, and with their host government. Table 3 lists the agencies and agency sections we met with at each post.

Table 3: U.S. Agencies and Agency Sections Where We Conducted Interviews, by Post

Post	U.S. government agency and agency section
Beijing	<ul style="list-style-type: none"> • U.S. Patent and Trademark Office • State Economic and Public Affairs sections • USTR • DHS, Immigration and Customs Enforcement • DHS, Customs and Border Protection • DOJ, Federal Bureau of Investigation • DOJ, Resident Legal Advisor • Commerce, U.S. Foreign Commercial Service • Commerce, Market Access and Compliance Unit • Dept. of Agriculture, U.S. Foreign Agricultural Service • HHS, Food and Drug Administration
Guangzhou	<ul style="list-style-type: none"> • U.S. Patent and Trademark Office • State Economic and Public Affairs sections • DHS, Immigration and Customs Enforcement • Commerce, U.S. Foreign Commercial Service • Dept. of Agriculture, U.S. Foreign Agricultural Service
Bangkok	<ul style="list-style-type: none"> • U.S. Patent and Trademark Office • State Economic, Political, Public Affairs, and Transnational Crime Affairs sections • DHS, Immigration and Customs Enforcement • DHS, Customs and Border Protection • DOJ, IPLEC • DOJ, Federal Bureau of Investigation • Commerce, U.S. Foreign Commercial Service • Dept. of Agriculture, U.S. Foreign Agricultural Service
New Delhi	<ul style="list-style-type: none"> • U.S. Patent and Trademark Office • State Economic, Public Affairs, and Science sections • DHS, Immigration and Customs Enforcement • DHS, Customs and Border Protection • DOJ, Federal Bureau of Investigation • Commerce, U.S. Foreign Commercial Service • Dept. of Agriculture, U.S. Foreign Agricultural Service • U.S. Trade Development Agency • HHS

Source: GAO.

We also met with representatives from various industry associations and individual companies in each location to obtain their perspectives on the key IP issues in the country and to learn about how they seek to protect their IP, including through collaboration with the U.S. government and the host government. Finally, in each location, we met with foreign government officials to learn about the challenges they face in improving IP protection and enforcement and to obtain their perspectives on the effectiveness of their collaboration with the U.S. government on IP issues.

To address the first objective, we reviewed U.S. government documents identifying key IP protection and enforcement issues in each of the case study countries, including each embassy's Special 301 submission for 2009 and also the final Special 301 reports for 2008 and 2009. Additionally, we reviewed the 2009 National Trade Estimate Report on Foreign Trade Barriers. We also reviewed other post documentation discussing key IP issues, including talking points from presentations, internal U.S. government IP newsletters, agency reports to their headquarters offices, and materials produced to assist U.S. businesses. Additionally, we interviewed U.S. government personnel and private-sector representatives in each of the countries to obtain their perspectives on the key IP protection and enforcement issues. Our discussion on foreign laws and regulations in the objective is based primarily on interviews with U.S. officials and U.S. government documentation, rather than GAO analysis of those laws.

To address the second objective, we used information from our interviews and documentation we collected at each post to evaluate the extent to which the USPTO attachés and DOJ's IPLEC have adopted good practices to collaborate with other agencies at the posts on promoting IP protection. Documents included attaché activity summaries, IP seminar agendas, the IPCEN agendas, IP working group minutes, and technical assistance work plans. In evaluating the collaboration practices at the four posts, we relied upon past work that GAO has done that identified key practices that agencies can adopt in order to sustain and enhance collaboration.¹ For this objective, we examined select key practices and assessed the extent to which agencies followed them in carrying out their IP activities at the posts. Specifically, we evaluated the extent to which agencies at the four posts had identified and addressed needs by leveraging resources, agreed

¹GAO, *Results-Oriented Government: Practices That Can Enhance and Sustain Collaboration among Federal Agencies*, [GAO-06-15](#) (Washington, D.C.: October 2005).

on role and responsibilities, and established compatible policies, procedures, and other means to operate across agency boundaries.

To address the third objective, we reviewed the 2008 and 2009 Special 301 Reports to determine the extent to which they provide guidance to posts on IP activities to undertake. We also reviewed each embassy's fiscal year 2010 Mission Strategic Plan and assessed the extent to which the plans discuss IP. We assessed the submissions of the embassies in Thailand and India for the 2009 Special 301 report to determine the extent to which the embassies had prioritized among various IP issues and set actionable objectives as well. Additionally, we reviewed the USPTO headquarters country plans covering the three countries and the USPTO IP attachés' individual work plans and analyzed the types of objectives established in these plans and the actions that plans call for to address these objectives. We also reviewed the IPR Working Group Action Plan for the embassy in New Delhi and assessed the extent to which it serves as a reasonable guide for the posts' IP activities. We interviewed U.S. government officials at all four posts to determine how they select IP activities to undertake and the extent to which they use interagency planning to guide their efforts. Based on the information collected through document review and interviews, we evaluated the extent to which the four posts have utilized interagency planning on IP to establish mutual reinforcing or joint strategies. This is a key practice that GAO has identified as contributing to enhanced and sustained collaboration. Finally, we utilized evidence collected in our interviews, as well as findings from past GAO work, to identify potential benefits the posts might achieve by performing interagency planning to establish joint strategies.

We conducted this performance audit from August 2008 through September 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of State



United States Department of State

Assistant Secretary and Chief Financial Officer

Washington, D.C. 20520

SEP 17 2009

Ms. Jacquelyn Williams-Bridgers
Managing Director
International Affairs and Trade
Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548-0001

Dear Ms. Williams-Bridgers:

We appreciate the opportunity to review your draft report, "INTELLECTUAL PROPERTY: Enhanced Planning by U.S. Personnel Overseas Could Strengthen Efforts," GAO Job Code 320623

The enclosed Department of State comments are provided for incorporation with this letter as an appendix to the final report.

