

# THE CRISIS IN INTELLECTUAL PROPERTY PROTECTION AND CHINA'S ROLE IN THAT CRISIS

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# ***The Crisis in Intellectual Property Protection and China's Role in That Crisis***

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## **I. THE CRISIS IN PROTECTING INTELLECTUAL PROPERTY RIGHTS**

### **A. INTRODUCTION**

A significant contributor to the extraordinary global economic growth over the last two centuries has been the development of intellectual property rights protection in major trading nations around the world. Despite the large membership to core treaties in the area, the nature and extent of the theft of intellectual property rights has changed and intensified in recent decades to where there is widespread concern about the ability to protect the source of much innovation. While there are many causes for the increasing problems being seen around the world, technological change (which has made distribution of fakes or pirated products much easier) and the integration of countries that historically have not had a strong intellectual property protection philosophy are certainly two of the prominent causes.

For the United States and many other major trading nations, the largest source of intellectual property problems is product manufactured in China. The Chinese government for the last several decades has been pressed by the United States and other countries to adapt their laws to conform to international norms and to take the steps necessary to be able to provide effective enforcement. The Chinese government has taken many actions, before and after joining the World Trade Organization, to conform its laws to international norms and to address at least some of the concerns of trading partners on enforcement. Despite the pressure and the affirmative steps taken, the extent of counterfeiting, piracy and other IP violations in China and

in exported Chinese goods, remains, in the view of many nations, unacceptably high and is putting enormous pressure on the global trading system.

This report starts by looking at the nature and extent of the crisis in intellectual property and China's role in that crisis. The report then examines the evolving history of intellectual property law within China, efforts of the Chinese government over time to address the pressure from the United States and others to improve both its IP laws and their enforcement, and what efforts trading partners have undertaken to help China achieve an acceptable level of protection of intellectual property rights. The report then concludes by examining the question of whether there are actions the United States could be taking to better protect IP rights in the United States. Two examples are explored: (1) whether a change in U.S. law in 1999 to provide for the publication of patent applications after 18 months may be harming innovators and (2) whether IP laws need to provide remedies to companies who purchase products with IP rights but compete with product made off of products which violate such rights.

## **B. THE NATURE OF THE CRISIS**

As is widely recognized, intellectual property ("IP") is among the most valuable property that exists.<sup>1</sup> Intellectual property rights ("IPR") and effective enforcement of such rights are critical to nations' ability to encourage innovation. The inability to protect such rights can reduce nations' tax revenues and job-creating potential, and can threaten the safety and health of citizens at home and abroad. Unfortunately, the growth in IP theft in recent decades has reached crisis proportions and has touched every aspect of modern society. Intellectual property theft has

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<sup>1</sup> *Progress Report of the Department of Justice's Task Force on Intellectual Property*, United States Department of Justice, June 2006, at 13 [hereinafter "*DOJ Progress Report*"].

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moved beyond luxury goods (handbags, designer clothes, watches, perfumes) and audio/visual materials (CDs, DVDs, software) and now includes counterfeit goods from pharmaceutical drugs, auto parts, airplane parts, batteries, cosmetics and even food products.<sup>2</sup> In recent years there have been reports of exploding counterfeit cell phone batteries,<sup>3</sup> babies dying after being fed fake formula with little nutritional value,<sup>4</sup> auto parts entering the market that are made of nothing more than well-constructed cardboard and sawdust,<sup>5</sup> counterfeit drugs being sold at well-known pharmacies such as CVS and Rite-Aid,<sup>6</sup> and even gypsum and starch being painted to look like tofu and then sold in legitimate stores.<sup>7</sup> This extensive range of counterfeit and pirated products has not only cost businesses hundreds of billions in lost sales, cost governments tax revenues from the lost legitimate sales, harmed consumers, cost workers' jobs, and damaged the reputation of businesses whose products have been copied, but it has also created serious public health and safety concerns and undermines the basis of innovation itself.

While not a new phenomenon, intellectual property theft used to be mainly a problem for producers of luxury goods, such as apparel and handbags, and was often considered a victim-less

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<sup>2</sup> See, e.g., *The Negative Consequences of International Intellectual Property Theft: Economic Harm, Threats to Public Health and Safety, and Links to Organized Crime and Terrorist Organizations*, International AntiCounterfeiting Coalition, January 2005, at 2; *Counting the Cost: The Economic Impacts of Counterfeiting and Piracy*, Preliminary Findings of OECD Study Presented by John Dryden, Deputy Director for Science, Technology and Industry, OECD, at the Third Global Congress on Combating Counterfeiting and Piracy, January 30-31, 2007, at 3 [hereinafter "*Counting the Cost*, OECD Preliminary Findings"]; *Counterfeit Food a 'Serious Threat' Says EC*, MeatProcess.com, November 13, 2006, available at [www.meatprocess.com/news/ng.asp?id=72010-counterfeit-ec-alcohol](http://www.meatprocess.com/news/ng.asp?id=72010-counterfeit-ec-alcohol).

<sup>3</sup> See *Exploding Cell Phones*, U.S. Chamber of Commerce, TheTrueCosts.org, November 2004, available at <http://www.thetruecosts.org/portal/truecosts/getthefacts/healthandsafety.htm>.

<sup>4</sup> See Jonathan Watts, *Drug Pirates Leave Death in Their Wake*, The Guardian, December 4, 2006.

<sup>5</sup> See Tom Nash, *Counterfeit Parts: A Poor Fit For Your Shop*, Motor Magazine, January 2004.

<sup>6</sup> See *Inside the World of Counterfeit Drugs*, Dateline NBC, June 9, 2006, available at [www.msnbc.com](http://www.msnbc.com).

<sup>7</sup> See Jaroslaw Anders, *U.S. Businesses Pursue Different Strategies to Fight Counterfeiters*, USINFO.STATE.GOV, January 25, 2007.

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crime.<sup>8</sup> However, counterfeiters now target any product with a market, including medicines, parts of airplanes, trucks, automobiles and other mobile equipment, foodstuffs, and pesticides – products with health and safety consequences.

This shift in IP theft from luxury goods to a broader array is evident in the European Union's (EU) seizure statistics. According to a report by the European Commission, 70 percent of the firms affected by counterfeiting in the mid-1980s produced luxury items, but by 2004 less than 2 percent of the items seized at the EU border were luxury goods.<sup>9</sup> In that same year, EU officials seized over 4 million counterfeit foodstuffs and drinks, which accounted for 4 percent of the total.<sup>10</sup>

The growth in scope of the problem can be measured in dollar terms for IP holders as well. According to a 1988 report by the International Trade Commission, U.S. industries were losing between \$43 billion and \$61 billion as a result of IP theft.<sup>11</sup> In 2005, this estimate had

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<sup>8</sup> See, e.g., Kathleen Millar, *Financing Terror: Profits from counterfeiting goods pay for attacks*, U.S. Customs Today, November 2002; Jerry Markon, *Virginia Men Face U.S. Trial in Peddling of Phony Purses*, Washington Post, January 30, 2007, at A01.

<sup>9</sup> See *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a Customs Response to the Latest Trends in Counterfeiting and Piracy*, Commission of the European Communities, COM(2005) 479 Final, November 10, 2005, at 3 [hereinafter "*EC Response to the Latest Trends in Counterfeiting and Piracy*"].

<sup>10</sup> See *European Commission Taxation and Customs Union Seizure Statistics*, 2004, at 1, available at [http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/statistics/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm) [hereinafter "*2004 EC Seizure Statistics*"].

<sup>11</sup> *Foreign Protection of Intellectual Property Rights and the Effect on U.S. Industry and Trade*, United States International Trade Commission, Pub. 2065 (February 1988), at H-3. See Dr. A. O. Adede, *The Political Economy of the TRIPS Agreement: Origins and History of Negotiations* (2001), at 4, available at [www.ictsd.org/dlogue/2001-07-30/Adede.pdf](http://www.ictsd.org/dlogue/2001-07-30/Adede.pdf).

reached \$250 billion.<sup>12</sup> The same 1988 report found that at least 5,300 American jobs were lost as a result of IP theft.<sup>13</sup> In 2005, this number had increased to over 700,000.<sup>14</sup>

The rapid growth in the size of the IP theft problem is at least partly due to advancing technologies, which not only aid in production of infringing goods but also in their distribution. For instance, current digital technology makes it easy to copy a CD and scan its cover to make a near-exact replica, or to distribute that sound recording to virtually limitless consumers over the internet. The advancement of the internet, in particular, is leading to increasing amounts of counterfeit and pirated goods entering supply chains and extending the global reach of the problem.<sup>15</sup>

### ***1. Global Problem***

IP theft is global in reach, affecting businesses and individuals around the world. While large companies with well-known brands are often targets, counterfeiting can also have a severe impact on small and mid-sized businesses. For instance, consider the Eastman Machine Company in Buffalo, New York. This is a relatively small, family-run business that was established in 1892 and manufactures cloth-cutting machines.<sup>16</sup> According to the Chairman of the company, since 1990, Eastman Machine Company has had to cut its work force by two-thirds

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<sup>12</sup> See *2005 Special 301 Report*, United States Trade Representative, 2005, at 3 [ hereinafter “*2005 Special 301 Report*”]; *DOJ Progress Report*, *supra* note 1, at 13.

<sup>13</sup> *Foreign Protection of Intellectual Property Rights and the Effect on U.S. Industry and Trade*, United States International Trade Commission, Pub. 2065 (February 1988), at 4-13.

<sup>14</sup> See *What are Counterfeiting and Piracy Costing the American Economy*, National Chamber Foundation, 2005, at 10; *DOJ Progress Report*, *supra* note 1, at 13.

<sup>15</sup> See *Counting the Cost*, OECD Preliminary Findings, *supra* note 2, at 5.

<sup>16</sup> Statement of Robert Stevenson, Chief Executive Officer, Eastman Machine Company, Buffalo, NY, Testimony Before the House Ways and Means Committee, April 14, 2005, available at [www.wtcbn.org/news/Stevenson%20Testimony.pdf](http://www.wtcbn.org/news/Stevenson%20Testimony.pdf).

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because it is being pushed out of the market by counterfeit products.<sup>17</sup> Despite the fact that the majority of the world's cutting machines are located in China, Eastman cannot compete there due to the prevalence of what the company characterizes as counterfeit "Eastman-clones," with an estimated 100,000 counterfeit machines sold there each year.<sup>18</sup> Eastman Machine Company's Chairman has testified that the clones have been reverse-engineered to replicate Eastman's machines, with counterfeiters copying not only the design, but also model numbers, trademarks, color schemes, and labels.<sup>19</sup> The copies can be so good that experienced distributors are not even able to detect the fakes.<sup>20</sup>

The illegal nature of counterfeiting and piracy makes it difficult to quantify the full scope of the problem. Counterfeiting and other forms of IP theft can affect domestic markets from domestic sources as well as from imports. Export markets can be affected for producers in the same way, by counterfeiting or other IP violations from in-country sources or from imports from one or more countries. Many IP violations are not discovered and, if discovered, are hard to measure in terms of historical reach or current volume or distribution. Thus, efforts to put a value on the global extent of IP theft is, by definition, an exercise in estimations based on certain facts and certain assumptions. While estimates vary widely, all estimates show rapid increases in

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<sup>17</sup> See *Jobs Killed*, U.S. Chamber of Commerce, Anti-Counterfeiting and Piracy Website, 2006, available at [www.thetruecosts.org/portal/truecosts/getthefacts/jobs.html](http://www.thetruecosts.org/portal/truecosts/getthefacts/jobs.html); *Piracy: Industry fights back*, TheManufacturer.Com, January 2007, available at [www.themanufacturer.com](http://www.themanufacturer.com).

<sup>18</sup> See *id.*

<sup>19</sup> See *Piracy: Industry fights back*, TheManufacturer.Com, January 2007, available at [www.themanufacturer.com](http://www.themanufacturer.com); see also Statement of Robert Stevenson, Chief Executive Officer, Eastman Machine Company, Buffalo, NY, Testimony Before the House Ways and Means Committee, April 14, 2005, available at [www.wtcbn.org/news/Stevenson%20Testimony.pdf](http://www.wtcbn.org/news/Stevenson%20Testimony.pdf).

<sup>20</sup> In response to this reality, Eastman has developed an automated cutting-machine, which is a more complex design and cannot be easily copied. However, given that Eastman is now legitimately concerned about sending its technology overseas, the automated design is manufactured only in the United States. See *Piracy: Industry fights back*, TheManufacturer.Com, January 2007, available at [www.themanufacturer.com](http://www.themanufacturer.com).

the problem and suggest the problem affects a significant part of commerce. For example, the highest estimate from any sources seems to be an estimate of \$670 billion provided by one of the speakers at the 2007 Third Global Congress on Combating Counterfeiting and Piracy held in Geneva in early 2007. The American Chamber of Commerce in China (“AmCham China”) has reported that global production of counterfeit and pirated goods had increased an estimated 1700 percent between 1993 and 2005.<sup>21</sup> Rules of thumb for counterfeit and pirated goods as a percent of global trade have been used in the past – 5-7 percent was developed in an OECD paper from the late 1990s.<sup>22</sup> More recently, the OECD has been conducting a new economic analysis which attempts to provide a clear methodology for looking at the question as it pertains to global trade.<sup>23</sup> The OECD approach excludes large parts of the counterfeit/pirating problem (*e.g.*, the in-country portion).<sup>24</sup> Using this methodology, the preliminary report states that international trade of counterfeit and pirated products account for 2.4 percent of the current total world trade in manufactured goods, or 2.0 percent of all goods.<sup>25</sup> According to the study, the counterfeiting and pirated goods displaced about \$176 billion of legitimate goods.<sup>26</sup> This estimate appears to be based solely on the value of the goods, as the amount does not include the price charged to the

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<sup>21</sup> Hugh Stephens, *Fake Products, Real Problems*, AmCham China Brief, April 2006.

<sup>22</sup> *See, e.g., Counting the Cost*, OECD Preliminary Findings, *supra* note 2, at 5; *see also The Economic Impact of Counterfeiting*, OECD, 1998, at 24. This 1998 OECD report stated that the value of counterfeit goods was about 3 percent of world trade in 1990, or about \$100 million dollars, and that by 1995, it had increased to 5 percent of world trade, or \$250 billion. *Id.*

<sup>23</sup> *See Counting the Cost*, OECD Preliminary Findings, *supra* note 2, at 5 (explaining that the original OECD report did not specify whether the methodology incorporated only exports and imports or if it included counterfeit products contained within a country, or whether it considered all traded items or just goods or even just manufactured goods).

<sup>24</sup> *See id.*

<sup>25</sup> *Id.* The study emphasized the conservative nature of the estimate and noted that these numbers did not include counterfeit or pirated goods that were consumed internally (*e.g.*, counterfeit auto parts that were made in China and sold in China), thus the 2.4 percent represents only the amount of counterfeit manufactured goods that were exported/imported.

<sup>26</sup> *Id.*

final purchaser or any economic costs such as lost jobs or tax revenues.<sup>27</sup> The study also points out that while this estimate is lower than the oft-cited 5-7 percent range, \$176 billion is higher than the entire GDP of many OECD countries, including Ireland.<sup>28</sup>

Looking just at the effect of IP theft on U.S. businesses, recent reports estimate that IP theft costs American businesses \$200-250 billion each year<sup>29</sup> and has contributed to the loss of at least 750,000 American jobs.<sup>30</sup> New York City alone estimates that it loses \$1 billion a year in sales tax revenue due to counterfeit goods,<sup>31</sup> while Los Angeles reportedly lost at least \$483 million in tax revenues in 2005 as a result of global IP theft.<sup>32</sup> As a whole, the California economy reportedly loses \$34.5 billion every year because of counterfeiting and piracy.<sup>33</sup>

Many U.S. multinational companies are known throughout the world, having invested many billions in brand development, product development, advertising, and quality assurance programs. Famous brands are frequent targets of counterfeiters. The top five brands in the world in 2006 were all U.S. companies, with Coca-Cola, Microsoft, IBM, GE, and Intel leading the list.<sup>34</sup> This is important because IP theft results in losses that extend beyond the value of lost sales. These additional losses include brand reputation, potential product liability stemming

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 6.

<sup>29</sup> See 2005 Special 301 Report, *supra* note 12, at 3; DOJ Progress Report, *supra* note 1, at 13.

<sup>30</sup> See *What are Counterfeiting and Piracy Costing the American Economy*, *supra* note 14, at 10; DOJ Progress Report, *supra* note 1, at 13.

<sup>31</sup> See *id.* at 6; Reuters, *Counterfeit Goods Are Linked to Terror Groups*, International Herald Tribune, February 12, 2007.

<sup>32</sup> See Gregory Freeman, Nancy D. Sidhu and Michael Montoya, *A False Bargain: The Los Angeles County Economic Consequences of Counterfeit Products*, Los Angeles County Economic Development Corporation, February 2007, at ii; *Music & Movie Piracy Takes Bite Out of Los Angeles Economy*, FMQB, February 19, 2007, available at [www.fmqb.com/article.asp?id=353659](http://www.fmqb.com/article.asp?id=353659).

<sup>33</sup> *Intellectual Property: Source of innovation, creativity, growth and progress*, International Chamber of Commerce, August 2005, at 14.

<sup>34</sup> See *Top 100 Brands 2006*, BusinessWeek Online, available at <http://bwnt.businessweek.com/brand/2006/>.

from counterfeit goods, and legal expenses incurred while trying to remove the counterfeit products from the market.<sup>35</sup> For example, consumers often buy a product because of the reputation they associate with the brand, such as Coca-Cola beverages or Microsoft software. IP theft can inflict heavy damage to brand reputation and credibility. Companies are often forced to defend in lawsuits stemming from counterfeit products to prove that a faulty product was not of their manufacture.<sup>36</sup>

The losses associated with IP theft are clearly substantial, but so are the profits for those engaged in the production of illegitimate goods. Thus, the attraction to counterfeiting and piracy is fairly straightforward. Investments in research and development are the most expensive aspects of bringing the majority of intellectual property-intensive goods and services to the market, as opposed to manufacturing or duplication.<sup>37</sup> Innovation investments require a company to take on significant risk, as the viability of an idea is never known until it is researched, tested and developed.<sup>38</sup> Those who steal others' innovation do not incur the investments for innovation and avoid those risks. Stated differently, those who counterfeit or pirate IP rights have little in the way of costs, making such theft very lucrative even at much lower prices. While it may cost more than \$100 million to create a blockbuster movie, the cost of copying a DVD is next to nothing.

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<sup>35</sup> See *Intellectual Property: Source of innovation, creativity, growth and progress*, *supra* note 33, at 17.

<sup>36</sup> See Clark R. Silcox and Philmore H. Colburn, II, *Counterfeit Products Present Additional Business Risks for Distributors and Contractors*, International Association of Electrical Inspectors, May-June 2005, available at [www.iaei.org/subscriber/magazine/05\\_c/silcox.htm](http://www.iaei.org/subscriber/magazine/05_c/silcox.htm).

<sup>37</sup> *Foreign Infringement of Intellectual Property Rights: Implications for Selected U.S. Industries*, Office of Industries Working Paper, United States International Trade Commission, October 2005, at 1.

<sup>38</sup> *Id.*; *Intellectual Property: Source of innovation, creativity, growth and progress*, *supra* note 33, at 8.

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To illustrate the attractiveness of IP theft and the potential profits generated in this area, the European Commission's Taxation and Customs Union states that one kilo of cannabis will sell for 2000 euros in Europe, while one kilo of counterfeit CDs will sell for 3000 euros.<sup>39</sup> Similarly, a U.S. report states that, with \$47,000, someone can buy either a kilo of cocaine or 1,500 pirated copies of Microsoft Office.<sup>40</sup> The person who buys the cocaine can sell it for \$94,000 and generate a 100 percent return, but the person who buys the pirated software can sell the copies for \$423,000, which is an 800 percent return on their investment.<sup>41</sup>

Despite increasing global awareness and concern regarding the issue of IP theft, there is a general consensus that the problem is growing.<sup>42</sup> A review of customs statistics demonstrates that counterfeit goods continue to flood markets at high rates. U.S. Customs reports the number of counterfeit seizures on a fiscal year basis and these statistics show a consistent increase between 2001 and 2005, when seizures increased from 3,586 in 2001 to 8,022 in 2005.<sup>43</sup> In 2006, this number surged to 14,675 seizures of counterfeit goods.<sup>44</sup> Both New Zealand and South Africa have also reported that counterfeit seizures have dramatically increased in recent

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<sup>39</sup> *A Serious Problem for Everyone*, European Commission Taxation and Customs Union, available at [http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/combating/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/combating/index_en.htm).

<sup>40</sup> *What are Counterfeiting and Piracy Costing the American Economy*, *supra* note 14, at 13. This example is based on Microsoft Office 2000.

<sup>41</sup> *Id.*

<sup>42</sup> See, e.g., *Counting the Cost*, OECD Preliminary Findings, *supra* note 2, at 6, 7; Ray Parry, *The Great Gall of China*, Counterfeit.com, last modified September 8, 2006, available at [www.counterfeit.com/main/publication/content/487.html](http://www.counterfeit.com/main/publication/content/487.html).

<sup>43</sup> *FY 2002 Top IPR Commodities Seized*, United States Customs [hereinafter "2002 U.S. Customs Statistics"]; *FY 2005 Top IPR Commodities Seized*, Department of Homeland Security, United States Customs and Border Protection and United States Immigration and Customs Enforcement [hereinafter "2005 U.S. Customs Statistics"]. A summary of these seizure statistics can be found at Table 3 in Appendix 1.

<sup>44</sup> *FY 2006 Top IPR Commodities Seized*, Department of Homeland Security, United States Customs and Border Protection and United States Immigration and Customs Enforcement [hereinafter "2006 U.S. Customs Statistics"]. Included in the 2006 statistics is a summary graph showing the dramatic increase in the number of seizures in recent years. This graph is attached as Table 5 in Appendix 1.

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years.<sup>45</sup> Similarly, the number of seizures in Japan increased almost 380 percent between 2001 and 2005, from 2,812 seizures in 2001 to 13,467 seizures in 2005.<sup>46</sup> In the EU, the official statistics report the actual number of articles seized, rather than the number of times they seized counterfeit goods, and these show slightly less consistent, though still significant, numbers of infringing products. In 2003, the EU seized 92.2 million counterfeit articles.<sup>47</sup> This number increased to 103.5 million in 2004, but then declined to 75.7 million in 2005.<sup>48</sup>

These border seizures have occurred despite the constant efforts of counterfeiters to adapt their actions to avoid detection. One common method used to avoid seizure is to modify the shipment route to make it appear as though the goods are entering from a country that is perceived as being low risk.<sup>49</sup> For instance, EU officials stopped a shipment of counterfeit car parts in 2004 that was coming from the U.S., but which actually originated in China.<sup>50</sup> Similarly, American officials have seized shipments that originated in China but traveled through Belize before entering the U.S.<sup>51</sup> Additionally, EU Customs statistics for 2005 show an increase in

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<sup>45</sup> See *Counterfeit Crime on the Increase*, One News, January 25, 2007, available at <http://tvnz.co.nz> (citing a 300 percent increase in counterfeit goods since 2001); *SARS Media Release: International Customs Day*, South African Revenue Service, January 26, 2007, available at [www.sars.gov.za](http://www.sars.gov.za) (stating the rate of counterfeit seizures in South Africa has been steadily increasing, with seizures increasing from 335 in the 2004-2005 financial year to 725 seizures the following year).

<sup>46</sup> *Intellectual Property Violation Seizure Report*, Japan Customs, 2002-2006. English translation attached as Table 2 in Appendix 1.

<sup>47</sup> *European Commission Taxation and Customs Union Seizure Statistics*, 2003, available at [http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/statistics/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm) [hereinafter "2003 EC Seizure Statistics"].

<sup>48</sup> *2004 EC Seizure Statistics*, *supra* note 10; *European Commission Taxation and Customs Union Seizure Statistics*, 2005, available at [http://ec.europa.eu/taxation\\_customs/customs/customs\\_controls/counterfeit\\_piracy/statistics/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm) [hereinafter "2005 EC Seizure Statistics"]. A summary of these seizure statistics can be found at Table 4 in Appendix 1.

<sup>49</sup> See, e.g., *EC Response to the Latest Trends in Counterfeiting and Piracy*, *supra* note 9, at 6.

<sup>50</sup> See *id.*

<sup>51</sup> See Beverley Lumpkin, *Counterfeit Consumer Goods Could Present Health and Safety Risks*, Associated Press, January 12, 2007, available at [www.signonsandiego.com](http://www.signonsandiego.com).

counterfeit goods coming from Switzerland, which is presumed to be an easier way to get shipments into the EU and avoid raising suspicion.<sup>52</sup>

Another method used to avoid detection is to send individual components of a counterfeit product, which are harder to detect at the border, and then have someone, either a member of the counterfeit organization or a third-party, assemble the final product for distribution within the importing country.<sup>53</sup> Additionally, counterfeiters are increasingly using the internet and free trade zones to facilitate distribution and avoid seizure at the border.<sup>54</sup> E-commerce sites may be misused by pirates to deceive consumers by posing as legitimate sellers.<sup>55</sup> With the changing technology and increasingly diverse channels for distributing goods, the levels of counterfeiting and piracy have continued to rise creating a crisis for IP holders and for nations which look to innovation for continued growth. All of these distribution methods are leading to increasing levels of infringing goods in the stream of commerce.<sup>56</sup>

## ***2. China's Role***

While IP theft is truly a global problem, China is widely regarded as one of the worst offenders. The United States Trade Representative (USTR) evaluated China's IPR enforcement regime a few years ago and determined that China should be placed on its Priority Watch list in

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<sup>52</sup> See 2005 EC Seizure Statistics, *supra* note 48; see also Thomas Mulier and Hugo Miller, *China, Russia Make Most Counterfeit Goods, Group Says (Update 1)*, Bloomberg.com, January 29, 2007, available at <http://www.thetruecosts.org/portal/truecosts/news/default> (Weekly Clip Report January 26-29).

<sup>53</sup> *What are Counterfeiting and Piracy Costing the American Economy*, *supra* note 14, at 9.

<sup>54</sup> See William New, *Industry, Intergovernmental Organizations Launch Global Anti-Piracy Blitz*, Intellectual Property Watch, January 31, 2007, available at [www.ip-watch.org](http://www.ip-watch.org); see also *Guidelines on Controlling Free Zones in Relation to Intellectual Property Rights Infringements*, World Customs Organization, EC0183E1a, January 12, 2005.

<sup>55</sup> Andrew Noyes, *Business Groups Release New Tools to Combat Piracy*, National Journals Technology Daily PM Edition, January 24, 2007, available at <http://www.thetruecosts.org/portal/truecosts/news/default> (Weekly Clip Report January 26-29).

<sup>56</sup> See *Counting the Cost*, OECD Preliminary Findings, *supra* note 2, at 4.

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April 2005, which demonstrated that the U.S. government felt China was lacking in IPR protection and enforcement.<sup>57</sup> Studies by non-governmental organizations also confirm that China is considered to be a severe offender. At the third annual Global Congress on Combating Counterfeiting and Piracy, held in Geneva in January 2007, preliminary results from an OECD study summarizing seizure statistics showed that four countries were responsible for 62 percent of all reported seizures, with the largest percentage originating in China.<sup>58</sup> Additionally, a recent survey of 48 businesses found that China and Russia were perceived as the worst offenders in terms of their IP protections and enforcement.<sup>59</sup> Finally, the most recent member survey by the American Chamber of Commerce in China (AmCham China) found that 55 percent of its member companies reported they were negatively affected by IPR violations in China, and 41 percent reportedly experienced increases in counterfeits of their goods over the past year.<sup>60</sup> As one author put it, China “seems to have become the ‘Godfather’ of counterfeiting – and is the mastermind behind the crisis.”<sup>61</sup>

The UK-based Anti-Counterfeiting Group estimates that China is the source of 60 to 75 percent of the total counterfeit goods in global circulation.<sup>62</sup> This estimate is supported by U.S. and EU government statistics, which demonstrate the significant and disproportionate number of

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<sup>57</sup> See *2006 Report to Congress on China's WTO Compliance*, United States Trade Representative, December 11, 2006, at 71.

<sup>58</sup> *Counting the Cost*, OECD Preliminary Findings, *supra* note 2, at 4 (noting that 32 percent of the goods seized originated in China, followed by Thailand at 13 percent, Korea at 9 percent, and Hong Kong at 8 percent).

<sup>59</sup> *Global Survey on Counterfeiting and Piracy*, Business Action to Stop Counterfeiting and Piracy, January 29, 2007, at 3.

<sup>60</sup> See *White Paper 2006: American Business in China*, The American Chamber of Commerce – The People's Republic of China, 2006, at 34 [hereinafter “AmCham White Paper 2006”]; see also *U.S. Chamber of Commerce and American Chamber of Commerce China Joint Submission in Support of USTR Special Provincial Review of IPR Protection in China*, July 14, 2006, at 2.

<sup>61</sup> Sativa Ross, *Parts Counterfeiting*, *Aftermarket Business*, October 1, 2004, available at [www.aftermarketbusiness.com](http://www.aftermarketbusiness.com).

<sup>62</sup> Parry, *supra* note 42.

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counterfeit goods that originate in China. In 2001, 46 percent of counterfeit goods seized at the U.S. border came from China, and the second-largest offender was Hong Kong at 10 percent.<sup>63</sup> In 2003, China accounted for 66 percent of the goods seized at the U.S. border and this number had increased to 69 percent by 2005.<sup>64</sup> Last year, the number increased even more with an astounding 81 percent of counterfeit goods seized at the U.S. border originating in China, and Hong Kong was still responsible for the second-largest amount at 6 percent.<sup>65</sup> The EU statistics show a similarly large percentage of counterfeit goods originating in China, with China accounting for 60 percent of the seizures in 2003, 54 percent in 2004, and 64 percent in 2005.<sup>66</sup> Japanese customs statistics show somewhat smaller amounts coming from China, but there have been dramatic increases in recent years, with China accounting for 7.9 percent in 2002 and increasing to 46.6 percent by 2005.<sup>67</sup>

To put these numbers in perspective, China currently accounts for approximately 20 percent of the world's population, with 1.3 billion people.<sup>68</sup> This percentage appears to be proportionately represented in U.S. import statistics, with China accounting for approximately 16 percent of all U.S. imports by value in 2006,<sup>69</sup> yet 81 percent of all counterfeit goods seized that year originated in China. Similarly, while 13.4 percent of total EU imports came from China in

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<sup>63</sup> 2002 U.S. Customs Statistics, *supra* note 43. The U.S. statistics for percentages are determined by value of the goods, *i.e.*, the value of goods originating from China represented 46 percent of the total value seized in 2001.

<sup>64</sup> *FY 2003 Top IPR Commodities Seized*, Department of Homeland Security, United States Customs and Border Protection and United States Immigration and Customs Enforcement [hereinafter "2003 U.S. Customs Statistics"].

<sup>65</sup> 2006 U.S. Customs Statistics, *supra* note 44.

<sup>66</sup> 2003 EC Seizure Statistics, *supra* note 47; 2004 EC Seizure Statistics, *supra* note 10; 2005 EC Seizure Statistics, *supra* note 48.

<sup>67</sup> *Intellectual Property Violation Seizure Report*, Japan Customs, 2002-2006. English translation attached as Table 2 in Appendix 1.

<sup>68</sup> See *The World Factbook*, Central Intelligence Agency, last updated March 15, 2007, available at <https://www.cia.gov/cia/publications/factbook/index.html> (comparing China and the World).

<sup>69</sup> See U.S. Import Statistics, attached as Table 1 in Appendix 1.

2005,<sup>70</sup> the country accounted for a much larger percentage of counterfeit goods entering the EU at 64 percent.

China's counterfeit operations have achieved a great level of sophistication, which enables them to thrive so successfully in this area. For instance, Chinese companies not only manufacture copies of the branded products, but also duplicate the anti-theft devices used by companies to protect their innovations, such as holograms, which are devices commonly used for security protection.<sup>71</sup> China is known to have one of the most highly sophisticated hologram manufacturing industries in the world.<sup>72</sup> China also excels at copying packaging designs and security inks that are intended to differentiate the real products from the fakes.<sup>73</sup> According to one author, "brand owners must accept that Chinese counterfeiters have the technical skills and equipment to copy almost anything and everything produced anywhere in the world including most protective deterrent and detection products."<sup>74</sup>

There are some signs that China's own appreciation for IPR is growing, which may be an important step in creating effective protection of foreign IPR. China's modern IP framework is only about two decades old,<sup>75</sup> which means that China is still cultivating an appreciation and understanding of IP rights.<sup>76</sup> However, the Director General of the World Intellectual Property Organization (WIPO) noted in December 2006 that the Chinese are rapidly increasing the

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<sup>70</sup> *EU Bilateral Trade With China*, DG Trade Statistics, September 15, 2006.

<sup>71</sup> See Parry, *supra* note 42.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> See *infra* Section II for a discussion on the history of China's IP laws.

<sup>76</sup> See Kathleen E. McLaughlin, *U.S. calls Beijing on Piracy – Despite Washington's Complaints, China Lags in Policing Intellectual Property Theft*, San Francisco Chronicle, June 8, 2005, at C-1, available at [www.sfgate.com](http://www.sfgate.com).

number of patents they file at WIPO, signaling an increased desire to protect their own IP rights.<sup>77</sup> As China places more value on its own intellectual property and takes actions to protect local IP owners, the international community may also see a corresponding increase in its efforts to protect the rights of foreign entities.<sup>78</sup>

While this increasing appreciation for its own IPR by the Chinese government introduces some hope for the future, as it stands now, many U.S. industries consider IP theft to be a serious trade barrier with China. Companies are less inclined to invest in new projects in that region when they feel the investments are not provided adequate security, and the incredibly high rates of IP theft in China make it difficult for U.S. businesses to compete.<sup>79</sup> The following sections highlight some of the challenges facing particular industries and identify, where possible, the industries' perceptions of the problems in China.

### **C. PHARMACEUTICALS**

IP theft in the pharmaceutical industry is a growing problem that has serious repercussions on public health and safety. Cancer medications, anti-malarial drugs, cholesterol medications, painkillers, antibiotics, HIV/AIDS drugs, Alzheimer's medication, hormones, weight loss drugs, and blood pressure medications are just some examples of the fake products

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<sup>77</sup> William New, *Piracy, Innovation Top Developed-Country Industry Priority List*, Intellectual Property Watch, January 26, 2007, available at [www.ip-watch.com](http://www.ip-watch.com). According to WIPO statistics, patent applications from China increased 56.8 percent in 2006 as compared to 2005. See *Record Year for International Patent Filings with Significant Growth from Northeast Asia*, World Intellectual Property Organization, Press Release PR/476/2007, February 7, 2007.

<sup>78</sup> See *The Boot Is On The Other Foot – China Discovers the Virtues of Intellectual Property*, The Economist, May 30, 2006; see also Marlowe Hood, *Steal This Software*, IEEE Spectrum, June 2005, available at [www.spectrum.ieee.org/june05/1232](http://www.spectrum.ieee.org/june05/1232) (noting that counterfeiting is also harming the Chinese software industry and quoting a Beijing-based attorney as saying, “Chinese companies will drive change more than foreign pressure”).

<sup>79</sup> See, e.g., *Foreign Infringement of Intellectual Property Rights*, *supra* note 37, at 1; *Intellectual Property: Source of innovation, creativity, growth and progress*, *supra* note 33, at 15.

that have made their way into the supply chain. Counterfeiters target both brand name and generic pharmaceuticals, and it is often difficult, if not impossible, to distinguish the real from the fake using only the naked eye.<sup>80</sup> Clearly, the ramifications from receiving a fake form of one of these pharmaceuticals can often be deadly.

The pharmaceutical industry is one of the few industries that estimates lost revenues due to inadequate patent protection in other countries.<sup>81</sup> For 2005, the industry estimates that it lost over \$7 billion in revenue from IP theft in 22 countries, with China accounting for the highest percentage of lost sales at 33 percent.<sup>82</sup> The production and sale of counterfeit drugs is the biggest problem facing the industry. However, there are also concerns in the industry regarding insufficient protection for pharmaceutical data.

### *1. Counterfeit Drugs*

In 2003, 600,000 boxes of fake Lipitor, a cholesterol-lowering medication, ended up in American drugstores, including Rite-Aid.<sup>83</sup> In 2004, at least 50 babies died and more than 100 were found to be severely malnourished in the Anhui province of China because they were fed fake milk formula, containing as little as six percent of the vitamins and protein necessary for an infant's growth and development.<sup>84</sup> In that same year, a 22-year old woman in Argentina was diagnosed with mild anemia and died after receiving highly-toxic, counterfeit iron injections.<sup>85</sup>

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<sup>80</sup> See World Health Organization Revised Fact Sheet No. 275: Counterfeit Medicines, November 14, 2006.

<sup>81</sup> *Foreign Infringement of Intellectual Property Rights*, *supra* note 37, at 27.

<sup>82</sup> *Id.*

<sup>83</sup> *Inside the World of Counterfeit Drugs*, Dateline NBC, June 9, 2006, available at [www.msnbc.com](http://www.msnbc.com).

<sup>84</sup> Watts, *supra* note 4.

<sup>85</sup> World Health Organization Revised Fact Sheet No. 275, *supra* note 80. An additional woman died from the same counterfeit iron injection the following year, yet at the time of the report (November 2006), Argentina did not consider counterfeiting medicines a crime. *Id.*

In 2005, two boys died from rabies in the Guangdong region of China, despite their parents' belief that the boys had been vaccinated against such disease.<sup>86</sup> Police later found 40,000 boxes of fake rabies vaccine.<sup>87</sup> In 2006, the U.S. Food and Drug Administration ("FDA") intercepted 51 shipments of counterfeit Tamiflu, the most popular medication for both the treatment and prevention of the bird flu, which had originated in China.<sup>88</sup>

These examples demonstrate that production of counterfeit drugs covers a broad spectrum, incorporating an array of illegal and infringing activity. The most harmless, in terms of public health, involves copying a brand label and applying it to generic drugs. This allows the counterfeiter to benefit from the brand recognition and charge a higher price, which is detrimental to the brand owner's reputation and results in significant lost profits but does not necessarily endanger the customer. A much more hazardous practice involves creating fake drugs that contain diminished levels of active ingredients, or even lack them entirely.

Given these multiple aspects, WHO has developed the following definition for counterfeit medicine:

a medicine, which is deliberately and fraudulently mislabeled with respect to identity and/or source. Counterfeiting can apply to both branded and generic products and counterfeit products may include products with the correct ingredients or with the wrong ingredients, without active ingredients, with insufficient active ingredients or with fake packaging.<sup>89</sup>

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<sup>86</sup> Watts, *supra* note 4.

<sup>87</sup> *Id.*

<sup>88</sup> Watts, *supra* note 4.

<sup>89</sup> *Counterfeit Medicines: an Update on Estimates*, International Medical Products Anti-Counterfeiting Taskforce (IMPACT), November 15, 2006, at 1 [hereinafter "*Counterfeit Medicines: an Update on Estimates*"].

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A working paper by the U.S. International Trade Commission (“ITC”) states that there are increasing reports of these fake and/or mislabeled drugs, which not only expose customers to serious health risks but also diminish consumer confidence in the global medical supply chain.<sup>90</sup>

Producing counterfeit drugs is a highly lucrative business, as there is high demand for the products yet low production costs.<sup>91</sup> Medicine can be very expensive and people looking for cheaper options often fall prey to counterfeiters who target drugs that are known to be in high demand. This equation has resulted in the highest concentration of counterfeit drugs making their way into the developing world. It is estimated that less than one percent of medicine sold in developed countries are counterfeit drugs; in developing countries, estimates range from 10 to 50 percent.<sup>92</sup>

However, the developed world is certainly not immune to counterfeit medications. The European Commission states that it stopped 148 counterfeit drug shipments at EU borders in 2005,<sup>93</sup> and that seizures of counterfeit drugs increased 1000 percent between 1998 and 2004.<sup>94</sup>

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<sup>90</sup> See *Foreign Infringement of Intellectual Property Rights*, *supra* note 37, at 33. The report provides the example of an active ingredient such as aspirin being distributed in bottles bearing counterfeit trademarks, such as for the schizophrenia drug, Zyprexa. *Id.* See also *PhRMA Written Comments to USTR re 2007 National Trade Estimate*, Pharmaceutical Research and Manufacturers of America, November 8, 2006 [hereinafter “*PhRMA Comments re 2007 NTE*”].

<sup>91</sup> *World Health Organization Revised Fact Sheet NO. 275*, *supra* note 80.

<sup>92</sup> See *Counterfeit Medicines: an Update on Estimates*, *supra* note 89, at 1; Robert Cockburn, *et al.*, *The Global Threat of Counterfeit Drugs: Why Industry and Governments Must Communicate the Dangers*, *PLoS Medicine* 2(4), April 2005, available at [doi:10.1371/journal.pmed.0020100](https://doi.org/10.1371/journal.pmed.0020100); *Counterfeit Drugs Questions and Answers*, United States Food and Drug Administration, available at [www.fda.gov/oc/initiatives/counterfeit/qa.html](http://www.fda.gov/oc/initiatives/counterfeit/qa.html).

<sup>93</sup> Emilie Reymond, *Drug Counterfeiters Changing Tactics to Bypass EU Customs*, *In-Pharmatechnologist.Com*, November 16, 2006.

<sup>94</sup> Brian Schwarz and Vanessa Wong, *Counterfeit Cures*, *Insight Magazine*, The American Chamber of Commerce in Shanghai, October 2006, at 29. See also *Intellectual Property Rights Issues and Imported Counterfeit Goods: Hearing Before the U.S.-China Economic and Security Review Commission*, 109th Cong., 2d sess., 176 (June 7-8, 2006) (statement of Mr. Peter Pitts, Center for Medicine in the Public Interest).

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In the U.S., a doctor in St. Louis, Missouri prescribed Procrit to a married mother of six to help with her energy levels as she battled cancer.<sup>95</sup> The family paid \$500 for each weekly injection that they picked up at their local pharmacy. The drug worked well for a while but then seemed to stop. It turned out that the last batch they received was fake and did not have enough of the active ingredient to make an impact.<sup>96</sup> The source was a counterfeit drug operation based in Miami and as many as 11,000 boxes of the fake Procrit had been distributed nationwide, with some even ending up in a well-known chain, CVS.<sup>97</sup> The counterfeiters pocketed an estimated \$28 million dollars, while the mother of six who was dying from cancer lost valuable time with her family.<sup>98</sup>

Additionally, in January 2007 police arrested the owner of Spin Quality Printers in Miami for his involvement in a large-scale illicit drug operation that focused on prescription medications for the treatment of HIV and the treatment of psychotic disorders such as schizophrenia.<sup>99</sup> The owner of the printing business used his equipment to create fake labels by forging brand names, lot numbers, and even expiration dates, so that the drugs could be marketed as legitimate pharmaceuticals.<sup>100</sup> Although the operation was based in Miami, investigators determined that these altered medications had been shipped throughout the country.<sup>101</sup>

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<sup>95</sup> *Inside the World of Counterfeit Drugs*, Dateline NBC, June 9, 2006, available at [www.msnbc.com](http://www.msnbc.com).

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *See Miami Man Arrested for Counterfeiting Prescription Drug Labels*, Office of the Attorney General, January 26, 2007, available at <http://myfloridalegal.com/newsrel.nsf/newsreleases>.

<sup>100</sup> *See id.*

<sup>101</sup> *Id.*

While counterfeit drugs are clearly already a major global concern, many fear that the situation will only get worse. One study estimates that counterfeit drug sales will increase annually by 13 percent through 2010, a growth rate nearly double that for sales of legitimate pharmaceuticals.<sup>102</sup> Given this growth rate, counterfeit drug sales are expected to reach \$75 billion by 2010, an increase of more than 90 percent from 2005.<sup>103</sup> Increasing use of the internet is one aspect that may help explain these escalating numbers, as online pharmacies are growing in number and estimates seem to agree that the majority of them are distributing counterfeit drugs. The high cost of prescription drugs, combined with a lack of health insurance, make the internet an attractive option for many consumers.<sup>104</sup> However, a report by WHO states that medicines purchased over the internet from websites that conceal their actual physical address are counterfeit in over 50 percent of the cases,<sup>105</sup> while a Columbia University study of 185 websites found that only 11 percent of the internet pharmacies were legitimate.<sup>106</sup>

A 30-year old man in Chicago experienced the dangers of buying drugs online in 2004 when he ordered \$400 worth of Xanax and Ultram, a painkiller, to help with his back pain.<sup>107</sup> He took one pill of each and woke up three weeks later in the hospital to learn that he had suffered a heart attack, fell into a coma and experienced brain damage as a result. The Xanax he ordered

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<sup>102</sup> *Anti-Counterfeiting and Piracy Update – Counterfeit Pharmaceuticals: Coming to a medicine cabinet near you*, National Chamber Foundation, January 2007.

<sup>103</sup> *World Health Organization Revised Fact Sheet No. 275*, *supra* note 80.

<sup>104</sup> *See Special Report: Bitter Pills*, BusinessWeek Online, December 18, 2006, available at [www.businessweek.com](http://www.businessweek.com).

<sup>105</sup> *Counterfeit Medicines: an Update on Estimates*, *supra* note 89, at 1.

<sup>106</sup> *See Anti-Counterfeiting and Piracy Update – Counterfeit Pharmaceuticals: Coming to a medicine cabinet near you*, National Chamber Foundation, January 2007; *Special Report: Bitter Pills*, *supra* note 104.

<sup>107</sup> *Special Report: Bitter Pills*, *supra* note 104.

turned out to be four times the normal dosage, which proved to be an almost-lethal combination when taken with the Ultram.<sup>108</sup>

The more common example may be Viagra, which happens to be one of the most frequently counterfeited drugs.<sup>109</sup> The attraction to buying this drug over the internet is not surprising as customers are able to bypass a visit to their doctor, but they often receive illegitimate pills that may pose serious health risks.

In addition to the health and safety concerns arising from this aspect of IP theft, there are also significant financial costs associated with it. As mentioned above, research and development (“R&D”) are expensive, and often lengthy, aspects of the total production of a good. This is particularly true in the pharmaceutical industry. The USITC reports that it takes 14.2 years to develop a new drug, with the average total cost to develop a new research-based prescription drug estimated at more than \$800 million.<sup>110</sup> U.S. pharmaceutical manufacturers reportedly spent an estimated \$39.4 billion on R&D in 2005, but for every 250 drugs that enter preclinical testing, only one ends up being approved by the FDA.<sup>111</sup> Moreover, only about 30 percent of drugs that make it onto the market generate returns that either meet or exceed their R&D costs.<sup>112</sup> Counterfeiting of drugs makes it much more difficult for pharmaceutical companies to continue to invest in new medicines to improve the quality of life.

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<sup>108</sup> *Id.*

<sup>109</sup> See, e.g., Emilie Reymond, *Drug Counterfeiters Changing Tactics to Bypass EU Customs*, In-Pharmatechnologist.Com, November 16, 2006; *World Health Organization Fact Sheet No. 275: Substandard and Counterfeit Medicines*, World Health Organization, November 2003.

<sup>110</sup> *Foreign Infringement of Intellectual Property Rights*, *supra* note 37, at 21.

<sup>111</sup> *PhRMA Comments re 2007 NTE*, *supra* note 90.

<sup>112</sup> *Id.*

China, India and Russia are considered to be three of the largest producers of counterfeit drugs.<sup>113</sup> It is estimated that between 200,000 and 300,000 people die in China each year as a result of counterfeit medications.<sup>114</sup> In 2005, official figures state that China investigated 310,000 reports of counterfeit drugs, which resulted in the destruction of 530 illegal factories, but only 214 cases continued on to prosecution.<sup>115</sup> According to the Pharmaceutical Research and Manufacturers of America (“PhRMA”), one of the biggest problems pharmaceutical manufacturers face in China in terms of IP theft is that Chinese manufacturers produce bulk active pharmaceutical ingredients (“API”), which are then used in the manufacture of counterfeit drugs.<sup>116</sup> The API are bought by counterfeiters who process the chemicals into counterfeit pills that are both sold in China and exported to other countries, including the U.S.<sup>117</sup>

A rather alarming fact is that the act of selling bulk quantities of active chemical ingredients to the counterfeiters is not illegal under Chinese law.<sup>118</sup> According to the Chinese Drug Administration Law, when a chemical company registers its API product with the State Food and Drug Administration (“SFDA”), it must notify the SFDA that the API will be used in a finished pharmaceutical product and the SFDA must grant the company a product registration number before the company can legally supply the API for the finished product.<sup>119</sup> When a

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<sup>113</sup> Watts, *supra* note 4. See *PhRMA Special 301 Submission 2007*, Pharmaceutical Research and Manufacturers of America, at 8 [hereinafter “*PhRMA Special 301 Submission 2007*”].

<sup>114</sup> Schwarz and Wong, *supra* note 94, at 29.

<sup>115</sup> Watts, *supra* note 4.

<sup>116</sup> See *PhRMA Comments re 2007 NTE*, *supra* note 90, at 13.

<sup>117</sup> See *id.*

<sup>118</sup> See *id.* This is in contrast to U.S. law which penalizes suppliers of API when they knowingly provide chemicals for a drug that will be marketed in violation of the Federal Food, Drug, and Cosmetic Act. See *id.* at 13 n.1 (referencing 18 U.S.C. § 371 and 18 U.S.C. § 2).

<sup>119</sup> See *id.*; see also Drug Administration Law of the People’s Republic of China, December 2001, available at [www.sfda.gov.cn/cmsweb/webportal/W45649037/A48335975.html](http://www.sfda.gov.cn/cmsweb/webportal/W45649037/A48335975.html); Regulations for Implementation of the

company chooses not to register its API with the SFDA, however, there is no government oversight to preclude the inclusion of the API in finished products.<sup>120</sup> While the SFDA clearly recognizes the importance of regulating such chemicals, this illustrates a loophole in the law that is being exploited for counterfeiting purposes. According to PhRMA, chemical companies in China advertise API on commercial websites under the general heading of “for medicinal use,” while having no regard for the specific intended use and often blatantly ignoring the SFDA regulations that would subject them to government oversight.<sup>121</sup>

China’s laws regarding criminal prosecution of production and sale of counterfeit drugs are also troublesome.<sup>122</sup> They contain extensive evidentiary requirements, including a certain amount of sales of the offending pharmaceutical and some proof that the drug contains a substantially deficient level of active ingredients, which are often difficult to show.<sup>123</sup> Additionally, these laws are reactionary as opposed to precautionary or preemptive, as the drug must already be in the supply chain and there must be some proof of its harmful effect before a criminal investigation can even commence.<sup>124</sup> According to PhRMA, these requirements “all but preclude[] criminal prosecution against counterfeiters under China’s drug laws.”<sup>125</sup>

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Drug Administration Law of the People’s Republic of China, September 2002, available at [www.sfda.gov.cn/cmsweb/webportal/W45649038/A48335997.html](http://www.sfda.gov.cn/cmsweb/webportal/W45649038/A48335997.html).

<sup>120</sup> See *PhRMA Comments re 2007 NTE*, supra note 90, at 13.

<sup>121</sup> See *id.*

<sup>122</sup> See *AmCham White Paper 2006*, supra note 60, at 38.

<sup>123</sup> See *id.*; *PhRMA Special 301 Submission 2007*, supra note 113, at 55.

<sup>124</sup> See *AmCham White Paper 2006*, supra note 60, at 38; *PhRMA Special 301 Submission 2007*, supra note 113, at 55.

<sup>125</sup> *PhRMA Special 301 Submission 2007*, supra note 113, at 55.

## 2. *Data*

An additional issue of concern to pharmaceutical companies is the lack of data protection in many emerging pharmaceutical industries.<sup>126</sup> One of the most expensive aspects of developing a new drug is conducting the clinical trials and gathering test data.<sup>127</sup> Maintaining that data and ensuring that others do not benefit from it is crucial to continued pharmaceutical innovation. Accordingly, Article 39.3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) recognizes the importance of data exclusivity and requires WTO members to provide drug companies with protection such that their clinical data are not disclosed or used unfairly for commercial gain.<sup>128</sup> Countries with sophisticated IPR regimes generally provide a period of exclusivity that prohibits others from using the protected data to support their own generic drug applications for a period of at least five years.<sup>129</sup> China, however, falls within a group of countries with emerging pharmaceutical industries that has yet to provide adequate data protection in accordance with the provisions of TRIPS Article 39.3.<sup>130</sup> While China adopted rules for data exclusivity in 2002 that called for a six-year term of protection, the American Chamber of Commerce in China has reported that China has had problems implementing the rules effectively.<sup>131</sup>

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<sup>126</sup> See *Foreign Infringement of Intellectual Property Rights*, *supra* note 37, at 24.

<sup>127</sup> See *id.*

<sup>128</sup> See *id.*; see also Agreement on Trade-Related Intellectual Property Rights, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C [hereinafter "TRIPS Agreement"].

<sup>129</sup> See *id.*

<sup>130</sup> See *id.*

<sup>131</sup> *AmCham White Paper 2006*, *supra* note 60, at 134. See Regulations for Implementation of the Drug Administration Law of the People's Republic of China, September 2002, Article 35, available at [www.sfda.gov.cn/cmsweb/webportal/W45649038/A48335997.html](http://www.sfda.gov.cn/cmsweb/webportal/W45649038/A48335997.html).

#### D. BIOTECHNOLOGY

Biotechnology is another research-intensive industry where IP theft is a growing problem. Certain biotechnology companies work to produce, *inter alia*, genetically modified organisms (GMOs) and pesticides with a focus on crop protection and sustainable agriculture. These clearly have important societal benefits, such as in the area of poverty alleviation.

This industry suffers from similar forms of infringement as the pharmaceutical industry, with bogus products being sold with fake labels, legitimate containers being re-used to sell counterfeit products, and diluting or otherwise altering legitimate products to significantly modify their effects.<sup>132</sup> This can tarnish the reputation of the original brand owners but, more importantly, it creates great uncertainty for the consumers who may rely on the products for their livelihood.

In China, a fake pesticide used on 200 hectares of wheat completely destroyed the harvest, on which over 100 households relied.<sup>133</sup> In 2004, hundreds of hectares of maize, potatoes and tomatoes were either completely destroyed or severely damaged by an agriculture product containing the wrong ingredient.<sup>134</sup> This resulted in the farmers incurring substantial economic loss, estimated at tens of thousands of euros per crop.<sup>135</sup> In addition to this economic loss, fake pesticides can cause significant environmental and health risks, particularly when used

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<sup>132</sup> See *CropLife International's Response to OECD Industry Questionnaire*, OECD Counterfeiting and Piracy Project, at Q1. CropLife International is a global federation representing the plant science industry across 91 countries. Some of its leading member companies include DuPont, Monsanto, Bayer Cropscience, and Dow Agrobusiness.

<sup>133</sup> *Id.* at Q2.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

on food crops.<sup>136</sup> It is important to consider that when the counterfeit goods contain unregistered ingredients, the quality of the produce is unknown and exports of such produce may no longer comply with international sanitary and phytosanitary standards. If these below-grade commodities make it into the market, they can compromise the entire food chain and pose serious health safety risks.<sup>137</sup>

Given these potential ramifications, as well as the societal benefits associated with legitimate biotechnology projects, it is understandable that IP is considered the “life blood” of the industry.<sup>138</sup> Investors will not provide financial resources necessary to continue developments in this area if there is weak patent protection and they fear their investment may not generate attractive returns.<sup>139</sup> In the area of biotechnology, reduced investment and innovation is truly detrimental to society as it not only results in economic losses and health risks, but it hinders economic development. Additionally, as IP theft becomes a more imposing problem in this industry, companies are forced to spend money on monitoring markets for counterfeit products and investing in programs to combat this problem.<sup>140</sup> This further hinders innovation as it means less money that can be spent researching and developing new products that could have substantial social benefits.

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<sup>136</sup> *CropLife America's Comments Regarding USTR's Special Provincial Review of IPR Protection in China*, July 19, 2006 (explaining that “farming communities could suffer long-term economic damages, based on sustained use of untested, unproven counterfeit chemical products on their crops and their land”).

<sup>137</sup> *See CropLife International's Response to OECD Industry Questionnaire*, *supra* note 132, at Q2.

<sup>138</sup> *Biotechnology Industry Organization's Written Comments to USTR Regarding China's WTO Compliance*, September 18, 2006, at 3, available at [www.bio.org/ip/letters/](http://www.bio.org/ip/letters/).

<sup>139</sup> *Biotechnology Industry Organization's Written Comments to State Intellectual Property Office of the Peoples' Republic of China Regarding Draft Amendments to China's Patent Law*, August 28, 2006, at 1, available at [www.bio.org/ip/letters/](http://www.bio.org/ip/letters/).

<sup>140</sup> *See Counterfeiting*, CropLife International, at [www.croplife.org](http://www.croplife.org), accessed December 4, 2006.

Again, China presents a serious obstacle as an estimated 30 percent of agricultural chemical products in China are believed to be counterfeit.<sup>141</sup> These counterfeit chemicals are not just affecting areas in China but they are also increasingly being exported to other markets.<sup>142</sup> While China is the largest market for U.S. biotechnology crops, China is also a large producer of its own technologically-enhanced plants. Given these mutual interests in the field of biotechnology, a positive environment that promotes innovation is beneficial to both the U.S. and China. Yet many believe that significant trade barriers exist in China, including inefficient enforcement of IP laws, which inhibit development in this area.<sup>143</sup>

#### **E. CONSUMER GOODS**

Some of the most well-known counterfeit products are manufactured consumer goods such as designer apparel, handbags and watches. However, counterfeiters have extended far beyond these items, with just about everything now being susceptible to IP theft. Many of the fake consumer goods finding their way into the market pose serious dangers to public health and safety.<sup>144</sup> The following reports demonstrate the broad array of known counterfeit consumer goods:

- U.S. Customs officials in Puerto Rico confiscated 13,000 fake light bulbs in 2006, worth an estimated \$45,000.<sup>145</sup>
- Over the past two and a half years, U.S. Customs has made more than 800 seizures of counterfeit golf equipment with an estimated domestic value of almost \$600,000.<sup>146</sup>

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<sup>141</sup> See *CropLife America's Comments Regarding USTR's Special Provincial Review of IPR Protection in China*, July 19, 2006.

<sup>142</sup> See *id.*

<sup>143</sup> See *Biotechnology Industry Organization's Written Comments to USTR Regarding China's WTO Compliance*, September 18, 2006, at 1, available at [www.bio.org/ip/letters/](http://www.bio.org/ip/letters/).

<sup>144</sup> See, e.g., Lumpkin, *supra* note 51 (quoting Caroline Joiner of the U.S. Chamber of Commerce Global Anti-Counterfeiting and Piracy Initiative as saying, "Every product and every industry is vulnerable [to counterfeiting].").

<sup>145</sup> *Id.*

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- South African Customs officials have already seized counterfeit goods with the 2010 World Cup logo.<sup>147</sup>
- In 2006, U.S. officials confiscated 60,000 counterfeit Duracell batteries containing a considerable amount of mercury and lacking proper ventilation such that they had a high probability of exploding under normal usage conditions.<sup>148</sup>
- Since 1993, more than nine million articles of counterfeit sports paraphernalia have been seized. The merchandise contained illegal sports logos for professional teams, colleges and universities, and was valued at more than \$300 million.<sup>149</sup>
- In the twenty-year period between 1973 and 1993, at least 166 accidents occurred as a result of counterfeit airplane parts.<sup>150</sup>
- In April 2004, authorities in multiple locations, including Hong Kong and the U.S., seized more than 7,000 counterfeit Xerox toner cartridges for color laser printers, worth an estimated \$1.3 million.<sup>151</sup>
- Of the 75 million counterfeit articles seized by EU officials in 2005, more than 5 million were counterfeit foodstuff, drinks and alcohol products.<sup>152</sup>
- In 2006, police in Illinois found close to 600 bottles of fake "Head and Shoulders" shampoo. Tests showed that the bottles contained four different types of bacteria that could endanger those with weakened immune systems.<sup>153</sup>
- Nintendo of America worked with Chinese officials to seize over 1.2 million counterfeit *Nintendo* video game products and semi-finished components in 2005.<sup>154</sup>
- The FDA posted a warning in October 2006 regarding counterfeit blood glucose test strips that had found their way into the American supply chain.<sup>155</sup>

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<sup>146</sup> *CBP Helping U.S. Golfers To Continue Hitting Them Straight*, CBP Today, October/November 2006.

<sup>147</sup> *See SARS Media Release: International Customs Day*, South African Revenue Service, January 26, 2007, available at [www.sars.gov.za](http://www.sars.gov.za).

<sup>148</sup> *See Ron Magers, Dangerous Fakes*, ABC 7 Chicago, November 14, 2006, available at [http://abclocal.go.com/wls/story?section=special\\_coverage&id=4761950](http://abclocal.go.com/wls/story?section=special_coverage&id=4761950).

<sup>149</sup> *NBA Issues Warning to Basketball Fans: Beware of Counterfeit All-Star Game Merchandise*, BusinessWire.Com, February 12, 2007.

<sup>150</sup> *See Willy Stern, Warning!*, Business Week, June 10, 1996, available at [www.businessweek.com/1996/24/b34791.htm](http://www.businessweek.com/1996/24/b34791.htm); *see also DOJ Progress Report*, *supra* note 1, at 13.

<sup>151</sup> *See \$1.3 Million in Counterfeit Toner Cartridges Confiscated*, Xerox, April 12, 2004, available at [http://www.xerox.com/go/xrx/template/inv\\_rel\\_newsroom.jsp?app=Newsroom&ed\\_name=NR\\_2004April12\\_Counterfeit\\_Cartridges&format=article&view=newsrelease&Xcntry=USA&Xlang=en\\_US](http://www.xerox.com/go/xrx/template/inv_rel_newsroom.jsp?app=Newsroom&ed_name=NR_2004April12_Counterfeit_Cartridges&format=article&view=newsrelease&Xcntry=USA&Xlang=en_US).

<sup>152</sup> *See 2005 EC Seizure Statistics*, *supra* note 48; *see also Counterfeit Food a 'Serious Threat' Says EC*, MeatProcess.Com, November 13, 2006, at [www.meatprocess.com/news](http://www.meatprocess.com/news).

<sup>153</sup> Magers, *supra* note 148.

<sup>154</sup> *IIPA Comments to TPSC on China's WTO Compliance*, International Intellectual Property Alliance, September 21, 2006, at 28.

<sup>155</sup> *See FDA Issues Nationwide Alert on Counterfeit One Touch Basic/Profile and One Touch Ultra Blood Glucose Test Strips*, United States Food and Drug Administration, October 13, 2006, available at [www.fda.gov/bbs/topics/NEWS/2006/NEW01490.html](http://www.fda.gov/bbs/topics/NEWS/2006/NEW01490.html).

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- In 2004, both Verizon Wireless and Kyocera Wireless recalled potentially counterfeit batteries after receiving complaints of batteries smoking and burning users. Verizon recalled 50,000 units, while Kyocera recalled about 1 million.<sup>156</sup>

A review of the written comments submitted to the USTR regarding the 2007 National Trade Estimate and China's WTO compliance provides additional insight into the breadth of this problem:

- The California Table Grape Commission reports that Chinese counterfeiters copy U.S. table grape box designs and use the American flag on their packaging in order to market their domestic grapes as U.S. grapes, which confuses the buyers and detracts from the high quality image and reputation of California table grapes.<sup>157</sup>
- A small American manufacturer of commercial door fixtures has learned that its trademark is well known in China due to extensive counterfeiting, even though the company does not conduct business there.<sup>158</sup>
- Sunkist Growers reports increasing IP infringement occurring in China with the Sunkist brand being applied illegally to everything from toys to beverages to fresh fruit.<sup>159</sup>
- Chinese wood is apparently being packaged to look like an American product. The illegal use of U.S.-licensed trademarks and the inferior quality of the products poses serious risk to the integrity of the U.S. industry.<sup>160</sup>
- The Society of Plastics Industry ("SPI") reports "massive intellectual property rights violations," particularly with respect to China. As examples, the SPI states that large quantities of counterfeit plastic flashlights containing a U.S. company's logo were made in China and sold in the U.S. and Canada; counterfeit household products were packaged to look like American products, even containing a fake "Made in the USA"

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<sup>156</sup> See Recall Alert: CPSC, Verizon Wireless Announce Recall of Counterfeit Cell Phone Batteries, United States Consumer Product Safety Commission, June 24, 2004, available at [www.cpsc.gov/cpsc/pub/prerel/prhmtl04/04559.html](http://www.cpsc.gov/cpsc/pub/prerel/prhmtl04/04559.html); Recall Alert: CPSC, Kyocera Wireless Corp. Announce Recall of Cell Phone Batteries, United States Consumer Product Safety Commission, October 28, 2004, available at [www.cpsc.gov/cpsc/pub/prerel/prhmtl05/05505.html](http://www.cpsc.gov/cpsc/pub/prerel/prhmtl05/05505.html).

<sup>157</sup> See Written Comments of California Table Grape Commission Regarding USTR's 2007 National Trade Estimate, November 8, 2006, at 3.

<sup>158</sup> See Written Comments of National Association of Manufacturers (NAM) Regarding USTR's 2007 National Trade Estimate, November 1, 2006, at 2.

<sup>159</sup> See Written Comments of Sunkist Growers Regarding USTR's 2007 National Trade Estimate, November 8, 2006, at 10.

<sup>160</sup> See Written Comments of American Forest and Paper Association Regarding USTR's 2007 National Trade Estimate, November 8, 2006, at 13.

label, and sold in Europe; and counterfeit medical devices have been discovered in numerous markets.<sup>161</sup>

- The Air-Conditioning and Refrigeration Institute (“ARI”) reports that many of its members have experienced IP infringement in China. Chinese companies copy U.S. logos and trade names, and in some cases even the actual equipment, and market the products both domestically and internationally. Counterfeit U.S. industry products have shown up in catalogues as well as at North American industry trade shows, and U.S. manufacturers are receiving warranty complaints on products that turn out to be counterfeit. One particularly egregious example concerns a Chinese company that uses ARI’s internationally-recognized certification symbol as its own company logo.<sup>162</sup>

In addition to the counterfeit goods themselves, there has been an increasing problem of products bearing counterfeit safety certifications. Underwriters Laboratories, Inc. is a long-established, well-respected company that tests products and certifies their safety by affixing their copyrighted “UL” label on the product.<sup>163</sup> Between 1995 and 2005, there were 1300 seizures of counterfeit products bearing the UL certification label, worth an estimated \$150 million.<sup>164</sup> Some examples include counterfeit extension cords, power strips, lamps, fire sprinklers, fire extinguishers, and natural gas hoses.<sup>165</sup> Since these counterfeit products are often made with low quality materials and do not meet minimum safety standards, there is a good chance the electrical

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<sup>161</sup> See *Written Comments of The Society of Plastics Industry, Inc. Regarding USTR’s Annual Review of China’s WTO Compliance*, September 20, 2006, at 5-6; see also *Written Comments of The Society of Plastics Industry, Inc. Regarding USTR’s 2007 National Trade Estimate*, November 8, 2006, at 4.

<sup>162</sup> See *Written Comments of The Air-Conditioning and Refrigeration Institute Regarding USTR’s 2007 National Trade Estimate*, 2006, at 4.

<sup>163</sup> See Underwriters Laboratories, Inc., at [www.ul.com](http://www.ul.com) (accessed January 12, 2007).

<sup>164</sup> See *Facts and Figures on UL Intellectual Property Protection*, Underwriters Laboratories, Inc., available at [www.ul.com/ace/AntiCounterfeiting\\_Facts.pdf](http://www.ul.com/ace/AntiCounterfeiting_Facts.pdf).

<sup>165</sup> See *id.*; *Underwriters Laboratories Issues Warning Over Counterfeit Sprinklers*, Fire Engineering, January 26, 2007, available at <http://www.thetruecosts.org/portal/truecosts/news/default> (Weekly Clip Report January 26-29); *UL Warns of Counterfeit Fire Extinguishers*, Underwriters Laboratories, February 14, 2007, available at [www.ul.com/newsroom/newsrel/nr021407.html](http://www.ul.com/newsroom/newsrel/nr021407.html); *UL Warns of Liquefied Petroleum Gas and Natural Gas Hoses with Unauthorized UL Marks*, Underwriters Laboratories, February 9, 2007, available at [www.ul.com/newsroom/newsrel/nr020907.html](http://www.ul.com/newsroom/newsrel/nr020907.html).

products can overheat or cause short circuits, which may lead to fires or explosions.<sup>166</sup> The UL certification appears on an estimated 20 billion legitimate products that enter the supply chain each year and Underwriters Laboratories is seriously concerned that these counterfeit labels and dangerous products will have a significant impact on consumer confidence.<sup>167</sup>

### ***1. Auto Parts***

One particularly dangerous type of consumer good experiencing increased counterfeiting activity is auto parts.<sup>168</sup> In 1997, seven children died and many others were injured when the brake pads failed and a school bus overturned; the brake pads were counterfeit and made of sawdust.<sup>169</sup> There are also reports of numerous deaths in Saudi Arabia due to counterfeit brake pads made from compressed wood chips, and brake shoe linings in Nigeria that were made from compressed grass, which burst into flames when pressure was applied.<sup>170</sup>

In addition to these known accidents, there have been numerous raids on counterfeit operations resulting in the seizure of substantial amounts of fake auto parts. Over the past two decades, General Motors has worked with authorities to conduct nearly 500 raids and shut down hundreds of counterfeit schemes, confiscating more than \$250 million worth of fake products.<sup>171</sup>

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<sup>166</sup> *UL's Anti-Counterfeiting Program*, Underwriters Laboratories Inc., available at [www.ul.com/ace/program.html](http://www.ul.com/ace/program.html).

<sup>167</sup> *See Anti-Counterfeiting Operations*, Underwriters Laboratories Inc., available at [www.ul.com/ace/index.html](http://www.ul.com/ace/index.html).

<sup>168</sup> *See Foreign Infringement of Intellectual Property Rights*, *supra* note 37, at 33; *see also Pirates of the 21<sup>st</sup> Century: Curse of the Black Market, Hearing Before the Oversight of Governmental Management, the Federal Workforce and the District of Columbia Subcomm. of the Comm. of Governmental Affairs, United States Senate*, 108<sup>th</sup> Cong., 2d Sess., 27 (April 20, 2004) (testimony of Phillip A. Rotman, II, Assistant Patent and Trademark Counsel, Dana Corporation, stating that the company has experienced a steady increase in counterfeit auto parts over the past five years).

<sup>169</sup> *See Nash*, *supra* note 5.

<sup>170</sup> *See id.*

<sup>171</sup> *See David Shepardson, Phony Parts Cost Ford \$1B*, *The Detroit News*, January 22, 2007, available at [www.detroitnews.com](http://www.detroitnews.com); *Nash*, *supra* note 5.

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One of the raids in 2001 involved a facility that was producing branded glass windshields that had no shatterproof safety element to protect passengers in the event of an accident; these windshields were being exported all over the world.<sup>172</sup> In 2000, Chinese authorities responded to complaints by foreign auto manufacturers by conducting raids on 248 markets and confiscated some 30,000 counterfeit parts with brand name labels such as Toyota, Nissan and Mercedes Benz.<sup>173</sup> In 2004, police arrested four wholesale auto parts dealers in New York because they were found to be selling \$700,000 worth of substandard parts, including brake pads, tail lights, ignition coils, tie rods, and water pumps.<sup>174</sup>

While counterfeit auto parts are not necessarily a new problem, they did not become a major problem until around 2003.<sup>175</sup> This is a problem that has primarily affected passenger vehicles but is beginning to show up more in medium and heavy truck parts,<sup>176</sup> and even military vehicles.<sup>177</sup> It is estimated that \$3 billion worth of counterfeit auto parts are sold in the U.S., with the global number reaching \$12 billion.<sup>178</sup> The Ford Motor Company recently announced

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<sup>172</sup> See Ross, *supra* note 61.

<sup>173</sup> See Louis J. Gorenc, *Counterfeit Automotive Replacement Parts Entering the DOD Procurement System*, Army AL&T Magazine, January-March 2007, available at <http://asc.army.mil/pubs/alt/>.

<sup>174</sup> *Intellectual Property: Source of innovation, creativity, growth and progress*, *supra* note 33, at 17.

<sup>175</sup> *Counterfeiting: Crime of the 21<sup>st</sup> Century*, Babcox Publications, Inc., 2005, available at [http://members.mema.org/source/Orders/index.cfm?section=unknown&task=3&CATEGORY=BPPUB&PRODUCT\\_TYPE=SALES&PRODUCT\\_CODE=AA16%2D06&SKU=AA16%2D06&DESCRIPTION=Brand%20Protection&FindSpec=&CFTOKEN=57739971&continue=1&SEARCH\\_TYPE=find&StartRow=1&PageNum=1&FindIn=](http://members.mema.org/source/Orders/index.cfm?section=unknown&task=3&CATEGORY=BPPUB&PRODUCT_TYPE=SALES&PRODUCT_CODE=AA16%2D06&SKU=AA16%2D06&DESCRIPTION=Brand%20Protection&FindSpec=&CFTOKEN=57739971&continue=1&SEARCH_TYPE=find&StartRow=1&PageNum=1&FindIn=) [hereinafter "*Counterfeiting: Crime of the 21<sup>st</sup> Century*"].

<sup>176</sup> See *No Trade in Fakes Supply Chain Tool Kit*, U.S. Chamber of Commerce Coalition Against Counterfeiting and Piracy (CACP), 2006, at 5.

<sup>177</sup> See Gorenc, *supra* note 173.

<sup>178</sup> See *Pirates of the 21st Century: Curse of the Black Market, Hearing Before the Oversight of Government Management, the Federal Workforce and the District of Columbia Subcomm. of the Comm. of Governmental Affairs United States Senate*, 108<sup>th</sup> Cong., 2d Sess., 3 (April 20, 2004) (opening statement of Senator Voinovich); Shepardson, *supra* note 171.

its own conservative estimate that IP theft costs the company \$1 billion each year.<sup>179</sup> It is unclear whether this cost includes employment of the full time staff it has dedicated to seeking out counterfeit products in the market and shutting down the counterfeit operations, but it does not account for any of the safety risks associated with the fake products.<sup>180</sup> However, the estimate does include the lost sales revenue as well as warranty costs. Auto parts companies are one of the many businesses that are experiencing serious increases in warranty costs as consumers return products presumed to be under warranty. Only after the parts are returned and replaced do the companies discover they are not real branded products.<sup>181</sup> In addition to these costs, the U.S. Commerce Department estimates that the American auto industry could hire an additional 200,000 workers if the sale of counterfeit auto parts were eliminated.<sup>182</sup>

The GM Goodwrench website provides information on counterfeit parts and includes the following list of those most commonly imitated: wheel covers, oil and air filters, shock absorbers, fan belts, disc brake pads and shoes, air conditioning compressors, starters, spark plugs, oxygen sensors, valves and valve lifters, distributor caps, gasoline filters and filter caps, rocker arms and camshafts, antifreeze/coolant and transmission fluids, bearings, alternators and generators.<sup>183</sup> The ITC notes that counterfeit auto parts are particularly prominent in overseas markets and provides additional examples of exceptionally dangerous products, including oil

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<sup>179</sup> See *No Trade in Fakes Supply Chain Tool Kit*, *supra* note 176, at 7; David Shepardson, *Phony Parts Cost Ford \$1B*, *The Detroit News*, January 22, 2007, available at [www.detnews.com](http://www.detnews.com).

<sup>180</sup> See *No Trade in Fakes Supply Chain Tool Kit*, *supra* note 176, at 7-8.

<sup>181</sup> See, e.g., *id.* at 5.

<sup>182</sup> *What are Counterfeiting and Piracy Costing the American Economy*, *supra* note 14, at 10.

<sup>183</sup> *Counterfeit Parts*, GM Goodwrench, available at [www.gmgoodwrench.com/partsaccessories/counterfeitparts.jsp](http://www.gmgoodwrench.com/partsaccessories/counterfeitparts.jsp).

filters made from old rags and perforated food cans, and gas filters that are lacking check valves.<sup>184</sup>

These products enter the supply chain through a range of methods, including international schemes, trade shows, and product diversion. In some cases, the parts are produced overseas and then shipped to other countries, including the U.S., where partners will apply counterfeit labels and packaging for distribution.<sup>185</sup> One means of distribution is trade shows, such as the Automotive Aftermarket Products Expo (AAPEX), which is one of the largest annual trade shows in the U.S.<sup>186</sup> In 2004, the staff at AAPEX investigated 24 cases of suspected IP violations, which resulted in the discovery of multiple patent and trademark infringements.<sup>187</sup> This trade show also attracted close to 59,000 buyers, all of which could have unknowingly purchased fake products and included them in their inventories.<sup>188</sup> Additionally, there are reports of boxes of Bendix-branded braking systems that, upon opening, contained rows of legitimate products on top, but counterfeit parts placed below them, which illustrates another means of getting counterfeit products into the supply chain.<sup>189</sup>

Product diversion occurs when a company sends its technology to an overseas manufacturer who fulfills its obligation to the original owner but also produces excess inventory that can then be sold through underground distribution channels.<sup>190</sup> This additional inventory may not be subject to the same quality control and safety standards, which means that the

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<sup>184</sup> See *Foreign Infringement of Intellectual Property Rights*, *supra* note 37, at 33.

<sup>185</sup> See Ross, *supra* note 61.

<sup>186</sup> *Counterfeiting: Crime of the 21<sup>st</sup> Century*, *supra* note 175.

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> See Ross, *supra* note 61.

<sup>190</sup> See *id.*; *Foreign Infringement of Intellectual Property Rights*, *supra* note 37, at 33.

original owners may end up competing against lower priced, substandard goods that came off of their own technology.<sup>191</sup>

Asia is again alleged to be the source of many of these counterfeit products, with China leading the region.<sup>192</sup> The National Association of Manufacturers has even described China as the “epicenter of global counterfeiting.”<sup>193</sup> Chinese automotive counterfeiters operate sophisticated schemes, often splitting up the manufacturing and labeling and making it difficult for authorities to determine the scope of the counterfeiting and to shut down an entire operation.<sup>194</sup> The Chinese province of Zhejiang reportedly poses an exceptional problem in terms of counterfeit auto parts.<sup>195</sup>

## ***2. Electrical***

Similar to counterfeit pharmaceuticals and fake auto parts, counterfeit electrical products are cause for serious concern due to the potential health and safety implications, in addition to the economic costs and detrimental impact on a brand owner's reputation. There have been numerous reports on a broad array of counterfeit electrical products, including circuit breakers, holiday lights, cables and wires, power strips, electrical cords, light bulbs, and heating and air conditioning equipment. In 2006, U.S. Customs seized over \$7 million worth of counterfeit consumer electronics, which constituted five percent of the total goods seized that year, and the EU reports that counterfeit electronic equipment represented four percent of its total seizures in

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<sup>191</sup> *Counterfeiting: Crime of the 21<sup>st</sup> Century*, *supra* note 175.

<sup>192</sup> *See, e.g., No Trade in Fakes Supply Chain Tool Kit*, *supra* note 176, at 6.

<sup>193</sup> *National Association of Manufacturers' Recommendations on Special 301 Out of Cycle Review of China*, February 14, 2005, available at [www.nam.org](http://www.nam.org).

<sup>194</sup> *See AmCham White Paper 2006*, *supra* note 60, at 38.

<sup>195</sup> *See Submission of the International AntiCounterfeiting Coalition, Inc. to the United States Trade Representative Regarding Special 301 Recommendations*, February 12, 2007, at 16-17.

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2005, with more than 3 million items seized at the border.<sup>196</sup> The detailed examples that follow further demonstrate the magnitude of this problem.

- A British electrical safety organization assisted in raids between April and August of 2006 that resulted in the seizure of over 220,000 items of fake switchgear, 210,000 items of counterfeit electrical wiring, and over 50,000 pieces of fake packaging.<sup>197</sup> These raids brought the group's total number of items seized throughout the past ten years to over 10 million items.<sup>198</sup>
- In July 2006, New York police seized more than 100,000 counterfeit electrical goods, including extension cords and smoke detectors.<sup>199</sup>
- In Australia, thousands of power sockets containing the misappropriated logo of a well-known Australian company were installed in homes and later determined to be significantly inferior, posing the potential risk of melting, fire or exposure to live wires.<sup>200</sup>
- In August 2006, the U.S. Consumer Product Safety Commission issued a notice regarding 600,000 counterfeit extension cords that had been imported from China and were being sold at various Dollar Tree stores nationwide.<sup>201</sup> The six-foot extension cords contained undersized wires and lacked sufficient insulation such that they posed a risk of overheating and could lead to possible shock.<sup>202</sup>
- A November 2006 article in a Qatari newspaper called for increased action against the flood of counterfeit products entering their market, noting specifically that many recent fires in Doha were believed to be the result of low-quality electrical cables and equipment being used in new home construction.<sup>203</sup> Similarly, East African Cables called for tighter enforcement of standards to curb the use of counterfeit electrical equipment in booming African construction. The organization believed that

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<sup>196</sup> See 2006 U.S. Customs Statistics, *supra* note 44; 2005 EC Seizure Statistics, *supra* note 48.

<sup>197</sup> *Wiring Accessories – Top tips to avoid counterfeits*, ASTA BEAB Certification Services, February 24, 2007, available at [www.beab.co.uk/live/NewsRel3.asp](http://www.beab.co.uk/live/NewsRel3.asp).

<sup>198</sup> *Id.*

<sup>199</sup> Bradley Hope, *Kelley Outlines Dangers of Counterfeiting*, The New York Sun, February 2, 2007, available at [www.nysun.com/pf.php?id=47938](http://www.nysun.com/pf.php?id=47938).

<sup>200</sup> See Kelly Burke, *Fake Power Sockets Pose Fire Risk*, Sydney Morning Herald, September 25, 2006, available at [www.smh.com.au](http://www.smh.com.au), accessed via [www.nema.org/gov/anti-counterfeiting/news.cfm](http://www.nema.org/gov/anti-counterfeiting/news.cfm).

<sup>201</sup> See *Dollar Tree Stores Recall Counterfeit Extension Cords Due to Shock Hazard*, United States Consumer Product Safety Commission, August 10, 2006, available at [www.cpsc.gov/cpscpub/prerel/prhtml06230.html](http://www.cpsc.gov/cpscpub/prerel/prhtml06230.html), accessed via [www.nema.org/gov/anti-counterfeiting/news.cfm](http://www.nema.org/gov/anti-counterfeiting/news.cfm).

<sup>202</sup> *Id.*

<sup>203</sup> See *Residents Call For Stern Action Against Low-Quality Products Flooding Markets*, The Peninsula, November 16, 2006, available at [www.thepeninsulaqatar.com](http://www.thepeninsulaqatar.com), accessed via [www.nema.org/gov/anti-counterfeiting/news.cfm](http://www.nema.org/gov/anti-counterfeiting/news.cfm).

substandard cables and faulty electrical equipment contributed to numerous recent fires.<sup>204</sup>

- Most recently, the Canadian Standards Association International (“CSA”) issued a warning in February 2007 regarding substandard light bulbs bearing counterfeit CSA certifications.<sup>205</sup> These light bulbs were found to pose a risk of fire due to the fact that they created temperatures beyond allowable limits.

In most cases, it is incredibly hard to determine whether something is fake, so much so that electrical contractors often cannot even tell the difference.<sup>206</sup> In one case, counterfeit circuit breakers were such good aesthetic copies that the only way to tell they were fake, without opening them up, was by a difference in their weight.<sup>207</sup> The fact that counterfeiters are now copying various certification logos and applying them to the substandard products is adding to the complexity of the situation and making it even more difficult to determine the real from the fake.<sup>208</sup> These counterfeit electrical products not only expose the consumer to safety risks, such as fire or shock, but they also expose the installing contractor and brand owner to potential liability for any accidents that occur down the line.<sup>209</sup>

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<sup>204</sup> See *EA Cables Roots for Quality Products*, Kenya Broadcasting Corporation, March 17, 2006, available at [www.kbc.co.ke/story.asp?ID=35664](http://www.kbc.co.ke/story.asp?ID=35664), accessed via [www.nema.org/gov/anti-counterfeiting/news.cfm](http://www.nema.org/gov/anti-counterfeiting/news.cfm).

<sup>205</sup> See *CSA International Announces Important Consumer Safety Alert for Encore Sales “Bright Ideas” Type A Light Bulbs of Certain Ratings*, CSA International, February 2, 2007, accessed via [www.nema.org/gov/anti-counterfeiting/news.cfm](http://www.nema.org/gov/anti-counterfeiting/news.cfm).

<sup>206</sup> See *Statement of the National Electrical Manufacturers Association at the U.S. Ambassador’s IP Roundtable*, November 18, 2003, available at [www.nema.org/gov/anti-counterfeiting/position.cfm](http://www.nema.org/gov/anti-counterfeiting/position.cfm).

<sup>207</sup> See Clark R. Silcox and Philmore H. Colburn, II, *Counterfeit Products Present Additional Business Risks for Distributors and Contractors*, International Association of Electrical Inspectors, May-June 2005, available at [www.iaei.org/subscriber/magazine/05\\_c/silcox.htm](http://www.iaei.org/subscriber/magazine/05_c/silcox.htm).

<sup>208</sup> See, e.g., *Facts and Figures on UL Intellectual Property Protection*, Underwriters Laboratories, Inc., at [www.ul.com/ace/AntiCounterfeiting\\_Facts.pdf](http://www.ul.com/ace/AntiCounterfeiting_Facts.pdf); Manny Gratz, *White Paper: The Threat of Counterfeit Product Approval Marks Warrants Aggressive Detection and Enforcement Action*, Canada Standards Association, October 2002, at 2; *Written Comments of The Air-Conditioning and Refrigeration Institute Regarding USTR’s 2007 National Trade Estimate*, at 4.

<sup>209</sup> See Silcox and Colburn, II, *supra* note 207.

In 2003, the National Electrical Manufacturers Association (“NEMA”) generated a list of known electrical products where either the brand mark or the certification mark had been misappropriated.<sup>210</sup> The list included: General Electric, Cutler Hammer, MEMS, and Square D circuit breakers; smoke detectors with fake certification marks and fake Chinese brand marks; Cooper Bussman fuses; control relays used in industrial automation equipment containing fake certification marks; Philips, Osram and General Electric lamps; wires and cables with fake certification marks and fake brand marks of Coleman Cable, Commscope, Cable Design Technologies, Nexans, and Pirelli.<sup>211</sup> According to NEMA, most of these products had been manufactured in China.<sup>212</sup> NEMA has also stated that “China is the single biggest factor influencing our members’ business these days,” and explained that China is viewed as a double-edged sword.<sup>213</sup> On the one hand, it is becoming a more prominent trading partner and export market, generating huge demand for electrical products, but on the other hand, manufacturers of these products feel they are being victimized due to insufficient IP protection.<sup>214</sup>

### ***3. High Tech Components***

In addition to electrical products, counterfeiters also target high tech electronic components, such as circuit boards, resistors, capacitors, and semiconductors (such as DRAMS

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<sup>210</sup> See *Statement of the National Electrical Manufacturers Association at the U.S. Ambassador’s IP Roundtable*, November 18, 2003, available at [www.nema.org/gov/anti-counterfeiting/position.cfm](http://www.nema.org/gov/anti-counterfeiting/position.cfm).

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*; *Statement of the National Electrical Manufacturers Association at the U.S. Ambassador’s IP Roundtable*, January 13, 2005, available at [www.nema.org/gov/anti-counterfeiting/position.cfm](http://www.nema.org/gov/anti-counterfeiting/position.cfm). According to the U.S. Customs seizure statistics, just over \$7 million worth of electronics were seized at the border in 2006 and \$5.1 million of that total came from China, with an additional \$1 million worth coming from Hong Kong. See *2006 U.S. Customs Statistics*, *supra* note 44.

<sup>213</sup> *United States-China Economic Relations and China’s Role in the World Economy, Hearing Before the House Ways and Means Committee*, 109th Cong., 1st Sess., April 14, 2005 (Statement for the Record by National Electrical Manufacturers Association (NEMA)).

<sup>214</sup> *Id.*

(dynamic random access memory)).<sup>215</sup> There are reports of whole servers and personal computers (“PCs”) being replicated, but more commonly it is the individual components, with illegitimate integrated circuits and chip components causing the biggest problems as they are often used in PC motherboards and power management systems where a single faulty part can have a disastrous impact.<sup>216</sup>

The information technology industry, which incorporates these electronic components, is another research-intensive industry where the products are in high demand, similar to pharmaceuticals, which makes it a prime target for counterfeiting.<sup>217</sup> IP theft in this area has become more of a problem over the past ten to fifteen years due to a combination of factors: companies increasingly outsource their manufacturing, supply chains have grown in complexity, and the internet has provided an anonymous distribution channel where merchandise is rarely inspected before it is purchased.<sup>218</sup> This combination, along with increasing technological advances that allow for easier replication and production, provides the opportunity for counterfeiting and makes for difficult monitoring. It is now estimated that up to ten percent of all high tech products sold globally could be counterfeit, which results in the global IT industry losing \$100 billion a year in revenues.<sup>219</sup>

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<sup>215</sup> See Michael Pecht and Sanjay Tiku, *Bogus!*, IEEE Spectrum, May 2006, available at [www.spectrum.ieee.org/may06/3423](http://www.spectrum.ieee.org/may06/3423); *Counterfeit Electronic Component Resources*, Design Chain Associates, available at [www.designchainassociates.com/counterfeit.html](http://www.designchainassociates.com/counterfeit.html).

<sup>216</sup> See *Counterfeit Components*, Emphasis, National Electronics Manufacturing Center of Excellence, December 2003, available at [www.empf.org/empfasis/archive/1203counterfeit.htm](http://www.empf.org/empfasis/archive/1203counterfeit.htm).

<sup>217</sup> See *Managing the Risks of Counterfeiting in the Information Technology Industry*, KPMG International, 2005, at 5.

<sup>218</sup> See Pecht and Tiku, *supra* note 215, at 11.

<sup>219</sup> *Managing the Risks of Counterfeiting in the Information Technology Industry*, *supra* note 217, at 1.

There are two general types of counterfeiting in this area: unlicensed copies and repackaging. Unlicensed copies are usually made off of the same equipment as the legitimate products but without the consent and/or knowledge of the brand owners.<sup>220</sup> Repackaging, on the other hand, is a basic concept but it covers a variety of activities. One report recounts that an electronics company, Philips, received numerous complaints regarding certain integrated circuit chips bearing the Philips Semiconductors logo, including complaints from a military contractor.<sup>221</sup> Upon investigation, Philips was able to determine that the chips were in fact Philips' product, but the company had allegedly discarded them as defective. The defective chips were apparently retrieved by counterfeiters and repackaged as legitimate chips, which were then sold through an unauthorized distributor.<sup>222</sup> Another example of repackaging is when counterfeiters modify the model number or date to make a part look like an earlier version that may be in demand but is harder to find than the newer models.<sup>223</sup>

Perhaps the newest form of repackaging is occurring in response to new environmental regulations in Europe pursuant to the Restriction on Hazardous Substances ("RoHS") directive.<sup>224</sup> This directive, which bans the sale of electronic components containing lead, mercury and other toxic substances, is causing problems for some manufacturers as the process for producing lead-free components may be different from the production process they normally

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<sup>220</sup> See Michael Singer, *Gray Market a Double-Edged Sword*, InternetNews.Com, January 21, 2005, available at [www.internetnews.com/bus-news/article.php/3462561](http://www.internetnews.com/bus-news/article.php/3462561).

<sup>221</sup> See Pecht and Tiku, *supra* note 215.

<sup>222</sup> See *id.*

<sup>223</sup> See *id.*

<sup>224</sup> See James Carbone, *Watch out for Bogus RoHS Parts*, Purchasing Magazine Online, May 18, 2006, available at [www.purchasing.com/article/CA6333246.html](http://www.purchasing.com/article/CA6333246.html).

use. It is anticipated that counterfeiters will respond to this sharp increase in demand for lead-free products by repacking leaded products to reflect the new lead-free directive.<sup>225</sup>

As a manufacturing and distribution center, China again finds itself at the heart of high tech counterfeiting. IT companies feel competitive pressure to lower manufacturing costs, which has led to increased outsourcing and China's low wages make it a popular option.<sup>226</sup> An influx of foreign direct investment and advanced technology, combined with inadequate IP protection, has provided the opportunity for counterfeiters to prosper in China.<sup>227</sup> Much of the foreign investment has focused on the southern manufacturing provinces of Fujian and Guangdong, which now have large concentrations of counterfeiting.<sup>228</sup> According to one report, once companies established their legitimate manufacturing processes in these regions, it was very easy for the processes to "migrate" to illegitimate factories nearby."<sup>229</sup>

#### **4. *Apparel and Accessories***

Counterfeit apparel and accessories are not a new phenomenon, nor are they necessarily associated with similar health and safety concerns as are other industries, but they are still an imposing problem. In 2006, the categories of footwear and wearing apparel constituted 57 percent of the goods seized at the U.S. border, and the addition of accessories, such as handbags, watches and headwear, brings the total up to 70 percent.<sup>230</sup>

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<sup>225</sup> See Pecht and Tiku, *supra* note 215; James Carbone, *Watch out for Bogus RoHS Parts*, Purchasing Magazine Online, May 18, 2006, at [www.purchasing.com/article/CA6333246.html](http://www.purchasing.com/article/CA6333246.html).

<sup>226</sup> See Pecht and Tiku, *supra* note 215.

<sup>227</sup> *Managing the Risks of Counterfeiting in the Information Technology Industry*, *supra* note 217, at 8.

<sup>228</sup> See *id.*

<sup>229</sup> *Id.*

<sup>230</sup> 2006 U.S. Customs Statistics, *supra* note 44.

One way in which apparel and accessories differ from some of the other categories of counterfeit merchandise is through public perception. It is hard to imagine any consumer who would choose to knowingly buy fake prescription drugs, yet many people who purchase counterfeit apparel and accessories are aware that they are not buying the real thing.<sup>231</sup> In some cases, the consumers are more concerned about brand image than they are with quality and, particularly in the case of luxury items such as high-end handbags, people are under the impression that the knockoffs do not really have much of an effect on the brand owners because the legitimate merchandise carries such a hefty price tag.<sup>232</sup>

Again, China is viewed as the source of many of these counterfeit goods. In 2006, Customs officers in Miami discovered a container with over \$1 million worth of fake sportswear, by brands such as Nike, Puma, Reebok, Adidas, and Tommy Hilfiger, along with counterfeit luxury items by Prada, Versace, Louis Vuitton, Ferragamo, and Hugo Boss.<sup>233</sup> This shipment originated in China but traveled through Belize before arriving in Miami. Similarly, in that same year, Customs officials in Arizona seized fifteen cargo containers originating from China that held 135,000 pairs of fake Nike Air Jordan shoes.<sup>234</sup> Following this seizure, members of the counterfeit ring attempted to bribe the officials to allow the seized goods into the country. The

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<sup>231</sup> See *No Trade in Fakes Supply Chain Tool Kit*, *supra* note 176, at 11.

<sup>232</sup> Jerry Markon, *Virginia Men Face U.S. Trial in Peddling of Phony Purses*, Washington Post, January 30, 2007, at A01 (noting that the real handbags can cost several hundred dollars to several thousand dollars, implying that the profit margins are extensive).

<sup>233</sup> Lumpkin, *supra* note 51.

<sup>234</sup> *Anti-Counterfeiting and Piracy Update: Outrage of the Month – September 2006*, National Chamber Foundation, September 2006.

counterfeiters also attempted to falsify the government records to show that the goods were re-exported to Mexico, when in fact they were destined for the U.S.<sup>235</sup>

There are numerous markets in China that are widely known to be centers for counterfeit apparel and luxury goods. On June 30, 2006, the Chinese government shut down Xiangyang Market, widely regarded as one of the largest and most popular counterfeit markets in China.<sup>236</sup> However, rather than curb the act of counterfeiting, this appears to have simply displaced the vendors, either to areas surrounding the old market or to a new underground market.<sup>237</sup> This illustrates one of the main concerns foreign businesses have with regard to IP protection in China and problems related to effective enforcement of IP laws, which is the belief that, too often, administrative action such as seizures or shutting down this market do not actually result in decreasing counterfeit production and sales.

#### **F. COPYRIGHT PIRACY**

Similar to counterfeit apparel and accessories, copyright piracy may not carry with it some of the obvious health and safety risks associated with other aspects of IP theft, but it is still of critical concern around the world. In the U.S., the copyright industries contribute significantly

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<sup>235</sup> *Id.*

<sup>236</sup> See, e.g., *Goodbye Xiangyang*, Australia China Connections, August 15, 2006, available at [www.chinaconnections.com.au/archives/view/?id=7&PHPSESSID=d86aa1436a32fd81b297a266f203ab3b](http://www.chinaconnections.com.au/archives/view/?id=7&PHPSESSID=d86aa1436a32fd81b297a266f203ab3b); Tan Bee Leng, *Shanghai's Popular Xiang Yang Market to Be Shut Down at End of June*, June 28, 2006, Channel NewsAsia, available at [www.channelnewsasia.com/stories/eastasia/view/216194/1/html](http://www.channelnewsasia.com/stories/eastasia/view/216194/1/html).

<sup>237</sup> See *Goodbye Xiangyang*, Australia China Connections, August 15, 2006, available at [www.chinaconnections.com.au/archives/view/?id=7&PHPSESSID=d86aa1436a32fd81b297a266f203ab3b](http://www.chinaconnections.com.au/archives/view/?id=7&PHPSESSID=d86aa1436a32fd81b297a266f203ab3b) (stating that "Shanghai's famous fake market might have been closed down but others are secretly opening up in defiance of IP laws," and noting there are at least ten alternative markets with the most popular being the Yatai Xinyang market that opened on July 12, 2006 with the main purpose of accommodating those who had been displaced by the closure of the Xiangyang market); see also *Fake Fans Get Fix at New Markets*, Shanghai Daily, August 8, 2006, available at [www.shanghai.gov.cn/shanghai/node8059/City\\_news/userobject22ai22568.html](http://www.shanghai.gov.cn/shanghai/node8059/City_news/userobject22ai22568.html).

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to the economy. The core copyright industries<sup>238</sup> contributed \$760.49 billion to U.S. GDP in 2004, which was 6.48 percent of total GDP, and the total copyright industries<sup>239</sup> contributed \$1.3 trillion, or 11.09 percent of the total.<sup>240</sup> Those numbers were expected to increase in 2005, with the estimated contribution of the core industries being \$819.06 billion, and the total copyright industries contributing \$1.39 trillion to U.S. GDP.<sup>241</sup> In terms of employment, the core copyright industries employed 5.3 million people in 2005, which was 4.03 percent of total U.S. employment, while the total copyright industries employed 11.33 million people, representing 8.49 percent of total employment.<sup>242</sup> Additionally, the core industries generated at least \$110.8 billion in foreign sales and exports in 2005.<sup>243</sup> Clearly, the copyright industries are a substantial component of the U.S. economy but, with piracy rates as high as 95 percent in certain foreign markets, continued growth and development is constrained.<sup>244</sup>

Pirated optical discs, which include CDs and DVDs, are a well-known problem. However, copyright piracy extends beyond just copied music and movies and affects most, if not all, forms of copyrighted material, including computer software and written publications. Additionally, internet piracy has rapidly increased over the past several years, with illegal

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<sup>238</sup> The “core” copyright industries are defined as “those industries whose primary purpose is to create, produce, distribute or exhibit copyright materials. These industries include newspapers, books and periodicals, motion pictures, recorded music, music publishing, radio and television broadcasting, and business and entertainment software.” Stephen E. Siwek, *Copyright Industries in the U.S. Economy: The 2006 Report*, Economists Incorporated, 2006, at 7 [hereinafter “*Copyright Industries in the U.S. Economy*”].

<sup>239</sup> The “total” copyright industries include the core industries, as well as the partial, non-dedicated support, and interdependent copyright industries, which incorporates all aspects of copyright materials, from transportation, to manufacturers of blank CDs, to retail sales of CD and DVD players. See Siwek, *Copyright Industries in the U.S. Economy*, *supra* note 238, at 7.

<sup>240</sup> *Id.* at 2.

<sup>241</sup> *Id.*

<sup>242</sup> *Id.* at 4.

<sup>243</sup> *Id.* at 5.

<sup>244</sup> See *IIPA Special 301 Letter to USTR*, International Intellectual Property Alliance, February 12, 2007, at 2 [hereinafter “*IIPA Special 301 Letter to USTR – 2007*”].

downloading and streaming representing major problems.<sup>245</sup> According to the International Intellectual Property Alliance's ("IIPA") most recent conservative estimate, which does not fully account for internet piracy, the U.S. copyright industries lost between \$30 and \$35 billion in 2005 due to global piracy.<sup>246</sup> Providing an alternative perspective, the Motion Picture Association of America ("MPA") estimates that revenue from trade in pirated goods has now surpassed that of sales in illegal narcotics.<sup>247</sup>

China has long been a center for pirated optical discs and continues to expand its reach to all areas of copyright piracy. The IIPA has claimed that the country's exceptionally high levels of piracy present an "endemic problem" in China, with piracy rates ranging from 85-95 percent throughout all sectors (music, books, film, software).<sup>248</sup> This IP theft resulted in losses to the U.S. copyright industries in excess of \$2.6 billion in 2005.<sup>249</sup> Serious market access restrictions in many copyright sectors contribute to the high levels of piracy in China as the legitimate products may be delayed entry or banned entirely, which creates prime opportunities for pirates to release illegal versions into the market.<sup>250</sup> China's high piracy rates and market access restrictions are considered to be a major bilateral trading issue that discourages foreign companies from making investments in the country.<sup>251</sup> However, local Chinese businesses are

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<sup>245</sup> *2006 Special 301 Report: People's Republic of China*, International Intellectual Property Alliance, February 13, 2006, at 114 [hereinafter "*IIPA 2006 Special 301 Report: China*"].

<sup>246</sup> *See IIPA Special 301 Letter to USTR – 2007*, *supra* note 244, at 21.

<sup>247</sup> *See id.* at 13 (stating that estimated criminal revenue for IPR theft in 2004 was \$512 billion, while revenue for drug trafficking was \$322 billion); Stevens, *supra* note 21, at 20 (discussing how the exceptional profits associated with pirated goods have attracted the attention of organized crime).

<sup>248</sup> *See IIPA Comments to the TPSC on China's WTO Compliance*, *supra* note 154, at 22.

<sup>249</sup> *Written Comments to USTR Regarding China's WTO Compliance*, International Intellectual Property Alliance, September 21, 2006, at 3.

<sup>250</sup> *See, e.g., Motion Picture Association's Submission to USTR Regarding 2007 National Trade Estimate*, November 8, 2006, at Asia-Pacific 23 [hereinafter "*MPA Submission for 2007 NTE*"].

<sup>251</sup> *See Foreign Infringement of Intellectual Property Rights*, *supra* note 37, at 36.

starting to appreciate the losses associated with copyright piracy as they also suffer from the proliferation of pirated products.<sup>252</sup> For instance, the MPA estimated that the Chinese film industry lost \$2.7 billion in 2005 as a result of global film piracy.<sup>253</sup>

The information below outlines some of the major copyright sectors that are affected by piracy and explains the problems they face, particularly in China.

### ***1. Film and Music***

Copyright piracy heavily affects both the film and music industries through the hardcopy sales of infringing CDs and DVDs, as well as increasing volumes of illegally downloaded movies and sound recordings. The recording industry estimates that at least one in every three CDs purchased in 2005 was an illegal copy, with a total of 1.2 billion illegal CDs sold during that year.<sup>254</sup> This resulted in \$4.5 billion worth of global traffic in physical pirated music.<sup>255</sup>

Likewise, the worldwide motion picture industry estimated global lost sales of \$18.2 billion in 2005 as a result of piracy.<sup>256</sup> The U.S. industries' share of that total loss was estimated

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<sup>252</sup> See, e.g., *IIPA Comments to the TPSC on China's WTO Compliance*, *supra* note 154, at 9 n.21 (stating that the Center for American Economic Studies under the Institute of World Economics and Politics of the Chinese Academy for Social Sciences conducted a study that demonstrated the substantial impact global film piracy had on the local Chinese film industry and also expressed that few in the local industry felt it would improve any time soon).

<sup>253</sup> See *Who Piracy Hurts: Economies*, Motion Picture Association of America, available at [www.mpa.org/piracy\\_Economies.asp](http://www.mpa.org/piracy_Economies.asp).

<sup>254</sup> See *Recording Industry 2006 Piracy Report: Protecting Creativity in Music*, International Federation of the Phonographic Industry, 2006, at 4 [hereinafter "*Recording Industry 2006 Piracy Report*"].

<sup>255</sup> See *id.* at 4. This estimated number of \$4.5 billion is based on the pirate prices and does not account for internet piracy. *Id.*

<sup>256</sup> See L.E.K., *The Cost of Movie Piracy*, Motion Picture Association of America, 2005, at 4, available at [www.mpa.org/2006\\_05\\_03leksumm.pdf](http://www.mpa.org/2006_05_03leksumm.pdf). The MPA states that its loss calculations are based on the number of legitimate units that would have been purchased if the pirate products were not available. *Id.* at 13.

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at \$6.1 billion, with 80 percent of the losses incurred abroad and 20 percent incurred at home.<sup>257</sup>

Given that 60 percent of all movies fail to recoup their investments based solely on their domestic release,<sup>258</sup> international sales are crucial to the health of the industry, which employs around 750,000 American workers.<sup>259</sup>

“Camcording” is still considered to be the biggest source of film piracy, with an estimated 90 percent of all pirated films originating from a camcorder in a movie theater.<sup>260</sup> The pirates can then reproduce the infringing copies in large volumes and distribute the movies within hours of their debut, and sometimes even before the official release. As movies are often “rolled out,” or released in different countries on different days, pirates may get a camcorder into an earlier release and then distribute the illegal versions in other countries before the movie officially arrives.<sup>261</sup> This happened with the recent release of *Spider-Man 3*, which starting premiering in countries such as Tokyo and London in mid-April but was not officially released until early May.<sup>262</sup> Two weeks before the movie was set to premier in the U.S., pirated DVDs

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<sup>257</sup> See *2005 U.S. Piracy Fact Sheet*, Motion Picture Association of America, available at [www.mpa.org/USPiracyFactSheet.pdf](http://www.mpa.org/USPiracyFactSheet.pdf).

<sup>258</sup> See *Who Piracy Hurts: Entertainment Industry*, Motion Picture Association of America, at [www.mpa.org/piracy\\_EntInd.asp](http://www.mpa.org/piracy_EntInd.asp).

<sup>259</sup> See *Who Piracy Hurts: Economies*, Motion Picture Association of America, at [www.mpa.org/piracy\\_Economies.asp](http://www.mpa.org/piracy_Economies.asp) (stating that more than 350,000 people are directly employed by the motion picture industry and 400,000 people are indirectly employed as drivers, food personnel, carpenters, etc.). According to an economic analysis of the impact of piracy on the motion picture industry, piracy costs these U.S. workers \$5.5 billion in lost earnings annually. If not for piracy, there would also be the creation of 141,000 additional jobs in this industry and an additional \$837 million in tax revenues for the government. See Stephen E. Siwek, *The True Cost of Motion Picture Piracy to the U.S. Economy*, Institute for Policy Innovation, September 2006, at 5, 8.

<sup>260</sup> *2005 U.S. Piracy Fact Sheet*, Motion Picture Association of America, at [www.mpa.org/USPiracyFactSheet.pdf](http://www.mpa.org/USPiracyFactSheet.pdf); *MPA Submission for 2007 NTE*, *supra* note 250.

<sup>261</sup> See *MPA Submission for 2007 NTE*, *supra* note 250 (providing the example of a person with a camcorder who was caught in the U.S. and admitted that someone in Asia had offered him \$2,000 to record the movie while it was still showing in theaters).

<sup>262</sup> See Reuters, *Chinese Pirates Beat Spider-Man to the Punch*, NYTimes.Com, April 24, 2007, available at [www.nytimes.com/reuters/arts/entertainment-china-piracy-spiderman.html?\\_r=1&oref=slogin](http://www.nytimes.com/reuters/arts/entertainment-china-piracy-spiderman.html?_r=1&oref=slogin); see also

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were already for sale in China, complete with a Chinese language warning against pirating, for just over \$1.<sup>263</sup>

These illegal versions can also easily be uploaded onto the internet and distributed anywhere in the world. Accordingly, the internet is considered a huge threat that is greatly exacerbating the problem of copyright piracy.<sup>264</sup> The IIPA states that “the unprecedented growth of the Internet and increasing availability of broadband connections, coupled with the absence of adequate copyright laws and enforcement in the online environment in many countries, has effectively turned the Internet into a highly efficient network for distribution of infringing copyright materials.”<sup>265</sup>

The effects of this relatively new distribution method are evident in a survey taken in ten of the largest markets, which found that an estimated 20 billion songs were illegally downloaded in 2006 alone.<sup>266</sup> As for films, the ITC estimated in 2005 that between 400,000 and 600,000 movies were illegally downloaded on a daily basis.<sup>267</sup> In addition, the development of the internet, as well as other advancing technologies, allow pirates to switch production from large factories to smaller, more mobile venues that are harder to police.<sup>268</sup>

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Worldwide Release Info, available at <http://spiderman3.sonypictures.com/international/> and <http://www.imdb.com/title/tt0413300/releaseinfo>.

<sup>263</sup> See Reuters, *Chinese Pirates Beat Spider-Man to the Punch*, NYTimes.Com, April 24, 2007, available at [www.nytimes.com/reuters/arts/entertainment-china-piracy-spiderman.html?\\_r=1&oref=slogin](http://www.nytimes.com/reuters/arts/entertainment-china-piracy-spiderman.html?_r=1&oref=slogin).

<sup>264</sup> See, e.g., *id.* (stating that the internet “has emerged as the fastest growing threat to the filmed entertainment industry.”)

<sup>265</sup> *IIPA Special 301 Letter to USTR – 2007*, *supra* note 244, at 5.

<sup>266</sup> *Id.*

<sup>267</sup> *Foreign Infringement of Intellectual Property Rights*, *supra* note 37, at 42.

<sup>268</sup> See *IIPA Special 301 Letter to USTR – 2007*, *supra* note 244, at 11. The report provides the example of “burning” technology that allows pirates to easily replicate large quantities of copyright material for commercial sale but requires only a very small investment. *Id.* at 11-12. Another report notes that new mobile

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Both the film and music sectors agree that China is a major concern.<sup>269</sup> In fact, China is considered to be the largest physical market for pirated goods, meaning that it has the highest piracy rates for hard copies of CDs and DVDs. Specifically, reports estimate that 95 percent of DVDs for sale in China are pirated, along with 85 percent of all CDs.<sup>270</sup> The music industry estimates that over 350 million pirated CDs were sold in China in 2005, with an estimated piracy value of \$410 million,<sup>271</sup> while the film industry reports that revenues from U.S. movie releases in China have declined by almost a quarter over the past ten years as a result of these high levels of piracy.<sup>272</sup> The film industry also reports that DVDs of U.S. films are some of the most highly-exported pirated products from China.<sup>273</sup>

Heading into 2007, IIPA identified China, Russia, Thailand, Indonesia, and Nigeria as key “trouble spots” for optical disc piracy.<sup>274</sup> The four countries other than China had a combined optical disc production capacity of 1.810 billion discs per year in 2006.<sup>275</sup> At the same time, China, *by itself*, was thought to be capable of producing at least 5.187 billion discs

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phone technology allows for phone-to-phone transfer of downloaded songs. See *Recording Industry 2006 Piracy Report*, *supra* note 254, at 5.

<sup>269</sup> See, e.g., *Recording Industry 2006 Piracy Report*, *supra* note 254, at 3 (listing China has one of the industry’s top ten priority countries).

<sup>270</sup> See *IIPA Comments to TPSC on China’s WTO Compliance*, *supra* note 154, at 22; *Recording Industry 2006 Piracy Report*, *supra* note 254, at 13.

<sup>271</sup> *Recording Industry 2006 Piracy Report*, *supra* note 254, at 11. The music industry also notes the high levels of infringement at karaoke bars in China, with over 100,000 known establishments and yet very few legally obtain the rights to the songs they use. See *Goodbye Xiangyang*, Australia China Connections, August 15, 2006.

<sup>272</sup> See *MPA Submission for 2007 NTE*, *supra* note 250.

<sup>273</sup> See *id.*

<sup>274</sup> See *IIPA Special 301 Letter to USTR – 2007*, *supra* note 244, at 9.

<sup>275</sup> See *id.* at 9-11.

annually.<sup>276</sup> These numbers have increased compared to 2005 when IIPA estimated total Chinese production capacity at 4.8 billion discs per year.<sup>277</sup> Increasing production capabilities are adding to the piracy problem as there is significant global overcapacity for optical discs.<sup>278</sup>

Just prior to completion of this report, the largest crackdown on optical discs in China's history occurred in the Southern province of Guangdong.<sup>279</sup> Working in cooperation with the MPA, officials seized over 1.8 million optical discs on March 17, 2007.<sup>280</sup> In addition to the infringing CDs and DVDs, officials seized thirty production machines and arrested thirteen people. The confiscated optical discs included works by numerous MPA member companies, "as well as every Chinese film released to date this year, and many US, South Korean and Japanese animated and television series titles."<sup>281</sup>

While physical piracy clearly still remains strong in China, internet piracy has been growing phenomenally in recent years, which increases the country's threat to copyright industries. In 2005, China added 10 million new broadband lines, making it the second largest broadband market in the world behind the U.S.<sup>282</sup> While these broadband lines provide high-

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<sup>276</sup> See *id.* at 9. According to another report, most production lines are interchangeable, meaning they can easily switch production between DVDs, CDs and other forms of optical discs. *IIPA Comments to the TPSC on China's WTO Compliance*, *supra* note 154, at 25.

<sup>277</sup> See *IIPA Special 301 Letter to USTR – 2007*, *supra* note 244, at 9.

<sup>278</sup> See *Recording Industry 2006 Piracy Report*, *supra* note 254, at 4 (explaining that in 2005, there was demand for 20 billion optical discs but there was global production capacity of 60 billion units). As industry groups and law enforcement officials attempt to crack down on the proliferation of optical discs, numerous raids and seizures are taking place throughout the world, with both the music and film industries reporting that over 80 million optical discs were seized in 2005. See *2005 U.S. Piracy Fact Sheet*, Motion Picture Association of America; *Recording Industry 2006 Piracy Report*, *supra* note 254, at 4.

<sup>279</sup> See *New Rulings Designed to Snare IPR Pirates*, Xinhua, April 6, 2007, available at [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=67243&col\\_no=925&dir=200704](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=67243&col_no=925&dir=200704).

<sup>280</sup> See *Newsletter Regarding IPR (April 2, 2007)*, China Daily, April 3, 2007, available at [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=66358&col\\_no=882&dir=200704](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=66358&col_no=882&dir=200704).

<sup>281</sup> *Id.*

<sup>282</sup> *Recording Industry 2006 Piracy Report*, *supra* note 254, at 13.

speed digital connections that allow for efficient transfer of information and, thus, create the possibility of increased dissemination of legal copyright materials, they also create the possibility for increased worldwide dissemination of illegal copyright materials.<sup>283</sup> The IIPA reports that there are now hundreds of websites based in China that contain illegal copyright content.<sup>284</sup>

An important aspect to the piracy problem in China is its restrictive market access regulations. The film and music sectors agree that China's exceptionally high levels of piracy are directly related to the country's market access restrictions. The music industry claims that censorship regulations often delay a recording's release, which allows pirated versions to appear in the market before the legal product.<sup>285</sup> The film industry has additional barriers as it faces quantitative restrictions, as well as content restrictions, when trying to get its products into China. For instance, each year the government allows a maximum of only 20 foreign revenue sharing films into the country.<sup>286</sup> Additionally, the MPA reports that there is a government monopoly on film importation and distribution in China, which dictates what movies are allowed into the country and when they will be released.<sup>287</sup> These restrictions provide pirates with the opportunity and the financial incentive to distribute unedited versions of songs and films where the legitimate product is either delayed in its release due to bureaucratic obstacles or banned entirely.

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<sup>283</sup> See *IIPA Special 301 Letter to USTR – 2007*, *supra* note 244, at 5.

<sup>284</sup> See *IIPA Comments to the TPSC on China's WTO Compliance*, *supra* note 154, at 23.

<sup>285</sup> See *Recording Industry 2006 Piracy Report*, *supra* note 254, at 13.

<sup>286</sup> *MPA Submission for 2007 NTE*, *supra* note 250, at Asia-Pacific 16.

<sup>287</sup> See *id.* at Asia-Pacific 23.

## 2. *Software*

Microsoft launched its new Windows Vista operating system in late January 2007 after spending a reported \$6 billion getting it ready for the market, which included investing heavily in anti-piracy features.<sup>288</sup> The retail price for the software is several hundred dollars, yet even before the program was available in legitimate stores, pirated copies were being sold in China for less than ten dollars.<sup>289</sup> A basic Chinese version of the licensed software sells for \$295, but pirated copies are available for between \$1.30 and \$4, depending on the location, while a pirated copy of the English version was a bit more at \$7.<sup>290</sup> Similarly, illegal copies showed up on the streets of Latin America just days after the launch. In Sao Paulo, Brazil, a pirated version of Vista's Ultimate edition could be found for 15 reals, or about \$7.20, while the official version retailed for 989 reals.<sup>291</sup>

This recent example of mainstream software piracy helps to illustrate the magnitude of the problem. There is an estimated worldwide software piracy rate of 35 percent, but when broken down on a regional or individual level, those rates differ greatly.<sup>292</sup> Central/Eastern Europe is the worst regional offender with a rate of 69 percent, followed closely by Latin

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<sup>288</sup> See Kathleen E. McLaughlin, *Pirated Vista Beats Microsoft to China's PCs*, The San Francisco Chronicle, January 31, 2007, available at [www.sfgate.com](http://www.sfgate.com); Reuters, *Pirates Pounce on New Windows Vista*, Los Angeles Times, February 7, 2007, available at [www.latimes.com](http://www.latimes.com).

<sup>289</sup> See McLaughlin, *supra* note 288.

<sup>290</sup> See *id.*

<sup>291</sup> See Reuters, *Pirates Pounce on New Windows Vista*, Los Angeles Times, February 7, 2007, available at [www.latimes.com](http://www.latimes.com).

<sup>292</sup> See *Third Annual BSA and IDC Global Software Piracy Study*, BSA and IDC, May 2006, at 1. This study covers "all packaged software that runs on personal computers, including desktops, laptops and ultra-portables. This includes operating systems, systems software such as databases and security packages, business applications and consumer applications such as PC games, personal finance and reference software. This study does not include other types of software such as that which runs on servers or mainframes or software sold as a service." *Id.*

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America at 68 percent.<sup>293</sup> On an individual basis, Vietnam and Zimbabwe had the highest piracy rates in 2005 at 90 percent, followed by Indonesia at 87 percent, and China and Pakistan both at 86 percent.<sup>294</sup> In contrast, the U.S. maintains the lowest software piracy rate at 21 percent, followed by New Zealand at 23 percent, and Austria at 26 percent.<sup>295</sup> According to these statistics, the Business Software Alliance (“BSA”) estimates that the U.S. lost about \$6.9 billion in 2005 as a result of software piracy.<sup>296</sup> This number has been increasing steadily, from \$6.5 billion in 2003 and \$6.6 billion in 2004.<sup>297</sup>

In 2003, China, at 92 percent, was at the top of the list of countries with the highest software piracy rates.<sup>298</sup> The Chinese government has taken steps to reduce the levels of piracy and, as a result, China’s piracy rate declined first to 90 percent in 2004 and then to 86 percent in 2005.<sup>299</sup> While it has made some progress, software piracy is clearly still a serious problem in China. The BSA estimates that Chinese software piracy alone cost U.S. businesses almost \$1.6

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<sup>293</sup> *Third Annual BSA and IDC Global Software Piracy Study*, *supra* note 292, at 2, Figure 1.

<sup>294</sup> *Id.* at 4, Table 1.

<sup>295</sup> *Id.*

<sup>296</sup> *See id.* at 8, Table 2. The economic consequences of this piracy extend well beyond the direct consequences of lost sales. An economic impact analysis performed in 2005 concluded that a ten percent decrease in software piracy in the U.S., from 21 percent to 11 percent, would generate more than 100,000 new high-wage jobs and inject nearly \$125 billion into the economy, which in turn could result in an additional \$21 billion in tax revenues. This study considered the significant impact the information technology sector has on the economy and examined the total economic impact of lower piracy rates. Accordingly, the estimate for the additional contribution to the economy goes beyond the increased sales revenues companies would incur with decreased piracy and incorporates such factors as the new job growth and corresponding increases in consumer spending, as well as the increased spending by governments, educational institutions and businesses who would invest in new hardware, software and services being provided by the prospering IT sector. *See Expanding The Frontiers of Our Digital Future: Reducing Software Piracy to Accelerate Global IT Benefits*, BSA and IDC, December 2005, at 12, available at [www.bsa.org/idcstudy/pdfs/White\\_Paper.pdf](http://www.bsa.org/idcstudy/pdfs/White_Paper.pdf) (providing the methodology for this study).

<sup>297</sup> *See Third Annual BSA and IDC Global Software Piracy Study*, *supra* note 292, at 13, Table 3.

<sup>298</sup> *See id.* at 4, Table 1. China shared this top spot with Vietnam, which also had a piracy rate of 92 percent. *Id.*

<sup>299</sup> *See id.*

billion in 2005, with corporate end user piracy representing the largest problem.<sup>300</sup> Moreover, while the government has recently taken concerted steps to curb software piracy, such as by requiring that new PCs come equipped with licensed software, the BSA estimates that as much as 70 percent of the software installed on the government's own machines remains illegal.<sup>301</sup>

In addition to business software, entertainment software, such as video games, is also being stolen and copied. The Entertainment Software Association estimates that global piracy cost the U.S. entertainment software industry \$3.0 billion in 2004.<sup>302</sup> China is considered to be the primary producer of cartridge-based entertainment software, with much of the production being exported around the world.<sup>303</sup> China also had an estimated 250,000 internet cafes in 2005, with only about one percent using licensed entertainment software products.<sup>304</sup>

### **3. Publications**

There are generally considered to be three main forms of piracy affecting the publishing industry: illegal photocopying, internet piracy, and print piracy. U.S. book publishers estimate that, as a result of such piracy, they lost \$582.5 million in 2006.<sup>305</sup>

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<sup>300</sup> See *Written Comments of BSA Regarding USTR's Special Provincial Review of IPR Protection in China*, Business Software Alliance, June 30, 2006.

<sup>301</sup> See McLaughlin, *supra* note 288.

<sup>302</sup> See *Intellectual Property: Anti-Piracy FAQ*, Entertainment Software Association, available at [www.theesa.com/ip/anti\\_piracy\\_faq.php](http://www.theesa.com/ip/anti_piracy_faq.php). This total cost of \$3 billion does not include losses attributable to internet piracy. *Id.*

<sup>303</sup> See *Intellectual Property: IP Issues Map – China*, Entertainment Software Association, available at [www.theesa.com/ip/anti\\_piracy\\_map.php](http://www.theesa.com/ip/anti_piracy_map.php) (indicating that pirated entertainment software originating in China had been seized in the Middle East, Europe, North America, and South America).

<sup>304</sup> *IIPA Comments to TPSC on China's WTO Compliance*, *supra* note 154, at 27.

<sup>305</sup> See *Publishers and Other Copyright Industries, Submit Annual Review of Global Intellectual Property Protection to the USTR*, Association of American Publishers, February 13, 2007, available at [www.publishers.org/press/releases.cfm?PressReleaseArticleID=371](http://www.publishers.org/press/releases.cfm?PressReleaseArticleID=371).

The largest problem facing this sector of the copyright industry is illegal photocopying, which mainly targets academic materials. Many pirates in this area operate highly sophisticated operations near, and sometimes on, university campuses.<sup>306</sup> They copy entire textbooks and use digital scanners to create covers that are often such good quality they are difficult to differentiate from the legitimate product.<sup>307</sup> The most advanced operations have stock lists of materials available, keep warehouses filled with merchandise, and use bar codes to organize inventory.<sup>308</sup>

It is estimated that just about every Chinese university has one of these “textbook centers” on campus, and some are even run by the schools themselves.<sup>309</sup> This rampant infringement of intellectual property rights affects both foreign and Chinese right-holders alike, as pirates act without their authorization and deprive them of compensation.<sup>310</sup>

Print piracy is the second form of copyright infringement facing the publishing industry. This generally occurs either through print overruns, where an entity has a license to run a certain amount of copies and produces beyond the specified amount, or through outright piracy where an entity prints copies without ever obtaining a license to do so.<sup>311</sup> This is particularly prevalent in countries that have a large printing capacity, such as China and India.<sup>312</sup> The pirates produce

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<sup>306</sup> See *Trade With China, Hearing Before the Trade Subcommittee of the House Ways and Means Committee*, 110th Cong., 1st Sess. (February 15, 2007) (testimony of the Honorable Patricia S. Schroeder, President and Chief Executive Officer, Association of American Publishers, Inc.) [hereinafter “Schroeder Testimony”]; *IIPA Special 301 Letter to USTR – 2007*, *supra* note 244, at 16.

<sup>307</sup> See *Types of Piracy in Overseas Markets – Problems Faced by the Publishing Industry*, Association of American Publishers, available at [www.publishers.org/antipiracy/article.cfm?AntiPiracyArticleID=2](http://www.publishers.org/antipiracy/article.cfm?AntiPiracyArticleID=2); see also *IIPA Written Comments to USTR Regarding Special Provincial Review of IPR Protection in China*, July 14, 2006 at 1-3.

<sup>308</sup> See Schroeder Testimony, *supra* note 306.

<sup>309</sup> See *id.*

<sup>310</sup> See *IIPA Comments to the TPSC on China's WTO Compliance*, *supra* note 154, at 26.

<sup>311</sup> See Schroeder Testimony, *supra* note 306.

