

*Hearing on Intellectual Property Rights Issues and Counterfeit Goods*

**Opening Statement of  
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Commissioner and Hearing Co-Chair**

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Good Morning and welcome to today's hearing on Intellectual Property Rights and Imports of Counterfeit Goods. Through this hearing the Commission is fulfilling its statutory mandate under Public Law No. 109-108 to investigate and report on "the degree of non-compliance by the People's Republic of China with agreements between the United States and the People's Republic of China on ... intellectual property rights, and United States enforcement policies with respect to such agreements." We are fortunate to have with us, Members of Congress, Administration officials, industry representatives, and legal experts.

There is no question that China is a rampant violator of intellectual property rights. Today's hearing will address, among other issues, is 1) how IP violations reflect the inadequacies of a Chinese system lacking rule of law; and 2) whether it is possible to separate IP violations from China's development or whether they are an essential ingredient in this development.

The lack of an effective rule of law in China has resulted in a corrupt domestic legal system and the central government's commitments to the in international arena that it knows it cannot or will not enforce. China's Communist party has perpetrated a corrupt legal system that is at the local level operated by judges under the thumb of administrative officials and in the pockets of nefarious elements. As such, the underdeveloped legal system has not provided the necessary protections when rights, particularly intellectual property rights are violated, and is overwhelmed by the economic imperatives of development and employment pressures, and provincial political authorities. Annually, the central government commits to improving its protection of intellectual property rights at the U.S.-China Joint Committee on Commerce and Trade, and it promulgates laws that appear to enforce these agreements, knowing that they will not, in fact, be enforced. Without an enforceable rule of law in China, and a restructured, greatly strengthened court system, and legal resources with political clout, intellectual property rights are infringed at levels near 100 percent.

It remains unclear whether the Chinese government is committed to engaging the IPR infringement issue or whether Chinese development is dependent on such infringement. There are very serious questions about the central role of commercial and industrial piracy as a core driver of China's current level of development, innovation and international competitiveness -- and whether eliminating the advantages of this extensive industrial piracy would affect the stability of the regime itself. Whereas rampant piracy should logically limit the level of foreign investment in China, it has not. While it is often reported that foreign companies attempt to protect their most valued IP from Chinese pirates, they continue to invest and expose their IP. At the same time, it is clear that the Chinese government seeks foreign investment as a means of technology transfer for its own technological development. Does China's development rely on a certain level of IP infringement? Is the government a party to the infringement? If so, can the United States, realistically expect advancement in the protection of intellectual property rights in China?

How the U.S. Congress and the Administration choose to view this concern ultimately determines the appropriate actions we will take as a nation to ensure the protection of our IP. In the five years since China has joined the WTO, there has been no tangible improvement in the protection of intellectual property. If China is to be held responsible for adhering to its commitments, it is time to explore the WTO dispute settlement option for a variety of U.S. industries most injured by China's IPR violations.

This hearing examines the questions of IPR losses to China from the perspective of a variety of U.S. industries – entertainment, including the recording, publishing, and film industries, but also in many key manufacturing sectors, such as electronics, automotive, software, chemicals, and pharmaceuticals. What progress has been made to bring China into compliance with its commitments to honor the TRIPS agreement? What tools have worked and what further initiatives by the U.S. Government are needed? What role is Congress playing and what further action should Congress take? In particular, what effect would initiating dispute resolution panels in the WTO achieve?

This hearing is intended as a broad ranging inquiry into the state of IPR protection for U.S. economic interests in China, determination of what progress has been made, and what further steps are needed. At the most fundamental level, is China too dependent on IPR piracy, broadly practiced across most industrial sectors, for its economic development and technological progress? Can, in fact, the Chinese national government control illegal activities now rampant at the provincial level, and the cities of Shanghai and Beijing themselves. Is there sufficient political will in the national government to change the widespread practice of piracy across the economic landscape?

The deadline in the WTO for China to fully implement its obligations under the TRIPS agreement, which requires all WTO members to provide certain minimum standards of intellectual property protection, as well as effective IPR enforcement, was a key achievement of the Uruguay Round. The TRIPS agreement is the first broadly-subscribed multilateral intellectual property agreement that is subject to mandatory

dispute settlement provisions. What's the scorecard for Chinese compliance with that agreement, and how has it improved over the last five years.

In the 2006 USTR Special 301 Report, China is placed on the Priority Watch List, which includes countries that deny adequate and effective protection for IPR. This report states, "faced with only limited progress by China in addressing certain deficiencies in IPR protection and enforcement, the U.S. will step up consideration of its WTO dispute settlement option." In addition, we will "conduct a special provincial review in the coming year to examine the adequacy and effectiveness of IPR protection and enforcement at the provincial level." Certainly, this Commission and the Congress are vitally interested in what this stepping up process means in the way of action in Geneva, and, second, how the provincial review is coming?

I thank the participants in advance for what will prove to be two days of illuminating testimony.