

The US Trade Representative: Not working for you

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The US Trade Representative is a self-descriptive office of the Executive Branch. I've followed them as closely as I can tolerate, which is not too closely.

Within the broad mandate of its name—to represent the US in trade negotiations—it could potentially have a number of mandates. They could be free-marketeers, and simply strive to lift all barriers. They could try to maximize well-being for US citizens, under the presumption that the Indian and Chinese Trade Representatives are taking care of their own. But there are opinions from the USTR that contradict both of these options: they are no strangers to endorsing blocks on foreign goods, even though those goods may benefit U.S. consumers. After all, the USA still has a Harmonized Tariff Schedule¹ with 99 chapters. How do consumers benefit from the 2.5-10% import tax on station wagons (chapter 87)? Why is coffee free for import but “coffee substitutes containing coffee” are taxed (chapter 9)?

They could be a pro-business organization, but that too fails, because there are many types of business the USTR leaves on the back burner of trade; you'll see one below. The only consistent description of what the USTR does is that it advocates for those companies and industry organizations that have contributed the most cash to the current presidential administration. That is the minimally cynical interpretation that is consistent with actual USTR behavior. I've tried my hardest to accept sunnier interpretations, but none fit. The only way to read the Harmonized Tariff Schedule is to ask who paid for each line to be added or removed.

As I've commented before, the USA has limited political capital. It's certainly a lot, and a lot more than Ghana has, but most trade negotiations are tit-for-tat operations, and you only get one tit at a time. Thus, when the USTR stands firm on a rule that maximizes profit for certain U.S. firms, it puts all other firms and individuals in a worse position. We've all got to pick our fights, but the USTR's seems to pick the fight for pharma—Harmonized Tariff Schedule chapter 30, plus appendix—pretty darn often.

The USTR and intellectual property Because I spend most of my time looking at IP, I can offer it as a case study. The USTR is *not* interested in strong IP laws. Sure, they have documents² that say things like “The Administration will continue to pursue

¹<http://www.usitc.gov/tata/hts/bychapter/index.htm>

²http://www.ustr.gov/Document_Library/Press_Releases/2002/February/USTR_Announces_Results_of_January_2002_Special_301_Out-_Of-Cycle_Reviews_of_

the aggressive enforcement of intellectual property rights. . .” And they have repeatedly forced foreign countries to adopt U.S. patents so that they are unable to produce generic drugs that would lower prices in those markets, which seems to be a pro-intellectual property stance.

But on the other hand, it recently set up an agreement that some countries outside the USA must weaken their laws protecting medical test results³(pdf), because such IP protection hampers the foreign adoption of US drugs. So there went any thoughts that the USTR just believes in IP: they advocate strong IP only when it benefits US interests.

The above document repeatedly states provisions that countries may limit the agreement when necessary to protect the well being of their citizens, but (I’ve briefly alluded to this before too) the USTR habitually puts pressure on any country that uses such compulsory licensing exemptions. The USTR is doing its part to make sure that nobody in Africa bypasses U.S. patents to produce AIDS medications, even though the situation is a public health emergency by any measure. There are likely tens or hundreds of thousands of people the world over who have died thanks in part to the USTR’s selective position on strong intellectual property law.

Not doing evil: the hard part Google, Inc., a provider of information services the world over, has had trouble in China. They profess their goal of making all the world’s information available everywhere, but Chinese culture as far back as Confucius has pushed for greater restraint, pointing out that unfettered speech can destroy social order. This is one of the great questions of civilization, and none of us have an answer. Further, information covers a lot of ground with different ethical implications, including kiddie porn, Faulun Gong tracts, and direct critiques of government officials. So I’m not going to touch the question of what China’s leaders should be doing. But the fact remains that they are currently among the world leaders in censoring Internet traffic⁴.

But Google is sticking to its opinion that information wants to be free, and is working hard to make sure that its services are as fully available as possible in China. Is this because they want to maximize shareholder value, or because they truly feel that censorship is evil? I dunno. Probably a little of both. But they took an interesting approach to the issue: they petitioned the US Trade Representative⁵, claiming that China’s blocking of valuable information products at the border is exactly analogous to any other country’s blocking of textiles at the border. After all, information is on par with textiles in dollar terms, and is the primary industry for large swatches of California. Further, the USTR has spent many lawyer-hours on convincing China’s central government to convince local police to arrest Chinese street vendors who shill dubs

Intellectual_Property_Protection_in_the_Bahamas..html

³http://www.google.com/url?sa=t&ct=res&cd=1&url=http%3A%2F%2Fwww.ustr.gov%2Fassets%2FDocument_Library%2FFact_Sheets%2F2007%2Fasset_upload_file312.11283.pdf&ei=1beCROqeNaCuEIZzjYK&usq=AFQjCNEoyVxQKXu1.bP5L4uhCBOaiuqdlw&sig2=iL2r-uoiFK.7OrIG2UZjdg

⁴<http://opennet.net/research/profiles/china>

⁵http://news.wired.com/dynamic/stories/G/GOOGLE_CENSORSHIP?SITE=WIRE&SECTION=HOME&TEMPLATE=DEFAULT

of Star Wars, because doing so is in clear violation of the copyright on file at the film department of the Library of Congress [which is where I'm writing from, by the way]. So everything is in place for the USTR to get involved.

So, what is the USTR's opinion? From the article linked above: "If censorship regimes create barriers to trade in violation of international trade rules, the USTR would get involved," USTR spokeswoman Gretchen Hamel said. She added though that human rights issues, such as censorship, typically falls under the purview of the State Department."

So they don't even bother considering it. Now, the USTR's lawyers are expected to argue three impossible legal interpretations before breakfast. For example, I've read too many articles where they claim that other countries are violating a treaty originating in 1986 if their domestic courts make rulings that diverge from a certain 1994 ruling by a U.S. domestic court. [Yes, the TRIPS treaty and *In re Alappat*.] They are such fans of disingenuous interpretation of law that I find their naïve statement that they can't see censorship as a trade barrier to be disingenuous.

The USTR's primary work is helping companies in situations where some country is not allowing the company to vend its goods, and this is exactly the situation Google faces. The USTR works hard on maximizing foreign markets for U.S. media. But here, the USTR rejects a media provider's complaint of being blocked from trade out of hand. Again, there's an easy cynical interpretation—Google has not contributed enough to the Bush Administration—but a non-cynical interpretation that is in any way consistent with other USTR behavior is not forthcoming. Why are Merck, the RIAA, the MPAA, and the Intellectual Property Owner's Association (a lobbying group for IP extremists) on the USTR's IP advisory committee, but Google is not invited? [IP is Industry Trade Advisory Committee⁶ number 15.]

Trade negotiations are going to happen, and India, China, and everybody else do indeed have their representative. So the US needs the office of the US Trade Representative. But it does not have to be an opaque organization that makes important policy decisions behind closed doors. I've tried, I've tried, and I can not find systematic evidence to refute the hypothesis that the USTR's purpose is to advocate for policies that make money for the small number of firms that are large contributors to Republican candidates.

But there are alternatives. They could set a list of open priorities and stick with them, except for circumstances that are understood and explained. Final agreements are half in the USTR's control and half the control of the other side, but the USTR could publish rationales for the agendas they bring to a meeting with trade representatives from other countries. More generally, they could behave like a representative of US citizens and provide the level of transparency we expect from a government bureaucracy with heavy influence on trillions of dollars in trade.

⁶http://www.ustr.gov/Who.We.Are/List_of_USTR_Advisory_Committees.html