<sup>312</sup> See *IIPA Special 301 Letter to USTR – 2007*, *supra* note 244, at 16.

illegal copies of current publications but also perform unauthorized translations.<sup>313</sup> This practice offends not only the original publisher but also the local companies that may have legitimate licenses to produce or translate the publication.<sup>314</sup>

The last form of copyright infringement that plagues the publishing industry is internet piracy, which is the fastest growing problem that the industry faces.<sup>315</sup> Books and journals can now be scanned into a computer and uploaded onto the internet to be distributed around the world with just a few clicks of the mouse.<sup>316</sup> As mentioned above with regard to film and music piracy, China is the fastest growing internet market and there are increasing reports of websites that offer books for free download. In addition to this distribution of scanned materials, there is a growing problem in China with abuse of licenses for online academic journals.<sup>317</sup>

In her testimony before the Subcommittee on Trade, the President of the Association of American Publishers (“AAP”) told the committee members that street vendors are regularly seen selling illegal copies of books right outside the Beijing International Book Fair.<sup>318</sup> Additionally, similar to the film and music industry, the U.S. publishing industry believes that market access restrictions in China have a direct impact on piracy levels. According to the AAP, foreign publishers are not allowed to import or distribute their own materials in the Chinese market, with such responsibilities often assigned to State-owned enterprises.<sup>319</sup> These restrictions create

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<sup>313</sup> See Schroeder Testimony, *supra* note 306.

<sup>314</sup> See IIPA Comments to the TPSC on China's WTO Compliance, *supra* note 154, at 26.

<sup>315</sup> See Schroeder Testimony, *supra* note 306.

<sup>316</sup> See IIPA Comments to the TPSC on China's WTO Compliance, *supra* note 154, at 27.

<sup>317</sup> See *id.*

<sup>318</sup> See Schroeder Testimony, *supra* note 306.

<sup>319</sup> See *id.*

additional costs and delay arrival of foreign materials, which are factors that provide the incentive and opportunity for counterfeiting.

#### **G. LINKS TO ORGANIZED CRIME**

Counterfeiting and piracy are clearly enormous problems in the world today. IP theft affects just about everything that is made and results in economic losses as well as serious health and safety concerns. However, the effects of IP theft extend beyond these immediate consequences as there are increasing reports linking counterfeiting and piracy to organized crime.<sup>320</sup> The revenues that legitimate businesses lose are instead going to fund human trafficking, drug operations, and even terrorism.<sup>321</sup> IP theft is considered an attractive option because of the high profits involved and the relatively low levels of risk, particularly in countries where prosecution is lacking and fines are low.<sup>322</sup>

Government agencies and law enforcement organizations have been able to trace the funds used to finance various terrorist activities. For instance, the FBI has apparently gathered “strong evidence” that terrorists financed the 1993 bombing of the World Trade Center by selling counterfeit apparel, such as trademark-infringing t-shirts, from a store in New York City.<sup>323</sup> It is

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<sup>320</sup> See, e.g., *Intellectual Property: Source of innovation, creativity, growth and progress*, supra note 33, at 14; *The Negative Consequences of International Intellectual Property Theft*, supra note 2, at 14-35.

<sup>321</sup> See Stephens, supra note 21.

<sup>322</sup> See *Intellectual Property Crimes: Are Proceeds from Counterfeited Goods Funding Terrorism*, Hearing Before the House Committee on International Relations, 108<sup>th</sup> Cong., 1st Sess., 6 (July 16, 2003) (Testimony of the Honorable Tom Lantos, Representative in Congress from the State of California); *Intellectual Property: Source of innovation, creativity, growth and progress*, supra note 33, at 14; *The Negative Consequences of International Intellectual Property Theft*, supra note 2, at 23-24.

<sup>323</sup> See *The Negative Consequences of International Intellectual Property Theft*, supra note 2, at 20; see also *Counterfeiting and Organized Crime*, Union des Fabricants, 2003, at 14.

also alleged that the group accused of the 2004 Madrid train bombings funded some of their activities by selling pirated CDs.<sup>324</sup>

Following the September 11, 2001 terrorist attacks, governments and organizations around the world significantly increased their focus on intellectual property crimes.<sup>325</sup> Tracing terrorist funding became an even higher priority and counterfeiting was considered to be one possible source, along with drug trafficking, credit card fraud, and bulk currency smuggling.<sup>326</sup> In an article printed in U.S. Customs Today, just a little over a year after the September 11 attacks, the author states:

The new link between commercial-scale piracy and counterfeiting has redirected public attention in 2002, and law enforcement agencies like Customs and Interpol are going after organized crime syndicates in charge of what was too often viewed as a 'victimless crime.' September 11 changed the way Americans look at the world. It also changed the way American law enforcement looks at Intellectual Property Crimes.<sup>327</sup>

When evaluating the extent of the problem that IP theft poses, these extended ramifications cannot be overlooked.

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<sup>324</sup> Reuters, *Counterfeit Goods are Linked to Terror Groups*, International Herald Tribune, February 12, 2007.

<sup>325</sup> See, e.g., Millar, *supra* note 8 (discussing the U.S. government's joint task force called Operation Green Quest that was created on October 25, 2001, designed to link funds to terrorist activities, and Interpol's establishment of a Group of Experts on Intellectual Property Crime not long after the September 11 attacks); *Intellectual Property Crimes: Are Proceeds from Counterfeited Goods Funding Terrorism*, Hearing Before the House Committee on International Relations, 108<sup>th</sup> Cong., 1st Sess., 25 (July 16, 2003) (Testimony of the Honorable Tom Lantos, Representative in Congress from the State of California).

<sup>326</sup> Dean Boyd, *Operation Green Quest Targets Terrorist Finances*, U.S. Customs Today, November 2001.

<sup>327</sup> Millar, *supra* note 8.

**H. CUSTOMS SEIZURES OF COUNTERFEIT AND PIRATED GOODS; TRADE FLOWS OF SELECTED CATEGORIES OF GOODS**

In trying to understand the severity of the problem of counterfeit and pirated goods, one can look at government statistics on items like number of border seizures and source of the seizures. One can also look at trade flows to see if there are large reported flows of imports into the United States of categories of goods where IP problems are known to exist. One can also look at U.S. exports to see if trade flow trends suggest possible displacement of U.S. exports. Because there are many reasons behind changing trade flows and because, obviously, not all imports involve products with IP violations, trade data are only of some help in understanding the size of the problem. Nonetheless, the data are provided below and in Appendix 2 to this report.<sup>328</sup>

Between 1990 and 2006, U.S. imports from China and exports to China expanded much more rapidly than U.S. imports from all countries and U.S. exports to all countries. Table 1 below shows the data.

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<sup>328</sup> The trade data have been compiled by MBG Information Services from U.S. government import and export data.

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**TABLE 1: US Goods Trade: Census Basis**

	US Exports	US Imports	US Balance		US Exports	US Imports	US Balance		US Exports	US Imports	US Balance
	-- World --	-- World --	-- World --		-- China --	-- China --	-- China --		-- World less China --		
	\$ MILLIONS	\$ MILLIONS	\$ MILLIONS		\$ MILLIONS	\$ MILLIONS	\$ MILLIONS		\$ MILLIONS	\$ MILLIONS	\$ MILLIONS
1990	\$392,976	\$495,260	<b>-102,284</b>		\$4,807	\$15,224	<b>-10,417</b>		\$388,168	\$480,036	<b>-91,867</b>
1991	421,854	488,123	<b>-66,269</b>		6,287	18,976	<b>-12,689</b>		415,567	469,147	<b>-53,580</b>
1992	447,471	531,297	<b>-83,826</b>		7,470	25,676	<b>-18,206</b>		440,001	505,622	<b>-65,620</b>
1993	464,858	580,469	<b>-115,610</b>		8,767	31,535	<b>-22,768</b>		456,091	548,934	<b>-92,843</b>
1994	512,626	663,830	<b>-151,204</b>		9,282	38,781	<b>-29,499</b>		503,345	625,049	<b>-121,704</b>
1995	582,120	743,505	<b>-161,386</b>		11,748	45,555	<b>-33,807</b>		570,371	697,950	<b>-127,579</b>
1996	622,827	791,315	<b>-168,488</b>		11,978	51,495	<b>-39,517</b>		610,849	739,819	<b>-128,970</b>
1997	687,598	870,213	<b>-182,615</b>		12,805	62,552	<b>-49,747</b>		674,793	807,661	<b>-132,868</b>
1998	680,474	913,885	<b>-233,411</b>		14,258	71,156	<b>-56,898</b>		666,216	842,729	<b>-176,513</b>
1999	692,821	1,024,766	<b>-331,945</b>		13,118	81,786	<b>-68,668</b>		679,703	942,980	<b>-263,277</b>
2000	780,419	1,216,888	<b>-436,469</b>		16,253	100,063	<b>-83,810</b>		764,166	1,116,825	<b>-352,659</b>
2001	729,100	1,140,999	<b>-411,899</b>		19,182	102,278	<b>-83,096</b>		709,918	1,038,721	<b>-328,803</b>
2002	693,103	1,161,366	<b>-468,263</b>		22,128	125,192	<b>-103,065</b>		670,975	1,036,174	<b>-365,198</b>
2003	724,771	1,257,121	<b>-532,350</b>		28,368	152,436	<b>-124,068</b>		696,403	1,104,685	<b>-408,282</b>
2004	818,775	1,469,704	<b>-650,930</b>		34,744	196,682	<b>-161,938</b>		784,031	1,273,022	<b>-488,992</b>
2005	905,978	1,673,455	<b>-767,477</b>		41,925	243,470	<b>-201,545</b>		864,052	1,429,984	<b>-565,932</b>
2006	1,037,143	1,855,119	<b>-817,976</b>		55,224	287,773	<b>-232,549</b>		981,919	1,567,346	<b>-585,428</b>
	<b>Percent Increases 1990-2006</b>				<b>Percent Increases 1990-2006</b>				<b>Percent Increases 1990-2006</b>		
	<b>164%</b>	<b>275%</b>	<b>700%</b>		<b>1049%</b>	<b>1790%</b>	<b>2132%</b>		<b>153%</b>	<b>227%</b>	<b>537%</b>

SOURCE: US DOC, CENSUS

While large increases in trade would suggest that there could be corresponding increases in counterfeit and pirated goods without a worsening of the level of illegal activity, in fact, the seizures by U.S. Customs for the period 2001-2006 shows the value of seizures of Chinese products at the U.S. border increasing twice as fast as the rate of growth of overall imports from China, with the effect that China went from being 46.0 percent of total seizures in 2001 to 81.0

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percent in 2006. The data for the United States, EU and Japanese border seizures of goods for IP violations are shown in Table 2, below.

**TABLE 2: Counterfeit Seizure Statistics: U.S., E.U, Japan**

	1999	2000	2001	2002	2003	2004	2005	2006
<b>United States</b>								
Total Seizures (Quantity)	3,691	3,244	3,586	5,793	6,500	7,255	8,022	14,675
Total Seizures (\$ Value)	98,501,594	45,327,526	57,438,680	98,990,341	94,019,227	138,767,885	93,234,510	155,369,236
% from China (by value)	UN*	UN	46.0	49.0	66.0	63.0	69.0	81.0
<b>European Union</b>								
Total Registered Cases	4,694	6,253	5,056	7,553	10,709	22,311	26,704	UN
Percentage from China	UN	8.0	18.0	15.0	18.0	30.0	38.0	UN
<b>Total Items Seized</b>	<b>25,285,844</b>	<b>67,724,431</b>	<b>94,421,497</b>	<b>84,951,039</b>	<b>92,218,700</b>	<b>103,546,179</b>	<b>75,733,387</b>	<b>UN</b>
Percentage from China	UN	UN	UN	UN	60.0	54.0	64.0	UN
<b>Japan</b>								
Total Seizures	UN	UN	2,812	6,978	7,412	9,143	13,467	13,316**
Percentage from China	UN	UN	7.2	7.9	22.0	36.7	46.6	40.3
SOURCE: U.S. Customs Seizure Statistics; EC Taxation and Customs Union Seizure Statistics; Japan Customs Seizure Statistics. A more detailed summary of these seizure statistics is located in Appendix 1, Tables 2-4. * UN = Unknown ** Japan's seizure statistics for 2006 only cover January through September.								

Data from the European Union show China's share of the total registered seizure cases growing from 8.0 percent in 2000 to 38.0 percent in 2005 (from 500 cases in 2000 to 10,147 in 2005). A similar pattern is available for Japan, where seizures of products from China grew from 7.2 percent in 2001 (202 seizures) to 40.3 percent in 2006 (5,366 seizures). Table 2 of Appendix 1 provides a detailed breakout of the data reported by the Japanese government showing the type of IP violation found in the seizures as well as the type of products seized.

The copyright industry is one of the few industries that estimates losses and levels of piracy affecting its various sectors. As IP thieves have long targeted this industry, along with luxury and apparel goods, it provides one of the best historical accounts of the problem. Table 3,

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below, illustrates that some sectors, such as motion pictures and business software, have generally believed the levels of piracy were well above 75 percent in China, dating all the way back to 1995. The sound recording sector, however, has experienced a significant increase in the level of piracy over the past ten years.

**TABLE 3**

<b>PEOPLE'S REPUBLIC OF CHINA</b> <b>Estimated Levels of Copyright Piracy: 1995-2006</b>												
<b>Industry</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Motion Pictures	100%	85%	75%	90%	90%	90%	88%	91%	95%	95%	93%	NA
Sound Recordings / Musical Compositions	54%	53%	56%	56%	90%	85%	90%	90%	90%	85%	85%	85%
Business Software Applications	96%	95%	96%	95%	91%	93%	92%	92%	92%	90%	86%	82%
Entertainment Software	99%	97%	96%	95%	95%	99%	92%	96%	96%	90%	92%	NA
<small>SOURCE: Figures for 1995-2000 are from <i>IIPA 2001 Special 301 Report: People's Republic of China</i>, International Intellectual Property Alliance (IIPA); figures for 2001 are from <i>IIPA 2002 Special 301 Report: People's Republic of China</i>, International Intellectual Property Alliance (IIPA); figures for 2002-2006 are from <i>IIPA 2007 Special 301 Report: People's Republic of China</i>, International Intellectual Property Alliance (IIPA).</small>												

Despite the relatively stable levels of piracy in the motion picture and business software sectors, the losses incurred as a result of piracy have been substantial throughout the period.

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**TABLE 4**

<b>PEOPLE'S REPUBLIC OF CHINA</b>												
<b>Estimated Trade Losses Due to Copyright Piracy: 1995-2006</b>												
<i>(in millions of U.S. dollars)</i>												
<b>Industry</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Motion Pictures	124.0	120.0	120.0	120.0	120.0	120.0	160.0	168.0	178.0	280.0	244.0	NA
Sound Recordings/ Musical Compositions	300.0	176.8	150.0	80.0	70.0	70.0	47.0	48.0	286.0	202.9	204.0	206.0
Business Software Applications	488.0	507.5	987.9	808.4	437.2	658.7	1140.2	1,637.3	1,787.0	1,488.0	1,554.0	1,949.0
Entertainment Software	1,286.0	1,380.0	1,409.4	1,420.1	1,382.5	NA	455.0	NA	568.2	510.0	589.9	NA
<b>Totals</b>	<b>2,198.0</b>	<b>2184.3</b>	<b>2667.3</b>	<b>2428.5</b>	<b>2009.7</b>	<b>848.7</b>	<b>1802.2</b>	<b>1853.3</b>	<b>2819.2</b>	<b>2480.9</b>	<b>2591.9</b>	<b>2155.0</b>
<small>SOURCE: Figures for 1995-2000 are from <i>IIPA 2001 Special 301 Report: People's Republic of China</i>, International Intellectual Property Alliance (IIPA); figures for 2001 are from <i>IIPA 2002 Special 301 Report: People's Republic of China</i>, International Intellectual Property Alliance (IIPA); figures for 2002-2006 are from <i>IIPA 2007 Special 301 Report: People's Republic of China</i>, International Intellectual Property Alliance (IIPA).</small>												

Trade flow statistics provide an additional means of examining the impact of IP theft on various industries/goods and the effect of increasing levels of counterfeit and pirated goods entering the stream of commerce. Multiple data sets providing import and export statistics for products that are known to be the subject of IP infringement are attached as Appendix 2.<sup>329</sup> While it is not possible to know the exact cause of the changes in trade flows, there are some interesting trends that correspond to known counterfeiting and piracy problems of U.S. producers. For instance, the trade data show that U.S. exports of computer software declined by 50.2 percent between 2000 and 2005. This figure corresponds to the IIPA's estimate that the

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<sup>329</sup> The data sets include U.S. export and import statistics and relevant trade balances. The list of goods used for this analysis was generated by reviewing information from the U.S. Chamber of Commerce, the United States International Trade Commission, and U.S. industry submissions to the United States Trade Representative for the 2007 National Trade Estimate. These sources provided specific examples of U.S. goods that are known to be affected by IP theft.

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business software industry's losses due to copyright piracy more than doubled over the same period.<sup>330</sup>

Counterfeiting is becoming an increasing problem for the auto parts industry and a review of the trade data shows that the U.S. moved from having a trade surplus of over \$3 billion in this area in 2000 to a trade deficit of over \$9.6 billion in 2006. At the same time, U.S imports of Chinese auto parts increased by over 500 percent, from \$440 million in 2000 to \$2.7 billion in 2006. While much of the trade reflects legitimate products, some portion likely reflects the growing problem of counterfeiting and pirated goods.

Additionally, a review of the statistics for foam footwear shows that the total U.S. trade deficit has more than doubled over the past six years, while its trade deficit with China has more than tripled. While, again, much of this increased trade will have been of legitimate goods, footwear accounted for the largest percentage of counterfeit goods that U.S. Customs officials seized at the border in 2006, both in terms of the total goods (41 percent by value was footwear) and the total originating in China (49 percent by value was footwear).<sup>331</sup>

The data show similar trends of shifting trade balances or dramatically-increasing deficits corresponding to increasing Chinese imports for, *inter alia*, personal care products, air conditioners and electrical chords. Those are all products where concern has been raised about IP theft.

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<sup>330</sup> See *IIPA 2001 Special 301 Report: People's Republic of China*, International Intellectual Property Alliance (IIPA); *IIPA 2002 Special 301 Report: People's Republic of China*, International Intellectual Property Alliance (IIPA); and *IIPA 2007 Special 301 Report: People's Republic of China*, International Intellectual Property Alliance (IIPA). All IIPA Special 301 submissions made to USTR available at [www.iipa.com/countryreports.html](http://www.iipa.com/countryreports.html).

<sup>331</sup> See 2006 U.S. Customs Statistics, *supra* note 44.

## **II. THE DEVELOPMENT OF INTELLECTUAL PROPERTY RIGHTS IN CHINA**

### **A. INTRODUCTION**

On December 11, 2001 China became a member of the World Trade Organization and with its membership assumed obligations under the WTO Trade-Related Aspects of Intellectual Property (“TRIPS”) Agreement. Despite China’s membership in the WTO and the accompanying requirement to comply with the TRIPS Agreement, China is generally considered as having one of the world’s highest rates of intellectual property theft. As China has worked to bring its laws into compliance with substantive standards, the focus both within China and by its trading partners has been on enforcement and education of all levels of society on the role of intellectual property.

The first step towards the effective enforcement of IPR is implementing TRIPS – “complying intellectual property legislation, including the procedural, remedial rules and institutional rules in place....The second step should go further to operational and institutional issues, to make the laws ‘workable’. To make amendments to China’s intellectual property laws was not easy, but to put these amendments into effect in society is much more difficult.”<sup>332</sup> So while there have been substantial improvements over time in China’s IPR laws, this is sometimes overshadowed because China’s “enforcement of intellectual property laws may well be described as unsatisfactory if not dismal or in crisis.”<sup>333</sup>

Putting China’s contemporary attitude toward the enforcement of intellectual property rights in a historical context may help to explain some of the difficulties China has had in

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<sup>332</sup> Jianqiang Nie, *The Enforcement of Intellectual Property Rights in China*, London, England: Cameron May, 2006, at 217.

<sup>333</sup> *Id.*

comporting its legal and societal codes with the modern demands for intellectual property protection. This section examines the historical development of China's IP laws with a focus on the effect of Chinese history and culture on the development of IP laws. This historical review provides some background on China's persistent struggle with enforcing IP rights, demonstrating the problem's longevity in the country and the challenges China and its trading partners are likely to continue to face in the years ahead.

Specifically, this section discusses the first attempts to introduce IP law in China. Next, this section examines the development of IP laws in China after the Cultural Revolution, with an analysis of some of the first and more important laws passed at the time. A recurring theme throughout this section and China's history is the influence and external pressure by China's trading partners on China to adopt and enforce better IP laws. This section then looks at U.S. pressure over the last several decades on China to improve IPR protection. Finally, this section addresses China's accession to the WTO with an analysis of the commitments made by China and the changes to China's IP laws before and after accession.

## **B. EARLY ATTEMPTS TO INTRODUCE INTELLECTUAL PROPERTY LAW IN CHINA**

Historically, China was known as a nation of innovation and creativeness. However, due to historical, cultural, economic, and political factors, China eventually fell behind its trading partners. In the 17<sup>th</sup> and 18<sup>th</sup> centuries, Western governments began to view patent and copyright law as a means of promoting research and development by rewarding those responsible with monopolies on their creations.<sup>334</sup> According to William Alford, this shift never occurred in

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<sup>334</sup> William P. Alford, *To Steal a Book is an Elegant Offense: Intellectual Property Law in Chinese Civilization*, Stanford California: Stanford University Press, 1995, at 18.

China, where Confucian culture put more “emphasis on personal development, in contrast to personal gain,” and where the individual was important, but primarily for his or her contribution to society.<sup>335</sup> When examining the evolution of China’s IPR laws, it is important to note that China has a “culture deeply embedded with traditions completely antithetical to the patenting of inventions and to the granting of property rights.”<sup>336</sup> However, over the past century, China has been under pressure to develop IP laws according to Western notions of intellectual property rights. Due in part to philosophical and cultural differences, China has consistently struggled to embrace intellectual property rights and to develop the necessary structure to enforce those rights.

Intellectual Property law was first introduced in China in the latter part of the 19<sup>th</sup> century through trade agreements with Japan, Great Britain and the United States. These trade agreements were imposed on the Qing Dynasty after trade wars stemming from the inability of foreign merchants to enter the Chinese market.<sup>337</sup> The wars and the agreements that followed resulted in numerous Chinese trade concessions to foreign powers and greater influence over China’s domestic policies.<sup>338</sup> Perhaps the most famous of such wars was the Opium War (1839-42).<sup>339</sup>

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<sup>335</sup> John R. Allison and Lianlian Lin, *The Evolution of Chinese Attitudes Toward Property Rights in Invention and Discovery*, 20 U. PA. J. Int’l Econ. L. 735, 737 (1999), citing, Alford, *supra* note 334, at 10.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> *Id.*

<sup>339</sup> The Opium War started after China condemned and outlawed the importation of opium. At the time, British traders were buying opium in India and using it to barter with Chinese merchants. After a Chinese leader seized and destroyed a load of opium on a British cargo ship, the British government declared war on China and won easily. As part of the settlement, Britain gained more influence in China and Hong Kong was ceded to the British. *See id.*

At the end of the 19<sup>th</sup> century, foreign economic involvement in China increased, as did the level of trade, making the protection of intellectual property more important.<sup>340</sup> There was also an increasing awareness of property rights amongst Western traders, who found that existing IP protection in China applied only to Chinese guilds, was localized, and unavailable to foreigners.<sup>341</sup> Meanwhile, the Chinese government's interest in protecting intellectual property "remained focused on the control of ideas and the maintenance of order, rather than on the protection of private property interests or the nurturing of a marketplace of ideas."<sup>342</sup>

China's first trademark and copyright laws were introduced following the commercial treaties negotiated at the end of the Boxer Rebellion (1900).<sup>343</sup> Neither law was effectively implemented, and it would be another two decades before China passed laws protecting foreign rights as outlined in the treaties and envisioned by the foreign powers.<sup>344</sup> After revolution in 1911, the last imperial dynasty collapsed. In 1912, under the new Republic, China adopted its first patent law. However, the law only applied to Chinese nationals.<sup>345</sup> The law was amended and extended to American patent holders in 1923, but, like the first copyright and trademark laws, it failed to provide meaningful protection due to ineffective implementation.<sup>346</sup>

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<sup>340</sup> Prior to the Opium War, and for the first few decades thereafter, "[i]ssues of intellectual property were not of consequence in Chinese economic and legal interaction with the West...as trade was confined to items such as opium, tea, and raw silk, sold as bulk commodities, rather than under brand names." See Alford, *supra* note 334, at 33-34.

<sup>341</sup> After the formation of the Paris Convention in 1883, and the Berne Convention in 1886, there was increasing international awareness of intellectual property rights and an expectation amongst traders that trademarks registered at home would be protected in countries abroad, including China, although China was not a signatory to the Conventions. See Alford, *supra* note 334, at 34-35.

<sup>342</sup> Alford, *supra* note 334, at 47-8.

<sup>343</sup> Allison and Lin, *supra* note 335, at 747; see also Nie, *supra* note 332, at 179.

<sup>344</sup> Alford, *supra* note 334, at 41.

<sup>345</sup> Allison and Lin, *supra* note 335, at 747.

<sup>346</sup> *Id.*

Another attempt to develop intellectual property rights in China was started in 1928 with the passage of a copyright law, followed by a trademark law in 1930, and a patent law in 1932.<sup>347</sup> However, these laws too failed to fully establish intellectual property protection in China. “[F]undamentally, these laws failed to achieve their stated objectives because they presumed a legal structure, and indeed, a legal consciousness, that did not exist in China and, most likely, could not have flourished there at that time.”<sup>348</sup> The failure of the treaty powers to provide the technical assistance to train Chinese officials and the failure to educate the Chinese population on the importance of intellectual property rights have been identified as factors in the failure of these early laws to be properly implemented or enforced.<sup>349</sup>

Apart from the essentially self-serving advice provided by a small core of British, Japanese, American and other foreign advisors largely involved in legislative drafting and general legal counseling, it appears that the treaty powers made no substantial efforts to show the Chinese government why intellectual property law might be of benefit to China, to assist in the training of Chinese officials with responsibility in this field, or to educate the Chinese populace as to its rationale.<sup>350</sup>

### **C. INTELLECTUAL PROPERTY LAW IN CHINA SINCE THE LATE 1940S**

In 1949, the Chinese Communist Party came to power and invalidated all Republican law and modeled a new legal system on the USSR.<sup>351</sup> The Soviet socialist model comported with longstanding Confucian traditions, as the fundamental rationale behind both systems was that inventions and creations draw heavily from society’s “preexisting repository of knowledge” and

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<sup>347</sup> Alford, *supra* note 334, at 34.

<sup>348</sup> *Id.* at 53.

<sup>349</sup> *Id.* at 49.

<sup>350</sup> *Id.*

<sup>351</sup> *Id.* at 56; *see also* Allison and Lin, *supra* note 335, at 749.

thus inherently belonged to society. Neither system believed that the creation of ideas established private ownership interests and both believed in the importance of controlling the dissemination of information and ideas, with control remaining in the hands of a few, but for the benefit of society as a whole.<sup>352</sup>

The early regulation of intellectual property law in the People's Republic of China was in the Provisional Regulations on the Protection of Invention Rights and Patent Rights of August 11, 1950. The structure of rights was similar to the Soviet system, with two tracks, including a "Certificate of Invention" and a "Certificate of Patent."<sup>353</sup> Unlike the Soviet system, which was crafted to attract foreign investment from Western multinational enterprises, the Chinese system focused on Chinese intellectuals and aimed to give them enough rights to stimulate innovation that would contribute to the national reconstruction.<sup>354</sup>

During the 1950s, '60s, and '70s, very few patents were issued in China. By 1958, the patent law had produced only six invention certificates and four patents, with no patents or invention certificates issued between 1958 and 1963.<sup>355</sup> In 1962, the Communist leadership rejected the use of material incentives to encourage creative and inventive efforts and, a year

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<sup>352</sup> Alford, *supra* note 334, at 57; Allison and Lin, *supra* note 335, at 749.

<sup>353</sup> Nie, *supra* note 332, at 179; *see also* Alford, *supra* note 334, at 57-58. A Certificate of Invention gave the State the right to exploit and disseminate the invention and the inventor the right to monetary rewards based on savings realized from their invention and the right to hold an honorable certificate. *Id.* With a Certificate of Patent the patentee enjoyed the right of exploitation and was given the option of transferring the patent right or allowing others to exploit the invention, waiving his patent rights, or converting the patent right to the right of invention. Nie, *supra* note 332, at 179. However, the Certificate of Patent was only available to inventors of products invented out of the employment of a state-owned enterprise and to foreign nationals inventing on their own in China. Allison and Lin, *supra* note 335, at 750. But even the few inventions that were eligible for a Certificate of Patent could be subject to state confiscation or transferred to a Certificate of Invention if the government determined that the invention "concerned national security, or 'affected the welfare of the great majority of the people.'" *Id.*

<sup>354</sup> Alford, *supra* note 334, at 58; *see* Allison and Lin, *supra* note 335, at 750.

<sup>355</sup> Allison and Lin, *supra* note 335, at 750.

later, Article 23 of the 1963 Regulations on Awards for Inventions made it so that all inventions would belong to the State and there would be no monopoly on inventions.<sup>356</sup>

During the Cultural Revolution (1966-76), IP development in China came to a halt as “scientists, inventors, creators, and intellectuals in general...were considered a subversive element” and forced to abandon their careers in favor of agricultural labor.<sup>357</sup>

#### **D. PRESSURE ON CHINA TO DEVELOP INTELLECTUAL PROPERTY LAWS AFTER THE CULTURAL REVOLUTION**

As China emerged from the Cultural Revolution, the new Chinese leaders recognized what China had lost over the previous decade and saw the need for China to develop a modern economy. The leadership understood that the development of such an economy required scientific and technological advancement. Although this required the government to relinquish some control over the socialist economy and develop laws to protect individual property rights, many leaders regarded an economy based at least partly on market principles as essential for China's development. The Chinese leadership introduced the “Four Modernizations,” a program for “China to reach world-class strength in agriculture, industry, science and technology, by the end of the century.”<sup>358</sup> Under the encouragement of Deng Xiaoping, IP laws were designed to: soothe foreign fears and encourage foreign investment to bring with it foreign technology; stimulate domestic research and scientific growth; encourage the exchange of ideas among

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<sup>356</sup> See Nie, *supra* note 332, at 179; Allison and Lin, *supra* note 335, at 750.

<sup>357</sup> Allison and Lin, *supra* note 335, at 752.

<sup>358</sup> Nie, *supra* note 332, at 181.

Chinese scientists; and bring China into international organizations such as the United Nations' WIPO, where membership brought side-benefits for the country's development.<sup>359</sup>

The State Science and Technology Commission was reestablished in 1978 to oversee the “general policy for scientific and technological development’ [and] was directed to work up long-range policy on inventions” and, later, for trademarks and copyrights.<sup>360</sup> In the late 1970s and early 1980s, China “enacted a large body of law and implemented regulations with the aim of creating a legal system that would support an economy based on market incentives while retaining the basic principles of socialism.”<sup>361</sup> This modernization program importantly arose from within China, a hopeful sign for future implementation and enforcement needs of both Chinese businesses and of businesses around the world.

While the Chinese leadership began working to implement stronger IP laws to attract technology and help facilitate development in China, Chinese integration with the international community also increased the external pressure on the Chinese government to improve IPR protection. For example, in 1979, China and the United States established diplomatic relations and later that year, signed a trade agreement.<sup>362</sup> Because of the importance of intellectual property protection to U.S. interests, this first trade agreement following normalization of relations contained intellectual property provisions. Specifically, the signing of the 1979 Sino-U.S. Trade Agreement was conditioned on China “recogniz[ing] the importance of effective

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<sup>359</sup> Allison and Lin, *supra* note 335, at 753-4; *see also* Alford, *supra* note 334, at 69.

<sup>360</sup> Alford, *supra* note 334, at 66.

<sup>361</sup> Allison and Lin, *supra* note 335, at 753.

<sup>362</sup> *See* Agreement on Trade Relations Between The United States of America and The People's Republic of China, July 7, 1979, 18 Int'l Legal Materials 1041 [hereinafter “1979 Sino-U.S. Trade Agreement”].

protection of patents, trademarks and copyrights.”<sup>363</sup> The Agreement also provided that each Party “shall take appropriate measures, under its laws and regulations and with due regard to international practice, to ensure ..... the other Party protection of copyrights equivalent to the copyright protection correspondingly accorded by the other party.”<sup>364</sup> The 1979 Agreement, combined with China’s desire to develop and integrate its economy with the international community, initiated an overhaul of China’s IP laws and commitments.

China’s efforts resulted in a series of laws and regulations adopted over the next decade, including the 1982 Trademark Law (Trademark Law), the 1984 Patent Law (Patent Law), the 1990 Copyright Law (Copyright Law), the 1991 Computer Software Protection Regulation (Software Protection Regulation), the 1993 Law Against Unfair Competition (Unfair Competition Law), and the 1995 Regulations for Customs Protection of Intellectual Property (Customs Regulations).<sup>365</sup> China also joined many of the important international treaties pertaining to the protection of intellectual property, including the Convention Establishing the World Intellectual Property Organization (WIPO Convention)<sup>366</sup> in 1980, the Paris Convention

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<sup>363</sup> See 1979 Sino-U.S. Trade Agreement, *supra* note 362; see also Deli Yang and Peter Clarke, *Globalisation and Intellectual Property in China*, Technovation, May 2005, citing Zheng, C., *The World Trade Organization and TRIPS*, Publishing House of the People’s University of China, Beijing (1996).

<sup>364</sup> See 1979 Sino-U.S. Trade Agreement, *supra* note 362, Art. VI.

<sup>365</sup> Naigan Zhang, *Intellectual Property Law Enforcement in China: Trade Issues, Policies and Practices*, 8 *Fordham Intell. Prop. Media & Ent. L.J.* 63, 63-64 (1997-1998).

<sup>366</sup> See WIPO Notification No. 110, Convention Establishing the World Intellectual Property Organization, Accession by the People’s Republic of China (March 4, 1980) (effective June 3, 1980), available at [http://www.wipo.int/edocs/notdocs/en/convention/treaty\\_convention\\_110.html](http://www.wipo.int/edocs/notdocs/en/convention/treaty_convention_110.html).

for the Protection of Industrial Property (Paris Convention)<sup>367</sup> in 1985, and the Madrid Agreement for the International Registration of Marks (Madrid Agreement)<sup>368</sup> in 1989.<sup>369</sup>

### ***1. 1982 Trademark Law***

Similar to the 1963 Trademark Regulations, the new Trademark Law emphasized the use of trademarks to control product quality.<sup>370</sup> According to Article 1, the purpose of the Law was to provide for exclusive trademark rights and encourage the production of high quality goods for consumers and for “promoting the development of [the] socialist commodity economy.”<sup>371</sup> Alford opined that the first purpose, “protecting the exclusive right to use a trademark,” was, for the most part, created only for the contribution that right might make to promoting the socialist economy.<sup>372</sup> While granting some rights, the Trademark Law, like the Patent Law, also denied certain rights. The Law gave no protection to service marks, collective marks, certification marks, defensive marks, and trademarks that were deemed as “having the nature of discrimination against any nationality,” “having the nature of exaggeration and deceit in

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<sup>367</sup> See Paris Notification No. 114, Paris Convention for the Protection of Industrial Property, Accession by the People's Republic of China (December 19, 1984) (effective March 19, 1985), available at [http://www.wipo.int/edocs/notdocs/en/paris/treaty\\_paris\\_114.html](http://www.wipo.int/edocs/notdocs/en/paris/treaty_paris_114.html).

<sup>368</sup> See Madrid (Marks) Notification No. 41, Madrid Agreement Concerning the International Registration of Marks, Accession by the People's Republic of China (July 4, 1989) (effective October 4, 1989), available at [http://www.wipo.int/edocs/notdocs/en/madrid-gp/treaty\\_madrid\\_gp\\_41.html](http://www.wipo.int/edocs/notdocs/en/madrid-gp/treaty_madrid_gp_41.html).

<sup>369</sup> Later, as discussed in Section II-E, China joined the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) in 1992, the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (Geneva Convention) in 1993, and the Patent Cooperation Treaty (PCT) in 1994.

<sup>370</sup> See Mark Sidel, *Copyright, Trademark and Patent Law in the People's Republic of China*, 21 Tex. Int'l L.J. 259, 271 (1985-1986). “Article 1 of the 1963 Trademark Regulations provided that the Regulations should strengthen ‘trademark control and guarantee and improve the quality of products,’” citing 1963 Trademark Regulations, translated in 62 Pat. & Trademark Rev. 249 (1964).

<sup>371</sup> Trademark Law of the People's Republic of China (Adopted at the 24<sup>th</sup> Session of the Standing Committee of the Fifth National People's Congress on August 23, 1982), available at [www.chinatoday.com/law/a02.htm](http://www.chinatoday.com/law/a02.htm) [hereinafter “1982 Trademark Law”] (The Chinese version of the law can be found in Appendix 3).

<sup>372</sup> See Alford, *supra* note 334, at 75.

advertising goods,” and “detrimental to socialist morals or customs or having other unhealthy influences.”<sup>373</sup>

Articles 31 and 34 of the Law provided that where there is a violation the “local administrative authorities for industry and commerce” will call for the infringer to cease, and rectify the situation, and would “circulate a notice of criticism or impose a fine.”<sup>374</sup> If a party is not satisfied with the decision of an administrative authority, the party “may institute proceedings with the people’s court.”<sup>375</sup> As Alford pointed out, the remedy provisions in the Law proved problematic by relying too much on the administrative side, despite the provision allowing access to the courts, and they were also vague, making it unclear how to bring actions, what administrative or judicial actions were available, and how to enforce those actions.<sup>376</sup> Additionally, the remedies provided by the law were viewed as not being substantial enough to deter the offensive behavior.<sup>377</sup> Finally, foreigners also could not directly complain to a local trademark authority, but, rather, had to go through a trademark agent.<sup>378</sup>

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<sup>373</sup> 1982 Trademark Law, *supra* note 371, Art. 8. *See* Alford, *supra* note 334, at 75.

<sup>374</sup> 1982 Trademark Law, *supra* note 371, Arts. 31 and 34. Violations under Article 31 pertain to the use of a trademark with goods of poor quality and Article 34 pertains to the use of an unregistered trademark. Article 33 addresses the punishment for selling, without a registered trademark, goods prescribed by the state as requiring a trademark. The Article provides that the “local administrative authorities for industry and commerce shall order him to file an application for registration within a specified period, and may, in addition, impose a fine. *Id.*

<sup>375</sup> *Id.* at Art. 36.

<sup>376</sup> *See* Alford, *supra* note 334, at 76.

<sup>377</sup> *See id.*

<sup>378</sup> 1982 Trademark Law, *supra* note 371, Art. 10.

2. *1984 Patent Law*<sup>379</sup>

The Patent Law allowed for patenting of “inventions-creations,” which included inventions, utility models (“petty inventions”), and designs.<sup>380</sup> Article 45 provided that an invention patent had a duration of fifteen years and five years for a utility model or design, with a provision for a single three-year renewable period.<sup>381</sup> Under Article 25 of the Patent Law there were, however, many important limitations as to what could be patented.<sup>382</sup> Additionally, excluded from patentability was anything “contrary to the laws of the state or social morality or that are detrimental to public interest.”<sup>383</sup>

On its face, the Patent Law appeared to provide foreigners with greater privileges because Chinese subjects could only apply for patents if they invented the item on their own or while working at a non-state entity, which at the time, was not common.<sup>384</sup> However, as applied, foreigners were often at a disadvantage. For instance, although Article 25 applied to foreigners and Chinese equally, the exclusion of patent coverage to chemical, pharmaceutical, and alimentary inventions disproportionately affected foreign patent holders, as, more often than not,

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<sup>379</sup> See Tables 1 and 2 in Appendix 8 containing the total number of patent applications and patents granted in China from 1985-2006.

<sup>380</sup> Patent Law of the People’s Republic of China, Arts. 1 and 2 (entered into force April 1, 1985), translated in 24 I.L.M. 295 (1985) [hereinafter “1984 Patent Law”] (The Chinese version of the law can be found in Appendix 3).

<sup>381</sup> *Id.*, Art. 45.

<sup>382</sup> *Id.* at Art. 25. Article 25 provided that no patent shall be granted for: “Scientific discoveries”; “Rules and methods of mental activities”; “Methods for the diagnosis or for the treatment of diseases”; “Food, beverage and flavorings”; “Pharmaceutical products and substances obtained by means of a chemical process”; “Animal and plant varieties”; and “Substances obtained by means of nuclear transformation.” However, “processes used in producing” food, beverages, flavoring, pharmaceutical products, chemical substances and animal and plant varieties could be granted a patent. *Id.* Additionally, under the exception for “rules and methods of mental activities,” computer software could not be patented unless bundled with a computer. See Sidel, *supra* note 370, at 283-4.

<sup>383</sup> 1984 Patent Law, *supra* note 380, Art. 5.

<sup>384</sup> *Id.* at Art. 6; see Allison and Lin, *supra* note 335, at 755.

foreigners already held patents for such products.<sup>385</sup> Additionally, patent protection for such products is more valuable to the rights holder, as the underlying technology for these products is easily discernable and copied.<sup>386</sup>

An additional weakness of the Patent Law was that it provided very few remedies for the patentee to protect the limited rights that the law granted. Article 60 provided that when a patentee believes his patent has been infringed, he may request the administrative authority to handle the matter or may institute legal proceeding in the people's court.<sup>387</sup> Where there is an infringement and "the circumstances are serious, any person directly responsible shall be prosecuted for his criminal liability."<sup>388</sup> However, as the Patent Law provided that certain acts did not constitute infringement of the patent right, it would seem that "the Patent Law of 1984 had far more to say about the rights being provided than the means through which individuals might vindicate them."<sup>389</sup> Additionally, since remedies were almost all limited to administrative or criminal remedies, decisions were kept with the government, allowing for few civil remedies, and not allowing for remedial actions to be in the hands of the patentees.<sup>390</sup>

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<sup>385</sup> Alford, *supra* note 334, at 72.

<sup>386</sup> *Id.*

<sup>387</sup> 1984 Patent Law, *supra* note 380, Art. 60.

<sup>388</sup> *Id.* at Art. 63.

<sup>389</sup> Alford, *supra* note 334, at 72. Article 62 provided that the following acts should not be deemed infringement: the use or sale of a product made by the patent holder or with the patent holder's permission; the use or sale of a patented product without knowledge that it was made and sold without the patent holders authorization; continued production or use of a product or process by another person, when that person has made, used, or made preparations to make or use the product before the patent holder's date of filing; use of the patent by foreign transport temporarily passing through Chinese territory in accordance with an international agreement or on the basis of reciprocity; and use of the patent solely for purposes of scientific research. *See* 1984 Patent Law, *supra* note 380, Art. 62.

<sup>390</sup> *See id.* at 73.

### 3. *1990 Copyright Law*

After a controversial and complicated debate over whether copyrights were strictly a private right, relevant only to the protection of private interests or were “relevant to public interests” requiring administration by a government agency, China passed the 1990 Copyright Law.<sup>391</sup> The law provided that an administrative authority would be responsible for the nationwide administration of copyrights and would have the ability to levy fines.<sup>392</sup> The Law did not provide detailed rules for civil procedures and remedies, and provided no provisions on criminal penalty.<sup>393</sup> Additionally, the law suffered from dual and sometimes competing purposes since it granted authors copyright protection, but, like the Trademark Law, only with the purpose of encouraging works that would help advance the aims of the Communist Party.<sup>394</sup>

Similar to the Patent Law, the Copyright Law tried to placate the demands of the international marketplace by giving foreigners, in some circumstances, more rights than their Chinese counterparts. Under Article 27, “remuneration for the exploitation of works shall be established by the copyright administration department under the State Council.... [or] [w]here otherwise agreed to in a contract, remuneration may also be paid in accordance with the terms of the said contract.”<sup>395</sup> Thus, while the Chinese were not allowed to determine their royalties,

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<sup>391</sup> Copyright Law of the People’s Republic of China (adopted at the Fifteenth Session of the Standing Committee of the Seventh National People’s Congress on September 7, 1990) available at <http://www.chinaconsulatesf.org/eng/kj/wjfg/t43948.htm> [hereinafter “1990 Copyright Law”] (The Chinese version of the law can be found in Appendix 3); see also Nie, *supra* note 332, at 185.

<sup>392</sup> Additionally, Article 8 provided that [t]he Copyright administration department of the People’s Government of each province, autonomous region and municipality directly under the Central Government shall be responsible for the administration of copyright in its administrative areas. See 1990 Copyright Law, *supra* note 391, Arts. 8 and 46.

<sup>393</sup> *Id.* at Arts. 45-50; see Nie, *supra* note 332, at 185.

<sup>394</sup> 1990 Copyright Law, *supra* note 391, Art. 1; see Nie, *supra* note 332, at 184.

<sup>395</sup> 1990 Copyright Law, *supra* note 391.

foreigners were given the right to negotiate contracts for their royalties.<sup>396</sup> However, foreigners' rights were diminished by Article 2 that denied foreigners protection unless their works were published in China first or had more extensive rights by a bilateral or international agreement.<sup>397</sup> Finally, the foreign exchange regime limited the amount of royalties a foreigner was allowed to take out of the country.<sup>398</sup>

#### **4. 1991 Regulations for Computer Software Protection**

The Regulations for the Protection of Computer Software were similar to the Patent, Copyright, and Trademark Laws in that “a seemingly broad statement of rights is subject to a variety of qualifications.”<sup>399</sup> The regulations provided that copyright holders had the following rights: (1) right of publication; (2) right of authorship; (3) right of use; (4) right of licensing use and receiving remuneration; and (5) right of transfer.<sup>400</sup> Any software published prior to the issuance of the Regulation was presumed to already be in the public domain.<sup>401</sup> However, under Article 13, the regulations contained language about “national and public security interests” that limited the scope of the rights that the regulations granted, without clearly defining “national and public security interests.”<sup>402</sup> Under Article 24, registration of software was considered a “prerequisite for administrative treatment of rights disputes or for lawsuits.”<sup>403</sup> Additionally, to seek the enforcement of rights, software developers were required to provide key proprietary

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<sup>396</sup> Alford, *supra* note 334, at 79.

<sup>397</sup> 1990 Copyright Law, *supra* note 391, Art. 2.

<sup>398</sup> Alford, *supra* note 334, at 80.

<sup>399</sup> *Id.*

<sup>400</sup> See Regulations for Computer Software Protection, Art. 9 (promulgated on June 4, 1991, effective October 2, 1991) [hereinafter “1991 Regulations for Computer Software”].

<sup>401</sup> Alford, *supra* note 334, at 81; *see id.*

<sup>402</sup> See 1991 Regulations for Computer Software, *supra* note 400, Art. 13.

<sup>403</sup> *See id.* at Art. 24.

data to a government Ministry in a “registration process that is far more exacting than that of many nations, particularly in view of the regulations’ liberal invocation of the national interest.”<sup>404</sup>

**E. THE UNITED STATES INCREASES PRESSURE ON CHINA TO IMPROVE IPR PROTECTION**

In the late 1980s, the United States and China began holding discussions on methods to improve China’s protection of IPR. The discussions covered laws on copyright, patent, trademark, trade secrets, and unfair competition, as well as the enforcement of those laws.<sup>405</sup> However, progress was slow. In order to address problems with the then existing Chinese laws, regulations and enforcement efforts, on April 26, 1991, USTR, pursuant to the Special 301 provisions of the 1988 Trade Act, identified China as a Priority Foreign Country.<sup>406</sup> USTR commented that:

China is our only major trading partner to offer neither product patent protection for pharmaceutical and other chemicals, nor

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<sup>404</sup> Alford, *supra* note 334, at 81.

<sup>405</sup> 1995 *National Trade Estimate Report on Foreign Trade Barriers*, United States Trade Representative, at 54 [hereinafter “National Trade Estimate 1995”].

<sup>406</sup> Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994) (“Special 301”), under Special 301 provisions, USTR must identify those countries that deny adequate and effective protection for IPR or deny fair and equitable market access for persons that rely on intellectual property protection. Countries that have the onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products must be designated as “Priority Foreign Countries.”

Priority Foreign Countries are potentially subject to an investigation under the Section 301 provisions of the Trade Act of 1974. USTR may not designate a country as a Priority Foreign Country if it is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IPR.

*See Background on Special 301*, United States Trade Representative, available at [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2006/2006\\_Special\\_301\\_Review/asset\\_upload\\_file324\\_9334.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2006/2006_Special_301_Review/asset_upload_file324_9334.pdf).

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copyright protection for U.S. works. In addition, trademarks are granted to the first registrant in China, regardless of the original owner. Trade secrets are not adequately protected in China. As a result, piracy of all forms of intellectual property is widespread in China, accounting for significant losses to U.S. industries.<sup>407</sup>

Accordingly, on May 26, 1991, USTR initiated an investigation on China's intellectual property rights practices.<sup>408</sup> The investigation was resolved when the United States and China signed the 1992 Memorandum of Understanding ("MOU") on Intellectual Property Rights.<sup>409</sup> This MOU was the first bilateral IP agreement between the U.S. and China that strictly focused on China's legislation. The MOU required China to revise its Patent Law to: (1) cover patented subject matter on all chemical inventions, whether products or processes; (2) extend the term of protection for patents of invention to twenty years from the date of filing the patent application;<sup>410</sup> and (3) limit the use of compulsory licenses.<sup>411</sup> Additionally, China was required to accede to the Convention for the Protection of Literary and Artistic Works<sup>412</sup> (Berne Convention) and the Convention for the Protection of Producers of Phonograms Against

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<sup>407</sup> *Fact Sheet: Special 301 on Intellectual Property*, Office of the United States Trade Representative, April 26, 1991, available at USTR Reading Room.

<sup>408</sup> See *Background on Special 301*, *supra* note 406.

<sup>409</sup> See *Memorandum of Understanding Between the Government of the People's Republic of China and the Government of the United States of America on the Protection of Intellectual Property Rights*, January 7, 1992, available at [http://tcc.export.gov/trade\\_agreements/all\\_trade\\_agreements/exp\\_005362.asp](http://tcc.export.gov/trade_agreements/all_trade_agreements/exp_005362.asp) [hereinafter "1992 Memorandum of Understanding"].

<sup>410</sup> Under Article 1 of the MOU, the U.S. agreed that if it became a party to an international convention that required a twenty year patent term, it would amend its laws to satisfy that obligation. In 1995, following the conclusion of the Uruguay Round, to comply with the implementing legislation for the WTO (The Uruguay Round Agreements Act), the U.S. changed its patent term to twenty years. See *Changes to Implement 20-Year Patent Term and Provisional Applications*, 60 Fed. Reg. 20195 (June 8, 1995) (to be codified at 37 C.F.R. pts. 1 and 3).

<sup>411</sup> See 1992 Memorandum of Understanding, *supra* note 409, at Article 2; see also Zhang, *supra* note 365, at 73.

<sup>412</sup> See Berne Notification No. 140, Berne Convention for the Protection of Literary and Artistic Works, Accession by the People's Republic of China (July 15, 1992) (effective October 15, 1992), available at [http://www.wipo.int/edocs/notdocs/en/berne/treaty\\_berne\\_140.html](http://www.wipo.int/edocs/notdocs/en/berne/treaty_berne_140.html).

Unauthorized Duplication of Their Phonograms<sup>413</sup> (Geneva Convention), and issue regulations that would put China in compliance with those conventions and with the MOU.<sup>414</sup> In 1994, China also acceded to the Patent Cooperation Treaty (PCT).<sup>415</sup>

China viewed itself as having fully implemented the MOU after passing the 1992 Revision of Patent Law, the 1992 Implementing International Copyright Treaties Provisions, the 1993 Law Against Unfair Competition and completed accession to the Berne and Geneva Conventions.<sup>416</sup> However, the U.S. had ongoing concerns about China's ability/willingness to enforce the new laws and regulations, particularly copyright provisions. The "short history of copyright law in China, the lack of Chinese officials with experience in the enforcement of copyright law, and the general ignorance of copyright law among many Chinese" contributed to the difficulty China experienced in enforcing these new laws, especially with respect to foreigners.<sup>417</sup> In 1994, USTR commended China's progress in implementing the MOU, but noted that China's enforcement of IPR laws and regulations was "sporadic at best and virtually non-existent with regard to copyrighted works."<sup>418</sup>

In June 1994, the U.S. initiated a second Special 301 investigation that led to eight months of negotiations. On February 26, 1995, the U.S. and China reached the Agreement Regarding Intellectual Property Rights ("IPR Agreement"), which included an Annex entitled

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<sup>413</sup> See Phonograms Notification No. 50, Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms, Accession by the People's Republic of China (January 30, 1993) (effective April 30, 1993), available at [http://www.wipo.int/edocs/notdocs/en/phonograms/treaty\\_phonograms\\_50.html](http://www.wipo.int/edocs/notdocs/en/phonograms/treaty_phonograms_50.html).

<sup>414</sup> See 1992 Memorandum of Understanding, *supra* note 409, at Article 3; see also Zhang, *supra* note 365, at 73.

<sup>415</sup> Zhang, *supra* note 365, at 64-65.

<sup>416</sup> *Id.* at 73.

<sup>417</sup> *Id.*

<sup>418</sup> 2004 National Trade Estimate Report on Foreign Trade Barriers, United States Trade Representative, at 51 [hereinafter "National Trade Estimate 2004"].

“Action Plan for Effective Protection and Enforcement of Intellectual Property Rights.”<sup>419</sup> The 1995 IPR Agreement required China to establish a nationwide administrative IPR enforcement structure and provide market access for audiovisual products, computer software, and for books and periodicals.<sup>420</sup> The IPR enforcement structure included: (1) a state council working conference on intellectual property rights and sub-central working conferences, (2) enforcement task forces, (3) a special enforcement period, (4) enforcement efforts in specific fields, (5) enforcement directly through administrative agencies and departments, (6) additional administrative actions, (7) customs enforcement, (8) establishment of copyright verification systems, (9) administrative and regulatory matters, and (10) training and education programs to improve the environment for intellectual property.<sup>421</sup>

Feeling that China was not doing enough to enforce the 1995 IPR Agreement, a year later the United States threatened to impose tariffs on Chinese exports. To avoid this, the U.S. and China signed the 1996 IPR Accord.<sup>422</sup> The 1996 IPR Accord included a “Report,” outlining what China had done and what needed to be done in order to fully implement the 1995 IPR Agreement.<sup>423</sup> The Accord also included an “Access Accord” which allowed for the opening of

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<sup>419</sup> See *People's Republic of China Intellectual Property Rights Memorandum of Understanding – Action Plan for Effective Protection and Enforcement of Intellectual Property Rights*, February 26, 1995, available at [http://tcc.export.gov/trade\\_agreements/all\\_trade\\_agreements/exp\\_005363.asp](http://tcc.export.gov/trade_agreements/all_trade_agreements/exp_005363.asp) [hereinafter “1995 Memorandum of Understanding”].

<sup>420</sup> See *id.*

<sup>421</sup> See *id.* at Annex I; see also Zhang, *supra* note 365, at 75.

<sup>422</sup> See *People's Republic of China Implementation of the 1995 Intellectual Property Rights Agreement – 1996* (June 17, 1996), available at [http://tcc.export.gov/trade\\_agreements/all\\_trade\\_agreements/exp\\_005361.asp](http://tcc.export.gov/trade_agreements/all_trade_agreements/exp_005361.asp).

<sup>423</sup> See *id.*

the Chinese market for American cultural products, but was subject to Chinese censorship requirements.<sup>424</sup>

To prepare for accession to the WTO, in the late 1990s, the U.S. and other trading partners continued to urge China to further strengthen its IPR laws. For its part, China continued with reform efforts and began drafting revisions to its trademark, patent, and copyright laws, and established the State Intellectual Property Office (“SIPO”).<sup>425</sup>

**F. CHINA'S ACCESSION TO THE WORLD TRADE ORGANIZATION (“WTO”) AND COMPLIANCE WITH LEGAL REQUIREMENTS OF THE WTO TRIPS AGREEMENT**

At the same time that China was involved in bilateral negotiations with the U.S. about the adequacy of its intellectual property laws and enforcement, China was also pursuing accession to the GATT and then the World Trade Organization. For many members of the WTO, an important multilateral issue for China being able to accede to the WTO was its ability to be fully in compliance with the TRIPS Agreement at the time of accession.<sup>426</sup> To be in a position to

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<sup>424</sup> See *id.*

<sup>425</sup> Although China envisioned that SIPO would coordinate China's IP enforcement efforts by merging the patent, trademark and copyright offices under one authority, this has not occurred. Indeed, China's IP issues and enforcement is handled by a complex bureaucratic web of various agencies. Currently, although SIPO has a policy making role in trademarks, patents, and copyrights, SIPO's activities are primarily focused on granting patents and registering semiconductor layout designs. See *Protecting Your Intellectual Property Rights (IPR) in China: A Practical Guide for U.S. Companies*, Office of China Economic Area, Export.gov, January 2003, available at <http://www.mac.doc.gov/China/IPRNEW.html>. “The China Trademark Office (CTMO) and National Copyright Administration of China (NCAC) remain separate bodies, while still another entity, the Ministry of Commerce (MOFCOM), administers technology transfer issues.” *Facing the China Challenge: Using an Intellectual Property Strategy to Capture Global Advantage*, The Boston Consulting Group, September 20, 2004, at 8, available at [http://www.bcg.com/publications/publications\\_search\\_results.jsp?PUBID=1217](http://www.bcg.com/publications/publications_search_results.jsp?PUBID=1217).

<sup>426</sup> See generally *Report of the Working Party on the Accession of China*, WT/MIN(01)/3 (10 November 2001), at paras. 251-305 (regarding China's intellectual property rights commitments); see also, Terence P. Stewart, Law Offices of Stewart and Stewart, *Accession of the People's Republic of China to the World Trade Organization: Baseline of Commitments, Initial Implementation and Implications for U.S.-PRC Trade Relations and U.S. Security Interests: A Report and Selected Annexes Prepared for the U.S.-China Security Review Commission*

accept the terms of the Chinese Protocol on Accession, including its commitment to full implementation of the TRIPS Agreement at the time of accession, China revised its IP laws before accession,<sup>427</sup> making “comprehensive revisions to the laws and regulations regarding IPR protection and their legal interpretation.”<sup>428</sup>

By the end of 2001, China had amended its patent, trademark, and copyright laws and had amended regulations for patent law, computer software protection, and the protection of layout designs of integrated circuits.<sup>429</sup> After accession, China issued regulations for trademark and copyright laws, implementing rules and judicial interpretations in the patent, trademark, and copyright areas, and regulations and implementing rules for integrated circuits, computer software, and pharmaceuticals.<sup>430</sup>

Among the assumed obligations of the WTO TRIPS Agreement, China agreed to:

- set minimum standards of protection for copyrights and neighboring rights, trademarks, geographical indications, industrial designs, patents, integrated-circuit layout designs and undisclosed information;
- set minimum standards for the enforcement of intellectual property rights in administrative and civil actions;
- set minimum standards, with regard to copyright piracy and trademark counterfeiting, for the enforcement of intellectual property rights in criminal actions and actions at the border; and

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by the Law Offices of Stewart and Stewart, Transnational Publishers (2002). (The book provides a table containing all of China's TRIPS commitments, which is provided in Annex 5 of this report.)

<sup>427</sup> See Table 1 of Appendix Table 3 for a list of relevant laws with effective dates and dates of amendment, See also, Tables 1-3 in Appendix 4, which contains the changes in enforcement measures from the laws passed in the 1990s and the laws passed between 2000 and 2001.

<sup>428</sup> *White Paper on China's Intellectual Property Rights in 2005*, State Intellectual Property Office (SIPO), available at: [http://www.sipo.gov.cn/sipo\\_English/ndbg/bps/200605/t20060509\\_99488.htm](http://www.sipo.gov.cn/sipo_English/ndbg/bps/200605/t20060509_99488.htm) [hereinafter “2005 Chinese White Paper”].

<sup>429</sup> *2006 National Trade Estimate Report on Foreign Trade Barriers*, United States Trade Representative, at 115 [hereinafter “*Nation Trade Estimate 2006*”].

<sup>430</sup> *Id.*

- provide other WTO Members national and MFN treatment with respect to protection and enforcement of intellectual property rights.<sup>431</sup>

Articles 41-61 of the TRIPS Agreement specifically address the enforcement of intellectual property rights. These Articles include detailed provisions on administrative, civil, criminal and border enforcement measures designed to protect the owners of intellectual property rights.<sup>432</sup> An important aspect of China's treaty obligations under the Protocol and TRIPS Agreement related to enforcement provisions addressing procedural, remedial, and institutional mechanisms for the enforcement of intellectual property rights.<sup>433</sup>

During the Working Party, members expressed concern with respect to China's enforcement of IPR.<sup>434</sup> Specifically, they called on China to increase its enforcement efforts, ensure the vigorous enforcement of laws by taking action against manufacturing facilities, markets, and retail shops.<sup>435</sup> Additionally, they urged that civil actions should be made easier and the calculation of damages should not be based on the infringer's profits, which requires evidence of actual sales, and that criminal prosecution should be more accessible by a lowering of criminal thresholds, which were seldom met.<sup>436</sup>

As required in China's Protocol of Accession, in 2002 China submitted to the Council for Trade-Related Aspects of Intellectual Property Rights, a Review of Legislation that outlined the

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<sup>431</sup> See *2005 Report to Congress on China's WTO Compliance*, United States Trade Representative, December 11, 2005, at 63.

<sup>432</sup> In particular, TRIPS articles 41 (general obligations) and 61 (criminal procedures) mandate effective enforcement of IPR.

<sup>433</sup> Nie, *supra* note 332, at 191.

<sup>434</sup> See generally *Report of the Working Party on the Accession of China*, *supra* note 426, at paras. 287-304.

<sup>435</sup> *Id.* at paras. 287-288.

<sup>436</sup> *Id.* at paras. 289, 297, and 304.

major changes to its intellectual property laws in the years preceding accession.<sup>437</sup> The Chinese delegation reported to the Council that after major amendments to the related laws and regulations “the legislation for IPR protection in China has been greatly improved and has achieved full compliance with the TRIPS Agreement of the WTO.”<sup>438</sup> With respect to enforcement, the delegation of China reported that, in addition to the changes in legislation, “priorities have also been given to the issues related with IPR protection like the sharpening of the awareness of IPR protection among the general public and the strengthening of the enforcement of IPR laws and regulations so as to ensure an effective IPR legal system on the national scale.”<sup>439</sup>

### *1. Amendments to the Copyright Law*

During China’s accession to the WTO, members of the Working Party expressed concern that the 1990 Copyright Law was not consistent with the TRIPS Agreements.<sup>440</sup> Specifically, members noted “the need to clarify the rights of performers and producers....[and that] improvements were needed with respect to enforcement of copyright to provide expressly for provisional measures to preserve evidence, including documentary evidence and for remedies sufficient to deter further infringements.”<sup>441</sup> Recognizing that China’s Copyright Law still had differences with the TRIPS Agreement, China committed to clarifying the compensation system

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<sup>437</sup> *Review of Legislation, China*, IP/Q/CHN/1, IP/Q2/CHN/1, IP/Q3/CHN/1, IP/Q4/CHN/1 (December 10, 2002) [hereinafter “*Review of Legislation*”].

<sup>438</sup> *Id.* at 3.

<sup>439</sup> *Id.* at 4.

<sup>440</sup> For a full listing of the amendments made to China’s Copyright Law, see *Transitional Review Mechanism of China – Communication from China*, IP/C/W/382 (16 September 2002).

<sup>441</sup> *Report of the Working Party on the Accession of China*, *supra* note 426, at para. 258.

for use of copyright material, “increasing the legitimate compensation amount and strengthening the measures against infringing activities.”<sup>442</sup>

In 2002, the Chinese government reported that the revised Copyright Law<sup>443</sup> “extends the scope of protection, clearly defines the right of performers and producers, adds the provisional measures of property and evidence preservation, stipulates the amount of statutory damages and enhances the administrative sanction on the infringements that harm the public interests.”<sup>444</sup>

With respect to enforcement, Article 49 states that copyright owners or rights holders may apply to the People’s Court for injunctions forcing infringers to desist and preserve property for litigation purposes, so long as the petitioner holds reasonable evidence that infringement has occurred or is about to occur and that delay would cause irreparable damage to their interests.<sup>445</sup> Article 50 allows for the preservation of property before litigation is instigated, so long as there is a demonstrable risk that evidence will be lost or hard to obtain in the future.<sup>446</sup>

Under Article 48, the People’s Court has the authority, “according to the specific circumstances of an infringement,” to order damages of no more than RMB 500,000 (\$61,000) “when the right’s holders actual loss or the infringer’s income from the infringement cannot be ascertained.”<sup>447</sup> For copyright infringements that harm the public interest, “apart from civil liabilities that the infringer shall bear, the copyright administrative authorities have the right to

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<sup>442</sup> *Id.* at para. 259.

<sup>443</sup> See Table 1 in Appendix 4, showing the amendments to China’s Copyright Law from 1990-2001.

<sup>444</sup> *Review of Legislation*, *supra* note 437, at 3.

<sup>445</sup> *Main Dedicated Intellectual Property Under Laws and Regulations Notified Under Article 63.2 of the Agreement: Copyright Law of the People’s Republic of China (September 7, 2990, amended October 27, 2001) IP/N1/CHN/C/1 (8 July 2002).*

<sup>446</sup> *Id.*

<sup>447</sup> *Transitional Review Mechanism of China – Communication from China*, *supra* note 440, at para. 7.

order the infringer to desist from infringing acts, to confiscate the infringer's income from the infringement, to confiscate and destroy the infringing reproduction, and have the infringer fined."<sup>448</sup> This Article also provides that under "serious" circumstances, the administrative authority can confiscate the materials and equipment used in production of the infringing articles.<sup>449</sup>

## *2. Amendments to the Trademark Law*

Working Party members were concerned that China's Trademark Law did not provide for national treatment to foreign owners of trademarks, required foreign owners to use designated trademark agents, and was inconsistent with TRIPS for not allowing certain signs as eligible for protection.<sup>450</sup> Additionally, they said that the Law "should provide that a non-distinctive mark could qualify for registration when it has acquired distinctiveness based on use" and the law should be clarified so that "actual use of a mark was not required before a party could file to register a mark."<sup>451</sup>

China recognized that the trademark law did not meet the requirements of the TRIPS Agreement and the Paris Convention and committed to the Working Party that, before accession, amendments would be made to the following aspects:

to include the trademark registration of three-dimensional symbols, combination of colours, alphabets and figures; to add the content of collective trademark and certification trademark (including geographical indications; to introduce official symbol protection; to protect well-known trademarks; to include priority rights; to

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<sup>448</sup> *Id.* at para. 8.

<sup>449</sup> *Id.*

<sup>450</sup> *Report of the Working Party on the Accession of China*, *supra* note 426, at para. 261.

<sup>451</sup> *Id.*

modify the existing trademark right confirmation system and offer interested parties the opportunity for judicial review concerning the confirmation of trademark rights; to crack down on all serious infringements; and to improve the system for providing damages for trademark infringement.<sup>452</sup>

After the Trademark Law<sup>453</sup> was amended, China reported to the WTO that the Law “specifically provides for the protection of geographic indications and well-known trademarks, expands the scope of eligible subject matter of a trademark, stipulates the right of priority, adds judicial review to administrative decisions relating to trademark registration and strengthens the cracking down on trademark infringement.”<sup>454</sup> As required by Article 15 of the Trips Agreement, letters, numbers, shapes and colors are eligible of registration.<sup>455</sup> With respect to enforcement, the ability to investigate and punish infringing acts was increased, by giving the authorities the right to inquire, consult, investigate on site, sequester, and seize.<sup>456</sup>

The amended Implementing Regulations of Trademark Law stipulate that the infringement of exclusive rights of a registered trademark carries a fine no more than three times the amount of the infringing value, and where no value is available, the amount of the fine shall be no more than RMB 100,000 (\$12,200).<sup>457</sup>

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<sup>452</sup> *Id.*

<sup>453</sup> See Table 2 in Appendix 4, showing the amendments to China's Trademark Law from 1982-2001.

<sup>454</sup> *Review of Legislation*, *supra* note 437, at 3.

<sup>455</sup> *Id.* at 8.

<sup>456</sup> *Transitional Review Mechanism of China – Communication from China*, *supra* note 440, at para. 21.

<sup>457</sup> *Id.*

### 3. *Amendments to the Patent Law*

The primary concern for the Working Party was the lack of clarity in the “subject matter that would be subject to compulsory licensing” under the Patent Law.<sup>458</sup> China responded to this concern by committing to amendments to the Implementing Rules of the Patent Law to ensure that use without proper authorization would only be permitted if: (1) there had been efforts to obtain permission on reasonable commercial terms and adequate compensation, which could be waived for national or extreme emergencies; (2) in such a case, the rights holder would receive payment of adequate remuneration; (3) authorization for use would be predominantly for the domestic market; and (4) for semi-conductors technology, the scope and duration would only be for non-commercial use or to “remedy a practice determined after judicial or administrative process to be anti-competitive.”<sup>459</sup>

China’s amended Patent Law<sup>460</sup> gave new criteria for calculating infringement damages, and affirmed the right of patent applicants and owners to institute litigation against any administrative determination before a court. With respect to enforcement, “[t]he revised Patent Law sets the conditions for granting compulsory licenses, and adds the provision of judicial review for the administrative decisions regarding patent of utility model and design.”<sup>461</sup>

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<sup>458</sup> *Report of the Working Party on the Accession of China*, *supra* note 426, at para. 274.

<sup>459</sup> *Id.* at para. 275.

<sup>460</sup> See Table 3 in Appendix 4, showing the amendments to China’s Patent Law from 1984-2000.

<sup>461</sup> *Review of Legislation*, *supra* note 437, at 3.

**III. AN OVERVIEW OF ENFORCEMENT MEASURES IN CHINA AND CHINA'S EFFORTS TO IMPROVE INTELLECTUAL PROPERTY ENFORCEMENT**

While Chinese IPR laws have a “sound legal framework providing ‘black letter law’ protection to IPR, the real issue lies with enforcement of those rights.”<sup>462</sup> In that regard, recent reviews of IPR enforcement in China by U.S. Congressional groups, the U.S. and foreign governments, trade associations, scholars, and independent groups provide a consistent picture of the array of factors that undermine IPR enforcement in China. These factors include: an overly bureaucratic enforcement structure; lack of coordination among the main enforcement agencies; China’s reliance on administrative measures rather than criminal sanctions to combat IPR infringement; corruption and local government protection; the limited resources available to, and lack of training of, enforcement officials; and inadequate understanding and education by the public of the economic and social impact of IPR theft.

IPR enforcement in China is a complicated system of overlapping bodies at the local, provincial and national administrative levels, with the State Intellectual Property Organization (“SIPO”) exercising little control over local and provincial bodies.<sup>463</sup> The large number of enforcement authorities include: SIPO for patents and layout designs of integrated circuits; State Administration for Industry and Commerce (“SAIC”) and its Trademark Office for trade marks; the State General Administration of Quality Supervision, Inspection and Quarantine (“AQSIQ”), for geographical indications registration and administration; National Copyright Administration (“NCA”) for copyright; State Drug Administration for protected medicines; Ministry of Commerce (“MOFCOM”) for administrative protection of agriculture-related chemicals; and the

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<sup>462</sup> *China FTA – Need for Progress on Intellectual Property Rights*, Australian Chamber of Commerce and Industry, January 2006, at 5, available at [www.acci.asn.au](http://www.acci.asn.au).

<sup>463</sup> *Id.* See *supra* note 425, explaining that SIPO was established for the purpose of coordinating China’s IPR enforcement efforts by merging the patent, trademark, and copyright offices under one authority.

Ministry of Agriculture and the State Forestry Administration for the protection of new plant varieties.<sup>464</sup> Border enforcement is carried out by China Customs, and SAIC is in charge of enforcement of laws against unfair competition, including the protection of trade secrets.<sup>465</sup> The State Press and Publications Administration and the Ministry of Public Security also play a role in enforcement.<sup>466</sup> Chinese authorities lack the high level of coordination and training needed to investigate and prosecute IPR infringements that this complex system requires.<sup>467</sup> The problems associated with a lack of coordination among the various levels of government agencies are compounded by different agencies using different standards to determine criminal conduct.<sup>468</sup>

#### **A. ENFORCEMENT MECHANISMS**

Three principal avenues exist for enforcing IPR in China. They are administrative, civil, and criminal enforcement mechanisms. Administrative enforcement mechanisms are used in the majority of cases, with criminal enforcement being the least common avenue for recourse.<sup>469</sup>

##### ***I. Administrative Enforcement***

Intellectual property rights in China are enforced through either administrative action or judicial measures, with the latter including civil actions and criminal prosecutions. Both the administrative agencies and the judicial system have the legal competence to address intellectual property disputes.<sup>470</sup> The law allows the administrative authorities to administer and enforce

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<sup>464</sup> *Trade Policy Review: China, Report by the Secretariat*, WT/TPR/S161 (28 February 2006), at para. 304 [hereinafter "*Trade Policy Review*"].

<sup>465</sup> *Id.* at para 303.

<sup>466</sup> *Id.* at para 304.

<sup>467</sup> *National Trade Estimate 2006*, *supra* note 429, at 128.

<sup>468</sup> *Id.*

<sup>469</sup> See Appendix 9 for Chinese IPR enforcement statistics from 1998-2005.

<sup>470</sup> Nie, *supra* note 332, at 217.

IPRs.<sup>471</sup> The administrative enforcement system in China was designed in part in response to concerns by foreign parties about the “slowness and inefficiency” of the Chinese court system to handle IP matters.<sup>472</sup> Nearly every intellectual property right has its own administrative agency,<sup>473</sup> resulting in diverse coverage that includes patents, trademarks, copyrights, trade secrets, bio-engineering, and customs procedures. Where infringement occurs, the rights holder may either bring a lawsuit to the court or file a complaint with the governing administrative bodies.<sup>474</sup> If the administrative action does not produce a satisfactory result, the administrative authority will usually refer the case to the judicial system where it becomes subject to civil law.<sup>475</sup> The remedies available to the administrative body(ies) include preliminary injunctions and fines.<sup>476</sup>

According to the U.S. Patent and Trademark Office (“USPTO”), the benefits of the administrative process are that it is rapid, local, inexpensive, does not require formal legal representation, and that injunctions are available.<sup>477</sup> Administrative action often takes place within two days of filing a complaint.<sup>478</sup> Administrative actions – particularly raids by the local authorities – are easier and faster than civil or criminal suits, and are often used in cases of clear infringement or pure counterfeiting.<sup>479</sup> However, the system still suffers from a lack of

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<sup>471</sup> *Id.*

<sup>472</sup> Electronic Industries Alliance/China Alliance, *Protecting Intellectual Property Rights in China*, 2006 at 19.

<sup>473</sup> Elaine T. Wu, United States Patent and Trademark Office, Intellectual Property Section, *The Changing Environment for Enforcement of Intellectual Property Rights in China*, December 14, 2006, at 5.

<sup>474</sup> *Transitional Review Mechanism of China, Communication from China*, IP/C/W/384 (11 October 2002) at 4.

<sup>475</sup> *Trade Policy Review*, *supra* note 464, at para 305.

<sup>476</sup> *Transitional Review Mechanism of China, Communication from China*, IP/C/W/384 (11 October 2002) at 4.

<sup>477</sup> Wu, *supra* note 473, at 5.

<sup>478</sup> *Protecting Intellectual Property Rights in China*, Electronic Industries Alliance/China Alliance, 2006, at 19.

<sup>479</sup> *Best Practices: Intellectual Property Protection in China*, The US-China Business Council, available at <http://www.uschina.org/info/ipr/ipr-best-practices.html>.

transparency, persistent local protectionism, limited geographic jurisdiction, and penalties that are too low to serve as a deterrent.<sup>480</sup> Due to the opaque nature of the Chinese administrative enforcement system, it is difficult for outside parties to determine the actual outcome of these cases and thus evaluate the system's effectiveness.<sup>481</sup>

The decentralization of power in China allows for "local protectionism," giving local governments very little incentive to protect foreign IPR, as doing so often brings no "immediate benefits to the region" or the local economy.<sup>482</sup> Enforcement authorities are directly managed and compensated by local governments, and not the federal government; thus, they are more likely to follow the interests of the local politicians.<sup>483</sup> Often, local governments rely on profits derived from counterfeit goods and thus are unwilling to enforce laws if doing so would jeopardize a major employer or a large source of revenue.<sup>484</sup> In some cases, counterfeiting markets account for as much as 26 percent of municipal tax revenues and provide, directly or indirectly, employment to tens of millions of people.<sup>485</sup> Due to the local governments' dependence on these illegal enterprises to provide them with funding for many necessities, including education and health care, local enforcement authorities must consider the real

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<sup>480</sup> Wu, *supra* note 473, at 5.

<sup>481</sup> 2006 Report to Congress, U.S.-China Economic and Security Review Commission (USCC), 109<sup>th</sup> Cong., 2d Sess. 38 (November 2006) [hereinafter "*USCC 2006 Report to Congress*"].

<sup>482</sup> Randal S. Alexander, Comment, *China's Struggle to Maintain Economic Viability While Enforcing International and Domestic Intellectual Property Rights*, 4 J. Marshall Rev. Intell. Prop. L 608, 617-8 (2005).

<sup>483</sup> *China FTA – Need for Progress on Intellectual Property Rights*, Australian Chamber of Commerce and Industry, January 2006, at 7, available at [www.acci.asn.au](http://www.acci.asn.au).

<sup>484</sup> U.S.-China Economic and Security Review Commission, *Hearing on Intellectual Property Rights Issues and Counterfeit Goods*, testimony of Daniel C. K. Chow, June 8, 2006 [hereinafter "*Chow Testimony*"]. In some cases, the protectionism and corruption is deeply imbedded in the region, with local government officials financing and establishing the wholesale counterfeit distribution channels that serve Chinese and export markets. *Id.* at 4.

<sup>485</sup> *Id.* at 6.

economic consequences to their regions from enforcement actions.<sup>486</sup> Thus, while the central government has taken significant steps to reform IPR laws, many local authorities lack the incentive to enforce these laws.<sup>487</sup> Moreover, China would “need to expend significant resources and political capital to deal with the massive economic and social problems that would likely arise” from greater counterfeiting enforcement.<sup>488</sup>

Critics of administrative enforcement argue that it carries penalties that are too low to act as a sufficient deterrent.<sup>489</sup> Article 48 of the Copyright Law provides that compensation for infringement will be according to the actual loss of the right owner or, if the actual loss is difficult to determine, then according to the unlawful income.<sup>490</sup> If neither can be determined, the people’s court will decide on compensation not to exceed RMB 500,000 (\$61,000).<sup>491</sup> The infringer is also responsible for expenses to the right owner for preventing the infringement.<sup>492</sup> Article 36 of the Implementation of the Copyright Law states that for any infringement which also “prejudices the social or public interests,” a fine of not more than RMB 100,000 (\$12,200) may be imposed by the administrative department for copyright.<sup>493</sup> The Patent Law provides that the administrative authority may confiscate the illegal earnings of the infringer, impose a fine of no more than three times the illegal earnings and, if there are no illegal earnings, a fine of

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<sup>486</sup> *Id.*

<sup>487</sup> Alexander, *supra* note 482, at 617.

<sup>488</sup> Chow Testimony, *supra* note 484, at 6.

<sup>489</sup> *China FTA – Need for Progress on Intellectual Property Rights*, Australian Chamber of Commerce and Industry, January 2006, at 6, available at [www.acci.asn.au](http://www.acci.asn.au).

<sup>490</sup> *Main Dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement, Copyright Law of the People’s Republic of China*, IP/N/1/CHN/C/1 (8 July 2002).

<sup>491</sup> *Id.*

<sup>492</sup> *Id.*

<sup>493</sup> *Main Dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement, Regulations for the Implementation of the Copyright Law of the People’s Republic of China*, IP/N/1/CHN/C/3 (13 October 2003).

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no more than RMB 50,000 (\$6,100).<sup>494</sup> Article 42 of the Regulations for the Implementation of the Trademark Law states that fines “shall be not more than 20% of the volume of the illegal business or not more than two times the profit illegally earned.”<sup>495</sup>

In 2004, the average fine for an administrative judgment was only \$620.<sup>496</sup> According to USTR, Chinese data indicates that 99 percent of copyright and trademark cases in 2004 were channeled into the administrative system, resulting in fines that were too low to be an effective deterrent and therefore considered by many counterfeiters as simply a cost of doing business.<sup>497</sup>

Critics argue that administrative fines are low because they are assessed based on the value of the counterfeit or pirated goods and not the genuine article.<sup>498</sup> The low level of fines also prevents enforcement officials from getting to the source of pirated and counterfeit goods because retailers have no incentive to provide the authorities with information to prosecute the producers.<sup>499</sup> Additionally, when people are caught selling pirated or counterfeit goods, they are only charged for goods that the authorities can prove they had the intent to sell; simply keeping

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<sup>494</sup> *Main Dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement, Patent Law of the People's Republic of China, IP/N/1/CHN/I/1* (8 July 2002).

<sup>495</sup> *Main Dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement, Regulations for the Implementation of the Trademark Law of the People's Republic of China, IP/N/1/CHN/T/2* (13 October 2003).

<sup>496</sup> Tim Browning, Office of Enforcement, United States Patent and Trademark Office, “Protecting and Enforcing Your Intellectual Property in China,” Presentation to Conference on Intellectual Property in the Global Marketplace (July 18, 2006).

<sup>497</sup> *2006 Special 301 Report*, United States Trade Representative, April 28, 2006, at 18, available at [http://www.ustr.gov/Document\\_Library/Reports\\_Publications/2006/2006\\_Special\\_301\\_Review/Section\\_Index.html](http://www.ustr.gov/Document_Library/Reports_Publications/2006/2006_Special_301_Review/Section_Index.html) [hereinafter “2006 Special 301 Report”].

<sup>498</sup> *National Trade Estimate 2006*, *supra* note 429, at 126.

<sup>499</sup> *2005 Report to Congress on China's WTO Compliance*, *supra* note 431, at 68.

goods at a warehouse has not been sufficient to show that the infringer had the intent to sell the goods.<sup>500</sup>

The weaknesses in the administrative enforcement mechanism are compounded by the reluctance of administrative authorities to forward administrative cases to the Ministry of Public Security for criminal investigation.<sup>501</sup> Of the 51,851 administrative cases in 2004 involving trademark infringement and counterfeiting, only 96 of those cases were referred for criminal prosecution.<sup>502</sup> Of the total cases, only 5,494 (10.6 percent) involved foreign rights holders.<sup>503</sup> Similarly, there were 9,691 copyright infringement cases, but only 102 of those cases were referred for criminal prosecution, and only 158 involved a foreign rights holder.<sup>504</sup> Thus, only approximately 0.2 percent of administrative trademark cases and 1 percent of administrative copyright cases were transferred for criminal prosecution.<sup>505</sup> Statistics in 2001 are similar, with the transfer rates from administrative to criminal prosecution only 0.2 percent for trademark cases and 1.5 percent for copyright cases.<sup>506</sup> While there is some indication that the number of

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<sup>500</sup> *National Trade Estimate 2006*, *supra* note 429, at 126. Recently, in Shanghai Changning District Court, the Court found a distributor of counterfeit golf clubs guilty of “attempt” based primarily on the amount of inventory the distributor had in his possession. Officials seized 1,755 counterfeit golf clubs, with a value of RMB4.7 million (\$570,000). The defendant was sentenced to 18 months in jail and a fine of RMB 30,000 (\$3,700) *See* Prison Sentences for Counterfeit Golf Equipment Dealers, TaylorMade-adidas Golf, November 16, 2006, available at [www.tmag.com/media/pressreleases/2006/111606\\_counter.htm](http://www.tmag.com/media/pressreleases/2006/111606_counter.htm).

<sup>501</sup> *National Trade Estimate 2006*, *supra* note 429, at 126.

<sup>502</sup> Transitional Review Mechanism of China, Communication from China, IP/C/W/460 (11 November 2005) at 2.

<sup>503</sup> Thomas Snyder, United States Patent and Trademark Office, “Protecting and Enforcing Your Intellectual Property in China,” Presentation at Conference on Intellectual Property in the Global Marketplace (July 18, 2006).

<sup>504</sup> *Id.*

<sup>505</sup> *National Trade Estimate 2006*, *supra* note 429, at 126.

<sup>506</sup> *Id.*

criminal prosecutions is increasing, the lack of transparency in the Chinese system makes it difficult to measure the improvement or even confirm its existence.<sup>507</sup>

*a. Customs Enforcement*

Customs enforcement is relatively inexpensive and effective for halting goods entering or leaving China. However, it is most beneficial when officials can accurately identify the imports' port of origin, which often proves difficult in practice.<sup>508</sup> Additional challenges include high storage charges incurred from confiscations and the limited percentage of goods able to be regularly inspected by customs officials.<sup>509</sup>

Enforcement of IPR at the border is governed by Customs regulations and administered by China Customs. Different enforcement procedures apply depending on whether the IPR has been filed or recorded at Customs beforehand. If recorded, "Customs can seize the goods at the border and inform the right-holder in writing if it is found that the goods infringe the holder's IPRs."<sup>510</sup> In this case, the "right-holder must provide an application letter requesting that the goods be detained, along with a guarantee, within three days of receipt of the notice from Customs."<sup>511</sup> If the IPR is not recorded, then the right-holder must apply to Customs with specified documentation.<sup>512</sup> The WTO's 2006 Trade Policy Review of China notes that Customs

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<sup>507</sup> *Id.*

<sup>508</sup> Wu, *supra* note 473, at 8.

<sup>509</sup> *Id.*

<sup>510</sup> *Trade Policy Review, supra* note 464, at para. 310.

<sup>511</sup> *Id.* at para. 310.

<sup>512</sup> *Id.* at para. 311.

has been increasingly active in seizures and investigations of infringing goods, with the number of investigated cases rising from 330 in 2001, to 569 in 2002, 756 in 2003, and 1,051 in 2004.<sup>513</sup>

## ***2. Criminal Enforcement***

Criminal prosecution is possible in certain cases.<sup>514</sup> Under the Criminal Law,<sup>515</sup> there are seven specific types of IPR infringement regarded as criminal acts, including: counterfeiting registered trade marks;<sup>516</sup> selling goods bearing counterfeited registered trade marks;<sup>517</sup> illegally producing and selling representations of registered trademarks;<sup>518</sup> forging another person's patent;<sup>519</sup> copyright infringement;<sup>520</sup> selling infringing reproductions;<sup>521</sup> and infringing commercial secrets.<sup>522</sup> Criminal offenses for IPR infringement carry a maximum prison sentence of up to seven years and/or monetary fines.<sup>523</sup> One apparent loophole in China's Criminal Law is that while criminal liability exists under the Code for sales of counterfeit goods within China, such liability does not appear to extend to goods sold abroad.<sup>524</sup>

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<sup>513</sup> *Id.* at para. 311. It is relevant to note that China amended its Foreign Trade Law in 2004 following its accession to the WTO. This amendment eliminated the state monopoly on trading rights, thus eliminating counterfeiters' need to locate a complicit state-owned trading company and making it easier to export counterfeit goods. Accordingly, there is a greater need for strong Customs enforcement. See Chow Testimony, *supra* note 484, at 7.

<sup>514</sup> For a comparison of IPR criminal thresholds and punishment for the United States, Canada, Australia, and Japan, see Tables 1, 2, 3, and 4 in Appendix 7.

<sup>515</sup> See Appendix 3 for excerpts of the Criminal Law of the People's Republic of China.

<sup>516</sup> Criminal Law of the People's Republic of China § 7: Crimes of Infringing on Intellectual Property Rights (adopted July 1, 1979, revised March 14, 1997), at Article 213, available at <http://www.cecc.gov/pages/newLaws/criminalLawENG.php>.

<sup>517</sup> *Id.* at Article 214.

<sup>518</sup> *Id.* at Article 215.

<sup>519</sup> *Id.* at Article 216.

<sup>520</sup> *Id.* at Article 217.

<sup>521</sup> *Id.* at Article 218.

<sup>522</sup> *Id.* at Article 219.

<sup>523</sup> *Trade Policy Review*, *supra* note 464, at para. 308.

<sup>524</sup> Chow Testimony, *supra* note 484, at 7.

Investigators, prosecutors, and injured parties have the right to seek criminal enforcement measures. Deterrent damages in criminal cases include fines and imprisonment, as well as the possibility of being subject to civil damages.<sup>525</sup> While criminal enforcement is potentially more cost-effective than civil litigation, high liability thresholds make cases difficult to pursue and problems exist in the process of referring administrative cases to criminal prosecutors, such that few cases actually enter criminal proceedings.<sup>526</sup> In 2004, only 96 cases were referred for criminal prosecution.<sup>527</sup> The U.S. has consistently criticized China for its high criminal thresholds and, in November 2006, informed China that it would be filing a formal request for WTO consultations.<sup>528</sup> This request was subsequently delayed after China requested they hold bilateral discussions.<sup>529</sup> However, in April 2007, the U.S. followed through with its concerns and filed a request for consultations at the WTO.<sup>530</sup>

The pace of prosecution for Criminal enforcement has also been identified as potentially problematic: in 2005, China's Public Security Bureau initiated 2,991 IP criminal cases, involving over 5,000 suspects, but only 261 cases were concluded, with 2,661 still making their way through the system.<sup>531</sup> However, Xiao Yang, Chief Justice of the Supreme People's Court,

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<sup>525</sup> Browning, *supra* note 496.

<sup>526</sup> *Id.*

<sup>527</sup> *Id.*

<sup>528</sup> 2007 National Trade Estimate Report on Foreign Trade Barriers, United States Trade Representative, at 108 [hereinafter "National Trade Estimate 2007"].

<sup>529</sup> *Id.*

<sup>530</sup> See *China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights*, Request for Consultations by the United States, WT/DS362/1, IP/D/26, G/L/819 (16 April 2007). The U.S. also filed a request for consultations with regard to China's market access restrictions facing the book publishing and film industries, which are also viewed to play a significant role in the high levels of piracy in China. See *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, Request for Consultations by the United States, WT/DS363/1, G/L/820, S/L/287 (16 April 2007).

<sup>531</sup> Snyder, *supra* note 503.

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announced in March 2007 that the court system in 2006 had concluded 2,277 IPR criminal cases, including counterfeiting and piracy, and sentenced 3,508 criminals.<sup>532</sup>

Criminal prosecution for an IP case still requires coordination among a relatively large number of agencies at all levels of government.<sup>533</sup> As with administrative and civil enforcement procedures, there is a lack of detailed information regarding the outcome of criminal cases, making it difficult to assess the efficacy of the enforcement system. China's response to the pressure from the U.S. and other WTO members for better utilization of criminal remedies has been to repeat its position that its "combination of administrative, civil and criminal enforcement is increasingly effective."<sup>534</sup>

As mentioned above, the number of administrative cases referred for criminal prosecution remains small, with almost no improvement. In fact, the number of cases referred for criminal prosecution has barely kept pace with the growth in the total number of administrative IPR cases in China. The procedures for transferring cases from administrative to judicial proceedings remain vague and rarely workable.<sup>535</sup> According to the Stipulations on Transferring the Suspected Criminal Cases,<sup>536</sup> administrative authorities are required to transfer a case when there

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<sup>532</sup> *People's Court and the Supreme People's Procuratorate: Press Hard on IPR Crimes*, State Intellectual Property Office (SIPO), March 26, 2007, available at [http://www.sipo.gov.cn/sipo\\_English/npc/200703/t20070326\\_147298.htm](http://www.sipo.gov.cn/sipo_English/npc/200703/t20070326_147298.htm).

<sup>533</sup> *National Trade Estimate 2006*, *supra* note 429, at 126. "Other obstacles in the area of criminal enforcement include, for example, the lack of criminal liability for certain acts of copyright infringement, the profit motive requirement in copyright cases, the requirement of identical trademarks in counterfeiting cases and the absence of minimum, proportionate sentences and clear standards for initiation of police investigations in cases where there is a reasonable suspicion of criminal activity." *National Trade Estimate 2007*, *supra* note 528, at 108.

<sup>534</sup> *2007 Trade Policy Agenda and 2006 Annual Report of the President of the United States on the Trade Agreements Program*, United States Trade Representative, March 2007, at 162, available at [http://www.ustr.gov/Document\\_Library/Reports\\_Publications/2007/2007\\_Trade\\_Policy\\_Agenda/Section\\_Index.html](http://www.ustr.gov/Document_Library/Reports_Publications/2007/2007_Trade_Policy_Agenda/Section_Index.html) [hereinafter "*2007 Trade Policy Agenda*"].

<sup>535</sup> Nie, *supra* note 332, at 242.

<sup>536</sup> Stipulations on Transferring the Suspected Criminal Cases to the Public Security Office by the Administrative Enforcement Authorities (State Council, July 9, 2001).

is suspicion of crime.<sup>537</sup> Similarly, Article 54 of the Trademark Law states that “[w]here a crime is suspected to have been committed, the case shall be promptly turned over to the judicial department to be dealt with in accordance of the law.” However, the Copyright Law and Patent Law have no such analogous provisions. Reasons for the lack of cases transferred to judicial departments include: the ambiguous language in China’s Criminal Law such as, “large amount of sale,” “huge,” “especially large,” “serious circumstances,” “very serious circumstances,” “heavy losses,” and “special serious results”; wide differences in the criteria for determining criminal liability for a group of people versus an individual; various criminal provisions in the IPR laws are overlapping and confusing; and “discrepancies among an act which constitutes a criminal offence, a civil infringement, and an act which constitutes a violation of intellectual property administrative regulations, is nuanced and difficult to operate.”<sup>538</sup>

***a. Supreme People’s Court’s Judicial Interpretations on Criminal Enforcement***

In 2004, the Supreme People’s Court issued a Judicial Interpretation (“First Judicial Interpretation”) that clarified and expanded the scope of criminal enforcement of IPR infringement.<sup>539</sup> The First Judicial Interpretation lowered the threshold for criminal prosecution of IPR infringement, which is determined based on the value of the infringing products or illegal

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<sup>537</sup> Nie, *supra* note 332, at 237.

<sup>538</sup> *Id.* at 242.

<sup>539</sup> See Judicial Interpretations by the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues of Concrete Application of Laws in Handling Criminal Cases of Infringing Intellectual Property, December 21, 2004, available at [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=2038&col\\_no=121&dir=200603](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=2038&col_no=121&dir=200603) [hereinafter “Judicial Interpretation I”] (English translation attached in Appendix 3). A second Judicial Interpretation was issued on April 5, 2007. Judicial Interpretations by the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues of Concrete Application of Laws in Handling Criminal Cases of Infringing Intellectual Property II, [hereinafter “Judicial Interpretation II”] (Chinese version attached in Appendix 3; draft English version available at <http://ipdragon.blogspot.com/2007/04/draft-judicial-interpretation-several.html>).

gains from the infringement.<sup>540</sup> According to official Chinese statistics, in the first year with the new thresholds, 3,567 cases concerning the manufacture of fake products and illegal sales of pirated products went to criminal courts, an increase of 28 percent.<sup>541</sup> In addition to reducing these minimum thresholds, the First Judicial Interpretation established new guidelines to facilitate the transfer of administrative and customs cases for criminal investigation, as well as fair trade regulations and new provisions addressing online copyright piracy, accomplice liability, and the import and export of infringing goods.<sup>542</sup> It also provides that if a “unit,” as opposed to an individual, commits any of the crimes stipulated in Articles 213 through 219 of the Criminal Law, the criteria used to establish criminal liability for the unit is three times higher than that of the individual.<sup>543</sup> For instance, if the individual is criminalized for selling 10,000 pirated copies, the threshold for criminal liability for the unit is 30,000 pirated copies.

Despite the above-mentioned reforms, challenges remain in the criminal enforcement process. For example, questions remain regarding the methodology used to value seized goods (and therefore the application of the minimum thresholds), how to determine whether piracy activity has generated a profit, and whether merchants were aware that goods in a transaction were counterfeit.<sup>544</sup> The 2004 reforms also eliminated a “three strikes rule” that required criminal prosecution for repeat offenders.<sup>545</sup> According to Pei Xianding, senior judge at China’s

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<sup>540</sup> Judicial Interpretation I, *supra* note 539.

<sup>541</sup> See *Wider Net for IPR Pirates*, Xinhua, April 6, 2007, available at [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=67243&col\\_no=925&dir=200704](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=67243&col_no=925&dir=200704).

<sup>542</sup> *USCC 2006 Report to Congress*, *supra* note 481, at 39.

<sup>543</sup> Judicial Interpretation I, *supra* note 539.

<sup>544</sup> *USCC 2006 Report to Congress*, *supra* note 481, at 39.

<sup>545</sup> *Id.*

Supreme People's Court, further reductions to the threshold for criminal prosecution would require amendments by the National People's Congress to the relevant laws.<sup>546</sup>

On April 5, 2007, the Supreme People's Court and the Supreme People's Procuratorate issued "Several Issues of Concrete Application of Laws in Handling Criminal Cases of Infringing Intellectual Property II" ("Second Judicial Interpretation").<sup>547</sup> The Second Judicial Interpretation lowered the criminal threshold for copyright material and lowered the threshold for when the level of infringement calls for harsher penalties. Additionally, *inter alia*, the Second Judicial Interpretation contains clarifications for: lowering the threshold for how "units" will be sentenced under Articles 213-219 of the Criminal Code such that they are now the same as the individual level; the circumstances for when suspended sentences will not apply; defining the term "reproduction and distribution" as "reproduction and/or distribution"; allowing for the promotion of infringing products to constitute distribution; and assessing fines for IP crimes.<sup>548</sup>

### *i. Trademarks*

With respect to trademarks, the First Judicial Interpretation lowered the threshold for illegal business from RMB 100,000 (\$12,200) to RMB 50,000 (\$6,100) and the threshold for illegal gains was reduced to RMB 30,000 (\$3,700).<sup>549</sup> The maximum punishment is three years and a fine. If the "circumstances are especially serious" the maximum sentence is seven years,

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<sup>546</sup> *Id.*

<sup>547</sup> See *Wider Net for IPR Pirates*, *supra* note 541; see also *New Interpretation Issued to Enhance Criminal Prosecution*, NTD Patent & Trademark Agency Ltd., April 6, 2007, available at <http://www.chinantd.com/news.php?language=en&channel=53&id=1333>.

<sup>548</sup> See *Wider Net for IPR Pirates*, *supra* note 541; see also *New Interpretation Issued to Enhance Criminal Prosecution*, NTD Patent & Trademark Agency Ltd., April 6, 2007, available at <http://www.chinantd.com/news.php?language=en&channel=53&id=1333>.

<sup>549</sup> Snyder, *supra* note 503; see also Table 1 in Appendix 6, outlining Chinese criminal thresholds for Trademark infringement according to Articles 213-214 of the Criminal Law and Judicial Interpretations.

but not less than three years. The First Judicial Interpretation states that “circumstances are especially serious,” when: the illegal business volume is more than RMB 250,000 (\$30,500) or the illegal gains are more than RMB 150,000 (\$18,300); and, when forging more than two registered trademarks, the amount of illegal business volume is more than RMB 150,000 (\$18,300) or illegal gains are more than RMB 100,000 (\$12,200). The First Judicial Interpretation also allowed for the criminal enforcement of selling commodities bearing a registered trademark, when the value of sales is more than RMB 250,000 (\$30,500).<sup>550</sup>

By comparison, under U.S. law, the maximum sentence for someone intentionally trafficking or attempting to traffic counterfeit marks is \$2,000,000 and 10 years in prison.<sup>551</sup> If the infringer is other than an individual, the maximum fine is \$5,000,000. If there is a second offense, the maximum sentence for the individual is \$5,000,000 and 20 years and \$15,000,000 for infringers that are not individuals.

## *ii. Copyrights*

Similarly, the threshold for criminal prosecution for copyright violations was lowered by the First Judicial Interpretation from the reproduction and distribution of 5,000 copies to 1,000 copies.<sup>552</sup> The threshold for criminal prosecution in copyright cases, where “there are other serious circumstances,” was also reduced to RMB 50,000 (\$6,100) in business volume. In criminal cases, where it is considered that “the amount of illegal gains is relatively large,” the

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<sup>550</sup> Judicial Interpretation I, *supra* note 539. The Second Judicial Interpretation specifically addresses copyrights and does not address trademarks. *See* Judicial Interpretation II, *supra* note 539.

<sup>551</sup> 18 USC §2320.

<sup>552</sup> Snyder, *supra* note 503; *see also* Table 2 in Appendix 6, outlining Chinese criminal thresholds for Copyright infringement according to Articles 217-218 of the Criminal Law and Judicial Interpretations.

threshold was decreased to RMB 30,000 (\$3,700).<sup>553</sup> The maximum sentence is not more than 3 years and a fine.<sup>554</sup> Crimes, where “there are other especially serious circumstances” or “the amount of illegal gains is huge,” carry a sentence of 3 to 7 years and are defined as having illegal gains greater than RMB 150,000 (\$18,300), illegal business volume greater than RMB 250,000 (\$30,500) or more than 5,000 illegal copies.<sup>555</sup>

As mentioned above, the Second Judicial Interpretation further lowered the threshold for criminal prosecution in copyright cases.<sup>556</sup> The new rules, effective immediately, lower the minimum threshold for criminal prosecution from 1,000 copies to 500 copies.<sup>557</sup>

By comparison, under U.S. law, a person will face criminal liability if the infringement was committed either for purposes of commercial advantage or private financial gain, by the reproduction or distribution of one or more copies which have a value of more than \$1,000, or by making a commercial work accessible to the public, via the internet, if the person knew or should have known that the work was a commercial work.<sup>558</sup> The maximum sentences vary slightly, but acts committed either for purposes of commercial advantage or private financial gain carry the maximum sentence of 5 years plus a fine if 10 copies are distributed or only one copy with a value of \$2,500.<sup>559</sup> A second offense raises the maximum punishment to ten years plus a fine.<sup>560</sup> For sentencing purposes, U.S. law allows for the retail value of the good to be used.<sup>561</sup>

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<sup>553</sup> Judicial Interpretation I, *supra* note 539.

<sup>554</sup> *Id.*

<sup>555</sup> *Id.*

<sup>556</sup> See *Wider Net for IPR Pirates*, *supra* note 541.

<sup>557</sup> *Id.*

<sup>558</sup> 17 USC §506.

<sup>559</sup> 18 USC §2319.

***iii. Patents***<sup>562</sup>

The First Judicial Interpretation provides that criminal enforcement will be used when the illegal business volume is more than RMB 200,000 (\$24,400) or the illegal gains are more than RMB 100,000 (\$12,200), if infringement has caused direct economic loss of more than RMB 500,000 (\$61,000), or, if counterfeiting more than two patents, the amount of illegal business volume is more than RMB 100,000 (\$12,200) or illegal gains are more than RMB 50,000 (\$6,100).<sup>563</sup> The maximum penalty is 3 years in jail and a fine.<sup>564</sup>

***3. Civil Enforcement***

In recent years, the increase in civil actions has primarily been by Chinese rights-holders.<sup>565</sup> From January to November, 2005, there were 11,468 civil cases.<sup>566</sup> Of these cases, 5,240 were copyright, 2,491 were patent, and 1,482 were trademark cases.<sup>567</sup> Only five percent of these cases involved foreign rights holders.<sup>568</sup> In 2007, Xiao Yang, Chief Justice of China's Supreme People's Court, reported to the National People's Congress that in 2006 there were 14,056 civil cases, with total fines reaching RMB 2.71 billion (\$330 million).<sup>569</sup> Of these cases,

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<sup>560</sup> 18 USC §2319.

<sup>561</sup> See *United States v. Steele*, 785 F.2d 743 (9th Cir. 1986).

<sup>562</sup> U.S. law does not provide for criminal sanctions for the infringement of patents.

<sup>563</sup> Judicial Interpretation I, *supra* note 539.

<sup>564</sup> See Table 3 in Appendix 6, outlining Chinese criminal thresholds for Patent infringement according to Article 216 of the Criminal Law and Judicial Interpretations.

<sup>565</sup> *2006 National Trade Estimate*, *supra* note 429, at 128.

<sup>566</sup> Snyder, *supra* note 503.

<sup>567</sup> *Id.*

<sup>568</sup> *USCC 2006 Report to Congress*, *supra* note 481, at 39.

<sup>569</sup> See The Reports from SPC & SPP: Strengthen the Judicial Protection of IPR in China, April 6, 2007, available at [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=67282&col\\_no=934&dir=200704](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=67282&col_no=934&dir=200704).

5,751 were copyright cases, 2,378 were trademark cases, 2,378 were patent cases, and 1,188 were unfair competition cases.<sup>570</sup>

Civil suits are often pursued in cases of “look-alike” infringement or in complex cases when administrative authorities are unable to make a determination of infringement.<sup>571</sup> Litigation can take up to two years, and infringers can halt a civil suit for patent infringement by filing an administrative challenge to the patent with SIPO.<sup>572</sup>

Civil enforcement measures (which can be heard by a specialized judiciary that is supposed to be specifically trained in IPR issues) can result in monetary damages (though they are often minimal) and injunctive relief, and provide rights of appeal and nationwide enforcement jurisdiction.<sup>573</sup> However, high litigation costs and a lack of judicial independence in many jurisdictions limits the attractiveness of this legal avenue, as do the difficulties plaintiffs often face in collecting on civil damages.<sup>574</sup> Finally, with patent cases, “where enforcement through civil litigation is of particular importance, a single case still takes several years to complete, rendering the damages provisions adopted to comply with China’s TRIPS Agreement obligations less meaningful.”<sup>575</sup>

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<sup>570</sup> *See id.*

<sup>571</sup> *Best Practices: Intellectual Property Protection in China*, *supra* note 479.

<sup>572</sup> *Id.*

<sup>573</sup> Wu, *supra* note 473, at 6.

<sup>574</sup> *Id.*

<sup>575</sup> *National Trade Estimate 2006*, *supra* note 429, at 128.

**B. STRUCTURAL OVERVIEW OF ENFORCEMENT AGENCIES**

The complex set of ministries involved in China's copyright and anti-counterfeiting enforcement efforts are discussed below. Also included are diagrams further illustrating this intricate enforcement structure.<sup>576</sup>

***1. Anti-Counterfeit Enforcement***

Two principal administrative enforcement bureaucracies in China hold anti-counterfeit enforcement power: the Administration for Industry and Commerce (AIC) and the Quality Technical Supervision Bureau (QTSB).<sup>577</sup> The jurisdiction of both agencies extends to the county level, with the AIC's jurisdiction extending to the village and township level.<sup>578</sup> Both agencies have the right to levy fines as well as confiscate, destroy, and auction counterfeit goods.<sup>579</sup>

The two agencies, however, differ in important respects. The QTSB is primarily a technical bureaucracy in which higher-level education is necessary to perform inspection and analysis of product quality, measurement, and standards, and enforcement agents must pass an employment examination.<sup>580</sup> This has led to QTSB personnel having a reputation for being more educated, professional, and less prone to corruption.<sup>581</sup> QTSB's broad responsibilities include regulating the formulation and implementation of national and local standards and measurements and protecting consumers through the supervision of national and local product

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<sup>576</sup> See *infra* Figures 1 and 2.

<sup>577</sup> Andrew C. Mertha, Assistant Professor, Department of Political Science, Washington University, St. Louis, "Testimony to the US-China Economic and Security Review Commission Hearing on Intellectual Property Rights Issues and Imported Counterfeit Goods" (June 8, 2006), at 3 [hereinafter "Mertha Testimony"].

<sup>578</sup> *Id.* at 3.

<sup>579</sup> *Id.*

<sup>580</sup> *Id.*

<sup>581</sup> *Id.*

quality standards.<sup>582</sup> Around 1994, the QTSB began to directly focus on combating the production and sale of counterfeit goods.<sup>583</sup>

The AIC's responsibilities cover a range of administrative, managerial, and regulatory duties, including collecting enterprise registration and management fees as well as responsibility for closing down enterprises violating trademarks.<sup>584</sup> Registration and management fees have been an important source of extra-budgetary income for local AIC offices, creating a conflict with enforcement responsibilities.<sup>585</sup>

Some commentators believe that competition between the two agencies over the enforcement portfolio has led to an increase in anti-counterfeiting enforcement and that this competitive environment facilitates a greater focus on enforcement due to the revenue opportunities from levying large fines.<sup>586</sup>

## ***2. Copyright and other IPR Enforcement***

China has implemented an organizational restructuring of many IPR-related agencies and offices. Beginning in March 1998, the Patent Office was incorporated into the State Intellectual Property Bureau, the Trademark Office is under the authority of the State Administration for Industry and Commerce, and local Copyright departments are housed within the State Administration for Press and Publications.<sup>587</sup> The majority of IPR enforcement efforts are

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<sup>582</sup> Mertha Testimony, *supra* note 577, at 4.

<sup>583</sup> *Id.*

<sup>584</sup> *Id.* at 3.

<sup>585</sup> *Id.*

<sup>586</sup> *Id.* at 4.

<sup>587</sup> National Working Group for IPR Protection, *Related Organizations In China*, Ministry of Commerce of the People's Republic of China. [http://english.ipr.gov.cn/en/services/ser\\_organizations.shtml](http://english.ipr.gov.cn/en/services/ser_organizations.shtml).

carried out by local personnel in cooperation with local Public Security Bureau officers. Additionally, specialized intellectual property courts have been established in key cities and provinces to settle IPR disputes.<sup>588</sup>

The National Copyright Administration is staffed by technical specialists and legal officials, but according to some commentators, the copyright enforcement apparatus is inadequately staffed and funded and overly dependent on other agencies that host provincial and lower-level Copyright Departments.<sup>589</sup>

At the provincial level, the Provincial Press and Publications Administration makes all decisions regarding personnel, budgetary, and additional ad-hoc resources allocated to provincial Copyright Departments.<sup>590</sup> This has led to low resource allocation – in 1999, China had only 200 people engaged in full-time administrative copyright work.<sup>591</sup>

Below the provincial level, corresponding units of the Press and Publications Administration and Copyright Department are merged within and subsumed under the bureaucracy headed by the Ministry of Culture, which manages a wide range of responsibilities, including press, publications, copyright, and other competing administrative agencies (*i.e.*, radio, film, television, sports).<sup>592</sup>

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<sup>588</sup> *White Paper on IPR Protection*, Embassy of the People's Republic of China, April 21, 2005, available at <http://www.china-embassy.org/eng/xw/t192663.htm>.

<sup>589</sup> Mertha Testimony, *supra* note 577, at 2.

<sup>590</sup> *Id.*

<sup>591</sup> *Id.*

<sup>592</sup> *Id.* at 3.

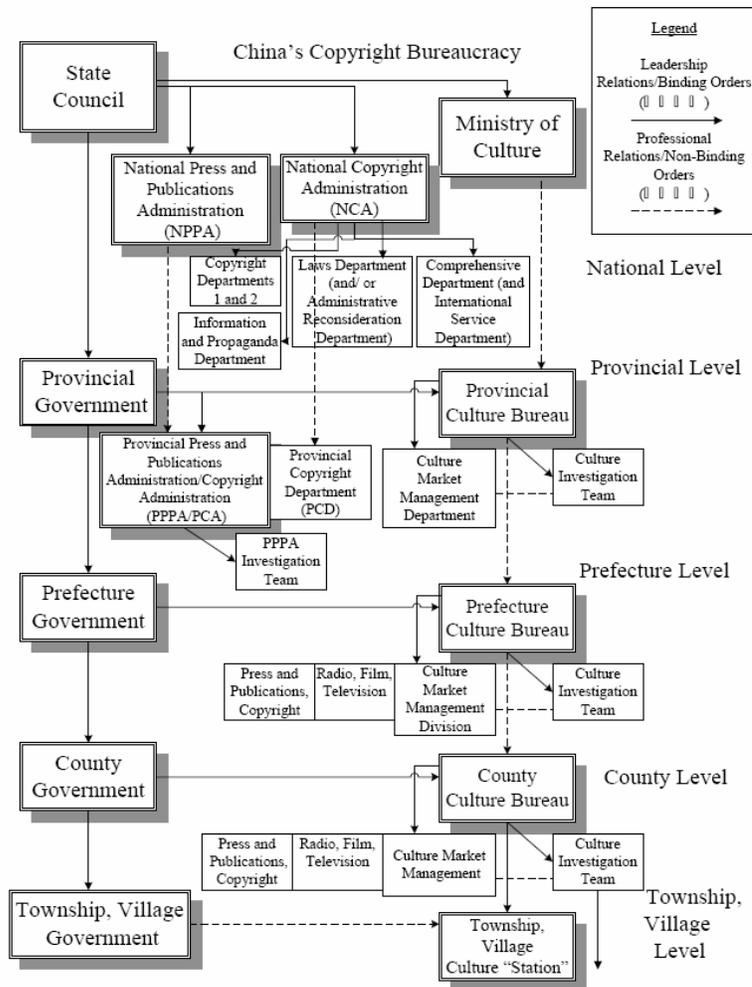
For all the above reasons, China's copyright enforcement system is much less effective than the anti-counterfeit apparatus.<sup>593</sup>

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<sup>593</sup> *Id.* at 2.

*China's Complex IPR Enforcement Bureaucracies*<sup>594</sup>

**Figure 1a (with the Culture Bureaucracy)**



<sup>594</sup> *Id.* at 10-12.

Figure 1b (without the Culture Bureaucracy)

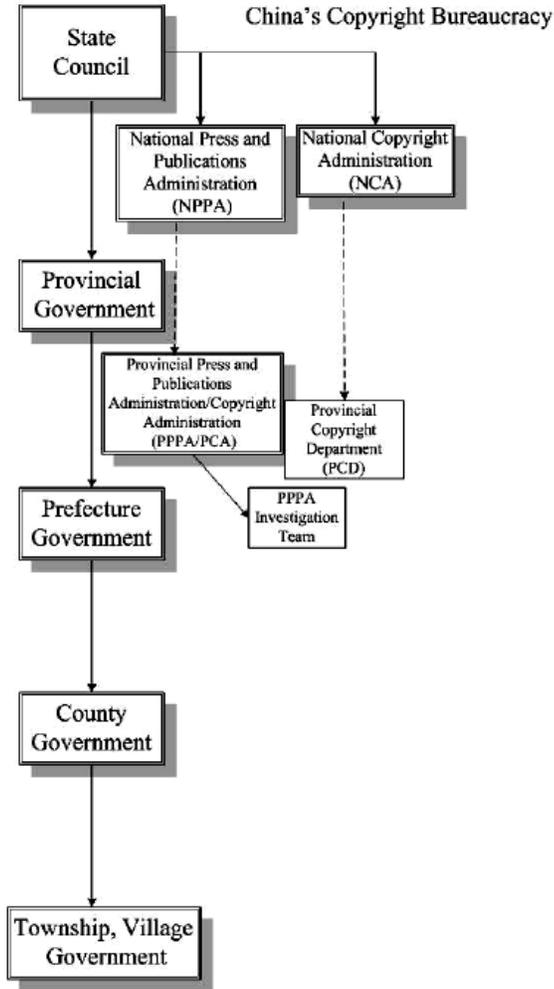
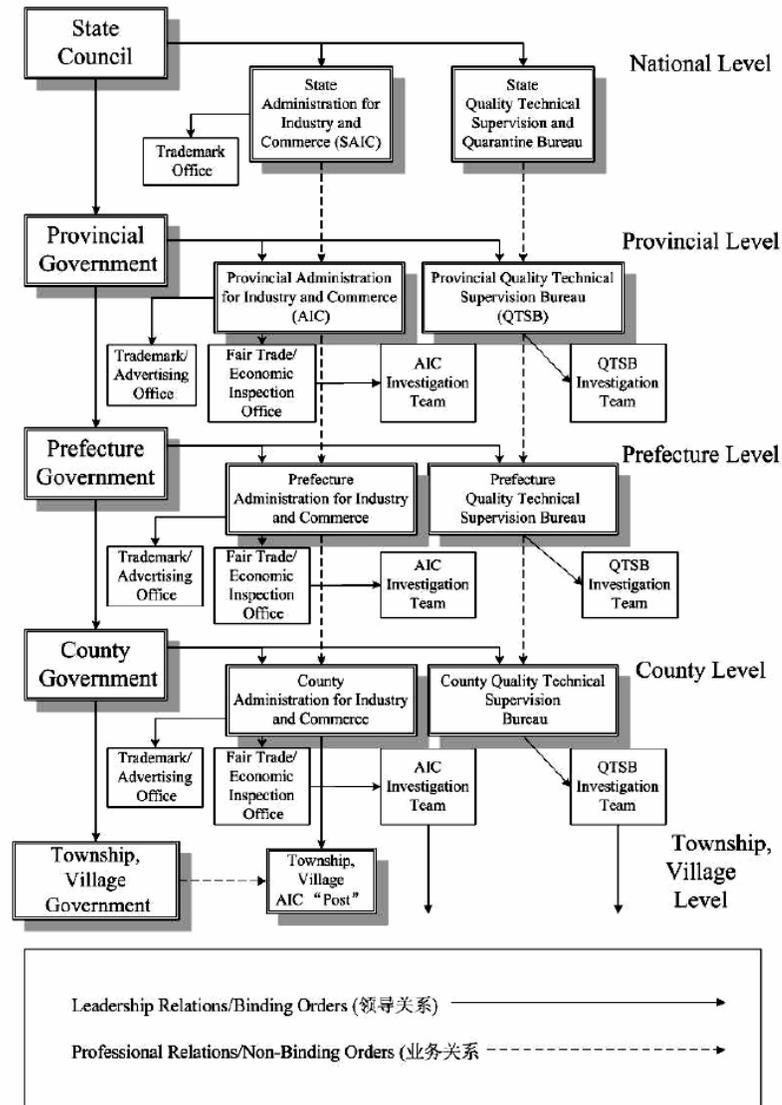


Figure 2

China's Anti-Counterfeiting Bureaucracies\*



(\*Since 1999, AICs and QTSBs have switched from horizontal to vertical leadership relations up to the provincial level)

**C. CHINA'S EFFORTS TO IMPROVE ITS IPR REGIME HAVE SHOWN  
INCREMENTAL IMPROVEMENTS**

As part of the World Trade Organization's (WTO) Trade Policy Review of China in 2006, the Chinese government submitted a report that, *inter alia*, describes the steps taken to strengthen its IPR regime, while acknowledging the challenges it continues to face. The Chinese government believes it has worked strenuously to comply with its WTO TRIPS obligations and, despite less-than-perfect results, has worked hard to strengthen and improve IPR enforcement. The report states that:

China has made significant progress in IPR protection particularly in building the IPR-related legal system and raising the consciousness of the general public for IPR protection. However, the Chinese Government is fully aware that like in all other countries the protection of intellectual property rights is constrained by the level of economic development and other conditions in reality. IPR protection in China cannot be perfected overnight. The Chinese Government is determined to continue its persistent and strenuous efforts to achieve that goal.<sup>595</sup>

***1. China's 2006 Action Plan on IPR Protection***

In March 2006, the National IPR Protection Working Group Office, in conjunction with other relevant departments, released "China's Action Plan on IPR Protection." The plan covered four major IP areas: trademark, copyright, patent, and import and export.<sup>596</sup> The Action Plan involved the IPR protection plans and arrangements of eleven departments including: the Ministry of Public Security; Ministry of Information Industry; Ministry of Commerce; Ministry of Culture; Customs General Administration; State Administration of Industry and Commerce; Administration of Quality Inspection; Supervision and Quarantine; Copyright Bureau; State

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<sup>595</sup> *Trade Policy Review*, *supra* note 464, at para 66.

<sup>596</sup> "China's Action Plan on IPR Protection 2006," People's Daily Online, April 30, 2006, available at [http://english.people.com.cn/200604/30/eng20060430\\_262334.html](http://english.people.com.cn/200604/30/eng20060430_262334.html).

Food and Drug Administration; State Intellectual Property Office; and Legislative Affairs Office of the State Council.<sup>597</sup>

The Action Plan addressed nine reform areas: legislation; law enforcement; mechanism building; propaganda; training and education; international communication and cooperation; promoting business self discipline; services to right holders; and subject research.<sup>598</sup> According to the Action Plan, China would draft, formulate and revise seventeen laws, regulations, rules and measures relating to trademark, copyright, patent and customs protection, and draft, improve and revise six judicial interpretations.<sup>599</sup> The IPR law enforcement efforts included seven dedicated campaigns, eight regular enforcement initiatives, and twenty specific measures.<sup>600</sup>

The Action Plan called for establishing an enforcement mechanism with twelve components, including a service center for reporting IPR violations and publishing law enforcement statistics.<sup>601</sup> The plan also stated that seven approaches and thirty-nine measures would be adopted to raise public awareness of IPR protection, and twenty-one IPR training programs would be organized under the Project of Training Thousands of IPR Personnel.<sup>602</sup>

The Action Plan also pledged international cooperation, facilitated through nineteen exchange and cooperation activities, seven of which would be between China and the United States.<sup>603</sup> “With a view to improving enterprises’ consciousness and awareness of IPR

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<sup>597</sup> *Id.*

<sup>598</sup> *Id.*

<sup>599</sup> *Id.*

<sup>600</sup> *Id.*

<sup>601</sup> China’s Action Plan on IPR Protection 2006, *supra* note 596.

<sup>602</sup> *Id.*

<sup>603</sup> *Id.*

protection,” three initiatives were to be launched, including a conference on enterprise IPR protection and proprietary innovation.<sup>604</sup> The Plan additionally called for twelve specific measures covering nine areas to be established to better serve rights holders, and countermeasure-oriented research to be conducted in five fields.<sup>605</sup>

On April 6, 2007 China released “China’s Action Plan on IPR Protection 2007.”<sup>606</sup> The Action Plan identified 276 measures in 10 areas, including: legislation, enforcement; trials; institutional building; publicity; training and education; international exchange and cooperation; advancing IPR protection in businesses; services to right-holders; and thematic studies.<sup>607</sup> Authorities will draft or revise 14 laws, regulations, rules and administrative measures on trademark, copyright, and customs protection, in addition to seven judicial interpretations and guidelines.<sup>608</sup>

With respect to enforcement, there will be 14 campaigns, including, *inter alia*, special crackdowns on piracy of textbooks and teaching supplements; cyber infringements; street vendors and booths selling audiovisual products; protection of Olympic logos; false use of famous brand trademarks; special enforcement checks to protect geographical indications for certain food products; and continued special actions against unauthorized computer software preloading.<sup>609</sup> The Action Plan also contains eleven day-to-day enforcement measures, which

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<sup>604</sup> *Id.*

<sup>605</sup> *Id.*

<sup>606</sup> “China’s Action Plan on IPR Protection 2007,” National Working Group for IPR Protection, April 4, 2007, available at [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=67391&col\\_no=925&dir=200704](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=67391&col_no=925&dir=200704).

<sup>607</sup> *Id.*

<sup>608</sup> *Id.*

<sup>609</sup> *Id.*

include, *inter alia*, continuing clampdowns at exhibitions and fairs, high incidence areas and sectors, and in wholesale and retail commodity markets.<sup>610</sup>

## *2. China's Progress Pursuant to Action Plans*

In 2006, the Ministry of Commerce (MOFCOM) set up fifty service centers in cities throughout China to facilitate IPR infringement complaints.<sup>611</sup> By the end of November 2006, the fifty centers had received 1,014 complaints, transferred 657 to law enforcement departments, and resolved 286.<sup>612</sup> The law enforcement departments have investigated and settled a number of major cases based on evidence provided by the centers.

To facilitate filing complaints, China has established a hotline number and a new website (described further below), [www.ipr.gov.cn](http://www.ipr.gov.cn).<sup>613</sup> Another important step taken by the government is the issuance of the Circular on the *Transfer of Susceptible Criminal Offences by Administrative Organs for Law Enforcement* and the subsequent release of three further Circulars by the Ministry of Public Security addressing the accelerated transfer of IPR infringement cases from administrative to criminal enforcement.<sup>614</sup>

The Chinese government reports that administrative enforcement has been further enhanced by the use of special enforcement campaigns. The 2006 Action Plan noted seven dedicated campaigns against IPR theft, including "Mountain Eagle," "Sunshine," and "Blue

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<sup>610</sup> *Id.*

<sup>611</sup> *Transitional Review Under Section 18 of the Protocol on the Accession of The People's Republic of China*, World Trade Organization (WTO), IP/C/43, at para. 7 (November 21, 2006).

<sup>612</sup> *286 Complaints*, State Intellectual Property Office (SIPO), January 18, 2007, available at [http://www.sipo.gov.cn/sipo\\_English/specialtopic/number/200701/t20070118\\_127826.htm](http://www.sipo.gov.cn/sipo_English/specialtopic/number/200701/t20070118_127826.htm).

<sup>613</sup> *Transitional Review Under Section 18 of the Protocol on the Accession of The People's Republic of China*, *supra* note 611, at para. 7.

<sup>614</sup> *Id.*

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Sky.”<sup>615</sup> The “Mountain Eagle” campaign was designed to toughen trademark protection and statistics indicate that, by the end of 2006, nearly 3,000 cases had been accepted and over 2,300 cases had been closed with more than 3,600 suspects arrested.<sup>616</sup> The 2006-2007 “Sunshine Campaign,” focused on audiovisual (AV) IPR violations, resulted in more than 2,200 audiovisual units (*i.e.*, DVDs) inspected, of which 66 units or booths were banned; 219,998 copies of illegal AV products were confiscated and 23 persons were transferred for further investigation.<sup>617</sup> “Blue Sky” is a one-year campaign to protect IPR at trade shows, with a special focus on raising awareness for trademark, copyright, and patent protection.<sup>618</sup> China has also begun to employ new strategies at trade shows, also part of the Action Plan, to monitor and punish entities that display illegal products.<sup>619</sup> Another campaign, entitled “Hawk Action,” was a clampdown on IPR infringement that lasted from November 2004 to December 2005, during which time 3,534 cases of IP infringement were reported and investigated, with 3,149 cases closed and 5,981 counterfeiters apprehended.<sup>620</sup>

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<sup>615</sup> China’s Action Plan on IPR Protection 2006, *supra* note 596.

