

Japan Resolution Of WTO Dispute On Sound Recordings (1997)

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USTR-DESIGNATE BARSHEFSKY ANNOUNCES RESOLUTION OF WTO DISPUTE WITH JAPAN ON SOUND RECORDINGS

United States Trade Representative-designate Charlene Barshefsky today announced that the United States and Japan have resolved the dispute over Japan's protection of U.S. sound recordings. Japan recently adopted amendments to the Japanese Copyright Law to provide protection to U.S. recordings produced between 1946 and 1971. These amendments are scheduled to come into effect before the end of March 1997 and are intended to bring Japan's copyright law into compliance with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights, or "TRIPS Agreement".

"We launched this case on a clear principle to protect intellectual property rights," said Barshefsky. "We sought -- and will now obtain -- protection for U.S. sound recordings from one of the most vibrant and popular periods in the history of American music -- from the swing music of Duke Ellington, the bebop jazz of John Coltrane, the rock and roll of Elvis Presley, Chuck Berry, Little Richard, Johnny Cash, Patsy Cline and the Sixties sounds of Bob Dylan, the Beach Boys and Otis Redding. The remarkable range and stature of the music produced in that quarter-century makes it an important part of our heritage."

Barshefsky also said, "Japan's action provides a clear indication of the enormous value of the TRIPS Agreement and WTO dispute settlement procedures for U.S. industry and workers. I am especially pleased that we were able to resolve this issue through WTO dispute settlement consultations. "

It is estimated that approximately 6 million unauthorized recordings, from the pre-1971 period are manufactured and sold in Japan annually. Industry estimates are that U.S. rights holders in these sound recordings lost half a billion dollars annually because of the absence of such protection in Japan.

The US recording industry, along with other entertainment industries, is a key U.S. industry. Recorded music is a \$40 billion dollar industry. In 1995, industry sales in the United States reached over \$26 billion. Over 60% of that topped \$14 billion, and sales in the rest of the world.

\$26 billion in industry foreign sales was of products made by Americans. The recording industry employs tens of thousands of workers in our country and in every state in the nation. Along with the musicians and sound engineer who record the music, there are countless others, including the workers who press and make the CDs, truckers who transport them, and retail clerks who sell them.

Background on the Dispute

Prior to the adoption of these amendments, Japan's copyright law only granted protection to foreign sound recordings that were produced on or after January 1, 1971, the date on which Japan first provided specialized protection for sound recordings under its copyright law.

The absence of protection for works produced between 1946 and 1971 put Japan squarely in conflict with Article 14.6 of the TRIPS Agreement, which applies the provisions of Article 18 of the Berne Convention to the protection of sound recordings. These provisions generally require that a country -- in this case, Japan -- provide a 50-year term of protection to pre-existing works originating in another WTO member-country -- in this case, the United States -- if those works have not already enjoyed a full term of protection in both countries. Since Japan, along with other developed countries, was required to fulfill its TRIPS Agreement obligations by January 1, 1996, all sound recordings produced in other WTO member-countries after January 1, 1946, were required to be eligible for protection.

On February 14, 1996, the United States initiated WTO dispute settlement proceedings against Japan and several rounds of formal and informal consultations took place over the course of 1996. Based on the Government of Japan's promulgation on December 26, 1996, of amendments providing U.S. sound recordings retroactive protection, the United States and Japan notified the WTO that a mutually satisfactory solution had been reached, thus terminating the dispute settlement proceeding.
