

Statement of the International Center for Law & Economics In support of IIPA Request for Review of the Intellectual Property Rights Practices of South Africa in the 2019 GSP Review, 84 Fed. Reg. 11150 (March 25, 2019)

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We submit this statement in support of IIPA's petition to review South Africa's GSP eligibility in light of South Africa's failure to provide "adequate and effective protection" to intellectual property as required by the GSP statute and, in particular, profound concerns with draft legislation that will, if enacted, further erode the protection of intellectual property in South Africa for U.S. and South African creators alike.

While we support IIPA's petition, we note at the outset our reluctance to take such a position: We believe that trade sanctions are harmful to the country imposing them (and on which they are imposed, of course), and, as far as possible, should be avoided. Both the U.S. and South Africa benefit from the GSP that currently affords South African producers unilateral, tariff-free access to U.S. markets for some goods. As such, we caution that the USTR should withdraw South Africa's GSP designation only as a last resort.

But we also believe that both the United States and South Africa share a strong interest in sustaining creators through adequate and effective protection of intellectual property, thereby promoting economic development and the production of culturally diverse materials. And, unfortunately, removal of GSP is one of the few tools available to the U.S. to protect the interests of U.S. creators of intellectual property in global markets. The USTR is legally obliged to faithfully discharge its congressional mandate by taking action to defend U.S. intellectual property in accordance with various trade laws, including by ensuring that GSP beneficiary countries provide adequate and effective protection within the meaning of the statute.

In submitting this statement, we are mindful that South Africa's President has not yet signed into law the Bills that motivated the IIPA's petition. If he does so, South Africa would fail to meet the conditions for GSP eligibility and USTR will be obliged to revoke all or some of its GSP benefits. We note, however, that numerous local actors have voiced concerns regarding the constitutionality of the proposed legislation and the harm that it will do to the community of creators in South Africa. It is possible that President Ramaphosa will heed these concerns, reject the draft legislation and send it back to Parliament for reconsideration, with directions to adapt or remove its numerous provisions that conflict with South Africa's Constitution and the country's international treaty obligations. So doing could result in a text more consistent with South Africa's (and the U.S.'s) cultural and economic interests. Most importantly from the perspective of this submission, by rejecting

the draft legislation President Ramaphosa would at the very least defer any action on the part of USTR to revoke South Africa's GSP eligibility.

In short, we argue that:

- Protection of intellectual property both in the U.S. and in South Africa is mutually beneficial;
- Duty-free imports from South Africa to the U.S. benefit the citizens of both countries, and those citizens will suffer as a result of the partial or full withdrawal of GSP benefits from South Africa;
- GSP withdrawal is nonetheless required if South Africa does not adequately and effectively protect U.S. intellectual property;
- South Africa's copyright laws currently do not effectively protect the rights of artists; and
- Two Bills recently passed by South Africa's Parliament, and championed by U.S.-based evangelists of "fair use," would further weaken the effectiveness of copyright protection.

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