<sup>616</sup> National Working Group for IPR Protection, *Mountain Eagle Campaign II Shows Effects*, Ministry of Commerce of the People’s Republic of China, March 16, 2007, available at <http://english.ipr.gov.cn/ipr>.

<sup>617</sup> National Working Group for IPR Protection, *Sunshine Campaign I in Qingdao Fights Against Pirated AV Products*, Ministry of Commerce of the People’s Republic of China, July 14, 2006, available at [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=7734&col\\_no=886&dir=200607](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=7734&col_no=886&dir=200607).

<sup>618</sup> China’s Action Plan on IPR Protection 2006, *supra* note 596.

<sup>619</sup> Erin Ennis and Robert Alaimo, *China’s 2006 IPR Review*, China Business Review (March-April 2007), available at <http://www.chinabusinessreview.com/public/0703/ipr.html>; *2007 Trade Policy Agenda*, *supra* note 534, at 159, available at [http://www.ustr.gov/Document\\_Library/Reports\\_Publications/2007/2007\\_Trade\\_Policy\\_Agenda/Section\\_Index.html](http://www.ustr.gov/Document_Library/Reports_Publications/2007/2007_Trade_Policy_Agenda/Section_Index.html).

<sup>620</sup> National Working Group for IPR Protection, *Achievement on IPR Protection in the State Council’s Special Campaign*, Ministry of Commerce of the People’s Republic of China, April 5, 2006, available at [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=3031&col\\_no=888&dir=200604](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=3031&col_no=888&dir=200604).

In 2007, China announced that it had launched a “spring campaign” against illegal and pirated publications, including pornography, which will last until May.<sup>621</sup> This was on top of a 100-day nationwide fall campaign against pirated audio and video products and computer software.<sup>622</sup> Finally, in March 2007, the government announced its largest crackdown, with more than 1.81 million pirated CDs and DVDs seized in the Guangdong Province.<sup>623</sup>

To buttress enforcement at the local level, “some provinces had promulgated local administrative regulations to strengthen IPR protection, encourage innovation and counter IPR infringement activities.”<sup>624</sup> The State Council is requiring local governments at all levels to include IPR protection as an important agenda item in their overall economic development plans and include a training program for local officials.<sup>625</sup>

In early 2007, SIPO released the patent statistics for 2006 that show that:

local intellectual property offices handled a total of 1,270 patent disputes with 973 cases closed, of which 1,227 were patent infringement disputes with 952 cases closed, and 43 other patent disputes with 21 closed. 33 cases of counterfeiting patents and 933 cases of working off patents were investigated; 20,475 law enforcers were dispatched; 7,780 business sites and 2,968,249 goods were inspected; 12 cases were transferred to public security organs and 35 cases were transferred from other departments; and

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<sup>621</sup> *China Launches “Spring Campaign” Against Pirated Publications*, Xinhua, April 6, 2007, available at [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=67276&col\\_no=1046&dir=200704](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=67276&col_no=1046&dir=200704).

<sup>622</sup> *Id.*

<sup>623</sup> *Wider Net For IPR Pirates*, *supra* note 541.

<sup>624</sup> *Transitional Review Under Section 18 of the Protocol on the Accession of The People’s Republic of China*, *supra* note 611, at para. 56.

<sup>625</sup> *Id.*

IP offices cooperated with other law enforcement departments on 469 cases.<sup>626</sup>

SIPO has declared 2007 “a key year to complete the formulation of the state IP strategy and speed up the construction of a powerful IP office.”<sup>627</sup> SIPO has laid out the following 10 components of its work plan: completion and initial implementation of the state IP strategy; moving forward with revisions to the Patent Law; implementation of the 11<sup>th</sup> Five Year Plan for the development of IP activity; enhancing capabilities in patent examination and constructing a patent information system; expanding awareness of IP protection in society, with 2007 the “year of IP culture;” building up financial and human resources; and deeper international cooperation and exchange (including international conventions).<sup>628</sup>

The Chinese government recently announced a framework to “explore new progress in international cooperation.”<sup>629</sup> The goal is for China to “be more active in promulgating international regulations and standards in the IP field, rather than merely accepting or following international routine.”<sup>630</sup> China seeks international cooperation to help the country adopt international standards and regulations and plans to strengthen relations with the World Intellectual Property Organization (“WIPO”), the International Union for the Protection of New Varieties of Plants (“UPOV”), and the WTO.<sup>631</sup> As part of its WIPO commitments, China has

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<sup>626</sup> National Working Group for IPR Protection, *SIPO: Statistics on Patent Law Enforcement in 2006 Released*, Ministry of Commerce of the People’s Republic of China, March 16, 2007, available at [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=61664&col\\_no=925&dir=200703](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=61664&col_no=925&dir=200703).

<sup>627</sup> *SIPO Printed and Distributed Its Work Priorities for 2007*, State Intellectual Property Office (SIPO), March 1, 2007, available at [http://www.sipo.gov.cn/sipo\\_English/gfxx/zyhd/200703/t20070301\\_141588.htm](http://www.sipo.gov.cn/sipo_English/gfxx/zyhd/200703/t20070301_141588.htm).

<sup>628</sup> *Id.*

<sup>629</sup> *To Explore New Progress in International Cooperation*, State Intellectual Property Office (SIPO), October 9, 2006, available at [http://www.sipo.gov.cn/sipo\\_English/specialtopic/200610/t20061009\\_112223.htm](http://www.sipo.gov.cn/sipo_English/specialtopic/200610/t20061009_112223.htm).

<sup>630</sup> *Id.*

<sup>631</sup> *Id.*

agreed to verify that all computers used by the government and state-owned enterprises are loaded with legal software.<sup>632</sup> China is also considering hosting the Asia-Pacific International Symposium on Gene Resources.<sup>633</sup>

### ***3. New IPR Website***

A significant development toward greater transparency of China's IPR enforcement efforts has been MOFCOM's launch of an IPR protection website, [www.ipr.gov.cn](http://www.ipr.gov.cn), designed to introduce domestic and international readers to China's laws, rules, policies, and measures concerning IPR protection and to enhance public awareness of IPR generally.<sup>634</sup> The website provides one-stop access to IPR-related news, policies, documents, laws and regulations, information about IPR legal proceedings, and government ministries involved in IPR administration and enforcement.

### ***4. Progress in the Province of Jiangsu***

The province of Jiangsu in particular has been commended for taking positive steps in its protection of IPR. In 2002, the Vice Minister of Culture recognized the province for its anti-piracy efforts and noted that authorities on different levels were working together to crack down on illegal products.<sup>635</sup> These efforts were helping to make Jiangsu "one of China's major distribution places for legitimate audio-visual products."<sup>636</sup>

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<sup>632</sup> Ennis and Alaimo, *supra* note 619; *2007 Trade Policy Agenda*, *supra* note 534, at 159.

<sup>633</sup> *To Explore New Progress in International Cooperation*, *supra* note 629.

<sup>634</sup> *China Launches IPR Protection Website*, People's Daily Online, April 30, 2006, available at [http://english.people.com.cn/200604/30/eng20060430\\_262285.html](http://english.people.com.cn/200604/30/eng20060430_262285.html).

<sup>635</sup> See Speech at the Coordination Center for the National Action Against Illegal Audio-visual Products, Delivered by Mr. Zhao Weisui, Vice Minister of Culture, August 13, 2002, Nianjing, China, available at <http://av.ccnt.com.cn/pbc/index4.1.htm?lm=004&id=003>.

<sup>636</sup> *Id.*

Foreign associations have also recognized Jiangsu for its multi-level efforts and willingness to collaborate on enforcement initiatives. For instance, the Business Software Alliance notes that Jiangsu was one of the provinces that responded positively to its request for enforcement actions against illegal software,<sup>637</sup> and a joint statement by the U.S. Chamber of Commerce and the American Chamber of Commerce–China (AmCham-China) states that Jiangsu's government has been willing to work with them toward improving IPR protection.<sup>638</sup> The U.S. Chamber and AmCham-China feel they have established a good relationship with provincial authorities and party leaders in Jiangsu. Together, they have put on IP enforcement seminars for the region and plan on having additional workshops in the future. This willingness to cooperate is particularly notable given that other provinces have resisted similar outreach efforts.<sup>639</sup>

The province's initiatives also extend beyond cooperation, as Jiangsu seeks to be a leader in the field of IP enforcement and to set a good example for other provinces.<sup>640</sup> Jiangsu appears to have embraced the importance of IP rights and aims not only to protect those rights but to develop them. To that end, in 2004, the Science and Technology Department of Jiangsu University established the Jiangsu University Intellectual Property Right Research Institute which focuses on four key aspects of IP rights: creation, protection, utilization, and personnel cultivation.<sup>641</sup> The Institute has research groups set up for IP management, IP laws and IP

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<sup>637</sup> See *Written Comments Regarding Special Provincial Review of IPR Protection in China*, Business Software Alliance, June 30, 2006.

<sup>638</sup> *Joint Submission in Support of USTR Special Provincial Review of IPR Protection in China*, U.S. Chamber of Commerce and American Chamber of Commerce–China, July 14, 2006, at 6-7.

<sup>639</sup> See *id.* at 4 (noting the officials in Guangdong province have resisted some IP enforcement initiatives).

<sup>640</sup> See *id.* at 6.

<sup>641</sup> Bao Xinyan, *Jiangsu Works Out IPR Scheme*, China Daily, August 6, 2004.

information, and encourages local enterprises to incorporate IPR strategies into their development plans.<sup>642</sup>

In March 2007, the Vice Governor of Jiangsu Province, Mr. Jiuhuan Zhang, gave a speech at the “Global Forum on Intellectual Property Rights Protection and Innovation.” In that speech he discussed priorities for the province, which include strengthening coordination and cooperation among other provinces and cities and increasing public supervision of illegal activities. Mr. Zhang noted that Jiangsu was also attempting to facilitate three shifts in IPR enforcement, specifically: (1) a shift of focus from the provincial level to the city level; (2) a shift from enforcement by a single agency or locality to joint enforcement; and (3) a shift from passively accepting complaints to proactive supervision and regulation.<sup>643</sup> This outlook and awareness with regard to IPR seems to set this province apart from others, and observers have noted that Jiangsu has the “political will...to make IPR enforcement a top priority, creating a great example for other provinces from an IP protection perspective.”<sup>644</sup>

### **5. Other Key Recent Developments**

Below is a sampling of other key initiatives and developments that have been touted by the Chinese government in the past few months as important signs of progress:

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<sup>642</sup> *See id.*

<sup>643</sup> Speech Delivered by Mr. Jiuhuan Zhang, Vice Governor of Jiangsu Province, at the Global Forum on Intellectual Property Rights Protection and Innovation, March 28, 2007 (Chinese text is attached in Appendix 12).

<sup>644</sup> *Joint Submission in Support of USTR Special Provincial Review of IPR Protection in China*, U.S. Chamber of Commerce and American Chamber of Commerce-China, July 14, 2006, at 9.

- **Enhanced Transparency:** In April 2007, Chinese officials announced plans to allow envoys of foreign governments and representatives of international organizations to attend IPR trials and to publicize trial information through the media.<sup>645</sup>
- **Enhanced Penalties for Violators:** In January 2007, China's Supreme People's Court issued a notice ordering stricter penalties for violators of IPR.<sup>646</sup> Under the order, all illegal gains and manufacturing tools of violators are to be confiscated and pirated products destroyed, and courts are urged to impose fines large enough to strip violators of their ability to resume production.<sup>647</sup>
- **Protection of Brand Names:** In January 2007, MOFCOM issued "Measures for Evaluation and Protection of Brand Names," indicating that it will ban the importation of any good it finds to be encroaching upon the intellectual property of brands and causing damage to the order of Chinese foreign trade.<sup>648</sup> If a brand-name enterprise faces unjustifiable competition or dispute over its domain name, MOFCOM, in cooperation with other relevant administrative departments, will handle the case according to applicable law, protect the brand name as assessed by MOFCOM, and impose a fine.<sup>649</sup>
- **Judicial and Prosecutorial Efforts:** In January 2007, Xiao Yang, Chief Justice of the Supreme People's Court, disclosed that, since 2001, courts throughout China have

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<sup>645</sup> *Foreigners able to sit in on Chinese IPR trials*, Xinhua, April 5, 2007, available at [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=66983&col\\_no=925&dir=200704](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=66983&col_no=925&dir=200704).

<sup>646</sup> *China to Impose Stricter Penalties for IPR Violations*, People's Daily Online, January 19, 2007, available at [http://english.people.com.cn/200701/17/eng20070117\\_341867.html](http://english.people.com.cn/200701/17/eng20070117_341867.html).

<sup>647</sup> *Id.*

<sup>648</sup> *Ministry of Commerce: 'Special protection' of Brand IP*, State Intellectual Property Office (SIPO), January 12, 2007, at [http://www.sipo.gov.cn/sipo\\_English/gfxx/zyhd/200701/t20070112\\_126782.htm](http://www.sipo.gov.cn/sipo_English/gfxx/zyhd/200701/t20070112_126782.htm).

<sup>649</sup> *Id.*

accepted more than 60,000 cases involving IP and that further efforts were underway to ensure that IP cases are handled in an appropriate manner.<sup>650</sup> In March 2007, a senior prosecutor of the Supreme People's Procuratorate announced that his office had apprehended 3,729 suspects allegedly manufacturing or selling counterfeit goods, or violating trademark, copyright, or trade secret rights, and prosecuted 3,634 of them.<sup>651</sup>

- **Applicability of International Law:** At a national conference on IPR-related litigation in January 2007, a senior judicial official indicated that international IPR law would take precedence in domestic trials even when differing from domestic laws.<sup>652</sup> The official further noted that while Chinese IPR laws are typically in line with international law, in the case of divergence, China will give priority to international conventions that directly apply to domestic IPR cases.<sup>653</sup>
- **Adoption of WIPO Conventions:** In December 2006, the NPC Standing Committee passed two decisions allowing for China's adoption of the WIPO Copyright Convention and the WIPO Show and Recorded Product Convention, indicating that

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<sup>650</sup> *Supreme Court: More than 60,000 Cases Involving China IP Heard in 6 Years*, State Intellectual Property Office (SIPO), January 11, 2007, available at [http://www.sipo.gov.cn/sipo\\_English/gfxx/zyhd/200701/t20070111\\_126644.htm](http://www.sipo.gov.cn/sipo_English/gfxx/zyhd/200701/t20070111_126644.htm).

<sup>651</sup> *People's Court and the Supreme People's Procuratorate: Press Hard on IPR Crimes*, State Intellectual Property Office (SIPO), March 26, 2007, available at [http://www.sipo.gov.cn/sipo\\_English/npc/200703/t20070326\\_147298.htm](http://www.sipo.gov.cn/sipo_English/npc/200703/t20070326_147298.htm).

<sup>652</sup> *International Laws Applied in Local IPR Cases in China*, Ministry of Commerce, People's Republic of China, January 19, 2007, available at <http://english.mofcom.gov.cn/aarticle/counselorsreport/europereport/200701/20070104292275.html>.

<sup>653</sup> *Id.*

China is working to upgrade Internet copyright protection throughout the country as well as strengthen cooperation with the international community.<sup>654</sup>

- **Royalty Payments on Music:** Beginning in 2007, China's radio and television stations will be required to pay royalties on broadcast music. According to a National Copyright Administration official, a set of fee collection methods and standards will be officially promulgated in the coming year.<sup>655</sup>
- **Online Copyright Protection:** The National Copyright Administration (NCA), the Motion Picture Association of America, the Business Software Alliance, the Association of American Publishers, and the British Publishers Association have signed a Memorandum of Understanding on the Establishment of Coordination Mechanism for Online Copyright Protection (MOU).<sup>656</sup> Under the MOU, American and British trade groups will provide lists to the NCA of priority items to protect and the NCA will investigate reported cases of piracy and keep in regular contact with the trade groups regarding progress.<sup>657</sup>

## ***6. Assessment of Enforcement Challenges***

As reviewed in previous sections, there is both a global IP crisis and China is a major source of the IP infringement. The Chinese government has been pressured by many to improve enforcement through a series of changes to laws, regulations, and action programs. China has been working to improve both the IP rights of IP holders and the enforcement process. At the

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<sup>654</sup> *NPC Standing Committee Approved Two Conventions of WIPO*, State Intellectual Property Office (SIPO), January 9, 2007, [http://www.sipo.gov.cn/sipo\\_English/gfxx/zyhd/200701/t20070109\\_126503.htm](http://www.sipo.gov.cn/sipo_English/gfxx/zyhd/200701/t20070109_126503.htm).

<sup>655</sup> *Chinese Radio, TV Stations to Pay Music Royalties*, China View, December 19, 2006, available at <http://news.jongoo.com/articles/06/1219/818/ODE4JmGnWS1q.html>.

<sup>656</sup> Jacqui Cheng, *China Signs Agreement to Crack Down on Piracy*, Ars Technica LLC, December 15, 2006, available at <http://arstechnica.com/news.ars/post/20061215-8430.html>.

<sup>657</sup> *Id.*

same time, China's leaders have typically been slow to acknowledge publicly the scope of the country's IPR enforcement problems. For example, following the Strategic Economic Dialogue meetings between the United States and China in December 2006, Vice Premier Wu Yi stated that "China will continue to enforce IPR protection with a responsible attitude" and "will continue to fulfill its responsibility in IPR protection in the international system, to closely cooperate with international organizations and other countries so as to promote the establishment of an IPR protection system and improved business environment in China."<sup>658</sup>

Similarly, the Congressional Executive Commission on China (CECC) reported that Chinese officials have "characterized the government's IPR enforcement efforts as effective, or downplayed the seriousness of IPR issues."<sup>659</sup> In November 2005, the head of China's WTO delegation responded to American, Japanese, and Swiss inquiries under Article 63 of the TRIPS Agreement that the blame placed on China for being a top producer and exporter of counterfeit automotive parts was groundless.<sup>660</sup> A MOFCOM analyst stated that the U.S. government exaggerates IPR issues due to its fear of China's surging exports.<sup>661</sup> One senior Chinese official stated that IPR infringement in China is "not that serious" when compared to international standards and viewed in proportion to China's total exports.<sup>662</sup>

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<sup>658</sup> Wu Yi: *China Will Continue to Enforce IPR Protection*, State Intellectual Property Office (SIPO), December 25, 2006, available at [http://www.sipo.gov.cn/sipo\\_English/default.htm](http://www.sipo.gov.cn/sipo_English/default.htm).

<sup>659</sup> *2006 Annual Report*, Congressional-Executive Commission on China (CECC), 109<sup>th</sup> Cong., 2d Sess., Ch. VII(d): Commercial Rule of Law and the Impact of the WTO (September 20, 2006), available at <http://www.cecc.gov/pages/annualRpt/annualRpt06/CommercialRuleofLaw.php?PHPSESSID=a87e917d2409c771152ee2e81766c895#30a> [hereinafter "*CECC 2006 Annual Report*"].

<sup>660</sup> *Transitional Review Under Section 18 of the Protocol on the Accession of the People's Republic of China: Report to the General Council by the Chair*, World Trade Organization (WTO), IP/C/39, at para. 8 (November 21, 2005).

<sup>661</sup> *CECC 2006 Annual Report*, *supra* note 659, at 146.

<sup>662</sup> *Id.* (quoting Gong Zheng, deputy director of the General Administration of Customs).

Most recently, in response to the U.S. announcement that it was filing two WTO cases against China on IPR matters, a MOFCOM spokesman stated that “the Chinese government has always been firm in protecting intellectual property rights and has attained well-known achievements.”<sup>663</sup> The Commissioner of SIPO indicated that in filing these cases “the United States has ignored the Chinese government’s immense efforts and great achievements in strengthening IPR protection and tightening enforcement of its copyright laws.”<sup>664</sup>

In the final analysis, China’s trading partners acknowledge that China has taken many positive steps to improve IP rights and enforcement. Unfortunately, the breadth and depth of IP violations within China are confounding the ability of innovative societies to obtain the returns from innovation. China’s trading partners expect and need significant progress in reducing the level of piracy and counterfeiting. Some Chinese officials remain frustrated by overall levels of piracy and have urged authorities across the country to wage an “all around war” against piracy.<sup>665</sup> The crisis in China and globally cannot subside until the “all around war” is waged in China and in other countries with similar alarming infringement patterns.

#### **IV. MULTILATERAL, BILATERAL, AND PRIVATE SECTOR MONITORING OF CHINA’S IPR REGIME AND THE TECHNICAL ASSISTANCE PROVIDED TO IMPROVE ENFORCEMENT**

Given all the revisions to China’s IP laws and regulations over the past two decades and the significant global interest in having China achieve a more effective IP system, there are numerous perspectives on China’s progress. To improve IP enforcement in China, governments,

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<sup>663</sup> *China Expresses Regret, Dissatisfaction over U.S. Complaints at WTO*, Ministry of Commerce, April 10, 2007, available at <http://english.mofcom.gov.cn/aarticle/newsrelease/commonnews/200704/20070404553955.html>.

<sup>664</sup> *US Move to File Trade Cases Against China ‘not wise’*, State Intellectual Property Office (SIPO), April 13, 2007, available at [http://www.sipo.gov.cn/sipo\\_English/gfxx/default.htm](http://www.sipo.gov.cn/sipo_English/gfxx/default.htm).

<sup>665</sup> Shanglin Luan, *Officials ‘Not Optimistic’ About Fight Against Piracy*, Xinhua News Agency, August 19, 2006, available at [http://english.gov.cn/2006-08/19/content\\_365953.htm](http://english.gov.cn/2006-08/19/content_365953.htm).

nongovernmental organizations, and members of the private sector have been working with China at the multilateral level through the World Trade Organization (“WTO”) and the World Intellectual Property Office (“WIPO”); at the regional level through ASEAN and APEC; and/or at the bilateral level through consultation and working groups, to provide technical assistance and encourage China to strictly enforce its IPR laws. The following discussion highlights some of the main reports by multilateral organizations, governments, and business associations that are monitoring China’s enforcement efforts. This section then looks at programs that have provided technical assistance to China.

**A. WTO SECRETARIAT COMMENTS ON CONTINUING HIGH LEVELS OF IPR INFRINGEMENT AND INADEQUATE IPR ENFORCEMENT IN CHINA**

Pursuant to Article 18.1 of the Protocol of Accession, China agreed to undergo an evaluation under the Trade Review Mechanism (TRM) every year for eight years, beginning a year after accession, with a final review in the tenth year.<sup>666</sup> The purpose of the TRM is to allow members to review China’s implementation of its WTO commitments. It also gives members an opportunity to submit comments and questions to China regarding issues of concern. According to the Protocol, China is required to notify the Council for Trade-Related Aspects of Intellectual Property Rights of:

- (a) amendments to Copyright, Trademark and Patent Law, as well as relevant implementing rules covering different areas of the TRIPS Agreement bringing all such measures into full compliance with and full application of the TRIPS Agreement and the protection of undisclosed information; and
- (b) enhanced IPR enforcement efforts through the application of more effective administrative sanctions as described in the Report.

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<sup>666</sup> Accession of the People’s Republic of China, Protocol on Accession, WT/L/432 (10 November 2001).

Additionally, the WTO recently conducted its first Trade Policy Review (“TPR”) of China. TPRs are conducted by the Trade Policy Review Body and are a thorough examination of a country’s trade policies. The WTO Secretariat’s TPR report provides a compilation of factual material and review of members’ views about China’s trade policy, including China’s IPR regime.

The TPR report notes that China made major revisions to its IPR laws in recent years, including the Patent Law (2000), the Trademark Law (2001), and the Copyright law (2001), and established an “extensive and complex framework” to administer and enforce IPR.<sup>667</sup> Notwithstanding China’s efforts to enact IPR laws that comply with its TRIPS obligations, the rate of IPR infringement continues to be high and the level of enforcement of IPR continues to be inadequate. China’s efforts in the area of IPR enforcement have fallen short of its commitments as viewed by other members. The Secretariat’s TPR report states:

The main problems identified by China’s major trading partners include: lack of coordination among the main enforcement agencies; local protectionism and corruption; inadequate deterrence provided by the system of administrative, civil, and criminal penalties; and a lack of sufficient training of personnel.<sup>668</sup>

The Secretariat’s report notes that enforcement of IPR in China is “complex with a large number of responsible authorities.”<sup>669</sup> “The number of cases settled through administrative

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<sup>667</sup> *Trade Policy Review*, *supra* note 464, at para. 272.

<sup>668</sup> *Id.* at para. 303.

<sup>669</sup> *Id.* at para. 304. The “responsible authorities” are: “the SIPO for patents and layout designs of integrated circuits; the SAIC and its Trademark Office for trademarks and, along with the AQSIQ, for geographical indications registration and administration; the National Copyright Administration for copyright; the State Drug Administration for protected medicines; MOFCOM (previously the State Economic and Trade Commission) for administrative protection of agriculture-related chemicals; and the Ministry of Agriculture and the State Forestry Administration for the protection of new plant varieties. Enforcement at the border is carried out by Customs, while the SAIC is in charge of enforcement of laws against unfair competition,

means remains high, although an increasing number of cases, especially for copyright, are being transferred to the courts.”<sup>670</sup> Despite China’s IPR enforcement efforts, the Secretariat concludes that a high level of IPR infringement continues and IPR enforcement efforts to date have been inadequate, noting specifically the problems faced on a local level where:

[i]t appears that enforcement remains weak and infringement of intellectual property rights widespread. In addition to inadequate deterrents provided through the prosecution system, it is also claimed that "local protectionism" is a major cause of IPR infringement. Local protectionism may be the result of discretionary actions that give preference to local traders and producers, and of local corruption, which may provide local manufacturers or traders of counterfeit goods advance notice of police raids; there is also concern that regional administrative agencies lack sufficient knowledge and training in IPR enforcement.<sup>671</sup>

### ***1. Article 63.3 Request***

In 2005, pursuant to Article 63.3 of the TRIPS Agreement, the U.S., with Japan and Switzerland, requested that China provide enforcement data and “clarifications regarding specific cases of IPR enforcement that China has identified for the years 2001 through 2004.”<sup>672</sup> The purpose of the request was for the U.S. to “obtain a more complete picture of China’s intellectual property enforcement efforts” and a “better understanding of such key features of IPR cases in China as the legal basis on which they have been decided and the remedies actually

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including the protection of trade secrets. In addition, other government agencies such as the State Press and Publication Administration and the Ministry of Public Security are also involved in enforcement.” *Id.*

<sup>670</sup> *Id.* at para. 303.

<sup>671</sup> *Id.* at para. 313.

<sup>672</sup> *Request for Information Pursuant to Article 63.3 of the TRIPS Agreement*, IP/C/W/461 (November 14, 2005). Specifically the U.S. requested clarification of cases discussed by China from 2001-2004, with the following details of the cases: Legal Basis; Remedies, Provisional Measures, and Repeat Infringers; Location, Year, and Competent Authority; Transfer of Cases to Criminal Authorities; Nationals of Other Members/Countries; Product.

imposed on infringers.”<sup>673</sup> Thus far, the United States believes that China has not satisfied the Members’ request completely. In 2007, USTR stated that China has only provided limited information in response to the Article 63.3 request, “hampering the United States’ ability to evaluate whether China is taking all necessary steps to address the rampant IPR infringement found throughout China.”<sup>674</sup>

**B. THE UNITED STATES: MONITORING CHINA’S PROGRESS WITH THE SPECIAL 301 REVIEWS, COMPLIANCE REPORTS AND THROUGH THE JOINT COMMISSION ON COMMERCE AND TRADE**

In its 2005 WTO compliance report, the U.S. Trade Representative’s Office commented that generally China has done a satisfactory job with respect to amending its IPR laws to comply with the TRIPS Agreement and bringing its laws into line with international norms in most key areas, although noting that some improvements (*e.g.*, Internet copyright protection) are still needed.<sup>675</sup> In the 2006 “Special 301”<sup>676</sup> report, however, USTR stated that China “remains a top intellectual property enforcement priority” and “does not provide American copyright materials, inventions, brands, and trade secrets the intellectual property protection and enforcement to which they are entitled.”<sup>677</sup> USTR warned that given the “limited progress by China in

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<sup>673</sup> See *USTR Pursues WTO Process to Probe IPR Enforcement in China*, USTR Press Release (October 26, 2005), available at [www.ustr.gov](http://www.ustr.gov); see also *Request for Information Pursuant to Article 63.3 of the TRIPS Agreement*, IP/C/W/461 (November 14, 2005).

<sup>674</sup> *National Trade Estimate 2007*, *supra* note 528, at 107.

<sup>675</sup> See *2005 Report to Congress on China’s WTO Compliance*, *supra* note 431, at 63.

<sup>676</sup> Since the late 1980s, the U.S. has used the “Special 301” to conduct annual reviews of the adequacy and effectiveness of intellectual property rights in foreign countries. Today, 86 countries are reviewed, including China. As discussed above, the U.S. has been using the Special 301 mechanism, and the threat of investigations, since the early 1990s to pressure China to pursue reforms in its IPR regime. See Section II-E. In 2006, USTR determined that China would remain on the Priority Watch List, where it was elevated to the year before, and remain subject to Section 306 monitoring. See *2006 Special 301 Report*, *supra* note 497.

<sup>677</sup> *2006 Special 301 Report*, *supra* note 497.

addressing certain deficiencies in IPR protection and enforcement, the United States will step up consideration of its WTO dispute settlement options.”<sup>678</sup>

The 2006 Special 301 Report contains particular criticism of China’s inability to crack down on piracy at the local level. USTR examined the lack of IPR protection at the local level by focusing on provinces considered to be “hot spots.”<sup>679</sup> In the four hot spots identified in the report, USTR noted that there appears to be “an acute need for authorities to more effectively establish and sustain proactive, deterrent IPR enforcement.”<sup>680</sup> To follow up on this theme, USTR said that the 2007 Special 301 Report will contain a special provincial review to examine the “adequacy and effectiveness of IPR protection and enforcement at the provincial level...spotlight[ing] strengths, weaknesses, and inconsistencies in and among specific jurisdictions...”<sup>681</sup> USTR also expressed concern about complaints from U.S. industries of the possibility “that laws or policies in a variety of fields might be misused to favor domestic over foreign IPR.”<sup>682</sup> USTR concluded that despite China’s efforts, and particularly the efforts of President Hu Jintao and Vice Premier Wu Yi, “the reality of IPR enforcement in China continues to lag far behind the commitment made by China’s government at the Joint Commission on Commerce and Trade (JCCT) in 2004, and renewed in 2005 and 2006, to achieve a significant reduction in IPR infringement throughout China.”<sup>683</sup>

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<sup>678</sup> *Id.*

<sup>679</sup> Enforcement across China was characterized as inconsistent. As part of the 2006 Special 301 Report and to encourage Chinese efforts to increase attention to certain “hot spots,” USTR looked at four of these “hot spots”: Guangdong Province, Beijing City, Zhejiang Province, and Fujian Province.

<sup>680</sup> *2006 Special 301 Report, supra* note 497.

<sup>681</sup> *Id.*

<sup>682</sup> *Id.*

<sup>683</sup> *Id.*

Since 2004, USTR has used the JCCT as the primary means for the U.S. to secure from China specific commitments for increasing IPR enforcement and action plans to implement those commitments. The annual JCCT meetings provide the U.S. and China with a vehicle to discuss ongoing IPR issues and problems, a mechanism for China to make certain commitments, and a means for the U.S. to monitor and ensure that China faithfully implements those commitments.

The JCCT was initially established in 1983 as a forum for bilateral trade issues and to promote commercial relations. In 2004, the JCCT became a prominent feature in the U.S.-China trade dialogue and is now co-chaired by two cabinet level officials from the U.S., *viz.*, the Secretary of Commerce and the U.S. Trade Representative, and China's representative is the Vice-Premier responsible for foreign trade.<sup>684</sup> The JCCT consists of ten working groups, including an IPR group, which was established in 2004.

For the 2004 JCCT meeting, IPR enforcement was the primary issue on the agenda. At the meeting, China announced an action plan with six major commitments to increased enforcement in the country. The commitments included: (1) to significantly reduce the levels of IPR infringement; (2) to promulgate a judicial interpretation to increase penalties for IPR violations by the end of 2004 by expanding the range of violations subject to criminal investigation, criminalizing online piracy and the import, export, storage, and distribution of pirated and counterfeit products; (3) to increase pressure on IPR violators by conducting nationwide enforcement actions and increasing enforcement actions at customs; (4) to help protect on-line works by ratifying and implementing the WIPO Internet-related treaties; (5) to begin a

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<sup>684</sup> USTR is a cabinet level administration office, but unlike the Secretary of Commerce, the USTR is not a Secretary of an Executive Department.

national IPR education campaign; and (6) to expand the ban on the use of pirated software at all levels of government.<sup>685</sup>

***1. China's Compliance with 2004 JCCT Commitments***

In the 2005 Special 301 Review, USTR announced the results of an out-of-cycle review.<sup>686</sup> This out-of-cycle review was conducted to evaluate the implementation of China's 2004 commitments made at the JCCT meeting. These commitments were again evaluated as part of the 2006 Special 301 Report. China's compliance with commitments made at the JCCT meetings in 2004, 2005, and 2006 are examined individually below.

***a. To significantly reduce the level of IPR infringement***

In 2005, USTR reported that infringement levels remain unacceptably high, and, according to industry submissions in the out-of-cycle review, infringement levels are at 90 percent and above for nearly every form of intellectual property.<sup>687</sup> Overall piracy rates were not found to have declined since China's WTO accession and, in some sectors, they had increased.<sup>688</sup> According to industry submissions, internet piracy was quickly becoming the biggest threat to the copyright industry.<sup>689</sup> Trademark counterfeiting remained a problem, with the value of Chinese counterfeits seized by the U.S. increasing by 47 percent from 2004 to 2005.<sup>690</sup> Based

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<sup>685</sup> 2004 Special 301 Report, United States Trade Representative, 12-13, available at [http://www.ustr.gov/Document\\_Library/Reports\\_Publications/2004/2004\\_Special\\_301/Section\\_Index.html](http://www.ustr.gov/Document_Library/Reports_Publications/2004/2004_Special_301/Section_Index.html).

<sup>686</sup> Out-of-Cycle Reviews are reviews that may be conducted at any time and are used to evaluate changes and developments in particular countries.

<sup>687</sup> 2005 Special 301 Report, *supra* note 12.

<sup>688</sup> *Id.*

<sup>689</sup> *Id.*

<sup>690</sup> *Id.*

on these findings, USTR recommended China “[u]ndertake additional aggressive action to significantly reduce IPR infringement levels.”<sup>691</sup>

In 2006, USTR reported that, despite the increase in cases in Chinese courts, overall piracy and counterfeiting levels in China remained high and were affecting products from a wide range of industries.<sup>692</sup> Industry sources estimated that there had been little or no improvement, with levels of piracy at 85 to 93 percent.<sup>693</sup> USTR also reported that China’s share of IPR infringing products seized at the U.S. border had increased from 63 percent in 2004 to 69 percent in 2005, while the total value of the goods decreased from \$87.2 million in 2004 to \$63.9 million in 2005.<sup>694</sup>

At the third elevated meeting of the JCCT in April, 2006, the USTR reported that there has been progress in China’s efforts to significantly reduce IPR infringement, but that the U.S. does not consider China to have fully met its 2004 JCCT commitment.

***b. To promulgate a Judicial Interpretation to increase penalties and expand the range of violations subject to criminal investigation***

As discussed above, in 2004 the Supreme People’s Court and Supreme People’s Procuratorate issued a new Judicial Interpretation that helped clarify and expand the scope of criminal enforcement.<sup>695</sup> USTR commended the improvements, commenting that the issuance of the Judicial Interpretation and the provisions it contains signal “top government and judicial

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<sup>691</sup> *Id.*

<sup>692</sup> 2006 Special 301 Report, *supra* note 497.

<sup>693</sup> *Id.*

<sup>694</sup> *Id.*

<sup>695</sup> See discussion regarding Judicial Interpretations *supra* Section III.A.2.a.

level willingness to commit to addressing counterfeiting and piracy problems.”<sup>696</sup> However, USTR complained that the provisions did not go far enough and that efforts were “hampered by institutional differences and the need to accommodate competing domestic interests.”<sup>697</sup>

Noted improvements included: lower criminal thresholds, accomplice liability to importers, exporters, and others; a broadening of goods included in sales calculations; a lower standard for defining what “for profit” was; and an expansion of the law defining what constituted an infringing trademark.<sup>698</sup> However, USTR also found many deficiencies, such as changes that actually weakened the enforcement measures. The Judicial Interpretation removed special liability for repeat offenders (three strikes rule), dealers in counterfeit products that threaten public safety, and infringers of well known trademarks.<sup>699</sup> It also continued to allow the criminal threshold to be based on the value of the infringing good and not the price of the legitimate good.<sup>700</sup> Copyright infringement was criminalized, including online piracy, but only if undertaken to make a profit.<sup>701</sup> Some acts, such as the export of infringing goods or the unauthorized rental, translation, public performance, broadcasting, adaptation, and bootlegging of performances were not criminalized. This is true even if the infringement is on a commercial scale.<sup>702</sup>

In the 2006 Special 301 Report, USTR stated that the biggest problem with enforcement in China remained the “toothless administrative enforcement and underutilization of criminal

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<sup>696</sup> 2005 Special 301 Report, *supra* note 12.

<sup>697</sup> *Id.*

<sup>698</sup> *Id.*

<sup>699</sup> *Id.*

<sup>700</sup> *Id.*

<sup>701</sup> 2005 Special 301 Report, *supra* note 12.

<sup>702</sup> *Id.*

remedies.”<sup>703</sup> The purpose of the Judicial Interpretation was to help China impose more criminal penalties on a wider range of counterfeiting and piracy activities. However, it is difficult to determine what effect the Judicial Interpretation has had. USTR found very few reports of criminal prosecution in copyrights cases, but an increase in criminal trademark prosecutions.<sup>704</sup> Due to the lack of transparency in the Chinese system, it is difficult to determine whether the increased prosecutions resulted in actual convictions or what penalties, if any, were imposed.<sup>705</sup>

With respect to the 2004 Judicial Interpretation, in 2006, USTR concluded:

China's high thresholds for criminal activity (*i.e.*, the minimum values or volumes required to initiate criminal prosecution) continue to be a major reason for the lack of an effective criminal deterrent... the mandated thresholds remain so high that they make it impossible as a matter of law to prosecute many commercial infringers, especially at the retail level...[and] the problem is made worse by China's reliance on values of infringing products, rather than genuine products, as the default rule for determining whether threshold values are met. China has thus maintained a legal “safe harbor” that protects a large group of commercial infringers and operates to deprive the criminal enforcement authorities of needed information regarding the sources of counterfeit and pirated goods.<sup>706</sup>

***c. To increase pressure on IPR violators by conducting nation-wide enforcement actions and increase actions at Customs***

In August 2004, the Chinese government announced a year-long national crack down on IPR infringements.<sup>707</sup> The campaign focused on sectors where trademark counterfeiting and

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<sup>703</sup> 2006 Special 301 Report, *supra* note 497.

<sup>704</sup> 2005 Special 301 Report, *supra* note 12.

<sup>705</sup> *Id.*

<sup>706</sup> 2006 Special 301 Report, *supra* note 497.

<sup>707</sup> 2005 Special 301 Report, *supra* note 12.

copyright infringement are concentrated, including “import and export activities, trade fairs and exhibitions, distribution and wholesale markets, brand name processing and publishing.”<sup>708</sup> USTR found that the crackdown had led to an increase in the number of seizures, but that the seized goods often found their way back into the market and many of the cases were brought by administrative authorities, resulting in low fines that provide for very little deterrence.<sup>709</sup> USTR reported that infringers regarded these fines as simply the price of doing business.<sup>710</sup> Again, USTR complained that there was a deficiency in the administrative enforcement mechanism. Their concern was compounded by Chinese government statistics showing that between 2001 and 2004, there was a decrease in the number of cases that were transferred from administrative authorities to the Ministry of Public Security for criminal investigation.<sup>711</sup>

To address the sheer volume of infringing products leaving China, China's General Administration of Customs issued new regulations and implementing rules to increase border enforcement and “make it easier for rights holders to secure effective enforcement at the border.”<sup>712</sup> The new regulations “extend the term of IPR recordations from seven to ten years, and lower the cap on the security bonds required from rights holders seeking the seizure of allegedly infringing goods.”<sup>713</sup> However, “the new rules no longer expressly authorize customs authorities to levy administrative fines on companies engaged in trading counterfeit or pirated

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<sup>708</sup> *Id.*

<sup>709</sup> *Id.*

<sup>710</sup> *Id.*

<sup>711</sup> *Id.*

<sup>712</sup> 2005 *Special 301 Report*, *supra* note 12; see also Rules of the Customs of People's Republic of China for Implementing the Regulations of People's Republic of China on Customs Protection of Intellectual Property Rights (Adopted at the Executive Meeting of the General Administration of Customs on April 22, 2004, promulgated by Decree No. 114 of the General Administration of Customs on May 25, 2004, and effective as of July 1, 2004), available at [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=2068&col\\_no=121&dir=200603](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=2068&col_no=121&dir=200603).

<sup>713</sup> 2005 *Special 301 Report*, *supra* note 12.

goods and reduce the fines that Customs authorities can impose from 100 percent to 30 percent of the value of the goods.”<sup>714</sup> Additionally, the measures do not cover the transfer of cases from administrative to criminal prosecution.<sup>715</sup> Nor do they authorize nationwide bonding to cover all of China’s ports.<sup>716</sup> Finally, the regulations continue to allow for the auction rather than the destruction of seized goods.<sup>717</sup>

In 2006, USTR again expressed its concerns for the 2004 customs regulations and implementing rules. These two pieces of legislation were intended to “strengthen border enforcement and to make it easier for rights holders to secure effective enforcement at the border” but there are still weaknesses. In particular, the rules

impose a deadline of only three days for a right holder to apply for seizure of suspected infringing good held by Chinese customs...[and] disposal of confiscated goods remains a problem under the implementing rules, which appear to mandate auction, rather than destruction, of infringing goods not purchased by the right holder or used for public welfare.<sup>718</sup>

In April 2007, the General Administration of Customs of China published a notice regarding the auction of infringing goods that are confiscated by Customs.<sup>719</sup> The notice called for Customs to strictly adhere with the regulations in Article 27 of the “Regulations of the People’s Republic of China Governing Customs Protection of Intellectual Property Rights.”<sup>720</sup>

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<sup>714</sup> *Id.*

<sup>715</sup> *Id.*

<sup>716</sup> *Id.*

<sup>717</sup> *Id.*

<sup>718</sup> 2006 Special 301 Report, *supra* note 497.

<sup>719</sup> See General Administration of Customs Regulates Auction of Infringing Goods, NTD Patent & Trademark Agency Ltd., April 5, 2007, available at <http://www.chinantd.com/news.php?language=en&channel=53&id=1332>.

<sup>720</sup> See *id.*

The notice states that before auction, the “infringing features on the goods and packages should be entirely eliminated ...[and if they] cannot be entirely eliminated, the goods should be destroyed.”<sup>721</sup> Additionally, before the goods are auctioned, Customs should ask the opinion of the right holders.<sup>722</sup>

***d. To protect copyright works on the internet by ratifying and implementing the WIPO internet-related treaties***

China is facing increasing internet piracy. A review of Chinese regulations and implementing rules reveals loopholes which permits some piracy to evade enforcement efforts. Still, USTR has commented that “China’s current regulations, implementing rules and judicial interpretations do increasingly address copyright issues related to the Internet.”<sup>723</sup> In 2004, China made a JCCT commitment to accede to WIPO Internet Treaties, which includes the WIPO Copyright Treaty and the WIPO Performance and Phonography Treaty.<sup>724</sup> In 2006, a legislative package was submitted to the National People’s Congress for China to join the WIPO Internet Treaties.<sup>725</sup> However, USTR expressed concern regarding the draft regulations and asked that China address USTR’s concerns before finalizing implementing measures.<sup>726</sup>

USTR gave detailed examples of their concerns, which included the following:

- The draft only provides legal protections and remedies relating to technological protection measures (TPMs) that prevent or restrict the making available to the public of a work (*e.g.*, passwords). It provides

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<sup>721</sup> *See id.*

<sup>722</sup> *See id.*

<sup>723</sup> 2005 Special 301 Report, *supra* note 12.

<sup>724</sup> *Id.*

<sup>725</sup> The WIPO Internet Treaties include the Copyright Treaty (WCT) and Performance and Phonography Treaty (WPPT).

<sup>726</sup> 2006 Special 301 Report, *supra* note 497.

neither legal protections nor remedies to prevent circumvention of copy-control TPMs. Its exception to protection against circumvention remains overbroad. Without such protections and remedies, the United States is concerned that China will not provide effective protection against copyright infringement on the Internet.

- The United States has concerns about several broad limitations on rights. These provisions should be reconsidered in the light of the tests for limitations and exceptions to copyright prescribed by the WIPO Internet Treaties and TRIPS.
- The notice and take down measures for a copyright holder appear overly burdensome and rigid. As the Internet becomes a more popular means for distributing copyrighted material such as music, it is critical that these regulations include effective and efficient means of notifying Internet service providers and taking down infringing material.<sup>727</sup>

At the 2006 JCCT meeting, the U.S. pledged that it would provide China with additional technical assistance to help China fully implement the WIPO Internet Treaties.<sup>728</sup> On March 9, 2007, China finally acceded to both the WIPO Copyright Treaty and the WIPO Performance and Phonography Treaty, thus completing its 2004 JCCT commitment to join the WIPO Internet Treaties.<sup>729</sup> In the 2007 National Trade Estimate, USTR commended China for issuing new regulations that meet the requirements of the WIPO Internet Treaties, but commented that “more work is needed at both the national level and the provincial level to meet the challenges of Internet Piracy and fully implement the WIPO Internet treaties.”<sup>730</sup>

***e. To begin IPR education campaign***

To fulfill its education commitment, in 2004 China launched a campaign that included television programs, published inserts in English language newspapers, and special reports on

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<sup>727</sup> *Id.*

<sup>728</sup> *National Trade Estimate 2007, supra note 528, at 107.*

<sup>729</sup> See The List of Recent Notifications, available on the WIPO Website, <http://www.wipo.int/treaties/en/>.

<sup>730</sup> *National Trade Estimate 2007, supra note 528, at 107.*

specific IP efforts that were published in IPR trade journals.<sup>731</sup> For example, SIPO introduced a television program called Intellectual Fortune and began publishing an English-language insert dedicated to intellectual property in China Daily, an English-language paper.<sup>732</sup> Additionally, in 2005, an anti-piracy concert was broadcast on television with an estimated viewing audience of 500 million people.<sup>733</sup> In 2005, USTR commented that it is still too early to know what the long-term implications of the Chinese campaign will be.<sup>734</sup>

China's 2007 Action Plan on IPR Protection includes seventy-four publicity measures to "reinforce education among the public, improving society-wide awareness on the respect for and protection of IPR."<sup>735</sup> These events include large-scale destructions of pirated materials, "on-site information services for law-related publicity programs of IPR, a "publicity campaign featuring 'anti-counterfeiting' and 'anti piracy,'" a publicity campaign entitled "Enjoy the Music, Respect Artistic Creation," and an online campaign using a cartoon series to promote IPR awareness entitled "A Networked World and A Copyright-Friendly China."<sup>736</sup>

***f. To expand the ban on pirated software in government offices***

At the 2004 JCCT meeting, Vice Premier WU Yi made a commitment that the Chinese government would be free of pirated software.<sup>737</sup> Government institutions at all levels would use

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<sup>731</sup> 2005 Special 301 Report, *supra* note 12.

<sup>732</sup> *Id.*

<sup>733</sup> *Id.*

<sup>734</sup> 2006 Special 301 Report, *supra* note 497.

<sup>735</sup> See China's Action Plan on IPR Protection 2007, *supra* note 606.

<sup>736</sup> See *id.*

<sup>737</sup> 2005 Special 301 Report, *supra* note 12.

only legal software.<sup>738</sup> In 2005 USTR found that several local governments, provinces, and municipalities had instituted measures requiring only legal software, but that China had not satisfied its commitment that all levels of government would use only legal software.<sup>739</sup>

In 2006 submissions to USTR, members of the industry claimed that government purchases were not high enough for them to conclude that all software purchased by the government was legal.<sup>740</sup> At the 2006 JCCT meeting China committed to ensure that legitimate software is used in Chinese enterprises “and to take up issues of government and enterprise software asset management in the JCCT IPR Working Group.”<sup>741</sup> Just before the April 2006 JCCT meeting China issued rules requiring computers to come pre-installed with licensed operating system software.<sup>742</sup> In 2007, USTR reported that China’s implementation of these rules had been successful, with U.S. industry pleased with the initial results.<sup>743</sup>

## ***2. Additional JCCT commitments and concerns***

At the 2005 JCCT meeting, China committed to take aggressive action against movie piracy, with an emphasis on enforcing the piracy of titles not yet authorized for distribution.<sup>744</sup> Rights holders reported to USTR that there had been only limited improvement in the piracy of pre-release titles, but that there had been some improvement in Shanghai, one of four selected cities for the crackdown, but not the three other major cities.<sup>745</sup> USTR commented that part of

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<sup>738</sup> *Id.*

<sup>739</sup> *Id.*

<sup>740</sup> *2006 Special 301 Report, supra note 497.*

<sup>741</sup> *National Trade Estimate 2007, supra note 528, at 107.*

<sup>742</sup> *Id.*

<sup>743</sup> *Id.*

<sup>744</sup> *2006 Special 301 Report, supra note 497.*

<sup>745</sup> *Id.*

the reason for the high rate of piracy in China was due to the delays in regulatory approval for legitimate films, which allowed pirated goods to hit the market first.<sup>746</sup> This was also true for video games and books.<sup>747</sup> In 2007, USTR again raised this issue as an “exacerbating factor” which also raised WTO concerns as the “restrictions inadvertently help to ensure that infringing products continue to dominate those sectors within China.”<sup>748</sup>

Additionally, China agreed to increase the overall number of criminal prosecutions for IPR violations relative to the number of IPR administrative cases, but, for 2006, there was no sign that there had been a shift to criminal prosecutions.<sup>749</sup> Figures reported by China indicate that the absolute number of criminal cases had risen, but USTR was not provided with the administrative numbers which would indicate whether there had indeed been a shift to criminal prosecutions.<sup>750</sup> Additionally, industry groups reported that the percentage of cases transferred remained small.<sup>751</sup>

In addition to specific actions to implement or strengthen past commitments, at the 2006 JCCT meeting, the U.S. secured more commitments from China.<sup>752</sup> These commitments included an agreement between the two countries to work together to combat infringing goods at trade fairs and major consumer markets such as the Silk Road.<sup>753</sup> They also agreed to increase

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<sup>746</sup> *Id.*

<sup>747</sup> *National Trade Estimate 2007, supra* note 528, at 106.

<sup>748</sup> *Id.* See *infra* Section V.A. for information regarding recent U.S. requests for consultations filed at WTO.

<sup>749</sup> *2006 Special 301 Report, supra* note 497.

<sup>750</sup> *Id.*

<sup>751</sup> *Id.*

<sup>752</sup> *National Trade Estimate 2007, supra* note 528, at 107.

<sup>753</sup> *Id.*

cooperation between respective enforcement and customs officials.<sup>754</sup> In the 2007 National Trade Estimate, USTR stated that “China has made some progress in implementing its April 2006 JCCT commitments, but it has been slower than in the past.”<sup>755</sup>

USTR has also expressed specific concerns it has received from U.S. industries. Rights holders complained that Chinese patent law was narrow in scope and that it was not possible to patent transgenic plants and animals.<sup>756</sup> There was also a lack of clarity in the laws for generic drug patents, contributing to the “continued growth of counterfeit drugs, with corresponding health and safety issues.”<sup>757</sup> There were also concerns about “unfair commercial use of undisclosed test and other data” submitted by pharmaceutical companies seeking market approval.<sup>758</sup>

### **C. EUROPEAN UNION: MONITORING CHINESE ENFORCEMENT**

China is now the European Union’s first priority in terms of intellectual property enforcement worldwide. The EU Chamber of Commerce reported in its 2006 Business Confidence Survey of China that weak IPR protection was still one of the key challenges of doing business in China, with only 9 percent of respondents commenting that they had never experienced problems in China and 67 percent stating that present laws for IP enforcement in

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<sup>754</sup> *Id.*

<sup>755</sup> *Id.*

<sup>756</sup> 2006 Special 301 Report, *supra* note 497.

<sup>757</sup> *Id.*

<sup>758</sup> *Id.*

China do not act as an effective deterrent.<sup>759</sup> “Despite all the efforts taken to improve the situation, IP violations in [China] have been growing in recent years.”<sup>760</sup>

While the European Commission (“EC”) recognized the progress made by China and noted that China “made noticeable improvements to its framework of laws and regulations, the lack of effective IPR enforcement is the main problem.”<sup>761</sup> The European Commission considered the main inadequacies in China’s IP system to be: weak deterrence for infringers, lack of cooperation between and within enforcement agencies, difficulty for rights holders to initiate and proceed with a case, lack of financial and human resources for administrative enforcement, and lack of enforcement at the local level combined with local protectionism.<sup>762</sup> On a recent visit to China, Peter Mandelson, the EU Trade Commissioner, commented that there is no “substitute for enforcement of Chinese anti-counterfeiting laws on the ground, including lower criminal thresholds for offenders, action to clean up street markets and the guarantee of royalty payments and fair conditions for technology transfer.”<sup>763</sup> Mandelson continued by saying that “creativity is Europe’s comparative advantage and counterfeiting is a drain on our competitiveness in the Chinese market.”<sup>764</sup>

A recent study by the European Commission stated that “[t]he adequate protection of intellectual property rights such as patents, copyrights and trademarks is central to the exercise of

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<sup>759</sup> *EU, China Co-operate on Illegal Trade*, EurActiv.com, September 19, 2006, available at <http://www.euractiv.com/en/trade/eu-china-opperate-illegal-trade/article-157971>.

<sup>760</sup> *Intellectual Property Rights: Current Situation & Future Perspective*, European Commission, July 25, 2006, available at [http://trade.ec.europa.eu/doclib/docs/2006/july/tradoc\\_129426.pdf](http://trade.ec.europa.eu/doclib/docs/2006/july/tradoc_129426.pdf).

<sup>761</sup> *Id.*

<sup>762</sup> *Id.*

<sup>763</sup> *Mandelson Visits Chinese State Intellectual Property Office; Urges Tougher Chinese Action on Counterfeiting, Technology Transfers, Payments of Royalties*, European Commission, November 8, 2006, available at [http://ec.europa.eu/trade/issues/sectoral/intell\\_property/pr081106\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/intell_property/pr081106_en.htm).

<sup>764</sup> *Id.*

Europe's comparative advantage in innovation, design and high-value production.”<sup>765</sup> The Commission accused China of “industrial policies that limit market access by non-Chinese origin goods and that aim to extract technology and IP from foreign rights-holders and support the development of Chinese industries.”<sup>766</sup> Perhaps the biggest issue for the EU was the methods used by the Chinese companies to acquire foreign technology.<sup>767</sup> The EU claimed that Chinese practices and policies “highlight China's national interest in and priority of achieving technological independence in the shortest possible time... [and] have encouraged the fierce acquisition of foreign technology through various strategies.”<sup>768</sup>

#### **D. BUSINESSES CONTINUE TO FACE HIGH LEVELS OF IPR INFRINGEMENT IN CHINA**

The American Chamber of Commerce in China (AmCham) issued its 2006 White Paper in which it, *inter alia*, provided an overview of the IPR experience of American businesses in China. In short, AmCham found that there has not been any notable improvement in the IPR environment in China.

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<sup>765</sup> *Global Europe: EU-China Trade and Investment Competition and Partnership*, European Commission, October 2006, available at [http://trade.ec.europa.eu/doclib/docs/2006/november/tradoc\\_131234.pdf](http://trade.ec.europa.eu/doclib/docs/2006/november/tradoc_131234.pdf).

<sup>766</sup> *Id.*

<sup>767</sup> The methods noted by the EC include:

(1). Open Standards: Chinese companies obtain free and unlimited access to open standards documentation but refuse or are forbidden to pay reasonable royalties on patents attached to the standard in question (i.e. essential patents); (2). Forced disclosure of secret data: government authorities request excessive amounts of data to be provided by foreign businesses in the form of questionnaires that must be completed prior to receiving formal authorisation to market or license their products, build a factory,...;(3). Joint ventures & Government Procurement: government authorities initiate calls for tenders for projects which request advanced levels of technological resources. Projects are allocated to foreign companies, which must enter in a joint venture partnership or technology transfer. The Chinese JV partner benefits from its technology and technological know-how long after the project expiry. Once the project is finalised, government authorities can launch similar projects at a larger scale by assigning the Chinese JV partner. It is worth noting that the third form slightly differs from the first two as it involves a one time payment for assimilating the technology, though agreements do not generally transfer IP rights to the Chinese JV partner. *Intellectual Property Rights: Current Situation & Future Perspective*, European Commission, July 25, 2006, available at [http://trade.ec.europa.eu/doclib/docs/2006/july/tradoc\\_129426.pdf](http://trade.ec.europa.eu/doclib/docs/2006/july/tradoc_129426.pdf).

<sup>768</sup> *Id.*

Five years after China's accession to the WTO, American businesses confronting IPR enforcement issues in China are shifting their focus from the symptomatic to the systematic. Across industries, American companies have concluded that the returns on case-by-case adjudication (whether through administrative, civil or criminal channels) are insufficient to change the overall environment, and confidence in existing IPR enforcement mechanisms remains low: a consensus is emerging that reform is necessary at the most fundamental level.<sup>769</sup>

The White Paper reported that 55 percent of American companies surveyed were “negatively affected by IPR violations” and that 41 percent said that “counterfeits of their products increased.”<sup>770</sup> With respect to IPR enforcement, AmCham reported that “generally speaking, administrative enforcement is ineffective.”<sup>771</sup> Among AmCham's findings:

- In administrative actions, only 51% of surveyed companies were satisfied with the degree of cooperation from Chinese officials;
- System of transferring administrative cases to criminal courts does not operate smoothly;
- In court actions, less than half of surveyed companies were satisfied with the degree of cooperation from Chinese court officials;
- Despite lowered thresholds for criminal liability, overall criminal prosecution remained low;
- Only 22% of surveyed companies believe the 2004 Judicial Interpretation of Threshold for Criminal Liability will benefit IPR protection either moderately or greatly;
- IPR enforcement in civil courts is hampered because “gathering evidence is difficult; damages amounts are too low; and judgments are problematic to enforce.”<sup>772</sup>

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<sup>769</sup> *AmCham White Paper 2006, supra* note 60, at 34.

<sup>770</sup> *Id.*

<sup>771</sup> *Id.* at 36.

<sup>772</sup> *Id.*

Notwithstanding these less-than-optimistic findings, AmCham reported that “{n}onetheless, American businesses generally agree that awareness of IPR issues has increased in China and that the Chinese government is making efforts in this area such as in the formation of the Leading Group that has been coordinating the Chinese government’s IPR campaign.”<sup>773</sup>

The U.S. Chamber of Commerce had similar findings in its 2006 annual report on *China’s WTO Implementation and Other Issues of Importance to American Business in the U.S.-China Commercial Relationship*.<sup>774</sup> While recognizing that significant IPR protection and enforcement efforts were underway in China, the Chamber nonetheless observed that “China has fallen short of commitments to effectively protect IPR, both with respect to its obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement), as well as China’s many JCCT commitments on IPR protection and enforcement.”<sup>775</sup> The Chamber found that since its 2005 report, the IPR climate in China had not significantly improved for its members due to the lack of adequate deterrence of intellectual property theft in the marketplace and, if anything, “the climate has worsened, as more and more small- and medium-sized enterprises (SMEs) complain of the dramatic impact of counterfeits on their businesses worldwide.”<sup>776</sup>

However, the Chamber commended the actions of the Chinese government during the 2004-2006 period, for improving legislation on IPR protections and increasing the number of

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<sup>773</sup> *Id.* at 34.

<sup>774</sup> *U.S. Chamber of Commerce Report: China’s WTO Implementation and Other Issues of Importance to American Business in the U.S.-China Commercial Relationship*, U.S. Chamber China WTO Implementation Working Group, Publication # 0497, September 2006, available at [www.uschamber.com/publications/reports/050913\\_china.htm](http://www.uschamber.com/publications/reports/050913_china.htm).

<sup>775</sup> *Id.* at 16.

<sup>776</sup> *Id.* at 15.

criminal cases taken against trademark counterfeiters. Recent statistics on enforcement actions from January-June, 2006, suggested that police actions against pirates and counterfeiters were up and that a high number of raids were undertaken by the local Administration for Industry & Commerce (AIC), but that the number of raids had decreased since 2005, and the number of IP cases transferred from administrative to the criminal system had also decreased.<sup>777</sup>

While China has made many commitments in the past several years, the Chamber questioned whether the 2006 Action Plan, like previous plans, would be fully implemented. However, the Chamber believed that certain initiatives in the 2006 Action Plan “underscored the central government’s commitment to improve protection and enforcement, and create a basis for optimism that the Chinese government will continue to achieve progress in IPR protection.”<sup>778</sup>

The initiatives cited by the Chamber were:

- 50 IPR Infringement Reporting Centers that allow IP owners to report enforcement complaints;
- the pre-loading of legal operating system software on all computers manufactured in or imported into China;
- providing the government with sufficient funds to purchase only computers with pre-loaded, legal software;
- the signing of agreements with Chinese computer manufacturers to purchase U.S. operating system software.<sup>779</sup>

The Chamber cited the following as concerns requiring particular attention: strengthening criminal, administrative, and civil enforcement; adopting additional measures to permit transparent monitoring and verification of enforcement efforts and their impact; and that the Chinese government commit the funds necessary to fulfill commitments made at the JCCT,

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<sup>777</sup> *Id.* at 17.

<sup>778</sup> *Id.* at 18.

<sup>779</sup> *Id.*

including money to ensure the government is able to fulfill its commitment to purchases of legal software, as well as the funds for training and monitoring the enforcement of that commitment at all levels of government.<sup>780</sup>

In 2006 the European Commission published the results of a survey on the experiences of EU businesses with IPR enforcement outside the EU in 2005. The survey identified China as the main priority, with Chinese products accounting for two-thirds of all counterfeit goods seized at the EU border.<sup>781</sup> The purpose of this survey was not to “black list” particular countries but to focus the Commission’s technical assistance programs on priority countries.<sup>782</sup> The Enforcement Survey was based on questionnaires that asked for infringements suffered, measures undertaken against such infringements, and how local authorities responded to the complaints.<sup>783</sup>

The Survey indicated that IPR enforcement remains weak. While the Chinese legal system was adequate to protect IPR, enforcement and use of the legal system remained inadequate. The main weaknesses pointed out by participants were: local protectionism, corruption, poor coordination between the levels of government, inadequately trained judges, lack of criminal prosecution, extended censorship review which allows pirates access to exclusive distribution of newly-released titles, inadequate customs inspection of counterfeit goods, administrative penalties that are too low to serve as a deterrent, the length of procedures,

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<sup>780</sup> *Id.* at 19.

<sup>781</sup> *Intellectual Property: EU Business Survey Identifies Target Countries in Fight Against Counterfeiting*, European Commission, October 5, 2006, available at [http://ec.europa.eu/trade/issues/sectoral/intell\\_property/pr051006\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/intell_property/pr051006_en.htm).

<sup>782</sup> *Id.*

<sup>783</sup> *Intellectual Property: Enforcement Survey 2006*, European Commission, available at [http://ec.europa.eu/trade/issues/sectoral/intell\\_property/survey2006\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/intell_property/survey2006_en.htm). The Enforcement Survey was given to rights-holders, associations, EU Delegations, and the Embassies of EU member states, and was made available on the web to any interested party.

the insufficient implementation of TRIPS into the domestic legal system, and the low perception of IP in the population.<sup>784</sup>

**E. TECHNICAL ASSISTANCE INITIATIVES TO HELP CHINA IMPROVE ENFORCEMENT**

Article 67 of the TRIPS Agreement provides that in “order to facilitate the implementation of this Agreement, developed country members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members.”<sup>785</sup> Assistance programs should help least-developed countries prepare laws and regulations on IPR protection and enforcement, as well as provide support “regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.”<sup>786</sup> IP-related technical assistance provided to developing countries is described in the following broad descriptions:

- General and specialized training for human resource development;
- Advice on IP policy/legal reforms and assistance in preparing draft laws;
- Support for modernizing IPR administration (including automation) and collective management systems; and
- International patent co-operation and information services (including search and examination) to facilitate IPR administration and promote local innovation and creativity.<sup>787</sup>

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<sup>784</sup> *Intellectual Property: Enforcement Survey: China*, European Commission, October 2006, at 9, available at [http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc\\_130388.pdf](http://trade.ec.europa.eu/doclib/docs/2006/october/tradoc_130388.pdf).

<sup>785</sup> TRIPS Agreement, *supra* note 128, Article 67.

<sup>786</sup> *Id.*

<sup>787</sup> Tom Pengelly, *Technical Assistance for the Formulation and Implementation of Intellectual Property Policy in Developing Countries and Transition Economies*, International Centre for Trade and Sustainable Development, Issue Paper 11(2005).

Pursuant to Article 67, WTO Member states have provided China with various forms of technical assistance in efforts to strengthen its IPR regime. The section below highlights those efforts as well as other government programs that promote capacity building with trading partners. In addition to government assistance, various organizations and members of the private sector have also contributed assistance to the development of China's IPR regime.

***1. Government Programs***

***a. United States***

In the 2006 Report to Congress on China's WTO Compliance, USTR gave the following description of the technical assistance in IPR provided by the U.S. to China:

As in prior years, the United States worked with central and local government officials in China in 2006 in a determined and sustained effort to improve China's IPR enforcement, with a particular emphasis on the need for dramatically increased utilization of criminal remedies. A variety of U.S. agencies held regular bilateral discussions with their Chinese counterparts and have conducted numerous technical assistance programs for central and local government officials on TRIPS Agreement rules, enforcement methods and rule of law issues.<sup>788</sup>

Following China's accession to the WTO, the United States increased the amount of technical assistance designed to promote and assist China in fulfilling its WTO commitments. "Since 2001, the U.S. government has conducted well over 50 training programs involving Chinese government officials."<sup>789</sup> In November 2006, Undersecretary of Commerce for Intellectual Property, Jon Dudas, stated that, generally, China has been receptive to U.S.

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<sup>788</sup> 2006 Report to Congress on China's WTO Compliance, *supra* note 57, at 77.

<sup>789</sup> Bush Administration Strategy for Targeting Organized Piracy: Accomplishments and Initiatives, Office of the U.S. IPR Coordinator, June 2006, at 9, available at [http://www.stopfakes.gov/pdf/STOPsheet\\_0606.pdf](http://www.stopfakes.gov/pdf/STOPsheet_0606.pdf) [hereinafter "STOP Accomplishments and Initiatives"].

proposals for increased capacity building for IPR enforcement and that Chinese officials continue to seek advice from the U.S. on how to improve its IPR situation.<sup>790</sup> The U.S. has provided additional U.S. IPR officers who are stationed in China.<sup>791</sup>

Additionally, the U.S. has coordinated with other governments to provide China with needed technical assistance. At the bilateral level, the U.S. has been working more closely with the European Union, allowing for increased coordination and information-sharing on many IPR issues in China, and at the regional level with members of the Asia-Pacific Economic Cooperation Forum (APEC).

Similarly, in 2005, the Justice Department held bilateral discussions with China on criminal IP enforcement and hopes to establish a “bilateral law enforcement experts group to improve operational cooperation and coordination in joint and cross-border investigations.”<sup>792</sup>

The United States Patent and Trademark Office (USPTO) is responsible for coordinating U.S. efforts to reduce IP theft from American IPR holders. Accordingly,:

The USPTO provides a variety of IP enforcement training and technical assistance activities. The programs are designed to foster respect for IP, encourage governmental and right holders’ efforts to combat infringement, and promote best practices in the enforcement of IPR. Our technical assistance and capacity building initiatives grew out of a desire to promote IP protection and assist developing countries in meeting their obligations under

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<sup>790</sup> *Dudas Says China Cooperative on IPR, But Results Still Lacking*, Inside US-China Trade, November 29, 2006.

<sup>791</sup> *Id.*

<sup>792</sup> *STOP Accomplishments and Initiatives*, *supra* note 789, at 5.

the WTO's Trade-Related Aspects of Intellectual Property Rights  
(TRIPS) Agreement.<sup>793</sup>

Under the American Inventors Protectors Act of 1999, USPTO's duties include advising the President, through the Secretary of Commerce, and all Federal agencies, on national and international IP policy issues, including IP protection in other countries. USPTO is authorized to provide guidance, conduct programs and studies, and otherwise interact with foreign IP offices and international intergovernmental organizations on IPR issues.<sup>794</sup> The USPTO's Offices of International Relations and Enforcement are authorized by Congress to:

- Work with Congress to implement international IP treaties;
- Provide technical assistance to foreign governments that are looking to develop or improve their IP laws and systems;
- Train foreign IP officials on IP enforcement;
- Advise the Department of State and the Office of the U.S. Trade Representative (USTR) on drafting/reviewing of IP sections in bilateral investment treaties and trade agreements;
- Advise USTR on intellectual property issues in the World Trade Organization (WTO); and
- Work with USTR and industry on the annual review of IP protection and enforcement under the Special 301 provisions of the Trade Act of 1974.<sup>795</sup>

The Department of State chairs the Intellectual Property Rights Training Coordination Group, which is comprised of U.S. agencies and members of the private sector.<sup>796</sup> The goal of

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<sup>793</sup> Statement of Stephen M Pinko, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office Before the Committee on the Judiciary Subcommittee on Intellectual Property, United States Senate, May 25, 2005.

<sup>794</sup> *Id.*

<sup>795</sup> *Id.*

<sup>796</sup> Members include: U.S. Department of State; U.S. Department of Commerce, International Trade Administration, Commercial Law Development; U.S. Department of Justice, Office of Overseas Prosecutorial Development Assistance & Training Criminal Division, Computer Crime and Intellectual Property Section Criminal Division; U.S. Department of Homeland Security, Bureau of Customs & Border Protection; Federal Bureau of Investigation; U.S. Agency for International Development; Office of the U.S. Trade Representative; U.S. Patent and Trademark Office; Copyright Office of the Library of Congress; Coalition for Intellectual

the group is to prioritize program proposals and to ensure that training and assistance projects respond to the needs of foreign officials and policy makers from developing and least-developed countries of the WTO. In order to coordinate their efforts, share information, and plan IPR training, training providers from the private and public sector maintain the Intellectual Property Rights Training Program Database. The database is maintained by U.S. Government agencies and industry associations that provide technical assistance related to the protection of IPR. Table 2 in Appendix 10 gives descriptions of the reported projects provided to China in 2006.

As a member of the IPR Training Coordination Group, interagency efforts by the U.S. Justice Department (DOJ) are also included on the IPR Training Program Database. An additional program coordinated by the Justice Department is the deployment of an IP law enforcement coordinator to Asia. Based in Thailand, the IP law enforcement coordinator works with “prosecutors in the Department’s Computer Crime and Intellectual Property Section and Office of International Affairs to oversee IP law enforcement training and assist U.S.-based enforcement efforts in the region.”<sup>797</sup> DOJ continues to provide trainers and technical assistance to prosecutors, investigators, judges and IP experts.<sup>798</sup> For instance, in September 2005, Commerce Secretary Gutierrez unveiled the expanded Global Intellectual Property Rights Academy, a program for foreign judges and enforcement officials that is administered by the

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Property Rights (CIPR); Interactive Digital Software Association (IDSA); International Anti-Counterfeiting Coalition (IACC); International Intellectual Property Alliance (IIPA); International Intellectual Property Institute (IIPI); Pharmaceutical Research & Manufacturers of America (PhRMA).

<sup>797</sup> *STOP Accomplishments and Initiatives*, *supra* note 789, at 5.

<sup>798</sup> *Id.*

USPTO.<sup>799</sup> The Academy offers courses in general IPR issues, as well as courses focused on a variety of specialized IPR topics.<sup>800</sup>

According to a recent report, the U.S. government is planning an expansion of the IP attaché program.<sup>801</sup> This program supports IP experts at American embassies to “work with local government officials to improve IP laws and enforcement procedures.”<sup>802</sup> Similarly, embassy personnel will be trained so that they are the first responders to IPR issues and are able to “identify problems abroad and assist rights holders before fakes enter the market and the supply chain.”<sup>803</sup>

Another method used by the U.S. government to help combat the increase in IPR violations is the use of technical assistance programs for U.S. businesses based in China and domestic businesses with IPR exposure in China. For example, in November 2005, Secretary Gutierrez announced the China Intellectual Property Rights Advisory Program. This program is coordinated by the Department of Commerce in cooperation with the American Bar Association, the National Association of Manufacturers, and the American Chamber of Commerce in China, to provide free legal consultations on IPR matters to small- and medium-sized U.S. businesses.<sup>804</sup> According to the American Bar Association, the International IPR Advisory Program seeks to:<sup>805</sup>

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<sup>799</sup> *Commerce Secretary Carlos Gutierrez Unveils Initiatives to Fight Intellectual Property Theft*, U.S. Department of Commerce Press Release, September 21, 2005, available at [http://www.commerce.gov/opa/press/Secretary\\_Gutierrez/2005\\_Releases/September/09-21-05%20IPR%20initiatives.htm](http://www.commerce.gov/opa/press/Secretary_Gutierrez/2005_Releases/September/09-21-05%20IPR%20initiatives.htm).

<sup>800</sup> In 2006, 24 sessions were planned in Alexandria, Virginia, with all expenses for foreign officials paid by USPTO.

<sup>801</sup> *STOP Accomplishments and Initiatives*, *supra* note 789, at 2.

<sup>802</sup> *Id.*

<sup>803</sup> *Id.*

<sup>804</sup> *Id.*

<sup>805</sup> The International IPR Advisory Program also has programs for Brazil, Russia, India, Egypt, and Thailand.

- Help American businesses understand the steps they must take to develop an intellectual property protection strategy for the Chinese market;
- Help U.S. companies facing IPR disputes abroad pursue resolution to their problems; and
- Reinforce the message that it is essential for U.S. companies to take action to enforce their IPR in accordance with foreign civil, administrative, and criminal laws and that failing to act can have devastating consequences for future businesses.<sup>806</sup>

Other programs for U.S. businesses include the creation of “IP Toolkits,”<sup>807</sup> a downloadable booklet that guides businesses through securing and enforcing their rights in key markets, including China, and the establishment of a legal hotline to counsel businesses on how to protect IPR, how best to resolve problems, refer matters to a trade compliance officer, monitor the case, and give advice on next steps. A similar program, the IPR Case Referral Mechanism (CRM), facilitates the submission of IPR cases by U.S. companies through China’s Ministry of Commerce (MOFCOM) to the relevant Chinese agencies. The interagency group reviews cases where there are complaints that the Chinese government failed to provide adequate protection to U.S. businesses. After an internal review of the complaint, the CRM will send approved cases to the Chinese government to facilitate a resolution.<sup>808</sup>

In October 2004, the Strategy Targeting Organized Piracy (STOP!) was announced. This is a U.S. government-wide effort to “stop fakes at the U.S. border and, to empower U.S. businesses to secure and enforce their intellectual property rights in overseas markets, to expose

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<sup>806</sup> International IPR Advisory Program, American Bar Association Section of International Law, *available at* <http://www.abanet.org/intlaw/intlproj/iprprogram.html>.

<sup>807</sup> Export.gov, a website managed by the International Trade Administration that brings together resources from across the U.S. Government to assist American businesses in planning their international sales strategies and succeed in today’s global marketplace also has available *Protecting Your Intellectual Property Rights (IPR) in China: A Practical Guide for U.S. Companies*, at [www.mac.doc.gov/China/Docs/BusinessGuides/IntellectualPropertyRights.htm](http://www.mac.doc.gov/China/Docs/BusinessGuides/IntellectualPropertyRights.htm).

<sup>808</sup> *STOP Accomplishments and Initiatives*, *supra* note 789, at 2.

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international counterfeiters and pirates, to keep global supply chains free of infringing goods, to dismantle criminal enterprises that steal U.S. intellectual property and to reach out to like-minded U.S. trading partners in order to build an international coalition to stop counterfeiting and piracy worldwide.”<sup>809</sup> The STOP initiative provides a hotline for U.S. businesses to call to obtain information on how to secure their patents, copyright and trademarks, and to enforce these rights in the U.S. and abroad. Another component of the STOP initiative is the No-Trade-in-Fakes program, a joint program with the Department of Commerce and the private sector to develop a “set of guidelines and a corporate compliance program that participating companies will use to ensure their supply chains and retail networks are free of counterfeit or pirated goods.”<sup>810</sup>

Using U.S. government agencies, international organizations, and the resources and expertise of private industry, the U.S. provides an array of assistance to help developing and transition countries participate fully in the WTO and implement their current and future obligations under trade agreements.<sup>811</sup> The U.S. Agency for International Development (USAID) maintains the Trade Capacity Building (TCB) Database,<sup>812</sup> which “provides some of

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<sup>809</sup> 2006 Report to Congress on China's WTO Compliance, *supra* note 57, at 77-78.

<sup>810</sup> Statement of Stephen M Pinko, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office Before the Committee on the Judiciary Subcommittee on Intellectual Property, United States Senate, May 25, 2005.

<sup>811</sup> Coordination of TCB activities is led by the Office of the U.S. Trade Representative (USTR) and strengthened by the resources and technical expertise of the following agencies: the U.S. Agency for International Development (USAID); the Millennium Challenge Corporation; the U.S. Trade and Development Agency (USTDA); the Department of Agriculture, Energy, Interior, Justice, Labor, State, and Transportation; the Environmental Protection Agency (EPA); U.S. Customs and Border Protection (CBP) of the Department for Homeland Security; the Commercial Law Development Program, International Trade Administration (ITA), U.S. Patent and Trademark Office (PTO), and the National Institute of Standards and Technology of the Department of Commerce; the Food and Drug Administration (FDA); the Federal Trade Commission (FTC); U.S. Export-Import Bank; and the Federal Mediation and Conciliation Service.

<sup>812</sup> The Trade Capacity Building Database is the result of a 2001 U.S. Government survey of its technical assistance programs and activities that promote trade-related capacity building in developing countries and

the most comprehensive data on IP technical assistance programmes” in support of developing and transition economies.<sup>813</sup>

The database gives access to survey data on funding and activity descriptions, which may be sorted according to country or region, agency or funding source, and TCB Category.<sup>814</sup> Among the many TCB categories are specific WTO agreements, including the TRIPS Agreement. Table 1 shows the total TCB funds spent, the sum of TCB monies provided in technical assistance for all WTO Agreements, and monies specifically provided for the TRIPS Agreement. Table 2 shows the same details, but only with respect to funds provided to China.<sup>815</sup> These tables show that, in 2006, of all TCB funds allocated to technical assistance with WTO Agreements, 23 percent of the funds were allocated to TRIPS programs. In terms of China, this number was even greater with one third of the funds dedicated to TRIPS.

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transition economies around the world. The Survey was sent to all major federal government departments and agencies that provide trade capacity building assistance. From this survey and subsequent surveys, the database was generated with the purpose of fostering coordination among private donors, U.S. government providers, and U.S. industry regarding efforts to improve trade capacity projects.

<sup>813</sup> Pengelly, *supra* note 787.

<sup>814</sup> A full listing of all the TCB Categories and their definitions is available at <http://gesdb.usaid.gov/tcb/definition.html>; for the methodology on how the database is compiled and limitations, see <http://gesdb.usaid.gov/tcb/method.html>.

<sup>815</sup> See Table 1 in Appendix 10 for project descriptions and allocation of funds for TRIPS-specific TCB assistance projects provided to China from 2002 to 2006.

<b>Table 1</b>					
<b>Total Trade Capacity Building (TCB) Assistance To All Recipients</b>					
	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Total TCB Funds <sup>1</sup>	637.8	760.1	921.2	1,345.3	1395.9
Total TCB Funds: "All Agreements" <sup>2</sup>	36,325,261	35,088,900	25,012,669	19,858,920	26,447,766
Total TCB Funds: TRIPS Agreement	6,215,359	7,027,824	4,708,533	1,526,357	6,240,808
% Allocated to TRIPS	17%	19%	18%	7%	23%

<sup>1</sup> (US \$ Millions) This includes all TCB Categories – WTO Related Support and other capacity building projects by the U.S. Government.

<sup>2</sup> (This does not include funds spent on "WTO Awareness and Accession")

<b>Table 2</b>					
<b>U.S. Trade Capacity Building (TCB) Assistance to China</b>					
	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
Total TCB Funds to China	2,950,742	1,730,670	5,476,457	2,613,840	3,174,673
Total TCB Funds: All Agreements	64,723	94,200	108,250	54,016	1,200,045
Total TCB Funds: TRIPS Agreement	62,723	--	--	--	400,812
% Allocated to TRIPS	9.6%	--	--	--	33.3%

***b. European Union***

Since the mid 1990's, the EU has provided technical assistance to China to support economic reforms with a "particular focus on training and institutional capacity-building."<sup>816</sup> IPR-related technical assistance programs funded by the European Union are managed and

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<sup>816</sup> *Bilateral Trade Relations: China*, European Commission, available at [http://ec.europa.eu/trade/issues/bilateral/countries/china/index\\_en.htm](http://ec.europa.eu/trade/issues/bilateral/countries/china/index_en.htm) (last updated March 7, 2007).

implemented by the EU Delegation in China under the EU-China Trade Project (EUCTP). Currently, the IP technical assistance programs are “taken in the framework of a global trade assistance program called ‘Support to China’s Integration into the World Trading System.’”<sup>817</sup> The EUCTP programs are in cooperation with various Chinese government entities: Ministry of Commerce (MOFCOM), Ministry of Finance, General Administration of Customs (GAC), State Council, Ministry of Justice (MOJ), National Development and Research Council (NDRC), Ministry of Agriculture (MOA), China Administration Civil Aviation (CACC), State Food and Drug Administration (SFDA), General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), State Intellectual Property Office (SIPO), Trademark Office (TMO), National Copyright Administration of China (NCAC), and Supreme People’s Court (SPP).<sup>818</sup>

Today, EU technical assistance programs dedicated to IPR typically focus on:

- Completing the legal framework to make the IP laws in the countries/regions concerned in line with, at least, the minimum TRIPS requirements;
- Facilitating the implementation of international IP obligations, in particular those resulting from bilateral and multilateral agreements;
- Improving the administration of IPR, including supporting the establishment of reinforcement of the competent domestic offices and agencies and the training of staff;
- Improving the enforcement of IPR, and in particular fighting against infringements thereof;
- Raising awareness in the country/region about the importance of IPR for the economic development.<sup>819</sup>

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<sup>817</sup> *IPR in China*, European Commission, October 2, 2006, available at [http://ec.europa.eu/trade/issues/sectoral/intell\\_property/ipr\\_china\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/intell_property/ipr_china_en.htm).

<sup>818</sup> *Technical Cooperation Activities: Information From Members, European Communities*, IP/C/W/476/Add.5 (13 December 2006) at 3.

<sup>819</sup> *Intellectual Property: Objectives and Content*, European Commission, August 3, 2006, available at [http://ec.europa.eu/trade/issues/sectoral/intell\\_property/pr030806a\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/intell_property/pr030806a_en.htm).

The EU expects to adopt a new program in 2007, IP II, which will primarily be devoted to IPR enforcement.

Among the recent IP activities implemented under the EUCTP was the Comparative Study on the EU and Chinese Legislation Protecting Intellectual Property Rights and its Enforcement.<sup>820</sup> This study was done by EU and Chinese experts under the framework of the EU Trade Related Technical Assistance to China.<sup>821</sup> The comparative study of EU and Chinese law was done so that the EU and China could gain a better “understanding of the specific conditions under which their respective laws and regulations are implemented.”<sup>822</sup> The parties intended for the study to be used as a base for further discussions and negotiations on the perceived limitations of China’s IPR enforcement system, and for Chinese consideration of amendments to the “fundamental laws and regulations” concerning that system.<sup>823</sup>

In November of 2006 Peter Mandelson, the EU Trade Commissioner, participated in the signing of a joint memorandum between the European Chamber of Commerce in China and the Chinese Ministry of Commerce (MOFCOM) in which the European Commission agreed to provide technical assistance to the 50 Intellectual Property Complaint Centers established earlier in the year by the Chinese government.<sup>824</sup> As mentioned earlier, these Complaint Centers are to offer practical assistance for companies in identifying and addressing cases of intellectual property theft.

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<sup>820</sup> Study is available at [http://www.euchinawto.org/en/view\\_cmpt03.asp?iID=101](http://www.euchinawto.org/en/view_cmpt03.asp?iID=101).

<sup>821</sup> Table 3 in Appendix 10 contains a full listing of EU technical assistance programs dedicated to IPR and China.

<sup>822</sup> *The Legislation Protecting Intellectual Property Rights and its Enforcement in the European Union and the People's Republic of China: A Comparative Study*, EU-China Trade Project, December 2005.

<sup>823</sup> *Id.*

<sup>824</sup> *Mandelson Visits Chinese State Intellectual Property Office: urges tougher Chinese action on counterfeiting, technology transfers, payment of royalties*, European Commission, November 8, 2006, available at [http://ec.europa.eu/trade/issues/sectoral/intell\\_property/pr081106\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/intell_property/pr081106_en.htm).

Similar to the U.S., the EU has also produced a “Guidebook on Enforcement of Intellectual Property Rights.”<sup>825</sup> However, in addition to raising awareness of “the impacts and the risks of piracy, counterfeiting and other violations of intellectual property rights,” the Guidebook should “inform Community right holders doing business in problematic countries about the risks incurred and assist them in their reaction against infringement of their rights” and is “intended to assist the least developed countries’ public authorities in their efforts to comply with their obligations under Part II of the TRIPS Agreement to put into place systems and procedures for the effective enforcement of intellectual property rights.”<sup>826</sup>

At the 2005 EU-US Summit, leaders issued a statement that they were “committed to effectively combating piracy and counterfeiting at home and abroad” and composed a working group of officials representing lead agencies and services from both administrations to “identify the areas and modalities for joint action.”<sup>827</sup> At the following EU-US Summit in Vienna in June 2006, the leaders of the European Union and the United States issued the EU-US Action Strategy for the Enforcement of Intellectual Property Rights. The governments decided to:

- Strengthen IPR enforcement internationally through coordinated and/or complementary technical assistance cooperation and capacity building programmes, including addressing the issue of public awareness;
- Share information with each other and with industry on training opportunities and programmes;

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<sup>825</sup> Michael Blakeney, *Guidebook on Enforcement of Intellectual Property Rights*, Queen Mary Intellectual Property Research Institute, available at [http://trade.ec.europa.eu/doclib/docs/2005/april/tradoc\\_122641.pdf](http://trade.ec.europa.eu/doclib/docs/2005/april/tradoc_122641.pdf).

<sup>826</sup> *Intellectual Property Enforcement Guidebook*, European Commission, April 18, 2005, available at [http://ec.europa.eu/trade/issues/sectoral/intell\\_property/guidebook.htm](http://ec.europa.eu/trade/issues/sectoral/intell_property/guidebook.htm).

<sup>827</sup> See *United States and European Union Launch Action Strategy for the Enforcement of Intellectual Property Rights*, U.S. Secretary of Commerce Carlos Gutierrez, press release, June 20, 2006, available at [http://www.commerce.gov/opa/press/Secretary\\_Gutierrez/2006\\_Releases/June/20\\_US-EU\\_IPR\\_Strategy\\_rls.htm](http://www.commerce.gov/opa/press/Secretary_Gutierrez/2006_Releases/June/20_US-EU_IPR_Strategy_rls.htm).

- Launch joint activity in capacity building programs in select key countries; and
- Identify ways to increase private sector participation and support.<sup>828</sup>

*c. Japan*

There are many Japanese organizations and agencies providing technical assistance to China, including: Japan International Cooperation Agency; Japan External Trade Organization; Customs Intellectual Property Information Center; The Association for Overseas Technical Scholarship; The Ministry of Foreign Affairs of Japan; Ministry of Economy, Trade and Industry of Japan; Ministry of Economy, Trade and Industry of Japan; and the Ministry of Finance Japan. The agencies provide programs for the Chinese government and the private sector.<sup>829</sup> Additionally, the Japanese Patent Office (JPO) cooperates with SIPO on human resources development programs.<sup>830</sup>

Representatives from JPO meet with representatives of SIPO once a year to provide SIPO with information about Japan's IP strategies and measures and to discuss how examination processes are conducted. JPO also helps develop human resources by accepting trainees.<sup>831</sup> Additionally, the JPO works with the Korean and Chinese governments to coordinate meetings among their patent offices.<sup>832</sup> This is commonly known as the Trilateral Policy Dialogue. The meetings are used to exchange information about common issues, as well as global issues, in

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<sup>828</sup> *Intellectual Property: Links to Other Key Providers of IPR Technical Assistance*, European Commission, August 3, 2006, available at [http://ec.europa.eu/trade/issues/sectoral/intell\\_property/pr030806c\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/intell_property/pr030806c_en.htm).

<sup>829</sup> A full listing of programs from Japanese agencies and ministries for the past five years is provided on Table 4 in Annex 10.

<sup>830</sup> *International IP-related Activities in the Asia-Pacific Region*, Japanese Patent Office, available at [http://www.jpo.go.jp/torikumi\\_e/kokusai\\_e/asia\\_ip\\_e/apip\\_4e.htm](http://www.jpo.go.jp/torikumi_e/kokusai_e/asia_ip_e/apip_4e.htm).

<sup>831</sup> *Id.*

<sup>832</sup> *Id.*

intellectual property, and for the development of assistance programs for the ASEAN nations.<sup>833</sup>

In 2005, JPO held an enforcement seminar in China, aimed at “developing human resources engaged in IPR enforcement and supporting relevant enlightenment and dissemination of IPR systems in China.”<sup>834</sup>

*d. Australia*

Australia fulfils its Article 67 technical cooperation commitments at the bilateral, regional, and multilateral levels by focusing on developing countries located primarily in the Asia-Pacific region. At the regional level, Australia works closely with the APEC Secretariat and the Asia-Pacific Economic Cooperation Intellectual Property Rights Expert’s Group (APEC-IPEG).<sup>835</sup> Australian Government agencies that are chiefly involved in IPR are IP Australia, the Australian Agency for International Development (AusAID), the Department of Foreign Affairs and Trade (DFAT), and the Attorney-General’s Department (AGD).

Recent bilateral Activities with China on enforcement have included: visits from the Commissioner of SIPO for the exchange of IP-related information; a visit of Chinese IP experts from both the national and provincial IP offices to discuss IP administration and enforcement issues; and a visit from officials of the Office of the National Working Party on IPR Protection, where several Australian agencies provided information on, and answered questions about IP protection and enforcement in Australia.<sup>836</sup>

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<sup>833</sup> *Id.*

<sup>834</sup> *Technical Cooperation Activities: Information From Members, Japan, IP/C/W/476/Add.1* (3 October 2006) at 4.

<sup>835</sup> *Technical Cooperation Activities: Information from Members, Australia, IP/C/W/455/Add.1* (7 October 2005) at 1.

<sup>836</sup> *Id.*

*e. Canada*

Canada has a number of technical cooperation activities at the bilateral, regional, and multilateral levels, with bilateral efforts mainly focused on the Latin American, Caribbean and Asia-Pacific regions.<sup>837</sup> Regional activities are generally undertaken in the context of (APEC-IPEG), with multilateral activities in close collaboration with the World Intellectual Property Organization (WIPO).<sup>838</sup> Canadian activities are primarily administered by the Canadian Intellectual Property Office (CIPO), the Canadian International Development Agency (CIDA), Health Canada (HC) and the Royal Canadian Mounted Police (RCMP), with institutional help from the Center of Trade Policy and Law (CTPL), the McGill University Faculty of Law and the Institute of Comparative Law, and the Quaker International Affairs Programme.<sup>839</sup>

With respect to bilateral activities, CIPO, in partnership with WIPO, offers to developing country Members a one-week Executive Workshop on Application of Management Techniques in the Delivery of Intellectual Property Services. In 2005, China participated in this course. The course is targeted to senior-level officials and has the following objectives:

1. to enhance knowledge and skills in the area of management techniques in the delivery of intellectual property services, with a view to improving the capacity of intellectual property officials;
2. to provide participants with firsthand experience of the nature and scope of Canada's IP expertise, products and services; and
3. to provide a forum for the exchange of ideas and experiences with officials from the other IP offices.<sup>840</sup>

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<sup>837</sup> *Technical Cooperation Activities: Information from Members, Canada, IP/C/W/476/Add.7* 10 November 2006) at 1.

<sup>838</sup> *Id.*

<sup>839</sup> *Id.*

<sup>840</sup> *Id.* at 1-2.

**2. *Activities by International and Regional Institutions to Improve IPR Enforcement***

**a. *World Trade Organization***

Generally, the technical assistance supported by the WTO is delegated to the World Intellectual Property Organization (WIPO) under the WTO-WIPO Co-operation Agreement. Most of what the WTO does in terms of assistance is to explain the rights and obligations under the TRIPS Agreement to Member countries and observers. The Secretariat will also provide advice to Members and observers regarding specific technical questions about the TRIPS Agreement. Additionally, as explained above, under the TRIPS Agreement, developed WTO Member countries have an obligation, upon request, to provide technical assistance to least-developed and developing countries. According to annual submissions to the WTO TRIPS Council, developed countries such as the European Union and its member states, the United States, Japan, Australia, Canada, New Zealand, Norway, and Switzerland provide such assistance.

**b. *World Intellectual Property Organization (“WIPO”)***

WIPO is a specialized United Nations agency responsible for intellectual property protection and promotion, and for creating a balanced international IP system that rewards creativity while helping protect public interests. According to the agreement between WIPO and the WTO, which entered into force on January 1, 1996, WIPO will provide TRIPS-related legal technical assistance specifically focused on the implementation of the TRIPS Agreement in response to requests received by developing countries and least-developed countries.<sup>841</sup>

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<sup>841</sup> *Technical Cooperation Activities: Information From Other Intergovernmental Organizations: World Intellectual Property Organization (WIPO)*, IP/C/W/478/Add.3 (18 October 2006) at para. 4.

WIPO's overall objective is to promote effective protection and use of IPRs among member states. WIPO's philosophy for its technical assistance program is that every recipient should be encouraged to develop an IP culture appropriate to that country's needs.<sup>842</sup> This should include a national IP strategy, the most suitable national infrastructure, and the development of a nation-wide perception of IP as a powerful tool for economic, social, and cultural development.<sup>843</sup> WIPO has the largest amount of funds at its disposal for assistance programs dedicated to developing and transition economies.<sup>844</sup>

WIPO's primary areas of technical assistance are in: legislative advice (providing expertise and financial assistance for developing national and regional IP institutions); human resource development and training; institutional development and automation; and enforcement.<sup>845</sup> WIPO consults with member states to individually tailor each program with the intention that these programs achieve sustainable results.<sup>846</sup> As more developing countries complete necessary legal reforms required in implementing the TRIPS Agreement, other international IP treaties, and bilateral and multilateral agreements, enforcement is likely to play a more important role within WIPO's technical cooperation programs.<sup>847</sup>

In the current Medium-Term Plan for WIPO Program Activities, WIPO states that the main objective of the plan is to further the maintenance and development of respect for

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<sup>842</sup> Pengelly, *supra* note 787, at 20.

<sup>843</sup> *Id.*

<sup>844</sup> *Id.* at 21.

<sup>845</sup> *Id.*

<sup>846</sup> *Id.*

<sup>847</sup> *Id.* at 18.

intellectual property throughout the world.<sup>848</sup> This means that any erosion of the existing protection should be prevented, and as protection increases “enforcement, should be simpler, cheaper, and more secure.”<sup>849</sup> “WIPO seeks to continually enhance its role as the leading international organization, and the UN specialized agency, responsible for initiatives in respect of effective international cooperation in the area of IP.”<sup>850</sup>

By request of the Council for TRIPS, WIPO, along with other intergovernmental organizations that are observers to the Council, provides information on its technical and financial contributions to technical assistance programs related to the implementation of the TRIPS Agreement.<sup>851</sup> According to WIPO’s submission to the WTO in October 2006, technical assistance provided to China included legislative advice exclusively on copyright and related rights to prepare new or update existing laws for compliance with current international standards.<sup>852</sup> Additionally, WIPO organized a regional conference in China on “Certain Topical Issues in Regard to Intellectual Property for Asian Countries.”<sup>853</sup>

***c. Asian-Pacific Economic Cooperation Forum (“APEC”)***

APEC is an intergovernmental group of 21 member countries in the Asia-Pacific region.

<sup>854</sup> Using non-binding commitments, APEC helps promote and facilitate economic growth,

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<sup>848</sup> *Medium-Term Plan for WIPO Program activities – Vision and Strategic Direction of WIPO*, World Intellectual Property Organization (WIPO), available at <http://wipo.int/about-wipo/en/dgo/pub487.htm> (this Medium Term Plan for WIPO highlights the four year period from 2006-2009).

<sup>849</sup> *Id.*

<sup>850</sup> *Id.*

<sup>851</sup> *Technical Cooperation Activities: Information From Other Intergovernmental Organizations: World Intellectual Property Organization (WIPO)*, IP/C/W/478/Add.3 (18 October 2006) at para. 1.

<sup>852</sup> *Id.* at para. 12.

<sup>853</sup> *Id.* at para. 66.

<sup>854</sup> APEC’s 21 members include: Australia; Brunei Darussalam; Canada; Chile; People’s Republic of China; Hong Kong, China; Indonesia; Japan; Republic of Korea; Malaysia; Mexico; New Zealand; Papua New Guinea;

cooperation, and trade and investment in the region. For the past several years, APEC conferences have increasingly addressed IP rights and the need for strong IPR protection and enforcement. The APEC Sub-Committee on Customs Procedures (SCCP) reports to the APEC Committee on Trade and Investment (CTI). SCCP is responsible for enforcement matters, and to help educate APEC members of other members' enforcement strategies, SCCP recently released to the CTI the Intellectual Property Rights Enforcement Strategies Report.<sup>855</sup> This Report, compiled by Australia and intended as a reference tool for customs administrations and businesses in the APEC region, is an inventory of IPR enforcement activities of all APEC members.<sup>856</sup>

During the 2006 APEC meeting in Ha Noi, Vietnam, APEC members reaffirmed the commitments made in Santiago in 2004. In Santiago, Chile members recognized the importance of improved protection and enforcement of IPR and agreed on the need to build on APEC's Comprehensive Strategy on Intellectual Property Rights and help "reduce piracy, trade in counterfeit goods and online piracy, and increase cooperation and capacity building."<sup>857</sup> Among APEC's capacity building measures outlined in the 2006 Ha Noi Action Plan<sup>858</sup> are measures

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Peru; The Republic of the Philippines; The Russian Federation; Singapore; Chinese Taipei; Thailand; United States of America; Viet Nam.

<sup>855</sup> Intellectual Property Rights (IPR) Enforcement Strategies, Sub-Committee on Customs Procedures, Asia-Pacific Economic Cooperation, September 2006, available at [http://www.apec.org/apec/apec\\_groups/committees/committee\\_on\\_trade/subcommittee\\_on\\_customs.MedialibDownload.v1.html?url=/etc/medialib/apec\\_media\\_library/downloads/committees/cti/pubs/2006.Par.0012.File.v1.1](http://www.apec.org/apec/apec_groups/committees/committee_on_trade/subcommittee_on_customs.MedialibDownload.v1.html?url=/etc/medialib/apec_media_library/downloads/committees/cti/pubs/2006.Par.0012.File.v1.1).

<sup>856</sup> *Id.*

<sup>857</sup> *Id.*

<sup>858</sup> The Ha Noi action plan gives specific action to the Bogor Goals, which were agreed to in 1994, and to the Busan Roadmap, a 2005 agreement that highlights important areas where it is believed that APEC needs to accelerate progress. See Table 5 in Appendix 10 for specific program descriptions under the Action Plan.

that address counterfeit medicines, customs enforcement, public awareness, and securing supply chains against counterfeit and pirated goods.<sup>859</sup>

With respect to IPR, the key deliverables outlined in the Ha Noi Action Plan were:

- “Complete additional Model Guidelines on Effective IPR Public Awareness Campaign and Model Guidelines on Keeping Supply Chains against Counterfeit and Pirated Goods.”
- “Inclusion in Leaders’ Declaration of statement urging government entities not to use illegal software and other content on their computer systems and networks, especially as it pertains to Internet usage.”
- “Complete exchange of information on IPR enforcement points of contact and IPR websites and apply the APEC Effective Practices for Regulations Related to Optical Disc Production.”<sup>860</sup>

To encourage members to strengthen IPR protection and enforcement regimes, in the Joint Statement from Ha Noi, ministers reaffirmed their support for the APEC Anti-Counterfeiting and Piracy Initiative. This Initiative, first proposed in Korea in 2005, suggested work in four areas toward combating counterfeiting and piracy, including: reducing the volume of trade in counterfeit and pirated goods; reducing online piracy; increasing cooperation to stop piracy and counterfeiting; increasing capacity building to strengthen anti-counterfeit and piracy enforcement.<sup>861</sup>

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<sup>859</sup> Joint Statement, The Eighteenth APEC Ministerial Meeting, Ha Noi, Viet Nam, November 15-16, 2006, available at [http://www.apec.org/content/apec/ministerial\\_statements/annual\\_ministerial/2006\\_18th\\_apec\\_ministerial.html](http://www.apec.org/content/apec/ministerial_statements/annual_ministerial/2006_18th_apec_ministerial.html).

<sup>860</sup> *Ha Noi Action Plan to Implement the Busan Roadmap Towards the Bogor Goals (Final)*, APEC, 2006, at Annex, available at [www.mofa.go.jp/policy/economy/apec/2006/action.pdf](http://www.mofa.go.jp/policy/economy/apec/2006/action.pdf).

<sup>861</sup> APEC Anti-Counterfeiting and Piracy Initiative, Meeting of APEC Ministers Responsible for Trade, Jeju, Korea, June 2-3, 2005, available at [http://www.apec.org/apec/ministerial\\_statements/sectoral\\_ministerial/trade/2005\\_trade.html](http://www.apec.org/apec/ministerial_statements/sectoral_ministerial/trade/2005_trade.html).

In 2006, ministers in Ha Noi also endorsed two new sets of guidelines: the Model Guidelines for Effective Public Awareness Campaigns on IPR and the Model Guidelines to Secure Supply Chains against Counterfeit and Pirated Goods.<sup>862</sup> This was in addition to the three previous IPR Model Guidelines endorsed by Ministers in 2005: the Model Guidelines to Reduce Trade in Counterfeit and Pirated Goods, the Model Guidelines to Protect Against Unauthorized Copies, and the Model Guidelines to Prevent the Sale of Counterfeit Goods Over the Internet.<sup>863</sup>

The Leaders' Declaration from Ha Noi not only requests that central government agencies use only legal software and other copyright materials, it asks for members to implement policies to prevent copyright infringement in accordance with relevant international conventions and domestic laws and regulations concerning copyright and related materials.<sup>864</sup> The statement also calls for contractors using government funds and recipients of other government money to purchase only legal software or other legal copyright materials.<sup>865</sup> Finally, the ministers asked that officials explore the possibility of establishing an APEC information exchange mechanism of IPR customs protection.<sup>866</sup>

#### **F. INITIATIVES BY THE PRIVATE SECTOR TO PROTECT INTELLECTUAL PROPERTY IN CHINA**

While businesses wait for China to strengthen its enforcement mechanisms, they have responded by taking their own, sometimes creative, actions to protect their IPR. These actions have come from various business associations or other groups who have made great efforts to

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<sup>862</sup> Joint Statement, The Eighteenth APEC Ministerial Meeting, Ha Noi, Viet Nam, (November 15-16, 2006), available at [http://www.apec.org/content/apec/ministerial\\_statements/annual\\_ministerial/2006\\_18th\\_apec\\_ministerial.html](http://www.apec.org/content/apec/ministerial_statements/annual_ministerial/2006_18th_apec_ministerial.html).

<sup>863</sup> *Id.* at 8.

<sup>864</sup> *Id.*

<sup>865</sup> *Id.* at 9.

<sup>866</sup> *Id.*

educate people about IPR, to work cooperatively with national and local law enforcement officials, and to push legislative changes at the national and local levels. The groups have also served as a forum for businesses to share protection initiatives and their experiences with other members. In addition to these groups, individual companies have been successful in implementing creative ideas to protect their intellectual property.

Recently, Warner Bros. Distributors set out to beat copyright infringers in China by releasing the DVD version of Superman Returns a full two months before the movie was released in the U.S.<sup>867</sup> They also sold the DVD at prices just above the price of a pirated copy in order to remain competitive.<sup>868</sup> Another film company, Twentieth Century Fox, has announced a similar idea.<sup>869</sup>

Companies have also taken effective ideas and shared them with governments and law enforcement officials. For example, Pfizer, the pharmaceuticals producer, has been organizing roundtable discussions with Chinese ministries, including the State Administration for Industry and Commerce, State Food and Drug Administration, Ministry of Public Security, and Customs to find workable solutions to counteract the production of fake pharmaceuticals in China.<sup>870</sup>

A creative mechanism shared by large organizations, trade groups, and individual companies is the use of company websites as a place for the public to report infringing goods. The World Health Organization (WHO), Business Software Alliance (BSA), and GM

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<sup>867</sup> Justin Chan, *Out-Pirating the Pirates*, Insight, December 2006, available at <https://www.amcham-china.org.cn/amcham/upload/wysiwyg/OutpiratingThePirates.pdf>.

<sup>868</sup> *Id.* at 22.

<sup>869</sup> *Id.*

<sup>870</sup> Schwartz and Wong, *supra* note 94, at 30.

Goodwrench are examples of entities that have adopted this practice. According to the Business Action to Stop Counterfeiting and Piracy (BASCAP), BSA takes an additional step by offering a \$200,000 reward for information on counterfeiting, while the Software and Information Industries Association (SIIA) offers up to a million dollars. Other associations, such as the Motor & Equipment Manufacturers Association (MEMA), the Motion Picture Association of America (MPAA), and the Recording Industry Association of America (RIAA), also offer rewards.<sup>871</sup> Such actions allow private companies to monitor the flow of infringing goods, better understand where leaks are in their supply chain, assess what actions they can take to stop infringing goods, and assist law enforcement officials to seize infringing goods.

To develop a cohesive policy on intellectual property rights and counteract its theft in the automotive industry, MEMA created the Brand Protection Council, a group that is open to any member of the Automotive Aftermarket Suppliers Association (AASA), Heavy Duty Manufacturers Association (HDMA), or the Original Equipment Suppliers Association (OESA). To specifically address the problem in China and organize a united response from members, MEMA also established a China Aftermarket Forum. Similarly, BASCAP, a group started by the International Chamber of Commerce, “unites the global business community so as to more efficiently identify and address intellectual property rights issues and petition for greater commitments by local, national and international officials in the enforcement and protection of intellectual property rights.”<sup>872</sup> BASCAP unites a range of business sectors in many countries to fight counterfeiting and piracy, with the aim of educating people about the ramifications of IPR

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<sup>871</sup> See Report a Pirated or Counterfeit Item, at [http://www.bascap.com/report\\_counterfeit.html](http://www.bascap.com/report_counterfeit.html).

<sup>872</sup> BASCAP Mission, at [www.iccwbo.org/bascap/id883/index.html](http://www.iccwbo.org/bascap/id883/index.html).

theft, compelling government action, and creating a culture where intellectual property is respected and protected.<sup>873</sup>

In January 2007, the U.S. Chamber of Commerce and the Coalition Against Counterfeiting and Piracy (CACP)<sup>874</sup> released a toolkit containing steps for companies to take to protect supply chains from counterfeiters and piracy.<sup>875</sup> Although recognizing the role of governments to create the necessary legal structure to protect trademarks and copyrights effectively and to enforce those laws, the Chamber states that businesses “must also do their part to prevent the production and sale of counterfeit products.”<sup>876</sup>

The tool kit contains seven case studies as well as best practice guidelines for companies to protect their supply chains. The case studies describe what companies such as Bendix, Ford, Merck, New Balance, Purdue, Torys LLP, and Xerox face, and what these companies are doing to fight the counterfeiting and pirating of their products and to protect their supply chain.<sup>877</sup> Ford is able to strictly monitor supplies coming into its factories, but, in the aftermarket, it has a full-time staff that works undercover to monitor suppliers. Outside of the U.S., Ford hires investigative agencies that use informants to monitor aftermarket activities.

To protect its products, Xerox has set-up a “Toner Phoner,” a hotline for customers to call and report possible illegitimate products.<sup>878</sup> Xerox also cooperates with government and law

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<sup>873</sup> See BASCAP Brochure, at [www.iccwbo.org/bascap](http://www.iccwbo.org/bascap).

<sup>874</sup> The Coalition Against Counterfeiting and Piracy is a business coalition of 225 members, led by the U.S. Chamber of Commerce. The CACP seeks to strengthen U.S. and international efforts in the fight against counterfeiting and piracy. See [www.thecaap.com](http://www.thecaap.com).

<sup>875</sup> *No Trade in Fakes Supply Chain Tool Kit*, *supra* note 176.

<sup>876</sup> *No Trade in Fakes Supply Chain Tool Kit*, *supra* note 176.

<sup>877</sup> *Id.*

<sup>878</sup> *Id.*

enforcement through the Partnership Against Terrorism (C-TPAT), a public-private program focused on strengthening and improving international supply chains and U.S. border security.<sup>879</sup> This allows Xerox to perform inspections, audit shipments, and refine dock security standards.<sup>880</sup> Overseas, Xerox maintains a worldwide intelligence network and database of suppliers, black marketers, and supply routes.<sup>881</sup>

Other organizations are working directly with the Chinese government. The Quality Brands Protection Committee (QBPC) is a public-private organization comprised of 140 multinational companies, including: Nike, Nokia, Philips, Hewlett-Packard, Intel, Johnson & Johnson, and the Sony Corporation.<sup>882</sup> The organization's vision is to "work cooperatively with the Chinese Central and local governments, local industry, and other organizations to make positive contributions to intellectual property protection."<sup>883</sup> QBPC holds awareness seminars for the Chinese public and education seminars for central and local enforcement agencies.<sup>884</sup> Additionally, QBPC participates in legislative reform by taking part in the process at the Supreme People's Court (SPC), Supreme People's Procuratorate (SPP) and other related legislative offices.<sup>885</sup>

Similar to the IP Toolkit booklet put out by the U.S. Commerce Department, the Electronics Industries Alliance (EIA), an alliance of several electronics trade associations, and

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<sup>879</sup> *Id.*

<sup>880</sup> *Id.*

<sup>881</sup> *Id.*

<sup>882</sup> A complete listing of membership is available at <http://www.qbpc.org.cn/>.

<sup>883</sup> *See* Quality Brands Protection Committee Fact Sheet, at <http://www.qbpc.org.cn/en/about/about/factsheet>.

<sup>884</sup> *See id.*

<sup>885</sup> *See id.*

China Alliance, a group of law firms, has recently put out “Protecting Intellectual Property Rights in China: A Best Practices Guide.”<sup>886</sup> EIA states that:

IPR infringement is a fact of life in many overseas markets, but the scale of production and the sheer breadth of the problem make Chinese IPR infringement a unique problem. A number of U.S. businesses, even those with no direct exposure to the Chinese market, are seeing Chinese-produced counterfeits of their products appear for sale in third-country markets or in the U.S.<sup>887</sup>

Accordingly, the booklet includes ten best practices for all companies in the electronics industry.

In the past, the primary purpose of the National Electrical Manufacturers Association (NEMA) was to provide a forum for the standardization of electrical equipment.<sup>888</sup> Today, one of the objectives of that forum is to help protect the intellectual property of NEMA members. NEMA does this by educating and training their members, documenting and publicizing the problem, and engaging in the public policy aspects of the debate. To fulfill these objectives, NEMA advocates improving coordination among state and national government and works with government agencies, customs and law enforcement, manufacturers, and other trade groups to find solutions.

Another way that businesses are being proactive and working with the Chinese government to reduce their exposure to IP theft is to submit comments for proposed changes to China's intellectual property laws. China is currently considering amendments to its patent laws

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<sup>886</sup> See *Protecting Intellectual Property Rights in China A Best Practices Guide*, Electronics Industry Alliance and The China Alliance, available at [http://www.eia.org/new\\_policy/innovation-ipr.phtml](http://www.eia.org/new_policy/innovation-ipr.phtml).

<sup>887</sup> See *id.*

<sup>888</sup> See About NEMA, at <http://www.nema.org/about/>.

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that will take effect sometime after 2007.<sup>889</sup> The U.S. Chamber of Commerce, AmCham-China and AmCham-Shanghai have submitted joint comments to SIPO regarding the draft amendments and providing suggestions on further revisions.<sup>890</sup> The U.S. Chamber took the additional step of hosting a seminar in September 2006 at which, SIPO officials and various U.S. businesses and legal representatives engaged in a dialogue about the draft law.<sup>891</sup> All three associations plan to stay involved, providing comments and working with the Chinese government while the amendments remain under consideration.

A final example of an industry group working with governments to increase enforcement efforts is the U.S. Golf Manufacturers Anti-Counterfeiting Working Group (“Golf Manufacturers Group”).<sup>892</sup> The Golf Manufacturers Group has worked with U.S. Customs and Border Protection to increase U.S. border enforcement by targeting and intercepting infringing goods and helping to prosecute the infringers.<sup>893</sup> In China, the Group has cooperated with Chinese officials by informing local officials of factories, warehouses, and retail outlets containing

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<sup>889</sup> *Patent Law Roundtable with SIPO*, U.S. Chamber of Commerce, available at <http://www.uschamber.com/international/regional/asia/insider>.

<sup>890</sup> See U.S. Chamber of Commerce and American Chamber of Commerce-China and American Chamber of Commerce-Shanghai, Joint Submission Comments on the Draft Third Amendment to the Patent Laws of the People's Republic of China, dated July 31, 2006 (September 12, 2006), available at [http://www.uschamber.com/NR/rdonlyres/efydgkijfgxfppcuxpzltbysgwinoejnjbetwewqjv6qf3vuvvpchnzmx\\_sxna2cqbr2haekf4tqr67gcbudadanqd/0607\\_comments\\_patent\\_law.pdf](http://www.uschamber.com/NR/rdonlyres/efydgkijfgxfppcuxpzltbysgwinoejnjbetwewqjv6qf3vuvvpchnzmx_sxna2cqbr2haekf4tqr67gcbudadanqd/0607_comments_patent_law.pdf); U.S. Chamber of Commerce and American Chamber of Commerce-China and American Chamber of Commerce-Shanghai, Joint Submissions Comments on the Revised Draft (Third) Amendment to the Patent Law of the People's Republic of China (March 12, 2007). For information on how obtain a copy of this latter submission see <http://www.uschamber.com/international/regional/asia/insider>.

<sup>891</sup> *Patent Law Roundtable with SIPO*, *supra* note 889.

<sup>892</sup> The U.S. Golf Manufacturers Anti-Counterfeiting Working Group is comprised of Acushnet Company, Callaway Golf, Cleveland Golf, Nike Golf, PING, and TaylorMade Golf Company.

<sup>893</sup> *CBP Helping U.S. Golfers to Continue Hitting Them Straight*, U.S. Customs and Border Protection Toady, Oct/Nov 2006, available at [http://www.cbp.gov/xp/CustomsToday/2006/october\\_november/us\\_golfers.xml](http://www.cbp.gov/xp/CustomsToday/2006/october_november/us_golfers.xml).

counterfeit golf equipment.<sup>894</sup> In 2005, the Golf Manufacturers Group's help led to a crackdown on golf retailers in Beijing's Silk Market, with 100 government officials descending on the market and shutting down all the infringing golf equipment retail outlets in the market.<sup>895</sup> In 2006, again with the help of the Golf Manufacturers Group, Chinese officials conducted a three-day operation, raiding four factories and warehouses and seizing counterfeit golf equipment valued at \$3 million.<sup>896</sup> Recently these raids have led to criminal convictions carrying prison sentences and fines, with one defendant sentenced to three and a half years and fined RMB 30,000 (\$3,700).<sup>897</sup>

## **V. PROACTIVE U.S. GOVERNMENT ACTION**

The previous sections have laid out the immense scope of global IP theft and explained China's role in the problem and the steps that have been taken by China and its trading partners to address China's portion of the crisis. While the U.S. has a long history of negotiating with Chinese officials and putting pressure on the government in attempts to bring about changes, this final portion of the report looks at additional steps the U.S. either is taking or could take in an effort to create a better environment for American IP rights holders and those who depend on IP products for the products they produce.

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<sup>894</sup> See *Guandong Province, PRC-US Golf Manufacturers Anti-Counterfeiting Working Group Deals Another Blow to Counterfeit Golf Factories*, Cleveland Golf, May 18, 2006, available at [http://www.clevelandgolf.com/index.php?&moid=122&function=display&oid=T007:2wie3kavs4an61gqknibe111&alias=press\\_releases&insidefile=release.html](http://www.clevelandgolf.com/index.php?&moid=122&function=display&oid=T007:2wie3kavs4an61gqknibe111&alias=press_releases&insidefile=release.html).

<sup>895</sup> See *Chinese Crackdown on Counterfeit Golf Products*, The Manufacturer, November 23, 2005, available at [http://www.themanufacturer.com/us/content/3878/Chinese\\_crackdown\\_on\\_counterfeit\\_golf\\_products?PHPSESSID=fd6313a30024b3c0f4ee2409e0f1910f](http://www.themanufacturer.com/us/content/3878/Chinese_crackdown_on_counterfeit_golf_products?PHPSESSID=fd6313a30024b3c0f4ee2409e0f1910f).

<sup>896</sup> See *Guandong Province, PRC-US Golf Manufacturers Anti-Counterfeiting Working Group Deals Another Blow to Counterfeit Golf Factories*, Cleveland Golf, May 18, 2006, available at [http://www.clevelandgolf.com/index.php?&moid=122&function=display&oid=T007:2wie3kavs4an61gqknibe111&alias=press\\_releases&insidefile=release.html](http://www.clevelandgolf.com/index.php?&moid=122&function=display&oid=T007:2wie3kavs4an61gqknibe111&alias=press_releases&insidefile=release.html).

<sup>897</sup> See *Prison Sentences for Counterfeit Golf Equipment Dealers*, TaylorMade-adidas Golf, Press Release, November 16, 2006, available at [http://www.tmag.com/media/pressreleases/2006/111606\\_counter.htm](http://www.tmag.com/media/pressreleases/2006/111606_counter.htm).

First, this section provides an overview of the two requests for consultations filed by the U.S. in April 2007 with China in the World Trade Organization on intellectual property rights and market access impediments facing U.S. IPR holders in certain sectors in China's market. These requests for consultations are the natural progression in the ongoing efforts of the United States to see that China complies fully with its WTO obligations and pertains to matters that the U.S. has pursued for many years to have addressed by the Chinese government.

Next, this section considers whether there are legislative changes the U.S. should enact to its own IP laws to address issues that currently complicate the ability to combat IP theft or that place purchasers of IP goods at an artificial competitive disadvantage against competitors using equipment that if imported into the United States would infringe the patent rights of companies here and that provide a false competitive advantage to the user.

#### **A. WTO REQUESTS FOR CONSULTATIONS**

In the WTO, where a member believes another member is not in compliance with WTO obligations, members will often work informally to seek a rectification of the problem. If a solution cannot be found or the member who is not in compliance is unable to address the matter for internal reasons, the member concerned with the law, regulation, administrative practice or government action can formally request consultations with the other member in the World Trade Organization under the Dispute Settlement Understanding and pursue formal dispute settlement if resolution is not achieved in a relatively short period of time.<sup>898</sup> In early April of 2007, the U.S. filed requests for consultation with China on two matters: (1) perceived deficiencies in

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<sup>898</sup> See Understanding on Rules and Procedures Governing the Settlement of Disputes, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 2.

China's IP laws, and (2) market access barriers to copyright-based industries.<sup>899</sup> In announcing its intention to file the requests, the U.S. acknowledged that China had made IPR protection a priority and that it was actively trying to improve its IPR regime. However, according to USTR, while the two countries "had been able to work cooperatively and pragmatically on a range of IPR issues," they had been unable "to agree on several important changes to China's legal regime that we believe are required by China's WTO commitments."<sup>900</sup>

The first complaint directly relates to China's IPR laws and regulations, focusing on three specific aspects of the current Chinese system. The U.S. has alleged that the minimum quantitative threshold that must be met prior to criminal prosecution for IP infringement provides a safe harbor for counterfeiters and pirates, resulting in significant harm to foreign right holders.<sup>901</sup> While China recently announced its intention to lower these thresholds, the existence of them at all allows for non-criminal IP theft.<sup>902</sup> Additionally, this request for consultation addresses China's regulations regarding disposal of confiscated counterfeit and pirated goods, which allow for such goods to be distributed into the market once the infringing elements (*e.g.*,

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<sup>899</sup> See *China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights*, *supra* note 530; *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, *supra* note 530. Both official requests for consultations are attached as Appendix 12.

<sup>900</sup> *United States Files WTO Cases Against China Over Deficiencies in China's Intellectual Property Rights Laws and Market Access Barriers to Copyright-Based Industries*, USTR Press Release, April 9, 2007, available at [www.ustr.gov/Document\\_Library/Press\\_Releases/2007/April/Section\\_Index.html](http://www.ustr.gov/Document_Library/Press_Releases/2007/April/Section_Index.html).

<sup>901</sup> See *China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights*, *supra* note 530; see also *United States Files WTO Cases Against China Over Deficiencies in China's Intellectual Property Rights Laws and Market Access Barriers to Copyright-Based Industries*, USTR Press Release, April 9, 2007, available at [www.ustr.gov/Document\\_Library/Press\\_Releases/2007/April/Section\\_Index.html](http://www.ustr.gov/Document_Library/Press_Releases/2007/April/Section_Index.html); *WTO Case Challenging Weaknesses in China's Legal Regime for Protection and Enforcement of Copyrights and Trademarks*, United States Trade Representative, April 2007, available at [www.ustr.gov/Document\\_Library/Fact\\_Sheets/2007/Section\\_Index.html](http://www.ustr.gov/Document_Library/Fact_Sheets/2007/Section_Index.html).

<sup>902</sup> See *United States Files WTO Cases Against China Over Deficiencies in China's Intellectual Property Rights Laws and Market Access Barriers to Copyright-Based Industries*, USTR Press Release, April 9, 2007, available at [www.ustr.gov/Document\\_Library/Press\\_Releases/2007/April/Section\\_Index.html](http://www.ustr.gov/Document_Library/Press_Releases/2007/April/Section_Index.html).

fake labels) have been removed. Finally, the U.S. has alleged that China's lack of copyright protection for foreigners awaiting censorship approval violates WTO obligations.<sup>903</sup> The U.S. points out that Chinese works are provided immediate protection but foreigners have no right to complain about infringement during this waiting period.<sup>904</sup>

The second case relates to China's market access restrictions, which are widely viewed as major contributing factors to the country's exceedingly high levels of piracy.<sup>905</sup> As discussed previously in this paper, there are numerous obstacles facing the various copyright industries who wish to distribute their products in China.<sup>906</sup> This request for consultation addresses the fact that U.S. companies must use either state-run or state-authorized organizations to get their products into China, which severely hinders foreigners' market access. Specifically with respect to publications and home entertainment videos, this request also addresses the fact that many of China's market access restrictions create significant delays and/or prohibitions with regard to distribution, which provide the opportunity for pirates to supply illegal copies before the legitimate products are allowed into the market.<sup>907</sup>

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<sup>903</sup> See *China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights*, *supra* note 530.

<sup>904</sup> See *United States Files WTO Cases Against China Over Deficiencies in China's Intellectual Property Rights Laws and Market Access Barriers to Copyright-Based Industries*, USTR Press Release, April 9, 2007, available at [www.ustr.gov/Document\\_Library/Press\\_Releases/2007/April/Section\\_Index.html](http://www.ustr.gov/Document_Library/Press_Releases/2007/April/Section_Index.html).

<sup>905</sup> See *China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, *supra* note 530; see also *United States Files WTO Cases Against China Over Deficiencies in China's Intellectual Property Rights Laws and Market Access Barriers to Copyright-Based Industries*, USTR Press Release, April 9, 2007, available at [www.ustr.gov/Document\\_Library/Press\\_Releases/2007/April/Section\\_Index.html](http://www.ustr.gov/Document_Library/Press_Releases/2007/April/Section_Index.html).

<sup>906</sup> See *supra* Section I.F.1, 3.

<sup>907</sup> See *United States Files WTO Cases Against China Over Deficiencies in China's Intellectual Property Rights Laws and Market Access Barriers to Copyright-Based Industries*, USTR Press Release, April 9, 2007, available at [www.ustr.gov/Document\\_Library/Press\\_Releases/2007/April/Section\\_Index.html](http://www.ustr.gov/Document_Library/Press_Releases/2007/April/Section_Index.html); see also *WTO Case Challenging Market Access Restrictions in China on Products of Copyright-Intensive Industries*, USTR, April 2007, available at [www.ustr.gov/Document\\_Library/Fact\\_Sheets/2007/Section\\_Index.html](http://www.ustr.gov/Document_Library/Fact_Sheets/2007/Section_Index.html).

While China reacted harshly to the requests for consultations filed by the United States, there has been a longstanding concern in the United States about the inability to achieve demonstrable improvements in IPR enforcement through the reduction in rates of piracy and the market access restrictions that contribute to the unbalanced trade relationship. Many requests for consultation result in the achievement of mutually acceptable solutions between the parties through negotiations. However, Chinese officials have responded to the filing of these requests for consultation by saying they will “fight to the end.”<sup>908</sup> They feel that the allegations by the United States ignore all of the improvements China has made in strengthening its IP system.<sup>909</sup> Given these statements by the Chinese government, it is entirely possible that consultations will not result in a mutually acceptable solution and these concerns will move forward to the dispute settlement body for resolution.

As long as the rate of IP theft within China and from Chinese exporters continues at the very high levels identified by trading partners and businesses around the world, there will be continuing pressure on China and continuing assistance to China to reduce drastically the IP theft.