If you have any questions concerning this response, please contact Carrie LaCrosse, Foreign Affairs Officer, Bureau of Economic, Energy and Business Affairs at (202) 647-0092.

Sincerely,

A handwritten signature in cursive script, appearing to read "James L. Millette".

James L. Millette

cc: GAO – Christine Broderick
EEB – David Nelson
State/OIG – Mark Duda

Department of State Comments on GAO Draft Report

**INTELLECTUAL PROPERTY: Enhanced Planning by U.S. Personnel
Overseas Could Strengthen Efforts**
(GAO 09-863, GAO Code 320623)

The Department thanks GAO for its evaluation of the U.S. Government's overseas personnel working on intellectual property issues in China, Thailand and India. The Department appreciates the opportunity to respond to the GAO recommendation and looks forward to continued engagement.

GAO Recommendation for Executive Action & DOS Response

To more effectively ensure that activities at U.S. posts with USPTO IP attaches consistently address the key IP protection and enforcement issues identified by the U.S. government, we recommend that the Secretary of State direct post leadership in countries with USPTO IP attaches to work with the USPTO IP attaches to take the following action:

Develop annual IP interagency work plans to be used by the post IP working groups with input from relevant agencies, which set objectives and identify activities for addressing key IP protection and enforcement issues defined by the U.S. government, taking into account the range of expertise of responsible agencies, available resources, and agency specific IP goals.

The Department concurs with this recommendation and plans to share this information with U.S. posts that currently have USPTO IP attaches or that receive IP attaches in the future. We will encourage these posts to assess how IP is currently addressed in their mission work plans and to consider how the suggestions in the GAO report, and the recommendation for Executive Action, can be effectively applied.

Appendix III: Comments from the U.S. Patent and Trademark Office



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE

September 16, 2009

MEMORANDUM FOR Nina Pfeiffer
Analyst in Charge
Government Accountability Office

FROM: Mark J. Olechowski *M. Olechowski*
Acting Chief Financial Officer
United States Patent and Trademark Office

SUBJECT: Response to Draft Report No. GAO-09-863: *"Intellectual Property, Enhanced Planning by U.S. Personnel Overseas Could Strengthen Efforts"* (September 30, 2009)

Thank you for your draft report to The Honorable Under Secretary and Director David J. Kappos dated September 30, 2009, detailing your findings and recommendations. We appreciate the GAO's statements in the report acknowledging the attachés' subject matter expertise and willingness to share this expertise with other agencies at post. We also appreciate the GAO's statements recognizing the effectiveness of the attachés as IP focal points at posts, spearheading collaboration among agencies by facilitating joint U.S. agency Intellectual Property (IP) efforts.

GAO Recommendation: Page 36 of the report recommends "that the Secretary of State direct post leadership in countries with USPTO IP attachés to work with the USPTO IP attachés to take the following action: develop annual IP interagency work plans to be used by the post IP working groups with input from relevant agencies, which set objectives and identify activities for addressing key IP protection and enforcement issues defined by the U.S. government, taking into account the range of expertise of responsible agencies, available resources, and agency specific IP goals."

USPTO Response:

We agree that long-term interagency work plans at posts with an attaché (e.g., annually) can further improve collaboration and maximize the effectiveness of U.S. Government efforts. Given the attachés' unique IP expertise at posts and full-time devotion to IP matters, as well as their demonstrated effectiveness in helping posts identify and address key IP issues, we recommend that USPTO and Foreign Commercial Service (FCS) drive the development of these work plans in collaboration with other agencies. In addition, endorsement of work plans by the Ambassador at each post would be beneficial to ensure that all agencies involved work together to maximize use of U.S. Government resources in addressing key IP issues.

P.O. Box 1450, Alexandria, Virginia 22313-1450 - www.USPTO.gov

**Appendix III: Comments from the U.S. Patent
and Trademark Office**

Again, we thank the Government Accountability Office for the report. We intend to meet the recommendations in a diligent manner, and we will gratefully accept suggestions as we move forward to ensure that an effective system is in place that will enable us to attain the needs of the United States Patent and Trademark Office.

Appendix IV: Comments from the Department of Commerce

SEP 22 2009



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

Mr. Loren Yager
Director, International Affairs and Trade
U.S. Government and Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Yager:

Thank you for forwarding the draft report "*Enhanced Planning by U.S. Personnel Overseas Could Strengthen Efforts, GAO -09-863*" for the Department of Commerce's review.

The International Trade Administration (ITA) supports the report's conclusion that greater coordination and advanced planning could benefit the Administration's efforts overseas on behalf of U.S. intellectual property interests. We do, however, have some technical/factual edits to recommend, which are enclosed.

Thank you, as always, for the fine work of your team. If you have any questions about ITA's review of the draft, please contact Victor Powers, Director of ITA's Office of Management and Operations, at (202) 482-1422.

Sincerely,

A handwritten signature in cursive script that reads "Michelle O'Neill".

Michelle O'Neill, Acting

Enclosure



Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Loren Yager (202) 512-4128 or yagerl@gao.gov

Staff Acknowledgments

In addition to the individual named above, Christine Broderick, Assistant Director; Nina Pfeiffer; and Ryan Vaughan made significant contributions to this report. Shirley Brothwell, Elizabeth Curda, Martin De Alteriis, Karen Deans, and Ernie Jackson also provided assistance.

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