**B. POTENTIAL CHANGES TO U.S. LAWS THAT COULD PROVIDE BETTER PROTECTION FOR INTELLECTUAL PROPERTY RIGHTS HOLDERS AND USERS OF INTELLECTUAL PROPERTY**

Aside from applying external pressure on, and offering technical assistance to, others to bring about change and increase protection of intellectual property rights, policy makers should consider whether there are steps the United States could be taking at home to reduce levels of IP

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<sup>908</sup> Richard McGregorin, *China to Fight US Copyright Complaint*, Financial Times, April 25, 2007 (quoting Wu Yi, a Chinese vice-premier).

<sup>909</sup> *See id.*

theft or mitigate the level of loss that U.S. rights holders are experiencing and the disadvantage businesses buying legitimate products may face in the marketplace for their products. This report explores two such possibilities. First, there is the question of whether a change in law in 1999 coupled with the growing backlog of patent applications and the advent of nearly universal access to the internet has had some significant unintended consequences in terms of facilitating efforts of others to copy patented or patentable innovations and beat the U.S. inventor to market.

Second, while IP rights and their protection have historically focused on the IPR holder, this paper looks at whether rights of action should exist for companies who produce products using manufacturing equipment which has patent(s) and compete with products produced by companies who are buying equipment that is a knockoff of patented machinery, placing the company who has bought legitimate equipment at an artificial competitive disadvantage. Where the purchaser of equipment is acquiring rights to a process patent, there are some rights (either directly or through a contract with the manufacturer) against at least the importer and, in some instances, the foreign manufacturer. But for many situations and for all purchasers of patented products that do not involve a process patent, there are no known rights to address imports of product produced from the knockoff equipment.

### ***1. Patent Reform and the 18 Month Rule***

In 1999, Congress amended a longstanding law that protected the details of a patent application unless and until patent protection was granted. Pursuant to that 1999 amendment, all applications are now made public at 18 months after the date of filing. Given that the current examination pendency period has grown significantly since the passage of the law and now averages 31 months, the reality of this “18 month rule” is that America’s innovation is available

on the internet months before it is provided patent protection. Companies across the globe are then able to “mine” the internet, take these now publicly available ideas and beat the inventor to market while the patent application is still pending in the U.S.

Pat Choate, Director of the Manufacturing Policy Project, examines the unintended consequences of this law in his report entitled *The Global Publication of U.S. Patent Applications and Select Reform Proposals*, attached as Appendix 13. This analysis examines the reasoning behind the 1999 amendment. Mr. Choate also examines pending patent reform proposals and explains why the suggested changes would only further weaken the American patent system. After highlighting the negative implications of selected issues for U.S. inventors, Mr. Choate proposes three recommendations to Congress to help reduce levels of IP theft and strengthen the protection provided by the U.S. patent system.

## **2. *Inadequate Remedies for Domestic Purchasers of Patented Machinery***

This portion of the report examines whether there is a class of producers who may lack adequate protection under current U.S. law with regard to patent infringements, and considers whether modification to the relevant patent law would help alleviate the impact of IP theft on that particular class. Specifically, this section looks at a situation where manufacturing equipment subject to patent in the U.S. is copied in a foreign country (for our purposes in this report, assumed to be China) and is then sold in China to the producers of a product that is exported to the United States. If the manufacturing equipment itself were exported to the U.S., the IPR holder in the U.S. would have various rights of action against the infringing goods.<sup>910</sup> In

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<sup>910</sup> A nonexclusive licensee would also have rights, but only if the patent holder jointly initiated proceedings with the licensee.

certain circumstances, the IPR holder would also be able to address the importation of products produced off of the equipment if the patent involved covered the production process (“process patent”).<sup>911</sup> However, except for certain situations involving a process patent, the user of the patented equipment in the United States (or in Europe or Japan or elsewhere) would have no recourse to the product produced off of the infringing equipment that was imported. This situation essentially means that companies that follow the rules and buy IP-protected production equipment can be driven out of business by the limited reach of U.S. patents and the lack of a tool to neutralize this false advantage. Although this is a potential threat to many domestic industries, it could be a particular threat to capital intensive industries.

There are many industries that can be described as capital intensive, where the manufacturing process is extremely machinery- and technology-dependent. A table included below shows a variety of U.S. manufacturing sectors, based on 2002 Census information, which have high capital intensity ratios compared to all manufacturing. Thus, a wide spectrum of U.S. industries can be seriously disadvantaged if the legitimate equipment they buy and adapt to their own needs are knocked off overseas and sold to foreign competitors at prices dramatically lower than the prices U.S. companies pay to buy legitimate manufacturing equipment.

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<sup>911</sup> See 19 U.S.C. § 1337(a)(1)(B) (prohibiting the importation into the United States, the sale for importation by the owner, importer, or consignee, of articles that infringe a valid U.S. patent or are produced by means of a process covered by a valid U.S. patent). Remedies available at the International Trade Commission (“ITC”) include: (1) Exclusion Order, allowing Customs to stop infringing goods from entering the U.S.; (2) Cease-and-Desist Order, which provides for a civil penalty per day of not more than the greater of 100,000 or twice the domestic value of the articles is imposed in the case of violation; and (3) Forfeiture of the Goods, which allows Customs to seize and destroy the goods in case of repeated infringement. See 19 U.S.C. § 1337(d), (f), (g), (i). Remedies available at the Federal District Court include: a preliminary and/or permanent injunction; damages in the form of a reasonable royalty; punitive damages; an award of interest; costs as fixed by the court; and attorney fees. See 35 U.S.C. §§ 283-285. To initiate proceedings at either the ITC or in Federal District Court, the producer must either have an exclusive license to the patent or the original patent holder must be a party to the action. See 19 C.F.R. § 210.12(a)(7) (requiring every complaint in an intellectual property based claim to include “a showing that at least one complainant is the owner or exclusive licensee of the subject intellectual property”).

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**Capital Expenditures for Selected U.S. Manufacturing Sectors**

NAICS code	Industry	Millions of Dollars				CapEx as a % of		
		Value added	Total cost of materials	Total value of shipments	Total capital expenditures	Total value	Total cost	Value Added
333511	Industrial mold manufacturing	3,780	1,633	5,431	569	10.5	34.8	15.0
334413	Semiconductor and related device manufacturing	44,821	16,546	61,471	4,783	7.8	28.9	10.7
3344	Semiconductor and other electronic component manufacturing	69,275	40,599	110,477	6,396	5.8	15.8	9.2
334414	Electronic capacitor manufacturing	734	839	1,640	125	7.6	14.9	17.0
322121	Paper (except newsprint) mills	24,159	18,203	42,199	2,665	6.3	14.6	11.0
336415	Guided missile and space vehicle propulsion unit and propulsion unit parts manufacturing	1,848	726	2,601	106	4.1	14.6	5.7
32512	Industrial gas manufacturing	3,491	2,409	5,865	348	5.9	14.4	10.0
32212	Paper mills	25,511	19,808	45,164	2,768	6.1	14.0	10.9
334415	Electronic resistor manufacturing	403	220	643	29	4.6	13.3	7.3
325188	All other basic inorganic chemical manufacturing	9,397	6,634	16,084	859	5.3	13.0	9.1
334515	Instrument manufacturing for measuring and testing electricity and electrical signals	6,192	3,754	10,147	471	4.6	12.5	7.6
324199	All other petroleum and coal products manufacturing	640	1,244	1,896	154	8.1	12.4	24.2
333514	Special die and tool, die set, jig, and fixture manufacturing	4,817	2,164	6,983	268	3.8	12.4	5.6
333515	Cutting tool and machine tool accessory manufacturing	3,441	1,622	5,097	198	3.9	12.2	5.7
322291	Sanitary paper product manufacturing	6,025	3,525	9,559	415	4.3	11.8	6.9
3221	Pulp, paper, and paperboard mills	38,112	32,104	70,031	3,775	5.4	11.8	9.9
32518	Other basic inorganic chemical manufacturing	11,205	8,684	19,927	1,017	5.1	11.7	9.1

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NAICS code	Industry	Millions of Dollars				CapEx as a % of		
		Value added	Total cost of materials	Total value of shipments	Total capital expenditures	Total value	Total cost	Value Added
333295	Semiconductor machinery manufacturing	4,566	4,508	9,160	493	5.4	10.9	10.8
325131	Inorganic dye and pigment manufacturing	1,940	1,577	3,522	169	4.8	10.7	8.7
3335	Metalworking machinery manufacturing	16,141	9,083	25,442	906	3.6	10.0	5.6
32211	Pulp mills	1,737	1,924	3,651	189	5.2	9.8	10.9
332991	Ball and roller bearing manufacturing	3,496	2,179	5,709	211	3.7	9.7	6.0
334511	Search, detection, navigation, guidance, aeronautical, and nautical systems and instrument manufacturing	21,211	10,171	32,305	934	2.9	9.2	4.4
32229	Other converted paper product manufacturing	8,354	5,669	14,020	520	3.7	9.2	6.2
336413	Other aircraft parts and auxiliary equipment manufacturing	13,191	7,273	20,779	650	3.1	8.9	4.9
325	Chemical manufacturing	253,609	206,901	460,425	17,846	3.9	8.6	7.0
322213	Setup paperboard box manufacturing	352	287	641	24	3.8	8.4	6.9
334510	Electromedical and electrotherapeutic apparatus manufacturing	9,949	5,600	15,646	465	3.0	8.3	4.7
325193	Ethyl alcohol manufacturing	784	1,517	2,288	125	5.5	8.3	16.0
32513	Synthetic dye and pigment manufacturing	3,351	2,968	6,338	244	3.8	8.2	7.3
325192	Cyclic crude and intermediate manufacturing	1,722	3,109	4,936	252	5.1	8.1	14.7
322	Paper manufacturing	75,780	78,063	153,766	6,260	4.1	8.0	8.3
32213	Paperboard mills	10,864	10,371	21,217	818	3.9	7.9	7.5
325182	Carbon black manufacturing	525	512	1,034	40	3.9	7.8	7.6
334412	Bare printed circuit board manufacturing	3,548	2,872	6,426	224	3.5	7.8	6.3

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NAICS code	Industry	Millions of Dollars				CapEx as a % of		
		Value added	Total cost of materials	Total value of shipments	Total capital expenditures	Total value	Total cost	Value Added
3345	Navigator, measuring, electromedical, and control instruments manufacturing	57,171	34,436	92,843	2,658	2.9	7.7	4.6
32519	Other basic organic chemical manufacturing	20,562	35,901	56,496	2,754	4.9	7.7	13.4
325181	Alkalies and chlorine manufacturing	1,283	1,538	2,809	118	4.2	7.6	9.2
325199	All other basic organic chemical manufacturing	17,522	30,839	48,290	2,347	4.9	7.6	13.4
33329	Other industrial machinery manufacturing	13,609	12,022	25,801	915	3.5	7.6	6.7
3251	Basic chemical manufacturing	45,515	64,125	109,710	4,868	4.4	7.6	10.7
333516	Rolling mill machinery and equipment manufacturing	249	239	498	18	3.5	7.4	7.1
334516	Analytical laboratory instrument manufacturing	5,103	3,278	8,328	238	2.9	7.3	4.7
3332	Industrial machinery manufacturing	15,687	13,938	29,882	1,001	3.4	7.2	6.4
322212	Folding paperboard box manufacturing	3,851	4,420	8,249	317	3.8	7.2	8.2
336412	Aircraft engine and engine parts manufacturing	11,674	11,597	23,539	798	3.4	6.9	6.8
325191	Gum and wood chemical manufacturing	531	436	981	30	3.0	6.8	5.6
3252	Resin, synthetic rubber, and artificial synthetic fibers and filaments manufacturing	22,523	37,926	60,223	2,572	4.3	6.8	11.4
336414	Guided missile and space vehicle manufacturing	6,946	5,580	12,518	364	2.9	6.5	5.2
324121	Asphalt paving mixture and block manufacturing	2,814	4,691	7,475	303	4.1	6.5	10.8
322122	Newsprint mills	1,352	1,605	2,965	103	3.5	6.4	7.6
334513	Instruments and related products manufacturing for measuring, displaying, and controlling industrial process variables	4,294	2,662	7,027	168	2.4	6.3	3.9

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NAICS code	Industry	Millions of Dollars				CapEx as a % of		
		Value added	Total cost of materials	Total value of shipments	Total capital expenditures	Total value	Total cost	Value Added
32412	Asphalt paving, roofing, and saturated materials manufacturing	5,344	8,162	13,424	512	3.8	6.3	9.6
<b>31-33</b>	<b>Manufacturing (All)</b>	<b>1,887,793</b>	<b>2,025,062</b>	<b>3,916,137</b>	<b>125,536</b>	<b>3.2%</b>	<b>6.2%</b>	<b>6.6%</b>

Source: U.S. Bureau of Census, *General Summary: 2002 EC02-31SG-1*, 2002 Economic Census at Table 2 (October 2005).

Most observers would think of semiconductors as a type of industry where there is a very high level of capital intensity. Semiconductors are, in fact, shown on the above table as one of the capital intensive industries compared to all U.S. manufacturing. One of the U.S. manufacturers, Micron Technology, Inc., in their 2006 10-K filing with the SEC provides an excellent explanation of why that is the case in the sector:

### **Manufacturing**

The Company's manufacturing facilities are located in the United States, Italy, Japan, Puerto Rico and Singapore. The Company's manufacturing facilities generally operate 24 hours a day, 7 days per week. Semiconductor manufacturing is extremely capital intensive, requiring large investments in sophisticated facilities and equipment. Most semiconductor equipment must be replaced every three to five years with increasingly advanced equipment.<sup>912</sup>

In the 1980s, the U.S. faced the loss of important parts of the semiconductor industry as dumping of semiconductors from Japan reduced profitability for U.S. producers, leading to a large scale exodus of companies from the reinvestment in the next generation DRAM

<sup>912</sup> Micron Technology, Inc., 2006 United States Securities Exchange Commission Form 10-K, at 4.

semiconductors.<sup>913</sup> So too, if semiconductor manufacturing equipment is copied and sold to local producers in China at prices far below the price of the equipment purchased by U.S. semiconductor companies for their facilities in the U.S., the underpricing capability flowing from the IP theft would just as certainly reduce the ability of U.S. companies to stay in the game by reinvesting the vast sums required to remain competitive. In Micron Technology's case, depreciation and amortization charges in 2006, 2005 and 2004 were higher than \$1.2 billion each year compared to sales of \$4.4 billion to \$5.27 billion, thus amounting to 24.3 percent to 27.6 percent of sales each year. Capital expenditures were at similarly high rates, 21.8 percent to 25.9 percent of sales.<sup>914</sup> China has an aggressive strategy for increasing its share of the global semiconductor volume and, as detailed in a separate TLAG report on high technology subsidy programs in China, is encouraging the development of the equipment industry supplying semiconductor companies as well.<sup>915</sup> Should the equipment companies base their equipment on reverse engineering patented equipment from the U.S., Europe, Japan or elsewhere, U.S. semiconductor companies may find themselves in an untenable situation.

Similarly, on pages 5-6 of this report, an example of a machinery manufacturer in the textile/apparel sector was reviewed for the purpose of showing the potential adverse consequences flowing from IP theft to small and medium sized companies. The example was the Eastman Machine Company in Buffalo, New York, established 115 years ago and a

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<sup>913</sup> See, e.g., *64K Dynamic Random Access Memory Components from Japan*, United States International Trade Commission, Pub. 1862 (June 1986) (Final); *Erasable Programmable Read Only Memories from Japan*, United States International Trade Commission, Pub. 1927 (December 1986) (Final).

<sup>914</sup> See *id.* at 36, 39.

<sup>915</sup> See Terence P. Stewart, Esq., *China's Industrial Subsidies Study: High Technology*, Trade Lawyers Advisory Group, 2007, at 55-57.

manufacturer of cloth-cutting machines.<sup>916</sup> While the Chairman of the company testified about the disastrous effects to his company over the last seventeen years (it had to cut its work force by two-thirds because it is being pushed out of the market by counterfeit products) as knockoffs of his equipment (apparently reverse engineered and copied down to the model number) are produced and sold in huge quantities in China each year (more than 100,000 “Eastman-clones” per year), the story did not deal with the devastating effect on Eastman’s customers who are forced to compete with product produced with the Eastman-clones. Eastman had no recourse against the machines sold in China, although it would have had a remedy for machines imported into the United States. It is assumed that the patented products did not involve a process patent. Hence, neither Eastman nor its customers had any remedy against the imported apparel or other textile products made off of the cloth cutting machines. China is, of course, a dominant global exporter of many textile and apparel products. While there are no statistics on the extent of the knocking off of equipment in the textile and apparel sector in China, anecdotal stories like that of the Eastman Machine Company suggest the problem is not isolated, but rather is likely very large and found across an array of manufacturing sectors.

There are no studies on this topic that have developed reliable statistics as to the full extent of the problems of reverse engineering and knocking off Western equipment. A contributing factor to this lack of data is that companies are reluctant to discuss the situation because of the export potential of China and other countries where IPR theft may be a significant threat. Nonetheless, the focus within China on developing their own equipment suppliers, the broad array of pirated products found within China and of Chinese origin around the world, and

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<sup>916</sup> *Statement of Robert Stevenson, Chief Executive Officer, Eastman Machine Company, Buffalo, NY, Testimony Before the House Ways and Means Committee, April 14, 2005.*

examples of pirated equipment that have been brought forward by selected companies like the Eastman Machine Company, suggest that the issue should be examined by policy makers and remedies provided for all stakeholders, not just the IP holder.

*a. Possible Studies and Legislative Options*

Because the problem is potentially enormous, policy makers should want to have studies undertaken by government entities and obtain the confidential cooperation of the private sector to determine the metes and bounds of the issue. Possibly, the U.S. International Trade Commission could conduct a 332 investigation, with independent fact gathering by all Administration agencies with a role in China and other countries with serious IP theft problems.

Similarly, the Administration, on its own or with the encouragement of Congress, could have information solicited in the context of the annual special 301 process, perhaps developing a listing of countries where the type of problem identified above is viewed by equipment manufacturers and customers of such manufacturers as being of particular concern. The information would permit the Administration to examine options for cooperative efforts to eliminate the problem or concerted activity from other major trading nations with similar concerns.

With regard to legislation, Congress should look at adding remedies that will give purchasers of patented machinery protection from products produced on knockoff equipment. Providing a cause of action for such purchasers against imported product believed to be produced with such knockoff equipment (and any domestic product so produced) should be reasonably straightforward, as would be an amendment to section 337 of the Tariff Act of 1930 to make imported goods made from such equipment subject to a cease and desist order. The bigger issue

may be the burden on the complaining party and how proceedings would move forward both to ensure an effective remedy and to minimize damage to legitimate trade.

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<b>10.</b>	<b>Foreign Technical Assistance Provided to China</b> <ul style="list-style-type: none"> <li>- Table 1: Project Allocation of U.S. Government Trade Capacity Building (TCB) Assistance for TRIPS in China</li> <li>- Table 2: Intellectual Property Rights Training Program Database: Technical Assistance Projects Provided to China in 2006</li> <li>- Table 3: European Union: Intellectual Property Technical Assistance Provided to China in 2004-2006</li> <li>- Table 4: Japan: Intellectual Property Technical Assistance Provided to China</li> <li>- Table 5: Ha Noi Action Plan Digital Economy and IPR Schedule of Activities</li> </ul>
<b>11.</b>	<b>Mr. Jiuhan Zhang, Vice Governor of Jiangsu Province, speech at the Global Forum on Intellectual Property Rights Protection and Innovation, March 28, 2007 (in Chinese)</b>
<b>12.</b>	<b>WTO Requests for Consultations</b> <ul style="list-style-type: none"> <li>- China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, Request for Consultations by the United States, WT/D363/1, G/L/820, S/L/287 (16 April 2007)</li> <li>- China – Measures Affecting the Protection and Enforcement of Intellectual Property Rights, Request for Consultations by the United States, WT/D362/1, IP/D/26, G/L/819 (16 April 2007)</li> </ul>
<b>13.</b>	<b><i>The Global Publication of U.S. Patent Applications &amp; Select Patent Reform Proposals, an analysis by Pat Choate of Trade Lawyers Advisory Group Associate Member The Manufacturing Policy</i></b>

# **APPENDIX**

## **1**

## Appendix 1, Table 1

**U.S. Imports from China: 1996-2006**

<i>Imports for Consumption by First Unit of Quantity, reported in 1,000 units</i>											
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<b>All Countries</b>	322,594,497	413,564,652	463,636,021	530,175,784	650,390,430	486,447,859	513,936,746	521,724,084	608,547,481	622,791,252	663,455,756
<b>China</b>	17,713,450	28,391,117	38,407,721	47,886,679	57,654,309	56,010,398	74,843,415	87,844,109	113,417,170	128,478,640	149,987,200
<b>China %</b>	<b>5.49%</b>	<b>6.86%</b>	<b>8.28%</b>	<b>9.03%</b>	<b>8.86%</b>	<b>11.51%</b>	<b>14.56%</b>	<b>16.84%</b>	<b>18.64%</b>	<b>20.63%</b>	<b>22.61%</b>

<i>Imports for Consumption by Customs Value, reported in 1,000 dollars</i>											
	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<b>All Countries</b>	790,469,714	862,426,346	907,647,006	1,017,435,397	1,205,339,019	1,132,635,340	1,154,810,867	1,250,096,785	1,460,160,460	1,662,379,669	1,845,053,181
<b>China</b>	51,209,376	61,995,926	70,815,036	81,522,281	99,580,514	102,069,326	124,795,665	151,620,144	196,159,513	242,637,964	287,052,416
<b>China %</b>	<b>6.48%</b>	<b>7.19%</b>	<b>7.80%</b>	<b>8.01%</b>	<b>8.26%</b>	<b>9.01%</b>	<b>10.81%</b>	<b>12.13%</b>	<b>13.43%</b>	<b>14.60%</b>	<b>15.56%</b>

SOURCE: Data retrieved from USITC DataWeb, located at <http://dataweb.usitc.gov>.

### Intellectual Property Violation Seizure Report JAPAN

**Summary 1: By Exporting Country\***

**NOTE: Upper rows in the number of seizures and lower rows in pieces\*\***

	2002	% of Total	2003	% of Total	2004	% of Total	2005	% of Total	2006	% of Total	% Change 2002-2006
China	552	7.90%	1,630	22.00%	3,358	36.70%	6,278	46.60%	9,440	48.20%	1710.14%
	534,495	53.80%	395,265	51.20%	434,980	41.90%	448,680	40.90%	452,216	46.20%	84.61%
South Korea	5,334	76.40%	4,505	60.80%	4,598	50.30%	6,045	44.90%	8,720	44.50%	163.48%
	231,149	23.30%	240,393	31.20%	381,371	36.80%	458,143	41.70%	384,173	39.20%	166.20%
Philippines	140	2.00%	299	4.00%	387	4.20%	365	2.70%	445	2.30%	317.86%
	54,503	5.50%	28,402	3.70%	37,840	3.60%	40,974	3.70%	33,187	3.40%	60.89%
Hong Kong	476	6.80%	625	8.40%	423	4.60%	369	2.70%	424	2.20%	89.08%
	77,587	7.80%	58,997	7.60%	142,414	13.70%	91,223	8.30%	68,727	7.00%	88.58%
Thailand	242	3.50%	199	2.70%	220	2.40%	272	2.00%	343	1.80%	141.74%
	33,825	3.40%	9,823	1.30%	13,939	1.30%	25,633	2.30%	27,798	2.80%	82.18%
U.S.A.	23	0.30%	25	0.30%	30	0.30%	38	0.30%	52	0.30%	226.09%
	1,695	0.20%	1,009	0.10%	3,702	0.40%	2,057	0.20%	2,987	0.30%	176.22%
Vietnam	13	0.20%	24	0.30%	15	0.20%	15	0.10%	44	0.20%	338.46%
	4,190	0.40%	1,780	0.20%	1,316	0.10%	616	0.10%	5,693	0.60%	135.87%
Turkey	1	0.00%	0	0.00%	0	0.00%	2	0.00%	35	0.20%	3500.00%
	200	0.00%	0	0.00%	0	0.00%	14	0.00%	208	0.00%	104.00%
Taiwan	40	0.60%	31	0.40%	33	0.40%	21	0.20%	20	0.10%	50.00%
	19,254	1.90%	15,871	2.10%	5,846	0.60%	3,380	0.30%	587	0.10%	3.05%
Malaysia	5	0.10%	8	0.10%	26	0.30%	8	0.10%	14	0.10%	280.00%
	235	0.00%	129	0.00%	487	0.00%	446	0.00%	67	0.00%	28.51%
Other Countries	152	0.60%	66	0.90%	53	0.60%	54	0.40%	54	0.30%	35.53%
	35,775	1.80%	19,637	2.50%	15,102	1.50%	26,234	2.40%	3,581	0.40%	10.01%
Total	6,978	100.00%	7,412	100.00%	9,143	100.00%	13,467	100.00%	19,591	100.00%	280.75%
	992,908	100.00%	771,306	100.00%	1,036,997	100.00%	1,097,400	100.00%	979,224	100.00%	98.62%

\* This table has been compiled according to exporting country, not necessarily by the country of origin.

\*\* Number of seizures and pieces reported are based on the number of import applications and international postal mails reported.

**SOURCE:** Japan Customs

### Intellectual Property Violation Seizure Report JAPAN

#### Summary 2: By Type of Intellectual Property\*

*Note: Upper rows in the number of seizures and lower rows in pieces\*\**

	2002	% of total	2003	% of total	2004	% of total	2005	% of total	2006	% of total	% change 2002-2006
Patents	7	0.10%	1	0.00%	80	0.90%	66	0.50%	26	0.10%	371.43%
	39,200	3.90%	550	0.10%	107,600	10.40%	46,906	4.30%	67,211	6.90%	171.46%
Utility Models	0	0.00%	1	0.00%	1	0.00%	2	0.00%	1	0.00%	
	0	0.00%	960	0.10%	400	0.00%	5,304	0.50%	4,896	0.50%	
Designs	13	0.20%	12	0.20%	39	0.40%	42	0.30%	54	0.30%	415.38%
	41,693	4.10%	42,641	5.50%	62,794	6.10%	107,294	9.80%	58,977	6.00%	141.46%
Trademarks	6,859	98.20%	7,332	98.70%	8,922	97.40%	13,228	97.90%	19,363	98.60%	282.30%
	611,100	60.50%	591,061	76.60%	690,749	66.60%	816,845	74.40%	784,591	80.10%	128.39%
Copyrights	108	1.50%	80	1.10%	119	1.30%	174	1.30%	198	1.00%	183.33%
	318,751	31.50%	136,094	17.60%	174,594	16.80%	120,991	11.00%	63,540	6.50%	19.93%
Copyright-Related Rights	0	0.00%	0	0.00%	0	0.00%	1	0.00%	1	0.00%	
	0	0.00%	0	0.00%	0	0.00%	60	0.00%	9	0.00%	
Plant Variety Protection	-	-	0	0.00%	1	0.00%	0	0.00%	0	0.00%	
	-	-	0	0.00%	860	0.10%	0	0.00%	0	0.00%	
Total	6,978	100.00%	7,412	100.00%	9,143	100.00%	13,467	100.00%	19,591	100.00%	280.75%
	992,908	100.00%	771,306	100.00%	1,036,997	100.00%	1,097,400	100.00%	979,224	100.00%	98.62%

\* Number of seizures and total quantities may not reconcile because some IP violations violate multiple IP rights.

\*\* Number of seizures and pieces reported are based on the number of import applications and international postal mails reported.

**SOURCE:** Japan Customs

### Intellectual Property Violation Seizure Report JAPAN

#### Summary 3: By Product Category\*

*Note: Upper rows in the number of seizures and lower rows in pieces\*\**

	2002	% of total	2003	% of total	2004	% of total	2005	% of total	2006	% of total	% change 2002-2006
Bags	5,547	56.10%	5,420	52.50%	6,420	50.20%	10,158	53.50%	15,327	56.70%	276.31%
	161,213	16.20%	142,417	18.50%	164,939	15.90%	253,327	23.10%	283,201	28.90%	175.67%
Key Holders/Cases	902	9.10%	771	7.50%	1,104	8.60%	2,036	10.70%	3,268	12.10%	362.31%
	12,843	1.30%	20,301	2.60%	63,191	6.10%	34,265	3.10%	49,418	5.00%	384.79%
Clothing	774	7.80%	1,006	9.70%	1,122	8.80%	1,615	8.50%	2,160	8.00%	279.07%
	218,840	22.00%	259,759	33.70%	211,094	20.40%	176,862	16.10%	171,681	17.50%	78.45%
Watches	493	5.00%	796	7.70%	1,252	9.80%	1,108	5.80%	1,462	5.40%	296.55%
	54,509	5.50%	29,918	3.90%	52,752	5.10%	34,344	3.10%	23,099	2.40%	42.38%
Shoes	321	3.20%	443	4.30%	357	2.80%	475	2.50%	928	3.40%	289.10%
	3,855	0.40%	11,054	1.40%	29,210	2.80%	25,953	2.40%	23,451	2.40%	608.33%
Belts	145	1.50%	250	2.40%	272	2.10%	503	2.60%	704	2.60%	485.52%
	1,015	0.10%	1,859	0.20%	4,626	0.40%	6,691	0.60%	5,568	0.60%	548.57%
Cell Phones and Attachments	427	4.30%	342	3.30%	442	3.50%	472	2.50%	513	1.90%	120.14%
	47,855	4.80%	30,607	4.00%	104,616	10.10%	77,702	7.10%	28,653	2.90%	59.87%
Cigarettes and Smoking Accessories	353	3.60%	241	2.30%	350	2.70%	442	2.30%	507	1.90%	143.63%
	3,052	0.30%	2,048	0.30%	4,180	0.40%	6,131	0.60%	7,643	0.80%	250.43%
Stationeries	297	3.00%	254	2.50%	292	2.30%	351	1.80%	400	1.50%	134.68%
	1,898	0.20%	3,675	0.50%	4,030	0.40%	6,282	0.60%	5,640	0.60%	297.15%
Personal Accessories	153	1.50%	158	1.50%	229	1.80%	381	2.00%	393	1.50%	256.86%
	36,613	3.70%	15,485	2.00%	26,568	2.60%	50,861	4.60%	46,887	4.80%	128.06%
Others	477	4.80%	643	6.20%	959	7.50%	1,446	7.60%	1,381	5.10%	289.52%
	451,215	45.40%	254,183	33.00%	371,791	35.90%	424,982	38.70%	333,983	34.10%	74.02%
Total	6,978	100.00%	7,412	100.00%	9,143	100.00%	13,467	100.00%	19,591	100.00%	280.75%
	992,908	100.00%	771,306	100.00%	1,036,997	100.00%	1,097,400	100.00%	979,224	100.00%	98.62%

\* Number of seizures and total quantities may not reconcile because some IP violations violate multiple IP rights.

\*\* Number of seizures and pieces reported are based on the number of import applications and international postal mails reported.

**SOURCE:** Japan Customs

**Intellectual Property Violation Seizure Report**  
**UNITED STATES**

**Summary 1: By Export Country**

	2001		2002		2003		2004		2005		2006		% Change 2001-2006
	Value	Percent	Value	Percent	Value	Percent	Value	Percent	Value	Percent	Value	Percent	
China	\$26,471,834	46.0%	\$48,622,997	49.0%	\$62,468,018	66.0%	\$87,274,373	63.0%	\$63,968,416	69.0%	\$125,595,844	81.0%	474.5%
Hong Kong	\$5,810,311	10.0%	\$3,959,258	4.0%	\$8,236,507	9.0%	\$7,019,670	5.0%	\$5,799,112	6.0%	\$9,389,464	6.0%	161.6%
India									\$1,966,638	2.0%	\$832,541	<1.0%	
Indonesia			\$1,361,101	1.0%							\$983,425	<1.0%	
Italy									\$1,268,188	1.0%			
Korea	\$2,845,538	5.0%	\$1,825,265	2.0%	\$3,219,268	3.0%	\$1,960,980	1.0%	\$1,418,060	2.0%	\$1,810,140	1.0%	63.6%
Malaysia			\$721,979	<1.0%	\$1,331,925	1.0%					\$1,174,071	<1.0%	
Mexico					\$1,966,929	2.0%	\$1,018,107	<1.0%			\$535,826	<1.0%	
Pakistan	\$922,767	2.0%	\$2,362,130	2.0%	\$2,010,465	2.0%			\$1,753,154	2.0%	\$1,838,815	1.0%	199.3%
Philippines					\$1,224,058	1.0%			\$1,352,021	1.0%			
Russia							\$7,304,746	5.0%	\$1,377,835	1.0%			
Singapore	\$2,751,582	5.0%									\$1,198,735	<1.0%	43.6%
South Africa							\$4,444,218	3.0%					
Switzerland			\$1,274,645	1.0%	\$676,197	<1.0%							
Taiwan	\$2,161,387	4.0%	\$26,507,356	27.0%					\$1,091,873	1.0%	\$1,843,764	1.0%	85.3%
United Arab Emirates	\$1,240,790	2.0%							\$2,118,409	2.0%			0.0%
Vietnam							\$2,599,561	2.0%	\$780,644	1.0%			
Others	\$15,234,471	26.0%	\$12,355,610	12.0%	\$12,885,860	14.0%	\$25,794,209	18.0%	\$11,692,181	13.0%	\$10,166,611	7.0%	66.7%
<b>TOTAL</b>	<b>\$57,438,680</b>		<b>\$98,990,341</b>		<b>\$94,019,227</b>		<b>\$138,767,885</b>		<b>\$93,234,510</b>		<b>\$155,369,236</b>		<b>270.5%</b>

SOURCE: Department of Homeland Security, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement

**Intellectual Property Violation Seizure Report**  
**UNITED STATES**

**Summary 2: By Product Category**

NOTE: Reported in domestic value and percentage of total seizures

	2001	% of total	2002	% of total	2003	% of total	2004	% of total	2005	% of total	2006	% of total	% Change 2001-2006
Wearing Apparel	\$7,833,431	14.0%	\$9,294,975	9.0%	\$13,888,823	15.0%	\$51,736,651	37.0%	\$16,099,540	17.0%	\$24,320,976	16.0%	310.5%
Footwear	\$3,085,028	5.0%	NR	NR	\$2,555,386	3.0%	\$2,048,523	1.0%	\$8,941,185	10.0%	\$63,445,619	41.0%	2056.6%
Handbags, Wallets, Backpacks	\$3,164,444	6.0%	\$2,927,194	3.0%	\$11,458,259	12.0%	\$23,189,817	17.0%	\$14,954,525	16.0%	\$14,750,201	9.0%	466.1%
Computers, Hardware	\$4,074,756	7.0%	NR	NR	NR	NR	\$1,683,811	1.0%	\$4,798,852	5.0%	\$14,287,989	9.0%	350.6%
Consumer Electronics	NR	NR	\$5,307,407	5.0%	\$3,779,736	4.0%	\$8,880,113	6.0%	\$8,793,700	9.0%	\$7,057,034	5.0%	
Media	\$7,324,064	13.0%	\$28,396,287	29.0%	\$7,357,876	8.0%	\$5,050,269	4.0%	NR	NR	\$6,965,156	4.0%	95.1%
Headwear	NR	NR	\$1,043,252	1.0%	\$1,286,198	1.0%	NR	NR	NR	NR	\$3,257,963	2.0%	
Health Care	NR	NR	NR	NR	NR	NR	NR	NR	NR	NR	\$3,092,919	2.0%	
Watches and Parts	\$5,631,528	10.0%	\$3,919,331	4.0%	\$3,384,025	4.0%	\$2,543,387	2.0%	\$3,070,832	3.0%	\$2,832,364	2.0%	50.3%
Pharmaceuticals	NR	NR	NR	NR	NR	NR	NR	NR	\$2,094,352	2.0%	\$2,298,694	1.0%	
Cigarettes	\$4,549,842	8.0%	\$37,579,894	38.0%	\$41,720,129	44.0%	\$24,161,416	17.0%	\$9,648,876	10.0%	NR	NR	
Perfumes	NR	NR	NR	NR	NR	NR	NR	NR	\$2,713,695	3.0%	NR	NR	
Toys and Electronic Games	\$4,355,268	8.0%	\$2,150,847	2.0%	\$1,510,839	2.0%	\$3,971,321	3.0%	\$8,568,925	9.0%	NR	NR	
Other	\$17,420,319	30.0%	\$8,371,154	10.0%	\$7,077,956	7.0%	\$15,502,577	12.0%	\$13,550,028	15.0%	\$13,060,321	8.0%	75.0%
Total	\$57,438,680	101.0%	\$98,990,341	101%	\$94,019,227	100%	\$138,767,885	100%	\$93,234,510	99%	\$155,369,236	99%	270.5%

NR = Not Reported (these goods may be included in the 'other' category but were not reported on their own in this year)

SOURCE: Department of Homeland Security, U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement

**Intellectual Property Violation Seizure Report**  
**EUROPEAN UNION**

**Summary 1: By Exporting Country (percentage of registered cases and articles seized)**

	2001		2002		2003		2004		2005		% Change 2001-2005
	Cases	Articles	Cases	Articles	Cases	Articles	Cases	Articles	Cases	Articles	Cases
Afghanistan									1.0%		
Algeria									3.0%		
Canada										1.0%	
Chile										1.0%	
China	18.0%		15.0%		18.0%	60.0%	30.0%	54.0%	38.0%	64.0%	211.1%
Czech Republic	4.0%		2.0%								
Gambia								2.5%			
Hong Kong	5.0%		5.0%		6.5%	6.0%	8.0%	3.0%	8.0%	3.0%	160.0%
India							2.0%	3.5%		2.0%	
Malaysia			3.0%		5.0%	3.0%	3.0%		4.0%		
Pakistan					3.0%						
Romania								2.0%			
Switzerland										5.0%	
Taiwan	3.0%					2.5%		7.5%			
Thailand	23.0%		43.0%		28.0%		20.0%		10.0%		43.5%
Turkey	8.0%		8.0%		6.0%		7.0%		7.0%	4.0%	87.5%
United Arab Emirates						2.0%		3.0%		4.0%	
United States of America	3.0%		2.0%		2.0%		4.0%		4.0%		133.3%
Others	36.0%		22.0%		31.0%	26.5%	26.0%	24.5%	25.0%	16.0%	69.4%
TOTAL	100%	Not reported	100%	Not Reported	100%	100%	100%	100%	100%	100%	100%

SOURCE: European Commission Taxation and Customs Union

**Intellectual Property Violation Seizure Report  
EUROPEAN UNION**

**Summary 2: Type of Intellectual Property as a Percentage of the Number of Cases**

	2001	2002	2003	2004	2005
Patents and Supplementary Protection Certificates	3.0%	1.5%	2.0%	5.0%	1.0%
Trademarks	83.0%	80.0%	83.0%	74.0%	79.0%
Designs and Models	5.0%	0.5%	1.5%	2.0%	7.0%
Copyrights and Related Rights	9.0%	18.0%	13.5%	14.0%	5.0%
Data Not Communicated	0.0%	0.0%	0.0%	5.0%	8.0%
Total	100.0%	100.0%	100.0%	100.0%	100.0%

SOURCE: European Commission Taxation and Customs Union

**Intellectual Property Violation Seizure Report**  
**EUROPEAN UNION**

**Summary 3: By Product Category**

NOTE: Upper row is number of cases registered and lower number is articles seized

	2001	% of total	2002	% of total	2003	% of total	2004	% of total	2005	% of total	% Change 2001-2005
Foodstuff, Alcoholic and Other Drinks	18	0.4%	13	0.2%	17	0.2%	53	0.0%	50	0.0%	277.78%
	4,106,663	4.3%	841,259	1.0%	1,489,908	1.6%	4,432,161	4.0%	5,228,896	7.0%	127.33%
Perfumes and Cosmetics	36	0.7%	37	0.5%	116	1.1%	214	1.0%	632	2.0%	1755.56%
	26,417	0.0%	112,132	0.1%	1,009,879	1.1%	784,268	1.0%	694,633	1.0%	2629.49%
Clothing and Accessories	2,628	52.0%	4380	58.0%	5,891	55.0%	13,928	63.0%	17,068	64.0%	649.47%
	4,782,672	5.1%	9,243,074	10.9%	3,876,271	4.2%	7,827,951	8.0%	10,982,915	15.0%	229.64%
Electrical Equipment	162	3.2%	283	3.7%	200	1.9%	829	4.0%	1,157	4.0%	714.20%
	1,026,517	1.1%	1,763,054	2.1%	523,275	0.6%	4,225,202	4.0%	3,273,538	4.0%	318.90%
Computer Equipment (hardware)	28	0.6%	22	0.3%	43	0.4%	122	1.0%	260	1.0%	928.57%
	103,327	0.1%	47,184	0.1%	79,402	0.1%	793,149	1.0%	808,637	1.0%	782.60%
CD (audio, games, software), DVD, Cassettes	785	15.5%	1388	18.4%	1898	17.7%	2785	12.0%	1,569	6.0%	199.87%
	39,737,512	42.1%	11,975,237	14.1%	32,616,560	35.4%	18,523,664	18.0%	9,703,059	13.0%	24.42%
Watches and Jewelry	543	10.7%	572	7.6%	1098	10.3%	2201	10.0%	3,188	12.0%	587.11%
	746,942	0.8%	424,168	0.5%	674,327	0.7%	491,588	0.0%	516,240	1.0%	69.11%
Toys and Games	269	5.3%	261	3.5%	497	4.6%	517	2.0%	770	3.0%	286.25%
	1,565,578	1.7%	1,124,756	1.3%	12,333,868	13.4%	18,106,924	17.0%	1,891,981	2.0%	120.85%
Cigarettes	NR	NR	89	1.2%	130	1.2%	316	1.0%	232	1.0%	
	NR	NR	31,360,411	36.9%	33,244,507	36.0%	41,588,030	40.0%	32,641,243	43.0%	
Medicines	NR	NR	148	1.0%							
	NR	NR	560,598	1.0%							
Other	587	11.6%	508	6.7%	820	7.7%	1346	6.0%	1,630	6.0%	277.68%
	42,325,869	44.8%	28,059,765	33.0%	6,370,702	6.9%	6,773,242	7.0%	9,431,647	12.0%	22.28%
Total	5,056	100.0%	7,553	100%	10,710	100%	22,311	100%	26,704	100%	528.16%
	94,421,497	100.0%	84,951,040	100%	92,218,699	100%	103,546,179	100%	75,733,387	100%	80.21%

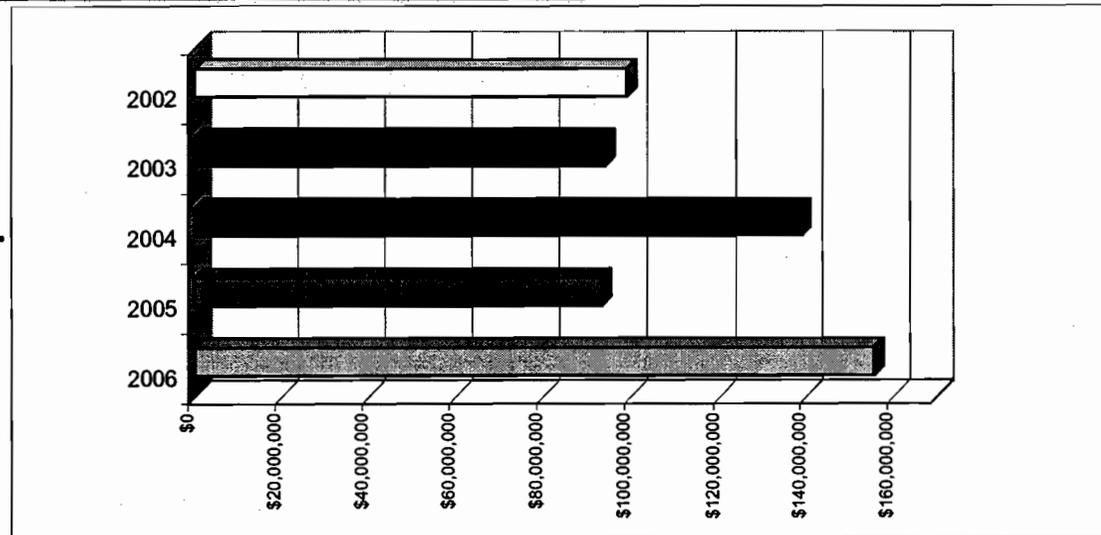
NR = Not Reported (these goods may be included in the 'other' category but were not reported on their own in this year)

SOURCE: European Commission Taxation and Customs Union

### **Comparison of Yearly Domestic Values of IPR Seizures**

The value of IPR seizures in FY 2006 increased by 67%, from the value in FY 2005. The FY 2006 domestic value is the highest in the history of Customs/ Department of Homeland Security

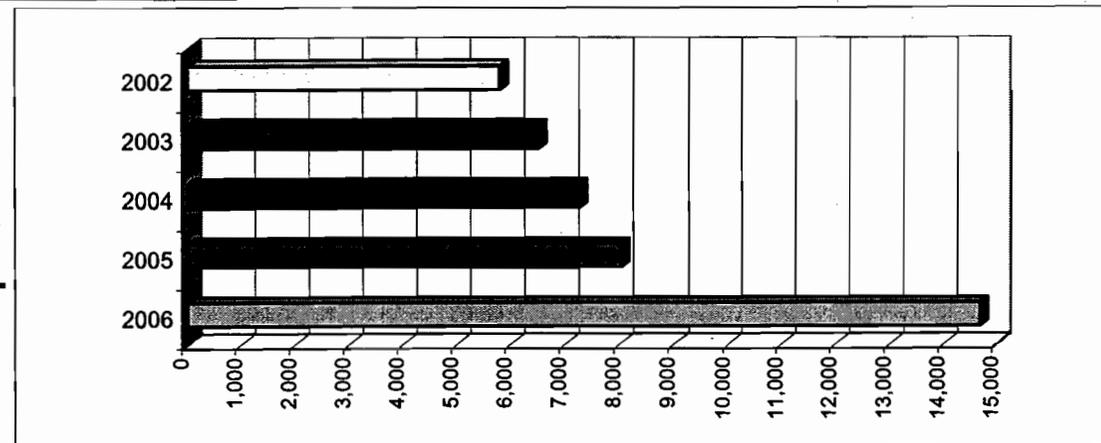
<b>Fiscal Year</b>	<b>Overall Total Values (IPR)</b>
2002	\$ 98,990,341
2003	\$ 94,019,227
2004	\$ 138,767,885
2005	\$ 93,234,510
2006	\$ 155,369,236
<b>Total</b>	<b>\$ 580,381,199</b>



### **Comparison of Yearly Seizure Totals**

The number of seizures in FY 2006, reflects an increase of almost 83% over the number of seizures in FY 2005, and is the highest number of seizures in the history of Customs/Dept. of Homeland Security. The port of JFK accounted for more than 48% of the total seizures.

<b>Fiscal Year</b>	<b>Number of Seizures</b>
2002	5,793
2003	6,500
2004	7,255
2005	8,022
2006	14,675
<b>Total</b>	<b>42,245</b>



Source: U.S. Customs and Border Protection,  
L.A. Strategic Trade Center,  
11-07-06

# **APPENDIX**

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U.S. Exports and Imports of Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns			----- Annual US Exports in \$ Millions -----								-- Change --		----- Annual US Imports in \$ Millions -----								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
Inkjet cartridges	8443	Total	\$1,246	\$995	\$842	\$863	\$878	\$1,030	\$1,062		-17.3%	3.1%	Total	\$1,707	\$1,567	\$1,321	\$1,359	\$1,657	\$1,878	\$2,064		10.0%	9.9%
		China	43	43	28	37	27	47	54		9.5%	12.9%	China	4	4	7	13	17	28	37		625.4%	29.4%
		All Others	1,202	952	813	826	851	983	1,008		-18.3%	2.6%	All Others	1,703	1,564	1,313	1,346	1,640	1,850	2,027		8.6%	9.6%
Golf clubs	950631	Total	407	415	325	334	345	355	361		-12.7%	1.5%	Total	80	87	177	201	249	299	338		276.3%	12.8%
		China	2	2	2	2	2	0	0		-98.6%	54.3%	China	54	67	155	178	219	273	320		401.9%	17.2%
		All Others	405	413	323	332	344	355	361		-12.3%	1.5%	All Others	25	20	22	23	30	26	18		4.8%	-33.0%
Windshields	700711	Total	386	310	294	315	286	278	243		-28.0%	-12.7%	Total	182	160	183	178	191	213	223		17.4%	4.5%
		China	1	0	1	0	0	0	0		-70.1%	-54.6%	China	2	5	3	4	5	6	10		264.8%	47.6%
		All Others	385	310	294	315	286	278	243		-27.9%	-12.7%	All Others	180	155	180	174	186	207	214		15.0%	3.2%
Auto replacement parts: brake pads, ignition coils, sway bars	8708	Total	30,995	28,994	29,030	28,086	30,885	31,532	33,511		1.7%	6.3%	Total	27,986	26,411	29,310	32,348	37,313	41,309	43,172		47.6%	4.5%
		China	119	150	185	242	403	370	533		209.9%	43.9%	China	440	572	770	1,016	1,465	1,993	2,711		353.3%	36.0%
		All Others	30,875	28,844	28,845	27,844	30,482	31,162	32,978		0.9%	5.8%	All Others	27,546	25,840	28,540	31,332	35,847	39,317	40,461		42.7%	2.9%
Cell phone batteries	850650	Total	120	109	115	145	179	234	280		95.0%	19.7%	Total	152	112	125	139	151	183	213		20.7%	16.5%
		China	1	4	2	1	1	1	4		34.1%	186.2%	China	3	4	7	17	20	37	43		1244.9%	16.1%
		All Others	119	105	113	144	178	233	276		95.6%	18.7%	All Others	149	108	118	122	131	146	170		-2.1%	16.6%
Duracell Batteries	8507	Total	\$932	\$896	\$773	\$723	\$746	\$859	\$1,060		-7.8%	23.3%	Total	2,122	1,823	1,624	1,516	1,883	2,138	2,385		0.8%	11.5%
		China	10	9	7	7	13	15	27		43.3%	87.0%	China	252	234	258	311	492	617	783		144.4%	26.9%
		All Others	922	887	766	716	733	845	1,033		-8.3%	22.2%	All Others	1,869	1,589	1,366	1,205	1,392	1,521	1,602		-18.6%	5.3%
Auto and truck parts	8708	Total	30,995	28,994	29,030	28,086	30,885	31,532	33,511		1.7%	6.3%	Total	27,986	26,411	29,310	32,348	37,313	41,309	43,172		47.6%	4.5%
		China	119	150	185	242	403	370	533		209.9%	43.9%	China	440	572	770	1,016	1,465	1,993	2,711		353.3%	36.0%
		All Others	30,875	28,844	28,845	27,844	30,482	31,162	32,978		0.9%	5.8%	All Others	27,546	25,840	28,540	31,332	35,847	39,317	40,461		42.7%	2.9%
Personal care products	33	Total	3,971	4,383	4,426	4,933	5,536	6,054	6,718		52.4%	11.0%	Total	2,750	2,945	3,268	4,642	5,857	6,727	7,012		144.6%	4.2%
		China	34	38	52	69	84	117	146		246.2%	24.2%	China	120	170	217	234	269	348	418		190.4%	20.3%
		All Others	3,937	4,346	4,374	4,864	5,452	5,936	6,572		50.8%	10.7%	All Others	2,631	2,775	3,051	4,408	5,588	6,379	6,593		142.5%	3.4%
Aircraft parts	880330	Total	12,962	13,529	11,993	12,290	13,393	15,164	18,170		17.0%	19.8%	Total	4,639	5,194	4,156	3,770	3,988	4,645	5,719		0.1%	23.1%
		China	208	258	253	270	311	517	722		148.8%	39.7%	China	32	57	53	61	78	83	129		155.6%	55.1%
		All Others	12,754	13,271	11,740	12,020	13,082	14,647	17,447		14.8%	19.1%	All Others	4,606	5,137	4,103	3,709	3,910	4,562	5,591		-1.0%	22.5%
Testing equipment	9024	Total	646	585	501	573	572	587	669		-9.1%	13.9%	Total	109	84	86	96	103	103	123		-6.0%	19.6%
		China	29	40	52	75	84	87	99		199.4%	14.3%	China	1	1	1	1	2	2	3		201.0%	15.9%
		All Others	617	545	449	498	488	501	570		-18.8%	13.9%	All Others	109	83	85	95	101	101	121		-7.4%	19.7%
Electrical control equipment	8532	Total	3,467	1,890	1,706	1,696	1,813	1,452	1,736		-58.1%	19.5%	Total	3,173	1,608	1,375	1,292	1,288	1,413	1,657		-55.5%	17.2%
		China	38	30	14	28	75	104	162		169.6%	56.6%	China	37	32	34	42	55	68	85		86.1%	24.1%
		All Others	3,429	1,860	1,691	1,668	1,738	1,349	1,574		-60.7%	16.7%	All Others	3,137	1,576	1,341	1,250	1,233	1,345	1,572		-57.1%	16.9%
Commercial door fixtures	730830	Total	\$126	\$123	\$115	\$109	\$121	\$148	\$181		17.0%	22.4%	Total	232	240	258	285	330	349	364		50.3%	4.5%
		China	2	2	1	1	1	1	1		-45.9%	-1.3%	China	6	8	11	15	28	38	56		515.4%	49.1%
		All Others	124	121	113	108	120	147	180		18.0%	22.6%	All Others	226	232	247	270	301	311	308		37.7%	-0.9%
Computer Software	852491	Total	773	531	388	356	354	385	455		-50.2%	18.2%	Total	184	122	108	87	69	69	51		-62.6%	-25.4%
		China	15	7	8	19	18	19	31		28.7%	65.5%	China	2	2	2	4	3	3	5		67.5%	53.0%
		All Others	758	524	379	337	335	366	423		-51.8%	15.7%	All Others	182	121	106	84	66	66	46		-63.9%	-29.2%

U.S. Exports and Imports of Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --				
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05				
Entertainment Software (including videogame DCs and cartridges, personal computer CD-ROMs and multimedia products)	950410	Total	380	467	485	604	551	715	1,219		88.0%	70.5%		Total	2,073	3,417	3,717	2,429	2,170	2,523	3,848		21.7%	52.5%	
		China	0	0	0	1	2	1	1	1		65.7%	35.1%		China	336	398	1,571	2,108	1,958	2,358	3,643		601.6%	54.5%
		All Others	380	466	485	604	549	714	1,218		88.0%	70.5%		All Others	1,737	3,019	2,145	321	212	165	205		-90.5%	24.0%	
Records	852410	Total	65	63	46	47	41	29	28		-55.8%	-3.9%		Total	17	13	9	8	7	7	5		-60.4%	-22.0%	
		China	0	1	0	0	0	1	1	1		320.7%	6.0%		China	0	0	0	0	0	0	0		-100.0%	N/A
		All Others	65	62	46	47	41	28	27		-57.0%	-4.2%		All Others	17	13	9	8	7	7	5		-60.4%	-22.0%	
Laser Disks	852432	Total	165	180	188	209	209	252	237		53.3%	-6.1%		Total	300	280	264	253	256	277	273		-7.5%	-1.7%	
		China	1	0	1	0	1	0	0	0		-90.5%	-37.4%		China	5	6	5	5	6	6	10		16.7%	60.2%
		All Others	163	180	187	208	208	252	237		54.6%	-6.1%		All Others	294	274	259	248	250	271	262		-8.0%	-3.1%	
MAGN TPE,N SOUND/IM	852440	Total	\$118	\$80	\$49	\$43	\$50	\$18	\$18		-84.5%	-0.4%		Total	19	12	13	5	4	4	3		-81.2%	-24.0%	
		China	1	2	1	1	3	0	1	1		-56.5%	96.7%		China	0	0	0	0	0	0	0		-58.3%	438.5%
		All Others	117	78	48	42	48	18	17		-84.8%	-2.8%		All Others	19	12	13	5	4	3	3		-81.2%	-25.7%	
MGN TPE,SND/IM=<4MM	852451	Total	46	37	25	32	26	20	15		-56.9%	-23.3%		Total	27	19	14	8	5	3	2		-88.6%	-24.8%	
		China	1	1	0	0	0	0	0	0		-94.0%	-43.7%		China	2	3	2	1	0	0	0		-78.7%	-70.9%
		All Others	46	36	25	32	26	20	15		-56.3%	-23.2%		All Others	25	17	12	6	5	3	2		-89.3%	-18.7%	
MG TPE,S/l>4=<6.5MM	852452	Total	77	48	34	31	30	16	15		-79.8%	-5.4%		Total	13	18	10	6	5	3	2		-79.5%	-37.4%	
		China	4	2	2	1	0	0	0	0		-95.5%	-55.6%		China	0	0	0	1	0	0	0		69.5%	-82.4%
		All Others	73	47	32	31	29	15	15		-78.9%	-4.8%		All Others	13	18	10	6	4	2	2		-81.1%	-33.0%	
MG TPE,SND/IM>6.5MM	852453	Total	88	82	68	47	32	23	14		-74.3%	-38.2%		Total	75	82	95	58	37	20	16		-72.9%	-22.9%	
		China	2	0	0	0	0	0	0	0		-98.8%	-63.0%		China	5	5	8	9	6	1	1		-78.4%	-14.2%
		All Others	86	82	67	47	32	23	14		-73.8%	-38.2%		All Others	69	76	87	49	31	19	15		-72.4%	-23.4%	
Textbooks, tradebooks, reference & prof'nal publications/journals	490199	Total	1,956	1,792	1,772	1,789	1,839	2,000	2,092		2.2%	4.6%		Total	1,570	1,626	1,647	1,726	1,897	1,979	2,092		26.0%	5.7%	
		China	12	12	12	18	19	17	26		41.0%	54.9%		China	219	266	335	409	528	598	717		173.5%	20.0%	
		All Others	1,944	1,780	1,760	1,771	1,820	1,983	2,066		2.0%	4.2%		All Others	1,352	1,360	1,312	1,317	1,369	1,381	1,375		2.2%	-0.5%	
Table grapes (Chinese copy US packaging/sell as US goods)	80610	Total	\$455	\$475	\$494	\$516	\$595	\$696	\$664		53.0%	-4.5%		Total	552	571	680	680	729	944	921		71.1%	-2.5%	
		China	11	9	8	6	21	47	35		323.0%	-24.1%		China	0	0	0	0	0	0	0		N/A	N/A	
		All Others	444	467	486	510	574	649	629		46.3%	-3.1%		All Others	552	571	680	680	729	944	921		71.1%	-2.5%	
Fresh fruit	08	Total	3,980	4,050	4,242	4,764	5,386	6,413	6,839		61.1%	6.6%		Total	3,919	3,891	4,229	4,590	5,169	5,825	6,323		48.6%	8.5%	
		China	31	39	47	51	72	138	132		346.6%	-4.4%		China	25	32	51	62	99	110	134		339.0%	22.3%	
		All Others	3,949	4,011	4,195	4,714	5,314	6,275	6,707		58.9%	6.9%		All Others	3,894	3,859	4,178	4,528	5,070	5,715	6,189		46.8%	8.3%	

U.S. Exports and Imports of Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
Beverages	22	Total	1,707	1,792	1,767	2,003	2,265	2,305	2,697		35.1%	17.0%	Total	8,339	8,731	9,701	10,948	11,781	13,052	16,188		56.5%	24.0%
		China	3	5	7	6	9	10	18		277.1%	75.2%	China	16	23	29	24	28	23	110		41.7%	383.8%
		All Others	1,704	1,787	1,759	1,996	2,256	2,295	2,679		34.7%	16.7%	All Others	8,323	8,708	9,672	10,924	11,753	13,030	16,078		56.5%	23.4%
Structural wood-based panels	441292	Total	2	3	1	1	1	1	1		-33.0%	-45.5%	Total	2	4	7	7	9	10	8		333.9%	-12.1%
		China	0	0	0	0	0	0	0		-41.2%	-96.4%	China	0	0	0	0	2	2	2		4200.9%	-6.3%
		All Others	1	3	1	1	1	1	1		-31.9%	-39.1%	All Others	2	4	7	7	7	7	6		235.2%	-14.0%
Structural wood-based panels	441820	Total	98	86	89	103	120	111	117		14.0%	5.2%	Total	416	460	508	523	626	708	774		70.3%	9.2%
		China	0	0	1	2	2	0	1		89.5%	159.2%	China	2	3	8	13	31	57	100		3454.8%	74.2%
		All Others	97	85	88	101	118	111	116		13.8%	4.5%	All Others	414	457	501	510	595	651	674		57.1%	3.5%
Agricultural chemical products, including glyphosate (Roundup)	38083019	Total	\$780	\$835	\$791	\$646	\$779	\$840	\$983		7.7%	17.0%	Total	211	268	236	305	301	267	293		26.5%	9.6%
		China	1	9	9	6	7	22	15		1790.5%	-29.8%	China	0	0	17	48	19	39	40		#####	3.5%
		All Others	779	826	782	640	772	818	968		5.1%	18.3%	All Others	211	267	219	256	282	229	253		8.4%	10.7%
ETHYLENE,PRIMARY FORM	3901	Total	2,698	2,391	2,605	2,844	3,762	4,534	5,195		68.0%	14.6%	Total	1,654	1,740	1,656	2,157	2,518	3,237	3,730		95.7%	15.2%
		China	139	113	116	114	243	358	396		156.9%	10.8%	China	1	2	2	2	3	9	13		1010.6%	47.0%
		All Others	2,559	2,279	2,489	2,730	3,519	4,176	4,799		63.2%	14.9%	All Others	1,653	1,737	1,654	2,155	2,515	3,228	3,717		95.3%	15.1%
OTHR OLEFIN PRIMARY F	3902	Total	1,360	1,311	1,414	1,668	2,073	2,544	3,023		87.1%	18.8%	Total	310	272	318	363	452	523	533		68.7%	2.0%
		China	56	110	101	151	196	237	296		323.9%	25.2%	China	0	0	1	0	0	1	1		293.7%	74.5%
		All Others	1,304	1,201	1,313	1,517	1,876	2,307	2,727		77.0%	18.2%	All Others	310	272	318	363	451	522	532		68.6%	1.9%
STYRENE,PRIMARY FORMS	3903	Total	867	757	785	861	1,033	1,159	1,353		33.6%	16.8%	Total	575	584	587	633	839	1,157	1,112		101.1%	-3.8%
		China	13	8	15	20	34	46	69		251.7%	50.7%	China	1	1	2	5	6	19	23		1512.4%	21.2%
		All Others	854	749	770	841	999	1,113	1,284		30.3%	15.4%	All Others	574	582	585	628	833	1,138	1,090		98.3%	-4.3%
VINYL CHLORIDE,ETC	3904	Total	1,020	1,075	1,079	1,170	1,430	1,503	1,734		47.3%	15.4%	Total	694	614	483	534	692	930	930		34.0%	-0.0%
		China	66	118	120	116	136	136	142		107.1%	4.3%	China	1	3	3	3	9	19	22		1313.1%	15.2%
		All Others	954	957	958	1,053	1,295	1,366	1,592		43.2%	16.5%	All Others	693	612	479	531	684	911	908		31.5%	-0.4%
VINYL ACETATE;O VINYL	3905	Total	\$474	\$431	\$501	\$536	\$613	\$636	\$639		34.4%	0.5%	Total	167	170	150	145	172	188	214		12.9%	13.9%
		China	2	3	13	12	11	12	14		381.2%	20.5%	China	11	10	8	4	4	5	6		-53.7%	19.4%
		All Others	471	428	487	524	601	624	625		32.6%	0.1%	All Others	156	160	143	141	168	183	208		17.5%	13.8%
ACRYLIC POLYMERS	3906	Total	798	817	860	846	1,038	1,253	1,358		57.1%	8.3%	Total	307	298	333	384	423	481	510		56.9%	6.1%
		China	20	15	23	25	36	39	56		100.3%	42.1%	China	0	0	0	1	6	14	22		4493.7%	61.8%
		All Others	778	802	837	821	1,002	1,214	1,302		56.0%	7.2%	All Others	306	298	333	383	417	467	488		52.6%	4.4%
POLYETHER,EXPOXID E,ET	3907	Total	3,050	2,945	2,875	3,099	3,700	4,246	4,775		39.2%	12.5%	Total	1,141	1,048	1,119	1,327	1,499	2,208	2,401		93.4%	8.8%
		China	137	132	173	223	313	393	423		186.5%	7.6%	China	2	1	1	2	15	135	119		8751.8%	-12.2%
		All Others	2,913	2,813	2,702	2,876	3,387	3,853	4,352		32.3%	13.0%	All Others	1,140	1,047	1,118	1,325	1,484	2,073	2,283		81.8%	10.1%
POLYAMIDES	3908	Total	734	615	681	749	985	1,130	1,351		54.1%	19.5%	Total	297	295	355	361	429	441	479		48.6%	8.7%
		China	21	22	32	44	74	88	136		321.2%	55.5%	China	0	0	1	1	4	3	4		2602.3%	41.8%
		All Others	713	593	649	706	912	1,043	1,215		46.3%	16.5%	All Others	296	295	355	359	425	438	475		47.7%	8.5%

U.S. Exports and Imports of Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
AMINO-RESIN,PRIM F;OT	3909	Total	729	672	769	910	1,055	1,410	1,474		93.4%	4.5%	Total	257	241	284	304	356	405	467		57.5%	15.4%
		China	24	25	42	109	124	180	189		651.2%	4.9%	China	0	0	1	1	1	3	15		8398.5%	366.4%
		All Others	705	647	728	801	931	1,230	1,285		74.5%	4.5%	All Others	257	241	283	303	355	401	452		56.2%	12.6%
SILICONE,PRIMARY FORM	3910	Total	\$490	\$444	\$538	\$578	\$650	\$738	\$895		50.8%	21.3%	Total	219	196	211	222	244	270	281		23.6%	3.9%
		China	13	13	17	28	39	65	98		403.0%	50.0%	China	0	1	2	1	2	1	1		705.5%	8.3%
		All Others	477	431	521	551	611	673	797		41.2%	18.5%	All Others	219	194	210	221	241	269	279		23.1%	3.9%
PETRO RESIN,PRIM F;OT	3911	Total	549	546	551	535	667	695	749		26.7%	7.7%	Total	157	156	146	154	181	235	273		49.3%	16.1%
		China	14	15	15	16	20	37	30		174.7%	-20.5%	China	0	1	2	1	2	7	13		#####	89.8%
		All Others	535	531	535	518	647	658	719		22.9%	9.3%	All Others	157	155	144	152	180	228	260		45.0%	13.9%
CELLULOSE,OT CHEM DER	3912	Total	579	622	657	714	846	879	953		51.9%	8.4%	Total	217	206	226	254	281	291	298		34.3%	2.3%
		China	6	5	7	15	28	96	114		1630.9%	18.8%	China	0	1	3	5	6	16	18		4667.8%	8.6%
		All Others	573	618	650	700	819	783	839		36.6%	7.2%	All Others	216	205	224	249	275	275	280		27.0%	2.0%
OT NATURAL PRIME FORM	3913	Total	204	215	230	244	265	262	268		28.6%	2.2%	Total	114	208	216	192	245	279	158		143.9%	-43.4%
		China	1	4	3	4	4	6	8		398.3%	37.3%	China	7	103	107	101	148	155	44		2192.0%	-71.8%
		All Others	203	212	227	240	261	257	260		26.5%	1.4%	All Others	108	104	109	91	98	124	114		15.3%	-7.8%
ION-EXCHANGERS	3914	Total	108	86	87	81	91	101	95		-6.8%	-6.0%	Total	172	161	176	183	164	202	202		17.9%	-0.1%
		China	1	1	1	1	3	4	6		412.3%	27.6%	China	4	7	8	15	15	20	24		385.1%	18.7%
		All Others	108	85	86	80	88	97	89		-10.1%	-7.5%	All Others	168	154	168	168	149	183	179		9.0%	-2.1%
WASTE,PARINGS,SCR AP	3915	Total	\$214	\$273	\$257	\$291	\$348	\$453	\$581		111.3%	28.4%	Total	154	147	160	149	161	223	380		44.1%	70.9%
		China	34	38	50	53	84	101	150		201.2%	49.0%	China	10	11	19	16	16	19	76		93.7%	301.9%
		All Others	181	235	207	238	264	352	431		94.7%	22.5%	All Others	145	136	142	133	145	204	304		40.8%	49.5%
MONOFIL,ROD,STICK, ETC	3916	Total	180	174	217	282	268	280	263		55.5%	-6.3%	Total	326	365	363	389	390	375	353		15.2%	-6.1%
		China	1	2	2	4	7	6	6		359.4%	-1.7%	China	2	4	5	5	8	15	22		836.2%	43.9%
		All Others	179	171	215	278	262	274	256		53.1%	-6.4%	All Others	324	361	358	384	381	360	330		11.0%	-8.2%
TUBE,PIPE,HOSES+FIT	3917	Total	985	932	955	1,087	1,197	1,366	1,610		38.6%	17.8%	Total	683	659	663	735	846	982	1,102		43.8%	12.2%
		China	7	9	9	14	23	25	22		242.8%	-9.0%	China	15	20	37	51	56	91	131		508.4%	44.5%
		All Others	978	924	945	1,073	1,174	1,341	1,587		37.1%	18.3%	All Others	668	640	627	684	790	892	971		33.4%	8.9%
FLOOR,WALL COVER	3918	Total	202	155	141	140	160	181	191		-10.4%	5.8%	Total	333	331	370	420	437	454	494		36.4%	9.0%
		China	3	4	1	1	1	4	3		1.4%	-8.9%	China	32	39	73	86	105	110	134		246.5%	21.5%
		All Others	198	151	139	139	158	177	188		-10.6%	6.1%	All Others	301	292	297	334	332	343	360		14.1%	5.0%
SELF ADHESIVE MATERIL	3919	Total	1,090	977	1,123	1,187	1,377	1,553	1,601		42.5%	3.0%	Total	428	408	478	511	589	706	793		64.9%	12.4%
		China	22	27	39	46	72	84	111		274.3%	32.3%	China	15	20	27	34	48	74	113		391.5%	51.4%
		All Others	1,068	951	1,084	1,141	1,304	1,470	1,490		37.6%	1.4%	All Others	413	388	451	477	541	631	681		52.9%	7.8%
PLATE,SHEET,ET,N CELL	3920	Total	\$2,944	\$2,746	\$2,720	\$2,872	\$3,248	\$3,423	\$3,653		16.3%	6.7%	Total	2,026	1,924	2,035	2,311	2,676	3,015	3,232		48.8%	7.2%
		China	53	81	97	106	141	148	173		177.5%	17.1%	China	59	58	73	81	112	170	211		190.3%	23.8%
		All Others	2,891	2,665	2,623	2,765	3,107	3,276	3,480		13.3%	6.2%	All Others	1,968	1,866	1,962	2,230	2,563	2,844	3,021		44.6%	6.2%

U.S. Exports and Imports of Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
OTHR PLATE,SHEET,ETC.	3921	Total	991	936	967	1,078	1,223	1,425	1,618		43.8%	13.6%	Total	745	709	799	850	1,066	1,237	1,365		66.1%	10.3%
		China	17	23	31	44	77	87	117		405.3%	34.1%	China	10	12	17	23	40	72	97		622.5%	34.2%
		All Others	974	913	936	1,033	1,146	1,338	1,501		37.4%	12.2%	All Others	735	697	782	827	1,026	1,165	1,268		58.5%	8.8%
BATH,SINK,LAVATR SEAT	3922	Total	56	63	53	53	61	68	84		22.1%	22.1%	Total	134	127	138	155	163	186	205		39.4%	10.1%
		China	1	1	1	0	1	1	0		-50.5%	-41.9%	China	7	9	11	17	27	34	47		375.2%	39.2%
		All Others	55	61	52	53	61	68	83		23.8%	22.7%	All Others	127	119	127	138	136	152	158		20.4%	3.7%
BOX,BAG,CLOSURES, ETC	3923	Total	2,671	2,620	2,882	2,958	3,151	3,442	3,844		28.8%	11.7%	Total	2,139	2,334	2,723	3,163	3,697	4,365	4,862		104.1%	11.4%
		China	30	28	29	42	63	37	53		23.0%	41.9%	China	423	499	625	789	914	1,180	1,434		178.9%	21.5%
		All Others	2,641	2,592	2,853	2,916	3,088	3,405	3,791		28.9%	11.4%	All Others	1,716	1,835	2,097	2,373	2,783	3,185	3,428		85.6%	7.7%
TABLEWARE,O HOUSEHOLD	3924	Total	530	572	535	543	570	603	659		13.9%	9.3%	Total	1,423	1,491	1,658	1,824	2,124	2,532	2,795		78.0%	10.4%
		China	3	5	5	4	4	7	9		131.7%	33.9%	China	799	860	1,025	1,149	1,397	1,759	1,993		120.1%	13.3%
		All Others	527	568	530	538	565	596	649		13.2%	9.0%	All Others	624	631	633	675	727	774	802		24.1%	3.6%
OT BUILDERS' WARE	3925	Total	\$239	\$209	\$219	\$225	\$256	\$307	\$380		28.1%	23.8%	Total	786	835	987	1,140	1,315	1,479	1,531		88.2%	3.5%
		China	1	2	3	4	4	4	8		206.6%	94.2%	China	280	297	352	380	432	499	518		78.1%	3.8%
		All Others	238	207	216	221	252	302	371		27.1%	22.8%	All Others	506	539	635	760	884	980	1,013		93.8%	3.4%
OTHER ARTICLES	3926	Total	4,386	3,960	3,487	3,385	3,768	4,063	4,367		-7.3%	7.5%	Total	3,631	3,611	3,707	3,988	4,602	5,313	5,659		46.3%	6.5%
		China	43	37	38	49	58	62	85		44.7%	36.5%	China	1,235	1,277	1,364	1,507	1,819	2,204	2,366		78.4%	7.3%
		All Others	4,342	3,923	3,449	3,336	3,710	4,001	4,282		-7.9%	7.0%	All Others	2,395	2,333	2,344	2,480	2,783	3,108	3,293		29.8%	6.0%
O WORK RUBBR+PLST,ETC	8477	Total	1,265	1,106	972	967	1,113	1,296	1,390		2.5%	7.3%	Total	1,991	1,428	1,446	1,688	1,791	2,127	2,150		6.8%	1.1%
		China	22	35	68	82	104	104	103		371.5%	-1.7%	China	5	5	7	15	24	34	36		577.1%	6.4%
		All Others	1,243	1,070	904	885	1,010	1,192	1,288		-4.1%	8.1%	All Others	1,986	1,423	1,439	1,673	1,767	2,093	2,114		5.4%	1.0%
O W INDIV FUNCTIONS	8479	Total	12,279	8,168	6,438	6,271	8,009	7,788	9,241		-36.6%	18.7%	Total	4,811	3,764	3,073	3,240	3,931	4,356	4,927		-9.5%	13.1%
		China	270	323	403	407	700	438	642		62.2%	46.6%	China	41	46	96	136	210	273	311		564.5%	14.1%
		All Others	12,008	7,845	6,036	5,863	7,310	7,350	8,599		-38.8%	17.0%	All Others	4,770	3,718	2,978	3,104	3,721	4,083	4,616		-14.4%	13.1%
MOLD BOX F MET FOUNDR	8480	Total	1,028	853	772	753	867	991	981		-3.6%	-1.0%	Total	1,367	1,184	1,343	1,390	1,511	1,602	1,806		17.2%	12.7%
		China	11	15	28	20	21	23	23		106.0%	0.5%	China	25	25	30	40	54	79	115		222.9%	44.1%
		All Others	1,017	838	744	733	846	968	958		-4.8%	-1.1%	All Others	1,342	1,159	1,313	1,350	1,457	1,523	1,692		13.4%	11.1%
PAINTING,DRAW,COL LAGE	9701	Total	\$2,680	\$3,237	\$1,910	\$1,992	\$2,574	\$3,316	\$4,314		23.7%	30.1%	Total	3,682	3,591	3,324	2,601	3,358	3,264	4,285		-11.4%	31.3%
		China	9	11	22	4	8	5	17		-40.5%	210.4%	China	25	22	33	36	37	53	67		112.1%	24.7%
		All Others	2,671	3,226	1,888	1,988	2,565	3,311	4,297		24.0%	29.8%	All Others	3,657	3,570	3,291	2,565	3,321	3,210	4,219		-12.2%	31.4%
ORIGNL ENGRAVE,PRINTS	9702	Total	44	52	63	92	91	94	111		112.4%	18.1%	Total	77	74	79	87	103	124	135		61.8%	9.1%
		China	0	0	0	0	0	1	0		1216.5%	-52.9%	China	0	0	0	1	0	1	2		182.0%	218.0%
		All Others	44	52	62	92	90	94	111		111.0%	18.7%	All Others	76	74	79	87	103	123	134		61.5%	8.2%
Digital Multimeters	903031	Total	89	68	60	59	65	76	86		-14.4%	13.2%	Total	63	49	37	47	67	78	91		23.8%	17.3%
		China	4	5	5	4	5	5	5		4.4%	4.0%	China	14	11	14	23	42	49	55		241.8%	12.3%
		All Others	85	63	55	55	60	72	81		-15.4%	13.8%	All Others	48	38	23	24	25	28	36		-41.5%	26.2%

U.S. Exports and Imports of Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
Connecting Devices for use with Modular Compressed Air Conditioning units																						
	84159090	Total	1,189	1,105	1,196	1,097	1,014	999	1,061	-15.9%	6.1%	Total	1,050	1,017	1,159	1,227	1,284	1,492	1,662	42.1%	11.4%	
		China	19	13	17	23	27	19	25	4.4%	27.8%	China	10	14	22	35	50	91	143	793.8%	56.3%	
		All Others	1,170	1,092	1,179	1,075	987	980	1,036	-16.3%	5.7%	All Others	1,040	1,003	1,137	1,192	1,234	1,400	1,519	34.7%	8.5%	
PISTON ENGS,INT COM																						
	8407	Total	6,513	6,413	6,027	5,747	5,557	5,770	6,005	-11.4%	4.1%	Total	9,148	7,953	8,277	8,553	9,180	9,408	8,131	2.8%	-13.6%	
		China	20	13	7	19	28	34	46	69.2%	36.6%	China	6	2	19	55	65	101	103	1614.4%	2.7%	
		All Others	6,493	6,399	6,019	5,729	5,529	5,736	5,959	-11.7%	3.9%	All Others	9,143	7,950	8,258	8,498	9,115	9,307	8,027	1.8%	-13.8%	
COMPRESSION-IGNITION																						
	8408	Total	2,595	2,157	2,424	2,645	3,783	4,647	4,943	79.1%	6.4%	Total	1,547	1,330	1,536	2,115	2,799	3,481	4,120	125.0%	18.4%	
		China	32	35	36	34	59	99	156	209.1%	57.3%	China	1	0	0	0	6	6	3	600.7%	-49.1%	
		All Others	2,563	2,121	2,388	2,611	3,724	4,548	4,788	77.4%	5.3%	All Others	1,546	1,330	1,535	2,115	2,793	3,475	4,117	124.8%	18.5%	
PARTS ENGS 8407,8408																						
	8409	Total	4,592	4,107	4,497	4,333	4,326	4,845	4,713	5.5%	-2.7%	Total	5,075	4,562	4,861	5,263	6,423	7,308	7,958	44.0%	8.9%	
		China	25	37	41	63	73	117	120	363.7%	2.3%	China	48	59	82	92	130	211	292	340.8%	38.6%	
		All Others	4,566	4,070	4,456	4,271	4,253	4,728	4,593	3.5%	-2.9%	All Others	5,028	4,502	4,779	5,171	6,293	7,097	7,666	41.2%	8.0%	
OTHER ENGINE,MOTORS																						
	8412	Total	515	572	571	697	751	942	1,232	83.1%	30.8%	Total	821	845	743	875	1,105	1,410	1,649	71.9%	16.9%	
		China	9	17	23	24	32	40	135	339.1%	241.5%	China	6	6	8	12	29	48	69	654.1%	41.7%	
		All Others	506	555	548	673	719	902	1,097	78.5%	21.5%	All Others	814	839	735	863	1,076	1,362	1,580	67.3%	16.0%	
OT ADP IN/OUTPUT UN																						
	847160	Total	3,621	3,351	3,348	3,735	4,637	4,392	4,123	21.3%	-6.1%	Total	19,915	15,793	17,374	15,893	18,709	17,681	16,923	-11.2%	-4.3%	
		China	32	34	55	70	90	91	111	184.6%	22.5%	China	3,656	3,759	5,648	7,277	10,999	10,992	11,284	200.7%	2.7%	
		All Others	3,589	3,317	3,293	3,665	4,547	4,301	4,012	19.9%	-6.7%	All Others	16,259	12,034	11,725	8,616	7,709	6,689	5,638	-58.9%	-15.7%	
OT ADP STORAGE UNIT																						
	847170	Total	4,396	3,849	3,181	3,166	3,683	4,084	4,163	-7.1%	2.0%	Total	16,179	13,201	11,999	11,395	10,835	10,779	11,202	-33.4%	3.9%	
		China	75	65	55	69	78	75	104	0.0%	38.5%	China	1,208	1,325	1,709	1,728	2,126	2,408	2,950	99.3%	22.5%	
		All Others	4,321	3,784	3,126	3,098	3,605	4,009	4,060	-7.2%	1.3%	All Others	14,971	11,875	10,290	9,667	8,709	8,371	8,253	-44.1%	-1.4%	
RADIO TELEPHONES FOR INSTALLATION IN MOTOR VEHICLE																						
	852520902	Total	\$339	\$174	\$101	\$77	\$142	\$123	\$71	-63.7%	-42.6%	Total	10,111	12,349	13,794	15,556	20,989	24,906	27,350	146.3%	9.8%	
		China	2	1	2	5	2	1	1	-40.3%	-35.4%	China	513	875	1,976	2,882	5,547	9,316	11,868	1716.3%	27.4%	
		All Others	337	172	99	72	140	122	70	-63.9%	-42.7%	All Others	9,598	11,475	11,818	12,675	15,442	15,590	15,482	62.4%	-0.7%	
RADIO PHONES, NT MOTOR VHCL, PBLIC CELLULAR SRVCE																						
	852520904	Total	1,120	1,224	913	870	1,412	1,771	2,377	58.1%	34.2%	Import detail not available										
		China	2	1	1	1	2	110	58	5870.7%	-47.9%	Import detail not available										
		All Others	1,118	1,223	912	869	1,410	1,661	2,320	48.5%	39.7%	All Others										
TRANSMISSION APPTS INCORPORATING RECEIVERS,NESOI																						
	852520908	Total	2,048	1,604	1,168	1,107	1,654	1,581	1,745	-22.8%	10.3%	Import detail not available										
		China	51	131	51	48	70	26	16	-47.8%	-40.5%	Import detail not available										
		All Others	1,998	1,473	1,117	1,059	1,584	1,555	1,729	-22.2%	11.2%	All Others										

U.S. Exports and Imports of Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
L-Lysine Feed Products, Their Methods of Production and Genetic Constructs for Production	292241	Total	141	198	218	349	407	238	253	69.3%	6.2%	Total	31	26	22	38	68	39	38	26.3%	-1.6%	
		China	7	4	5	8	27	10	9	39.7%	-12.7%	China	0	1	1	1	12	7	11	1566.4%	62.5%	
		All Others	133	195	213	341	380	228	244	71.0%	7.1%	All Others	30	25	21	37	56	32	27	6.2%	-14.7%	
Foam Footwear	6405909	Total	16	12	9	10	16	16	21	1.4%	31.3%	Total	60	40	32	45	55	86	128	42.4%	49.2%	
		China	0	0	0	0	0	0	0	158.2%	25.6%	China	29	30	24	32	35	62	108	111.7%	74.8%	
		All Others	16	12	9	10	16	16	21	0.7%	31.4%	All Others	31	10	8	13	20	24	20	-22.8%	-16.8%	
Voltage Regulators	903289	Total	\$2,283	\$2,113	\$2,082	\$2,203	\$2,184	\$2,191	\$2,355	-4.0%	7.5%	Total	2,208	2,071	2,310	2,352	2,724	2,631	2,736	19.2%	4.0%	
		China	20	27	43	48	49	51	83	154.3%	62.4%	China	20	14	33	34	44	46	64	136.3%	38.2%	
		All Others	2,263	2,086	2,039	2,155	2,135	2,140	2,273	-5.4%	6.2%	All Others	2,188	2,057	2,277	2,318	2,680	2,584	2,672	18.1%	3.4%	
Laser Bar Code Scanners and Scan Engines	854890	Total	1,230	993	752	707	678	674	644	-45.2%	-4.5%	Total	142	162	151	176	219	196	181	38.3%	-7.5%	
		China	46	38	31	21	51	43	43	-6.8%	-0.4%	China	7	9	4	13	12	28	16	324.7%	-42.0%	
		All Others	1,184	955	721	686	627	631	601	-46.7%	-4.8%	All Others	135	153	147	163	207	168	165	24.4%	-1.8%	
Laminated Floor Panels	4412	Total	235	175	173	179	222	223	249	-5.0%	11.9%	Total	962	979	1,234	1,397	2,180	2,318	2,571	141.0%	10.9%	
		China	1	1	0	2	3	4	6	398.9%	45.9%	China	30	47	103	164	433	617	982	1934.2%	59.3%	
		All Others	234	175	173	177	219	219	243	-6.4%	11.2%	All Others	932	932	1,131	1,232	1,747	1,701	1,589	82.6%	-6.6%	
SEMICON DV;L-EMT DIOD	8541	Total	5,911	4,658	4,020	4,225	5,019	5,243	6,106	-11.3%	16.5%	Total	5,879	4,016	3,289	3,323	3,896	3,893	4,549	-33.8%	16.8%	
		China	200	226	219	233	272	241	287	21.0%	18.8%	China	282	239	280	309	435	506	682	79.7%	34.8%	
		All Others	5,711	4,432	3,801	3,992	4,748	5,002	5,819	-12.4%	16.3%	All Others	5,597	3,777	3,009	3,015	3,460	3,387	3,866	-39.5%	14.1%	
INTEGRATED CIRCUITS	8542	Total	54,098	40,407	38,215	41,912	43,031	41,978	46,278	-22.4%	10.2%	Total	42,462	26,406	22,727	21,281	22,853	21,867	22,833	-48.5%	4.4%	
		China	671	865	1,371	2,214	2,667	3,122	5,589	365.0%	79.0%	China	487	415	449	540	921	1,279	1,500	162.7%	17.3%	
		All Others	53,427	39,541	36,844	39,698	40,364	38,856	40,688	-27.3%	4.7%	All Others	41,975	25,991	22,277	20,741	21,932	20,588	21,333	-51.0%	3.6%	
Zero-Mercury-Added Alkaline Batteries	850680	Total	\$124	\$131	\$106	\$135	\$132	\$144	\$157	15.4%	9.3%	Total	118	128	128	155	153	130	117	10.3%	-9.8%	
		China	0	1	0	0	1	1	0	119.2%	-72.7%	China	39	44	51	82	94	90	88	132.4%	-1.4%	
		All Others	124	130	106	135	131	143	157	15.1%	9.7%	All Others	79	84	77	73	59	40	29	-49.1%	-28.5%	
Agricultural Vehicles and Components Thereof	870190	Total	1,007	997	1,149	1,135	1,430	1,726	1,851	71.5%	7.3%	Total	1,506	1,374	1,601	1,835	2,444	2,754	2,499	82.9%	-9.3%	
		China	3	4	6	4	10	13	7	311.4%	-49.9%	China	6	6	9	12	19	21	17	242.4%	-18.3%	
		All Others	1,004	993	1,142	1,131	1,419	1,713	1,845	70.7%	7.7%	All Others	1,500	1,368	1,592	1,823	2,425	2,733	2,482	82.2%	-9.2%	
Power bars	210690709	Total	730	708	791	960	1,112	1,160	1,709	58.8%	47.4%	Total	415	510	607	734	1,005	1,160	1,359	180.0%	17.1%	
		China	22	35	16	93	142	26	36	16.8%	37.9%	China	16	18	20	21	22	23	35	48.2%	50.8%	
		All Others	708	673	775	867	970	1,134	1,673	60.1%	47.6%	All Others	399	492	587	713	982	1,137	1,323	185.2%	16.4%	
Contract lenses	900130	Total	528	592	548	470	511	673	750	27.5%	11.3%	Total	181	187	252	317	394	409	392	125.7%	-4.2%	
		China	5	4	3	2	2	1	2	-74.9%	38.9%	China	0	0	0	0	0	0	0	-71.1%	2.6%	
		All Others	523	588	545	468	509	672	748	28.4%	11.3%	All Others	181	187	252	317	394	409	392	125.7%	-4.2%	

U.S. Exports and Imports of Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
Air conditioners	8415	Total	2,358	2,216	2,155	2,059	2,016	2,132	2,289		-9.6%	7.4%	Total	1,943	1,886	2,212	2,579	2,672	3,006	3,571		54.7%	18.8%
		China	42	42	45	48	42	36	43		-15.5%	22.4%	China	193	246	404	684	745	920	1,267		377.7%	37.7%
		All Others	2,316	2,174	2,110	2,011	1,974	2,096	2,245		-9.5%	7.1%	All Others	1,751	1,639	1,808	1,895	1,927	2,086	2,304		19.2%	10.5%
Soy sauce	210310	Total	\$16	\$17	\$17	\$18	\$18	\$22	\$22		44.4%	-1.1%	Total	44	45	44	48	48	50	51		12.6%	3.4%
		China	0	0	0	0	0	0	0		N/A	N/A	China	7	7	7	8	9	11	11		52.8%	-0.4%
		All Others	16	17	17	18	18	22	22		44.4%	-1.2%	All Others	37	39	37	40	39	39	41		5.1%	4.4%
Motorcycle chains	731511	Total	52	47	46	59	58	72	69		38.3%	-4.0%	Total	139	121	128	144	160	171	187		23.1%	9.5%
		China	0	0	0	0	2	2	2		1020.0%	-9.2%	China	14	14	15	17	22	26	28		82.8%	9.3%
		All Others	52	47	46	59	57	70	68		35.0%	-3.9%	All Others	124	107	112	127	138	145	158		16.3%	9.5%
Curling irons	820551	Total	25	32	33	32	39	35	40		39.0%	16.5%	Total	149	155	177	173	167	169	200		13.8%	18.1%
		China	0	1	1	0	1	1	0		560.6%	-64.3%	China	74	83	108	115	111	113	145		52.5%	28.2%
		All Others	25	31	32	32	38	34	40		37.1%	17.9%	All Others	75	72	69	58	57	56	55		-24.7%	-2.4%
Electrical cords	8544	Total	5,875	5,231	4,575	4,301	4,814	5,366	6,411		-8.7%	19.5%	Total	9,036	8,491	8,465	8,571	9,496	10,691	12,436		18.3%	16.3%
		China	70	72	71	65	85	121	149		71.6%	23.2%	China	807	725	832	924	1,252	1,506	2,042		86.6%	35.6%
		All Others	5,804	5,159	4,504	4,237	4,728	5,245	6,262		-9.6%	19.4%	All Others	8,229	7,765	7,633	7,646	8,243	9,185	10,395		11.6%	13.2%
Mineral water	220110	Total	15	19	12	19	20	40	61		169.3%	53.7%	Total	201	186	196	331	320	294	277		46.6%	-5.9%
		China	0	0	0	0	0	0	0		69.9%	-74.3%	China	0	0	0	0	0	0	0		82.3%	1004.3%
		All Others	15	19	12	19	20	40	61		169.5%	53.8%	All Others	201	186	196	331	320	294	277		46.6%	-5.9%
Distilled water	28510090	Total	\$44	\$33	\$26	\$37	\$55	\$63	\$94		44.1%	48.0%	Total	28	30	26	35	17	0	0		-100.0%	N/A
		China	4	3	4	6	12	14	20		253.3%	45.5%	China	0	0	0	0	0	0	0		-100.0%	N/A
		All Others	40	30	22	31	43	49	73		23.4%	48.7%	All Others	28	30	26	35	17	0	0		-100.0%	N/A
Maize seeds	100510	Total	169	201	214	165	180	177	142		5.0%	-19.5%	Total	139	116	109	118	89	98	161		-29.5%	63.9%
		China	0	0	0	0	0	0	0		-56.2%	-100.0%	China	0	0	0	0	0	0	0		-100.0%	N/A
		All Others	168	201	214	165	180	177	142		5.1%	-19.5%	All Others	139	116	109	118	89	98	161		-29.5%	63.9%
Perfume	330300	Total	489	461	463	565	682	831	963		69.9%	15.9%	Total	900	900	980	1,133	1,251	1,343	1,412		49.2%	5.2%
		China	1	1	0	1	2	5	9		688.8%	58.7%	China	1	2	4	8	8	7	11		943.2%	55.8%
		All Others	488	461	463	564	680	826	955		69.1%	15.6%	All Others	899	898	976	1,124	1,243	1,336	1,401		48.6%	4.9%
Detergent	3402	Total	1,220	1,298	1,290	1,454	1,688	1,767	2,088		44.8%	18.2%	Total	581	599	652	593	608	659	720		13.5%	9.3%
		China	21	20	27	36	50	59	89		184.2%	50.4%	China	3	5	11	23	36	22	29		558.6%	29.4%
		All Others	1,199	1,278	1,263	1,418	1,638	1,708	1,999		42.4%	17.1%	All Others	578	594	641	571	573	637	691		10.2%	8.6%
Sugar	17	Total	683	723	636	689	735	828	1,043		21.3%	26.0%	Total	1,480	1,534	1,701	1,933	1,990	2,369	2,906		60.0%	22.7%
		China	18	22	13	25	40	29	34		56.9%	18.2%	China	26	26	47	54	69	88	103		240.7%	17.5%
		All Others	664	701	623	664	696	799	1,009		20.3%	26.3%	All Others	1,454	1,508	1,654	1,878	1,921	2,281	2,803		56.8%	22.9%
Diapers	6209	Total	\$40	\$21	\$12	\$9	\$6	\$8	\$9		-79.1%	3.8%	Total	465	547	515	533	538	579	639		24.6%	10.4%
		China	0	0	0	0	0	1	0		N/A	-100.0%	China	50	49	138	214	245	291	333		478.0%	14.6%
		All Others	40	21	12	9	6	8	9		-80.4%	10.6%	All Others	415	498	377	319	293	289	306		-30.4%	6.0%
Razors	8212	Total	308	336	343	334	333	369	355		19.8%	-3.9%	Total	157	183	200	274	255	299	350		89.8%	17.1%
		China	10	22	51	3	1	2	1		-84.1%	-28.2%	China	11	13	33	78	55	49	54		333.9%	11.3%
		All Others	298	314	292	330	332	367	353		23.2%	-3.8%	All Others	146	171	168	195	200	250	296		71.1%	18.2%
Olive oil	1509	Total	6	4	7	8	10	17	16		172.3%	-7.7%	Total	413	376	437	520	718	859	981		107.9%	14.2%
		China	0	0	0	0	0	0	0		N/A	N/A	China	0	0	0	0	0	0	0		-9.3%	30.9%
		All Others	6	4	7	8	10	17	16		172.3%	-7.7%	All Others	413	376	436	520	718	859	981		107.9%	14.2%

U.S. Exports and Imports of Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns			----- Annual US Exports in \$ Millions -----								-- Change --		----- Annual US Imports in \$ Millions -----								-- Change --			
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05			
Baby formula	0404	Total	179	156	146	143	172	237	342		32.0%	44.5%		Total	169	116	128	135	160	197	215		16.3%	9.2%
		China	9	17	19	24	28	31	49		242.5%	57.0%		China	0	0	0	0	0	0	0		N/A	N/A
		All Others	170	139	127	119	144	205	293		20.7%	42.5%		All Others	169	116	128	135	160	197	215		16.3%	9.2%
Toothpaste	330610	Total	148	136	131	138	156	168	182		13.5%	8.3%		Total	44	54	56	64	63	66	96		50.9%	45.3%
		China	2	0	0	0	1	1	2		-27.9%	59.4%		China	5	5	3	2	2	3	3		-40.7%	8.1%
		All Others	146	136	131	137	155	167	180		14.0%	7.9%		All Others	39	49	53	61	61	63	93		63.2%	47.1%
Air fresheners	330749	Total	\$64	\$78	\$85	\$82	\$104	\$119	\$161		86.4%	35.7%		Total	49	63	54	83	98	107	130		118.1%	20.8%
		China	0	0	0	1	1	2	3		1005.0%	19.4%		China	2	2	3	6	9	17	31		827.7%	84.1%
		All Others	64	78	85	82	103	117	159		83.6%	36.0%		All Others	47	61	50	77	89	90	98		90.6%	8.8%

US Department of Commerce, China Customs, Global Trade Information Services and MBG Information Services.

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U.S. Trade Balances for Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns		Annual US Balances in \$ Millions								-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05
Inkjet cartridges	8443	Total	-\$462	-\$573	-\$479	-\$497	-\$779	-\$848	-\$1,002	83.7%	18.2%
		China	39	39	21	23	10	19	17	-51.6%	-11.7%
		All Others	-501	-612	-500	-520	-789	-867	-1,019	73.0%	17.6%
Golf clubs	950631	Total	327	328	148	133	96	56	23	-82.9%	-58.9%
		China	-53	-65	-153	-175	-218	-273	-320	418.3%	17.2%
		All Others	380	394	300	309	314	329	343	-13.5%	4.2%
Windshields	700711	Total	204	150	111	137	95	65	20	-68.4%	-69.8%
		China	-1	-5	-2	-4	-5	-6	-9	428.2%	50.5%
		All Others	205	155	113	141	100	71	29	-65.5%	-59.1%
Auto replacement parts: brake pads, ignition coils, sway bars	8708	Total	3,009	2,583	-280	-4,262	-6,428	-9,777	-9,661	-425.0%	-1.2%
		China	-320	-422	-585	-774	-1,063	-1,622	-2,178	406.8%	34.2%
		All Others	3,329	3,004	306	-3,488	-5,365	-8,154	-7,483	-345.0%	-8.2%
Cell phone batteries	850650	Total	-32	-3	-10	6	28	51	67	-261.2%	31.1%
		China	-2	0	-5	-16	-20	-36	-39	1945.1%	9.6%
		All Others	-30	-3	-5	22	48	87	106	-390.7%	22.2%
Duracell Batteries	8507	Total	-1,190	-928	-851	-793	-1,137	-1,279	-1,325	7.5%	3.6%
		China	-242	-226	-251	-304	-479	-602	-756	148.6%	25.5%
		All Others	-948	-702	-600	-489	-658	-676	-569	-28.6%	-15.8%
Auto and truck parts	8708	Total	3,009	2,583	-280	-4,262	-6,428	-9,777	-9,661	-425.0%	-1.2%
		China	-320	-422	-585	-774	-1,063	-1,622	-2,178	406.8%	34.2%
		All Others	3,329	3,004	306	-3,488	-5,365	-8,154	-7,483	-345.0%	-8.2%
Personal care products	33	Total	1,221	1,439	1,158	291	-321	-673	-294	-155.2%	-56.4%
		China	-86	-132	-164	-165	-185	-230	-273	168.3%	18.3%
		All Others	1,307	1,571	1,323	455	-136	-443	-21	-133.9%	-95.2%
Aircraft parts	880330	Total	8,324	8,334	7,837	8,520	9,405	10,519	12,450	26.4%	18.4%
		China	175	200	200	209	232	434	594	147.5%	36.8%
		All Others	8,148	8,134	7,637	8,311	9,172	10,085	11,857	23.8%	17.6%
Testing equipment	9024	Total	536	501	415	477	469	484	546	-9.7%	12.7%
		China	28	39	51	74	82	84	96	199.3%	14.2%
		All Others	508	462	364	403	387	400	449	-21.3%	12.4%
Electrical control equipment	8532	Total	294	282	330	404	525	39	80	-86.6%	101.8%
		China	2	-3	-20	-14	20	35	78	1926.5%	119.5%
		All Others	292	285	350	418	505	4	2	-98.6%	-50.6%
Commercial door fixtures	730830	Total	-105	-117	-143	-176	-209	-201	-183	90.2%	-8.7%
		China	-4	-6	-10	-14	-28	-37	-55	778.9%	50.6%
		All Others	-101	-111	-133	-161	-181	-164	-128	62.0%	-21.9%
Computer Software	852491	Total	589	409	280	269	284	316	403	-46.4%	27.7%
		China	13	6	7	15	15	16	27	23.0%	68.0%
		All Others	576	403	274	254	269	300	377	-47.9%	25.5%

U.S. Trade Balances for Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns Product	HS Code	Source	----- Annual US Balances in \$ Millions -----							-- Change --		
			2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
<b>Entertainment</b>												
<b>Software (including videogame DCs and cartridges, personal computer CD-ROMs and multimedia products)</b>												
	950410	<b>Total</b>	-1,693	-2,950	-3,231	-1,824	-1,620	-1,808	-2,629		6.8%	45.4%
		<b>China</b>	-336	-398	-1,571	-2,108	-1,957	-2,357	-3,642		602.4%	54.5%
		<b>All Others</b>	-1,357	-2,552	-1,660	283	337	549	1,013		-140.4%	84.6%
<b>Records</b>												
	852410	<b>Total</b>	48	50	36	40	34	22	22		-54.2%	1.7%
		<b>China</b>	0	1	0	0	0	1	1		329.1%	5.5%
		<b>All Others</b>	48	48	36	40	34	21	22		-55.7%	1.6%
<b>Laser Disks</b>												
	852432	<b>Total</b>	-135	-100	-76	-44	-47	-25	-36		-81.5%	42.7%
		<b>China</b>	-4	-6	-4	-5	-6	-6	-10		57.1%	62.4%
		<b>All Others</b>	-131	-94	-72	-40	-42	-19	-26		-85.6%	36.2%
<b>MAGN TPE,N SOUND/IM</b>												
	852440	<b>Total</b>	100	68	35	38	46	15	16		-85.2%	5.2%
		<b>China</b>	1	2	1	1	2	0	1		-56.5%	86.3%
		<b>All Others</b>	99	66	35	37	44	14	15		-85.4%	2.8%
<b>MGN TPE,SND/IM=&lt;4MM</b>												
	852451	<b>Total</b>	20	18	11	25	21	17	13		-13.3%	-23.0%
		<b>China</b>	-1	-2	-2	-1	-0	-0	-0		-65.0%	-75.0%
		<b>All Others</b>	20	19	13	26	22	17	13		-15.6%	-24.0%
<b>MG TPE,S/!&gt;4=&lt;6.5MM</b>												
	852452	<b>Total</b>	64	30	24	25	25	13	13		-79.8%	1.2%
		<b>China</b>	4	1	2	0	0	-0	0		-101.5%	-166.9%
		<b>All Others</b>	61	28	22	25	25	13	13		-78.5%	0.4%
<b>MG TPE,SND/IM&gt;6.5MM</b>												
	852453	<b>Total</b>	13	1	-27	-10	-5	2	-2		-82.5%	-174.2%
		<b>China</b>	-4	-5	-7	-8	-6	-1	-1		-67.2%	-13.2%
		<b>All Others</b>	17	6	-20	-2	1	3	-1		-79.2%	-120.3%
<b>Textbooks, tradebooks, reference &amp; professional publications/journals</b>												
	490199	<b>Total</b>	386	166	125	63	-58	21	-0		-94.6%	-101.9%
		<b>China</b>	-207	-254	-323	-391	-509	-581	-691		181.2%	19.0%
		<b>All Others</b>	592	420	448	454	451	602	691		1.6%	14.8%
<b>Table grapes (Chinese copy US packaging/sell as US goods)</b>												
	80610	<b>Total</b>	-97	-96	-186	-164	-134	-249	-257		155.6%	3.3%
		<b>China</b>	11	9	8	6	21	47	35		323.0%	-24.1%
		<b>All Others</b>	-108	-105	-194	-170	-155	-295	-292		172.7%	-1.1%
<b>Fresh fruit</b>												
	08	<b>Total</b>	61	159	13	174	217	588	516		870.0%	-12.2%
		<b>China</b>	6	7	-4	-12	-27	28	-2		378.6%	-107.8%
		<b>All Others</b>	55	152	17	186	244	560	519		923.2%	-7.3%

U.S. Trade Balances for Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns		Annual US Balances in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
Beverages	22	Total	-6,633	-6,939	-7,934	-8,945	-9,515	-10,747	-13,491		62.0%	25.5%
		China	-13	-18	-22	-18	-19	-12	-91		-7.1%	643.3%
		All Others	-6,620	-6,921	-7,912	-8,928	-9,497	-10,735	-13,399		62.2%	24.8%
Structural wood-based panels	441292	Total	-1	-1	-6	-6	-8	-8	-8		1302.3%	-7.9%
		China	0	-0	-0	-0	-2	-2	-2		-1636.3%	-1.5%
		All Others	-1	-1	-6	-6	-6	-6	-6		731.9%	-10.1%
Structural wood-based panels	441820	Total	-318	-375	-419	-420	-506	-597	-657		87.6%	10.0%
		China	-1	-3	-7	-11	-29	-57	-99		4097.3%	73.5%
		All Others	-317	-372	-413	-409	-477	-540	-558		70.4%	3.3%
Agricultural chemical products, including glyphosate (Roundup)	38083019	Total	569	567	555	341	478	573	690		0.7%	20.5%
		China	1	8	-9	-42	-11	-17	-25		-2133.5%	46.0%
		All Others	568	558	564	383	490	590	715		3.9%	21.2%
ETHYLENE,PRIMARY FORM	3901	Total	1,044	652	948	688	1,243	1,296	1,465		24.1%	13.0%
		China	138	110	114	113	240	349	383		151.9%	9.8%
		All Others	906	541	834	575	1,003	948	1,082		4.6%	14.2%
OTHR OLEFIN PRIMARY F	3902	Total	1,050	1,039	1,096	1,305	1,621	2,021	2,490		92.5%	23.2%
		China	56	110	101	150	196	236	295		324.0%	25.0%
		All Others	994	929	995	1,154	1,425	1,785	2,195		79.6%	23.0%
STYRENE,PRIMARY FORMS	3903	Total	292	173	198	228	195	2	241		-99.4%	12898.0%
		China	12	6	13	15	28	27	47		129.0%	70.9%
		All Others	280	167	185	213	167	-25	194		-109.1%	-863.6%
VINYL CHLORIDE,ETC	3904	Total	326	461	596	636	738	572	804		75.6%	40.5%
		China	64	116	117	113	127	117	120		81.6%	2.5%
		All Others	262	345	479	522	611	455	684		74.1%	50.2%
VINYL ACETATE;O VINYL	3905	Total	307	262	350	391	441	448	425		46.0%	-5.1%
		China	-8	-7	5	8	7	7	8		-179.1%	21.3%
		All Others	315	268	345	383	434	441	417		40.0%	-5.5%
ACRYLIC POLYMERS	3906	Total	491	519	527	462	615	772	847		57.2%	9.7%
		China	19	14	22	25	30	25	33		31.9%	31.4%
		All Others	472	504	504	437	585	747	814		58.2%	9.0%
POLYETHER,EXPOXID E,ET	3907	Total	1,909	1,897	1,756	1,772	2,201	2,039	2,374		6.8%	16.4%
		China	136	131	172	221	298	258	305		90.2%	17.9%
		All Others	1,773	1,766	1,584	1,551	1,902	1,780	2,069		0.4%	16.2%
POLYAMIDES	3908	Total	437	320	325	389	556	690	872		57.8%	26.4%
		China	21	22	32	43	69	85	132		309.4%	56.0%
		All Others	416	298	294	346	487	605	740		45.3%	22.3%

U.S. Trade Balances for Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns		Annual US Balances in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
AMINO-RESIN,PRIM F;OT	3909	Total	472	431	486	606	698	1,005	1,007		113.0%	0.2%
		China	24	25	41	108	123	177	174		638.9%	-1.7%
		All Others	448	406	445	498	576	828	833		84.9%	0.6%
SILICONE,PRIMARY FORM	3910	Total	271	248	327	356	406	468	615		72.7%	31.4%
		China	13	12	16	26	37	64	97		399.2%	50.9%
		All Others	258	237	312	330	369	404	518		56.5%	28.3%
PETRO RESIN,PRIM F;OT	3911	Total	391	389	404	381	486	460	476		17.6%	3.4%
		China	14	14	13	15	19	31	17		126.4%	-44.5%
		All Others	378	376	391	366	467	430	459		13.7%	6.9%
CELLULOSE,OT CHEM DER	3912	Total	362	417	430	460	565	588	655		62.4%	11.5%
		China	5	4	4	10	22	80	96		1433.1%	20.9%
		All Others	357	413	426	450	544	508	559		42.5%	10.0%
OT NATURAL PRIME FORM	3913	Total	90	8	14	52	20	-16	110		-118.3%	-770.0%
		China	-6	-100	-104	-97	-143	-149	-36		2560.6%	-76.0%
		All Others	95	108	118	149	163	133	146		39.1%	10.0%
ION-EXCHANGERS	3914	Total	-63	-75	-89	-101	-73	-101	-107		60.4%	5.8%
		China	-3	-6	-6	-14	-12	-15	-18		378.0%	16.2%
		All Others	-60	-69	-82	-87	-61	-86	-89		43.2%	4.0%
WASTE,PARINGS,SCR AP	3915	Total	60	126	97	141	187	230	201		285.2%	-12.7%
		China	24	27	31	37	68	82	74		245.4%	-9.3%
		All Others	36	99	66	104	119	148	126		311.5%	-14.6%
MONOFIL,ROD,STICK, ETC	3916	Total	-146	-192	-146	-107	-121	-95	-90		-34.6%	-5.5%
		China	-0	-2	-3	-2	-2	-9	-16		3194.4%	75.3%
		All Others	-145	-190	-143	-106	-119	-86	-74		-40.7%	-14.1%
TUBE,PIPE,HOSES+FIT	3917	Total	302	273	292	352	351	384	507		27.0%	32.2%
		China	-8	-11	-27	-37	-33	-66	-109		755.5%	64.4%
		All Others	310	284	319	389	384	450	616		45.1%	37.0%
FLOOR,WALL COVER	3918	Total	-131	-177	-230	-280	-277	-273	-303		108.4%	11.1%
		China	-28	-36	-72	-85	-104	-107	-131		276.8%	22.5%
		All Others	-103	-141	-158	-195	-173	-166	-172		61.9%	3.8%
SELF ADHESIVE MATERIL	3919	Total	662	570	645	676	788	848	807		28.0%	-4.8%
		China	7	7	12	11	24	9	-2		27.8%	-121.7%
		All Others	655	563	633	664	764	838	809		28.0%	-3.5%
PLATE,SHEET,ET,N CELL	3920	Total	918	822	685	561	572	409	421		-55.5%	3.0%
		China	-5	23	24	26	29	-23	-38		315.3%	67.6%
		All Others	923	799	661	535	543	431	459		-53.3%	6.4%

U.S. Trade Balances for Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns		Annual US Balances in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
OTHR PLATE,SHEET,ETC.	3921	Total	246	227	168	227	157	187	253		-23.7%	35.0%
		China	7	11	14	22	36	15	20		107.0%	33.8%
		All Others	238	216	154	206	120	172	233		-27.7%	35.1%
BATH,SINK,LAVATR SEAT	3922	Total	-78	-65	-85	-102	-102	-118	-122		51.9%	3.2%
		China	-6	-7	-11	-16	-27	-33	-47		467.4%	40.7%
		All Others	-72	-57	-75	-86	-76	-85	-75		17.9%	-11.6%
BOX,BAG,CLOSURES, ETC	3923	Total	532	286	159	-204	-546	-923	-1,018		-273.3%	10.3%
		China	-393	-471	-597	-747	-851	-1,143	-1,381		191.0%	20.8%
		All Others	925	757	756	543	305	220	363		-76.2%	65.0%
TABLEWARE,O HOUSEHOLD	3924	Total	-893	-919	-1,123	-1,282	-1,554	-1,929	-2,136		116.0%	10.7%
		China	-796	-856	-1,021	-1,144	-1,392	-1,751	-1,983		120.0%	13.2%
		All Others	-97	-64	-102	-137	-162	-178	-152		83.0%	-14.3%
OT BUILDERS' WARE	3925	Total	-547	-627	-768	-916	-1,059	-1,173	-1,152		114.5%	-1.8%
		China	-279	-295	-349	-377	-427	-495	-510		77.5%	3.0%
		All Others	-268	-332	-419	-539	-632	-678	-642		153.1%	-5.3%
OTHER ARTICLES	3926	Total	755	349	-220	-603	-834	-1,249	-1,291		-265.6%	3.4%
		China	-1,192	-1,240	-1,325	-1,459	-1,761	-2,142	-2,281		79.7%	6.5%
		All Others	1,947	1,589	1,105	856	928	893	989		-54.1%	10.8%
O WORK RUBBR+PLST,ETC	8477	Total	-726	-322	-474	-721	-678	-831	-759		14.5%	-8.6%
		China	17	30	61	67	80	70	67		311.4%	-5.6%
		All Others	-743	-353	-535	-788	-758	-901	-826		21.3%	-8.4%
O W INDIV FUNCTIONS	8479	Total	7,467	4,404	3,365	3,031	4,079	3,432	4,314		-54.0%	25.7%
		China	229	277	307	271	490	166	331		-27.7%	100.1%
		All Others	7,238	4,127	3,058	2,759	3,589	3,267	3,982		-54.9%	21.9%
MOLD BOX F MET FOUNDR	8480	Total	-339	-331	-571	-637	-644	-611	-825		80.3%	35.1%
		China	-14	-9	-1	-20	-33	-57	-92		319.1%	61.7%
		All Others	-325	-321	-569	-617	-611	-555	-734		70.4%	32.3%
PAINTING,DRAW,COL LAGE	9701	Total	-1,002	-355	-1,414	-609	-784	53	29		-105.3%	-45.7%
		China	-16	-11	-11	-32	-28	-48	-50		197.5%	4.0%
		All Others	-986	-344	-1,403	-578	-756	101	79		-110.2%	-22.0%
ORIGNL ENGRAVE,PRINTS	9702	Total	-32	-22	-17	5	-13	-30	-24		-8.1%	-19.7%
		China	-0	-0	-0	-1	-0	0	-1		-276.4%	-677.7%
		All Others	-32	-22	-17	6	-12	-30	-22		-7.1%	-24.6%
Digital Multimeters	903031	Total	26	19	23	12	-2	-1	-5		-104.9%	257.4%
		China	-10	-6	-9	-19	-37	-45	-51		345.6%	13.1%
		All Others	37	25	32	31	35	43	46		19.0%	5.8%

U.S. Trade Balances for Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns Product	HS Code	Source	Annual US Balances in \$ Millions							-- Change --		
			2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
<b>Connecting Devices for use with Modular Compressed Air Conditioning units</b>												
	84159090	Total	193	122	85	-94	-242	-463	-573		-340.4%	23.7%
		China	9	-1	-4	-11	-22	-71	-116		-929.1%	62.3%
		All Others	184	123	88	-83	-220	-392	-457		-312.9%	16.6%
<b>PISTON ENGS,INT COM</b>												
	8407	Total	-2,635	-1,540	-2,250	-2,806	-3,623	-3,638	-2,125		38.1%	-41.6%
		China	14	11	-11	-36	-37	-67	-57		-574.3%	-14.4%
		All Others	-2,649	-1,551	-2,239	-2,770	-3,587	-3,571	-2,068		34.8%	-42.1%
<b>COMPRESSION-IGNITION</b>												
	8408	Total	1,048	827	888	530	984	1,166	823		11.2%	-29.4%
		China	31	35	36	34	53	93	153		198.1%	64.3%
		All Others	1,017	792	853	496	931	1,073	670		5.5%	-37.5%
<b>PARTS ENGS 8407,8408</b>												
	8409	Total	-484	-454	-364	-930	-2,096	-2,462	-3,245		408.8%	31.8%
		China	-23	-22	-41	-30	-57	-94	-172		315.2%	84.0%
		All Others	-461	-432	-323	-900	-2,040	-2,369	-3,073		413.4%	29.7%
<b>OTHER ENGINE,MOTORS</b>												
	8412	Total	-306	-273	-172	-178	-353	-468	-417		53.0%	-11.0%
		China	3	12	15	12	3	-9	66		-445.2%	-845.4%
		All Others	-309	-284	-187	-190	-356	-459	-483		48.9%	5.2%
<b>OT ADP IN/OUTPUT UN</b>												
	847160	Total	-16,294	-12,442	-14,025	-12,158	-14,072	-13,289	-12,800		-18.4%	-3.7%
		China	-3,624	-3,725	-5,593	-7,207	-10,910	-10,902	-11,173		200.8%	2.5%
		All Others	-12,670	-8,716	-8,432	-4,951	-3,162	-2,388	-1,626		-81.2%	-31.9%
<b>OT ADP STORAGE UNIT</b>												
	847170	Total	-11,783	-9,352	-8,818	-8,228	-7,151	-6,695	-7,039		-43.2%	5.1%
		China	-1,133	-1,260	-1,654	-1,659	-2,048	-2,333	-2,846		105.9%	22.0%
		All Others	-10,650	-8,092	-7,164	-6,569	-5,104	-4,362	-4,193		-59.0%	-3.9%
<b>RADIO TELEPHONES FOR INSTALLATION IN MOTOR VEHICLE</b>												
	852590	Total	-4,322	-7,629	-10,317	-12,151	-16,333	-19,899	-21,380		360.4%	7.4%
	852520902	China	-372	-604	-1,856	-2,797	-5,453	-9,146	-11,775		2359.2%	28.7%
		All Others	-3,950	-7,025	-8,461	-9,354	-10,880	-10,753	-9,605		172.2%	-10.7%
<b>RADIO PHONES, NT MOTOR VHCL, PBLIC CELLULAR SRVCE</b>												
	852520904	Balance detail not available										
		Balance detail not available										
		All Others										
<b>TRANSMISSION APPTS INCORPORATING RECEIVERS,NESOI</b>												
	852520908	Balance detail not available										
		Balance detail not available										
		All Others										

U.S. Trade Balances for Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns Product	HS Code	Source	----- Annual US Balances in \$ Millions -----							-- Change --		
			2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
<b>L-Lysine Feed Products, Their Methods of Production and Genetic Constructs for Production</b>												
	292241	<b>Total</b>	110	172	196	311	339	199	215		81.3%	7.7%
		China	7	3	4	7	15	4	-2		-46.3%	-144.0%
		All Others	103	170	193	304	324	196	216		90.0%	10.6%
<b>Foam Footwear</b>												
	6405909	<b>Total</b>	-46	-30	-26	-37	-41	-73	-110		58.6%	51.4%
		China	-30	-31	-25	-33	-37	-65	-111		117.5%	71.9%
		All Others	-16	1	-0	-4	-4	-8	1		-49.3%	-109.7%
<b>Voltage Regulators</b>												
	903289	<b>Total</b>	75	42	-227	-149	-540	-439	-381		-683.8%	-13.3%
		China	0	13	11	14	5	5	19		950.7%	302.7%
		All Others	75	29	-238	-163	-545	-444	-400		-693.4%	-10.0%
<b>Laser Bar Code Scanners and Scan Engines</b>												
	854890	<b>Total</b>	1,089	831	601	531	459	479	463		-56.0%	-3.4%
		China	39	28	27	8	39	15	27		-61.5%	75.6%
		All Others	1,049	802	574	523	420	463	436		-55.8%	-5.9%
<b>Laminated Floor Panels</b>												
	4412	<b>Total</b>	-727	-803	-1,061	-1,217	-1,958	-2,095	-2,321		188.1%	10.8%
		China	-29	-46	-103	-162	-429	-612	-976		1978.3%	59.3%
		All Others	-698	-758	-958	-1,055	-1,529	-1,482	-1,345		112.5%	-9.3%
<b>SEMICON DV;L-EMT DIOD</b>												
	8541	<b>Total</b>	32	642	731	902	1,123	1,350	1,557		4142.2%	15.4%
		China	-82	-13	-61	-76	-164	-265	-395		222.8%	49.5%
		All Others	114	655	792	978	1,287	1,614	1,953		1319.1%	21.0%
<b>INTEGRATED CIRCUITS</b>												
	8542	<b>Total</b>	11,636	14,000	15,488	20,631	20,178	20,111	23,444		72.8%	16.6%
		China	184	450	921	1,674	1,746	1,843	4,089		899.2%	121.9%
		All Others	11,452	13,550	14,567	18,957	18,433	18,268	19,355		59.5%	5.9%
<b>Zero-Mercury-Added Alkaline Batteries</b>												
	850680	<b>Total</b>	6	4	-22	-20	-22	13	40		109.5%	193.4%
		China	-38	-43	-51	-82	-94	-89	-88		132.5%	-0.8%
		All Others	45	47	29	62	72	102	128		129.2%	24.8%
<b>Agricultural Vehicles and Components Thereof</b>												
	870190	<b>Total</b>	-500	-377	-452	-700	-1,014	-1,028	-648		105.9%	-37.0%
		China	-3	-2	-2	-8	-8	-8	-11		169.0%	33.0%
		All Others	-496	-375	-450	-692	-1,006	-1,020	-637		105.5%	-37.5%
<b>Power bars</b>												
	210690709	<b>Total</b>	1,133	1,113	1,054	1,112	1,105	1,190	1,380		5.0%	16.0%
		China	11	24	5	82	149	46	32		321.0%	-30.6%
		All Others	1,122	1,089	1,049	1,029	956	1,143	1,347		1.9%	17.9%
<b>Contract lenses</b>												
	900130	<b>Total</b>	347	404	296	153	118	264	358		-23.8%	35.5%
		China	5	4	3	2	2	1	2		-74.9%	39.1%
		All Others	342	400	292	151	116	263	356		-23.1%	35.5%

U.S. Trade Balances for Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns Product	HS Code	Source	----- Annual US Balances in \$ Millions -----								-- Change --	
			2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
Air conditioners	8415	Total	415	330	-57	-520	-656	-874	-1,282		-310.6%	46.6%
		China	-150	-205	-360	-636	-703	-884	-1,223		487.5%	38.3%
		All Others	566	535	302	116	47	10	-59		-98.3%	-695.0%
Soy sauce	210310	Total	-28	-28	-27	-30	-30	-27	-29		-4.8%	7.1%
		China	-7	-7	-7	-8	-9	-11	-11		52.8%	-0.6%
		All Others	-22	-21	-21	-22	-21	-17	-19		-23.3%	12.1%
Motorcycle chains	731511	Total	-86	-73	-81	-84	-102	-99	-118		13.9%	19.3%
		China	-14	-13	-15	-16	-20	-24	-27		71.0%	10.8%
		All Others	-72	-60	-66	-68	-82	-74	-91		2.8%	22.1%
Curling irons	820551	Total	-124	-123	-144	-141	-128	-135	-160		8.7%	18.5%
		China	-74	-81	-107	-115	-110	-113	-145		51.9%	28.7%
		All Others	-50	-41	-37	-26	-18	-22	-15		-55.4%	-33.4%
Electrical cords	8544	Total	-3,161	-3,260	-3,891	-4,270	-4,682	-5,325	-6,026		68.4%	13.2%
		China	-737	-654	-762	-860	-1,167	-1,385	-1,893		88.0%	36.6%
		All Others	-2,424	-2,606	-3,129	-3,410	-3,515	-3,939	-4,133		62.5%	4.9%
Mineral water	220110	Total	-186	-167	-183	-311	-300	-255	-216		36.9%	-15.1%
		China	0	0	0	0	-0	0	-0		66.8%	-367.9%
		All Others	-186	-167	-183	-311	-300	-255	-216		36.9%	-15.1%
Distilled water	28510090	Total	12	1	-1	1	20	16	35		32.9%	119.7%
		China	4	3	4	6	12	13	20		237.4%	48.8%
		All Others	8	-1	-4	-5	9	3	16		-64.7%	442.7%
Maize seeds	100510	Total	30	85	105	48	90	79	-18		167.6%	-123.1%
		China	0	0	0	0	0	0	-0		-55.0%	-102.9%
		All Others	29	85	105	47	90	79	-18		168.9%	-123.1%
Perfume	330300	Total	-411	-439	-517	-567	-569	-511	-449		24.6%	-12.2%
		China	0	-1	-3	-7	-6	-2	-2		-10230.2%	45.9%
		All Others	-411	-437	-513	-560	-563	-510	-447		24.2%	-12.4%
Detergent	3402	Total	639	699	638	861	1,080	1,108	1,368		73.3%	23.5%
		China	17	15	16	13	15	37	60		111.4%	63.1%
		All Others	622	684	622	848	1,065	1,071	1,308		72.3%	22.1%
Sugar	17	Total	-797	-811	-1,065	-1,244	-1,255	-1,541	-1,863		93.2%	20.9%
		China	-7	-4	-34	-29	-29	-59	-69		687.3%	17.1%
		All Others	-790	-807	-1,031	-1,214	-1,226	-1,482	-1,793		87.6%	21.0%
Diapers	6209	Total	-425	-526	-503	-524	-532	-571	-631		34.5%	10.4%
		China	-50	-49	-138	-214	-245	-290	-333		476.9%	14.8%
		All Others	-374	-477	-365	-310	-287	-281	-297		-25.0%	5.9%
Razors	8212	Total	151	153	143	60	78	70	5		-53.4%	-93.1%
		China	-1	9	18	-75	-53	-47	-53		3311.8%	12.7%
		All Others	152	143	125	135	131	117	58		-22.8%	-50.6%
Olive oil	1509	Total	-407	-371	-430	-512	-708	-842	-966		106.9%	14.7%
		China	-0	0	-0	-0	-0	-0	-0		-9.3%	25.5%
		All Others	-407	-371	-430	-512	-708	-842	-965		106.9%	14.7%

U.S. Trade Balances for Products Known to be Affected by IP Theft: 2000-2006

Counterfeit Concerns		----- Annual US Balances in \$ Millions -----								-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05
Baby formula	0404	Total	10	40	19	9	12	40	127	291.8%	218.0%
		China	9	17	19	24	28	31	49	242.5%	56.9%
		All Others	1	23	-1	-15	-16	9	78	731.4%	808.9%
Toothpaste	330610	Total	104	82	75	74	93	102	86	-2.2%	-15.6%
		China	-3	-4	-3	-2	-2	-2	-1	-47.5%	-29.3%
		All Others	108	87	78	76	94	104	87	-3.6%	-15.8%
Air fresheners	330749	Total	14	15	31	-0	5	11	32	-21.2%	176.3%
		China	-2	-2	-3	-5	-8	-15	-29	806.5%	93.5%
		All Others	16	17	34	5	14	26	60	63.2%	129.4%

US Department of Commerce, China Customs, Global Trade Information Services and MBG Information Services.

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions										-- Change --		Annual US Imports in \$ Millions										-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05					
Inkjet cartridges	8443	Total	\$1,246	\$995	\$842	\$863	\$878	\$1,030	\$1,062		-17.3%	3.1%	Total	\$1,707	\$1,567	\$1,321	\$1,359	\$1,657	\$1,878	\$2,064		10.0%	9.9%			
		Canada	212	163	161	183	155	196	184		-7.6%	-5.8%	Germany	587	679	552	570	741	781	849		33.2%	8.7%			
		Mexico	104	64	71	58	59	66	71		-36.7%	7.7%	Japan	398	295	209	226	255	363	375		-8.8%	3.5%			
		Germany	110	83	82	71	69	72	69		-34.1%	-4.6%	United Kingdom	153	109	111	107	121	126	143		-17.4%	13.1%			
		China	43	43	28	37	27	47	54		9.5%	12.9%	Israel	70	63	67	80	80	94	134		34.1%	41.8%			
		United Kingdom	93	81	63	43	51	47	46		-49.4%	-1.3%	Switzerland	77	64	35	46	82	72	97		-6.2%	33.2%			
		All Others	684	561	435	471	517	602	637		-12.0%	5.9%	China	4	4	7	13	17	28	37		625.4%	29.4%			
		All Others												All Others	419	352	338	316	361	413	430		-1.4%	4.2%		
Golf clubs	950631	Total	407	415	325	334	345	355	361		-12.7%	1.5%	Total	80	87	177	201	249	299	338		276.3%	12.8%			
		Canada	59	61	53	60	65	70	81		17.9%	16.4%	China	54	67	155	178	219	273	320		401.9%	17.2%			
		United Kingdom	89	92	88	89	89	85	74		-4.8%	-12.8%	Japan	15	12	15	11	13	11	8		-27.5%	-24.4%			
		Korea, South	33	29	28	26	26	43	57		27.8%	34.4%	Taiwan	3	4	3	3	6	7	3		127.9%	-51.9%			
		Japan	134	147	81	78	69	51	49		-61.4%	-5.7%	Vietnam	0	0	0	0	0	0	2		N/A	1023.1%			
		Netherlands	0	0	9	20	18	22	21		4624.2%	-2.7%	Hong Kong	3	2	2	6	5	5	2		70.3%	-68.6%			
		China	2	2	2	2	2	0	0		-98.6%	54.3%	All Others	4	2	2	3	6	3	2		-17.1%	-31.1%			
		All Others	89	85	63	59	77	85	78		-5.0%	-7.6%														
Windshields	700711	Total	386	310	294	315	286	278	243		-28.0%	-12.7%	Total	182	160	183	178	191	213	223		17.4%	4.5%			
		Canada	267	220	203	205	189	184	162		-31.1%	-11.8%	Mexico	120	95	111	97	115	141	144		17.5%	1.8%			
		Germany	23	23	23	34	23	22	25		-4.9%	17.6%	Canada	27	24	29	36	27	21	21		-22.9%	-0.1%			
		Mexico	65	45	49	40	32	27	17		-58.2%	-35.9%	China	2	5	3	4	5	6	10		264.8%	47.6%			
		France	5	4	3	2	5	6	6		33.0%	-8.6%	Japan	8	7	6	7	6	9	8		7.3%	-14.3%			
		Belgium	2	1	2	2	2	1	5		-31.1%	317.4%	Germany	7	9	11	10	10	10	7		35.8%	-26.6%			
		China	1	0	1	0	0	0	0		-70.1%	-54.6%	All Others	18	20	23	24	27	27	35		49.8%	30.2%			
		All Others	24	17	14	32	35	38	27		54.2%	-29.0%														
Auto replacement parts: brake pads, ignition coils, sway bars	8708	Total	30,995	28,994	29,030	28,086	30,885	31,532	33,511		1.7%	6.3%	Total	27,986	26,411	29,310	32,348	37,313	41,309	43,172		47.6%	4.5%			
		Canada	16,598	15,333	16,508	16,391	17,975	18,371	18,074		10.7%	-1.6%	Canada	9,373	8,640	9,704	10,606	11,190	11,868	11,336		26.6%	-4.5%			
		Mexico	7,231	6,784	6,465	5,902	6,289	6,318	7,437		-12.6%	17.7%	Mexico	4,616	4,618	5,220	5,595	6,627	7,780	9,184		68.6%	18.0%			
		Germany	622	704	623	603	781	843	963		35.4%	14.3%	Japan	7,305	6,581	6,802	7,253	8,896	9,227	8,716		26.3%	-5.5%			
		Japan	1,386	1,180	1,212	1,064	884	751	913		-45.8%	21.6%	Germany	1,494	1,492	1,683	2,172	2,514	2,787	2,778		86.5%	-0.3%			
		Austria	943	965	822	394	333	566	686		-39.9%	21.3%	China	440	572	770	1,016	1,465	1,993	2,711		353.3%	36.0%			
		China	119	150	185	242	403	370	533		209.9%	43.9%	All Others	4,758	4,508	5,130	5,707	6,619	7,654	8,447		60.9%	10.4%			
		All Others	4,095	3,878	3,216	3,490	4,221	4,313	4,904		5.3%	13.7%														
Cell phone batteries	850650	Total	120	109	115	145	179	234	280		95.0%	19.7%	Total	152	112	125	139	151	183	213		20.7%	16.5%			
		Canada	19	16	14	17	27	33	38		73.0%	15.3%	Japan	103	71	63	50	51	55	58		-46.3%	5.2%			
		Mexico	35	19	15	13	16	22	36		-37.3%	65.8%	China	3	4	7	17	20	37	43		1244.9%	16.1%			
		Switzerland	1	0	0	1	1	23	33		2887.9%	42.6%	Israel	10	10	11	16	19	24	27		144.5%	10.2%			
		Ireland	6	16	24	32	23	39	25		521.6%	-36.3%	France	6	5	10	13	14	17	17		184.6%	2.5%			
		United Kingdom	6	5	5	11	15	14	20		128.1%	39.3%	Canada	2	1	4	3	7	9	14		455.2%	58.7%			
		China	1	4	2	1	1	1	4		34.1%	186.2%	All Others	28	21	29	40	39	41	54		44.0%	32.5%			
		All Others	52	48	55	70	97	102	124		96.0%	22.4%														
Duracell Batteries	8507	Total	\$932	\$896	\$773	\$723	\$746	\$859	\$1,060		-7.8%	23.3%	Total	2,122	1,823	1,624	1,516	1,883	2,138	2,385		0.8%	11.5%			
		Canada	299	295	289	299	333	382	473		27.6%	23.9%	China	252	234	258	311	492	617	783		144.4%	26.9%			
		Mexico	185	205	182	147	142	155	194		-16.2%	24.6%	Japan	1,022	795	588	397	463	457	447		-55.3%	-2.3%			
		Sweden	2	3	6	7	21	26	36		1137.6%	36.3%	Mexico	458	418	391	371	365	370	427		-19.3%	15.6%			
		Germany	21	27	19	19	15	26	36		22.5%	37.3%	Canada	42	30	28	39	57	108	139		159.4%	28.4%			
		China	10	9	7	7	13	15	27		43.3%	87.0%	Korea, South	24	25	53	73	117	136	136		458.5%	0.4%			
		All Others	414	357	271	244	222	256	295		-38.3%	15.4%	All Others	323	321	307	325	389	451	453		39.5%	0.5%			

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
Auto and truck parts	8708	Total	30,995	28,994	29,030	28,086	30,885	31,532	33,511		1.7%	6.3%	Total	27,986	26,411	29,310	32,348	37,313	41,309	43,172		47.6%	4.5%
		Canada	16,598	15,333	16,508	16,391	17,975	18,371	18,074		10.7%	-1.6%	Canada	9,373	8,640	9,704	10,606	11,190	11,868	11,336		26.6%	-4.5%
		Mexico	7,231	6,784	6,465	5,902	6,289	6,318	7,437		-12.6%	17.7%	Mexico	4,616	4,618	5,220	5,595	6,627	7,780	9,184		68.6%	18.0%
		Germany	622	704	623	603	781	843	963		35.4%	14.3%	Japan	7,305	6,581	6,802	7,253	8,896	9,227	8,716		26.3%	-5.5%
		Japan	1,386	1,180	1,212	1,064	884	751	913		-45.8%	21.6%	Germany	1,494	1,492	1,683	2,172	2,514	2,787	2,778		86.5%	-0.3%
		Austria	943	965	822	394	333	566	686		-39.9%	21.3%	China	440	572	770	1,016	1,465	1,993	2,711		353.3%	36.0%
		China	119	150	185	242	403	370	533		209.9%	43.9%	All Others	4,758	4,508	5,130	5,707	6,619	7,654	8,447		60.9%	10.4%
		All Others	4,095	3,878	3,216	3,490	4,221	4,313	4,904		5.3%	13.7%											
Personal care products	33	Total	3,971	4,383	4,426	4,933	5,536	6,054	6,718		52.4%	11.0%	Total	2,750	2,945	3,268	4,642	5,857	6,727	7,012		144.6%	4.2%
		Canada	1,007	1,064	1,211	1,333	1,491	1,600	1,783		58.9%	11.4%	Ireland	41	74	84	1,000	1,723	2,077	2,067		5006.0%	-0.5%
		United Kingdom	300	307	329	400	456	525	588		75.0%	12.0%	France	831	852	897	1,055	1,153	1,217	1,252		46.5%	2.9%
		Mexico	334	426	388	353	392	447	491		33.7%	10.0%	Canada	476	531	575	641	770	856	874		79.9%	2.1%
		Japan	320	376	366	432	505	483	434		50.7%	-10.0%	China	120	170	217	234	269	348	418		190.4%	20.3%
		Australia	130	165	136	165	196	233	272		79.5%	16.5%	Italy	178	217	216	241	327	384	407		116.3%	5.9%
		China	34	38	52	69	84	117	146		246.2%	24.2%	All Others	1,106	1,101	1,279	1,473	1,615	1,846	1,995		66.9%	8.0%
		All Others	1,846	2,008	1,943	2,179	2,413	2,649	3,004		43.5%	13.4%											
Aircraft parts	880330	Total	12,962	13,529	11,993	12,290	13,393	15,164	18,170		17.0%	19.8%	Total	4,639	5,194	4,156	3,770	3,988	4,645	5,719		0.1%	23.1%
		Japan	1,851	2,005	1,849	1,859	1,509	1,635	1,934		-11.6%	18.2%	Japan	1,172	1,386	1,016	841	864	1,038	1,427		-11.4%	37.5%
		United Kingdom	1,511	1,500	1,480	1,506	1,495	1,509	1,712		-0.2%	13.5%	United Kingdom	899	969	758	738	721	856	1,046		-4.8%	22.2%
		Germany	808	793	687	735	897	1,317	1,453		63.0%	10.3%	Canada	917	952	638	560	615	651	778		-29.1%	19.5%
		Brazil	428	433	332	368	804	786	1,198		83.5%	52.4%	France	376	408	384	388	384	400	464		6.3%	15.9%
		Singapore	388	498	427	518	659	858	1,098		121.1%	28.0%	Korea, South	127	184	87	82	110	182	209		42.8%	15.4%
		China	208	258	253	270	311	517	722		148.8%	39.7%	China	32	57	53	61	78	83	129		155.6%	55.1%
		All Others	7,768	8,041	6,964	7,033	7,718	8,542	10,052		10.0%	17.7%											
Testing equipment	9024	Total	646	585	501	573	572	587	669		-9.1%	13.9%	Total	109	84	86	96	103	103	123		-6.0%	19.6%
		China	29	40	52	75	84	87	99		199.4%	14.3%	United Kingdom	22	25	22	21	26	24	27		7.0%	14.8%
		United Kingdom	48	43	32	45	34	43	60		-10.7%	39.5%	Germany	19	18	20	21	21	24	26		27.9%	7.1%
		Korea, South	59	42	33	42	49	51	54		-14.0%	5.8%	Canada	6	4	6	8	9	7	10		31.8%	39.4%
		Germany	66	52	45	52	37	38	51		-42.9%	36.9%	Japan	18	13	6	9	8	9	9		-49.4%	-2.0%
		Canada	38	31	29	39	39	35	46		-7.8%	32.7%	Ireland	0	1	5	6	6	5	8		3457.0%	52.2%
		All Others	406	378	311	320	330	334	359		-17.6%	7.3%	China	1	1	1	1	2	2	3		201.0%	15.9%
													All Others	44	23	27	30	31	31	40		-29.7%	29.6%
Electrical control equipment	8532	Total	3,467	1,890	1,706	1,696	1,813	1,452	1,736		-58.1%	19.5%	Total	3,173	1,608	1,375	1,292	1,288	1,413	1,657		-55.5%	17.2%
		Mexico	1,899	981	957	869	952	590	666		-68.9%	12.9%	Mexico	688	378	288	297	309	466	614		-32.2%	31.7%
		China	38	30	14	28	75	104	162		169.6%	56.6%	Japan	1,146	593	444	381	448	409	448		-64.3%	9.5%
		Hong Kong	84	33	68	114	100	108	126		28.3%	16.6%	China	37	32	34	42	55	68	85		86.1%	24.1%
		Canada	368	200	133	114	119	124	125		-66.2%	0.6%	Israel	454	169	237	231	94	72	75		-84.2%	4.7%
		Netherlands	6	2	41	91	100	103	98		1541.8%	-4.5%	Czech Republic	192	63	47	55	61	56	56		-70.9%	0.2%
		All Others	1,071	644	492	481	467	423	558		-60.5%	31.9%	All Others	657	373	326	287	320	341	378		-48.1%	10.9%
Commercial door fixtures	730830	Total	\$126	\$123	\$115	\$109	\$121	\$148	\$181		17.0%	22.4%	Total	232	240	258	285	330	349	364		50.3%	4.5%
		Canada	51	57	63	62	69	86	92		66.5%	7.3%	Canada	180	181	194	199	224	206	195		14.6%	-5.6%
		Kuwait	1	1	0	0	0	1	18		157.8%	1116.8%	Mexico	27	31	32	32	37	46	69		70.1%	51.6%
		Mexico	13	12	7	7	8	12	16		-11.2%	36.2%	China	6	8	11	15	28	38	56		515.4%	49.1%
		Norway	3	2	1	1	2	4	4		77.1%	0.9%	United Kingdom	6	5	6	9	8	11	10		95.8%	-9.2%
		Japan	3	2	2	2	2	2	4		-6.4%	71.7%	Germany	2	4	3	14	11	4	8		135.0%	120.0%
		China	2	2	1	1	1	1	1		-45.9%	-1.3%	All Others	12	11	13	16	21	44	26		277.0%	-41.0%
		All Others	54	48	39	35	39	41	46		-24.2%	11.2%											

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions										-- Change --		Annual US Imports in \$ Millions										-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05					
Computer Software	852491	Total	773	531	388	356	354	385	455		-50.2%	18.2%	Total	184	122	108	87	69	69	51		-62.6%	-25.4%			
		Canada	253	190	143	121	109	89	80		-64.8%	-9.6%	Canada	22	19	15	10	11	15	11		-32.5%	-24.6%			
		Japan	51	35	24	26	32	32	36		-36.6%	11.8%	Germany	18	19	14	23	12	10	6		-42.6%	-44.0%			
		Germany	35	24	15	18	16	29	36		-17.7%	24.7%	China	2	2	2	4	3	3	5		67.5%	53.0%			
		China	15	7	8	19	18	19	31		28.7%	65.5%	Japan	18	11	9	4	5	3	5		-81.7%	43.2%			
		United Kingdom	53	37	26	16	22	26	29		-50.9%	10.7%	United Kingdom	19	15	9	6	5	5	4		-71.8%	-29.8%			
		All Others	366	238	173	157	157	190	242		-48.2%	27.6%	All Others	105	57	58	40	33	32	21		-69.9%	-33.9%			
Entertainment Software (including videogame DCs and cartridges, personal computer CD-ROMs and multimedia products)	950410	Total	380	467	485	604	551	715	1,219		88.0%	70.5%	Total	2,073	3,417	3,717	2,429	2,170	2,523	3,848		21.7%	52.5%			
		Canada	249	337	335	449	388	459	606		84.4%	32.2%	China	336	398	1,571	2,108	1,958	2,358	3,643		601.6%	54.5%			
		Mexico	35	40	50	26	39	74	327		111.1%	342.3%	Japan	1,614	2,616	1,339	200	133	76	137		-95.3%	81.7%			
		Hong Kong	20	6	16	27	24	33	68		70.1%	103.3%	United Kingdom	31	16	15	26	14	26	26		-15.6%	1.0%			
		Brazil	4	4	9	4	8	14	38		225.2%	172.9%	Taiwan	7	4	7	13	14	13	15		86.1%	11.6%			
		Chile	8	7	2	2	3	26	32		223.4%	21.2%	Canada	5	4	4	8	6	11	9		129.9%	-16.9%			
		China	0	0	0	1	2	1	1		65.7%	35.1%	All Others	80	380	780	74	45	39	17		-50.8%	-56.0%			
		All Others	64	71	72	95	87	108	147		68.6%	36.2%														
Records	852410	Total	65	63	46	47	41	29	28		-55.8%	-3.9%	Total	17	13	9	8	7	7	5		-60.4%	-22.0%			
		Japan	22	23	17	17	16	11	9		-46.9%	-22.1%	United Kingdom	10	9	6	5	4	3	2		-70.7%	-38.0%			
		Russia	0	0	0	0	1	1	4		473.2%	336.0%	Czech Republic	0	0	0	0	0	1	1		278.4%	98.0%			
		Canada	3	3	3	3	3	2	2		-29.9%	-17.6%	Germany	2	1	1	1	1	1	1		-48.0%	-10.6%			
		United Kingdom	8	4	4	5	3	2	2		-77.1%	-8.2%	Italy	0	0	0	1	1	1	0		31.8%	-4.1%			
		Netherlands	2	1	2	1	1	1	1		-61.1%	80.3%	Netherlands	0	0	0	0	0	0	0		-5.1%	7.5%			
		China	0	1	0	0	0	1	1		320.7%	6.0%	China	0	0	0	0	0	0	0		-100.0%	N/A			
		All Others	31	30	20	21	18	11	9		-64.8%	-19.5%	All Others	5	1	1	1	1	2	1		-64.4%	-47.4%			
Laser Disks	852432	Total	165	180	188	209	209	252	237		53.3%	-6.1%	Total	300	280	264	253	256	277	273		-7.5%	-1.7%			
		Canada	52	51	49	67	85	99	98		91.9%	-1.4%	Canada	88	100	90	93	95	104	93		18.6%	-10.4%			
		Mexico	21	26	38	40	30	38	36		81.2%	-4.9%	United Kingdom	59	47	42	40	41	43	40		-27.4%	-5.8%			
		Japan	18	26	25	33	40	48	31		170.1%	-35.0%	Mexico	22	23	24	21	25	27	34		24.5%	24.7%			
		United Kingdom	13	13	11	12	10	11	14		-14.2%	23.7%	Germany	29	18	20	18	15	17	19		-42.5%	17.9%			
		France	8	9	8	7	4	5	8		-31.7%	48.6%	Netherlands	8	7	8	6	7	9	11		6.5%	21.3%			
		China	1	0	1	0	1	0	0		-90.5%	-37.4%	China	5	6	5	5	6	6	10		16.7%	60.2%			
		All Others	52	56	56	49	40	50	50		-2.8%	-0.8%	All Others	89	78	75	70	67	72	65		-19.4%	-9.4%			
MAGN TPE,N SOUND/IM	852440	Total	\$118	\$80	\$49	\$43	\$50	\$18	\$18		-84.5%	-0.4%	Total	19	12	13	5	4	4	3		-81.2%	-24.0%			
		Canada	16	8	10	5	4	3	3		-79.2%	-14.6%	Australia	0	0	0	0	1	1	1		4163.9%	10.2%			
		India	6	1	5	14	19	1	2		-79.1%	36.3%	Japan	2	1	3	1	1	1	1		-64.4%	-13.2%			
		Mexico	5	11	2	1	4	2	2		-55.3%	-20.0%	Canada	14	9	10	1	1	0	0		-98.3%	5.3%			
		Korea, South	11	3	2	7	2	2	2		-86.1%	3.1%	France	0	0	0	0	0	0	0		-29.5%	136.4%			
		United Kingdom	6	7	3	1	2	2	1		-72.0%	-41.2%	Germany	0	0	0	0	0	0	0		-7.2%	-19.4%			
		China	1	2	1	1	3	0	1		-56.5%	96.7%	China	0	0	0	0	0	0	0		-58.3%	438.5%			
		All Others	72	48	25	14	16	8	8		-89.4%	7.6%	All Others	2	2	0	2	2	1	0		-34.7%	-66.4%			

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
<b>MGN</b>																						
TPE,SND/IM<=4MM	852451	<b>Total</b>	46	37	25	32	26	20	15	-56.9%	-23.3%	<b>Total</b>	27	19	14	8	5	3	2	-88.6%	-24.8%	
		Russia	0	0	0	0	0	2	3	1148.9%	82.1%	<b>Canada</b>	10	9	5	3	2	1	1	-91.6%	-20.7%	
		Canada	16	14	10	10	7	5	3	-67.4%	-38.9%	<b>United Kingdom</b>	1	1	1	1	0	1	0	-30.4%	-52.9%	
		Brazil	1	0	0	1	2	3	3	468.0%	-4.6%	<b>Japan</b>	0	0	0	0	0	0	0	-45.6%	7.7%	
		Mexico	4	2	3	2	2	2	1	-42.7%	-33.4%	<b>Mexico</b>	6	3	2	0	0	0	0	-98.5%	193.7%	
		United Kingdom	2	2	2	3	2	1	1	-68.0%	24.6%	<b>France</b>	0	0	0	0	0	0	0	193.2%	54.2%	
		China	1	1	0	0	0	0	0	-94.0%	-43.7%	<b>China</b>	2	3	2	1	0	0	0	-78.7%	-70.9%	
		All Others	23	17	10	16	12	7	3	-69.8%	-50.8%	<b>All Others</b>	7	4	4	2	2	1	0	-91.5%	-28.3%	
<b>MG TPE,S/I&gt;4=&lt;6.5MM</b>																						
	852452	<b>Total</b>	77	48	34	31	30	16	15	-79.8%	-5.4%	<b>Total</b>	13	18	10	6	5	3	2	-79.5%	-37.4%	
		Canada	22	18	13	11	11	7	6	-70.0%	-14.4%	<b>Canada</b>	6	16	8	3	2	1	1	-88.3%	-28.3%	
		Mexico	3	4	3	1	1	1	1	-76.3%	45.4%	<b>France</b>	0	0	0	0	0	0	0	-92.5%	720.1%	
		Korea, South	3	3	2	1	3	0	1	-88.1%	198.4%	<b>Hungary</b>	0	0	0	0	0	0	0	N/A	-30.9%	
		Japan	16	6	3	2	1	1	1	-95.0%	-1.8%	<b>United Kingdom</b>	1	0	0	0	0	0	0	-64.8%	-48.8%	
		Germany	1	1	1	1	0	0	1	-68.9%	261.5%	<b>Japan</b>	1	0	0	0	1	0	0	-58.2%	-58.8%	
		China	4	2	2	1	0	0	0	-95.5%	-55.6%	<b>China</b>	0	0	0	1	0	0	0	69.5%	-82.4%	
		All Others	28	15	11	14	12	7	5	-76.2%	-18.5%	<b>All Others</b>	5	2	1	1	1	1	0	-80.0%	-51.6%	
<b>MG</b>																						
TPE,SND/IM>6.5MM	852453	<b>Total</b>	88	82	68	47	32	23	14	-74.3%	-38.2%	<b>Total</b>	75	82	95	58	37	20	16	-72.9%	-22.9%	
		Canada	41	33	27	24	17	12	6	-71.0%	-50.6%	<b>Korea, South</b>	13	8	30	23	12	6	4	-54.7%	-27.6%	
		Venezuela	0	1	0	0	0	0	1	3.5%	747.3%	<b>Canada</b>	25	23	15	11	6	3	2	-86.8%	-35.1%	
		Mexico	16	15	24	10	5	5	1	-71.2%	-72.0%	<b>Peru</b>	0	0	0	0	0	4	2	N/A	-51.2%	
		Netherlands	2	0	1	2	2	1	1	-20.1%	-28.5%	<b>Mexico</b>	14	31	19	3	6	1	2	-90.3%	38.9%	
		Hong Kong	1	2	1	1	0	0	1	-89.6%	989.3%	<b>Argentina</b>	0	0	1	0	0	0	1	986.4%	1751.4%	
		China	2	0	0	0	0	0	0	-98.8%	-63.0%	<b>China</b>	5	5	8	9	6	1	1	-78.4%	-14.2%	
		All Others	26	32	15	10	9	4	4	-83.1%	-13.9%	<b>All Others</b>	17	15	22	12	7	4	3	-74.0%	-28.3%	
<b>Textbooks, tradebooks, reference &amp; professional publications/journals</b>																						
	490199	<b>Total</b>	1,956	1,792	1,772	1,789	1,839	2,000	2,092	2.2%	4.6%	<b>Total</b>	1,570	1,626	1,647	1,726	1,897	1,979	2,092	26.0%	5.7%	
		Canada	777	751	789	840	878	928	989	19.5%	6.6%	<b>China</b>	219	266	335	409	528	598	717	173.5%	20.0%	
		United Kingdom	272	254	272	277	290	288	296	6.0%	2.9%	<b>Canada</b>	223	260	255	270	279	271	285	21.5%	5.3%	
		Mexico	113	99	80	80	77	112	110	-0.9%	-2.0%	<b>United Kingdom</b>	318	302	267	283	301	298	283	-6.2%	-5.1%	
		Australia	116	66	70	75	78	100	108	-13.4%	7.9%	<b>Hong Kong</b>	224	228	222	188	183	174	135	-22.5%	-22.4%	
		Japan	124	129	104	98	101	93	79	-24.6%	-15.6%	<b>Singapore</b>	86	96	100	102	113	113	114	31.1%	1.2%	
		China	12	12	12	18	19	17	26	41.0%	54.9%	<b>All Others</b>	501	474	469	475	493	526	558	5.0%	6.1%	
		All Others	543	481	445	402	395	461	483	-15.1%	4.7%											
<b>Table grapes (Chinese copy US packaging/sell as US goods)</b>																						
	80610	<b>Total</b>	\$455	\$475	\$494	\$516	\$595	\$696	\$664	53.0%	-4.5%	<b>Total</b>	552	571	680	680	729	944	921	71.1%	-2.5%	
		Canada	207	190	214	235	283	307	312	48.5%	1.7%	<b>Chile</b>	388	378	459	444	509	614	718	58.3%	16.9%	
		Mexico	38	33	42	36	42	51	50	33.7%	-2.4%	<b>Mexico</b>	143	178	203	226	207	301	153	110.9%	-49.2%	
		Hong Kong	49	72	68	59	35	44	43	-11.3%	-2.2%	<b>Brazil</b>	0	0	0	0	2	13	29	2564.0%	118.3%	
		Malaysia	16	37	38	43	54	63	40	298.7%	-35.7%	<b>Peru</b>	1	2	5	4	4	11	16	1838.2%	44.1%	
		China	11	9	8	6	21	47	35	323.0%	-24.1%	<b>South Africa</b>	15	3	6	3	4	2	2	-88.8%	33.5%	
		All Others	134	135	123	137	160	185	184	38.0%	-0.4%	<b>China</b>	0	0	0	0	0	0	0	N/A	N/A	
												<b>All Others</b>	6	11	7	3	4	4	4	-30.1%	-11.5%	

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
Fresh fruit	08	Total	3,980	4,050	4,242	4,764	5,386	6,413	6,839		61.1%	6.6%	Total	3,919	3,891	4,229	4,590	5,169	5,825	6,323		48.6%	8.5%
		Canada	1,226	1,255	1,369	1,542	1,708	1,947	2,165		58.8%	11.2%	Mexico	727	735	771	907	1,102	1,410	1,393		93.9%	-1.2%
		Japan	625	602	607	606	637	615	612		-1.5%	-0.5%	Chile	622	626	772	798	925	1,059	1,230		70.3%	16.1%
		Mexico	269	279	259	260	269	327	419		21.6%	28.5%	Costa Rica	487	514	484	523	486	512	742		5.1%	44.9%
		Germany	190	181	167	185	223	331	336		74.0%	1.5%	Guatemala	252	293	338	338	358	384	373		52.4%	-2.7%
		Spain	105	113	142	197	261	317	313		201.1%	-1.3%	Ecuador	267	278	314	307	284	296	354		11.1%	19.4%
		China	31	39	47	51	72	138	132		346.6%	-4.4%	China	25	32	51	62	99	110	134		339.0%	22.3%
		All Others	1,534	1,580	1,650	1,924	2,216	2,738	2,861		78.5%	4.5%	All Others	1,540	1,413	1,500	1,656	1,914	2,055	2,098		33.4%	2.1%
Beverages	22	Total	1,707	1,792	1,767	2,003	2,265	2,305	2,697		35.1%	17.0%	Total	8,339	8,731	9,701	10,948	11,781	13,052	16,188		56.5%	24.0%
		Canada	410	435	397	494	540	616	700		50.1%	13.6%	France	1,695	1,587	1,806	2,103	2,150	2,398	2,790		41.5%	16.3%
		United Kingdom	202	252	281	317	428	296	422		46.5%	42.4%	Mexico	1,279	1,395	1,622	1,739	1,821	2,082	2,472		62.8%	18.7%
		Japan	225	218	240	217	249	281	307		25.2%	9.0%	Italy	732	777	942	1,124	1,190	1,332	1,448		82.0%	8.7%
		Mexico	143	163	170	188	142	147	167		3.2%	13.6%	United Kingdom	925	894	954	989	1,125	1,198	1,327		29.5%	10.7%
		Germany	80	80	79	94	110	109	128		35.4%	17.9%	Netherlands	830	912	1,022	1,066	1,059	1,083	1,321		30.5%	22.0%
		China	3	5	7	6	9	10	18		277.1%	75.2%	China	16	23	29	24	28	23	110		41.7%	383.8%
		All Others	643	639	593	686	787	845	954		31.4%	12.9%	All Others	2,863	3,144	3,326	3,902	4,407	4,937	6,721		72.5%	36.1%
Structural wood-based panels	441292	Total	2	3	1	1	1	1	1		-33.0%	-45.5%	Total	2	4	7	7	9	10	8		333.9%	-12.1%
		Canada	0	3	1	1	0	0	0		-34.1%	-10.5%	Thailand	0	1	3	4	3	4	4		1965.6%	14.7%
		Mexico	0	0	0	0	0	0	0		87.0%	-24.4%	China	0	0	0	0	2	2	2		4200.9%	-6.3%
		Cayman Islands	0	0	0	0	0	0	0		-65.2%	-71.3%	Malaysia	0	0	0	0	1	1	1		520.1%	-25.2%
		Indonesia	0	0	0	0	0	0	0		N/A	N/A	Taiwan	0	0	0	0	1	0	1		2166.6%	63.4%
		China	0	0	0	0	0	0	0		-41.2%	-96.4%	Brazil	1	1	3	1	1	1	0		2.4%	-75.6%
		All Others	0	0	0	0	0	0	0		-57.3%	-98.4%	All Others	1	1	1	1	2	1	0		30.0%	-69.0%
Structural wood-based panels	441820	Total	98	86	89	103	120	111	117		14.0%	5.2%	Total	416	460	508	523	626	708	774		70.3%	9.2%
		Canada	55	53	58	65	78	72	70		31.5%	-2.7%	Canada	208	226	243	254	295	323	345		55.1%	6.9%
		Japan	14	12	11	12	10	9	7		-40.0%	-20.8%	China	2	3	8	13	31	57	100		3454.8%	74.2%
		Bahamas	4	3	3	3	3	5	6		17.3%	37.9%	Brazil	34	48	55	47	64	85	90		154.5%	5.7%
		Mexico	4	4	3	2	4	5	6		17.1%	24.1%	Chile	21	32	39	38	50	44	51		110.2%	15.2%
		Ireland	0	1	2	1	1	1	2		205.4%	50.1%	Mexico	42	38	37	37	39	36	39		-13.7%	7.6%
		China	0	0	1	2	2	0	1		89.5%	159.2%	All Others	110	114	126	134	147	163	149		47.9%	-8.5%
		All Others	20	13	12	18	22	19	24		-2.2%	26.7%											
Agricultural chemical products, including glyphosate (Roundup)	38083019	Total	\$780	\$835	\$791	\$646	\$779	\$840	\$983		7.7%	17.0%	Total	211	268	236	305	301	267	293		26.5%	9.6%
		Canada	298	357	340	287	322	367	468		23.1%	27.5%	Canada	53	42	14	14	9	24	48		-55.0%	98.2%
		Brazil	105	98	97	78	120	136	132		29.3%	-3.0%	France	17	20	14	31	49	37	46		116.0%	22.6%
		Mexico	41	57	20	25	44	35	76		-15.8%	118.1%	China	0	0	17	48	19	39	40		12238.3%	3.5%
		France	28	46	71	83	76	53	64		91.4%	19.6%	Israel	6	3	3	7	17	22	39		253.3%	82.7%
		Belgium	39	57	30	30	34	26	32		-32.4%	20.6%	Germany	19	35	53	70	81	46	32		136.1%	-30.7%
		China	1	9	9	6	7	22	15		1790.5%	-29.8%	All Others	115	168	135	134	126	100	89		-12.8%	-11.3%
		All Others	268	211	224	138	176	201	197		-24.8%	-2.3%											
ETHYLENE, PRIMARY FORM	3901	Total	2,698	2,391	2,605	2,844	3,762	4,534	5,195		68.0%	14.6%	Total	1,654	1,740	1,656	2,157	2,518	3,237	3,730		95.7%	15.2%
		Mexico	635	592	590	734	942	1,194	1,312		88.1%	9.9%	Canada	1,499	1,581	1,502	1,950	2,313	2,845	3,322		89.8%	16.8%
		Canada	612	612	579	717	855	1,034	1,237		69.0%	19.7%	Thailand	23	25	11	29	4	54	61		140.2%	12.3%
		China	139	113	116	114	243	358	396		156.9%	10.8%	Brazil	8	3	11	22	20	28	50		237.9%	79.4%
		Belgium	225	179	236	253	291	392	370		74.0%	-5.6%	Germany	20	18	22	26	37	41	42		104.8%	3.0%
		Colombia	60	40	48	60	92	98	133		62.8%	35.6%	Japan	26	35	37	39	33	36	40		34.3%	11.4%
		All Others	1,027	856	1,035	966	1,339	1,458	1,746		42.0%	19.8%	China	1	2	2	2	3	9	13		1010.6%	47.0%
												All Others	77	76	72	89	109	225	202		192.2%	-10.0%	

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
<b>OTHR OLEFIN</b>																							
<b>PRIMARY F</b>																							
	3902	<b>Total</b>	1,360	1,311	1,414	1,668	2,073	2,544	3,023		87.1%	18.8%	<b>Total</b>	310	272	318	363	452	523	533		68.7%	2.0%
		Mexico	356	338	386	430	548	808	1,003		126.8%	24.2%	Canada	206	178	210	223	276	305	288		48.1%	-5.6%
		Canada	449	383	441	537	657	765	803		70.5%	5.0%	Japan	56	45	50	57	64	64	68		13.8%	5.8%
		China	56	110	101	151	196	237	296		323.9%	25.2%	Germany	17	17	17	19	36	40	42		134.7%	4.4%
		Belgium	69	58	81	74	89	101	110		46.2%	8.2%	Netherlands	2	2	13	15	31	24	27		894.5%	14.1%
		Israel	25	37	23	35	73	39	80		54.3%	106.9%	Belgium	8	8	6	10	8	12	16		52.0%	33.0%
		All Others	404	384	381	441	509	594	731		46.9%	23.0%	China	0	0	1	0	0	1	1		293.7%	74.5%
													All Others	20	22	22	39	43	77	91		287.2%	18.4%
<b>STYRENE,PRIMARY</b>																							
<b>FORMS</b>																							
	3903	<b>Total</b>	867	757	785	861	1,033	1,159	1,353		33.6%	16.8%	<b>Total</b>	575	584	587	633	839	1,157	1,112		101.1%	-3.8%
		Mexico	276	234	257	280	341	379	484		37.3%	27.8%	Mexico	121	156	153	129	211	316	318		160.4%	0.6%
		Canada	310	296	295	323	379	391	405		26.0%	3.4%	Canada	158	131	134	137	212	235	227		49.2%	-3.5%
		Belgium	29	24	30	32	38	60	76		104.4%	26.9%	Korea, South	69	55	63	64	98	162	147		134.2%	-9.2%
		China	13	8	15	20	34	46	69		251.7%	50.7%	Bahamas	53	67	64	84	90	114	128		115.4%	12.5%
		Japan	25	24	22	22	31	40	47		60.0%	17.0%	Taiwan	39	40	46	52	68	109	92		181.3%	-15.6%
		All Others	214	172	166	183	210	244	273		13.8%	12.1%	China	1	1	2	5	6	19	23		1512.4%	21.2%
													All Others	135	133	127	162	153	203	179		50.8%	-12.0%
<b>VINYL CHLORIDE,ETC</b>																							
	3904	<b>Total</b>	1,020	1,075	1,079	1,170	1,430	1,503	1,734		47.3%	15.4%	<b>Total</b>	694	614	483	534	692	930	930		34.0%	-0.0%
		Canada	393	356	379	414	491	566	626		44.0%	10.6%	Canada	196	276	181	203	255	297	221		51.7%	-25.5%
		Mexico	98	99	109	114	131	164	184		68.0%	12.0%	Japan	197	158	112	115	120	131	172		-33.3%	31.1%
		China	66	118	120	116	136	136	142		107.1%	4.3%	Germany	51	43	51	74	111	147	141		187.6%	-4.1%
		Netherlands	41	37	36	47	56	56	71		38.7%	25.9%	Colombia	13	5	7	22	35	56	64		340.4%	13.1%
		Japan	56	53	41	47	74	67	63		19.0%	-5.4%	Italy	40	29	37	35	47	55	62		39.7%	12.3%
		All Others	367	411	393	431	543	513	648		39.9%	26.3%	China	1	3	3	3	9	19	22		1313.1%	15.2%
													All Others	197	101	90	83	118	224	247		13.9%	10.4%
<b>VINYL ACETATE;O</b>																							
<b>VINYL</b>																							
	3905	<b>Total</b>	\$474	\$431	\$501	\$536	\$613	\$636	\$639		34.4%	0.5%	<b>Total</b>	167	170	150	145	172	188	214		12.9%	13.9%
		Belgium	126	113	120	149	131	148	135		17.4%	-8.7%	Germany	59	61	53	43	52	49	62		-16.3%	26.8%
		Canada	46	42	51	57	60	69	77		49.9%	11.4%	Canada	27	28	24	32	31	38	43		40.4%	13.8%
		Mexico	62	57	55	55	71	63	61		1.2%	-3.1%	Taiwan	15	12	9	15	17	19	27		29.5%	38.5%
		Singapore	40	38	45	47	49	46	54		15.0%	17.6%	Japan	28	23	27	22	31	28	26		-0.4%	-6.2%
		Germany	13	20	24	20	33	29	43		115.9%	48.9%	Belgium	4	5	1	2	3	6	13		33.4%	117.8%
		China	2	3	13	12	11	12	14		381.2%	20.5%	China	11	10	8	4	4	5	6		-53.7%	19.4%
		All Others	184	158	193	196	257	270	256		46.9%	-5.3%	All Others	23	30	28	26	33	43	37		87.9%	-13.7%
<b>ACRYLIC POLYMERS</b>																							
	3906	<b>Total</b>	798	817	860	846	1,038	1,253	1,358		57.1%	8.3%	<b>Total</b>	307	298	333	384	423	481	510		56.9%	6.1%
		Canada	205	222	242	250	286	309	293		50.9%	-5.3%	Canada	91	93	103	116	117	119	132		31.9%	10.1%
		Mexico	155	133	148	147	190	228	255		46.7%	11.9%	Japan	64	64	75	82	95	80	86		25.0%	7.0%
		Brazil	49	45	49	47	57	76	94		53.2%	24.4%	Germany	45	35	39	55	60	81	82		82.6%	0.6%
		Belgium	29	42	39	28	29	46	63		61.5%	36.6%	United Kingdom	37	31	40	43	39	42	43		11.3%	3.2%
		Germany	17	22	20	16	26	45	60		158.9%	34.5%	France	10	15	22	24	28	40	31		288.7%	-22.5%
		China	20	15	23	25	36	39	56		100.3%	42.1%	China	0	0	0	1	6	14	22		4493.7%	61.8%
		All Others	322	338	339	332	413	510	536		58.1%	5.1%	All Others	59	59	56	63	79	105	115		76.4%	9.7%
<b>POLYETHER,EXPOXID</b>																							
<b>E,ET</b>																							
	3907	<b>Total</b>	3,050	2,945	2,875	3,099	3,700	4,246	4,775		39.2%	12.5%	<b>Total</b>	1,141	1,048	1,119	1,327	1,499	2,208	2,401		93.4%	8.8%
		Mexico	457	434	486	572	589	804	918		76.1%	14.1%	Canada	451	412	407	390	467	592	647		31.5%	9.3%
		Canada	743	662	662	647	704	829	894		11.6%	7.8%	Mexico	76	67	65	134	254	353	404		363.9%	14.4%
		China	137	132	173	223	313	393	423		186.5%	7.6%	Thailand	39	54	67	115	95	131	184		237.6%	40.2%
		Korea, South	121	110	124	129	167	223	278		84.5%	24.4%	Japan	171	137	115	122	128	133	139		-22.5%	4.6%
		Japan	201	218	180	156	230	248	254		23.5%	2.4%	Korea, South	54	48	71	74	74	137	136		152.5%	-1.0%
		All Others	1,391	1,389	1,249	1,373	1,697	1,748	2,008		25.6%	14.9%	China	2	1	1	2	15	135	119		8751.8%	-12.2%
													All Others	349	329	393	488	466	726	773		108.2%	6.5%

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
POLYAMIDES	3908	Total	734	615	681	749	985	1,130	1,351		54.1%	19.5%	Total	297	295	355	361	429	441	479		48.6%	8.7%
		Canada	165	157	159	161	182	231	219		39.7%	-5.3%	Canada	125	116	135	117	134	126	123		0.8%	-2.4%
		Mexico	75	109	99	102	160	165	204		120.7%	23.2%	Germany	57	58	63	64	78	88	104		54.8%	17.8%
		China	21	22	32	44	74	88	136		321.2%	55.5%	France	16	28	32	37	41	48	49		195.0%	1.3%
		Japan	88	53	76	69	80	97	131		10.4%	34.8%	Japan	36	37	45	45	51	58	46		60.8%	-22.0%
		Belgium	55	49	49	62	83	78	116		42.4%	49.2%	Netherlands	10	10	11	13	18	19	29		92.8%	51.3%
		All Others	330	225	265	311	406	472	545		42.9%	15.6%	China	0	0	1	1	4	3	4		2602.3%	41.8%
												All Others	52	46	69	83	103	99	126		88.3%	27.4%	
AMINO-RESIN,PRIM F;OT	3909	Total	729	672	769	910	1,055	1,410	1,474		93.4%	4.5%	Total	257	241	284	304	356	405	467		57.5%	15.4%
		Canada	279	232	254	299	352	484	465		73.6%	-3.9%	Canada	104	116	113	115	130	164	167		56.9%	2.1%
		Mexico	91	103	109	140	162	200	234		119.1%	16.5%	Germany	52	38	54	59	75	75	89		43.6%	18.5%
		China	24	25	42	109	124	180	189		651.2%	4.9%	Japan	26	19	21	26	31	35	41		35.1%	17.6%
		Brazil	23	24	25	28	54	70	87		207.1%	25.3%	Belgium	15	5	9	6	6	12	37		-18.9%	192.7%
		Japan	41	32	36	31	35	45	61		9.6%	37.5%	United Kingdom	8	12	18	17	20	23	19		174.8%	-15.0%
		All Others	271	256	304	303	327	431	438		59.0%	1.6%	China	0	0	1	1	1	3	15		8398.5%	366.4%
												All Others	50	52	69	79	93	92	98		82.4%	6.9%	
SILICONE,PRIMARY FORM	3910	Total	\$490	\$444	\$538	\$578	\$650	\$738	\$895		50.8%	21.3%	Total	219	196	211	222	244	270	281		23.6%	3.9%
		Belgium	44	44	71	75	84	78	103		79.8%	31.8%	Germany	102	83	107	109	108	102	100		0.2%	-1.5%
		China	13	13	17	28	39	65	98		403.0%	50.0%	Japan	63	55	58	64	74	74	73		18.9%	-2.4%
		Japan	40	32	52	61	44	76	97		89.0%	28.1%	Thailand	0	0	0	0	7	22	36		168218.0%	63.1%
		Canada	74	62	72	70	77	87	87		16.4%	0.8%	Canada	20	17	14	15	16	19	22		-6.6%	18.5%
		Korea, South	29	26	32	40	50	58	69		102.2%	18.6%	France	12	8	7	9	9	13	14		17.1%	5.0%
		All Others	290	267	294	305	356	374	441		29.0%	17.9%	China	0	1	2	1	2	1	1		705.5%	8.3%
												All Others	22	32	23	24	27	38	34		70.6%	-11.1%	
PETRO RESIN,PRIM F;OT	3911	Total	549	546	551	535	667	695	749		26.7%	7.7%	Total	157	156	146	154	181	235	273		49.3%	16.1%
		Belgium	94	79	76	64	95	88	104		-6.8%	18.3%	United Kingdom	43	45	30	33	43	47	61		11.2%	28.6%
		Canada	78	142	156	142	129	112	94		43.7%	-15.9%	Japan	31	26	28	33	40	43	57		39.1%	32.6%
		Mexico	50	49	35	40	54	58	88		14.6%	52.0%	Germany	28	25	25	33	39	48	45		73.4%	-7.5%
		Netherlands	20	31	41	48	61	61	83		200.5%	35.1%	Canada	15	14	13	12	16	38	38		159.6%	0.8%
		Japan	41	45	39	39	60	72	75		75.0%	3.5%	Korea, South	3	3	3	3	5	15	16		428.2%	11.9%
		China	14	15	15	16	20	37	30		174.7%	-20.5%	China	0	1	2	1	2	7	13		11500.7%	89.8%
All Others	251	185	189	187	248	267	276		6.3%	3.4%	All Others	38	43	44	40	36	37	42		-4.3%	15.4%		
CELLULOSE,OT CHEM DER	3912	Total	579	622	657	714	846	879	953		51.9%	8.4%	Total	217	206	226	254	281	291	298		34.3%	2.3%
		China	6	5	7	15	28	96	114		1630.9%	18.8%	Germany	29	28	38	41	54	54	53		87.0%	-2.2%
		Belgium	57	88	80	100	119	110	101		93.8%	-8.2%	Japan	37	37	42	43	45	43	51		16.5%	18.3%
		Japan	39	61	34	36	50	62	77		57.7%	25.5%	Netherlands	24	24	24	25	27	22	24		-7.2%	9.5%
		Korea, South	22	28	29	35	39	50	63		126.1%	27.0%	Brazil	8	4	3	10	15	18	18		117.0%	0.5%
		United Kingdom	43	36	45	47	46	56	61		29.4%	9.3%	China	0	1	3	5	6	16	18		4667.8%	8.6%
		All Others	412	405	462	482	564	506	537		22.8%	6.1%	All Others	118	111	116	131	134	137	134		16.3%	-2.6%
OT NATURAL PRIME FORM	3913	Total	204	215	230	244	265	262	268		28.6%	2.2%	Total	114	208	216	192	245	279	158		143.9%	-43.4%
		Mexico	56	41	35	54	62	63	65		12.8%	3.9%	China	7	103	107	101	148	155	44		2192.0%	-71.8%
		Japan	24	31	55	38	35	39	39		59.4%	1.8%	Austria	11	10	13	11	10	16	15		47.0%	-5.4%
		Belgium	14	25	26	30	36	32	36		136.0%	12.4%	Japan	9	11	10	10	11	13	15		45.6%	8.2%
		Canada	14	14	15	21	23	27	28		88.1%	3.9%	France	18	17	17	14	15	16	14		-12.0%	-8.7%
		Brazil	5	3	6	5	10	9	10		91.6%	10.7%	United Kingdom	2	4	8	9	9	13	12		465.7%	-6.8%
		China	1	4	3	4	4	6	8		398.3%	37.3%	All Others	68	63	62	47	52	67	59		-1.4%	-11.7%
All Others	90	98	90	91	95	87	81		-3.9%	-6.5%													

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions										-- Change --		Annual US Imports in \$ Millions										-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05					
ION-EXCHANGERS	3914	Total	108	86	87	81	91	101	95		-6.8%	-6.0%	Total	172	161	176	183	164	202	202		17.9%	-0.1%			
		Canada	42	25	28	21	23	28	35		-32.7%	23.2%	Sweden	70	68	71	60	70	76	69		8.5%	-9.2%			
		Germany	1	0	2	1	4	12	13		1187.8%	8.4%	France	19	17	25	36	32	37	35		96.5%	-5.7%			
		Japan	15	10	8	20	19	19	10		21.5%	-44.8%	Austria	25	24	25	30	3	20	26		-17.5%	26.5%			
		Mexico	12	7	4	5	6	5	8		-56.4%	52.5%	China	4	7	8	15	15	20	24		385.1%	18.7%			
		China	1	1	1	1	3	4	6		412.3%	27.6%	Germany	17	15	13	13	12	17	18		-1.4%	11.4%			
		All Others	37	44	44	33	36	33	24		-12.0%	-27.8%	All Others	37	30	34	28	32	32	30		-12.2%	-6.3%			
WASTE,PARINGS,SCRAP	3915	Total	\$214	\$273	\$257	\$291	\$348	\$453	\$581		111.3%	28.4%	Total	154	147	160	149	161	223	380		44.1%	70.9%			
		Hong Kong	51	79	96	107	101	152	223		196.2%	46.3%	China	10	11	19	16	16	19	76		93.7%	301.9%			
		China	34	38	50	53	84	101	150		201.2%	49.0%	Mexico	42	39	31	33	46	64	64		53.8%	0.9%			
		Canada	59	64	54	62	79	107	107		80.5%	-0.2%	Canada	36	32	23	28	35	55	56		53.1%	2.6%			
		India	5	7	7	7	8	21	23		319.1%	10.2%	Germany	19	17	25	20	19	20	46		4.3%	127.5%			
		Belgium	2	11	4	5	6	6	13		273.8%	108.0%	Italy	10	15	20	15	14	14	44		37.8%	207.3%			
		All Others	63	73	47	57	69	65	65		3.2%	-0.2%	All Others	38	33	42	38	32	51	94		34.2%	85.9%			
MONOFIL,ROD,STICK,ETC	3916	Total	180	174	217	282	268	280	263		55.5%	-6.3%	Total	326	365	363	389	390	375	353		15.2%	-6.1%			
		Canada	39	41	44	47	56	69	78		73.9%	13.1%	Canada	282	316	320	347	337	305	268		8.2%	-12.1%			
		Mexico	23	21	17	25	37	37	41		63.1%	12.6%	China	2	4	5	5	8	15	22		836.2%	43.9%			
		Dominican Republic	10	11	34	53	36	40	30		322.6%	-26.4%	Germany	5	5	3	5	5	7	10		39.1%	46.2%			
		Costa Rica	39	52	72	93	61	47	29		20.4%	-36.9%	United Kingdom	7	6	2	2	4	4	7		-37.8%	68.7%			
		Japan	16	2	4	5	5	6	12		-61.1%	90.7%	Belgium	2	1	2	2	4	5	7		157.1%	35.6%			
		China	1	2	2	4	7	6	6		359.4%	-1.7%	All Others	28	34	31	28	31	39	38		36.0%	-1.9%			
		All Others	53	44	44	55	66	75	66		43.0%	-11.7%														
TUBE,PIPE,HOSES+FITTING	3917	Total	985	932	955	1,087	1,197	1,366	1,610		38.6%	17.8%	Total	683	659	663	735	846	982	1,102		43.8%	12.2%			
		Mexico	298	293	301	360	412	475	594		59.5%	25.2%	Canada	272	260	237	251	292	365	387		34.4%	5.8%			
		Canada	265	249	268	304	335	383	422		44.3%	10.2%	China	15	20	37	51	56	91	131		508.4%	44.5%			
		Germany	24	22	25	33	30	31	45		26.7%	46.7%	Mexico	48	43	46	55	71	94	107		97.6%	13.6%			
		United Kingdom	22	25	23	23	29	39	38		74.8%	-2.4%	Germany	45	43	53	67	73	78	86		71.4%	10.6%			
		Australia	12	13	14	20	19	34	36		194.7%	6.0%	Japan	59	53	54	58	67	76	78		29.1%	2.2%			
		China	7	9	9	14	23	25	22		242.8%	-9.0%	All Others	244	239	236	253	286	278	314		13.8%	12.8%			
		All Others	357	322	315	334	350	381	452		6.5%	18.8%														
FLOOR,WALL COVER	3918	Total	202	155	141	140	160	181	191		-10.4%	5.8%	Total	333	331	370	420	437	454	494		36.4%	9.0%			
		Canada	98	94	95	94	104	114	122		16.6%	6.8%	China	32	39	73	86	105	110	134		246.5%	21.5%			
		Mexico	10	9	4	5	7	8	10		-19.6%	26.1%	Canada	166	153	144	143	141	142	132		-14.6%	-7.0%			
		United Kingdom	8	5	4	5	5	7	8		-8.2%	14.3%	Taiwan	48	45	46	46	52	51	40		5.2%	-22.0%			
		Germany	3	2	2	1	2	3	5		12.3%	48.7%	Korea, South	2	4	4	16	21	21	34		762.1%	65.2%			
		Hong Kong	4	3	2	3	3	5	4		15.8%	-18.4%	United Kingdom	22	21	19	23	28	31	33		43.2%	7.3%			
		China	3	4	1	1	1	4	3		1.4%	-8.9%	All Others	63	69	84	106	90	99	121		58.2%	22.6%			
		All Others	76	39	32	31	38	40	39		-47.2%	-1.9%														
SELF ADHESIVE MATERIAL	3919	Total	1,090	977	1,123	1,187	1,377	1,553	1,601		42.5%	3.0%	Total	428	408	478	511	589	706	793		64.9%	12.4%			
		Mexico	293	240	263	290	326	377	348		28.7%	-7.7%	Canada	116	122	166	166	174	177	177		52.5%	-0.2%			
		Canada	247	237	270	261	290	314	302		27.2%	-3.8%	China	15	20	27	34	48	74	113		391.5%	51.4%			
		China	22	27	39	46	72	84	111		274.3%	32.3%	Taiwan	69	63	68	65	74	87	89		26.8%	2.6%			
		Germany	65	53	67	77	96	101	106		54.3%	5.4%	Japan	101	67	62	61	71	84	82		-17.1%	-2.3%			
		Hong Kong	24	20	32	41	56	58	62		137.5%	7.5%	Germany	38	41	50	55	58	73	76		91.5%	4.8%			
		All Others	439	400	453	472	536	620	671		41.4%	8.2%	All Others	89	95	105	129	163	211	257		136.1%	21.8%			

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
<b>PLATE,SHEET,ET,N CELL</b>																							
	3920	<b>Total</b>	\$2,944	\$2,746	\$2,720	\$2,872	\$3,248	\$3,423	\$3,653		16.3%	6.7%	<b>Total</b>	2,026	1,924	2,035	2,311	2,676	3,015	3,232		48.8%	7.2%
		Canada	886	813	870	960	1,022	1,102	1,176		24.3%	6.8%	Canada	594	621	665	764	909	984	1,105		65.6%	12.3%
		Mexico	482	477	430	459	535	621	660		28.8%	6.4%	Japan	336	299	295	341	367	376	367		11.8%	-2.4%
		China	53	81	97	106	141	148	173		177.5%	17.1%	Korea, South	121	111	145	162	198	227	224		88.1%	-1.5%
		United Kingdom	157	121	125	120	137	141	163		-10.5%	15.6%	China	59	58	73	81	112	170	211		190.3%	23.8%
		Germany	99	107	115	111	125	123	124		24.3%	0.9%	Mexico	117	120	119	134	152	186	189		60.0%	1.5%
		All Others	1,266	1,147	1,083	1,114	1,288	1,289	1,356		1.9%	5.2%	All Others	800	716	739	829	938	1,071	1,137		33.9%	6.1%
<b>OTHR PLATE,SHEET,ETC.</b>																							
	3921	<b>Total</b>	991	936	967	1,078	1,223	1,425	1,618		43.8%	13.6%	<b>Total</b>	745	709	799	850	1,066	1,237	1,365		66.1%	10.3%
		Canada	279	275	295	299	373	420	432		50.5%	2.9%	Canada	232	233	278	253	319	360	355		55.4%	-1.3%
		Mexico	280	225	265	272	304	365	403		30.6%	10.4%	Germany	76	74	79	93	137	134	173		77.4%	28.7%
		China	17	23	31	44	77	87	117		405.3%	34.1%	Korea, South	65	63	68	75	93	95	110		46.8%	15.5%
		Hong Kong	32	31	32	41	54	61	105		91.6%	73.3%	China	10	12	17	23	40	72	97		622.5%	34.2%
		United Kingdom	50	54	41	55	53	80	90		60.1%	11.7%	Mexico	38	40	48	46	55	70	74		85.5%	5.8%
		All Others	333	328	303	367	362	412	471		23.6%	14.5%	All Others	325	286	308	360	422	506	556		55.5%	10.0%
<b>BATH,SINK,LAVATR SEAT</b>																							
	3922	<b>Total</b>	56	63	53	53	61	68	84		22.1%	22.1%	<b>Total</b>	134	127	138	155	163	186	205		39.4%	10.1%
		Canada	19	21	20	22	25	27	37		45.6%	36.2%	Canada	94	83	85	92	92	99	96		5.5%	-3.0%
		Mexico	6	4	5	4	7	7	7		28.6%	-8.2%	China	7	9	11	17	27	34	47		375.2%	39.2%
		United Kingdom	3	14	5	3	5	5	6		39.7%	26.6%	Mexico	19	23	26	28	18	25	29		34.9%	15.3%
		Belgium	6	4	5	2	3	3	3		-52.8%	10.0%	Germany	3	2	3	3	4	4	5		60.4%	18.0%
		France	1	1	1	1	2	2	3		293.2%	21.2%	Korea, South	0	0	1	3	4	5	4		3391.5%	-15.5%
		China	1	1	1	0	1	1	0		-50.5%	-41.9%	All Others	12	11	12	13	18	20	24		69.7%	23.5%
		All Others	20	18	17	20	20	23	27		13.9%	17.6%											
<b>BOX,BAG,CLOSURES, ETC</b>																							
	3923	<b>Total</b>	2,671	2,620	2,882	2,958	3,151	3,442	3,844		28.8%	11.7%	<b>Total</b>	2,139	2,334	2,723	3,163	3,697	4,365	4,862		104.1%	11.4%
		Mexico	973	974	1,126	1,143	1,241	1,364	1,487		40.2%	9.0%	Canada	881	932	994	1,114	1,255	1,449	1,551		64.6%	7.0%
		Canada	752	796	890	953	920	1,088	1,210		44.6%	11.2%	China	423	499	625	789	914	1,180	1,434		178.9%	21.5%
		Japan	126	104	103	120	135	135	145		6.8%	7.8%	Mexico	110	154	206	206	267	279	313		154.8%	12.1%
		United Kingdom	79	79	70	74	88	88	96		11.6%	9.3%	Taiwan	111	114	135	136	183	208	216		88.0%	3.4%
		Belgium	12	26	12	37	38	60	79		411.7%	30.3%	Thailand	28	33	54	82	86	147	166		425.9%	12.6%
		China	30	28	29	42	63	37	53		23.0%	41.9%	All Others	587	602	709	835	991	1,100	1,183		87.5%	7.5%
		All Others	699	613	652	590	664	670	774		-4.1%	15.5%											
<b>TABLEWARE,O HOUSEHOLD</b>																							
	3924	<b>Total</b>	530	572	535	543	570	603	659		13.9%	9.3%	<b>Total</b>	1,423	1,491	1,658	1,824	2,124	2,532	2,795		78.0%	10.4%
		Canada	181	186	208	216	235	264	292		46.1%	10.5%	China	799	860	1,025	1,149	1,397	1,759	1,993		120.1%	13.3%
		Mexico	68	73	78	66	60	64	59		-6.1%	-7.9%	Mexico	81	110	110	117	174	200	211		148.0%	5.3%
		United Kingdom	25	35	26	25	32	29	35		16.3%	21.6%	Taiwan	186	166	146	139	123	123	126		-33.5%	2.0%
		Netherlands	16	14	12	15	15	16	19		0.5%	20.1%	Canada	92	98	101	108	108	119	122		29.3%	3.0%
		Australia	12	11	11	13	15	15	19		25.3%	29.8%	Hong Kong	35	36	34	39	50	49	39		37.7%	-20.7%
		China	3	5	5	4	4	7	9		131.7%	33.9%	All Others	230	221	242	273	273	283	304		22.8%	7.6%
		All Others	225	248	195	204	209	208	225		-7.5%	8.1%											
<b>OT BUILDERS' WARE</b>																							
	3925	<b>Total</b>	\$239	\$209	\$219	\$225	\$256	\$307	\$380		28.1%	23.8%	<b>Total</b>	786	835	987	1,140	1,315	1,479	1,531		88.2%	3.5%
		Canada	109	96	98	104	137	164	198		50.7%	20.8%	Canada	389	426	501	562	640	690	702		77.3%	1.8%
		Mexico	20	20	17	16	18	22	30		11.6%	35.9%	China	280	297	352	380	432	499	518		78.1%	3.8%
		United Kingdom	13	16	18	16	11	14	16		11.7%	17.6%	Mexico	23	32	36	59	93	127	150		445.3%	18.8%
		Australia	8	5	6	4	3	9	11		9.7%	25.9%	Taiwan	59	51	57	83	79	81	79		36.8%	-1.6%
		China	1	2	3	4	4	4	8		206.6%	94.2%	Korea, South	1	1	2	10	20	17	14		1375.6%	-15.9%
		All Others	89	71	78	81	83	94	116		5.4%	23.8%	All Others	33	30	39	46	52	67	67		98.8%	0.7%

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
OTHER ARTICLES	3926	Total	4,386	3,960	3,487	3,385	3,768	4,063	4,367		-7.3%	7.5%	Total	3,631	3,611	3,707	3,988	4,602	5,313	5,659		46.3%	6.5%
		Mexico	2,275	1,929	1,710	1,590	1,702	1,772	1,803		-22.1%	1.8%	China	1,235	1,277	1,364	1,507	1,819	2,204	2,366		78.4%	7.3%
		Canada	723	722	661	683	796	867	896		19.9%	3.4%	Canada	626	608	659	678	784	938	948		49.9%	1.0%
		Japan	202	175	145	155	171	200	216		-1.1%	8.1%	Mexico	424	388	390	409	455	522	596		23.1%	14.1%
		United Kingdom	118	130	115	120	108	124	129		5.7%	3.7%	Japan	227	197	183	206	248	276	262		21.4%	-5.2%
		Germany	111	97	94	85	85	97	123		-12.6%	26.7%	Germany	168	148	161	187	218	237	241		40.8%	2.0%
		China	43	37	38	49	58	62	85		44.7%	36.5%	All Others	950	993	950	1,001	1,078	1,135	1,247		19.5%	9.8%
		All Others	915	869	724	703	848	942	1,116		2.9%	18.5%											
O WORK RUBBR+PLST,ETC	8477	Total	1,265	1,106	972	967	1,113	1,296	1,390		2.5%	7.3%	Total	1,991	1,428	1,446	1,688	1,791	2,127	2,150		6.8%	1.1%
		Canada	323	262	251	239	246	267	300		-17.4%	12.3%	Canada	471	382	385	407	431	505	523		7.1%	3.6%
		Mexico	272	185	164	143	194	243	278		-10.4%	14.2%	Germany	452	303	323	397	454	529	520		16.9%	-1.7%
		China	22	35	68	82	104	104	103		371.5%	-1.7%	Japan	518	269	319	332	356	413	415		-20.3%	0.4%
		Germany	84	75	60	59	64	76	82		-9.7%	8.1%	France	137	100	103	157	120	125	161		-8.7%	28.7%
		Brazil	36	29	33	28	32	64	52		78.0%	-19.5%	Italy	113	93	70	92	114	134	119		18.4%	-10.7%
		All Others	528	520	396	416	473	542	576		2.6%	6.4%	China	5	5	7	15	24	34	36		577.1%	6.4%
		All Others											All Others	294	278	240	287	293	388	376		31.9%	-3.1%
O W INDIV FUNCTIONS	8479	Total	12,279	8,168	6,438	6,271	8,009	7,788	9,241		-36.6%	18.7%	Total	4,811	3,764	3,073	3,240	3,931	4,356	4,927		-9.5%	13.1%
		Korea, South	1,515	934	791	925	844	971	1,513		-35.9%	55.8%	Japan	2,149	1,427	1,082	914	1,142	1,194	1,519		-44.4%	27.2%
		Taiwan	2,464	1,013	899	581	1,269	1,131	1,089		-54.1%	-3.7%	Germany	725	695	513	634	704	788	787		8.8%	-0.2%
		Canada	1,005	773	820	933	765	810	1,026		-19.4%	26.8%	Canada	433	368	372	472	505	516	595		19.2%	15.3%
		Japan	1,657	1,021	592	734	913	796	948		-52.0%	19.2%	China	41	46	96	136	210	273	311		564.5%	14.1%
		Mexico	953	742	656	513	648	665	698		-30.3%	4.9%	Italy	218	200	171	196	216	255	284		17.0%	11.7%
		China	270	323	403	407	700	438	642		62.2%	46.6%	All Others	1,247	1,028	839	887	1,154	1,331	1,431		6.7%	7.6%
		All Others	4,414	3,362	2,277	2,177	2,870	2,977	3,324		-32.6%	11.6%											
MOLD BOX F MET FOUNDR	8480	Total	1,028	853	772	753	867	991	981		-3.6%	-1.0%	Total	1,367	1,184	1,343	1,390	1,511	1,602	1,806		17.2%	12.7%
		Mexico	331	265	225	236	297	419	442		26.5%	5.5%	Canada	708	589	700	713	714	816	805		15.3%	-1.3%
		Canada	457	301	269	291	337	339	315		-25.8%	-6.9%	Japan	251	229	278	254	297	234	292		-6.9%	24.8%
		China	11	15	28	20	21	23	23		106.0%	0.5%	Germany	73	69	63	76	99	138	174		89.4%	26.0%
		Germany	29	22	18	16	25	20	23		-31.7%	15.5%	China	25	25	30	40	54	79	115		222.9%	44.1%
		Japan	15	16	20	15	10	12	18		-22.8%	54.0%	Taiwan	44	47	36	47	48	55	55		24.7%	1.1%
		All Others	185	233	213	175	177	179	160		-3.2%	-10.8%	All Others	266	225	237	259	298	280	366		5.2%	30.4%
PAINTING,DRAW,COL LAGE	9701	Total	\$2,680	\$3,237	\$1,910	\$1,992	\$2,574	\$3,316	\$4,314		23.7%	30.1%	Total	3,682	3,591	3,324	2,601	3,358	3,264	4,285		-11.4%	31.3%
		Switzerland	814	950	481	622	800	1,090	1,588		33.9%	45.6%	France	1,834	1,746	1,400	1,004	1,300	1,157	1,408		-36.9%	21.7%
		United Kingdom	691	856	509	627	764	903	951		30.6%	5.3%	United Kingdom	583	638	500	386	608	650	890		11.5%	36.9%
		France	261	261	195	144	227	345	370		32.1%	7.1%	Germany	197	183	229	249	340	330	481		67.3%	45.6%
		Germany	197	224	128	138	137	248	271		26.1%	9.2%	Italy	225	196	251	272	193	278	286		23.6%	3.0%
		Korea, South	3	35	46	58	44	43	171		1424.0%	293.7%	Spain	79	120	296	117	158	176	221		123.2%	25.2%
		China	9	11	22	4	8	5	17		-40.5%	210.4%	China	25	22	33	36	37	53	67		112.1%	24.7%
		All Others	705	901	530	399	593	681	947		-3.3%	39.0%	All Others	738	687	614	537	723	619	933		-16.2%	50.9%
ORIGNL ENGRAVE,PRINTS	9702	Total	44	52	63	92	91	94	111		112.4%	18.1%	Total	77	74	79	87	103	124	135		61.8%	9.1%
		United Kingdom	11	11	16	21	23	19	25		79.7%	29.3%	France	24	19	18	19	29	28	32		16.4%	17.5%
		Germany	4	8	3	5	5	9	19		152.7%	118.1%	Germany	7	15	10	16	16	30	29		338.1%	-4.7%
		France	3	2	3	4	11	4	13		41.9%	237.8%	United Kingdom	16	15	18	17	20	38	29		133.5%	-23.7%
		Switzerland	2	5	2	7	13	17	12		810.0%	-29.4%	Spain	2	2	3	2	4	3	7		57.1%	128.2%
		Canada	5	6	11	24	5	12	9		158.5%	-22.0%	Switzerland	3	3	6	3	5	6	6		63.9%	19.2%
		China	0	0	0	0	0	1	0		1216.5%	-52.9%	China	0	0	0	1	0	1	2		182.0%	218.0%
		All Others	21	20	28	31	33	32	32		54.3%	0.3%	All Others	25	19	24	29	30	20	31		-20.4%	56.2%

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions										-- Change --		Annual US Imports in \$ Millions										-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05					
Digital Multimeters	903031	Total	89	68	60	59	65	76	86		-14.4%	13.2%	Total	63	49	37	47	67	78	91		23.8%	17.3%			
		Netherlands	20	19	19	18	19	22	25		9.9%	13.3%	China	14	11	14	23	42	49	55		241.8%	12.3%			
		Canada	9	8	7	7	7	8	9		-12.2%	4.7%	Malaysia	0	3	3	2	3	4	12		2442.9%	186.8%			
		Mexico	5	4	4	4	4	5	6		-9.2%	20.1%	Taiwan	13	9	7	8	8	8	8		-39.1%	3.0%			
		Singapore	4	3	4	4	4	5	5		20.1%	6.6%	Thailand	0	0	0	0	0	0	3		491.3%	731.2%			
		China	4	5	5	4	5	5	5		4.4%	4.0%	Korea, South	10	8	6	5	4	5	3		-51.9%	-36.5%			
		All Others	46	28	22	23	26	31	37		-31.2%	16.7%	All Others	25	18	7	9	10	11	10		-55.6%	-13.2%			
Connecting Devices for use with Modular Compressed Air Conditioning units	84159090	Total	1,189	1,105	1,196	1,097	1,014	999	1,061		-15.9%	6.1%	Total	1,050	1,017	1,159	1,227	1,284	1,492	1,662		42.1%	11.4%			
		Canada	610	537	542	481	488	504	524		-17.4%	4.0%	Mexico	608	537	682	710	727	835	898		37.2%	7.5%			
		Mexico	253	297	370	348	253	210	179		-17.2%	-14.7%	Canada	111	156	184	185	176	180	169		62.2%	-5.9%			
		Saudi Arabia	48	37	34	39	38	41	62		-14.6%	51.1%	China	10	14	22	35	50	91	143		793.8%	56.3%			
		China	19	13	17	23	27	19	25		4.4%	27.8%	Japan	176	174	133	115	106	115	130		-35.0%	13.7%			
		Austria	1	0	6	13	10	16	22		1387.5%	36.9%	Korea, South	12	13	15	25	35	55	58		378.1%	4.9%			
		All Others	258	221	227	193	198	209	248		-18.8%	18.7%	All Others	133	123	122	157	189	216	264		62.8%	22.3%			
PISTON ENGINES,INT COM	8407	Total	6,513	6,413	6,027	5,747	5,557	5,770	6,005		-11.4%	4.1%	Total	9,148	7,953	8,277	8,553	9,180	9,408	8,131		2.8%	-13.6%			
		Canada	4,425	4,202	4,011	4,042	4,105	4,191	4,363		-5.3%	4.1%	Canada	2,788	2,162	2,202	2,421	2,901	2,827	2,486		1.4%	-12.1%			
		Mexico	864	938	607	328	431	491	537		-43.2%	9.5%	Japan	3,378	3,036	2,965	2,769	2,607	2,781	2,327		-17.7%	-16.3%			
		Australia	77	75	78	80	95	122	118		58.4%	-3.1%	Mexico	1,497	1,355	1,338	1,445	1,900	1,950	1,577		30.2%	-19.1%			
		Italy	98	100	124	128	125	153	114		55.8%	-25.2%	Germany	1,208	1,115	1,258	1,373	1,381	1,253	1,096		3.7%	-12.5%			
		Belgium	153	112	116	102	141	154	103		0.8%	-33.1%	Austria	125	97	121	169	119	222	213		77.9%	-4.2%			
		China	20	13	7	19	28	34	46		69.2%	36.6%	China	6	2	19	55	65	101	103		1614.4%	2.7%			
		All Others	875	972	1,083	1,048	632	625	723		-28.6%	15.5%	All Others	146	183	374	320	207	274	327		87.7%	19.5%			
COMPRESSION-IGNITION	8408	Total	2,595	2,157	2,424	2,645	3,783	4,647	4,943		79.1%	6.4%	Total	1,547	1,330	1,536	2,115	2,799	3,481	4,120		125.0%	18.4%			
		Canada	961	707	687	723	1,068	1,468	1,643		52.7%	12.0%	Germany	217	190	256	456	556	711	1,181		228.2%	66.1%			
		Mexico	773	565	821	1,111	1,584	1,621	1,575		109.7%	-2.9%	Japan	580	454	441	511	738	902	897		55.4%	-0.5%			
		United Kingdom	210	261	271	228	349	365	346		74.0%	-5.3%	Mexico	231	164	244	336	502	557	614		140.8%	10.3%			
		Belgium	64	47	56	47	69	177	191		175.0%	7.5%	Brazil	37	14	185	279	200	340	478		817.0%	40.6%			
		China	32	35	36	34	59	99	156		209.1%	57.3%	United Kingdom	278	312	166	206	282	287	346		3.2%	20.7%			
		All Others	554	541	552	502	654	917	1,033		65.4%	12.7%	China	1	0	0	0	6	6	3		600.7%	-49.1%			
												All Others	203	195	243	328	514	678	600		234.2%	-11.5%				
PARTS ENGS 8407,8408	8409	Total	4,592	4,107	4,497	4,333	4,326	4,845	4,713		5.5%	-2.7%	Total	5,075	4,562	4,861	5,263	6,423	7,308	7,958		44.0%	8.9%			
		Canada	2,062	1,740	1,788	1,815	1,971	2,155	1,945		4.5%	-9.8%	Mexico	948	826	979	1,086	1,476	1,648	1,901		73.8%	15.3%			
		Mexico	789	674	682	560	574	633	641		-19.8%	1.1%	Japan	1,720	1,598	1,484	1,485	1,764	1,850	1,739		7.6%	-6.0%			
		United Kingdom	246	221	185	159	161	192	236		-21.9%	23.1%	Canada	1,171	1,003	1,038	1,124	1,199	1,389	1,443		18.6%	3.9%			
		Belgium	95	98	141	162	147	110	204		16.6%	84.7%	Germany	302	288	347	413	476	566	678		87.4%	19.9%			
		Australia	129	125	151	137	169	220	198		70.7%	-9.8%	Brazil	306	223	286	295	399	459	571		49.9%	24.4%			
		China	25	37	41	63	73	117	120		363.7%	2.3%	China	48	59	82	92	130	211	292		340.8%	38.6%			
		All Others	1,245	1,212	1,510	1,438	1,232	1,417	1,369		13.8%	-3.4%	All Others	581	564	646	767	979	1,186	1,334		104.2%	12.5%			
OTHER ENGINE,MOTORS	8412	Total	515	572	571	697	751	942	1,232		83.1%	30.8%	Total	821	845	743	875	1,105	1,410	1,649		71.9%	16.9%			
		Canada	222	210	204	222	257	321	329		44.6%	2.6%	Canada	140	142	144	172	194	236	284		68.2%	20.1%			
		China	9	17	23	24	32	40	135		339.1%	241.5%	Germany	127	147	108	144	195	246	278		93.2%	13.1%			
		Singapore	8	15	18	15	27	73		249.3%	169.8%	Japan	147	143	112	116	150	197	225		34.0%	14.5%				
		Mexico	23	21	20	31	41	57	71		150.8%	23.8%	United Kingdom	90	90	91	85	104	172	180		89.9%	5.1%			
		United Kingdom	37	39	23	42	36	50	61		37.2%	21.7%	Italy	41	46	42	57	74	85	91		107.7%	6.8%			
		All Others	216	270	283	360	370	447	563		106.6%	25.8%	China	6	6	8	12	29	48	69		654.1%	41.7%			
												All Others	268	271	238	289	359	426	521		58.9%	22.4%				

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
<b>OT ADP IN/OUTPUT UN</b>																							
	847160	<b>Total</b>	3,621	3,351	3,348	3,735	4,637	4,392	4,123		21.3%	-6.1%	<b>Total</b>	19,915	15,793	17,374	15,893	18,709	17,681	16,923		-11.2%	-4.3%
		Canada	1,266	1,017	1,001	1,033	1,265	1,472	1,459		16.2%	-0.9%	China	3,656	3,759	5,648	7,277	10,999	10,992	11,284		200.7%	2.7%
		Mexico	447	627	909	1,172	1,530	1,105	834		147.5%	-24.5%	Malaysia	1,388	1,106	1,696	1,656	1,339	1,465	1,256		5.6%	-14.2%
		Netherlands	182	146	120	137	181	228	252		25.2%	10.8%	Japan	5,384	3,435	2,492	1,390	1,317	1,056	906		-80.4%	-14.3%
		Brazil	95	72	70	80	102	97	135		1.6%	39.4%	Mexico	2,476	2,491	2,648	1,680	1,174	904	660		-63.5%	-27.0%
		Germany	121	110	111	118	117	114	115		-5.8%	0.8%	Taiwan	1,221	1,005	952	847	743	581	552		-52.4%	-5.1%
		China	32	34	55	70	90	91	111		184.6%	22.5%	All Others	5,791	3,997	3,937	3,042	3,136	2,682	2,264		-53.7%	-15.6%
		All Others	1,477	1,344	1,082	1,125	1,353	1,286	1,217		-13.0%	-5.4%											
<b>OT ADP STORAGE UNIT</b>																							
	847170	<b>Total</b>	4,396	3,849	3,181	3,166	3,683	4,084	4,163		-7.1%	2.0%	<b>Total</b>	16,179	13,201	11,999	11,395	10,835	10,779	11,202		-33.4%	3.9%
		Mexico	643	670	572	424	690	872	732		35.8%	-16.1%	China	1,208	1,325	1,709	1,728	2,126	2,408	2,950		99.3%	22.5%
		Canada	693	599	554	587	637	699	673		0.8%	-3.8%	Singapore	4,753	3,935	3,785	3,828	3,388	3,240	2,880		-31.8%	-11.1%
		Netherlands	429	372	247	322	448	327	371		-23.6%	13.4%	Thailand	1,097	844	651	760	1,021	1,337	1,886		22.0%	41.0%
		Japan	384	269	238	280	295	326	301		-15.1%	-7.6%	Malaysia	2,466	2,210	1,947	1,913	1,404	1,028	962		-58.3%	-6.4%
		United Kingdom	235	238	157	125	120	165	215		-29.5%	29.8%	Philippines	1,363	1,043	987	895	799	672	677		-50.7%	0.8%
		China	75	65	55	69	78	75	104		0.0%	38.5%	All Others	5,292	3,845	2,920	2,270	2,098	2,093	1,847		-60.4%	-11.8%
		All Others	1,938	1,634	1,357	1,359	1,416	1,618	1,767		-16.5%	9.2%											
<b>RADIO TELEPHONES FOR INSTALLATION IN MOTOR VEHICLE</b>																							
	852520902	<b>Total</b>	\$339	\$174	\$101	\$77	\$142	\$123	\$71		-63.7%	-42.6%	<b>852590 Total</b>	10,111	12,349	13,794	15,556	20,989	24,906	27,350		146.3%	9.8%
		Hong Kong	3	6	7	3	6	5	21		48.8%	350.8%	China	513	875	1,976	2,882	5,547	9,316	11,868		1716.3%	27.4%
		Mexico	140	88	28	13	22	22	16		-84.6%	-28.0%	Korea, South	2,916	4,332	4,330	5,594	8,054	5,963	5,334		104.5%	-10.5%
		France	2	0	1	9	74	42	15		2440.2%	-64.1%	Mexico	1,801	2,250	1,657	1,479	2,078	2,247	2,513		24.7%	11.9%
		Korea, South	19	5	8	2	2	0	3		-99.4%	2528.9%	Taiwan	58	74	63	116	253	820	1,659		1310.2%	102.2%
		Venezuela	8	10	12	4	1	0	2		-97.6%	971.6%	Malaysia	846	1,098	1,054	1,290	1,377	1,493	1,655		76.5%	10.9%
		China	2	1	2	5	2	1	1		-40.3%	-35.4%	All Others	3,977	3,720	4,714	4,196	3,681	5,067	4,321		27.4%	-14.7%
		All Others	166	63	44	40	33	54	13		-67.7%	-75.1%											
<b>RADIO PHONES, NT MOTOR VHCL, PBLIC CELLULAR SRVCE</b>																							
	852520904	<b>Total</b>	1,120	1,224	913	870	1,412	1,771	2,377		58.1%	34.2%	Import detail not available										
		Mexico	331	506	305	155	400	375	649		13.4%	73.0%	Import detail not available										
		Venezuela	50	53	62	25	153	169	345		235.8%	104.0%	Import detail not available										
		Hong Kong	56	4	5	10	35	90	157		60.6%	73.8%	Import detail not available										
		Peru	23	38	63	73	65	58	138		155.3%	136.2%	Import detail not available										
		Ecuador	12	24	41	62	102	178	121		1365.3%	-31.7%	Import detail not available										
		China	2	1	1	1	2	110	58		5870.7%	-47.9%	Import detail not available										
		All Others	646	598	436	544	655	790	910		22.3%	15.2%	Import detail not available										
<b>TRANSMISSION APPTS INCORPORATING RECEIVERS,NESOI</b>																							
	852520908	<b>Total</b>	2,048	1,604	1,168	1,107	1,654	1,581	1,745		-22.8%	10.3%	Import detail not available										
		Canada	621	443	416	388	561	759	801		22.2%	5.6%	Import detail not available										
		Mexico	330	134	171	139	227	118	271		-64.2%	129.6%	Import detail not available										
		Venezuela	16	13	15	15	44	18	73		11.6%	300.9%	Import detail not available										
		Brazil	156	94	59	27	40	54	64		-65.4%	19.6%	Import detail not available										
		Algeria	18	82	4	0	1	1	49		-93.4%	4171.5%	Import detail not available										
		China	51	131	51	48	70	26	16		-47.8%	-40.5%	Import detail not available										
		All Others	857	707	452	490	711	605	470		-29.4%	-22.3%	Import detail not available										

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
<b>L-Lysine Feed Products, Their Methods of Production and Genetic Constructs for Production</b>																							
	292241	<b>Total</b>	141	198	218	349	407	238	253		69.3%	6.2%	<b>Total</b>	31	26	22	38	68	39	38		26.3%	-1.6%
		Netherlands	40	68	79	138	153	81	76		100.5%	-6.1%	China	0	1	1	1	12	7	11		1566.4%	62.5%
		Canada	24	26	29	39	50	35	37		50.4%	4.5%	Brazil	0	0	0	0	8	8	10		N/A	24.6%
		Belgium	4	3	4	9	2	8	20		115.0%	143.2%	Indonesia	12	10	5	6	14	7	7		-43.2%	4.2%
		Brazil	4	9	10	19	26	20	17		412.2%	-16.2%	Korea, South	7	5	5	8	19	11	5		52.0%	-55.5%
		Mexico	9	6	4	12	19	13	15		48.1%	15.9%	Japan	5	3	3	3	3	3	3		-35.2%	-21.7%
		China	7	4	5	8	27	10	9		39.7%	-12.7%	All Others	6	7	8	19	12	3	3		-48.5%	-17.6%
		All Others	52	83	87	124	130	69	78		32.4%	12.7%											
<b>Foam Footwear</b>																							
	6405909	<b>Total</b>	16	12	9	10	16	16	21		1.4%	31.3%	<b>Total</b>	60	40	32	45	55	86	128		42.4%	49.2%
		Belgium	0	0	0	0	0	1	3		3095.1%	270.2%	China	29	30	24	32	35	62	108		111.7%	74.8%
		Canada	2	2	2	2	2	3	3		81.0%	7.6%	Italy	8	3	3	7	10	11	10		48.3%	-6.3%
		Emirates	0	0	0	0	0	0	2		177.1%	1966.5%	Brazil	13	1	1	1	2	6	3		-56.4%	-47.6%
		Tanzania	0	0	0	0	0	1	2		900.7%	40.9%	Spain	4	2	2	2	4	3	2		-31.9%	-34.6%
		Nicaragua	0	0	0	1	1	1	1		3216.3%	93.2%	Thailand	1	1	1	0	1	1	2		-23.8%	45.5%
		China	0	0	0	0	0	0	0		158.2%	25.6%	All Others	5	2	2	2	3	3	3		-36.4%	-5.4%
		All Others	14	9	7	7	12	10	9		-28.9%	-5.9%											
<b>Voltage Regulators</b>																							
	903289	<b>Total</b>	\$2,283	\$2,113	\$2,082	\$2,203	\$2,184	\$2,191	\$2,355		-4.0%	7.5%	<b>Total</b>	2,208	2,071	2,310	2,352	2,724	2,631	2,736		19.2%	4.0%
		Canada	1,271	1,134	1,120	1,221	1,253	1,153	1,080		-9.3%	-6.3%	Mexico	1,007	1,037	1,214	1,167	1,212	1,059	994		5.1%	-6.2%
		Mexico	379	391	350	305	327	346	332		-8.8%	-3.8%	Germany	187	143	185	241	345	361	453		93.3%	25.5%
		France	25	16	16	33	48	123	190		387.1%	54.4%	Japan	341	260	277	334	453	389	416		14.0%	6.8%
		Korea, South	28	26	34	45	39	43	85		52.4%	98.5%	Canada	266	247	209	160	186	218	233		-17.8%	6.9%
		China	20	27	43	48	49	51	83		154.3%	62.4%	United Kingdom	120	93	113	115	108	126	112		5.3%	-10.9%
		All Others	559	519	519	552	468	475	585		-15.0%	23.1%	China	20	14	33	34	44	46	64		136.3%	38.2%
												All Others	267	276	278	301	375	431	464		61.4%	7.7%	
<b>Laser Bar Code Scanners and Scan Engines</b>																							
	854890	<b>Total</b>	1,230	993	752	707	678	674	644		-45.2%	-4.5%	<b>Total</b>	142	162	151	176	219	196	181		38.3%	-7.5%
		Mexico	86	100	101	105	93	129	108		49.9%	-16.1%	Mexico	49	72	52	68	78	69	80		40.3%	15.3%
		Japan	100	73	40	45	38	43	51		-57.0%	19.2%	Switzerland	0	0	6	5	9	12	23		3234.2%	93.3%
		China	46	38	31	21	51	43	43		-6.8%	-0.4%	China	7	9	4	13	12	28	16		324.7%	-42.0%
		Hong Kong	42	30	20	28	39	54	42		27.7%	-20.9%	Japan	18	13	16	17	19	16	15		-11.2%	-5.8%
		Australia	28	26	23	24	33	32	38		14.3%	18.8%	United Kingdom	3	7	6	5	8	6	6		122.7%	-0.3%
		All Others	928	726	537	485	424	374	361		-59.7%	-3.4%	All Others	64	60	67	68	93	65	41		0.0%	-37.0%
<b>Laminated Floor Panels</b>																							
	4412	<b>Total</b>	235	175	173	179	222	223	249		-5.0%	11.9%	<b>Total</b>	962	979	1,234	1,397	2,180	2,318	2,571		141.0%	10.9%
		Canada	79	69	77	84	104	100	122		26.0%	21.9%	China	30	47	103	164	433	617	982		1934.2%	59.3%
		Mexico	72	51	53	45	47	48	57		-33.4%	19.2%	Canada	282	315	355	374	455	498	460		76.4%	-7.6%
		Bahamas	4	4	4	5	11	13	12		226.3%	-11.2%	Brazil	97	99	143	244	440	416	280		328.6%	-32.7%
		China	1	1	0	2	3	4	6		398.9%	45.9%	Malaysia	109	95	130	119	208	176	213		60.6%	21.3%
		Dominican Republic	6	4	4	5	2	4	6		-43.1%	56.0%	Indonesia	234	194	213	189	213	194	201		-17.2%	3.6%
		All Others	72	47	36	39	54	54	47		-25.1%	-13.0%	All Others	208	229	290	306	432	417	434		100.2%	4.1%

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions										-- Change --		Annual US Imports in \$ Millions										-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006		'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006		'00-'05	'06/'05			
<b>SEMICON DV:L-EMT</b>																										
<b>DIOD</b>																										
	8541	<b>Total</b>	5,911	4,658	4,020	4,225	5,019	5,243	6,106		-11.3%	16.5%	<b>Total</b>	5,879	4,016	3,289	3,323	3,896	3,893	4,549		-33.8%	16.8%			
		Mexico	1,068	786	711	734	821	855	908		-20.0%	6.3%	Japan	1,846	1,168	851	768	945	962	1,126		-47.9%	17.0%			
		Hong Kong	251	244	233	266	462	593	665		136.4%	12.2%	China	282	239	280	309	435	506	682		79.7%	34.8%			
		Singapore	203	194	252	252	279	242	559		19.3%	131.1%	Malaysia	855	468	478	466	514	532	578		-37.8%	8.7%			
		Germany	311	323	205	182	265	411	525		32.2%	27.7%	Mexico	613	540	381	450	538	489	563		-20.2%	15.3%			
		Thailand	226	243	134	140	327	348	323		53.9%	-7.3%	Taiwan	301	171	147	169	193	195	230		-35.1%	18.1%			
		China	200	226	219	233	272	241	287		21.0%	18.8%	All Others	1,983	1,431	1,151	1,163	1,270	1,210	1,369		-39.0%	13.1%			
		All Others	3,652	2,641	2,267	2,418	2,594	2,553	2,839		-30.1%	11.2%														
<b>INTEGRATED</b>																										
<b>CIRCUITS</b>																										
	8542	<b>Total</b>	54,098	40,407	38,215	41,912	43,031	41,978	46,278		-22.4%	10.2%	<b>Total</b>	42,462	26,406	22,727	21,281	22,853	21,867	22,833		-48.5%	4.4%			
		China	671	865	1,371	2,214	2,667	3,122	5,589		365.0%	79.0%	Taiwan	4,840	3,253	2,910	2,858	3,556	3,522	4,212		-27.2%	19.6%			
		Malaysia	4,862	3,599	4,543	6,025	5,209	4,748	5,530		-2.4%	16.5%	Korea, South	7,370	3,452	3,405	3,313	3,884	2,966	2,910		-59.8%	-1.9%			
		Korea, South	5,863	3,312	3,774	4,553	4,392	4,503	4,723		-23.2%	4.9%	Malaysia	5,452	4,067	3,783	3,116	3,115	2,915	2,626		-46.5%	-9.9%			
		Mexico	6,092	5,172	4,085	4,050	4,627	4,681	4,648		-23.2%	-0.7%	Japan	6,701	3,551	2,160	1,880	2,183	1,980	2,309		-70.5%	16.7%			
		Philippines	4,590	4,201	4,230	5,092	3,945	3,685	4,053		-19.7%	10.0%	Philippines	5,255	3,312	3,073	2,716	2,244	2,211	2,238		-57.9%	1.2%			
		All Others	32,019	23,256	20,211	19,978	22,192	21,240	21,734		-33.7%	2.3%	China	487	415	449	540	921	1,279	1,500		162.7%	17.3%			
													All Others	12,357	8,356	6,946	6,858	6,948	6,994	7,038		-43.4%	0.6%			
<b>Zero-Mercury-Added</b>																										
<b>Alkaline Batteries</b>																										
	850680	<b>Total</b>	\$124	\$131	\$106	\$135	\$132	\$144	\$157		15.4%	9.3%	<b>Total</b>	118	128	128	155	153	130	117		10.3%	-9.8%			
		Netherlands	0	0	7	31	13	11	36		3809.5%	214.5%	China	39	44	51	82	94	90	88		132.4%	-1.4%			
		Mexico	30	31	23	19	18	16	20		-47.3%	31.4%	Japan	12	12	12	19	15	7	8		-40.0%	20.7%			
		Germany	3	5	9	11	12	24	14		608.7%	-42.4%	Spain	3	2	1	1	1	1	4		-73.6%	402.7%			
		Brazil	2	1	3	2	9	12	11		392.2%	-1.5%	Korea, South	6	4	5	5	5	4	3		-29.0%	-35.1%			
		Canada	50	43	12	9	8	7	8		-85.5%	13.8%	Mexico	2	4	5	8	9	7	2		233.9%	-65.2%			
		China	0	1	0	0	1	1	0		119.2%	-72.7%	All Others	56	62	54	40	28	21	11		-61.8%	-49.6%			
		All Others	38	50	51	62	70	73	67		91.8%	-8.5%														
<b>Agricultural Vehicles</b>																										
<b>and Components</b>																										
<b>Thereof</b>																										
	870190	<b>Total</b>	1,007	997	1,149	1,135	1,430	1,726	1,851		71.5%	7.3%	<b>Total</b>	1,506	1,374	1,601	1,835	2,444	2,754	2,499		82.9%	-9.3%			
		Canada	437	484	498	515	592	619	694		41.7%	12.1%	Japan	600	531	625	741	999	1,074	1,069		78.9%	-0.5%			
		Australia	84	65	101	119	193	183	138		116.5%	-24.4%	Germany	179	203	213	225	314	331	338		85.1%	1.9%			
		Germany	78	77	74	60	56	96	115		23.6%	19.4%	United Kingdom	221	197	243	215	275	271	247		22.9%	-8.9%			
		United Kingdom	42	46	52	37	61	96	97		130.3%	0.1%	Italy	127	144	163	144	181	199	219		56.8%	10.1%			
		Russia	3	8	1	18	20	51	81		1800.7%	59.4%	France	26	47	80	64	142	205	134		686.1%	-34.8%			
		China	3	4	6	4	10	13	7		311.4%	-49.9%	China	6	6	9	12	19	21	17		242.4%	-18.3%			
		All Others	360	313	417	382	497	668	721		85.6%	7.9%	All Others	347	246	268	433	513	652	475		87.9%	-27.1%			
<b>Power bars</b>																										
	210690709	<b>Total</b>	730	708	791	960	1,112	1,160	1,709		58.8%	47.4%	<b>Total</b>	415	510	607	734	1,005	1,160	1,359		180.0%	17.1%			
		Canada	227	221	260	287	314	423	493		85.8%	16.6%	Canada	121	188	190	240	391	452	485		274.4%	7.2%			
		Mexico	65	75	69	88	133	150	474		129.9%	214.9%	New Zealand	9	18	28	39	42	92	149		924.8%	61.5%			
		Japan	90	89	117	133	149	167	164		85.2%	-2.0%	Mexico	12	15	23	56	110	125	149		983.9%	19.5%			
		Korea, South	34	63	77	70	72	72	79		112.2%	10.1%	Thailand	22	35	47	49	53	69	88		204.6%	28.7%			
		Netherlands	44	28	30	29	39	34	47		-21.8%	35.5%	France	26	27	30	37	48	42	53		61.0%	25.9%			
		China	22	35	16	93	142	26	36		16.8%	37.9%	China	16	18	20	21	22	23	35		48.2%	50.8%			
		All Others	247	197	223	259	263	287	417		16.3%	45.2%	All Others	209	209	270	291	339	357	399		71.0%	11.7%			

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05		
Contract lenses	900130	Total	528	592	548	470	511	673	750		27.5%	11.3%	Total	181	187	252	317	394	409	392		125.7%	-4.2%
		United Kingdom	78	84	141	162	168	147	163		89.0%	10.6%	Indonesia	80	65	115	100	128	152	159		91.3%	4.4%
		Japan	125	183	130	86	79	95	140		-23.9%	47.1%	Ireland	37	49	55	90	155	154	153		314.6%	-0.7%
		Singapore	86	78	77	73	91	93	106		8.7%	14.0%	United Kingdom	57	65	71	114	98	86	65		52.1%	-25.0%
		Germany	28	39	24	2	23	121	105		329.0%	-13.0%	Germany	2	2	4	5	6	6	10		222.7%	50.5%
		Canada	58	56	53	60	55	76	72		30.3%	-5.9%	Taiwan	0	0	0	2	3	2	2		417.0%	43.0%
		China	5	4	3	2	2	1	2		-74.9%	38.9%	China	0	0	0	0	0	0	0		-71.1%	2.6%
		All Others	148	148	121	86	93	140	162		-5.7%	16.2%	All Others	6	5	7	7	4	9	4		58.1%	-60.8%
Air conditioners	8415	Total	2,358	2,216	2,155	2,059	2,016	2,132	2,289		-9.6%	7.4%	Total	1,943	1,886	2,212	2,579	2,672	3,006	3,571		54.7%	18.8%
		Canada	1,109	997	1,030	973	969	1,038	1,085		-6.4%	4.5%	China	193	246	404	684	745	920	1,267		377.7%	37.7%
		Mexico	413	441	504	498	393	343	342		-16.8%	-0.3%	Mexico	709	626	791	865	911	1,106	1,243		56.1%	12.5%
		Saudi Arabia	75	74	57	61	53	60	90		-19.8%	50.1%	Canada	214	271	288	290	272	291	298		35.6%	2.4%
		Venezuela	34	50	29	15	36	83	75		144.9%	-10.2%	Korea, South	297	256	289	278	262	168	164		-43.4%	-2.6%
		United Arab Emirates	49	53	41	29	40	61	66		24.7%	8.3%	Thailand	70	73	84	73	102	100	160		42.9%	59.1%
		China	42	42	45	48	42	36	43		-15.5%	22.4%	All Others	461	415	355	389	381	421	440		-8.6%	4.4%
		All Others	637	560	450	435	483	511	587		-19.9%	15.0%											
Soy sauce	210310	Total	\$16	\$17	\$17	\$18	\$18	\$22	\$22		44.4%	-1.1%	Total	44	45	44	48	48	50	51		12.6%	3.4%
		Canada	8	8	9	10	10	11	12		43.0%	7.2%	Hong Kong	16	15	13	14	14	13	13		-19.3%	-1.7%
		Mexico	3	2	2	3	3	6	3		112.4%	-41.8%	Taiwan	9	12	11	12	11	12	11		29.0%	-6.6%
		Netherlands	0	0	1	1	1	1	1		332.8%	25.5%	China	7	7	7	8	9	11	11		52.8%	-0.4%
		Israel	0	1	1	1	1	1	1		55.6%	46.5%	Japan	7	7	7	7	7	9	9		0.5%	24.7%
		Russia	0	0	0	0	0	1	1		1761.0%	-19.9%	Thailand	2	2	2	2	2	2	2		19.7%	25.7%
		China	0	0	0	0	0	0	0		N/A	N/A	All Others	3	4	4	5	5	5	6		58.4%	10.3%
		All Others	4	6	4	4	3	3	4		-31.2%	25.8%											
Motorcycle chains	731511	Total	52	47	46	59	58	72	69		38.3%	-4.0%	Total	139	121	128	144	160	171	187		23.1%	9.5%
		Canada	33	29	30	31	34	38	39		14.1%	3.3%	Japan	61	52	51	58	57	54	60		-11.4%	10.7%
		Mexico	10	7	5	7	6	7	9		-30.7%	31.4%	China	14	14	15	17	22	26	28		82.8%	9.3%
		United Kingdom	1	1	1	2	3	3	3		121.0%	3.7%	France	8	9	11	16	20	19	20		133.9%	3.3%
		Japan	0	1	0	1	1	4	2		1152.3%	-38.6%	Italy	11	8	9	11	14	16	19		45.8%	23.7%
		Brazil	0	0	0	0	1	1	2		616.8%	139.9%	Taiwan	20	13	13	14	16	15	17		-26.1%	15.9%
		China	0	0	0	0	2	2	2		1020.0%	-9.2%	All Others	25	25	28	28	32	42	43		66.2%	3.2%
		All Others	7	10	9	18	13	18	12		146.6%	-32.8%											
Curling irons	820551	Total	25	32	33	32	39	35	40		39.0%	16.5%	Total	149	155	177	173	167	169	200		13.8%	18.1%
		Canada	6	7	7	8	7	9	12		44.4%	29.3%	China	74	83	108	115	111	113	145		52.5%	28.2%
		Philippines	0	1	1	2	2	1	4		1266.3%	195.4%	Taiwan	32	30	29	23	20	19	15		-39.7%	-20.4%
		Germany	1	1	1	1	2	2	2		67.0%	19.9%	Germany	6	4	5	5	7	7	7		22.6%	-0.9%
		Costa Rica	0	1	2	1	0	1	2		90.7%	203.9%	Italy	9	10	10	9	8	7	5		-24.0%	-26.2%
		Dominican Republic	0	0	1	6	13	4	2		4228.6%	-44.6%	Japan	4	3	4	4	3	3	4		-23.4%	28.5%
		China	0	1	1	0	1	1	0		560.6%	-64.3%	All Others	24	24	21	16	17	20	23		-16.6%	17.4%
		All Others	17	21	19	13	14	17	17		-0.2%	3.0%											
Electrical cords	8544	Total	5,875	5,231	4,575	4,301	4,814	5,366	6,411		-8.7%	19.5%	Total	9,036	8,491	8,465	8,571	9,496	10,691	12,436		18.3%	16.3%
		Mexico	1,979	1,783	1,627	1,538	1,685	1,855	2,220		-6.3%	19.7%	Mexico	5,576	5,090	5,590	5,483	5,682	6,265	6,726		12.3%	7.4%
		Canada	1,844	1,749	1,675	1,537	1,728	1,875	2,147		1.7%	14.5%	China	807	725	832	924	1,252	1,506	2,042		86.6%	35.6%
		Honduras	10	8	15	18	77	107	173		960.6%	60.6%	Canada	710	687	515	483	543	595	767		-16.2%	28.9%
		United Kingdom	214	223	146	141	144	129	157		-39.8%	22.0%	Philippines	351	326	321	349	374	402	433		14.6%	7.6%
		China	70	72	71	65	85	121	149		71.6%	23.2%	Honduras	58	46	67	91	163	253	365		335.4%	43.8%
		All Others	1,756	1,397	1,040	1,002	1,093	1,278	1,564		-27.2%	22.4%	All Others	1,533	1,616	1,140	1,240	1,482	1,670	2,104		8.9%	26.0%

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
Mineral water	220110	Total	15	19	12	19	20	40	61	169.3%	53.7%	Total	201	186	196	331	320	294	277	46.6%	-5.9%	
		Japan	6	9	6	10	14	31	49	400.7%	57.3%	France	103	96	86	70	87	78	81	-24.0%	4.2%	
		Canada	6	7	3	6	3	3	6	-44.4%	84.8%	Italy	32	28	36	44	54	65	66	105.4%	1.6%	
		Cayman Islands	0	0	0	0	0	0	1	66.6%	153.1%	Fiji	5	9	12	23	27	48	41	825.9%	-15.8%	
		Bahamas	0	0	0	0	0	1	1	489.6%	70.1%	Canada	41	33	34	159	114	51	29	24.5%	-44.0%	
		Taiwan	0	0	0	1	1	0	0	128.6%	152.5%	Norway	1	0	2	5	10	19	23	3462.4%	24.5%	
		China	0	0	0	0	0	0	0	69.9%	-74.3%	China	0	0	0	0	0	0	0	82.3%	1004.3%	
		All Others	2	2	2	2	3	4	3	61.0%	-18.5%	All Others	20	21	25	29	28	33	37	69.6%	11.5%	
Distilled water	28510090	Total	\$44	\$33	\$26	\$37	\$55	\$63	\$94	44.1%	48.0%	Total	28	30	26	35	17	0	0	-100.0%	N/A	
		Korea, South	6	7	6	8	14	18	22	213.0%	22.8%	Canada	19	21	20	27	12	0	0	-100.0%	N/A	
		China	4	3	4	6	12	14	20	253.3%	45.5%	Germany	6	4	3	5	2	0	0	-100.0%	N/A	
		Taiwan	4	1	1	2	3	7	13	66.6%	86.9%	Japan	2	2	1	1	1	0	0	-100.0%	N/A	
		Singapore	3	3	1	4	4	6	10	127.2%	82.7%	Israel	0	0	0	0	0	0	0	-100.0%	N/A	
		Japan	4	4	3	7	10	8	7	87.8%	-7.1%	Finland	0	0	0	0	0	0	0	-100.0%	N/A	
		All Others	23	15	10	9	12	11	20	-54.4%	92.5%	China	0	0	0	0	0	0	0	-100.0%	N/A	
													All Others	2	3	2	2	1	0	0	-100.0%	#DIV/0!
Maize seeds	100510	Total	169	201	214	165	180	177	142	5.0%	-19.5%	Total	139	116	109	118	89	98	161	-29.5%	63.9%	
		Canada	40	52	45	34	48	51	57	26.7%	12.5%	Chile	82	85	82	90	58	55	94	-32.5%	69.4%	
		Mexico	19	58	49	29	25	34	17	80.2%	-50.2%	Argentina	36	20	15	15	11	15	40	-57.5%	162.9%	
		Chile	4	2	2	3	1	8	10	98.5%	37.9%	Canada	11	8	8	11	17	20	20	74.3%	2.9%	
		Pakistan	6	2	6	7	10	13	10	121.9%	-18.5%	Brazil	0	0	1	1	1	5	7	5100.6%	23.6%	
		France	7	19	35	35	30	13	10	102.3%	-23.2%	Hungary	2	0	1	0	0	0	0	-100.0%	N/A	
		China	0	0	0	0	0	0	0	-56.2%	-100.0%	China	0	0	0	0	0	0	0	-100.0%	N/A	
		All Others	94	67	76	57	64	59	38	-36.9%	-36.2%	All Others	8	3	1	1	3	3	0	-69.5%	-90.5%	
Perfume	330300	Total	489	461	463	565	682	831	963	69.9%	15.9%	Total	900	900	980	1,133	1,251	1,343	1,412	49.2%	5.2%	
		Canada	70	68	91	106	110	127	135	80.8%	6.3%	France	564	571	609	718	759	833	844	47.5%	1.4%	
		Australia	15	15	17	21	35	58	84	280.5%	44.9%	United Kingdom	86	85	108	126	117	126	173	46.4%	36.7%	
		United Kingdom	20	18	26	40	51	59	80	195.7%	35.0%	Italy	83	88	88	97	127	148	144	79.3%	-3.0%	
		Mexico	84	92	73	57	62	59	68	-29.0%	14.4%	Spain	32	31	42	46	64	73	95	128.4%	30.5%	
		United Arab Emirates	17	22	28	26	37	41	66	149.1%	60.5%	Switzerland	29	38	43	45	42	41	42	44.1%	2.8%	
		China	1	1	0	1	2	5	9	688.8%	58.7%	China	1	2	4	8	8	7	11	943.2%	55.8%	
		All Others	283	245	227	315	385	481	521	70.0%	8.4%	All Others	105	86	85	92	134	114	103	8.7%	-10.0%	
Detergent	3402	Total	1,220	1,298	1,290	1,454	1,688	1,767	2,088	44.8%	18.2%	Total	581	599	652	593	608	659	720	13.5%	9.3%	
		Canada	440	485	533	624	759	799	912	81.6%	14.1%	Mexico	192	181	185	146	152	174	210	-9.6%	20.7%	
		Mexico	104	100	108	120	139	126	198	21.2%	56.5%	Canada	177	204	219	158	147	147	176	-16.9%	19.3%	
		Japan	80	83	78	79	93	95	106	17.9%	11.9%	Germany	59	54	62	70	74	77	80	30.3%	4.8%	
		China	21	20	27	36	50	59	89	184.2%	50.4%	Japan	31	27	26	34	40	45	49	46.4%	8.6%	
		Netherlands	72	75	78	64	66	77	85	6.2%	10.8%	China	3	5	11	23	36	22	29	558.6%	29.4%	
		All Others	502	535	467	531	581	611	699	21.6%	14.4%	All Others	118	129	149	162	160	194	176	63.8%	-9.0%	
		Sugar	17	Total	683	723	636	689	735	828	1,043	21.3%	26.0%	Total	1,480	1,534	1,701	1,933	1,990	2,369	2,906	60.0%
Canada	230			256	253	271	267	294	322	28.0%	9.6%	Mexico	165	206	274	249	301	456	755	176.1%	65.7%	
Mexico	114			91	65	79	123	176	301	54.1%	71.0%	Canada	316	392	417	556	540	584	605	84.8%	3.5%	
Japan	76			80	63	65	66	70	67	-7.3%	-5.0%	Brazil	90	107	92	116	121	185	183	106.6%	-1.2%	
China	18			22	13	25	40	29	34	56.9%	18.2%	Dominican Repu	88	77	81	88	86	85	122	-3.6%	44.2%	
Korea, South	26			30	21	17	16	18	26	-30.4%	44.1%	Guatemala	39	40	58	86	75	110	122	185.3%	10.7%	
All Others	218			244	222	232	225	241	293	10.1%	21.7%	China	26	26	47	54	69	88	103	240.7%	17.5%	
													All Others	757	685	733	784	800	861	1,015	13.7%	17.9%

U.S. Exports and Imports of Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Exports in \$ Millions								-- Change --		Annual US Imports in \$ Millions								-- Change --				
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05				
Diapers	6209	Total	\$40	\$21	\$12	\$9	\$6	\$8	\$9		-79.1%	3.8%	Total	465	547	515	533	538	579	639		24.6%	10.4%		
		Canada	1	1	1	1	2	2	2	4		268.8%	62.2%	China	50	49	138	214	245	291	333		478.0%	14.6%	
		Ecuador	0	0	1	1	1	2	1	1		691.3%	-44.5%	Bangladesh	46	64	52	47	43	46	68		0.2%	49.2%	
		Mexico	12	6	4	1	1	1	1	1		-94.5%	17.6%	Vietnam	1	0	4	11	25	37	42		6535.4%	12.4%	
		Costa Rica	18	8	2	2	1	1	1	1		-96.7%	2.9%	Philippines	68	79	53	40	30	31	33		-53.9%	4.6%	
		United Kingdom	0	0	0	0	0	0	0	1		-24.8%	67.2%	Indonesia	50	58	41	38	29	28	30		-44.0%	6.1%	
		China	0	0	0	0	0	0	1	0		N/A	-100.0%	All Others	251	296	227	183	166	147	134		-41.4%	-8.6%	
		All Others	8	6	5	4	2	2	2	2		-72.1%	-5.5%												
Razors	8212	Total	308	336	343	334	333	369	355		19.8%	-3.9%	Total	157	183	200	274	255	299	350		89.8%	17.1%		
		Canada	69	86	95	115	128	149	128		114.6%	-14.1%	Mexico	61	76	82	71	73	85	91		38.0%	6.9%		
		United Kingdom	88	105	88	57	66	55	42		-37.2%	-24.5%	China	11	13	33	78	55	49	54		333.9%	11.3%		
		Mexico	26	21	27	42	42	45	40		71.1%	-12.1%	Greece	16	15	12	25	39	52	49		220.7%	-5.9%		
		Poland	1	1	3	2	3	10	22		776.6%	121.4%	Poland	0	0	0	0	0	11	42			270.8%		
		Malaysia	4	8	13	12	11	13	16		273.3%	23.0%	Brazil	0	0	1	16	17	22	27		10785.7%	21.6%		
		China	10	22	51	3	1	2	1		-84.1%	-28.2%	All Others	68	80	74	84	71	80	87		16.7%	9.1%		
		All Others	110	92	66	103	82	95	106		-13.7%	11.4%													
Olive oil	1509	Total	6	4	7	8	10	17	16		172.3%	-7.7%	Total	413	376	437	520	718	859	981		107.9%	14.2%		
		Canada	2	2	2	2	3	6	8		171.3%	32.1%	Italy	310	274	316	362	480	561	619		80.9%	10.3%		
		Hong Kong	0	0	0	0	0	0	1		741.8%	3599.9%	Spain	63	55	84	95	124	149	175		134.9%	18.0%		
		Mexico	2	1	1	1	2	2	1		-0.6%	-60.4%	Tunisia	9	9	3	4	39	20	56		115.6%	175.0%		
		Guatemala	0	0	0	0	0	0	1		144.4%	19.0%	Turkey	11	22	12	28	28	56	41		405.9%	-25.4%		
		Netherlands																							
		Antilles	0	0	0	0	0	0	0		384.5%	66.7%	Argentina	2	2	2	5	4	22	23		803.4%	5.6%		
		China	0	0	0	0	0	0	0		N/A	N/A	China	0	0	0	0	0	0	0		-9.3%	30.9%		
All Others	2	2	3	5	4	8	5		343.8%	-38.7%	All Others	17	15	20	25	43	51	66		205.2%	29.7%				
Baby formula	0404	Total	179	156	146	143	172	237	342		32.0%	44.5%	Total	169	116	128	135	160	197	215		16.3%	9.2%		
		Mexico	47	22	27	28	28	55	89		16.0%	63.7%	New Zealand	68	76	76	101	112	144	172		111.2%	19.8%		
		Canada	43	45	32	35	43	46	52		8.4%	11.8%	Canada	14	11	8	10	17	23	24		58.6%	5.8%		
		China	9	17	19	24	28	31	49		242.5%	57.0%	Ireland	22	7	11	10	18	14	12		-36.4%	-10.1%		
		Japan	21	24	24	16	19	24	29		13.8%	21.9%	Denmark	2	1	3	3	5	7	2		182.1%	-68.6%		
		Korea, South	9	5	5	7	7	18	22		103.3%	27.1%	Australia	23	8	10	0	1	1	1		-94.5%	-13.7%		
		All Others	50	43	38	33	46	63	100		24.1%	59.0%	China	0	0	0	0	0	0	0		N/A	N/A		
														All Others	40	13	20	12	8	8	3		-79.1%	-67.2%	
Toothpaste	330610	Total	148	136	131	138	156	168	182		13.5%	8.3%	Total	44	54	56	64	63	66	96		50.9%	45.3%		
		Canada	60	53	65	60	74	80	85		31.9%	7.3%	Mexico	5	0	0	8	10	16	47		222.7%	192.0%		
		Japan	14	18	16	17	21	22	27		61.0%	25.1%	Canada	19	23	22	21	18	17	21		-8.6%	23.4%		
		Russia	0	0	0	0	0	1	7		N/A	410.8%	Netherlands	0	0	0	2	10	10	8			-15.3%		
		Korea, South	4	6	8	6	5	5	6		42.7%	12.7%	United Kingdom	7	17	16	13	9	8	7		12.0%	-13.8%		
		Germany	6	8	3	5	5	9	5		49.4%	-40.8%	India	3	4	4	5	4	6	5		138.1%	-20.7%		
		China	2	0	0	0	1	1	2		-27.9%	59.4%	China	5	5	3	2	2	3	3		-40.7%	8.1%		
		All Others	63	51	38	49	49	49	49		-20.9%	-1.7%	All Others	5	5	11	13	9	6	5		15.5%	-22.3%		
Air fresheners	330749	Total	\$64	\$78	\$85	\$82	\$104	\$119	\$161		86.4%	35.7%	Total	49	63	54	83	98	107	130		118.1%	20.8%		
		Canada	33	41	39	42	56	50	66		50.5%	31.5%	Canada	36	36	31	39	38	36	42		0.9%	16.3%		
		Mexico	4	7	10	11	11	23	35		469.6%	53.4%	China	2	2	3	6	9	17	31		827.7%	84.1%		
		Philippines	1	1	3	5	11	17	21		2739.8%	21.4%	Mexico	1	5	2	14	16	18	23		2063.6%	25.4%		
		United Kingdom	4	7	6	5	5	5	7		16.0%	39.7%	Thailand	1	1	0	6	11	11	6		925.5%	-44.1%		
		Japan	6	4	5	2	2	3	5		-50.7%	62.0%	Guatemala	0	0	0	0	0	1	5		N/A	456.2%		
		China	0	0	0	1	1	2	3		1005.0%	19.4%	All Others	10	19	17	18	23	25	23		150.5%	-7.0%		
		All Others	15	17	22	16	17	18	25		19.6%	35.6%													

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----								-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
Inkjet cartridges	8443	Total	-\$462	-\$573	-\$479	-\$497	-\$779	-\$848	-\$1,002		83.7%	18.2%
		Germany	-477	-597	-470	-499	-672	-709	-780		48.7%	10.0%
		Japan	-321	-193	-157	-171	-214	-316	-339		-1.6%	7.4%
		Israel	-59	-57	-53	-68	-68	-86	-125		45.3%	46.4%
		Canada	140	112	119	134	91	131	108		-6.8%	-17.3%
		United Kingdom	-60	-28	-48	-64	-70	-79	-97		32.1%	21.6%
		China	39	39	21	23	10	19	17		-51.6%	-11.7%
		All Others	276	151	109	149	144	192	214		-30.3%	11.3%
Golf clubs	950631	Total	327	328	148	133	96	56	23		-82.9%	-58.9%
		China	-53	-65	-153	-175	-218	-273	-320		418.3%	17.2%
		Canada	58	60	53	59	63	69	81		17.5%	17.8%
		United Kingdom	89	91	88	88	89	85	73		-4.6%	-14.0%
		Korea, South	33	28	28	26	26	42	57		28.4%	34.2%
		Japan	118	135	66	67	56	41	40		-65.7%	-0.6%
		All Others	81	78	66	69	80	92	91		13.8%	-0.9%
Windshields	700711	Total	204	150	111	137	95	65	20		-68.4%	-69.8%
		Canada	240	195	174	169	163	163	142		-32.0%	-13.3%
		Mexico	-55	-50	-63	-57	-83	-114	-126		107.3%	10.8%
		Germany	15	14	13	24	12	12	18		-24.5%	56.0%
		China	-1	-5	-2	-4	-5	-6	-9		428.2%	50.5%
		Korea, South	-0	-1	-2	-1	-1	-1	-6		277.4%	549.0%
		All Others	5	-4	-9	6	9	11	1		104.5%	-89.4%
Auto replacement parts: brake pads, ignition coils, sway bars	8708	Total	3,009	2,583	-280	-4,262	-6,428	-9,777	-9,661		-425.0%	-1.2%
		Japan	-5,919	-5,401	-5,590	-6,189	-8,012	-8,476	-7,803		43.2%	-7.9%
		Canada	7,225	6,693	6,804	5,785	6,785	6,503	6,738		-10.0%	3.6%
		China	-320	-422	-585	-774	-1,063	-1,622	-2,178		406.8%	34.2%
		Germany	-872	-788	-1,061	-1,569	-1,733	-1,944	-1,815		123.0%	-6.7%
		Mexico	2,615	2,165	1,245	308	-338	-1,462	-1,747		-155.9%	19.5%
		All Others	280	335	-1,092	-1,823	-2,066	-2,775	-2,856		-1092.2%	2.9%
Cell phone batteries	850650	Total	-32	-3	-10	6	28	51	67		-261.2%	31.1%
		Japan	-101	-68	-61	-47	-45	-49	-46		-51.6%	-6.0%
		China	-2	0	-5	-16	-20	-36	-39		1945.1%	9.6%
		Mexico	33	18	14	12	13	21	35		-37.5%	71.0%
		Switzerland	-2	-3	-2	-1	-1	21	29		-1033.0%	41.4%
		Ireland	6	16	24	32	23	39	25		522.2%	-36.3%
		All Others	34	34	21	27	59	56	63		62.2%	13.2%
Duracell Batteries	8507	Total	-1,190	-928	-851	-793	-1,137	-1,279	-1,325		7.5%	3.6%
		China	-242	-226	-251	-304	-479	-602	-756		148.6%	25.5%
		Japan	-988	-758	-562	-379	-449	-439	-429		-55.5%	-2.4%
		Canada	257	265	261	260	276	274	334		6.3%	22.1%
		Mexico	-273	-213	-210	-224	-223	-214	-234		-21.4%	9.1%
		Korea, South	-15	-10	-44	-69	-113	-131	-129		781.2%	-1.7%
		All Others	70	14	-46	-77	-150	-165	-112		-335.9%	-32.2%

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----							-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
Auto and truck parts	8708	Total	3,009	2,583	-280	-4,262	-6,428	-9,777	-9,661		-425.0%	-1.2%
		Japan	-5,919	-5,401	-5,590	-6,189	-8,012	-8,476	-7,803		43.2%	-7.9%
		Canada	7,225	6,693	6,804	5,785	6,785	6,503	6,738		-10.0%	3.6%
		China	-320	-422	-585	-774	-1,063	-1,622	-2,178		406.8%	34.2%
		Germany	-872	-788	-1,061	-1,569	-1,733	-1,944	-1,815		123.0%	-6.7%
		Mexico	2,615	2,165	1,245	308	-338	-1,462	-1,747		-155.9%	19.5%
		All Others	280	335	-1,092	-1,823	-2,066	-2,775	-2,856		-1092.2%	2.9%
Personal care products	33	Total	1,221	1,439	1,158	291	-321	-673	-294		-155.2%	-56.4%
		Ireland	-17	-44	-47	-945	-1,665	-2,015	-1,991		11543.3%	-1.2%
		France	-703	-743	-784	-911	-994	-1,028	-1,046		46.1%	1.8%
		Canada	531	534	636	693	720	744	909		40.1%	22.1%
		Italy	-137	-166	-155	-190	-276	-333	-351		143.4%	5.5%
		Japan	245	297	262	346	389	351	315		43.3%	-10.3%
		China	-86	-132	-164	-165	-185	-230	-273		168.3%	18.3%
All Others	1,388	1,693	1,410	1,463	1,688	1,837	2,144		32.4%	16.7%		
Aircraft parts	880330	Total	8,324	8,334	7,837	8,520	9,405	10,519	12,450		26.4%	18.4%
		Germany	679	636	557	615	776	1,167	1,274		71.9%	9.2%
		Brazil	397	395	315	342	776	753	1,157		89.8%	53.6%
		Singapore	342	436	374	467	595	782	1,024		128.4%	31.0%
		United Kingdom	612	531	722	768	773	653	666		6.8%	2.0%
		Korea, South	449	657	354	281	296	313	641		-30.3%	105.0%
		China	175	200	200	209	232	434	594		147.5%	36.8%
All Others	5,670	5,479	5,314	5,837	5,956	6,418	7,093		13.2%	10.5%		
Testing equipment	9024	Total	536	501	415	477	469	484	546		-9.7%	12.7%
		China	28	39	51	74	82	84	96		199.3%	14.2%
		Korea, South	57	41	29	41	46	51	54		-10.7%	5.9%
		Canada	32	27	23	31	29	27	36		-14.8%	30.9%
		Saudi Arabia	27	44	35	44	35	41	33		55.6%	-19.3%
		United Kingdom	26	18	10	24	8	19	33		-26.0%	70.4%
		All Others	367	333	267	263	268	261	294		-28.7%	12.5%
Electrical control equipment	8532	Total	294	282	330	404	525	39	80		-86.6%	101.8%
		Japan	-1,111	-533	-413	-352	-417	-384	-427		-65.4%	11.2%
		Hong Kong	62	26	64	110	96	106	123		70.2%	16.4%
		Netherlands	-1	-3	35	88	99	102	98		-19114.6%	-4.1%
		Canada	356	185	117	98	104	105	97		-70.6%	-7.4%
		China	2	-3	-20	-14	20	35	78		1926.5%	119.5%
		All Others	985	609	546	474	623	76	111		-92.3%	47.0%
Commercial door fixtures	730830	Total	-105	-117	-143	-176	-209	-201	-183		90.2%	-8.7%
		Canada	-128	-124	-131	-137	-155	-120	-103		-6.3%	-14.8%
		China	-4	-6	-10	-14	-28	-37	-55		778.9%	50.6%
		Mexico	-13	-19	-24	-25	-28	-34	-53		150.3%	56.9%
		Kuwait	1	1	0	0	0	1	18		157.8%	1116.8%
		Germany	-1	1	-1	-13	-10	-3	-8		340.1%	157.6%
		All Others	41	31	23	12	12	-8	17		-120.8%	-305.3%

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----							-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
Computer Software	852491	Total	589	409	280	269	284	316	403		-46.4%	27.7%
		Canada	231	171	127	110	97	74	69		-67.9%	-6.5%
		Japan	33	25	14	22	27	29	32		-12.7%	8.4%
		Germany	17	5	1	-5	4	18	30		8.7%	63.0%
		Hong Kong	14	10	7	8	12	10	27		-25.8%	162.8%
		China	13	6	7	15	15	16	27		23.0%	68.0%
		All Others	281	193	125	119	130	168	219		-40.2%	30.2%
Entertainment Software (including videogame DCs and cartridges, personal computer CD-ROMs and multimedia products)	950410	Total	-1,693	-2,950	-3,231	-1,824	-1,620	-1,808	-2,629		6.8%	45.4%
		China	-336	-398	-1,571	-2,108	-1,957	-2,357	-3,642		602.4%	54.5%
		Canada	244	334	331	441	382	448	597		83.5%	33.4%
		Mexico	-4	-121	-608	-4	32	71	325		-2010.1%	360.7%
		Japan	-1,606	-2,607	-1,336	-191	-129	-73	-125		-95.4%	71.1%
		Hong Kong	15	2	9	25	13	20	60		40.3%	195.0%
		All Others	-6	-160	-56	12	39	83	155		-1487.8%	86.5%
Records	852410	Total	48	50	36	40	34	22	22		-54.2%	1.7%
		Japan	22	23	17	17	16	11	9		-47.1%	-21.9%
		Russia	0	0	0	0	1	1	4		473.2%	336.0%
		Canada	3	3	3	3	2	2	2		-32.3%	-16.9%
		Netherlands	1	1	1	1	1	0	1		-75.8%	155.5%
		China	0	1	0	0	0	1	1		329.1%	5.5%
		All Others	21	22	15	19	14	6	5		-70.9%	-12.5%
Laser Disks	852432	Total	-135	-100	-76	-44	-47	-25	-36		-81.5%	42.7%
		United Kingdom	-46	-34	-31	-28	-31	-32	-27		-31.2%	-16.1%
		Japan	4	16	15	25	33	42	25		870.2%	-40.3%
		Germany	-21	-6	-13	-12	-11	-12	-14		-44.2%	22.0%
		China	-4	-6	-4	-5	-6	-6	-10		57.1%	62.4%
		Netherlands	-6	-6	-6	-4	-4	-6	-5		2.2%	-8.4%
		All Others	-63	-63	-37	-20	-29	-11	-5		-81.8%	-60.6%
MAGN TPE,N SOUND/IM	852440	Total	100	68	35	38	46	15	16		-85.2%	5.2%
		Canada	2	-1	1	4	3	3	3		43.4%	-16.1%
		India	6	1	5	14	19	1	2		-79.1%	36.3%
		Mexico	5	11	2	1	4	2	2		-53.6%	-21.3%
		Korea, South	11	2	2	7	2	2	2		-86.4%	4.7%
		China	1	2	1	1	2	0	1		-56.5%	86.3%
		United Kingdom	6	7	3	1	2	1	1		-81.8%	-17.6%
All Others	69	47	23	12	16	6	7		-92.0%	24.5%		

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----							-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
<b>MGN</b>												
TPE,SND/IM=<4MM	852451	Total	20	18	11	25	21	17	13		-13.3%	-23.0%
		Russia	0	0	-0	-0	-0	2	3		2633.7%	82.1%
		Brazil	1	0	0	1	2	3	3		465.8%	-4.3%
		Canada	6	5	6	6	5	4	2		-23.0%	-42.6%
		Mexico	-3	-0	2	2	2	2	1		-177.9%	-43.9%
		United Kingdom	1	1	0	3	2	-0	1		-101.7%	-2891.7%
		China	-1	-2	-2	-1	-0	-0	-0		-65.0%	-75.0%
		All Others	16	13	5	14	10	6	3		-61.4%	-57.5%
<b>MG TPE,S/I&gt;4=&lt;6.5MM</b>												
	852452	Total	64	30	24	25	25	13	13		-79.8%	1.2%
		Canada	16	3	5	8	9	6	5		-62.5%	-12.6%
		Mexico	0	4	2	1	1	1	1		1087.9%	46.9%
		Korea, South	3	3	2	1	3	0	1		-88.4%	213.0%
		Japan	16	5	3	2	0	1	1		-96.5%	27.4%
		China	4	1	2	0	0	-0	0		-101.5%	-166.9%
		All Others	26	14	10	13	11	6	5		-78.8%	-6.5%
<b>MG</b>												
TPE,SND/IM>6.5MM	852453	Total	13	1	-27	-10	-5	2	-2		-82.5%	-174.2%
		Korea, South	-11	-7	-30	-23	-12	-5	-4		-52.2%	-23.2%
		Canada	16	10	12	14	10	9	4		-46.4%	-56.5%
		Peru	0	0	0	0	0	-4	-2		-976.6%	-52.2%
		Venezuela	0	1	0	0	0	0	1		331.0%	745.7%
		China	-4	-5	-7	-8	-6	-1	-1		-67.2%	-13.2%
		All Others	11	2	-2	7	2	4	0		-64.0%	-94.1%
<b>Textbooks, tradebooks, reference &amp; professional publications/journals</b>												
	490199	Total	386	166	125	63	-58	21	-0		-94.6%	-101.9%
		Canada	554	491	534	570	599	657	704		18.7%	7.2%
		China	-207	-254	-323	-391	-509	-581	-691		181.2%	19.0%
		Hong Kong	-192	-198	-190	-169	-160	-156	-116		-18.6%	-25.6%
		Australia	106	57	61	66	68	91	101		-14.0%	10.8%
		Singapore	-24	-47	-50	-53	-55	-59	-64		144.6%	8.2%
		All Others	148	117	92	39	-0	68	65		-53.8%	-4.6%
<b>Table grapes (Chinese copy US packaging/sell as US goods)</b>												
	80610	Total	-97	-96	-186	-164	-134	-249	-257		155.6%	3.3%
		Chile	-388	-378	-459	-444	-509	-614	-718		58.3%	16.9%
		Canada	206	190	214	235	281	306	311		48.7%	1.6%
		Mexico	-105	-145	-161	-190	-165	-250	-103		138.9%	-58.7%
		Hong Kong	49	72	68	59	35	44	43		-11.3%	-2.2%
		Malaysia	16	37	38	43	54	63	40		298.7%	-35.7%
		China	11	9	8	6	21	47	35		323.0%	-24.1%
		All Others	114	120	105	128	148	157	136		37.6%	-13.4%

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----								-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
Fresh fruit	08	Total	61	159	13	174	217	588	516		870.0%	-12.2%
		Canada	1,111	1,130	1,237	1,374	1,512	1,721	1,890		54.8%	9.8%
		Chile	-619	-624	-770	-793	-918	-1,051	-1,215		69.6%	15.7%
		Mexico	-459	-456	-512	-647	-833	-1,084	-973		136.2%	-10.2%
		Costa Rica	-476	-504	-475	-516	-477	-503	-730		5.8%	45.1%
		Japan	623	601	606	604	635	613	611		-1.6%	-0.4%
		China	6	7	-4	-12	-27	28	-2		378.6%	-107.8%
		All Others	-126	5	-69	164	324	863	937		-784.4%	8.6%
Beverages	22	Total	-6,633	-6,939	-7,934	-8,945	-9,515	-10,747	-13,491		62.0%	25.5%
		France	-1,665	-1,554	-1,757	-2,063	-2,107	-2,343	-2,724		40.8%	16.2%
		Mexico	-1,136	-1,231	-1,452	-1,552	-1,679	-1,935	-2,305		70.3%	19.1%
		Italy	-714	-756	-923	-1,100	-1,147	-1,264	-1,370		77.0%	8.4%
		Netherlands	-716	-826	-953	-962	-936	-1,010	-1,231		41.1%	21.9%
		Brazil	-7	11	-7	-12	-99	-107	-1,034		1339.8%	868.6%
		China	-13	-18	-22	-18	-19	-12	-91		-7.1%	643.3%
		All Others	-2,382	-2,565	-2,820	-3,240	-3,529	-4,076	-4,736		71.1%	16.2%
Structural wood-based panels	441292	Total	-1	-1	-6	-6	-8	-8	-8		1302.3%	-7.9%
		Thailand	-0	-1	-3	-4	-3	-4	-4		1965.6%	14.7%
		China	0	-0	-0	-0	-2	-2	-2		-1636.3%	-1.5%
		Malaysia	-0	-0	-0	-0	-1	-1	-1		520.1%	-25.2%
		Taiwan	-0	-0	-0	-0	-1	-0	-1		3274.5%	63.4%
		Mexico	0	0	0	0	0	0	0		87.0%	-24.4%
		All Others	-1	1	-3	-1	-2	-1	-0		159.1%	-81.3%
		Structural wood-based panels	441820	Total	-318	-375	-419	-420	-506	-597	-657	
Canada	-153			-173	-185	-188	-218	-250	-275		63.5%	9.7%
China	-1			-3	-7	-11	-29	-57	-99		4097.3%	73.5%
Brazil	-33			-48	-55	-47	-64	-85	-90		156.9%	5.5%
Chile	-21			-31	-39	-38	-50	-44	-51		112.3%	15.0%
Indonesia	-19			-13	-16	-19	-20	-24	-33		25.6%	38.3%
All Others	-91			-106	-117	-116	-125	-136	-109		50.2%	-19.7%
Agricultural chemical products, including glyphosate (Roundup)	38083019			Total	569	567	555	341	478	573	690	
		Canada	245	315	326	272	313	343	421		40.1%	22.6%
		Brazil	98	93	93	74	112	134	132		36.0%	-1.5%
		Mexico	1	15	-14	-6	13	1	44		-40.6%	6151.4%
		Israel	-6	-2	-2	-7	-15	-19	-39		225.2%	105.6%
		Belgium	37	28	29	29	33	25	31		-31.8%	22.7%
		China	1	8	-9	-42	-11	-17	-25		-2133.5%	46.0%
		All Others	192	110	131	21	33	106	126		-45.0%	18.9%
ETHYLENE, PRIMARY FORM	3901	Total	1,044	652	948	688	1,243	1,296	1,465		24.1%	13.0%
		Canada	-887	-969	-923	-1,233	-1,458	-1,811	-2,085		104.2%	15.1%
		Mexico	627	588	587	730	938	1,186	1,298		89.1%	9.4%
		China	138	110	114	113	240	349	383		151.9%	9.8%
		Belgium	215	171	228	241	272	361	344		68.5%	-4.7%
		Colombia	60	40	48	60	92	98	133		64.5%	35.6%
		All Others	891	711	894	776	1,160	1,113	1,391		24.9%	25.0%

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----							-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
<b>OTHR OLEFIN</b>												
<b>PRIMARY F</b>												
	3902	<b>Total</b>	1,050	1,039	1,096	1,305	1,621	2,021	2,490		92.5%	23.2%
		Mexico	355	335	380	424	540	801	996		125.9%	24.3%
		Canada	243	205	231	314	381	460	515		89.4%	12.0%
		China	56	110	101	150	196	236	295		324.0%	25.0%
		Belgium	61	50	76	64	81	89	93		45.4%	4.8%
		Israel	25	37	23	35	73	37	77		50.1%	106.8%
		All Others	310	301	285	318	351	397	513		28.0%	29.1%
<b>STYRENE,PRIMARY</b>												
<b>FORMS</b>												
	3903	<b>Total</b>	292	173	198	228	195	2	241		-99.4%	12898.0%
		Canada	153	165	161	186	167	156	178		2.2%	13.9%
		Mexico	154	78	105	152	130	63	166		-59.3%	164.6%
		Korea, South	-63	-51	-59	-59	-90	-153	-137		142.6%	-10.7%
		Bahamas	-53	-67	-64	-84	-90	-113	-128		115.0%	12.5%
		Taiwan	-19	-30	-34	-39	-52	-90	-73		383.3%	-19.1%
		China	12	6	13	15	28	27	47		129.0%	70.9%
		All Others	107	73	76	58	102	112	187		4.4%	66.9%
<b>VINYL CHLORIDE,ETC</b>												
	3904	<b>Total</b>	326	461	596	636	738	572	804		75.6%	40.5%
		Canada	197	80	198	211	237	269	404		36.3%	50.3%
		Mexico	63	82	88	93	108	129	144		104.3%	12.1%
		Germany	-44	-29	-34	-55	-97	-130	-123		195.0%	-5.1%
		China	64	116	117	113	127	117	120		81.6%	2.5%
		Japan	-141	-105	-71	-68	-46	-64	-109		-54.3%	69.3%
		All Others	186	317	299	341	410	251	367		35.2%	46.1%
<b>VINYL ACETATE;O</b>												
<b>VINYL</b>												
	3905	<b>Total</b>	307	262	350	391	441	448	425		46.0%	-5.1%
		Belgium	122	107	119	147	128	142	122		16.8%	-14.0%
		Mexico	61	56	54	54	71	62	60		1.6%	-2.9%
		Singapore	39	38	45	47	48	44	51		12.8%	15.2%
		Brazil	22	26	28	23	32	42	41		87.8%	-1.4%
		Canada	19	14	27	25	29	31	34		63.3%	8.5%
		China	-8	-7	5	8	7	7	8		-179.1%	21.3%
		All Others	52	27	72	87	126	120	108		131.2%	-9.6%
<b>ACRYLIC POLYMERS</b>												
	3906	<b>Total</b>	491	519	527	462	615	772	847		57.2%	9.7%
		Mexico	147	122	138	136	167	195	226		32.6%	16.0%
		Canada	114	129	140	134	169	190	161		65.9%	-15.1%
		Brazil	49	42	47	45	54	72	91		47.3%	24.9%
		Belgium	20	36	32	20	24	41	56		104.6%	38.2%
		Japan	-47	-39	-47	-58	-32	-35	-46		-25.5%	30.4%
		China	19	14	22	25	30	25	33		31.9%	31.4%
		All Others	189	215	195	160	203	284	326		50.5%	14.6%
<b>POLYETHER,EXPOXID</b>												
<b>E,ET</b>												
	3907	<b>Total</b>	1,909	1,897	1,756	1,772	2,201	2,039	2,374		6.8%	16.4%
		Mexico	381	366	421	438	335	452	514		18.6%	13.9%
		China	136	131	172	221	298	258	305		90.2%	17.9%
		Canada	293	250	255	256	237	237	247		-19.1%	4.2%
		Hong Kong	171	113	167	164	194	190	221		11.3%	16.5%
		Netherlands	87	122	97	92	107	99	207		14.1%	109.6%
		All Others	843	915	644	601	1,030	803	880		-4.7%	9.6%

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----							-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
POLYAMIDES	3908	Total	437	320	325	389	556	690	872		57.8%	26.4%
		Mexico	71	106	84	78	129	146	177		106.7%	21.4%
		China	21	22	32	43	69	85	132		309.4%	56.0%
		Belgium	49	44	43	52	77	68	112		39.7%	63.8%
		Germany	-44	-46	-53	-58	-71	-78	-99		78.1%	27.6%
		Canada	41	41	24	44	48	105	96		159.2%	-8.7%
		All Others	300	153	195	228	303	364	454		21.2%	25.0%
AMINO-RESIN,PRIM F;OT	3909	Total	472	431	486	606	698	1,005	1,007		113.0%	0.2%
		Canada	174	116	141	184	223	320	298		83.6%	-7.0%
		Mexico	83	95	96	128	139	185	216		123.0%	17.2%
		China	24	25	41	108	123	177	174		638.9%	-1.7%
		Brazil	22	23	24	27	53	68	84		206.4%	23.0%
		Germany	-45	-29	-46	-49	-63	-58	-76		29.2%	31.4%
		All Others	213	200	230	209	224	314	311		46.9%	-0.6%
SILICONE,PRIMARY FORM	3910	Total	271	248	327	356	406	468	615		72.7%	31.4%
		China	13	12	16	26	37	64	97		399.2%	50.9%
		Belgium	39	30	67	68	74	62	90		61.1%	44.2%
		Korea, South	29	25	32	40	49	56	67		95.6%	20.1%
		Canada	54	44	58	55	60	68	65		25.0%	-4.2%
		Mexico	60	48	48	45	50	55	61		-7.8%	9.6%
		All Others	77	89	107	122	136	163	235		111.9%	44.8%
PETRO RESIN,PRIM F;OT	3911	Total	391	389	404	381	486	460	476		17.6%	3.4%
		Belgium	87	69	57	52	93	87	103		-0.6%	18.3%
		Mexico	50	49	34	39	53	57	86		13.0%	51.1%
		Netherlands	15	24	37	46	58	58	78		276.8%	35.5%
		Canada	63	128	142	130	112	74	56		16.9%	-24.5%
		United Kingdom	-18	-38	-21	-26	-33	-37	-52		108.8%	40.2%
		China	14	14	13	15	19	31	17		126.4%	-44.5%
All Others	179	144	142	126	184	191	188		6.5%	-1.6%		
CELLULOSE,OT CHEM DER	3912	Total	362	417	430	460	565	588	655		62.4%	11.5%
		China	5	4	4	10	22	80	96		1433.1%	20.9%
		Belgium	45	74	68	85	105	94	84		108.1%	-11.1%
		United Kingdom	29	23	33	38	36	49	52		70.4%	7.3%
		Korea, South	20	24	23	29	31	38	52		87.7%	36.2%
		Russia	7	18	22	21	21	37	48		413.1%	29.6%
		All Others	256	273	280	277	349	291	324		13.8%	11.4%
OT NATURAL PRIME FORM	3913	Total	90	8	14	52	20	-16	110		-118.3%	-770.0%
		Mexico	55	41	35	54	62	63	65		12.8%	3.8%
		Belgium	13	25	26	30	36	32	36		139.8%	12.3%
		China	-6	-100	-104	-97	-143	-149	-36		2560.6%	-76.0%
		Canada	12	11	13	19	21	25	25		105.0%	2.3%
		Japan	15	21	45	28	24	25	25		67.8%	-1.6%
		All Others	-1	10	-0	18	20	-12	-5		1912.3%	-56.3%

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----							-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
ION-EXCHANGERS	3914	Total	-63	-75	-89	-101	-73	-101	-107		60.4%	5.8%
		Sweden	-70	-66	-71	-59	-69	-76	-69		7.9%	-9.0%
		Canada	41	23	27	19	21	27	34		-34.8%	27.5%
		France	-16	-9	-23	-34	-30	-34	-33		112.3%	-3.2%
		Austria	-24	-24	-25	-30	-3	-20	-26		-13.4%	26.4%
		China	-3	-6	-6	-14	-12	-15	-18		378.0%	16.2%
		All Others	9	6	9	17	20	18	5		91.8%	-74.4%
		WASTE,PARINGS,SCRAP	3915	Total	60	126	97	141	187	230	201	
Hong Kong	51	77		93	105	100	151	222		198.7%	46.7%	
China	24	27		31	37	68	82	74		245.4%	-9.3%	
Mexico	-13	-2		-21	-12	-21	-48	-56		271.3%	16.9%	
Canada	24	31		31	34	45	52	51		122.0%	-3.0%	
Germany	-18	-15		-22	-18	-17	-17	-44		-4.6%	154.3%	
All Others	-7	7		-15	-4	12	9	-47		-225.0%	-603.4%	
MONOFIL,ROD,STICK,ETC	3916	Total		-146	-192	-146	-107	-121	-95	-90		-34.6%
Canada		-243	-275	-276	-299	-281	-237	-191		-2.5%	-19.4%	
Mexico		22	20	17	25	37	35	39		60.1%	11.1%	
Dominican Repu		10	11	34	53	36	40	30		322.6%	-26.7%	
Costa Rica		39	52	72	93	61	47	29		20.5%	-36.9%	
China		-0	-2	-3	-2	-2	-9	-16		3194.4%	75.3%	
All Others		27	2	10	23	27	28	19		4.7%	-34.2%	
TUBE,PIPE,HOSES+FITTING		3917	Total	302	273	292	352	351	384	507		27.0%
Mexico	250		249	255	304	340	380	487		52.2%	28.0%	
China	-8		-11	-27	-37	-33	-66	-109		755.5%	64.4%	
Japan	-30		-20	-30	-26	-35	-44	-50		46.1%	12.9%	
Germany	-21		-21	-28	-34	-44	-47	-41		123.7%	-13.3%	
Canada	-7		-11	31	53	42	17	35		-361.2%	104.4%	
All Others	118		87	91	91	79	143	184		21.5%	28.7%	
FLOOR,WALL COVER	3918		Total	-131	-177	-230	-280	-277	-273	-303		108.4%
China		-28	-36	-72	-85	-104	-107	-131		276.8%	22.5%	
Taiwan		-46	-41	-45	-45	-51	-50	-39		7.7%	-20.8%	
Korea, South		3	-2	-2	-15	-18	-19	-33		-664.2%	70.0%	
United Kingdom		-14	-17	-15	-17	-23	-24	-26		70.3%	5.3%	
Germany		-4	-8	-17	-45	-19	-16	-25		274.7%	55.2%	
All Others		-41	-73	-78	-73	-62	-57	-50		36.9%	-12.6%	
SELF ADHESIVE MATERIAL		3919	Total	662	570	645	676	788	848	807		28.0%
Mexico	286		236	252	270	293	319	300		11.5%	-5.9%	
Canada	131		115	104	95	116	137	125		4.7%	-8.4%	
Hong Kong	24		20	32	41	56	57	62		138.0%	7.4%	
Singapore	28		27	52	51	47	55	50		96.8%	-9.7%	
Australia	26		22	27	32	36	44	45		72.4%	2.9%	
China	7		7	12	11	24	9	-2		27.8%	-121.7%	
All Others	161		143	167	175	216	226	227		40.7%	0.4%	

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----								-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
PLATE,SHEET,ET,N CELL	3920	Total	918	822	685	561	572	409	421		-55.5%	3.0%
		Mexico	365	356	311	326	382	434	471		18.8%	8.5%
		Japan	-205	-189	-196	-216	-237	-255	-273		24.5%	7.0%
		Korea, South	-47	-32	-69	-94	-119	-144	-142		208.0%	-1.9%
		Taiwan	-64	-52	-50	-48	-37	-65	-89		1.2%	36.9%
		Hong Kong	60	53	48	52	55	53	80		-11.9%	51.7%
		China	-5	23	24	26	29	-23	-38		315.3%	67.6%
		All Others	814	662	615	515	500	408	411		-49.8%	0.6%
OTHR PLATE,SHEET,ETC.	3921	Total	246	227	168	227	157	187	253		-23.7%	35.0%
		Mexico	242	185	217	226	249	295	329		22.0%	11.4%
		Germany	-47	-42	-50	-66	-111	-103	-142		121.3%	37.4%
		Hong Kong	31	31	32	40	53	60	104		91.9%	73.0%
		Korea, South	-49	-48	-50	-55	-82	-79	-77		60.5%	-2.9%
		Canada	47	41	17	46	54	60	76		26.5%	28.0%
		China	7	11	14	22	36	15	20		107.0%	33.8%
		All Others	14	48	-11	15	-43	-60	-57		-523.6%	-4.3%
BATH,SINK,LAVATR SEAT	3922	Total	-78	-65	-85	-102	-102	-118	-122		51.9%	3.2%
		Canada	-75	-62	-65	-70	-67	-71	-58		-4.6%	-18.0%
		China	-6	-7	-11	-16	-27	-33	-47		467.4%	40.7%
		Mexico	-13	-19	-22	-24	-11	-18	-22		37.8%	25.1%
		United Kingdom	2	13	3	1	3	3	4		4.7%	59.4%
		Germany	-0	-1	-2	-2	-2	-3	-4		2451.6%	34.3%
		All Others	13	12	11	9	2	4	5		-66.7%	17.9%
		BOX,BAG,CLOSURES, ETC	3923	Total	532	286	159	-204	-546	-923	-1,018	
China	-393			-471	-597	-747	-851	-1,143	-1,381		191.0%	20.8%
Mexico	863			821	920	937	973	1,084	1,174		25.6%	8.2%
Canada	-128			-137	-104	-161	-335	-362	-341		181.8%	-5.7%
Taiwan	-93			-94	-109	-112	-134	-170	-180		83.6%	5.6%
Thailand	-18			-21	-38	-66	-72	-129	-137		607.0%	6.4%
All Others	301			189	87	-54	-128	-204	-153		-167.7%	-24.8%
TABLEWARE,O HOUSEHOLD	3924			Total	-893	-919	-1,123	-1,282	-1,554	-1,929	-2,136	
		China	-796	-856	-1,021	-1,144	-1,392	-1,751	-1,983		120.0%	13.2%
		Canada	89	88	107	108	127	146	170		63.3%	16.7%
		Mexico	-13	-37	-31	-52	-114	-137	-152		964.9%	11.5%
		Taiwan	-182	-162	-144	-136	-120	-121	-124		-33.5%	2.2%
		Hong Kong	-20	-23	-26	-33	-43	-42	-33		113.6%	-23.0%
		All Others	29	70	-7	-24	-11	-23	-13		-181.0%	-42.3%
		OT BUILDERS' WARE	3925	Total	-547	-627	-768	-916	-1,059	-1,173	-1,152	
China	-279			-295	-349	-377	-427	-495	-510		77.5%	3.0%
Canada	-280			-330	-403	-458	-503	-526	-504		87.6%	-4.1%
Mexico	-4			-12	-19	-44	-76	-105	-121		2878.3%	15.2%
Taiwan	-56			-49	-54	-79	-77	-77	-78		38.0%	1.0%
United Kingdom	8			12	14	11	5	8	11		2.0%	35.8%
All Others	64			47	44	30	18	22	51		-65.6%	128.6%

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----							-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
OTHER ARTICLES	3926	Total	755	349	-220	-603	-834	-1,249	-1,291		-265.6%	3.4%
		China	-1,192	-1,240	-1,325	-1,459	-1,761	-2,142	-2,281		79.7%	6.5%
		Mexico	1,850	1,541	1,319	1,181	1,247	1,250	1,208		-32.5%	-3.4%
		Taiwan	-134	-186	-155	-187	-166	-163	-172		22.3%	5.1%
		Germany	-57	-50	-67	-101	-133	-140	-119		144.3%	-15.1%
		Belgium	37	59	42	47	77	87	89		135.4%	2.4%
		All Others	251	226	-34	-83	-97	-141	-17		-156.1%	-88.0%
O WORK RUBBR+PLST,ETC	8477	Total	-726	-322	-474	-721	-678	-831	-759		14.5%	-8.6%
		Germany	-369	-227	-262	-337	-389	-453	-438		22.9%	-3.4%
		Japan	-467	-208	-277	-287	-307	-368	-378		-21.2%	2.8%
		Mexico	268	182	161	141	192	240	275		-10.2%	14.4%
		Canada	-148	-120	-133	-168	-184	-237	-222		60.5%	-6.3%
		France	-101	-73	-82	-140	-101	-106	-128		5.3%	20.7%
		China	17	30	61	67	80	70	67		311.4%	-5.6%
		All Others	73	94	59	4	32	22	65		-69.4%	192.2%
O W INDIV FUNCTIONS	8479	Total	7,467	4,404	3,365	3,031	4,079	3,432	4,314		-54.0%	25.7%
		Korea, South	1,446	883	743	852	761	851	1,421		-41.2%	67.0%
		Taiwan	2,413	974	862	531	1,200	1,068	1,017		-55.7%	-4.8%
		Mexico	922	705	630	483	594	592	618		-35.8%	4.5%
		Japan	-492	-405	-490	-180	-230	-398	-570		-19.1%	43.3%
		Singapore	765	432	327	216	569	400	482		-47.7%	20.4%
		China	229	277	307	271	490	166	331		-27.7%	100.1%
		All Others	2,185	1,540	986	859	695	753	1,014		-65.5%	34.6%
MOLD BOX F MET FOUNDR	8480	Total	-339	-331	-571	-637	-644	-611	-825		80.3%	35.1%
		Canada	-251	-288	-431	-422	-377	-477	-490		89.9%	2.6%
		Mexico	320	259	217	230	281	403	413		25.9%	2.4%
		Japan	-236	-213	-258	-240	-288	-222	-273		-5.9%	23.3%
		Germany	-44	-47	-45	-60	-74	-118	-151		168.7%	27.8%
		China	-14	-9	-1	-20	-33	-57	-92		319.1%	61.7%
		All Others	-115	-32	-52	-125	-153	-140	-232		22.4%	65.6%
PAINTING,DRAW,COL LAGE	9701	Total	-1,002	-355	-1,414	-609	-784	53	29		-105.3%	-45.7%
		Switzerland	620	815	298	453	692	964	1,404		55.5%	45.6%
		France	-1,573	-1,485	-1,205	-860	-1,073	-812	-1,038		-48.4%	27.9%
		Italy	-182	-89	-58	-235	-148	-186	-218		2.2%	17.0%
		Germany	-1	40	-101	-111	-203	-82	-210		11088.4%	155.5%
		Korea, South	-3	29	40	47	20	34	158		-1326.1%	360.1%
		China	-16	-11	-11	-32	-28	-48	-50		197.5%	4.0%
		All Others	153	345	-376	128	-44	183	-17		19.2%	-109.5%
		ORIGNL ENGRAVE,PRINTS	9702	Total	-32	-22	-17	5	-13	-30	-24	
France	-21			-18	-14	-15	-18	-24	-20		13.1%	-17.5%
Germany	-3			-8	-8	-11	-11	-21	-9		529.9%	-55.7%
Switzerland	-1			2	-4	4	11	12	6		-1002.7%	-50.8%
Canada	-5			1	8	20	0	8	5		-258.3%	-34.5%
Spain	-1			-2	-3	-0	-3	-2	-4		20.5%	161.2%
China	-0			-0	-0	-1	-0	0	-1		-276.4%	-677.7%
All Others	0			1	5	8	9	-3	-0		-1852.0%	-94.7%

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----							-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
Digital Multimeters	903031	Total	26	19	23	12	-2	-1	-5		-104.9%	257.4%
		China	-10	-6	-9	-19	-37	-45	-51		345.6%	13.1%
		Netherlands	7	7	18	17	18	21	25		191.5%	18.1%
		Malaysia	0	-2	-3	-2	-3	-3	-10		-228018.8%	233.5%
		Canada	9	7	6	6	7	7	8		-13.6%	6.3%
		Taiwan	-11	-8	-6	-7	-7	-7	-7		-36.4%	0.3%
		All Others	32	20	16	17	19	25	30		-21.6%	21.0%
<b>Connecting Devices for use with Modular Compressed Air Conditioning units</b>												
84159090	Total	193	122	85	-94	-242	-463	-573		-340.4%	23.7%	
		Mexico	-338	-228	-297	-345	-462	-621	-711		83.4%	14.5%
		Canada	499	380	357	296	311	324	355		-35.1%	9.5%
		Japan	-163	-155	-107	-102	-98	-106	-120		-34.9%	13.3%
		China	9	-1	-4	-11	-22	-71	-116		-929.1%	62.3%
		Saudi Arabia	49	38	36	41	40	42	62		-14.4%	47.2%
		All Others	137	87	99	26	-11	-31	-42		-122.5%	37.5%
<b>PISTON ENGINES,INT COM</b>												
8407	Total	-2,635	-1,540	-2,250	-2,806	-3,623	-3,638	-2,125		38.1%	-41.6%	
		Japan	-3,074	-2,805	-2,560	-2,509	-2,579	-2,731	-2,236		-11.1%	-18.1%
		Canada	1,637	2,040	1,810	1,621	1,204	1,364	1,877		-16.7%	37.6%
		Mexico	-633	-417	-731	-1,117	-1,469	-1,459	-1,040		130.5%	-28.7%
		Germany	-1,168	-1,048	-1,224	-1,345	-1,345	-1,214	-1,033		3.9%	-14.9%
		Austria	-107	-83	-89	-115	-76	-152	-162		41.1%	6.9%
		China	14	11	-11	-36	-37	-67	-57		-574.3%	-14.4%
		All Others	696	763	555	696	680	621	526		-10.7%	-15.3%
<b>COMPRESSION-IGNITION</b>												
8408	Total	1,048	827	888	530	984	1,166	823		11.2%	-29.4%	
		Canada	957	701	670	697	1,047	1,438	1,610		50.2%	11.9%
		Germany	-152	-124	-186	-415	-516	-584	-1,086		283.9%	85.9%
		Mexico	542	400	578	776	1,082	1,064	961		96.4%	-9.8%
		Japan	-552	-431	-402	-464	-672	-834	-827		51.1%	-0.9%
		Brazil	-20	8	-167	-251	-170	-307	-429		1453.3%	39.8%
		China	31	35	36	34	53	93	153		198.1%	64.3%
		All Others	242	237	360	153	160	296	442		22.3%	49.4%
<b>PARTS ENGNS 8407,8408</b>												
8409	Total	-484	-454	-364	-930	-2,096	-2,462	-3,245		408.8%	31.8%	
		Japan	-1,565	-1,475	-1,114	-1,155	-1,628	-1,681	-1,563		7.4%	-7.0%
		Mexico	-159	-152	-297	-526	-902	-1,014	-1,260		539.9%	24.2%
		Germany	-166	-183	-219	-320	-395	-484	-555		191.7%	14.7%
		Canada	891	736	750	691	773	766	502		-14.0%	-34.5%
		Brazil	-225	-110	-139	-159	-300	-367	-464		62.8%	26.6%
		China	-23	-22	-41	-30	-57	-94	-172		315.2%	84.0%
		All Others	762	751	696	569	413	411	267		-46.1%	-34.9%
<b>OTHER ENGINE,MOTORS</b>												
8412	Total	-306	-273	-172	-178	-353	-468	-417		53.0%	-11.0%	
		Germany	-99	-114	-83	-107	-154	-207	-224		110.2%	8.4%
		Japan	-123	-112	-69	-78	-109	-141	-182		14.7%	29.1%
		United Kingdom	-54	-51	-67	-42	-68	-122	-119		125.6%	-1.8%
		Italy	-34	-35	-33	-41	-67	-68	-76		102.6%	12.2%
		Singapore	1	-7	-5	13	8	22	67		1665.3%	209.3%
		China	3	12	15	12	3	-9	66		-445.2%	-845.4%
All Others	-1	33	70	67	33	56	52		-5802.0%	-8.6%		

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			Annual US Balances in \$ Millions								-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
<b>OT ADP IN/OUTPUT</b>												
UN	847160	<b>Total</b>	-16,294	-12,442	-14,025	-12,158	-14,072	-13,289	-12,800		-18.4%	-3.7%
		China	-3,624	-3,725	-5,593	-7,207	-10,910	-10,902	-11,173		200.8%	2.5%
		Malaysia	-1,361	-1,081	-1,676	-1,646	-1,325	-1,453	-1,234		6.7%	-15.0%
		Canada	1,142	893	890	904	1,110	1,296	1,216		13.5%	-6.2%
		Japan	-5,232	-3,255	-2,371	-1,278	-1,178	-948	-817		-81.9%	-13.8%
		Taiwan	-1,176	-958	-908	-793	-698	-547	-526		-53.5%	-3.9%
		All Others	-6,043	-4,315	-4,368	-2,139	-1,071	-737	-265		-87.8%	-64.0%
<b>OT ADP STORAGE</b>												
UNIT	847170	<b>Total</b>	-11,783	-9,352	-8,818	-8,228	-7,151	-6,695	-7,039		-43.2%	5.1%
		China	-1,133	-1,260	-1,654	-1,659	-2,048	-2,333	-2,846		105.9%	22.0%
		Singapore	-4,318	-3,588	-3,543	-3,622	-3,187	-3,073	-2,706		-28.8%	-11.9%
		Thailand	-1,069	-824	-630	-738	-989	-1,310	-1,857		22.6%	41.8%
		Malaysia	-2,329	-2,043	-1,780	-1,829	-1,326	-917	-859		-60.6%	-6.3%
		Canada	665	574	534	565	615	682	661		2.6%	-3.0%
		All Others	-3,599	-2,211	-1,746	-945	-216	255	567		-107.1%	122.6%
<b>RADIO TELEPHONES</b>												
<b>FOR INSTALLATION IN</b>												
<b>MOTOR VEHICLE</b>												
	852590	<b>Total</b>	-4,322	-7,629	-10,317	-12,151	-16,333	-19,899	-21,380		360.4%	7.4%
		China	-372	-604	-1,856	-2,797	-5,453	-9,146	-11,775		2359.2%	28.7%
		Korea, South	-2,727	-4,288	-4,242	-5,554	-8,022	-5,897	-5,286		116.3%	-10.4%
		Taiwan	-12	-23	-30	-97	-227	-797	-1,645		6622.1%	106.4%
		Malaysia	-827	-1,073	-1,017	-1,260	-1,357	-1,455	-1,583		76.0%	8.8%
		Mexico	-728	-1,170	-995	-1,030	-1,304	-1,544	-1,163		112.0%	-24.6%
		All Others	343	-471	-2,177	-1,413	30	-1,060	73		-409.0%	-106.9%
<b>RADIO PHONES, NT</b>												
<b>MOTOR VHCL, PBLIC</b>												
<b>CELLULAR SRVCE</b>												
	85250904	Balance detail not available										
		Balance detail not available										
		Balance detail not available										
		Balance detail not available										
		Balance detail not available										
		Balance detail not available										
		Balance detail not available										
		Balance detail not available										
<b>TRANSMISSION</b>												
<b>APPTS</b>												
<b>INCORPORATING</b>												
<b>RECEIVERS,NESOI</b>												
	852520908	Balance detail not available										
		Balance detail not available										
		Balance detail not available										
		Balance detail not available										
		Balance detail not available										
		Balance detail not available										
		Balance detail not available										
		Balance detail not available										

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----							-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
<b>L-Lysine Feed Products, Their Methods of Production and Genetic Constructs for Production</b>												
	292241	<b>Total</b>	110	172	196	311	339	199	215		81.3%	7.7%
		Netherlands	40	68	79	138	152	81	76		100.5%	-6.0%
		Canada	24	26	29	39	50	35	36		47.6%	3.6%
		Belgium	4	3	4	9	0	8	20		115.7%	143.2%
		Mexico	5	3	-2	-2	19	13	15		184.3%	15.9%
		Spain	14	13	12	16	20	12	13		-9.8%	1.6%
		China	7	3	4	7	15	4	-2		-46.3%	-144.0%
		All Others	17	57	72	104	82	46	56		174.1%	22.7%
<b>Foam Footwear</b>												
	6405909	<b>Total</b>	-46	-30	-26	-37	-41	-73	-110		58.6%	51.4%
		China	-30	-31	-25	-33	-37	-65	-111		117.5%	71.9%
		Italy	-7	-3	-3	-7	-10	-11	-10		51.5%	-6.8%
		Belgium	0	0	0	0	0	1	3		3515.4%	266.5%
		Canada	1	2	1	1	2	2	3		73.5%	53.3%
		Brazil	-13	-1	-1	-1	-2	-5	-3		-57.3%	-53.3%
		All Others	3	2	2	3	6	5	7		101.7%	33.5%
<b>Voltage Regulators</b>												
	903289	<b>Total</b>	75	42	-227	-149	-540	-439	-381		-683.8%	-13.3%
		Canada	1,006	887	910	1,060	1,066	935	847		-7.0%	-9.4%
		Mexico	-628	-647	-864	-862	-885	-713	-662		13.5%	-7.3%
		Germany	-147	-103	-127	-161	-293	-322	-403		119.2%	25.1%
		Japan	-228	-174	-189	-261	-397	-344	-348		50.8%	1.0%
		France	1	-19	-13	-5	-14	44	108		3291.6%	147.8%
		China	0	13	11	14	5	5	19		950.7%	302.7%
		All Others	72	84	44	66	-22	-43	57		-159.7%	-234.2%
<b>Laser Bar Code Scanners and Scan Engines</b>												
	854890	<b>Total</b>	1,089	831	601	531	459	479	463		-56.0%	-3.4%
		Hong Kong	42	30	20	27	39	53	40		27.1%	-24.1%
		Japan	82	60	23	28	19	27	36		-67.1%	34.1%
		Australia	29	26	23	23	32	31	35		10.2%	10.0%
		St. Kitts & Nevis	1	-0	0	-0	0	0	34		-59.2%	14346.9%
		Saudi Arabia	16	19	18	21	21	22	30		35.2%	37.9%
		China	39	28	27	8	39	15	27		-61.5%	75.6%
		All Others	880	667	490	424	308	329	260		-62.6%	-20.9%
<b>Laminated Floor Panels</b>												
	4412	<b>Total</b>	-727	-803	-1,061	-1,217	-1,958	-2,095	-2,321		188.1%	10.8%
		China	-29	-46	-103	-162	-429	-612	-976		1978.3%	59.3%
		Canada	-203	-247	-278	-290	-352	-398	-338		96.1%	-15.1%
		Brazil	-97	-99	-143	-244	-440	-416	-280		328.7%	-32.7%
		Malaysia	-109	-95	-129	-118	-207	-175	-213		60.5%	21.5%
		Indonesia	-234	-194	-212	-188	-212	-193	-201		-17.4%	3.7%
		All Others	-54	-123	-196	-215	-318	-299	-314		453.3%	4.7%

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----								-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006		'00-'05	'06/'05
<b>SEMICON DV;L-EMT</b>												
<b>DIOD</b>												
	8541	<b>Total</b>	32	642	731	902	1,123	1,350	1,557		4142.2%	15.4%
		Japan	-1,476	-849	-597	-461	-570	-578	-808		-60.8%	39.8%
		Hong Kong	145	203	210	247	439	580	652		299.1%	12.5%
		Singapore	129	127	193	199	228	208	529		60.8%	154.4%
		China	-82	-13	-61	-76	-164	-265	-395		222.8%	49.5%
		Mexico	456	246	330	285	283	366	345		-19.7%	-5.8%
		All Others	859	929	656	708	907	1,039	1,235		20.9%	18.9%
<b>INTEGRATED</b>												
<b>CIRCUITS</b>												
	8542	<b>Total</b>	11,636	14,000	15,488	20,631	20,178	20,111	23,444		72.8%	16.6%
		Mexico	5,189	4,639	3,566	3,635	4,266	4,419	4,380		-14.9%	-0.9%
		China	184	450	921	1,674	1,746	1,843	4,089		899.2%	121.9%
		Malaysia	-590	-468	760	2,909	2,093	1,833	2,904		-410.6%	58.5%
		Hong Kong	1,540	1,363	1,724	2,339	3,289	2,836	2,278		84.1%	-19.7%
		Canada	4,031	1,616	1,140	1,179	1,839	1,867	1,885		-53.7%	0.9%
		All Others	1,281	6,400	7,377	8,895	6,945	7,314	7,908		471.0%	8.1%
<b>Zero-Mercury-Added</b>												
<b>Alkaline Batteries</b>												
	850680	<b>Total</b>	6	4	-22	-20	-22	13	40		109.5%	193.4%
		China	-38	-43	-51	-82	-94	-89	-88		132.5%	-0.8%
		Netherlands	0	0	7	31	13	11	36		3917.0%	214.7%
		Mexico	28	28	19	12	9	9	18		-67.8%	104.1%
		Germany	2	2	6	8	7	22	13		919.5%	-40.2%
		Brazil	2	1	3	2	9	12	11		403.2%	-1.6%
		All Others	12	16	-6	9	33	48	49		291.8%	1.7%
<b>Agricultural Vehicles</b>												
<b>and Components</b>												
<b>Thereof</b>												
	870190	<b>Total</b>	-500	-377	-452	-700	-1,014	-1,028	-648		105.9%	-37.0%
		Japan	-594	-526	-618	-735	-990	-1,064	-1,063		79.2%	-0.2%
		Canada	281	422	431	422	467	507	605		80.6%	19.2%
		Germany	-101	-126	-140	-165	-258	-235	-223		132.5%	-5.2%
		Italy	-106	-119	-132	-116	-158	-173	-194		63.7%	12.1%
		United Kingdom	-179	-151	-192	-178	-214	-175	-151		-2.2%	-13.9%
		China	-3	-2	-2	-8	-8	-8	-11		169.0%	33.0%
		All Others	199	124	198	72	139	111	377		-44.1%	238.5%
<b>Power bars</b>												
	210690709	<b>Total</b>	1,133	1,113	1,054	1,112	1,105	1,190	1,380		5.0%	16.0%
		Mexico	93	101	92	93	109	226	419		143.0%	85.2%
		Japan	133	159	181	204	212	222	212		67.1%	-4.8%
		Canada	202	136	178	159	51	105	168		-48.0%	59.9%
		New Zealand	12	6	-21	-31	-37	-80	-131		-738.9%	64.1%
		Korea, South	51	81	85	72	85	68	62		35.2%	-10.0%
		China	11	24	5	82	149	46	32		321.0%	-30.6%
		All Others	631	606	534	531	536	601	618		-4.7%	2.8%

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----							-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
Contract lenses	900130	Total	347	404	296	153	118	264	358		-23.8%	35.5%
		Indonesia	-80	-65	-115	-99	-127	-151	-158		90.0%	4.2%
		Ireland	-29	-42	-52	-89	-154	-154	-152		429.5%	-0.7%
		Japan	125	183	129	85	79	95	140		-23.7%	47.2%
		Singapore	83	76	75	70	90	88	106		6.0%	20.5%
		United Kingdom	21	19	70	48	69	61	98		186.8%	60.6%
		China	5	4	3	2	2	1	2		-74.9%	39.1%
		All Others	222	230	186	136	159	324	322		45.9%	-0.4%
Air conditioners	8415	Total	415	330	-57	-520	-656	-874	-1,282		-310.6%	46.6%
		China	-150	-205	-360	-636	-703	-884	-1,223		487.5%	38.3%
		Mexico	-296	-185	-287	-368	-518	-763	-901		157.6%	18.2%
		Canada	895	726	742	684	697	747	788		-16.4%	5.4%
		Thailand	-62	-65	-80	-71	-99	-92	-156		47.8%	70.9%
		Korea, South	-284	-244	-279	-265	-245	-154	-147		-45.6%	-4.5%
		All Others	313	304	207	136	211	271	359		-13.4%	32.3%
Soy sauce	210310	Total	-28	-28	-27	-30	-30	-27	-29		-4.8%	7.1%
		Hong Kong	-16	-15	-13	-14	-14	-13	-13		-19.3%	-1.8%
		Taiwan	-9	-11	-11	-12	-11	-12	-11		28.1%	-6.3%
		Canada	8	7	8	9	9	10	11		30.1%	8.0%
		China	-7	-7	-7	-8	-9	-11	-11		52.8%	-0.6%
		Japan	-6	-6	-7	-6	-7	-7	-9		5.1%	27.6%
		All Others	2	3	2	2	2	5	3		107.6%	-37.8%
Motorcycle chains	731511	Total	-86	-73	-81	-84	-102	-99	-118		13.9%	19.3%
		Japan	-60	-52	-51	-58	-56	-50	-57		-17.4%	14.6%
		Canada	32	25	26	29	31	35	36		10.9%	3.6%
		China	-14	-13	-15	-16	-20	-24	-27		71.0%	10.8%
		Italy	-11	-8	-9	-10	-13	-14	-19		29.5%	42.2%
		France	-8	-8	-11	-16	-20	-19	-19		136.5%	0.0%
		All Others	-25	-17	-21	-13	-24	-27	-32		8.3%	17.1%
Curling irons	820551	Total	-124	-123	-144	-141	-128	-135	-160		8.7%	18.5%
		China	-74	-81	-107	-115	-110	-113	-145		51.9%	28.7%
		Taiwan	-31	-29	-29	-23	-20	-19	-15		-40.9%	-18.3%
		Canada	5	6	6	8	6	9	11		73.1%	28.9%
		Germany	-5	-3	-4	-4	-5	-5	-5		11.0%	-9.0%
		Italy	-9	-10	-10	-9	-8	-5	-4		-39.8%	-23.3%
Electrical cords	8544	Total	-3,161	-3,260	-3,891	-4,270	-4,682	-5,325	-6,026		68.4%	13.2%
		Mexico	-3,597	-3,307	-3,963	-3,945	-3,997	-4,409	-4,506		22.6%	2.2%
		China	-737	-654	-762	-860	-1,167	-1,385	-1,893		88.0%	36.6%
		Canada	1,134	1,062	1,160	1,054	1,185	1,280	1,380		12.9%	7.8%
		Philippines	-300	-305	-278	-305	-312	-321	-339		7.1%	5.6%
		Japan	-148	-93	-120	-106	-143	-211	-203		42.3%	-3.8%
		All Others	486	37	71	-108	-248	-279	-465		-157.3%	66.8%

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----							-- Change --		
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
Mineral water	220110	Total	-186	-167	-183	-311	-300	-255	-216		36.9%	-15.1%
		France	-103	-96	-86	-70	-87	-78	-81		-24.0%	4.2%
		Italy	-32	-28	-35	-44	-54	-65	-66		106.0%	1.5%
		Japan	6	9	6	10	13	31	49		407.8%	57.7%
		Fiji	-5	-9	-12	-23	-27	-48	-41		825.5%	-15.8%
		Norway	-1	-0	-2	-5	-10	-19	-23		3461.2%	24.5%
		China	0	0	0	0	-0	0	-0		66.8%	-367.9%
		All Others	-52	-43	-54	-179	-135	-76	-54		45.7%	-29.0%
Distilled water	28510090	Total	12	1	-1	1	20	16	35		32.9%	119.7%
		Canada	-15	-18	-17	-24	-23	-33	-43		118.9%	29.7%
		Korea, South	5	6	6	8	14	18	22		274.0%	23.2%
		China	4	3	4	6	12	13	20		237.4%	48.8%
		Taiwan	4	-0	1	2	3	7	12		71.2%	83.4%
		Singapore	2	3	1	4	4	6	10		136.2%	81.6%
		All Others	12	8	5	5	11	6	14		-52.4%	141.4%
Maize seeds	100510	Total	30	85	105	48	90	79	-18		167.6%	-123.1%
		Chile	-78	-82	-80	-87	-56	-48	-83		-38.9%	74.4%
		Canada	29	44	37	23	31	31	37		7.9%	18.6%
		Argentina	-31	-18	-12	-13	-10	-11	-36		-63.3%	217.5%
		Mexico	18	58	49	29	25	34	17		82.4%	-50.4%
		Pakistan	6	2	6	7	10	13	10		121.9%	-18.5%
		China	0	0	0	0	0	0	-0		-55.0%	-102.9%
		All Others	85	81	105	89	90	61	37		-28.9%	-39.0%
Perfume	330300	Total	-411	-439	-517	-567	-569	-511	-449		24.6%	-12.2%
		France	-551	-555	-585	-675	-710	-769	-781		39.5%	1.5%
		Italy	-81	-87	-87	-94	-124	-141	-132		74.2%	-6.4%
		Canada	48	47	74	84	80	100	117		110.4%	17.2%
		Spain	-30	-27	-41	-42	-59	-71	-94		136.2%	32.4%
		United Kingdom	-66	-66	-82	-86	-67	-67	-93		1.2%	38.2%
		China	0	-1	-3	-7	-6	-2	-2		-10230.2%	45.9%
		All Others	271	252	207	253	316	439	536		62.1%	22.2%
Detergent	3402	Total	639	699	638	861	1,080	1,108	1,368		73.3%	23.5%
		Canada	263	281	314	466	613	652	736		148.0%	12.9%
		Netherlands	70	72	72	56	55	62	64		-11.3%	4.1%
		China	17	15	16	13	15	37	60		111.4%	63.1%
		Japan	50	56	52	45	52	50	57		0.4%	14.9%
		Germany	-44	-39	-47	-52	-52	-45	-50		1.9%	11.0%
		All Others	284	315	231	333	397	352	500		24.3%	41.9%
Sugar	17	Total	-797	-811	-1,065	-1,244	-1,255	-1,541	-1,863		93.2%	20.9%
		Mexico	-51	-115	-210	-170	-178	-279	-454		451.3%	62.3%
		Canada	-86	-136	-164	-285	-273	-290	-282		236.4%	-2.6%
		Brazil	-79	-93	-87	-110	-115	-178	-175		126.3%	-1.9%
		Dominican Repu	-84	-74	-77	-86	-83	-83	-119		-1.8%	44.3%
		Guatemala	-37	-37	-55	-83	-73	-108	-118		193.5%	9.7%
		China	-7	-4	-34	-29	-29	-59	-69		687.3%	17.1%
		All Others	-453	-351	-438	-481	-504	-544	-645		20.0%	18.6%

U.S. Trade Balances for Products Known to be Affected by IP Theft: Top Five Markets (Plus China) 2000-2006

Counterfeit Concerns			----- Annual US Balances in \$ Millions -----								-- Change --	
Product	HS Code	Source	2000	2001	2002	2003	2004	2005	2006	'00-'05	'06/'05	
Diapers	6209	Total	-425	-526	-503	-524	-532	-571	-631		34.5%	10.4%
		China	-50	-49	-138	-214	-245	-290	-333		476.9%	14.8%
		Bangladesh	-46	-64	-52	-47	-43	-46	-68		0.2%	49.2%
		Vietnam	-1	-0	-4	-11	-25	-37	-42		6535.4%	12.4%
		Philippines	-68	-79	-53	-40	-30	-31	-33		-54.0%	4.7%
		Indonesia	-50	-58	-41	-38	-29	-28	-30		-44.1%	6.2%
		All Others	-210	-275	-215	-174	-160	-139	-126		-33.9%	-9.8%
Razors	8212	Total	151	153	143	60	78	70	5		-53.4%	-93.1%
		Canada	54	58	69	80	104	129	110		139.2%	-14.5%
		China	-1	9	18	-75	-53	-47	-53		3311.8%	12.7%
		Mexico	-35	-55	-54	-29	-31	-40	-51		13.2%	28.4%
		Greece	-16	-15	-12	-25	-39	-52	-49		221.4%	-5.9%
		United Kingdom	78	100	85	54	62	54	41		-30.2%	-23.8%
		All Others	72	55	37	54	35	26	7		-63.7%	-75.1%
Olive oil	1509	Total	-407	-371	-430	-512	-708	-842	-966		106.9%	14.7%
		Italy	-310	-273	-316	-362	-480	-558	-619		80.1%	10.9%
		Spain	-63	-55	-84	-95	-124	-149	-175		134.6%	18.0%
		Tunisia	-9	-9	-3	-4	-39	-20	-56		115.6%	175.0%
		Turkey	-11	-22	-12	-28	-28	-56	-41		405.9%	-25.4%
		Argentina	-2	-2	-2	-5	-4	-22	-23		802.9%	5.6%
		China	-0	0	-0	-0	-0	-0	-0		-9.3%	25.5%
		All Others	-11	-11	-14	-17	-33	-37	-51		242.2%	35.9%
Baby formula	0404	Total	10	40	19	9	12	40	127		291.8%	218.0%
		New Zealand	-68	-76	-76	-101	-112	-144	-172		111.1%	19.8%
		Mexico	47	22	27	28	28	55	89		16.0%	63.7%
		China	9	17	19	24	28	31	49		242.5%	56.9%
		Japan	21	24	24	16	19	24	29		14.0%	21.9%
		Canada	28	35	24	25	27	23	27		-17.2%	17.7%
		All Others	-27	18	-1	16	22	50	104		-282.8%	106.7%
Toothpaste	330610	Total	104	82	75	74	93	102	86		-2.2%	-15.6%
		Canada	41	31	42	38	56	62	64		50.5%	2.8%
		Mexico	1	4	5	-3	-5	-8	-43		-976.1%	426.3%
		Japan	14	18	16	17	21	22	27		60.9%	25.2%
		Russia	0	0	-0	0	0	1	7		N/A	410.8%
		Korea, South	2	5	6	5	4	4	5		97.8%	28.1%
		China	-3	-4	-3	-2	-2	-2	-1		-47.5%	-29.3%
		All Others	50	29	8	18	17	22	27		-55.1%	19.7%
Air fresheners	330749	Total	14	15	31	-0	5	11	32		-21.2%	176.3%
		China	-2	-2	-3	-5	-8	-15	-29		806.5%	93.5%
		Canada	-2	6	7	4	18	14	24		-720.6%	70.0%
		Philippines	1	1	3	5	11	17	21		2758.5%	21.5%
		Mexico	3	2	8	-4	-6	5	12		52.6%	157.1%
		Thailand	-1	-1	-0	-6	-11	-11	-6		984.6%	-45.1%
		All Others	16	8	16	6	1	1	9		-95.7%	1186.3%

US Department of Commerce, China Customs, Global Trade Information Services and MBG Information Services.

# APPENDIX

## 3

### **Chinese Laws and Judicial Interpretations**

- List of Chinese laws and treaties discussed in report and information regarding where such laws may be accessed
- Table 1: Current Chinese IPR Laws With Dates Promulgated/Adopted, Date of Effect, and Amendments
- 1982 Trademark Law of the People's Republic of China (Adopted at the 24<sup>th</sup> Session of the Standing Committee of the Fifth National People's Congress on August 23, 1982) (in Chinese)
- 1984 Patent Law of the People's Republic of China (entered into force April 1, 1985) (in Chinese)
- 1990 Copyright Law of the People's Republic of China (adopted at the Fifteenth Session of the Standing Committee of the Seventh National People's Congress on September 7, 1990) (in Chinese)
- Excerpts of the Criminal Law of the People's Republic of China
- Judicial Interpretations by the Supreme People's Court and the Supreme People's Procuratorate on Several Issues of Concrete Application of Laws in Handling Criminal Cases of Infringing Intellectual Property (December 21, 2004)
- Judicial Interpretations by the Supreme People's Court and the Supreme People's Procuratorate on Several Issues of Concrete Application of Laws in Handling Criminal Cases of Infringing Intellectual Property II (April 5, 2007) (In Chinese)

## **Chinese Intellectual Property Laws and Treaties**

Copyright Law of the People's Republic of China (adopted Sep. 7, 1990, amended Oct. 27, 2001), *available at Main dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement: China*, WTO Council for Trade-Related Aspects of Intellectual Property Rights, IP/N/1/CHN/C/1, Doc. 02-3795 (July 8, 2002).

Regulations for the Implementation of the Copyright Law of the People's Republic of China (promulgated by Decree of the State Council on August 2, 2002), *available at Main dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement: China*, WTO Council for Trade-Related Aspects of Intellectual Property Rights, IP/N/1/CHN/C/3, Doc. 03-5385 (Oct. 13, 2002).

Trademark Law of the People's Republic of China (adopted Aug. 23, 1982, amended Feb. 22, 1993 and Oct. 27, 2001) *available at Main dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement: China*, WTO Council for Trade-Related Aspects of Intellectual Property Rights, IP/N/1/CHN/T/1, Doc. 02-3791 (July 8, 2002).

Regulations for the Implementation of the Trademark Law of the People's Republic of China (promulgated by Decree of the State Council on Aug. 3, 2002) *available at Main dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement: China*, WTO Council for Trade-Related Aspects of Intellectual Property Rights, IP/N/1/CHN/T/2, Doc. 03-5384 (Oct. 13, 2003).

Patent Law of the People's Republic of China (adopted Mar. 12, 1984, amended Sept. 4, 1992 and Aug. 25, 2000) *available at Main dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement: China*, WTO Council for Trade-Related Aspects of Intellectual Property Rights, IP/N/1/CHN/I/1, Doc. 02-3796 (July 8, 2002).

Implementing Regulations of the Patent Law of the People's Republic of China (promulgated by Decree of the State Council on June 15, 2001), *available at Main dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement: China*, WTO Council for Trade-Related Aspects of Intellectual Property Rights, IP/N/1/CHN/I/2, Doc. 02-3797 (July 8, 2002).

Rules for the Implementation of the Patent Law of the People's Republic of China (promulgated by Decree of the State Council on June 15, 2001, revised Dec. 28, 2002), *available at Main dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement: China*, WTO Council for Trade-Related Aspects of Intellectual Property Rights, IP/N/1/CHN/I/3, Doc. 03-5381 (Oct. 13, 2003).

Regulations on Computer Software Protection (adopted Dec. 20, 2001, effective as of Jan. 1, 2002), *available at Main dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement: China*, WTO Council for Trade-Related

Aspects of Intellectual Property Rights, IP/N/1/CHN/C/2/Rev.1, Doc. 03-5382 (Oct. 13, 2002).

Regulations on the Protection of Layout Designs of Integrated Circuits (adopted Mar. 28, 2001, promulgated Apr. 2, 2001), *available at Main dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement: China*, WTO Council for Trade-Related Aspects of Intellectual Property Rights, IP/N/1/CHN/L/1/Rev.1, Doc. 03-5386 (Oct. 13, 2003).

Rules for Implementing the Regulations on the Protection of Layout-Designs of Integrated Circuits (promulgated Sept. 18, 2001, effective as of Oct. 1, 2001), *available at Main dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement: China*, WTO Council for Trade-Related Aspects of Intellectual Property Rights, IP/N/1/CHN/L/2, Doc. 02-3798 (July 8, 2002).

Anti Unfair Competition Law of the People's Republic of China (effective as of Dec. 01, 1993), *available at* <http://en.chinacourt.org/public/detail.php?id=3306>.

Regulations on Protection of New Varieties of Plants (promulgated by Decree of the State Council on Mar. 20, 1997, effective as of Oct. 1, 1997), *available at Main dedicated Intellectual Property Laws and Regulations Notified Under Article 63.2 of the Agreement: China*, WTO Council for Trade-Related Aspects of Intellectual Property Rights, IP/N/1/CHN/P/1, Doc. 02-3792 (July 8, 2002).

Rules of the Customs of People's Republic of China for Implementing the Regulations of People's Republic of China on Customs Protection of Intellectual Property Rights (adopted at the Executive Meeting of the General Administration of Customs on Apr. 22, 2004, promulgated by Decree of the General Administration of Customs on May 25, 2004, and effective as of July 1, 2004), *available at* [http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=2068&col\\_no=121&dir=200603](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=2068&col_no=121&dir=200603).

Criminal Law of the People's Republic of China § 7: Crimes of Infringing on Intellectual Property Rights (adopted July 1, 1979, revised Mar. 14, 1997) *available at* <http://www.cecc.gov/pages/newLaws/criminalLawENG.php>.

Drug Administration Law of the People's Republic of China (promulgated by Order of the President on Feb. 28, 2001, effective as of Dec. 01, 2001), *available at* <http://www.sfda.gov.cn/cmsweb/webportal/W45649037/A48335975.html>.

Regulations for Implementation of the Drug Administration Law of the People's Republic of China (promulgated by Decree of the State Council on Aug. 04, 2002, effective as of Sept. 15, 2002), *available at* <http://www.sfda.gov.cn/cmsweb/webportal/W45649038/A48335997.html>.

Agreement on Trade Relations Between The United States of America and The People's Republic of China, July 7, 1979, 18 Int'l Legal Materials 1041.

Memorandum of Understanding Between the Government of the People's Republic of China and the Government of the United States of America on the Protection of Intellectual Property Rights (Jan. 17, 1992), *available at* [http://tcc.export.gov/trade\\_agreements/all\\_trade\\_agreements/exp\\_005362.asp](http://tcc.export.gov/trade_agreements/all_trade_agreements/exp_005362.asp).

People's Republic of China Intellectual Property Rights Memorandum of Understanding – 1995 Action plan, Action Plan for Effective Protection and Enforcement of Intellectual Property Rights, Annex I (Feb. 26, 1995), *available at* [http://tcc.export.gov/trade\\_agreements/all\\_trade\\_agreements/exp\\_005363.asp](http://tcc.export.gov/trade_agreements/all_trade_agreements/exp_005363.asp).

People's Republic of China Implementation of the 1995 Intellectual Property Rights Agreement – 1996 (June 17, 1996), *available at* [http://tcc.export.gov/trade\\_agreements/all\\_trade\\_agreements/exp\\_005361.asp](http://tcc.export.gov/trade_agreements/all_trade_agreements/exp_005361.asp).

Convention Establishing the World Intellectual Property Organization, July 14, 1967, WIPO Notification No. 110, Accession by the People's Republic of China (deposited Mar. 4, 1980, effective June 3, 1980), *available at* [http://www.wipo.int/edocs/notdocs/en/convention/treaty\\_convention\\_110.html](http://www.wipo.int/edocs/notdocs/en/convention/treaty_convention_110.html).

Paris Convention for the Protection of Industrial Property, Mar. 20, 1883, Paris Notification No. 114, Accession by the People's Republic of China (deposited Dec. 19, 1984, effective Mar. 19, 1985), *available at* [http://www.wipo.int/edocs/notdocs/en/paris/treaty\\_paris\\_114.html](http://www.wipo.int/edocs/notdocs/en/paris/treaty_paris_114.html).

Madrid Agreement Concerning the International Registration of Marks, April 14, 1891, Madrid (Marks) Notification No. 41, Accession by the People's Republic of China (deposited July 4, 1989, effective Oct. 4, 1989), *available at* [http://www.wipo.int/edocs/notdocs/en/madrid-gp/treaty\\_madrid\\_gp\\_41.html](http://www.wipo.int/edocs/notdocs/en/madrid-gp/treaty_madrid_gp_41.html).

Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, Berne Notification No. 140, Accession by the People's Republic of China (deposited July 15, 1992, effective Oct. 15, 1992), *available at* [http://www.wipo.int/edocs/notdocs/en/berne/treaty\\_berne\\_140.html](http://www.wipo.int/edocs/notdocs/en/berne/treaty_berne_140.html).

Patent Cooperation Treaty (PCT), June 19, 1970, PCT Notification No. 81, Accession by the People's Republic of China (deposited Oct. 1, 1993, effective Jan. 1, 1994), *available at* [http://www.wipo.int/edocs/notdocs/en/pct/treaty\\_pct\\_81.html](http://www.wipo.int/edocs/notdocs/en/pct/treaty_pct_81.html).

**Table 1****China's Intellectual Property Laws**

	<b><u>Promulgated/ Adopted</u></b>	<b><u>Date of Effect</u></b>	<b><u>Amendments</u></b>	<b><u>Effective Date of Last Amendment</u></b>	<b><u>**Notified to WTO</u></b>
Copyright Law	September 7, 1990	June 1, 1991	October 27, 2001	January 1, 2002	Yes
Implementing Regulations of Copyright Law	August 2, 2002	September 15, 2002			
Trademark Law	August 23, 1982	March 1, 1983	February 22, 1993 October 27, 2001	December 1, 2001	Yes
Implementing Regulations of Trademark Law	August 3, 2002	September 15, 2002			
Patent Law	March 12, 1984	April 1, 1985	September 4, 1992 August 25, 2000	July 1, 2001	Yes
Implementing Regulations of Patent Law	June 15, 2001	July 1, 2001	2003(?)		Yes
Rules for the Implementation of Patent Law	June 15, 2001/ December 28, 2002				
Regulations on Computer Software Protection	December 20, 2001	January 1, 2002			Yes
Regulations on the Protection of Layout Designs of Integrated Circuits	March 28, 2001/ April 2, 2001	October 1, 2001			Yes
Rules for Implementing the Regulations on the Protection of Layout-Designs of Integrated Circuits	September 18, 2001	October 1, 2001			Yes
The Unfair Competition Law	September 2, 1993				
Regulations on Protection of New Varieties of Plants	March 20, 1997	October 1, 1997			Yes

\*\* The eight laws and regulations that have been notified by China are considered the “main dedicated laws” related to IPR protection.

## PRC Trade Mark Law (1982)

【法规标题】 中华人民共和国商标法(1982)

【类别】 [商标及特殊标志/商标法](#)

【发文字号】 全国人大常委会令第 10 号

【批准日期】

【发布部门】 [全国人大常委会](#)

【发布日期】 1982.08.23

【实施日期】 1983.03.01

【时效性】 已被修订

【效力级别】 法律

【唯一标志】 44439

【全文】

\*注：本篇法规已被《全国人大常委会关于修改[商标法](#)的决定》（发布日期：1993年2月22日 实施日期：1993年7月1日）修正

### 中华人民共和国商标法

（全国人大常委会令第 10 号 1982 年 8 月 23 日第五届全国  
人民代表大会常务委员会第二十四次会议通过）

（相关资料：[法律 1 篇](#) [行政法规 6 篇](#) [部门规章 114 篇](#) [司法解释 4 篇](#) [地方法规 25 篇](#) [案例 3 篇](#) [相关论文 4 篇](#)）

### 目录

- 第一章 总则
- 第二章 商标注册的申请
- 第三章 商标注册的审查和核准
- 第四章 注册商标的续展、转让和使用许可

第五章 注册商标争议的裁定  
第六章 商标使用的管理  
第七章 注册商标专用权的保护  
第八章 附则

## 第一章 总则

第一条 为了加强商标管理，保护商标专用权，促使生产者保证商品质量和维护商标信誉，以保障消费者的利益，促进社会主义商品经济的发展，特制定本法。

第二条 国务院工商行政管理部门商标局主管全国商标注册和管理的工作。

(相关资料: [部门规章 2 篇](#))

第三条 经商标局核准注册的商标为注册商标，商标注册人享有商标专用权，受法律保护。

(相关资料: [部门规章 4 篇](#) [案例 2 篇](#))

第四条 企业、事业单位和个体工商户，对其生产、制造、加工、拣选或者经销的商品，需要取得商标专用权的，应当向商标局申请注册。

(相关资料: [部门规章 3 篇](#) [司法解释 1 篇](#))

第五条 国家规定必须使用注册商标的商品，必须申请商标注册，未经核准注册的，不得在市场销售。

(相关资料: [部门规章 3 篇](#))

第六条 商标使用人应当对其使用商标的商品质量负责。各级工商行政管理部门应当通过商标管理，监督商品质量，制止欺骗消费者的行为。

第七条 商标使用的文学、图形或者其组合，应当有显著特征，便于识别。使用注册商标的，并应当标明“注册商标”或者注册标记。

第八条 商标不得使用下列文字、图形：

( 1 ) 同中华人民共和国的国家名称、国旗、国徽、军旗、勋章相同或者近似的；

( 2 ) 同外国的国家名称、国旗、国徽、军旗相同或者近似的；

( 3 ) 同政府间国际组织的旗帜、徽记、名称相同或者近似的；

( 4 ) 同“红十字”、“红新月”的标志、名称相同或者近似的；

- ( 5 ) 本商品的通用名称和图形 ;
- ( 6 ) 直接表示商品的质量、主要原料、功能、用途、重量、数量及其他特点的 ;
- ( 7 ) 带有民族歧视性的 ;
- ( 8 ) 夸大宣传并带有欺骗性的 ;
- ( 9 ) 有害于社会主义道德风尚或者有其他不良影响的。

( 相关资料: [部门规章 9 篇](#) )

第九条 外国人或者外国企业在中国申请商标注册的,应当按其所属国和中华人民共和国签订的协议或者共同参加的国际条约办理,或者按对等原则办理。

( 相关资料: [行政法规 1 篇](#) [部门规章 2 篇](#) )

第十条 外国人或者外国企业在中国申请商标注册和办理其他商标事宜的,应当委托国家指定的组织代理。

( 相关资料: [部门规章 6 篇](#) )

## 第二章 商标注册的申请

第十一条 申请商标注册的,应当按规定的商品分类表填报使用商标的商品类别和商品名称。

第十二条 同一申请人在不同类别的商品上使用同一商标的,应当按商品分类表分别提出注册申请。

( 相关资料: [部门规章 1 篇](#) )

第十三条 注册商标需要在同一类的其他商品上使用的,应当另行提出注册申请。

第十四条 注册商标需要改变文字、图形的,应当重新提出注册申请。

第十五条 注册商标需要变更注册人的名义、地址或者其他注册事项的,应当提出变更申请。

( 相关资料: [部门规章 1 篇](#) )

## 第三章 商标注册的审查和核准

第十六条 申请注册的商标，凡符合本法有关规定的，由商标局初步审定，予以公告。

第十七条 申请注册的商标，凡不符合本法有关规定或者同他人在同一种商品或者类似商品上已经注册的或者初步审定的商标相同或者近似的，由商标局驳回申请，不予公告。

第十八条 两个或者两个以上的申请人，在同一种商品或者类似商品上，以相同或者近似的商标申请注册的，初步审定并公告申请在先的商标；同一天申请的，初步审定并公告使用在先的商标，驳回其他人的申请，不予公告。

第十九条 对初步审定的商标，自公告之日起三个月内，任何人均可以提出异议。无异议或者经裁定异议不能成立的，始予核准注册，发给商标注册证，并予公告；经裁定异议成立的，不予核准注册。

第二十条 国务院工商行政管理部门设立商标评审委员会，负责处理商标争议事宜。

第二十一条 对驳回申请、不予公告的商标，商标局应当书面通知申请人。申请人不服的，可以在收到通知十五天内申请复审，由商标评审委员会做出终局决定，并书面通知申请人。

第二十二条 对初步审定、予以公告的商标提出异议的，商标局应当听取异议人和申请人陈述事实和理由，经调查核实后，做出裁定。当事人不服的，可以在收到通知十五天内申请复审，由商标评审委员会做出终局裁定，并书面通知异议人和申请人。

( 相关资料: [部门规章 1 篇](#) )

#### 第四章 注册商标的续展、转让和使用许可

第二十三条 注册商标的有效期为十年，自核准注册之日起计算。

第二十四条 注册商标有效期满，需要继续使用的，应当在期满前六个月内申请续展注册；在此期间未能提出申请的，可以给予六个月的宽展期。宽展期满仍未提出申请的，注销其注册商标。

每次续展注册的有效期为十年。

续展注册经核准后，予以公告。

第二十五条 转让注册商标的，转让人和受让人应当共同向商标局提出申请。受让人应当保证使用该注册商标的商品质量。

转让注册商标经核准后，予以公告。

第二十六条 商标注册人可以通过签订商标使用许可合同，许可他人使用其注册商标。许可人应当监督被许可人使用其注册商标的商品质量。被许可人应当保证使用该注册商标的商品质量。

商标使用许可合同应当报商标局备案。

( 相关资料: [部门规章 5 篇](#) )

## 第五章 注册商标争议的裁定

第二十七条 对已经注册的商标有争议的，可以自该商标经核准注册之日起一年内，向商标评审委员会申请裁定。

商标评审委员会收到裁定申请后，应当通知有关当事人，并限期提出答辩。

( 相关资料: [部门规章 1 篇](#) )

第二十八条 对核准注册前已经提出异议并经裁定的商标，不得再以相同的事实和理由申请裁定。

第二十九条 商标评审委员会做出维持或者撤销有争议的注册商标的终局裁定后，应当书面通知有关当事人。

## 第六章 商标使用的管理

第三十条 使用注册商标，有下列行为之一的，由商标局责令限期改正或者撤销其注册商标：

- ( 1 ) 自行改变注册商标的文字、图形或者其组合的；
- ( 2 ) 自行改变注册商标的注册人名义、地址或者其他注册事项的；
- ( 3 ) 自行转让注册商标的；
- ( 4 ) 连续三年停止使用的。

( 相关资料: [部门规章 2 篇](#) )

第三十一条 使用注册商标，其商品粗制滥造，以次充好，欺骗消费者的，由各级工商行政管理部门分别不同情况，责令限期改正，并可以予以通报或者处以罚款，或者由商标局撤销其注册商标。

( 相关资料: [部门规章 2 篇](#) )

第三十二条 注册商标被撤销的或者期满不再续展的，自撤销或者注销之日起一年内，商标局对与该商标相同或者近似的商标注册申请，不予核准。

第三十三条 违反本法第五条规定的，由地方工商行政管理部门责令限期申请注册，可以并处罚款。

第三十四条 使用未注册商标，有下列行为之一的，由地方工商行政管理部门予以制止，限期改正，并可以予以通报或者处以罚款：

- ( 1 ) 冒充注册商标的；
- ( 2 ) 违反本法第八条规定的；
- ( 3 ) 粗制滥造，以次充好，欺骗消费者的。

( 相关资料: [部门规章 7 篇](#) )

第三十五条 对商标局撤销注册商标的决定，当事人不服的，可以在收到通知十五天内申请复审，由商标评审委员会做出终局决定，并书面通知申请人。

( 相关资料: [部门规章 1 篇](#) )

第三十六条 对工商行政管理部门根据本法第三十一条、第三十三条、第三十四条的规定做出的罚款决定，当事人不服的，可以在收到通知十五天内，向人民法院起诉；期满不起诉又不履行的，由有关工商行政管理部门申请人民法院强制执行。

## 第七章 注册商标专用权的保护

第三十七条 注册商标的专用权，以核准注册的商标和核定使用的商品为限。

( 相关资料: [部门规章 3 篇](#) [案例 1 篇](#) )

第三十八条 有下列行为之一的，均属侵犯注册商标专用权：

- ( 1 ) 未经注册商标所有人的许可，在同一种商品或者类似商品上使用与其注册商标相同或者近似的商标的；
- ( 2 ) 擅自制造或者销售他人注册商标标识的；

( 3 ) 给他人的注册商标专用权造成其他损害的。

( 相关资料: [部门规章 3 篇](#) [司法解释 1 篇](#) [案例 3 篇](#) )

第三十九条 有本法第三十八条所列侵犯注册商标专用权行为之一的,被侵权人可以向侵权人所在地的县级以上工商行政管理部门要求处理。有关工商行政管理部门有权责令侵权人立即停止侵权行为,赔偿被侵权人的损失,赔偿额为侵权人在侵权期间因侵权所获得的利润或者被侵权人在被侵权期间因被侵权所受到的损失;对情节严重的,可以并处罚款。当事人不服的,可以在收到通知十五天内,向人民法院起诉;期满不起诉又不履行的,由有关工商行政管理部门申请人民法院强制执行。

对侵犯注册商标专用权的,被侵权人也可以直接向人民法院起诉。

( 相关资料: [部门规章 3 篇](#) [司法解释 1 篇](#) [案例 1 篇](#) )

第四十条 假冒他人注册商标,包括擅自制造或者销售他人注册商标标识的,除赔偿被侵权人的损失,可以并处罚款外,对直接责任人员由司法机关依法追究刑事责任。

( 相关资料: [部门规章 1 篇](#) [司法解释 1 篇](#) )

## 第八章 附则

第四十一条 申请商标注册和办理其他商标事宜的,应当缴纳费用,具体收费标准另定。

( 相关资料: [部门规章 1 篇](#) )

第四十二条 本法的实施细则,由国务院工商行政管理部门制定,报国务院批准施行。

第四十三条 本法自 1983 年 3 月 1 日起施行。1963 年 4 月 10 日国务院公布的《商标管理条例》同时废止;其他有关商标管理的规定,凡与本法抵触的,同时失效。

本法施行以前已经注册的商标继续有效。

【英文译本】 [Patent Law of the People's Republic of China](#) (1985)

【法规标题】 中华人民共和国专利法

【类别】 [专利/专利法](#)

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(发布日期：1992年9月4日 实施日期：1992年9月4日)修正

## 中华人民共和国专利法

(一九八四年三月十二日第六届全国人民代表大会常务委员会第四次会议通过

一九八四年三月十二日中华人民共和国主席令第十一号公布

一九八五年四月一日起施行)

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## 第一章 总 则

第一条 为了保护发明创造专利权，鼓励发明创造，有利于发明创造的推广应用，促进科学技术的发展，适应社会主义现代化建设的需要，特制定本法。

第二条 本法所称的发明创造是指发明、实用新型和外观设计。

第三条 中华人民共和国专利局受理和审查专利申请，对符合本法规定的发明创造授予专利权。

( 相关资料: [部门规章 1 篇](#) )

第四条 申请专利的发明创造涉及国家安全或者重大利益需要保密的，按照国家有关规定办理。

第五条 对违反国家法律、社会公德或者妨害公共利益的发明创造，不授予专利权。

( 相关资料: [部门规章 1 篇](#) )

第六条 执行本单位的任务或者主要是利用本单位的物质条件所完成的职务发明创造，申请专利的权利属于该单位；非职务发明创造，申请专利的权利属于发明人或者设计人。申请被批准后，全民所有制单位申请的，专利权归该单位持有；集体所有制单位或者个人申请的，专利权归该单位或者个人所有。

在中国境内的外资企业和中外合资经营企业的工作人员完成的职务发明创造，申请专利的权利属于该企业；非职务发明创造，申请专利的权利属于发明人或者设计人。申请被批准后，专利权归申请的企业或者个人所有。

专利权的所有人和持有人统称专利权人。

( 相关资料: [部门规章 1 篇](#) [案例 1 篇](#) )

第七条 对发明人或者设计人的非职务发明创造专利申请，任何单位或者个人不得压制。

第八条 两个以上单位协作或者一个单位接受其他单位委托的研究、设计任务所完成的发明创造，除另有协议的以外，申请专利的权利属于完成或者共同完成的

单位；申请被批准后，专利权归申请的单位所有或者持有。

( 相关资料: [部门规章 2 篇](#) )

第九条 两个以上的申请人分别就同样的发明创造申请专利的，专利授予最先申请的人。

( 相关资料: [部门规章 1 篇](#) [案例 1 篇](#) )

第十条 专利申请权和专利权可以转让。

全民所有制单位转让专利申请权或者专利权的，必须经上级主管机关批准。

中国单位或者个人向外国人转让专利申请权或者专利权的，必须经国务院有关主管部门批准。

转让专利申请权或者专利权的，当事人必须订立书面合同，经专利局登记和公告后生效。

第十一条 发明和实用新型专利权被授予后，除本法第十四条规定的以外，任何单位或者个人未经专利权人许可，都不得实施其专利，即不得为生产经营目的制造、使用或者销售其专利产品，或者使用其专利方法。

外观设计专利权被授予后，任何单位或者个人未经专利权人许可，都不得实施其专利，即不得为生产经营目的制造或者销售其外观设计专利产品。

第十二条 任何单位或者个人实施他人专利的，除本法第十四条规定的以外，都必须与专利权人订立书面实施许可合同，向专利权人支付专利使用费。被许可人无权允许合同规定以外的任何单位或者个人实施该专利。

第十三条 发明专利申请公布后，申请人可以要求实施其发明的单位或者个人支付适当的费用。

第十四条 国务院有关主管部门和省、自治区、直辖市人民政府根据国家计划，有权决定本系统内或者所管辖的全民所有制单位持有的重要发明创造专利允许指定的单位实施，由实施单位按照国家规定向持有专利权的单位支付使用费。

中国集体所有制单位和个人的专利，对国家利益或者公共利益具有重大意义，需要推广应用的，由国务院有关主管部门报国务院批准后，参照前款规定办理。

( 相关资料: [部门规章 1 篇](#) )

第十五条 专利权人有权在其专利产品或者该产品的包装上标明专利标记和专利号。

第十六条 专利权的所有单位 或者 持有单位应当对职务发明创造的发明人或者设计人给予奖励；发明创造专利实施后，根据其推广应用的范围和取得的经济效益，对发明人或者设计人给予奖励。

( 相关资料: [部门规章 2 篇](#) )

第十七条 发明人或者设计人有在专利文件中写明自己是发明人或者设计人的权利。

第十八条 在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利的，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，根据本法办理。

( 相关资料: [部门规章 1 篇](#) )

第十九条 在中国没有经常居所或者营业所的外国人、外国企业或者外国其他组织在中国申请专利和办理其他专利事务的，应当委托中华人民共和国国务院指定的专利代理机构办理。

中国单位或者个人在国内申请专利和办理其他专利事务的，可以委托专利代理机构办理。

( 相关资料: [部门规章 2 篇](#) [地方法规 3 篇](#) )

第二十条 中国单位 或者个人将其在国内完成的发明创造向外国申请专利的，应当首先向专利局申请专利，并经国务院有关主管部门同意后，委托国务院指定的专利代理机构办理。

( 相关资料: [部门规章 5 篇](#) [司法解释 1 篇](#) [地方法规 3 篇](#) )

第二十一条 在专利申请公布或者公告前，专利局工作人员及有关人员对其内容负有保密责任。

## 第二章 授予专利权的条件

第二十二条 授予专利权的发明和实用新型，应当具备新颖性、创造性和实用性。

新颖性，是指在申请日以前没有同样的发明或者实用新型在国内外出版物上公开发表过、在国内公开使用过或者以其他方式为公众所知，也没有同样的发明或者实用新型由他人向专利局提出过申请并且记载在申请日以后公布的专利申请文件

中。

创造性，是指同申请日以前已有的技术相比，该发明有突出的实质性特点和显著的进步，该实用新型有实质性特点和进步。

实用性，是指该发明或者实用新型能够制造或者使用，并且能够产生积极效果。

( 相关资料: [部门规章 1 篇 案例 1 篇](#) )

第二十三条 授予专利权的外观设计，应当同申请日以前在国内外出版物上公开发表过或者国内公开使用过的外观设计不相同或者不近似。

( 相关资料: [部门规章 1 篇](#) )

第二十四条 申请专利的发明创造在申请日以前六个月内，有下列情形之一的，不丧失新颖性：

- 一、在中国政府主办或者承认的国际展览会首次展出的；
- 二、在规定的学术会议或者技术会议上首次发表的；
- 三、他人未经申请人同意而泄露其内容的。

( 相关资料: [部门规章 2 篇](#) )

第二十五条 对下列各项，不授予专利权：

- 一、科学发现；
- 二、智力活动的规则和方法；
- 三、疾病的诊断和治疗方法；
- 四、食品、饮料和调味品；
- 五、药品和用化学方法获得的物质；
- 六、动物和植物品种；
- 七、用原子核变换方法获得的物质。

对上款第四项至第六项所列产品的生产方法，可以依照本法规定授予专利权。

( 相关资料: [部门规章 3 篇 裁判文书 1 篇](#) )

### 第三章 专利的申请

第二十六条 申请发明或者实用新型专利的，应当提交请求书、说明书及其摘要和权利要求书等文件。

请求书应当写明发明或者实用新型的名称，发明人或者设计人的姓名，申请人姓名或者名称、地址，以及其他事项。

说明书应当对发明或者实用新型作出清楚、完整的说明，以所属技术领域的技术人员能够实现为准；必要的时候，应当有附图。摘要应当简要说明发明或者实用新型的技术要点。

权利要求书应当以说明书为依据，说明要求专利保护的范围。

( 相关资料: [部门规章 1 篇](#) )

第二十七条 申请外观设计专利的，应当提交请求书以及该外观设计的图片或者照片等文件，并且应当写明使用该外观设计的产品及其所属的类别。

( 相关资料: [部门规章 2 篇](#) )

第二十八条 专利局收到专利申请文件之日为申请日。如果申请文件是邮寄的，以寄出的邮戳日为申请日。

第二十九条 外国申请人就同一发明或者实用新型在外国第一次提出专利申请之日起十二个月内，或者就同一外观设计在外国第一次提出专利申请之日起六个月内，又在中国提出申请的，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照相互承认优先权的原则，可以享有优先权，即以其在外国第一次提出申请之日为申请日。

申请人要求优先权，有本法第二十四条所列情形之一的，优先权的期限自该情形发生之日起计算。

( 相关资料: [部门规章 2 篇](#) )

第三十条 申请人要求优先权的，应当在申请的时候提出书面声明，写明在外国提出申请的申请日和受理该申请的国家，并且在三个月内提交经该国受理机关证明的该申请文件副本；未提出书面声明或者逾期未提交文件的，即被视为未要求优先权。

第三十一条 一件发明或者实用新型专利申请应当限于一项发明或者实用新型。属于一个总的发明构思的两项以上的发明或者实用新型，可以作为一件申请提出。

一件外观设计专利申请应当限于一种产品所使用的一项外观设计。用于同一类别并且成套出售或者使用的产品的两项以上的外观设计，可以作为一件申请提出。

( 相关资料: [部门规章 1 篇](#) )

第三十二条 申请人可以在被授予专利权之前随时撤回其专利申请。

第三十三条 申请人可以对其专利申请文件进行修改，但是不得超出原说明书记载的范围。（相关资料：[裁判文书 1 篇](#)）

#### 第四章 专利申请的审查和批准

第三十四条 专利局收到发明专利申请后，经初步审查认为符合本法要求的，自申请日起十八个月内，予以公布。专利局可以根据申请人的请求早日公布其申请。

第三十五条 发明专利申请自申请日起三年内，专利局可以根据申请人随时提出的请求，对其申请进行实质审查；申请人无正当理由逾期不请求实质审查的，该申请即被视为撤回。

专利局认为必要的时候，可以自行对发明专利申请进行实质审查。

（相关资料：[部门规章 1 篇](#)）

第三十六条 发明专利的申请人请求实质审查的时候，应当提交在申请日前与其发明有关的参考资料。

发明专利已经在外国提出过申请的，申请人请求实质审查的时候，应当提交该国为审查其申请进行检索的资料或者审查结果的资料；无正当理由不提交的，该申请即被视为撤回。

（相关资料：[部门规章 2 篇](#)）

第三十七条 专利局对发明专利申请进行实质审查后，认为不符合本法规定的，应当通知申请人，要求其在指定的期限内陈述意见，或者对其申请进行修改；无正当理由逾期不答复的，该申请即被视为撤回。

第三十八条 发明专利申请经申请人陈述意见或者进行修改后，专利局仍然认为不符合本法规定的，应当予以驳回。

第三十九条 发明专利申请经实质审查没有发现驳回理由的，专利局应当作出审定，予以公告，并通告申请人。

（相关资料：[法律 1 篇](#) [行政法规 1 篇](#) [部门规章 2 篇](#) [相关论文 2 篇](#)）

第四十条 专利局收到实用新型和外观设计专利申请后，经初步审查认为符合本法要求的，不再进行实质审查，即行公告，并通知申请人。

(相关资料: [法律 1 篇](#) [行政法规 1 篇](#) [部门规章 2 篇](#) [相关论文 2 篇](#))

第四十一条 专利申请自公告之日起三个月内，任何人都可以依照本法规定向专利局对该申请提出异议。专利局应当将异议的副本送交申请人，申请人应当在收到异议副本之日起三个月内提出书面答复；无正当理由逾期不提出书面答复的，该申请即被视为撤回。

(相关资料: [部门规章 1 篇](#))

第四十二条 专利局经审查认为异议成立的，应当作出驳回申请的决定，并通知异议人和申请人。

第四十三条 专利局设立专利复审委员会。申请人对专利局驳回申请的决定不服的，可以在收到通知之日起三个月内，向专利复审委员会请求复审。专利复审委员会复审后，作出决定，并通知申请人。

发明专利的申请人对专利复审委员会驳回复审请求的决定不服的，可以在收到通知之日起三个月内向人民法院起诉。

专利复审委员会对申请人关于实用新型和外观设计的复审请求所作出的决定为终局决定。

(相关资料: [部门规章 1 篇](#))

第四十四条 对专利申请无异议或者经审查异议不成立的，专利局应当作出授予专利权的决定，发给专利证书，并将有关事项予以登记和公告。

## 第五章 专利权的期限、终止和无效

第四十五条 发明专利权的期限为十五年，自申请日起计算。

实用新型和外观设计专利权的期限为五年，自申请日起计算，期满前专利权人可以申请续展三年。

专利权人享有优先权的，专利权的期限自在中国申请之日起计算。

(相关资料: [部门规章 1 篇](#))

第四十六条 专利权人应当自被授予专利权的当年开始缴纳年费。

第四十七条 有下列情形之一的，专利权在期限届满前终止：

- 一、没有按照规定缴纳年费的；
- 二、专利权人以书面声明放弃其专利权的。

专利权的终止，由专利局登记和公告。

第四十八条 专利权被授予后，任何单位或者个人认为该专利权的授予不符合本法规定的，都可以请求专利复审委员会宣告该专利权无效。

( 相关资料: [部门规章 2 篇](#) [司法解释 1 篇](#) [地方法规 1 篇](#) )

第四十九条 专利复审委员会对宣告专利权无效的请求进行审查，作出决定，并通知请求人和专利权人。宣告专利权无效的决定，由专利局登记和公告。

对专利复审委员会宣告发明专利无效或者维持发明专利权的决定不服的，可以在收到通知之日起三个月内向人民法院起诉。

专利复审委员会对宣告实用新型和外观设计专利权无效的请求所作出的决定为终局决定。

( 相关资料: [部门规章 1 篇](#) [司法解释 1 篇](#) )

第五十条 宣告无效的专利权视为自始即不存在。

## 第六章 专利实施的强制许可

第五十一条 专利权人负有自己在中国制造其专利产品、使用其专利方法或者许可他人在中国制造其专利产品、使用其专利方法的义务。

第五十二条 发明和实用新型专利权人自专利权被授予之日起满三年，无正当理由没有履行本法第五十一条规定的义务的，专利局根据具备实施条件的单位的申请，可以给予实施该专利的强制许可。

( 相关资料: [部门规章 1 篇](#) )

第五十三条 一项取得专利权的发明或者实用新型比前已经取得专利权的发明或者实用新型在技术上先进，其实施又有赖于前一发明或者实用新型的实施的，专利局根据后一专利权人的申请，可以给予实施前一发明或者实用新型的强制许可。

在依照前款规定给予实施强制许可的情形下，专利局根据前一专利权人的申请，也可以给予实施后一发明或者实用新型的强制许可。

( 相关资料: [部门规章 2 篇](#) )

第五十四条 依照本法规定申请实施强制许可的单位或者个人，应当提出未能以合理条件与专利权人签订实施许可合同的证明。

第五十五条 专利局作出的给予实施强制许可的决定，应当予以登记和公告。

第五十六条 取得实施强制许可的单位或者个人不享有独占的实施权，并且无权允许他人实施。

第五十七条 取得实施强制许可的单位或者个人应当付给专利权人合理的使用费，其数额由双方商定；双方不能达成协议的，由专利局裁决。

( 相关资料: [部门规章 1 篇](#) )

第五十八条 专利权人对专利局关于实施强制许可的决定或者关于实施强制许可的使用费的裁决不服的，可以在收到通知之日起三个月内向人民法院起诉。

## 第七章 专利权的保护

第五十九条 发明或者实用新型专利权的保护范围以其权利要求的内容为准，说明书及附图可以用于解释权利要求。

外观设计专利权的保护范围以表示在图片或者照片中的该外观设计专利产品为准。

( 相关资料: [案例 1 篇](#) )

第六十条 对未经专利权人许可，实施其专利的侵权行为，专利权人或者利害关系人可以请求专利管理机关进行处理，也可以直接向人民法院起诉。专利管理机关处理的时候，有权责令侵权人停止侵权行为，并赔偿损失；当事人不服的，可以在收到通知之日起三个月内向人民法院起诉；期满不起诉又不履行的，专利管理机关可以请求人民法院强制执行。

在发生侵权纠纷的时候，如果发明专利是一项产品的制造方法，制造同样产品的单位或者个人应当提供其产品制造方法的证明。

( 相关资料: [部门规章 2 篇](#) )

第六十一条 侵犯专利权的诉讼时效为二年，自专利权人或者利害关系人得知或者应当得知侵权行为之日起计算。

( 相关资料: [部门规章 1 篇](#) )

第六十二条 有下列情形之一的，不视为侵犯专利权：

一、专利权人制造或者经专利权人许可制造的专利产品售出后，使用或者销售该产品的；

二、使用或者销售不知道是未经专利权人许可而制造并售出的专利产品的；

三、在专利申请日前已经制造相同产品、使用相同方法或者已经作好制造、使用的必要准备，并且仅在原有范围内继续制造、使用的；

四、临时通过中国领土、领水、领空的外国运输工具，依照其所属国同中国签订的协议或者共同参加的国际条约，或者依照互惠原则，为运输工具自身需要而在其装置和设备中使用有关专利的；

五、专为科学研究和实验而使用有关专利的。

第六十三条 假冒他人专利的，依照本法第六十条的规定处理；情节严重的，对直接责任的人员比照[刑法第一百二十七条](#)的规定追究刑事责任。

(相关资料: [相关论文 1 篇](#))

第六十四条 违反本法第二十条规定，擅自向外国申请专利，泄露国家重要机密的，由所在单位或者上级主管机关给予行政处分；情节严重的，依法追究刑事责任。

(相关资料: [部门规章 1 篇](#))

第六十五条 侵夺发明人或者设计人的非职务发明创造专利申请权和本法规定的其他权益的，由所在单位或者上级主管机关给予行政处分。

第六十六条 专利局工作人员及有关国家工作人员徇私舞弊的，由专利局或者有关主管机关给予行政处分；情节严重的，比照[刑法第一百八十八条](#)规定追究刑事责任。

## 第八章 附 则

第六十七条 向专利局申请专利和办理其他手续，应当按照规定缴纳费用。

(相关资料: [部门规章 2 篇](#))

第六十八条 本法实施细则由专利局制订，报国务院批准后施行。

(相关资料: [部门规章 1 篇](#))

第六十九条 本法自一九八五年四月一日起施行。

【英文译本】 [Copyright Law of the People's Republic of China](#) 1990

【法规标题】 中华人民共和国著作权法

【类别】 [著作权与软件保护/著作权](#)

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【全文】

\*注：本篇法规已被 [《全国人民代表大会常务委员会关于修改〈中华人民共和国著作权法〉的决定》](#) ( 发布日期：2001 年 10 月 27 日 实施日期：2001 年 10 月 27 日 ) 修改

中华人民共和国著作权法  
( 1990 年 9 月 7 日第七届全国人民代表大会  
常务委员会第十五次会议通过 )  
中华人民共和国主席令  
第三十一号

( 相关资料: [法律 2 篇](#) [行政法规 13 篇](#) [部门规章 108 篇](#) [司法解释 18 篇](#) [其他规范性文件 1 篇](#) [地方法规 55 篇](#) [案例 15 篇](#) [裁判文书 177 篇](#) [相关论文 42 篇](#) )

《中华人民共和国著作权法》已由中华人民共和国第七届全国人民代表大会常务委员会第十五次会议于 1990 年 9 月 7 日通过，现予公布，自 1991 年 6 月 1 日起施行。

中华人民共和国主席 杨尚昆

1990年9月7日

## 第一章 总则

第一条 为保护文学、艺术和科学作品作者的著作权，以及与著作权有关的权益，鼓励有益于社会主义精神文明、物质文明建设的作品的创作和传播，促进社会主义文化和科学事业的发展与繁荣，根据宪法制定本法。

(相关资料: [相关论文 2 篇](#))

第二条 中国公民、法人或者非法人单位的作品，不论是否发表，依照本法享有著作权。

外国人的作品首先在中国境内发表的，依照本法享有著作权。

外国人在中国境外发表的作品，根据其所属国同中国签订的协议或者共同参加的国际条约享有的著作权，受本法保护。

(相关资料: [行政法规 1 篇](#) [部门规章 1 篇](#) [司法解释 1 篇](#) [案例 1 篇](#) [裁判文书 20 篇](#) [相关论文 1 篇](#))

第三条 本法所称的作品，包括以下列形式创作的文学、艺术和自然科学、社会科学、工程技术等作品：

- (一) 文字作品；
- (二) 口述作品；
- (三) 音乐、戏剧、曲艺、舞蹈作品；
- (四) 美术、摄影作品；
- (五) 电影、电视、录像作品；
- (六) 工程设计、产品设计图纸及其说明；
- (七) 地图、示意图等图形作品；
- (八) 计算机软件；
- (九) 法律、行政法规规定的其他作品。

(相关资料: [部门规章 1 篇](#) [司法解释 1 篇](#) [案例 1 篇](#) [裁判文书 17 篇](#) [相关论文 1 篇](#))

第四条 依法禁止出版、传播的作品，不受本法保护。

著作权人行使著作权，不得违反宪法和法律，不得损害公共利益。

(相关资料: [裁判文书 1 篇](#) [相关论文 1 篇](#))

第五条 本法不适用于：

(一) 法律、法规，国家机关的决议、决定、命令和其他具有立法、行政、司法性质的文件，及其官方正式译文；

(二) 时事新闻；

(三) 历法、数表、通用表格和公式。

(相关资料: [案例 1 篇](#) [裁判文书 3 篇](#))

第六条 民间文学艺术作品的著作权保护办法由国务院另行规定。

(相关资料: [裁判文书 2 篇](#))

第七条 科学技术作品中应当由专利法、技术合同法等法律保护的，适用专利法、技术合同法等法律的规定。

第八条 国务院著作权行政管理部门主管全国的著作权管理工作；各省、自治区、直辖市人民政府的著作权行政管理部门主管本行政区域的著作权管理工作。

(相关资料: [部门规章 1 篇](#) [相关论文 1 篇](#))

## 第二章 著作权

### 第一节 著作权人及其权利

第九条 著作权人包括：

(一) 作者；

(二) 其他依照本法享有著作权的公民、法人或者非法人单位。

(相关资料: [部门规章 1 篇](#) [裁判文书 5 篇](#))

第十条 著作权包括下列人身权和财产权：

(一) 发表权，即决定作品是否公之于众的权利；

(二) 署名权，即表明作者身份，在作品上署名的权利；

(三) 修改权，即修改或者授权他人修改作品的权利；

(四) 保护作品完整权，即保护作品不受歪曲、篡改的权利；

(五) 使用权和获得报酬权，即以复制、表演、播放、展览、发行、摄制电

影、电视、录像或者改编、翻译、注释、编辑等方式使用作品的权利；以及许可他人以上述方式使用作品，并由此获得报酬的权利。

## 第二节 著作权归属

( 相关资料: [部门规章 2 篇](#) [司法解释 1 篇](#) [案例 3 篇](#) [裁判文书 33 篇](#) )

第十一条 著作权属于作者，本法另有规定的除外。

创作作品的公民是作者。

由法人或者非法人单位主持，代表法人或者非法人单位意志创作，并由法人或者非法人单位承担责任的作品，法人或者非法人单位视为作者。

如无相反证明，在作品上署名的公民、法人或者非法人单位为作者。

( 相关资料: [部门规章 1 篇](#) [案例 2 篇](#) [裁判文书 27 篇](#) )

第十二条 改编、翻译、注释、整理已有作品而产生的作品，其著作权由改编、翻译、注释、整理人享有，但行使著作权时，不得侵犯原作品的著作权。

( 相关资料: [部门规章 2 篇](#) [司法解释 1 篇](#) [案例 1 篇](#) [裁判文书 8 篇](#) )

第十三条 两人以上合作创作的作品，著作权由合作作者共同享有。没有参加创作的人，不能成为合作作者。

合作作品可以分割使用的，作者对各自创作的部分可以单独享有著作权，但行使著作权时不得侵犯合作作品整体的著作权。

( 相关资料: [裁判文书 2 篇](#) )

第十四条 编辑作品由编辑人享有著作权，但行使著作权时，不得侵犯原作品的著作权。

编辑作品中可以单独使用的作品的作者有权单独行使其著作权。

( 相关资料: [行政法规 1 篇](#) [裁判文书 5 篇](#) )

第十五条 电影、电视、录像作品的导演、编剧、作词、作曲、摄影等作者享有署名权，著作权的其他权利由制作电影、电视、录像作品的制片者享有。

电影、电视、录像作品中剧本、音乐等可以单独使用的作品的作者有权单独行使其著作权。

( 相关资料: [案例 2 篇](#) [裁判文书 4 篇](#) [相关论文 1 篇](#) )

第十六条 公民为完成法人或者非法人单位工作任务所创作的作品是职务作品，除本条第二款的规定以外，著作权由作者享有，但法人或者非法人单位有权在其业务范围内优先使用。作品完成两年内，未经单位同意，作者不得许可第三人以与单

位使用的相同方式使用该作品。

有下列情形之一的职务作品，作者享有署名权，著作权的其他权利由法人或者非法人单位享有，法人或者非法人单位可以给予作者奖励：

(一) 主要是利用法人或者非法人单位的物质技术条件创作，并由法人或者非法人单位承担责任的工程设计、产品设计图纸及其说明、计算机软件、地图等职务作品；

(二) 法律、行政法规规定或者合同约定著作权由法人或者非法人单位享有的职务作品。

(相关资料: [行政法规 1 篇](#) [司法解释 2 篇](#) [裁判文书 15 篇](#) [相关论文 2 篇](#))

第十七条 受委托创作的作品，著作权的归属由委托人和受托人通过合同约定。合同未作明确约定或者没有订立合同的，著作权属于受托人。

(相关资料: [司法解释 1 篇](#) [案例 2 篇](#) [裁判文书 9 篇](#) [相关论文 1 篇](#))

第十八条 美术等作品原件所有权的转移，不视为作品著作权的转移，但美术作品原件的展览权由原件所有人享有。

(相关资料: [行政法规 1 篇](#) [裁判文书 1 篇](#) [相关论文 1 篇](#))

第十九条 著作权属于公民的，公民死亡后，其作品的使用权和获得报酬权在本法规定的保护期内，依照[继承法](#)的规定转移。

著作权属于法人或者非法人单位的，法人或者非法人单位变更、终止后，其作品的使用权和获得报酬权在本法规定的保护期内，由承受其权利义务的法人或者非法人单位享有；没有承受其权利义务的法人或者非法人单位的，由国家享有。

### 第三节 权利的保护期

(相关资料: [裁判文书 2 篇](#))

第二十条 作者的署名权、修改权、保护作品完整权的保护期不受限制。

(相关资料: [行政法规 1 篇](#))

第二十一条 公民的作品，其发表权、使用权和获得报酬权的保护期为作者终生及其死亡后五十年，截止于作者死亡后第五十年的 12 月 31 日；如果是合作作品，截止于最后死亡的作者死亡后的第五十年的 12 月 31 日。

法人或者非法人单位的作品、著作权(署名权除外)由法人或者非法人单位享有的职务作品，其发表权、使用权和获得报酬权的保护期为五十年，截止于作品首次发表后第五十年的 12 月 31 日，但作品自创作完成后五十年内未发表的，本法

不再保护。

电影、电视、录像和摄影作品的发表权、使用权和获得报酬权的保护期为五十年，截止于作品首次发表后第五十年的 12 月 31 日，但作品自创作完成后五十年内未发表的，本法不再保护。

#### 第四节 权利的限制

( 相关资料: [行政法规 2 篇](#) [裁判文书 3 篇](#) )

第二十二条 在下列情况下使用作品，可以不经著作权人许可，不向其支付报酬，但应当指明作者姓名、作品名称，并且不得侵犯著作权人依照本法享有的其他权利：

- ( 一 ) 为个人学习、研究或者欣赏，使用他人已经发表的作品；
- ( 二 ) 为介绍、评论某一作品或者说明某一问题，在作品中适当引用他人已经发表的作品；
- ( 三 ) 为报道时事新闻，在报纸、期刊、广播、电视节目或者新闻纪录影片中引用已经发表的作品；
- ( 四 ) 报纸、期刊、广播电台、电视台刊登或者播放其他报纸、期刊、广播电台、电视台已经发表的社论、评论员文章；
- ( 五 ) 报纸、期刊、广播电台、电视台刊登或者播放在公众集会上发表的讲话，但作者声明不许刊登、播放的除外；
- ( 六 ) 为学校课堂教学或者科学研究，翻译或者少量复制已经发表的作品，供教学或者科研人员使用，但不得出版发行；
- ( 七 ) 国家机关为执行公务使用已经发表的作品；
- ( 八 ) 图书馆、档案馆、纪念馆、博物馆、美术馆等为陈列或者保存版本的需要，复制本馆收藏的作品；
- ( 九 ) 免费表演已经发表的作品；
- ( 十 ) 对设置或者陈列在室外公共场所的艺术作品进行临摹、绘画、摄影、录像；
- ( 十一 ) 将已经发表的汉族文字作品翻译成少数民族文字在国内出版发行；
- ( 十二 ) 将已经发表的作品改成盲文出版。

以上规定适用于对出版者、表演者、录音录像制作者、广播电台、电视台的权

利的限制。(相关资料:[行政法规 1 篇](#) [司法解释 1 篇](#) [地方法规 1 篇](#) [案例 1 篇](#) [裁判文书 9 篇](#) [相关论文 2 篇](#))

### 第三章 著作权许可使用合同

第二十三条 使用他人作品应当同著作权人订立合同或者取得许可，本法规定可以不经许可的除外。

(相关资料:[部门规章 1 篇](#) [案例 1 篇](#) [裁判文书 6 篇](#))

第二十四条 合同包括下列主要条款：

- (一) 许可使用作品的方式；
- (二) 许可使用的权利是专用使用权或者非专用使用权；
- (三) 许可使用的范围、期间；
- (四) 付酬标准和办法；
- (五) 违约责任；
- (六) 双方认为需要约定的其他内容。

(相关资料:[裁判文书 1 篇](#))

第二十五条 合同中著作权人未明确许可的权利，未经著作权人许可，另一方当事人不得行使。

(相关资料:[相关论文 1 篇](#))

第二十六条 合同的有效期限不超过十年。合同期满可以续订。

第二十七条 使用作品的付酬标准由国务院著作权行政管理部门会同有关部门制定。

合同另有约定的，也可以按照合同支付报酬。

第二十八条 出版者、表演者、录音录像制作者、广播电台、电视台等依照本法取得他人的著作权使用权的，不得侵犯作者的署名权、修改权、保护作品完整权和获得报酬权。

### 第四章 出版、表演、录音录像、播放

#### 第一节 图书、报刊的出版

第二十九条 图书出版者出版图书应当和著作权人订立出版合同，并支付报酬。  
(相关资料: [行政法规 1 篇](#) [裁判文书 2 篇](#))

第三十条 图书出版者对著作权人交付出版的作品，在合同约定期间享有专有出版权。合同约定图书出版者享有专有出版权的期限不得超过十年，合同期满可以续订。

图书出版者在合同约定期间享有的专有出版权受法律保护，他人不得出版该作品。

(相关资料: [行政法规 1 篇](#))

第三十一条 著作权人应当按照合同约定期限交付作品。图书出版者应当按照合同约定的出版质量、期限出版图书。

图书出版者不按照合同约定期限出版，应当依照本法第四十七条的规定承担民事责任。

图书出版者重印、再版作品的，应当通知著作权人，并支付报酬。图书脱销后，图书出版者拒绝重印、再版的，著作权人有权终止合同。

(相关资料: [行政法规 1 篇](#))

第三十二条 著作权人向报社、杂志社投稿的，自稿件发出之日起十五日内未收到报社通知决定刊登的，或者自稿件发出之日起三十日内未收到杂志社通知决定刊登的，可以将同一作品向其他报社、杂志社投稿。双方另有约定的除外。

作品刊登后，除著作权人声明不得转载、摘编的外，其他报刊可以转载或者作为文摘、资料刊登，但应当按照规定向著作权人支付报酬。

(相关资料: [行政法规 1 篇](#) [部门规章 7 篇](#) [案例 1 篇](#) [裁判文书 4 篇](#) [相关论文 1 篇](#))

第三十三条 图书出版者经作者许可，可以对作品修改、删节。

报社、杂志社可以对作品作文字性修改、删节，对内容的修改，应当经作者许可。

(相关资料: [行政法规 1 篇](#))

第三十四条 出版改编、翻译、注释、整理、编辑已有作品而产生的作品，应当向改编、翻译、注释、整理、编辑作品的著作权人和原作品的著作权人支付报酬。

## 第二节 表演

第三十五条 表演者(演员、演出单位)使用他人未发表的作品演出，应当取得著作权人许可，并支付报酬。

表演者使用他人已发表的作品进行营业性演出，可以不经著作权人许可，但应当按照规定支付报酬；著作权人声明不许使用的不得使用。

表演者使用改编、翻译、注释、整理已有作品而产生的作品进行营业性演出，应当按照规定向改编、翻译、注释、整理作品的著作权人和原作品的著作权人支付报酬。

表演者为制作录音录像和广播、电视节目进行表演使用他人作品的，适用本法第三十七条、第四十条的规定。

( 相关资料: [行政法规 1 篇](#) [部门规章 4 篇](#) [裁判文书 5 篇](#) [相关论文 1 篇](#) )

第三十六条 表演者对其表演享有下列权利：

- ( 一 ) 表明表演者身份；
- ( 二 ) 保护表演形象不受歪曲；
- ( 三 ) 许可他人从现场直播；
- ( 四 ) 许可他人为营利目的录音录像，并获得报酬。

### 第三节 录音录像

( 相关资料: [行政法规 1 篇](#) [裁判文书 2 篇](#) )

第三十七条 录音制作者使用他人未发表的作品制作录音制品，应当取得著作权人的许可，并支付报酬。使用他人已发表的作品制作录音制品，可以不经著作权人许可，但应当按照规定支付报酬；著作权人声明不许使用的不得使用。

录像制作者使用他人作品制作录像制品，应当取得著作权人的许可，并支付报酬。

录音录像制作者使用改编、翻译、注释、整理已有作品而产生的作品，应当向改编、翻译、注释、整理作品的著作权人和原作品的著作权人支付报酬。

( 相关资料: [行政法规 1 篇](#) [部门规章 5 篇](#) [裁判文书 3 篇](#) [相关论文 1 篇](#) )

第三十八条 录音录像制作者制作录音录像制品，应当同表演者订立合同，并支付报酬。

( 相关资料: [裁判文书 1 篇](#) )

第三十九条 录音录像制作者对其制作的录音录像制品，享有许可他人复制发行并获得报酬的权利。该权利的保护期为五十年，截止于该制品首次出版后第五十年的 12 月 31 日。

被许可复制发行的录音录像制作者还应当按照规定向著作权人和表演者支付报

酬。

#### 第四节 广播电台、电视台播放

( 相关资料: [行政法规 1 篇](#) [部门规章 2 篇](#) [裁判文书 5 篇](#) )

第四十条 广播电台、电视台使用他人未发表的作品制作广播、电视节目，应当取得著作权人的许可，并支付报酬。

广播电台、电视台使用他人已发表的作品制作广播、电视节目，可以不经著作权人许可，但著作权人声明不许使用的不得使用；并且除本法规定可以不支付报酬的以外，应当按照规定支付报酬。

广播电台、电视台使用改编、翻译、注释、整理已有作品而产生的作品制作广播、电视节目，应当向改编、翻译、注释、整理作品的著作权人和原作品的著作权人支付报酬。

( 相关资料: [行政法规 1 篇](#) [部门规章 2 篇](#) [案例 1 篇](#) [裁判文书 1 篇](#) [相关论文 1 篇](#) )

第四十一条 广播电台、电视台制作广播、电视节目，应当同表演者订立合同，并支付报酬。

第四十二条 广播电台、电视台对其制作的广播、电视节目，享有下列权利：

- ( 一 ) 播放；
- ( 二 ) 许可他人播放，并获得报酬；
- ( 三 ) 许可他人复制发行其制作的广播、电视节目，并获得报酬。

前款规定的权利的保护期为五十年，截止于该节目首次播放后第五十年的 1 2 月 3 1 日。

被许可复制发行的录音录像制作者还应当按照规定向著作权人和表演者支付报酬。

( 相关资料: [行政法规 1 篇](#) [部门规章 1 篇](#) [裁判文书 2 篇](#) )

第四十三条 广播电台、电视台非营业性播放已经出版的录音制品，可以不经著作权人、表演者、录音制作者许可，不向其支付报酬。

( 相关资料: [裁判文书 2 篇](#) [相关论文 2 篇](#) )

第四十四条 电视台播放他人的电影、电视和录像，应当取得电影、电视制片者和录像制作者的许可，并支付报酬。( 相关资料: [案例 2 篇](#) [相关论文 1 篇](#) )

#### 第五章 法律责任

第四十五条 有下列侵权行为的，应当根据情况，承担停止侵害、消除影响、公开赔礼道歉、赔偿损失等民事责任：

- (一) 未经著作权人许可，发表其作品的；
- (二) 未经合作作者许可，将与他人合作创作的作品当作自己单独创作作品发表的；
- (三) 没有参加创作，为谋取个人名利，在他人作品上署名的；
- (四) 歪曲、篡改他人作品的；
- (五) 未经著作权人许可，以表演、播放、展览、发行、摄制电影、电视、录像或者改编、翻译、注释、编辑等方式使用作品的，本法另有规定的除外；
- (六) 使用他人作品，未按照规定支付报酬的；
- (七) 未经表演者许可，从现场直播其他表演的；
- (八) 其他侵犯著作权以及与著作权有关的权益的行为。

(相关资料: [司法解释 1 篇](#) [地方法规 1 篇](#) [案例 7 篇](#) [裁判文书 64 篇](#) [相关论文 2 篇](#))

第四十六条 有下列侵权行为的，应当根据情况，承担停止侵害、消除影响、公开赔礼道歉、赔偿损失等民事责任，并可以由著作权行政管理部门给予没收非法所得、罚款等行政处罚：

- (一) 剽窃、抄袭他人作品的；
- (二) 未经著作权人许可，以营利为目的，复制发行其作品的；
- (三) 出版他人享有专有出版权的图书的；
- (四) 未经表演者许可，对其表演制作录音录像出版的；
- (五) 未经录音录像制作者许可，复制发行其制作的录音录像的；
- (六) 未经广播电台、电视台许可，复制发行其制作的广播、电视节目的；
- (七) 制作、出售假冒他人署名的美术作品的。

(相关资料: [行政法规 1 篇](#) [部门规章 3 篇](#) [司法解释 2 篇](#) [地方法规 4 篇](#) [案例 6 篇](#) [裁判文书 53 篇](#) [相关论文 1 篇](#))

第四十七条 当事人不履行合同义务或者履行合同义务不符合约定条件的，应当依照[民法通则](#)有关规定承担民事责任。

(相关资料: [地方法规 1 篇](#) [裁判文书 5 篇](#) [相关论文 1 篇](#))

第四十八条 著作权侵权纠纷可以调解，调解不成或者调解达成协议后一方反悔的，可以向人民法院起诉。当事人不愿调解的，也可以直接向人民法院起诉。

( 相关资料: [裁判文书 5 篇](#) )

第四十九条 著作权合同纠纷可以调解，也可以依据合同中的仲裁条款或者事后达成的书面仲裁协议，向著作权仲裁机构申请仲裁。

对于仲裁裁决，当事人应当履行。当事人一方不履行仲裁裁决的，另一方可以申请人民法院执行。

受申请的人民法院发现仲裁裁决违法的，有权不予执行人民法院不予执行的，当事人可以就合同纠纷向人民法院起诉。

当事人没有在合同中订立仲裁条款，事后又没有书面仲裁协议的，可以直接向人民法院起诉。

( 相关资料: [裁判文书 1 篇](#) )

第五十条 当事人对行政处罚不服的，可以在收到行政处罚决定书三个月内向人民法院起诉，期满不起诉又不履行的，著作权行政管理部门可以申请人民法院执行。( 相关资料: [地方法规 1 篇](#) [相关论文 1 篇](#) )

## 第六章 附则

第五十一条 本法所称的著作权与版权系同义语。

( 相关资料: [地方法规 1 篇](#) )

第五十二条 本法所称的复制，指以印刷、复印、临摹、拓印、录音、录像、翻录、翻拍等方式将作品制作一份或者多份的行为。

按照工程设计、产品设计图纸及其说明进行施工、生产工业品，不属于本法所称的复制。

( 相关资料: [司法解释 1 篇](#) [裁判文书 3 篇](#) )

第五十三条 计算机软件的保护办法由国务院另行规定。

( 相关资料: [裁判文书 1 篇](#) )

第五十四条 本法的实施条例由国务院著作权行政管理部门制定，报国务院批准后施行。

( 相关资料: [行政法规 1 篇](#) )

第五十五条 本法规定的著作权人和出版者、表演者、录音录像制作者、广播电台、电视台的权利，在本法施行之日尚未超过本法规定的保护期的，依照本法予以保护。

本法施行前发生的侵权或者违约行为，依照侵权或者违约行为发生时的有关规定和政策处理。

第五十六条 本法自1991年6月1日起施行。

## Excerpts of the Criminal Law of the People's Republic of China

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(Adopted at the Second Session of the Fifth National People's Congress on July 1, 1979,  
Revised at the Fifth Session of the Eighth National People's Congress on March 14,  
1997)

### SECTION 7 CRIMES OF INFRINGING ON INTELLECTUAL PROPERTY RIGHTS

Article 213 Whoever, without permission from the owner of a registered trademark, uses a trademark which is identical with the registered trademark on the same kind of commodities shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Article 214 Whoever knowingly sells commodities bearing counterfeit registered trademarks shall, if the amount of sales is relatively large, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the amount of sales is huge, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Article 215 Whoever forges or without authorization of another makes representations of the person's registered trademarks or sells such representations shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined; if the circumstances are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined.

Article 216 Whoever counterfeits the patent of another shall, if the circumstances are serious, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.

Article 217 Whoever, for the purpose of making profits, commits any of the following acts of infringement on copyright shall, if the amount of illegal gains is relatively large, or if there are other serious circumstances, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the amount of illegal gains is huge or if there are other especially serious circumstances, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined:

(1) reproducing and distributing a written work, musical work, motion picture, television programme or other visual works, computer software or other works without permission of the copyright owner;

(2) publishing a book of which the exclusive right of publication is enjoyed by another person;

(3) reproducing and distributing an audio or video recording produced by another person without permission of the producer; or

(4) producing or selling a work of fine art with forged signature of another painter.

Article 218 Whoever, for the purpose of making profits, knowingly sells works reproduced by infringing on the copyright of the owners as mentioned in Article 217 of this Law shall, if the amount of illegal gains is huge, be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined.

Article 219 Whoever commits any of the following acts of infringing on business secrets and thus causes heavy losses to the obligee shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined; if the consequences are especially serious, he shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined:

(1) obtaining an obligee's business secrets by stealing, luring, coercion or any other illegitimate means;

(2) disclosing, using or allowing another to use the business secrets obtained from the obligee by the means mentioned in the preceding paragraph; or

(3) in violation of the agreement on or against the obligee's demand for keeping business secrets, disclosing, using or allowing another person to use the business secrets he has.

Whoever obtains, uses or discloses another's business secrets, which he clearly knows or ought to know falls under the categories of the acts listed in the preceding paragraph, shall be deemed an offender who infringes on business secrets.

"Business secrets" as mentioned in this Article refers to technology information or business information which is unknown to the public, can bring about economic benefits to the obligee, is of practical use and with regard to which the obligee has adopted secret-keeping measures.

"Obligee" as mentioned in this Article refers to the owner of business secrets and the person who is permitted by the owner to use the business secrets.

Article 220 Where a unit commits any of the crimes mentioned in the Articles from 213 through 219 of this Section, it shall be fined, and the persons who are directly in charge and the other persons who are directly responsible for the crime shall be punished in accordance with the provisions of the Articles respectively.

Source: Congressional – Executive Commission on China

Available at: <http://www.cecc.gov/pages/newLaws/criminalLawENG.php>

## Interpretation by the Supreme People's Court and the Supreme People's Procuratorate on Several Issues of Concrete Application of Laws in Handling Criminal Cases of Infringing Intellectual Property

(Adopted at the 1331st Session of the Judicial Committee of the Supreme People's Court on November 2, 2004 and the 28th Session of the Tenth Procuratorial Committee of the Supreme People's Procuratorate on November 11, 2004 and to be effective as of December 22, 2004.)

To punish criminal acts of infringing on intellectual property in accordance with law and to maintain the order of the socialist market economy, some concrete problems regarding law application to handling criminal cases involving infringement on intellectual property are hereby interpreted as follows in accordance with applicable provisions of the Criminal Law of the People's Republic of China ("the Criminal Law"):

**Article 1** Using an identical trademark on the same merchandise without permission of its registered owner in any of the following circumstances falls under the definition of "the circumstances are serious" stipulated in Article 213 of the Criminal Law and shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined for committing the crime of forging registered trademarks:

- (1) the amount of illegal business volume being more than RMB 50,000 or that of illegal gains being more than RMB 30,000;
- (2) forging more than two registered trademarks, the amount of illegal business volume being more than RMB 30,000 or that of illegal gains being more than RMB 20,000;
- (3) other circumstances of a serious nature.

Whoever having any of the following acts that falls under the definition of "the circumstances are especially serious" stipulated in Article 213 of the Criminal Law shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined for committing the crime of forging registered trademarks:

- (1) the amount of illegal business volume being more than RMB 250,000 or that of illegal gains being more than RMB 150,000;
- (2) forging more than two registered trademarks, the amount of illegal business volume being more than RMB 150,000 or that of illegal gains being more than RMB 100,000;
- (3) other circumstances of an especially serious nature.

**Article 2** Whoever knowingly sells commodities bearing counterfeited registered

trademarks, if the amount of sales is more than RMB 50,000, and thus falls under the definition of "the amount of sales is relatively large" stipulated in Article 214 of the Criminal Law shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined for committing the crime of selling commodities bearing counterfeited registered trademarks.

Whoever selling such commodities of more than RMB 250,000 in value falls under the definition of "the amount of sales is huge" stipulated in Article 214 of the Criminal Law and shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined for the crime of selling commodities bearing counterfeited registered trademarks.

**Article 3** Whoever forges or makes representations of another person's registered trademarks without authorization of the person or sells such representations in any of the following circumstances and thus falls under the definition of "the circumstances are serious" stipulated in Article 215 of the Criminal Law shall be sentenced to fixed-term imprisonment of not more than three years, criminal detention or public surveillance and shall also, or shall only, be fined for committing the crime of illegally making registered trademarks and selling illegally-made registered trademarks:

(1) the amount of the representations of other person's registered trademarks forged or made without authorization or that of the sold representations of other person's registered trademarks forged or made without authorization being more than 20,000 copies, or the amount of illegal business volume being more than RMB 50,000, or the amount of illegal gains being more than RMB 30,000;

(2) the amount of the representations of other person's registered trademarks forged or made without authorization or that of the sold representations of more than two of other person's registered trademarks forged or made without authorization being more than 10,000 copies, or the amount of illegal business volume being more than RMB 30,000, or the amount of illegal gains being more than RMB 20,000;

(3) other circumstances of a serious nature.

Whoever having any of the following acts that falls under the definition of "circumstances of an especially serious nature" stipulated in Article 215 of the Criminal Law shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined for committing the crime of illegally making registered trademarks and selling illegally-made registered trademarks:

(1) the amount of the representations of other person's registered trademarks forged or made without authorization or that of the sold representations of other person's registered trademarks forged or made without authorization being more than 100,000 copies, or the amount of illegal business volume being more than RMB 250,000, or the amount of illegal gains being more than RMB 150,000;

(2) the amount of the representations of other person's registered trademarks forged or made without authorization or that of the sold representations of more than two of other person's registered trademarks forged or made without authorization being more than 50,000 copies, or the amount of illegal business volume being more than RMB 150,000, or the amount of illegal gains being more than RMB 100,000;

(3) other circumstances of an especially serious nature.

**Article 4** Whoever counterfeits the patent of another person in any of the following circumstances and thus falls under the definition of "the circumstances are serious" stipulated in Article 216 of the Criminal Law shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined for committing the crime of counterfeiting the patent of another person:

(1) the amount of illegal business volume being more than RMB 200,000 or that of illegal gains being more than RMB 100,000;

(2) causing direct economic loss of more than RMB 500,000 to the owner of patent;

(3) counterfeiting more than two patents, the amount of illegal business volume being more than RMB 100,000 or that of illegal gains being more than RMB 50,000;

(4) other circumstances of a serious nature.

**Article 5** Whoever, for the purpose of making profits, commits any of the acts of infringement on copyright mentioned in Article 217 of the Criminal Law, if the amount of illegal gains is more than RMB 30,000, and thus falls under the definition of "the amount of illegal gains is relatively large"; or whoever has any of the following acts and thus falls under the definition of "there are other serious circumstances" shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined for committing the crime of infringing on copyright:

(1) the amount of illegal business volume being more than RMB 50,000;

(2) reproducing and distributing more than 1,000 illegal copies of a written work, musical work, motion picture, television program or other visual works, computer software or other works without permission of the copyright owner;

(3) other circumstances of a serious nature.

Whoever, for the purpose of making profits, commits any of the acts of infringement on copyright mentioned in Article 217 of the Criminal Law, if the amount of illegal gains is more than RMB 150,000, and thus falls under the definition of "the amount of illegal gains is huge"; or whoever has any of the following acts and thus falls under the definition of "there are other especially serious circumstances" shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined for committing the crime of infringing on copyright:

- (1) the amount of illegal business volume being more than RMB 250,000;
- (2) reproducing and distributing more than 5,000 illegal copies of a written work, musical work, motion picture, television program or other visual works, computer software or other works without permission of the copyright owner;
- (3) other circumstances of an especially serious nature.

**Article 6** Whoever, for the purpose of making profits, commits any of the acts stipulated in Article 218 of the Criminal Law, if the amount of illegal gains is more than RMB 100,000, and thus falls under the definition of "the amount of illegal gains is huge" shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined for committing the crime of selling works reproduced by infringing on the copyright:

**Article 7** Whoever commits any of the acts stipulated in Article 219 of the Criminal Law to cause losses of more than RMB 500,000 to the obligee of business secrets and thus falls under the definition of "causing heavy losses to the obligee of business secrets" shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention and shall also, or shall only, be fined for committing the crime of infringing on business secrets.

Whoever causes losses of more than RMB 2.5 million to the obligee of business secrets and thus falls under the definition of "the consequences are especially serious" stipulated in Article 219 of the Criminal Law shall be sentenced to fixed-term imprisonment of not less than three years but not more than seven years and shall also be fined for committing the crime of infringing on business secrets.

**Article 8** "Identical trademarks" as stipulated in Article 213 of the Criminal Law refers to the trademarks either identical to the registered trademarks infringed on, or showing no notable visual difference from the trademarks infringed on and thus being misleading to the public.

"Use" as stipulated in Article 213 of the Criminal Law refers to such acts as applying registered trademarks or counterfeited registered trademarks to commodities, commodity packing and containers, commodity user guides and commodity transaction documents, or using registered trademarks or counterfeited registered trademarks for advertisement, publicity, exhibitions and other business activities.

**Article 9** "Amount of sales" as stipulated in Article 214 of the Criminal Law refers to all the illegal incomes gained or ought to be gained by selling commodities bearing counterfeited registered trademarks.

Any of the following circumstances shall be regarded as falling under the definition of "knowingly" stipulated in Article 214 of the Criminal Law:

- (1) Knowing that the registered trademarks on the commodities that he/she sells have been altered, replaced or covered;
- (2) Selling the same commodities for which one has already been given administrative penalty or has borne civil responsibilities for selling commodities bearing counterfeited registered trademarks;
- (3) Counterfeiting or altering the authorization documents of the registrant or knowing such documents have been counterfeited or altered;
- (4) Other circumstances in which the fact that the registered trademarks borne by the commodities are counterfeited is known.

**Article 10** Any of the following acts falls under the definition of "counterfeiting patent of another person" stipulated in Article 216 of the Criminal Law:

- (1) Citing patent number on the commodities or the packing of the commodities one produces or sells without permission of the owner of the patent;
- (2) Citing patent number in advertisement or other publicity materials without permission of the owner of the patent so as to make people think that the involved technology is the patented technology of another person;
- (3) Citing patent number in contract without permission of the owner of the patent so as to make people think that the involved technology in the contract is the patented technology of another person;
- (4) Counterfeiting or altering the patent certificates, patent documents or patent application documents of another person.

**Article 11** The circumstances of charging directly or indirectly by such means as publishing paid advertisement fall under the definition of "for the purpose of making profits" stipulated in Article 217 of the Criminal Law.

"Without permission of the copyright owner" as stipulated in Article 217 of the Criminal Law refers to the circumstances where authorization of the copyright owner is not obtained, the authorization documents of the copyright owner are altered or the authorization scope is exceeded.

Distributing a written work, musical work, motion picture, television program or other visual works, computer software or other works to the public by information network falls under the definition of "reproducing and distributing" stipulated in Article 217 of the Criminal Law.

**Article 12** "Illegal business volume" as stipulated in the Interpretation refers to the value

of the products produced, stored, transported and sold by the doer in the course of infringing on intellectual property. Value of the products produced by infringing on intellectual property shall be computed according to the prices at which such products are actually sold. Value of the products produced by infringing on intellectual property produced, stored, transported, and those not sold shall be computed according to the labeled prices or the actual prices found to be sold at after investigation. Value of the products produced by infringing on intellectual property without labeled prices or whose actual prices are impossible to be ascertained shall be computed according the middle market prices of such products.

Values of illegal business volume, illegal gains and amount of sales shall be computed cumulatively in cases of repeatedly infringing on intellectual property where such acts have not yet been given administrative penalty or have not so far initiated criminal procedures.

"Copies" as stipulated in Article 3 of the Interpretation refers to one piece of representation of the complete logo of the trademark.

**Article 13** Committing the crime of counterfeited registered trademarks stipulated in Article 213 of the Criminal Law while selling commodities bearing such counterfeited registered trademarks and thus constituting a crime shall be convicted and punished in accordance with provisions of Article 213 of the Criminal Law for committing the crime of counterfeiting registered trademarks.

To whoever that commits the crime of counterfeiting registered trademarks stipulated in Article 213 of the Criminal Law while knowingly selling commodities bearing registered trademarks counterfeited by another person and thus constituting a crime, a combined punishment for several crimes shall be applied.

**Article 14** Committing the crime of infringing on copyright stipulated in Article 217 of the Criminal Law while selling commodities produced by infringing on copyright and thus constituting a crime shall be convicted and punished in accordance with provisions of Article 217 of the Criminal Law for committing the crime of infringing on copyright.

To whoever that commits the crime of infringing on copyright stipulated in Article 217 of the Criminal Law while knowingly selling works reproduced by infringing on the copyright and thus constituting a crime, a combined punishment for several crimes shall be applied.

**Article 15** Where a unit commits any of the crimes stipulated in the Articles 213 through 219 of the Criminal Law, it shall be convicted and sentenced according to the criteria that are as three times higher as those for convicting and sentencing individuals committing same crimes according to the Interpretation.

**Article 16** Whoever knowingly provides loans, funds, bank accounts, invoices, certificates, licenses, production and operation places, as well as facilities and assistance

in producing, storing and import-export agency services shall be deemed an accomplice in the crime of infringing on intellectual property.

**Article 17** Should discrepancies arise between the Interpretation and other legal interpretations promulgated previously regarding infringement on intellectual property, the previously promulgated interpretations shall not be applied after the Interpretation goes into effect.

Source: IPR.gov.cn

Available at:

[http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a\\_no=2038&col\\_no=121&dir=200603](http://english.ipr.gov.cn/ipr/en/info/Article.jsp?a_no=2038&col_no=121&dir=200603)

Judicial Interpretations by the Supreme People's Court  
and the Supreme People's Procuratorate on Several Issues of  
Concrete Application of Laws in Handling Criminal Cases of Infringing Intellectual  
Property II (April 5, 2007)

【法规标题】最高人民法院、最高人民检察院关于办理侵犯知识产权刑事案件具体应用法律若干问题的解释(二)

【类别】[经济审判/知识产权案件审理](#)

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【全文】

最高人民法院公告

《[最高人民法院、最高人民检察院关于办理侵犯知识产权刑事案件具体应用法律若干问题的解释\(二\)](#)》已于2007年4月4日由最高人民法院审判委员会第1422次会议、最高人民检察院第十届检察委员会第75次会议通过，现予公布，自2007年4月5日起施行。

二〇〇七年四月五日

最高人民法院、最高人民检察院关于办理  
侵犯知识产权刑事案件具体应用法律若干问题的解释(二)

(2007年4月4日最高人民法院审判委员会第1422次会议、最高人民检察院第十届检察委员会第75次会议通过 法释〔2007〕6号)

为维护社会主义市场经济秩序，依法惩治侵犯知识产权犯罪活动，根据刑法、刑事诉讼法有关规定，现就办理侵犯知识产权刑事案件具体应用法律的若干问题解释如下：

第一条 以营利为目的，未经著作权人许可，复制发行其文字作品、音乐、电影、电视、录像作品、计算机软件及其他作品，复制品数量合计在五百张（份）以上的，属于刑法第二百一十七条规定的“有其他严重情节”；复制品数量在二千五百张（份）以上的，属于刑法第二百一十七条规定的“有其他特别严重情节”。

第二条 刑法第二百一十七条侵犯著作权罪中的“复制发行”，包括复制、发行或者既复制又发行的行为。

侵权产品的持有人通过广告、征订等方式推销侵权产品的，属于刑法第二百一十七条规定的“发行”。

非法出版、复制、发行他人作品，侵犯著作权构成犯罪的，按照侵犯著作权罪定罪处罚。

第三条 侵犯知识产权犯罪，符合刑法规定的缓刑条件的，依法适用缓刑。有下列情形之一的，一般不适用缓刑：

(一) 因侵犯知识产权被刑事处罚或者行政处罚后，再次侵犯知识产权构成犯罪的；

(二) 不具有悔罪表现的；

(三) 拒不交出违法所得的；

(四) 其他不宜适用缓刑的情形。

第四条 对于侵犯知识产权犯罪的，人民法院应当综合考虑犯罪的违法所得、非法经营数额、给权利人造成的损失、社会危害性等情节，依法判处罚金。罚金数

额一般在违法所得的一倍以上五倍以下，或者按照非法经营数额的 50% 以上一倍以下确定。

第五条 被害人有证据证明的侵犯知识产权刑事案件，直接向人民法院起诉的，人民法院应当依法受理；严重危害社会秩序和国家利益的侵犯知识产权刑事案件，由人民检察院依法提起公诉。

第六条 单位实施[刑法第二百一十三条](#)至[第二百一十九条](#)规定的行为，按照[《最高人民法院、最高人民检察院关于办理侵犯知识产权刑事案件具体应用法律若干问题的解释》](#)和本解释规定的相应个人犯罪的定罪量刑标准定罪处罚。

第七条 以前发布的司法解释与本解释不一致的，以本解释为准。

# **APPENDIX**

## **4**

Appendix 4: Table 1

Changes to Chinese Patent law

	<b>The 1984 Patent Law The 1979 Penal Code</b>	<b>The 1992 Patent Law The 1979 Penal Code</b>	<b>2000 Patent Law 1997 Penal Code</b>
<b>Judicial Review of the Administrative Decision</b>	3 month statute of limitations for challenging administrative decisions. (Article 60, second sentence)	Same	Same
<b>Private Course of Actions for Infringement</b>	2 year of statute of limitations for civil action, starting from the time the right holder should have known of the infringement. (Article 61)	Same	Same
<b>Calculation of Damages</b>	No equivalent provisions	No equivalent provisions	Two primary options plus an alternative measure: 1) Damages based on losses to the right holder; 2) Damages based on illicit profit made by the infringer; 3) When it is difficult to ascertain damages using methods (1) or (2), damages will be equal to reasonable license fees.
<b>Mandatory Administrative Sanctions</b>	Article 61, second sentence: the administrative agency <u>has the authority to</u> issue a cease and desist order and order the payment of damages.	Same as the 2000 law (Article 78 of the Implementing Regulations)	Article 58 of the Implementing Regulations provides that a party passing off patented product <u>shall</u> be subject to public notification of the violation; confiscation of the illicit income; and <u>may</u> be punished by a fine three times the illicit income (in cases where the infringer has no illicit income, a fine not exceeding RMB 50,000 (US\$6,250)).
	No equivalent provisions	No equivalent provisions	Any person who falsely claims that certain products or process is patented shall be subject to a cease and desist order, and such order shall be publicized. In addition, the person may also be subject to a fine not exceeding RMB 50,000. (Article 59)
<b>Criminal Liability</b>	Article 63: Any person who is <b>directly responsible</b> for passing off his product as other person's patented product, and the circumstances are serious, shall be held criminally liable in accordance with Article 127 of the 1979 Penal Code.	Same as the 1984 law	Article 58, first sentence: Where any person passes off the patent of another person as his own may be subject to criminal sanctions. (Implementing Regulations of the Patent Law define what constitutes passing off a patent.)

Appendix 4: Table 1

	<b>The 1984 Patent Law The 1979 Penal Code</b>	<b>The 1992 Patent Law The 1979 Penal Code</b>	<b>2000 Patent Law 1997 Penal Code</b>
<b>Threshold for Criminal Prosecution</b>	Directly responsible; and	Directly responsible; and	No similar requirement
	Serious circumstances (no Supreme People’s Court (SPC) Interpretation)	Serious circumstances (no Supreme People’s Court Interpretation)	Serious circumstances SPC has clarified that “serious circumstances” mean: 1) Illicit turnover of more than RMB 200,000 (US\$25,000); 2) Illicit profit over RMB 100,000 (US\$12,500); 3) Causing direct loss to the right owner over RMB 500,000 (US\$62,500); 4) Passing off two or more patents, and illicit turnover above RMB 100,000 (US\$12,500) or illicit profit over RMB 50,000 (US\$6,250); or 5) Other serious circumstances.
<b>Maximum Punishment</b>	3-year imprisonment (Article 127 of the 1979 Penal Code)	3-year imprisonment (Article 127 of the 1979 Penal Code)	3-year imprisonment (Article 216 of the 1997 Penal Code)

Appendix 4: Table 2

Changes to Chinese Trade Mark Law

	<b>1982 Trade Mark Law 1979 Penal Code</b>	<b>1992 Trade Mark Law 1979 Penal Code</b>	<b>1993 Amendment to the Penal Code</b>	<b>2001 Trade Mark Law 1997 Penal Code</b>
<b>Judicial Review of Administrative Decision</b>	Article 39 (15 days statute of limitation)	Same (Article 39)	N/A	Same (Article 53)
<b>Private Course of Actions for Infringement</b>	Yes (Article 39, second paragraph)	Same (Article 30, second paragraph)	N/A	Same (Article 53, first sentence)
<b>Calculation of Damages</b>	No equivalent provisions	No equivalent provisions	N/A	Article 56 Two basic options: illicit income of the infringer or the loss by the right owner, including cost to stop the infringement. If the above could not be proven with reasonable certainty, court may determine the amount of damages in accordance to the circumstances of the infringement, but in no circumstances should such damage exceed RMB 500, 000.
<b>Mandatory Administrative Sanctions</b>	Not mandatory	Not mandatory	N/A	Mandatory sanctions on finding of infringement include: 1) Cease and desist order; 2) Confiscate and destroy infringing products, production facilities and equipments.

Appendix 4: Table 2

	<b>1982 Trade Mark Law 1979 Penal Code</b>	<b>1992 Trade Mark Law 1979 Penal Code</b>	<b>1993 Amendment to the Penal Code</b>	<b>2001 Trade Mark Law 1997 Penal Code</b>
<b>Criminally Punishable Conduct</b>	Two types of conduct are criminally punishable: 1) Trade mark passing off; 2) Production or sale of registered trade mark.  Article 40 of the Trade Mark Act  Article 127 of the Penal Code	Additional conduct that is criminally punishable: knowingly selling infringing products. (Article 40 of the Trade Mark Act)	Limits “trade mark passing off” to the conduct of applying the same mark on the same line of products as a registered mark.	Same as the 1993 amendment
<b>Threshold for Criminal Investigation</b>	1) For state or collectively owned enterprises: illicit turnover above RMB 10,000, or illicit profit over RMB 3,000.  2) For individual: illicit turnover above RMB 3,000, or illicit profit over RMB 1,000.  (SPP [86] GaoJianfa [2] 4, March 24, 1986)	1) Trade Mark Passing Off i) For entities, illicit turnover above RMB 100,000 (US\$12,500), or illicit profit above RMB 20,000 (US\$2,500); ii) For individuals: illicit turnover above RMB20, 000 (US\$ 2,500), or profit RMB2, 000 (US\$250).  2) Production or Sale of Registered Trade Mark Without Authorization i) Entities: 20,000 pieces, or illicit profit over RMB10, 000, (US\$2,500); ii) Individual—5,000 pieces, RMB 2,000 (US\$250).  3) Knowingly Sell Infringing Products i) Entities: illicit turnover RMB 100,000 (US\$12,500), or illicit profit over RMB 20,000 (US\$2,500); ii) Individual: illicit turnover above RMB 20,000 (US\$2,500), or profit over RMB 5,000 (US\$625).		

Appendix 4: Table 2

	<b>1982 Trade Mark Law 1979 Penal Code</b>	<b>1992 Trade Mark Law 1979 Penal Code</b>	<b>1993 Amendment to the Penal Code</b>	<b>2001 Trade Mark Law 1997 Penal Code</b>
<b>Threshold for Criminal Punishment</b>	Directly responsible	Directly responsible	Head of an entity is directly responsible for infringements by that entity.	No similar requirement
	Serious circumstances	Serious circumstances (not defined)	Serious circumstances or large illicit profits	<p>“Serious circumstances” mean:</p> <ol style="list-style-type: none"> <li>1) Illicit turnover above RMB 50,000 (US\$6,250);</li> <li>2) Illicit income over RMB 30,000 (US\$3,750); or</li> <li>3) Passing off two or more registered trade marks, and either the illicit turnover is more than RMB 30,000 (US\$3,750) or illicit income above RMB 20,000 (US\$2,500).</li> </ol> <p>(Supreme People’s Court opinion, December 4, 2004)</p>
<b>Maximum Punishment</b>	3 year imprisonment, criminal detention and/or fine	3 year imprisonment, criminal detention and/or fine	Up to 7 years of imprisonment, criminal detention, and/or fine	Up to 7 years of imprisonment, criminal detention and/or fine

Appendix 4: Table 3

Changes to Chinese Copyright law

	<b>1990 Copyright Law 1979 Penal Code</b>	<b>1994 (Penal Code Amendment)</b>	<b>The 2001 Copyright Statute The 1997 Penal Code and SPC Interpretations</b>
<b>Judicial Review of Administrative Decisions</b>	Yes, 3-month statute of limitations (Article 50)	N/A	Same (Article 55)
<b>Private Course of Actions for Infringement</b>	Yes (Articles 45-49)	N/A	Yes (Articles 47,48)
<b>Calculation of Damages</b>	No provision	N/A	Damages shall be calculated based on the actual loss of the right holder. When it is difficult to calculate the actual loss, the illicit profit by the infringer may be used. The cost the right holder incurred for stopping the infringement shall also be compensated. When actual loss of the right holder and the illicit profit by the infringer could not be established with reasonable certainty, the court may impose a fine according to the individual circumstances of the case, but in no case should the amount of the fine be more than RMB 500,000 US\$62,500). (Article 48)
<b>Mandatory Administrative Sanction</b>	Discretionary authority to impose administrative sanctions	N/A	Discretionary authority to impose administrative sanctions
<b>Criminal Liability</b>	Not a criminal offense	Yes (conditioned on “commercial purpose”)	Same as the 1994 amendment: only for conduct with commercial purpose

Appendix 4: Table 3

	<b>1990 Copyright Law 1979 Penal Code</b>	<b>1994 (Penal Code Amendment)</b>	<b>The 2001 Copyright Statute The 1997 Penal Code and SPC Interpretations</b>
<b>Threshold for Criminal Punishment</b>	Not a crime	<p>The illicit profit was large or the existence of other serious circumstances.</p> <p>SPC 1995 opinion: illicit profit was large when:</p> <ol style="list-style-type: none"> <li>1) For individual infringer, the illicit profit was more than RMB 20,000 (US\$2,500), or illicit turnover more than RMB 100,000 (US\$12,500);</li> <li>2) For entity infringer, the illicit profit was more than RMB 100,000 (US\$12,500), or the illicit turnover was above RMB 500,000 (US\$62,500); or</li> <li>3) Has been twice subjected to penal or administrative sanctions for copyright infringement.</li> </ol> <p>(Fafa [1995] 1, January 16, 1995)</p>	<p>Same ambiguous language, but later clarified by two judicial interpretations.</p> <p>SPC First Judicial Interpretation:</p> <ol style="list-style-type: none"> <li>1) Illicit profit of RMB 30,000 (US\$3,750);</li> <li>2) Illicit turnover over RMB 50,000 (US\$6,250);</li> <li>3) More than 1000 illicit copies in congregation;</li> </ol> <p>or</p> <ol style="list-style-type: none"> <li>3) Other serious circumstances.</li> </ol> <p>(Fashi [2004] 19, December 8, 2004)</p> <p>SPC Second Judicial Interpretation:</p> <ol style="list-style-type: none"> <li>1) 500 copies or more will constitute “other serious circumstances;</li> <li>2) Reproduction of 2,500 or more units will constitute “other exceptionally serious circumstances.”</li> </ol> <p>(Fashi [2007] 6, April 4, 2007)</p>
<b>Maximum Punishment (for reproduction, publication of infringing works, or sale of bogus artworks)</b>	Not a crime	Up to 7 years	Up to 7 years
<b>Maximum Punishment for Sale of Infringing Works</b>		Up to 5-years	Up to 3 years

# **APPENDIX**

**5**

**Commitments Of China**  
**Report of the Working Party on the Accession of China**  
**WT/MIN(01)/3**

**TRADE-RELATED INTELLECTUAL PROPERTY REGIME**

**A. General**

**1. Overview**

251. The representative of China stated that China had made the protection of intellectual property rights ("IPRs") an essential component of its reform and opening-up policy and socialist legal construction. The formulation of laws and regulations in this field could be traced back to the late 1970s. Since then, China had joined relevant international conventions and had actively participated in the activities sponsored by relevant international organizations. It had intensified its exchanges and cooperation with countries throughout the world in the field of IPR protection. As a result, notwithstanding the initial stage of its development, China's IPR protection system aimed at achieving world dimension and world standards. Lists of administrative rules concerning intellectual property rights currently in force in China were presented below in Table A. The status of ongoing reforms and other relevant information was presented in Table B in the following paragraph. Other laws, regulations and measures relating to the implementation of the TRIPS Agreement had been or would be notified to the WTO and would be made available upon request.

Table A: The Administrative Rules of China Concerning Intellectual Property Rights [omitted; consists of lists of laws regarding patent rights, trademark, and copyright]

252. The representative of China stated that for accession to the WTO Agreement and compliance with the TRIPS Agreement, further amendments had been made to the Patent Law. The amendments to the Copyright Law and the Trademark Law, as well as relevant implementing rules covering different areas of the TRIPS Agreement, would also be accomplished upon China's accession. The representative of China stated that laws adopted by the National People's Congress and administrative regulations, including implementing rules, issued by the State Council were applied and enforced by the people's courts. The Working Party took note of these commitments.

**Table B: Revision of China's IPR Laws in Conformity with the TRIPS Agreement**

A list of China's IPR laws, administrative regulations and department rules to be revised and abolished \* \* \*. Part I of the list contained eight laws and regulations. Part II of the list contained four department rules to be revised or abolished \* \* \*. This list included the names of laws, regulations and department rules, reasons for revision or abolishment, and dates of implementation.

**2. Responsible agencies for policy formulation and implementation**

253. The representative of China stated that, at present, different agencies were responsible for IPR policy formulation and implementation. The State Intellectual Property Office ("SIPO") was responsible for patent approval; the Trademarks Office under the State Administration for Industry and Commerce ("SAIC") was responsible for trademarks registration; the Copyright Office was responsible for copyright policy making; SAIC was responsible for anti-unfair competition, including the protection of trade secrets; the State Drug Administration ("SDA") was responsible for administrative protection of pharmaceuticals; the General Customs Administration was responsible for border measures; the Ministry of Agriculture and the State Administration of Forestry were responsible for protection of plant varieties; the Ministry of Information Industry was responsible for the protection of layout designs of integrated circuits; and the State General Administration of the People's Republic of China for Quality Supervision and Inspection and Quarantine and SAIC were responsible for combating counterfeiting activities. Other agencies like the agency for press and publications, the people's courts and police were also involved in the protection of IPR in China.

**3. Participation in international intellectual property agreements**

254. The representative of China stated that China became a member of the World Intellectual Property Organization in 1980. \* \* \*

[ China ia member of various international IPR groups and agreements: Paris Convention for the Protection of Industrial Property (1985), Treaty on Intellectual Property in Respect of Integrated Circuits (1989), Madrid Agreement Concerning the International Registration of Marks (1989), Berne Convention for the Protection of Literary and Artistic Works (1992), Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms (1993), Patent Cooperation Treaty (1994), Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (1994), Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1995), Protocols of the Madrid Agreement Concerning the International Registration of Marks (1995), Locarno Agreement on Establishing an International Classification for Industrial Designs (1996), Strasbourg Agreement Concerning the International Patent Classification (1997)]

Besides the above efforts, China participated in the TRIPS negotiations during the Uruguay Round and initialled the Final Act.

**4. Application of national and MFN treatment to foreign nationals**

256. The representative of China responded that China's IPR laws provided that any foreigner would be treated in accordance with any agreement concluded between the foreign country and China, or in accordance with any international treaty to which both countries were party, or on the basis of the principle of reciprocity. The representative of China further confirmed that China would modify relevant laws, regulations and other measures so as to ensure national and MFN treatment to foreign right-holders regarding all intellectual property rights across the board in compliance with the TRIPS Agreement. This would include adjustments of the clearance requirement mentioned in the previous paragraph to ensure national treatment. The Working Party took note of these commitments.

**B. Substantive Standards Of Protection, Including Procedures For The Acquisition And Maintenance Of Intellectual Property Rights**

**1. Copyright protection**

258. Some members of the Working Party expressed concerns about the consistency of China's current law on the protection of copyright and related rights with the TRIPS Agreement. \* \* \*

259. The representative of China responded that, realizing that there were some existing differences between China's copyright laws and the TRIPS Agreement, the amendment to the Copyright Law had been accelerated. The proposed amendments would clarify the payment system by broadcasting organizations which use the recording products and also include the following provisions: rental rights in respect of computer programs and movies, mechanical performance rights, rights of communication to the public and related protection measures, protection of database compilations, provisional measures, increasing the legitimate compensation amount and strengthening the measures against infringing activities. China's copyright regime including Regulations for the Implementation of the Copyright Law and the Provisions on the Implementation of the International Copyright Treaty would be amended so as to ensure full consistency with China's obligations under the TRIPS Agreement. The Working Party took note of these commitments.

## **2. Trademarks, including service marks**

263. The representative of China stated that with the development of China's market economy and the further implementation of the TRIPS Agreement, China's legislative and law enforcement bodies had also realized that the existing trademark law fell somewhat short of fulfilling the requirements of the TRIPS Agreement and the Paris Convention in a few aspects and were therefore preparing to amend the existing trademark law to fully meet the requirements of the TRIPS Agreement. Modifications would mainly be made to the following aspects: to include the trademark registration of three-dimensional symbols, combinations of colours, alphabets and figures; to add the content of collective trademark and certification trademark (including geographical indications); to introduce official symbol protection; to protect well-known trademarks; to include priority rights; to modify the existing trademark right confirmation system and offer interested parties the opportunity for judicial review concerning the confirmation of trademark rights; to crack down on all serious infringements; and to improve the system for providing damages for trademark infringement. The Working Party took note of these commitments.

## **3. Geographical indications, including appellations of origin**

264. The representative of China stated that the relevant rules of the SAIC and the State General Administration of the People's Republic of China for Quality Supervision and Inspection and Quarantine partly provided protection for geographical indications, including appellations of origin, and that the amendments to the trademark law would have a specific provision on the protection of geographical indications.

265. Members of the Working Party took note of the progress achieved on providing protection for geographical indications and reiterated the importance of China's legislation complying with the obligations under the TRIPS Agreement (Articles 22, 23 and 24). The representative of China shared this assessment and reiterated China's intention to fully comply with relevant articles in the TRIPS Agreement on geographical indications. The Working Party took note of this commitment.

## **4. Industrial designs**

266. Some members of the Working Party noted that the industrial design provisions of China's patent law appeared to implement substantial portions of the TRIPS Agreement requirements relating to industrial designs. One notable exception was the area of textile designs. These members noted that designs of WTO Members could be protected under China's Provisions on the Implementation of the International Copyright Treaty as works of applied art. Members urged China to incorporate this protection into its law and to provide such protection to domestic textile designs.

## **5. Patents**

267. The representative of China stated that in preparation for its accession, China revised its patent law in 1992 for the first time. China had taken measures to enhance consistency with the TRIPS Agreement in terms of major provisions and protection standards. In order to increase the awareness of the general public on IPR protection, and patent protection in particular, to be consistent with the TRIPS Agreement, and to build up a sound social environment for the promotion and commercialization of inventions, the National People's Congress approved the second revision of the Patent Law on 25 August 2000. The revised patent law, which would take effect on 1 July 2001, included the following elements: (1) patent owners would have the right to prevent others from offering for sale the patented product without their consent (Article 11); (2) for utility model and design applications or patents, the final decision on re-examination and invalidation would be made by the people's courts other than for inventions that were patented prior to the amendment (Articles 41 and 46); (3) patent owners could, before instituting legal proceedings, request the people's court to take provisional measures such as to order the suspension of infringing acts and to provide property preservation (Article 61); and (4) conditions for granting a compulsory licence would be further clarified and made consistent with the TRIPS Agreement.

268. The representative of China further stated that since its establishment, SIPO had paid great attention to strengthening its contacts and coordination with relevant departments and ministries in the field of IPR law enforcement, especially in the areas of settling inter-agency problems and resolving key cases. \* \* \*

269. The representative of China stated that so far as the range of patent protection and protection for new plant varieties were concerned, China had already met the requirements of Article 27 of the TRIPS Agreement. When amending the Patent Law in 1992, China modified Article 25 therein with reference to the relevant stipulations in the draft of the TRIPS Agreement and expanded the coverage of patent protection to food, beverages, flavourings, pharmaceuticals and materials obtained by chemical methods. The scope of patent exclusions would be limited to "scientific discoveries, rules and methods of intellectual activities, diagnostic and therapeutic methods for the treatment of diseases, animals and plant varieties, as well as materials obtained by the change of nucleus".

270. He further stated that Article 5 of China's Patent Law stipulated that inventions that violate laws of China or social morality or prejudice public interest would not be entitled to patent right. While literally there was a difference between Article 5 of China's Patent Law and the TRIPS Agreement, in practice, during the review of patent applications, the interpretation of "violating laws of China" had been restricted to "if laws of China prohibit the sale of a certain patented product, or prohibit the sale of products manufactured by a patented method, the granting of patent right cannot be denied to this product invention or this invention of product manufacturing method by relying on Article 5 of the Patent Law". Hence, in essence, he concluded that there was no difference between Article 5 of the Patent Law as applied and the TRIPS Agreement. Nonetheless, China would amend the Implementing Rules of the Patent Law to ensure that this provision would be implemented in full compliance with Article 27.2 of the TRIPS Agreement, which stipulated that: "Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law". The Working Party took note of this commitment.

271. Regarding Article 28 of the TRIPS Agreement (rights conferred), the representative of China stated that China's patent law had fully complied with the requirements of the TRIPS Agreement \* \* \*.

272. Further to the 1992 amendment, the representative of China stated that China's Patent Law provided for compulsory licences based on reasonable terms, for public interest and for dependent patents. \* \* \*

273. The representative of China stated that following the 1992 amendment, the regulations on compulsory licensing in China's Patent Law and its implementing rules, as a whole, had fulfilled the requirements of the TRIPS Agreement. However, some wording and expressions in the Chinese regulations were still not identical to the TRIPS Agreement and these regulations still needed improvement in respect of the administrative legal proceedings concerning compulsory licensing. \* \* \* In the representative of China's view, these regulations were fully consistent with the TRIPS Agreement. He also added that up to now China had not issued any compulsory licences for patent enforcement.

274. Some members of the Working Party noted the improvements in the provisions regarding compulsory licensing for patents that the representative of China cited. Some members however, requested clarification of the subject matter that would be subject to compulsory licensing under the Patent Law.

275. In response, the representative of China agreed that still not all the requirements of Article 31 of the TRIPS Agreement had been incorporated into Chinese law, and that the Implementing Rules of the Patent Law would therefore be modified so as to ensure that: (1) use without authorization of the right-holder would only be permitted if, prior to such use, the proposed user had made efforts to obtain authorization from the right-holder on reasonable commercial terms and conditions, on the understanding that this requirement could be waived in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use and subject to the other provisions of subparagraph (b) of Article 31; (2) the right-holder would be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization (Article 31(h)); (3) any such use would be authorized predominantly for the supply of the domestic market (Article 31(f)); and (4) in the case of semi-conductor technology, the scope and duration of such use would only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive (Article 31(c)). The Working Party took note of these commitments.

276. Regarding Article 32 of the TRIPS Agreement (revocation/forfeiture), the representative of China stated that in light of Articles 41 and 46 of the amended Patent Law, patent applicants or patentees of inventions, as well as applicable utility models and designs, could institute legal proceedings in the people's court if they were not satisfied with the review or nullity decisions made by the Patent Review Board. This modification enabled China's Patent Law to be fully consistent with TRIPS regarding administrative decisions which were subject to judicial review.

277. On the duration of patent right protection, the representative of China stated that as early as 1992 when China made an initial amendment to the Patent Law, Article 45 (later converted into Article 42 after the second amendment) was modified as: "the duration of inventions patent right is 20 years and the duration of patent right for applicable utility model and designs is 10 years, counted as of the date of application". Therefore, China's Patent Law had for a long time accorded with Articles 26 and 33 of the TRIPS Agreement concerning the duration of patent rights.

278. Regarding Article 34 of the TRIPS Agreement (process patents: burden of proof), the representative of China stated that China's Patent Law was modified in 1992 and 2000, and was now in full conformity with the TRIPS Agreement. The amended paragraph 2 of Article 57 reads: "when any infringement dispute relates to a process patent for the manufacture of a new product, any entity or individual manufacturing the identical product shall furnish proof to the effect that a different process is used in the manufacture of its or his product".

## **6. Plant variety protection**

279. The representative of China confirmed that China was a party to the 1978 text of the Universal Convention on the Protection of Plant Varieties ("UPOV"). In March 1997, the State Council formulated and promulgated the Regulation on the Protection of New Plant Varieties, thus offering protection for new plant varieties in a *sui generis* form consistent with the requirements of the TRIPS Agreement. A unit or an individual that had accomplished the breeding enjoyed an exclusive right in their right-granted variety. No unit or individual could, without permission from the owner of the variety rights (referred to as "the variety rights owner"), produce or market for commercial purposes the propagation material of the rights-granted variety, or repeatedly use for commercial purposes the propagation material of the rights-granted variety in the production of the propagation material of another variety. The conditions of non-voluntary licensing were set out in the regulation. The period of protection of variety rights, from the date of grant of the rights, would be 20 years for vines, forest trees, fruit trees and ornamental trees and 15 years for other plants.

**7. Layout designs of integrated circuits**

280. The representative of China stated that China was one of the first countries to sign the Treaty on Intellectual Property in Respect of Integrated Circuits in 1989. The specific Regulation on the Protection of Layout Designs of Integrated Circuits, which would implement China's obligations under Section 6, Part II of the TRIPS Agreement, was issued in April 2001 and would be effective on 1 October 2001.

281. The representative of China stated that China was strengthening the protection of the layout designs to support the rapid development of the integrated circuit industry. The regulations provided protection to layout-designs, according to which the following acts if performed without authorization of the right-holder were unlawful: importing, selling or otherwise distributing for commercial purposes a protected layout-design, an integrated circuit in which a protected layout-design was incorporated, or an article incorporating such an integrated circuit only in so far as it continued to contain an unlawfully reproduced layout-design. The exception clause and non-voluntary licensing clause were in conformity with Article 37 of TRIPS. The term of protection was 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurred. In addition, the protection to the layout-design of integrated circuits was in accordance with Article 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits.

**8. Requirements on undisclosed information, including trade secrets and test data**

284. The representative of China further confirmed that China would, in compliance with Article 39.3 of the TRIPS Agreement, provide effective protection against unfair commercial use of undisclosed test or other data submitted to authorities in China as required in support of applications for marketing approval of pharmaceutical or of agricultural chemical products which utilized new chemical entities, except where the disclosure of such data was necessary to protect the public, or where steps were taken to ensure that the data are protected against unfair commercial use. This protection would include introduction and enactment of laws and regulations to make sure that no person, other than the person who submitted such data, could, without the permission of the person who submitted the data, rely on such data in support of an application for product approval for a period of at least six years from the date on which China granted marketing approval to the person submitting the data. During this period, any second applicant for market authorization would only be granted market authorization if he submits his own data. This protection of data would be available to all pharmaceutical and agricultural products which utilize new chemical entities, irrespective of whether they were patent-protected or not. The Working Party took note of these commitments.

**C. Measures To Control Abuse Of Intellectual Property Rights**

286. Some members of the Working Party expressed some concerns as to the compatibility of China's rules on control of anti-competitive licensing practices or conditions with the corresponding obligations under Article 40 of the TRIPS Agreement. The representative of China stated in response that China's legislation would comply with these obligations, notably as to the request for consultations with other Members. He stated that these rules would apply across the board to all intellectual property rights. The Working Party took note of this commitment.

**D. Enforcement**

**1. General**

287. Some members of the Working Party expressed concern that there was a continued need for additional enforcement efforts by the Government of China. They also said that China should strengthen the legislative framework for the enforcement of intellectual property rights for all right-holders. The representative of China stated that where an infringement of intellectual property rights was found in China, the person concerned could bring a lawsuit to a court. \* \* \*

288. Some members of the Working Party further urged China to ensure the vigorous application by Chinese authorities of the enforcement legislation in order to considerably reduce the existing high levels of copyright piracy and trademark counterfeiting. Action should include the closure of manufacturing facilities as well as markets and retail shops that had been the object of administrative convictions for infringing activities. The representative of China stated that the measures for cracking down on intellectual property piracy were always severe in China. In judicial aspects, courts at all levels were continuously paying attention to the trial of IPR cases. As for administration aspects, the administrative authorities at all levels were putting emphasis on strengthening anti-piracy work. In addition, the administrative authorities were also enhancing the legal publication and education of the general public in a bid to ensure that the legal environment of China would be able to meet the requirements for enforcing the TRIPS Agreement. The Working Party took note of these commitments.

## **2. Civil judicial procedures and remedies**

290. The representative of China stated that Article 118 of the General Principles of the Civil Law provided that if the rights of authorship (copyrights), patent rights, rights of exclusive use of trademarks, rights of discovery, rights of invention or rights for scientific and technological research achievements of citizens or juridical persons were infringed upon by such means as plagiarism, alteration or imitation, they had the right to demand that the infringement be stopped, its ill effects be eliminated and the damages be compensated for. He further stated that the Trademark Law, the Patent Law and the Copyright Law had similar provisions.

291. The representative of China further confirmed that, Articles 42 and 43 of the TRIPS Agreement would be effectively implemented under the judicial rules of civil procedure. The Working Party took note of this commitment.

292. The representative of China confirmed that the relevant implementing rules would be amended to ensure full compliance with Articles 45 and 46 of the TRIPS Agreement, to the effect that damages paid by the infringer to the right-holder would be adequate to compensate for the injury suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity. The Working Party took note of this commitment.

## **3. Provisional measures**

294. The representative of China stated that in China's Civil Procedure Law there were provisions on property preservation, but as yet no explicit stipulations had been provided to authorize the people's court to take measures for the prevention of infringements prior to formal institution of a lawsuit by a party involved. In order to enhance the deterrent power of law against infringements and to guarantee that the legitimate rights and interests of patentees would not suffer from irreparable harm as well as to comply with the TRIPS Agreement, China, when amending the Patent Law for the second time in 2000, introduced Article 61 to regulate provisional measures, which provided as follows: "where a patentee or any interested party who can provide any reasonable evidence that his right is being infringed or that such infringement is imminent, and any delay in stopping the acts is likely to cause irreparable harm to his or its legitimate rights and interests, he or it may, before instituting legal proceedings, request the people's court to order the suspension of related acts and to provide property preservation".

296. The representative of China stated that Article 61 of the Patent Law would be implemented in a way fully consistent with Article 50.1-4 of the TRIPS Agreement. He also stated that "reasonable evidence" in Article 61 of the Patent Law would be, through implementing rules, clarified to mean "any reasonably available evidence in order to satisfy with sufficient degree of certainty that the applicant is the right-holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse". The Working Party took note of this commitment.

#### **4. Administrative procedures and remedies**

299. The representative of China stated that most IPR enforcement actions in China resulted in administrative measures to address the infringement. He noted ongoing efforts to strengthen the sanctions that were available to administrative authorities and the increased attention given to enforcement of IPRs. The representative of China confirmed that the government would continue to enhance its enforcement efforts, including through the application of more effective administrative sanctions. Relevant agencies, including the State Administration for Industry and Commerce, the State General Administration of the People's Republic of China for Quality Supervision and Inspection and Quarantine and the Copyright Office, now had the authority to confiscate equipment used for making counterfeit and pirated products and other evidence of infringement. These relevant agencies would be encouraged to exercise their authority to seize and preserve evidence of infringement such as inventory and documents. Administrative authorities would have the authority to impose sufficient sanctions to prevent or deter further infringement and would be encouraged to exercise that authority. Appropriate cases, including those involving repeat offenders and willful piracy and counterfeiting, would be referred to relevant authorities for prosecution under the criminal law provisions. The Working Party took note of these commitments.

#### **5. Special border measures**

301. Some members of the Working Party expressed concerns as to the compatibility of existing border measures with obligations under Articles 51 to 60 of the TRIPS Agreement; \* \* \*

302. In response, the representative of China stated that China would provide holders of intellectual property rights with procedures related to border measures that complied fully with the relevant provisions of the TRIPS Agreement (Articles 51 to 60). The Working Party took note of this commitment.

#### **6. Criminal procedures**

304. Some members of the Working Party expressed concerns that criminal procedures could not be used effectively to address piracy and counterfeiting. In particular, the monetary thresholds for bringing a criminal action, as currently applied, were very high and seldom met. Those thresholds should be lowered so as to permit effective action that would deter future piracy and counterfeiting. In response, the representative of China stated that China's administrative authority would recommend that the judicial authority make necessary adjustments to lower the thresholds so as to address these concerns. The Working Party took note of this commitment.

305. Noting the advanced state of protection for intellectual property rights in China, the representative of China confirmed that upon accession China would fully apply the provisions of the TRIPS Agreement. The Working Party took note of this commitment.

Source: Terence P. Stewart, Law Offices of Stewart and Stewart, *Accession of the People's Republic of China to the World Trade Organization: Baseline of Commitments, Initial Implementation and Implications for U.S.-PRC Trade Relations and U.S. Security Interests: A Report and Selected Annexes* Prepared for the U.S.-China Security Review Commission by the Law Offices of Stewart and Stewart, Transnational Publishers, Appendix 2 (2002).

# **APPENDIX**

## **6**

## Appendix 6: Table 1

### Criminal Thresholds for IPR Infringement in China

#### Trademark

Criminal Law	Punishment	Threshold	Standard
<b>Article 213</b> Unauthorized Use of Trademark	Imprisonment ≤ 3 years Fine*	<ol style="list-style-type: none"> <li>1. Illegal business &gt; RMB 50K (\$6,250) or illegal gains &gt; RMB 30K (\$3,750)</li> <li>2. Forging more than 2 reg. trademarks and               <ol style="list-style-type: none"> <li>a. Illegal business &gt; RMB 30K (\$3,750) or</li> <li>b. Illegal gains &gt; RMB 20K (\$2,500)</li> </ol> </li> <li>3. Other circumstances of a serious nature</li> </ol>	Serious circumstances
<b>Article 213</b> Unauthorized Use of Trademark	Imprisonment ≥ 3 years, but ≤ 7years Fine*	<ol style="list-style-type: none"> <li>1. Illegal business &gt; RMB 250K (\$31,250) or illegal gains &gt; RMB 150K (\$18750)</li> <li>2. Forging more than 2 reg. trademarks and               <ol style="list-style-type: none"> <li>a. Illegal business &gt; RMB 150K (\$18750) or</li> <li>b. Illegal gains &gt; RMB 100K (\$12,500)</li> </ol> </li> <li>3. Other circumstances of an especially serious nature</li> </ol>	Especially serious circumstances
<b>Article 214</b> Knowingly Sells Commodities Bearing Counterfeited Registered Trademarks	Imprisonment ≤ 3 years Fine*	Amount of sales > 50K (\$6,250)	Amount of sales is relatively large

<b>Criminal Law</b>	<b>Punishment</b>	<b>Threshold</b>	<b>Standard</b>
<b>Article 214</b> Knowingly Sells Commodities Bearing Counterfeited Registered Trademarks	Imprisonment $\geq$ 3 years, but $\leq$ 7years Fine*	Amount of sales > 250K (\$31,250)	Amount of sales is huge
<b>Article 215</b> Forgery or Unauthorized Representation of Another's Person Trademark, Sale of Such Representation	Imprisonment $\leq$ 3 years Fine*	1. Trademark of 1 person: a. Amount of copies > 20K b. Illegal business > RMB 50K (\$6,250) c. Illegal gains > RMB 30K (\$3,750) 2. Trademarks of more than 2 persons a. Amount of copies > 10K b. Illegal business > RMB 30K (\$3,750) c. Illegal gains > RMB 20K (\$2,500) 3. Other circumstances of a serious nature	Serious circumstances
<b>Article 215</b> Forgery or Unauthorized Representation of Another Person's Trademark, Sale of Such Representation	Imprisonment $\geq$ 3 years, but $\leq$ 7years Fine	1. Trademark of 1 person: a. Amount of copies > 100K b. Illegal business > RMB 250K (\$31,250) c. Illegal gains > RMB 150K (\$18,750) 2. Trademarks of more than 2 persons: a. Amount of copies > 50K or b. Illegal business > RMB 150K (\$18,750) or c. Illegal gains > RMB 100K (\$12,500) 3. Other circumstances of a especially serious nature	Especially serious circumstances

\* In determining the size of a fine, the Peoples Court takes into account “illegal income, the illegal turnover, the damage caused to the rights owner, the harm to society and other circumstances of the crime. The amount of the fine shall generally range from one time up to five times the illegal income or 50% up to one time the illegal turnover.” See, Judicial Interpretations by the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues of Concrete Application of Laws in Handling Criminal Cases of Infringing Intellectual Property II (April 5, 2007), available at: <http://ipdragon.blogspot.com/2007/04/draft-judicial-interpretation-several.html>.

## Appendix 6: Table 2

### Criminal Thresholds for IPR Infringement in China

#### Patent

Criminal Law	Punishment	Threshold	Standard
<b>Article 216</b> Counterfeit of Patent of Another Person	Imprisonment $\leq$ 3 years Fine*	1. Illegal business > RMB 200K (\$25,000) 2. Illegal gains > 100K 3. Direct economic loss of patentee > RMB 500K (\$62,500) 4. Counterfeit of more than 2 patents: a. Illegal business > RMB 100K (\$12,500) or b. Illegal gains > RMB 50K (\$6,250) 5. Other circumstances of a serious nature	Serious circumstances

\* In determining the size of a fine, the Peoples Court takes into account “illegal income, the illegal turnover, the damage caused to the rights owner, the harm to society and other circumstances of the crime. The amount of the fine shall generally range from one time up to five times the illegal income or 50% up to one time the illegal turnover.” *See*, Judicial Interpretations by the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues of Concrete Application of Laws in Handling Criminal Cases of Infringing Intellectual Property II (April 5, 2007), available at: <http://ipdragon.blogspot.com/2007/04/draft-judicial-interpretation-several.html>.

## Appendix 6: Table 3

### Criminal Thresholds for IPR Infringement in China

#### Copyright

Criminal Law	Punishment	Threshold	Standard
<b>Article 217</b> Copyright Infringement for the Purpose of Making Profits	Imprisonment $\leq$ 3 years Fine*	Illegal gains > RMB 30K (\$3,750)	Amount of illegal gains is relatively large
<b>Article 217</b> Copyright Infringement for the Purpose of Making Profits	Imprisonment $\leq$ 3 years Fine	1. Illegal business > RMB 50K (\$6,250) 2. Reproduced and distributed copies $\geq$ 500 3. Other circumstances of a serious nature	Other serious circumstances
<b>Article 217</b> Copyright Infringement for the Purpose of Making Profits	Imprisonment $\geq$ 3 years, but $\leq$ 7years Fine*	Illegal gains > RMB 150K (\$18,750)	Amount of illegal gains is huge
<b>Article 217</b> Copyright Infringement for the Purpose of Making Profits	Imprisonment $\geq$ 3 years, but $\leq$ 7years Fine*	1. Illegal business > RMB 250K (\$31,250) 2. Reproduced and distributed copies $\geq$ 2500 3. Other circumstances of a especially serious nature	Especially serious circumstances
<b>Article 218</b> Knowingly Sells Infringing Copyright Works for the Purpose of Making Profits	Imprisonment $\leq$ 3 years Fine*	Illegal gains > RMB 100K (\$12,500)	Amount of illegal gain is huge

\* In determining the size of a fine, the Peoples Court takes into account “illegal income, the illegal turnover, the damage caused to the rights owner, the harm to society and other circumstances of the crime. The amount of the fine shall generally range from one time up to five times the illegal income or 50% up to one time the illegal turnover.” See, Judicial Interpretations by the Supreme People’s Court and the Supreme People’s Procuratorate on Several Issues of Concrete Application of Laws in Handling Criminal Cases of Infringing Intellectual Property II (April 5, 2007), available at: <http://ipdragon.blogspot.com/2007/04/draft-judicial-interpretation-several.html>.

# **APPENDIX**

**7**

## Appendix 7: Table 1

### Criminal Thresholds for IPR Infringement in the United States

#### Copyright

Criminal Law	Punishment	Threshold
<p><b>17 U.S.C. § 506(a)(1)(A):</b> Willful copyright infringement for purposes of commercial advantage or private financial gain</p>	<p>Imprisonment ≤ 5 years and/or fine</p>	<p>18 U.S.C. § 2319(b)(1): Reproduction or distribution, including by electronic means, of at least 10 copies or phonorecords of 1 or more copyrighted works during any 180 day period, retail value ≥ \$2,500</p>
<p><b>17 U.S.C. § 506(a)(1)(A):</b> Willful copyright infringement for purposes of commercial advantage or private financial gain</p>	<p>Imprisonment ≤ 10 years and/or fine</p>	<p>18 U.S.C. § 2319(b)(2): Offense is a second or subsequent offense under paragraph (1)</p>
<p><b>17 U.S.C. § 506(a)(1)(A):</b> Willful copyright infringement for purposes of commercial advantage or private financial gain</p>	<p>Imprisonment ≤ 1 year and/or fine</p>	<p>18 U.S.C. § 2319(b)(3): In any other case</p>
<p><b>17 U.S.C. § 506(a)(1)(B):</b> Reproduction or distribution, including by electronic means, of at least 10 copies or phonorecords of 1 or more copyrighted works during any 180 day period, retail value &gt; \$1,000</p>	<p>Imprisonment ≤ 3 years and/or fine</p>	<p>18 U.S.C. § 2319(c)(1): Reproduction or distribution of at least 10 or more copies or phonorecords of 1 or more copyrighted works, retail value ≥ \$2,500</p>
<p><b>17 U.S.C. § 506(a)(1)(B):</b> Reproduction or distribution, including by electronic means, of at least 10 copies or phonorecords of 1 or more copyrighted works during any 180 day period, retail value &gt; \$1,000</p>	<p>Imprisonment ≤ 6 years and/or fine</p>	<p>18 U.S.C. § 2319(c)(2): Offense is a second or subsequent offense under paragraph (1)</p>

**Appendix 7: Table 1**

<b>Criminal Law</b>	<b>Punishment</b>	<b>Threshold</b>
<p><b>17 U.S.C. § 506(a)(1)(B):</b>                      Reproduction or distribution, including by electronic means, of at least 10 copies or phonorecords of 1 or more copyrighted works during any 180 day period, retail value &gt; \$1,000</p>	<p>Imprisonment ≤ 1 year and/or fine</p>	<p>18 U.S.C. § 2319(c)(3):                      Reproduction or distribution of 1 or more copies or phonorecords of 1 or more copyrighted works, retail value ≥ \$1,000</p>
<p><b>17 U.S.C. § 506(a)(1)(C):</b>                      Distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution</p>	<p>Imprisonment ≤ 3 years and/or fine</p>	<p>18 U.S.C. § 2319(d)(1)</p>
<p><b>17 U.S.C. § 506(a)(1)(C):</b>                      Distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution</p>	<p>Imprisonment ≤ 5 years and/or fine</p>	<p>18 U.S.C. § 2319(d)(2):                      Offense was committed for purposes of commercial advantage or private financial gain</p>
<p><b>17 U.S.C. § 506(a)(1)(C):</b>                      Distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution</p>	<p>Imprisonment ≤ 6 years and/or fine</p>	<p>18 U.S.C. § 2319(d)(3):                      Offense is a second or subsequent offense</p>

**Appendix 7: Table 1**

<b>Criminal Law</b>	<b>Punishment</b>	<b>Threshold</b>
<p><b>17 U.S.C. § 506(a)(1)(C):</b>                      Distribution of a work being prepared for commercial distribution, by making it available on a computer network accessible to members of the public, if such person knew or should have known that the work was intended for commercial distribution</p>	<p>Imprisonment ≤ 10 years and/or fine</p>	<p>18 U.S.C. § 2319(d)(4):                      Offense is a second or subsequent offense under paragraph (2)</p>

<b>Criminal Law</b>	<b>Punishment</b>
<p><b>18 U.S.C. § 2319A(a):</b>                      Whoever, without the consent of the performer or performers involved, knowingly and for purposes of commercial advantage or private financial gain—</p> <ol style="list-style-type: none"> <li>(1) Fixes the sounds or sounds and images of a live musical performance in a copy or phonorecord, or reproduces copies or phonorecords of such a performance from an unauthorized fixation;</li> <li>(2) Transmits or otherwise communicates to the public the sounds or sounds and images of a live musical performance; or</li> <li>(3) Distributes or offers to distribute, sells or offers to sell, rents or offers to rent, or traffics in any copy or phonorecord fixed as described in paragraph (1), regardless of whether the fixations occurred in the United States</li> </ol>	<p>Imprisonment ≤ 5 years and/or fine</p>
<p><b>18 U.S.C. § 2319A(a):</b>                      (See above) and offense is a second or subsequent offense</p>	<p>Imprisonment ≤ 10 years and/or fine</p>

## Appendix 7: Table 1

### Trademark

Criminal Law	Punishment
<p><b>18 U.S.C. § 2320(a):</b> Whoever intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services</p>	<p>Individual: - Imprisonment ≤ 10 years and/or - Fine ≤ 2million</p> <p>Other than individual: - Fine ≤ 5 million</p>
<p><b>18 U.S.C. § 2320(a):</b> In the case of an offense by a person under this section that occurs after that person is convicted of another offense under this section</p>	<p>Individual: - Imprisonment ≤ 20 years and/or - Fine ≤ 5million</p> <p>Other than individual: - Fine ≤ 15 million</p>

**Patent:** The United States has no criminal provisions relating to patent infringement.

## Appendix 7: Table 2

### Annex 7: Table 2: Criminal Thresholds for IPR Infringement in Canada

#### Trademark

Criminal Law	Punishment
<b>§ 406 Forging trade-mark</b>	Imprisonment ≤ 2 years or offence punishable on summary conviction
<b>§ 407 Offence</b> Every one commits an offence who, with intent to deceive or defraud the public or any person, whether ascertained or not, forges a trade-mark.	Imprisonment ≤ 2 years or offence punishable on summary conviction
<b>§ 408 Passing off</b> Every one commits an offence who, with intent to deceive or defraud the public or any person, whether ascertained or not, (a) passes off other wares or services as and for those ordered or required; or (b) makes use, in association with wares or services, of any description that is false ...	Imprisonment ≤ 2 years or offence punishable on summary conviction
<b>§ 409 Instruments for forging trademarks</b> Every one commits an offence who makes, has in his possession or disposes of a die, block, machine or other instrument designed or intended to be used in forging a trade-mark.	Imprisonment ≤ 2 years or offence punishable on summary conviction
<b>§ 410 Other offences to trade-marks</b> Every one commits an offence who, with intent to deceive or defraud, (a) defaces, conceals or removes a trade-mark or the name of another person from anything without the consent of that other person; or (b) being a manufacturer, dealer, trader or bottler, fills any bottle or siphon that bears the trade-mark or name of another person, without the consent of that other person, with a beverage, milk, by-product of milk or other liquid commodity for the purpose of sale or traffic.	Imprisonment ≤ 2 years or offence punishable on summary conviction

## Appendix 7: Table 2

Criminal Law	Punishment
<p><b>§ 411 Used goods sold without disclosure</b>                      Every one commits an offence who sells, exposes or has in his possession for sale, or advertises for sale, goods that have been used, reconditioned or remade and that bear the trade-mark or the trade-name of another person, without making full disclosure that the goods have been reconditioned, rebuilt or remade for sale and that they are not then in the condition in which they were originally made or produced.</p>	<p>Imprisonment <math>\leq</math> 2 years or offence punishable on summary conviction</p>

### Copyright

Criminal Law	Punishment
<p><b>§ 42(1) Offences and punishment</b>                      Every person who knowingly</p> <ul style="list-style-type: none"> <li>(a) makes for sale or rental an infringing copy of a work or other subject-matter in which copyright subsists,</li> <li>(b) sells or rents out, or by way of trade exposes or offers for sale or rental, an infringing copy of a work or other subject-matter in which copyright subsists,</li> <li>(c) distributes infringing copies of a work or other subject-matter in which copyright subsists, either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright,</li> <li>(d) by way of trade exhibits in public an infringing copy of a work or other subject-matter in which copyright subsists, or</li> <li>(e) imports for sale or rental into Canada any infringing copy of a work or other subject-matter in which copyright subsists</li> </ul>	<p>On summary conviction:</p> <ol style="list-style-type: none"> <li>1. Fine <math>\leq</math> C\$25,000 and/or</li> <li>2. Imprisonment <math>\leq</math> 6 months</li> </ol> <p>On conviction on indictment</p> <ol style="list-style-type: none"> <li>1. Fine <math>\leq</math> C\$1 million and/or</li> <li>2. Imprisonment <math>\leq</math> 5 years</li> </ol>

**Appendix 7: Table 2**

<b>Criminal Law</b>	<b>Punishment</b>
<p><b>§ 42(2) Possession and performance offences and punishment</b>                      Every person who knowingly                      (a) makes or possesses any plate that is specifically designed or adapted for the purpose of making infringing copies of any work or other subject-matter in which copyright subsists, or                      (b) for private profit causes to be performed in public, without the consent of the owner of the copyright, any work or other subject-matter in which copyright subsists</p>	<p>On summary conviction:                      1. Fine ≤ c\$25,000 and/or                      2. Imprisonment ≤ 6 months</p> <p>On conviction on indictment                      1. Fine ≤ c\$1 million and/or                      2. Imprisonment ≤ 5 years</p>
<p><b>§ 43(1) Infringement in case of dramatic, operatic or musical work</b>                      Every person who knowingly                      (a) makes or possesses any plate that is specifically designed or adapted for the purpose of making infringing copies of any work or other subject-matter in which copyright subsists, or                      (b) for private profit causes to be performed in public, without the consent of the owner of the copyright, any work or other subject-matter in which copyright subsists</p>	<p>On summary conviction:                      1. Fine ≤ c\$250</p> <p>In case of a second or subsequent offence:                      1. Fine ≤ c\$250 and/or                      2. Imprisonment ≤ 2 months</p>
<p><b>§ 43(2) Change or suppression of title or author's name</b>                      Any person who makes or causes to be made any change in or suppression of the title, or the name of the author, of any dramatic or operatic work or musical composition in which copyright subsists in Canada, or who makes or causes to be made any change in the work or composition itself without the written consent of the author or of his legal representative, in order that the work or composition may be performed in whole or in part in public for private profit</p>	<p>On summary conviction:                      1. Fine ≤ c\$500</p> <p>In case of a second or subsequent offence:                      1. Fine ≤ c\$500 and/or                      2. Imprisonment ≤ 4 months</p>

**Patent:** Canada has no criminal provisions relating to patent infringement.

## Appendix 7: Table 3

### Annex 7: Table 3: Criminal Thresholds for IPR Infringement in Australia

#### Trademark

Criminal Law	Punishment
§ 145: Falsifying or unlawfully removing a registered trade mark	1. Fine ≤ 500 penalty units* and/or 2. Imprisonment ≤ 2 years
§ 146: Falsely applying a registered trade mark	1. Fine ≤ 500 penalty units* and/or 2. Imprisonment ≤ 2 years
§ 147: Manufacture and possession of die etc. for use in commission of offence	1. Fine ≤ 500 penalty units* and/or 2. Imprisonment ≤ 2 years
§ 148: Selling, exposing goods for sale, having goods in possession for the purpose of trade or manufacture, importing goods into Australia for the purpose of trade or manufacture	1. Fine ≤ 500 penalty units* and/or 2. Imprisonment ≤ 2 years

\* **Crimes Act of 1914**

**4AA Penalty units**

(1) In a law of the Commonwealth or a Territory Ordinance, unless the contrary intention appears: *penalty unit* means \$110.

**4B Pecuniary penalties—natural persons and bodies corporate**

(3) Where a body corporate is convicted of an offence against a law of the Commonwealth, the court may, if the contrary intention does not appear and the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to **5 times the amount of the maximum pecuniary penalty** that could be imposed by the court on a natural person convicted of the same offence.

## Appendix 7: Table 3

### Copyright

Criminal Law	Punishment	Standard
<p><b>132 Offences</b></p> <p>(1) A person shall not, at a time when copyright subsists in a work:</p> <ul style="list-style-type: none"> <li>(a) make an article for sale or hire;</li> <li>(b) sell or let for hire, or by way of trade offer or expose for sale or hire, an article;</li> <li>(c) by way of trade exhibit an article in public; or</li> <li>(d) import an article into Australia for the purpose of: <ul style="list-style-type: none"> <li>(i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;</li> <li>(ii) distributing the article for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the owner of the copyright in the work; or</li> <li>(iii) by way of trade exhibiting the article in public; if the person knows, or ought reasonably to know, the article to be an infringing copy of the work.</li> </ul> </li> </ul> <p>(2) A person shall not, at a time when copyright subsists in a work, distribute:</p> <ul style="list-style-type: none"> <li>(a) for the purpose of trade; or</li> <li>(b) for any other purpose to an extent that affects prejudicially the owner of the copyright; an article that the person knows, or ought reasonably to know, to be an infringing copy of the work.</li> </ul> <p>(2A) A person shall not, at a time when copyright subsists in a work, have in his or her possession an article for the purpose of:</p> <ul style="list-style-type: none"> <li>(a) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article;</li> <li>(b) distributing the article for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the owner of the copyright in the work; or</li> </ul>	<p>1. Imprisonment <math>\leq</math> 5 years and/or</p> <p>2. Fine <math>\leq</math> 850 penalty units*</p>	<p>(6AA) If:</p> <ul style="list-style-type: none"> <li>(a) a person contravenes subsection (1), (2) or (2A); and</li> <li>(b) the article to which the contravention relates is an infringing copy because it was made by converting a work or other subject-matter from hardcopy or analog form into a digital or other electronic machine-readable form</li> </ul>

**Appendix 7: Table 3**

<b>Criminal Law</b>	<b>Punishment</b>	<b>Standard</b>
See above	1. Imprisonment $\leq$ 5 years and/or 2. Fine $\leq$ 550 penalty units*	(6AB) If: (a) either: (i) a person contravenes subsection (1) because of the doing of an act referred to in paragraph (1)(a), (b) or (c); or (ii) a person contravenes subsection (2) or (2A); and (b) subsection (6AA) does not apply
(1) A person shall not, at a time when copyright subsists in a work: (d) import an article into Australia for the purpose of: (i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, the article; (ii) distributing the article for the purpose of trade, or for any other purpose to an extent that will affect prejudicially the owner of the copyright in the work; or (iii) by way of trade exhibiting the article in public; if the person knows, or ought reasonably to know, the article to be an infringing copy of the work.	1. Imprisonment $\leq$ 5 years and/or 2. Fine $\leq$ 650 penalty units*	(6AC) If: (a) a person contravenes subsection (1) because of the doing of an act referred to in paragraph (1)(d); and (b) subsection (6AA) does not apply
(3) A person shall not, at a time when copyright subsists in a work, make or have in his or her possession a device that the person knows, or ought reasonably to know, is to be used for making infringing copies of the work. (5) A person shall not cause a literary, dramatic or musical work to be performed in public at a place of public entertainment, if the person knows, or ought reasonably to know, that copyright subsists in the work and that the performance constitutes an infringement of the copyright. (5AA) A person shall not cause: (a) a sound recording to be heard in public at a place of public entertainment; or (b) a cinematograph film, in so far as it consists of visual images, to be seen in public at a place of public entertainment or, in so far as it consists of sounds, to be	1. Imprisonment $\leq$ 5 years and/or 2. Fine $\leq$ 550 penalty units*	(6A) A person who contravenes subsection (3), (5), (5AA), (5A), (5B), (5C) or (5D)

**Appendix 7: Table 3**

<b>Criminal Law</b>	<b>Punishment</b>	<b>Standard</b>
<p>heard in public at such a place; if the person knows, or ought reasonably to know, that copyright subsists in the sound recording or the cinematograph film and that the copyright will thereby be infringed.</p> <p>(5A) A person must not provide, or by way of trade promote, advertise or market, a circumvention service if the person knows, or is reckless as to whether, the service will be used to circumvent, or facilitate the circumvention of, a technological protection measure.</p> <p>(5B) A person must not:</p> <ul style="list-style-type: none"> <li>(a) make a circumvention device; or</li> <li>(b) sell, let for hire, or by way of trade offer or expose for sale or hire, or otherwise promote, advertise or market, a circumvention device; or</li> <li>(c) distribute a circumvention device with the intention of trading, or engaging in any other activity that will affect prejudicially an owner of copyright; or</li> <li>(d) by way of trade exhibit a circumvention device in public; or</li> <li>(e) import a circumvention device into Australia with the intention of: <ul style="list-style-type: none"> <li>(i) selling, letting for hire, or by way of trade offering or exposing for sale or hire, or otherwise promoting, advertising or marketing, the device; or</li> <li>(ii) distributing the device for trading, or for engaging in any other activity that will affect prejudicially an owner of copyright; or</li> <li>(iii) exhibiting the device in public by way of trade; or</li> </ul> </li> <li>(f) make a circumvention device available online to an extent that will affect prejudicially an owner of copyright; if the person knows, or is reckless as to whether, the device will be used to circumvent, or facilitate the circumvention of, a technological protection measure.</li> </ul> <p>(5C) A person must not remove or alter any electronic rights management information attached to a copy of a work or other</p>		

## Appendix 7: Table 3

Criminal Law	Punishment	Standard
<p>subject-matter in which copyright subsists, except with the permission of the owner or exclusive licensee of the copyright, if the person knows, or is reckless as to whether, the removal or alteration will induce, enable, facilitate or conceal an infringement of the copyright in the work or other subject-matter.</p> <p>(5D) A person must not:</p> <ul style="list-style-type: none"> <li>(a) distribute a copy of a work or other subject-matter in which copyright subsists with the intention of trading; or</li> <li>(b) import into Australia a copy of such a work or other subject-matter with the intention mentioned in paragraph (a); or</li> <li>(c) communicate to the public a copy of such a work or other subject-matter; without the permission of the owner or exclusive licensee of the copyright if any electronic rights management information attached to the copy has been removed or altered and the person;</li> <li>(d) knows that the electronic rights management information has been so removed or altered without the permission of the owner or exclusive licensee of the copyright; and</li> <li>(e) knows, or is reckless as to whether, the doing of the act referred to in paragraph (a), (b) or (c) will induce, enable, facilitate or conceal an infringement of the copyright in the work or other subject-matter.</li> </ul>		

**\* Crimes Act of 1914**

**4AA Penalty units**

(1) In a law of the Commonwealth or a Territory Ordinance, unless the contrary intention appears: *penalty unit* means \$110.

**4B Pecuniary penalties—natural persons and bodies corporate**

(3) Where a body corporate is convicted of an offence against a law of the Commonwealth, the court may, if the contrary intention does not appear and the court thinks fit, impose a pecuniary penalty not exceeding an amount equal to **5 times the amount of the maximum pecuniary penalty** that could be imposed by the court on a natural person convicted of the same offence.

**Patent:** Australia has no criminal provisions relating to patent infringement.

## Appendix 7: Table 4

### Annex 7: Table 4: Criminal Thresholds for IPR Infringement in Japan

#### Trademark

A translation of the new Japanese Trademark Act, including the amendment of criminal provisions, will be available soon at: <http://www.cas.go.jp/jp/seisaku/hourei/data2.html>.

#### Copyright

Criminal Law	Punishment
<p><b>Article 119</b></p> <p>(i) any person who infringes of moral rights of authors, copyright, right of publication, moral rights of performers or neighboring rights etc.;</p> <p>(ii) any person who, for profit-making purposes, causes others to use automatic reproducing machines mentioned in Article 30, paragraph (1), item (i) for such reproduction of works or performances, etc. as constitutes an infringement on copyright, right of publication or neighboring rights.</p>	<p>1. Imprisonment ≤ 5 years and/or</p> <p>2. Fine ≤ 5 million yen</p>
<p><b>Article 120bis</b></p> <p>(i) any person who transfers to the public the ownership of, or lends to the public, manufactures, imports or possesses for transfer of ownership or lending to the public, or offers for the use by the public, a device having a principal function for the circumvention of technological protection measures or copies of a program having a principal function for circumvention of technological protection measures, or transmits publicly or makes transmittable such program;</p> <p>(ii) any person who, as a business, circumvents technological protection measures in response to a request from the public;</p> <p>(iii) any person who, for profit-making purposes, does an act considered to constitute an infringement on moral rights of authors, copyright, moral rights of performers or neighboring rights under the provisions of Article 113, paragraph (3);</p> <p>(iv) any person who, for profit-making purposes, does an act considered to constitute an infringement on copyright or neighboring rights under the provisions of Article 113, paragraph (5).</p>	<p>1. Imprisonment ≤ 3 years and/or</p> <p>2. Fine ≤ 3 million yen</p>

## Appendix 7: Table 4

Criminal Law	Punishment
<p><b>Article 121</b> Any person who distributes copies of works on which the true name or generally known pseudonym of a non-author is indicated as the name of the author.</p>	<p>1. Imprisonment <math>\leq</math> 1 year and/or 2. Fine <math>\leq</math> 1 million yen</p>
<p><b>Article 121bis</b> Any person who makes, distributes or possesses for distribution copies of commercial phonograms reproduced from any of the following commercial phonograms . . . .</p>	<p>1. Imprisonment <math>\leq</math> 1 year and/or 2. Fine <math>\leq</math> 1 million yen</p>
<p><b>Article 122</b> Any person who violates the provisions of Article 48 (Indication of sources) or Article 102, paragraph (2) (reproduction is made of performances, phonograms, sounds or images of broadcasts or wire diffusions).</p>	<p>Fine <math>\leq</math> 500,000 Yen</p>

## Patent

Criminal Law	Punishment
<p><b>Article 196</b> (Crime of infringement) An infringer of a patent right or exclusive license . . . .</p>	<p>1. Imprisonment with work <math>\leq</math> 5 years or 2. Fine <math>\leq</math> 5 million yen</p>
<p><b>Article 197</b> (Crime of fraud) Any person who has obtained a patent, a registration of extension of the duration of a patent right or a trial decision by means of a fraudulent act . . . .</p>	<p>1. Imprisonment with work <math>\leq</math> 1 year or 2. Fine <math>\leq</math> 1 million yen</p>
<p><b>Article 198</b> (Crime of false marking) A person s who fails to comply with Article 188 . . . .</p>	<p>1. Imprisonment with work <math>\leq</math> 3 years or 2. Fine <math>\leq</math> 3 million yen</p>

## Appendix 7: Table 4

<b>Criminal Law</b>	<b>Punishment</b>
<p><b>Article 201</b> (Dual liability) Where a representative of a juridical person or an agent, employee or other worker of a juridical person or an individual has committed in the course of performing his/her duties for the juridical person or individual, any act in violation prescribed in the following items, in addition to the offender, the juridical person shall be punished by a fine as provided in the corresponding item and the individual shall be punished by a fine as provided in the Article prescribed in the corresponding item:</p>	<ul style="list-style-type: none"><li>(i) Article 196 or 200-2(1), fine <math>\leq</math> 150 million Yen</li><li>(ii) Article 197 or 198, fine <math>\leq</math> 100 million Yen</li></ul>

# **APPENDIX**

## **8**

**Table 1****Applications for Three Kinds of Patents Received from Home and Abroad, 1985-2006**

Years	Total				Domestic				Foreign			
	Total	Invention	Utility Model	Design	Total	Invention	Utility Model	Design	Total	Invention	Utility Model	Design
1985-2006 Accumulated Total	3334367	1089515	1289867	954985	2727857	565147	1280558	882152	606510	524368	9309	72833
2001	203573	63204	79722	60647	165773	30038	79275	56460	37800	33166	447	4187
2002	252631	80232	93139	79260	205544	39806	92166	73572	47087	40426	973	5688
2003	308487	105318	109115	94054	251238	56769	107842	86627	57249	48549	1273	7427
2004	353807	130133	112825	110849	278943	65786	111578	101579	74864	64347	1247	9270
2005	476264	173327	139566	163371	383157	93485	138085	151587	93107	79842	1481	11784
2006	573178	210490	161366	201322	470342	122318	159997	188027	102836	88172	1369	13295

**Table 2****Three Kinds of Patents Granted for Home and Abroad, 1985-2006**

Years	Total				Domestic				Foreign			
	Total	Invention	Utility Model	Design	Total	Invention	Utility Model	Design	Total	Invention	Utility Model	Design
1985-2006 Accumulated Total	1737504	296503	838228	602773	1488747	112442	831638	544667	248757	184061	6590	58106
2001	114251	16296	54359	43596	99278	5395	54018	39865	14973	10901	341	3731
2002	132399	21473	57484	53442	112103	5868	57092	49143	20296	15605	392	4299
2003	182226	37154	68906	76166	149588	11404	68291	69893	32638	25750	615	6273
2004	190238	49360	70623	70255	151328	18241	70019	63068	38910	31119	604	7187
2005	214003	53305	79349	81349	171619	20705	78137	72777	42384	32600	1212	8572
2006	268002	57786	107655	102561	223860	25077	106312	92471	44142	32709	1343	10090

# **APPENDIX**

## **9**

## Appendix 9

### Chinese IPR Application and Enforcement Statistics

Patents								
	1998	1999	2000	2001	2002	2003	2004	2005
<b>Total Patent Applications</b>	121,989	134,239	170,690	203,573	252,631	308,487	353,807	476,264
Percent of Increase Over Previous Year	6.8	10.0	27.2	19.3	24.1	22.1	14.7	34.5
Domestic Patent Applications	96,233	109,958	140,273	201,919	251,680	307,316	352,215	473,826
Foreign Patent Applications	25,756	24,281	30,417	1,654	951	1,171	1,592	2,438
Patents Approved	67,889	100,156	105,344	114,252	132,399	182,226	190,238	214,003
<b>Requests for Reexamination</b>	322	463	555	616	961	1,813	2,768	3,230
Percent of Increase Over Previous Year	5.6	43.8	19.9	11.0	56.0	88.7	52.7	16.7
Cases Resolved	258	401	817	625	785	1,235	1,447	1,576
<b>Requests for Invalidation</b>	636	783	1,194	1,316	1,752	1,813	1,904	2,087
Percent of Increase Over Previous Year	15.6	23.1	52	10.2	33.1	3.4	4.9	9.6
Invalidation Cases Resolved	398	795	1,561	1,480	*****	1,617	1,667	1,643
<b>Total Patent Disputes</b>	612	791	802	977	1442	1,517	1,455	1,597
Percent of Increase Over Previous Year	3.6	29.2	1.4	21.8	47.6	5.2	-4.1	9.8
Disputes Resolved	465	641	718	888	1,291	1,237	1,215	*****
<b>Passing-Off of Patent Investigations</b>	2,086	2,071	*****	413	1679	1873	1983	*****
Trademarks								
	1998	1999	2000	2001	2002	2003	2004	2005
<b>Total Trademark Applications</b>	157,683	170,715	223,177	270,417	371,936	452,095	588,000	664,000
Percent of Increase Over Previous Year	6	8.3	30.7	21.2	37.5	26.3	30	12.9
Domestic Trademark Applications	129,394	140,620	181,717	229,775	321,034	405,620	527,665	593,365
Foreign Trademark Applications	18,252	18,883	24,623	23,234	37,221	33,912	60,335	70,635
Trademark Applications Examined	139,228	166,866	167,307	139,014	223,793	245,737	*****	312,031
Trademarks Approved	107,710	122,401	158,575	202,839	212,533	242,511	587,926	258,532
Total Number of Valid Registered Trademarks	968,827	1,091,228	1,249,803	1,452,277	1,664,810	1,907,321	2,495,247	2,753,779
<b>Total Number of Trademark Infringement and Counterfeiting Cases</b>	14,736	16,949	22,001	22,813	23,539	26,488	40,171	39,107
Number of Cases Concluded	14,141	16,130	11,313	21,960	23,109	26,023	*****	*****
Total Amount of Fines Assessed (RMB)	85,547,000	106,000,000	140,000,000	210,000,000	214,000,000	242,000,000	268,000,000	342,000,000
<b>Persons Transferred to Judicial Agencies for Criminal Prosecution</b>	35	21	45	88	78	45	82	215
Copyrights								
	1998	1999	2000	2001	2002	2003	2004	2005
<b>Total Copyright Registrations</b>	3,265	4,791	6,474	10,370	11,836	*****	*****	*****
<b>Total Copyright Cases</b>	1,028	1,616	2,457	4,416	6,408	23,013	9,691	9,644
Number of Cases Concluded	826	1,515	2,277	4,306	6,107	22,429	9,499	9,380
Concluded by Imposition of Fines	826	1,059	1,726	3,607	5,250	21,032	7,986	7,840
Handled by Mediation	294	463	479	633	721	1,173	1,363	1,174
Transferred to Judicial Authorities	28	39	103	66	136	224	101	366

Source: White Papers on the Intellectual Property Right Protection in China 1998-2006, available at: [www.sipo.gov](http://www.sipo.gov).

# **APPENDIX**

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## Appendix 10: Table 1

### Project Allocation of US Government Trade Capacity Building (TCB) Assistance for TRIPS in China

Activity Title	Activity Description	Year	Total
China Forum on Criminal Intellectual Property Protection	The Department of Justice provided an Intellectual Property Law Enforcement Coordinator to participate in the 2006 China Forum on Criminal Intellectual Property Protection in Shanghai, China. The forum was hosted by the Ministry of Public Security and the State Office of Intellectual Property Protection of China. Funded by Department of State and implemented by Department of Justice/Criminal Division.	2006	\$2,262
Regional Law Enforcement Workshop in Hong Kong	Two members of the Computer Crimes and Intellectual Property Section of the Department of Justice, a trial attorney and an intellectual property law enforcement coordinator, traveled to Beijing, China, to participate in law enforcement meetings with Chinese officials on combating online piracy. Funded by Department of State and implemented by Department of Justice.	2006	\$6,950
Combating Online Piracy Meetings	Two members from the Department of Justice Computer Crime and Intellectual Property Section (a trial attorney and an intellectual property law enforcement coordinator) traveled to Beijing, China, to participate in law enforcement meetings with Chinese officials on combating online piracy. Funded by Department of State and implemented by Department of Justice.	2006	\$8,600
Intellectual Property Rights Training Program	The proposed intellectual property rights training program would provide training courses on methods and techniques to identify counterfeit and pirated goods for customs officials in China. The U.S. Trade and Development Agency anticipates trainers would include officials from Customs and Border Protection of the Department of Homeland Security, other U.S. Government agencies, and private sector experts. Funded and implemented by Trade and Development Agency.	2006	\$383,000

Activity Title	Activity Description	Year	Total
Enforcement provisions of TRIPS & Internet Piracy – video conferences with Chinese judges and the Shanghai Intellectual Property Bureau	Enforcement provisions of TRIPS & Internet Piracy – video conferences with Chinese judges and the Shanghai Intellectual Property Bureau (May, 2002). Funded and implemented by US Patent and Trademark Office.	2002	\$7,375
Seminars & Meetings on IPR	IP enforcement seminars with Sichuang Province Academy of Social Sciences (researchers, judges, government officials); a TRIPs compliance lecture and Chinese IP statutory initiatives with Chongqing IP officials, Chongqing Academy of Social Sciences, and the Southwestern Univ. of Policies and Law in Chongqing City; the USPTO enforcement program seminar with the Shanghai WTO Enforcement Center; a meeting with the Mayor of Dalian; a meeting with judges; a meeting at the Academy of Sciences; and a meeting with SIPO (April, 2002). Funded and implemented by US Patent and Trademark Office.	2002	\$38,997
USTR Bilateral Meetings	USTR bilateral meetings (January, 2002). Funded and implemented by US Patent and Trademark Office.	2002	\$9,987
Biotech Patenting Speech	Biotech patenting speech (June, 2002). Funded and implemented by US Patent and Trademark Office.	2002	\$6,364

Source: USG Trade Capacity Building Database, USAID Data Services; <http://gesdb.usaid.gov/tcb/index.html>.

## Appendix 10: Table 2

### Intellectual Property Rights: Training Program Database: Technical Assistance Projects Provided to China in 2006

Title of Program	Synopsis/Comments	Date	Sponsor
USPTO GIPA: Enforcement Academy	<p>Location: Alexandria, Virginia</p> <p>Training Recipients: Police, Customs officials, other enforcement officials, Prosecutors, Judges - civil/administrative courts, Judges - criminal courts</p> <p>This program deals with the U.S. Government's system for the protection and enforcement of intellectual property rights.</p>	1/24/06 – 1/27/06	USPTO
USPTO GIPA Visiting Scholars Program	<p>Location: Alexandria, Virginia</p> <p>Training Recipients: Trademark officials, Patent officials</p> <p>To provide foreign government officials from patent and trademark backgrounds an overview of the U.S. system of patent and trademark examination.</p>	2/13/06 – 2/24/06	USPTO
USPTO-CTMO Seminar on Geographical Indications	<p>Location: Beijing (May 22-23) and Xiamen (May 25)</p> <p>Training Recipients: Trademark officials, Administrative officials, other enforcement officials, Commerce officials, Industry officials (<i>i.e.</i>, Ministry of), Trade officials, other executive branch officials, Legislators, Journalists, Legal professionals, Right holder groups, other, Academics</p> <p>The focus of the program was on the benefits of using the trademark-based system for GI protection, discussion of the WTO Panel Report, and WTO TRIPs Council discussions on the GI issue. The seminar also focused on U.S. industry's view concerning the benefits of using the trademark system and the "economic advantage for rightholders."</p>	5/22/06 – 5/25/06	USPTO
Seminar: Traditional Knowledge/Genetic Resources/Folklore	<p>Location: Beijing and Kunming, China</p> <p>Training Recipients: Copyright officials, Patent officials, other enforcement officials, Commerce officials, Culture officials, Industry officials (<i>i.e.</i>, Ministry of), Ministry of Public Health officials, Trade officials, Journalists, Legal professionals, Right holder groups, other, Academics</p> <p>Seminar to discuss new developments in the protection of traditional knowledge, genetic resources, and folklore.</p> <p>Additional Sponsor: State Intellectual Property Office of China (SIPO)</p>	6/05/06 – 06/09/06	USPTO

Title of Program	Synopsis/Comments	Date	Sponsor
USPTO Global IP Academy Copyright Program	<p>Location: Alexandria, VA</p> <p>Training Recipients: Copyright officials, Administrative officials, other executive branch officials, Legal professionals</p> <p>Program to provide copyright training to foreign government officials featuring presentations, panel discussions, and case studies on broad range of legal and policy issues, including the purposes of copyright; the subject matter of copyright, ownership, transfer and collective management, rights and limitations, copyright infringement and liability; and copyright's role in economic and cultural development.</p>	8/15/06 - 8/18/06	USPTO
Copyright & Related Rights	<p>Location: Stockholm</p> <p>Training Recipients: Copyright officials, Police, Administrative officials</p> <p>Training sponsored by the Swedish Patent Office for 25 persons from developing world. IFPI dealt specifically with the music industry response to investigation of piracy both physical product and on-line.</p>	8/24/06 - 8/24/06	USPTO
USPTO GIPA Patents Program	<p>Location: Alexandria, VA</p> <p>Training Recipients: Patent officials, Legal professionals, other</p> <p>Global Intellectual Property Academy (GIPA) program provided the opportunity to learn from and interact with U.S. Government officials responsible for patent examination procedure and policy. Program also provided the opportunity to interact with each other and build relationships with counterparts from other countries.</p>	9/23/06 - 9/27/06	USPTO

Title of Program	Synopsis/Comments	Date	Sponsor
Local Law Enforcement Workshops	<p>Location: China</p> <p>Training Recipients: Copyright officials, Trademark officials, Patent officials, Police, Customs officials, Administrative officials, other enforcement officials, Prosecutors, Judges – civil/administrative courts, Judges – criminal courts, Commerce officials, Legal professionals, Right holder groups</p> <p>USPTO Staff, along with invitational speakers (a senior ADA, from the Bronx District Attorney’s Office and Assistant Chief of the Waterfront Commission of NY Harbor) traveled throughout five cities in China, speaking and meeting with over 80 local police officers, prosecutors, customs officials and judges. The purpose of the workshops was to have U.S. local enforcement officials share their experiences investigating and prosecuting IP criminal cases in NYC with their counterparts in China. In an effort to get China to increase criminal IP cases, the discussions in China demonstrated the efforts undertaken by U.S. local governments and the challenges and obstacles our law enforcement officials face in pursuing successful criminal IP cases.</p>	11/07/06 - 11/15/06	USPTO
USPTO GIPA Trademarks Program	<p>Location: Alexandria, VA</p> <p>Training Recipients: Trademark officials, Patent officials, other</p> <p>USPTO Global Intellectual Property Academy (GIPA) program provided training to leaders of industrial property offices, patent and trademark examiners, and other IP experts.</p>	12/05/06 - 12/08/06	USPTO

Source: Intellectual Property Rights Training Program Database: <http://www.training.ipr.gov/>. See also, Technical Cooperation Activities: Information from Members: United States, IP/CW/476/Add.6 (25 October 2006).

## Appendix 10: Table 3

### Technical Assistance Activities Provided to China by the European Union 2004-2006

Beneficiary country(ies)	Title and Date of the Event	Organizing Agency	Description
China	China–EU–Japan–IP Seminar (19 October 2004)	EUCTP	This EU–China–Japan IP seminar aimed at joining forces with regard to IP enforcement in the context of Design Protection and unfair commercial practices
China	Internship (July 2005)	EUCTP	Support to an intern from SIPO to stay with "DG Market" in Brussels
China	EU–China IP Comparative Study (15 June – 15 December 2005)	EUCTP	The report documented the European and Chinese practice in judicial procedures in handling IPR–related cases (Trademark, Patent, Design and Copyright) and compared EU practice (UK, France, Germany, Czech Republic) with Chinese practices. Please refer to web site <a href="http://www.euchinawto.org">www.euchinawto.org</a> .
China	Pharmaceuticals IPR (22 October – 5 November 2005)	EUCTP	The Pharmaceuticals IPR study tour focused on data exclusivity, patent term restoration and drug anti–counterfeiting, as well as the conditions required in China for a research–based pharmaceutical industry. The delegation visited the UK, France, Belgium and Germany.
China	EU–China IP WG Briefing Pack (7 November – 15 December 2005)	EUCTP	The first EU–China IP Working Group meeting took place on 18 October 2005 in Beijing. The meeting brought together Chinese officials from a range of ministries linked to IPR, EU IPR experts and representatives from the European pharmaceutical industry. To support the Group meeting and facilitate the dialogue, the EUCTP translated the meeting documents and compiled a Briefing Pack. The documentation is accessible on the web site of the EUCTP encrypted with password.
China	Standards and IPR (April – July 2006)	EUCTP	This activity is a fact–finding exercise that examines the relationship between IPRs and standards and sheds light on policy scenarios in this area. The study was launched on 1 April 2006. The final draft report will be submitted on 31 July 2006 and will be disseminated to the beneficiaries once reviewed and translated.
China	Trademark and Copyright Seminar (7 June 2006)	EUCTP	A seminar was held in Beijing addressing the problems of Trademark and Copyrights violations in Beijing Retail Markets.

<b>Beneficiary country(ies)</b>	<b>Title and Date of the Event</b>	<b>Organizing Agency</b>	<b>Description</b>
China	IP Judges Training (August – September 2006)	EUCTP	The EUCTP is supporting the National Judges College in designing training activities intended to build capacity and enhance the skills of approximately 270 judges in civil IP courts, including but not limited to civil procedures in infringement cases, interim injunctions, trademark and copyright infringements on the Internet, trade secrets and software infringements. EUCTP is currently identifying European judges and specialized senior attorneys to deliver their training, which is due to take place in the last week of September.
China	Support to the EU–China IPR Dialogue (1 November 2005 – 15 August 2008)	EUCTP	The EUCTP will continue to support the activities undertaken under the IPR Working Group and specifically will follow up on the recommendations raised by the EU–China IPR Comparative Study.

Source: Technical Cooperation Activities: Information from Members: European Communities, IP/C/W/476/Add.5 (13 December 2006).

## Appendix 10: Table 4

### Japan's IP Training Programs for China during the Past Five Years

Source: Annual Report on Imitations and Pirated Edition by Government Coordination Office, June 2006  
published by Ministry of Economy, Trade and Industry, and Related Agencies

ID	Project Name	Sponsoring Organization	Period	Budget (in JPY million)	Project Objectives
<b>A. Programs For the Government of China</b>					
1	Seminar for Management of China's Public Safety Investigation Team	JICA	FY2004	Included in ¥161,206 JICA Contributions to the International Cooperation Organizations Management Budget	To invite and introduce high level officials of China's Public Safety departments to Japan's police system; programs against various crimes; activities of local police departments through visits to various related facilities.
2	Technical Cooperation Project (IP Protection)	JICA	FY2005 - FY2010	¥32 for FY2005	To hold IP training seminars between Chinese and Japanese experts in Japan through exchanges of ideas and to conduct collaborative research on IP issues in relation to China's WTO entry.
3	Research on China's IP System	JETRO	FY2002	Included in ¥4.6 Specialists Travel Fund	To send legal experts on IP to China for holding Japan-China bilateral legal talks among experts from both country to discuss China's needs to address IP-related issues.
4	Seminar for Promoting the Use of IP Rights for Practitioners	JETRO	FY2005	Included in ¥207 Project Funds to Strengthen IP Protection in Foreign Countries	To produce and distribute revised "IP Rights for Japanese Companies and Information on How to Report Counterfeits" to supervisors at local business administration offices (in Hangzhou, Shanghai, Guangzhou) and local technical bureaus (in Wuhan, Chengdu) through meetings in the areas.
5	Japan-China IP Protection Improvement Seminar	Japan Chamber of Commerce and Industry in China, JETRO	FY2004	Included in ¥180 Project to Strengthen IP Protection against Counterfeits in Foreign Countries	To promote the publication noted above to local field officers (in Fujian, Beijing, Henan, Jiangsu, Guangdong) where counterfeit production and their sales are prevalent.
6	Japan Bearing Industrial Association Seminar for China's Customs	JETRO	FY2004	Included in ¥180 Project to Strengthen IP Protection against Counterfeits in Foreign Countries	To hold a seminar for Chinese Customs agents with cooperation with the Japan Bearing Industrial Association, to distribute "Counterfeit Bearing Manual" explaining how to determine bearing counterfeits, bearing usages, risks associated with counterfeit bearings, and to report on the state of counterfeit bearings in China and other countries to the Customs staff.

## Appendix 10: Table 4

### Japan's IP Training Programs for China during the Past Five Years

Source: Annual Report on Imitations and Pirated Edition by Government Coordination Office, June 2006  
published by Ministry of Economy, Trade and Industry, and Related Agencies

ID	Project Name	Sponsoring Organization	Period	Budget (in JPY million)	Project Objectives
7	Technical Conference for China's Industrial Rights Bureau	JETRO	FY2003	Included in ¥120 Project to Strengthen IP Protection against Counterfeits in Foreign Countries	To introduce Japan's high-technologies to Chinese patent examiners for securing and protecting Japanese companies' rights in patent applications and in the high-tech products area where slow patent application processing are prevalent in China.
8	Follow-up Seminars	Patent Office	FY2004	Included in ¥410 Project to Educate Personnel dealing with Industrial Property Rights	To hold a Beijing seminar titled "IP Strategy for Companies."
9	Invitational Training to Control Products Violating Intellectual Property Rights	CIPIC, Japan's Customs Office	FY2005	Included in ¥16 Contract for Economic Cooperation Research	To invite Chinese Customs agents to hold a seminar to promote TRIPs rules.
<b>B. Programs For the China's Private Sector</b>					
10	Project To Train IP Translators	JETRO	FY2004	Included in ¥878 Demonstration Project to Form Leading Investment Environments	To establish a Japan-China IP Translator Certification Institute in China to certify translators to help reduce "mis-translation" issues, which is one of the key China-Japan IP issues.
11	Creating Network and Membership Support for Personnel Training with the Guangzhou IP Research Society	JETRO	FY2003 - FY2004	Included in ¥840 Contract to Support Harmonized Trade Investments	To send specialists to help improve business know-how at Japanese companies liaison offices, as well as help improving member companies' understanding about IP, while developing organizational structures to work closely with Canton IP Research Organization (private organization). The Organization has strong working relationships with Chinese government organizations and their liaison offices.
12	Assistance to Protect Intellectual Property in Computer Software in Dalian	JETRO	FY2004 - FY2005	Included in ¥922 Contract to Support Harmonized Trade Investments	To hold seminars for software companies on how to structure information management systems to respond to increased business from Japan during FY2005. In FY2004, to send specialists to hold seminars on the importance of IP protection for software companies.
13	Training in IP Rights	AOTS	FY2004 - FY2005	Included in ¥185 Cooperative Training for Harmonized Trade Investments	To hold seminars for Beijing and Shanghai patent office staff to help improve their capabilities to process Japanese patent applications and their responses to cases involving counterfeits.

## Appendix 10: Table 4

### Japan's IP Training Programs for China during the Past Five Years

Source: Annual Report on Imitations and Pirated Edition by Government Coordination Office, June 2006  
published by Ministry of Economy, Trade and Industry, and Related Agencies

ID	Project Name	Sponsoring Organization	Period	Budget (in JPY million)	Project Objectives
14	Personnel Training Support for Shanghai-Area Patent Offices	JETRO	FY2003	Included in ¥871 Cooperative Training for Harmonized Trade Investments	To send specialists to help improve capabilities of Chinese patent offices in the Shanghai area where large numbers of Japanese companies have moved to the area.
15	Licensing System Training	AOTS	FY2003	Included in ¥186 Cooperative Training for Harmonized Trade Investments	To provide seminars to owners/managers of Chinese companies (in Beijing and Shanghai) to learn about the importance of the licensing system.
16	Market Economy Training (Management of Trademarks)	AOTS	FY2003 - FY2005	Included in ¥5,974 Economy/Commerce Personnel Training Program	To hold invitational seminars for China's private- and public-sector personnel to help improve their trademark management capabilities.
17	JPO/IPR Training (Chinese Patent Special Course)	Patent Office	FY2005	Included in: (1) ¥69 Private-Sector IP Consolidation Cooperation Program; and (2) ¥410 Industrial Property Right Personnel Training Programs	To hold training sessions to help China's understanding about IP in general through: lectures/discussions on the patent system; preparation of details/drawings; how to respond to office actions; application corrections; patentability evaluation; and the use of patent information.
18	JPO/IPR Training (Chinese Practitioner Course)	Patent Office	FY2004 - FY2005	Included in: (1) ¥69 Private-Sector IP Consolidation Cooperation Program; and (2) ¥410 Industrial Property Right Personnel Training Programs	To hold invitational training sessions for both public- and private-sector personnel to help them understand the importance of: IP strategy and its applicabilities; IP management; patent procedures; and other important topics (violations and licensing issues) at companies through lectures and discussions.
19	Chinese IP Assets Management Training	AOTS	FY2004 - FY2005	Included in ¥5,974 Assistance Training Program for Economic/Commerce Manpower	To hold invitational training sessions for both public- and private-sector personnel to help improve IP asset management capability.
20	Digital Cinema Training	AOTS	FY2004	Included in ¥185 Cooperative Training, including Harmonized Trade Investments	To hold invitational training sessions for securing visual contents, contents selection methods, and instructions on the most current movie projectors, as well as the need for IP protection and conducting business practices through contracts.
21	Licensee Training Program	AOTS	FY2004 - FY2005	Included in ¥185 Cooperative Training, including Harmonized Trade Investments	To hold invitational seminars and overseas training promoting: prevention of unfair competition; protection of IP rights; business dealings through contracts; and prevention of counterfeits.

## Appendix 10: Table 4

### Japan's IP Training Programs for China during the Past Five Years

Source: Annual Report on Imitations and Pirated Edition by Government Coordination Office, June 2006  
published by Ministry of Economy, Trade and Industry, and Related Agencies

ID	Project Name	Sponsoring Organization	Period	Budget (in JPY million)	Project Objectives
22	Asia Contents Industry Training	AOTS	FY2005	Included in ¥5,974 Assistance Training Program for Economic/Commerce Manpower	To hold invitational training sessions through lectures and discussions on Japan's content industries including the movie industry, to promote content distribution and cooperation systems to produce content cooperatively within Asia.
23	Training for Copyright Protection under Digital Environment	WIPO, Agency for Cultural Affairs	FY2005	Included in ¥5,974 Assistance Training Program for Economic/Commerce Manpower	To provide lectures on copyright to China's copyright enforcement officials, who are developing China's copyright policy.
<b>C. Programs for Multiple Countries including China</b>					
24	International Commercial Laws Symposium (IP Enforcement Activities and Challenges in Asia)	The Ministry of Justice	FY2002 - FY2003	¥3 for <b>China</b> , Singapore, Malaysia, Philippines, Thailand, Australia, and Japan	Held international symposiums (once each in 2002 and 2003) focusing on the state of IP enforcement and its challenges, with cooperation of JETRO.
25	Group Seminar (on International IP Rights)	JICA, Comparative Law Research Center	FY2000 - FY2004	Included in ¥161,206 JICA Contribution for <b>China</b> , Thailand, Indonesia, Philippines, Cambodia, and Others	To provide outlines of key IP laws, experience with technology transfers, and IP rights to specialists with leadership positions on technology transfers.
26	ASEM Trade Harmonization Plan	MOFA, METI, MOF, and Others	FY2000 - FY2004	No Specific Budget Established. For ASEM Countries	To hold seminars to help improve the understanding of IP protection need to seminar participants from both the public- and private-sectors.
27	Group Training (on Customs Administration)	JICA, Japan Customs	FY2000 - FY2005	Included in ¥161,206 JICA Contribution for <b>China</b> , Cambodia, India, Kazakhstan, Uzbekistan, and Others	To introduce Japan's customs system to customs agents from developing countries, while helping their customs operations by providing comparative studies with participating countries' customs systems.
28	Group Training (on Copyright System)	JICA, Agency for Cultural Affairs	FY1998 - FY2005	Included in ¥160,077 JICA Contribution for <b>China</b> , Columbia, Indonesia, Malawi, Panama, Peru, and Thailand	To help promote copyrights; improve copyright systems through practical training for copyright administrators including government officials, organizations, and university staff on the purposes of copyrights.
29	Training Course (on Protection of Plant Growers' Rights)	JICA, MAFF	FY2000 - FY2004	Included in ¥161,206 JICA Contribution for <b>China</b> , Thailand, Indonesia, Malaysia, Philippines, Vietnam, Argentina, Bangladesh, Bolivia, Kenya, Mauritius, India, Pakistan, Zimbabwe, Brazil, and Costa Rica	To help government officials' understanding of plant growers' rights through seminars on UPOV treaty and knowledge/technologies on new plant species.
30	Training Course (on Protection of Plant Species)	JICA, MAFF	FY2005	Included in ¥160,007 JICA Contribution for <b>China</b> , Philippines, Vietnam, Argentina, Kenya, Zimbabwe, and Mozambique	To help government officials' understanding of protection of plant species through seminars on UPOV treaty and knowledge/technologies on new plant species.

## Appendix 10: Table 4

### Japan's IP Training Programs for China during the Past Five Years

Source: Annual Report on Imitations and Pirated Edition by Government Coordination Office, June 2006  
published by Ministry of Economy, Trade and Industry, and Related Agencies

ID	Project Name	Sponsoring Organization	Period	Budget (in JPY million)	Project Objectives
31	Group Training (on APEC Industrial Property Rights)	JICA, Patent Office	FY2002 - FY2005	Included in ¥160,007 JICA Contribution for <b>China</b> , Thailand, Indonesia, Philippines, Vietnam, Papua New Guinea, and Peru	To help train personnel on industrial IP rights systems and to expand the systems' application within the APEC region.
32	Group Training (on APEC Industrial Property Rights)	JICA, Patent Office	FY2000 - FY2001	¥17 Contribution for <b>China</b> , Thailand, Indonesia, Philippines, Vietnam and Others	To help train government personnel on effective establishment/management/harmonization of industrial IP right systems within the APEC region.
33	Invitational Training for IP Counterfeits Control	CIPIC, Japan's Customs Office	FY2004	¥18 Contribution for <b>China</b> , Thailand, Indonesia, Malaysia, Philippines, Vietnam, Cambodia, Myanmar, and Laos	To contribute to a better harmonization of international trade through inviting developing countries' customs officials to Japan to promote TRIPs rules.
34	International Symposium on Copyrights and Related Rights for the Asia Pacific Region	WIPO, Agency for Cultural Affairs	FY2000 - FY2005	Included in ¥52 Asia-Region Copyright Promotion Project for <b>China</b> , Indonesia, Philippines, Vietnam, Mongolia, Fiji and Asia Pacific Countries	To hold an international copyright symposium for the Asia and Pacific regions.
35	Special Training Program in Tokyo	WIPO, Agency for Cultural Affairs	FY2000 - FY2005	Included in ¥52 Asia-Region Copy Right Promotion Project for Bhutan, Cambodia, <b>China</b> , Malaysia, Mongolia, Sri Lanka, and Vietnam	To hold annual training programs for specialists from developing countries in the Asia and Pacific regions.
36	Asia / Pacific Copyrights and Related Rights Seminar (Tokyo Seminar)	Agency for Cultural Affairs, CRIC	FY2000 - FY2005	¥6 for ASEAN, <b>China</b> , Korea	To hold an international seminar on copyright by inviting copyright officials from the Asia and Pacific regions to exchange information on patent systems and ideas.
37	Industrial Property Rights Training Program	AOTS	FY2000 - FY2002	Included in ¥169 Contribution to Harmonize Trade Investments for <b>China</b> , Thailand, Indonesia, Malaysia, Philippines, Vietnam, and others	To hold invitational seminars on the industrial IP system, patent management, responses to patent infringements, IP protection systems for participants (company managers, practitioners, and patent attorneys).
38	WIPO Training (Enforcement Course)	WIPO, Patent Office	FY2000 - FY2005	Included in: (1) ¥178 International IP Agencies Contribution; and (2) ¥410 Industrial IP Personnel Training Program for <b>China</b> , Thailand, Indonesia, Malaysia, Philippines, Vietnam, India, and Pakistan	To hold invitational seminars on the international IP framework, basic IP rights, how to respond to patent infringements, negative impacts from patent infringements and Japan's policy on IP infringements. Participants are invited from courts, police, and customs staff from developing countries.
39	WIPO Training (Computerization Course)	WIPO, Patent Office	FY2000 - FY2005	Included in: (1) ¥178 International IP Agencies Contribution; and (2) ¥410 Industrial IP Personnel Training Program for <b>China</b> , Thailand, Indonesia, Malaysia, Philippines, Vietnam, India, Laos, and Sri Lanka	To hold invitational seminars to help develop a better understanding of patent system computerization for specialists from developing countries, using Japan's experience from computerization.

## Appendix 10: Table 4

### Japan's IP Training Programs for China during the Past Five Years

Source: Annual Report on Imitations and Pirated Edition by Government Coordination Office, June 2006  
published by Ministry of Economy, Trade and Industry, and Related Agencies

ID	Project Name	Sponsoring Organization	Period	Budget (in JPY million)	Project Objectives
40	WIPO Training (Inspector Course)	WIPO, Patent Office	FY2000 - FY2005	Included in: (1) ¥178 International IP Agencies; and (2) ¥410 Industrial IP Personnel Training Program Contribution for <b>China</b> , Thailand, Indonesia, Malaysia, Philippines, Vietnam, Bhutan, Iran, and Mongolia	To hold invitational training seminars for patent examiners from developing countries on: international laws and regulations of IP; specialist knowledge for patent processing; coordination among responsible agencies toward international harmonization; and the importance of information exchanges.
41	WIPO Training (Administration Course)	WIPO, Patent Office	FY2000 - FY2005	Included in: (1) ¥178 International IP Agencies Contribution; and (2) ¥410 Industrial IP Personnel Training Program for <b>China</b> , Indonesia, Malaysia, Philippines, Thailand, Vietnam, Papua New Guinea, Bangladesh, Cambodia, India, Laos, Mongolia, Myanmar, Nepal, and Sri Lanka	To hold invitational training seminars for officials from developing countries on the importance of IP rights, IP systems, improved management of the systems and disseminating a better understanding of IP systems within their countries.
42	JPO / IPR Training (Corporate Managers Course)	Patent Office	FY2000 - FY2004	Included in: (1) ¥69 IP Assets Private-Sector Cooperation Project; and (2) ¥410 Industrial IP Personnel Training Program for <b>China</b> , Thailand, Indonesia, Malaysia, Philippines, and Vietnam	To hold invitational seminars for corporate managers on improving knowledge about the application of IP rights on a corporate-level through lectures and discussions within companies.
43	JPO / IPR Training (Lawyers' Course)	Patent Office	FY2000 - FY2005	Included in: (1) ¥69 IP Assets Private-Sector Cooperation Project; and (2) ¥410 Industrial IP Personnel Training Program for <b>China</b> , Thailand, Indonesia, Malaysia, Philippines, Vietnam, Mexico, and India	To hold invitational seminars for attorneys on: comparative analysis of IP legal systems in various countries; approaches for determining patent violations; reviews of IP rights violation cases to help a better understanding of IP rights.
44	JPO / IPR Training (IP Trainers' Course)	Patent Office	FY2000 - FY2005	Included in: (1) ¥69 IP Assets Private-Sector Cooperation Project; and (2) ¥410 Industrial IP Personnel Training Program for <b>China</b> , Thailand, Indonesia, Malaysia, Philippines, Vietnam, Cambodia, India, and Laos	To hold invitational training to help improve dissemination of knowledge and approaches of effective IP protection through presentations and exchanges of opinions and participants' experiences.
45	JPO / IPR Training (Practitioners' Course)	Patent Office	FY2000 - FY2005	Included in: (1) ¥69 IP Assets Private-Sector Cooperation Project; and (2) ¥410 Industrial IP Personnel Training Program, for <b>China</b> , Thailand, Indonesia, Philippines, Vietnam, and India	To hold invitational training seminars to help develop a comprehensive understanding by IP specialists about international patent agreements, intellectual property rights laws, patent application practices, and trademark application practices.

### Appendix 10: Table 4

#### Japan's IP Training Programs for China during the Past Five Years

Source: Annual Report on Imitations and Pirated Edition by Government Coordination Office, June 2006  
published by Ministry of Economy, Trade and Industry, and Related Agencies

ID	Project Name	Sponsoring Organization	Period	Budget (in JPY million)	Project Objectives
46	JPO / IPR Training (Patent Specialists' Course)	Patent Office	FY2000 - FY2005	Included in: (1) ¥69 IP Assets Private-Sector Preparation Cooperation Project; and (2) ¥410 Industrial IP Personnel Training Program for <b>China</b> , Thailand, Indonesia, Philippines, Vietnam, and India	To hold invitational training seminars to help improve understanding about patent systems by specialists through lectures and discussions on patent system outlines, how to prepare details and drawings, application corrections, issues of leading technologies and patents, and the use of available patent information.
47	APIC Training (Managers' Training Course)	Japan Institute of Invention and Innovation	FY2004	Included in ¥501 for <b>China</b> , Thailand, Indonesia, Malaysia, Vietnam, India, and Mexico	To hold invitational seminars for companies' management to help improve their knowledge and the use of IP management within their companies through lectures on strategies for IP management and discussions.
48	Long-Term IP Research Fellowship Program	Patent Office	FY2001 - FY2005	Included in ¥ 410 Industrial Property Personnel Training Program for <b>China</b> , Thailand, and Vietnam	To hold invitational seminars for leaders and future leaders of governments, as well as college lecturers, in the IP field of Asia Pacific region countries needing help .
49	Asia Pacific Region Workshop	WIPO / Patent Office	FY2004	Included in ¥178 International IP Rights Organizations Contribution for Japan, Bangladesh, Cambodia, <b>China</b> , India, Indonesia, Iran, Laos, Malaysia, Mongolia, Pakistan, Papua New Guinea, Korea, Singapore, Sri Lanka, Thailand, Vietnam, and Philippines	To help Asia Pacific region countries' IP departments by disseminating information on: how to establish a fast and accurate system to protect IP rights; simplification of the IP application process; the use of Information Technologies; simplification of IP administration through office modernization under a workshop titled "Computerization Information Technologies and IP rights."
50	Asia Pacific Region Workshop	WIPO / Patent Office	FY2004	Included in ¥178 International IP Rights Organizations Contribution for Japan, Pakistan, Bangladesh, Bhutan, <b>China</b> , India, Indonesia, Iran, Malaysia, Maldives, Nepal, Philippines, Korea, Sri Lanka, Thailand, and Singapore	To hold regional workshops to promote the Madrid System for protecting international IP rights, emphasizing trademarks and the Madrid System's economic importance.
51	Asia Pacific Region Workshop	WIPO / Patent Office	FY2004	Included in ¥178 International IP Rights Organizations Contribution for Japan, Sri Lanka, Bangladesh, Bhutan, Cambodia, <b>China</b> , Fiji, India, Indonesia, Iran, Laos, Malaysia, Mongolia, Myanmar, Nepal, Pakistan, Papa New Guinea, Philippines, Korea, Thailand, Singapore, and Vietnam	To hold regional workshops on "IP System Development and Its Use" to help promote cooperation among government agencies, universities, and the private-sector.

### Appendix 10: Table 4

#### Japan's IP Training Programs for China during the Past Five Years

Source: Annual Report on Imitations and Pirated Edition by Government Coordination Office, June 2006  
published by Ministry of Economy, Trade and Industry, and Related Agencies

ID	Project Name	Sponsoring Organization	Period	Budget (in JPY million)	Project Objectives
52	Asia Pacific Region Symposium	WIPO / Patent Office	FY2005	Included in ¥178 International IP Rights Organizations Contribution for Japan, Malaysia, Bangladesh, Bhutan, Brunei, Cambodia, <b>China</b> , Fiji, India, Indonesia, Iran, Laos, Mongolia, Myanmar, Nepal, Pakistan, Papua New Guinea, Philippines, Korea, Samoa, Singapore, Sri Lanka, Thailand, Tonga, and Vietnam	To hold seminars for: effective IP enforcement structure building through strong cooperation among IP enforcement agencies; improving staff knowledge on IP at Customs and police departments by providing basic IP principals; and sharing information on IP enforcement policies and administration.
53	International Forum	WIPO / Patent Office	FY2005	Included in ¥178 International IP Rights Organizations Contribution for Japan, <b>China</b> , Korea, Singapore, Malaysia, India, Indonesia, Philippines, Thailand, Vietnam, Cambodia, Mongolia, Sri Lanka, Bangladesh, Bhutan, Brunei, Fiji, Iran, Laos, Maldives, Myanmar, Nepal, Pakistan, Papua New Guinea, Samoa, Tonga, Afghanistan, the U.S., EPO, Cameroon, Kenya, Nigeria, South Africa, Egypt, Jordan, Lebanon, Morocco, Brazil, Chile, and Jamaica	To help create a mutual understanding of IP issues between developed countries and developing countries. This Forum introduces and discusses various countries' IP initiatives to help foster a "IP System for Economic Development" concept.
54	Industrial Property Rights Training Program	AOTS	FY2004	Included in ¥6,021 Project to Educate Personnel for Economic/Commercial Development in Cambodia, <b>China</b> , India, Indonesia, Malaysia, Myanmar, Mongolia, Laos, and Vietnam	To hold invitational training on how to improve the use of IP rights for Asian companies.

Abbreviations: JICA = Japan International Cooperation Agency  
JETRO = Japan External Trade Organization  
CIPIC = Customs Intellectual Property Information Center  
AOTS = The Association for Overseas Technical Scholarship  
MOFA = The Ministry of Foreign Affairs of Japan  
METI = Ministry of Economy, Trade and Industry of Japan  
MOF = Ministry of Finance Japan

## Appendix 10: Table 5

### Ha Noi Action Plan Digital Economy and IPR Schedule of Activities

Elements	On-going Actions	Future Actions	Timeframe	Capacity-Building
<b>Anti-Counterfeit and Piracy</b>	<ul style="list-style-type: none"> <li>• Implement existing three Model Guidelines for Anti counterfeiting and Piracy</li> <li>• Develop additional Model Guidelines on Effective IPR Public Awareness Campaign and Model Guidelines on Keeping Supply Chains against Counterfeit and Pirated Goods</li> <li>• Cooperation and identify customs and law enforcement contacts from each economy</li> <li>• Advance proposal for government agencies to use legitimate software and other copyright materials</li> </ul>	<ul style="list-style-type: none"> <li>• Continue to implement the existing model guidelines and develop new ones, where appropriate</li> <li>• Report on implementation of the APEC Effective Practices for Regulations Related to Optical Disc Production</li> <li>• Strengthen collaboration with the private sector and other stakeholders, including ABAC</li> </ul>		<ul style="list-style-type: none"> <li>• Conduct training on combating counterfeit medicines and medical devices</li> <li>• Capacity building for custom officers in preventing counterfeit goods</li> <li>• Capacity building to relevant parties responsible for conducting public awareness campaign</li> <li>• Workshop to exchange experience on the issue of supply chain intellectual property infringement, and capacity building to relevant parties in the supply chain in order to secure supply chains against counterfeit and pirated goods</li> </ul>
<b>IPR Service Centers</b>	<ul style="list-style-type: none"> <li>• Complete exchange of information on IPR enforcement points of contact and IPR websites</li> <li>• Establish a website in each economy to provide basic factual IPR-related information</li> <li>• IPR toolkits</li> </ul>	<ul style="list-style-type: none"> <li>• Improve the operations of IPR Services Centers via sharing best practices</li> <li>• APEC consolidated Internet Portal on IPR Services in member economies</li> </ul>	2006-2008	<ul style="list-style-type: none"> <li>• Training and seminar on operation of IPR Services Center</li> <li>• Promote private sector inputs for IPR protections and enforcement</li> </ul>
<b>Promoting Trade in Digital Economy</b>	<ul style="list-style-type: none"> <li>• Establish Technology Choice Principles Pathfinder</li> </ul>	<ul style="list-style-type: none"> <li>• Share experiences in implementing technology choices principles</li> </ul>		<ul style="list-style-type: none"> <li>• Workshops, seminars</li> </ul>

Elements	On-going Actions	Future Actions	Timeframe	Capacity-Building
<b>Other IPR Initiatives</b>	<ul style="list-style-type: none"> <li>• Strengthen IPR in SME through holding joint seminar between IPEG and SME, including women SMEs</li> <li>• Strengthen intellectual property protection for life sciences</li> <li>• The Auto Dialogue adopted Best Practices Paper on IPR issues in the automotive sector</li> </ul>	<ul style="list-style-type: none"> <li>• Share best practices in IPR protection and enforcement for SMEs</li> <li>• Training workshops on anti-counterfeiting of pharmaceuticals and medical devices.</li> <li>• Share experiences on the implementation of Best Practices Paper on IPR issues in the automotive sector</li> </ul>	2007 – 2008	<ul style="list-style-type: none"> <li>• Educational training seminars and other events</li> <li>• Two training workshops on LSIF anti-counterfeiting</li> <li>• Workshop, seminars</li> </ul>

Source: Ha Noi Action Plan to Implement the Busan Roadmap Towards the Bogar Goals – Final;  
<http://www.mofa.go.jp/policy/economy/apec/2006/action.pdf>

# **APPENDIX**

**11**

# 加强知识产权保护工作 推进创新型省份建设

——在“全球知识产权保护与创新论坛”上的演讲

张九汉

(2007年3月28日)

尊敬的各位来宾、各位朋友，女士们，先生们：

上午好！

非常高兴参加本次论坛，感谢主办方提供机会，代表江苏省就“知识产权保护与创新”主题，与各位专家、学者、官员进行探讨。

江苏位于中国东部沿海的长江三角洲地区，国土面积10.26万平方公里，占全国1.06%；总人口7549万人，占全国5.7%，人口密度为全国之最；下辖13个省辖市、106个县（市、区）。江苏是一个经济大省，去年GDP超2.1万亿元，占全国1/10，人均超3500美元。江苏是一个开放大省，与218个国家和地区建立了贸易关系，去年进出口总额2840亿美元，外商直接投资超174亿美元，占全国1/4以上。外商投资企业超6万家，有275家世界500强企业在江苏投资。江苏又是一个科教人才大省，高校119所，在校生140万人，居全国第一；科研机构3800多个，科技人员36万，江苏籍两院院士300多名，占全国的1/4，在江苏的两院院士

有90人，全国名列前茅。

加强知识产权保护，既是推进科技自主创新的前提和保障，也是维护良好贸易投资环境和公平竞争环境的基础性工作。长期以来，江苏省高度重视知识产权保护工作，作为实施科教兴省战略、推进创新型省份建设的重要内容，作为“法治江苏”、“诚信江苏”建设的重要部分，作为规范市场秩序、营造公平竞争市场环境的重要方面，坚持以建立现代知识产权制度为目标，以提高企事业单位知识产权创造、保护、利用和管理能力为核心，以加强政府知识产权管理职能、提高公共服务水平为重点，着力建立与市场经济体制相适应、与经济社会发展相协调、与国际规则相符合的知识产权工作管理体制和运行机制，知识产权工作总量实现突破、执法不断加强、服务逐步完善、环境日益优化。

### 一、加强知识产权工作组织领导与统筹协调

知识产权工作综合性强，涉及商标、专利、版权等主管部门，还涉及海关、公安、法院等执法司法机关，政府必须加强组织领导和统筹协调。工作中，我们主要抓了四个方面：一是加强组织领导。省政府在整顿和规范市场经济秩序领导小组框架下成立保护知识产权工作组，统筹全省知识产权保护领导工作。二是完善协作机制。加强机构建设，省、省辖市以及60%以上县（市、区）成立知识产权局。省市县商标、版权部门建立了相应管理机构和执法队伍。省政府建立了由25个部门组成的知识产权联席会议制度，形成各部门相互配合的协作机制。三是加强制度建设。省里

颁布了《关于进一步加强知识产权工作的意见》、《关于开展知识产权保护专项行动的意见》等系列文件，明确把严厉打击侵犯知识产权行为、营造尊重和保护知识产权的法治环境，作为营造富有活力的创新创业环境、为建设创新型省份提供有力保障的重要内容。四是广泛开展宣传教育活动。充分利用“世界知识产权日”等时机，开展保护知识产权宣传周、保护知识产权成果展览等活动，定期发布知识产权状况白皮书，举办以“保护知识产权，规范市场秩序”为主题的市县长培训班，在全省营造尊重知识产权、保护知识产权的浓厚氛围。

## 二、实施明确的鼓励创新政策导向

创新是科学技术发展的核心动力和核心价值，知识产权是科技创新的基础和衡量指标。我省通过实施明确的政策导向，推动科技创新和知识产权创造。一是推动重点产业领域的科技创新。以支柱产业和主要行业为突破口，在轻工、纺织、机械、化工、冶金、造纸、建材等传统产业领域打造一批知名品牌，提升科技含量和竞争力；在生物技术、信息技术、新材料和医药、新能源等高新技术及新兴产业领域加强知识产权创造，提升核心竞争力和对关联产业的带动力；同时，注重现代农业和环境生态方面的知识产权保护工作，推进新农村建设及资源节约型、环境友好型社会建设，提升可持续发展能力。二是突出企业的主体地位。支持企业研发投入，技术开发费用可以通过税前进成本的方式给予据实补偿；支持企业建立研发机构，研发机构科技人员实际发放

的工资额可在企业计算应纳税所得额时据实扣除；支持具自主知识产权的产品进入市场，对具有较大市场潜力并需重点扶持的创新试制品和首次投向市场的产品，政府进行首购或订购。三是引导知识产权创造。省政府关于鼓励和促进科技创新创业50条政策中，从支持专利申请、支持重要技术标准研究等方面，明确了专门的扶持政策。江苏同时还推进实施名牌发展战略，鼓励企业创驰名商标、中国名牌。去年，全省高新技术产业产值超万亿，占规模以上工业产值的四分之一；专利申请量5.3万件、授权量1.9万件；拥有商标注册数18.7万件、中国驰名商标63件，中国名牌产品153件（其中中国世界名牌产品1件），总量位居全国前列。

### 三、推进知识产权成果转化与产业化

坚持以提高产业竞争力为目标，加大科技成果转化投入，推进知识产权成果向现实生产力转化。一是着力构建以项目为载体的知识产权成果转化机制。从2004年起，省政府设立重大科技成果转化专项资金，支持具有自主知识产权的重大科技成果应用和产业化，共组织实施188个项目，总投入228亿元，项目成果拥有授权专利478项。二是着力推进产学研结合。加强企业与高校、科研机构的合作，推动高校、科研院所围绕企业和市场需求确定研究重点，形成以应用为主的科研导向。三是着力开放式配置科技资源。与“两院两校两部委”（中国科学院、中国工程院、清华大学、北京大学、科技部、国防科工委）建立了稳定的合作关系，积极参与长三角区域科技创新协作，不断扩大国际科技交流

与合作，吸引了更多的国内外知识产权成果在江苏转化。四是着力发展更多层次的技术交易市场。大力促进技术交易市场健康发展，交易日趋活跃，规模逐渐扩大。去年，全省签订技术合同展1万多项，成交额120亿元。

#### 四、提高知识产权执法水平

加大执法力度，依法严厉打击侵犯知识产权违法犯罪行为，是知识产权工作的重要内容。重点抓好五个方面：一是加强法规体系建设。制定了《江苏省查处冒充专利行政办法》等系列地方性法规，确保执法公平、有序。建立了知识产权行政执法听证制度、专家咨询制度，确保执法工作制度化、规范化。二是强化执法协作和配合。制定了《行政执法与刑事司法相衔接的工作意见》，加强工商、版权、专利行政部门与公安、检察、法院等司法部门的案件移交，加强与外省市的协作配合，建立执法部门协作机制、重大案件会商通报机制、联合办案机制，推动知识产权执法工作“三个转变”：由省向市“重心下移”的主体转变，由单独执法向联合执法转变，由被动接受投诉向主动监管转变。三是加大违法行为的社会监督和舆论监督力度。建立知识产权举报投诉中心，设立“12312”举报电话。四是引导正版正货基地建设。建设沪宁沿线正版音像示范带，并向苏中、苏北推进，采用连锁方式规范音像制品经营行为，推进机关、企业使用正版软件。五是集中开展以商标、版权、专利为重点的知识产权保护专项行动。去年，全省法院共审理一、二审知识产权案件1000多件，专

利行政执法机关共受理案件84件，商标监管机关共检查经营户20万个，检查商品交易市场9000多个，查处商标侵权假冒案件1000多起，有效维护了知识产权权益人合法权益。

### 五、切实加强服务体系建设

提高知识产权管理水平，必须整合资源，加快建立健全社会化、网络化的知识产权服务体系。一是注重知识产权公共服务平台建设。构建集专利、商标、版权等知识产权信息、法律信息、市场信息和服务信息于一体的全省公共信息服务平台，建立了中外有效专利、失效专利、知识产权服务机构、法律法规、案例、图书及知识产权与工程技术专家库等7个数据库，形成了面向全省的公共信息网络平台。二是注重知识产权代理服务机构建设。鼓励社会力量适应市场需求，以股份制、合伙制等多种形式，创办知识产权服务机构，逐步形成比较完善的知识产权代理、信息咨询、产权交易、资产抵押、风险投资等服务机构体系。三是注重发挥行业协会的作用。发挥行业协会在推动产业发展、促进行业自律方面的作用，制定行业知识产权管理、保护、运用规则，建立行业知识产权信息传播、互享、预警机制。

当前，江苏人均GDP超3500美元，总体上已步入市场化完善期、工业化转型期、城市化加速期和经济国际化提升期。技术进步水平、自主创新能力将成为继资源、资金之后影响经济综合竞争力的最重要的因素之一。我省将以实施《江苏省知识产权战略实施纲要》为主线，围绕知识产权创新、管理、保护、政策、公

共服务、投入六大体系建立，大力推进知识产权工作与经济工作紧密结合、良性互动，加大行政和司法保护力度，依法严厉打击侵犯知识产权违法犯罪行为，为鼓励自主创新、维护权利人合法权益提供有力保障。

女士们，先生们：

江苏在加强知识产权保护工作中，十分重视对外交流与合作。我省已与美国、欧盟、日本、台湾等国家和地区建立了比较稳定的合作关系，与美国全国商会联合成功举办了两届“中美（江苏）知识产权论坛”，签订了《知识产权合作谅解备忘录》，与欧盟也签订了合作备忘录。专程来北京参加此次论坛的美国全国商会多诺霍会长将于明天下午赶赴南京对江苏进行友好访问，并将在中国著名学府南京大学作知识产权保护演讲。在此，我祝多诺霍先生行程愉快。同时，我也非常荣幸地对出席此次论坛的国内外朋友们发出邀请，欢迎你们到江苏投资兴业、观光旅游，热情开放的江苏人民欢迎你们！

谢谢大家！

# **APPENDIX**

**12**

**CHINA – MEASURES AFFECTING TRADING RIGHTS AND  
DISTRIBUTION SERVICES FOR CERTAIN PUBLICATIONS  
AND AUDIOVISUAL ENTERTAINMENT PRODUCTS**

Request for Consultations by the United States

The following communication, dated 10 April 2007, from the delegation of the United States to the delegation of China and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the People's Republic of China ("China") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), and Article XXII of the *General Agreement on Trade in Services* ("GATS") with respect to (1) certain measures that restrict trading rights with respect to imported films for theatrical release, audiovisual home entertainment products (*e.g.*, video cassettes and DVDs), sound recordings, and publications (*e.g.*, books, magazines, newspapers, and electronic publications), and (2) certain measures that restrict market access for, or discriminate against, foreign suppliers of distribution services for publications and foreign suppliers of audiovisual services (including distribution services) for audiovisual home entertainment products.

**I. Trading rights**

In its protocol of accession to the World Trade Organization ("WTO"),<sup>1</sup> China committed to fully open the right to trade (*i.e.*, the right to import goods into China and to export goods from China), with some limited exceptions not applicable here, within three years after accession. Despite this, various measures of China reserve to certain Chinese state-designated and wholly or partially state-owned enterprises the right to import films for theatrical release, audiovisual home entertainment products (*e.g.*, video cassettes and DVDs), sound recordings, and publications (*e.g.*, books, magazines, newspapers, and electronic publications) (collectively, the "Products").

In this connection, the measures at issue include the following:

- (1) the Regulations on Administration of the Films Industry<sup>2</sup>;

<sup>1</sup> *Protocol on the Accession of the People's Republic of China*, WT/L/432, 23 November 2001 (the "Accession Protocol").

<sup>2</sup> State Council Order No. 342, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

- (2) the Provisional Rules on the Entry Criteria for Operating Film Enterprises<sup>3</sup>;
- (3) the Administrative Regulation on Publishing<sup>4</sup>;
- (4) the Administrative Regulations on Audiovisual Products<sup>5</sup>;
- (5) the Catalogue for Guidance of Foreign Investment Industries<sup>6</sup>;
- (6) the Several Opinions of the Ministry of Culture, State Administration of Radio, Film and Television, General Administration of Press and Publication, National Development and Reform Commission and the Ministry of Commerce on Introducing Foreign Investment into the Cultural Sector<sup>7</sup>;
- (7) the Measures for the Administration of Import of Audio and Video Products<sup>8</sup>;
- (8) the Measures for Administration of Chinese Foreign Contractual Distribution Ventures of Audiovisual Products<sup>9</sup>;
- (9) the Administrative Regulations on Electronic Publications<sup>10</sup>; and
- (10) the Procedure for Examination and Approval of Establishment of Publication Importation Entities<sup>11</sup>;

as well as any amendments, related measures, or implementing measures.

The measures at issue appear not to allow all Chinese enterprises and all foreign enterprises and individuals to have the right to import the Products into the customs territory of China. It also appears that foreign individuals and enterprises, including those not invested or registered in China, are accorded treatment less favourable than that accorded to enterprises in China with respect to the right to trade. Accordingly, the measures at issue appear to be inconsistent with China's obligations under the provisions of paragraphs 5.1 and 5.2 of Part I of the Accession Protocol,<sup>12</sup> as well as China's obligations under the provisions of paragraph 1.2 of Part I of the Accession Protocol (to the extent that it incorporates commitments in paragraphs 83 and 84 of the Report of the Working Party on the

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<sup>3</sup> Decree No. 43 of the State Administration of Radio, Film and Television and the Ministry of Commerce (10 October 2004).

<sup>4</sup> State Council Order No. 343, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

<sup>5</sup> State Council Order No. 341, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

<sup>6</sup> Order [2004] No. 24 of the State Development and Reform Commission, the Ministry of Commerce of the People's Republic of China (30 November 2004).

<sup>7</sup> Order [2005] No. 19 of the Ministry of Culture (6 July 2005).

<sup>8</sup> Decree No. 23 of the Ministry of Culture and the General Administration of Customs (17 April 2002).

<sup>9</sup> Promulgated by the Ministry of Culture and Ministry of Commerce on 9 February 2004 (superseding the measures notified by China in S/C/N/219).

<sup>10</sup> Order No. 11 of the General Administration of Press and Publication (30 December 1997).

<sup>11</sup> **General Administration of Press and Publication** (27 December 2005) (available at: [www.gapp.gov.cn/GalaxyPortal/inner/zsww/zongsu3.jsp?articleid=4923&boardpid=1450&boardid1=115010101150c](http://www.gapp.gov.cn/GalaxyPortal/inner/zsww/zongsu3.jsp?articleid=4923&boardpid=1450&boardid1=115010101150c)) (visited on 9 April 2007).

<sup>12</sup> The Products are not listed in Annex 2A or Annex 2B of the Accession Protocol.

Accession of China<sup>13</sup>). The Accession Protocol forms part of the terms of accession agreed between China and the WTO and is an integral part of the *Marrakesh Agreement Establishing the World Trade Organization*.

Furthermore, to the extent that the measures at issue impose prohibitions or restrictions other than duties, taxes or other charges, on the importation into China of the Products, these measures appear to be inconsistent with China's obligations under Article XI:1 of the GATT 1994.

## II. Distribution services

In the Accession Protocol, China made market access and national treatment commitments in the distribution services and audiovisual services sectors of its Schedule of Specific Commitments on Services (the "Schedule").<sup>14</sup> Despite those commitments, various measures of China impose market access restrictions or discriminatory limitations on foreign service providers seeking to engage in the distribution of publications and certain audiovisual home entertainment products.

In this connection, the measures at issue include:

- (1) the Administrative Regulation on Publishing<sup>15</sup>;
- (2) the Administrative Regulations on Audiovisual Products<sup>16</sup>;
- (3) the Provisions on Guiding the Orientation of Foreign Investment<sup>17</sup>;
- (4) the Catalogue for Guidance of Foreign Investment Industries<sup>18</sup>;
- (5) the Several Opinions of the Ministry of Culture, State Administration of Radio, Film and Television, General Administration of Press and Publication, National Development and Reform Commission and the Ministry of Commerce on Introducing Foreign Investment into the Cultural Sector<sup>19</sup>;
- (6) the Administrative Regulations on Management of Foreign-Invested Book, Magazine and Newspaper Distribution Enterprises<sup>20</sup>;
- (7) the Administrative Regulations on the Publication Market (revised)<sup>21</sup>;

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<sup>13</sup> WT/MIN(01)/3.

<sup>14</sup> WT/L/432, Annex 9, and WT/MIN(01)/3/Add.2.

<sup>15</sup> State Council Order No. 343, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

<sup>16</sup> State Council Order No. 341, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

<sup>17</sup> Decree [2002] No. 346 of the State Council (11 February 2002).

<sup>18</sup> Order [2004] No. 24 of the State Development and Reform Commission, the Ministry of Commerce of the People's Republic of China (30 November 2004).

<sup>19</sup> Order [2005] No. 19 of the Ministry of Culture (6 July 2005).

<sup>20</sup> The General Administration of Press and Publication and the Ministry of Foreign Trade and Economic Cooperation (17 March 2003).

<sup>21</sup> Promulgated by the General Administration of Press and Publication on 16 July 2003, revised on 16 June 2004.

- (8) the Administrative Regulations on Electronic Publications<sup>22</sup>;
- (9) the Administrative Measures on Subscription of Imported Publications<sup>23</sup>;
- (10) the Procedure for Examination and Approval of Establishment of Chinese-Foreign Entities, Cooperative Joint Ventures, and Wholly Foreign Owned Publication Distribution Enterprises<sup>24</sup>; and
- (11) the Measures for Administration of Chinese Foreign Contractual Distribution Ventures of Audiovisual Products<sup>25</sup>;

as well as any amendments, related measures, or implementing measures.

**A. Publications (e.g., books, newspapers, periodicals, and electronic publications)**

The measures at issue appear to prohibit foreign service suppliers (including wholly or partially foreign-owned or foreign-invested enterprises) from engaging at least in a type of distribution described in these measures as the "master distribution" of publications. The measures at issue also appear to prohibit foreign service suppliers (including wholly or partially foreign-owned or foreign-invested enterprises) from engaging at least in the wholesaling of "electronic publications" (a term that refers to a subset of publications). Moreover, the measures at issue may extend this prohibition more broadly to all distribution of all publications (whether at the "master distribution" level or otherwise). Furthermore, to the extent that some foreign service suppliers are allowed to engage in some aspects of the distribution of publications, there appear to be discriminatory requirements concerning such suppliers' registered capital, such suppliers' operating term, and the particular publications that such suppliers may distribute.

The measures at issue therefore appear to accord treatment to foreign suppliers of distribution services for publications treatment less favourable than that accorded to Chinese suppliers of distribution services for publications. In Sectors 4A-4E of its Schedule, China undertook market access and national treatment commitments with respect to the supply through commercial presence in China by service suppliers of other Members of, *inter alia*, distribution services for publications. Moreover, the measures at issue do not appear to fall within the terms, limitations, conditions, or qualifications on market access or national treatment that China has specified in its Schedule for the distribution of publications through commercial presence in China by service suppliers of other Members. Accordingly, the measures at issue appear to be inconsistent with China's obligations under Articles XVI and XVII of the GATS.

**B. Audiovisual home entertainment products**

The measures at issue appear to prohibit foreign service suppliers (including wholly or partially foreign-owned or foreign-invested enterprises) from engaging at least in a type of distribution described in these measures as the "master distribution" of audiovisual home

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<sup>22</sup> Order No. 11 of the General Administration of Press and Publication (30 December 1997).

<sup>23</sup> Order No. 27 of the General Administration of Press and Publication (adopted at the fourth conference of the General Administration of Press and Publication on 9 September 2004 and published on 31 December 2004).

<sup>24</sup> General Administration of Press and Publication (27 December 2005).

<sup>25</sup> Promulgated by the Ministry of Culture and Ministry of Commerce on 9 February 2004 (superseding the measures notified by China in S/C/N/219).

entertainment products such as video cassettes and DVDs ("audiovisual home entertainment products"). Moreover, to the extent that foreign services suppliers are permitted to engage in any distribution of those products (whether at the "master distribution" level or otherwise), the measures at issue appear to impose requirements that the service be supplied through a form of entity that Chinese persons control, or in which Chinese persons have a dominant position, or for which there is a limitation on the participation of foreign capital.

The measures at issue therefore appear to accord treatment to foreign suppliers of audiovisual distribution services for audiovisual home entertainment products treatment less favourable than that accorded to Chinese suppliers of audiovisual distribution services for audiovisual home entertainment products, and to impose restrictions on market access on foreign service suppliers of audiovisual distribution services for audiovisual home entertainment products. In Sector 2D of its Schedule, China undertook market access and national treatment commitments with respect to the supply through commercial presence in China by service suppliers of other Members of distribution services for a range of products including, *inter alia*, audiovisual home entertainment products. Moreover, the measures at issue do not appear to fall within the terms, limitations, conditions, or qualifications on market access or national treatment that China has specified in its Schedule for the distribution of such products through commercial presence in China by service suppliers of other Members. The measures at issue therefore appear to be inconsistent with China's obligations under Articles XVI and XVII of the GATS.

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The measures cited in this request for consultations also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

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**CHINA – MEASURES AFFECTING THE PROTECTION AND  
ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

Request for Consultations by the United States

The following communication, dated 10 April 2007, from the delegation of the United States to the delegation of China and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of the People's Republic of China ("China") pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article 64 of the *Agreement on Trade-Related Aspects of Intellectual Property Rights* ("TRIPS Agreement") (to the extent that Article 64 corresponds to Article XXII of the *General Agreement on Tariffs and Trade 1994*) with respect to certain measures pertaining to the protection and enforcement of intellectual property rights in China.

**I. Thresholds for criminal procedures and penalties**

The first matter on which the United States requests consultations concerns the thresholds that must be met in order for certain acts of trademark counterfeiting and copyright piracy to be subject to criminal procedures and penalties. In this regard, the measures at issue include:

- (1) the Criminal Law of the People's Republic of China (adopted at the Second Session of the Fifth National People's Congress on 1 July 1979 and revised at the Fifth Session of the Eighth National People's Congress on 14 March 1997) ("Criminal Law"), in particular Articles 213, 214, 215, 217, 218, and 220; and
- (2) measures by the courts and procuratorate that apply throughout China, including the Interpretation by the Supreme People's Court and the Supreme People's Procuratorate on Several Issues of Concrete Application of Law in Handling Criminal Cases of Infringing Intellectual Property (adopted at the 1331<sup>st</sup> Session of the Judicial Committee of the Supreme People's Court on 2 November 2004 and the 28<sup>th</sup> Session of the Tenth Procuratorial Committee of the Supreme People's Procuratorate on 11 November 2004 and to be effective as of 22 December 2004) ("the December 2004 Judicial Interpretation"), and the Interpretation by the Supreme People's Court and the Supreme People's Procuratorate on Several Issues of Concrete Application of Law in Handling Criminal Cases of Infringing Intellectual Property (II) (adopted on 4 April 2007, at the 1422<sup>nd</sup> Session of the Judicial Committee of the Supreme People's Court and the 75<sup>th</sup> Session of the Tenth Procuratorial Committee of the Supreme People's Procuratorate, and to be effective on 5 April 2007) ("the April 2007 Judicial Interpretation");

as well as any amendments, related measures,<sup>1</sup> or implementing measures.

Articles 213, 214, and 215 of the Criminal Law describe certain acts of trademark counterfeiting that may be subject to criminal procedures and penalties. However, under Article 213, criminal procedures and penalties are available only "if the circumstances are serious" or "if the circumstances are especially serious". Under Article 214, criminal procedures and penalties are available only "if the amount of sales [of commodities bearing counterfeit registered trademarks] is relatively large" or "if the amount of sales is huge". Under Article 215, criminal procedures and penalties are available only "if the circumstances are serious" or "if the circumstances are especially serious".

Articles 217 and 218 of the Criminal Law describe certain acts of copyright piracy that may be subject to criminal procedures and penalties. However, under Article 217, criminal procedures and penalties are available only "if the amount of illegal gains is relatively large, or if there are other serious circumstances" or "if the amount of illegal gains is huge or if there are other especially serious circumstances". Under Article 218, criminal procedures and penalties are available only "if the amount of illegal gains is huge".

Article 220 of the Criminal Law provides for the availability of procedures and penalties when the crimes described in Articles 213 through 219 are committed by a "unit", as opposed to by natural persons.

The Criminal Law itself does not define the terms "serious", "especially serious", "relatively large", and "huge" as used in the above-referenced articles. Instead, these terms are defined in the December 2004 Judicial Interpretation and the April 2007 Judicial Interpretation by reference to "illegal business volume" (stated in terms of the value of products produced, stored, transported and sold), "illegal gains" (stated in terms of profit), or number of "illegal copies".

Additionally, where the thresholds are defined in terms of "illegal business volume", Article 12 of the December 2004 Judicial Interpretation provides that value ordinarily is calculated according to "the prices at which such products are actually sold" or "the labeled prices or the actual prices found to be sold at after investigation". In other words, it is the price of the infringing goods as opposed to the price of the corresponding legitimate goods that determines "illegal business volume". The lower the actual or labeled prices of infringing goods, the more of them an infringer can sell or offer for sale without reaching the thresholds in the Criminal Law that are defined by reference to "illegal business volume".

The United States understands that acts of trademark counterfeiting and copyright piracy occurring on a commercial scale in China that fail to meet the thresholds are not subject to criminal procedures and penalties in China. The lack of criminal procedures and penalties for commercial scale counterfeiting and piracy in China as a result of the thresholds appears to be inconsistent with China's obligations under Articles 41.1 and 61 of the TRIPS Agreement.

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<sup>1</sup> Such other related measures include but are not limited to the Explanation on Certain Questions Related to the Concrete Application of Law in Hearing Cases of Crimes of Illegal Publication Fa Se (1998) No. 30 (adopted by the Adjudication Committee of the Supreme People's Court at its 1032<sup>nd</sup> meeting on 11 December 1998, effective as of 23 December 1998) and the Prosecution Guidelines for Criminal Cases Jointly Issued by the Supreme People's Procuratorate and the Ministry of Public Safety (18 April 2001).

## **II. Disposal of goods confiscated by Customs authorities that infringe intellectual property rights**

The second matter on which the United States requests consultations concerns goods that infringe intellectual property rights that are confiscated by Chinese customs authorities, in particular the disposal of such goods following removal of their infringing features.

In this regard, the measures at issue include:

- (1) the Regulations of the People's Republic of China for Customs Protection of Intellectual Property Rights (adopted at the 30<sup>th</sup> Ordinary Meeting of the State Council on 26 November 2003, published by the State Council on 2 December 2003, and effective from 1 March 2004) ("Customs IPR Regulations"), in particular Chapter 4 thereof; and
- (2) the Implementing Measures of Customs of the People's Republic of China for the Regulations of the People's Republic of China on Customs Protection of Intellectual Property Rights (adopted at an Administration Affairs Meeting of the General Administration of Customs on 22 April 2004, issued by the General Administration of Customs with Order No. 114 on 25 May 2004, and effective from 1 July 2004) ("Customs IPR Implementing Measures"), in particular Chapter 5 thereof;

as well as any amendments, related measures,<sup>2</sup> or implementing measures.

Specifically, the United States understands that Article 27 of the Customs IPR Regulations and Article 30 of the Customs IPR Implementing Measures set forth a hierarchy of requirements for the disposal of goods that infringe intellectual property rights and that are confiscated by Chinese customs authorities. Under that hierarchy, the customs authorities often appear to be required to give priority to disposal options that would allow such goods to enter the channels of commerce (for instance, through auctioning the goods after removing their infringing features). Only if the infringing features cannot be removed must the goods be destroyed. The requirement that infringing goods be released into the channels of commerce under the circumstances set forth in the measures at issue appears to be inconsistent with China's obligations under Articles 46 and 59 of the TRIPS Agreement.

## **III. Denial of copyright and related rights protection and enforcement to works that have not been authorized for publication or distribution within China**

The third matter on which the United States requests consultations concerns the denial of copyright and related rights protection and enforcement to creative works of authorship, sound recordings, and performances that have not been authorized for publication or distribution within China. For example, it appears that works that are required to undergo censorship review (or other forms of pre-publication or pre-distribution review) before entering the Chinese market are not protected by copyright before the review is complete and publication and distribution within China has been authorized.

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<sup>2</sup> Such other related measures include but are not limited to the Law of the People's Republic of China on Administrative Penalty (adopted at the Fourth Session of the Eighth National People's Congress on 17 March 1996, promulgated by Order No. 63 of the President of the People's Republic of China on 17 March 1996, and effective as of 1 October 1996) and in particular Article 53 thereof.

In this regard, the measures at issue include:

- (1) the Copyright Law,<sup>3</sup> in particular Article 4;
- (2) the Criminal Law, the Regulations on the Administration of Publishing Industry, the Regulations on the Administration of Broadcasting, the Regulations on the Administration of Audiovisual Products, the Regulations on the Administration of films, and the Regulations on the Administration of Telecommunication;<sup>4</sup>
- (3) the Administrative Regulations on Audiovisual Products<sup>5</sup>;
- (4) the Administrative Regulation on Publishing<sup>6</sup>;
- (5) the Administrative Regulations on Electronic Publications<sup>7</sup>;
- (6) the Measures for the Administration of Import of Audio and Video Products<sup>8</sup>;
- (7) the Procedures for Examination and Approval for Publishing Finished Electronic Publication Items Licensed by a Foreign Copyright Owner<sup>9</sup>;
- (8) the Procedures for Examination and Approval of Importation of Finished Electronic Publication Items by Electronic Publication Importation Entities<sup>10</sup>;
- (9) the Procedures for Recording of Imported Publications<sup>11</sup>;
- (10) the Interim Regulations on Internet Culture Administration<sup>12</sup>; and
- (11) the Several Opinions on the Development and Regulation of Network Music<sup>13</sup>;

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<sup>3</sup> Adopted at the 15th Session of the Standing Committee of the Seventh National People's Congress on 7 September 1990, and amended according to the Decision on the Revision of the Copyright Law of the People's Republic of China, adopted at the 24th Session of the Standing Committee of the Ninth National People's Congress on 27 October 2001. See *Main Dedicated Intellectual Property Laws and Regulations Notified under Article 63.2 of the Agreement: China*, IP/N/1/CHN/C/1, circulated 8 July 2002.

<sup>4</sup> As noted by China in reply to a question in *Review of Legislation: China*, IP/Q/CHN/1, circulated 10 December 2002, section V.A.3.

<sup>5</sup> State Council Order No. 341, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

<sup>6</sup> State Council Order No. 343, adopted at the 50th executive meeting of the State Council on 12 December 2001, promulgated on 25 December 2001.

<sup>7</sup> Order No. 11 of the General Administration of Press and Publication (30 December 1997).

<sup>8</sup> Decree No. 23 of the Ministry of Culture and the General Administration of Customs (17 April 2002).

<sup>9</sup> General Administration of Press and Publication (27 December 2005) (Basis of Establishment: Decision on Establishing Administrative Licensing for Items Necessary to be Maintained for Administrative Examination and Approval by the State Council [State Council Order No. 412]).

<sup>10</sup> General Administration of Press and Publication (27 December 2005) (Basis of Establishment: Decision on Establishing Administrative Licensing for Items Necessary to be Maintained for Administrative Examination and Approval by the State Council [State Council Order No. 412]).

<sup>11</sup> General Administration of Press and Publication (27 December 2005) (Basis of Establishment: Article 45 of the Administration Regulations on Publication [State Council Order No. 343]).

<sup>12</sup> Promulgated in Order No. 27 of the Ministry of Culture (10 May 2003), amended by Order No. 32 of the Ministry of Culture (1 July 2004).

<sup>13</sup> Ministry of Culture (20 November 2006).

as well as any amendments, related measures, or implementing measures.

Article 5(1) of the *Berne Convention for the Protection of Literary and Artistic Works (1971)* (the "Berne Convention") requires that foreign authors of protected works shall enjoy all the rights granted to domestic authors, as well as all the rights specially granted by the Berne Convention.<sup>14</sup> These rights may not be made subject to any formality (Berne Convention Article 5(2)). TRIPS Agreement Article 9.1 requires all WTO Members, *inter alia*, to comply with Articles 1 through 21 of the Berne Convention.<sup>15</sup>

China's Copyright Law provides the legal basis for copyright protection within China of the works of Chinese and foreign authors, and it provides an array of rights to such authors (*e.g.*, rights of reproduction, translation, and adaptation). In addition, the Copyright Law provides specific statutory protections to performers, producers of sound recordings, and broadcasting organizations. However, the first sentence of Article 4 of the Copyright Law provides as follows: "Works the publication or distribution of which is prohibited by law shall not be protected by this Law". Therefore, authors of works whose publication or distribution has not been authorized (and whose publication or distribution is therefore prohibited) appear not to enjoy the minimum standards of protection specially granted by the Berne Convention in respect of those works (and may never enjoy such protection if the work is not authorized, or is not authorized for distribution or publication in the form as submitted for review). In addition, the rights of authors of works whose publication or distribution is required to undergo pre-publication or pre-distribution review appear to be subject to the formality of successful conclusion of such review. The foregoing appears to be inconsistent with China's obligations under TRIPS Agreement Article 9.1.

In addition, Article 14 of the TRIPS Agreement requires China to give performers, *inter alia*, the possibility of preventing certain acts, and to give producers of phonograms (sound recordings) the right to authorize or prohibit the direct or indirect reproduction of their sound recordings (collectively, the "related rights"). To the extent that the Copyright Law also denies protection of these rights to performers and producers of sound recordings during the period of any pre-publication or pre-distribution prohibition, the Copyright Law appears to be inconsistent with China's obligations under Article 14 of the TRIPS Agreement.

Furthermore, it appears that the measures at issue provide different pre-distribution and pre-authorization review processes for Chinese nationals' works, performances (or their fixations) and sound recordings than for foreign nationals' works, performances (or their fixations) and sound recordings. To the extent that these different processes, taken together with Article 4 of the Copyright Law, result in earlier or otherwise more favourable protection or enforcement of copyright or related rights for Chinese authors' works, Chinese performers' performances (or their fixations) and Chinese producers' sound recordings than for foreign authors' works, foreign performers' performances (or their fixations) and foreign producers' sound recordings, the measures at issue appear to be inconsistent with China's obligations under TRIPS Agreement Article 3.1. Additionally, to the extent that Article 4 of the Copyright Law, independently or in conjunction with the different pre-authorization or pre-distribution processes in the other measures at issue, causes foreign authors of works whose publication or distribution has not been authorized not to enjoy the rights granted to

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<sup>14</sup> The minimum standards of copyright protection for literary and artistic works specially granted by the Berne Convention include, *inter alia*, the right of reproduction (Berne Convention Article 9(1)), the right of adaptation (Berne Convention Article 12), and the right of translation (Berne Convention Article 8).

<sup>15</sup> However, WTO Members do not have rights or obligations under the TRIPS Agreement in respect of the rights conferred under Article 6*bis* of the Berne Convention or of the rights derived therefrom.

Chinese authors, the measures at issue appear to be inconsistent with China's obligations under TRIPS Agreement Article 9.1 (with respect at least to China's obligations to comply with Articles 5(1) and 5(2) of the Berne Convention).

In addition, to the extent that Article 4 of China's Copyright Law, independently or in conjunction with the other measures at issue, makes it impossible for rightsholders to enforce their copyrights or related rights with respect to works, performances or sound recordings that have not been authorized for publication or distribution, China fails to make enforcement procedures available so as to permit effective action against infringements of those copyrights and related rights. This appears to be inconsistent with China's obligations under TRIPS Agreement Article 41.1.

#### **IV. Unavailability of criminal procedures and penalties for a person who engages in either unauthorized reproduction or unauthorized distribution of copyrighted works**

The fourth matter on which the United States requests consultations concerns the scope of coverage of criminal procedures and penalties for unauthorized reproduction or unauthorized distribution of copyrighted works. In particular, it appears that unauthorized reproduction of copyrighted works by itself – that is, unauthorized reproduction that is not accompanied by unauthorized distribution – may not be subject to criminal procedures and penalties. Likewise, it appears that unauthorized distribution of copyrighted works by itself – that is, unauthorized distribution that is not accompanied by unauthorized reproduction – may not be not subject to criminal procedures and penalties.

In this regard, the measures at issue include the Criminal Law, in particular Article 217, as well as any amendments, related measures, or implementing measures.

Article 217 establishes the availability of criminal procedures and penalties for certain acts of copyright piracy, including "reproducing and distributing [*fuzhifaxing*] a written work, musical work, motion picture, television programme or other visual works, computer software or other works without permission of the copyright owner" and "reproducing and distributing an audio or video recording produced by another person without permission of the producer".<sup>16</sup>

To the extent that wilful copyright piracy on a commercial scale that consists of unauthorized reproduction – but not unauthorized distribution – of copyrighted works, and *vice versa*, may not be subject to criminal procedures and penalties under the law of China, this would appear to be inconsistent with China's obligations under Articles 41.1 and 61 of the TRIPS Agreement.

The United States notes that Article 2 of the April 2007 Judicial Interpretation addresses the phrase "reproducing and distributing" [*fuzhifaxing*], and we look forward to discussing this matter with China during our consultations.

\* \* \* \* \*

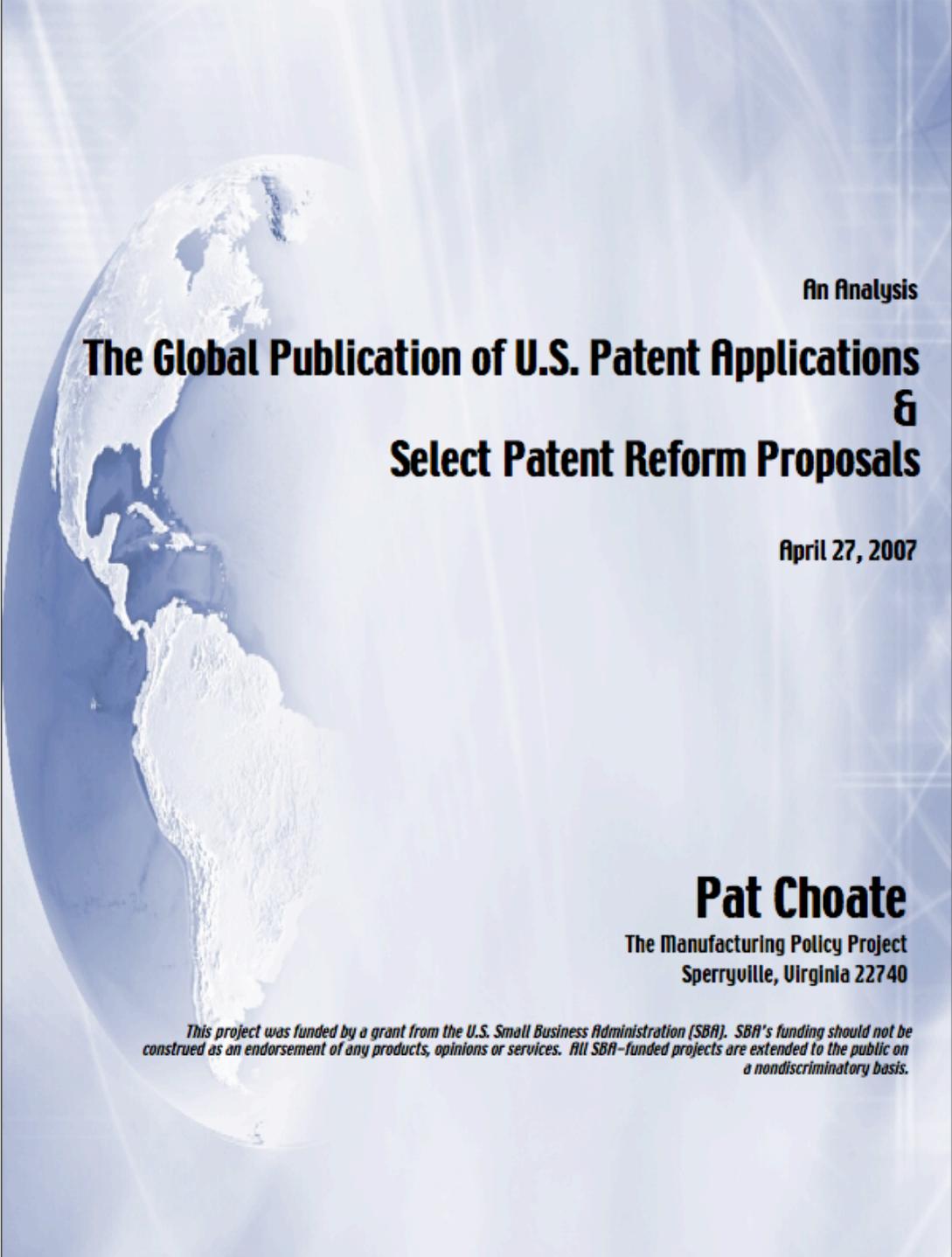
We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

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<sup>16</sup> Article 218 of the Criminal Law refers to someone who "sells" infringing works. However, it appears that this reference to "sell[ing]" in Article 218 is different from the reference to "distributing" in Article 217.

# **APPENDIX**

**13**



An Analysis

# **The Global Publication of U.S. Patent Applications & Select Patent Reform Proposals**

April 27, 2007

**Pat Choate**

The Manufacturing Policy Project  
Sperryville, Virginia 22740

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Pat Choate is the author of three books on national development strategies including the High-Flex Society, Agents of Influence and Hot Property: The Stealing of Ideas in an Age of Globalization. He is co-author of America in Ruins, Being Number One, Thinking Strategically, Why NAFTA Must Be Stopped Now and Democratizing U.S. Trade Policy Making. His forthcoming book is Dangerous Business, The Consequences of Globalization (Alfred A Knopf, 2008). He was a co-founder of the Congressional Economic Leadership Institute (CELI) and served as its Chair or Co-Chair for 18 years. In 1994, the University of Oklahoma, from which Choate holds an M.A. and Ph. D. in economics, named him the Arthur Barto Adams Alumni Fellow in recognition of his continuing scholarship. In 1996, Ross Perot picked him to be his vice presidential running mate. Pat Choate and his wife live near Washington, Virginia.

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## **About The Manufacturing Policy Project**

The Manufacturing Policy Project (MPP) is a nonprofit, nonpartisan 501(c)(3) research organization that undertakes public policy-related studies. MPP reports, books and related materials examine issues central to the continuing development of the U.S. economy. P.O. Box 422 Sperryville, Virginia 22740.

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## Abstract

America's economy depends upon the creation and enforcement of intellectual property rights. This report examines a key part of that system – the mandatory publication of patent applications at 18 months after the earliest filing date. This “18-month rule” was enacted by Congress in 1999 and was a radical change in U.S. patent policy. The policy objectives it aimed to address have been solved or outstripped by other events. Worse, in today's “flat world” this special rule recklessly exposes American inventions to online pirates before they have the protection of a patent. This exposure is compounded by the equally important problem of examination pendency. In the name of “harmonization,” current patent reform proposals call for expanding this rule; this gains America nothing and only worsens a problem that is not yet widely appreciated.

In today's wired world, this rule facilitates piracy of U.S. intellectual property rights before inventors have patent protections. The problem is significant. Between November 2001 and October 1, 2006, the USPTO published 1,267,000 patent applications, of which more than 600,000 were from American inventors. China, Korea and other countries use the Internet to “hack” the USPTO for innovations; our competitors use published applications as a free R&D lab. While applications languish in an ever-increasing backlog, competitors take our ideas to market and sell products to Americans. Once published the damage is done: A published application is prior art and cannot be used by the inventor as a trade secret or modified for resubmission if rejected.

Pirates already enjoy the advantage of illegal operation. This radical 18-month rule gives pirates the dual gifts of free IP and more than a year head start. Pendency, the backlog in applications waiting to be examined, has exploded since 1992 from 19 months to 31.1 months. While an inventor is held up in limbo the pirate is making money and locking in customers.

Presently, inventors can choose not to have their applications published if they agree not to file a patent application in another country. Almost 20 percent of U.S.-origin applicants make that election. Current patent reform proposals would take this away. Advocates say “harmonization” of U.S. law with other nations is essential. Large multi-national businesses of course want the same rules everywhere, but this ignores small entity inventors' unique role in America.

This right of secrecy is particularly important to small entity inventors (independent inventors, businesses with 500 or fewer employees, universities, and nonprofit research organizations). They file 31 percent of all U.S.-origin applications, and almost half elect not to publish.

This “great invention giveaway” problem is a classic unintended consequence. The 18-month rule was designed in the pre-Internet era (1992) to counter “submarine” patents, a problem the USPTO solved through administrative means, and to “harmonize” U.S. patent practices with those of Europe and Japan. American society gains no innovation benefit from this rule. Nor does such publication entice firms to clear products to avoid infringement.

America is different. We embrace risk and willingly break the status quo. Other nations embrace incumbents and support established networks of economic and political power. It is against America's best interests to “harmonize” our patent standards down to theirs and expose our inventors' secrets without providing the appropriate protections.

Strong patents, quickly processed and fully disclosed create the certainty that inventors and investors need to confront the status quo and provide the diffusion of knowledge that society expects. Congress should legislate a return to the first principles adopted by President George Washington and the 1<sup>st</sup> U.S. Congress in 1790: *No information in a patent application will be disclosed unless and until the protection of a patent is granted. Rejected patent applications will be returned to the applicants with their secrets intact.*

The report includes several recommendations by which Congress can strengthen the U.S. patent system and, by that, strengthen American innovation.

# Summary

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1. Every patent ever issued in the United States was granted under laws that Congress enacted under the authority of Article I, Section 8 of the U.S. Constitution which states: *“The Congress shall have Power ...To promote the Progress of Science and Useful Arts, by securing for limited times to Authors and Inventors the exclusive Right to their Writings and Discoveries.”*
2. The importance of patents to America’s Founding Fathers is reflected in the fact that the Patent Act of 1790 was one of the first laws made by the 1<sup>st</sup> U.S. Congress. President George Washington in his first State of the Union message (January 8, 1790) asked Congress to enact patent legislation. Barely three months later, he signed the first Patent Act into law (April 10, 1790). The Progress clause is the only place in the U.S. Constitution that explicitly grants a “right.”
3. The two fundamental goals of the U.S. patent system are to (a) encourage inventors to produce more and useful creations and (b) expand general knowledge in the United States through disclosure of the details of those creations.
4. The basic “patent bargain” created by America’s Founding Fathers is this: If the inventor will fully disclose the details of a creation, including the best mode of its use, society will grant that inventor the right of exclusive use for a set period, and provide a federal court system in which the patent owner can defend that right. An exclusive right of use for a period in exchange for the full disclosure of information about the creation is the “golden covenant” between society and creative people as embodied in a patent.
5. Between 1790 and 1999 there was a second part to the U.S. “patent bargain.” The U.S. government would not disclose any details in a patent application unless and until the protection of a patent was provided. Then as now, rejected patent applications were destroyed unless they were referred to in a granted patent. Congress radically changed this part of the bargain in 1999, as is described and analyzed in this paper.
6. A patent is granted only for creations that are (a) useful, (b) novel and (3) not obvious. Whether a creation is potentially commercial is not a test of patentability.
7. The USPTO makes the determination of whether an application meets the requirements of patentability. It also provides several means to administratively contest a granted patent. U.S. law also allows a challenge of a patent’s validity in the Federal Court System. In 1982, Congress established a separate court in Washington, D.C. to hear patent appeals – The United States Court of Appeals for the Federal Circuit. Patent cases like all other cases coming from courts of appeal can be taken to the Supreme Court on a petition for certiorari and can be considered at the discretion of the Court. As this suggests, a patent is a powerful right and the U.S. provides the means for a strong defense of that right.
8. Until recently, operating a swift patent process was a high national priority. The quicker an inventor can secure an uncontested patent, the sooner the innovation can be put to use. The sooner the patent process makes public the details of these creations, the quicker the nation’s base of knowledge is expanded. Prompt action, leading to uncontested patents and full disclosure through publication, is vital to U.S. progress.

9. About half of the 443,000 patent applications filed at the USPTO in fiscal year 2006 were from foreign-origin applicants.
10. Of the 173,000 utility patents (the largest category) granted in FY 2006, 89,823 (51.7 percent) went to U.S.-origin inventors.
11. The United States Patent and Trademark Office (USPTO) distinguishes between “small entities” (independent inventors, companies with 500 or fewer employees, not-for-profit organizations and universities) and “large entities” (larger corporations).
12. Of the 89,823 utility patents issued to U.S.-origin inventors in FY 2006, more than 27,000 went to U.S.-origin small entity inventors. In sum, small-entity inventors are a vital part of the U.S. processes of creativity and innovation.
13. The importance of small entity inventors in U.S. innovation is obscured by a combination of factors,
  - The USPTO’s aggregate publication of patent data,
  - Under-examination by scholars of innovation,
  - Under-representation on blue-ribbon groups which review U.S. patent policy and
  - Under-involvement in Congressional hearings and Congressional thinking when patent reforms are being crafted.
14. Small entities are the annual recipients of about 31 percent of all patents granted to U.S.-origin applications. Research funded by the Small Business Administration reveals:
  - Small firm patents on average are more technically important than large firm patents and are twice as likely to be among the top one percent of most frequently cited patents.
  - Small patenting firms produce 13 times more patents per employee than large patenting firms.
  - Small firms represent one-third of the most prolific patenting companies that have 15 or more U.S. patents.
  - Small firms are more effective in producing high-value innovations.
  - Small firm innovation is twice as closely linked to scientific research as large firm innovation on average and substantially more high-tech or leading edge.
15. With the outsourcing of R&D by large entity corporations, small businesses, individual inventors, universities, colleges and non-profit research organizations are becoming ever more important to America’s technological and economic future. The effect of any proposed changes in patent laws on these small entity inventors merits special attention by Congress.
16. While the United States’ patent system provides inventors, large and small entities, with the strongest protections in the world, a handful of “Big Tech” corporations have adopted a business model that fosters a “culture of infringement.”. These companies hire smart people, provide enormous incentives to create state-of-the art products, send their employees to technical conferences, require that they read technical journals, but refuse to allow them to read the patents

of others. Their legal strategy is to feign ignorance of applications and patents to avoid the charge of willful infringement. If U.S. patent law were changed to encourage due diligence as part of any willful infringement defense, such a strategy would be less viable.

17. The business strategy of these Big Tech corporations is to quickly seize ownership of an entire market, gain enormous wealth and sort out any patent infringement problems later through takeovers, litigation, delays, negotiations, settlements, Supreme Court challenges and the lobbying of Congress to “reform” U.S. patent laws in their favor.
18. A check of SEC records of four of the Big Tech corporations that are now actively lobbying Congress for changes in U.S. patent laws reveals that they paid \$3.5 billion in patent settlements in the period 1993-2005. In the same period, they generated \$1.4 trillion in revenues. Their infringement costs were one-quarter of one-percent of revenues, which in relative terms is an insignificant business expense.
19. The U.S. patent system is under attack by:
  - A few Big Tech companies that are trying to reduce their huge contingent liabilities for patent infringement by persuading Congress to change U.S. patent laws to their advantage,
  - A few traditional business groups with transnational agendas who want the convenience of the same rules wherever they are,
  - Academics and businesses in the open source community who are ideologically opposed to the grant of patents for software and business methods and
  - The Governments of Japan and Europe, which are trying to alter the U.S. patent system in the image of theirs.
20. Though these groups and companies do not act in lock-step, the general goals of their political advocacy, under the guise of “patent reform,” are to:
  - Change the U.S. patent system from first-to-invent to first-to-file.
  - Impose 18-month disclosure on all patent applications.
  - Eliminate the “best mode” description in a patent application.
  - Eliminate treble damages for willful infringement of patents.
  - Expand procedures for challenge and review of a patent after grant.
  - Allow third party participation in the USPTO patent examinations.
  - Limit patent lawsuits to a few federal courts.
  - Eliminate juries from patent cases.
  - Expand the rule-making authority of USPTO so that it can unilaterally change the rights of applicants and patent owners.
  - Provide no support for reducing examination pendency or giving the USPTO the resources necessary to truly do its core mission and improve quality.

21. The three principal political and propaganda themes of this campaign are:
- America is in the midst of a patent “litigation crisis.”
  - The USPTO is issuing a large number of “poor quality” patents.
  - Patents are too strongly enforced.
    - Presumption of validity.
    - Juries favor patent owners, especially sympathetic inventors.
    - Patent owner goes first in court proving infringement.
    - Accused infringer goes last and must overcome high burden of proof to challenge validity – clear and convincing.
    - Court of Appeals for the Federal Circuit is too pro-patent.
22. Federal Judicial Caseload Statistics reveal **there is no U.S. patent litigation crisis.** Specifically,
- In the 14-year period 1993-2006, the ratio of patent lawsuits commenced per the number of patents issued remained an almost constant 1.5 percent. Patent disputes grew at the same pace as the number of patents granted. A flat ratio means there are “no unusual surge” of lawsuits and “no litigation crisis.” (See Table Four)
  - Between 2004 and 2006, the actual number of patent lawsuits commenced dropped from 3,075 to 2,700. (See Table One)
  - More than 96 percent of all commenced patent lawsuits settle before trial. Most patent lawsuits filed are part of a negotiation strategy.
  - In 2004, 96 patent lawsuits went to trial in the United States, 107 were tried in 2005, as were 102 in 2006. Only 102 patent trials per year is **not** a litigation crisis by any definition. (See Table One)
  - Of the almost 200,000 patents that are now issued annually, only five ten-thousandth of one percent will be challenged in a patent trial.
23. The patent performance and challenge data of the USPTO reveals that **the U.S. is not in the midst of a “patent quality” crisis.** The quality of patents issued by the USPTO is high and improving, despite a surge in patent applications. Specifically,
- Only a handful of all patents granted are ever challenged at the USPTO or in a trial: a major test of fire for a patent’s validity and the quality of the USPTO’s examination policies.
  - The USPTO issued more than 3,185,000 patents between 1981 and 2006. During that same period, 8,612 patents were challenged through the *ex parte* and *inter partes* processes – that is, one/three hundredth of one percent (0.003), an extraordinarily low rate.
  - The USPTO has, on average, only 100 patent interference cases per year (challenges as to is to who was the first to invent) – an extraordinarily low rate since in FY 2006 the USPTO received 443,000 patent applications, disposed of 332,000 and allowed 185,000 patents. Only 100 such cases a year is mute testimony to the effectiveness of the USPTO and its first-to-invent system.

- For all *ex parte* reviews (1981-12/31/2006), all claims were cancelled for 10 percent, all claims were confirmed for 26 percent and claim changes were made in 64 percent. For the 208 *inter partes* challenges, 7 reexamination certificates were issued (1999-12/31/07) of which 1 had all claims confirmed and 6 had all claims revoked.
  - With 74 percent of *ex parte* reexaminations resulting in claims cancelled or narrowed, the process can be viewed as biased in favor of patent holders.
  - In the period 1981-2001, the USPTO issued more than 3.1 million patents. Of these, fewer than 8,900 were challenged at the USPTO (0.003 percent) – a strong indication that the USPTO is issuing patents of sufficient quality to forestall challenges.
  - Of patents challenged in the 100 plus federal patent trials each year, more than 60 percent are affirmed.
  - “Reform” proponents promote the perception that there is a widespread problem of questionable patents, but they provide no data. Instead, they provide unsubstantiated anecdotes as conclusive “facts” and sound bites.
24. The real patent “crisis” that America faces consists of three parts. None has its roots at the USPTO. None is solvable by any of the proposed “reforms” now before Congress. Specifically,
- The first crisis is the destructively high and rising U.S. patent pendency rate.
    - a. The average time required to process a patent has expanded from 19 months in 1992 to more than 31 months in 2006. The average time for first action pendency has almost tripled from less than eight months in 1992 to 22.6 months in 2006.
    - b. The principal reason for these increased delays is that between 1991 and 2004 the President and Congress diverted hundreds of millions of dollars the USPTO collected in patent and trademark fees to the general fund, and thus other uses. The 2001 appropriation act, for instance, allowed the USPTO to spend only \$784 million of the \$1.1 billion of fees that it collected. These fee diversions prevented the USPTO from hiring the additional examiners it needed to process a rising number of domestic and foreign patent applications. While Congress has stopped the fee diversion, it still does not provide the USPTO with enough additional monies to reduce a massive legacy backlog that will exceed 800,000 patent applications by the end of 2007.
    - c. Largely because of inadequate pay, and also for performance problems and job dissatisfaction, the turnover rate of patent examiners is slightly more than 10 percent per year. While the USPTO will hire an additional 1,000 examiners this year, almost 500 existing employees will quit. Thus, the net increase will be about 500 examiners. These are too few to even process all the patent applications USPTO receives annually, which means the backlog steadily increases, as does the pendency rate.
    - d. The USPTO management is being forced to find shortcut solutions such as reducing the number of claims allowable in a patent. Today, almost 25 percent of all patent applications contain 10 or more claims. Cutting claims would narrow the protections available to complex creations. Shortcut solutions are dangerous for they inevitably come at the expense of inventors; that is, fewer claims, fewer continuances, higher rejection rates, fewer protections, and they become permanent.

- e. While hiring more examiners may be politically and ideologically unpopular, and even sometimes represented as undoable, such a course is, in fact, the best and quickest solution to cut the backlog and ultimately the pendency rate, while simultaneously assuring that the USPTO issues high quality patents. Cutting the backlog and pendency rates, while simultaneously improving patent quality, is a vital national challenge equal in importance to the Manhattan Project or putting an American on the moon, but at a tiny fraction of the cost of those projects.
- f. An average patent pendency rate of 12 months would solve virtually all the problems addressed in virtually all the “reform” legislation now before Congress. If America’s future is dependent on technology, then we need it in use sooner rather than later, which means Congress should appropriate enough resources to meet this challenge. Today, the lack of a sufficient number of talented patent examiners at the USPTO that speak English proficiently is a major chokepoint in U.S. innovation efforts.

- o The second crisis is the virtually unfettered foreign piracy of U.S. patents.

The Office of the United States Trade Representative (USTR) for many years has confronted foreign piracy with diplomacy instead of a forceful assertion of U.S. rights at the World Trade Organization (WTO). In early April of 2007, the USTR filed an intellectual property case at the WTO against China for its inadequate protections of U.S.-owned copyrights and trademarks. While belated, this is an encouraging action. Hopefully, it represents a shift to a broader, more aggressive assertion of U.S. intellectual property rights at the WTO and will be expanded to include patent piracy – actions that are essential to stopping foreign piracy of U.S. patents.

- o The third crisis is the mandated publication of unexamined, unprotected U.S. patent applications.

Foreign corporations, foreign governments and foreign pirates are now able to systematically “mine” unprotected U.S.-origin patent applications and steal American-owned creations because Congress in 1999 mandated that the USPTO must publish applications on the Internet 18 months and a nanosecond from the earliest date an inventor files for a patent. Only Congress can stop this reckless publication of unexamined U.S.-origin patent applications.

25. Congress made its last major changes of U.S. patent law in December 1994 (Congressional ratification of the World Trade Agreement) and in November 1999 (The American Inventors Protection Act.)

26. Over the past 40 years, several “Blue Ribbon” commissions have been formed to make recommendations on patent reform. “The Report of the Presidential Commission on the Patent System” (1966), for instance, recommended publication of patent applications – the “Johnson Committee.” The changes that Congress made in 1994 and 1999 were largely based on recommendations that came from The Advisory Commission on Patent Law Reform, a study group that was formed in 1991 by Secretary of Commerce Robert Mosbacher. Yet, the “Johnson” and “Mosbacher” recommendations were dated for they were made,

- o Pre-globalization.
- o Pre-Internet (One year before the World Wide Web - CERN in 1993).

- Pre-Chinese membership in the WTO – 2000.
  - Pre-globalization, mega-piracy of patents.
27. The Mosbacher recommendations were made at a time that the average patent pendency was 19 months (vs. 31.1 in 2006) and the average pendency for a first action by the USPTO was only 8 months (vs. 22.6 in 2006). The Mosbacher Commission wanted patent applications published, but 24 months after the earliest filing date of a patent application – that is, almost 5 months more than average total pendency in 1992.
  28. The changes in patent law that Congress enacted in 1999 mirrored European and Japanese standards that require publication at the 18-month point. In that legislation, Congress required of the United States Patent and Trademark (USPTO) that *“each application for a patent shall be published, in accordance with procedures determined by the Director, promptly after the expiration of a period of 18 months from the earliest filing date for which a benefit is sought under this title.”*
  29. The USPTO is not required by law to publish the entire application. It chooses to do so.
  30. Publication is significant because once on the Internet the entire contents of a U.S. patent application can be retrieved in about two seconds, anywhere in the world, on tens of thousands of foreign-based computers. Publication at 18-months means that the full contents of virtually all U.S. patent applications are made available for inspection worldwide for an average of 4.6 months before the USPTO takes a first action and an average of 13.1 months before it grants a patent. For complex patent applications this unprotected period can be 30 months or more.
  31. The Congress included with the 18-month rule an “opt-out option” that provides the USPTO will not publish the patent application, *“if an applicant makes a request upon filing, certifying that the invention disclosed in the application has not and will not be filed in another country, or under a multilateral international agreement that requires publication of applications 18 months after filing, the application shall not be published.”*
  32. The requirement that inventors not file for a patent in other nations if they choose not to allow the publication of their patent applications contradicts other U.S. policies that encourage global engagement by American companies and entrepreneurs.
  33. Between 2001 and 2006, about 36 percent of U.S.-origin applicants file foreign applications. Foreign patent offices publish these applications at 18-months from filing. If published abroad at 18-months, USPTO publication at 18-months does not disadvantage these inventors since the information is already public.
  34. Overall, about ten percent of all patent applicants received at the USPTO exercise the opt-out option. Many U.S. inventors and patent attorneys still do not recognize that they have such a choice. The opt-out rate might be greater if the USPTO’s default was not to publish unless requested by the applicant to do so, instead of the reverse – that is, the USPTO publishes unless the inventor exercises their opt-out right.
  35. Hidden in this aggregate opt-out data is a very significant fact: Half of all patent applications at the USPTO come from abroad. As roughly half of the total applications are from foreign-owned entities, this means that the “opt out” share of U.S.-origin applications is 20 percent. Although about 20 percent of all U.S.-origin patent applications choose not to have the USPTO publish their applications, an unknown number of academic inventors disclose information about their creations in journals and conferences prior to USPTO making a patent decision.

36. Narrowing the numbers to U.S.-origin inventors, an estimated half of small entity applications exercise the option of non-disclosure. This option is vital to these inventors. For them, secrecy is their best, if not only, protection until they have a patent in hand, even if the price is not to seek patent protections in other nations.
37. The patent proposals now before Congress would eliminate the right of applicants to not have their applications disclosed and published. Under these proposals, all patent applications would be published at the 18-month point.
38. The arithmetic of USPTO's publication of patent applications is:
- Between November 2001 and October 1, 2006, the USPTO published 1,267,000 U.S. patent applications. Of these, an estimated 620,000 were of U.S.-origin.
  - Of the estimated 620,000 U.S.-origin first patent filings published by the USPTO between 2001 and 2006, almost 64 percent were neither filed at the Japanese Patent Office nor at the European Patent Office or in other nations, all of which also publish patent applications at the 18-month point.
  - The argument "*Publication in the U.S. does not matter because applications will be published in other nations*" is not true for 64 percent of all U.S.-origin patent applications. Almost 400,000 U.S.-origin patent applications filed between November 2001 and October 1, 2006 did not file for a foreign patent.
  - All published patent applications become prior art instantly, available to anyone, anywhere. Consequently, those U.S. inventors whose applications were published but denied could no longer, as in the past, use their innovations as trade secrets or improve them for resubmission. Assuming an average allowance rate (approval rate) of 59 percent of these 400,000 U.S.-origin applications, 160,000 were rejected and their secrets were made public - at the U.S. inventors' expense.
39. The Japan Patent Office (JPO) reports that South Korea and China are systematically "mining" Japanese patent applications published on the Internet. Those nations, among many others, are also mining U.S. and European patent applications on the Internet. In 2005, JPO reported that their computers were getting 17,000 patent inquiries per day from China and 55,000 per day from South Korea.
40. The USPTO does not monitor such inquiries, but the U.S. experience is certain to be similar to Japan's because the patent applications filed in each are equally open to inspection over the Internet.
41. The World Intellectual Property Organization (WIPO) reports that the use of its searchable patent-information system tripled in 2006. WIPO is accelerating training for developing countries on how to secure patent information from issued patents and patent applications that are now available on the Internet. As one WIPO official noted, "Patents are territorial, but disclosure is global."
42. If a patent is published and it is infringed before a patent is issued, U.S. law allows the patent owner to collect damages, but first the owner must identify the infringer, provide notice of the published application and specify which claims are being infringed. If the pirate is located in another nation, such as China, a national patent must have been sought and the lawsuit must be filed there. Therefore, USPTO secrecy is the only real protection an inventor has until a patent is granted.

43. Several patent “reform” groups are urging Congress to create a USPTO-administered “post-grant” patent challenge process, which would allow anyone to challenge a patent before a USPTO administrative judge in the nine-month period after it is granted. The advantages of the “post-grant” process are:
- It would be less expensive than a conventional patent trial.
  - It involves few risks for challengers.
44. The disadvantages of such a “post-grant” procedure are:
- It would instantly increase the de facto pendency rate of all patents by a minimum of nine months. Today, the average USPTO pendency rate is 31.1 months. If this procedure were adopted, inventors would have to wait, on average, 40.1 months before they had an unchallenged patent. Then, challenged patents would be tied up in an appeals process, which is likely to take another 2.5 years.
  - The USPTO *ex parte* and *inter partes* challenges have an average pendency of about 23 and 29 months respectively. The European Patent Office, which permits such “post-grant” challenges, reports that the average duration of their appeals proceedings is 31 months. If the USPTO experience with such a new procedure was similar to that of the European Patent Office, an inventor would, on average, have a challenged patent tied up for 71 months after filing – almost six years.
  - The European Patent Office reports that 5.4 percent of granted patents were challenged through its nine-month post-grant procedure in 2005. This represented almost 3,000 cases annually and does not include private lawsuits commenced in Europe.
  - Europeans are using this relatively inexpensive post-grant challenge procedure as a business tool to extort a license from inventors, block or delay the introduction of competing technologies and restrict the scope of someone else’s patent – practices they and others may find equally attractive if this procedure is available to them in the United States.
  - The U.S. patent challenge rate by all means (*ex parte*, *inter partes*, interference and lawsuit) is 1.8 percent – is less than one-third Europe’s post-grant process.
  - If the U.S. use of such a procedure parallels the European rates (5.4 percent of patents granted), the number of U.S. patent challenges would triple to 10,000 “post grant” suits annually, plus whatever number of patent suits that would be filed in federal district courts.
  - The adoption of a “post-grant” challenge process would require a substantial increase in the number of USPTO administrative judges and support staff.
  - The Japan Patent Office, which had a similar “post grant” challenge procedure, abandoned it on January 1, 2004.
45. The lack of respect for the “special dispatch” rule imposed by Congress leads to uncertainty. A patent owner, particularly a small entity owner, cannot take their asset to market if the cloud of post-grant review(s) looms overhead. Perpetual re-examination hampers inventors’ capacity to go to market and reduces or eliminates the economic value of intellectual properties. Additional post-grant procedures that include features of litigation will slow special dispatch. More disputes will come to a USPTO already struggling with a re-exam backlog.

46. The U.S. first-to-invent system has less confusion and fewer challenges/lawsuits than the first-to-file system used in Europe. The Japan Patent System (JPO) is not comparable.
47. Only 100 U.S. patents a year are challenged as to who was the first to invent, the interference process. As such a tiny number attests, under the U.S. approach there is virtually no confusion or conflict as to who is the real inventor.
48. Although small entity inventors generate 31 percent of all U.S.-origin patents, they are involved in less than 18 percent of the miniscule number of all interference cases – that is, fewer than 20 cases per year. The present system is small-entity “friendly.”
49. The European first-to-file system is sufficiently confusing and conflict-prone that oppositions are filed against 5.4 percent of patents granted in the nine-month, “post-grant” challenge process, of which 38 percent are revoked.
50. This report notes that the Congress should legislate as mandated USPTO policy that no information in a patent application be disclosed unless the protection of a patent is granted.
51. This report recommends:

**Recommendation One** – The U.S. Congress should impose an emergency suspension of the publication of U.S.-origin patent applications until such time as (1) the United States Trade Representative can certify that China, Russia and other nations on its priority watch of intellectual property violators have brought the piracy of U.S. patents under control; (2) the USPTO’s average pendency rate is below the 18-month level and (3) the Congress votes to resume such publication. Ideally, the governments of Japan and Europe would join in this effort. But, if not, the U.S. should proceed unilaterally, while publishing in English foreign applications at the USPTO that are published abroad. While those nations would still publish the many U.S. patents filed in their patent offices, 64 percent of U.S.-origin patent applications are not filed in other nations. Therefore, the secrets in these U.S.-origin applications would remain secure until either a U.S. patent was issued or the inventor filed for a patent in another country or the application. One exception should exist – the USPTO should publish the applications of those U.S.-origin applicants that certify that they want publication at the 18-month point or earlier. An emergency suspension is compatible with U.S. obligations at the World Trade Organization as the TRIPS agreement does not require the publication of patent applications after a specified time of filing.

**Recommendation Two** – The Congress should require the Office of the United States Trade Representative, as part of its annual 301 Special Report, to identify countries whose exports to the U.S. have a substantially higher level than average of counterfeit goods or goods that violate U.S. patent rights. Imports so designated by the USTR would be required to be accompanied by a “Certificate of Authenticity” from either the government where the goods are produced or the U.S. importer that verifies the goods do not violate U.S. patents, copyrights or trade marks. Fraudulent certifications would result in penalties and inspections of all imports from those nations. Once the USTR removes a nation from this strengthened Special 301 list, such certifications would no longer be mandated.

**Recommendation Three** – The Congress should direct the General Accountability Office (GAO) to initiate a study of patent litigation in the United States. The report should examine whether there is a greater number of lawsuits filed against technology companies than against other types of companies as a percent of patents filed, granted

and held. The study should ascertain if the high tech companies surveyed in such a lawsuit used a patent clearance process (due diligence) and if there is any difference in the use of such due diligence between high technology and traditional business defendants. The study should also investigate whether there is a group of plaintiffs that is systematically abusing the litigation process or whether there is a small group of companies recklessly infringing the patent rights of others and thus being sued by many patent holders. If the GAO finds that a higher than average portion of patent litigation is against companies that do not use a patent clearance (due diligence) procedure, Congress should authorize an automatic award of treble damages when such companies lose an infringement case.

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An Analysis  
of  
The Global Publication of U.S. Patent Applications & Select  
Patent Reform Proposals

By Pat Choate

### **Introduction**

The Japan External Trade Organization (JETRO) maintains dozens of offices throughout the world, including six in the United States. They provide Japanese industries with timely foreign market intelligence and business development support. In the summer of 2004, Yoichi Gotani, Director of JETRO's Intellectual Property Office in Beijing visited the Haier Group, China's largest consumer-electronics maker, where he met the executive in charge of the company's intellectual property activities.

When Gotani asked about Haier's research activities, he was told that the company "spends only a small amount on research." Instead, the Haier executive said, "Using several dozen computers, we search for patent applications submitted to patent offices in Japan, the United States and European countries to obtain useful information to develop our products. ... Most of those foreign inventors and companies," he said, "won't apply for patent rights in China; there's nothing legally wrong in us using them."<sup>1</sup>

The Haier example is a pattern not an anomaly. China has a well-conceived plan to get secret and proprietary defense and business information from the United States. Some of this is obtained through spies. The top intelligence officer in the Office of Director of National Intelligence, Michael McConnell, has stated that while "140 foreign intelligence services" are trying to penetrate the U.S., "the Chinese are the most aggressive." Federal prosecutors in Santa Ana, California, for instance, describe how one Chinese family stole detailed secrets about Navy submarine engines that run silent enough to avoid detection. Other federal prosecutors are putting another team of Chinese operatives on trial for stealing from DuPont 22,000 confidential abstracts on company products including advanced materials used in airplane construction.<sup>2</sup>

Since 2001, one of the easiest ways to obtain such proprietary information legally is by systematically mining patent applications published on the Internet. Companies across the world see published patent applications as a gold mine for ideas that they can get to market quickly. Studying U.S. and other foreign patent applications augments, and sometimes replaces, domestic research and development.

Foreign companies can systematically examine the entire content of patent applications

submitted to the Japan Patent Office because Japan, Europe, and now the United States publish those materials on the Internet 18 months after an inventor files for a patent, regardless of whether the patent has been granted or not.

After Director Gotani reported his findings to Tokyo, the Japanese Patent Office (JPO) examined how often people inside China, as well as South Korea, entered their computer system to look at Japanese patent applications. The JPO officials were stunned to learn there were 17,000 inquiries a day from China and 55,000 a day from South Korea.<sup>3</sup> The Chinese and South Korean companies were systematically retrieving information about the most advanced research and development underway in Japan for incorporation into Chinese and Korean research, development and products.

In July 2005, The Yomiuri Shimbun, one of Japan's largest newspapers, used the Gotani story to illustrate the technological vulnerability created in Japan by the Japan Patent Office's premature publication of patent applications. The newspaper editorially concluded that Japan's intellectual property competitiveness, a foundation of that nation's strength, was widely threatened by this practice.

For decades, Japanese and European patent offices have published patent applications at the 18-month point. But to get such information, a researcher was forced to go the Japanese or European patent offices and laboriously search through the filed papers. Then, the principal beneficiaries of such labor-intensive and expensive research were those nations' own domestic corporations. U.S. companies, large and small, were also forced to make early publication of their patent applications a prerequisite to securing foreign patent protection, allowing foreign industries to get an early peek at American innovations.

A decade ago such a review of patent applications in the United States would have been impossible, even illegal. Before 1999, the U.S. Patent and Trademark Office (USPTO) was required by Congress to keep secret the contents of a patent application – the information was published only if, and after, a patent had been granted. The content of rejected applications was also kept secret, allowing the inventors to use their creations as trade secrets. The ultimate example of a how a well-kept trade secret can facilitate long-term success is the Coca-Cola Company and its secret formula for Coke Classic.

## **Unprotected American Secrets**

U.S. patent policy changed in November 1999 when the U.S. Congress enacted Public Law 106-113 that included a little-noticed provision requiring the USPTO to follow the practices of Japanese and European patent offices and publish patent applications 18 months after filing.

The first USPTO publications were made in the fall of 2001 when 27,000 patent applications reached the 18-month mark. By October 1, 2006, the USPTO had placed on the Internet a total of 1,271,000 patent applications.<sup>4</sup>

The electronic publication of patent applications on the Internet gives anyone located anywhere in the world instant access to the file of any issued patent in the U.S., Japan or Europe, plus the details about any patent application that has reached the 18-month-after-filing mark. To put the economic significance of this procedure into context, the U.S., Japanese and European patent

offices receive virtually all the patent applications made worldwide and they issue approximately 85 percent of all patents granted in the world. Thus, the fastest, easiest and least expensive R&D program for a company or a developing nation unconcerned about patent rights is to hire skilled analysts, give them access to the Internet and have them “mine” the information made public by the patent offices of Japan, Europe and the United States.

Other nations, notably China, and their state-owned and private companies, are aggressively mining the U.S., Japanese and European patent systems for their R&D. The ability to access ideas only 18 months after a patent has been filed, but before the protection of a patent is provided, enables these nations and companies to get someone else’s newest innovation to market faster than American, Japanese or European entrepreneurs generally can because the real creators’ ability to produce their innovations is postponed by the need for a patent in order to get seed capital. Well-financed infringers have no such limitation.

Consequently, the Congressionally-mandated publication of U.S. patent applications is akin to the U.S. pouring massive amounts of R&D money into a big bucket in order to stimulate the creation of more U.S. innovations and ultimately more and better American jobs. But imagine that there is a big hole in that bucket and the innovations flowing from that new stream of money are flowing to other nations at the expense of their American owners. This is not imaginary. The 18-month rule is the hole in America’s innovation bucket.

## **The Nano-Power of the Internet**

Although the governments of Japan and Europe had long lobbied the United States to adopt their 18-month rule, those governments and their corporate leaders badly underestimated the power of the Internet to distribute the details of their patent applications.<sup>5</sup> Nor did they anticipate the magnitude of modern commercial piracy, much of which today is state-protected. Thus, not just America’s advanced technologies and creations are available worldwide for early examination, and theft, so too are those of Japan and Europe, as Director Gotani and the JPO were shocked to discover in 2005.

And to compound these vulnerabilities, the governments of Japan and Europe, as did the U.S. government, have given Chinese producers, the most aggressive patent pirates in history, unimpeded access to their goods and their domestic markets.

Logical questions are why does the United States have this 18-month rule in the first place? What was the original intent? In the 1990s when Congress was considering this proposal, three reasons were given.

The first was that the United States needed to harmonize its patent system with those of Japan and Europe. Yet, as skeptics pointed out then, the U.S. has the “gold standard” of global patent systems. Harmonization was a political argument on a par with “everyone else does it, and so should we.”

A second, more substantive, reason was to eliminate the threat of “submarine” patents, an argument developed in the late 1980s and refined in the 1990s by the Japanese development Ministry.<sup>6</sup> Yet, a former Commissioner of the USPTO, has testified before Congress that between 1971 and 1993, only 627 patent applications out of 2.3 million could be classified as

submarine patents. At least a third of those were U.S. government military secrets. In the late 1970s, moreover, the Patent Office had established a system to prevent submarine patents and not one had been issued since then.

A third reason was that U.S. companies were supposedly wasting precious resources on duplicative research. Duplication would be prevented if companies could see what others were doing through the publication of patent applications. What was not considered are the R&D losses to inventors when the details of their creations are published but the USPTO does not grant a patent. Between November 2001 and October 1, 2006, more than 160,000 rejected patent applications suffered that fate – the applications were published, the USPTO did not grant a patent and the inventors' creations instantly became prior art. I suspect that the costs of lost R&D that this entailed far exceeds any losses that would have been created by any duplicative research.

Of course, if patent pendency rates could be reduced to less than 18-months, the need for any such publication would be obviated.

Over the past 40 years, several “Blue Ribbon” commissions and other groups have prepared recommendations on patent reform, the most recent being that by the Federal Trade Commission (2003), the National Academy of Sciences (2004) and the Congressional Research Service (2005) – all of which are distinguished by their under representation of perspectives from small entity inventors. The most influential of these studies was The Advisory Commission on Patent Law Reform, a study group that was created by Secretary of Commerce Robert Mosbacher in 1991, made the case for early publication in its 1992 report. Their work was the foundation for a multi-year legislative effort by the Clinton Administration.

The Mosbacher report recommended publication at the 24-month point. When the Mosbacher Commission made its report the average pendency rate was 19 months, as opposed to 31.1 months in 2006. The average pendency for a first action by the USPTO was only eight months versus 22.6 months in 2006. The anticipation back then was that most patent applications would have been processed and patents issued or denied by the date of mandatory publication.

As this suggests, the changes recommended by the Mosbacher Commission were made in an altogether different era. It was before globalization, before the creation of the World Wide Web, before China's emergence as a major economic power and collector of foreign technologies and before the emergence of mega-piracy. Those changes have altered the world in ways that could not be imagined in 1992. Yet the Mosbacher recommendations from that era still define the present reforms now before Congress.

In an experiment for this analysis, I accessed the Internet from my home computer and examined the published patents and patent applications of a private chemical company that zealously guards its technologies and business strategies. Because of Public Law 106-113, and its 18-month publication requirement, I could view every U.S. patent ever issued to that company, plus its 120-plus patent applications that have reached the 18-month mark. Were I a chemist, I would be able to deconstruct that company's research agenda, identify its breakthroughs and, most likely, identify where its research, development and business were headed.

For small entity inventors, the cost of filing a patent in dozens of other nations is prohibitive.

Neither can they afford to defend their patents in dozens of other foreign courts. Altogether, almost two-thirds of all U.S.-origin patent applications are not filed in other nations. This means that the “*U.S. should publish all its patent applications because they will be made public elsewhere, anyway*” argument is false.

The policy of the USPTO is neither to identify who seeks information from USPTO computers nor count inquiries. The USPTO sells its raw files, the materials provided on its web site, to commercial firms and other governments that then make the information user-friendly for companies such as the Haier Group. So, no one knows whether analysts from other nations examine the USPTO filings any more or less than they examine those of the Japan or Europe. A reasonable assumption is that U.S., Japanese and European patent offices are subject to the same intensive levels of scrutiny.

The USPTO and its employees are merely doing the job Congress has given it, and doing so competently. The problem is that in the 1999 legislation, Congress changed the historic “bargain” the U.S. made with its creative people. For more than two centuries, that bargain was twofold – (1) that in exchange for disclosing the details of a creation, an inventor would be given the exclusive use of it for a set time and (2) if no patent were issued, the details of the creation would be kept a secret, thereby allowing it to be used as a trade secret or be developed further.

Under this new “bargain,” however, the details of inventions are published before USPTO makes a decision to provide the protection of a patent. In effect, society gets its ice cream before having to eat its broccoli. It gets knowledge without providing commensurate protection. This is of great consequence.

The uncompensated, Congressionally-mandated “taking” of information in a rejected patent application and giving it to the world destroys any possibility that the inventor can use the innovation as a trade secret or develop it further for resubmission for a patent. The magnitude of these takings is massive. USPTO reports that about 41 percent of all patent applications were rejected in 2005 - about 69,000 applications. Some of this 41 percent may eventually be given a patent as the data include abandoned applications that may be refiled, continuances and other forms of disposals. Nonetheless, tens of thousands of patent applications, proprietary information, were made public, for use by anyone, anywhere. Today, an inventor’s risk is about 50-50 that their application will be rejected and that the USPTO will put their creation into the public domain unless they choose against publication and agree not to seek a patent in any other nation.

George Margolin, Vice President of the Professional Inventors Alliance and the holder of several dozen patents on photographic equipment and advanced semiconductor production devices, characterizes this premature release of secrets as “reverse alchemy – converting the gold of invention into the dross of lead.” For inventors and the U.S. economy, that is certainly true.

Lengthening pendency rates also increase the risk of piracy and magnify the losses to inventors, and ultimately the U.S. economy. The time required to process an application from filing to the grant of a patent, the period termed “pendency,” has increased from approximately 18 months in the early 1990s to more than 31 months in 2007.<sup>7</sup> The average time the information in an application is on the Internet before a patent decision is made has grown from a few months to

more than a year. For many complex applications, such as biotechnologies and computer-related innovations, this pendency is now past 44 months, leaving this proprietary information on the Internet almost two years before a patent is issued, if it is issued.<sup>8</sup>

Congress enacted two special provisions to mitigate the harmful effects of the 18-month rule. First, any inventor who chooses not to file a patent outside the United States on a creation is exempt from the early publication requirement, though the inventor must make a special effort not to file. The default procedure at USPTO is to publish, unless requested otherwise by the applicant.

Second, the owner of a patent can collect royalties or damages from an infringer from the date the patent application was filed until the date the USPTO granted the patent.

Both these provisions are widely viewed as unsatisfactory compensation to inventors for the early publication of their applications. To force applicants to accept the 18-month rule, in the first provision described above, Congress has effectively prohibited them from seeking the patent protection they need to do business in other nations. Likewise the Department of Justice argued in the *Microsoft v AT&T* case heard by the Supreme Court in the spring of 2007 that a patent owner should file for a patent overseas if they want to protect it in a particular country. By effectively restricting the use of patented intellectual property to U.S. markets, this policy undermines other, broader national policies that encourage full U.S. engagement in the global marketplace.

Despite these stiff limitations, almost ten percent of all patent applicants take the “U.S.-only” option, choosing full patent security in the U.S. now (including keeping their rights to a trade secret) over the chance of getting patent protection in the rest of the world later. But this number is deceiving as to its importance because half of U.S. patent applications are of foreign-origin. Virtually all foreign-origin patents do not seek the opt-out option because their applications are published at 18 months in other nations. As roughly half of the total applications are from foreign-owned entities, this means that the share of U.S.-origin applications is roughly twice the 10 percent of the total – in other words, as much as 20 percent of all U.S.-origin patent applications chose not to have their patent applications published by the USPTO. One caveat is in order: Although many academics, or their employers, may choose not to have USPTO publish their application, many also disclose details of their creations by the publication of papers and presentations at conferences.

Intuitively, most of those inventors are in the small entity category because they cannot afford multiple international filings. Since small entities file 31 percent of all U.S.-origin patent applications, I estimate that more than half of all small entity applicants choose not to have their secrets published. (See Table One) Half is a significant number that should be carefully considered in any Congressional patent reform efforts.

The second compensation Congress provided is also inadequate in that it requires the patent owner to provide the infringer “actual notice” of the published application and then specify the claims that are being infringed. To meet such an impossibly high standard at such an early stage in a patent’s life, patent owners must first discover who, here and abroad, is infringing their patent claims during the pre-grant publication period, and then formally notify them they are infringing. Since each nation has its own patent laws, patent owners must bring any suit against infringers in the nation(s) that issued the patent.

Beyond the onerous impracticality of requiring the patent holder to provide such detailed notice, foreign litigation in faraway places such as China can cost at least a million dollars per case. Moreover, the Office of the United States Trade Representative has repeatedly reported to Congress that such cases have a high risk of failure and that when successful the damage awards are generally trivial.

Total secrecy until an application is approved or rejected, therefore, is the only assured protection an inventor really has while an application is being examined by the USPTO.

The Japanese government is dealing with the reality of the ever-expanding foreign piracy and counterfeiting of its citizens' intellectual property by quietly encouraging its corporations to keep their best and most advanced technologies inside Japan where security is tight. Trade secrets and tight corporate security are their protection. If a patent is warranted, certain high technologies are given priority in the JPO examination process, allowing a patent to be issued prior to the 18-month mark.

Japan's policy is practical, though it diminishes the sharing of knowledge with society. Japan's strategy is also economically risky because if the trade secret is reverse-engineered by a competitor or compromised in a legal manner, few protections exist for the patent owner worldwide.

Interviews with several U.S. inventors and business people, though not a representative statistical sample, suggest that many are increasingly treating their creations as trade secrets. They realistically calculate that a premature disclosure through the 18-month publication process will result in the piracy of their creations. This unintended consequence of action by the U.S. Congress cuts the heart out of America's long-term innovation process, limiting the spread of knowledge created by a vast base of innovators.

## **Parties in Conflict**

Small changes in something so complex as U.S. patent laws are fraught with unintended consequences of great significance. As in medicine, that is why the first principle in any government "reform" should be, "do no harm."

A major unintended consequence of the 18-month rule is that the large U.S., Japanese and European corporations that persuaded the U.S. Congress to legislate it into law are among its principal victims. These corporations and their patent lawyers and advisors did not adequately consider the extraordinary power of the Internet to facilitate the instantaneous, detailed mining of all granted patents and all unprotected patent applications in all the world's patent offices. Nor did they anticipate China's aggressive, technology-based industrial policies. Most important, they did not anticipate how lucrative open global markets would make patent, copyright and trademark piracy. They let the foxes into their economic henhouse.

Historically, Congress set U.S. patent rights through a political process that allowed the affected domestic parties at conflict to find a compromise. That process is impaired now, largely because of the changing nature of the parties at interest.

The United States Patent and Trademark Office (USPTO) usefully distinguishes between what it terms “small entities” (independent inventors, companies with 500 or fewer employees, not-for-profit organizations, and universities) and “large entities” (larger corporations).

Until recently, the principal patent conflict was between independent inventors and large U.S. corporations, a reflection that individual inventors are a natural enemy of the status quo, large corporations and state-owned enterprises. With globalization, however, that conflict has quickly expanded to the world stage and increasingly it is including a conflict between developing and developed nations for access and control of various technologies and industries. The large corporations are even more likely to be victimized by global pirates in this lawless post-Internet economic age than independent inventors because they have more patents applications published, and are thus more vulnerable to theft.

Even with all the filings from large U.S. corporations and their counterparts from around the world, small entity inventors still receive roughly 31 percent of all U.S.-origin patents every year. This happens nowhere else in the world. It is the very heart of what Austrian economist Joseph Schumpeter called “creative destruction” and for more than two hundred years has been the engine of America’s economic growth. It is America’s principal hope for meeting the global economic challenges it faces.

The role of small entity innovation is inadequately understood and undervalued in the United States, largely because it has been under-studied.<sup>9</sup> Small entity inventors play a key role in this creative process. Research funded by the Small Business Administration reveals,

- Small firm patents on average are more technically important than large firm patents and are twice as likely to be among the top one percent of most frequently cited patents.
- Small patenting firms produce 13 times more patents per employee than large patenting firms.
- Small firms represent one-third of the most prolific patenting companies that have 15 or more U.S. patents.
- Small firms are more effective in producing high-value innovations.
- Small firm innovation is twice as closely linked to scientific research as large firm innovation on average and is substantially more high-tech or leading edge.<sup>10</sup>

For small entity inventors, patent rights are essential, providing them the means to raise capital, make license arrangements and defend themselves against infringers.

In the past, large entity inventors were more cavalier about patents. Judge Howard Markey, the first Chief Judge of the Federal Circuit, the appellate court that hears patent cases exclusively, wrote of this:

*Many giant corporations have no need of a patent system. They may obtain patents, but only as a defense against some little machine shop operator who*

*might otherwise invent and patent something the public would demand, and the big corporation would have to negotiate for, instead of adding the item to its product line. Many large corporations should be glad to compete on size, nationwide service, high volume, strong finance, and prompt delivery. They can kill off smaller competitors on any of these bases, unless the small competitor has a patent on a product somebody wants to buy.<sup>11</sup>*

Increasingly, however, large U.S. entities are realizing that global patent rights are also essential to their survival. In a world where China, India, Brazil and other nations are quickly becoming the world's workshop -- manufacturing everything from the simplest to the most advanced technologies -- many large entity American-headquartered corporations have transformed themselves into little more than intellectual property holding companies that design, market and distribute products and services which are produced by others in foreign locales. The protection of those corporations' intellectual property rights is vital because those rights constitute a major portion of their stockholders' real value.

Since each nation has its own patent system and laws, patent owners often face the prospect of having to mount cases in several nations to protect their property. As dozens of major U.S. transnational corporations have discovered, patent protections provided in developing nations, such as China, are generally meaningless, as are the judicial remedies in those countries. The small entity inventors are particularly disadvantaged when pitted against deep-pocket pirates, particularly those who enjoy the political and financial support of their governments, such as in China.

The legislative record of the 1999 enactment of the 18-month rule reveals the consequences of this change in U.S. patent law were given scant attention. The principal arguments for this legislation were that it would make the U.S. system more like those of Japan and Europe, and it would help cut down on duplicative research. Then, the power and reach of the Internet were only partially understood and the limitations of the World Trade Organization intellectual property protections (TRIPS) were not yet clear, as was the reluctance of governments in developing countries to confront patent piracy.

## **A New Culture of Infringement**

In 1999, when the last major legislative changes were made in patent law, Congress and those who advised it did not recognize or understand the emergence of a new U.S. business model, one created in large measure by a new generation of U.S. tech companies whose approach is to pirate the patents of others, quickly become very rich and powerful and deal with the consequences later.

In testimony before the U.S. Senate Committee on the Judiciary in May 2006, Dr. Nathan P. Myhrvold, formerly Chief Technology Officer for Microsoft and now CEO of Intellectual Ventures, explained how this aggressive business model works:

*“Most tech companies have made a deliberate decision to ignore the patent system. ... The tech company will hire smart people and put them under huge pressure and lucrative incentives to create state of the art products. They*

*send people to technical conferences, and encourage them to read scientific papers so they can learn the latest techniques. Yet, they do not allow them to read patents – not even patents by the same people whose research papers they use, or patents of the institutions from which they hire employees. In most tech companies, it is vehemently against company policy for engineers to read patents. This is based on a “see no evil, hear no evil” theory that it is better to feign ignorance than to find you’re infringing. They do not check their products to see whether they infringe anybody else’s patents – a common practice in other industries, known as patent clearance. Nor do they have established programs to license outside patents on a proactive basis. The R&D strategy is very effective because you don’t spend any time worrying about other people’s patent rights. It inevitably leads to infringing many valid patents. It is the engineering equivalent of driving at high speed, with the accelerator pedal mashed to the floor, but not looking to see whether there are other cars around. ... Their strategy is ‘get big fast,’ own the market and, if there is a patent problem, sort it out later.’”<sup>12</sup>*

In fairness, what Dr. Myhrvold describes was the U.S. and German technology strategy in the 19<sup>th</sup> Century, the Japanese strategy in the 20<sup>th</sup> Century and now China’s strategy in the 21<sup>st</sup> Century. The more familiar term is “mercantilism,” a systematic approach to acquiring the technologies of other nations and undercutting their economic abilities. “Predation” is the term applied when companies engage in such strategies.

To expect that the “smart people” under the “huge pressure” Myhrvold describes would obey these corporate edicts, and not sneak a peak at a cutting-edge patent application, is probably unrealistic. If such ambitious and unprincipled people refuse to respect the legal rights of patent holders, why would they be expected to respect the rights of patent applicants?

If these infringers can use the creations patented by others to quickly seize ownership of an entire market, they can become rich enough to buy their way out of any lawsuit, including purchasing the victim’s company, as often happens. Or, they can simply destroy their victims with the cost of litigation, forcing a cheap settlement on their own terms, often forcing the opponent into bankruptcy. Or, they can pay a large settlement out of their winnings. Or, they can invest a few million dollars in lobbyists and trade associations to weaken the patent laws and penalties for infringement. Or they can hire the best Constitutional experts and challenge the validity of key parts of U.S. patent laws. All these options are being used. For them, stealing pays very well.

The economics of the serial infringers’ business strategy, as described by Dr. Myhrvold, can be reduced to a cost-benefit analysis. He commissioned an examination of the Securities and Exchange Commission (SEC) records of four corporations that are leading the political charge to weaken U.S. patent protections and calculated how much they paid out in patent lawsuit settlements during the period 1993-2005. In total, the analysts discovered that these four companies paid \$3.5 billion in patent settlements. But, their “pedal to the metal” business strategy enabled them to take in \$1.4 trillion of revenue. Thus, the settlement costs were only one-quarter of one percent of their revenues (0.26 percent) – in relative terms a minor cost of doing business. If such corporations can persuade Congress and the Supreme Court to weaken existing patent laws and penalties, infringement is made even less costly and thus more desirable as a business model.

This new reality is that the world of innovation is filled with powerful governments and large corporations that have made a deliberate decision to infringe (steal) the patents owned by others, and then do all in their power to derail and postpone a reckoning with the owners. The premature publication of patent applications enables these infringers to access the newest, best technology only 18 months after it is sufficiently perfected for a patent application. As the world's principal source of innovation, the creative people and companies of the United States are the principal victims of such theft.

Naturally, the question is how did something so obviously harmful as the 18-month rule become the law of the United States? The answer is essential to devising a remedy.

## **The Politics of Publication**

The 18-month rule is an old idea, one long used by the Japanese and Europeans to get an early peek at what their inventors are doing. The principal U.S. advocates were large entity corporations and the organizations and service providers they fund, who since the late 1960s publicly lobbied for Congressional adoption of Japanese and European patent publication practices.

As these studies reflect, large corporations and their service providers dominate the membership, control and recommendations of such study groups. Notably absent from such committees are representatives of small companies and individual inventors. The absence is consequential because small entity inventors are the source of about 31 percent of all U.S.-origin patents granted. For more than 40 years, small entity inventors and their organizations have stoutly opposed publication of applications prior to the grant of a patent.

In recent years, the consultative process with Congress has become skewed in favor of the large entities. Partially, this reflects large U.S. corporations' influence with a succession of Presidents and the Congress, allowing them to shape U.S. patent policies. But less visibly, this imbalance also reflects the growing and tightly focused political intervention of Japanese and European corporations and their governments in U.S. politics and governance. Data produced by the Center for Public Integrity, a nonprofit organization that monitors lobbying, reveals that between 1998 and 2004 companies headquartered in 78 countries spent more than \$620 million for the lobbying work of 550 Washington, D.C. firms and 3,800 lobbyists, including 100 former Members of Congress who are working as foreign agents. Today, almost 700 foreign governments and corporations employ almost 4,000 lobbyists in Washington, D.C.

As I documented in Hot Property, large entity corporations from the U.S., Japan and Europe so dominated the creation of what became the Trade Related Intellectual Property Aspects (TRIPS) of the World Trade Agreement adopted in 1994 that their lawyers actually drafted the text the WTO adopted. In that trilateral effort, European business was represented by UNICE, the Union of Industrial and Employers' Confederations of Europe, the official voice of businesses and industries from 22 European nations. The *Keidanren*, whose membership includes all major Japanese companies and industry associations, represented Japanese business. A self-appointed group of corporations from the Business Roundtable represented the United States, including IBM, Pfizer, Merck, Johnson & Johnson, Bristol-Myers, Hewlett-Packard, General Motors, General Electric, DuPont, Monsanto, CBS, FMC, Warner and Rockwell International.

As part of that process, the European, Japanese and U.S. patent offices formed a trilateral project in 1983 to harmonize the creation of a unitary trilateral patent system. Since 1983, the directors of the European, Japanese and U.S. patent offices have held 24 trilateral conferences to effect such integration. Much of that work deals with fundamental questions, such as inter-computer compatibility and which word processing software is mutually acceptable. Yet, much of that work also deals with fundamental policy questions, such as should the United States change from a system that grants a patent to the first person to invent or the first person to file a patent application?

The issue of who advises the governments on the views of inventors is significant. While the governments of Japan and Europe have traditionally relied on the views of their large entities to help set their patent policies, the U.S. now does so as well. That process is formalized in the Trilateral Project these governments have formed. The trade associations of the large entity inventors present the views of U.S. patent holders. Small entity representatives have been absent at those deliberations, and their perspectives ignored.

A uniquely American problem is created by revolving door appointments – that is, policy officials in USPTO moving between high public office and the corporations, lobbyists and law firms that rely on USPTO decisions. It is a culture that provides rich incentives to elevate the interests of large entities over those of small entities and international over national concerns. It is an approach in which lawyers, former Members of Congress and ex-Hill staff with no experience in business or management experience of the scale required are put in charge of the USPTO, an institution responsible for decisions and assets of critical importance to the economy and national security.

The point is that the function of the USPTO is quasi-judicial in nature. It involves the management of thousands of people. The decisions that the USPTO makes are fundamental to America's innovation, competitiveness and economic policies. The Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office has responsibilities that are every bit as sensitive and important to the nation as those of the Director of Federal Bureau of Investigation and the Director General of the General Accountability Office, whose top positions are set respectively for fixed terms of 10 and 15 years, after which the officeholder may not be reappointed. While the positions of Commissioner of Patents and Commissioner of Trademarks are set for 5-year renewal terms, the top job is not. As with the FBI and GAO, Congress should consider requiring a one-time fixed appointment of the top job at USPTO for a duration comparable to that at the FBI or GAO.

## **The Arithmetic of Patent Reform**

Diluting the legal power of U.S. patents, under the guise of “patent reform,” remains a major goal of other governments and numerous transnational corporations, many of which are headquartered in the United States.

The agenda of their lobbying effort contains numerous proposals, including (1) changing the U.S. patent system to a first-to-file approach, (2) eliminating the “opt-out” provision in the 18-month publication rule, (3) eliminating the requirement to provide a “best mode” description in the application, (4) limiting to egregious acts the legal provision that provides triple damages for

willful infringement, (5) permitting a third-type of post-grant challenge of an issued patent and (6) allowing a third party challenge to a patent application while it is under review by the USPTO.

The details of these provisions are complex, and their consequences not immediately obvious. Thus, the lobbying campaigns for these proposals concentrate on two themes that are more understandable and more politically acceptable. The first theme is that a patent litigation crisis exists. The second is that the USPTO is approving a large body of sub-quality patents. Neither is correct.

The “litigation crisis” theme argues that greedy plaintiffs, filing so many unworthy lawsuits, are impeding U.S. innovation, unfairly imposing massive burdens on law-biding corporations and inventors and harming America’s ability to compete in the global economy.

A new lobbying group for tech companies describes this crisis on its web site’s home page as follows:

*Did you know?*

*Nationwide, the number of patent litigation cases more than doubled between 1991 and 2001; the number of patent litigation cases in 2005 was more than 19.5% greater than the number in 2001. In Marshall, Texas alone, where only seven patent cases were filed in 2003, 116 cases have been filed in the last 16 months?<sup>13</sup>*

These numbers are correct, but highly misleading -- a prime example of Professor Darrel Huff’s maxim (Lying with Statistics, W.W. Norton Publisher, 1993) that “*Numbers, when tortured, will confess to anything.*”

While the number of patent litigation cases did more than double between 1991 and 2001, in the same period the number of patent applications grew from 178,000 to 346,000 and the USPTO issued 77,000 more patents in 2001 than it did in 1991.<sup>14</sup> The number of patent cases that went to trial between 2001 and 2005 did rise from 76 to 107, actually a 40 percent increase. (See Table Two) Yet the key fact is that of all the patent lawsuits filed more than 96 percent were settled without a trial. Clearly, most of these filings were for purposes of negotiation.

As for Marshall, Texas, the New York Times did a profile on the town in 2006 noting that more patent lawsuits will be filed in that federal district court than all others except the Central District in Los Angeles.<sup>15</sup> The reason that particular court gets so many patent cases, according to the article, is that Judge T. John Ward is an expert in patent law, quickly moves cases to trial and local juries are willing to give large awards to those victimized by patent infringers. Historically, decisions there favor the patent owner. That court is not a good place for lawyers who try to delay the judicial process, a common strategy particularly when a cash-poor plaintiff-inventor sues a rich infringer-defendant. Almost 95 percent of the cases filed there settle quickly.

Closer to Washington, D.C. the District Court for Northern Virginia is known as the “rocket docket,” a fast, expert, efficient court that handles complex patent cases. Courts with such expertise, and that are managed well, deter gaming of the system and reduce the need for post-

grant procedures at USPTO to administratively hear patent case.

Several advocates of patent “reform” are urging Congress to establish a handful of patent courts around the nation, what is known as the “venue” issue, and forcing plaintiffs to file their cases in the closest one of those few or in the area where they or the other party reside. The goal is to keep cases out of the “rocket docket.” Few of these advocates have publicly supported the idea of providing the federal courts with additional resources for more staff. Not surprisingly, advocates of a weaker patent system also wish to exclude juries from hearing patent cases, though juries now decide more than 50 percent of patent damage awards. For 15 of the past 23 years, the median award of damages in patent cases by juries has exceeded that of judges.<sup>16</sup>

A major advocacy group illustrates the “litigation crisis” by noting the soaring number of “intellectual property” cases filed between 2001 and 2005. Missing in their explanation is that the broad term “intellectual property” includes all copyright and trademark cases filed. It is true that the number of “intellectual property” cases soared from 8,282 in 2001 to more than 12,000 in 2005, but, the surge was created by an explosion of copyright cases filed by entertainment companies against people downloading pirated music and movies from the Internet. There has been no surge of patent suits. (See Table Three)

The Federal Judicial Caseload Statistics, which are issued annually by the Administrative Office of the U.S. Courts, reveal that in the six-year period 2001-2006 the number of patent lawsuits filed increased from 2,520 to 2,700 – a growth of seven percent or barely more than one percent annually. In both 2005 and 2006, the total number of lawsuits commenced actually declined each year.

Equally important is the question of what happened with those cases? The federal judicial caseload statistics and the USPTO data on patent applications and grants reveal:

Only 5/10,000 of one percent of patents issued are challenged in a patent trial.

In 2006, more than 52 percent of all patent lawsuits commenced, settled before pretrial.

In 2006, more than 12 percent of patent lawsuits settled during or after pretrial.

In 2006, only 102 patent cases went to trial, which represents about 3.8 percent of all patent cases commenced.

Put into context, the number of patent lawsuits that go to trial annually rose from 76 cases in 2001 to 102 cases in 2006. While individual companies that were sued could consider themselves as under siege and settle to avoid litigation expenses, the long-term trend suggests that there are proportionally no more patent suits per patents granted now than in the past. The ratio of patent lawsuits per patents granted has hovered around the 1.5 percent level in the 14-year period 1993 and 2006 (Table Four).

For a nation that now grants almost 200,000 patents annually and has millions of patents in effect, 2,700 newly filed cases per year, of which only 102 go to trial, is by no measure a patent “litigation crisis.” The reality is that by the time a case reaches court or appeal, it most likely does involve a real patent with real infringement. The point is not many cases ever reach this point.

A “solution” to this non-existent problem proposed by many in the large entity community is for Congress to adopt a European-type third chance to contest a patent for nine-months after it has been granted. This would be an *inter partes* proceeding before a USPTO administrative judge. As with the current *inter partes* process, all parties would be involved. The principal advantage of this new challenge process is it would lessen a plaintiff’s legal costs, while creating another opportunity to challenge a patent’s validity.

Missing in this discussion, so far, is an examination of the experiences of other nations. The Innovation Alliance reports that,

*Less than 10 years after adopting such a system, Japan, Korea, Taiwan and China have all recently abolished post-grant opposition procedures in favor of a streamlined invalidation proceeding that permits a centralized process for administrative reexamination. The Japanese Patent Office has publicly acknowledged that repeated attacks against a patent under duplicative administrative and judicial opposition systems have imposed undue burdens on patentees, resulting in increased costs and delays. Similarly, Taiwan concluded that its post-grant opposition system unfairly benefited infringers to the detriment of all patent owners.*

The Innovation Alliance concludes that the post grant procedure,

*“... would create a quasi-judicial system of administrative litigation that heavily tips the balance in favor of the challenger’s interests; increases incentives to litigate; and disproportionately shifts litigation costs to the patent owner. Unlike a civil proceeding, a post-grant opposition system would invite challenges by any party adversely affected by a patent. And it would facilitate invalidation by eliminating the patent’s presumption of validity and reducing significantly the challenger’s evidentiary burden. In addition, the challenger would be free of constraints designed to reduce the cost, scope and potential abuses of administrative reexamination.”<sup>17</sup>*

The European experience with such post-grant review confirms that view. Its procedures are used not only to test the validity of patents, but also as a means for infringers to extort patent owners. The March 2007 **Euromoney Institutional Investor** reports that one of the important values of this post-grant challenge process in Europe is its use as a “business tool.”

*It is relatively inexpensive to file an opposition, but it can have the effect of removing a patent which blocks a technology area of interest, restricting the scope of an overly broad patent or simply provoking licensing discussions with the patentee. Thus, the offensive value of oppositions in Europe should not be overlooked.<sup>18</sup>*

The aggressive use of such challenges in Europe can truss a patent for 40 months or more after it has been granted. This process has the effect in Europe of rendering all granted patents as “conditional” until the nine-month window for filing a challenge expires. If challenged, the

EPO reports that the average duration of its *inter parte* process is 31 months. The mere threat of a challenge, therefore, is sufficient to force many patentees to grant a license rather than face a three- or four-year delay.

How prevalent are such challenges in Europe? Very. Wilding and Bridle report that in 2004 and 2005 more than five percent of all granted patents in Europe were challenged through this *inter partes* procedure. Challenged patents were upheld in whole or part 62 percent of the time in the first round. In appeal, 20 percent of the challenged patents were revoked. The issue in Europe is both that of weeding out invalid patents and gaming the *inter partes* challenge process for business reasons.

Imagine what would happen in the United States, which has a far more litigious society than Europe, if Congress adopts this post-grant nine-month review and challenge process. If five percent of U.S. patents granted annually are challenged, as in Europe, the USPTO would be forced to handle almost 10,000 cases a year – 17 times the total number of *ex parte* and *inter partes* challenges (581) filed at the USPTO in FY 2006.

By making patent challenges easier and less costly, this proposed solution is likely to stimulate more rather than fewer lawsuits. The big change is that USPTO judges will be hearing most of these cases. If the U.S. rate of such challenges equals Europe's, the total number of cases filed in U.S. courts and at the USPTO would surge from the current 3,300 per year (2700 lawsuits plus 581 USPTO *ex parte* and *inter partes* challenges) to 10,000 or more post-grant cases alone. Plus, plaintiffs that did not use these procedures would still have the option of filing a patent lawsuit in the federal courts.

The introduction of a post grant challenge process would mean that for thousands of inventors, the time they would have an unchallenged, exclusive use of their creation would drop from 17.6 years on average now to 14 years or even less.

Although no U.S. patent litigation crisis exists today, the unintended consequence of creating of such a post-grant challenge process would be to surely create one.

The second theme being advanced by critics of the U.S. patent system is the poor quality of patents the USPTO is granting. The “usual suspects” of patented frivolity, or what are often called “vanity” or “silly” patents, include a patent on a sandwich and one on a backyard swing, both of which have been revoked by the USPTO. The sandwich patent, however, was not on how to make a sandwich, but on how to package a sandwich for long-term storage and use in places such as convenience stores. The patent on a swing seems to be filed by an applicant and a patent lawyer to demean the patent processes.

Missing from the “poor quality” argument is the identification of instances in which a “silly” patent has been used as the basis for a successful lawsuit. Ronald J. Riley, Executive Director of Inventor Ed, notes that, “many of these silly patents are the work of scoundrels in the invention promotion industry, who have repeatedly defrauded people for typically between ten and fifty thousand dollars.”

USPTO is making a concentrated effort to improve the quality of its product, requiring an examiner to secure the approval of two supervisors before a patent is awarded. Consequently, the patent allowance rate is dropping sharply at the USPTO – that is, the number of applications

compared to the number of patents granted. (See Chart 1) In the late 1990s, that rate was in the 70 percent levels. In 2006, it was 54 percent and dropping. While not conclusive, this is suggestive of tougher standards.

The interference rate (the number of challenges per patents issued as to the origin of an invention) is a second measure of quality. There are on average only 100 challenges per year as to who is the true inventor of a patented creation. So few challenges in a system that is now granting 180,000-plus patents each year is a remarkably positive test of quality. The conflict rate is so low as to be statistically insignificant.

A third measure of patent quality is how many patents are challenged and survive after being formally challenged. The USPTO provides two unbiased and relatively quick ways for anyone to challenge an issued patent. In an *ex parte* challenge, a procedure available since 1981, anyone can challenge a patent and the USPTO will review the patent's claims. In the 26-year period 1981-2006, the USPTO received 8403 requests for *ex parte* reexaminations, of which 7403 were granted. Of the 5640 *ex parte* reexamination certificates issued, 10 percent had all claims cancelled, 64 percent had claim changes and 26 percent had all claims confirmed.<sup>19</sup>

The USPTO also offers a second method for anyone to challenge a patent – an *inter partes* reexamination, which is akin to an abbreviated trial. The *inter partes* process was introduced in late 1999. In the 7-year period between 1999-2006, the USPTO has had 209 *inter partes* requests for reexaminations, of which 168 were granted. Of the seven *inter partes* reexamination certificates issued since 1999, only one had all claims confirmed and six had all claims denied.

The average overall *ex partes* reexamination pendency rate (filing date to certificate issue date) is 23 months. For *inter partes* reexaminations, it is 27.9 months.

Having 74 percent of the *ex parte* reexaminations result in claims cancelled or narrowed and 6 of the 7 *inter partes* challenges result in all claims denied reveals that these patents were of poor quality. This also reveals that these processes are not biased in favor of inventors, as is often asserted. If anything, these numbers reveal the opposite.

Most important, these numbers strongly support the thesis that almost all patents granted by USPTO are sufficiently valid to preempt a challenge. Specifically, the USPTO issued more than 3.185,000 patents between 1981 and 2006. During that same period, 8,612 patents were challenged through the *ex parte* and *inter partes* processes – that is, only one/three thousandth of one percent (0.003) were challenged.

The USPTO makes mistakes and on a rare occasion issues a “bad” patent. Yet, the tiny number challenged over the past quarter century, and the even smaller number totally reversed strongly, suggests that almost all patents granted by USPTO are of sufficient quality to be valid.

A fourth test of validity is the number of patents contested on appeal in a patent trial. By the time a patent has been examined by USPTO, reexamined if requested and tried in a civil case, it has withstood a test of fire. The Congress in 1982 established a special court that hears appeals on patent cases – The United States Court of Appeals for the Federal Circuit. Few patent cases go this far in the judicial process, but of those that do the lower court decisions are affirmed roughly two-thirds of the time.<sup>20</sup>

Critics of the U.S. patent system argue this reflects a bias on the part of this Court. A more realistic view is that by the time a patent reaches this advanced stage in the legal process, it has been examined so closely that only a few are invalid, and those few often reflect a contested point of patent law which ultimately may need to be resolved by either the Supreme Court or Congress.

In sum, the USPTO is granting valid patents. Few invalid patents slip through the process and where an invalid one does get through, the USPTO offers relatively quick, relatively inexpensive challenge procedures. If that is unsatisfactory, a challenger can take the matter to a federal district court, which happened only 102 times in 2006. America's patent system is far from broken. It works admirably.

A partial solution to the problem of "silly" patents could be for the critics to fund workshops in select law schools, where students, working under the guidance of their professors, could file *ex parte* examination requests at the USPTO. The experience for the students would be useful, silly patents could be revoked and the USPTO could identify examiners who need more training and supervision. It could also identify those critics and patent lawyers who are using their special privileges to waste the USPTO's limited resources.

### **The Mossinghoff Study**

The United States is the only nation that gives a patent to the first-person-to-invent. All other nations issue a patent to the first-to-file.

For more than 40 years, the governments of Japan and Europe have urged the U.S. to change its patent system to be like theirs, as have many large-entity groups in the United States. Their basic argument is "harmonization" that is, others do it and so therefore should the United States.

Transnational corporations would like one set of procedures and rules everywhere.

A first-to-file system would cut the costs for filing in multiple countries, since the forms and procedures would be the same. These large U.S. corporations are accustomed to the first-to-file systems in other nations, as are foreign corporations who apply in the United States under our first-to-invent procedures.

The arithmetic behind any determination of which system is preferable for the United States is this, (a) about half of all U.S. patent applications now come from abroad, (b) about 64 percent of all U.S. patent applications are not filed abroad, (c) small entity inventors file 31 percent of all U.S.-origin patent applications, and (d) most small entity inventors cannot afford to file for a foreign patent and do not file for one.

The greatest beneficiaries of the first-to-invent system are America's small-entity inventors. Now, they are not pitted in a race to the Patent Office against richer, larger corporations, though they would be if Congress makes such a drastic change.

The pivotal public policy question is which system has less confusion as to whom the patent should be awarded and results in better quality patents? In that contest, the U.S.'s first-to-invent system wins hands down and is far preferable to the European and Japanese approach.

In 2005, a group of large-entity companies sponsored a study to determine whether small or large entities are advantaged or disadvantaged by America's first-to-invent approach. The study has been cited many times as proof that retaining a first-to-invent system is not justified by the data. In fact, the data reveals just the opposite conclusion, which surely must have been a surprise for the sponsors.

The study was directed by former Commissioner of Patents and Trademarks Gerald J. Mossinghoff, who did a statistical analysis of what happens when two parties claim to have invented something at nearly the same time, something called interference cases or two-party decisions.<sup>21</sup> If there were problems in the first-to-invent system, a large number of such cases would exist. But they do not.

Remarkably, in the 22-year period 1983-2004, Mossinghoff found there were only 3,253 two-party decisions, a period when the USPTO received 4.5 million applications and granted more than 2.4 million patents. There were on average only 155 such interference cases per year, or as Mossinghoff pointed out, less than one in 1000 applications filed. More recently, the USPTO reports the average number of interference cases is only 100 per year.

Mossinghoff also found that the number of small entities advantaged in that 22-year period by the interference process was 286 and the number disadvantaged was almost the same (289), a strong statistical suggestion that the USPTO approach was balanced.

The Mossinghoff data provides an irrefutably strong argument for not changing from a first-to-invent to a first-to-file patent system. Specifically, the supposed disadvantage of the present approach is that it leads to confusion and conflicts as to the real inventor. Yet, as the Mossinghoff data conclusively reveals, this is not so. So few interference cases in the 22-year period analyzed means the existing first-to-invent system is well understood by users and produces few conflicts over who is the real inventor. The first-to-invent system works exceedingly well for the United States. A first-to-file system would be pressed to do as well, even after several years of operation.

The annual European Patent Offices (EPO) challenge rate was 5.4 percent of granted patents in 2005. The combination of all U.S. interferences, plus all USPTO *ex parte* and *inter partes* challenges, plus all U.S. patent lawsuits commenced, per the number of U.S. patents granted produces a comparable U.S. challenge rate of 1.8 percent. The EOP challenge rate is three times that of the United States, not counting lawsuits.

This difference is highly significant. It strongly suggests that Europe would be well advised to adopt the U.S. first-to-invent approach if they wish to reduce confusion and lawsuits in their patent process.

Mossinghoff's study also reveals that small entities were involved in only 17.6 percent of these two-party cases, although they generate 31 percent of all U.S.-origin patent applications. The overwhelming majority of those interference cases (82.4 percent) were between large entities that fully understood the patent process and were capable of financing their advocacy.

The Mossinghoff data document that the number of small entity inventors affected by interferences is only one of every 7,800 applications. This is so statistically insignificant as to

be irrelevant. One of 7,800 is not a problem at the USPTO.

The point is that our present system is not adversely affecting large or small entity inventors nor U.S. or foreign inventors as to who is the first to invent. The system results in less than one third the annual number of patent challenges and lawsuits as that of Europe. Then, why “fix” something that works so well? Why go to all the trouble, all the costs of changing to something else, particularly when any possible benefits are so illusory?

If there is some benefit to U.S.-origin inventors other than imitating what other nations require, other than using the same forms and procedures, which 64 percent of U.S. inventors never do because they do not file for a foreign patent, advocates of that change should be forthcoming as to what those benefits may be.

The other question raised in the Mossinghoff paper is about the ability of those few, those one in 7,800 inventors, to finance the legal costs of a two-party case. He found that 575 small entity inventors, in that two-decade time period, took their cases to conclusion, which also strongly suggests that legal costs were not a barrier, even for those few.

Strikingly, several of the “reforms” being proposed to Congress, including the first-to-file proposal, are not a top priority of many large entity organizations. The Intellectual Property Owners Association (IPO), a trade association of large corporations, reported at the Tokyo Trilateral Meeting in November 2006 the results of a survey of 117 respondents attending its September 2005 annual meeting, asking the attendees what patent reform topics were their most important.<sup>22</sup> The IPO found that only 21 percent of the respondents to its survey thought that modifying the law on willful infringement was the most important topic they faced.

Only 25 percent of the respondents thought a post-grant opposition system were most important. Apparently, they felt the USPTO’s existing challenge processes are sufficient.

Only 40 percent of the responding IPO members believed that shifting to a first-to-file system was the most important patent topic. Not surprisingly, the large entities are experienced and skilled in dealing with the differences between the U.S., Japanese and European patent systems. Indeed that gives them a competitive advantage over competitors who lack those capacities.

Concurrently, the Professional Inventors Alliance, which represents the views of independent inventors, opposes all these proposed changes.

Why, therefore, are these proposals being considered if the large entity inventors do not think they are a top priority and small entity inventors stoutly oppose them?

I conclude that the shift to a first-to-file system is a legacy recommendation, a hardy standard, thrown into most Blue Ribbon studies without any analysis of what it would mean to American inventors. Congress has rejected this change for decades and should reject it now.

### **The Likely Consequences of Patent “Reform”**

If today’s patent “reform” campaign succeeds, the changes now being considered would likely weaken the U.S. patent system and the protections it provides inventors. They would impede U.S. innovation and harm America’s ability to face the global challenges we face.

Should inventors be required to include in their patent applications the “best mode” to replicate and use their creations; that is, should they be required to share their knowledge of how best to use their creation as part of the price for exclusive use?

I think the answer is yes – absolutely. The golden covenant of a patent is simple – exclusive use in exchange for sharing new knowledge. Otherwise, the patent grantee gains the benefits of government-licensed exclusivity, while denying the public the full knowledge to which it is entitled. The possibility that this may cause patent owners future problems in litigation defenses is no excuse for withholding knowledge.

In the early part of the 20<sup>th</sup> Century, I.G. Farben, the giant German chemical cartel, was granted dozens of chemical patents in the United States, giving it exclusive use of its creations. However, Farben cheated. When DuPont and other chemical makers tried to replicate those chemical processes during World War I, they discovered vital elements were missing. Farben had not provided a best mode of use. It got the benefit of exclusive use without sharing knowledge. Indeed, Pierre DuPont, who spent more than \$100 million of 1917 dollars trying to replicate those chemical patents, claimed that DuPont chemists would have been killed if they had followed the Farben patents.<sup>23</sup>

The point is the United States should not give exclusive rights to inventors unless the inventors share with the public the best and true way to independently replicate their creations. Expanding public knowledge is one of the patent system’s most important functions.

In sum, the “reforms” currently being proposed would allow infringers to escape the consequences of their actions, but they also will greatly weaken America’s small entity inventors and those large entity inventors who obey the laws. This will happen through:

- More infringement.
- More litigation.
- More delays for start-ups by small entity inventors.
- More patent system abuses, such as those in Japan.
- More piracy created by more “mining” of unprotected U.S. patent applications.
- More patent applications as inventors rush to the USPTO to be the first to file.
- Lower quality created by the premature filing of applications.
- Lower financial recoveries for victims of patent infringement.

## **Recommendations**

A culture of infringement exists in many developing nations, particularly China and Russia, and among many Big Tech companies in the United States. This culture threatens the viability of patent systems, here and abroad, and thus threatens the incentives that have long underpinned U.S. innovation and development. If the processes of innovation are to be strengthened, this new culture of infringement must be smashed. In 2005, the U.S.-China Economic and Security Review Commission studied the 18-month rule and recommended to Congress that it be revoked, but patent legislation was not enacted in the 109<sup>th</sup> Congress. Thus, the following recommendations are made.

**Recommendation One** – The Congress should impose an emergency suspension of the publication of U.S.-origin patent applications until such time as (1) the United States Trade Representative can certify that China, Russia and other nations on its priority watch of intellectual property violators have brought the piracy of U.S. patents under control; (2) the USPTO average pendency rate is below the 18-month level and (3) the Congress votes to resume such publication. One exception should exist – the USPTO should publish the applications of those U.S.-origin applicants that certify that they want publication at the 18-month point or earlier.

The existing publication of U.S.-origin patent applications effectively destroys the possibility of U.S. inventors using their creations as trade secrets or further developing their inventions and re-submitting a patent application. Tens of thousands of potential U.S. trade secrets annually are being administratively destroyed by such publication. Equally significant, publication is facilitating fast-track piracy by infringers, here and abroad.

Ideally, the governments of Japan and Europe would join in this effort. But, if not, the U.S. should proceed unilaterally, while publishing in English applications from those nations that are published abroad. While those nations would still publish the 36 percent of U.S.-origin patent applications filed in their patent offices, a majority of U.S. inventors are unable to afford the pursuit of patent applications in other nations. Therefore, the secrets in a majority of U.S.-origin applications would remain secret until either a U.S. patent was issued or they filed for a patent in another country. An emergency suspension is compatible with U.S. obligations at the World Trade Organization as the TRIPS agreement does not require the publication of patent applications after a specified time of filing.

**Recommendation Two** – The Congress should require the Office of the United States Trade Representative, as part of its annual 301 Special Report, to identify countries whose exports to the U.S. have a substantially higher level than average of counterfeit goods or goods that violate U.S. patent rights. Imports so designated by the USTR would be required to be accompanied by an “Certificate of Authenticity” from either the government where the goods are produced or the U.S. importer that verifies the goods do not violate U.S. patents, copyrights or trade marks.

Fraudulent certifications would result in penalties and inspections of all imports from those nations. Once the USTR removes a nation from this strengthened Special 301 list, such certifications would no longer be mandated.

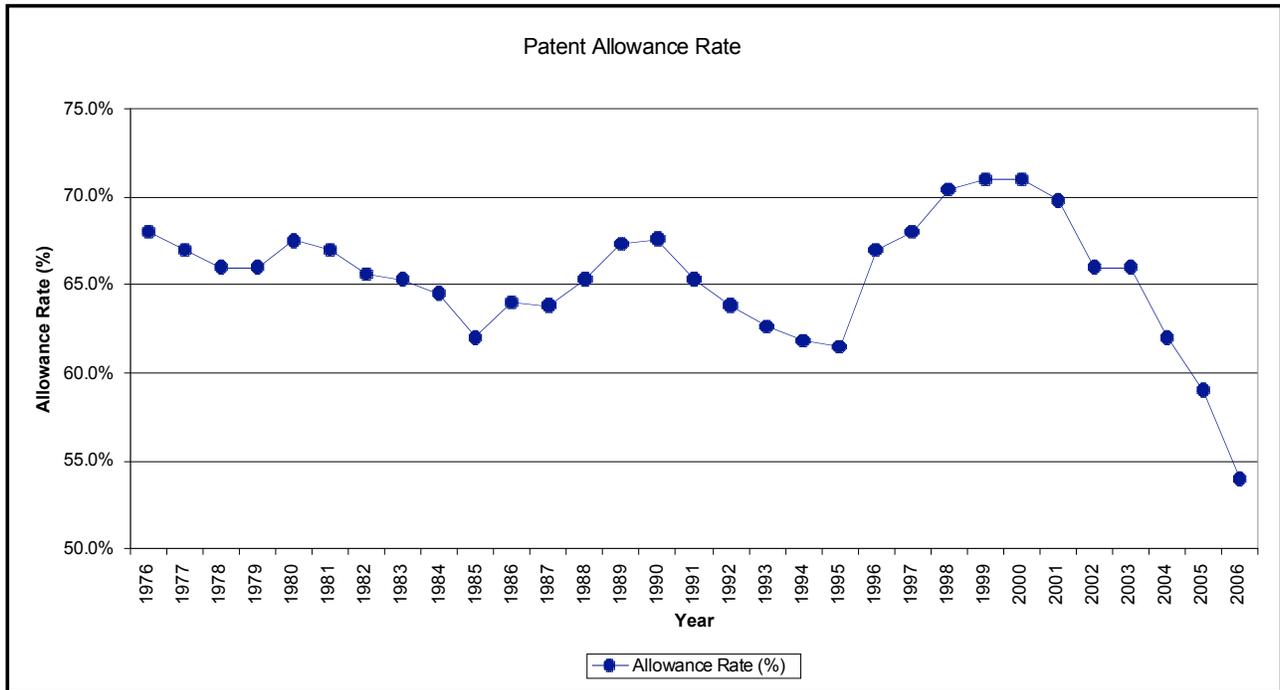
**Recommendation Three** – Direct the GAO to initiate a study of patent litigation in the United States. The report should examine whether there is a greater number of lawsuits filed against technology companies than against other types of companies as a percent of patents filed, granted and held. The study should ascertain if each high tech company in such a lawsuit used a patent clearance process (due diligence) and if there is any difference in the use of such due diligence between high technology and traditional business defendants. The study should also investigate whether there is a group of plaintiffs that is systematically abusing the litigation process or whether there is a small group of companies allegedly infringing the patent rights of others and thus being sued by many patent holders. It should also examine if this threat is sufficiently high enough to merit requiring publicly owned companies to disclose on a regular basis whether patent litigation is a material risk to shareholders’ equity and quantify the value of these intellectual property threats in that reportage. If the risk is real, it should be reported. If the GAO finds that a higher than average portion of patent litigation is against companies that

do not use a patent clearance (due diligence) procedure, and thus are reckless, Congress should consider that an egregious act and authorize an automatic award of treble damages when such companies lose an infringement case.

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## Tables and Charts

**Chart One**  
**Patent Allowance Rate**  
(1975-2006)



Source: USPTO.

**Table One**  
**USPTO Patent Applications and Grants**  
**Vital Data (Utility, Plant and Reissue Patents) (1998-2006)**

<b>Ownership of Utility, Plant and Reissue Patents (UPR)</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>
<u>Total Utility, Plant and Reissue (UPR) Applications (FY)*</u>	240,090	261,041	293,244	326,081	333,688	333,452	355,527	384,228	417,819
Large Entity Applicants									
Percent of Total Applications	69%	69%	71%	N/A	71%	71%	72%	72%	73%
Small Entity Applicants									
Percent of Total Applications	31%	31%	29%	N/A	29%	29%	28%	28%	27%
<u>Total Utility, Plant and Reissue (UPR) Grants (FY)*</u>	140,159	143,681	165,500	170,638	162,216	173,065	170,637	152,088	164,115
Large Entity Grantees									
Percent of Total Patent Grants	71%	71%	72%	73%	76%	77%	76%	76%	77%
Small Entity Grantees									
Percent of Total Patent Grants	29%	29%	28%	27%	24%	23%	24%	24%	23%
<u>Utility Patents Granted (Calendar Year)**</u>	147,518	153,485	157,494	166,036	167,331	169,023	164,291	143,806	173,771
U.S. Origin	80,289	83,905	85,068	87,600	86,971	87,893	84,271	74,637	89,823
Percent of Total	54.20%	54.70%	54.00%	52.80%	52.00%	52.00%	51.30%	51.90%	51.70%
Foreign Origin	67,229	69,580	72,426	78,436	80,360	81,130	80,020	69,169	83,948
Percent of Total	45.80%	45.30%	46.00%	47.20%	48.00%	48.00%	48.70%	48.10%	48.30%
<u>U.S.-Origin Utility Patents (Calendar Year)</u>	80,289	83,905	85,068	87,600	86,971	87,893	84,271	74,637	89,823
Large Entity U.S. Grantees (Calculated)									
Percent of Total	61%	62%	63%	65%	69%	69%	69%	68%	N/A
Small Entity U.S. Grantees (Calculated)									
Percent of Total	39%	38%	37%	35%	31%	31%	31%	32%	N/A
<u>Patent Applications Published at 18 Months (FY)***</u>	N/A	N/A	N/A	25,359	169,729	243,007	248,561	291,221	291,259

Data Sources: "Small entity" means an independent inventor, small businesses with 500 or fewer employees, universities and colleges, and organizations the U.S. Internal Revenue Service designates as a 501(c)(3) non-profit organization. By statute, they may pay reduced patent fees. The data herein is denoted as to whether it is on the basis of a Fiscal Year or a Calendar Year. \*Provided to Author by USPTO Analysts. \*\*All Patents, All Types of Report, USPTO, A PTMB Report, 2006. \*\*\* USPTO Annual Reports, 2004, 2005 and 2006.

**Table Two  
U.S. District Courts  
Patent Cases Commenced and Terminated by  
Nature of Court Action Taken -- 2001-2006**

Year  (12 months ending March 31)	Cases Filed	No Court Action	Cases Terminated and Court Actions Taken			
			Total	Before Pretrial	During or After Pretrial	During/After Trial
<b>2001</b>	2520	634	1689	1330	283	76
<b>2002</b>	2700	665	1801	1413	302	86
<b>2003</b>	2814	673	1809	1372	349	88
<b>2004</b>	3075	769	1907	1432	379	96
<b>2005</b>	2720	863	1941	1492	342	107
<b>2006</b>	2700	860	1840	1409	329	102

Source: Federal Judicial Caseload Statistics, 2001-2006 (As of March 31 of each year).

**Table Three**  
**Copyright, Patent and Trademark Cases Filed**  
**U.S. District Courts**  
(1990-2005 – Calendar Years)

Fiscal Year	Private Cases			Total
	Copyright	Patent	Trademark	
<b>1990</b>	2,075	<b>1,212</b>	2,405	5,692
<b>1995</b>	2,417	<b>1,706</b>	2,716	6,839
<b>2000</b>	2,050	<b>2,460</b>	4,187	8,697
<b>2001</b>	2,446	<b>2,496</b>	3,340	8,282
<b>2002</b>	2,084	<b>2,680</b>	3,458	8,222
<b>2003</b>	2,448	<b>2,788</b>	3,657	8,893
<b>2004</b>	3,007	<b>3,055</b>	3,496	9,558
<b>2005</b>	5,796	<b>2,706</b>	3,657	12,159

Source: **Federal Judicial Caseload Statistics**. The surge in intellectual property lawsuits is primarily due to an increase in copyright filings that was likely due to music companies filing infringement cases against individuals downloading from the Internet copyrighted recordings.

**Table Four**  
**Patents Granted and Lawsuits Commenced**  
(FY 1992-2006)

Fiscal Year	Patents Granted	Patents Suits Commenced	Lawsuits as a Percent of Patents Granted
2006	183,000	2,700	1.47
2005	165,000	2,720	1.64
2004	187,000	3,075	1.64
2003	190,000	2,814	1.48
2002	177,000	2,700	1.52
2001	188,000	2,520	1.32
2000	182,000	2,484	1.36
1999	159,000	2,318	1.45
1998	155,000	2,218	1.43
1997	123,000	2,112	1.71
1996	117,000	1,840	1.57
1995	114,000	1,723	1.51
1994	113,000	1,617	1.43
1993	107,000	1,553	1.45

Sources: Data from the patents Granted is from USPTO Annual Reports. Data for lawsuits commenced is from the Federal Judicial Statistics. The lawsuit data is as of March 31 of each year. The patents granted data is as of the Federal Fiscal Year. While the data is skewed by the different times used for the reporting years, a long-term view is created for this 14-year period. The author calculated the ratios.

## Notes

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- <sup>1</sup> "Naivete or Generosity?" The Planning National Strategies Series, **The Daily Yomiuri** (Tokyo) July 2, 2005.
- <sup>2</sup> "China's Spying Overwhelms U.S. counterintelligence," Jeff Bliss, Bloomberg, April 2, 2007.
- <sup>3</sup> "Naivete or Generosity?"
- <sup>4</sup> "Historical background," The Website of the Trilateral Co-operation, [www.trilateral.net/background/](http://www.trilateral.net/background/).
- <sup>5</sup> Testimony of Pat Choate, The U.S.-China Economic & Security Review Commission, Hearing On Intellectual Property Rights Issues and Dangers of Counterfeited Goods Imported Into the United States, Washington, D.C., June 8, 2006.
- <sup>6</sup> A submarine patent is one in which an inventor files an application on a creation of some value, files continuations to delay the issuance of a patent for many years and then allows the patent to surface (hence submarine) after which the patent is used to sue companies that were unaware of the patent filing. In reality those few patents that could be classified as "submarine" patents mostly were issued by government. The problem was a fiction used to justify changes in U.S. patent law, much as a "litigation crisis" is being used to justify changes in U.S. patent law in the 110<sup>th</sup> Congress.
- <sup>7</sup> Fiscal year 2006: A Record-Breaking Year for the USPTO," USPTO, Press Release, (December 22, 2006).
- <sup>8</sup> "Patent Pendency Statistics," (FY 2006), USPTO Annual Report.
- <sup>9</sup> "Independent inventors and innovation," Cynthia Wagner Weick and Cynthia F. Eakin," **Entrepreneurship and Innovation**, February 2005.
- <sup>10</sup> "Small Serial Innovators: The Small Firm Contribution to Technical Change," CHI Research, SBA Contract no SBHHQ-01-C-0149, February 2003.
- <sup>11</sup> "Stacking the Deck Against the New," Skip Kaltenheuser, Venture Capital Journal, December 1, 1997.
- <sup>12</sup> Testimony of Dr. Nathan P. Myhrvold, Subcommittee on Intellectual Property, Committee of the Senate Judiciary, Washington, D.C., May 23, 2006.
- <sup>13</sup> Coalition for Patent Fairness, web site.
- <sup>14</sup> USPTO, "Patents and Trademarks by Type: 1980-2005, Statistical Reports Available for Viewing, Calendar Year Patent Statistics."
- <sup>15</sup> "So Small a Town, So Many Patent Suits," Julie Creswell, **The New York Times**, September 24, 2006.
- <sup>16</sup> PwC, "2007 Patent and Trademark Damages Study," Pricewaterhouse Coopers, 2007, p. 14.
- <sup>17</sup> Innovation Alliance, "Not Patently Obvious: The Innovation Alliance's Position on Proposed Patent Reform Legislation," March 2007.
- <sup>18</sup> Ames Wilding and Andy Bridle, "Statistics on EPO Oppositions," Euromoney Institutional Investor, March 2007.

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<sup>19</sup> "Ex Parte Reexamination Filing Data," December 31, 2006, and "Inter Partes Reexamination," December 31, 2006. Office of the Commissioner of Patents, USPTO. 2007.

<sup>20</sup> "Statistics," United States Court of Appeals for the Federal Circuit, 1997-FY 2006.

<sup>21</sup> "Small Entities and the 'First to Invent' Patent System: An Empirical Analysis," Gerald J. Mossinghoff, The Washington Legal Foundation, 2005.

<sup>22</sup> "Legal Certainty for Patent System Users," Presentation by the Intellectual Property Owners Association, Trilateral Offices and Users Conference, Tokyo Japan, November 16, 2006.

<sup>23</sup> Pat Choate, **Hot Property**, Alfred A. Knopf (2005).